

IJ Celebrates  
15th Anniversary  
1991-2006

# Liberty & LAW

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# BURYING THE COMPETITION

## IJ Takes On Maryland's Funeral Home Cartel

By Jeff Rowes

Anyone who has ever made funeral arrangements for a loved one knows that it is expensive. Charles Brown can give you at least one reason why this is especially true in Maryland: funeral industry insiders don't like competition, and they use government force to keep entrepreneurs like him out of the field.

Charles' story is like that of so many entrepreneurs. He and his family own Rest Haven, a beautifully manicured cemetery in Hagerstown, Md. Charles realized many years ago that he could serve his clients best by building a funeral home on the grounds of Rest Haven, so he did what any good entrepreneur would do: he built one.

That is when the trouble began. Charles is not a licensed funeral director, and Maryland allows only licensed funeral directors to own funeral homes. (Keep in mind, Charles' son, a licensed funeral director, would operate the funeral home; all Charles would do is own it.)

The only alternatives for Charles are either prohibitively expensive or impossible for him to meet. For instance, the State has reserved special corporate licenses, but they sell for about \$250,000—an inflated figure thanks to the government-created scarcity.

Also, the surviving spouse or the executor of a deceased funeral director can own or run a funeral

**Competition** continued on page 10

# Celebrating Milwaukee's Successful Vision of Urban Education

By Howard Fuller

Fifteen years after parental choice gained a toehold in the world of education reform with just a few hundred families in Milwaukee, the positive results are evident. The city's experience with choice provides a valuable example for school reformers nationwide.

The Milwaukee Parental Choice Program—the nation's first school voucher program for low-income families—has grown to nearly 15,000 children in 125 schools. Parents, given the financial means to choose the best school for their children, are eager to do so and schools are eager to serve them.

Milwaukee is now home to a strong group of schools and educators dedicated to providing low-income and working class parents with high-quality educational opportunities.

Milwaukee parents can now access private schools through the voucher program, 49 charter schools, 19 public/private "partnership schools" serving at-risk children, and the traditional public schools. Along North Avenue alone, 16 schools—charter, public and private—compete for students where once only two struggling public schools existed. The diversity and innovation on North Ave., dubbed "the main street of American school reform" by the Milwaukee *Journal Sentinel*, have given real hope to a community in the city's urban core.

In no other American city do parents, especially poor black parents, have such a wide array of educational choices.

This is possible because education dollars in Milwaukee follow the child, expanding access and providing schools the right incentives to meet children's needs.

That critical shift in power from bureaucracy to parents has had far-reaching, positive impacts on Milwaukee Public Schools. The dire prediction that the program would lead to the demise



**"We do things differently because we have to compete. We have a consciousness of all the options in the community."**

—Milwaukee Schools Superintendent William Andrekopoulos

of the Milwaukee Public Schools simply isn't true. In fact, MPS results suggest the opposite.

Since the introduction of parental choice, MPS enrollment is up, the annual high school drop out rate has declined, state test scores have improved and real spending per pupil has increased.

Traditional public schools in Milwaukee face greater accountability because they must recruit and satisfy parents to maintain their budgets. Budget reforms that allow schools to control 95 percent of MPS operating funds have empowered school leaders. Schools also control teacher hiring, dismantling the tenure system that once shuttled the least experienced teachers to the neediest schools.

MPS Superintendent William Andrekopoulos recently acknowledged to the *Journal Sentinel*, "We do things differently because we have to compete. We have a consciousness of all the options in the community."

To be sure, too many of our children's educational needs still are not being met. Much work remains to be done, but the real gains of the past 15 years cannot be ignored.

Indeed, those gains enabled advocates to build an effective and diverse coalition of parents, educators, business people, community activists and elected officials. Though badly outnumbered in their party, a group of courageous urban Democrats now back choice because they see the benefits for their constituents. Their numbers will increase as young people, who support parental choice in large numbers, become more involved in political activity.

The need for broad-based support continues because the attacks of choice opponents—mostly orchestrated by the teachers' unions—never end.

After the teachers' unions and their allies suffered two legal defeats in which the Institute for Justice successfully defended parental choice, the

opponents of choice have turned to politics.

Most recently, an arbitrary enrollment cap threatened the very existence of the program. Failure to lift the cap would have led to a state rationing system that would have thrown up to 4,000 students out of their schools. Our coalition undertook a massive campaign to convince union-backed Democratic Governor Jim Doyle to raise the cap, which he finally did, averting a crisis.

After 15 years of school choice in Milwaukee, we know that school choice works for students, schools and our community. We also have learned that our foes will persist. So must we. ♦

**Dr. Howard Fuller**, a former Milwaukee Public Schools superintendent, directs the Institute for the Transformation of Learning at Marquette University and chairs the Milwaukee-based Alliance for Choices in Education.



# Campaign Finance Laws vs. Free Speech

By Steve Simpson

Should governments be able to regulate political speech and association?

The question almost seems absurd for an American. Our First Amendment states that “Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The Framers certainly believed that the First Amendment protected *political* speech and participation in addition to other forms of speech. Reflecting the same value for these rights, each state has its own separate constitutional protection for speech and association.

Despite these protections, the federal government and most states have passed campaign finance laws that blatantly violate these rights. Sold as efforts to control the influence of “money” in politics, the laws in fact regulate what money buys—political speech—and what it represents for many citizens—a meaningful opportunity to participate in the political process.

Federal and state laws regulate campaign contributions and expenditures for political candidates, and many states even extend these regulations to ballot initiative elections. In 2002, Congress actually banned broadcast advertisements mentioning a candidate for federal office within 30 days of a primary and 60 days of an election that are paid for with corporate funds. The Supreme Court



upheld the ban in 2003, concluding that it was necessary to prevent the appearance of corruption. Since then, 13 states have passed similar laws.

In short, in America, it is now constitutional for the government to control and even ban political speech and participation. To borrow from Justice Thomas in his now-famous dissent in the *Kelo* case: Something has gone horribly awry with the Court’s—and the country’s—approach to the First Amendment.

Just as the Institute for Justice stepped into the breach to protect property rights from the steady encroachment of government intrusion into our lives, we are championing First Amendment rights against the growth of campaign finance laws. Our recent efforts include:

- A challenge to Arizona’s Clean Elections Act, which created a public financing scheme for elections paid for by a tax on lobbyists;
- A challenge to efforts by the political establishment in Washington State to

intimidate two talk radio hosts by requiring an initiative campaign they support to report as “in-kind contributions” the hosts’ on-air comments about the campaign;

- A challenge to Colorado’s ballot initiative regulations that would require the Independence Institute, Colorado’s premier free market policy organization, to register with the State and report all of its expenditures and contributions simply because it tried to educate the public about a referendum it (correctly) believed would lead to higher taxes and more government spending;
- Filing amicus briefs in U.S.

Supreme Court campaign finance cases, including two cases before the Court this term.

Campaign finance laws are perhaps the most significant attack on First Amendment freedoms in a generation. They chill political speech and participation and are often used as political weapons. Unless checked now, they will inevitably expand as each new effort to regulate “money” in politics fails to dampen the basic human desire to influence politics, leading to new “loopholes” and calls for more regulations to close them.

IJ will continue to oppose these laws and to expose them for what they are: naked efforts to control political speech and participation. ♦

**Steve Simpson** is an IJ senior attorney.



# PROPERTY RIGHTS



IJ senior attorney **Scott Bullock** addresses New Orleans property owners.

## Preparing for Eminent Domain in New Orleans

Alarmed by preliminary proposals from the “Bring New Orleans Back Commission,” which include the potential widespread use of eminent domain for private development, on March 2, IJ Senior Attorney Scott Bullock and Staff Attorney Dave Roland traveled to the heart of the damaged sections of New Orleans to meet with affected residents and to share information with them about eminent domain abuse. About 125 people packed a local church hall to hear their presentations at a forum organized by the non-profit ACORN, which has been working with residents who want to save their homes from demolition and to rebuild. We will continue to carefully monitor the situation and work with local folks to ensure that individual citizens—not government planners—decide the fate of the city. ♦

## Property Rights Victory in Oregon

By Michael Bindas

The people of Oregon and property owners nationwide won a significant victory on February 21 when the Oregon Supreme Court upheld a ballot initiative designed to restore fairness to land use regulation.

Measure 37, which Oregonians approved in 2004, requires the government to compensate a property owner if enactment or enforcement of a land use regulation restricts the property’s use and reduces its fair market value. Alternatively, the government may choose not to apply the regulation to the property.

In a word, Measure 37 is about *fairness*. Because no individual property owner should have to foot the bill for regulation designed to benefit all citizens, the measure distributes the costs of land use regulation to the public at large.

Even though the measure makes exceptions for regulation necessary to protect public health and safety, influential interests attacked it in the courts. An Oregon trial court judge bowed to their wish, holding Measure 37 unconstitutional because it limits the government’s “plenary power to regulate land use in Oregon.”

IJ entered the fray when the case went to the Oregon Supreme Court. In a “friend of the court” brief, IJ argued that Measure 37 is the people’s expression about the proper protection of individual rights, not an impermissible restriction on the government’s regulatory power.

A unanimous Oregon Supreme Court agreed and held that nothing in the Oregon Constitution prohibits the people, in the exercise of their initiative power, from requiring “state or local entities to decide . . . whether to pay just compensation or to modify, remove, or not apply certain land use regulations.”

The ruling was a victory for Oregonians and for all who value property rights. Rather than pitting environmental preservation *against* property rights, as so many governmental policies do, Measure 37 strikes an appropriate balance between the two. ♦

**Michael Bindas** is an IJ staff attorney.





# CastleCoalition.org Redesign

By Isaac Reese

Immediately after the U.S. Supreme Court issued its decision in *Kelo v. City of New London*, IJ's **CastleCoalition.org** became the resource in the fight against eminent domain abuse. Given the incredible demand from reporters, homeowners, students, scholars and legislators, we undertook a redesign of the site to make it more user-friendly and informative. In addition to expanding the existing content, we've added these new features:

### Maps and State Pages

"10,000 abuses of eminent domain," has been the Castle Coalition's rallying cry since Dana Berliner's 2003 report, *Public Power, Private Gain*, exposed how frequently state and local governments wrench homes and businesses from their owners for the benefit of private parties. We have taken the research in this report and merged it with Google maps to graphically convey the enormity of current and past abuses across the nation. (See [maps.CastleCoalition.org](http://maps.CastleCoalition.org).) Zoom to your state and you will get a feel for the current legal climate for forced private-to-private property transfers. Our list of current proposed bills will let you know how your state legislature is reacting to the *Kelo* crisis. Additionally, each point on the map is interactive—click it and the story of that project will pop up above.

### Legislator Contact Tools

The adage, "all politics is local," could not be more true in the wake of *Kelo*. Almost as soon as the U.S.

Supreme Court rendered the public use clause meaningless, state and local governments reacted to the public's outrage by proposing bills to protect their constituents' property rights. CastleCoalition.org's "Legislative Reform" section makes it easier for homeowners and activists to petition their elected representatives for real reform.

### CastleWatch

*CastleWatch*, the Castle Coalition's new online publication, educates and informs homeowners and activists around the country about the latest eminent domain news. Stories range from profiles of those who have saved what is rightfully theirs to real-world stories of abuse. *CastleWatch* exposes the myths of eminent domain apologists and showcases photos of the "blighted" home or business of the week. ♦

**Isaac Reese** is IJ's production and design coordinator.



Please visit our recently redesigned site at [CastleCoalition.org](http://CastleCoalition.org).

## Castle Coalition Regional Conferences

By Steven Anderson

Given the amount of eminent domain abuse occurring nationwide, it was only a matter of time before the Castle Coalition took its activist conference on the road.

Since its inception, the Castle Coalition has held an annual conference in the nation's capital to train home and small business owners in the techniques necessary to stop the government



from taking property from one private individual and handing it to another. But the reach of this event was limited and did not meet the boundless need for more information and instruction.

A main component of the "Hands Off My Home" campaign, launched in the wake of the U.S. Supreme Court's infamous *Kelo* decision, was to hold regional activist conferences. Building on our well-attended session in Newark, N.J.—which included activists from Connecticut, Pennsylvania and New York as well as the Garden State—we have held conferences in Arizona, Washington and Florida. We are currently planning conferences in California, Missouri and Ohio—all states needing educated activists and serious eminent domain reform.

The regional conferences are modeled on our national conference, providing attendees with instruction on such topics as building grassroots coalitions, media relations, preparing for legal action and initiating legislative reform. In addition, participants can share their stories and lay the groundwork for statewide coalitions to end eminent domain abuse.

In a few short months, we will have tripled the number of conferences we hosted prior to the *Kelo* decision and added hundreds of new members to the best-trained group of activists in the country. With their help, we will continue fighting to keep the government's hands off our homes. ♦

**Steven Anderson** is IJ's Castle Coalition coordinator.

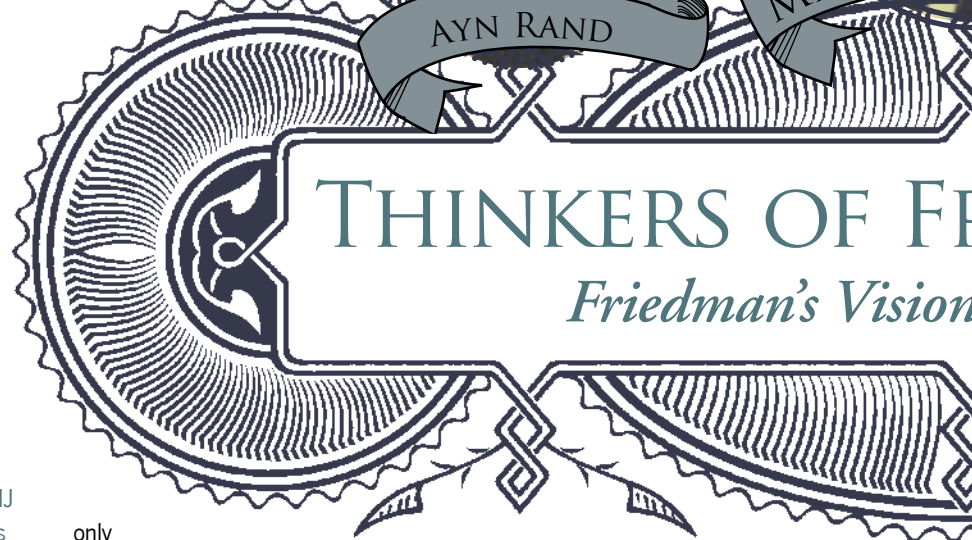




AYN RAND



MILTON FRIEDMAN



By Chip Mellor

The wisdom of the Founding Fathers lies at the heart of IJ's work. However, the insights of three intellectual giants of the 20th century—Milton Friedman, Friedrich Hayek and Ayn Rand—provide constant inspiration as well. What makes them so relevant to IJ is that we regularly see their predictions and observations about bureaucracy and government play out in the real world in the cases we take on. In this and the next two issues of *Liberty & Law*, I will highlight one of these individuals and offer examples of how the Institute for Justice's litigation addresses directly both the problems these titans identified and the solutions they offered.

Milton Friedman has been called by many the most influential economist of the 20th century. His writings combine provocative assaults on conventional economic wisdom with lucid explanations of why individuals flourish when they can exercise choice under a regime of limited, decentralized government and free markets. Nowhere does Friedman make his case more compellingly than in his 1962 book, *Capitalism and Freedom*. This small volume not

only contains an overarching philosophy of government, but also applies that philosophy to some of the most vexing problems in economics and politics.

Two such problems are the role of government in education and occupational licensing. (These issues represent two of IJ's four core mission areas.) Influenced by Friedman's seminal case for school choice and vouchers, IJ has worked hard from its founding in both the courts of law and the court of public opinion to make school choice a reality. His work on occupational licensing is perhaps less widely known, but has also been central to our mission from the outset. When the Institute seeks to break down arbitrary barriers to entry-level entrepreneurship,

we are inspired by his words. Friedman wrote:

The overthrow of the medieval guild system was an indispensable step in the rise of freedom in the Western world . . . . [M]en could pursue whatever trade or occupation they wished without the by-your-leave of any governmental or quasi-governmental authority. In more recent decades, there has been a retrogression, an increasing tendency for particular occupations to be restricted to individuals licensed to practice them by the state.



MILTON FRIEDMAN



FRIEDRICH HAYEK

# FREEDOM AND IJ: How It Guides IJ's Work

Estimates are that as much as 20 percent of the occupations in today's American workforce condition entry through licenses or permits of some sort. Twenty years ago estimates were in the range of 10 percent. Fifty years ago, they were a mere five percent. We come across new examples of licensed occupations frequently, an array that ranges from lawyers to beekeepers. The pattern for cartelization is almost always the same: an occupation is faced with an influx of newcomers who compete with the established practitioners; soon, established businesses begin calling for "professionalizing" the occupation or

standardizing services; before long minimum standards are proposed and a trade association is formed; the association then calls for legislation to mandate and enforce qualifications. Legislation is enacted and entry into the occupation is conditioned or even closed.

IJ clients who try to drive taxicabs, braid hair or sell caskets are continually confronted by regulatory regimes that evolved in just this way. Today we're seeing similar trends for interior designers, teachers, massage therapists, landscapers and others.

The barriers created are costly, as Friedman notes:

The most obvious social cost is that . . . licensure almost inevitably

becomes a tool in the hands of a special producer group to obtain a monopoly position at the expense of the rest of the public. There is no way to avoid this result.

Guess who sits on the cosmetology boards? The funeral boards? Always a majority will be members of the very profession that is regulated. In Oklahoma and Tennessee, respectively, five and six members of the states' seven-member funeral boards were themselves funeral directors. Can you guess how they voted on proposals to increase their competition?

In the years since *Capitalism and Freedom* was published, Milton Friedman's views have been vindicated in many ways, including the Institute for Justice's efforts to break open the public school monopoly and tear down occupational licensing schemes. Milton Friedman gave us the blueprint; it is now our honor to do all we can to secure his vision. ♦

**Chip Mellor** is IJ's president and general counsel.



**Inc.**  
February 2006



Chip Mellor

**“Most people in and around the government are beholden to Corporate America and don't pay attention to (let alone understand) the needs of entrepreneurs. Here's a list of Beltway movers and shakers who are trying to change that.”**

**William “Chip” Mellor**

*Co-founder, Institute for Justice*

“The Institute for Justice specializes in civil liberties, property rights, and regulatory issues. A libertarian, nonprofit law firm, it has consistently and successfully represented small-business owners and entrepreneurs—by, for example, taking on licensing laws that hinder businesses from competing in established markets. The firm doesn't charge for its work, which means it's priced right for folks like Las Vegas limo drivers and Oklahoma casket makers, two examples of happy former clients. Though Mellor worked in the Reagan White House, the firm distances itself from either political party and takes on big-business friends of the GOP as readily as it goes after affirmative-action regulations. ‘IJ are some of the very few who fight against these arrangements between politicians and favored business groups,’ says Thomas Firey, managing editor of the Cato Institute's journal *Regulation*.”◆

**Michael Bindas:  
Super Lawyer, Rising Star**

By Bill Maurer

A graduate of the U.S. Military Academy at West Point, Michael Bindas spent three years defending America as an officer in the U.S. Army. Today, Michael spends his days as a staff attorney in the Institute



for Justice's Washington Chapter, where he defends the principles that made this country a beacon of opportunity. His work has been so impressive that Michael was named a “Washington Super Lawyer – Rising Star” for 2006 by *Washington Law & Politics* magazine.

Each year, *Washington Law & Politics* mails ballots to the most recent group of attorneys named as Super Lawyers by the magazine. The Super Lawyers are asked to vote for the best attorneys who are either 40 years old or younger or who have been practicing for 10 or fewer years. The magazine then reviews the nominees, ranks them and cuts that list until only approximately 2.5 percent remain.

It is easy to see why Michael made this selective listing. Since he joined IJ-WA in July 2005, Michael has proven

himself a champion of liberty. From challenging efforts of self-interested prosecutors to shut down politically unpopular talk radio discussions to fighting to keep the Green Lake Guest House Bed & Breakfast open in the face of irrational regulations, Michael has been in the

forefront of IJ-WA's efforts to make Washington a freer place to live.

Michael attended the University of Pennsylvania Law School, where he was Order of the Coif, clerked for Judge Rhesa Barksdale of the 5th U.S. Circuit Court of Appeals and worked for one of Seattle's top law firms before joining the Institute for Justice. Michael demonstrates that IJ is able to

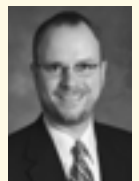
attract the best legal talent to continue its fight against the entrenched interests seeking to stamp out opportunity, ownership and free speech nationwide.

Congratulations to Michael, IJ-WA's Rising Star.◆



IJ-WA attorney **Michael Bindas**

**Bill Maurer** is executive director of the Institute for Justice Washington Chapter.





# Overcoming Entrepreneurial Hurdles

The steel bars on the windows obscured any view of the deli and meat store within. If you were walking down the sidewalk, those bars wouldn't stand out. The building just to the north is boarded up. The one to the south has identical bars on its windows. There isn't a lot of foot traffic in this part of Chicago. There is a group of people that hang out in front of the liquor store two doors down, but they tend to keep people away, not attract them. There aren't a lot of offices or factories, no real lunch crowd at all.

Why would anyone want to open a store in this environment? That is the question our clients—Little Kizzie and Ashley Avery—confronted, just like so many of our clients who look to start new enterprises on Chicago's tough streets.

But the entrepreneurial drive cannot be repressed.

K&R Halal Meats (the store founded by Little Kizzie and Ashley) opened in 2002. The Averys had to move into this location two years ago when they were forced out of their old site by a redevelopment project. By the Averys' own admission, the new location was not in the best neighborhood, but it was one of the few places where they could find both affordable rent and the space they required. Additionally, their landlord made several helpful concessions as incentives for them to take the space.

K&R, which stands for Kindness and Righteousness, took this as a

sign. And with more of the business coming from catering and large meat orders than from deli and walk-in sales, the location seemed less of an impediment.

That all changed, however, when their landlord died. Her family members were not as understanding. In fact, they were not at all interested in helping the Averys. Harassment, badgering and threats caused them to move once again.

But still they persisted.

They took the opportunity to rejuvenate their business and try to avoid some of the problems they had encountered. They worked with the Institute for Justice Clinic on Entrepreneurship and with Hull House—a non-profit designed to provide business planning and strategy advice to inner-city entrepreneurs. Building on another relationship they had cultivated, K&R was invited to present to Aramark (one of the country's largest food service companies) for the opportunity to provide lunches at the University of Illinois-Chicago. But two days before the presentation, the unthinkable happened. The foster son of Little Kizzie—a boy that she had raised since he was three years old and whom her own children thought of as a brother—was shot to death.

I, of course, assumed that we would have to postpone the meeting. I told Little Kizzie that I was happy to make the call to Aramark.

But to Little Kizzie, cancelling was not an option. She viewed this tragedy as a test of how badly they wanted their business to succeed. Little Kizzie wanted the opportunity to compete—to fulfill her dream. A poor location, a bad neighborhood, an unscrupulous landlord or even a family tragedy would not deter her. That perseverance epitomizes the entrepreneurial spirit that transforms individuals, entrepreneurs, their employees, customers and communities.

We all know about the irrational licensing schemes and endless red tape that entrepreneurs must overcome to have a chance to succeed. That challenge is enough to discourage far too many small businesses, and is one of the reasons IJ helps entrepreneurs to succeed in that fight. The Averys' story also serves as an illustration of the real-world obstacles so many of the IJ Clinic's clients face, and underscores the desire and perseverance each displays in the pursuit of his or her dreams. ♦

**Praveen Kosuri**  
is assistant director  
of the IJ Clinic on  
Entrepreneurship at The  
University of Chicago Law  
School.





IJ Senior Attorney **Clark Neily** addresses the media along with IJ clients, from left, **Joe Jenkins**, **Charles Brown** and **Brian Chisholm**. **Chip Mellor**, IJ's president and general counsel, right, and client **Charles Brown**, top right, also addressed the media who gathered for the case launch.



## Suppressing Price-lowering Competition

**Competition** continued from page 1  
home, even if they have no experience at all in the funeral industry.

These exceptions show that the government has no reason to keep entrepreneurs like Charles out of business merely because they are not licensed funeral directors. In fact, to encourage entrepreneurship and cut costs to consumers, they should open the market. Like cartels everywhere, Maryland's scheme clobbers consumers. Two experts recently estimated that the average funeral in Maryland costs about \$800 more than it would in an open market. And the average funeral home in Maryland takes in about 30 percent more in income each year than the average American funeral home, thanks in large part to the government-imposed cartel.

Amazingly, not even the State of Maryland is behind this law. In 2004, the Department of Health and Mental Hygiene, which oversees the funeral home industry, concluded that Maryland's funeral home ownership law harms consumers. The Federal Trade Commission said the same thing.

The human dimension of Maryland's restriction on funeral home ownership hit home to Charles about 10 years ago. Back then, Charles leased his funeral home to a licensed funeral director who ran it. But this funeral director suddenly left one day, leaving

the remains of one of Charles' clients in the building. Charles urgently contacted the State Board of Morticians for permission to bring in a licensed funeral director to take care of the deceased.

The board refused, telling Charles that this would make him the owner of a funeral home and that's just not allowed. What they meant, of course, was that Charles didn't have the money and connections to get one of the 58 corporate licenses that would have allowed him to own a funeral home. Charles' son Eric had to visit the family of the deceased and explain that Rest Haven could not honor its promise to take care of their mother.

This moment of what he calls his "professional humiliation" inspired a decade-long effort to reform Maryland's funeral home ownership law in the state legislature. Charles wore out more than one pair of shoes walking the halls of the Capitol in Annapolis, talking to lawmakers about a common sense ownership law that would enable entrepreneurs to own a funeral home on the same terms as the special corporate licensees. This would mean owning the business, but hiring a licensed funeral director to supervise operations. A reform like this would bring Maryland into line with all but two other states.

And just about everyone Charles spoke with agreed that the law needed to be

changed—everyone, that is, except the funeral home cartel. They keep reform bills bottled up year after year with the help of their special defender in the state legislature, Hattie Harrison, chair of the House Rules Committee. Delegate Harrison, who has received thousands of dollars in contributions from cartel beneficiaries, simply blocks any bill the industry does not like.

The Founders understood that special interests like Maryland's funeral home cartel would always try to bend the law to their advantage. That is why they intended the Constitution to protect our right to earn an honest living without being subject to arbitrary laws that do nothing but make special interests rich. And that is why on March 1, 2006, Charles and four other entrepreneurs—Joe Jenkins, Gail Manuel, John Armiger and Brian Chisholm—filed suit in federal court seeking to vindicate their constitutional right to earn an honest living without pointless government interference. In bringing this suit, IJ is reminding Maryland and the courts that economic liberty is a cornerstone of the American Dream. ♦

**Jeff Rowes** is an IJ staff attorney.



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**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 destinies as free and responsible members of society. IJ 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, IJ trains law students, lawyers and policy activists in the tactics of public interest litigation.

Through these activities, IJ 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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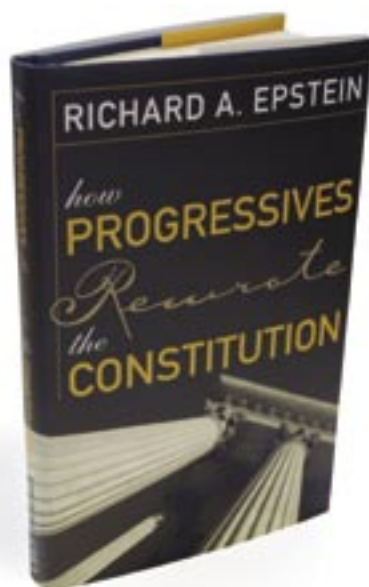
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**Epstein Captures an Era**

In his provocative new book “How Progressives Rewrote the Constitution,” Richard Epstein shows how Progressives saw in constitutional interpretation an opportunity to advance their political agenda. They transformed a Constitution that showed at every turn the influence of John Locke and James Madison into one that reflected the ideas of the leading intellectuals of their own time. They did not understand the political theory of the document. As a result, they rewrote key provisions of the constitutional text. As Epstein writes, the Progressives “were determined that their vision of the managed economy should take precedence in all areas of life. Although they purported to have great sophistication on economic and social matters, their understanding of those matters was primitive, and their disdain for the evident signs of social improvement colored their vision of the success of the older order. In the end, they cannot hide behind any notion of judicial restraint or high-minded social virtue. The Progressives and their modern defenders have to live with the stark truth that the noblest innovations of the Progressive Era were its greatest failures.”◆

To order a copy of “How Progressives Rewrote the Constitution,” visit: [www.cato.org](http://www.cato.org).

# Quotable Quotes

**The Wall Street Journal**

**Executive Director of IJ’s Washington Chapter Bill Maurer:** “I think this case [*San Juan County v. No New Gas Tax*] presents a substantial issue under the First Amendment . . . This is one of the most important cases nationally about the right of the press to speak freely, without the interference of the government or regulation of the government—because the power to regulate is the power to suppress.”

**The New York Times**

“In a rare display of unanimity that cuts across partisan and geographic lines, lawmakers in virtually every statehouse across the country are advancing bills and constitutional amendments to limit use of the government’s power of eminent domain to seize private property for economic development purposes.”

I refused to sacrifice my daughter to poor public schools.

I fought for the right to send her to the schools of my choice—  
schools that prepared her to become a college graduate.

Now I work to make sure other parents  
have quality educational options.

*I am IJ.*

*Tony Higgins with his daughter, Chironda  
Milwaukee, Wisconsin*

photo by John Sailer

[www.IJ.org](http://www.IJ.org)

*Institute for Justice  
School choice litigation*

**“They can’t take my property just because they want to. That’s not right . . . . This is a matter of principle. I wouldn’t sell for \$1 million . . . . The developer wants my property for the same reason I do: It’s in a good location.”**

*—IJ Client Joe Horney  
USA Today*



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