



**RIP P. J. O'ROURKE**  
Remembering  
freedom's  
funny man  
**PAGE 12**



**POLICY  
FORUM**  
Gov. Chris  
Sununu on  
liberty in NH  
**PAGE 9**



**ELECTION  
REFORM**  
Preventing  
the next  
crisis  
**PAGES 2, 14**

# Cato Policy Report

MARCH/APRIL 2022. VOL. XLIV NO. 2

## The Misguided War on Painkillers

BY JEFFREY MIRON, PEDRO BRAGA SOARES, AND JEFFREY SINGER

**T**he Centers for Disease Control and Prevention (CDC) estimates 75,673 people died of opioid overdoses in 2021 in the United States. Just two years before, in 2019, the CDC had recorded 49,860 opioid-related deaths, which implies a staggering 50 percent increase over the two-year period. Between 1990 and 2020, the opioid overdose death rate rose almost twentyfold in the United States. Most observers assumed that this explosion resulted from a surge in opioid prescribing, spurred especially by Purdue Pharma's promotion of OxyContin, a slow-release version of oxycodone that allegedly carries a lower risk of addiction. In response to the rise in overdoses, the United States has imposed substantial new restrictions on opioid prescribing.

But that widespread assumption is incorrect: the rise in opioid deaths did not result mainly from the increase in opioid prescribing. And whatever caused the initial increase in

overdoses, new restrictions have exacerbated rather than ameliorated the upward trend. In addition, these new restrictions have harmed those who use opioids to alleviate pain, a legitimate and undervalued need, even precipitating suicides in many cases. The right policy response is to reduce restrictions on opioid prescribing, perhaps to the point of ending the requirement to get a prescription altogether.

### MORE PRESCRIBING, MORE DEATHS?

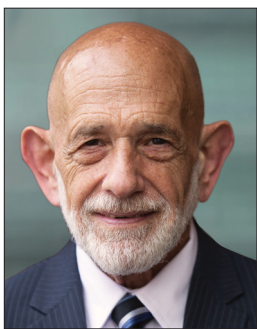
Beginning in the 1990s, physicians expanded opioid prescribing substantially. Doctors had previously prescribed opioid painkillers for short-term pain and for palliative care in terminally ill cancer patients but generally not for chronic conditions such as back pain, osteoarthritis, fibromyalgia, or headaches

*Continued on page 6*

**JEFFREY MIRON** is vice president for research at the Cato Institute and the director of undergraduate studies in the Department of Economics at Harvard University. **PEDRO BRAGA SOARES** is a graduate student in economics at Pontifical Catholic University of Rio de Janeiro. **JEFFREY SINGER** is a senior fellow at the Cato Institute and a practicing surgeon in Arizona.



**PHILIPPE ÉTIENNE**, French ambassador to the United States, participates in a discussion with Cato senior fellow **JUSTIN LOGAN** at a policy forum in December on how increasing European defense capabilities could reduce reliance on the United States.



BY ROBERT A. LEVY

“  
Today’s  
mandate is  
to assemble  
a coalition  
that will  
reaffirm the  
rule of law.  
”

## CHAIRMAN’S MESSAGE

# Voting Reforms: Setting Priorities

In key battleground states, beleaguered election officials are considering retirement. Some Republican officeholders who resisted Donald Trump’s grab for an extended presidency will be facing primary challengers. Apparently the endgame is to replace those officials with loyal Trump acolytes who might be persuaded to substitute Republican for Democratic electors if a tight 2024 statewide race goes the wrong way. If that sounds like scaremongering, some polls indicate that more than 70 percent of Republican voters have swallowed the ex-president’s false claims of significant election fraud.

So how have federal and state governments reacted to the risk of election sabotage? Predictably, political messaging has trumped, and the focus has been on voting rights—a distinct and less urgent issue. In Congress, two major bills failed. The first, the Freedom to Vote Act, consisted mainly of voter-access provisions that Republicans declined to support. Many of those provisions were unconstitutional. Even if a state were to inhibit voting, the remedy (usually via the judiciary) should target the specific violation, not unsubstantiated offenses across the country.

The second, also partisan, bill—the John R. Lewis Voting Rights Advancement Act—was designed to restore preclearance rules, which the Supreme Court invalidated in 2013, for changes in voting practices by designated states, mostly in the South. Chief Justice John Roberts wrote that the formula was obsolete and questioned its selective application. He also noted that black voter turnout had “come to exceed white voter turnout in five of the six states originally covered.”

Nonetheless, Democrats were intent on imposing federal remedies for what they perceived as discriminatory and politicized voter restrictions at the state level. President Biden demagogued Georgia’s new law as “Jim Crow on steroids.” He called the Texas law “un-American” and an “assault on democracy.” But a dispassionate examination of the contents of these laws suggests otherwise. Yes, some COVID-19 emergency measures were rolled back. But the rules going forward are, on balance, less restrictive than pre-COVID-19 rules. If those rules were “un-American,” why no objection until now? And if Republican legislatures are imposing burdensome restrictions, why so little angst over more draconian regulations in Delaware, Maryland, New York, and other Democratic states?

That’s not to say Republican-controlled states haven’t occasionally altered the rules to win elections rather than promote democracy. In too many instances, unproven assertions of election fraud have been a pretext for unnecessary voter impediments. But here’s the good news: turnout is setting records, there are more ways to vote, registration is easier, and fraud is minimal. The task, therefore, is to find the right balance between voting rights and election integrity—state by state, not a nationwide, one-size-fits-all solution.

Separately, there are bigger fish to fry in pursuit of voting reform. Preventing postelection mischief that could subvert the process of vote counting and certification is a more pressing problem. Election experts have suggested several state-based improvements: bar harassment of election workers, prohibit arbitrary removal of election administrators, establish an audit process and objective standards for finalizing results, codify the role of election monitors, and ban faithless electors who won’t honor their candidate commitments.

Federally, Republicans have signaled their willingness to amend the Electoral Count Act, which prescribes Congress’s role in resolving disputes. That role, essentially, should be to count the electoral votes. The vice president’s duties are purely ministerial, and Congress must follow narrowly defined technical requirements for canvassing the Electoral College. To the extent that the Electoral Count Act expands those duties, it is arguably unconstitutional.

Suppose, however, different officials within state government have submitted conflicting slates of electors, and state courts haven’t settled the controversy. In that situation, the Electoral Count Act could specify which state entity controls. Perhaps the act could also stipulate how to handle other concerns, such as invalid signatures, the wrong number of electors, or misdated votes. The goals should be definitive procedures along with diminished congressional latitude.

Despite the partisan divide over voting rights, today’s mandate is to assemble a coalition that will reaffirm the rule of law and “Stop the Steal”—not the steal that didn’t occur in 2020 but the one that might occur in 2024 or later.

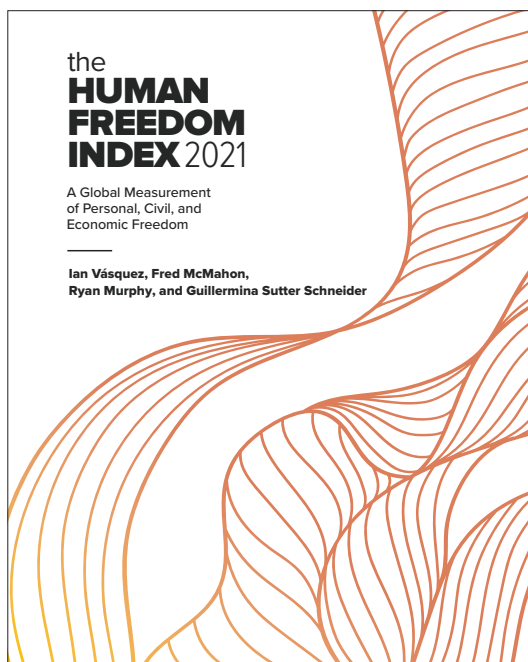
*Robert A. Levy*



Human Freedom Index releases 2021 edition

# Measuring Freedom from Switzerland to Syria

Everyone agrees that freedom is important, but that seemingly simple principle implicates a wide range of public policy choices and different forms of government. Most people have a sense of whether a nation is a free country, but articulating the standards that define one and undertaking a comprehensive analysis is a daunting task. Most who compile global rankings of various sorts restrict themselves to narrower and more easily definable categories, measuring factors such as the regulatory environment, civil liberties, democracy, press freedom, or other specific topics.



The *Human Freedom Index* is unique because it takes in the whole scope of human freedom. To do that, it produces scores for 82 distinct indicators across 165 jurisdictions, encompassing 98.1 percent of the world's population. Just released in its seventh annual edition for 2021, the *Human Freedom Index* is authored by Ian Vásquez, Fred McMahon, Ryan Murphy, and Guillermina Sutter Schneider and is copublished by the Cato Institute and the Fraser Institute, based in Canada.

As the authors explain, “The contest between liberty and power has been ongoing for millennia. For just as long, it has inspired competing conceptions of freedom.” Part of the report’s intent is to produce a comprehensive data set

allowing for research about correlations between different kinds of freedoms, but it also aims to flesh out a fuller definition of freedom in the process.

“Freedom in our usage is a social concept that recognizes the dignity of individuals and is defined by the absence of coercive constraint. . . . Freedom thus implies that individuals have the right to lead their lives as they wish as long as they respect the equal rights of others.”

Each country’s 82 indicators are grouped into categories covering the rule of law; security and safety; movement; religion; association, assembly, and civil society; expression and information; relationships; size of government; legal system and property rights; sound money; freedom to trade internationally; and regulation.

The trends are not comforting. Only 17 percent of the global population lives in jurisdictions that gained freedom from 2008 to 2019, while 83 percent lost ground. During that time, the most-improved nations included Myanmar (Burma), Sri Lanka, Tunisia, Ethiopia, and Armenia, though they still have much room for further improvement. The greatest declines were seen in Venezuela, Turkey, Nicaragua, Syria, and Bahrain, as authoritarian leaders have sought to crack down on dissent.

The countries at the top of the list demonstrate the strong correlation between freedom and prosperity, with a mix of high and rapidly growing income levels. Switzerland takes the

*Continued on page 8*

## Cato News Notes

### WELCOMING A NEW VOICE

Recently, Cato welcomed Cathy Young as a new cultural studies fellow. She writes on a wide variety of cultural and political topics, including gender issues and family law, freedom of speech and intellectual tolerance, diversity, education, and perspectives on American history, as well as Russia and U.S.-Russian relations from her perspective as a Russian immigrant to the United States. Young is also a weekly columnist for *Newsday*, a writer at *The Bulwark*, and a contributing editor at *Reason*.



### SURVEY SAYS . . .

The Cato 2021 Speech and Social Media National Survey queried 2,000 Americans and found that three-fourths of Americans don’t trust social media companies to make fair content-moderation decisions. The survey, conducted by David Kemp and Emily Ekins, also found widespread hostility to social media companies, including that 81 percent of Republicans say companies banning Donald Trump from their platforms violates the First Amendment.



Cato's director of defense and foreign policy studies, **ERIC GOMEZ** (1), moderates a book forum in January for *Catastrophic Success: Why Foreign-Imposed Regime Change Goes Wrong* with the author, **ALEXANDER B. DOWNES** of George Washington University, (2) and commentary from the Atlantic Council's **RACHEL RIZZO** (3) and Boston University's **JOSHUA SHIFFRINSON** (4).



**SEN. CHRIS MURPHY (D-CT)** speaks at a policy forum in December on reclaiming congressional authority over war powers, arms sales, and national emergencies.



**JAI MASSARI**, partner at the law firm Davis Polk, participates in a panel discussion at a policy forum in December on how to craft better regulations for cryptocurrency in the banking sector.



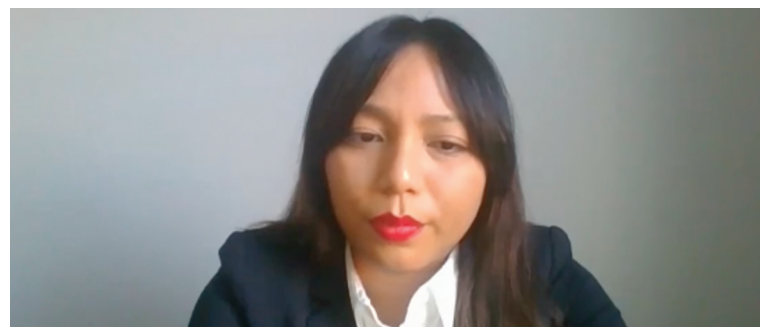


**ALLAN CAREY** (bottom) hosts a professional development event for educators as part of the Sphere initiative, where **WILL RUGER** (top left) and **JASON SORENS** (top right) discuss the latest release of their report *Freedom in the 50 States*.

**PETER VAN VALKENBURGH**, director of research for Coin Center, offers his perspective on the role of the Securities and Exchange Commission in regulating cryptocurrency at a policy forum in December, part of a series of events on the topic.



**MICHAEL F. CANNON**, director of health policy studies, explains his recent paper proposing the application of “public option” principles to Medicare, leveling the playing field between the government program and private insurance options.



Senior fellow **PATRICK EDDINGTON** and **GISELA KUSAKAWA**, staff attorney for Asian Americans Advancing Justice, participate in a policy forum on the Justice Department’s initiative to prosecute cases of intellectual property theft and industrial espionage originating from China.

*Continued from page 1*

due to fear of patient addiction or abuse.

New research in the 1980s, however, suggested that long-term medical use of opioids posed little risk of addiction. This evidence led the medical community to treat chronic pain more aggressively starting in the 1990s. Pharmaceutical companies supported this change and argued that new slow-release opioids such as OxyContin had particularly low risks of addiction.

Critics say this optimism about long-term prescribing, combined with aggressive marketing campaigns, led to widespread abuse of prescription opioids followed by increased overdoses and deaths. These critics successfully pushed for additional restrictions on opioid prescribing.

But this “more prescribing, more deaths” perspective on the opioid crisis is flawed. To begin, numerous studies in subsequent decades have confirmed the 1980s findings that medical opioid use generates minimal addiction (or overdoses). (Addiction and dependence are often mistakenly conflated. Dependence refers to the physiological adaptation to a drug after prolonged use, such that abrupt cessation causes acute withdrawal. This is seen with many drugs, including beta blockers, anti-epileptics, anti-depressants, and opioids. Addiction, on the other hand, is defined as compulsive use despite negative consequences.) Survey data on drug use show that nonmedical use of pain relievers remained stable or declined from 2002 onward. Since 2011, rapidly increasing deaths from heroin and synthetic opioids such as fentanyl have driven up the opioid overdose death rate, even though high-dosage opioid prescriptions have fallen by almost half since 2006. And total drug overdoses have been rising in the United States since 1959, albeit at a slower rate but still suggesting that broader factors might be contributing to the recent spike in opioid deaths.

Perhaps most importantly, the policy

## “Regulations have potentially caused physicians to undertreat pain.”

implication of and increased restrictions from the view that more prescribing is the problem are fundamentally misguided.

### **MORE RESTRICTIONS, MORE OVERDOSES**

In response to the rising rate of opioid deaths, state and federal governments enacted numerous additional restrictions on opioid access, including state prescription drug monitoring programs (PDMPs), tighter federal guidelines on prescribing, and increased federal monitoring of prescribers. This approach assumes that reducing prescription access will reduce opioid use and overdoses overall.

Restricting access to prescription opioids, however, mainly pushes users to obtain prescription opioids in other ways: stealing them from a parent or friend’s medicine cabinet, for example, or illicitly diverting them from pharmacies, or purchasing them in underground markets. Worse, increasing restrictions on the legal supply can push users to more-dangerous synthetic opioids, such as fentanyl, or banned opioids, such as heroin. In 2015, the CDC reported that declining availability of prescription opioids, and an abuse-deterrent reformulation of OxyContin, had led nonmedical users of prescription opioids to switch to heroin. Many young heroin users say they transitioned from prescription opioids when those became scarce due to decreased physician willingness to prescribe them and increased police monitoring of the pill market; the

Drug Enforcement Administration (DEA) sets quotas on the manufacture of prescription opioids and has been ratcheting down those quotas year after year.

Shifting the supply underground increases the frequency of overdoses. The underground drug trade incentivizes trafficking in high-purity products to facilitate evasion, a phenomenon known as the Iron Law of Prohibition. Quality control is poor in underground markets because reliable suppliers cannot legally advertise their goods and because consumers cannot sue for damages caused by faulty or mislabeled products. Also, consumers cannot easily assess the purity of the products they consume, so they accidentally take high-dose drugs or versions laced with more potent opioids like fentanyl.

Consistent with this reasoning, through 2012, natural or semisynthetic opioids such as OxyContin and Vicodin accounted for more than half of opioid deaths. Since 2010, heroin and synthetic opioids such as fentanyl have accounted for a growing share of deaths, with nearly 80 percent attributed to these two drug categories in 2020.

Abundant evidence confirms that increased restrictions have had adverse impacts. State PDMPs are now in effect in all states except Missouri. These programs require doctors who prescribe opioids (and other controlled substances) to enter these prescriptions in a database that allows or requires other prescribers to check a patient’s history before writing prescriptions. The goal is to identify high-risk prescribing patterns and so-called doctor shopping.

A recent paper finds that PDMPs indeed curtail consumption of prescription opioids, but users cut off from opioid prescriptions partially switch to heroin as a substitute, fully offsetting the reductions in hospitalizations and deaths from the decline in prescription opioids. Other studies suggest that PDMPs might have even increased overdoses and heroin-related crime.



Relatedly, federal and state crackdowns on “pill mills,” networks of doctors and pain clinics that prescribe high quantities of opioids, have further reduced the availability of prescription opioids. In 2011, for example, Florida banned pain management clinics from dispensing drugs and required extensive medical examinations before and after prescribing opioids for chronic pain. In 2017, the Department of Justice created the Opioid Fraud and Abuse Detection Unit to increase monitoring of physicians and pharmacies deemed to be dispensing “disproportionately large amounts of opioids.” Media coverage of these crackdowns has increased physicians’ fears of disciplinary action or prosecution, reducing opioid prescribing. Surveys indicate that these regulations have decreased physicians’ willingness to prescribe opioids, potentially causing them to undertreat pain. Public pressure also led Purdue Pharmaceuticals to introduce an abuse-deterrent version of OxyContin in 2010. This reformulation, which completely replaced previous versions, makes the pill hard to crush or dissolve. As a result, opioid abusers could not access the full oxycodone content of pills by snorting or injecting them, causing many to turn to heroin. The reformulation of OxyContin led to an estimated one-to-one substitution of heroin overdoses for pharmaceutical opioid overdoses, so deaths did not decrease as a result.

In 2018, Congress passed the Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act (the SUPPORT Act), which increased federal assistance for state PDMPs, expanded access to opioid-use-disorder treatment, expanded efforts to identify overprescribing, and granted funding to hospitals that limit the use of prescription opioids. The act’s expansion of opioid-use-disorder treatment was a positive step, but its attempts to limit prescribing again pushed users to illicit opioids, offsetting the effects of reduced

“  
The overdose  
risk of increased  
heroin use far  
outweighs that  
of prescription  
opioids.  
”

access to prescription opioids. And this federal monitoring of prescribers likely contributes to undertreatment of pain by exacerbating fear of regulatory sanctions.

Proponents of opioid-prescribing regulations argue that while decreased prescribing may harm people who switch to more dangerous drugs, it will also reduce creation of new addicts by limiting exposure to opioids. But, as even National Institute on Drug Abuse Director Nora Volkow concedes, addiction occurs in only a small percentage of patients exposed to opioids. Moreover, so long as heroin is illegal, the overdose risk of increased heroin use far outweighs that of prescription opioids. In 2019, roughly 10 times as many people had used nonheroin opioids than heroin in the past year, yet overdoses from heroin and nonheroin opioids were approximately equal. Furthermore, a smaller share of prescription users would switch to heroin if they had easy access to prescription opioids. Troublingly, an increasing number of non-medical drug users are starting with heroin. Research shows that among heroin addicts admitted for rehab in 2015, 33.3 percent stated that their drug use started with heroin, compared with 8.7 percent in a survey taken 10 years earlier. And if reducing access to opioids restricts the creation of new addicts, we should see deaths from other opioids and heroin decrease as prescription opioid deaths and misuse rates fall, even with a lag. The data, however, show a persistent decline in

overdose deaths from prescription opioids alone (not mixed with other substances) since 2011.

## **HARM REDUCTION MEASURES HINDERED BY REGULATION**

An important component of government limits on prescribing includes restrictions on treating opioid use disorder with opioid replacements such as methadone and buprenorphine. Because of cumbersome regulation, only 5 percent of physicians are licensed to prescribe buprenorphine, and few licensed prescribers treat the maximum permitted number of patients. Surveys of physicians indicate that the main impediments to buprenorphine prescribing include a lack of knowledge about how to acquire a DEA license and fear of buprenorphine diversion. The scarcity of buprenorphine and methadone treatment may have pushed opioid users to underground markets, thereby increasing overdoses.

In fact, recent research suggests that, on average, adding one extra regulation for physical facility management—a category that includes requirements on facility cleanliness, layout, and number of resting rooms—to opioid treatment programs at the state level is associated with an increase of 1.31 opioid-related deaths per 100,000 people. Restrictions on opioid maintenance contradict decades of evidence that shows medically assisted treatments using buprenorphine and methadone mitigate heroin and opioid dependence, reduce drug overdose deaths, and decrease the mortality rate from opioid use. A comparative study of six different treatment pathways for opioid use disorder shows that only treatment with buprenorphine and methadone is associated with reduced risk of overdose. The U.S. Code of Federal Regulations also acknowledges that the use of methadone “has been shown to be an effective part of a total treatment effort in the management and rehabilitation of selected narcotic addicts.”

---

## “Prohibition is unlikely to succeed.”

Evidence from other countries also suggests that increased legal access to replacement opioids reduces deaths and improves health outcomes, such as lower HIV infection rates. In the United Kingdom, Germany, Switzerland, and Canada, physicians can prescribe heroin for the treatment of severe dependence on heroin and other opioids, which has led to positive therapeutic outcomes and reduced illicit heroin use in these countries. In 1995, France allowed physicians to prescribe buprenorphine for maintenance treatment without patient caps or special licensing requirements, leading to a fivefold reduction in heroin deaths and an estimated 3,900 lives saved. In Hong Kong, early programs in the 1970s to expand access to medically assisted treatments for opioid dependence were linked to a low prevalence of HIV among drug users decades later.

Safe consumption sites, which allow users of opioids and other drugs to access clean needles in a supervised and controlled setting, have become common in cities across Europe and Canada. The sites reduce the use of contaminated needles and the pressure to consume drugs in a solitary or unfamiliar setting. Opponents fear that such sites will increase drug use, but safe injection sites are associated with lower overdose mortality, fewer ambulance calls for treating overdoses, and a decrease in HIV infections. Yet such sites

remain illegal under federal law. Some local governments have authorized such sites, but they still rely on lack of federal enforcement to keep operating.

### POLICY IMPLICATIONS

A simple first step toward decreasing the risks associated with the consumption of opioids is to ensure legal access to harm reduction treatments. For example, the federal government could end or at least decrease the restrictive regulation of methadone and buprenorphine and even morphine- or heroin-maintenance treatment for opioid dependence and remove rules that limit prescribing for that purpose. A concrete proposal with bipartisan support would end the DEA X-waiver requirement, which makes it harder for physicians to prescribe buprenorphine to outpatients. Federal and state governments could also end the war on pill mills. Pain patients are the unintended casualties in this war, as it intimidates health care practitioners into underprescribing pain killers. Safe

consumption sites could be made legal under federal and state law.

In addition, the United States should consider making all opioids more legal by shifting them to less regulated schedules of the Controlled Substances Act or even to over-the-counter status. In the most radical case, opioids would be legally available for purchase by adults without a prescription. While modest reforms to regulation can decrease the prevalence of underground opioid consumption, outright legalization would eliminate the underground market. Individuals who choose to purchase and consume opioids would have access to labeled products and proper advice, reducing the dangers of use. In our view, this would counteract the recent increase in opioid overdose deaths.

Beyond any implications for overdose deaths, advocates of restrictions on legal access to opioids should consider all their costs and benefits. Prohibition is unlikely to succeed in preventing individuals from using drugs or opioids. While increased opioid access may heighten the risk of opioid dependence, prescribing them also improves the quality of life for patients who suffer severe or chronic pain. We have focused here on overdose deaths, but a complete analysis would also suggest that the harms of regulation outweigh the risk of increasing opioid dependence. ■

---

*Continued from page 3*

top spot, followed by New Zealand, Denmark, Estonia, and Ireland. The United States has seen its scores decline, having ranked 7th in 2008 but falling to 15th place in this year's report, tied with Germany and Japan.

The correlation between personal freedom and economic freedom is strong, but sometimes there is a gap where a country does notably better on one than the other. Singapore, for example, has long been noted for its robustly free-market economic

policies, ranking 2nd in economic freedom, but an authoritarian political structure with little respect for civil liberties places the island city-state much further down, in 88th place, for personal freedom. On the other hand, Sweden was ranked 1st in the personal freedom category but 37th for economic freedom.

The data behind the scores in the *Human Freedom Index* are potentially useful for a wide range of research. They can be used to study the correlation between different

kinds of freedom, as a way to track the increase or decrease of freedoms over time, to study the correlation between freedom and well-being metrics (such as income or reported happiness), and to tease out hidden trends that indicate whether certain kinds of freedom are more conducive to the spread of other freedoms. ■

**THE HUMAN FREEDOM INDEX, INCLUDING THE FULL REPORT AND DOWNLOADABLE DATA SETS, CAN BE FOUND AT [CATO.ORG/HUMAN-FREEDOM-INDEX/2021](https://Cato.org/human-freedom-index/2021).**



# New Hampshire's Success Story

New Hampshire is back on top of Cato's *Freedom in the 50 States* survey, taking first place in the nation's only comprehensive review of both personal and economic freedom. The state's governor, **Chris Sununu**, also took first place in Cato's *2020 Fiscal Policy Report Card on America's Governors*. Behind much of that success are the state's unique constitutional structures and political culture, as Gov. Sununu explained at Cato Club Naples in early February.

I do a press conference every single week, partly to give information to the citizens about what's going on specifically around COVID, but other stuff as well. But one thing I am very insistent on doing is I never leave until the press has literally no more questions. I've never walked out with somebody saying, "We have one more question," which is a point of personal pride. It means I'm exhausting them.

Two things happen there. It's being super transparent, and we'll talk about the value of transparency and what it does for your constituency. But it also lets me know what is really out there. And one thing I try to tell people all the time in the statehouse, a lot of people think the leaders of the state house and senate and the governor are going to get together and provide some answers and solutions for the state. No, we're not. We are the tools. You guys have the answers. The citizens understand the problems. The citizens are actually dealing with the barriers of a broken system. And so our job is to hear back from the citizens about what is actually happening, and then we're the tools to actually get something done and break down those barriers.

And that's one of my fundamental philosophies of how to approach government. I don't have all the answers. I'm just a means to get something done. But you've got to be very open and really champion the individual. You got to ask, "What is happening in

your business or your school or with your kids or with your health care or with your veteran services? What is happening with you? And where's the system not working for you?" Because chances are, if it hasn't worked for one person, it probably didn't work for ten thousand other folks, too. So let me dive into that.

“  
I don't  
have all the  
answers.  
”

I tend to be very, very detail oriented. It's a lot of work, but boy, it allows us to really dig into issues at a fundamental level. It's the engineer in me; I designed a lot of systems. And one thing you learn on day one at MIT, as long as you get through that first physics class, is that you never design the system perfectly the first time. You just don't. It would be incredibly arrogant to think that way.

So, one thing I also try to bring to government is flexibility. Say if we're going to write a bill, we have an idea, and want to do these five things. But let's first make sure that we know if those five things don't work, so if so, we're not stuck with it for five years.

Depending on what we find, we could pivot, we could move the funding, we could move the infrastructure, we can explore all those options. There could be external factors we hadn't considered. We could have had a great idea and just missed the mark a little bit. Well, let's not call it good enough and just suffer along with that. That's something Washington does a lot, and it's absolutely terrible. And most states actually don't do it very well, either, but I try to take that engineering mindset into the job every day, so that we build that flexibility and focus on the individual. So we can always tinker with it a little bit. And that's a good thing. You always want to be able to tinker with something.

As was mentioned, we don't have sales tax or income tax. I got to be honest, as you probably know, my dad was governor back in the '80s. But he's good about not giving me unsolicited advice, because as he says, "I could give you all the unsolicited advice in the world, but no one ever takes unsolicited advice. So when you have a question, call me, I'm always here for you."

So I call him during the budget. I said, "I'm going after the interest and dividends tax." New Hampshire doesn't tax income in general, but for a long time we've had a tax on dividends income. And he just started laughing. He said, "Good luck. You can't do it. It's too entrenched. All the wealthy people that come up for the summer end up paying a lot of that tax." But then when I got it done, guess who I called first? We're rolling that from five percent down to four, then three. It'll be at zero in a few years, totally phased out, and then we can truly say New Hampshire has no income taxes at all.

But it wasn't just about getting another tax-cut win. By forcing fiscal responsibility, we create the incentives to be efficient. Other people who might not be completely like-minded with me about decentralizing

government and getting it back to local control, they now have to work with us on that because we just don't have the revenue coming in.

Now, we have other sources of revenue, of course, in New Hampshire. Most of the tax you pay is property tax. We have pretty high property taxes, to be sure. But the beauty of that... well, I don't want to say the beauty of a tax, but the beauty of that system... is that I live in a town of 1,500 people. If I don't like how my taxes are being spent, I know the first name and the cell number of every one of my town selectmen and my budget committee. And if I don't like it, I'm going to see Art in aisle seven at the grocery store. And I'm going to give Art a piece of my mind for not passing the right budget and balancing it. So there's great accountability in that. You know folks by first name in your community who are really controlling the bulk of your taxes. So it's a very different system, but it allows the individuals and the families and the citizens to have so much say in that process. I believe very much that as a governor, I shouldn't be pulling in more power. I should be decentralizing power, and that's a big part of what's worked so well for New Hampshire.

Somebody asked me earlier about Chris Christie in New Jersey. Chris and I have been friends for a long time, but New Jersey constitutionally has just about the most powerful governor you could have. The governor of New Jersey, whoever it might be, with a swipe of a pen can do pretty much whatever they want, and it's designed that way in their constitution. It's actually terrible. Constitutionally, you could say, I am one of the weaker governors. I have an executive council that checks all my contracts. Get this: in New Hampshire, every two weeks, every contract over \$10,000 is openly debated with the five executive counselors and the governor in an open and public meeting anybody can come to, and we talk about every single contract. It's an unbelievable process.

This is something that goes all the way back to 1680, under King Charles II. They

didn't want any of the governors, or often they were called presidents of the colonies at the time, to have too much power. So every state had an executive council to check the financial and fiduciary responsibilities of the governor. Well, most states got "smart" and found ways to get rid of theirs. We're one of the only states that still has one, and definitely the only one that still uses it so extensively.



“  
By forcing fiscal responsibility,  
we create the incentives to be efficient.  
”

If anything, in New Hampshire, we keep giving them more power, the executive council. We keep giving them more control as opposed to the governor having unilateral power because they are such a good check and balance. We don't have financial shenanigans in New Hampshire, because it's so open and public. And it's partly because you can come to that meeting, and sit right next to the attorney general, or the commissioner of health and human services in the

crowd, because we don't get separated, we all sit in the public area. You can literally walk right up to the governor in that meeting and just start a conversation if you want. There's an amazing citizen power in that process because it tells the individual that they have a voice and that I as an elected official have to listen.

You see that in our legislature, too. We have more people in our state legislature, by far, than any other state. In fact, it's one of the largest legislatures in the world. We have 400 state representatives representing 1.4 million people! Four hundred of them, and they only get paid a hundred bucks a year. I mean, it's like herding cats. Don't get me wrong, it has its ups and downs. But that's one state representative for about every 3,000 people. Like town selectmen, your representative in Concord is going to be somebody you know, somebody you see at the grocery store, somebody you can easily reach and who can hear you. It's very different from other states where you have one person representing a district with tens or hundreds of thousands of people. And then we have a senate that's much smaller, it's 24 senators. So we really get the benefits of having both a larger representative body that's close to the people and a smaller, more deliberative body that can make sure we get the details right.

There is another amazing part of our system. We all have to get elected every two years. We're one of just two states that do that; it's me and Phil Scott from Vermont who have two-year terms instead of four-year terms like most states. I have to get elected every two years, and it sucks! It's terrible. It's really hard, but it's also wonderful. Because the citizens have all the say: "Do your job, and if you want to keep it and you get results, then by God, we'll hire you again. But if you don't, we're going to fire you faster than anybody. And we're going to get someone in there that understands the power of the individual and the power of the citizens." And it really is great that way. It really is.

I'm a big anti-tax guy and I've never raised



a tax. I've never made an excuse for raising a tax. And we got a lot of that going around. There's always, "Well, we had to raise this one here," and, "Well, that tax only affects out-of-staters . . ." No. Cut taxes, period. Force your legislature to do more with less. Force your executive branch to do more with less. It's what we do in New Hampshire, and we've been incredibly successful.

My job isn't to solve all your problems with a new program. My job as governor is to create as many doors of opportunity for your business, for your family, for the services that we're providing, and then you do you. You pick whatever door you want, what best fits you and your needs. We fought tooth and nail for 30 years to get school choice done in New Hampshire. Last year, we got it done. Charter schools obviously are very strong in New Hampshire, and we're now on the leading edge of school choice.

So, of the 400 representatives in the legislature, did I have some supermajority to get that done? No. I had 208 Republicans, 192 Democrats. Razor-thin margins. And to be fair, about 20 to 25 of those Republicans were really super . . . I'll be nice and call them

super hardcore libertarian. They vote with the other Republicans most of the time, but they can be pretty difficult on a few issues some of the time as well, right? I'm sure you can understand that at Cato.

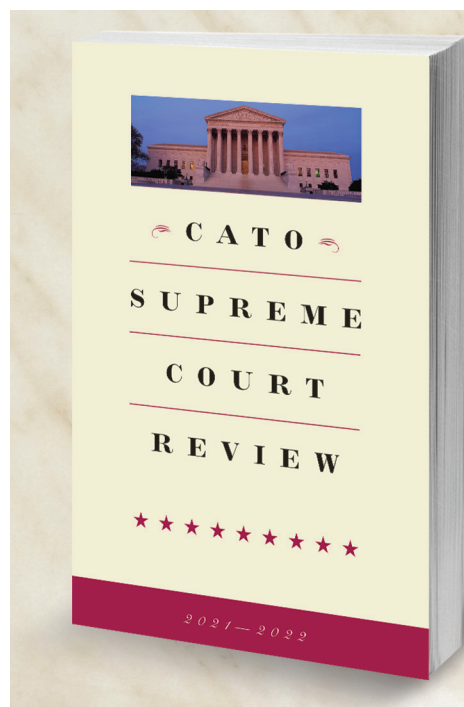
But again, that's part of the checks and balances, and it works. We were able to make the right arguments and focus on the families that are most affected. In that case, with school choice, it was a lot of low-income families in the inner city, people of color who just figured their kid was stuck in this terrible school, and they had no other choice. Not any more. Now the state money that goes to that school is yours, because it ain't my money. It's your money, and it's that family's money. I've just been given the responsibility of trying to manage it, and the best way to do that is to give the control back to the families.

There's no greater responsibility in all of public service than managing somebody else's money. I think that goes for every private CEO too. That's a great trust they're giving you, and you've got to take it very seriously. I wish everybody had that mindset. For school choice we thought, well, maybe 300 or 400 families might take that oppor-

tunity. It's been thousands in the first year, and we're not even through the first year yet. It just started in September.

That's what school choice is about, untapped potential, and my job is to create another door of opportunity so you and your kids can walk through it and untap that potential.

I think by doing that and championing the individual, empowering the local communities, is also why when we have extra money at the state level, we send it back to cities and towns to lower those property taxes. We send it back to the actual taxpayers. We were able to cut all these taxes, and yet we're one of the fastest growing states in the region. Businesses are falling over themselves to come here! So instead of falling because we cut taxes, my revenues are actually going through the roof. We literally have more money than we know what to do with right now. So the good news is that I'll cut more taxes, right? We'll just keep cutting them, because we're showing that you can do more with less. It's a hard thing to get at, and I think from a leadership position, you got to dig into those details sometimes. But that's the fun part of the work. ■



“Unquestionably the definitive volume on the Supreme Court’s term.”

—TOM GOLDSTEIN, Founder, *SCOTUSblog*

The only scholarly journal to critique the Court from a Madisonian perspective, grounded in the nation’s first principles: liberty and limited government.

CATO  
INSTITUTE

AVAILABLE AT CATO.ORG AND ONLINE  
RETAILERS NATIONWIDE • #CATOBOOKS





*Laughter and the  
Love of Liberty:*  
Remembering  
P. J. O'Rourke

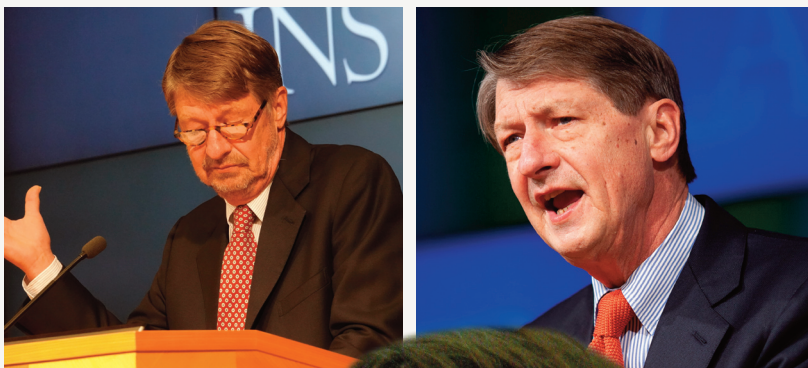
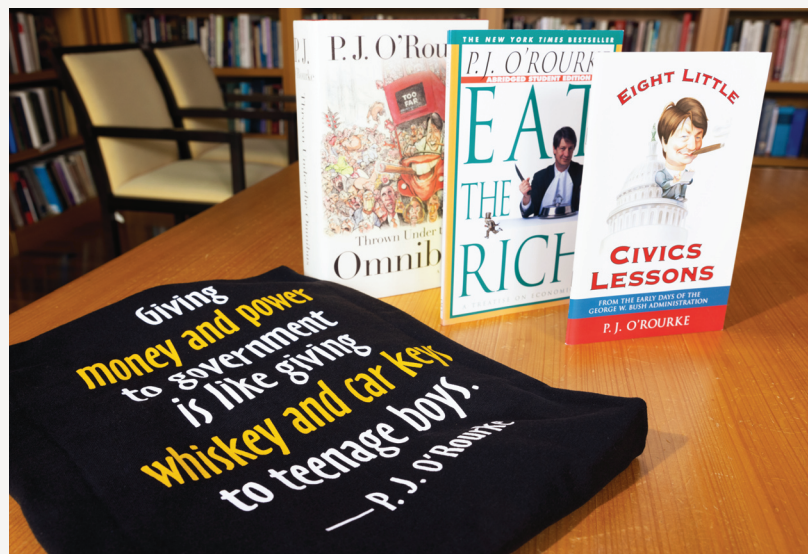
Cato lost a dear friend and colleague with the passing of P. J. O'Rourke on February 15, at the age of 74. With a one-of-a-kind career spanning decades, O'Rourke was a pioneering satirist, a gifted comedic writer, a groundbreaking journalist, and one of the nation's best-known and most widely read libertarians.

O'Rourke's career took off with his tenure at *National Lampoon*, where he ultimately served as editor in chief, helping to launch some of the biggest names in comedy as well as writing his own widely praised work, such as coauthoring *National Lampoon's 1964 High School Yearbook*. One of his most well-known pieces was the memorably titled, "How to Drive Fast on Drugs While Getting Your Wing-Wang Squeezed and Not Spill Your Drink."

A leftist in his youth, O'Rourke became a staunch libertarian, an about-face that informed much of his commentary on life, society, and politics. He was known for his deadpan and sardonic style, mocking pretensions on both sides of the aisle, and reveling in revealing the dysfunction of institutions and ideologies.

After his time at *National Lampoon*, he became the foreign





affairs desk chief for *Rolling Stone*. In that capacity, he filed searing and irreverent dispatches from places as diverse as war-torn Beirut and a televangelist retirement village. He later became a columnist for the *Atlantic Monthly*, bringing his wit and insight to such sober topics as Social Security reform, campaign finance, and a wide range of other policy issues.

During this time, he also authored more than twenty books, among which *Parliament of Whores* and *Give War a Chance* reached number one on the *New York Times* bestseller list. His quips were so well known that he had more citations in the *Penguin Dictionary of Humorous Quotations* than any other living writer.

But as Cato's executive vice president David Boaz notes on the *Cato at Liberty* blog, there was serious education behind all the jokes. "*Parliament of Whores* is a very funny book," he writes, "but it's also a very perceptive analysis of politics in a modern mixed-economy democracy. And if you read *Eat the Rich*, you'll learn more about how countries get rich—and why they don't—than in a whole year of econ at most colleges. In fact, I've decided that the best answer to the question, 'What's the best book to start learning economics?' is *Eat the Rich*."

O'Rourke also had a long-running collaboration with Cato, where he was an H. L. Mencken Research Fellow. He frequently presented his new books at Cato forums, and Cato helped arrange book tours that took him to dozens of cities. Cato was able to produce an abridged version of *Eat the Rich* for distribution in high schools as well as an original series of short essays, *Eight Little Civics Lessons*, covering the first few months of the George W. Bush administration. O'Rourke was a frequent presence at Cato events, including both the opening of Cato's current building in 1993 and Cato's 40th anniversary in 2017, and made his last of many Cato appearances in a 2020 online forum for the launch of his book, *A Cry from the Far Middle: Dispatches from a Divided Land*.

"We're going to miss P. J. terribly," writes Boaz. "But as long as we have his books and his other writings, we will remember how much he made us laugh and how much we learned along the way. We extend our deepest condolences to his wife, Tina, and their three children." ■





## Preventing the Next Election Crisis

The aftermath of the 2020 election was an unprecedented stress test for America's electoral institutions. For the first time in American history, an incumbent president refused to accept that he had been defeated for reelection. President Trump and those in his orbit tried every tactic they could to dispute, delay, and hinder the peaceful transfer of power. That campaign against the Constitution reached its tragic culmination in the storming of the United States Capitol on January 6, 2021.

The date of the Capitol riot was set by a previously obscure 19th-century law, the Electoral Count Act (ECA). Passed in an attempt to fix the problems from the disputed 1876 election, this law governs the process by which Electoral College votes are cast, certified, sent to Congress, and counted before a joint session as required by the Constitution. In most elections, this has been a little-noticed formality, the last official step in confirming an election outcome. But thanks to shoddy drafting and arguable ambiguities in the ECA, Trump was able to incite a mob with the false claim that Congress, or perhaps even Vice President Pence acting alone, could overturn the reality that Joe Biden won the 2020 election.

Cato experts have urged Congress to reform the Electoral Count Act as the most urgently needed legislative response to prevent future constitutional crises. Robert Levy, chairman of Cato's board of directors, was writing explanations of the constitutional principles at stake even as the 2020 dispute was ongoing, posting "Presidential Elections: A Primer" to the *Cato at Liberty* blog in December 2020. (See also, "Voting Reforms: Setting Priorities," page 2.)

Senior fellow Walter Olson has also praised ECA reform as a better alternative

to the sweeping voting and elections bills that were being pushed by congressional Democrats on a party-line basis, which have since failed to pass in the Senate ("The Dos and Don'ts of Defending Democracy," *Cato Policy Report* (November/December 2021)).

In recent weeks, ECA reform has been a hot topic in Congress, with serious efforts underway to pass a reform bill on a bipartisan basis. The Committee on House Administration, chaired by Rep. Zoe Lofgren (D-CA), released a staff report outlining the ECA's history, problems, and a list of proposed fixes. Three senators in the Democratic caucus, Angus King (I-ME), Dick Durbin (D-IL), and Amy Klobuchar (D-MN), released a discussion draft of their initial proposal for bill language. And a bipartisan group of more than a dozen senators, led by Sen. Susan Collins (R-ME), is reportedly working on their own draft. Two of those senators, Joe Manchin (D-WV) and Lisa Murkowski (R-AK), conducted a rare bipartisan joint interview with CNN's Jake Tapper to promote the group's work on the ECA and related issues.

As reform proposals are being formulated, Cato has been an active participant in getting the details right, including meeting with Capitol Hill offices for members from both parties and in both chambers.

Cato research fellow Thomas A. Berry helped highlight a particular problem that was otherwise being overlooked. As he explained, the ratification of the Twentieth Amendment in 1933 changed the rules for how Congress must handle electoral votes cast for allegedly ineligible candidates. Instead of throwing those votes out altogether, Congress must instead count them, and if they then also find that the winning candidate is ineligible (or dead), then the presidency passes to his or her running mate, the vice president-elect. Aside from

an important point of constitutional compliance, this rule also ensures that the voters get the party of their choice in the White House rather than potentially giving the presidency to the defeated opponent of an ineligible or deceased candidate.

In all, Cato has published more than a dozen pieces exploring the details of the Electoral Count Act, explaining what a reform bill should look like, and reviewing the ideas proposed so far in Congress. This work has been widely cited in the national press, including the *New York Times*, the *Washington Post*, and CNN.

These ideas include raising the threshold needed to trigger a debate and vote in Congress on rejecting a state's votes, clarifying the purely ministerial role of the vice president, and spelling out an exhaustive list of valid grounds for objections. The latter should be limited to a narrow range of constitutional mandates that are properly up to Congress to enforce, such as ensuring that states cast the right number of votes or did not cast votes that are not permitted, including for presidential and vice-presidential candidates both from the same state as the electors. At the same time, this would exclude Congress from judging the underlying conduct of the popular election in each state, a matter that is for the states and the courts to decide.

"The Cato Institute has long worked to encourage people everywhere to better understand and appreciate the principles of government that are set forth in America's Founding documents," wrote Cato's president, Peter Goettler, after the assault on Congress. "Among these principles is the peaceful transfer of power after free and fair elections." By seeking to clarify and strengthen the rules governing that process, Cato is working to make sure that crucial constitutional principles can withstand challenges for generations to come. ■



*Cato Surveillance Conference brings the Fourth Amendment into the information age*

## Defending Digital Privacy in a Pandemic

Americans are more dependent than ever on online services, as the COVID-19 pandemic has pushed grocery shopping, office work, and other daily activities into the digital realm. With that entanglement comes new concerns for privacy as large-scale data harvesting on an unprecedented level is being undertaken by both governments and private corporations. In December, experts came together to discuss these trends at the annual Cato Surveillance Conference, organized by senior fellow Julian Sanchez, whose work covers issues of technology, privacy, and civil liberties.

The daylong conference featured an opening keynote from Sen. Ron Wyden (D-OR), a longtime civil libertarian opponent of warrantless mass surveillance. He praised the role Cato has played in “continuing to prosecute the case in a bipartisan way” and spoke about his bill, cosponsored with Sen. Rand Paul (R-KY) and 18 other senators, to update the Electronic Communications Privacy Act of 1986. As Wyden explained, this law has left a massive loophole by allowing the government to evade court supervision and other legal limits by obtaining personal information from third-party vendors rather than directly from companies with a customer relationship. This practice of outsourcing mass surveillance that would be unlawful if done by the government itself would be ended by Wyden and Paul’s proposed the Fourth Amendment Is Not for Sale Act.

After the keynote, a panel moderated by Sanchez brought together two leading reporters to discuss their investigative work, Kashmir Hill of the *New York Times* and Dana Priest of the *Washington Post*. As part of her coverage of what has been dubbed the surveillance-industrial complex, Priest discussed how an Israeli company with government backing and approval



has been selling powerful spyware tools to authoritarian regimes. In the same vein, Hill’s reporting has revealed how the facial-recognition company Clearview AI has become a favorite of law enforcement, who use its supply of billions of photos that are harvested from the internet.

Other presentations included those of Julie Mao of Just Futures Law about government surveillance and retaliation against immigrant support groups and Elizabeth Laird of the Center for Democracy and Technology on the disturbing expansion of schools using spyware on students as part of the shift to virtual learning during the pandemic.

Jeff Kosseff, an associate professor of cybersecurity law at the U.S. Naval Academy, and Afsaneh Rigot, a fellow at Harvard University’s Technology and Public Purpose Project, explained how the demonization of anonymous speech online is misguided scapegoating at odds with the history and reality of how anonymity is a critical part of First Amendment freedoms.

In addition to the discussions, the conference also featured an unusual practical demonstration. Beau Woods of the Atlantic

Council first explained the security vulnerabilities of the so-called internet of things, the increasing usage of web access for common appliances and other things beyond traditional computers, including cars and medical devices. Deral Heiland, principal security researcher for cybersecurity firm Rapid7, then demonstrated these vulnerabilities in real time by hacking into a common consumer webcam such as the ones often used for home security.

Digital technology has opened up society in radical ways and enabled new kinds of human flourishing. But along with that promise comes the peril of new threats to freedom and privacy. Important decisions must be made about both public policy and private practices, with massive potential consequences for decades to come. With the annual Surveillance Conference, Cato continues to ensure that the timeless principles of limited government and individual liberty are applied faithfully to ever-evolving modern realities. ■

**THE 2021 CATO SURVEILLANCE CONFERENCE CAN BE VIEWED AT [CATO.ORG/EVENTS/CATO-SURVEILLANCE-CONFERENCE-2021](https://CATO.ORG/EVENTS/CATO-SURVEILLANCE-CONFERENCE-2021).**

*The attacks on Big Tech undermine both liberal and conservative principles*

## Conservatives Take Aim at Free Markets and Free Speech

For libertarians, American politics has often been a difficult choice between conservatives seen as better on free markets and limited government and progressives keener on civil liberties and personal freedoms. The resurgence of illiberal populism has scrambled those long-held assumptions, as conservatives have joined anti-business liberals in attacks on technology companies. Cato's experts have, in turn, risen to the challenge, defending fundamental principles regardless of scrambled political expectations.

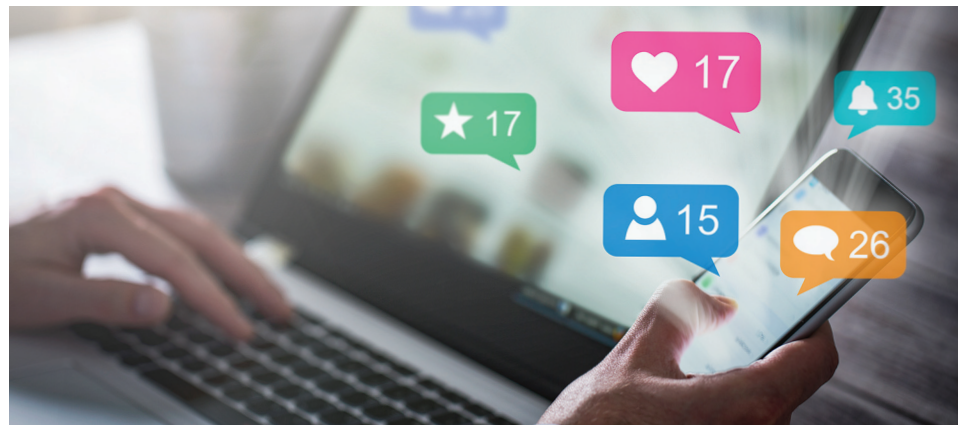
In February, Kara Frederick, research fellow at the conservative Heritage Foundation, released a study, "Combating Big Tech's Totalitarianism: A Road Map," outlining an aggressive program of government intervention against technology firms and social media companies. Unfortunately, as Cato's Matthew Feeney and Ryan Bourne explained in their analysis on the *Cato at Liberty* blog, "Frederick's paper is marked by imprecision, factual errors, and vague political rhetoric. The most substantive recommendations ultimately represent a retreat from long-established conservative policy principles consistent with a free economy and free society."

Feeney, director of Cato's Project on Emerging Technologies, and Bourne, Cato's R. Evan Scharf Chair for the Public Understanding of Economics, begin by noting that much of Frederick's report is taken up with anecdotal complaints about tech companies, many of them lacking factual basis. For example, the report cites a list of 22 Twitter users who were suspended, of which 21 had expressed a preference for Donald Trump in the 2016 election. However, this is hardly a list that makes the case for bias against conservatives.

"The list includes the white supremacist Richard Spencer, the former KKK Grand Wizard David Duke, the anti-Semite Tila Tequila, and the American Nazi Party," Feeney and Bourne note. "To see a Heritage Foundation paper citing research that includes such

people and institutions as belonging in the 'conservative' category because they back Donald Trump is, to put it mildly, jarring."

Heritage's report also takes on a new enthusiasm for antitrust laws of the sort previously associated with anti-market progressives. By undoing decades of law to rationalize and restrain antitrust law, the new populist opponents of Big Tech would unleash arbitrary enforcement actions with little more rationale than beating up on a politically disfavored industry.



In addition to undermining free-market principles, the anti-tech conservative agenda also includes troubling implications for the First Amendment. By muddying the waters between government action and private action, crucial bulwarks of free speech doctrines would be weakened in the name of fighting claims of private censorship.

Much of the debate centers on Section 230, a widely misunderstood law that was crucial to allowing the modern internet as we know it to exist. Simply put, "you can sue a tweeter if their tweet defames you, but you cannot sue Twitter over the same tweet."

Frederick's proposal would use revoking the protections of Section 230 as a cudgel to punish companies for removing at least some legal speech, but that is untenable given the extreme range of speech protected by the First Amendment, which the government cannot selectively

disfavor. "[Tech companies] would have to choose between enjoying Section 230 protections while putting up with pornography, beheading videos, spam, and other legal content, or screening such content at the risk of being held liable for any illegal content that slips through the screening net. Such a system would significantly limit the amount of speech online."

The new conservative disdain for free markets and free speech earns plaudits with some on the right who have taken up Donald Trump's hostility to social media companies,

especially since he was banned. It's also a disavowal of the traditional conservative embrace of limited government, free enterprise, and rule of law under the Constitution.

"Although not persuasive as policy analysis, Frederick's paper is of use to those interested in the history and anthropology of American conservatism," Feeney and Bourne conclude, given that "America's leading conservative think tank has released a paper outlining a roadmap for interfering in First Amendment-protected content moderation, empowering federal bureaucrats in alphabet soup agencies, and hampering innovation and growth among America's most famous and successful companies." ■

**"ALL ROADS LEAD TO BIG GOVERNMENT: HERITAGE TAKES ON BIG TECH" CAN BE FOUND AT [CATO.ORG/BLOG/ALL-ROADS-LEAD-BIG-GOVERNMENT-HERITAGE-TAKES-BIG-TECH](https://www.cato.org/blog/all-roads-lead-big-government-heritage-takes-big-tech).**





1



2



3



4

Senior fellow **WALTER OLSON** (1) and staff writer **ANDY CRAIG** (4) participate in a book forum for *The Politics Industry: How Political Innovation Can Break Partisan Gridlock and Save Our Democracy*, discussing electoral reform ideas with the author, **KATHERINE M. GEHL** of the Institute for Political Innovation (2) and the Brookings Institution's **ELAINE KAMARCK** (3).

**DECEMBER 1:** *The Politics Industry: How Political Innovation Can Break Partisan Gridlock and Save Our Democracy*

**DECEMBER 2:** New Technology and Old Rules: Constructing a Crypto Regulatory Framework

**DECEMBER 6:** Congress and War: Reclaiming Article I Powers

**DECEMBER 7:** Special Release Event: *Freedom in the 50 States*

**DECEMBER 9:** New Technology and Old Rules: Constructing a Crypto Regulatory Framework

**DECEMBER 10:** French Ambassador Philippe Étienne on the Meaning of European Defense

**DECEMBER 14:** Cato Surveillance Conference 2021

**DECEMBER 16:** The China Initiative: Origins and Consequences

**JANUARY 13:** Freest in the 50 States: A Discussion with New Hampshire Governor Chris Sununu

**JANUARY 13:** New Technology and Old Rules: Constructing a Crypto Regulatory Frameworks

**JANUARY 20:** Would “Medicare for All” Mean Quality for All?

**JANUARY 21:** *The Original Meaning of the Fourteenth Amendment: Its Letter and Spirit*

**JANUARY 27:** *Catastrophic Success: Why Foreign-Imposed Regime Change Goes Wrong*

**AUDIO AND VIDEO FOR MOST CATO EVENTS CAN BE FOUND ON THE CATO INSTITUTE WEBSITE AT [CATO.ORG/EVENTS](https://www.cato.org/events).**

# Cato Calendar

## SMART CITY SYMPOSIUM

Washington • Cato Institute  
June 7, 2022

## SPHERE SUMMIT: THE FOUNDATIONS OF CIVIC CULTURE

Washington • Cato Institute  
July 10–14, 2022

Speakers include Jonathan Rauch, Nadine Strossen, Irshad Manji, and Yuval Levin.

## SPHERE SUMMIT: INCORPORATING CIVIC CULTURE INTO ADVANCED STUDIES

Washington • Cato Institute  
July 24–28, 2022

## ALTERNATIVE MONEY UNIVERSITY

Washington • Cato Institute  
August 7–10, 2022

## THE STATE OF MONETARY POLICY AFTER 40 YEARS

40th Annual Monetary Conference  
Washington • Cato Institute  
September 8, 2022

Speakers include Lawrence H. Summers, Thomas Sargent, and Eswar Prasad.

## 21ST ANNUAL CONSTITUTION DAY

Washington • Cato Institute  
September 16, 2022

## CATO CLUB RETREAT

Bluffton, SC  
Montage Palmetto Bluff  
September 29–October 2, 2022

Updated information on Cato Institute events, including cancellations, can be found at [Cato.org/events](https://www.cato.org/events).

# Climate and the Economy

**W**hat will be the impact of carbon emissions, and the implied changes in temperatures, on the world economy and on the economies of particular regions? In “**The Economic Geography of Global Warming**” (Research Briefs in Economic Policy no. 278), José-Luis Cruz and Esteban Rossi-Hansberg consider the regional impacts of climate change to develop a novel model for best policies and the implementation of those policies across various regions.

## REPEAT OFFENDERS



Does it help or hurt long-term recidivism rates for prosecutors to be more lenient on nonviolent misdemeanor offenses?

Using a data set from the Suffolk County, Massachusetts, district attorney’s office, Amanda Agan, Jennifer Doleac, and Anna Harvey find that leniency does indeed have a positive effect, reducing the rates at which people are later charged for other offenses, in “**Misdemeanor Prosecution and Recidivism**” (Research Briefs in Economic Policy no. 279).

## FREEDOM TO ADAPT

Beyond the immediate death toll, pandemics also produce some of the largest economic shocks on record. In “**Economic Freedom and Resilience: New Evidence from the 1918 Pandemic**” (Pandemics and Policy), Vincent Geloso explores the evidence from the 1918 Spanish Flu pandemic and finds that greater degrees of economic freedom are correlated with better adaptation and quicker recoveries.

## COLLEGES AND IMMIGRANTS

The positive economic impact of high-skilled immigrants is an important contributor to economic growth. In “**Getting Schooled: The Role of Universities in Attracting Immigrant Entrepreneurs**” (Research Briefs in Economic Policy no. 280), Natee Amornsiripanitch, Paul A. Gompers, George Hu, and Kaushik Vasudevan use venture capital data to show how the presence of universities helps attract immigrants who go on to start businesses with high growth potential, thus boosting local economies.

## RISKY BUSINESS



Arms sales have become a large part of U.S. foreign policy, used to cement alliances and boost opponents of hostile regimes. The *Arms*

*Sales Risk Index*, by A. Trevor Thrall and Jordan Cohen, documents the downsides of profligate arms sales by measuring factors linked to negative outcomes such as dispersion, diversion, and the misuse of weapons by recipients. Just released in its fourth annual edition, the report includes a special section focused on the risks of small arms and light weapons sales.

## MONETARY POLICY AND INEQUALITY

The racial wealth gap is one of the most persistent and troubling issues in public policy. Has monetary policy contributed to the persistence of this gap? In “**Monetary Policy and Racial Inequality**” (Research Briefs in Economic Policy no. 281), Alina Bartscher, Moritz Kuhn, Moritz Schularick, and Paul Wachtel find that growing proposals to use monetary policy to address

racial inequality are not promising and might even be counterproductive.

## LOW-INCOME INFLATION

Softer monetary policy can have a drastic negative effect on low-income households relative to high-income households, according to Asger Lau Andersen, Niels Johannesen, Mia Jørgensen, and José-Luis Peydró in “**Expansionary Monetary Policy Increases Inequality**” (Research Briefs in Economic Policy no. 282). Using administrative microdata, the authors document

**CATO POLICY REPORT** is a bimonthly review published by the Cato Institute and sent to all contributors. It is indexed in PAIS Bulletin. Single issues are \$2.00 a copy. ISSN: 0743-605X. ©2022 by the Cato Institute. Correspondence should be addressed to *Cato Policy Report*, 1000 Massachusetts Ave. NW, Washington, DC 20001. [www.cato.org](http://www.cato.org) • 202-842-0200

### CATO POLICY REPORT

David Boaz.....Editor  
Andy Craig.....Associate Editor  
Jon Meyers.....Art Director  
Karen Garvin.....Senior Copyeditor  
Mai Makled.....Graphic Designer

### CATO INSTITUTE

Peter Goettler.....President and CEO  
Robert A. Levy.....Chairman  
David Boaz.....Executive Vice President  
Linda Ah-Sue.....V.P., Events and Conferences  
Lesley Albanese.....Senior Vice President, Initiatives  
Evan Bolick.....General Counsel  
Khristine Brookes.....V.P., Communications  
Marissa Delgado.....V.P., Chief Financial Officer  
James A. Dorn.....V.P., Monetary Studies  
Emily Ekins.....Vice President  
Gene Healy.....Senior Vice President, Policy  
Steve Kurtz.....V.P., Chief Digital Officer  
Clark Neily.....Senior Vice President, Legal Studies  
John Samples.....Vice President  
Ian Vásquez.....V.P., International Studies  
Harrison Moar.....V.P., Development  
Edward H. Crane.....President Emeritus

James Buchanan (1919–2013).....Distinguished Senior Fellow  
F. A. Hayek (1899–1992).....Distinguished Senior Fellow  
William A. Niskanen (1933–2011).....Chairman Emeritus



the disparate impacts of monetary expansion.

## INCARCERATION AND POVERTY



The high and growing incarceration rate in the United States has disproportionately impacted economically disadvantaged and minority

communities, with significantly higher arrest, conviction, and incarceration rates for minorities. The economic impacts of this policy are often overlooked, but they are dramatic, especially when it comes to the disparate rates in pretrial detentions, as documented in **“The Economic Costs of Pretrial Detention”** (Research Briefs in Economic Policy no. 283) by Will Dobbie and Crystal S. Yang.

## ACTING UP

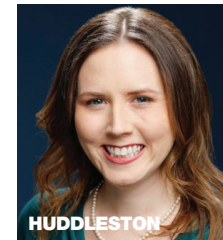
Presidents have increasingly exploited loopholes in federal law to evade Senate advice and consent through the use of acting appointees. In **“Closing the Vacancies Act’s Biggest Loophole”** (Briefing Paper no. 131), Thomas A. Berry explains how Congress can fix this end run around an important constitutional check on executive power.

## SPOILED SYSTEM?

The 1883 Pendleton Civil Service Reform Act was a major step toward ending political patronage and professionalizing the civil service, which is often seen as a key component of economic growth. In an analysis of the law’s impact on the Customs Service, Diana Moreira and Santiago Pérez find that the law worked as intended by some metrics but that this did not translate

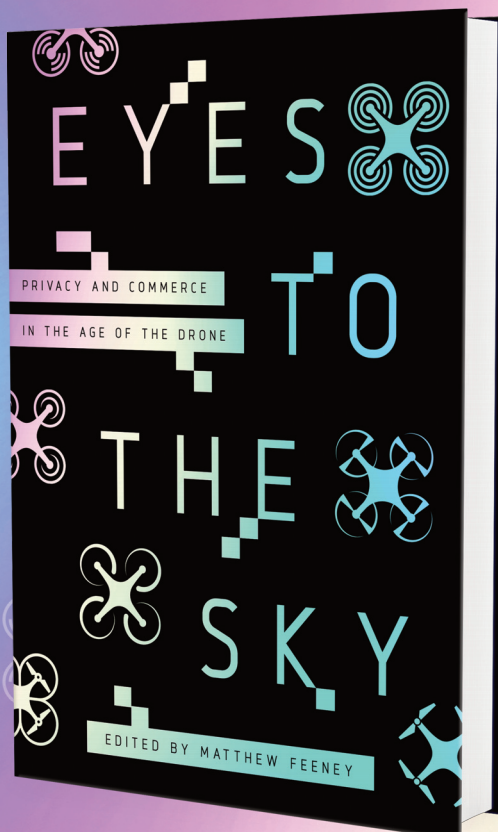
into greater efficiency or revenue collection, as the authors demonstrate in **“Civil Service Reform and Organizational Practices: Evidence from the Pendleton Act”** (Research Briefs in Economic Policy no. 284).

## BARRIERS TO ENTRY



Section 230, the crucial piece of legislation that protects internet companies from liability for user-generated content, has been accused of

being a giveaway to Big Tech companies. In fact, the law is crucial to lowering barriers to entry and enabling competition, as Jennifer Huddleston shows in **“Competition and Content Moderation”** (Policy Analysis no. 922). ■



“The timely essays in this book provide a roadmap for how to advance drone innovation.”

— ADAM THIERER, SENIOR RESEARCH FELLOW, MERCATUS CENTER  
AT GEORGE MASON UNIVERSITY

“Essential reading for anyone who wants to understand how we will balance rights and innovation.”

— GREGORY S. MCNEAL, PROFESSOR OF LAW AND PUBLIC POLICY  
AT PEPPERDINE UNIVERSITY AND COFOUNDER OF AIRMAP

“A vital addition to understanding the way forward for drones in our national airspace.”

— JERAMIE D. SCOTT, SENIOR COUNSEL, ELECTRONIC PRIVACY  
INFORMATION CENTER

CATO  
INSTITUTE

AVAILABLE AT CATO.ORG AND ONLINE  
RETAILERS NATIONWIDE #CATOBOOKS

## Cato Policy Report

1000 Massachusetts Ave. NW  
Washington, DC 20001

ADDRESS SERVICE REQUESTED

# CATO

Nonprofit Organization  
U.S. Postage  
**PAID**  
Southern MD  
Permit No. 4205

# “To Be Governed...”

## MAYBE MEMBERS OF CONGRESS SHOULD BE SUMMONED TO TESTIFY ON THEIR PERFORMANCE

On Wednesday, the chief executives of major airlines will be summoned to Capitol Hill to testify on their performance.

—*Washington Post*, December 14, 2021

## WAIVING THE CITY'S OWN BUREAUCRATIC BARRIERS

Faced with rising overdoses driven by the opioid epidemic, San Francisco Mayor London Breed declared a state of emergency in the city's Tenderloin neighborhood Friday.

The declaration is part of the mayor's Tenderloin Emergency Intervention Plan and will allow the city to waive certain laws and remove bureaucratic barriers in order to increase the resources available to quickly address the crisis, her office said. . . .

The state of emergency will allow the city to speed up implementation of emergency programs such as waiving contract procurement rules and zoning and planning codes in order to quickly open a site where people with substance abuse issues can get treatment.

—*Los Angeles Times*, December 17, 2021

## THE UPS AND DOWNS OF CENTRAL PLANNING

When China put in place its one-child policy four decades ago, policy makers said they would simply switch gears if births dropped too much. That has turned out to be not so easy. . . .

With the number of births declining year after year, China is now racing in the opposite direction, closing abortion clinics and expanding services to help couples conceive.

—*Wall Street Journal*, January 3, 2022

## UNITED SUBSIDIES OF AMERICA

The U.S. is planning to hand out \$10 billion to help upstart companies gain access to capital.

—*Wall Street Journal*, January 8, 2022

Congress created a nearly \$30 billion fund last year to help struggling restaurants, but the money ran out within weeks of its launch. Lobbyists for the industry, including the National Restaurant Association, pressed lawmakers to replenish the fund.

—*Wall Street Journal*, January 8, 2022

## NO, NO ECONOMIST WOULD SAY THAT

To understand economics, you must understand where wealth comes from. If you talk to an economist, the economist might say, “Wealth comes from printing money.”

—*Michio Kaku in World Economic Forum*, January 14, 2022

## YOU WERE SURPRISED BY THAT?

The *Early 202*: It's been almost three years since you landed at Squire Patton Boggs. What's surprised you most about becoming a lobbyist?

Joseph Crowley: I think what's surprised me the most is that there's a whole other world out there beyond Congress and elective office. I had served in elective office for 32 years. So it's been refreshing in many respects—the opportunity to meet other people and to be engaged on issues of substance that matter to me still.

—*Former representative Joseph Crowley in the Washington Post*, January 21, 2022

## SAYING THE QUIET PART OUT LOUD

State Sen. Rick Girdler [R-KY] . . . did respond to the Commonwealth Journal regarding [his introduction of a bill to reduce accountability on local governments' use of tax subsidies for development].

Most notably, he said, the bill wasn't his doing: it came from the Kentucky League of Cities, who simply needed a legislator's name attached to it to help make it into law.

—*Commonwealth Journal (Somerset, Kentucky)*, January 27, 2022

## LOOKS LIKE NATIONAL CONSERVATISM IS WINNING IN CHINA

U.S. semiconductor giant Intel Corp. apologized following a social-media backlash over a letter it sent suppliers asking them to avoid sourcing from the Chinese region of Xinjiang, where the Chinese government has conducted a campaign of forcible assimilation against religious minorities. . . .

Karry Wang, a singer with the popular Chinese boy band TFBoys, said Wednesday that he would step down as brand ambassador for Intel over the matter.

“National interests trumps everything,” the celebrity's management office said in comments posted on China's Twitter-like Weibo platform.

—*Wall Street Journal*, December 23, 2021

## DID TEST SCORES INCREASE 58 PERCENT?

In the last seven years under Mayor de Blasio, the [New York City Department of Education] annual budget has ballooned from \$20 billion to a whopping \$31.6 billion.

—*New York Post*, December 27, 2021