

Liberty & LAW

Volume 14 Issue 3

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By Steve Simpson

The Washington Post headline said it all: "Virginia vintner's challenge ends in triumph."

On May 16th, the U.S. Supreme Court issued a decisive victory to IJ and our clients Juanita Swedenburg, David Lucas, and their customers in New York. In a decision that lead lawyer Clint Bolick called "the best day for wine-lovers since the invention of the corkscrew," the Court struck down discriminatory laws in New York and Michigan that denied out-of-state wineries the same direct shipping opportunities available to in-state wineries.

Writing for a five-justice majority, Justice Anthony Kennedy called the constitutional principle

barring protectionism "essential to the foundations of the Union. States may not enact laws that burden out-of-state producers or shippers simply to give a competitive advantage to in-state businesses." The Court agreed with IJ that the 21st Amendment "did not give the states the authority to pass nonuniform laws in order to discriminate against out-of-state goods, a privilege they had not enjoyed at any earlier time." And it soundly rejected the States' claim that the bans were necessary to prevent underage drinking and to facilitate tax collection as mere "unsupported assertions" lacking any evidence whatsoever.

Wine Victory continued on **page 11**



Don't Tangle with Braiders

New Case Marks Launch of IJ's Minnesota Chapter

IJ clients, above, from left, **Saleemah Salahud-Din Shabazz**, **Lillian Awah Anderson** and **Ejgayehu Beyene Asres** stand with IJ Minnesota Chapter Executive Director **Lee McGrath** at the launch of the case and state chapter. While the television crews set up, IJ-MN attorneys Nick Dranias and Lee McGrath talk with our clients (top right). Right, Lee McGrath addresses the media during the launch press conference.



photos by Lisa Sanders

By Lee McGrath

On April 20, the Institute for Justice Minnesota Chapter (IJ-MN) swung open its doors and put on notice bureaucrats from St. Paul to International Falls that the days of planning-as-usual are over.

Happy warriors for liberty have set up shop in the land of Hubert Humphrey and will litigate across the state on behalf of the politically and economically disenfranchised whose rights are being violated by the government.

The welcome from our fellow freedom-loving locals could not have been warmer. At IJ-MN's first press conference, all five local TV stations and both major newspapers in the Twin Cities reported on the new State Chapter and our clients—three African hairbraiders who are challenging Minnesota's cosmetology cartel.

Less than a week later, more than 120 supporters heard Chip Mellor, IJ's president and co-founder, explain that Minnesota was ripe for a state chapter because of its strong state constitution, clean judiciary, like-minded civic organizations and newly formed team of litigators well-trained in the IJ way.

Why Minnesota?

The opening of the Institute for Justice Minnesota Chapter did not happen overnight. Chip and I started discussing a

state chapter in Minnesota in 2001. Chip had a vision of what the state chapters could do to complement the work of the attorneys in D.C. And he knew that to have a successful state chapter, Minnesota had to offer an environment where IJ's strategies could work both in court and in the court of public opinion.

IJ researched Minnesota's Constitution and judiciary. It found that the state's courts had demonstrated a willingness to find greater protection for individual liberties in the state constitution than the federal Constitution. The presence of greater protection in the state constitution in the areas of religious freedom and police searches bodes well for IJ's legal strategy of strengthening economic liberty, property rights and free speech above protection found in the U.S. Constitution.

Moreover, I prepared an in-depth analysis that showed, among other factors, that Minnesota's current political climate was being transformed by pressures to compete in world markets, the failings of public education, and the popular fatigue with state government not engaged in the productivity revolution seen in the private sector. This suggested that IJ's media strategies would be well received.

IJ Takes Norwood Eminent Domain Fight To Ohio Appeals Court

First Case

Having done our homework, IJ-MN opened its doors and announced its first case, *Anderson v. Minnesota Board of Barbers and Cosmetology Examiners*. The case challenges the constitutionality of State regulations that require an African hairbraider to obtain a cosmetology license even though government-mandated classes and tests are unrelated to braiding.

In this case, IJ-Minnesota has terrific clients who represent the best of the entrepreneurial spirit and are determined to have Minnesota's irrational regulations overturned.

Five years after immigrating to the United States from Cameroon, our lead plaintiff, Lillian Awah Anderson, opened "Extensions Plus" in South Minneapolis. Extensions Plus is a clean, professional salon that specializes strictly in braiding, weaving and natural hairstyles—skills Lillian learned 20 years ago from a local school in Buea, Cameroon. Since opening her salon, Lillian has built a successful business the old-fashioned way—by working hard to establish a loyal clientele.

Joining Lillian in the lawsuit are Ejgayehu "Gigi" Asres and Saleemah Shabazz. Gigi was born in Addis Ababa, Ethiopia, and came to the United States in 1999 as a political refugee fleeing the horrors of civil war. Born in America, Saleemah's knowledge of hairbraiding was passed to her from relatives who learned it from earlier generations. A student and teacher of African culture, Saleemah believes that this case is just as much about cultural expression as it is about economics.

Under Minnesota's cosmetology regulations, Lillian, Gigi and Saleemah must spend 1,550 hours in training that has nothing to do with hairbraiding, while licensed cosmetologists are permitted to braid hair without ever taking a single hour of training in the methods of locking, twisting or weaving hair. Wielding the threat of

Chapter Launch continued on page 5



IJ attorneys **Dana Berliner, Scott Bullock and Bert Gall** speak to media along with IJ clients **Joy and Carl Gamble** as IJ takes their case to the Ohio Appeals Court. The Gambles are no longer allowed to live in their own home of 35 years.

On April 18, 2005, Norwood, Ohio, property owners and their community supporters rallied in front of Ohio's First District Court of Appeals in Cincinnati before the Institute argued a challenge to the City of Norwood's outrageous abuse of eminent domain.

Norwood's kowtowing to private developers in this case is particularly breathtaking. When it was unable to obtain all the properties for a planned project, a private developer demanded that the City do an urban renewal study to see if the disputed neighborhood was "blighted."

(Not surprisingly, the study, which was funded by the developer in question, found blight even though not one of the homes or businesses was dilapidated or delinquent on taxes.) The developer also paid for all of the costs of property acquisition and is even paying the private law firm that defends the City's actions in court. It is a total buy-out

of the City of Norwood's eminent domain authority.

The trial judge found that the City abused its discretion in finding the Edwards Road neighborhood "blighted," but went on to find that the area could be called "deteriorating," thus justifying the use of eminent domain.

Among the criteria the City used to justify the "deteriorating" label is "diversity of ownership"—essentially, too many individual



Above, many homeowners and members of the community came to show their support for property rights. Right, IJ attorney Bert Gall addresses the rally while client Joe Horney looks on.



property owners in this particular area. As we pointed out to the appeals court, under that standard, just about every residential neighborhood in America could be fair game for a politically connected developer.

A decision is expected within the next several months. ♦

The Ultimate *Winn*-Win Scenario

IJ Scores Victory in Arizona School Choice

By Tim Keller

School choice advocates received great news in March when Arizona's Federal District Court dismissed *Winn v. Hibbs*, the Arizona Civil Liberties Union's (AzCLU) frivolous legal challenge to Arizona's pioneering Scholarship Tuition Tax Credit.

In granting the Institute for Justice Arizona Chapter's (IJ-AZ) motion to dismiss, the district court not only struck a blow for the rule of law, but handed the thousands of parents and children who rely on scholarships a well-deserved victory.

For IJ-AZ's client Pastor Glenn Dennard, this ruling ensures that his five children will remain safely ensconced in the schools best suited to their needs. Pastor Dennard, speaking of his oldest daughter, said, "We refused to send her to any of the neighborhood public schools because of the inadequate education the local schools offer." And so he sacrificed and found a way to send her to private school. But without the tuition scholarships, Pastor Dennard's other four children would be unable to attend private school.

And there is still more to do, because this *Winn*-win improves the prospects of expanding the current tax credit program. Arizona's scholarship tuition organizations, such as IJ-AZ's other client Arizona School Choice Trust, still have hundreds of families on waiting lists.

This session, the Arizona Legislature twice passed tax credit bills that would have allowed corporations to receive dollar-for-dollar credits for money they donated to scholarship-granting organizations. Despite the growing body of social science data demonstrating the benefits of choice, Governor



Parents **Glenn** and **Rhonda Dennard** with their children, (from left), **Glenn II (13)**, **Joshua (12)**, **Marché (10)**, **Sarah (9)**, and **Micah (15)**. **Glenn II, Joshua, Marché** and **Sarah** attend Grace Community Christian School and **Micah** attends Xavier High School.

Janet Napolitano unfortunately vetoed the first bill—which capped the total donations at \$55 million per year—as soon as it hit her desk. Fortunately, the Legislature took the measure back to the drawing board and reached a compromise with the Governor that allowed the passage of a corporate tax credit capped at \$5 million per year, allowing the Scholarship Tax Credit program to expand its reach to as many as 1,500 additional students per year.

With the district court's solid ruling in *Winn* upholding the constitutionality of school choice, we can once again quiet reform opponents' rhetoric that choice programs violate the First Amendment's Establishment Clause.

The reality is that school choice is the only education reform proven to result in real improvements for all our children's learning environments—both for students who choose to attend private schools and

for students who remain in public schools. While the teachers' unions continue to promise improvement if only they are provided more money (never mind that those improvements never materialize and that there is no link between per-pupil funding and student achievement), school choice delivers a quality education today.

The AzCLU and its allies, whose interests lie not with improving our children's education but in protecting the public education monopoly, should abandon any further legal challenges. Instead, we should get on with the business of true education reform. Arizona is already a national leader in school choice, but we can and must do more because our children deserve nothing less. ♦

Tim Keller is executive director of the Institute for Justice Arizona Chapter.





Tim Keller, executive director of IJ's Arizona state chapter, presents oral argument in *Salib v. City of Mesa* to the Arizona Court of Appeals, while students of his high school alma mater listen as part of the court's outreach program that connects the court with Arizona communities.

IJ's Minnesota Chapter Seeks Clear Course for Liberty in North Star State



Client **Lillian Awan Anderson**, braiding hair above, wants the right to earn an honest living without the red tape of 1,550 hours of cosmetology classes that don't teach how to braid hair.

How Sweet It Is to Defend Free Speech

By Jennifer Barnett

Who says you can't go home again?

On the morning of April 7, Institute for Justice Arizona Chapter (IJ-AZ) Executive Director Tim Keller returned to his high school alma mater to protect Winchell's Doughnut franchise owner Ed Salib's free speech rights. The Arizona Court of Appeals selected IJ-AZ's commercial speech case, *Salib v. City of Mesa*, as a vehicle for its "Connecting with the Community" program and held oral argument in front of approximately 200 high school students at Scottsdale's Horizon High School.

IJ-AZ filed suit on Ed's behalf in January 2003 challenging the City of Mesa's sign ordinance. The ordinance forbids businesses in the City's Redevelopment Area from hanging window signs that cover more than 30 percent of the windows. Ed receives professionally produced signs each month from Winchell's advertising the current specials; these signs typically cover more window area than the ordinance permits.

Mesa's purported justification for the sign code is to improve aesthetics and increase public safety. As Tim pointed out to the Court, the ordinance does neither of these things: window clutter may be as high as ever since businesses are still free to fill their windows with actual products, and they are also free to cover 100 percent of the window area with blinds or paint as long as they are not displaying any commercial messages.

Tim's argument began humorously by asking the judges to excuse his rumbling stomach

as he demonstrated the arbitrariness of Mesa's sign code using a mock-up window and miniature signs with pictures of the tasty doughnuts he loves. In a lighthearted moment, while stressing the importance of commercial speech to our free market economy, Tim quipped to the Court that the public deserves to know that Ed's frozen mocha cappuccinos are cheaper than Starbucks'.

In contrast, the City provided the Court with a stereotypical big-government apologist in the attorney it sent to defend the ordinance. The City's attorney spoke without passion, plaintively asking the Court not to make the City jump through any more hoops in passing ordinances—such hoops might be too "burdensome"—and we wouldn't want cities to face any extra burdens when passing ordinances that trample their citizens' constitutional rights. Without much left to say in her favor, the City's attorney sat down with more than two minutes left of argument time.

Tim used every last second of his allotted time to press his case, growing more passionate toward the end of the argument.

"Days like these are why I became an IJ attorney," Tim declared after the argument. "I love standing up for the cause of liberty in the face of governmental tyranny and, of course, the opportunity for a free doughnut or two." ♦

Jennifer Barnett is an IJ-AZ staff attorney.



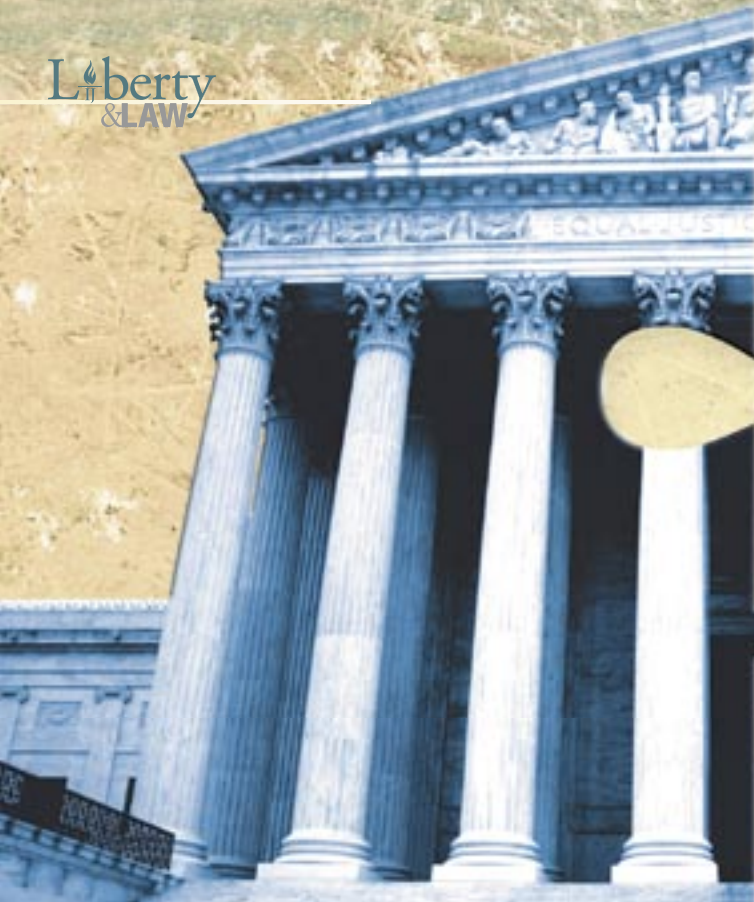
Chapter Launch continued from **page 3** incarceration, the cosmetology cartel creates barriers that block the efforts of these three courageous women to realize their professional aspirations.

Their fight is the perfect case to introduce the Institute for Justice to Minnesotans and to send a clear message to thousands of bureaucrats who never dreamed that IJ's merry band of litigators would fight against the welfare state in the land of Fritz Mondale, Gene McCarthy and Garrison Keillor.

The positive popular reaction to our initial case confirms Chip's vision for state chapters and the organizational quest to move from a national law firm to a nationwide law firm—one with litigators located in many states. ♦

Lee McGrath is executive director of the Institute for Justice Minnesota Chapter.





Judicial

Judicial

Two Paths To Big

By Chi

Without realizing it, liberals and conservatives are working from opposite ends of the political spectrum, under opposing rationales, to reach the same end: expanded government power. As a result of the political push and pull between those advocating judicial activism and those favoring judicial restraint, two fundamental American rights—the right to earn an honest living and the right to own private property—have been stripped of vital constitutional protection, leaving entrepreneurs and small property owners especially vulnerable to backroom deals and majoritarian whims.

The Framers envisioned a system in which individuals enjoyed rights equally, and the rights they enjoyed were treated with equal respect under the Constitution. In 1938, the U.S. Supreme Court decided *United States v. Carolene Products Co.*, upholding the Filled Milk Act through which Congress prohibited the interstate shipment of milk or cream to which had been added any fat or oil. The opinion was a stroke of judicial activism that, through its infamous footnote 4, created an artificial dichotomy of

rights under the Constitution. Some rights, notably free speech, were elevated to a preferred tier and now rightly receive vigorous constitutional protection. Rights demoted to the second tier—specifically economic liberty and property rights—wrongly receive far less constitutional protection.

Indeed, the protection for economic liberty is so feeble that bureaucrats and judges may simply invent justifications for challenged laws, even if those justifications are purely hypothetical and even if it is quite clear they had nothing to do with the legislature's decision to pass the law. While property rights have received a somewhat greater degree of protection from the Supreme Court during the past 20 years, they remain under siege from government through eminent domain, zoning and environmental regulations.

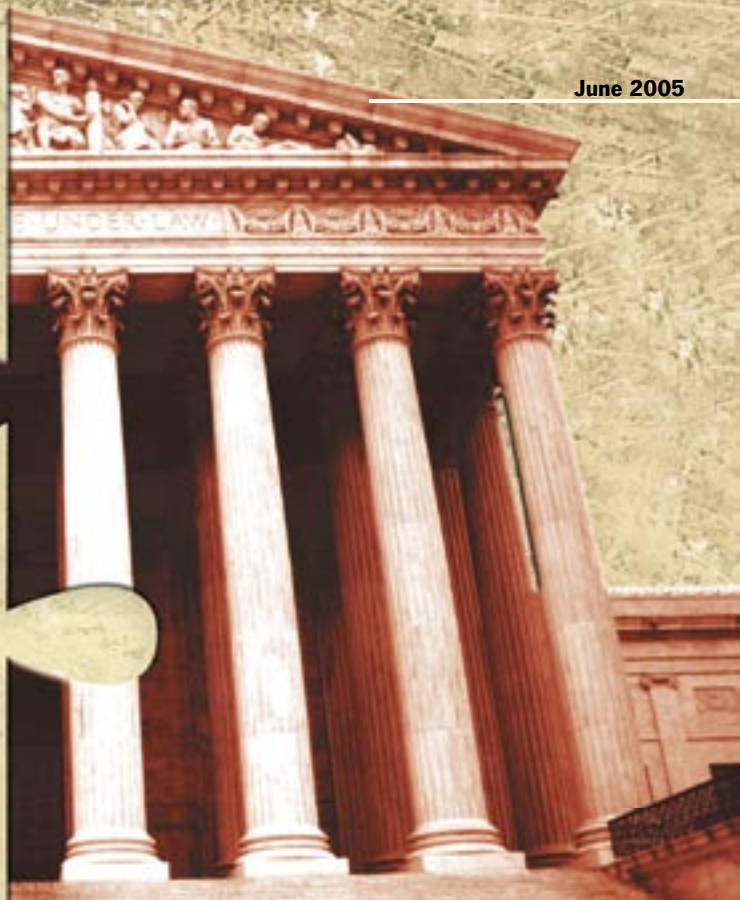
When the legislative or executive branch exceeds its legitimate enumerated powers, the courts have the authority, indeed the duty, to declare that exercise of power unconstitutional. Liberals, however, tend to reject the notion that the courts have any role in seriously protecting economic liberty or property rights. This is remarkable in light of the fact that many liberals strongly advocate

court protection for various rights—such as welfare—whose constitutional pedigree is far more questionable than rights to private property and economic liberty. During recent decades, liberal judges, often urged on by public interest groups, have issued many opinions expanding the realm of economic and property regulation, thereby strengthening the welfare state. Having achieved this judicially sanctioned welfare state, liberals are strong supporters of letting the political process operate unimpeded by court oversight.

Conservatives, who can be supportive of property rights and economic liberty on policy grounds, are nevertheless reluctant to have courts rein in legislatures. Reacting to the perceived excesses of the Warren Court, *Roe v. Wade*, and the ability of liberal public interest groups to advance their agendas through the courts, many conservatives have come to view the judiciary with suspicion, at times bordering on outright animosity. Increasingly, their touchstone is judicial restraint requiring deference to legislatures. This deference, coupled with an allegiance to precedent, means that conservatives are rarely willing to overrule precedent, leaving entrenched the very foundations of the welfare state they rail against.

Activism & Restraint: igger Government

p Mellor



Both liberals and conservatives take comfort in their belief that legislatures will respond to the will of the public and make informed policy decisions that can be changed as public sentiment dictates. Though appealing in principle, this trust in the democratic process ignores the realities of governmental institutions. Through gerrymandering and other means, elected representatives are increasingly insulated from their constituents. Meanwhile, many policies are set and enforced by unelected, unaccountable agencies, boards and commissions. What's more, politically powerful special interests often capture the regulatory process to keep out newcomers, or to take what doesn't belong to them. In the absence of judicial limitations, protection of economic and property rights is increasingly dependent on the self-restraint of government institutions—a commodity that is chronically in short supply.

In such a climate, the Court's role in reviewing the constitutionality of laws becomes especially important. Without judicially recognized constitutional constraints, perverse incentives lead inexorably to expansion of government power and the yielding

of individual rights. That dynamic is nowhere more evident than in property rights and economic liberty, where the current constitutional debate is whether there should be any limits on governmental power. In effect, where does the outer boundary of government authority lie?

A classic example is *Kelo v. New London*, in which the Supreme Court will decide whether the constitutional requirement that takings be for a "public use" places any judicially enforceable limit on the power of eminent domain. The Court must decide whether the government can take property from one owner in order to give it to another private party solely because that new owner may be able to pay higher taxes. In upholding the taking of 15 properties owned by seven families to make way for private office space and other unspecified projects (begging the question of how a taking can be declared for a public use when no specific use has been declared), the Connecticut Supreme Court deferred to the New London City Council. But it also deferred to the unelected, private New London Development Corporation, which has been given the government's power of eminent domain.

Recognizing the speculative nature of the project and the breathtaking expansion of this government power, dissenting Connecticut Supreme Court justices wrote, "The majority assumes that if the enabling statute is constitutional, if the plan of development is drawn in good faith, and if the plan merely states that there are economic benefits to be realized, that is enough. Thus, the test is premised on the concept that 'if you build it, [they] will come,' and fails to protect adequately the rights of private property owners." Under this standard, no home and no small business would be safe from tax-hungry governments and land-hungry developers. As the Institute for Justice noted in its Supreme Court brief, "Only the utterly incompetent could fail to devise a hypothetical chain of events whereby any use of eminent domain could lead to economic growth."

The state of economic liberty jurisprudence is even more dire, as demonstrated by a recent 10th U.S. Circuit Court of Appeals decision upholding Oklahoma's retail casket cartel. Oklahoma law requires anyone selling a casket to become a government-licensed funeral director—no small task considering,

Judicial Activism continued on **page 10**



IJ hosted its third Partners Retreat bringing together donors, clients and Institute staff to discuss our plans to create a freer nation. In addition to substantive talks about our litigation, media relations and outreach, those gathered also enjoyed fascinating guest speakers, golf, terrific music and—always a highlight—skeet shooting. ♦



INSTITUTE FOR JUSTICE PARTNERS RETREAT

May 5-8, 2005; The Boulders Resort, Phoenix, AZ



IJ Untangles Cosmetology Laws With Back-to-Back Hairbraiding Victories

By Valerie Bayham

The Institute for Justice has dealt protectionism dual knockout blows, defending the economic liberty of African-style hairbraiders from the Gulf of Mexico to the Pacific Northwest. In both Mississippi and Washington state, braiders are celebrating their freedom from the unjust requirements of the states' cosmetology boards. Braiders—who use no reactive chemicals or dyes—can now practice their cultural art form without having to complete hundreds of hours of onerous and irrelevant training.

On April 19, 2005, Mississippi Governor Haley Barbour signed legislation freeing Mississippi braiders from the Board of Cosmetology's control. Braiders no longer have to earn a cosmetology or wig-specialist license, requiring 1,500 hours or 300 hours, respectively. Instead, they simply pay a \$25 registration fee to the Board of Health and complete a short self-test on basic health and sanitation guidelines. This legislative change was initiated in response to an IJ lawsuit filed last August that attacked the State's outrageous training requirements for braiders and braiding instructors. The legislation will go into effect for a three-year trial period, starting on July 1.

This victory is a testament to the hard work and dedication of IJ clients Melony Armstrong and Margaret Burden, who traveled to the Mississippi capitol—along with their IJ attorneys—on a weekly basis in order to inform legislators about the importance of economic liberty to braiders.

Armstrong, who owns Naturally Speaking in Tupelo and also offers courses in advanced braiding techniques, noted after a private signing ceremony with the Governor, "This is a dream come true. I am finally able to expand my business and provide jobs to braiders."

Burden, who has been braiding hair since she was a little girl, added, "This bill changes lives. It allows braiders to bring their dreams and ideas into reality. It is about more than economic empowerment—it demonstrates the power of each and every citizen to speak and have its government listen."

In Washington state, IJ client Benta Diaw is now free to earn an honest living braiding hair as well. Diaw, a Seattle-area entrepreneur from Senegal, opened Touba African Hair Braiding in 1998—just two years after immigrating to the United States. With cosmetology inspectors threatening braiders with citations, Diaw was concerned that her livelihood was in jeopardy.

When faced with the might of the Institute for Justice Washington Chapter (IJ-WA), however, the Washington State Department of Licensing quickly retreated from its view that African braiders should be regulated as cosmetologists. This February, the Department filed an Interpretative Statement pursuant to Washington's Administrative Procedure Act stating that the Department does not consider the practice of natural hair care to fall within the definition of cosmetology; therefore, braiders are not required to have a cosmetology license. Under Washington law, Interpretative Statements are written evidence of an agency's interpretation of a statute or rule and are given "great weight" by the courts. Finding that African hairbraiders were no longer at risk of citations for operating without a cosmetology license in Washington, the lawsuit was dismissed in March.

Commenting on the success of the lawsuit, Diaw recently noted, "I am so very happy to be able to practice my heritage without worrying about the government closing my salon. And I know that other braiders here in Washington are thankful to be free to practice their heritage too."

Thanks to Diaw, Armstrong, and Burden's courage and their willingness to fight local bureaucrats and government red tape, African hairbraiding salons previously operating under the threat of investigation and prosecution by the government can now be secure in the knowledge that their rights are protected in Mississippi and Washington state. ♦

Valerie Bayham is an IJ staff attorney.



Top, IJ clients, **Christina Griffin**, **Melony Armstrong** and **Margaret Burden** (from left) stand with IJ staff attorney **Valerie Bayham** just after Governor **Haley Barbour**, center, signed legislation releasing Mississippi braiders from the Board of Cosmetology's control. Institute for Justice Washington Chapter client, **Benta Diaw**, bottom, also no longer needs a cosmetology license, thanks to the pressure from her IJ-WA lawsuit.

Fighting Arbitrary Laws and Regulations

Judicial Activism continued from page 7 in addition to years of study, it requires an applicant to embalm 25 bodies; all this despite the fact that casket retailers never handle dead bodies nor perform funerals—they merely sell what amounts to a box. The 10th Circuit explained, apparently without irony, that “dishing out special economic benefits to certain in-state industries remains the favored pastime of state and local governments,” and upheld the law on the grounds “that intrastate economic protectionism . . . is a legitimate state interest.” In effect, we now have a federal appeals court giving a green light to the rankest form of cronyism and favoritism. Despite the starkness of the 10th Circuit’s unanimous ruling, in March the Supreme Court declined to review the case.

As long as the Court shows such extraordinary deference to legislatures and maintains a two-tier approach to constitutional rights, the ratchet operates in one direction—to increase government power. When government growth is proceeding exponentially, setting reasonable outer boundaries might be a good place to start. The problem, however, is that for economic liberty and property rights, the boundaries are set at such an outer extreme that, for all practical purposes, courts cede virtually unchecked authority to government. Bureaucrats become adroit at maximizing their power just short of the boundary. The result is a flourishing regulatory

regime that too often leaves abused property owners and entrepreneurs without recourse.

If economic liberty and property rights are to be restored to their rightful place in the constitutional constellation, the courts must go beyond merely setting these outer limits; they must truly revive constitutional protections. Judicial activism and abdication have read these rights out of the Constitution; it is essential that consistent and principled judicial engagement rehabilitate them. Respect for *stare decisis* must not mean refusal to reexamine wrongly decided cases; it must mean a respect for order that makes transitions as smooth as possible, while at the same time fulfilling the courts’ responsibility to recognize constitutional constraints on government authority.

With constitutional constraints in place, deference to legislatures makes sense. Liberals, conservatives and others can compete to establish policies through the deliberations of elected representatives. Wishes of the majority can prevail while the rights of the minority are respected. And entrepreneurs and small property owners, secure in their rights, can once again focus their energies on productive activities instead of trying to fend off arbitrary laws and regulations. ♦

Chip Mellor is IJ’s president and general counsel. This article appeared in *American Lawyer* magazine.



IJ Earns Charity Navigator’s Highest Rating For Fourth Consecutive Year

For the fourth consecutive year, the Institute for Justice has earned the highest rating from Charity Navigator, a non-profit organization that evaluates the financial management and organizational efficiency of 3,900 charities across the country.



In recognizing the Institute, Charity Navigator said, “Receiving four out of a possible four stars indicates that your organization excels, as compared to other charities in America, in successfully managing the finances of your organization in an efficient and effective manner. This consistency in your rating is an exceptional feat, especially given the economic challenges many charities have had to face in the last year.”

Charity Navigator was founded in 2001 to help donors make informed decisions by providing information on, and evaluating the financial health of, the nation’s largest charities. It rates charities by evaluating two broad areas of financial health, organizational efficiency and organizational capacity, and then issues an overall rating that combines the charity’s performance in both areas. The information is provided free of charge on the organization’s website, www.charitynavigator.org.

The Institute for Justice works hard to put to good use each dollar we receive in support, and we’re honored to be recognized in this way. ♦



About the publication

Liberty & Law is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication and outreach, advances a rule of law under which individuals can control their own destinies as free and responsible members of society. It litigates to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties, and to restore constitutional limits on the power of government. In addition, it trains law students, lawyers and policy activists in the tactics of public interest litigation to advance individual rights.

Through these activities, it challenges the ideology of the welfare state and illustrates and extends the benefits of freedom to those whose full enjoyment of liberty is denied by government.

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“Virginia vintner’s challenge ends in triumph.”

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As IJ client David Lucas summed it up, the Court gave wineries and their consumers what the Constitution commands: “the right to economic liberty.” Juanita Swedenburg echoed this sentiment: “This is interstate commerce, as it was meant to be. The Founding Fathers wanted us to be one nation when it came to trade, not 50 states.”

IJ filed the case in U.S. District Court in Manhattan in early 2000 on behalf of Swedenburg, Lucas, and New York wine consumers Robin Brooks Rigolosi, Patrick Fitzgerald and Cortes DeRussy. Before long, the special interests who benefited from New York’s protectionist system sought to intervene in the case. Soon IJ and its clients found themselves facing off against eight teams of highly paid New York lawyers and their powerful clients, including the four largest New York wine wholesalers and two unions. It was a classic David versus Goliath battle.

IJ rose to the challenge, enlisting the efforts at various times of no less than eight IJ attorneys, including IJ President Chip Mellor, Deb Simpson, Miranda Perry, Marni Soupcoff, Clark Neily, Bert Gall, and me. Gretchen Embrey provided unwavering litigation support throughout, and John Kramer and Lisa Knepper managed one of the biggest media blitzes in IJ’s history. Many more IJ employees and supporters provided invaluable help, including our development team, our donors, and more law clerks and interns than we can count. It was truly a team effort from start to finish.

Even though the Supreme Court case is behind us, other related battles will rage on. The Court’s ruling requires states to treat in-state and out-of-state wineries the same, but it does not require them to allow direct shipping at all. Currently, 26 states allow direct shipping in some form, while 24 prevent it. Of those 24, eight states have discriminatory laws that are now unconstitutional. The remaining 16 will have to be analyzed to determine whether they treat all wineries the same.

The states now have a choice: they can either side with the wholesalers and their oligopolies, or they can side with wineries and consumers. Free trade is good policy, however, and the momentum favors direct shipping, so we expect states will increasingly open their borders to trade, rather than close them down.



IJ’s Strategic Litigation Counsel **Clint Bolick** and client **Juanita Swedenburg** are both pleased with the U.S. Supreme Court decision.

But the protectionists have not given up. Indeed, the ink was barely dry on the Court’s opinion when Nida Samona, chairwoman of the Michigan Liquor Control Commission, said that she will recommend that Michigan ban all direct shipping rather than open its borders to wine from other states. This is pure sour grapes, but it no doubt accurately expresses the views of the wholesalers and their allies in the state bureaucracies. So IJ will remain vigilant to ensure that this victory for free trade is not squandered by state legislatures.

After the oral argument in December, IJ supporter and Virginia vintner Lew Parker said, “Only one group was there because of what they believed in, not what they were being paid for. That’s the Institute for Justice. And it showed.”

That’s true, but we could not have done it without our supporters and our heroic clients.

Cheers!◆

Steve Simpson is an IJ senior attorney.



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terms!) that is one
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