

LIBERTY

IN ACTION



GOLDWATER
IN 2016

FALL 2016



CEO'S PAGE

Many fear the upcoming presidential election is a threat to the principles of liberty. And it may be.

But as the nation learned with Barry Goldwater's loss in the 1964 presidential election: *Elections aren't everything.*

Yes, Goldwater lost in '64, but the ideas he fought for went on to transform American politics. As Senator John McCain put it, Goldwater and his supporters transformed the Republican Party "from an Eastern elitist organization to the breeding ground for the election of Ronald Reagan."

So many of our friends and supporters I've spoken with across the country tell me they wish they could vote for Goldwater this year.

That would be nice, wouldn't it?

But I say we can vote for Goldwater this year. Maybe not on the ballot in November. But right now, and for every day to come, by supporting the Goldwater Institute that keeps his principled spirit alive.

Even more, *we're delivering on it*, advancing liberty across multiple fronts.

Because of his experience in politics and decades in Congress, Goldwater knew the political process was not the be-all and end-all . . . and that politicians would come and go, as would their principles.

Goldwater could have decided to put all his efforts and his legacy behind more electoral efforts. He could have shifted his attention to a single issue. Instead, toward the end of his life, he gave his name to our organization because he knew we had only one interest: *to fight for the liberty of the American people.* It may be "Evening in America," but it's not the end. The Oval Office will change hands, and you and I will fight on.

The Goldwater Institute is not content with the status quo any more than you are.

And we don't take no for an answer. We find a way. As a result, we are winning victories previously thought impossible.

Consider our news this month that a new lifesaving treatment for neuroendocrine cancer is available in Texas *without FDA approval*, thanks to the Right

to Try. *This is the first time in more than 50 years that patients and doctors did not have to seek the permission of the federal government to take potentially lifesaving medicine.*

That's not something any single candidate could deliver: It took the Goldwater Institute, the people of 32 states, and one courageous doctor to make that vision a reality. Lives are being saved, freedoms are being restored.

Next month the Phoenix Convention Center will host hundreds of schools and education providers at the 2016 Education Fair AZ, the valley's first big event for families navigating school choice. Why? Our steady work day in, day out, over the past 25 years has transformed Arizona's education system into one where most families now choose and direct their children's educations. Milton Friedman's dream of "unfettered school choice" is taking shape and we are spreading Arizona's leadership across the country.

Right now I'm most excited about how we're establishing a pro bono network of freedom-fighting attorneys across the country. Think of how Airbnb owns no hotels and Uber owns no taxis. Why pay for a full team of attorneys when we can harness the abilities of freedom-loving attorneys to fight and win cases that protect our constitutional freedoms (see page 24).

In this month's *Liberty in Action*, we explore the most important issues for voters in the 2016 presidential election (Gallup Poll). As we continue to expand our vision for America across the nation, in courtrooms, and in our local communities, please consider how much good you can do by "voting" for the Goldwater Institute and the principled ideas that fuel our work. Then give as generously as you can.

This election will soon be history; the Goldwater Institute is the future.



Sincerely,
Darcy Olsen

P.S. We're over the moon to hear from beloved author, *Wall Street Journal* columnist, and former Reagan speech writer Peggy Noonan as she takes the stage to receive the 2016 Goldwater Award at the Arizona Biltmore October 14. We're looking forward to her reflections, past and present.

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As excerpted from his new book, Timothy Sandefur warns of an America that is gradually losing the principle of freedom and becoming instead what he calls the Permission Society—a society in which our choices are increasingly subject to government pre-approval. Learn what can be done.



IT'S FREEDOM, STUPID

“It’s the economy, stupid,” became the messaging centerpiece of President Clinton’s 1992 presidential campaign. And in every presidential campaign before and since, talk of the economy and jobs is part of the discussion.

But often that discussion has sounded more like a broken record than a plan for sustained economic growth built on the principles of free market enterprise. On one side of the aisle is talk of more government spending; on the other, the need for tax cuts. And while government spending and tax policy are important issues, they miss the heart of the matter.

Economic growth and job creation are built on a more fundamental principle: Free people making free choices in a free economy.

So how has the Goldwater Institute answered the questions that matter most? With a simple reply, “It’s freedom, stupid.”



*By Jon Riches, director of national litigation and
general counsel at the Goldwater Institute*



*These “sharing economy”
technologies are changing
the way people live, work,
and travel.*

Take, for example, the work the Goldwater Institute has done on “sharing economy” issues.

Just this year, with the help of the Goldwater Institute, Arizona became the friendliest state in the country for home-sharing. Home-sharing allows property owners to rent out all or part of their homes on a short-term basis. New technologies and digital platforms have made these transactions possible for millions of Americans without the need for middlemen.

As a result of home-sharing innovations, Airbnb is now the world’s largest accommodation provider, delivering a stream of income to entrepreneurial property owners, and a local living experience to visitors.

Unfortunately, policymakers throughout the country have tried to put an end to home-sharing, often at

the behest of powerful hotel interests and for other reasons unrelated to health and safety.

At the heart of these regulations is a scary premise: Government regulators think that you do not own your property, and can dictate how and when you use it.

At the Goldwater Institute, we think differently. Which is why we developed and successfully passed landmark legislation that prohibits local governments from banning short-term rentals, unless the government can demonstrate its regulations are appropriately related to health and safety.

In a separate case, Goldwater attorneys filed a case against the Federal Aviation Administration after that agency shut down an innovative flight-sharing company called Flytenow, which allowed private pilots to connect with passengers to share



*Economic growth and job creation
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**= BIG
IDEA**

the operating expenses of small-aircraft flights. *Flytenow v. FAA* is currently pending before the U.S. Supreme Court.

These “sharing economy” technologies are changing the way people live, work, and travel. They are allowing greater flexibility to use one’s own property and work part time. And they are providing consumers with new and novel choices, often at a fraction of the price of incumbent businesses.

The job-creating potential is also staggering. In the United States alone, there are nearly 700,000 Uber drivers, providing over 21 million riders service.

Short-term rentals are putting unused property to productive use, and employing countless individuals in the home improvement, real estate, service, and tourism industries.

Unfortunately, politicians on both sides of the aisle are missing this enormous economic movement. At worst, these technologies are being shut down when regulators apply old and incongruent rules to new innovations. Or they are being slowed and hindered by policymakers who want to protect the special interests that support them.

Uber drivers, for example, can choose the time, place, and manner in which they work, like all independent contractors. But politicians who are supported by big labor want them to be unionized.

Sharing-economy technologies are offering freedom, choice, and flexibility. But while technology may be changing, the principles that animate and advance the economy do not change.

At the bottom of all of these new economic issues, like most every major policy question, is a political choice: Are we masters of our own fate, our own labor, and our own property, or are we subject to the whims of government, able to act only after being granted permission?

We prefer freedom. And when it comes to the economy and jobs, freedom works. It’s just that simple. ◀



*By Christina Sandefur, executive vice president
for policy at the Goldwater Institute*

BREAD AND CIRCUSES

“ We are a Nation becalmed. We have lost the brisk pace of diversity and the genius of individual creativity. We are plodding at a pace set by centralized planning, red tape, rules without responsibility, and regimentation without recourse.

Rather than useful jobs in our country, people have been offered bureaucratic ‘make work,’ rather than moral leadership, they have been given bread and circuses, spectacles, and, yes, they have even been given scandals. Tonight there is violence in our streets, corruption in our highest offices, aimlessness among our youth, anxiety among our elders and there is a virtual despair among the many who look beyond material success for the inner meaning of their lives. Where examples of morality should be set, the opposite is seen. Small men, seeking great wealth or power, have too often and too long turned even the highest levels of public service into mere personal opportunity. ”

Barry Goldwater delivered these prescient remarks in 1964, accepting the Republican Party's nomination for president. Unfortunately, his words could have been delivered today. In 2016, Americans are still plagued by a culture of "government knows best," and, if the 2016 election teaches us any lesson, it's that we can never escape politics as usual in Washington, D.C.

That's not because people don't want change. Polls show most Americans are eager to check Washington's power. Government growth has been on a one-way upward trajectory since 1965 despite the Reagan Revolution, Bill Clinton's declaration that the "era of big government is over," and the election of the Tea Party Congress.

As Goldwater went on to say, "Those who seek to live your lives for you, to take your liberties in return for relieving you of yours, those who elevate the state and downgrade the citizen must see ultimately a world in which earthly power can be substituted for divine will"

If past experience—and this election—is any lesson, Americans cannot rely on assurances that we can simply "vote the bums out." For one thing, most laws are not written by elected officials, but by unelected bureaucratic agencies. And without rethinking our nation's path, electing new politicians changes the faces but keeps the system in place. Instead of hoping some statesman can save us, we need to protect the timeless principles that underlie our constitutional freedoms. A culture that prioritizes the "vision" of bureaucrats and politicians at the expense of every person's right to shape his or her own destiny cannot hope for real change.

But now is not a time for despondency. It's a time to embrace opportunity. And that opportunity is plentiful, if we will just see it. The solution to Washington's problems isn't in Washington.

"That . . . is the ladder of liberty, built by decentralized power. On it also we must have balance between the branches of government at every level."

Father of the Constitution James Madison wrote that the system of federalism in our Constitution provides "a double security . . . to the rights of the people." Federal law provides basic, minimum protection for individual rights—but leaves the states free to establish stronger shields for individual rights when those federal protections fall short.

Congress, the White House, and federal courts may have forgotten the principles of life, liberty, and the pursuit of happiness in favor of political expediency. But we haven't. We're answering Madison's call to action.

We're walking the halls of capitols, arguing in courtrooms, and speaking to communities nationwide, to harness the power of state governments to ensure the survival and success of liberty.

"We do not seek to lead anyone's life for him—we seek only to secure his rights and to guarantee him opportunity to strive."

The right to try to save your own life when you've been diagnosed with a terminal illness. The right to earn an honest living to realize your dreams and provide for your family. The right of individuals and businesses to own and use private property as they see fit. The freedom of families to pursue educational opportunities that prepare their children for the future. The freedom to express oneself and support a cause without fear of harassment or intimidation. The freedom from having one's hard-earned money taken by government and given away to private organizations. These are not Republican or Democratic principles. They're American principles. And they're basic human rights. They are what we stand for.

Father of the Constitution James Madison wrote that the system of federalism in our Constitution provides "a double security . . . to the rights of the people."

And our constitutional system gives us a powerful tool—50 powerful tools—by which those principles can be realized.

Barry Goldwater was never elected president. But through our work, his legacy lives. We have it in our power to restore the vision of our Founders—and to broaden that vision so that all people enjoy the blessings of liberty. At the Goldwater Institute, we are devoted to unleashing the power of freedom to empower people to live freer, happier lives. That is our vision for America. And that's why we say, vote Goldwater in 2016! ◀



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TO HELP NOURISH FUTURE GENERATIONS.



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By Darcy Olsen, chief executive officer at the Goldwater Institute

FOLLOW THE LEADER

STATES PAVE WAY AS TERMINALLY ILL RECEIVE FIRST TREATMENTS UNDER RIGHT TO TRY. CONGRESS SHOULD FOLLOW.

For the first time in more than 50 years, terminally ill patients are receiving lifesaving treatments without having to seek FDA approval or get permission from the federal government. Dr. Ebrahim Delpassand revealed at a recent U.S. Congressional Committee hearing that he has treated 78 cancer patients under the Texas Right to Try law using a treatment that has completed clinical trials but is awaiting final FDA approval.

Dr. Delpassand is the founder and medical director of a private nuclear oncology center in Houston. He is the former deputy chairman, associate professor, chief of clinical nuclear medicine and director of therapeutic nuclear medicine at M.D. Anderson Cancer Center in Houston.

Three years ago, we at the Goldwater Institute had a vision. We argued that if Americans had the right to die, a right that has been upheld by the U.S. Supreme Court, we also have the right to try to save our lives.

Three years later, that idea—the Right to Try—has become law in 32 states.

This spring, Dr. Delpassand also testified that “Patients being treated under the law were told that they had three to six months to live. Many will now have the opportunity to attend a child’s wedding, meet a new grandchild, or simply enjoy more sunrises.” Thanks to your support of this work patients are living better and living longer.



Our success in driving the adoption of the Right to Try is not just helping patients today, it is reshaping the entire national conversation around the drug approval process. The Right to Try has become part of party platforms; multiple federal bills along these lines are gaining ground, and the FDA is taking note. Among other changes, the FDA—in a lifesaving move for DMD patients—reversed itself and approved the drug eteplirsen. The FDA also pledged to reduce its 300-hour compassionate use application to 45 minutes, and the agency announced the creation of a “compassionate use navigator”—a person to guide patients through the FDA’s labyrinth.

There is much Congress can and should do to facilitate better access to medicine, including allowing for international reciprocity, which would reduce the cost of drug development and, most important, give patients access to the most advanced care now.

At this point, we anticipate more physicians and research centers

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will move forward with treatments for patients in need under our state laws. If the federal government decides to try and block treatments, citing preemption, we are prepared to defend physicians and patients in court. If you have the right to die, you have the Right to Try. We will keep our supporters up to date on this critical issue. ◀

Written by Matt Bellina, a 32-year-old father, veteran, and terminally ill ALS patient. Article reprinted with permission from the Washington Post.

LIFE OR DEATH FOR FEDERAL RIGHT TO TRY

Last Thursday, I testified before the Senate on a bill that could mean life or death for me. The Trickett Wendler Right To Try Act would clear the way for drug and device manufacturers to provide investigative therapies to terminal patients if a patient and his or her doctor thinks it might help.

In the *Washington Post*, columnist Joe Davidson called my testimony “compelling” but decided that ultimately the “Right to Try” proposal is a “solution in search of a problem.”

As a 32-year-old father, veteran, and terminally ill ALS patient, I can assure you we have a problem—and this bill is part of the solution.

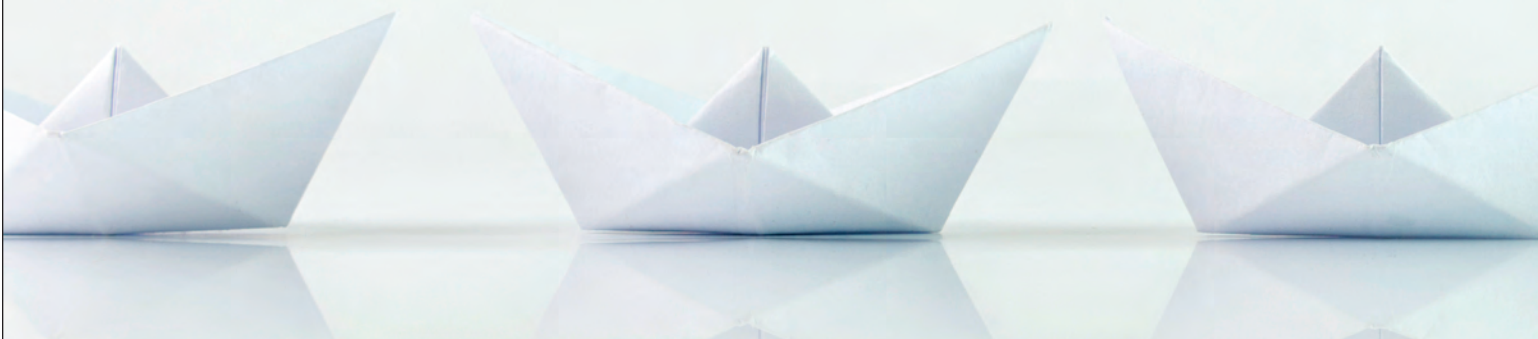
Thirty-one states have passed Right to Try laws in 24 months. When the measures are approved, it’s with overwhelming bipartisan support. In more than half of all states, they passed unanimously, without a single dissenting vote from a Republican or Democrat. They have also been signed into law by Republican and Democratic governors.

The state laws allow terminal patients like me to work directly with their doctors and drug manufacturers to access promising treatments now being safely used in clinical trials. The federal law under consideration would prevent the Federal Drug Administration or any other federal agency from blocking or interfering with the implementation of these state-passed laws.

A new federal law is essential in order for the state laws to have a meaningful impact. Right now, many drug companies are sitting on the sidelines, waiting to see what the FDA does now that the first brave doctor has stepped forward to say that he is treating patients under his state’s law.

Until doctors and drug companies know that the FDA isn’t going to have them prosecuted, why would they risk providing treatments to anyone, no matter how compelling the story?

In his column, Davidson suggests that Right to Try is unnecessary because the FDA has a process called “compassionate use” that gives terminal patients access to treatments still in



clinical trials and that the agency approves almost every request.

But this program is severely flawed.

The FDA disincentivizes doctors and companies from participating in the program by making the process onerous and by refusing to put in writing that the agency will not shut down a trial or delay approval because of any adverse events that happen outside of the clinical trials.

In Thursday's hearing, much was made of the fact that the FDA itself has acknowledged these flaws by attempting to streamline the application process and proposing a new office within the agency to help dying people navigate its bureaucracy.

Shorter forms and hand-holding bureaucrats are helpful—but when you're dying, you don't have time for that.

Right to Try streamlines the process for early access to an investigative treatment and eliminates unnecessary delay. If a patient is willing to try a promising treatment, the federal government should not get a veto stamp. After all, these are patients who understand the risks, whose doctors think the treatments may help them more than anything else on the market today, and who are supported by companies willing to provide treatment.

The FDA says it approves almost all requests for access to investigative treatments. Last year, that was a little over 1,200 requests.

Dr. Razelle Kurzrock of the University of California, San Diego, told the Goldwater Institute that when she ran clinical trials at MD Anderson Cancer Center, she would spend

hours on the phone with the FDA trying to get a verbal commitment before even beginning the application process for a patient.

"It's almost a self-fulfilling prophecy for the FDA to say they approve everything, because you don't even put in the application before you sort of get a verbal approval from the FDA that it's worth doing."

In 2014, nearly 25,000 people in France were using investigative treatments through that government's equivalent program. If a country with one-fifth the population of the United States can help 2000 percent more people, we clearly have a problem.

No one advocating for the state or federal Right to Try laws thinks it is a magic pill. But it does open up new options for people like me whose time is running out.

What is the downside of creating new pathways for the terminally ill to access promising treatments? Maybe the law won't help millions of people, or even many—but for those that it does help, it's a game-changer. Just ask the 78 terminal cancer patients who are still with us today because of a state version of this law.

Senator Ron Johnson, Republican from Wisconsin, plans to ask the full Senate to pass this bill by unanimous consent this coming week.

If the senators comply, they will be able to look back on that decision and know it saved lives. ◀



By Timothy Sandefur, vice president for litigation at the Goldwater Institute

THE PROMISE OF OPPORTUNITY

Income inequality has grown across the world in recent decades, in countries as different as the United States, India, and Russia. Here at home, the gap between rich and poor has widened so much that, according to the liberal Economic Policy Institute, the top 1 percent captured more than 85 percent of income growth in the past five years. Those numbers are debatable—they result in part

from changes in tax laws, and researchers often don't count government benefits like welfare when measuring income. But inequality is real, and it can have lasting consequences: People have a harder time climbing the economic ladder if they think the promise of opportunity is a sham.

At the Goldwater Institute, we believe freedom is the best solution.

When talking about inequality, we should remember the

distinction Alexis de Tocqueville drew in his classic *Democracy in America*, between the “manly and legitimate passion for equality that spurs all men to wish to be strong and esteemed”—and the “depraved taste for equality, which impels the weak to want to bring the strong down to their level.” The first kind of equality leads to the healthy ambition we call the American Dream—the attitude that says “I can be as good as anyone.” But, as Tocqueville warned, the



second kind of equality “reduces men to preferring equality in servitude to inequality in freedom.” No nation can long survive the stifling uniformity imposed on it by laws that restrict innovation and entrepreneurship, and allow those with political influence to enrich themselves, while barring newcomers from working their way to success.

Freedom, after all, increases inequality in one sense—it’s just that we call it by a different name:

“diversity.” When government imposes top-down, one-size-fits-all mandates on companies, or bars competition to benefit politically powerful monopolies, people who might otherwise have been brilliant inventors, or might have founded ingenious new businesses, won’t be able to realize their potential. That’s why countries that prioritize equality over freedom tend to produce conformity and bland sameness. Imagine what would

have happened to Thomas Edison or Steve Jobs if they’d been born in North Korea.

But a bustling, free society gives people more chances to develop their unique talents, and when they do, we celebrate them for being special individuals—even though specialness is a kind of inequality. That’s a good thing—and it’s what James Madison meant when he wrote that “the first object of government” is “the protection of different and



unequal faculties of acquiring property.” Innovators like Edison or Jobs—and small business owners like Goldwater Institute clients Lauren Boice or Ryan and Laetitia Coleman—are unique people who were able to share their specialness with all of us, thanks to freedom. That kind of inequality benefits everyone.

The dangerous inequality is rooted in laws that stifle opportunity and make political influence count more than hard work. For example, many communities have passed laws that forbid homeowners

from renting out rooms to guests through “home-sharing” sites. Politically powerful hotel chains, of course, can afford the expense of getting government permits, and they’re eager to use these laws to ban competition. But for middle-class homeowners, home-sharing prohibitions cut off an important option for closing the income gap. People often use home-sharing to help pay their mortgages; more than half of Airbnb hosts in 10 of America’s largest cities report that they would be unable to pay their bills without income

from home-sharing, and 13 percent would have faced foreclosure. Thanks to Goldwater’s pioneering legislation protecting home-sharing, Arizona homeowners can still use their property to better their lives in this way.

Or consider “certificate of need” laws that block people from starting new businesses unless they persuade a government bureaucracy that there’s a “need” for a new company. These laws enable existing businesses to veto potential new competition—regardless of whether the

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newcomer is qualified and honest. When economic success depends on bureaucratic favoritism rather than on satisfying consumers or creating better products or services, entrepreneurs get locked out—while the fortunate few who have the time and money to get a certificate keep their insider status. Since those insiders can often give certificates to family members, the result is to entrench inequality, sometimes for generations.

That's why our lawsuit challenging Georgia's certificate of need law argues that government

can regulate the economy to protect the public—not to prevent competition. And it's why our new Right to Earn a Living Act would bar government from imposing rules that restrict competition to benefit insiders—while allowing government to regulate industries in order to ensure that businesses are run safely and honestly. The Act declares economic freedom a fundamental right, and gives judges the tools they need to protect the right to economic competition against bureaucrats who often work with existing

businesses to close the doors of opportunity. Competition keeps those doors open so that tomorrow's Edisons can become the unique individual they were meant to be.

Our nation was founded on respect for equal rights and the uniqueness of each individual. Our laws should encourage “the legitimate passion for equality”—and discourage the dangerous kind—by ensuring that our society is open to the creative, innovative, and special people who make all our lives so much richer. ◀

Thank you, this and every year, for your extraordinary generosity. With your financial support, we continue to protect individual property rights critical for innovators in a shared economy, defend treatment for terminally ill patients looking for a second chance at life, and guard free speech guaranteed by the First Amendment. So let us extend our most heartfelt gratitude because, without you, none of this is possible. You are a true defender of freedom and protector of liberty.

THANK YOU



ARE YOU A LITIGATOR INTERESTED IN DEFENDING AND ADVANCING **LIBERTY**?

The Goldwater Institute's pro bono litigation network is the opportunity you've been waiting for. Join the fight for liberty in courtrooms across the country!

To learn more or to apply, visit goldwaterinstitute.org/en/pro-bono/



IN DEFENSE OF LIBERTY

In the past few years, the Goldwater Institute has used litigation to stop the nefarious practice of union release time, to stop taxpayer-funded stadiums, to protect the right of workers to vote by secret ballot in union-organizing elections, and to give the terminally ill access to lifesaving medicines.

One key to our success is our unique litigation strategy.

The federal Constitution provides basic minimum protections for freedom, but state constitutions can expand freedom above that federal baseline—as we say, it’s a floor, not a ceiling. And based on that philosophy, we’ve focused on using state law to protect individual rights when Washington, D.C., hasn’t. For instance, in the wake of the *Kelo* decision, which expanded the power of eminent domain to allow government to benefit powerful developers at the expense of home owners and small-business owners, the Goldwater Institute developed a law—the Property Ownership Fairness Act—that is far stronger than the federal Fifth Amendment. It’s been the law in Arizona for 10 years, and we’re moving forward to get it passed in other states.

But it’s not enough to write new laws—we also have to go to court to make sure the laws, as well as the sometimes overlooked protections already existing in state law, are actually enforced. Through path-breaking litigation, we’ve set the standard for protecting individual freedom in state courts across the country—creating game-changing legal precedents to limit the size and scope of government. The Goldwater Institute boasts a 74 percent win rate in the courtroom, and we can be very proud of that.

Our success has also inspired sister organizations to establish 16 new liberty-

oriented litigation centers in other parts of the country, and the filing of more than 30 lawsuits following our model.

Even so, we only have the resources to take about 1 case out of every 25 that come to us.

If you’ve ever hired an attorney, you know firsthand that litigation is expensive. Most of the cost goes to paying for first-rate legal talent. But what if we could recruit and deploy an army of highly trained litigators who would fight for liberty pro bono?

Public interest litigation is an uphill battle. Not only do we confront decades of precedent set by Progressive judges and lawyers, but the political left has monopolized the public interest legal market for decades. Progressives still have a decisive advantage in dollars and the sheer number of lawyers nationwide.

The ACLU, for example, was founded in 1920, giving it an 83-year head start on us. They also have a sizable cash and staff advantage. Their annual budget is \$133 million, over 25 times the size of Goldwater’s entire budget. That budget funds a team of more than 200 attorneys, compared to Goldwater’s current handful.

Just as Uber owns no taxis and Airbnb owns no hotels, our new Constitutional Defense League can tap the private sector and leverage the experience of thousands of attorneys without the full expense of employing them. By recruiting a network of pro bono attorneys, we can expand our litigation capacity like never before. Goldwater Institute attorneys are working to train and oversee a team of lawyers who want to advance the cause of liberty in courtrooms in their own home states, using precedents we’ve helped set, and with support from our legal staff.

*By Timothy Sandefur, vice president for
litigation at the Goldwater Institute*



*...what if we could recruit
and deploy an army of highly
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fight for liberty pro bono?*

*Wherever liberty is threatened,
it should have an attorney. That's
the promise of the Constitutional
Defense League.*



With a limited initial outreach, the response has been impressive, including that of Ivy League graduates and attorneys at top private law firms. The Goldwater Institute will provide comprehensive training to these attorneys in mid-2017.

After the pro bono attorneys are fully trained, they will be able to take cases and claims the Goldwater Institute has litigated and replicate them in their home states. Some cases will be more appropriate for Constitutional Defenders than for our in-house attorneys, including enforcement actions where board precedent already exists.

Our attorneys are in court today fighting for:

- **The rights of entrepreneurs:** State and local governments routinely discriminate against business owners by prohibiting advertisements even while allowing political signs or other kinds of messages without limit. We're fighting under both state and federal constitutions to vindicate the free speech rights of business owners like Aaron Shearer, the Scottsdale business owner whose farmers markets were shut down by city officials who refused to let her put up signs directing the public to the locations. City law lets people put up signs to advertise Christmas tree lots or real-estate open houses without a permit. But Aaron's farmers markets—which depend on signs to tell people where to shop for fresh produce—weren't on that list. City fathers banned her from putting up the signs—essentially shutting down her business.

- **The rights of Native American children:** Federal and state law establish a separate-and-unequal set of rules for Native American kids in foster care and adoption cases—rules that often make it harder for the state to protect the children against abuse and neglect. We're in court in Arizona, Washington, California, and elsewhere to defend their equal rights—including the case of “Lexi,” the 6-year-old California girl who was taken away from her foster parents of four years and sent to live with a different family in Utah, simply because her great-great-great-great-grandparent was a full-blooded Choctaw Indian. She's appealed her case to the U.S. Supreme Court, and we're part of the team of lawyers fighting for her right to equal legal treatment—without regard for her race. And we're challenging the constitutionality of these laws in a class-action civil rights case in federal court, representing children throughout Arizona who need safe, loving, adoptive families—and aren't blinded by racial prejudice.

- **The rights of property owners:** Local governments nationwide are cracking down on the freedom of homeowners to let guests stay in their houses through so-called “sharing economy” sites like Airbnb.com. Through our cutting-edge litigation, we're defending homeowners in Arizona, Tennessee, and other states. We were recently victorious in defending Glenn Odegard, a Jerome property owner who carefully restored a century-old Victorian house so that he could rent it out to tourists. Glenn had fixed up the home with his own two hands, making it so beautiful that it was featured on the cover of *Arizona Highways* magazine—only to have the city declare it against the law for him to accept lodgers. Our litigation ensured that his hard work was rewarded rather than punished—and he was the guest of honor of Governor Doug Ducey at the ceremony to sign our new vacation rental home into law.

- **The rights of taxpayers:** In Arizona, Texas, and several other states, we're taking on officials who hand out taxpayer money to politically powerful companies through “economic development” projects that leave hardworking taxpayers on the hook—and “release time” schemes that give government unions public money for their own private benefit. We're challenging release time in Austin on behalf of taxpayers who shouldn't be forced to give up their hard-earned money to support a public employee union that's actively working against to expand government and increase the tax burden citizens have to pay.

Wherever liberty is threatened, it should have an attorney. That's the promise of the Constitutional Defense League.

Freedom is the precious birthright of every American—of every property owner, of every entrepreneur, of every child. But just as we're all entitled to freedom, it's also our obligation to do our part to defend that freedom. Each of us feels, at times, that the forces against us are overwhelming. But if we think about it, we have so many tools at hand for defending freedom: 50 state constitutions, countless lawyers willing to lend their efforts to the cause—and millions of unique citizens like you, each with their own gifts and talents. We have it in our power to make real the promise of liberty for a new generation. ◀

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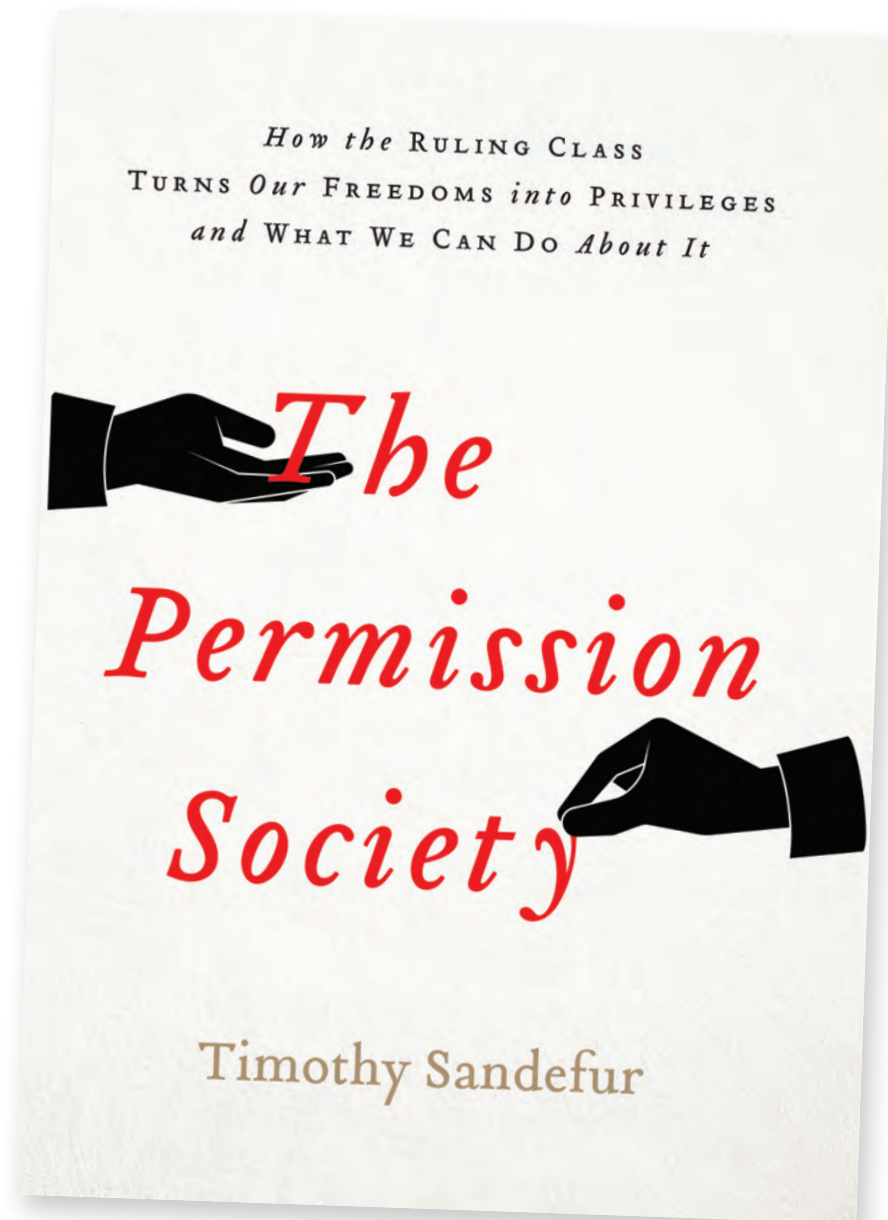
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Not having to ask permission is one of the most essential parts of freedom. To be free means to be able to make one's own decisions without first seeking some kind of approval from a superior. Freedom does not mean the right to do whatever pleases, regardless of harm to others. It means the ability to follow one's own will: to do as one chooses with oneself—with one's own abilities and property—without

being required to ask leave of somebody else.

This is the difference between rights and permissions. We have freedom when we can make the operative choices about our lives—about what to say, what our religious beliefs are, what jobs to take, or what to build on our property. To the degree that we must ask someone else to let us act, we do not have rights but privileges—licenses that are granted, on limited terms, from someone who stands above us.

Under the rule of monarchy, subjects enjoyed no freedoms except those that the ruler chose to allow. Someone wishing to travel, preach, start a business, publish a book, or engage in any number of other activities was first required to obtain permission from the authorities. Under such rules, the people enjoyed only privileges, not rights. Their freedoms took the form of forbearance on the part of the ruler, which could be revoked at any time. When America's founders broke with the mother country, they sought to reverse this polarity.

The government of the new United States would not give permissions to people but would have to ask permission from the people. The founding fathers pledged their lives, fortunes, and sacred honor to the proposition that all human beings are fundamentally equal, with none enjoying any special right to rule another. Government existed not to give people rights, but to protect the rights that were already theirs.

Sadly, today America is gradually losing this principle of freedom and becoming instead what I call the Permission Society—a society in which our choices are increasingly subject to government pre-approval. Whether it be building a house, getting a job, owning a gun, expressing one's political beliefs, or even taking a life-saving medicine, laws and regulations at the federal, state, and local level

now impose permit requirements that forbid us to act unless we first get permission from the government. Thanks in particular to ideas that originated with the early twentieth-century Progressive movement, today's leading politicians, judges, intellectuals, and activists now believe that we are not free unless and until the government says we are.

But laws that require us to get government permits before we may do things, build things, buy things, or make things, cause many social and political problems:

*All we have of freedom,
all we use or know,
This our fathers bought for
us, long and long ago.
Ancient Right unnoticed—
as the breath we draw.
Leave to live by no man's
leave, underneath the law.*

— Rudyard Kipling

• **Rent-seeking:** When permits become valuable, they encourage people to devote time and money to getting permits and blocking their competitors from getting them. Moving companies that can use Competitor's Veto laws, for example, try to succeed not by providing better service to customers but by obtaining favors from the government and preventing new companies from starting.



• **The Knowledge Problem:**

The permit system is premised on the notion that government knows what should and should not be permitted. But there is rarely good reason to assume this, and often good reason to doubt it. The founding fathers eliminated prior restraints on freedoms of religion and speech in part because the government does not know the "truth" about religion or politics and cannot be trusted to ensure that only true things are preached

or published. But government is no better at managing our economic choices, the uses of property, the practice of medicine, or our family relationships than it is at managing those things.

- **Vagueness:** The standards a person must meet in order to get a permit are often written so vaguely that nobody can know what they really mean—which gives bureaucrats the ability to impose whatever restrictions they want. Broadcasters regulated under the ambiguous “public interest” standard often found that their freedom of speech existed only at the mercy of the FCC, and architectural design review, which enables officials to block the construction of buildings they find unattractive, allows them to impose their own aesthetic tastes on neighborhoods.

- **Demanding payoffs:** The power to give someone permission allows the government to make demands of people in exchange for permits. When property owners request a permit to improve their property, the permitting agency has the leverage to force them to give up land or cash. And because the government can deprive doctors of the ability to practice medicine or prescribe treatment, it can restrict their rights to free speech and the rights of patients to access medicine they need.

- **The double-layer effect of permits:** Because violating a permit requirement is illegal, even if the permit requirement itself is invalid, citizens have little opportunity to resist illegal restrictions of their freedom. A property owner, for example, who thinks the government is abusing its authority, must hold off construction, often for years, while a court reviews the case—a prospect many people cannot afford. Officials

often use delay and financial pressure to get their way.

- **Stifling innovation:** Permit requirements essentially force a person to prove that something is a good idea before he can give it a try. But in many areas of life, particularly in economics, it is simply not possible to know whether something will prove to be a good idea without trying it first. As Friedrich Hayek wrote, competition is a “discovery procedure”—a tool for learning what innovations will or will not prove beneficial. But the permit system bars competition and discovery and often scares entrepreneurs away from trying new ideas that might otherwise have made everybody better off.

- **Government as superior:** Because the permit system requires government approval of things a citizen would like to do, it essentially establishes a Permission Society—a system of superiors and inferiors, in which those who grant permission stand on a higher plane than those who must ask for it. This contradicts the basic principle of equality and gradually corrupts the spirit of self-reliance on which healthy democracies depend. Instead of equal citizens who together establish and run the government for the benefit of all, the Permission Society regards citizens as subjects or children, who can be told what they may do with their property, what they may read or say, what sorts of medicine they may take, and even what sort of sexual and family relationships are permissible.

What other option is there? The traditional system of nuisance—with its fundamental principle that people can do as they will with what belongs to them, so long as they harm

nobody else—provides a ready alternative that respects equality and freedom of choice.

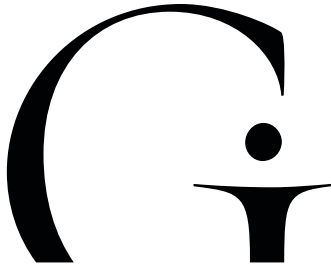
At the Nuremberg trials in 1946, Supreme Court Justice Robert Jackson, serving as the chief prosecutor of Nazi war criminals, sought words to express the idea of freedom that he hoped would rise from the ashes of Europe. He found those words in an 1899 poem by Rudyard Kipling entitled “The Old Issue”:

All we have of freedom,
all we use or know,
This our fathers bought
for us, long and long ago.
Ancient Right unnoticed—
as the breath we draw.
Leave to live by no man's
leave, underneath the law.

Leave to live by no man's leave. The freedom to decide and to act without first asking leave of kings or bureaucrats is the crucial difference between those who are free and those who are not. As government takes increasing control over aspects of our lives—economic, political, social, and personal—our nation is more in danger of losing all we have of freedom.

Yet the Permission Society's most basic assumption—that people cannot be trusted with freedom, that they are therefore not free unless government says they are—is not only its most offensive element, but also its silliest. *Of course* people can be trusted with freedom. We do it all the time. And if we do not, then we must ask the question: Whom can we trust with *ours*? ◀

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GuideStar, a national clearing-house for information about nonprofit organizations, recently honored the Goldwater Institute with its highest possible rating of Platinum.

GuideStar has recognized the Institute's commitment to financial transparency and disclosure of other information to assist donors in making better decisions about their charitable giving.



For the third consecutive year, the Goldwater Institute received a four-star rating from Charity Navigator, America's largest evaluator of nonprofit organizations.

Four stars is Charity Navigator's highest rating, recognizing that the Goldwater Institute "consistently executes its mission in a fiscally responsible way." Only 12 percent of all U.S. nonprofits have received this rating at least three years in a row.

In announcing the rating, Charity Navigator said the Goldwater Institute outperforms most other charities in America and has proved worthy of the public's trust and support.