

Pachyderms applaud California constitutional lawyer



Sandefur

One seldom hears Kansas Republicans applaud judicial activism, but it happened at Friday's meeting of the Wichita Pachyderm Club.

Although "activist judge" is usually a conservative code word for liberal, Pachyderm guest speaker Timothy Sandefur tore into the nation's judges for not being activist enough in ensuring Americans' right to work and start a business.

Sandefur is principal attorney at the Pacific Legal Foundation in California and an adjunct scholar to the libertarian-oriented Washington think tank Cato Institute.

Sandefur said courts should do more to protect individuals' constitutional rights — particularly "the right to earn an honest living without being unduly interfered with by government."

"The founding fathers agreed with that and they called it the pursuit of happiness," he said.

In an hour-long speech long on history and humor, Sandefur outlined cases through the years where judges declined to overturn laws, even those that states admitted were irrational or designed simply to protect established businesses from startup competitors.

He assailed liberals for pushing to "make society nice" through efforts such as minimum wages and protection of union jobs.

He also lashed big business for using its lobbying clout to get laws passed to strangle potential competition.

His key contemporary example was *Munie v. Skouby*, a case he's working on now.

Munie is a St. Louis-area mover challenging a Missouri law that has prevented him from expanding to other markets in the state.

Sandefur said the law gives existing moving companies near-veto power over attempts by competitors to get licensed.

In Missouri, when a company applies for a license for a moving company, the state is required to contact all other moving companies in the area to see if they object, Sandefur said.

If even one does, the applicant “has to go before a board of bureaucrats and prove there’s a ‘need’ for a new moving company,” he said.

He said that is nearly impossible and compared it to forcing Starbucks to prove there was a need for new coffee shops in Seattle when that company first opened its doors.

In addition, Sandefur was harshly critical of the 2005 U.S. Supreme Court decision in *Kelo vs. City of New London*, a Connecticut case that upheld the right of local governments to use eminent domain to seize property for private-sector redevelopment activity.

The case — in which New London forced a woman to give up her oceanfront home for a developer’s proposed project — sparked a flurry of state laws to prohibit government from doing that.

But Sandefur said that “Kelo backlash” was largely unsuccessful because most of the new state laws are riddled with loopholes. A builder-backed California initiative actually expanded government’s power to take property, he said.

But he did say the backlash has made local politicians think twice about seizing property for redevelopment.

“I’m always happy when politicians are scared of anything, because that’s what they’re supposed to be,” he said.

- By [Dion Lefler](#)