



# Liberty & LAW

Volume 20 Issue 1

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## INSTITUTE FOR JUSTICE IS CELEBRATING



## THE SECRET TO IJ'S SUCCESS

By Chip Mellor

In 1991, we launched the Institute for Justice, determined to restore constitutional protection for our most basic freedoms and to advance a rule of law conducive to a society of free and responsible individuals. Twenty years later, we celebrate our anniversary having achieved more than we dared dream, but recognizing that we have just begun to tap our potential. Over the course of this anniversary year, we will feature articles looking at IJ's history and showcasing our future plans. This series begins by answering a frequently posed question: "What is the secret to IJ's success?"

The easy answer is, of course, the people of IJ. Our staff, board, donors and clients are all extraordinarily talented and dedicated to the principles of liberty.

But there is more to it than that.

Many organizations have talented people. The difference is the culture of IJ that permeates all of our work and interaction with others. We call it "The IJ Way." The IJ Way involves five attributes that each IJer brings to every task. First, we are entrepreneurial in creating and seizing opportunities, pursuing our goals with focused tenacity. We make things happen rather than simply waiting to react to the agenda of the other side. Second, we achieve results in the real world. While ideas and philosophy undergird our work, we translate that into action that changes the lives of our clients and in the long run, the jurisprudence of America. Third, we are positive and open, approaching every task with a positive attitude

20th Anniversary continued on page 8

# IJ's Challenge to Arizona's "Clean Elections" Goes to the U.S. Supreme Court

By William R. Maurer

The Institute for Justice is heading back to the U.S. Supreme Court for one of the most important free speech cases in years. At issue in the case—*Arizona Freedom Club PAC v. Bennett*—is whether the government may insert itself into political campaigns and place its thumb firmly on the scales in favor of government-funded candidates.

The case also gives IJ the opportunity to team up with the Goldwater Institute, one of our close allies among state-based think tanks. Goldwater also represents a number of candidates in the case of *McComish v. Bennett*. The two cases were consolidated by the U.S. Supreme Court.

For more than a decade, Arizona has used taxpayer money to finance the campaigns of politicians running for office. But Arizona does not stop there. Besides funding candidates, it tries to “level the playing field” for taxpayer-financed candidates by penalizing traditionally funded candidates—those who finance their campaigns through private contributions. Arizona’s law even penalizes the independent supporters of traditionally funded candidates. It does all this by providing what Arizona calls “matching funds.” These are subsidies the government pays to government-funded candidates when their opponents spend more money than the government wants. That is, the government sets an arbitrary level, and if an independent group or privately financed candidate spends more than that, to counter

their message the government pays additional money directly to the publicly financed candidates in the race.

This impedes the ability of independent groups and privately financed candidates to spend money promoting their political views above the government-set limit, because if they speak above that limit, the government directly subsidizes their political opponents.

**“The Clean Elections Act creates an abbreviated Miranda Right for traditionally funded candidates: They have the right to remain silent, any speech they may undertake can and will be countered by government funding.”**

In this zero-sum game of electoral politics, the end result is a *de facto* limit on how much speech occurs in campaigns. For example, under Arizona’s scheme, if a traditionally funded candidate raises and spends \$10,000 to promote his campaign, the government gives approximately \$10,000 to each of his government-funded opponents. So, if the candidate has three government-funded rivals in a primary, that means his \$10,000 turns into nearly a \$30,000 gain for his opponents.

The Clean Elections Act creates an abbreviated Miranda Right for traditionally funded candidates: They have the right to

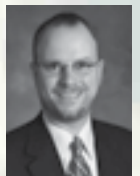
remain silent, any speech they may undertake can and will be countered by government funding.

In the past few years, the U.S. Supreme Court and the lower courts have begun striking down laws that interfere with speech during campaigns. The case IJ is bringing before the Court asks whether the government may get around these decisions by creating disincentives and burdens to achieve indirectly what the government is prohibited from doing directly.

In this case, IJ represents two groups that make independent expenditures in Arizona campaigns—the Arizona Freedom Club PAC and the Arizona Taxpayers Action Committee, along with state Senator Rick Murphy and former Arizona Treasurer Dean Martin. The case demonstrates the persistence of IJ and its clients. Martin and IJ started challenging this law in 2004 and, as the years of litigation went on, including two trips to the Ninth U.S. Circuit Court of Appeals, the other clients joined with him to now present their case to the highest court in the land.

Once again, IJ is at the forefront of setting the agenda for constitutional litigation in America. The argument will take place on March 28, and the Court is expected to issue a decision before the end of June. ♦

**William R. Maurer** is the IJ Washington Chapter executive director.





# Strategic Research Paying Dividends

By Lisa Knepper

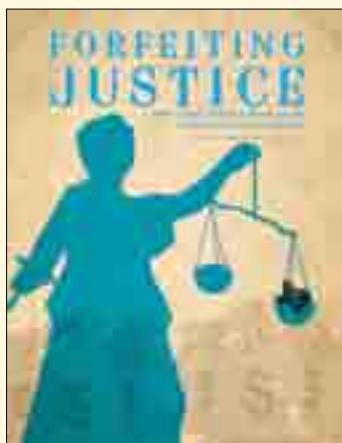
The Institute for Justice’s strategic research program is something truly new in the world of public interest law. No other organization has the capability to produce academic-caliber research and then employ that research in cutting-edge litigation to advance freedom.

In IJ’s constitutional challenge to Texas’ civil forfeiture scheme, for example, our research underscored a key legal claim—and put the state on the defensive. In *Forfeiting Justice*, released in November, Director of Strategic Research Dick Carpenter used data provided by Texas law enforcement agencies themselves to show that, on average, forfeiture funds represented 14 percent of agency budgets in 2007. For the 10 agencies that took in the most forfeiture money, proceeds equaled a whopping 37 percent of budgets.

IJ argues that Texas’ scheme provides police and prosecutors improper incentives to pursue forfeitures that generate funds for the agencies, distracting them from other law enforcement goals and putting the property of innocent citizens at risk. The data show that these

incentives are real and sizable. Perhaps that is why the state fought to prevent IJ from accessing more recent and detailed data, but also challenged in court the presentation of the data we do have.

Strategic research likewise demonstrated the real-world harms of Arizona’s so-called “Clean Elections” system, now before the U.S. Supreme Court. In expert testimony, David



IJ’s combined approach of cutting-edge litigation, effective media relations and strategic research—including our *Forfeiting Justice* report (available at [www.ij.org/3577](http://www.ij.org/3577))—is keeping the state on the defensive.

Primo, a political scientist at the University of Rochester, showed that privately supported candidates delay spending on or raising money for their speech to avoid triggering “matching funds” to publicly funded opponents.

In other words, these candidates hold their fire so their speech is not “matched” with additional subsidies to their opponents. The Government Accountability Office cited Dr. Primo’s findings in a recent report on taxpayer funding plans like Arizona’s and found evidence that independent groups behave similarly. This

proof of harm to the unfettered exercise of First Amendment rights was a key part of IJ’s successful petition asking the Court to take the case, as well as our merits brief arguing matching funds should be struck down.

Strategic research also played a role in IJ’s defense of Arizona’s school choice program before the High Court. Opponents, drawing on anecdotal reports from local newspapers, attempted to paint the individual tax credit program as rigged to favor wealthy families. We asked education analyst Vicki Murray to evaluate that claim, and she found that scholarship recipients’ median income is actually \$5,000 less than the statewide median. That provided powerful evidence to the Court that Arizona’s program does in fact open the doors of educational opportunity to low- and middle-income families.

In these and other cases, strategic research is giving IJ litigators an additional tool to make the case for freedom in court. And increasingly, our work is also having an impact on scholarly and policy debates. We have had 10 articles published in or accepted for publication by peer-reviewed journals, and at least 36 other articles have cited our work in scholarly, law review and policy publications—testaments to both the quality of the research and its relevance to vital issues of the day.

Starting this first-of-its-kind program required the kind of entrepreneurial spirit and long-term vision that are the hallmarks of IJ’s success. A little less than five years into this venture, it is clearer than ever that it is paying dividends. ♦

**Lisa Knepper** is an IJ director of strategic research.



**“Strategic research is giving IJ litigators an additional tool to make the case for freedom in court.”**



# IJ Launches Center for Judicial Engagement

In January, IJ launched its Center for Judicial Engagement to secure constitutional limits on government power by reinvigorating the courts' role as bulwarks of liberty. IJ will challenge the

notion, far too prevalent today on the right and the left, that courts should routinely defer to legislative and executive authority. The Center will be guided in its mission by the declaration below.

## Declaration of the Institute for Justice's Center for Judicial Engagement

Never in modern times has the need for enforcing constitutional limits on government been more urgent. Government at all levels has expanded to threaten our most basic liberties and our very way of life. This explosion of political power violates our Constitution, which was carefully crafted to protect us from the rampant and intrusive government we now have.

But the Constitution is meaningless if the provisions enshrined in it by the Framers are not enforced. That is the duty of our courts. They must be the "bulwarks of liberty" envisioned by James Madison, and judges are obliged to prevent the government from exercising powers not authorized by the Constitution. But rather than the bulwarks they were designed to be, courts have instead increasingly shown misguided deference to other branches of government.

This must change. A principled commitment to judicial engagement is the essential first step toward establishing a rule of law that is faithful to the Constitution and its design to secure the blessings of liberty for all Americans by limiting the size and scope of government.

The Institute for Justice has created the Center for Judicial Engagement to educate the public and persuade judges to fully enforce the limits our Constitution places on the government's exercise of power over our lives.

### I. The Constitution and the Judiciary

Individuals have rights that are inherent and unalienable. Governments are "instituted among men" to secure those rights, a small portion of which we delegate to government in exchange for protection of the far more expansive freedoms that we retain. The

Constitution recognizes and protects these retained freedoms, and it establishes a federal government of strictly limited and enumerated powers. It also imposes limits on state governments, whose powers, though broader than those of the federal government, are likewise finite.

The rights guaranteed by the Constitution are many and broad. Some are identified specifically, others are not. The Ninth Amendment provides that the enumeration of certain rights shall not be construed to deny or disparage other rights, and the Fourteenth Amendment forbids states from abridging the broad set of privileges or immunities (meaning rights) held by citizens of the United States. Due process provisions limit both the means and the ends of government, while the principle of equal protection requires that government power be exercised fairly and without improper discrimination.

The constitutionality of particular government conduct is ultimately determined through judicial review, which has been an essential feature of American government for more than 200 years. Judicial review is vital to our system of government because when courts fail to enforce constitutional limits on government power, we are left only with the self-restraint of public officials, which experience shows is no restraint at all.

### II. Government Out of Control

Government activity at all levels today far exceeds what the Constitution authorizes. The federal government, for example, long ago abandoned any pretense of confining itself to powers actually granted by the Constitution and regulates everything from children's education to the crops farmers grow for their own consump-

tion. Besides exercising powers not conferred by the Constitution, Congress routinely delegates its legislative powers to the executive branch, instructing unaccountable agencies to pursue ill-defined goals without intelligible guidance.

State governments also routinely exercise powers denied by the Constitution, which includes specific restraints, such as the Contracts Clause and the Fourteenth Amendment, that federal courts have failed to properly enforce. Moreover, like the federal government, states often adopt regulations whose only plausible purpose is to advance the interests of favored groups at the expense of others. This is particularly evident in the field of occupational licensing, where economic protectionism is commonplace and government officials frequently impose anti-competitive restrictions designed to thwart, not foster, the pursuit of the American Dream.

We are smothered under a blanket of regulation that impedes, envelops, and exhausts us, with the government demanding an ever-increasing portion of the fruits of our labor. Indeed, government today spends so far beyond its means that it has saddled our children and grandchildren with crushing debts that exceed by orders of magnitude what any preceding generation has faced. That is unjust and immoral, but it is the natural tendency of government unchecked.

### III. Judicial Engagement

Judicial review plays a key role in our system of government and the prevention of tyranny. Yet there is an increasing tendency to present the public with a false dichotomy between improper judicial activism and supposedly laudable judicial restraint. Striking down unconstitutional laws and blocking illegitimate government actions is not activism; rather, it is judicial engagement—enforcing limits on government power consistent with the text and purpose of the Constitution. Allowing the government to exercise forbidden powers and trample individual rights is not restraint, it is abdication.

Prior rulings that ignore, dilute, or otherwise render meaningless constitutional limits on government power provide no basis for courts' continued failure to stop the government from acting unconstitutionally. Where a conflict exists between precedent and the Constitution—for example, the practical elimination of the public use provision from the Fifth Amendment in *Kelo v. City of New London*—the Constitution must prevail.

Over the years, courts have effectively amended the Constitution, granting to government powers it does not possess and

allowing it to restrict freedom arbitrarily. This trend must stop, and the damage it has caused must be undone by limiting or overruling cases that have transformed our Constitution from a guarantor of liberty to a virtual blank check for the exercise of government power.

Government actions are not entitled to “deference” simply because they result from a political process involving elected representatives. To the contrary, the Framers were acutely aware of and deeply concerned about the dangers of interest-group politics and overweening government, and the structure of the Constitution rejects reflexive deference to the other branches. It is the courts' job to check forbidden political impulses, not ratify them under the banner of majoritarian democracy.

Constitutional cases are often difficult and frequently defy bright lines or simple rules. But judges must engage the facts of every constitutional case, just as they do in non-constitutional cases. Judges must meaningfully evaluate the government's action and the restrictions it imposes on liberty so they can determine, based on the evidence presented, the true basis of that action and whether it passes constitutional muster. Ignoring evidence, inventing facts, and rubber-stamping the wanton exercise of government power represent judicial abdication, not modesty.

### To our fellow citizens we say:

The Constitution promises a government of limited powers.

**That promise has been broken.**

The Constitution promises an array of individual rights—both written and unwritten—that the government may neither deny nor disparage.

**That promise has been broken.**

The Constitution promises a rule of law under which individuals can control their destinies as free and responsible members of society.

**That promise too has been broken—over and over again.**

Courts' failure to properly fulfill their role has deprived us of the liberty that is our birthright and has transformed government into an insatiable behemoth that threatens the very future of this nation.

Judicial engagement means taking the Constitution seriously—as a charter of liberty and a bulwark of freedom against illegitimate government power. For ourselves and our posterity we must, from this day forward, accept nothing less. ♦

**“Striking down unconstitutional laws and blocking illegitimate government actions is not activism; rather, it is judicial *engagement*—enforcing limits on government power consistent with the text and purpose of the Constitution.”**



# Arlington Virginia's Sign Ordinance Is For the Dogs

By Robert Frommer


America's road to economic recovery won't begin in Washington, D.C. It will start in the homes and offices of entrepreneurs who risk it all to bring an idea to life. And their success is our success: The goods and services that these innovators offer and the jobs they create benefit us all. You would think that local governments would try to make starting one of these businesses as easy as possible, but you would be wrong. In Arlington County, Va., it has gotten so bad that entrepreneurs must choose between their right to speak and their right to earn an honest living.

For more than 20 years, Kim Houghton sold advertising at *The Washington Post*. But Kim wanted more: She sought a new direction that would let her work on something she felt passionate about. After looking at her life, Kim realized that she loved

spending time with her three dogs. And so Kim decided to open Wag More Dogs, a high-end canine daycare, grooming and boarding business.

Kim rented a building next to an area dog park and began to get Wag More Dogs up and running. In order to give back to the park she had gone to for years and engender some good will for Wag More Dogs, Kim commissioned a 16-by-60 foot piece of art on the side of the building she leases that depicts happy cartoon dogs, bones, and paw prints. For three months the painting sat without issue, with dog park patrons telling Kim how much they liked it compared to the ugly cinder block walls that dominated the park.

Then one day, Arlington officials blocked Kim's building permit and told her that



IJ client **Kim Houghton**, above, displays an image of the mural Arlington County is trying to force her to paint over or turn into a government sign. IJ Staff Attorney **Robert Frommer**, left, discusses Kim's case at IJ's launch press conference.





Wag More Dogs could not open until she painted over her happy cartoon dogs. The problem—in the eyes of Arlington officials—was that Kim’s artwork had “a relationship” with her business. In other words, if Wag More Dogs’ painting had depicted kittens or ponies, that would have been fine. And if an auto shop had painted a mural of cartoon dogs, that would have been fine as well. But because Wag More Dogs is a dog business, Arlington County forced Kim to put up an ugly blue tarp that has covered her innocuous painting for over four months.

The First Amendment does not let the government play art critic. But Arlington’s law gives government bureaucrats absolute discretion to treat entrepreneurs with absolute disdain. That is why the Institute for Justice stepped up. In December,

we filed a federal lawsuit contending that Arlington’s sign ordinance is unconstitutional because it is hopelessly vague and because it imposes special burdens on some paintings based on who painted them and what they depict. When we prevail, we will have done more than just help Kim tear down a tarp. We will have advanced the cause of economic liberty and vindicated a simple but incredibly important legal principle: that under the First Amendment the right to speak is just that—a right—not a privilege for government officials to dole out as they please. ♦

**Robert Frommer** is an IJ staff attorney.



[www.ij.org/DogMuralVideo](http://www.ij.org/DogMuralVideo)

Watch the case video, “IJ Fights to Unleash Free Speech.”



**20th Anniversary** continued from **page 1** focused on solutions, not problems. Indeed, our ability to see the glass as half-full has been central to our ability to develop creative strategies, persevere, and ultimately prevail against what to others may seem like hopeless odds. Fourth, we are principled and adhere unfailingly to those principles whether in litigation, public debate or internal discussion. And finally, we are resilient, and even in the face of heart-breaking setbacks, we recover quickly and set in motion strategies to overcome whatever defeat we may have suffered and move ahead aggressively. When people remark, as they often do, on the esprit de corps of IJ, they are recognizing this culture.

In addition to the victories this culture has made possible, it has been indispensable in growing IJ into the national institution it is today. The IJ Way enables talented people to thrive and to succeed beyond expectations year after year. That in turn has enabled us to pioneer an unprecedented approach to public interest law. We pursue cutting-edge constitutional litigation that has put our issues on the national agenda and brought five cases to the U.S. Supreme Court in the past eight years.

But as we stated at our founding, litigation alone is not enough.

- The IJ Way**
- Entrepreneurial
  - Real World
  - Positive & Open
  - Principled
  - Resilient

Thus, we have built an award-winning communications team that not only secures widespread recognition of our work, but also achieves reforms by marshalling public opinion. Our activism and outreach take us to neighborhoods across America to thwart eminent domain abuse, support school choice and oppose arbitrary occupational licensing laws. Our strategic research program brings sophisticated social science to bear on issues related to our litigation.

Our constitutional expertise is translated effectively into select legislative arenas by our new legislative counsel. Our IJ Clinic on Entrepreneurship helps aspiring inner-city entrepreneurs to pursue their dreams of self-sufficiency. And our lean development and

administration staffs provide and deploy the resources necessary to operate a nationwide organization with six—soon to be seven—offices and a nearly \$12 million annual budget.

This is what the people of IJ have achieved so far. And this is why the people of IJ everywhere should celebrate the foundation we have laid for success over the next 20 years!◆

**Chip Mellor** is IJ's president and general counsel.





# IJ Boldly Goes Beyond Usual Media Outlets

By John E. Kramer

I never understood audiophiles. I listened to my iPod through run-of-the-mill headphones and it sounded just fine to me.

Then I was lucky enough to visit with Jim Thiel, the founder of THIEL Audio and an IJ donor until his recent passing. Jim sat me down in his company's showroom at the Consumer Electronics Show—the world's largest technology tradeshow—to show me what I was missing. He hooked up his own iPod to play Beethoven's Fifth Piano Concerto through his sound system. Instantly I understood the experience audiophiles were after.

"Do you hear the separation between each instrument?" he asked. "You can hear each instrument *individually*, as if the entire orchestra were sitting in front of you. *That* is what audiophiles are after. That is what makes our system different."

Jim Thiel drew in the uninitiated and the skeptical and won them over through the mastery of his craft.

That is the same thing the Institute for Justice works to do each day, sharing our message with mainstream media who might not initially understand or appreciate our worldview. In the end—because of the way we communicate and the content of the message we deliver—we consistently earn respectful media coverage from all corners of the journalistic realm.

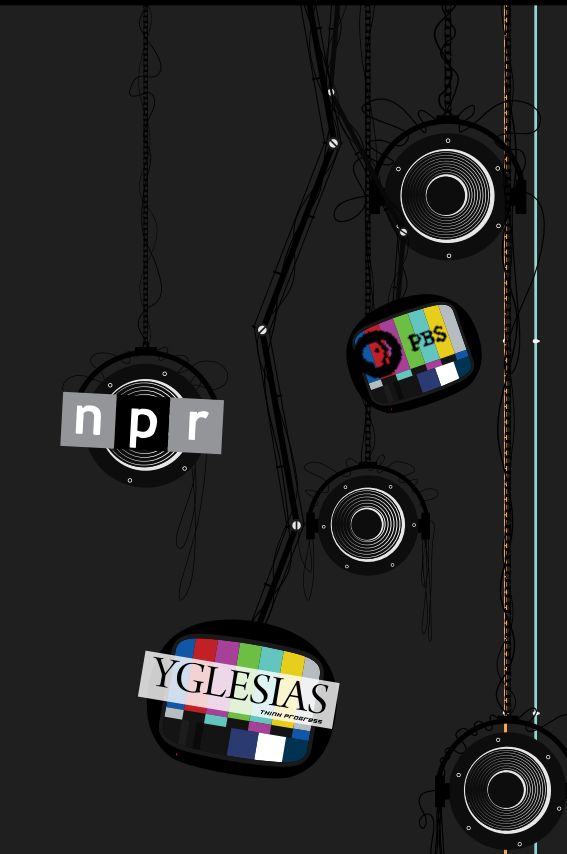
One of my favorite success stories along these lines came from National Public Radio's Legal Correspondent Nina Totenberg, who summed up what we have heard from so many

reporters over the years: "I like working with the Institute for Justice because you guys are happy warriors. You're informed, you believe in what you say and deliver it with a smile." As Totenberg's comment attests, in the substance and style of our message, IJ is made up of happy warriors.

Similar appreciation was heaped on IJ at the *Daily Dish*, a popular blog run in *The Atlantic* by journalist Andrew Sullivan, where Conor Friedersdorf counted IJ among those pursuing "pragmatic libertarianism." That, too, is how we see ourselves. From our inception, IJ was created to be *real world*—we take important ivory tower ideas, like economic liberty, and demonstrate their importance to Americans on Main Street. That is why *The Atlantic* writers and many others cover IJ cases, such as our lawsuit on behalf of Louisiana monks who are blocked from selling caskets because of a government-imposed funeral home cartel. Heavyweight liberal blogger Matt Yglesias of the influential Center for American Progress, likewise recently praised this IJ case saying, ". . . the view that public policy should encourage rather than discourage competition is one progressives should be able to easily embrace."

One might be surprised to find lengthy discussions in liberal news outlets demonstrating the importance of property rights, and yet, year in and year out, the Institute for Justice has earned such placements in publications like *Mother Jones*, which covered IJ's battle against civil forfeiture abuse, and syndicated television programs like *Democracy Now!*, which spotlighted IJ's effort to turn the disastrous U.S. Supreme Court ruling in the *Kelo* case into a national cause for reform.

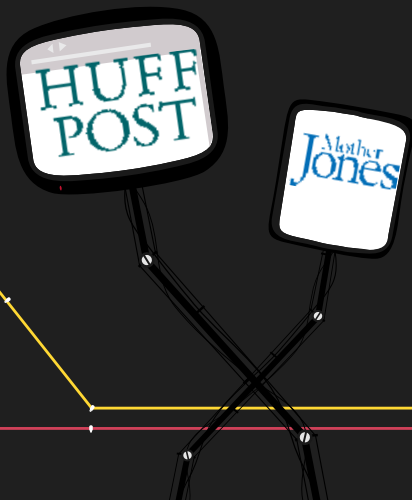
IJ took its battle for free speech and against campaign finance restrictions to *The Huffington Post* in the wake of the unfounded outrage over the Supreme Court's *Citizens United* ruling. IJ Senior Attorney Bert Gall pointed out that the very media that is upset over the ruling, which in reality did nothing but expand free speech rights, should have feared



the consequences of a ruling that went the other way—an outcome that could ultimately have restricted the media's ability to editorialize on politics and endorse candidates.

Throughout its nearly 20-year history, the Institute for Justice has worked to set the standard in the Freedom Movement to effectively advance our ideals not only in court, but in the court of public opinion, and not solely to those few in the media who are philosophically predisposed to agree with us, but also to those many influential reporters and outlets who are often at odds with how we think. By remaining positive, real-world and insightful, we will continue to work to earn their coverage and expand the message of freedom. ♦

**John E. Kramer** is IJ's vice president for communications.





## IJ v. The Legal Cartel

By Anthony Sanders

IJ has taken on some of the nastiest licensing cartels in American industry, from interior design to transportation to veterinary medicine. Where established interests have used occupational licensing and government force to fence out competitors, IJ has been there to protect the rights of hard-working Americans to earn an honest living.

And now, IJ has taken on the biggest and most-entrenched cartel of them all: the legal bar.

Across the nation, licensing laws protect established attorneys by burdening aspiring practitioners with superfluous educational requirements just for the privilege of taking a bar exam. A minority of states go as far as requiring attorneys to attend only those law schools accredited by the American Bar Association. In these states, even if an attorney has practiced for years with a stellar record, he or she cannot sit for the state's bar exam—let alone become licensed—without graduating from an ABA-accredited school.

Minnesota is one of these states. In December, IJ Minnesota submitted to the Minnesota Supreme Court a detailed analysis of the choke-hold that the ABA has over the licensure of lawyers in the land of 10,000 lakes. IJ proposed a change allowing a person to take the Minnesota bar exam if he already is licensed in another state.

IJ's efforts in Minnesota will be a significant blow to the monopoly that the ABA has over accreditation of law schools. It will lower the barriers to

entry for prospective lawyers and thereby expand consumer choice. In turn, we will continue to educate the judiciary on the misuse of occupational regulations for future attacks on other anticompetitive regulations.

IJ not only attacked current licensing requirements, but briefed the court on the increasing overreach of occupational licensing. For example, less than five percent of workers needed a license to work in the 1950s. Approximately 30 percent do today. More than 800 occupations require a license to work in at least one state. Further, although licensing is almost always sold to the public as necessary for health and safety, the fact that established industry groups are usually the ones pushing for greater licensing laws should tip off the public and regulators that such demands are more about protecting themselves from competition than protecting the public. In other words, when a practitioner stands up and cries, "Please regulate me!" that should be a red flag to all involved.

Of course, keeping out competition pays rich dividends. Licensing laws drive up wages for licensees by 15 percent within regulated professions. For all this, there is little evidence that licensing protects public health and safety or improves quality.

Just think: If IJ can bring economic liberty to lawyers, what can't we do? ♦

**Anthony Sanders** is an IJ Minnesota Chapter staff attorney.



## Texas Horse Teeth Floaters File Regulations Down to Size

By Clark Neily

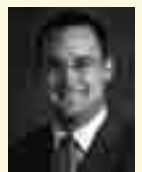
After a three-year legal battle on behalf of horse teeth floaters in Texas, we are proud to say, "Yippee, y'all!" On November 9, 2010, Travis County Judge Orlinda Naranjo struck down the Texas vet board's lawless campaign against non-veterinarian practitioners, enabling our clients (and hundreds of other hard-working Texans) to continue floating horses' teeth without bureaucratic interference.

Horses' teeth grow throughout their lifetimes and must occasionally be filed down or "floated" to maintain proper length and alignment. Teeth floating is an animal husbandry practice that has been performed for centuries by laypersons whose skill and experience often far exceed that of government-licensed veterinarians.

But in 2007, the Texas vet board—which had long acknowledged and approved teeth floating by non-veterinarians—suddenly changed its policy and ordered non-veterinarian practitioners to cease and desist or face prosecution "to the fullest extent of the law." IJ quickly filed suit on behalf of teeth floaters who stood to lose their livelihoods, as well as horse owners who didn't appreciate the government dictating who they could and could not employ to care for their animals.

Suing the Texas vet board was like chasing a greased pig—for three years, the board juked and jived, doing everything it could to prevent the courts from ruling on the legality of its new teeth-floating rule. But justice prevailed in the end, as we stopped the vet board's anti-competitive assault on economic liberty dead in its tracks. Not surprisingly, the board, still beholden to the veterinarians whose livelihoods it protects, has vowed to try again. We say, "Don't mess with Texas teeth floaters!" ♦

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



**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

**Crain's Chicago Business**

**IJ Clinic on Entrepreneurship Director**

**Beth Milnikel:** "Chicago is unfortunately tough on entrepreneurs. It's hard to start a small business in the best of circumstances. And it's tragic when the city is standing in the way of innovators and creative people who are trying to make neighborhoods a better place to live."



**WUSA9  
(CBS-TV DC)**

**IJ client Kim Houghton regarding her mural:**

"I'm not going to lie down. I'm not going to roll over. I wasn't going to just walk away and whitewash over something that I spent so much money on and put so much heart into. It really is an expression of my passion for dogs."



**Washington Post (Editorial)**

"[S]he filed suit in federal court with the help of the Institute for Justice, a civil liberties law firm. The suit argues Ms. Houghton's First Amendment right to express herself through art is being abridged. And it notes that there would not have been a problem if the mural depicted flowers, dragons or ponies instead of dogs. The absurdity that reveals should cause Arlington residents to wonder about their government's grasp of common sense."

**CNN.com**

**IJ Washington Chapter Director Bill Maurer:** "We hope the Supreme Court will strike down Arizona's 'matching funds' law. The entire purpose of laws like Arizona's is to provide the government with the means to limit individuals' speech by limiting their spending while putting a thumb on the scale in favor of government-funded candidates. That is not allowed under the First Amendment."

**Las Vegas Review-Journal**

**IJ Senior Attorney Dana Berliner:** "Cities and state governments are placing all kinds of barriers to business startups and innovation. This is a bad thing at all times and particularly a bad policy in times of economic calamity. In general, occupational licenses tend to protect people already in business."



**“[T]he Supreme Court’s 2010 ruling in *Citizens United v. Federal Election Commission* and a related lower-court decision, *SpeechNow.org v. Federal Election Commission*, arguably represent the most fundamental changes to campaign finance law in decades.”**

—Congressional Research Service



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City officials want to throw us in jail because we give tours and describe things without a license.

The First Amendment does not allow the government to be in the business of deciding who is and is not allowed to speak.

We are standing up for our right to communicate for a living.

And we will win.

*We are IJ.*



*Tonia Edwards and Bill Main*  
Washington, D.C.

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