

June 2015

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IJ client **Abdi Abdisalan** wants to own his own taxicab company and work for himself, but the San Diego taxi cartel is suing to keep him from getting a permit.

### By Wesley Hottot

Taxicab lawsuits are special at IJ because they perfectly illustrate how entrenched interests use government power to keep entry-level entrepreneurs from taking their first step up the economic ladder. And IJ's latest lawsuit defending two San Diego drivers is no exception.

Last year, long before the case was filed, a group of San Diego taxi drivers reached out to IJ for help. The city's cap on the number of taxi permits—in place since 1984—allowed for just 993 cabs in a growing city of 1.3 million people. Taxi drivers wanted to own

their own permits and go into business for themselves. But the city's policy of artificial scarcity made taxi permits expensive: Permits sold for around \$120,000. All of the available permits were (and still are) owned by just 499 people, most of whom do not drive cabs themselves. Instead, drivers lease permits for between \$300 and \$800 per week.

Enter IJ's legislative counsel, Lee McGrath, who answered the drivers' call and worked with their organization to persuade the San Diego City Council to open the taxi market to new competition. Months of

Taxi Freedom continued on page 9



# Gone in 13 Days:

IJ Holds IRS Accountable in North Carolina



### By Robert Everett Johnson

This article was supposed to introduce IJ's latest civil forfeiture case, involving a North Carolina convenience store owner named Lyndon McLellan who had his entire bank account—more than \$107,000—seized because, according to the IRS, he made cash bank deposits in the "wrong" amounts. But before we could get the article to print, and as a result of our litigation effort and media blitz against the government agency, the IRS agreed to give back Lyndon's money.

This is hardly the first time the government has admitted defeat in an IJ civil forfeiture case, but it sets a new record for speed. From the day the Institute for Justice entered the case, it took the government only 13 days to decide it would not take Lyndon's money after all. During

those 13 days, the case received intense public attention—including an article in *The New York Times* and a segment on *Fox News*.

The IRS targeted Lyndon under so-called "structuring" laws, which were designed to go after drug dealers, money launderers and others seeking to evade bank reporting requirements, but which sweep up small business owners guilty of nothing more than depositing their hard-earned money in the bank.

Cases like this were supposed to be a thing of the past. In October 2014, *The New York Times* published a front-page story featuring IJ clients Carole Hinders and Jeff Hirsch, who also had their money seized under the structuring laws. The IRS responded by announcing it would henceforth limit its application of the structuring laws to real criminals.

Lyndon is exactly the kind of person the IRS policy change was supposed to protect from its often abusive practices. Lyndon built his business through tireless work—manning the register, sweeping the floors, working the grill and hardly ever taking a vacation for more than a decade. He runs a store where you can buy a catfish sandwich for \$2.75, where the same regulars come every day for breakfast and where practically every customer knows Lyndon by name.

But, policy or no, the government was determined to take Lyndon's bank account because they saw it as easy pickings. The government filed its forfeiture complaint in December 2014, two months after the IRS announced its policy change. And, in March 2015, the prosecutor handling Lyndon's case sent an email offering to settle for 50 percent





of the money. In other words, although the case never should have been brought, the prosecutor demanded half of Lyndon's money in order to go away. The same prosecutor warned Lyndon to be quiet about what the government was doing, writing "publicity about it doesn't help. It just ratchets up feelings in the agency."

Instead of remaining silent and losing all he earned, Lyndon joined with IJ to fight the government's civil forfeiture action. And, as soon as the government realized it faced a real opposition, it turned tail and dropped the case. Now we will continue our effort to help Lyndon recover the fees and expenses he endured as a result of this misadventure.

The government's about-face confirms an ugly truth: The government uses civil forfeiture to prey on those who it does not think will fight back. Civil forfeiture thrives outside the light of public attention, where government can coerce property owners without having to justify its actions.

IJ is shining a light on civil forfeiture—and not just in Lyndon's case. The government is going to have no choice but to change. Perhaps not in 13 days, but perhaps sooner than any-

one thinks.◆

Robert Everett Johnson is an IJ attorney and the Elfie Gallun Fellow in Freedom and the Constitution.



## New Mexico Ends Civil Forfeiture

On April 9, New Mexico Gov. Susana Martinez ended civil forfeiture in the state by signing landmark legislation based on IJ's model forfeiture law.

New Mexico boldly enacted best-in-the-nation reforms to protect the property and due process rights of all New Mexicans. It replaced civil forfeiture with criminal forfeiture, redirected forfeiture proceeds into the state's general fund and prohibited state law enforcement from circumventing these reforms by collaborating with the federal government.

Reform efforts started late last year when *The New York Times* drew national attention to videos uncovered by IJ proving law enforcement was using state civil forfeiture laws to take property and profit from those takings. In those videos, Las Cruces City Attorney Harry Connelly explains that his civil forfeiture filings were "masterpieces of deception" and "we always try to get, every once in a while, maybe a good car."

The videos were smoking-gun evidence demonstrating that law enforcement used civil forfeiture to take property from owners who did nothing wrong. State legislators could not ignore them.

Sensing an historic opportunity, IJ teamed up with a former Department of Justice prosecutor and local activists from the ACLU, Drug Policy Alliance and other organizations to push for comprehensive forfeiture reform during the 2015 session. Using IJ's model forfeiture bill and advice from IJ, the coalition persuaded legislators, the public and ultimately Gov. Martinez to support the bill. The new law is now the gold standard against which all other state civil forfeiture reforms will be measured.



Watch the videos that helped jumpstart forfeiture reform in New Mexico.



IJ Florida Managing Attorney Justin Pearson moderated one of the panels for IJ's first-ever symposium on how state constitutions protect economic liberty. Professors **Steven Calabresi** and **Richard Epstein** were among the distinguished speakers.

### Economic Liberty's Secret Weapon: State Constitutions

### By Anthony Sanders

In 1776, New Hampshire adopted the first written state constitution—written years before the U.S. Constitution. And since then, state constitutions have protected many of our most basic liberties, such as the right to earn a living. For years, IJ has litigated under state constitutions, fighting for everything from the freedom to own a taxicab in Wisconsin to the right to sell flowers in Florida.

But we have noticed something missing in those battles. While we rely on academic research for many of our other cases, especially on how the U.S. Constitution protects economic liberties, there is very little research on how state constitutions do the same thing. That is surprising. Even after federal courts stopped enforcing the U.S. Constitution's similar protections after the New Deal, many state courts have continued protecting the rights of entrepreneurs. Research on this history would be invaluable.

So, instead of waiting for legal academics to come to us, we went to them.

On April 10, IJ partnered with the New York University School of Law's student journal, the *NYU Journal of Law and Liberty*, and held a day-long symposium, *Economic Liberties and State Constitutions*, at the law

school. In a fascinating intellectual adventure, several prominent legal scholars delivered papers that will be published in the journal later this year.

Keynoting the event was a recently retired judge, the Honorable Robert S. Smith, who sat on New York's highest court for over a decade. He discussed when state courts should protect

rights under state constitutions when the U.S. Supreme Court has failed to do so under the U.S. Constitution.

Four prominent law professors presented original ideas IJ can use in fighting unnecessary regulations on entrepreneurs and small businesses: Professor Richard Epstein of NYU and the University of Chicago law schools, a longtime friend and even a former client of IJ; Professor Jim Ely of Vanderbilt Law School; Dean Dan Rodriguez of Northwestern School of Law; and Professor Steve Calabresi, also of Northwestern School of Law.

This research will strengthen future IJ cases and inspire more research. One area we are particularly interested in is state constitutional provisions protecting economic liberty that are different from language found in the U.S. Constitution. For example, Florida's



bill of rights has a clause protecting the right "to be rewarded for industry." Similarly, Montana has a clause protecting the right "of pursuing life's basic necessities."

In our view, that language should protect entrepreneurs in

those states from bureaucrats sapping away their hard work and profits. These provisions have their own specific histories and meanings crying out for analysis. That research can bolster IJ economic liberty cases and inform state courts when they rule.

Perhaps a few years from now you will visit a business that was able to open because of IJ's litigation and that relied on research into how your state's constitution protects the right to earn a living. Events like our symposium are long-term investments in those future victories.

Anthony Sanders is an IJ attorney.











IJ Attorney Paul Avelar, right, and clients Nivea Earl and Christine McLean smile as Arkansas Gov. Asa Hutchinson signs a bill to deregulate hair braiding. Joining them at the signing was State Representative Bob Bollinger.

# Braiding Freedom Initiative Continues to Brush Out Excessive Hair Braiding Laws

### By Paul Avelar

Natural hair braiders in Arkansas and Washington are free to earn an honest living thanks to IJ's ongoing national braiding initiative. Now, 12 states do not require natural hair braiders to have licenses. These victories, and our victory in January on behalf of Texas-based Isis Brantleywho was prohibited from teaching hair braiding unless she converted her school into a full-blown barber college—mark a very successful first nine months of the initiative. Much of the success and continued national attention focused not just on hair braiding, but also on economic liberty and occupational licensing, are a testament to the strength of IJ's coordinated litigation, legislation, activism, media and research efforts.

In Washington, we forced the Department of Licensing (DOL) to write a new rule protecting natural hair braiders. A decade ago, we sued the DOL because it required braiders to get a cosmetology license, but it backed down and declared that braiding did not require a license. In late 2013, however, DOL—without notice or explanation—told Salamata Sylla she

needed a cosmetology license just to braid hair, so we returned to court.

Faced with our new lawsuit, the DOL agreed to a binding rule that Washington braiders are not required to have a license and can also use hair extensions as part of their practice. This new rule went into effect on April 10, bringing our lawsuit to an end.

In Arkansas, IJ sued on behalf of successful braiding entrepreneurs Nivea Earl and Christine McLean. Arkansas required Nivea and Christine to take 1,500 hours of cosmetology training, which can cost more than \$16,000, even though the training has nothing to do with braiding.

Our lawsuit caught the attention of State Rep. Bob Ballinger, who called us to apologize for Arkansas' law and offered legislation to fix the problem. Rep. Ballinger's "Natural Hair Braiding Protection Act," which is based on IJ's model legislation, was signed into law by Gov. Asa Hutchinson on March 15. The act exempts hair braiders from having to obtain any license and instead creates an optional certification. It will take effect shortly after the Arkansas legislative session ends, after which we will dismiss our case.

But our initiative is about more than braiding hair. Our efforts on behalf of braiders also benefit other workers. In Arkansas, for example, IJ helped open lawmakers' eyes to the need for larger occupational licensing reforms. Braiding cases pave the way for hard-working men and women in other fields to provide for themselves and their families through honest enterprise.

Despite these victories, as many as 23 states continue to subject braiders to onerous, expensive and pointless licensing requirements. That is why IJ continues to fight for braiding freedom in Missouri—where we expect a court decision by the end of the year—and to work up our next round of braiding cases.

Government cannot license something as safe and common as braiding hair. So long as it does, IJ will keep fighting for—and winning—economic liberty for everyone.◆

**Paul Avelar** is an IJ attorney.



"Government cannot license something as safe and common as braiding hair. So long as they do, IJ will keep fighting for—and winning—economic liberty for everyone."



IJ's Occupational Speech Litigation

# Climbs the Ivory Tower

By Robert McNamara

IJ's mission is to do more than just win cases; it is to change the legal culture in a way that makes it easier for others to win cases and to protect freedom nationwide. It is not enough to prevail in court. Instead, we need to start, and then win, debates about liberty and the U.S. Constitution at the highest levels.

In that spirit, we were delighted to see a recent essay in the *Harvard Law Review Forum* by Amanda Shanor and Robert Post, the Dean of Yale Law School, calling attention to a "remarkable" new court decision embracing a legal theory that they said threatened to bring about a "dystopia" unless it was stopped.

That "remarkable" decision was one that will be familiar

to loyal *Liberty & Law* readers: IJ's recent victory in *Edwards v. District of Columbia* striking down D.C.'s licensing requirement for tour guides. And this dystopian legal theory? The idea that the government cannot escape First Amendment scrutiny simply by labeling its restrictions "occupational licenses."

This was striking. Not because a legal academic was apoplectic

"THE FIGHT OVER OCCUPATIONAL SPEECH IS NOT JUST AN ABSTRACT LEGAL DEBATE. IT IS A FIGHT THAT MATTERS TO THE LIVELIHOODS OF OUR CLIENTS AND OF MILLIONS OF OTHER AMERICANS ALL ACROSS THE NATION."

about an IJ victory—we are used to that—but because it perfectly illustrates what the world would look like without IJ. If there were no IJ, the legal debate would be dominated by people who think that a "dystopia" is a world where the government has anything less than unchecked power to impose occupationallicensing laws. If there were no IJ, the unchallenged high ground would belong to people who think it is simply obvious that the First Amendment does not apply to occupational licensing at all.

Fortunately, there is an IJ. And that means the *Harvard Law Review Forum*, in the same issue, featured an essay by IJ Senior Attorney Paul Sherman, who calmly and cogently laid out IJ's position on occupational speech: that the First Amendment protects the right of everyone to speak for a living, whether they are professors or journalists or consultants or tour guides.

The fact that IJ's occupational-speech work is now

being debated by the highest levels of the legal academy is no accident. It is the product of IJ's consistent, principled advocacy on behalf of our occupational-speech clients—not just in court, but in newspapers, in academic journals, and on radio and television stations nationwide.

The fight over occupational speech is not just an abstract legal debate. It is a fight that matters to the livelihoods of our clients and of millions of other Americans all across the nation. But it is a fight that requires more than just court victories. It requires fundamentally changing the legal culture's approach to the intersection of free speech and economic liberty. IJ's advocacy has kindled a fiery debate on this topic-and, as evidenced by our victory in the D.C. tour-guide case, we are not just engaging in this debate. We are winning it. And we plan to continue.

Robert McNamara is an IJ senior attorney.

# Arizona Entrepreneurs Give State a Much-Needed Makeover

### By Tim Keller

IJ's lawsuit in Nevada representing two Las Vegas makeup artists has inspired legislative change in Arizona. In Nevada, makeup artists who want to teach others their craft must obtain cosmetology instructor licenses and turn their



Arizona entrepreneurs **Leiah Scheibel** and **Alexandra Bradberry**.

schools into state-licensed cosmetology schools.

Across the border in Arizona, professional makeup artist Leiah Scheibel and her business partner, Alexandra Bradberry, had a dream to open a studio and offer makeup-application services for weddings, shows and special events. That dream nearly ran aground when the Arizona Board of Cosmetology told them that only state-licensed cosmetologists can apply makeup for compensation. This made no sense to Leiah and Alexandra because cosmetology schools do not teach makeup artistry. Befuddled and angry, they began searching for a solution. That search led them to IJ.

Inspired by IJ's Nevada case, Leiah and Alex met with IJ Arizona. Our office manager and paralegal Kileen Lindgren, whose background is in legislative affairs, suggested taking a legislative approach. Kileen registered as a lobbyist, found a like-minded bill sponsor in Senator Kimberly Yee and spear-headed the campaign. The bill passed both houses with little opposition, and on March 23, the governor signed the bill exempting makeup artists from the Board's jurisdiction. They plan to open their business in August—something they would have done this past September had it not been for the cosmetology licensing scheme. Nevertheless, with persistence and principles, dreams do come true!◆

**Tim Keller** is the managing attorney of the IJ Arizona office.



### Judicial Engagement Continues to Make Waves

### By Clark Neily and Evan Bernick

Over the past few months, IJ's Center for Judicial Engagement (CJE) has been at the center of a fresh dialogue about the proper role of courts in constitutional cases, a dialogue that shows signs of finally moving beyond the false dichotomy of "judicial activism" and "judicial restraint." The result? Not only is judicial engagement squarely on the table in limited-government circles—it is becoming a focal point of those discussions.

In January, Senator Rand Paul shook up the right-of-center legal movement when he criticized knee-ierk judicial deference and described himself as a "judicial activist" who favors robust protection of individual liberty by the courts. He further challenged the status quo by praising the U.S. Supreme Court's 1905 decision in Lochner v. New York. The Lochner decision has been anathema to generations of conservatives and liberals for its principled defense of economic liberty. Appearing days later on Mark Levin's widely syndicated radio show, Senator Paul clarified that he is a proponent of "judicial engagement"-not activism-and believes that courts should fully enforce all constitutional limits on government power instead of a select handful, as they do now.

CJE responded immediately. We published an op-ed at *National Review Online* praising Senator Paul's challenge to conventional wisdom and arguing that reflexive judicial restraint has been a disaster for constitutionally limited government. This op-ed prompted a reply from conservative legal scholars and gave rise to a thoughtful exchange about judicial duty—whether judges should accept implausible and factually unsupported justifications for government action at face value or should instead insist upon honest explanations and reliable evidence. That exchange is ongoing, and it has attracted numerous other participants.

Of course, this is not merely an academic dispute. As the Supreme Court prepares to decide cases involving same-sex marriage and whether the IRS can provide billions of dollars in Obamacare subsidies without explicit congressional authorization, partisans on the left and right have accused the Court of "activism" for involving itself in those matters at all. CJE responded with a *USA Today* op-ed, arguing that all cases involving asserted abuses of government power merit the kind of engaged judging currently reserved for a small handful of privileged constitutional values.

Importantly, the call for judicial engagement is not limited to the High Court. Several hundred

thousand cases are filed in federal court every year, and of the 40,000 or so decided by the courts of appeals, only a few dozen are heard by the Supreme Court. In the last issue of Liberty & Law, we announced a weekly online newsletter and podcast called Short Circuit to highlight key decisions from the nation's federal circuit courts, which are a level below the U.S. Supreme Court. Editor John Ross' intriguing case summaries and irreverent humor have made Short Circuit an instant hit among hundreds of subscribers while earning favorable mentions on leading legal blogs, including Overlawyered and The Volokh Conspiracy.

While judicial engagement is not yet the coin of the realm, it has never been more widely—or seriously—discussed. The day courts start providing meaningful judicial review in all constitutional cases will be a rough day for Leviathan but a fine day for freedom.◆



Clark Neily is an IJ senior attorney and director of CJE.

**Evan Bernick** is the assistant director of CJE.



### Opening the taxi market in San Diego

**Taxi Freedom** continued from **page 1** hard work paid off last November, when the city council lifted the permit cap!

San Diego's new permitting reforms are among the best in the nation. Drivers who meet basic licensing, safety and insurance requirements can get their own permits for around \$3,000.

But San Diego's cab companies are not letting go so easily. In March, they sued to stop the city from issuing new permits. Their lawsuit demands that the court stop taxi permitting and that the city pay money damages for the supposed devaluation of their permits. IJ's litigation team has moved quickly to defend the new law alongside the city.

Our clients are two longtime cab drivers, Abdi Abdisalan and Abdullahi Hassan. They both came to this country as refugees from Somalia's civil war in the 1990s. Today, they are U.S. citizens seeking their own American Dream. For years, Abdi and Abdullahi have leased their taxi permits from other people. When the new law passed in November, Abdi immediately began plans to start his own company, Adam Cab, and Abdullahi began plans to start his own company, Kisima Cab. Both men just want an opportunity to compete on fair terms. The cab companies' lawsuit threatens these would-be entrepre-

neurs' ability to go to work for themselves. That is why IJ has taken their case.

On April 30, the court granted IJ's motion to intervene in the case on behalf of Abdi and Abdullahi. IJ also helped defeat an "emergency petition" filed by the cab companies to halt the new permitting process, a process that will now proceed while the case is pending. IJ is in full swing officially defending San Diego's free-market taxi reforms.

This is not IJ's first rodeo, either. The day before we filed our motion to intervene in San Diego, we were granted intervention in a similar case in Milwaukee, where cab companies have also sued to stop the city from lifting its cap on the number of taxi permits. The decision in Milwaukee helped persuade the judge to let us intervene in San Diego.

For too long, cities have enforced 19th-century transportation regulations in a 21st-century world. By intervening in cases like the ones now pending in San Diego and Milwaukee, IJ will help change the course of history and help guys like Abdi and Abdullahi take control of their own destinies.

Wesley Hottot is an IJ attorney.





Former IJ client **Larry Miller** is back at work selling Braves gear to fans after Atlanta tried to shut down his vending business.

### PLAY BALL!

### Atlanta Vendors are Back to Work

Baseball is the American pastime, with the sights and sounds of vendors turning the walk to the stadium into a festive, lively affair. Now, due to the indomitable spirit of former IJ client Larry Miller, that festive spirit has returned to Atlanta.

Readers may recall that IJ persuaded a court to strike down a sweetheart deal that handed all vending in Atlanta over to a single corporation. Ignoring the decision, Mayor Kasim Reed illegally put all street vendors out of work and pushed through a law that eliminated vending outside of Turner Field, where vendors had worked for decades.

Most people would have given up—but not Larry. For months, Larry fought tirelessly on behalf of his fellow vendors. This spring, his efforts paid off when the Atlanta City Council allowed vendors to return to Turner Field. With this victory, Larry and his fellow vendors can get back to work selling their wares and making memories.◆



IJ Senior Attorney **Bert Gall** accepts an award for IJ from food truck owners in Washington, D.C.

### IJ Honored for Its Fight to Advance Food Truck Freedom in D.C.

Two years ago, when D.C.'s food trucks were threatened with draconian and senseless parking restrictions that would have put most of them out of business, IJ stepped up and helped them fight back. And as we chronicled in the August 2013 issue of *Liberty & Law*, that fight against these restrictions, which were aimed at protecting restaurants from competition by food trucks, was successful. The D.C. Council backed down in the face of the public pressure and media attention we helped generate.

Fast forward to today, and D.C.'s food-truck scene is thriving. Last month, the D.C., Maryland and Virginia Food Truck Association honored IJ for its work to save D.C.'s food trucks—as well as the work we have done since then on behalf of food trucks in other cities—by presenting us with its Challenger Award at the association's inaugural Capital City Food Truck Convention. The award goes to individuals or groups "who transcended the status quo to advance a thriving and vibrant food truck industry."

We are honored to receive this award from the hundreds of food truck owners and employees in the greater D.C. area, and we're especially proud to have helped vindicate their right to earn an honest living.

#### Volume 24 Issue 3

#### **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 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

### KVUE-TV ABC Austin



### IJ Texas Managing Attorney Matt Miller:

"States that have adopted [school choice] programs find that it 'raises all boats.'
Public schools improve, students' lives are improved, families have more choice. To my knowledge, no state has ever undone one of these programs once they put one in place, because they're very popular, they're very

effective and everybody enjoys participating."

### Tampa Tribune

"Justin Pearson, a lawyer with the libertarian Institute for Justice who represents Black Pearl, said the law is unconstitutional and he will appeal. 'There is no legitimate reason to order limousine drivers to over-charge their customers,' Pearson said. 'It's not the government's job to protect customers from low prices.'"

#### **Dallas Morning News**

"'At every turn, [IJ client] Isis [Brantley] had to endure regulations that had no connection to what she was doing,' [IJ Attorney Arif] Panju said. 'Our legislators see that this is an important economic liberty issue.'"

### **Washington Post**

**IJ Attorney Darpana Sheth:** "Federal forfeiture programs must be reformed to end the distorted incentives for law enforcement and strengthen protections for property owners."

"Several states...have bills that would restrict or regulate civil forfeiture, according to the Institute for Justice...that has led a public relations and legal campaign against the practice."

--New York Times



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