

# THE BRIEF

## FROM THE DESK OF GABE CONGER

Dear Friends,

*“No sooner does a government attempt to go beyond its political sphere... than it exercises, even unintentionally, an insupportable tyranny.” — Alexis de Tocqueville*

**W**hat I love about the Bradley Impact Fund donor community isn’t just the lively debates on the many ways our political leaders have, as the great observer of American democracy put it, gone *beyond their political sphere*.

Far more important for me, and—I believe—for you, is that this community is doing something about it. I’m not terribly interested in just talking about the unfolding crisis, or in strategies designed to merely stave off America’s decline. Analyze the crisis we must—honestly, soberly, seriously. We know what we’re fighting for, but we must also know both what we’re fighting against and the lay of the land.

At the Impact Fund Retreat in Scottsdale this winter, the esprit de corps was palpable. Our time together had a purpose beyond considerable fellowship: introduce thinkers and doers to begin and strengthen relationships among the happy warriors who are all-in when it comes to reclaiming and defending our basic freedoms and advancing the institutions and strategies that will make this happen. We heard from leaders whose research, analysis, and general troublemaking is having true impact in academia—where the leftist monoculture has drifted from liberalism to open and, at times, violent embrace of its opposite. We heard exactly why religious freedom is enjoying win after win in the courts, why we may finally see the end of Chevron deference, and, just as importantly, what the shifting legal and political landscape means going forward.

Recall that Tocqueville’s extraordinary insights into America’s uniquely civil DNA didn’t end with a defense of mere democracy. Rather, he was so astounded that those of various stations used their freedoms to come together in common purpose that he saw a new era opening for the world. He was right. The defense of freedom and common purpose deserves our very best. Thank you for joining the Bradley Impact Fund in making this fight your own.

Onward.



Gabe Conger  
President, Bradley Impact Fund



### DID YOU KNOW?

The National Association of Scholars has proposed a Curriculum of Liberty, to educate American college students in line with higher education’s traditional role and turn away from radical fringe.



KEYNOTE SPEAKER  
GREG  
LUKIANOFF



*“You helped FIRE come into existence and have been our most reliable and steadfast friend. Thank you so much for everything you’ve been able to help us achieve.”*

— GREG LUKIANOFF, President and CEO of FIRE

**B**radley Impact Fund members know well the accountability that the Foundation for Individual Rights and Expression (FIRE) has brought to America’s academic institutions. But in their 2023 book, FIRE President Greg Lukianoff and his co-author Rikki Schlott present an updated view of the layers of pressures that exist in academic and corporate America to conform to woke priorities. In his keynote address, Mr. Lukianoff

made sure to not just highlight the “genuinely catastrophic” state of American institutions, but also to talk about solutions.

The increasingly violent anti-Israel protests following the Hamas terrorist attacks of October 7 perfectly set up Mr. Lukianoff’s key recommendation that leaders finally punish protesters who cross from speech to violence and disruption. Recent



events at Berkeley and Yale, he said, were exactly what you'd expect from protesters who don't believe they will face consequences for their actions. If freedom of expression is to return to campus, and if corporations are to rein in radical politics from their employees, it's time for repeat offenders to be held accountable.

The incident at Yale hit particularly close to home for Mr. Lukianoff. In March, the Young Communist League of Yale did what communists have always done: they stormed a classroom, demanding in this case that Professor Timothy Snyder, a scholar on the history of Soviet Communism, be silenced. The descendant of kulaks, or more prosperous Russian peasant farmers, Mr. Lukianoff wouldn't be American if his family hadn't fled after losing the war started by the Bolsheviks. This old communist tactic of intimidation is now commonplace in America, often deployed (as it was at Yale) under banners demanding that Israel be erased from the map.

While more leaders now openly acknowledge the problem and are starting to act, attacks on free expression on campus may not have peaked yet. According to FIRE's research, the number of professors fired for non-conformity with campus orthodoxy in the past ten years is approximately double the number who were fired under McCarthyism.

FIRE's recent research on the prevalence and effect of diversity, equity, and inclusion (DEI) statements on university campuses has yielded telling, but more importantly, actionable results. While ninety percent of the relatively small proportion of conservative professors agree that DEI statements are political litmus tests, about half of all professors agree with the statement. The most surprising finding was, as Mr. Lukianoff put

it, that "almost a quarter of professors thought that [DEI statements] were both political litmus tests and were appropriate. . . so at least they're being honest."

After highlighting other troubling findings, Mr. Lukianoff alighted on FIRE's goal to defend freedom of speech,

*not just as a legal right, but as something living in the heart of every American, something that actually ... shapes the way we interact with each other as fellow citizens.*

As promising as recent moves have been to expel DEI from institutions, or at least hold the worst perpetrators responsible, there is far more to do. This will require careful research so that decision makers know as well as possible the true state of the battle in their sectors and institutions, and can see what real leaders—like those in the Bradley Impact Fund community—are doing to restore freedom of expression and a sense of shared mission in their institutions.

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# LITIGATING FOR LIBERTY:

## *The Fight for Freedom of Association*

In the first session, Gabe Conger spoke with three of the most strategic, creative, and courageous defenders of freedom of expression and association against the power of government unions.

Victor Riches, President and CEO of the Goldwater Institute, explained that their entire focus is on changing public policy through litigation and legislation. Goldwater's game-changing innovation of Education Savings Accounts, (ESAs), though they have different titles in different states, started with a traditional voucher measure and getting it passed. Union-backed opponents effectively fought back in court with arguments based on the Blaine Amendment. But a year later, Goldwater returned with the first ESAs, a proposal that evaded Blaine Amendment problems by ensuring that taxpayers' money wouldn't go to parochial schools but rather to parents to spend as they see fit.

The first victory included ESAs for special needs children. In subsequent years, the program was expanded to military families, children from failing schools or who were living on reservations, and so on. But as their efforts gained more traction, they saw an opportunity to legally shore up the laws by building "cause of action" clauses into legislation, giving them standing to sue when the government tried to deny school choice to families.

Since government bureaucrats are known to break or ignore duly passed laws, adding causes of action clauses into legislation gives teeth to the law, giving Goldwater and other litigants the best chances of beating the government in court when infractions occur.

Nathan McGrath, President and General Counsel of the Fairness Center, discussed the strategic importance of not merely filing a case in a state and then moving on, but filing multiple cases to force unions to comply with the law. The strategy occurred to Mr. McGrath not long after he, as a young litigator in California, told his opponent that if his union client just stopped what they were doing, there would be no reason to pursue such cases. In a moment of surprising honesty, his opponent replied, "Nathan, we know, but you guys show up every couple years, and we settle the case or moot it out and then you go away. In the meantime, we make hundreds of thousands, if not millions of dollars. Basically, it's a business decision." This is why the Fairness Center's strategy is to pound the unions with multiple lawsuits rather than just win a case and walk away. The success of this strategy was recently reflected in a call McGrath received from a union attorney who volunteered information on their client's failure and begged the Center not to sue, insisting, "We'll take care of it." Persistent litigation with multiple cases is how wins can



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become precedents, and even in unfriendly states like Connecticut, unions have to look over their shoulders and do things right.

Aaron Withe, CEO of the Freedom Foundation, attributes the Freedom Foundation’s gift for gaining powerful enemies like American Federation of Teachers President Randi Weingarten to their success in helping union members leave, costing the unions millions every year. Their key measurements of success are how much they cost the unions, now measured in tens of millions of dollars in dues lost annually, and how much the unions fight back. In addition to their work in litigation and legislation, Freedom Foundation has invested heavily in the “ground game:” direct outreach to public employees, helping them understand their

rights and break free from their unions—helping former members keep more of their hard-earned money.

By hosting an annual Teacher Freedom Summit, Freedom Foundation has been able to educate hundreds of teachers about how unions are introducing radical ideas into schools and how teachers can fight back. They’re given tools and tactics oriented toward launching campaigns to opt-out members, sue unions, and eliminate radical union-backed ideas like Critical Race Theory. They’re even helping to decertify unions in some cases, as with a current Freedom Foundation-backed effort in Miami, Florida that is poised to decertify the nation’s third-largest district.

## BRADLEY SUMMER ASSOCIATE LEGAL FELLOWSHIP

The Fellowship is an opportunity for law students to explore a career in public interest law by working at an organization for ten weeks during the summer following their first or second year of law school. Fellows receive a stipend and have an opportunity to network with their class of fellows and leaders in the field. This year, with support from the Impact Fund donor community, the Impact Fund is supporting Fellows from the Fairness Center and the WMC Litigation Center.



## THE NEXT GENERATION OF JOURNALISM: *Opportunities and Threats to Freedom of the Press*

**M**ollie Hemingway, Editor in Chief of *The Federalist*, discussed how the publication was founded ten years ago to bring serious reporting and fresh perspective to stories that were being botched by the elite media. It wasn't long before *The Federalist* broke a number of important stories about the integrity of the 2016 election and the contentious nomination and appointment of Supreme Court Justice Brett Kavanaugh. Considering how, by controlling the framing of the biggest stories, the corporate media controls the way Americans talk, even how we think about so many complicated issues, it has never been more important to bring fearlessness and rigor to the table to shed light.



*the*  
**FEDERALIST**

**REAL  
CLEAR**  
INVESTIGATIONS

**THE COLLEGE FIX**  
BREAKING CAMPUS NEWS. LAUNCHING MEDIA CAREERS.

As Mrs. Hemingway put it, it's hard to win a war if you don't control the airspace, and that's what the news media is. The Left has invested heavily in information warfare, so it's critical that the facts typically hidden by mainstream media are brought out into the light. By doing so, outlets like *The Federalist* provide a broader perspective that helps people articulate what is wrong with so much that they're hearing. This is especially true given the latest evolution of cancel culture, now in the form of government agencies funding private NGOs who together determine what can and can't be said on social and traditional media.

Mark Hemingway, Senior Writer at *RealClearInvestigations* and book editor at *The Federalist*, noted a "palpable shift" in the media between his entry into the newsroom in the early nineties and the situation today. Thirty years ago, journalism was still mostly a working-class profession, even if there were more famous personalities. He traced the culture change to the emergence of Woodward and Bernstein, after which people started to look at journalism as more of a prestige position. Far more common in mainstream media bylines are MFAs in creative nonfiction from Ivy League schools than reporters who have ever held a blue-collar job. So, along with the politicization of institutions, journalists formed in elite education silos have begun to see their profession through the information warfare model. One of the effects is that the trusted institutions now present an alternative reality. *The New York Times* and the *Washington Post* received Pulitzers for reporting on the Russia collusion story that has been thoroughly debunked.

Yet, Pulitzer did an internal review and decided the reporting held up.

John Miller, Founder and Executive Director of *The College Fix* and its parent organization, the Student Free Press Association, welcomes the new world of perspective journalism. One of the biggest reasons liberal media bias is so pervasive is because so few conservatives go into the profession. The Left discriminates in hiring for mainstream media, of course, but the bigger problem from Mr. Miller's perspective is that not enough conservatives want to go into the field. *National Review*, and then *Human Events* and others, changed this trend years ago, but as late as the early 1990s, there were few publications for conservative journalists. Now, the legacy media has been totally blown up and there are many places for young conservatives to work for publications that can push back against the elite narrative. The Russian collusion story was nonsense, but we have never been in a better position to push back against it than we are right now.

In a follow up discussion, Mrs. Hemingway highlighted the fact that several elite publications no longer have to make a profit because they're owned by leftist elites who can afford to lose millions each year. Mr. Hemingway furthered the point with the engineering principle that "a system is what it does." The elite media should be judged not by what it claims it is doing, but by what it actually does, which is keep the Left in power. All agreed on the urgency of strengthening conservative media and training young journalists to be great reporters.

# BEYOND RED MEAT:

## *Advancing Academic Freedom On Campus*

**A**rt Pope, Chairman and Co-founder of the John William Pope Foundation and Director of the Bradley Impact Fund, discussed his Foundation's 2005 attempt to launch an interdisciplinary degree program on Western Civilization at UNC Chapel Hill. The project ended up failing under the weight of specious academic freedom charges from leftists on and off campus. Years later, the university faculty reached out again for partnership in a very different model—an independent School for Civic Life—which launched in the 2023-24 school year.

Mr. Pope encouraged anyone interested in launching a similar independent academic venture to work with the Bradley Impact Fund, whose staff and partners help vet ideas and advise on a prudent approach that will protect donors' intent.

Peter Wood, President of the National Association of Scholars (NAS), credited NAS's approximately 4,000 members behind the scenes within universities with exposing problems in higher ed and proposing solutions. Indeed, NAS members, with the support of members of the Bradley Impact Fund, have been

instrumental in getting Confucius Institutes off several college campuses. While they continue to work to expose foreign influence on campus, they also support faculty members who have fallen afoul of the progressive regime on campus. He cautioned that the necessary defense of academic freedom must be qualified with strong restrictions on the politicization of administrations and guided by an ordered liberty that is directed toward higher goods like the pursuit of truth.

*“We don't have time for  
a long march through the  
institutions like the Left did.”*

— JONATHAN BARTH

As Associate Director of the Center for American Institutions at Arizona State University, historian Jonathan Barth is helping lead a fruitful initiative to model intellectual diversity on campus and to educate students and the public on institutions that make the United States exceptional. Acknowledging the “full blown crisis in academia,” Mr. Barth cautioned against abandoning existing institutions entirely. The Center for American Institutions is seeing strong interest from both aligned and non-aligned students on campus. Before we give up on established institutions, Mr. Barth says, we should consider which policies are now working to bring intellectual diversity to campus and back them.





## A Fisherman's Tale of the Administrative State:

*The Fight Against our Fourth  
Branch of Government*

**R**yan Owens, co-director of the Center for the Study of Liberal Democracy at the University of Wisconsin-Madison, spoke with Paul Clement, Director of The Bradley Foundation Board and the 43rd solicitor general of the United States.

After thanking those in attendance who partner with The Bradley Foundation and Impact Fund, Mr. Clement reminded listeners that most of the Constitution's "Thou shalt nots" are directed at restraining the federal government, not the individual. The Founders' intent was to preserve liberty by making it very difficult to create unlimited and overweening laws. Early court cases supported this perspective, but after the second Roosevelt administration, the administrative state was unleashed.

The Framers might see a victory for limited government in the fact that Congress focuses a great deal more today on its oversight role in government than on trying to pass new rules and laws. But this perspective ignores the more troubling reality: rules and regulations are growing at an exponential rate, created and executed by bureaucrats in federal agencies who never appear on a ballot. How does one protect oneself from a regulator buried deep inside a federal department?

This is the quandary facing every American citizen, and it's up to attorneys who understand and focus on the unromantic branch of administrative law to rein in the unchecked regulatory power of the federal government. For about forty years, the reigning principle, Chevron deference, is that any statutory ambiguity should be interpreted in favor of the government. A textbook case involves the nuns of the Little Sisters of the Poor, who after ten years and several victories in court are still fighting government bureaucrats trying to force them to pay for contraception for employees.

But this could soon change. In January, Mr. Clement argued a case before the United States Supreme Court on behalf of commercial fishermen who are forced to pay the salaries of regulators put on their boat to basically find fault with their business. After oral arguments, many observers of the Court expect Chevron deference to fall or be severely limited. Either result, should it come to pass, will have the effect of freeing citizens from the whims of unaccountable bureaucrats.

*"Even the British didn't make  
you pay to put a redcoat in  
your house."*

— PAUL CLEMENT

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# PROTECTING RELIGIOUS FREEDOM: *A Strategy for Success*

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**M**ark Rienzi, President and CEO of the Becket Fund for Religious Liberty, has become well-known on the Right and feared on the Left for Becket's remarkable success in defending religious minorities in recent years. Indeed, religious liberty has seen a historic winning streak for the last twelve years or so, both because of the excesses of the Left and strong unity on the Right, including several organizations, like the Becket Fund, that receive strong support from members of the Bradley Impact Fund.

While this expansion of religious liberty in law is sometimes attributed to "Trump justices" or the appointment of many conservative Christian judges in recent years, the record shows something that is obviously not reducible to merely Christian or conservative judicial philosophy. Many of the most prominent cases were won by Muslim prisoners, Jewish synagogues, and Christians of various

political perspectives. This is why, Mr. Rienzi pointed out, several of the cases that made it to the Supreme Court were unanimously decided. Justices appointed by both parties recognize in the Constitution and legal precedent that protecting religion and religious liberty is fundamental for a peaceful, pluralist society.

*"Religious freedom isn't  
just for the religious."*

— RICK GARNETT

There is still hostility to the First Amendment in some state legislatures and courts, of course, but the precedents in defense of liberty are stacking up. And because courage is contagious, more people are willing to stand up and fight for religious freedom. Mr. Rienzi discussed a current Becket case in which the clients are Maryland parents whose preschool children were being told that their sex was determined by a doctor who was guessing.

In that case, Becket's lead clients are Muslim, and it's happening in a very liberal district. Case



selection matters, and advocates for religious liberty have to make as much progress as possible, with as broad a range of allies as possible.

Rick Garnett, Professor of Political Science at Notre Dame and Director of the University's Church, State, and Society Program, affirmed with Mr. Rienzi that religious freedom wasn't an add-on in the United States Constitution. Rather, it was foundational, and widely agreed upon among the Founders that freedom of religion was going to be a core part of our historic constitutional experiment. Mr. Garnett was emphatic, however, that religious freedom be seen not as some kind of luxury good for a few true believers since it is so closely, intrinsically linked with the other basic rights.

Notre Dame Law School is producing some of the strongest young litigants for religious freedom, both Mr. Rienzi and Mr. Garnett agreed. The school works hard to instill in its students that religious freedom is rooted in human dignity. This principle informs not only their curriculum, but also their

engagement with society.

Since being good neighbors to their community and forming students to win are also paramount, the program invests in a free religious liberty clinic that gives law students the chance to serve and to participate directly in litigation. Another popular program is the law school's religious freedom moot court tournament, which now attracts teams from all around the country. Mr. Garnett thanked the Bradley Impact Fund community for its support of this program, which provides invaluable experience to the next generation of champions for religious liberty, even beyond Notre Dame.

The goal, Mr. Garnett concluded, was to form attorneys capable of causing trouble for opponents of religious freedom. By getting experienced, top-ranked students into clerkships with federal judges, Notre Dame's law school is positioning the next generation of skilled advocates to defend freedom of religion.



**2024 BRADLEY  
IMPACT CONFERENCE**  
Kohler, WI

During the 2024 Bradley Impact Conference, we will explore ways in which the impact of leaders in media, education, economics, civics, civil society, policy, and philanthropy—each contributing their unique talents toward our common goal to restore, strengthen, and protect the principles and institutions of American exceptionalism—is *Greater Than...* it would be acting in isolation.



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