

Liberty & LAW

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By Bert Gall

It sounds obvious: The First Amendment protects the right of ordinary citizens to talk about politics. But that has become a foreign concept to Congress and state legislatures, which keep eroding that right through so-called “campaign finance” laws. Unfortunately, these laws have moved well past the realm of regulating the financing of politicians’ campaigns and into the realm of regulating—and ultimately silencing—the speech of almost anyone who wants to talk about politics.

But the Institute for Justice is fighting to reverse that trend in courts across the country—and we are winning significant battles.

In May of this year, we won our legal challenge against Florida’s “electioneering communications”

law, the most restrictive regulation of political speech in the nation. That law regulated all groups—including civic clubs, churches, neighborhood associations, policy organizations and charities—if they merely mentioned the name of a candidate or a ballot issue in communications like websites, fliers and newsletters. Under the law, these groups had to register with the government before speaking, reveal information about their donors and report every dollar that they spent or received. If not, they faced fines or even criminal prosecution.

Understandably, the threat of either submitting to intrusive regulation or suffering penalties chilled the speech of groups throughout Florida, including IJ’s clients. The Broward Coalition, homeowner and condo associations and community groups, could

FL Political Speech continued on page 3

Curtains for the Interior Design Cartel?



IJ clients **Pat Levenson** and **Eva Locke**, left of IJ Senior Attorney **Clark Neily**, join other interior design activists at the launch of the Florida case. **Levenson** and **Locke** are featured in the case video available on the IJ website at: www.ij.org/FLinteriordesign.

By Clark Neily

For three years, the Institute for Justice has been locked in a battle with an elitist faction of the interior design industry that seeks to legislate competitors out of business. This is among the most aggressive cartelization efforts IJ has ever encountered, and it represents a textbook example of “public choice theory”—where government officials act as agents for special interests—run riot. But with our latest case in Florida, launched on May 26, we are poised to deliver a knockout blow to the entire interior design cartel.

Florida is the crown jewel of the interior design cartel’s decades-long, multi-million-dollar national lobbying effort. Since 1994, it has been a *crime* in Florida for anyone but state-licensed interior designers to provide a “consultation,” “study” or “drawing” about the “nonstructural interior elements” of any commercial building or structure. Florida has thus criminalized entire industries such as office furniture suppliers, companies that sell commercial filing and storage systems, retail business consultants, product display companies, and even corporate art consultants—all of which involve consulting with customers about equipment, furnishings and other “interior elements” of their buildings. They are not remotely the practice of interior design, properly conceived.

As they say in late-night infomercials, “But wait—there’s more!” In 2002, amid complaints about lax enforcement from industry insiders, the state outsourced investigation and enforcement of its interior design law to a hired-gun private law firm in Tallahassee that gets half-a-million dollars a year to go after unlicensed interior designers with a vengeance. The law firm sends out hundreds of cease-and-desist orders

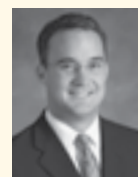
every year threatening entrepreneurs with fines of up to \$5,000 for

supposed violations of Florida’s interior design law, including letters to those people who have done nothing more than accurately advertise their interior design services.

Of course, it is perfectly clear by now that interior design laws have nothing to do with protecting public health or safety, as is the case with most such licensing laws, and everything to do with promoting the anti-competitive agenda of cartel members. As documented in IJ’s latest strategic research study, *Designed to Exclude*, this not only results in higher prices for consumers, but it also disproportionately excludes minorities and older career-switchers from the industry because they are less likely to possess the necessary academic credentials. This is economic protectionism at its very worst and an all-out assault on the very essence of the American Dream.

Enter the Institute for Justice. After a three-year campaign of painstaking litigation, strategic research, grassroots activism and effective media relations, we are now ready to bring this cartel’s actions to light in the Sunshine State and bring that much more freedom back to the Land of Opportunity.◆

Clark Neily is an Institute senior attorney.





IJ Senior Attorney **Clark Neily** at an interior design rally this spring in Texas.

Victory in Texas!

After two years and a trip to the Fifth U.S. Circuit Court of Appeals, we are pleased to declare victory over a Texas law that had barred interior designers from truthfully telling others that is what they do for a living. On April 22, 2009, the Fifth Circuit handed down a decision that systematically rejected each of the state's spurious arguments and directed the lower court to immediately enjoin the law pending final resolution of the case. As the Fifth Circuit crisply explained, Texas' interior design law "prohibits significant truthful speech," which—and this seems to be news to bureaucrats in the Lone Star State—is blatantly unconstitutional.

Seeing the handwriting on the wall, the state quickly surrendered by amending its interior design law to eliminate the constitutional defect, just as New Mexico and Oklahoma did (and Connecticut is attempting to do) in response to the Institute for Justice's lawsuits there. The interior design cartel is already making noises about launching a fresh assault on occupational freedom when the Texas Legislature reconvenes in 2011, and we look forward to giving them another drubbing if they do!◆



IJ vindicated the free speech rights of Florida clients **Charlotte Greenberg** and **Kristina Rasmussen**. With them is IJ Senior Attorney Bert Gall.

FL Political Speech continued from page 1

not print a single page in its newsletter about ballot issues that would affect its members. The University of Florida College Libertarians could not hand out a pamphlet about their opinions on ballot issues nor could they advertise when a candidate came to campus to speak with them about her views. And the National Taxpayers Union could not include commentary about Florida's ballot issues in its national guide concerning how initiatives and referenda will impact taxpayers.

In last October's issue of *Liberty & Law*, we reported that Judge Stephan P. Mickle of the U.S. District Court for the Northern District of Florida granted the Institute for Justice's motion for a preliminary injunction against the enforcement of the laws in time for November's election. Just last month, the court issued a final decision that permanently prevents the state from enforcing the laws. In his decision, Judge Mickle wrote that "[w]hile it is true that the legislature has the power to regulate elections, it does not have the power to regulate purely political discussions about elections."

He could not be more right.

Elections are the most important time to talk about political issues because that is when most people pay attention to those issues. Yet Florida raised the cost of speech so high that Floridians needed a lawyer before they could share their views. Although professional political operatives can hire an army of lawyers to cut through red tape in order to speak about important issues, the same is not true for the rest of us.

Of course, as the Founding Fathers recognized, political speech is too important to be left only to politicians. Unfortunately, Florida and the other 14 states with "electioneering communications" laws have not come to grips with that fact. But, as the court's decision shows, those laws are living on borrowed time. We will build upon this victory to ensure that politicians can no longer limit ordinary Americans' political speech under the pretense of "reforming" campaign finance.◆

Bert Gall is an Institute senior attorney.



Despite Legal Setback, School Choice Secured For Arizona Special Needs Kids

By Tim Keller

After years of intense litigation defending all four of Arizona's school choice programs, significant decisions were released in March and April in each of these cases. The decisions ranged from gratifying to disappointing to heartbreaking.

The most encouraging development was the Arizona Court of Appeals' March 12, 2009, decision in *Green v. Garritt* upholding Arizona's Corporate Scholarship Tax Credit Program. In the decision, Judge John Gemmill rejected the ACLU's arguments and emphasized that tax credit programs "pass constitutional muster." The decision is good news for the more than 2,000 Arizona children who rely on the scholarships to attend high-performing private schools.

Although the ACLU will most certainly appeal the decision, there is reason to believe, based on prior precedent, that the Arizona Supreme Court will not take the case. If the Court declines to hear the case, it would put an end to the legal challenge to the corporate tax credit program.

The most gut-wrenching of the school choice decisions came on March 25, 2009, when the Arizona Supreme Court issued its ruling in *Cain v. Horne*. In its decision, the Court declared that Arizona's innovative state-funded voucher programs for special needs and foster children violate a provision of the Arizona Constitution that prohibits appropriations of state funds "in aid of" private and religious schools.

The Court made a fundamental error because voucher programs do not aid private or religious schools. Rather, vouchers provide aid to parents and children. Providing financial assistance to parents to help them pay tuition is no more "aid" to private schools than giving food stamps to indigent families to buy food is aid to grocery stores. Most maddening is that the ruling leaves no option for further appeals. Of course, that does not mean we gave up the fight.

The day after the decision came down, IJ began working closely with our school choice allies such as the Alliance for School Choice, the Center for Arizona Policy and the Goldwater Institute to draft Lexie's Law, named after

"Lexie's Law is a new corporate tax credit that will allow Arizona's existing scholarship tuition organizations to raise additional private donations to fund tuition scholarships for special needs and foster children."

Lexie Weck—daughter of IJ's lead client in *Cain*. Lexie's Law is a new corporate tax credit that will allow Arizona's existing scholarship tuition organizations to raise additional private donations to fund tuition scholarships for special needs and foster children. Our hard work paid off when Arizona's new governor, Jan Brewer, convened a special



Clockwise from left, parent **Victoria Zicafoose** with daughter, **Sarah**, and IJ client **Andrea Weck** with daughters **Lexie**, **Charlie** and **Samantha** look on as Arizona Gov. **Jan Brewer** signs Lexie's Law, named for Lexie Weck.

session urging the Legislature to pass Lexie's Law. The Legislature wasted no time and passed Lexie's Law in only two days.

While the *Cain* ruling devastated many families, the governor and the Legislature have restored their hope. For many of the children who had received vouchers, their private schools were the first schools to ever meet their unique educational challenges head-on.

We are confident that Arizona's school tuition organizations and the business community will move quickly to ensure that the great strides these children have made toward improving both their academic and social skills will not be lost.

The *Cain* decision does have two positive aspects. First, the Court allowed the children relying on the programs to finish the school

IJ Creates City Studies To Show Burden of Bureaucracy

year. Second, the Court reaffirmed its prior ruling in *Kotterman v. Killian* that school choice programs funded by tax credits are constitutional.

In yet a third case, the Ninth U.S. Circuit Court of Appeals in *Winn v. Garriott*, decided in April to reinstate a legal challenge to Arizona's Individual Scholarship Tax Credit Program that had been previously thrown out of court as frivolous. School choice opponents are trying to tout the decision as a broad win, but the decision is very narrow and did not halt or otherwise interrupt the program. The ruling also does not question the constitutionality of tax credit programs generally, but rather calls into question Arizona's decision to provide tax credits for donations to certain scholarship tuition organizations that provide tuition grants only to religious schools.

The Ninth Circuit's concern is that the structure of Arizona's program may limit parental choice. We believe there are no constitutional flaws in the program and will continue to defend it as the case moves forward. But regardless of the final outcome, Arizona's tax credit programs will continue to grow and flourish even if some scholarship organizations have to alter the way they award scholarships.

In all, the decisions stack up to a win, a loss (turned into a legislative victory) and a draw. Yet we remain resilient in the face of adversity and will keep fighting for school choice because all parents deserve the right to choose the school that offers their child the best available education, regardless of whether it is a public or private school. ♦

Tim Keller is the IJ Arizona Chapter executive director.

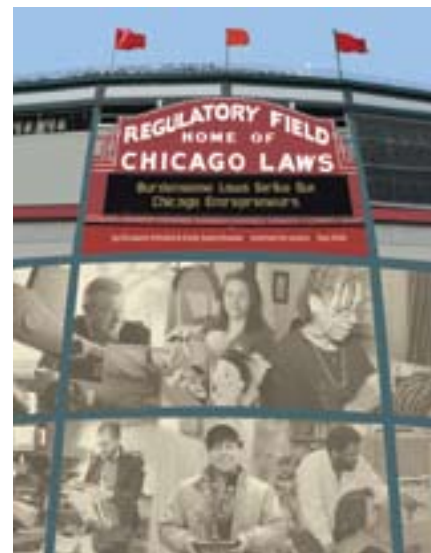


By Chip Mellor

The Institute for Justice's campaign to protect economic liberty continues roaring ahead with the filing of our challenge to Florida's interior design cartel (see page 2) coming on the heels of our lawsuit filed on behalf of entrepreneur Erroll Tyler who is taking on Boston's amphibian tour-boat cartel. Look for more such cases in the coming months.

In the meantime, this spring IJ is launching another essential facet of our economic liberty campaign. Institute attorneys will travel to Milwaukee, Phoenix, Atlanta, Houston, Denver, Newark, Miami, Los Angeles and the District of Columbia to document the real-world impact occupational licensing laws have on urban entrepreneurship. Our attorneys will dig into city hall records and travel throughout these cities to meet with struggling entrepreneurs afflicted by abusive licensing laws. The studies will provide a unique perspective on the proliferation and prevalence of laws that arbitrarily restrict entrepreneurship. In doing so, they will enable us to identify compelling clients and new litigation opportunities, and provide a national context for a major media and public education campaign. At a time when government's increasing intrusions into the private sector are reaching unprecedented levels, our city studies will be part of the Institute for Justice's effort to offer a counter-narrative that showcases the vital importance of entrepreneurship and free markets.

IJ just launched the first of these studies with *Regulatory Field: Home of Chicago Laws*, co-authored by Elizabeth Milnikel, director of the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School, and Emily Satterthwaite, the IJ Clinic's assistant director. As *U.S. News & World Report* col-



This report is available for download at www.ij.org/ChicagoCityStudy.

umnist Matt Bandyk recently reported, "Is Chicago the worst city in America to start a business? My hunch is that it is not, and if one investigated other cities with as much detail as IJ has investigated Chicago, one would find similar burdens on entrepreneurs." IJ expects to show just that with the nine studies we have underway.

Because courts have gutted constitutional protection for economic liberty, it is no surprise that occupational licensing laws have increased, but the magnitude (nearly 30 percent of all Americans need a license to work) and the reach into totally innocuous occupations (selling flowers or massaging horses) shows just how vital it is to turn back this tide of oppressive laws. Our strategic litigation and public education campaigns are uniquely capable of achieving this goal. Our city studies will add a potent weapon to our arsenal. ♦

Chip Mellor is IJ's president and general counsel.



From IJ Client to

American Folk Hero

IJ client **Susette Kelo** has crisscrossed the nation to share her story, which is featured in the new book, *Little Pink House*.

By **John E. Kramer**

Our national history is a history of folk heroes. From Betsy Ross and Harriet Tubman to Clara Barton, determined women have stood up to tyranny and battled great odds to do what was needed to improve the lives and lot of those around them.

So it is with Institute for Justice client Susette Kelo, who, with the publishing of the dramatic tale, *Little Pink House: A True Story of Courage and Defiance* (Grand Central Publishing), has entered the realm of American folk heroes. Susette's fight to save the only home she ever owned became a rallying point for those who believe in property rights and constitutional constraints on government power.

Across the nation, think tanks dedicated to the fight for freedom have joined with IJ to promote the book, its heroine and its author, Jeff Benedict. Kicking off the tour was the Texas Public Policy Foundation (TPPF), which invited Susette, Jeff and IJ Senior Attorney Dana Berliner to launch TPPF's briefing with the Texas Legislature to call for eminent domain reform in the Lone Star State. The Texas Legislature passed a constitutional amendment on eminent domain that will be voted on by the public in November.

The Cato Institute hosted a forum with Susette, Jeff and IJ Senior Attorney Scott Bullock—an event that C-SPAN's *Book TV*

later aired. Moderated by Cato's Center for Constitutional Studies Director Roger Pilon, the trio of guests vividly recounted Kelo's battle from the day she first saw the home until it was taken down board by board and reconstructed as a monument in downtown New London. The home now stands as a marker for the families who stood and fought for what was rightfully theirs.

The *Little Pink House* tour moved on to Boston, where the Pioneer Institute hosted an event in the historic Union Club. Explaining the need for eminent domain reform in places like Massachusetts—one of only seven states that has yet to pass reforms—is a continuing effort by State Policy Network organizations like Pioneer and IJ. Such relentless advocacy is one of the reasons 43 states have passed stronger property rights protections in the mere four years since *Kelo* was handed down.

Susette and Jeff then flew to Michigan where the Mackinac Center for Public Policy used their *Little Pink House* event as the center-piece of a major local media expedition and followed it with a bus tour of local areas where property rights remain under assault.

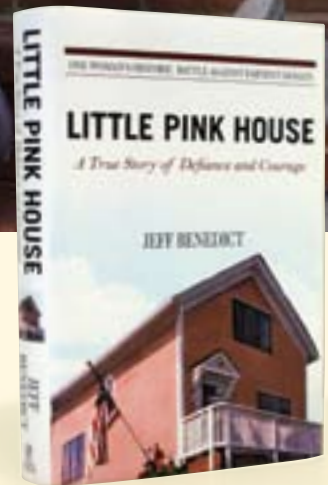
The Evergreen Freedom Foundation launched its Property Rights Center at a packed gala luncheon where Susette, Jeff and I recounted the story behind *Little Pink House*. EFF's new Property Rights Center seeks to

educate and activate citizens in Washington in the fight to protect private property against unwarranted government encroachment.

Phoenix was the latest stop on the tour, where the Goldwater Institute and the Institute for Justice co-hosted a lunchtime forum for Jeff and Goldwater Institute Litigation Director Clint Bolick with more than 120 guests. IJ earned one of its most significant property rights victories in Arizona when we successfully defended the rights of brake shop owner Randy Bailey, whose land was targeted by the city of Mesa to make way for an expanded Ace Hardware store.

If you have not yet read *Little Pink House*, do yourself a favor and read it; learn how this kind of abuse of power can take place in America. And share Susette's story with others. America needs heroes like her now more than ever. Isn't it nice that this hero fights for our constitutional rights? ♦

John E. Kramer is the Institute's vice president for communications.





IJ Senior Attorney **Bert Gall** with the Clarksville Property Rights Coalition, an IJ client and grassroots group. IJ just turned back a lawsuit by developers bent on silencing the group's criticism of eminent domain abuse.

Right to Protest Eminent Domain Abuse

VINDICATED IN TENNESSEE



By Bert Gall

The right to protest eminent domain abuse is alive and well in Tennessee.

That is the result of one of our recent First Amendment victories. In a decision issued in March 2009, Judge C.L. “Buck” Rogers of the Circuit Court for Sumner County, Tenn., dismissed the defamation lawsuit brought by Richard Swift, a developer who is a former member of the Clarksville City Council, and Wayne Wilkinson, another developer, against the Clarksville Property Rights Coalition (CPRC).

The CPRC is a group of home and business owners who came together to protest Clarksville's controversial redevelopment plan, which authorizes the use of eminent domain for private development. Swift and Wilkinson sued the group for defamation because it criticized them for using their political clout to advance a plan that served their self-interests. Specifically, the CPRC noted in a newspaper ad that both Swift and Wilkinson are developers and said, “This Redevelopment Plan is of the developers, by the developers, and for the developers.”

Just six days after the ad ran, Swift and Wilkinson filed their lawsuit, in which they asked the court for “damages” in the amount of \$1 million. Their defamation claim was clearly frivolous: Examples of defamation include accusing, without evidence, someone of committing a murder or having an affair—not engaging in

criticism of individuals' public political activities. But even though it was meritless, the lawsuit would have drained the CPRC members' limited resources by forcing them to hire a lawyer and spend tens of thousands of dollars in legal fees. We immediately recognized the lawsuit for what it was: an attempt to silence the redevelopment plan's opponents through frivolous, retaliatory and costly litigation rather than respond to legitimate—and constitutionally protected—criticism in public debate. To protect the CPRC's First Amendment right to protest eminent domain abuse, IJ quickly stepped in to defend the CPRC and filed a motion to dismiss the case.

Judge Rogers granted our motion and tossed the case out of court. He noted, “[d]ebate on public issues shall be uninhibited [and] wide open . . .,” and then ruled that “[a]ccusing a public official or public figure of using their political influence to obtain a benefit for others or themselves or favoring their supporters is not defamation.”

The court's decision dismissing the lawsuit is significant for several reasons. First, it removed the chilling effect that the lawsuit had on the CPRC's speech. No longer does the threat of a million-dollar judgment lurk in the background each and every day for our clients.

Second, in the wake of the infamous *Kelo* decision, which gutted the protection that the Fifth Amendment's “Public Use” clause

was intended to give to home and business owners, grassroots activism against eminent domain abuse has become property owners' best defense against that abuse. Much of that activism has been successful. However, politicians and developers who abuse eminent domain have reacted by filing frivolous defamation lawsuits—in places like Clarksville; Renton, Wash.; and Freeport, Texas—to suppress the speech of citizens who oppose the abuse of eminent domain. The outcome of this case—dismissal at the earliest possible stage of the litigation—makes this intimidation tactic much less attractive.

Third, the decision sets forth an important rule of law that other home and business owners in Tennessee and the rest of the country can use as a defense to frivolous defamation lawsuits: Criticizing the abusers of eminent domain for acting in their self-interest is not defamation, and politicians and developers who claim otherwise should have their lawsuits immediately dismissed. This rule of law is already helping others, as we are invoking it in our battle to defeat a similar lawsuit filed by Dallas developer Walker Royall against Carla Main and Roger Kimball, the author and publisher, respectively, of *Bulldozed*, a book that criticized Royall for abusing eminent domain in Freeport. (For more on that case, see the cover story of our February issue of *Liberty & Law*.)

The U.S. Supreme Court has long recognized that, under the First Amendment, “[o]ne of the prerogatives of American citizenship is to criticize public men and measures.” Just as we did in Clarksville, we will continue to protect this prerogative. After all, it gains increased importance for home and business owners when the public men are politicians and developers, and the public measure is a law authorizing the abuse of eminent domain. ♦

Bert Gall is an Institute senior attorney.



IJ Clinic on Entrepreneurship

Celebrates its 10th Anniversary

Connecting Law Students with Low-Income Clients

By Elizabeth Milnikel

The Institute for Justice Clinic on Entrepreneurship's growing legacy became visible this past May as generations of clients and students crowded together to celebrate the IJ Clinic's tenth anniversary. For the past decade, the IJ Clinic has operated out of the University of Chicago Law School, uniting law students—who needed practical legal experience—with low- and middle-income entrepreneurs—who could not otherwise afford legal help, but who desperately needed the guidance to create a private sector business.

The result? New businesses that continue to grow, even in this tough economy.

The atmosphere of the tenth anniversary celebration was festive and familial. An inner-city shoe store owner embraced a former IJ Clinic student who is now a tax attorney at one of the biggest firms downtown. A law student dined with the owner of a limousine company, who explained how much it meant to receive his corporate charter with help from the IJ Clinic back in 2000: He took his small children down

Above, IJ Clinic clients share their stories with IJ Clinic Director **Beth Milnikel**. Right, client **Denise Nicholes** explains her business to attendee **Fred Eck**. Center, client **Julie Welborn** speaks on the panel moderated by Beth. Far right, client **Shawnimals** hosted one of many displays at the 10th Anniversary reception.



to the Capitol to pick up the papers himself. The founders of Tasty Delite presented IJ President and General Counsel Chip Mellor with a package of their latest product—a kit for instant sweet potato pie. Carwash owner Larry Young—barely recognizable without his customary ball cap and overalls—got right to business when he spotted his student-lawyers, who were excited to learn he had received some important documents back from the state. Even in the midst of the festivities, students and clients were hard at work expanding entrepreneurship in Chicago.

The evening culminated with a panel presentation of three current IJ Clinic clients. They spoke eloquently about their struggles to achieve their dreams. Two, for the moment, have been forestalled by government interference. Ken Coats, for example, aimed to help people in his community who can't get jobs because they have arrest records, even if they were never convicted of any crime. They might be eligible to get their records expunged, and Ken learned the ins and outs of that complicated process. But the Illinois Attorney General ordered Ken to stop helping his customers, because it constituted an "unauthorized practice of law." He said he was utterly lost when he was summoned by the AG's office, and the IJ Clinic helped him find his way out. With the IJ Clinic's help, Ken has redesigned his business, which keeps growing.



IJ President and General Counsel **Chip Mellor** addresses the crowd of more than 120 attendees who came to celebrate the IJ Clinic's 10 years of helping entrepreneurs achieve their dreams of economic liberty.

Esmeralda Rodriguez spoke next. Esmeralda created programs for toddlers at the Park District field house in her neighborhood. She decided to build her own business where she could provide stimulating playtime for small children accompanied by parents and caregivers. Despite the business's commendable mission, the city is requiring her to get a "Public Place of Amusement" license—the same license strip clubs or stadiums must secure. Her savings are disappearing as she and her IJ Clinic legal advocates wrestle with the city's convoluted, onerous requirements, including a public notice to neighbors so they can object to her venture. The entire room choked up as she described her dream of providing activities for children in the neighborhood where she grew up, whose families could not afford day camps and other luxuries.

Finally, entrepreneur Julie Welborn painted a picture of the charming café she built with her business partner Denise Nicholes. (Their story was told in detail in *Liberty & Law*, October 2007, www.ij.org/PerfectPeace.) Their customers regularly ask why they opened such a classy and clean business in their overlooked neighborhood, instead of someplace fancier.



Julie responds, "Why not? Seventy-Ninth Street deserves a place like this, too."

Julie, Esmeralda and Ken all described the fundamental role of the entrepreneur. They spotted ways to serve customers that customers would really appreciate. It is absurd when government works to prevent businesses like these from opening or succeeding rather than give them the freedom and space to flourish.

Building off these three inspiring stories of resilience and passion, I announced to our assembled friends that IJ Clinic Assistant Director Emily Satterthwaite and I released a report capturing these and many more similar stories. Our guests were the first to receive copies of the report, called *Regulatory Field: Home of Chicago Laws*. Throughout the week, Emily and I conducted interviews with Chicago-area media, such as Chicago Public Radio's top local program *Eight Forty-Eight*, retelling the stories of these entrepreneurs who want nothing more than the right to earn an honest living in the trade of their choice free from unnecessary, unwise and often unconstitutional government constraints.

We, like the entrepreneurs around the room, have a dream too. We will spend another 10 years . . . another 20 . . . or even another 50 years if that is what it takes continuing to support Chicagoans' passionate efforts to serve customers with their talents and their labor. And we will do whatever we can to sweep—or, if necessary, bulldoze—absurd, counter-productive legal restrictions out of their way. ♦

Beth Milnikel is the IJ Clinic director.





Texas property owners **Wright Gore III**, left, and **Harper Huddleston** are among many outraged citizens who have recently joined with IJ to protest government power run amok.

Three Rallies and Three Messages Delivered Loud and Clear

By Matt Miller

IJ uses many tools to communicate with legislators about bills that are important to our cases. Often, a face-to-face meeting is the best way to deliver a message. Other times, we will use campaigns that involve letter writing, email or the telephone to demonstrate broad support (or outrage) on a particular issue.

But for that old-fashioned “feel good” factor, nothing beats a rally at the Capitol. Rallies give people a chance to be a part of something important. They are a visual and audible statement that are difficult to ignore, and the media loves them, expanding your message’s reach.

Texas has been a hotspot for IJ rallies lately because the Texas Legislature only meets for 180 days every two years, meaning that focus and message discipline are at a premium. “Free to Design” was our first rally, where independent interior designers gathered at the Capitol in Austin to fight

against an interior design “practice act” that would force them to obtain a government-issued license to provide interior design services in Texas. Thanks in large part to the rally—spearheaded and led by IJ’s Director of Activism and Coalitions Christina Walsh—and the personal outreach that followed, the practice act died in committee and has not been heard from since. The rally generated plenty of media buzz, including an excellent story on Austin’s NBC affiliate, in which one of the practice act’s biggest proponents admitted that, after searching for two years, she could not provide a single example of public harm from unlicensed interior design. IJ quickly turned this admission into a YouTube clip that helped turn legislative sentiment against the practice act.

Our second Texas rally called for eminent domain reform. Texas passed a weak response to *Kelo* in 2005, but stronger legislation in 2007 was vetoed by the governor. This year was our third effort, and IJ did everything we could do to make sure

Texas got it right this time. Our rally brought Texans from across the state who are living under the threat of eminent domain abuse, along with two state legislators and a host of property rights activists.

Once again, the media was all over the story. The Associated Press picked it up, and the rally was covered in newspapers and by television stations around the state.

We were only partially successful. Due to last-minute changes in the law, voters will vote in November on a constitutional amendment that still leaves many unresolved questions about eminent domain for private gain in Texas. More reform and litigation across Texas will still be needed to ensure property rights are protected.

A third rally took place just across the Red River in Oklahoma. Christina Walsh returned to the Midwest to lead a group of horse teeth floaters and horse owners in a rally calling for legislation in response to the arrest of a horse teeth floater who practiced his age-old craft without a veterinary



IJ Texas Chapter Executive Director **Matt Miller**, above, and IJ interior design client **Vickee Byrum**, call for limits on government power in the Lone Star state.

license. That rally generated news stories all over Oklahoma and put major pressure on the Legislature to fix the problem and prevent future arrests. And our work has already yielded great impact: Oklahomans who are not veterinarians will soon be able to float horses' teeth without risking felony charges, now that Gov. Brad Henry signed S.B. 452 into law in May. That bill strips a 2008 amendment to the state's Veterinary Practice Act that established felony penalties against individuals without a veterinary license who float (file) or extract horses' teeth. The new law goes into effect 90 days after receiving the governor's signature.

Rallies are a lot of work and a lot of fun for everyone involved (except our opponents), and they make a difference. They are one more valuable tool IJ uses in its daily fight for liberty.◆



Matt Miller is the IJ Texas Chapter executive director.



IJ Earns Two Gold "Communicator Awards"

The Institute for Justice just earned two gold "Communicator Awards" for our www.ij.org website and also for our San Tan Flat video, which IJ Assistant Director of Production & Design Isaac



Reese produced entirely in-house. (For those of you looking for a good libertarian laugh, watch the three minute video here: www.ij.org/video/santanflat).

The Communicator Awards are sanctioned and judged by the International Academy of the Visual Arts, an invitation-only body consisting of top-tier professionals from a "Who's Who" of acclaimed media, communications, advertising, creative and marketing firms. IAVA members include executives from organizations such as Alloy, Brandweek, Coach, Disney, The Ellen Degeneres Show, Estee Lauder, Fry Hammond Barr, HBO, Monster.com, MTV, Polo Ralph Lauren, Sotheby's Institute of Art, Victoria's Secret, Wired and Yahoo!.◆

Long-term, Strategic Litigation Comes Full-Circle in Brody Case

IJ Earns Victory for Port Chester, N.Y., Client

By Dana Berliner

We always say that IJ does long-term, strategic litigation. Our litigation in the case of *Brody v. the Village of Port Chester* is a perfect example of what that means. The Brody case has certainly been long-term—it is entering its ninth year. Unfortunately, the case has involved an enormous number of procedural disputes, and we have had to take the case up on appeal several times to reverse the lower court. But at every turn, our approach to the case has been strategic and has had far-reaching implications.

We filed the case originally to challenge New York’s eminent domain procedures. In New York—counter to any reasonable expectation—when the government moved to take property through eminent domain, the owners had to bring a legal challenge *before* they knew their property would be taken. You did not read that last sentence incorrectly. Owners had to bring their challenge within 30 days of the approval of a project that *may* result in eminent domain sometime in the next 30 or 40 years. Even worse, under the old law, the government did not have to tell you that this was your one and only chance to fight some future use of eminent domain. All the local government had to do was publish a notice in a newspaper’s classified ads that the plan had been approved and that the



IJ client **Bill Brody** fought for nearly 10 years to defend his rights and the property rights of others across the country.

government had determined that eminent domain would be appropriate. The notice pointedly did not mention that there were 30 days to bring a legal challenge or that you would lose all your rights if you did not mount a challenge immediately.

Enter Bill Brody, a business owner in Port Chester, N.Y., who wanted to challenge the taking of his property. He contacted IJ months before the condemnation happened but, unbeknownst to him, months after his right to challenge that taking had expired.

“In New York, when the government moved to take property through eminent domain, the owners had to bring a legal challenge *before* they knew their property would be taken.”

IJ brought suit on behalf of Bill Brody to challenge New York's law as violating the procedural due process guarantee of the 14th Amendment. We were particularly concerned about this law because we noticed in many states that local governments tend to hide the ball, telling people that they are safe until it is too late to do anything about it. New York seemed to be the most obvious procedural due process violation—it was blatantly unconstitutional on its face—but we also thought it represented a larger trend.

The case had an immediate effect in New York. As a result of the case, state legislators changed the law so that other New Yorkers would receive notice of the process and would be told they had to file a lawsuit in order to protect their rights. For New Yorkers, this was an enormous change. Instead of receiving no notice of the loss of their rights, they now receive a certified letter telling them explicitly what they have to do to challenge the taking of their home or business.

But the case and our legal victory in the Second U.S. Circuit Court of Appeals has had many more far-reaching effects. There are lots of cases about how the government gives notice—mail, newspaper, certified mail—but this is one of the very few cases about what the notice has to say. And if the government is taking an action that will affect your rights, it has to tell you about the fact that you have a limited opportunity to fight for your rights.

In addition to changing the law in New York, the case also helped create major legal changes in both New Jersey and Hawaii. New Jersey had a system similar to New York's. Home and business owners could challenge a condemnation when it happened, but they couldn't challenge the government's claim that the area was "blighted." That was an important limitation, because once you cannot challenge "blight," it becomes next to impossible to win a challenge to the taking of the property. In the 2008 case of *Harrison Redevelopment Agency v. DeRose*, a New Jersey appellate court relied in large part on the *Brody* decision to hold that this rule violated due process. The court ruled that owners cannot be bound by the time limit

on challenging blight findings and can challenge them if the government ever moves to take the property. That means thousands of people who had lost their ability to fight condemnations in New Jersey now can do so.

Sometimes, we do not even realize the impact of the precedents we set. In December 2008, the Hawaii Supreme Court issued an important decision that reversed a lower court ruling against owners who were challenging the taking of their property for the benefit of private parties. (This is the latest in a string of state high court decisions that reject the *Kelo* majority holding and find for property owners in eminent domain cases.) I was emailing with the attorney who litigated the case, Robert Thomas, and he told me that Hawaii also had a short time frame for bringing legal challenges. The trial court, in an unpublished decision in 2007, allowed the

owners to challenge the taking anyway, citing *Brody*. According to Thomas, "*Brody* carried the day." Without the *Brody* decision, this important Hawaii ruling might never have happened.

These have been the most important cases based on *Brody* that we know about, but it has also been cited in various other cases, including in 2008 to find an asset forfeiture proceeding in New York unconstitutional and in 2006 to reverse certain fines being charged by a local government in Michigan.

This is what long-term, strategic litigation is all about: When IJ takes a case, the precedents we set take on a life of their own, securing greater freedom for thousands or even millions of people beyond the individuals we actually represent. And that makes every one of the nine years spent fighting the *Brody* case worthwhile. ♦

"In addition to changing the law in New York, the case also helped create major legal changes in both New Jersey and Hawaii."

Dana Berliner is an Institute senior attorney.



An Inside View into IJ's Activism

By Jared Blanchard

As a supporter of the Institute for Justice's efforts, you are undoubtedly aware of the excellent work it does across the country. But many of you may not know of the great opportunities IJ provides to college students, postgraduates and law students, ensuring that IJ's work will continue for many years to come.

As the Maffucci Fellow, working at IJ under Director of Activism and Coalitions Christina Walsh, I was given challenging and interesting work that ranged from assisting in the creation of publications to helping organize rallies and workshops. My fellowship was created through the generosity of the Maffucci Family Foundation (created through the estate of longtime IJ supporters Constance and Gerard Maffucci of Vero Beach, Fla.) and, as a fellow for the Castle Coalition, my main focus was assisting IJ's efforts to fight eminent domain abuse.

My assistance in the Castle Coalition workshop for an embattled New York City neighborhood is a perfect example of one of the great opportunities I had while working at IJ. Willets Point is an industrial center in the New York Borough of Queens that is home to 250 thriving small

businesses. Mayor Bloomberg wants to clear these businesses out with eminent domain to make way for a grandiose private redevelopment scheme. To help the business owners fight the mayor's plot, IJ hosted a Castle Coalition workshop this past December to give Willets Point neighbors the grassroots tools they need to beat eminent domain abuse.

Through my effort to coordinate this workshop, I learned a great deal about the immense care and planning that IJ puts into every event it hosts. I helped with numerous tasks in support of the workshop, including sending out fliers, making phone calls, assembling materials and greeting people as they arrived at the workshop.

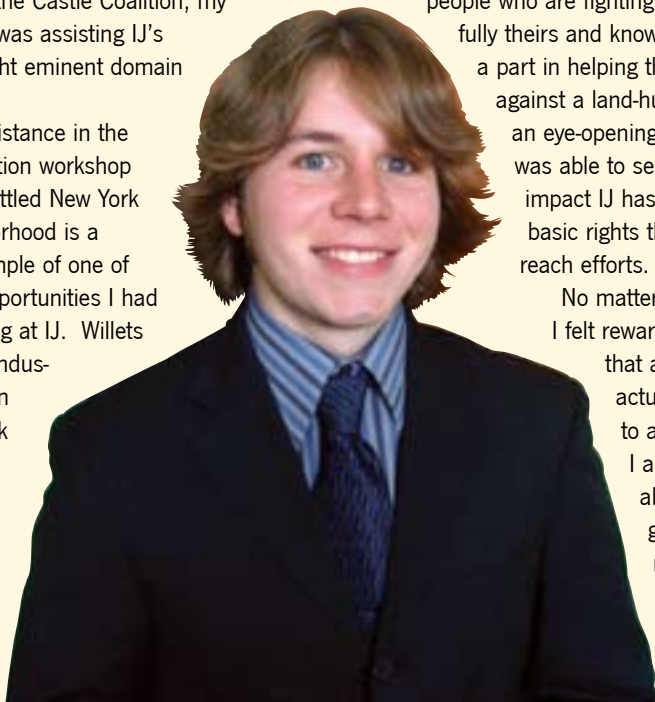
Attending the workshop was definitely a highlight of my time working at IJ. Meeting the people who are fighting for what is rightfully theirs and knowing that I played a part in helping them in their fight against a land-hungry mayor was an eye-opening experience: I was able to see the direct impact IJ has on safeguarding basic rights through its outreach efforts.

No matter my task at IJ, I felt rewarded knowing that all of my efforts actually contributed to advancing issues I am passionate about. As the government tries more and more to force itself

into our lives and hamper our basic freedoms, it can be tempting to feel helpless. I know I would sometimes feel helpless myself, but after working at IJ, I have seen these rights defended successfully time and time again, and I know something can be done. While others may publicly condemn violations of our basic rights, IJ actively works to protect those rights.

During my time with the Institute for Justice as a Maffucci Fellow, I received a unique and valuable education I could not get elsewhere. I did exciting and important work that I knew mattered. IJ's attorneys and staff were some of the nicest and most helpful people I have ever met, creating a fun but effective work atmosphere. For any undergrads or postgraduates out there looking for an internship, I cannot recommend applying to IJ more highly. ♦

Jared Blanchard was the Institute for Justice's Winter 2008-2009 Maffucci Fellow.



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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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Quotable Quotes

NPR Chicago

“Lawyers at the Institute for Justice Clinic on Entrepreneurship, based at the University of Chicago Law School, say that new business owners have to jump through all sorts of unnecessary state and city regulatory hoops. The report was issued through their Washington-based parent organization, the libertarian Institute for Justice. Beth Milnikel is an attorney, and the director of the Chicago clinic, and she says the clinic helps local entrepreneurs struggling to go by the book.”

Las Vegas Review-Journal Editorial

IJ Senior Attorney Steve Simpson: “When the government is taking the position that it can ban books because they are financed by corporations, it is time to scrap the campaign finance laws. This is America. We don’t ban books here.”

Baltimore Examiner

IJ Senior Attorney Clark Neily: “In our system of government, judges act as important guardians of our most cherished liberties, like free speech, religion and the right to vote. The ability to earn a living—free from blatantly anti-competitive laws that serve no other purpose than to prevent fair competition and exploit consumers—is certainly among those sacred rights.”

Boston Globe Editorial

“What does it say about the climate for small businesses in Boston and Cambridge that a guy with a promising business plan needs to turn to [the Institute for Justice] out-of-state libertarians to protect his interests in federal court? . . . A Boston police spokeswoman says that the department is reviewing its policy on the sightseeing license moratorium. It should be reviewed, and then lifted. Absent any concern for the health and safety of the public, the moratorium, especially if applied selectively, is little more than a means to tread on the economic liberties of entrepreneurs.”

“The Institute for Justice is a non-profit, public interest law firm . . . that helps individuals who feel mistreated by government practices.”

—Indianapolis Star



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not to ask for a handout, but to demand our American Dream:
a chance to compete in the free market.

And we won.

I am IJ.

*Abdi Buni, transitional president of Union Taxi
Denver, CO*

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