August 2012

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Liberty & LAW

Inside This Issue

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IJ WINS A Life-Saving Victory For Cancer Patients & Their Families

IJ client **Doreen Flynn**, a single mother of five children from Lewiston, Maine, is a compelling example of the courage and determination parents must exhibit when their children are struck with a deadly blood disease. Three of Doreen's daughters have Fanconi anemia, a serious genetic disorder whose sufferers often need a bone marrow transplant in their teens. Thanks to IJ's victory, those needing bone marrow transplants may soon find it easier to secure a match.

By Jeff Rowes

On June 25, the Institute for Justice's landmark victory in the bone marrow compensation case became final when U.S. Attorney General Eric Holder declined to ask the U.S. Supreme Court to review last year's decision in favor of our clients by the 9th U.S. Circuit Court of Appeals. Across the nation, doctors, patients and their supporters are now free to offer compensation to most donors of lifesaving bone marrow without fear of being prosecuted under the National Organ Transplant Act of 1984 (NOTA), which criminalizes organ sales.

This case began in October 2009 when IJ teamed up with cancer patients, the parents of children with deadly blood diseases, a renowned doctor, and the nonprofit MoreMarrowDonors.org to challenge NOTA's ban on compensation for bone-marrow donors. The basic idea behind this legal challenge was that bone marrow is actually just immature blood cells and it is legal to compensate blood donors. Unlike the donation of solid organs such as kidneys, which do not grow back when removed, marrow cells constantly regenerate. There was simply no rational

Bone Marrow continued on **page 10**

IJ Fights CON Job in Virginia

By Robert McNamara

Virginia's CON program regulates whether someone is allowed to open a new medical office or purchase new equipment. IJ client **Dr. Mark Monteferrante** shouldn't need the government's permission to compete.

A hallmark of IJ's approach to litigation is that we never merely ride the wave of public opinion; instead, we file cases that transcend tired ideological divides and that make differences for real-world clients.

There is no better example of this than our latest economic liberty challenge, which takes us into the heart of the national healthcare debate. As experts and pundits ask what the *federal* government can do to expand access to healthcare, missing from the debate is any discussion about what *state* governments can *stop* doing to achieve this end.

The answer to that question, it turns out, is "a lot." In 36 states and D.C., it is actually illegal to offer new healthcare services or purchase certain kinds of medical equipment without obtaining special permission from the government. These laws—called certificate of need or "CON" programs—establish government-imposed monopolies of service for favored established businesses. Before new healthcare services may open their doors, they must first prove to the state that their service is "necessary"—which, all too often, is simply code for proving that they won't take any customers away from an existing business.

Virginia, which imposes enormous burdens on doctors who want to provide safe and effective medical treatment in the state, is one of the worst offenders of these CON laws. The results are predictable: higher prices and fewer choices for patients, and bigger paychecks for industry insiders.

That is why the Institute for Justice filed suit on behalf of a group of doctors from up and down the East Coast who want to provide innovative medical services in Virginia. Whether they want to provide ordinary radiology services, like the Maryland-based doctors of Progressive Radiology, or cutting-edge technological innovations, like Dr. Mark Baumel, who has pioneered what he calls an "integrated virtual colonoscopy," the story is the same. These doctors want to earn an honest living while providing Virginians with top-flight medical care. And they are being blocked from doing so because of Virginia's arbitrary and unconstitutional CON law.

Watch the video, "Is your state pulling a medical CON job?"

To be clear, Virginia has no objection to any of the services our clients want to provide; state officials agree that these are safe and effective medical treatments, and all medical care would be provided by state-licensed doctors. Virginia only objects to our clients working for themselves.

The central idea of our litigation is simple: Doctors and patients—not state officials—are in the best position to decide what medical services and equipment are needed. And, even in the midst of rancorous debate over federal healthcare reform, it seems like people from across the political spectrum can agree on one thing: When private citizens want to invest in innovative and effective healthcare services, the last thing the government should do is *stop* them. Armed with these basic insights, IJ has set out to shake up the healthcare debate and create real change for patients—first in Virginia, and soon nationwide.◆

Robert McNamara is an IJ senior attorney.

IJ Leads the Fight To Protect Occupational Speech From Government Restrictions

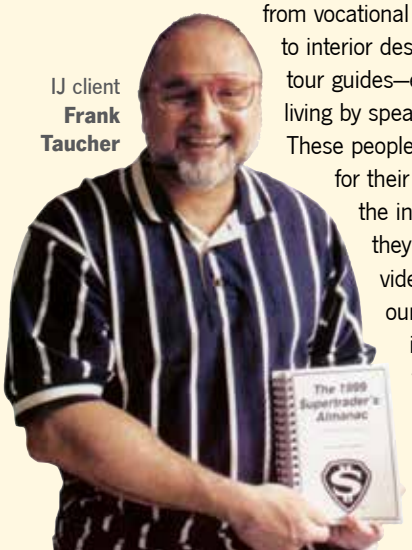
By Paul Sherman

One of the things that makes IJ so effective at defending the First Amendment is that we are entrepreneurial. Although there are many organizations that promote free speech generally, we are constantly on the lookout for important areas of free speech that have been abused by the government and neglected by courts and by other nonprofits. These include, among other things, the right to advertise one's business, the right to use signs to communicate, and the right to speak and associate about politics free from burdensome campaign finance laws.

Today, many people—from vocational teachers to interior designers to tour guides—earn their living by speaking. . . . Yet the U.S. Supreme Court has said almost nothing about whether occupational speech is protected by the First Amendment.

This issue of *Liberty & Law* is special because it features articles on two new cases—IJ's challenges to North Carolina's dietetics law and Nevada's cosmetology law—that seek to protect another category of valuable, but historically under-protected speech: occupational speech.

Throughout most of history, people have earned their living by selling goods or performing services. But today, many people—from vocational teachers to interior designers to tour guides—earn their living by speaking. These people are paid for their advice or the information they can provide. And in our modern, information-driven economy, the number of people working in these sorts of jobs can only be expected to increase. Yet, surprisingly, the U.S. Supreme Court has said almost nothing about whether occupational speech is protected by the First Amendment.



IJ client **Frank Taucher**

The Supreme Court's silence has had serious implications. As occupational licensing has expanded—today nearly one in three American workers needs a license from the government to work in their chosen occupation—an increasing number of these "speaking occupations" have been swept along with it.

Fifteen years ago, IJ set out to change that, and today we are still the only pro-First Amendment organization in the country defending occupational speech in a strategic, principled way.

The premise of IJ's occupational-speech cases is simple: Speech is protected by the First Amendment, even if you get paid for it. Whether you are a journalist, a political consultant, an interior designer or someone giving dietary advice, the government can't regulate or license your speech unless it can produce genuine evidence that the speech it wishes to regulate poses a danger to the public and can show that its regulation is no broader than necessary to prevent that danger.

IJ filed its first occupational speech case in 1997 on behalf of Frank Taucher. Taucher was an author who had written a guidebook on commodities trading, but the federal Commodity Futures Trading Commission claimed that authors like him needed a license from the government before they could publish their investing advice. We won that case, vindicating Frank Taucher's rights and laying the groundwork for future First Amendment challenges.

Free Speech continued on **page 10**

Charity Navigator Ranks IJ Among Most Elite

The nation's largest and most-utilized evaluator of charities, Charity Navigator, recently rated IJ as #3 on their list of top 10 charities with the most consecutive 4-Star ratings. This means that even among the small handful of elite institutions that earned the most consecutive 4-star ratings from Charity Navigator, IJ is one of the top performers.

This summer, for the 11th consecutive year, IJ earned the group's coveted 4-star rating for sound fiscal management and commitment to accountability and transparency. Less than *one percent* of the charities rated have received at least 11 consecutive 4-star evaluations, underscoring that IJ consistently executes its mission in a fiscally responsible way and, according to Charity Navigator, is "well-positioned to pursue and achieve long-term change."

Many thanks for making this work possible!

For more information, visit www.CharityNavigator.org.♦

A CAVEMAN GOES TO COURT

By Jeff Rowes

Abigail Van Buren, the beloved author known as Dear Abby, is warmly remembered for her commonsense advice to readers on marriage, parenting and other relationship issues. But was her column also a 50-year crime spree?

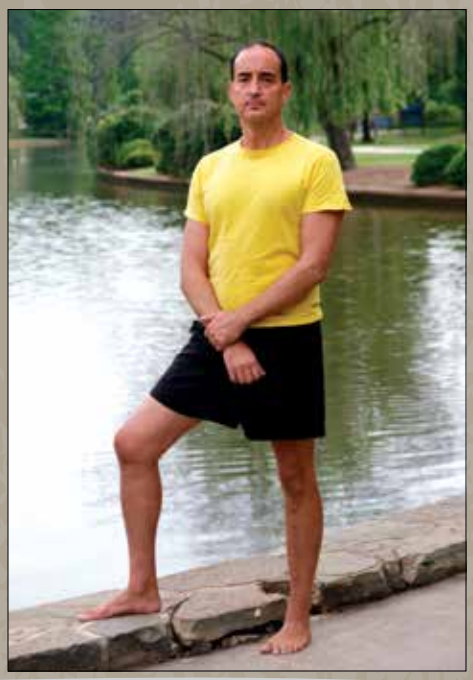
North Carolina would seem to think so. The North Carolina Board of Dietetics/Nutrition sent diet blogger Steve Cooksey a 19-page printout of his online writings—including his Dear Abby-style advice column—with red-pen comments in the margin indicating what Steve may and may not say without a government-issued dietitian's license. In a nutshell, North Carolina contends that Steve can make general statements like "avocados are good for you," but that it is a crime to offer personal advice such as "you should eat avocados" in response to a reader question.

Steve has been thrust into this censorship dispute because he decided to share his dramatic transformation to help others. Three years ago, Steve was an obese couch potato. He was rushed to the hospital in a near-diabetic coma and diagnosed with Type II diabetes, a result of his sedentary lifestyle and junk-food diet. Doctors told him he would be on diabetes drugs forever.

Steve decided to move forward by leaping back in time. He adopted the paleolithic diet of our Stone Age ancestors—meats, eggs, fish, veggies and nuts, but no sugars or agricultural starches. Steve lost 80 pounds, stopped needing insulin and other medications, and brought his diabetes under control. He became an advocate for paleolithic eating, and started a blog (www.diabetes-warrior.net).

Steve's blog became so popular that he started a life-coaching service to give the same advice for a small fee that he had been sharing for free. He also started a free Dear Abby-style advice column, where he would respond to questions sent in by readers. Unfortunately for Steve, it wasn't long before the state board found out about what he was saying.

The state board became involved after Steve attended a diabetes seminar at a local church. The head of diabetic services at a local hospital advocated the standard high-carb/low-fat diet for diabetics. Steve expressed his opinion that a paleolithic diet is best. Others expressed different views. A few days later, someone filed a complaint with the state board alleging that Steve was offering dietary advice without a license.



IJ client **Steve Cooksey** above. Watch the video, "Caveman Blogger Fights for Free Speech and Internet Freedom."

It is hard to believe that an American can come under investigation for offering an opinion at a church seminar and have his personal writings examined by a bureaucratic censor wielding a red pen, but that is just what happened. These peculiar circumstances are the result of uncertainty over what occurs when free speech collides with occupational licensing.

For years, the U.S. Supreme Court has said that protecting speech is a central value—perhaps the core value—of the Constitution. The Supreme Court has also said that there are virtually no constitutional limits on the government's power to restrict liberty through occupational-licensing laws. These principles are in direct conflict in Steve's case. And North Carolina is not applying the law simply to Steve's paid life-coaching service, but also to his free advice, whether in his advice column or in private emails and conversations.

As more and more occupations consist primarily of speech, and as the Internet makes it easier for laypeople to share valuable advice, there are going to be more conflicts between free speech and occupational licensing. There is an urgent need for the Supreme Court to settle this debate because over the past generation the intermediate courts of appeal have become less protective of speech in the form of advice even as the Supreme Court has grown more protective both of speech in general and advice in particular.

That is why Steve teamed up with the Institute for Justice and in May of this year brought suit against the North Carolina Board of Dietetics/Nutrition. Steve's case is on the cutting-edge of free-speech law and aimed squarely at the gap between Supreme Court decisions and those of the lower courts.

We plan to keep Steve and millions of others free to discuss what food to buy at the grocery store, keep the Internet free as a forum for sharing advice and ideas, and keep the cuffs off of Jeanne Phillips, who took over the Dear Abby column from her mom. We'd hate to see her get arrested for practicing psychology without a license.◆

Jeff Rowes is an IJ senior attorney.

Nevada Should Blush Over Makeup Artist Licensing Law

The government should not require teachers like IJ client **Lissette Waugh** to spend hundreds of hours in a classroom learning skills that have nothing to do with what they teach.

By Doran Arik

May the government require teachers to obtain government licenses to teach an occupation that individuals do not need a license to practice? According to the Nevada State Board of Cosmetology, the answer is yes.

Welcome to IJ's latest lawsuit on behalf of makeup artists from Nevada.

In Nevada, anyone may perform makeup artistry without a license. These skilled artists work on movie sets, photo shoots and at runway shows. But even though anybody may perform makeup artistry without a license, the Nevada State Board of Cosmetology dictates that no one may teach it without first getting the government's permission in the form of a cosmetology instructor's license.

Makeup artistry is different from cosmetology—which involves skincare, hair care and nail care—and it is not taught in cosmetology schools. IJ clients Lissette Waugh and Wendy Robin are experienced makeup artists who wanted to share their passion for this craft. They opened their own specialized makeup artistry schools to teach others the skills to succeed as freelance makeup artists in film, television, print photography and retail cosmetics.

But the state of Nevada has ordered Lissette and Wendy to shut down their schools and threatened them with fines of up to $2,000 unless they obtain cosmetology instructor's licenses, a process that costs thousands of dollars and requires hundreds of hours, none of which teach makeup artistry.

Even if Lissette and Wendy become licensed instructors, they still would not be allowed to operate their schools. According to the state board, Lissette and Wendy may only teach makeup artistry if they also teach Nevada's entire cosmetology curriculum, including lessons on how to cut and color hair, and perform facials, waxing and manicures—things that are totally irrelevant to makeup artistry. And once licensed, Lissette and Wendy would be forced to spend thousands of dollars to install cosmetology equipment in their schools that is completely irrelevant to their craft—equipment like shampoo bowls and facial chairs.

Watch the video, "Government to makeup artists: Put down the blush, or we'll shut you down."

As discussed in the Institute for Justice's recent report, *License to Work*, such laws are often put in place only to protect the profits of existing businesses and government-mandated schools that provide costly services to their students.

These regulations are not only outrageous and irrational—they are unconstitutional. Teaching is speech protected by the First Amendment to the Constitution. If anyone is free to perform makeup artistry then anyone should be free to teach it. The Constitution also protects the right to earn an honest living free from unreasonable government regulation. Nothing could be more unreasonable than forcing Lissette and Wendy to take irrelevant classes, teach irrelevant material and install irrelevant equipment to operate their businesses.

That is why Lissette and Wendy have filed suit to fight for their rights to speak freely and to earn an honest living. Their federal lawsuit, filed in June against the state board, continues IJ's long tradition of fighting for the rights of entrepreneurs nationwide. While lawmakers and the cosmetology cartel may try to mask what's going on here, no amount of lipstick will make these purely anticompetitive laws look any better.◆

Doran Arik is an IJ attorney.

Left, **Chip Mellor** and **Mike Grebe** with the award on stage after Chip received his 2012 Bradley Prize. Right, Chip thanks the Bradley Foundation for the honor and discusses the need for judicial engagement.

Chip Mellor: 2012 Bradley Prize Winner

By Scott Bullock

In June, IJ President and General Counsel Chip Mellor received one of the four 2012 Bradley Prizes, awarded by the Lynde and Harry Bradley Foundation. This prestigious award is a tremendous and much-deserved honor for our co-founder.

Michael W. Grebe, President and CEO of the Bradley Foundation, nicely summarized why Chip was selected: "Chip Mellor has led the fight for freedom in America's courts by challenging laws that stifle constitutional rights. Thanks to Chip, the Institute for Justice has become an influential public interest law firm securing major victories for economic liberty, property rights, school choice and the First Amendment."

The selection was based on nominations solicited from more than 200 prominent individuals across the nation.

The Bradley Prize was presented to Chip and three other recipients during a ceremony

**"For his extraordinary success as an institution-builder;
for making IJ a potent defender of small clients and large principles;
and for, in the process, proving that the phrase 'happy lawyer' is not yet an oxymoron,
for all these reasons, Chip Mellor is a recipient of a 2012 Bradley Prize."**

— George F. Will

Master of Ceremonies

held at the John F. Kennedy Center for the Performing Arts in Washington, D.C., a gala event that attracted more than 500 people from across the nation. A huge contingent of IJ staffers, along with Chip's family and IJ client Hector Ricketts were able to attend this event and join in his celebration. During his acceptance speech, with his usual grace and humility, Chip gave special recognition to his family and IJ colleagues who work alongside him in the fight for freedom.

In his remarks, Chip also challenged conservatives in the audience to abandon the false choice between judicial restraint and judicial activism when examining the proper role for courts in a free society. Instead, Chip gave a powerful encapsulation of the principles of judicial engagement, arguing that such engagement plays a critical role in our system of checks and balances and in the prevention of unconstitutional usurpations of power by the legislature and executive officials.

Chip said, "The Framers were deeply concerned about the dangers of interest group politics and overreaching government. The structure of the Constitution rejects blind deference to the other branches. The courts' job is to check forbidden political impulses, not to ratify them under the banner of majoritarian democracy. . . . People like IJ clients Hector Ricketts, Susette Kelo, Doreen Flynn and so many others seek the chance to live as free and responsible members of civil society. Theirs are the aspirations that can and should define our nation's future. But until the judiciary engages, those aspirations will remain at the mercy of increasingly unaccountable government."

It was a rousing speech, and it was a thrill for all of us to see Chip on that stage to receive this award. But I have to confess that I witnessed another special event that involved Chip on a stage. This event occurred a few years ago when Chip, one of IJ's great paralegals (Kyndra Griffin) and I attended a show by soul legend Solomon Burke. During his electrifying rendition of "Proud Mary" toward the end of the concert, Solomon started beckoning to particularly enthusiastic, hand-clapping members of the audience to join him on stage. Not surprisingly, most of the chosen few were ladies who happened to catch Solomon's eye, but he also picked Chip out of the crowd. Chip immediately bounded on to the stage and joined Solomon and his band as part of the spontaneous, hand-clapping chorus surrounding them. (Trust me: Chip's got rhythm!)

I have worked alongside Chip now for over 20 years in the fight for individual liberty. And the Bradley Prize was a wonderful testament to his dedication and all that he and the Institute have been able to accomplish. But joining Solomon Burke on stage also perfectly captured how I have always seen Chip: joyously keeping the beat in his own life while making sure it stays strong and true here at IJ.

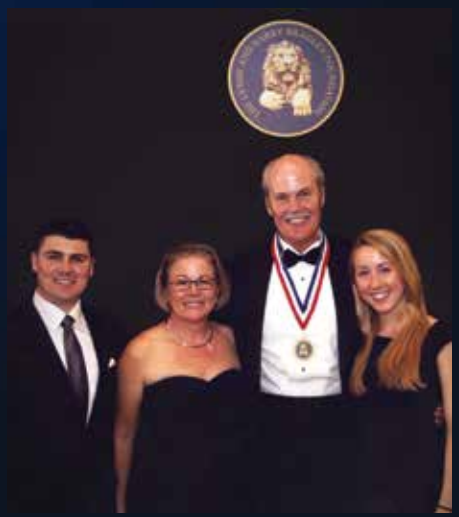
Bravo, Chip!◆

Scott Bullock is an IJ senior attorney.

Previous Bradley Prize Winners

Among the previous Bradley Prize winners are:

Richard Epstein
Alan Meltzer
Alan Kors
Gary Becker
Robert Woodson
Hernando de Soto
James Q. Wilson
George F. Will
Thomas Sowell
Shelby Steele
Abigail and Stephan Thernstrom
Clint Bolick



Chip Mellor pictured with wife **Alison Ling** and children **Mitch** and **Sarah**.

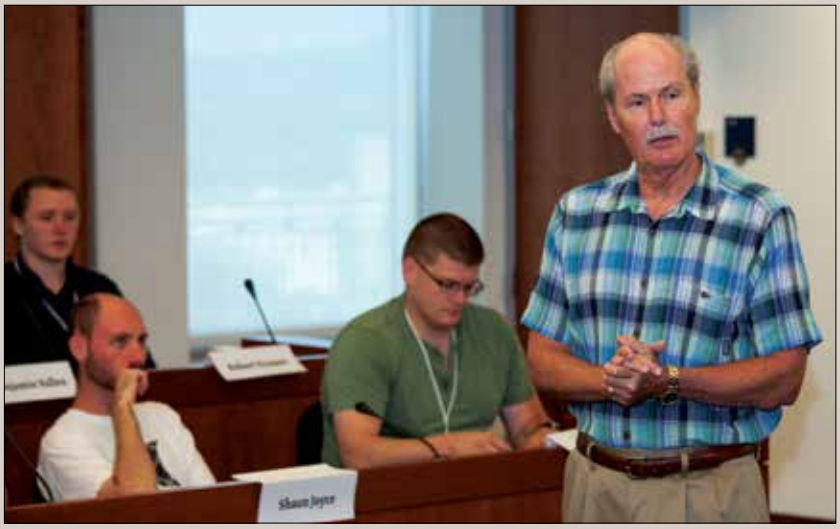
IJ's Annual Law Student Conference Trains the Next Generation Of Public Interest Advocates

By Krissy Keys

In June, 37 law students from 25 law schools across the nation attended the Institute for Justice's 21st annual law student conference, which was held at the George Washington University in Washington, D.C. Joining this year's attendees were the Institute for Justice's summer interns, IJ staff and an attorney from Sweden's Centrum för Rättvisa—a European public interest law firm modeled on IJ. Attendees spent the weekend getting a crash-course in public interest law the way only IJ can do it. This year's conference agenda included traditional conference sessions on IJ's litigation pillars, Institute for Justice litigation strategies for public interest law, media relations tactics, IJ's Human Action Network and our client roundtable. The client roundtable included Heather Coffy, IJ's Indiana school choice client; Abbot Justin Brown, who is fighting for the right of monks in his monastery to make and sell caskets without becoming government-licensed funeral directors; and Russ Caswell, the owner of a Massachusetts motel who is fighting the abuse of civil forfeiture laws. The panel showed attendees the real-world impact IJ's clients and litigation have throughout the nation. New and recently added conference sessions included sessions on IJ's strategic research, IJ's Center for Judicial Engagement, an attorney break-out session, which let attendees pick the brains of some of IJ's litigators, and a question and answer session with IJ's President and General Counsel Chip Mellor.

Joining Institute for Justice staff presenters were Georgetown Law Center Professor Randy Barnett, who discussed the Affordable Care Act litigation; Cato Institute's Roger Pilon who debuted a new law student conference session on constitutional theory and history; and George Mason University Professor Todd Zywicki, who spoke on public choice theory and the law.

One of the high points of this year's conference was the keynote address by Judge Diane S. Sykes of the 7th U.S. Circuit Court of Appeals. Judge Sykes gave a fascinating address on state supreme courts bucking U.S. Supreme Court precedent throughout history. All in attendance enjoyed the speech and the chance to talk with Judge Sykes throughout the evening.



IJ President **Chip Mellor** addresses this year's law student conference participants.

IJ summer clerks and interns and attendees of IJ's annual law student conference become members of IJ's Attorney Human Action Network, which now includes more than 1,000 conference alumni. IJ Attorney HAN members are frequently called upon to serve as local counsel for IJ cases, author amicus briefs, or to litigate cases IJ is unable to litigate.◆

Krissy Keys is the Institute's special projects manager.

IJ's 2012 Clerks and Interns

Our 2012 headquarters summer clerks and interns provided excellent legal research for IJ. They are from left to right, **Katie Mclay**, University of Pittsburgh School of Law; **Bryson Smith**, Yale University Law School; **David Morse**, University of Houston; **Brad King**, Harvard University Law School; **Jordan Fischetti**, George Mason University School of Law; **Andrew Ward**, New York University School of Law; **Andrew Koehlinger**, Hillsdale College; **Alex Antonova**, University of Virginia School of Law; **David Will**, Princeton University; **Darwyyn Deyo**, George Mason University; **Akil Alleyne**, Benjamin Cardozo School of Law; **David Scott**, University of Iowa College of Law; **Jessica Thompson**, University of North Carolina School of Law; **Charles Blatz**, Manhattanville College; and **Eddie Lowe**, University of Alabama School of Law.

Monks and Their Supporters Head to Federal Appeals Court in Support of Economic Liberty

On June 7, 2012, a federal appeals court in New Orleans heard argument on Saint Joseph Abbey's challenge to Louisiana's restrictions on who can sell a casket. In July 2011, after a bench trial, a judge struck down Louisiana's law as unconstitutional, but the state appealed that decision. Attending the argument were IJ clients Abbot Justin Brown, Deacon Mark Coudrain and a bus full of monks and nuns from the Abbey's community. The argument went well and we anticipate receiving a decision by the end of the year.◆

Bone Marrow continued from **page 1**

reason why a law designed to prevent a market in nonrenewable solid organs should apply to renewable marrow cells.

Like all of IJ's cases, our clients were front and center, and their stories—and courage in the face of tremendous personal adversity—were inspiring. Single mom Doreen Flynn, our lead plaintiff, has three daughters with Fanconi anemia, a genetic disease that, without a marrow transplant, usually kills its victims before adulthood by destroying their ability to make healthy blood. Jordan Flynn, Doreen's oldest, just underwent a bone marrow transplant in New York. Plaintiff Kumud Majumder, whose beloved 11-year-old son, Arya, died of leukemia months after we launched the case, never wavered and continues to be a tireless advocate

Watch the video, "A Mother's Fight: Mom fights to compensate marrow donors."

for increasing the number of minority donors.

On December 1, 2011, the 9th Circuit rendered its decision. It ruled that the federal government could constitutionally prohibit compensation for marrow cells obtained using the traditional surgical method of drawing them directly from the hip bones using a large-gauge needle. It also ruled, however, that the statute did not prohibit compensating donors who use the most common method of donation: drawing marrow cells directly from the bloodstream. This modern technique did not exist in 1984 when Congress enacted NOTA. The court held, contrary to the Department of Justice's position, that NOTA simply did not cover this new method.

The Attorney General was not prepared to accept this decision. He petitioned the full 9th Circuit to rehear the case in a special proceeding called *en banc* review. When the court denied that petition, the Attorney General's only option was review in the U.S. Supreme Court. By choosing not to pursue review there, the Attorney General has accepted the 9th Circuit's decision, which, because it is the only decision addressing this issue, created a uniform national rule.

Not only have we changed the law, we fundamentally altered the terms of the debate on a national scale, advancing the principle that liberty can be a powerful tool in the fight against deadly diseases and other healthcare problems. We secured feature articles and opinion pieces in *The Wall Street Journal*, *The New York Times*, *The Washington Post*, the *Los Angeles Times* and countless local print and television stories, as well as coverage in the medical and scientific press. *NBC* also recently featured our case on the *Today* show, *NBC Nightly News with Brian Williams*, and *Rock Center*. (If you have not seen that piece, we encourage you to do so: **iam.ij.org/rockcenter-ij**.) The case has also generated several scholarly articles and an academic conference at Drexel Law School.

With your help, the Institute for Justice will continue to change the world—and change lives—with innovative cases that sound the call of freedom in new ways.◆

Jeff Rowes is an IJ senior attorney.

IJ clients **Tonia Edwards** and **Bill Main** fight for free speech rights for tour guides in Washington, D.C.

Free Speech continued from **page 3**

In California and New Hampshire, IJ used the precedent from Taucher's case to successfully challenge efforts by licensed real estate brokers to shut down for-sale-by-owner websites. Together, these cases helped establish the important principle that the government cannot require a speaker to get a government license merely to publish information or advice to the world at large.

Following up on these successes, IJ expanded its efforts and started challenging laws that burdened one-on-one, individualized speech. In New Orleans and Washington, D.C., we are engaged in ongoing challenges to licensing requirements for tour guides. In Virginia, we challenged burdensome regulations on yoga teacher trainers, prompting the state legislature to amend its laws and remove the regulations. And in Florida we challenged restrictions on who could give interior design advice, resulting in a court ruling that drastically narrowed the scope of Florida's draconian interior design law.

These cases, along with our most recent challenges in Nevada and North Carolina, are an important part of IJ's broader effort to promote judicial engagement. Even within the realm of free speech—which has historically received more robust protection than other rights, like economic liberty—judges routinely make arbitrary distinctions, protecting some categories of speech while leaving others with little or no protection. But the First Amendment declares that government "shall make no law . . . abridging the freedom of speech." It doesn't add, "unless you get paid for it" or "unless it's individualized advice."

Judicial engagement requires that judges take the First Amendment at its word, without playing favorites or relegating disfavored categories of speech to second-class status. Courts haven't always lived up to that standard, but with the Institute for Justice's principled, cutting-edge arguments in support of commercial speech and occupational speech, we're aiming to change that.◆

Paul Sherman is an IJ attorney.

Volume 21 Issue 4

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.

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

How to reach us:

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

General Information . . . . . (703) 682-9320

Extensions:
Donations 233
Media 205

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

The Washington Post

"The [Institute for Justice] is on a constant watch to find the perfect case to challenge a series of economic regulation decisions nearly unbroken since the New Deal. Courts must find only that there is a 'rational basis' for an act, the most accommodating standard for government action."

Crain's Chicago Business

"Chicago should not protect restaurants from competition with the force of law. Mobile food entrepreneurs have the right to start new businesses serving fresh food on the go. And Chicagoans have the right to decide where to buy their meals. Our city will be more vibrant—and more delicious—for it."

National Law Journal

IJ Attorney Paul Sherman: "The government cannot require speakers to get a government license simply to give ordinary advice. Indeed, the government can no more require [IJ client Steve] Cooksey to become a licensed dietitian than it could require Dear Abby herself to become a licensed psychologist."

Richmond Times-Dispatch (Editorial)

"Two physicians being represented by the Arlington-based Institute for Justice are challenging Virginia's Certificate of Need process, which restricts who can deliver health-care services in the commonwealth—and which ones . . . . It's time to end Virginia's CON regime, for the sake of women's medical choice—and men's, too."

The Virginian-Pilot

"Enter the Institute for Justice, an Arlington-based, nonprofit that says it defends free speech and property rights. The group filed a federal lawsuit Wednesday on behalf of Central Radio. It seeks an injunction that would restrain the city from enforcing the sign ordinance."

“A recent comprehensive survey of state licensing practices by the Institute for Justice reveals little consistency or coherent purpose behind most licensing.”

—Matt Yglesias
Slate

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

Elmer Kilian
Eagle, Wisconsin

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