

Liberty & LAW

Volume 16 Issue 2

Inside This Issue

IJ Argues for
Economic Liberty Before
Washington Supreme Court
2

BB&T Chairman John Allison:
Why We Won't Fund
Eminent Domain Abuse

3

IJ & ALEC Team Up
On 50-State School Choice
Survey

8

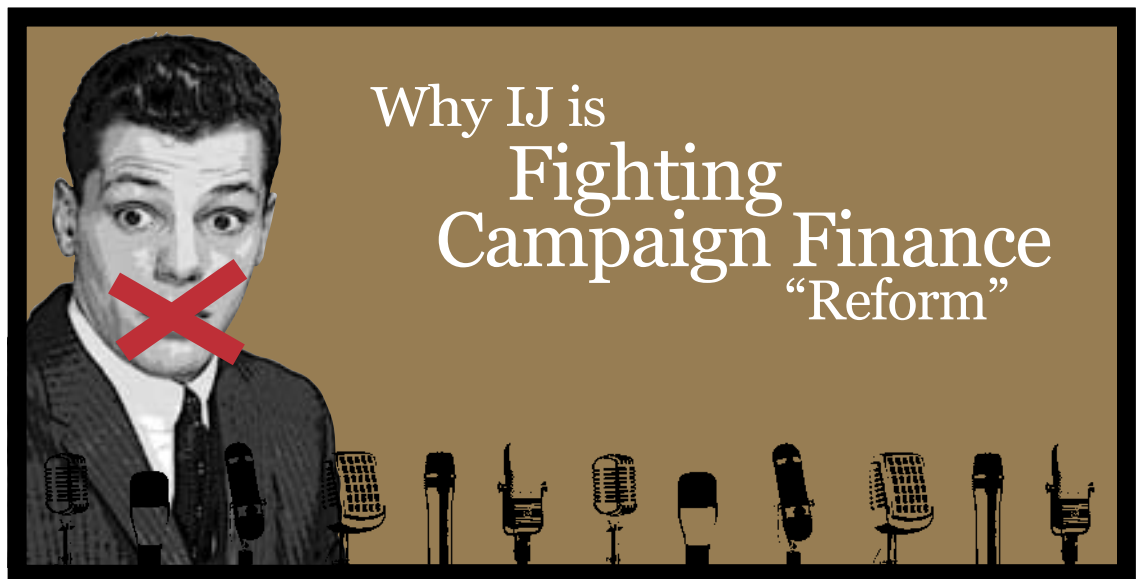
IJ Challenges
AZ Campaign Finance Laws
Before 9th Circuit

11

Published Bimonthly by the
Institute for Justice

visit us online:
www.ij.org

SILENCING SPEECH:



By Steve Simpson

"This is a sad day for the freedom of speech." So began Justice Scalia's dissent in the Supreme Court's now-infamous decision in *McConnell v. FEC*, in which the Court upheld some of the most restrictive campaign finance laws ever, including a provision that bans some groups from running ads that mention candidates.

Since then, many people have asked us what is left to fight about in this area. Didn't free speech lose? Isn't the fight over?

The answer is a resounding, "No!"

Just as the Supreme Court's decision in *Kelo* did not end the fight over property rights, so the *McConnell* decision did not end the fight over political speech. In fact, the Institute for Justice has been devoting more resources to campaign finance cases over the last few years, and we will continue to protect First Amendment rights.

One of the main reasons political speech restrictions have spread is that the public does not understand how the laws actually work. Most people assume that politicians are corrupt and that campaign finance laws are necessary to combat that corruption. But few know much about the laws themselves or their consequences in the real world. To address this, IJ focuses on cases that show how campaign finance laws infringe upon the First Amendment freedoms of *all* Americans, not just politicians and political parties.

Our strategy is simple: challenge the expansion of these laws, slowly but surely chip away at the court decisions that have allowed government to curtail our basic First Amendment freedoms, and expose campaign finance laws for what they really are—political speech restrictions.

For example, in *Sampson v. Coffman*, IJ is rep-
Campaign Finance continued on page 7

IJ Argues for ECONOMIC LIBERTY Before Washington Supreme Court

By William R. Maurer

Do residents of Washington have the right to earn an honest living in the occupation of their choice, or may the government enforce arbitrary and anti-competitive monopolies that allow the government—rather than the individual—to decide who may enter a field and who will be excluded? The Institute for Justice Washington Chapter (IJ-WA) argued a case on just that issue before the Washington

Supreme Court on March 22 in Olympia. This is the first economic liberty case IJ has presented before a state supreme court under a state constitution—an achievement 15 years in the making.

IJ's client is Joe Ventenbergs, who made a living hauling construction, demolition and land-clearing waste in Seattle. In 2001, the City of Seattle made it illegal for anyone but two large, multi-national corporations to haul such waste, effectively putting Joe out of business. Represented by the IJ Washington Chapter, Joe fought back and filed a lawsuit claiming that Seattle's actions violated his rights under the Washington Constitution's Privileges or Immunities Clause. That provision was written in 1889 to prevent the state and local governments from granting preferential treatment to large corporations. The clause remained dormant for decades until a 2004 decision from the state supreme court held that it provides greater protections than the U.S. Constitution's Equal Protection Clause. In Joe's case, the state's high court will address whether the Washington Constitution really protects small entrepreneurs from manipulations of the political process by large corporate interests or whether the people who wrote the Washington Constitution labored in vain.

The case is significant not just because it concerns the livelihood of a hard-working entrepreneur, but also because it is one of the first cases in the United States to address whether state consti-



“This is the first economic liberty case IJ will have before a state supreme court under a state constitution—an achievement 15 years in the making.”

tutions provide protections for the right to earn a living. Because the federal courts have provided only narrow protections for this fundamental right, it has often become necessary for entrepreneurs to look to state constitutions and state courts to vindicate their rights. Although IJ's quest for greater constitutional protection of economic liberty goes back to our founding in 1991, the ability to rely on state constitutions for greater protections for fundamental liberties is one of the reasons that IJ started opening state chapters in 2001. This effort had its first test in the field of economic liberty when Joe's case was heard in March. Our goal in the state courts is to provide a roadmap for federal courts to once again recognize that one's ability to earn a living is a vital and significant part of the freedoms guaranteed by the U.S. and state constitutions.

This will not be an easy task, however. For decades, the accepted position of the legal establishment at both the federal and state levels has been that economic liberties do not deserve any meaningful protection from the courts. With IJ's “never-say-die” attitude, we are challenging this conventional wisdom and seek to return economic liberty to its rightful place as one of our fundamental rights. We will not stop fighting until all entrepreneurs in this country are free to practice their trades unencumbered by government-imposed monopolies designed to protect special interests from competition.◆

William R. Maurer is executive director of IJ's Washington Chapter.



BB&T Will Not Fund Eminent Domain Abuse

By John Allison

Let me share with you some background explaining why BB&T decided not to make loans to developers for projects where eminent domain is used to take property from one private individual for the benefit of another private individual. BB&T is the 11th largest financial institution in the U.S. with \$120 billion in assets. Although BB&T is a large company today, when I joined in 1971, BB&T was a small farm bank. We have maintained that personal relationship culture with our clients and community as we have grown our business. BB&T is very much a principle-driven organization. We firmly believe that, in the long term, adhering to a rational set of values is the foundation for organizational success and personal happiness.

The Supreme Court's *Kelo* decision was stunning. After reading the decision, we became greatly concerned about its potential negative impact. The United States is the first country in history ever created based on a set of philosophical ideas. The world-changing concept, which the Founding Fathers expressed in the Declaration of Independence and the U.S. Constitution, is the principle of individual rights—life, liberty, property and the pursuit of happiness.

Property rights are essential for the protection of all rights and the foundation for a free society and an economically successful one. If the government can control your property, take the food off your table, you have no rights. The *Kelo* decision potentially threatens the concept of property rights and, therefore, the long-term economic well-being of the United States. We

also knew that we would be faced with decisions where we would be asked to finance projects where the power of government, i.e., the power of physical force, was going to be used to take one individual's property and effectively give it to another private individual. We know that this is both counter to the American sense of life and bad for the U.S.'s long-term well-being.

While there have been a handful of success stories, the history of eminent domain projects is poor. It should be noted that 99 percent of commercial real estate activity in America takes place without eminent domain. Why would eminent domain be necessary if a project is legitimate? Often projects involving eminent domain also require government subsidies. If a project is economically viable, why are eminent domain and government subsidies necessary? Many "free market" real estate developers have been economically damaged by projects involving eminent domain where politically connected developers receive subsidies.

In a more fundamental sense, even if any individual project using eminent domain may be successful, the principled protection of property rights is far more important to the "public good" in the long term. In numerous economic studies, it has been unequivocally



BB&T Chairman and CEO **John Allison** addresses the 2006 National Castle Coalition conference.

“Property rights are essential for the protection of all rights and the foundation for a free society and an economically successful one.”

demonstrated that property rights are essential for a free society and for economic growth. I agree with Thomas Jefferson's concept that government which governs least governs best and share with John Adams the fear of the tyranny of the majority. The Founding Fathers collectively "rolled over" in their graves when they heard the *Kelo* decision.

BB&T and I personally provide financial support for the Institute for Justice. It is a pleasure to congratulate IJ on its successes and the importance of its work. I also want to thank all of those who have fought heroically to defend their property. You are truly defending property rights for all of us. ♦

John Allison is Chairman and Chief Executive Officer of BB&T Corporation.



Reprinted in its entirety with permission from the *Star-Ledger*, Newark, N.J.

His domain to the end

Long Branch holdout, 93, dies at home

By Mark Mueller
STAR-LEDGER STAFF

Though he could barely walk, Albert Viviano ambled to protest meetings and rallies in and around Long Branch. Later, when he couldn't walk at all, he rolled to them in his motorized wheelchair, a little American flag in one hand, a placard in the other.

At 93, with his heart slowly giving out, Viviano was motivated by one thing: the right to die in his home.

The city of Long Branch wants that home, one of two dozen converted bungalows local officials have been trying to seize for three years to make way for new development.

The battle continues, but not for Viviano. On Sunday, he died in his bed, two blocks from the boardwalk he cherished, in the neighborhood he had known for 75 years.

"He won," said Viviano's daughter, Estelle Toscano. "My father won because he died in his own house."

It's a refrain heard repeatedly in Viviano's tiny neighborhood, which has become something of a symbol in one of the most closely watched disputes over eminent domain in the nation.

Viviano, who spent his teenage years fitting wheels onto horse-drawn wagons in Newark, was the oldest among the homeowners who have refused to sell to the city. And while it was clear his health was failing, he insisted on attending meetings and rallies,



Albert Viviano, 93, at an eminent domain protest in Freehold, N.J., last March.

creaky body be damned.

"He just uplifted everyone," said neighbor Lori Ann Vendetti, 45, a member of the coalition opposing Long Branch's plan. "You have some bad days in this fight, and then you'd see Al coming out with the little flags on his wheelchair and the button on his jacket and his poster. It was an inspiration."

What drove Viviano is what drives most of his neighbors: a deep love of Long Branch and a firm belief that government should not have the right to take a home indiscriminately.

"He couldn't believe this could happen in America, how someone who fought in the war, had a business and gave back to his country could just lose his home," Vendetti said. "He was fighting with all his might against that."

The courts, so far, have sided with Long Branch. In June, a Superior Court judge ruled the city was within its right to take the homes along Marine Terrace, Ocean Terrace and Seaview Avenue.

The plan calls for the homes to be razed in keeping with a \$1 billion redevelopment project that has already transformed parts of the city.

The residents are appealing the June decision, saying they will take the fight to the U.S. Supreme Court if they have to. They don't want to envision an alternative.

Most of them have been part of the neighborhood for decades. Few knew it as well as Viviano.

Viviano continued on page 12



FIGHTING LONG BRANCH'S OUTRAGEOUS ACTIONS

IJ client **Anna DeFaria** stands in front of her beachfront home in Long Branch, N.J. She joined with IJ to fight the city's effort to take her home so a private developer can build high-end condos on her land.

By Scott Bullock

In early February, IJ filed its opening brief with the New Jersey Appellate Court in one of the most important post-*Kelo* eminent domain cases in the nation. The City of Long Branch, N.J., has used its power of eminent domain to try to take the homes of modest-income senior citizens and young families so it may give the land to a private developer to build luxury condominiums for the wealthy.

This case is outrageous on many levels. Many of the homeowners in this neighborhood are senior citizens who worked their entire lives to be able to afford their small cottages along the shore. Anna DeFaria, 81, worked as a banquet waitress for many years, carrying heavy trays and saving her meager earnings so that she and her now-deceased husband could afford their dream home. Newark truck driver Carmen Vendetti and his wife, Fifi, also realized their dream of escaping the noise and congestion of the city by buying their little red-brick haven around the corner from Anna. The fact that the city is trying to force these people from their homes so a subsidiary of K.Hovnanian—one of the largest homebuilders in the nation—can put up generic, million-dollar condos is simply unconscionable.

The trial judge in this case was so eager to uphold the condemnations that he denied the homeowners even the ability to conduct discovery or to have a trial on the legality of the city's actions. The judge's opinion was riddled with major and

obvious legal errors. We are confident that the decision will be overturned on appeal.

The city's actions in this case are both tyrannical and extremely petty at the same time. For instance, when IJ agreed to represent the homeowners in the appeals court, we filed a motion to become a member of the New Jersey bar for this case, a routine practice we do in states wherever we file suit. The city objected to our motion, claiming, among its arguments, that even though we are the nation's leading public interest group fighting eminent domain abuse and we have been involved in every major eminent domain case in the past decade, we are not necessarily eminent domain "specialists"—one of the requirements for being admitted. It is this type of maddening argument that gives lawyers their bad reputation. Not surprisingly, the appellate court rejected it and permitted us to join the case. But the city's attempt to get us kicked off the case is a reminder that, in the battle for liberty in our courts, it is not always about principled arguments concerning the meaning of the Constitution. We also have to counter down-and-dirty attempts by government lawyers who will often stop at nothing, no matter how absurd the argument, to take people's property away from them. ♦

Scott Bullock is an IJ senior attorney.



Campaign Finance Disclosure: For Thee, But Not for Me

By Dick Carpenter

Do you think that campaign finance “reforms” requiring mandatory disclosure of contributors to campaigns are benign? Or that such disclosure provides more information to voters with little cost?

Think again.

Each election season, 24 states allow citizens to vote directly on laws. “Issue campaigns” try to convince citizens to vote for or against these ballot issues that cover subjects from the mundane to the controversial. In each of those states, such advocacy groups must register with the government and disclose the identities of all contributors. This mandatory disclosure is one of the universal features of all campaign finance regulations.

During the final weeks of the November 2006 election, we surveyed more than 2,200 people in six states about mandatory disclosure in issue campaigns.

Not surprisingly, we found 82 percent support the policy—that is, they support it until they must disclose *their own* personal information to the government and to the public. More than 56 percent would not wish to disclose their own name, address and contribution amount, and 71 percent opposed revealing their employer’s name—a common requirement.

Even worse, most people would think twice before donating to a campaign if their personal information and employer’s name were revealed. Respondents cited concerns over privacy and safety, the violation of a contributor’s secret ballot, and the risk of retaliation by employers, acquaintances or political opponents.

The results make clear the costs of mandatory disclosure: a chilling effect on core First Amendment freedoms of political speech and association.

But what about the benefits?

A significant majority of respondents had no idea where to access disclosure lists or bothered to read such information before voting. The benefits? They are essentially nil.

The results of our survey, published in March as *Disclosure Costs: Unintended Consequences of Campaign Finance Regulation* [www.ij.org/publications/other],



Illustration by Aaron Reese

provide additional intellectual ammunition to IJ’s litigation defending free political speech from the “good intentions” of government. And for our clients in Washington and Colorado, discussed in the cover story of this issue of *Liberty & Law*, the results confirm how such intentions produce consequences that are anything but good.◆

Dick Carpenter is IJ’s director of strategic research.



Campaign finance laws infringe upon the First Amendment freedoms of *all* Americans, not just politicians and political parties.

Campaign Finance continued from page 1
resenting Karen Sampson and five other residents of her Colorado neighborhood who were sued under campaign finance laws for engaging in the most basic political speech: a grassroots effort to oppose a plan to annex their neighborhood into the nearby town. In *Independence Institute v. Coffman*, IJ represents the Colorado-based free market think tank that found itself in the same position after criticizing two controversial state tax and finance referenda.

These two cases demonstrate that everyone has something to fear from campaign finance laws. If a small group of concerned citizens in Parker, Colo., can

be sued simply for talking to neighbors and printing lawn signs, then anyone can face the same harassment.

These cases also show the real costs of campaign finance laws. For the sake of “disclosure,” individuals and groups who exercise core rights to speech and association must register with the government and disclose the identities, addresses and sometimes even employers of their supporters. Worse still, they can be sued by vindictive political opponents, threatened with fines and forced to hire lawyers to defend themselves.

IJ’s cases also demonstrate the inevitable consequences of expanding political speech restrictions. For instance, in *San Juan County v. No New Gas Tax*, the IJ Washington Chapter is protecting freedom of the press by defending an ini-

tiative campaign against the claim that it failed to report the favorable commentary of two talk radio hosts as “in-kind” contributions. Because of a law that limits contributions during the last three weeks of an election to \$5,000, the case raised the very real prospect that the radio hosts would be muzzled. Supporters of so-called reform have long claimed that the laws would never threaten freedom of the press. As this case shows, that claim is naive at best.

“Our strategy is simple: challenge the expansion of these laws, slowly but surely chip away at the court decisions that have allowed government to curtail our basic First Amendment freedoms, and expose campaign finance laws for what they really are—political speech restrictions.”

In Arizona, IJ is challenging the state’s public financing scheme for political campaigns. (See the extended feature about our latest argument in this case on page 11.) Offered as the solution to the alleged shortcomings of privately funded campaigns, public financing schemes in fact coerce candidates to accept what the U.S. Supreme Court has repeatedly ruled unconstitutional—limits on what they can spend to get out their message.

IJ also files amicus briefs in major cases to demonstrate the damage campaign finance laws have done to the First Amendment. This term, we will file a brief in *FEC v. Wisconsin Right to Life*, in which the U.S. Supreme Court will address whether McCain-Feingold’s ban on ads that mention candidates within 30 days of a primary or 60 days

of a general election can be applied to grassroots lobbying ads—that is, ads that have nothing to do with an election and instead simply ask people to contact representatives and express their views about issues pending before Congress. The case represents the first opportunity to show the Supreme Court that it went too far in *McConnell* and that regulating money in campaigns unconstitutionally restricts core political speech.

Complementing these legal

efforts, IJ is also spearheading cutting-edge research. Dick Carpenter, IJ’s director of strategic research, is currently working on one study that examines the impact of disclosure laws on the likelihood that people

will contribute to ballot issue campaigns and another that examines the true costs of complying with reporting obligations. (See more about the first of these studies on page six.) Both studies will figure prominently in current and future cases.

Campaign finance laws pose one of our nation’s gravest threats to free speech. These laws have gained ground largely because the public and the courts have not recognized the supreme importance of free speech and the severity of the threat to political speech. With IJ’s continuing battle against campaign finance laws, that will change. ♦

Steve Simpson is an IJ senior attorney.



IJ and ALEC Create 50-State School Choice Summary



By Dick Komer

When legislators from any state in the union want to know how to create a school choice program under their state constitution, they can now find that information in one source: *School Choice and State Constitutions: A Guide to Designing School Choice Programs*. This document, which was created by the Institute for Justice's school choice team and will be released through the American Legislative Exchange Council (ALEC), reviews each state's constitutional provisions for passage most relevant to school choice legislation as well as any case law or legal opinions involving those

provisions. As the lawyers for school choice, IJ has always reviewed individual state constitutional provisions as the need arose, but this is our first comprehensive look at all 50 states at once.

Ever since our success at the U.S. Supreme Court in *Zelman v. Simmons-Harris*—defeating school choice opponents' attacks on choice programs under the federal Establishment Clause—the teachers' unions and their allies have been left with state constitutional challenges as their primary legal means of discouraging states from passing school choice legislation and of challenging those that pass.

They have relied on religion clauses, overly broad readings of the Establishment Clause. Consequently, the states' reliance on the Establishment Clause at other constitutional provisions relevant in determining school choice in other states, we look to see what other constitutional articles contain provisions used by the Florida Supreme Court in *Holmes*. Opportunity School

For each state, we quote the most relevant constitutional provisions, and then provide citations and short descriptions of relevant case law and legal opinions.

We conclude each state review with a brief analysis and recommendations section. Here we assess whether for a given state a voucher or tax credit program (or both) is feasible. While a number of states have interpreted their religion clauses more broadly than the Establishment Clause,

OHIO

CONSTITUTIONAL PROVISIONS

ANALYSIS AND RECOMMENDATIONS

Choice Legislation

Ohio v. Simmons-Harris, 535 U.S. 208 (2002)

Choice v. Simmons-Harris, 535 U.S. 208 (2002)

Choice v. Simmons-Harris, 535 U.S. 208 (2002)

Program Type	Feasibility
Individualized Education Program (IEP)	Yes
Individualized Education Program (IEP) with Choice	Yes
Individualized Education Program (IEP) with Choice and Voucher	Yes
Individualized Education Program (IEP) with Choice and Voucher and Tax Credit	Yes
Individualized Education Program (IEP) with Choice and Voucher and Tax Credit and Scholarship	Yes
Individualized Education Program (IEP) with Choice and Voucher and Tax Credit and Scholarship and Tax Credit	Yes
Individualized Education Program (IEP) with Choice and Voucher and Tax Credit and Scholarship and Tax Credit and Scholarship and Tax Credit and Scholarship and Tax Credit	Yes

Choice Legislation

Choice v. Simmons-Harris, 535 U.S. 208 (2002)

Choice v. Simmons-Harris, 535 U.S. 208 (2002)

Choice v. Simmons-Harris, 535 U.S. 208 (2002)

Survey

primarily on state constitutions' giving those clauses the same meaning the U.S. Supreme Court has found under the Establishment Clause. Recently, in the survey we focus on religion clauses, but we also look at other provisions that can be used in determining the constitutionality of a specific state. For example, we look at whether the constitutions' educational language similar to that of the U.S. Supreme Court in its poorly reasoned decision striking down the Scholarship Program there.

thereby rendering a voucher program less feasible, in almost all states a tax credit-type program would be viable. Fortunately, in nearly every state in the union, a well-designed school choice program is viable.

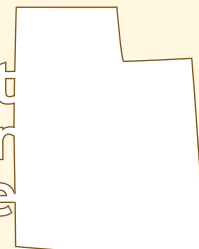
We also include a **list of various models of school choice legislation** formally adopted by ALEC, with a short thumbnail description of each. This list provides legislators and activists with a convenient starting place for thinking about forms of school choice programs that might be appropriate to propose for their states. Included are models of both broad voucher and tax credit programs and of narrower special-purpose programs addressed to the needs of special populations of children, such as those in special education or foster care.

Although not intended as a substitute for the more detailed in-depth legal review of state legislation that IJ does routinely, the idea is to provide a broad overview as a starting point for consideration of school choice legislation. Used in conjunction with IJ's recent publication "Bulletproofing School Choice Legislation," found on IJ's website at www.ij.org/publications/other, the new 50-state survey will provide a useful tool for lawmakers and advocates alike. ♦



Dick Komer is an IJ senior attorney.

Utah: the Latest Battleground for School Choice



On February 12, 2007, Utah Gov. Jon Huntsman Jr. signed into law the nation's first universal school voucher bill. Called the "Parent Choice in Education Act," the law creates a voucher program that is open to *any* child currently attending public school in Utah, along with entering kindergartners and private school students who are eligible for free and reduced-price lunches. The voucher amounts are graduated, ranging from \$3,000 for low-income families to \$500 for wealthier families, and parents may choose from a full range of religious and non-religious schools.

But the ink was barely dry on the new law before school choice opponents swooped in with a new stratagem for saving the public school monopoly. Confident in their ability to demagogue the issue and mobilize their anti-choice base, they called for a statewide referendum.

If opponents collect roughly 92,000 signatures, the issue will go on the ballot at the next election, which is not until November 2008. The program will be on hold during that time. Even if Utahans ultimately vote for choice in the referendum, school choice opponents will still have delayed the program for two years and will no doubt seek to delay it even longer by playing their next card, a constitutional challenge in court.

Fortunately, Utah has an outstanding team of local advocates for school choice in Parents for Choice in Education, which is already mobilizing parents and other supporters to thwart the forces of educational mediocrity and monopoly. However long it takes, we are confident that Utah's path-breaking efforts toward universal school choice will ultimately bear fruit and become an inspiration for other states looking to jettison the increasingly indefensible educational status quo. ♦

In It For the Long Haul



Bill Brody's Seven-Year Struggle Against Eminent Domain

By Robert McNamara

- July 14, 1999
Village of Port Chester authorizes the use of eminent domain.
- April 25, 2000
Village of Port Chester files petition to condemn Brody's property.
- June 13, 2000
Brody learns he's not allowed to challenge the condemnation.
- October 4, 2000
Brody and IJ file suit in federal court in New York.
- January 18, 2001
The Southern District of New York issues a preliminary injunction blocking the condemnation. **Victory!**
- August 8, 2001
The 2nd U.S. Circuit Court of Appeals removes the injunction.
- August 28, 2001
The village takes title to Brody's property.
- September 20, 2001
The Southern District of New York dismisses Brody's claims and throws the case out.
- September 24, 2003
The 2nd U.S. Circuit Court of Appeals reinstates Brody's claims. **Victory!**
- September 14, 2004
New York amends its eminent domain laws to require notice to property owners. **Victory!**
- January 4, 2005
The Southern District of New York dismisses Brody's claims and throws the case out.
- December 5, 2005
The 2nd U.S. Circuit Court of Appeals reinstates Brody's claims. **Victory!**
- March 19, 2007
Brody's trial finally begins.

While the popular backlash against the Supreme Court's decision in *Kelo* continues to curtail eminent domain abuse across the country, many land-hungry developers and tax-hungry bureaucrats refuse to go gently into that good night. There's no more striking example of that than the ongoing saga of eminent domain abuse in Port Chester, N.Y.

In 1996, Bill Brody bought four connected, abandoned buildings in downtown Port Chester and completely renovated them by doing what he does best: working hard. He installed new roofs and a new sprinkler system, and even hung a chandelier in the lobby, doing much of the work himself. When he was served with papers in 2000 notifying him that Port Chester was condemning his property to make way for a shopping mall, he figured he would apply that same work ethic to fighting the condemnation. There was only one problem: he could not. In New York, property owners can only challenge a condemnation when the government first authorizes a redevelopment project—something that can happen months or even years before any property is taken—and the law allowed condemnors to keep this limited ability to challenge condemnations practically a secret. In Bill's case, he lost his rights almost one year before he received his condemnation papers. Nobody had bothered to tell him.

Undeterred, Bill joined forces with the Institute for Justice to take on New York's eminent domain laws, which allowed local bureaucrats to strip people of their rights without sending them so much as a postcard. Seven years later, he has tallied an impressive string of victories. The media has roundly denounced the stacked deck offered by New York's laws. The 2nd U.S. Circuit Court of Appeals has held that the laws were uncon-

stitutional. Even the New York State Legislature has amended the state's eminent domain laws to require formal notice to property owners before any rights can be taken away.

The only people seemingly unfazed by these victories are the bureaucrats and developers who run Port Chester's redevelopment project. After losing two appeals to the 2nd Circuit, they continue to insist they have done nothing wrong. If anything, they are outraged that Bill has had the gall to stand up for his constitutional rights. They have asked the court to block Bill from recovering his property on the grounds that he should have figured out New York's illogical system for himself. For example, they claim he should have been reading the legal notice section of the newspaper every day for a year to see if his property might be under threat, even though the notices the village published did not say anything about challenging condemnation or explain that property owners would be unable to challenge the condemnation when it finally happened. In essence, they say he is at fault because he failed to chase down the government and ask if they were planning to violate his rights someday.

The extended litigation and absurd defenses on display in Port Chester are not unique. Arrogant bureaucrats, backed by deep-pocketed developers all too often steamroll property owners. After all, few people have the resources (or the stomach) for seven years of litigation in defense of their rights. Fortunately for the rest of us, Bill, backed by IJ, has shown he has the tenacity to put Port Chester's underhanded tactics exactly where they belong: on the losing side. ♦

Robert McNamara is an IJ staff attorney.



IJ State Chapters Team Up to Fight Campaign Finance Case Before 9th Circuit

By Tim Keller

In February, IJ's Arizona and Washington chapter executive directors joined forces before the 9th U.S. Circuit Court of Appeals arguing that Arizona's so-called "Clean" Elections Act is unconstitutional because it allows the state to enter the political debate, place its thumb on the scales and tip the balance in favor of taxpayer-financed candidates.

The argument was the culmination of a tremendous IJ team effort, with lawyers from each of IJ's offices nationwide chipping in to hone our arguments. After a last-minute move by the State of Arizona to dismiss one of our legal claims, IJ-WA Executive Director Bill Maurer rose up to meet their challenge by drafting supplemental briefing, leaving me free to focus my arguments on the merits of the case. (An audio file of the oral argument is available at

www.ca9.uscourts.gov, click on "Audio Files" and search for 05-15630.) The result was a persuasive presentation demonstrating that Arizona's scheme of publicly financing elections suppresses political speech.

As Bill noted after we argued the case, it takes a lot of work to make oral argument go smoothly. IJ lawyers take every court appearance seriously because

"Arizona's so-called 'Clean' Elections Act allows the state to enter the political debate, place its thumb on the scales, and tip the balance in favor of taxpayer-financed candidates."

all of our cases hold the promise of advancing the cause of individual liberty. Preparing for oral argument can be as demanding as it is rewarding. Solomon's proverbs say that "as iron sharpens iron, so one man sharpens another." IJ's main tool for sharpening our arguments is the "moot court" in which IJ attorneys act as judges, hammering the attorney preparing to argue with difficult questions, then assisting in developing crisp, cogent responses. IJ's preparation process arms our attorneys with cutting-edge constitutional arguments that have proven effective in carrying the day in court.

Among the reasons IJ is challenging Arizona's campaign finance control measure is because it allows the government to drown out the message of privately funded campaigns by doling out a dollar-for-dollar match to their opponents whenever someone (even without the privately funded candidate's consent) pro-

motes their candidacy. Arizona law also imposes onerous reporting requirements on privately funded candidates. A privately funded candidate may have to file up to 37 time-consuming reports on contributions during one election cycle, compared to only three such filings for publicly funded candidates. These reports trigger more funds to be immediately disbursed to the tax-funded candidate, thereby placing the entire burden on those who refuse taxpayer funds for their campaign.

In America, we once prized individuals who competed in the marketplace of ideas without the need for force or government financing. Today, however, through ever-increasing public finance schemes, the government hampers such individuality in politics. Arizona's scheme financially favors candidates who accept public funds while harming those who accept only private, voluntary donations.

IJ's Arizona and Washington chapters teamed up to do what our entire organization is dedicated to doing: halt government efforts to make decisions in our lives that we are best able to make for ourselves, including our decisions about political speech. ♦

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





IJ President **Chip Mellor**, right, and Senior Attorney **Scott Bullock** greet **Al Viviano** at the rally announcing IJ's involvement in the Long Branch case. IJ fought to save Mr. Viviano's home from eminent domain abuse. Our fight continues on behalf of his neighbors. [Photo did not appear in the *Star-Ledger*.]

Viviano continued from **page 4**

"All my life, he's been a fixture there," said William Giordano, 42, whose back yard faces Viviano's home on Marine Terrace. "The neighborhood will never be the same without him."

Like so many in the area, Viviano came from Newark. When people asked what he did for a living, he told them he was a blacksmith. His daughter said that description wasn't quite right, though, because Viviano never worked with a horseshoe in his life.

In his youngest days, before the automobile had infiltrated every part of society, Viviano made and installed wagon wheels while working for his father, Toscano said. Later, he did metal-work on trucks.

The business did well enough to allow Viviano's father to buy the modest three-bedroom bungalow on Marine Terrace in the 1920s. It was a fair-weather place then, with a broad, breeze-catching porch.

The Vivianos would head down from the city on weekends. Until the construction of the Garden State Parkway, it could be a rough trip, the bad roads wreaking havoc on the flimsy inner-tube tires in use at the time.

"He told us they'd always get flat

tires, sometimes two or three flats on one trip," Giordano said. "So they'd have to keep pulling over and patch them up."

To Viviano, the journey was worth it. Neighbors said he'd walk the beach—and later the boardwalk—several times a day, chatting with passersby and enjoying the ocean views. With his wife, Mary, he'd sit out on the porch, calling out to neighbors and regaling neighborhood kids with stories.

After retiring 26 years ago, Viviano moved down to Marine Terrace full-time, puttering around in his small basement workshop and dreaming up little inventions. Unsatisfied with a spoon to scoop out jelly from a jar, he hammered out a utensil with a little less swell, his daughter said.

Long before televisions came with shut-off timers, Viviano fashioned one by stripping the timer from his washing machine.

"He had an engineer's mind," said Toscano, who must now decide whether to keep up her father's fight. "He did things to the detail."

And if he didn't get it quite right the first time, he didn't give up.

Friends said he took that spirit into the struggle with Long Branch.

"He loved Long Branch, and he loved his home, and he couldn't see letting anyone take it away from him," said Anna DeFaria, 81, a friend and neighbor. "This fight meant everything to him. He was our rock."

The death of Mary Viviano two years ago coincided with Viviano's own decline in health.

Over time, he traded a cane for a wheelchair and accepted in-home help on a 24-hour basis. Still, the fight to save his home consumed him.

"He would say, 'This is my home. I want to die here,'" DeFaria said.

No one would have blamed Viviano for taking it easy, letting the younger residents take on the city. But Viviano wouldn't have it.

"He could have just given up, but he didn't," said Fifi Vendetti, 77, Lori Vendetti's mother. "He fought hard for our cause. We hope we don't let him down. We hope we win, and we hope he looks down upon us when that happens."◆

Mark Mueller may be reached at mmueller@starledger.com or (973) 392-5973.

© 2007 The Star-Ledger. All rights reserved.
Reprinted with permission.

IJ Washington Chapter Helps Defeat Bogus “Blight” in Seattle

By Michael Bindas

In January, the Institute for Justice scored yet another grassroots victory against eminent domain abuse. IJ galvanized a courageous group of Seattle property owners who defeated a government plan to “blight” their neighborhood and call in the bulldozers.

Seattle’s reckless scheme dates back to early 2006, when officials commissioned a “blight study” to justify using Washington’s Community Renewal Law (CRL) in the Rainier Valley neighborhood, one of America’s most diverse working-class communities. Under the CRL, a municipality can declare an entire neighborhood “blighted”—based on factors that have absolutely nothing to do with health or safety—then use eminent domain to “redevelop” the area. The law practically invites eminent domain abuse.

It came as no surprise, then, when Seattle’s “study” concluded that 1,391 acres of Rainier Valley—including 6,390 households sheltering 24,000 residents—were blighted. Based on that bogus determination, the city proposed a “community renewal plan” that included the power to condemn.

Rainier Valley’s residents fought back. Disgusted that their own government would write off their community to make way for private development, the residents called the IJ Washington Chapter. That call triggered a coast-to-coast effort, in which IJ-WA Executive Director Bill Maurer and Staff Attorney Michael Bindas were joined in Seattle by Castle Coalition Director Steven Anderson and IJ Vice President for Communications John Kramer from IJ’s Virginia headquarters to educate and train the residents’ grassroots activist group: Many Cultures, One Message (MCOM).

MCOM and IJ succeeded in bringing significant public



Seattle activist **Kwan Fong** stands in front of his business property, which the City of Seattle sought to “blight.”

attention to the issue—attention the city did not want. The team communicated through radio, television and the editorial pages to speak out against the city’s plan, receiving coverage in outlets as diverse as *The Wall Street Journal* and *Real Change*, a small weekly paper sold by Seattle’s homeless population. The tide really turned in early January when Seattle’s two leading newspapers editorialized for reform of the Community Renewal Law.

In light of the overwhelming political opposition that Seattle property owners and IJ mobilized, the mayor’s office officially abandoned the city’s plan. The victory was a testament to the courage of Rainier Valley’s residents and to the ability of IJ’s many offices to work together seamlessly in the cause of justice. ♦

Michael Bindas is an IJ-WA staff attorney.



A municipality can declare an entire neighborhood “blighted”—based on factors that have absolutely nothing to do with health or safety—then use eminent domain to “redevelop” the area.

High Court Refuses to Hear Eminent Domain Extortion Case

By Robert McNamara

As documented in the Bill Brody feature (on page 10) and in this article, government officials and the favored developer of Port Chester, N.Y., are among the nation's most ruthless and unprincipled abusers of eminent domain, using their power time and again to go after the most entrepreneurial individuals in the village.

After Bart Didden and his business partner, Domenick Bologna, struck a deal to build a CVS pharmacy on a piece of land they owned in Port Chester, they thought their prospects looked pretty good. Unfortunately for them, so did Gregg Wasser, the developer in charge of Port Chester's redevelopment project—and he wanted a piece of the action.

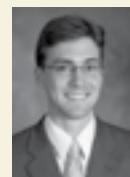
In 2004, Wasser approached the pair with an offer they could not refuse: they could either pay him \$800,000 or give him a 50 percent stake in their planned CVS. If they refused, Wasser would have the village condemn their property and turn it over to him so he could build a Walgreens. Less than 24 hours after they rejected this attempted extortion, their property was condemned.

“IJ remains at the forefront of the national effort to persuade judges that our rights depend on the willingness of courts to take them seriously against eminent domain abuse, and we will continue to seize every opportunity to press the courts into restoring protections for Americans’ property rights.”

When Bart filed suit to prevent the taking, the federal district court tossed the case out, saying that the use of eminent domain in an extortion racket simply to fatten the developer's profits was perfectly constitutional because the land in question was within the village's "redevelopment area." The 2nd U.S. Circuit Court of Appeals agreed, affirming in a two-page, unpublished opinion.

The indifference of these courts to outright extortion underscores one of our major challenges: convincing judges that they have an essential constitutional role in property cases. IJ took up Bart's cause and asked the U.S. Supreme Court to review the case. The question was simple. Are citizens entitled to ask for judicial review of condemnations, or can a city create a constitution-free zone just by designating it a redevelopment area? While the Court declined to hear the case, the issue was widely reported across the nation eliciting outrage over the fact that courts are not simply ruling for developers, but refusing to hear cases at all. IJ remains at the forefront of the national effort to persuade judges that our rights depend on the willingness of courts to take them seriously against eminent domain abuse, and we will continue to seize every opportunity to press the courts into restoring protections for Americans' property rights. ♦

Robert McNamara is an IJ staff attorney.



Volume 16 Issue 2

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.

Editor: John E. Kramer
 Layout & Design: Don Wilson

How to reach us:

Institute for Justice
 901 N. Glebe Road
 Suite 900
 Arlington, VA 22203

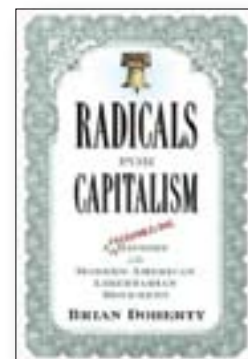
General Information (703) 682-9320
 Fax (703) 682-9321

Extensions:
 Donations 233
 Media 205

Website: www.ij.org
 E-mail: general@ij.org

Quotable Quotes

Excerpts from *Radicals for Capitalism* by Brian Doherty



“Institutions that leading libertarians used to muse about in correspondence as a dream for the future exist now, such as the Institute for Justice, launched in 1991 with Koch seed money. It’s a libertarian ACLU, a public interest law firm defending economic liberties and property rights, fighting for school choice and against eminent domain, restrictive occupational licensing laws that prevent the poor and unconnected from running their own businesses, and campaign finance laws that restrict political speech, among other libertarian causes. In the fifteen years of operation, the institute actually succeeded on occasion at reviving the libertarian dream of getting American courts to once again, post-New Deal, take economic liberties seriously.

“The institute has already won two cases at the U.S. Supreme Court: *Zelman v. Simmons-Harris* (2002), in which a Cleveland voucher program was upheld by the Supreme Court against charges of unconstitutionality, and *Swedenburg v. Kelly* (2005), which overturned a New York state ban on interstate wine shipment. IJ has also lost one at the Supreme Court, in the *Kelo v. New London* (2005) case, but a loss that created a public outcry against eminent domain for the benefit of private developers that may well lead to an eventual victory on the issue, at least through legislative changes on the state level.”

Baltimore Examiner

“Historically, urban renewal schemes disproportionately uproot blacks from their homes and businesses, triggering a host of other losses. A new study by Dr. Mindy Thompson Fullilove, professor of clinical psychiatry and public health at Columbia University, outlines them. The Institute for Justice, a nonprofit that legally represents home and business owners whose property has been seized through eminent domain, published the report.”

Minnesota Public Radio

“A national libertarian law firm is focusing on Red Wing in its campaign against government intrusion. The Institute for Justice calls itself ‘a merry band of litigators’ taking from the government and giving to the average citizen.”

My home of 45 years means everything to my family and me.

But now, the City of Long Branch wants to take it away
so a politically connected developer can build condos.

I won't give up my American Dream without a fight.

I am IJ.



*Anna DeFaria
Long Branch, New Jersey*

www.IJ.org

*Institute for Justice
Property rights litigation*

“For activists who seek to change the law, nothing works better sometimes than losing a big case in the Supreme Court... The *Kelo* ruling set off a political earthquake, and the tremors were felt across the country.”

—Los Angeles Times



Institute for Justice
901 N. Glebe Road
Suite 900
Arlington, VA 22203

NON-PROFIT ORG.
U.S. POSTAGE
P A I D
MERRIFIELD VA
PERMIT NO. 6418