

Liberty & LAW

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Free the Monks & Free Enterprise



“We are not a wealthy monastery,” said IJ client **Abbot Justin Brown**, who is fighting for the monks’ right to earn an honest living. “We want to sell our plain wooden caskets to pay for food, health care and the education of our monks.”

By Jeff Rowes

You know that no one is safe from bureaucrats and industry cartels when the government starts going after monks. But that’s what is happening in Louisiana, and so IJ has come to the rescue of Saint Joseph Abbey in our latest economic liberty case.

Following an ancient tradition of self-reliance, Abbot Justin Brown and his 35 fellow monks in Covington, La., want to help put food on their table by making and selling simple wooden caskets to the public. The monks have made caskets for themselves for more than 100 years and decided to launch

Saint Joseph Woodworks in late 2007. They hope to make 15 to 20 caskets each month.

But the State Board of Embalmers and Funeral Directors—which is dominated by members of the funeral industry—sent the monks a cease and desist letter before they sold even one casket. In Louisiana, one must be a government-licensed funeral director to sell caskets and the funeral directors do not want competition from anyone—not even monks.

There is no legitimate reason to license casket sellers. A casket is just a box. It serves no health or

Monks continued on **page 9**



IJ Prunes Louisiana's Floral Cartel

IJ clients **Leslie Massony**, left, and **Monique Chauvin** are now free to practice their trade without first having to get permission from their competition.

By Tim Keller

Just months after four Louisiana florists teamed up with the Institute for Justice to file a constitutional challenge to the state's arbitrary florist licensing scheme, Louisiana Gov. Bobby Jindal signed a bill uprooting the law's subjective "demonstration exam," thereby removing the largest obstacle to would-be florists trying to earn an honest living in the state.

Before the new law passed, Louisiana was the only state in the nation to require aspiring florists to pass both a written test and a highly subjective demonstration exam, in which budding florists were given four hours to create four floral arrangements that were then judged by a panel of state-licensed florists—i.e., their future competitors. The written test remains on the books (for now), but it presents a relatively minor government hoop.

Arranging and selling flowers is a perfectly harmless occupation that presents no risk to public health or safety. The demonstration exam did nothing but

enable industry insiders to exclude their future competition. Erecting these types of protectionist barriers on behalf of special interests is not a legitimate public purpose—it is an abuse of government power.

IJ highlighted the subjective and anti-competitive nature of the exam time and time again during our highly successful media campaign—a campaign spearheaded by IJ's *Blooming Nonsense* report (www.ij.org/3101), authored by IJ's Director of Strategic Research Dr. Dick Carpenter. The report detailed a social science experiment Dick conducted involving floral arrangements designed by both licensed Louisiana florists and unlicensed Texas florists and judged by florists in both states. The experiment demonstrated that Louisiana's licensing scheme failed to promote quality for consumers and instead merely kept entrepreneurs out of business and limited consumer choice.

The study was an instant success, and Dick, IJ President Chip Mellor and two of IJ's clients appeared on John Stossel's Fox Business Network program

on the eve of our case launch. The program translated into further media success. From the pages of *USA Today* to *CBS Evening News* to editorial pages throughout Louisiana, IJ and our clients hammered home the fact that there is no justification for a licensing scheme that prevents even a single person—much less significant numbers of people—from working as a florist. IJ's dominating media campaign and grassroots organizing set the stage for the Louisiana legislature to repeal the demonstration exam by nearly unanimous votes in both legislative houses.

Aspiring florists now have more freedom to pursue their chosen occupation free from blatantly anti-competitive government interference. This, plus the fact that three of IJ's clients have taken and passed the written examination, led us to dismiss the remaining aspects of our legal challenge. As you can read on page one of this issue of *Liberty & Law*, however, IJ continues to challenge government officials in Louisiana—this time on behalf



IJ's combined approach of cutting-edge litigation, effective media relations and strategic research—including our *Blooming Nonsense* report (available at www.ij.org/3101)—helped convince Louisiana lawmakers to free would-be florists in the state.

of the monks of Saint Joseph Abbey, who simply want to sell hand-crafted caskets—because the bureaucrats in Louisiana must learn there are constitutional limits

to the burdens government may impose on honest, productive livelihoods.

The Louisiana legislature should now take the final step and eliminate the written examination for florists. Until it does, IJ will continue to monitor the written exam to ensure that it remains an insubstantial barrier for florists. There is no need for the government to test or license would-be florists. The only purpose served by the written exam is to raise funds for the state through licensing fees while setting up an unnecessary—but in this case trivial—barrier to entrepreneurship. If necessary, we are prepared to file a new lawsuit. For now, however, IJ has eliminated the real root of the problem. This means our lead client Monique Chauvin can concentrate on growing her small business, Mitch's Flowers, in an environment now more free of needless regulation. ♦

Tim Keller is executive director of the IJ Arizona Chapter.



IJ in Top 1% Of U.S. Charities

*The Institute Earns 9th
Consecutive 4-Star Rating from
Charity Navigator*

Your support of the Institute for Justice continues to be a sound investment in liberty. This past August—for the *ninth consecutive year*—IJ earned an “exceptional” designation and the coveted 4-star rating from Charity Navigator for “its ability to efficiently manage and grow its finances.” Only *one percent* of the 5,500 charities rated have received nine consecutive 4-star evaluations, indicating that IJ consistently executes its mission in a fiscally responsible way and, according to Charity Navigator, “outperforms most other charities in America.”

We are grateful to everyone who makes our work possible and thus shares in this recognition. We will continue to strive each day to maintain this high standard of effectiveness. For more information, visit www.CharityNavigator.org. ♦



Texas Vet Board Protects Cartel, Not Public



Horse owners and equine dental practitioners rallied in Austin to support economic liberty in the fight against the monopolistic system created by the Texas veterinary board.

By Clark Neily

IJ's battle to protect the livelihoods of horse teeth floaters in Texas heated up in August when dozens of floaters and horse owners turned out for a rally and a public hearing in Austin.

"Floating" is the term for filing horses' teeth to ensure proper length and alignment. Unlike most animals, horses' teeth grow throughout their lives and must be filed down from time to time to prevent their molars from developing long enamel "points" that can prevent the horse from chewing its food properly.

As temperatures outside the veterinary board's offices climbed above 100 degrees, inside, IJ attorneys, staff and clients turned up the heat on government bureaucrats and their attempt to destroy the livelihoods of Texas teeth floaters. The vet board's latest ploy is a proposed rule that would allow non-veterinarians to float horses' teeth using manual rasps but would require veterinary supervision for any work involving power tools. Contrary to the vet board's entirely unsubstantiated concerns, however, floating power tools, which have been around for more than a century, are not only perfectly safe, but also offer greater precision with much less effort than hand tools.

As usual, the vet board had completely failed to do its homework in proposing the new rule, and dozens of floaters, horse owners and activists lined up to testify about the many contradictions, errors and inaccuracies reflected in the board's proposed rule. Also present were many state-licensed veterinarians, most of whom criticized the proposed rule for failing to slam the door completely shut on non-veterinarian floating in Texas. Those veterinarians made clear that as far as they were concerned, the vet board has one job and one job only: to protect veterinarians from competition by nonlicensees at all costs and ensure that horse owners have as little choice as possible in deciding who should care for their animals.

During the noon break at the public hearing, IJ led the crowd across the street to Republic Square Park where we held a press conference to publicize the vet board's illegal power grab and show the human faces behind this struggle. Besides IJ clients Carl Mitz and Randy Riedinger, who are two of the premier equine dental practitioners in the nation, the media conference featured Charmayne James and Bob Griswold, whose livelihoods as rodeo champions depend on getting the best pos-

sible care for their horses and not having that choice dictated to them by turf-protecting bureaucrats.

Perhaps the most remarkable thing about the August 20 hearing and press conference was the extent to which it drove home a basic truth that even the tin-eared members of the Texas vet board must realize by now: The only people who support the board's campaign against teeth floaters are state-licensed veterinarians. The public certainly doesn't want the board's "help" in choosing the most qualified practitioners to care for their horses, and teeth floaters want nothing more than to be left alone to practice their trade in peace.

Disdainful of the public and heedless of reason, fairness or common sense, the members of the Texas vet board behave as though they are unaccountable to anyone or anything. We plan to disabuse them of that notion and remind them that the Lone Star State is a place for rugged, self-reliant people, not nanny-state bureaucrats. ♦

Clark Neily is an IJ senior attorney.



Arizona Tax Credit Program Is Changing Lives —One Scholarship at a Time

By Andrea Weck-Robertson

When I heard that the U.S. Supreme Court was going to decide a legal challenge to Arizona's Individual Scholarship Tax Credit Program, I was immediately concerned because my daughter, Lexie, relies on a tax-credit-funded scholarship to attend a private school. I was relieved, however, when I learned that IJ is defending the program. I have every confidence that IJ will prevail when the Supreme Court hears oral arguments in that case, *Garriott v. Winn*, on November 3.

I am confident because IJ represented Lexie and me during our three-year battle against the teachers' unions and the ACLU of Arizona to defend my right to choose the school that best meets Lexie's needs as a child with disabilities. (Lexie was born with cerebral palsy, autism and mild mental retardation.) In 2006, the Arizona Legislature enacted a publicly funded scholarship program for children with special needs. The program was immediately challenged in state court—and IJ intervened in the case on our behalf. To our dismay, the Arizona Supreme Court ultimately declared the program unconstitutional.

But IJ and I refused to give up.

Together with a broad coalition of school choice supporters, we went to the Legislature



Watch the IJ video featuring **Andrea Weck** and her fight for school choice for her daughter, **Lexie**.

and pushed for a new scholarship program. The result was "Lexie's Law"—a scholarship tax credit program that allows corporations to donate money to School Tuition Organizations, which are nonprofit groups that fund private school scholarships. Soon thereafter, Lexie was awarded a scholarship from the Arizona School Choice Trust, one of Arizona's most prominent School Tuition Organizations. (To watch a brief video about my story, visit www.ij.org/freedomflix/weck.)

Lexie's transformation from a little girl who barely interacted with her family into a young woman who not only loves to play with her sisters, but who has become a peacemaker in the midst of conflict, is remarkable. She continues to amaze us all. For those who may recall my story, you know that I was a single mom. But I recently married a wonderful man. Thanks to the structure and consistency Lexie receives at her private school, she was able to walk down the aisle at our wedding, sit through the ceremony and even dance at our reception.

With all her challenges, Lexie should be my most difficult child, but she is my easiest. She has learned to adjust to new settings with confidence. She is nonverbal, but her sign language skills and comprehension grow daily. She has learned to string signs together to ask questions, and her listening comprehension is off the charts. As a result, she is a leader in her classroom because she so willingly responds to the instructions given by her teachers and aides. Thanks to the personalized instruction she gets through the school choice program, she has found her voice without using it.

I hope that success stories like this will spur the government schools to remodel their own special education



Andrea Weck and her daughter, **Lexie**, danced together at Andrea's wedding.

programs—which I have investigated at length and found to be utterly lacking the love and attention Lexie and her classmates receive from her private school teachers.

School choice is changing lives. The individuals and businesses who generously donate to charities like the Arizona School Choice Trust are changing lives. And, of course, IJ is changing lives through its tireless efforts to represent parents like me and children like Lexie who have been empowered to choose the school best-suited for our family. ♦

Andrea Weck-Robertson is an IJ client and school choice mom from Arizona.



IJ & D.C. Tour Guides Take On

By Robert McNamara

The Institute for Justice’s litigation against unconstitutional speech-licensing laws rolled forward on September 16 when we filed a federal lawsuit against Washington, D.C., which, makes it a crime to describe things without a license.

As regular *Liberty & Law* readers know, IJ has long fought against so-called speech licensing: laws that violate individuals’ First Amendment rights in the guise of occupational licensing. Whether it is protecting people’s right to publish their opinions on commodities trading without first having to register with the government or defending the right of Philadelphia tour guides to tell stories for a living, IJ has been on the cutting edge of free-speech litigation.

In this latest effort, we have teamed up with D.C. tour guides Tonia Edwards and Bill

Main, who run “Segs in the City” and provide fun-filled Segway-based tours of the city’s monuments and historic sights. Although the primary lure of “Segs in the City” is the opportunity to ride a Segway, a futuristic, self-propelled, personal transportation device, Bill and Tonia are knowledgeable guides who tell their tour groups stories about the city’s history and architecture. And because of this, D.C. authorities could throw them in jail for up to three months.

A D.C. law—very similar to a Philadelphia law IJ challenged in 2008—makes it illegal for

anyone to work as a sightseeing guide without first obtaining a special government license. New regulations promulgated in July make clear exactly what the law is trying to ban, by specifically stating that no unlicensed person may “describe . . . any place or point of interest in the District to any person” on a tour. Unauthorized describers face fines and up to 90 days in jail.

The licensing process is expensive and time-consuming (rife with fees, forms and a written examination), but Bill and Tonia’s chief objection to the licensing program is one of

Occupational Licensing Law



“This law is just like the countless occupational-licensing requirements that IJ has challenged in the past: a barrier to competition that does nothing at all to protect consumers.”



www.ij.org/DCToursVideo

Watch the case video, “License to Describe.”

This case takes aim directly at that idea and advances the

basic notion that everyone has the right to communicate for a living—whether they work as TV news reporters, tour guides or stand-up comedians—without first asking the government for permission. The First Amendment guarantees that right, and IJ will continue to protect it—in D.C., in Philadelphia and beyond. ♦

Robert McNamara is an IJ staff attorney.



principle: They believe that the government has no role in deciding who may (or may not) speak. Their customers can decide for themselves whether Bill and Tonia are worth listening to.

That is enough for Bill and Tonia’s customers, and that should be—must be—enough for D.C.’s city government as well. As the U.S. Supreme Court has repeatedly made clear, the First Amendment embraces a free marketplace of ideas. D.C.’s attempt to prevent guides like Bill and Tonia from bringing their ideas to market simply cannot stand.

Although IJ is arguing this case under the First Amendment to the Constitution, it is important to keep in mind that this law is just like the countless occupational-licensing requirements that IJ has challenged in the past: a barrier to entrepreneurship that does nothing at all to protect consumers. This case is simply an illustration of the expansiveness of mandatory occupational licensing. There is virtually nothing government thinks you should be able to do without its permission, not even describing things.

IJ Appeals Arizona “Clean Elections” Case To U.S. Supreme Court

By Paul Sherman

At the Institute for Justice, every one of our cases is an uphill fight, often against overwhelming odds and decades of bad legal precedent. As a result, we have learned a little something about perseverance. But few cases in IJ’s history have tested our resolve as much as our challenge to Arizona’s system of taxpayer-funded political campaigns, which IJ launched in 1999.

Under Arizona’s so-called “Clean Elections” system, political candidates have the option of running for office on the public dime, collecting government-issued subsidies instead of having to raise money on their own through voluntary contributions from the public. As a result, taxpayers are forced to pay for the campaigns of candidates with whom they might vehemently disagree.

This, by itself, would be bad enough. After all, as Thomas Jefferson recognized, “[T]o compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical.” But Arizona’s system goes even further and actively discourages ordinary people from speaking out in elections. Under the law, if a taxpayer-funded candidate is outspent by a privately funded candidate or by independent groups, the state will shovel more money to the taxpayer-funded candidate to make up the difference. In other words, speaking out against a “Clean Elections” candidate just means more public money for that candidate.

Arizona’s scheme violates the First Amendment, which prohibits the government from burdening or discouraging political speech. But filing a case was risky. In 1999, when IJ filed its challenge to Arizona’s law, federal courts

had become increasing deferential to so-called campaign finance “reform,” a trend that would only get worse over the next seven years, before the changing composition of the U.S. Supreme Court made it friendlier to free speech and more hostile to campaign finance regulations.

Throughout the litigation, IJ persevered through setbacks. The case was initially dismissed from federal court, so we refiled in state court, where we lost at trial, won on appeal, but then lost before the Arizona Supreme Court. Rather than give up, we filed a new challenge in federal court in 2004, and for the past six years, that challenge has been winding its way through federal court.

Now that stick-to-it-iveness is about to pay off.

On August 17—almost 11 years after we first filed the case—IJ asked the U.S. Supreme Court to hear *Arizona Freedom Club PAC v. Bennett*. Although any Supreme Court petition is a long shot, knowledgeable observers believe there is a good chance that the Supreme Court will hear the case. One strong indicator is that on June 8, 2010, the Court issued an emergency order freezing the operation of the “matching funds” portion of Arizona’s law. Such orders are rarely issued, and signal serious interest by the Court in the case.

Looking back, we could never have guessed that the fight would take this long. But now that we are on the cusp of having IJ’s fifth case before the U.S. Supreme Court in just nine years, we are reminded of why we persevere: The harder the conflict, the more glorious the triumph. ♦

Paul Sherman is an IJ staff attorney.



“Arizona’s scheme violates the First Amendment, which prohibits the government from burdening or discouraging political speech. But filing a case was risky. In 1999, when IJ filed its challenge to Arizona’s law, federal courts had become increasing deferential to so-called campaign finance ‘reform.’”



“There is no legitimate reason to license casket sellers. A casket is just a box. It serves no health or safety purpose. In fact, a casket is not even necessary for burial in Louisiana or anywhere else in the country. You can be buried in a bed sheet, in a cardboard box or in nothing at all.”

Clockwise from top, IJ client **Abbot Justin Brown** and attorneys **Jeff Rows** and **Scott Bullock** announce the lawsuit against the state of Louisiana. The woodshop at the Abbey where the caskets are crafted. **Prior Brian Harrington** and **Novice Dustin Bernard** show a casket. News crews get an up-close view of the monks' workmanship.



Monks continued from **page 1**
safety purpose. In fact, a casket is not even necessary for burial in Louisiana or anywhere else in the country. You can be buried in a bed sheet, in a cardboard box or in nothing at all.

In March, the state board issued subpoenas for Abbot Justin and Deacon Mark Coudrain to appear at a formal hearing to determine if they are guilty of violating the casket sale law. The state board has threatened them with huge fines for the sin of selling caskets without a license. They even face criminal prosecution and could be sentenced to 180 days in jail.

But earning an honest living should not be a crime in Louisiana or anywhere else. That is why IJ filed suit on August 12, 2010, in federal court in New Orleans to vindicate the right of economic liberty for every American.

The plight of the monks triggered interest and outrage across Louisiana and the rest of the nation. In addition to wall-to-wall local TV and newspaper coverage *USA Today* ran an op-ed by IJ Senior Attorney Scott Bullock and me; *The Wall Street Journal* ran a front-page story; John Stossel featured the case on *Fox Business* and our case-launch video was a hit with bloggers.

This case has resonated with so many people because it dramatically illustrates the David vs. Goliath fight that small-business entrepreneurs face nationwide. Unfair licensing laws and red tape stand in the way

of the American Dream from Portland, Maine, to Portland, Ore.

IJ's defense of Saint Joseph Abbey is a strategic part of our national campaign to restore economic liberty from coast to coast. One of the most important unsettled constitutional questions is whether the government

can keep people from earning an honest living merely to protect the profits of industry insiders. Previous IJ casket cases in Tennessee and Oklahoma created disagreement on this question between two federal courts of appeal. Our new case representing the Abbey has the potential to go all the way to the U.S. Supreme Court to resolve this disagreement and make economic liberty the constitutional law of the land.

The monks of Saint Joseph Abbey have teamed up with IJ to secure the blessings of economic liberty for everyone. With that in mind, the Louisiana casket cartel doesn't have a prayer! ♦

Jeff Rows is an IJ senior attorney.



Watch the case video, "Free the Monks & Free Enterprise."

Learning About Natural Rights and Limited Government At IJ's 19th Annual Law Student Conference

By **Krissy Keys**

The Institute for Justice held its 19th annual Law Student Conference in July at George Washington University in Washington, D.C. Thirty-six law

students, including IJ summer law clerks, attended this year's conference representing 23 schools. Joining them were IJ's summer undergraduate interns and new Institute for Justice staff.

Attendees were given a weekend-long crash course in public interest law "The IJ Way." Sessions taught by IJ attorneys and staff covered the importance of public interest law, how to litigate a public interest lawsuit, successfully managing nationwide public interest campaigns and the importance activism and media play in litigating public interest cases. Three of IJ's clients participated in the always-popular client panel, which put a human face on the cases that attendees learned about throughout the weekend. Law professors Randy Barnett of Georgetown

University Law Center and Todd Zywicki of George Mason University Law School, shared their unique academic insights into IJ's kind of public interest law—insights and lessons that remain rare in today's law school classrooms. And the Cato Institute's Roger Pilon provided attendees an array of career ideas and opportunities that await them after they have completed law school.

Judge Timothy Tymkovich of the 10th U.S. Circuit Court of Appeals, gave this year's keynote address. Judge Tymkovich gave an inspiring speech on the effectiveness of public interest law.

IJ's Law Student Conference remains a vital part of the

Institute for Justice's effort to advance its mission with the next generation of attorneys. These attendees become members of IJ's Attorney Human Action Network (HAN) and later often assist IJ with pro bono projects, case litigation and even become IJ attorneys and executive directors. There are now 790 HAN members nationwide. Many of IJ's HAN members attribute their passion for public interest law to their participation in IJ's annual conference. ♦

Krissy Keys is the Institute's special projects manager.



2010 Summer Clerks and Interns

Our 2010 headquarters summer clerks and interns provided excellent legal research for IJ. They are, from left to right, **Jared Blanchard**, Florida State University Law School; **Christian McClellan**, Georgetown University Law Center; **Allison Heydon**, Harvard Law School; **Liya Palagashvili**, George Mason University; **Joel Cazares**, Stanford Law School; **Larissa Price**, George Mason Law School; **Chris Mills**, Washington University Law School; **David Lander**, Harvard Law School; **Brandon Kressin**, NYU Law School; **Milad Emam**, University of Virginia Law School; **Kathleen Hunker**, Columbia Law School; **Allison McCarty**, Pepperdine; **Andrew Long**, Rutgers University; **Clarissa Kanell**, Westminster College.

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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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Quotable Quotes

FOX
America's Nightly Scoreboard



IJ Senior Attorney Scott Bullock: “Civil forfeiture is really one of the most serious assaults on private property rights in the nation today. Civil forfeiture turns a fundamental American principle—that you are innocent until proven guilty—on its head. In civil forfeiture, your property is guilty until you prove it innocent. And because this is not a criminal

proceeding, it’s a civil proceeding, the burden is on you to try to get your property back. . . . It has to stop.”

FOX
Fox & Friends

IJ Director of Activism and Coalitions Christina Walsh:

“This is an outrageous abuse of eminent domain. The city is engaging in a systematic program to tear down an entire neighborhood. . . . They’re trying to confiscate as much property in this neighborhood as possible without having to pay for it . . . and what’s worse, if the property owner can’t pay for the demolition, the city sells off the land to a private developer. The Institute for Justice is empowering [the homeowners] with the knowledge that they can fight city hall and win.”



The Wall Street Journal

“The [Louisiana] state funeral board has nine members, eight of whom are funeral industry professionals. The board ‘really has it in for the abbey,’ complains Jeff Rowes, senior attorney at the Institute for Justice, an Arlington, Va., libertarian public-interest law firm representing the monks [of Saint Joseph Abbey]. The law, he says, ‘is an unconstitutional invasion of the right to earn an honest living.’”

ThinkProgress.org

“[Y]ou see that a board dominated by industry insiders becomes more about reducing competition than anything else. The story’s in the papers because the libertarian Institute for Justice is helping the monks with a lawsuit, but the view that public policy should encourage rather than discourage competition is one progressives should be able to easily embrace.”

“The Institute has carved out a niche for itself in the legal landscape by defending entrepreneurs from ridiculous restrictions on economic activity.”

—Richmond Times-Dispatch



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I was told by the state of Louisiana that I need a license to arrange and sell flowers.

To make matters worse, the test to earn the license was judged by existing florists—my would-be competition.

I fought this blooming nonsense.

And I won.

I am IJ.

*Monique Chauvin
New Orleans, Louisiana*

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Economic liberty litigation*