

IJ Celebrates  
15 Years  
1991-2006

# Liberty & LAW

December 2006

Volume 15 Issue 6

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# Ending 2006 Strong



## And Looking Forward to Our Next 15 Years

This newsletter marks the end of our 15th year, and in it you will find an unprecedented level of activity that underscores IJ's potential for the next 15 years. You will read about an exciting array of cases filed or appealed in eight weeks, covering each of our four pillars: economic liberty, free speech, property rights and school choice. You will read of victories and meet clients who have prevailed with IJ's help, as well as those who have just begun their fight. And you will be able to see the dedication and talent of IJ's staff—without whom such activities and accomplishments would not be possible.

It is hard to believe that it has been 15 years since IJ opened its doors. We have always been so immersed in all it takes to maintain IJ's momentum and success that time sped by. While our mission remains the same, we are a much different organi-

zation today than we were 15 years ago. The institutional strengths we have developed with the generosity of our supporters enable us to tackle more cases, take on larger adversaries, and execute our strategic litigation with greater sophistication each passing year. This is crucial because the power of government at all levels is growing at an ominous rate.

So enjoy the following pages, knowing that they not only depict the recent past but also point the way to an exciting future.

Chip Mellor  
IJ's president and general counsel

# JOIN IJ'S NEW FOUR PILLARS SOCIETY

By Melanie Tacoma

The Founding Fathers left us many legacies. The most important of these, of course, was to recognize and enshrine in the Constitution the rights and principles that ensure our freedom today. This is the legacy the Institute for Justice fights every day to defend.

But the Founders also left personal legacies for future generations. Thomas Jefferson famously founded the University of Virginia, which educates nearly 20,000 students a year. In 1790, Benjamin Franklin left 1,000 pounds sterling—about \$4,400 at the time and about

Franklin's small gift has already benefited thousands of people and will help thousands more in the years to come.

What is your legacy?

For many, it is their family or the good work they do through their job or in their community. For 15 years, the Institute for Justice has worked to leave a legacy by advancing individual liberty through the courts of law and the court of public opinion nationwide. Though we have achieved great success in each of our four pillars—our defense of private property, free speech, school choice and economic liberty—we are also aware of the constant threat to freedom, both now and in the future, posed by overreaching government.

To recognize friends and supporters who have made a commitment to ensuring that the Institute for Justice has the resources to continue fighting for liberty as long as it is challenged, IJ established the Four Pillars Society.

Members of the Four Pillars Society have chosen to leave a legacy of liberty by including IJ in

their estate plans. This type of gift, called a planned gift, is relatively easy to do. And it helps provide us with the financial support we need to achieve long-term goals and implement larger scale programs than the demands of a year-to-year budget allow.

A gift to the Institute for Justice through your estate will help preserve the freedoms you value for generations to come, and it will unite you with others in the Four Pillars Society who want their legacies to reflect their commitment to the Founders' vision of a free

**“To recognize friends and supporters who have made a commitment to ensuring that the Institute for Justice has the resources to continue fighting for liberty as long as it is challenged, IJ established the Four Pillars Society.”**

\$100,000 in today's money—in a trust to provide young, married apprentices with funds as they got on their feet, noting that similar loans he received as a young printer enabled him to establish himself. As stipulated in Franklin's will, the trust accumulated interest for 200 years. In 1990, it was worth almost \$5 million and ultimately was used to found a technology school.

## FOUR PILLARS SOCIETY

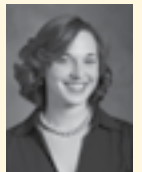
**A variety of gifts qualify you for membership in the Four Pillars Society. If you are interested in leaving a legacy of liberty through your support of IJ, speak with your attorney or financial planner about making a gift in any of the following ways:**

- Naming IJ as a beneficiary in your will, living trust, retirement plan or life insurance policy.
- Creating a charitable lead trust or charitable remainder trust for IJ.
- Establishing a charitable gift annuity for IJ.

society. Members will also receive a small Four Pillars Society gift, special updates and invitations to Four Pillar Society events.

If you would like more information, or would like us to know you have already remembered IJ in your financial planning, please contact me at [mtacoma@ij.org](mailto:mtacoma@ij.org) or (703) 682-9320, ext 230. I would be happy to help you explore what kind of gift might be right for you. ♦

**Melanie Tacoma** is the coordinator of IJ's Four Pillars Society.



# Bagel Entrepreneur Blazes to Victory

*Washington Chapter Earns Unanimous Victory in 9th Circuit*

By William R. Maurer

The Institute for Justice scored an important free speech victory on September 15 when the 9th U.S. Circuit Court of Appeals struck down a ban by the City of Redmond, Wash., on certain portable signs. The case represents one of the first times a court has held that the government cannot discriminate against one sort of commercial message while freely permitting another sort of commercial message.

The case began when Dennis Ballen had an employee stand on the corner of a busy road wearing a sign that read “Fresh Bagels – Now Open” and directing them to his nearby bagel store, Blazing Bagels. Because of its difficult-to-find location, Blazing Bagels relied heavily on signage to attract customers.

In 2003, Redmond told Ballen that such advertising “needs to cease and desist immediately.” The letter told Ballen that in Redmond portable signs—including those held or worn by individuals, containing certain kinds of commercial information—are prohibited. Redmond maintained in court that the ban was necessary to promote traffic safety and aesthetics. However, under the ordinance, although portable signs advertising small businesses were completely banned, portable signs advertising real estate were permitted. That exception fatally undermined the City’s supposed justifications for restricting Ballen’s speech. The 9th Circuit stated, “The City has protected outdoor signage displayed by the powerful real estate industry from an Ordinance that unfairly restricts the First Amendment

rights of, among others, a lone bagel shop owner.” This one-sided ban was utterly unjustified, according to the court, because “ubiquitous real estate signs, which can turn an inviting sidewalk into an obstacle course challenging even the most dexterous hurdler, are an even greater threat to vehicular and pedestrian safety and community aesthetics than the presence of a single employee holding an innocuous sign that reads: ‘Fresh Bagels – Now Open.’”

The decision should halt attempts by state and local governments located in the 9th Circuit, which includes a large portion of the western United States, to force small entrepreneurs to bear the entire burden of government regulation of speech. It represents an important victory in IJ’s long-term battle to have the courts recognize that speech about commercial activities is as constitutionally protected as speech on other topics. And it demonstrates that small entrepreneurs without the political influence of larger industries have a right to communicate with their customers.

The case also reflects IJ’s growth into a national law firm. Because I was scheduled to argue a separate free speech case in the Washington Supreme Court the same week as oral argument in this case, IJ Senior Attorney Steve Simpson came from headquarters and did a terrific job arguing before the 9th Circuit. IJ’s ability to draw on resources from across the nation allowed us to cover both arguments in both courts without any delays

that would have perpetuated the harm to our clients’ free speech rights.

So, if you are ever in Redmond, celebrate our free speech victory by stopping by to try one of Dennis’ bagels. You should have no trouble finding the store—just follow the sign.♦

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



# IJ Takes on Another Speech-Squelching Campaign Finance Law

By Steve Simpson

**When Karen Sampson decided to oppose a plan to annex her neighborhood of Parker North, Colo., into the nearby town of Parker, she knew she would face opposition, debate and perhaps even criticism for taking a stand. But she never dreamed she would be sued.**

Yet that is exactly what happened after Karen and a group of five like-minded neighbors spoke out against annexation. They had moved to Parker North largely because it was not part of the town of Parker and was free of many of the costs and petty annoyances of small town governance. So when she and her neighbors Norm Feck, Tom Sorg, Louise Schiller, and Wes and Becky Cornwell heard about the annexation plan, they did what many Americans in their position would do. They researched the issues, printed up flyers, started an email discussion group for the neighborhood and made lawn signs.

They expected a vigorous debate. What they received instead was a lawsuit, filed by a neighbor—the chief proponent of annexation—claiming that they violated Colorado’s campaign finance laws and should be fined, muzzled or both.

Under Colorado law, Karen and her neighbors were not simply a group of grassroots activists speaking out on an important local issue. They were an “issue committee” that had spent more than \$200 opposing a ballot issue. As such, they were required to register with the State, appoint a treasurer, open a separate bank account for all “campaign

finances,” and report all “contributions” and “expenditures” to the State, which will list on a website the *identities, addresses* and often *employers* of anyone who contributed money to their efforts. Worse still, the law allows any private person to sue alleged violators. The predictable result, as Karen and her neighbors discovered, is to give political adversaries a weapon to use against those with whom they disagree.

Karen and her neighbors thought that in America, all you needed to talk about politics was an opinion. They were shocked to find that modern campaign finance laws make it necessary to hire accountants and lawyers as well.

Faced with a lawsuit, the group hired a lawyer to defend them. To avoid the prospect of further fines, they registered as an issue committee and began filling out forms and tracking “expenditures.” Fortunately, they also discovered the

Institute for Justice.

On September 19, 2006, IJ filed *Sampson v. Dennis* in federal district court in Denver. The suit argues that the laws under which Karen and her neighbors were sued violate the First Amendment by allowing politically motivated individuals to file lawsuits against their opponents and by threatening to stifle political speech with red tape and regulations. The case demonstrates that campaign finance laws affect everyone. These laws—which are essentially political speech codes—threaten to make talking about politics about as palatable as filing an income tax return.



IJ Senior Attorney **Steve Simpson** and clients address media at the filing of *Sampson v. Dennis* in federal district court in Denver.

If IJ has anything to say on the subject, and we do, that will change. ♦

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



**They expected a vigorous debate. What they received instead was a lawsuit, filed by a neighbor—the chief proponent of annexation—claiming that they violated Colorado’s campaign finance laws and should be fined, muzzled or both.**

# IJ Aggressively Defends School Choice in Arizona

By Tim Keller

Last month, Arizona's freedom cavalry once again rode in to defend school choice from legal attack in the Grand Canyon State. This latest legal challenge, filed by the ACLU of Arizona, the Arizona School Boards Association, and the Arizona Center for Law in the Public Interest, is the third lawsuit filed in Arizona by school choice opponents and the most frivolous lawsuit ever filed against a parental choice program.

The challenged program expands the State's successful individual tuition tax credit program to allow corporations to donate to school tuition organizations. The money raised by the corporate tax credit is exclusively for tuition grants to low- to moderate-income families whose children are transferring from public to private schools. The program is capped at \$10 million in the first year.

IJ successfully defended the individual tax credit in 1999. In that case (*Kotterman v. Killian*), the Arizona Supreme Court declared in no uncertain terms that tax credits do not violate the state or federal constitutions. Because this new lawsuit recycles most of the same arguments made in *Kotterman*, IJ immediately filed a motion to dismiss the case along with our motion to intervene. Joining IJ in the defense of the program is former Arizona Supreme Court Chief Justice Thomas Zlaket, who authored the *Kotterman* decision.

IJ represents four scholarship-eligible families and the Arizona School Choice Trust, one of the scholarship-granting organizations. IJ client Stella Gomez is leading the charge. Her daughter Dorine has brittle bone disease and had to leave her beloved St. Gregory Elementary School because of financial hardship. The teachers and students at St. Gregory used to watch over Dorine and protect her in ways that her new public school will never match. As Stella explained, "Dorine should not have to pay such a high price while I am trying to get back on my feet financially."

IJ is deploying every tool at its disposal to win the war for educational freedom. When we filed our legal papers,



IJ-AZ executive director **Tim Keller** and clients **Stella Gomez, Cecilia Hernandez** and **Kerin Zimmerman**.

we simultaneously released two policy papers debunking myths the ACLU and its allies are spreading. IJ's new Director of Strategic Research, Dick Carpenter, studied all of Arizona's tax credits and found that the corporate tax credit is a mere 4.5 percent of the total credits taken in 2003 and just one-third of one percent of all income tax revenues collected by the State. In a year when Arizona's public school funding increased \$480 million, claiming that this one tiny program jeopardizes public schools is absurd.

IJ also released a fiscal analysis of the corporate tax credit program by Vicki Murray, an independent education analyst, which forecasts that the program will save Arizona's general fund \$57 million over five years.

Arizona's two new voucher programs for students with disabilities and those in foster care also appear to be in our opponents' crosshairs. A prominent school choice opponent requested that the State's Attorney General halt implementation of the voucher programs. It is unlikely the Attorney General will acquiesce, but it is a strong signal that the education establishment is preparing a legal challenge. IJ is gearing up to defend these programs as well.

The legal antics of choice opponents underscore the fact that they will stop at nothing to protect the existing education system from meaningful reform. Fortunately, IJ's legal team is ready to ride in at a moment's notice to defend school choice.◆

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



## Please Support IJ With a Year-End Donation

Last year, 84 percent of IJ's funding came from individuals just like you, while another 15 percent came from professional grant-making foundations and less than one percent was received from corporations. By virtue of their support, each of these individuals and organizations helped secure real-world results while advancing principles they believe in. And they did so very efficiently, as **82 cents of every dollar** they contributed **went directly to fund IJ's strategic litigation and programs**.



This year, won't you join them?

The positive effects your support will have on our clients and others like them will manifest daily, as we help entrepreneurs like Dennis Ballen, property owners like Princess Wells and school choice moms like Stella Gomez fight for their share of the American Dream. But more than that, you will be helping IJ secure a rule of law under which each of us is better able to enjoy the benefits of liberty as the Founders intended. That is a powerful one-two punch that is hard to beat, even in today's competitive charitable giving marketplace.

As you consider your year-end giving, please think about the difference you will make with a contribution to IJ. For your convenience, we have enclosed a return envelope, or you can donate online at [www.ij.org/give](http://www.ij.org/give).

We look forward to showing you all that we can achieve with your support.◆

# MINNESOTA: LAND OF ~~10,000~~ REGULATIONS

9,998

By Nick Dranias

Yes, indeed.

In a land known more for its liberalism than libertarianism, it took IJ's Minnesota Chapter only a few months to liberate sign hangers from needless bureaucracy and taxi drivers from an artificial cap on the number of taxi licenses in Minneapolis.

The first victory came on September 11, 2006, with the entry of a consent judgment against the City of Minneapolis and in favor of IJ-MN's clients Dan Dahlen and Truong Xuan Mai. Sign hangers are now free from the red tape and once-arbitrary process that stopped them from working in the entry-level occupation of sign hanging—a job that often involves simply digging a hole, dropping in a couple of posts, filling the hole with concrete and attaching a board to the posts.



Minneapolis sign hanger **Truong Xuan Mai** (left) and taxi company owner **Luis Paucar** (right) are both entrepreneurs who want to earn an honest living without unreasonable government interference. Thanks to the work of the IJ Minnesota Chapter they are now free to do so.

Previously, the City required the Police, Health, Water Works, Building, Zoning and Fire Departments all to approve any sign hanger license, but furnished no criteria to govern this process and no safeguards against licensing delay. In the consent judgment, Minneapolis admitted that this unconstrained multi-departmental approval process delayed 131 sign hanger license applications for several months and, in many cases, forever. For dozens of applicants, including Mai, these delays amounted to license denials because sign hanging is a seasonal business and sign hanger licenses expire annually.

Now, however, to receive a license to practice their trade in Minneapolis, sign hangers like Mai and Dahlen will need only to fol-

low an objective procedure of submitting an application, proof of insurance and bonding, and a small fee. Once this occurs, the City will have no more than five days in which to issue a license. In short, the sign hanger consent judgment not only blew eliminated an unconstitutional barrier to earning an honest living, it reaffirmed the rule of law rather than the rule of men.

Then, only one month later, economic liberty in the North Star State triumphed once again.

On October 14, 2006, Minneapolis enacted an ordinance, supported by the IJ Minnesota Chapter, that busted open the taxi cartel created decades ago. Previously, the City enforced a taxi cap that limited the number of authorized taxis to 343 through what was termed a “public convenience and necessity” test. In essence, this test required anyone requesting the issuance of new licenses to prove that new competition would not hurt existing taxi companies. Not only did the City repeal this impossible-to-meet, cartel-creating standard, but starting this December, the City will authorize up to 45 additional taxis every year until it finally eliminates its taxi cap altogether in 2010.

IJ-MN supported these crucial reforms before the City Council and in the court of public opinion. We spotlighted the plight of immigrant entrepreneurs from Ecuador, Egypt, Laos and Somalia who were being frozen out of the market. IJ-MN

also reached out to leading transportation economists and legal experts to testify in support of reform, including Professor Jerry Fruin of the Center for Transportation Studies at the University of Minnesota and Professor Robert Hardaway of the University of Denver’s College of Law. And when the taxi industry threatened a lawsuit to stop the taxi reforms—a historically successful tactic—IJ-MN helped stiffen the spines of City Council members by its strong, principled stance in support of reform and willingness to intervene on behalf of entrepreneurs and consumers in any industry suit.

In sum, prefaced by the publication of its study on barriers to entrepreneurship this past May, the Institute for Justice Minnesota Chapter took on Minneapolis’s regulatory regime. Two of the 11 outrageous occupational regulatory regimes spotlighted in *The Land of 10,000 Lakes Drowns Entrepreneurs In Regulations* (available online at [www.ij.org/publications](http://www.ij.org/publications)) have been eliminated.

With steadfast clients, solid legal advocacy and a focused media spotlight, IJ is tearing down Minnesota’s regulatory bureaucracy and is making way for unprecedented economic liberty across the state. The times they are a-changin’! ♦

**Nick Dranias** is an IJ Minnesota Chapter attorney.



## Making “Damn Sure” Property Rights Are Protected

By Michael Bindas

May the government take your home or business for the sole purpose of making “damn sure” it is eliminated, even if the government doesn’t need the land on which it sits? Represented by IJ’s Washington Chapter, seven sisters in Burien, Wash., are asking the Washington Supreme Court to answer that question.

The Strobel sisters inherited a piece of property in Burien when their parents passed away. For a quarter century, the family has leased it to Meal Makers, a popular diner-style restaurant.

The City of Burien, however, has different plans for the property. It wants to turn the area into a new “Town Square” development with upscale condos, shops and restaurants.

Because the Meal Makers building does not fit the City’s “vision” for the project, the City decided to site a road through the building and condemn it. To be precise, the City Manager instructed his staff to “make damn sure” the road went through the building. The staff configured—then re-configured—the road until it went straight through the restaurant. Then the City condemned the property.

The Strobels challenged the condemnation, arguing that their property was not “necessary” for the road—a requirement for condemnation under Washington law. The judge seemed to agree, noting that the road “could have been easily accomplished without affecting the Meal Makers restaurant or the Strobel property.” He suggested that the City’s conduct might be “oppressive” and an “abuse of power,” and described the condemnation decision as “you won’t sell and you don’t fit our vision, so we’re going to put a street right through your property and condemn it.”

Nevertheless, the judge felt his hands were tied by the extraordinary level of deference that Washington law affords government “necessity” determinations. He allowed the condemnation, and the Court of Appeals affirmed.

At that point, the Strobel sisters enlisted IJ-WA to take up their fight. On August 21 of this year, we filed a petition with the Washington Supreme Court urging it to hear the appeal of the sisters. Our request of the court is simple: make clear that property does not become necessary to the government simply because government officials want to make “damn sure” it is taken. ♦

**Michael Bindas** is an IJ Washington Chapter attorney.



IJ client **Robin Oldfelt**, one of seven sisters, is fighting eminent domain abuse.

# Designing Cartels



Client **Sherry Franzoy** with Director of Strategic Research **Dick Carpenter**, Arizona Chapter Attorney **Jennifer Perkins**, client **Caryn Armijo**, and Senior Attorney **Clark Neily** at case launch.

By Clark Neily

The latest front in the Institute for Justice's battle for economic liberty is New Mexico, where bureaucrats at the Interior Design Board are enforcing a blatantly anti-competitive advertising ban against hard-working entrepreneurs like IJ clients Sherry Franzoy and Caryn Armijo. New Mexico law allows anyone to *work* as an interior designer, but it is a crime to say that is what you do—unless you secure a ridiculous State-imposed license.

How did such a stupid law get on the books in the first place? Certainly not by accident.

As documented in a study prepared by IJ's new Director of Strategic Research Dick Carpenter, a small faction within the interior design community has been waging a relentless lobbying campaign to cartelize the industry through government regulation. Led by the powerful American Society of Interior Designers (ASID), that campaign follows a two-part strategy.

The first step is to persuade credulous legislators to adopt so-called "titing" laws that permit anyone to *work* as an interior designer, but provide that only those meeting certain credentials (specifically those held by—surprise!—ASID members) may use the terms "interior design" and "interior designer." The result is that in New Mexico (as well as Texas, Illinois, Florida and Connecticut) thousands of talented, highly experienced interior designers are suddenly demoted to "decorators" or "consultants" and prevented from advertising themselves—truthfully—as full-fledged interior designers.

From censorship, the cartel then proceeds to full-blown

occupational licensing in the guise of "practice acts" that dictate who may actually work as an interior designer. In Alabama, for example, it is now a crime to consult with people about such weighty matters as what pictures to hang on their walls or what color to paint them. (IJ filed a friend-of-the-court brief in a state court challenge to Alabama's interior design regulations.)

The pro-regulation faction has been tireless, lobbying legislatures from coast to coast in its attempt to "professionalize" (read: cartelize) the field of interior design. Indeed, IJ Arizona Chapter Attorney Jennifer Perkins, who is heading up the litigation in New Mexico, recently addressed a "town hall" meeting of interior designers in Arizona, where she scared off representatives of the pro-regulation faction when they found out that she would be there to challenge their lies and distortions.

IJ's legal argument in New Mexico is straightforward and compelling: First Amendment case law makes clear that government may not silence non-misleading commercial speech. Sherry Franzoy and Caryn Armijo cannot be forbidden from accurately describing who they are and what they do.

We will show New Mexico that freedom of speech is more than mere constitutional window dressing. And when we're done there, we will continue taking the fight to ASID and its cartel-cronies and put a stop to their war on free enterprise. ♦

**Clark Neily** is an IJ senior attorney.





# Homes of 5000 Florida Residents Declared “BLIGHTED”

“[T]he fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more”

**Justice Sandra Day O'Connor,  
Dissenting in *Kelo v. City of New London***



IJ property rights client **Princess Wells** in front of her home.

By Bert Gall

In the wake of the *Kelo* decision, Justice O'Connor's words proved to be prophetic, as tax-hungry cities and land-hungry developers went on an eminent domain abuse rampage, often in lower-income and minority communities. Indeed, in the year after *Kelo* was decided, cities condemned or threatened to condemn almost 6,000 properties for private development.

One city where the floodgates to eminent domain abuse opened in *Kelo's* wake was Riviera Beach, Fla., a working-class and predominantly African-American community of more than 33,000 on the Atlantic Ocean. Just as Susette Kelo owned a little pink house near the water, so does IJ client Princess Wells. She and her husband built the home, raised their children in it and have lived there for more than 20 years. Princess also owns a salon/barber shop in Riviera Beach that she operates with the help of her son.

But Princess' home and her business are under the constant threat of eminent domain. That's because the City, led by

Mayor Michael Brown, has plans to condemn her neighborhood for the benefit of private developers who want to build, among other things, a yacht marina, high-end condominiums and luxury hotels. The City wants to replace its lower-income residents with wealthier ones who can fork over more tax dollars.

The threat of eminent domain impacts Princess' life every day. For example, she's lost customers and employees because they believe that her business will eventually be forced to close when the bulldozers come. And the fact that she could lose her home at any time makes it pointless to spend the time or money to undertake several home improvement projects she would like to begin.

This May, Florida enacted one of the strongest eminent domain reform laws in the country—a law that bans the use of eminent domain for private development. The new law should provide complete protection to Princess and her neighbors. But instead of acknowledging that it is bound by the new law, the City claims that, by signing a questionable agreement with the developer the

day before the Governor signed the new law, it is free to disregard the law's protections for home and business owners.

Faced with the City's attempt to flout the law, Princess Wells joined with business owners Michael and Nora Mahoney, homeowner Artis Reaves and IJ to file a lawsuit aimed at removing the cloud of eminent domain that threatens Riviera Beach.

In response to our lawsuit, some City officials have already discussed passing a resolution saying that the City will obey the new law. But others, including the Mayor and the City's developer, have opposed such a resolution. Until the City passes legislation that officially takes eminent domain off the table, we will fight to protect our clients and their neighbors so that they can be secure in the homes and businesses that are rightfully theirs. ♦

**Bert Gall** is an IJ  
senior attorney.



# “For Sale” Is Free Speech

By Jeff Rowes

In 2003, Chris Pagan, who lives in Glendale, Ohio, took out a classified ad to sell his car. He only got a few calls, so he did what people have done since the advent of the automobile: he put a small “for sale” sign in his car window. This was a great idea because his phone rang off the hook.

This was also a terrible idea because it made Chris a criminal. Believe it or not, it is illegal in Glendale to put a “for sale” sign in a car parked anywhere but your driveway. Chris was facing a \$250 fine and even 30 days in jail.

Chris took down his sign after being threatened by the police, but he also filed suit in federal court because he understands what Glendale does not: he has a First Amendment right to tell people that his car is for sale.

Amazingly, Glendale defended its ban in court by arguing that people who read the words “for sale” will foolishly rush into the street to inspect the car and get run over. Glendale, in other words, does not trust its citizens to make good choices in response to the speech of others.

Most Americans would be outraged to discover that their government thinks they need to be kept ignorant for their own good, especially when the banned speech is something as harmless as a “for sale” sign. So it will come as a surprise to most Americans that Chris lost not only in the district court, but also in front of a three-judge panel of the 6th U.S. Circuit Court of Appeals, which covers the 32 million Americans who live in Michigan, Ohio, Kentucky and Tennessee.

Chris lost in part because the U.S. Supreme Court only affords limited First Amendment protection to “commercial” speech, meaning speech related to an economic transaction. The Supreme Court has never explained, however, why government

censors become especially enlightened, and citizens especially gullible, just because a sign reads “for sale” instead of “Go Red Sox” or “Vote Smith.”

The Supreme Court has also never explained why commercial speech is relegated to a second-class status. Why not censor political speech instead? After all, as Justice Blackmun observed, our concern with “the free flow of commercial speech may often be far keener than [our] concern for urgent political dialogue.” If this seems counterintuitive, just compare how often you buy something with how often you vote.

On June 2, 2006, the Institute for Justice took up Chris Pagan’s cause and asked all 14 judges of the 6th Circuit to rehear his case. The court granted our petition in September and will hear the case in December.

In our brief, we urged the full Court of Appeals to recognize that the burden of making good choices in response to the speech of others is simply not a “problem” the First Amendment allows the government to “solve” with censorship. For it to mean anything, the First Amendment must mean government can never censor truthful speech about lawful conduct just to prevent people from being able to make choices the government does not like.

So, while the facts of Chris’ case may seem unremarkable, the underlying principle could not be more important. In defending his right to put a “for sale” sign in his car window, Chris is defending everyone’s right to express and hear important ideas without fear of censorship and criminal prosecution. His way is the American way, and we hope the full Court of Appeals agrees. ♦

Jeff Rowes is an IJ staff attorney.



IJ client **Chris Pagan**.



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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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# Recognizing Excellence



IJ Chief Financial Officer **Brian Montgomery**, was recently recognized for his leadership and commitment to financial stewardship. The Washington D.C. accounting firm Tate & Tryon awarded Brian the *1st Annual Best Practices and Exemplary Achievements in Not-for-Profit Financial Management* after evaluating financial executives from the Greater Washington area non-profit community.



IJ President **Chip Mellor** and Vice President for Communications **John Kramer** receive an award for their presentation on economic liberty given to the annual convention of the Ohio Conference of the NAACP. Presenting the award, from left, are **James Workman**, legal redress chair; **Sybil Edwards-McNabb**, president; and **Ophelia Averitt**, board member.

We believe people should be free to control their own destinies, now and in the future.

We are leaving a legacy of liberty by including IJ in our will.

We are investing in freedom.

*We are IJ.*



*Will & Rita Olschewski  
Four Pillars Society members*

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*—Thomas Sowell*



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