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Liberty & LAW

Fighting Grassroots Tyranny & Helping Entrepreneurship Flourish



April Gilliland



Suzanne Leitner-Wise



Ash Patel

By Chip Mellor

In the aftermath of a great forest fire, small green shoots appear as the forest begins to regenerate. Some of those shoots will eventually become towering trees. In the aftermath of a recession, entrepreneurs create new businesses that are the green shoots of economic recovery.

Today, despite the continuing economic challenges, there are many entrepreneurs valiantly trying to establish and grow new businesses. As if the economic challenges were not enough, today's entrepreneurs—particularly those of modest means—face an increasing array of laws and regulations that foreclose entry into many fields or stifle growth. Many of these laws come in the form of licensing and permitting requirements. Indeed, today more than 30 percent of the American workforce needs a government license to work. All too often, the conditions imposed by such laws are arbitrary or protectionist.

Through IJ's Campaign for Economic Liberty, made possible through contributions to meet a chal-

lenge grant from Robert W. Wilson, we will strike down these arbitrary laws and enable entrepreneurs to provide the counter-narrative to calls for increased government management of the economy. This issue of *Liberty & Law* features three exciting economic liberty cases we recently launched. In each you will find the story of hard-working people whose dreams of a better life are being unconstitutionally denied by government. (See stories on pages 2, 6 and 7.) Without IJ, these individuals have little chance of success. But an IJ victory for each will not only unleash their individual potential, it will also set precedent for many others afflicted by grassroots tyranny.

We will file more economic liberty cases in the coming months and, as we do, we will elevate the cause of economic liberty to national prominence, creating the constitutional climate in which the green shoots of entrepreneurship will flourish.◆

Chip Mellor is IJ's president and general counsel.





From left, IJ client **Suzanne Leitner-Wise** and IJ attorneys **Clark Neily** and **Robert Frommer** are joined by IJ client **Beverly Brown** in challenging a law that forces yoga instructors to register with the state or shut their doors.

Virginia Regulations Tie Yoga Teacher-Trainers in Knots

By Robert Frommer

Entrepreneurs are the backbone of our economy. They come up with new ideas, take chances, create jobs and improve everyone's standard of living. In these tough economic times, states should encourage entrepreneurs, not put stumbling blocks in their way. But that is precisely what has happened to some small business owners in Virginia.

Julia Kalish, Suzanne Leitner-Wise and Beverly Brown are all yoga devotees who have spent years mastering the art. In fact, they are so proficient at yoga that they teach the discipline to others, including people who want to someday become yoga teachers themselves.

And that is where the problem begins: In Virginia, you don't need a license to practice yoga, and you don't need a license to teach yoga. But, incredibly, Virginia demands that you obtain its permission before you teach someone how to teach yoga.

Why?

According to the State Council of Higher Education for Virginia, anyone who offers "vocational" training has to first get a government-issued license.

Yoga teacher-training programs have been running in Virginia for years without any complaints. The Commonwealth's sudden interest in regulation came when an agency bureaucrat learned about the programs and realized that, because they taught a marketable skill, they qualified under the statute. This push for regulation for its own sake is completely contrary to America's tradition of individual freedom and limited government.

The practical consequences of Virginia's regulatory scheme are daunting. Yoga-instructor schools must pay a \$2,500 application fee and a yearly renewal fee of anywhere between \$500 and \$2,500. In addition, they must prepare and file a mountain of financial records and other administrative documents. And schools must submit their curricula to Virginia bureaucrats—none of whom (it is safe to bet) know anything about yoga—who will

pass judgment on whether it is of sufficient "quality." If a person dares to teach others how to teach yoga without first registering, she will face thousands of dollars in fines and up to one year in jail.

These obstacles would severely burden any small business, but for yoga-instructor programs, which rarely teach more than a few students each year, these regulations amount to a death sentence. Suzanne Leitner-Wise, owner of an Alexandria-based yoga-training program, said, "If I had to comply with the Virginia regulations, then I wouldn't be able to continue." Indeed, many yoga-instructor schools in Virginia and other states have been forced to shut their doors as a result of such regulatory pressure.

Suzanne, Julia and Beverly have joined forces with the Institute for Justice to challenge these pointless and burdensome regulations.

The First Amendment protects the right of individuals to speak and to listen to speakers of their choice. That means that just as Virginia cannot require writers to ask for permission before publishing a book, it cannot demand

that our clients seek its approval before talking with others about yoga instruction. By striking down these arbitrary barriers, the Institute for Justice will help protect economic liberty and ensure that our clients—and innumerable others across Virginia—remain free to chart their own destinies and create their own success. ♦



Robert Frommer is an IJ staff attorney.



Privileges or Immunities Clause Gets U.S. Supreme Court's Attention

On March 2, 2010, the U.S. Supreme Court will hear oral argument in a case that presents the single best opportunity the Court has ever had to repudiate the woefully misguided *Slaughter-House Cases* and begin enforcing the 14th Amendment as it was understood and intended by those who ratified it. That case, *McDonald v. City of Chicago* (in which IJ filed an amicus brief), presents a challenge to Chicago's handgun ban following the 2008 path-breaking Second Amendment decision *District of Columbia v. Heller*, which was litigated by IJ Senior Attorney Clark Neily, IJ Board member Bob Levy and former IJ law clerk Alan Gura. Here is how we came to this historic moment.

Following the Civil War, the former states of the Confederacy made clear their intent to keep newly free blacks—called freedmen—in a state of constructive servitude. They did this by stripping freedmen of their basic civil rights, particularly the rights to freedom of speech, armed self-defense and economic opportunity. This was accompanied by a campaign of terror in which anyone—white or black—who presumed to resist was persecuted, intimidated and, in many cases, lynched.

Reconstruction Republicans were outraged by this conduct, and they determined to put an end to it with the 14th Amendment, which was ratified in 1868. At the heart of the Amendment lay its command that “[n]o state shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States.” Just five years later, five Justices of the U.S. Supreme Court essentially stripped that provision out of the 14th Amendment in the *Slaughter-House Cases* because they considered it unwise to give federal courts the power to protect people's rights against state and local officials.

Despite near-universal consensus that *Slaughter-House* was wrongly decided, the Supreme Court has never revisited the decision. Until now—maybe.

The constitutionality of Chicago's handgun ban remains an open question after *Heller* because state and local governments are not bound by the Bill of Rights, but by the 14th Amendment, which has been interpreted to “incorporate” most of the provisions in the Bill of Rights with one particularly notable exception: the right to keep and bear arms. Incredibly, the U.S. Supreme Court has never decided whether Americans have a constitutional right not to be disarmed at the whim of local government officials, even though the right to keep and bear arms was mentioned repeatedly during the drafting and ratification of the 14th Amendment—by proponents and opponents alike.

What makes *McDonald* such an exciting opportunity is that the U.S. Supreme Court passed over several other post-*Heller* gun rights cases and granted *certiorari* in the one where the Privileges or Immunities Clause stands front and center. And that is because *McDonald* attorney Alan Gura, who was



IJ's new Privileges or Immunities: Academic Resources

page collects primary sources and modern scholarship on the history and meaning of the Privileges or Immunities Clause. Visit www.ij.org/PorI to read records of the original congressional debates on the 14th Amendment and interpretation by current legal scholars such as Richard Aynes and IJ's Clark Neily.

also lead counsel in *Heller*, made a bold decision to reject the conventional wisdom of arguing for incorporation under the Due Process Clause and litigate *McDonald* as a Privileges or Immunities case all the way. It is indisputable that the people who wrote and ratified the 14th Amendment intended the Privileges or Immunities Clause to protect the right to keep and bear arms. The time has come for the Supreme Court to finally honor that purpose. In so doing, it will go a long way toward reversing *Slaughter-House* and breathe life into the 14th Amendment—including the right to economic liberty—the way it was understood and intended by those who ratified it. ♦

New York: *Building Empires, Destroying Homes Through Eminent Domain Abuse*

By Dana Berliner

New York does absolutely everything wrong with regard to eminent domain. Its laws are hopelessly stacked against property owners. It is one of only seven states in the entire country that failed to pass any eminent domain reform in response to the U.S. Supreme Court's infamous decision in *Kelo v. City of New London*. For years, New York's lower courts turned a blind eye to the enormous benefits afforded to private developers, outrageous behavior on the part of government officials, and even blatant evidence that the projects would be miserable flops.

On November 24, 2009, New York's highest court—the Court of Appeals—had an opportunity to change all that. And instead, it decided to make things even worse, solidifying New York's status as the absolute worst state in the entire country for eminent domain abuse.

The case—*Goldstein v. New York State Urban Development Corporation*—challenged the plan to use eminent domain to hand over privately owned businesses and homes in Brooklyn to private developer Forest City Ratner as part of the Atlantic Yards development project to create a new arena for the New Jersey Nets and other surrounding private development. IJ submitted an amicus brief explaining to the court that this was New York's opportunity to follow the lead of the high courts of Hawaii, Missouri, New Jersey, Oklahoma, Ohio, Pennsylvania and Rhode Island, which all have begun imposing greater judicial scrutiny and rejected proposed condemnations as not for public use. Instead, New York issued what can only be called a shameful opinion, punting on all the major issues.

The court decided to simply accept the condemning agency's assertions—if the government said it was for public use, then the

court would not get involved. The majority's opinion frankly acknowledges that its decision opens the door to “political appointees to public corporations relying on studies paid for by developers . . . [as] a predicate for the invasion of property rights and the razing of homes and businesses.” But, it says, preventing such abuses is not the job of the courts, advising New Yorkers to look to their legislature to fix any problems.

New Yorkers must fervently hope that their legislature decides to do something, because eminent domain abuse in New York is completely out of control. At the same time that it filed its amicus brief, IJ released its statewide analysis, *Building Empires, Destroying Homes: Eminent Domain Abuse in New York*, which shows just how badly New York agencies have been abusing their power.

As *Building Empires* explains, “Over the past decade, a host of government jurisdictions and agencies statewide have condemned or threatened to condemn homes and small businesses for the New York Stock Exchange, The New York Times, IKEA, Costco, and Stop & Shop. An inner-city church lost its future home to eminent domain for a commercial development that never came to pass. Scores of small business owners have been threatened with seizure for a private university in Harlem and for office space in Queens and Syracuse. Older homes were on the chopping block near Buffalo, simply so newer homes could be built. From Montauk Point to Niagara Falls, every community in the Empire State is subject to what the courts have accurately called the ‘despotic power.’”

The Associated Press reported that IJ documented how New York is “‘a hotbed of abuse,’ with 2,226 properties statewide either condemned or threatened with condemnation



Download this new report here: www.ij.org/BuildingEmpires.

through eminent domain in the past decade to allow for private development.”

There is one glimmer of hope in the courts—an appellate decision rejecting the condemnation of private businesses for Columbia University. Nonetheless, after the Court of Appeals decision in *Goldstein*, the New York courts certainly cannot be counted on to protect the rights of their citizens.

IJ and the Castle Coalition have worked for years to reform New York's eminent domain laws and defeat individual projects. We won a legal victory in the *Brody* case, which vindicated the rights of a New York property owner, and helped defeat a number of eminent domain projects across the state, but what is needed now is systemic legislative reform that will protect New York property owners and renters once and for all. After the latest decision from the Court of Appeals, IJ will continue to fight until all in the Empire State are free from eminent domain abuse. ♦

Dana Berliner is an IJ senior attorney.



IJ Secures Victory in Arizona School Choice Case

By Tim Keller

Arguing a case in front of a state supreme court is a thrilling moment for a constitutional lawyer. It can be just as thrilling, however, to secure a supreme court victory without ever having to step foot in the courtroom. IJ secured just such a victory on October 27, 2009, when the Arizona Supreme Court declined to review the March 2009 decision in *Green v. Garriott* upholding Arizona's Corporate Tuition Tax Credit Program.

The Supreme Court's decision puts an end to a three-year-old legal challenge to a program that funds scholarships for low- and middle-income children who transfer from public to private schools. The nearly 3,000 parents who rely on the scholarship program to send their children to private schools can now breathe a sigh of relief and be fully assured that their tax-credit-funded scholarships are constitutional.

Filed by the ACLU of Arizona and the Arizona School Boards Association, *Green v. Garriott* was designed by school choice opponents to try to overturn another IJ-secured ruling: the Arizona Supreme Court's 1999 decision in *Kotterman v. Killian*. *Kotterman* upheld Arizona's innovative Individual Tax Credit Program from attacks under both the Arizona and federal constitutions.

IJ intervened in *Green v. Garriott* on behalf of the Arizona School Choice Trust (a nonprofit School Tuition

Organization that receives corporate contributions to fund private school scholarships) and parents who desperately wanted to transfer their children from public to private school but

lacked the financial means. One of those parents, Stella Gomez, had to pull her daughter, Dorine—who has brittle bone disease—from her Catholic school after Stella's husband walked out on the family. Stella no longer had the financial means to send Dorine to the private school that understood and met Dorine's special needs.

The Arizona Supreme Court's decision means the many parents like Stella, who prefer a private education for their children, will have the chance to see their dreams come true. Indeed, school choice programs like Arizona's Corporate Tuition Tax Credit help fulfill the promise of an equal opportunity for every child to receive a good education by recognizing there is nobody better suited to determine the educational needs of a child than that child's parent or guardian.



Dorine Gomez now has a chance to go to the school her mother feels is best to meet her special needs.

IJ is also defending Arizona's Individual Scholarship Tax Credit Program from legal attack in a federal case titled *Winn v. Garriott*. *Winn* was originally dismissed as meritless, but a

three-judge panel of the Ninth U.S. Circuit Court of Appeals reinstated the case in April 2009. The Ninth Circuit denied IJ's request that the entire court rehear the case, but eight judges joined a dissent arguing that the court's decision cannot be squared with U.S. Supreme Court precedent. In fact, the Ninth Circuit's decision is so far out of line with existing precedent that IJ has asked the U.S.

Supreme Court to summarily reverse the Ninth Circuit's ruling without additional briefing or oral argument. The odds are against such a ruling. But long odds are nothing new here at IJ. And, as we learned in *Green v. Garriott*, victory without supreme court argument can be a genuine thrill. ♦

Tim Keller is the IJ Arizona Chapter executive director.



“The Supreme Court’s decision puts an end to a three-year-old legal challenge to a program that funds scholarships for low- and middle-income children who transfer from public to private schools.”

Constitutional Rights Hanging by a Thread



IJ client Ash Patel in his salon.

A new Institute for Justice report, *Bureaucratic Barbed Wire: How Occupational Licensing Fences Out Texas Entrepreneurs*, shows how Texans are being denied their constitutional right to economic liberty. In 1945, Texas regulated only 43 occupations that did not involve the sale or distribution of alcohol. Today, Texans in over 500 different trades must obtain government permission before they can go to work.

The report documents how licensing in Texas is driven not by public health and safety concerns, but by industry insiders who use government power to unconstitutionally cartelize their industries.

You can download the report at www.ij.org/2895.

By Wesley Hottot

IJ's cutting-edge constitutional litigation sometimes places Institute attorneys in strange circumstances. For example, when the IJ Texas Chapter recently launched its constitutional challenge to the state's oppressive cosmetology regulations, I found myself having my eyebrows "threaded" on the steps of the Travis County courthouse.

Eyebrow threading is an ancient grooming technique widely practiced in South Asia and the Middle East. Threaders, as practitioners are commonly known, tightly wind a single strand of cotton sewing thread, form a lasso and quickly brush the thread across the face of their customers. Unwanted hair is trapped in the lasso and effortlessly removed from its follicles. It is a painless procedure that I can, with some authority, recommend. (For a demonstration and brief video about the case, visit: www.ij.org/3012.)

Eyebrow threading is a booming industry in Texas and around the United States because it is less expensive (just \$10 or less), faster (just 5 minutes or less) and more precise than waxing and other Western hair-removal techniques. It is also healthier for the skin. In fact, dermatologists often recommend thread-

ing to their patients. The procedure is all-natural, time-tested and safe.

Unfortunately, the state of Texas is attempting to license eyebrow threading without even understanding what it is.

Eyebrow threading is not mentioned anywhere in Texas' cosmetology laws or administrative rules, but state cosmetology police are threatening to shut down threading businesses and prevent individual threaders from practicing their trade because threaders do not have Western-style cosmetology training.

The state announced its regulation of threading by handing out staggering \$5,000 fines to threading businesses and \$2,000 fines to individual threaders.

The state is now demanding that eyebrow threaders spend \$20,000 and one year of their lives in private, government-approved beauty schools. Keep in mind that Texas beauty schools do not teach threading and the state cosmetology licensing examination does not test threading.

Senselessly, the state wants eyebrow threaders—many of whom have more than 20 years of experience—to learn hair styling, nail care, makeup and a host of other irrelevant practices that have nothing to do with their

trade. This is no way for the government to act, especially in difficult economic times. In December, eight brave eyebrow threaders joined the IJ Texas Chapter to sue the state for violating their constitutional right to economic liberty. The Texas Constitution's Privileges or Immunities Clause protects eyebrow threaders' right to earn an honest living in the occupation of their choosing free from arbitrary or excessive government regulation.

The case has already generated significant media attention with stories in every major media outlet in Texas; it even generated a front-page mention in the *Wall Street Journal*. Discouraged, the government's lawyers quickly agreed to stay enforcement against our clients until the court can consider our request for an injunction.

At the Institute for Justice, each attorney would do nearly anything for our clients. Having my eyebrows threaded on the steps of the courthouse was the least I could do to educate the public about this safe, all-natural and soon-to-be-unlicensed practice. ♦

Wesley Hottot is an IJ Texas Chapter staff attorney.



Dallas Officials Don't Understand: A Business with No Signs Is a Sign of No Business

By Matt Miller

The government wouldn't dream of telling a television station that ads can only run on 15 percent of the screen, or telling a newspaper that ads must be relegated to the bottom third of each page. Yet many cities have no reservations about setting similarly arbitrary, ill-advised and ultimately unconstitutional restrictions on businesses that want to hang signs in their windows.

The IJ Texas Chapter recently filed a federal lawsuit against the city of Dallas challenging just such a law. Dallas has banned all window signs in the upper two-thirds of any window and prohibits signs from covering more than 15 percent of a window. That means businesses can only display signs that are too small and too low to attract a potential customer's attention—hardly an effective way to tell people about the products and services offered inside.

This case challenges the notion that commercial speech is entitled to less protection than political or artistic speech. As Justice Clarence Thomas said in *44 Liquormart v. Rhode Island*, "I do not see a philosophical or historical basis for asserting that 'commercial' speech is of 'lower value' than 'noncommercial' speech Nor do I believe that the only explanations that the Court has ever advanced for treating 'commercial' speech differently from other speech can justify restricting 'commercial' speech in order to keep information from legal purchasers so as to thwart what would otherwise be their choices in the marketplace."



Dallas store owner **April Gilliland** has joined with IJ to challenge the city's ban on commercial signs in windows.

Window signs are incredibly important to small businesses. Newspaper, television and radio advertising are expensive and often ineffective ways to advertise the local products and services that small businesses tend to offer. Instead, window signs—most of which cost between only \$25 and \$200—allow small businesses to easily tell both regular and potential customers about products, services, sales and weekly specials.

Dallas claims the ban is necessary to improve community aesthetics and to allow police officers to see inside businesses. But deciding whether something is aesthetically pleasing should not be the government's job. And Dallas has no evidence that simple window signs make a business more vulnerable to crime. In fact, the city does not require businesses to have windows in the first place.

Our clients are a diverse and lively group of small business owners. They include a dry

cleaner, clothing store, travel agency, vacuum business and two Fastsigns franchisees who have seen the effect of the new law firsthand. Many of our clients have been issued warnings and citations by city enforcers to remove their signs or face fines of up to \$2,000. Others want to keep the signs they have but feel they should not have to become scofflaws in order to do so. All of them are standing up for the First Amendment right of every business owner in Dallas to communicate truthful information in their windows.

Justice Thomas is right. IJ is fighting to vindicate the basic speech rights of small businesses because the First Amendment protects all speech—even when it is printed in large type and hung in a store window. ♦

Matt Miller is the IJ Texas Chapter executive director.



What amount of signage is allowed under the Dallas sign code?



Is this signage allowed? **NO**



What about now that there is no signage in the top two-thirds of any window? **NO**



What about now that there is no signage in the top two-thirds of any window and less than 15 percent of it is covered? **OK**

The End of an Eminent Domain Error

Pfizer Closes in New London, Conn.



Land that once housed a neighborhood of homes in New London, Conn., now lies barren.

By Scott Bullock

In 2001, Pfizer, Inc., moved to New London, Conn., as part of a project that involved massive corporate welfare and led to the abuse of eminent domain, culminating in the landmark U.S. Supreme Court case, *Kelo v. City of New London*. This past November, however, Pfizer announced it will close its New London research and development headquarters. This marks the end of an eminent domain error.

New London created a redevelopment plan that gave land to Pfizer at a nominal cost and provided free environmental cleanup to the site. The plan also called for redevelopment of an area called Fort Trumbull, a working-class neighborhood adjacent to the Pfizer headquarters. It housed approximately 70 to 80 homes, as well as a few small businesses and an abandoned Navy base. The plan called for this area to be replaced by an upscale hotel, office buildings and new housing. This redeveloped area would “complement” the new Pfizer facility, leading to increased taxes and job growth for New London—or so the city promised. The state agreed to provide \$78 million for the project. Pfizer received an 80 percent tax abatement for 10 years.

Keep in mind, when the five justices of the U.S.

Supreme Court ruled against our clients—holding that taking property for “economic development” does not violate the U.S. Constitution’s Takings Clause—the justices stressed that there was a plan in place, and that so long as lawmakers who looked to use eminent domain for someone’s private gain had a plan, the courts would wash their hands. Now, nearly five years after the redevelopment scheme passed constitutional muster, the plant that was the magnet for the development is closing its doors just as its tax abatements expire. The very land where Susette Kelo’s home once stood remains barren—home to nothing but feral cats, seagulls and weeds.

For years, the disastrous Fort Trumbull project will be Exhibit A in demonstrating the folly of government plans that involve corporate welfare and abuse eminent domain for private development. Hopefully, city officials, planners and developers will take the Fort Trumbull experience to heart and pursue revitalization efforts only through voluntary, not coercive, means. Until they do, IJ will stand with property owners nationwide to fight for what is rightfully theirs. ♦



Scott Bullock is an IJ senior attorney.



IJ clients (from left) **Kim Sjostrom**, **Brad Sonnentag**, **Robert McCaughtry** and **Rebecca McCaughtry** are challenging the city of Red Wing, Minn., which wants to inspect rental homes without probable cause.

IJ 3, Red Wing 0 In Property Rights Battle

By Jason Adkins

IJ Minnesota won another victory in its battle to protect Minnesotans from unconstitutional searches of their homes and properties.

On December 23, a state district court concluded that the city of Red Wing's rental housing inspection program violated the U.S. Constitution because it did not "contain reasonable standards controlling the use and dissemination of the data collected during [rental] inspections to adequately protect the privacy of the citizens subject to inspection." Furthermore, the court found that "the scope of the [rental inspection program] is overly broad in that it grants inspectors too much discretion in deciding whether or not to search cabinets and closets." As a result, the court denied for the third time the city's application for an administrative warrant.

This ruling vindicates what IJ attorneys and our clients—courageous landlords and tenants standing against Red Wing's program—have known all along: Inspection programs that authorize invasive searches without any evidence of a problem or code violation in a particular home are unconstitutional.

After three rounds, landlord and IJ client Robert McCaughtry has had enough of Red Wing's seemingly endless efforts to violate his rights as well as the rights of his tenants: "What will it take for the city to end this foolish program? Forcing its way into people's homes without any evidence of a problem or code violation is outrageous."

Unfortunately, the court said people like McCaughtry could not file their own lawsuit to protect themselves from invasive searches until a warrant was actually granted. This is wrong because it allows cities like Red Wing to play constitutional trial-and-error while people are left fighting a never-ending procession of warrants. Landlords and tenants should be able to challenge an unconstitutional law from the moment it hits the books.

IJ will appeal that portion of the decision that leaves our clients in constitutional limbo, and will continue to fight for the rights of all homeowners and renters to be free from unreasonable searches. Hopefully, this case will be a lesson to other cities before they try to arbitrarily trample on the private property of their citizens. ♦



Jason Adkins is an IJ Minnesota Chapter staff attorney.

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To join or find out more about the Merry Band of Monthlies giving program, please call Mary McPherson at (703) 682-9320 ext. 239 or email her at mmcpherson@ij.org. ♦

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To sign up, send an e-mail to Melanie Hildreth, IJ's director of donor relations, at mhildreth@ij.org. ♦

IJ's Constitutional Law Fellowships: Harnessing Young Legal Talent in the Fight for Liberty

By Sarah Eisenhandler

When law firms recently decided to defer incoming associates—paying them to work at nonprofits for a period of time before they are brought onboard fulltime during this economic downturn—the Institute for Justice's fight for liberty reaped the reward and got an infusion of new and dedicated talent. Starting this past August, IJ's inaugural class of Constitutional Law Fellows—eight recent law school graduates who pledged to work for IJ for a period ranging from ten weeks to one year—began their legal careers "The IJ Way." Confident that IJ would provide me with exceptional training opportunities and substantive legal work, my law firm generously offered to sponsor my year-long fellowship at IJ's headquarters in Arlington, Va.

As a strong supporter of IJ's mission, I was anxious to get involved in its everyday battles for individual liberty. The fellowship program made sure I hit the ground running; within days, I was part of IJ's legal team fighting against the federal ban on compensating bone marrow donors. Fresh out of law school, I was given this unique opportunity to help abolish unnecessary governmental regulations.

All of the fellows have played important and exciting roles in the development and litigation of IJ's cases. Assisting with preparation for court hearings in IJ's First Amendment challenges to restrictive campaign-finance laws, helping to launch IJ's lawsuit against Virginia's misguided attempt to license yoga instructors, and drafting briefs in IJ's fight to save the Community Youth Athletic Center in National City, Calif., from eminent domain abuse are just a few examples.

Indeed, fellows are expected to participate in decision making and trial preparation just like any other member of the famed "Merry Band of Litigators." And, just as expressing a certain esprit de corps is a



IJ Constitutional Law Fellow **Sarah Eisenhandler** works to advance liberty.

characteristic of all of IJ's litigation efforts, it is also a part of the fellows program. We do not hesitate to help each other out with our projects, and we genuinely enjoy working with each other toward the common goal of increasing liberty. I believe that the strong friendships I have formed with the other fellows will endure throughout our legal careers.

What began as an unexpected post-graduate plan turned out to be a fantastic jumpstart to my new legal career. In its inaugural year, the Constitutional Law Fellows program has provided a terrific way for new lawyers to gain meaningful experience while working alongside talented and dedicated public interest lawyers. The program is proving to be an effective expansion to IJ's continuing fight for individual freedom.

IJ is now accepting applications for 2010-2011 Constitutional Law Fellows. To apply, email a cover letter, resume and a legal writing sample to IJ's Special Projects Manager Krissy E. Keys at kkeys@ij.org. ♦

Sarah Eisenhandler is an IJ constitutional law fellow.



IJ Senior Attorney **Steve Simpson** shares his insights into the First Amendment with law students.

Know A Freedom-Minded Law Student? Suggest They Apply For IJ's 2010 Conference

The Institute for Justice's 2010 Law Student Conference will be held July 23-25 at George Washington University in downtown Washington, D.C.

The annual conference covers the Institute for Justice's four litigation pillars: free speech, school choice, economic liberty and private property rights. The legal and political philosophy that undergirds IJ's legal efforts as well as the tactics of public interest law we practice are taught alongside other topics rarely discussed in law school, such as natural rights theory, cutting-edge constitutional theories, media relations and the use of social science research in public interest law.

If you know of first- or second-year law students who are freedom-minded, encourage them to visit www.ij.org/students for more information and to apply.

The conference application deadline is March 15, 2010.

For more information, contact IJ's Special Projects Manager Krissy E. Keys at kkeys@ij.org. ♦

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About the publication

Liberty & Law is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication, activism and research, 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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IJ Attorney Wesley Hottot: “They can't constitutionally regulate something that is safe. There has to be some threat to the public health or safety before the government can force an entrepreneur to get a license.”



New York Times.com
Ian Ayres on the Freakonomics Blog

“[The National Organ Transplant Act’s] criminal prohibition of donor compensation has now just been challenged in a lawsuit filed by the Institute for Justice I’m not sure if NOTA is unconstitutional. It’s pretty hard to convince a court that a statute is unconstitutionally irrational. But I’m pretty sure the United States would be a better place if MoreMarrowDonors.org could offer college scholarships without ending up in jail.”

Reason Magazine
Reason Staffers Pick The Best and Worst Things of The Decade

Damon Root: “Best: The Institute for Justice. With so much attention focused on the horror show that we call the federal government, it’s easy to forget about the many ways that state and local governments steal private property, abuse their regulatory authority, and interfere with every American’s right to earn an honest living. That’s where the Institute for Justice (www.ij.org) comes in. Over the past decade, this public interest law firm has racked up a series of landmark victories against eminent domain abuse, unnecessary occupational licensing, and other restrictions on economic liberty. Thanks to IJ’s efforts, we’re all living in a much freer place.”

Richmond Times Dispatch

“The case IJ and the yoga instructors will make is straightforward: Face-to-face teaching is a form of free speech, as much as a textbook or videotape is. Government needs a compelling state interest in order to regulate speech—and the bar that determines what qualifies as ‘compelling’ is set very high. The commonwealth’s rationale for interfering with yoga teacher-instruction doesn’t clear it. Pity the poor state officials stuck with the task of justifying the regulations.”

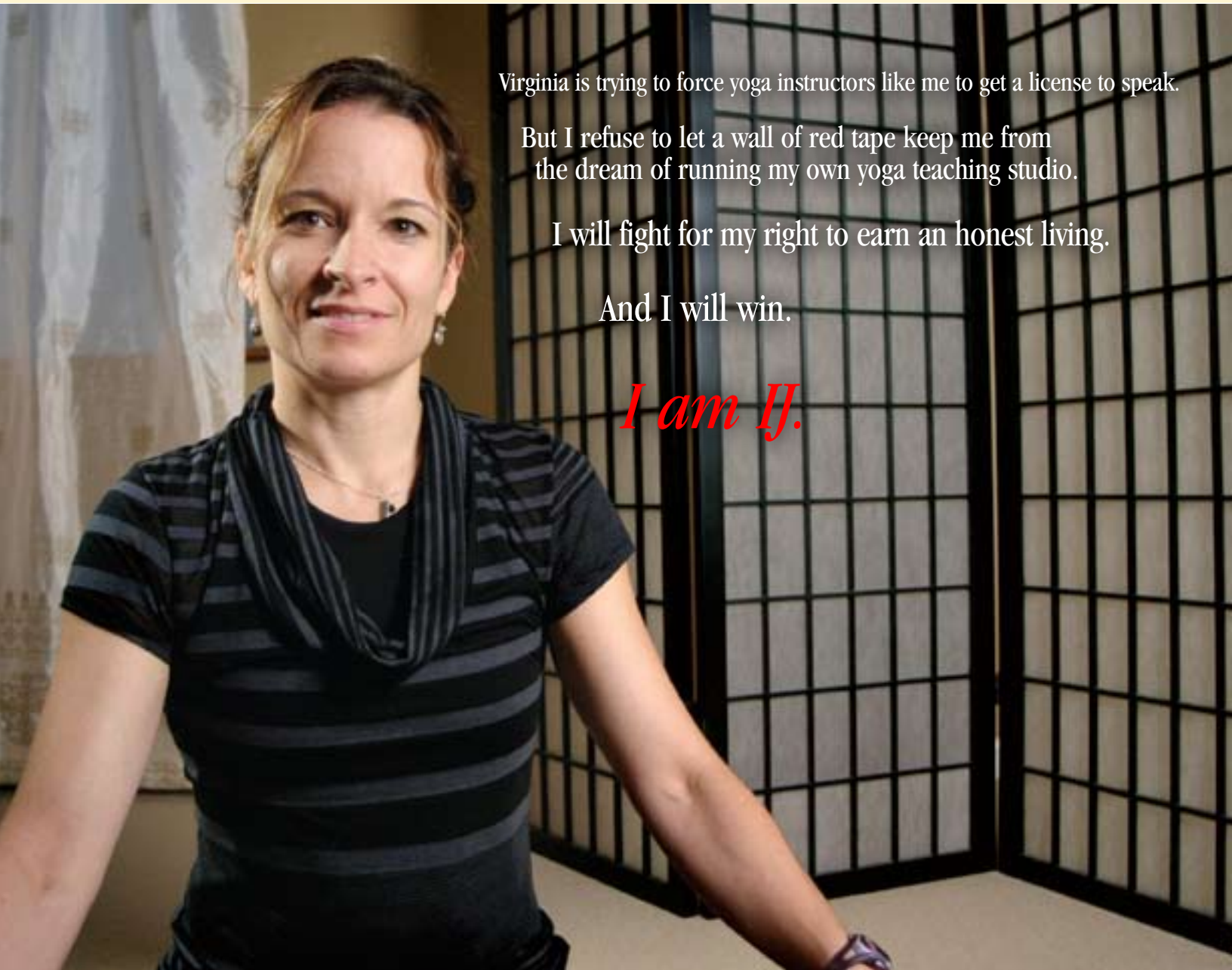
**“[IJ is] a nonprofit
libertarian law firm
on a mission to block
state governments
from overregulating.”**

—The Wall Street Journal



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Virginia is trying to force yoga instructors like me to get a license to speak.

But I refuse to let a wall of red tape keep me from
the dream of running my own yoga teaching studio.

I will fight for my right to earn an honest living.

And I will win.

I am IJ.

*Julia Kalish
Leesburg, Virginia*

www.IJ.org

*Institute for Justice
Economic liberty litigation*