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A Texas-Sized VICTORY For Economic Liberty

Entrepreneur **Ash Patel** can now reopen his successful eyebrow threading business after the government shut him down seven years ago.

By Wesley Hottot

In a sweeping decision with major implications for entrepreneurs in Texas and across the nation, the Texas Supreme Court ruled that economic regulations will no longer be rubber-stamped. Indeed, the court, and most notably a resounding concurring opinion by Justice Don Willett, expressly rejected the passive judicial deference that too many other courts follow when reviewing economic regulations. The opinion is now the law in one of the nation's largest and most economically vibrant states and will be used by IJ lawyers to urge other courts to protect economic liberty vigorously.

In 2009, IJ teamed up with a group of Texas eyebrow threaders, including Ash Patel and Anver Satani, to challenge a law that forced them to obtain useless and

burdensome cosmetology training. Eyebrow threading is a safe and traditional South Asian practice involving the use of a single strand of cotton thread to remove unwanted hair. The state required aspiring threaders to take 750 hours of instruction in a cosmetology school that does not even teach threading. And then the state issued \$2,000 fines to unlicensed threaders and ordered them to shut down their businesses until they completed the required classes.

After losses in the trial court and the court of appeals, IJ brought the case to the Texas Supreme Court in February 2014. In June of this year, the court ruled 6-3 that the state violated the Texas Constitution's due process clause.

Texas Eyebrow Threading continued on **page 13**



IJ client **John Rinaldi** started Green Cab, an innovative taxi company in a small Ohio town. But when he tried to expand to other cities, he was told his business was not welcome.

FAST AND FURIOUS IJ FIGHTS—AND WINS—TAXI CAP BATTLE IN OHIO

By Robert McNamara

Before he founded Green Cab, longtime Ohio entrepreneur John Rinaldi was more of a businessman than a taxi expert. As a result, he built a taxi company that looks a little different from the norm. Where most taxi companies rely on centralized telephone dispatching, John automated the process with software that tracks how busy each individual driver is. Where most taxi companies charge their drivers outlandish lease fees for the privilege of driving a company-owned vehicle, John came up with a simple revenue split to make sure both drivers and the company stay in the black. Where most taxi companies use a meter, John decided his small, college-town community was best served by a flat, \$3-a-head fare.

All those changes added up to wild success: Green Cab's hometown of Athens, Ohio, went from a place with next to no taxi service to one that was served by a full fleet of modern vehicles.

When John looked to expand his successful business model to similar college towns, though, he discovered yet another thing he had not known about the taxi business: In most cities, starting a taxi company is illegal.

By sheer coincidence, Athens (where John went to college) did not have any restrictions on starting a new taxi company, which meant things were wide open for Green Cab's innovative business model. But Bowling Green, Ohio—a town similar to Athens in many ways—had restrictions. When Green Cab's business manager showed up at City Hall in Bowling Green to apply for new taxi permits, he was actually openly laughed at. Bowling Green, like many cities across the country, capped the total number of taxis that were allowed to operate. Bowling Green law allowed only 16 taxi permits, all of which were in use, and that was the end of the story. Green Cab's innovations were not just unwelcome; they were illegal.

Enter the Institute for Justice. As part of IJ's decades-long project of standing up for innovation and against protec-

Intellectual Ammunition For Reform

From statehouses to the halls of Congress, IJ's strategic research has been providing intellectual ammunition for freedom-friendly reforms, most notably efforts to rein in civil forfeiture and scale back out-of-control occupational licensing. Hard facts—like the scope of civil forfeiture actions and the burdens licensing laws impose on entrepreneurs—can help raise the profile of issues and ratchet up pressure for reform. Two figures illustrate how our research is increasingly influencing public debate:

215

Since last October, IJ's civil forfeiture research has earned 215 media mentions, including features in *The New York Times* and *The Washington Post*, as well as editorials and op-eds in Nevada, Georgia and elsewhere, supporting state and federal reform efforts. Our research was featured in coverage for one of IJ's newest forfeiture cases, involving a baseless seizure at the Cincinnati airport, and our challenges to Philadelphia's forfeiture machine and IRS forfeiture abuses.

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IJ's *License to Work* report, detailing occupational licensing burdens for low-income workers nationwide, has earned 198 media mentions since its release in 2012. The report has been the go-to source for a growing chorus of advocates and writers supporting licensing reform in outlets as ideologically diverse as *The New York Times*, *The Wall Street Journal*, *The Economist*, *The Boston Globe*, *The New Republic* and *Vox.com*.



Green Cab's unique group of drivers love working for John and his company.

“In a just world, a city’s response to an innovative business should simply be **‘Welcome,’** not **‘Come back with a lawyer.’**”

tionism in taxi markets across the country, we teamed up with Green Cab to file a lawsuit against the city of Bowling Green, eager to show the world a concrete example of the power of allowing transportation innovation.

That concrete example (along with IJ's lawsuit and accompanying media coverage) made a quick difference: Within mere days of our lawsuit, Bowling Green's city council introduced legislation that will repeal its taxi cap. We expect to have Green Cabs rolling through town soon.

This rapid surrender on the government's part demonstrates that Bowling Green never needed its taxi cap in the first place—and it should not have taken a lawsuit to force city officials to realize this. In a just world, a city's response to an innovative business should simply be “Welcome,” not “Come back with a lawyer.” In the real world, though, entrepreneurs need IJ. Fortunately—much like one of John's Green Cabs—we are happy to show up when needed.◆

Robert McNamara is an IJ senior attorney.



Carving Economic Liberty In Stone

By Greg Reed

Political favors for industry insiders may be business as usual in New Jersey, but a law that the Monument Builders Association of New Jersey just rammed through the New Jersey Legislature is one of the most egregious violations of economic liberty in the country. This law outlaws religious cemeteries from selling headstones to their own parishioners as part of being buried in the church's own cemetery. Remarkably, the competitor in the crosshairs is the Archdiocese of Newark. As we did with the casket-making monks of Louisiana, IJ has leaped into action to defend economic liberty.

The Archdiocese has a religious obligation to provide consecrated ground for the internment of its faithful. Today it operates 11 cemeteries throughout northern New Jersey, containing the remains of nearly a million people. The Archdiocese must maintain these cemeteries in perpetuity.

In 2006, the Archdiocese began what it now calls its inscription-rights program to help generate the financial support necessary to maintain the cemeteries. Through this program, parishioners acquire a monument, such as a headstone or even a family mausoleum, from the cemetery. Unlike traditional headstone dealers, the Archdiocese promises to care for the monuments it sells in perpetuity.

While parishioners have celebrated the inscription-rights program, one group decided it would stop at nothing to shut it down. After losing a lawsuit in state court accusing the Archdiocese of "unfair competition," the headstone-dealers' lobby did what industry groups all too often do: It went to the state Legislature pleading

for a law to protect them from competition. They wanted to make it illegal for the Archdiocese to sell headstones. Instead of sending this self-interested industry group packing, the New Jersey Legislature caved.

There is no legitimate reason to restrict who can sell headstones. While it has great symbolic value, a headstone is just a beautiful rock. Unsurprisingly, the headstone dealers presented no evidence in their previous lawsuit or before the state Legislature proving that selling a beautiful rock to parishioners poses any risk to anyone. This law's sole purpose is to limit competition and divert parishioner money into the pockets of industry insiders.

That is why, on July 21, IJ filed suit on behalf of the Archdiocese and individual parishioners in federal court to vindicate the right to economic liberty for every American. IJ's defense of the Archdiocese's inscription-rights program is a part of our national campaign to restore economic liberty across the country. Our strategic litigation has already created disagreement among the federal courts of appeals about whether private economic protectionism is constitutionally legitimate. This case will eventually be heard by the 3rd U.S. Circuit Court of Appeals, which has not weighed in on this question. That means that no matter which way the court rules, the case will deepen the disagreement among the courts of appeals and position us for a run at the U.S. Supreme Court.

Economic liberty should be the law of the land. We intend to carve that in stone. ♦

Greg Reed is an IJ attorney.



Government to Air Travelers: Sit Back, Give Us Your Cash And Enjoy Your Flight

By Renée Flaherty

Readers of *Liberty & Law* are familiar with IJ's civil forfeiture work representing property owners and small business owners. But if you are a frequent flyer, you might be surprised to learn that law enforcement can use civil forfeiture to seize your cash in *airports*.

Charles Clarke is one of thousands of Americans whose cash has been taken by the government at an airport through civil forfeiture. Charles is a 24-year-old college student who spent more than five years saving \$11,000—only to have it seized by law enforcement officials before he boarded a flight at the Cincinnati/Northern Kentucky Airport. The government has kept Charles' life savings without charging him with, much less convicting him of, a drug crime.

The government claims it took Charles' money because his luggage smelled like marijuana. At that time, Charles occasionally smoked marijuana. But his cash was not drug money, and the police found no drugs on him or any other evidence of criminal activity. Nevertheless, they seized all of his cash and have held it for more than a year. Being an occasional

recreational smoker does not, without any other proof, make someone a drug dealer, and it does not mean that you should lose your life savings when no drugs or other evidence of a crime are found on you or your belongings. Courts have recognized that carrying large amounts of cash is not by itself evidence of criminal activity, but too many law enforcement agencies still find ways of seizing and forfeiting cash.

Charles saved up his money from working various jobs, financial aid, educational benefits based on his mother's status as a disabled veteran and gifts from family. Charles was visiting relatives in Cincinnati while he and his mother were moving to a new apartment back in Florida. He did not want to lose the \$11,000 in the move, so he took it with him. But the burden should not be on Charles to prove that his money is legitimate.

Ordinary Americans like Charles have become victims of a wave of forfeitures in our nation's airports. In the late 1990s, the Cincinnati/Northern Kentucky airport police took part in a couple dozen seizures per year—but by 2013, that figure had sky-

rocketed to almost 100 seizures, totaling more than **\$2 million**.

Under a federal program called equitable sharing, state and local police receive up to 80 percent of forfeiture proceeds in exchange for referring seized property to federal authorities. Using this program, 13 different law enforcement agencies from Kentucky and Ohio are seeking a cut of Charles' money, even though 11 of those agencies were not involved

Kentucky Forfeiture
continued on **page 14**



IJ client **Charles Clarke** had his life savings of \$11,000 seized at the Cincinnati/Northern Kentucky Airport.



DEAR IRS: GIVE THE MONEY BACK

By Robert Everett Johnson

If you take something that does not belong to you, you give it back. That lesson of basic kindergarten ethics is the subject of an advanced legal strategy IJ is using to get Khalid “Ken” Quran’s money back after it was seized by the IRS using civil forfeiture.

Ken came to America with only \$3,000 in savings and purchased a convenience store on a dusty plot of land in rural North Carolina. He spent years behind the counter, working to build a better future for his kids. Then, just as Ken’s children approached graduation and Ken began to think about retirement, the government used civil forfeiture to take his entire bank account—more than \$150,000.

At 60 years old, Ken was forced to take out a substantial loan, using his family home as collateral, to keep his business going.

Ken was targeted for civil forfeiture under so-called “structuring” laws. As we have discussed in previous issues of *Liberty & Law*, structuring laws make it a crime to avoid federal bank reporting requirements by withdrawing or depositing cash in amounts less than \$10,000. Structuring laws were

intended to target serious criminals but have been applied to small business owners accused of nothing more than doing business in cash.

IJ has represented numerous property owners in civil forfeiture actions brought by the government under structuring laws, and in each case the government eventually backed down and dropped the forfeiture action. The IRS changed its policy after IJ brought national media attention to what the IRS was doing. But Ken’s situation is different: The case came to IJ’s attention after the forfeiture was complete, meaning it is too late to fight the forfeiture in a court of law.

The government took Ken’s money in secret, using harsh strong-arm tactics. Government agents went to Ken’s store directly after seizing his bank account, searched the store with dogs, demanded that he sign a

piece of paper consenting to the forfeiture of his money, yelled that he was disrespecting their authority by refusing to sign and threatened to visit his wife to pressure her as well if he did not sign. Ken reluctantly signed the paper, although he cannot read English well and did not know what it meant.

Because the passage of time now bars a judicial claim, IJ is pursuing a new way to get Ken his money back: We have filed an administrative petition, called a remission petition, on Ken’s



iam.ij.org/irs-petitions-video



The IRS took over \$150,000 from IJ client **Ken Quran**'s business bank account, even though he did nothing wrong.

behalf. A remission petition is, in many ways, similar to a pardon petition. The IRS can use the remission process to return forfeited property to its lawful owner whenever the IRS concludes that doing so will advance the aims of justice.

Ken is not alone. IJ is filing a second remission petition on behalf of Randy Sowers, a dairy farmer from Maryland who had \$29,500 seized under structuring laws. And if the government agrees to return the money that it took from Ken and Randy, it will open up a path for hundreds or even thousands of other property owners to seek similar relief.

It was wrong for the IRS to take Ken's and Randy's money. Even the IRS thinks it was wrong: They have changed their policy so they won't go after people like Ken and Randy in the future. That policy change comes too late to directly benefit Ken and Randy, but if it would be wrong for the IRS to take the money today, it is equally wrong for the IRS to keep the money it seized in the past. The IRS should do the right thing and give Randy and Ken their money back. ♦

Robert Everett Johnson is an IJ attorney and the Institute's Elfie Gallun Fellow for Freedom and the Constitution.



Summer in the City, Public Interest Style

IJ's summer clerks and interns, guided by IJ attorneys **Dan Alban** (2nd row, 1st from right), **Greg Reed** (top right) and coordinator **Claire Healey** (2nd row, 3rd from right), learn how to be effective advocates for liberty.

By **Claire Healey**

Summertime means BBQs, ice cream and lots of time hanging by the pool. But if you are a law student interested in public interest litigation, it could mean a weekend learning how to be the most effective advocate for liberty at IJ and beyond. This summer, we have 29 clerks and interns working across IJ's six litigation offices, and at the beginning of June, they made the trek (or walked down the street if they are clerking at IJ's headquarters) to our annual public interest boot camp in Arlington, Va.

Liberty & Law readers have read previously about this conference, but this year we did things a little differently. We held the conference at the beginning of the summer to teach our clerks about IJ's legal theories and the practical skills they would need during the summer. This is in keeping with IJ's tradition of training the next generation of freedom fighters to be effective advocates for liberty. For example, Senior Attorney Jeff Rowes led a session on the methods IJ attorneys use to perform effective legal research and write strong, clear memos that help build our cases. Clerks also heard presentations on IJ's pillars, the Center for Judicial Engagement and our strategic research department. Finally, they participated in media relations workshops with the communications team to hone their messaging in the court of public opinion.

Of course, as in every year, the most popular session was the client panel. This year we heard how, if not for IJ, civil forfeiture would have bankrupted Jeff Hirsch's Long Island-based business; how the Indiana school choice victory helped Heather Coffy give her kids a better education; and how Nashville's minimum-fare law nearly shut down Ali Bokhari's limo and sedan service. Being able to hear directly from our clients about the real-world impact IJ is making left everyone inspired.

Judge Royce C. Lamberth of the U.S. District Court for the District of Columbia brought the conference to a close with a keynote address about the proper role of judges and provided valuable advice on how to successfully apply for those sought-after judicial clerkships.

Our annual public interest boot camp continues to be a source of inspiration and energy for IJ's clerks and staff alike. ♦

Claire Healey is IJ's student programs and events assistant.





IJ'S LEGISLATIVE TEAM SPREADS LIBERTY COAST TO COAST

By Lee McGrath

This year has been a banner year for IJ's legislative team. Since January, 17 pieces of legislation in 13 states have been enacted to deregulate occupations, repeal restrictions on free speech, expand school choice programs and scale back law enforcement's use of civil forfeiture. Many times, IJ's lawsuits spur states into taking action on their own without waiting for the courts to rule.

Over the past 10 years—and consistent with IRS rules—we have expanded our legislative efforts from eminent domain reform post-*Kelo* to include IJ's other three pillars and have broadened and deepened our advocacy skills. IJ now has a small team that meets with state legislators to introduce bills based on IJ's model legislation. It is common for state legislators to share drafts with IJ attorneys

to ensure that bills are designed effectively to protect the rights of entrepreneurs, property owners and grassroots activists and, in the case of school choice legislation, to prepare for possible litigation from teachers' unions after a bill is passed.

We bring the same principled advocacy and media savvy to legislative fights as we do to our courtroom battles. This includes using IJ's strategic research, meeting with individual legislators, testifying before committees and dominating the terms of the debate in the court of public opinion.

Public interest litigation will always be IJ's *raison d'être*. But, as you will read in the next few pages, IJ's legislative advocacy plays a strategic role in advancing our mission. ♦

Lee McGrath is IJ's legislative counsel.



Nevada Puts a New Face on Liberty

In a victory for free speech and economic liberty, Nevada no longer requires makeup artists who want to teach others how to apply makeup to obtain an irrelevant instructor's license.

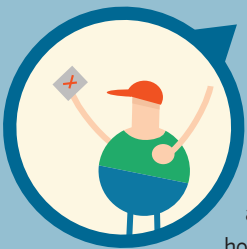
The new law comes after IJ and two Las Vegas-based makeup artists challenged the licensing scheme in federal court in 2012. Lissette Waugh and

Wendy Robin have more than 40 years of combined experience working as makeup artists, and both opened schools to train new makeup artists.

But the state cosmetology board moved to shut them down because they had not spent thousands of dollars and hundreds of hours to obtain a license utterly devoid of any relevance to teaching makeup artistry. They were also told to convert their schools into full-scale cosmetology schools to teach courses on hair and nails and install useless equipment like shampoo bowls and manicure tables.

The new law affirms the proposition that government cannot force entrepreneurs to do useless things.

—Tim Keller is the managing attorney of IJ Arizona.



Victory in Minnesota Campaign Speech

Often an early victory in court leads to a long-term victory in the legislature. That is just what happened in Minnesota.

In April 2014, IJ teamed up with a group of Minnesota donors and candidates to challenge the state's "special sources limit" that allowed only the first 12 ordinary citizens to donate \$1,000 to the state house candidate of their choice. Everyone who contributed after that was allowed to donate only \$500. That is unconstitutional. In this country, we do not dole out rights on a first-come, first-served basis.

Less than two months after we filed the lawsuit, the judge ordered Minnesota to stop enforcing its speech-squelching campaign finance law.

After that, the Minnesota Legislature saw the writing on the wall and repealed the law in May. IJ's lawsuit made good precedent and paved the way for legislators to protect the First Amendment.

—Anthony Sanders is an IJ senior attorney.

Hair Braiding Completely Deregulated in Texas

African hair braiders in Texas no longer have red tape tied around their hands. The last issue of *Liberty & Law* featured IJ's successful federal constitutional challenge against Texas laws that forced natural hair braiders, like IJ client Isis Brantley, to build large, fully equipped barber colleges before the state would allow them to teach students to braid hair for a living. Soon after that victory, state lawmakers moved to completely deregulate hair braiding, and on June 8, Gov. Greg Abbott signed the bill into law. IJ played a key role in getting this reform passed.



The deregulation of hair braiding in Texas marks a victory for natural hair braiders and economic liberty. It also serves as recognition that occupational licensing has gone too far when Texans are forced to obtain an unnecessary government license to simply go to work each morning. IJ will continue fighting until entrepreneurs everywhere enjoy economic liberty, free from the burdens of arbitrary licensing laws.

—Arif Panju is an IJ attorney.

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Are you looking for a rewarding and convenient way to support IJ? Consider joining our Merry Band of Monthly Donors! IJ's Merry Band is a special group of donors who stand shoulder to shoulder with IJ clients every month of the year. These consistent supporters provide the steady income we need to ensure that IJ can continue to make meaningful and enduring advances for individual liberty.

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Monthly donations also help IJ make the most efficient use of your generosity because they cut down on administrative costs, so more of your money goes directly to IJ's work. You can rest easy knowing your support is always current, and you will enjoy special monthly donor updates. At the end of each year, we'll send you an acknowledgement letter that can be used for tax purposes.

There has never been a better time to support IJ in this vital way. Simply sign up using the form and envelope in the center of this newsletter, or visit ij.org/donate to join the Merry Band of Monthly Donors. Contact Sarah Lockwood at (703) 682-9320 ext. 239 or sarah@ij.org for more information. Thank you for your support!◆

KELO

What a Difference a Decade Makes

By Scott Bullock and Dana Berliner

It seems hard to believe that the U.S. Supreme Court handed down its infamous decision in *Kelo v. New London* a decade ago. And since that decision and since the momentum we built across the U.S., IJ has taken our unique way of using litigation, communications and activism to all four of our pillars. Our work fighting eminent domain abuse shows how we continually refine our efforts and apply lessons through the entire organization, which enables IJ to take on what many believe to be hopeless causes and fundamentally transform the law throughout the country.

Our campaign to stop eminent domain abuse started in the mid-1990s with an epic battle in Atlantic City between IJ and Vera Coking on one side and a state agency charged with promoting casinos and Donald Trump himself on the other. We won. We then secured victories for home and small-business owners from downtown Pittsburgh to rural Mississippi.

All the while, we raised public awareness of these abuses through an extensive media and research campaign. We formed the Castle Coalition to equip property owners with the tools to fight back. The highlight of this effort was a *60 Minutes* exposé on eminent domain abuse that aired one year to the day before the Supreme Court agreed to take up the *Kelo* case.

Nothing puts a legal issue on the map like the Court agreeing to hear a case. When the Justices ruled 5–4 in *Kelo* that governments can take property from one private owner and hand it over to another in the name of raising new tax revenue, America was astounded. Op-ed pages were filled with

denunciations of the ruling. Disbelief over the decision immediately united people from across the country and across the usual divisions you see on big policy issues. Rush Limbaugh railed against *Kelo*, as did the head of the NAACP.

We were determined to take the outrage that swept the nation after *Kelo* and turn it into profound change in the courts and in the state legislatures. We pursued more cutting-edge litigation and secured victories in California, New Jersey and Tennessee, along with a landmark unanimous ruling from the Supreme Court of Ohio completely rejecting *Kelo* under the state's constitution. We drafted model legislation and testified before dozens of legislative bodies.

A decade later, we see the results. Forty-four states passed laws to strengthen protection for property owners, with 11 of those states changing their constitutions. Nine state supreme courts also increased protections for property owners facing takings for private development. No recent Supreme Court case has had that much of a direct and widespread impact. Since the *Kelo* decision, IJ has helped defeat at least 60 projects that relied on the use of eminent domain and blight designations that would have paved the way for abuse. The real legacy of Susette Kelo and her neighbors is that even though they lost their homes, their battle has a huge effect on the law and the nation.

Despite this significant progress, there is still no floor of protection against eminent domain abuse under the U.S. Constitution. So people in some states have strong property rights protections, some middling and some none at all. Like the First Amendment's protection for free speech and the Fourth Amendment's prohibition of unreasonable



Above: IJ client **Susette Kelo** and Senior Attorney **Scott Bullock**, who argued the case for IJ, meet the media immediately following the U.S. Supreme Court argument.

Opposite page: **Susette's** little pink house was moved from the New London neighborhood of Fort Trumbull to a new location in 2008.

**FROM CASTLE COALITION TO
LIBERTY IN ACTION**

By Steven Anderson

“A man’s home is his castle.” Inspired by this sentiment, in 2002, IJ created the Castle Coalition, a nationwide network of citizen advocates, to protect the thousands of home and small business owners targeted by local governments with eminent domain for private development. Using grassroots activism, the Castle Coalition defeated many illegitimate land grabs across the country in the years leading up to the *Kelo* decision. But *Kelo* catalyzed us to greater sophistication and success in our fight against eminent domain abuse—providing lessons we would later apply to our activism for economic liberty, school choice and free speech. We simply did what we had never done before.

On the day of the U.S. Supreme Court argument, we organized more than 20 rallies across the country in support of the property owners. Within days of the decision’s release, the Castle Coalition launched the “Hands Off My Home” campaign, which took the fight against eminent domain abuse to the state and local levels. IJ staff crisscrossed the nation testifying before state legislatures and city councils; helped draft reform legislation, ordinances and constitutional amendments; and inspired countless everyday Americans to fight to keep what they worked so hard to own.

The triumph, as Thomas Paine might say, has been glorious. As a result of IJ’s hallmark resilience and the work of the Castle Coalition, since *Kelo* more than 16,000 properties have been saved by defeating eminent domain projects and blight designations. We applied the lessons learned through the Castle Coalition to create Liberty in Action, IJ’s cutting-edge activism program that advocates on behalf of property owners, entrepreneurs, parents and activists to vindicate their rights. ♦

Steven Anderson is IJ’s managing vice president.



searches and seizures, the public use provision is an explicit part of the Bill of Rights. The Supreme Court would not stand for First and Fourth Amendment rights not having a meaningful level of protection for all Americans, regardless of the state in which they happen to reside. The same should apply to property owners when they face abuse of the eminent domain power. Our ultimate goal is to have *Kelo* overturned by the Supreme Court.

Moreover, we are starting to see an uptick in takings for private development again, especially with the commercial real estate market returning and local governments hungry for new sources of tax revenue. And IJ is there. We are back in Atlantic City fighting to save the home of Charlie Birnbaum, and we are working with property owners and activists in Colorado, Illinois, Massachusetts, Missouri and other states to stop projects that abuse eminent domain. As Thomas Jefferson advised, IJ will remain eternally vigilant on this issue.

We are also applying what we learned and the skills we developed over the past 10 years to pave the way for victories in our other areas, like civil forfeiture, where we are already having gratifying success. That is The IJ Way. And before you know it, we will be saying what a difference a decade made in these new areas of law too. ♦

Scott Bullock is an IJ senior attorney.



Dana Berliner is IJ’s litigation director.



New School Choice Programs Show Teachers' Unions Who's Boss



More states are passing school choice legislation, and IJ is defending more programs in court than ever before. Legislators have become emboldened, in part because of IJ's success in defending those programs in states like Indiana, New Hampshire and Alabama. This year is no exception. So far, five states—Montana, Mississippi, Arkansas, Tennessee and Nevada—have enacted new choice programs. Nevada, in particular, went big and bold with an education savings account program that enables all parents with a child in public school to use their tax dollars for an education program of their choice, including private schools. IJ Arizona Managing Attorney Tim Keller was invited to attend the bill signing ceremony in recognition of his indispensable efforts in helping draft and pass Nevada's program.

As always, IJ's school choice team stands ready to defend Nevada's program and the other new programs if opponents decide to challenge them.

—Erica Smith is an IJ attorney.

Food Freedom Initiative Makes Two States More Delicious

In 2013, IJ launched its National Food Freedom Initiative with three different cases in three different states. Two of the lawsuits spurred state officials to make changes.

In May 2015, Oregon repealed its ban on the advertisement of raw—or unpasteurized—milk after IJ challenged the ban on behalf of Christine Anderson. Under that law, Christine had been ordered to remove information about her raw milk—a perfectly legal product—from her farm's website.

And in June, Minnesota repealed its severe restrictions on home-made, or "cottage," foods. The restrictions, which IJ challenged on behalf of home-baking entrepreneurs Jane Astramecki and Mara Heck, limited the sale of cottage foods to farmers' markets and community events and capped sales at just \$5,000 annually. After the Minnesota Court of Appeals rejected the state's attempt to dismiss the lawsuit, the state capitulated, eliminating the farmers' market/community event restriction and increasing the sales cap to \$18,000.

IJ will continue fighting to ensure Americans are free to produce, procure and consume the foods of their choice.

—Michael Bindas is an IJ senior attorney.



Georgia, Montana and Nevada Pass Forfeiture Reform



Since January, many state legislatures have considered reforming state forfeiture laws. In the last issue of *Liberty & Law* readers learned that New Mexico completely ended civil forfeiture in April, and in the late spring, Georgia, Montana and Nevada became the latest states to enact solid reforms.

Georgia has some of the worst forfeiture laws in the nation. Even worse, law enforcement agencies routinely fail to report forfeitures as required by law. IJ successfully sued three agencies in 2011, but even that was insufficient to cause all other agencies to report.

After IJ's persistent advocacy, Georgia enacted IJ's model legislation for law enforcement to report forfeiture activity, which provides greater transparency on seizures and the use of forfeiture proceeds.

And officials in Montana and Nevada worked with IJ to enact meaningful reforms, including requiring a conviction in criminal court as a prerequisite to forfeiture in civil court. Additionally, Montana shifted the burden of proof to the government in claims brought by spouses and other innocent owners, and Nevada enacted comprehensive reporting requirements.

Five states total have passed forfeiture reform laws in the last year. They will not be the last.

—Lee McGrath is IJ's legislative counsel.

Texas Eyebrow Threading continued from **page 1**

The decision ranks as one of IJ's most important economic liberty victories. The court ruled that:

[T]he admittedly unrelated 320 required training hours, combined with the fact that threader trainees have to pay for the training and at the same time lose the opportunity to make money actively practicing their trade, leads us to conclude that the Threaders have met their high burden of proving that, as applied to them, the requirement of 750 hours of training to become licensed is not just unreasonable or harsh, but it is so oppressive that it violates Article I, § 19 of the Texas Constitution.

The court held that the Texas Constitution provides greater protection for economic liberty than does the U.S. Constitution. Under the Texas Constitution, courts must weigh both the government's justification for a law (which federal courts do) and the burden the law imposes upon those individuals who are being regulated (which federal courts typically ignore). In other words, a regulation violates the Texas Constitution if the burdens it places on entrepreneurs are too harsh relative to the purpose of the law.

In essence, the court held that Texas' cosmetology license requirements for threaders is unconstitutional because it forces threaders to learn *other* people's jobs in order to continue practicing *their* job. Even the three dissenting justices agreed that the state's threading regulations are "obviously too much."

Justice Don Willett summed it up best in his concurring opinion:

This case concerns the timeless struggle between personal freedom and government power. Do Texans live under a presumption of liberty or a presumption of restraint? The Texas Constitution confers power—but even more critically, it constrains power. What *are* the outer-boundary limits on government actions that trample Texans' constitutional right to earn an honest living for themselves and their families? Some observers liken judges to baseball umpires, calling legal balls and strikes, but when it comes to restrictive licensing laws, just how generous is the constitutional strike zone? Must courts rubber-stamp even the most nonsensical encroachments on occupational freedom? Are the most patently farcical and protectionist restrictions nigh unchallengeable, or are there, in fact, judicially enforceable limits?

“This case concerns far more than whether Ashish Patel can pluck unwanted hair with a strand of thread. This case is fundamentally about the American Dream and the unalienable human right to pursue happiness without curtsying to government on bended knee.”

- Texas Supreme Court Justice Don Willett



Justice Willett continued:

This case raises constitutional eyebrows because it asks building-block questions about constitutional architecture—about how we as Texans govern ourselves and about the relationship of the citizen to the State. This case concerns far more than whether Ashish Patel can pluck unwanted hair with a strand of thread. This case is fundamentally about the American Dream and the unalienable human right to pursue happiness without curtsying to government on bended knee. It is about whether government can connive with rent-seeking factions to ration liberty unrestrained, and whether judges must submissively uphold even the most risible encroachments.

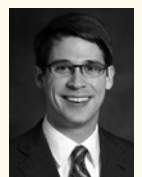
The most immediate impact of the court's ruling is this: After years of uncertainty, our clients can go back to work. Ash and Anver can reopen the statewide threading business they were forced to shutter in 2010. And all other threaders in Texas can now

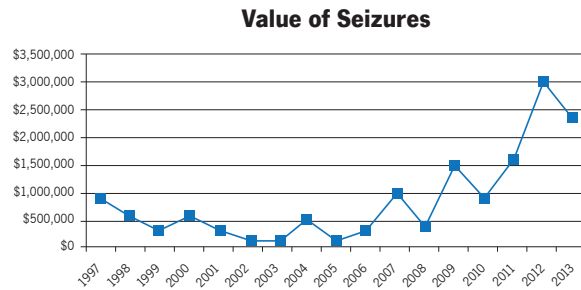
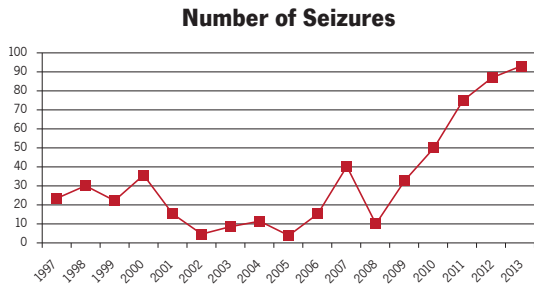
practice his or her trade without obtaining a useless license.

But the long-term impact of this case will be far wider. Many occupational licenses in Texas are now vulnerable to challenge, and we will select new targets. We will incorporate this victory into our growing array of cases that provide persuasive reasoning that can be adopted by other courts nationwide as we pursue strategic litigation to protect economic liberty. The problems created by occupational licensing are receiving national attention like never before, and this victory will serve as a provocative call to action to state legislatures looking to reform their laws.

As we always do, we will use our victory to build momentum for future success. Of course, we don't do it alone. We are grateful to have clients like Ash and Anver who stand with us in securing economic liberty and the American Dream.◆

Wesley Hottot is an IJ attorney.





Equitable Sharing Seizures Involving the Cincinnati/Northern Kentucky Airport Police, 1997–2013

Kentucky Forfeiture continued from page 5

in the seizure. Although earlier this year the Justice Department curtailed one of the most egregious aspects of equitable sharing after widespread criticism, Charles' case and the behavior of these law enforcement agencies demonstrate why those modest reforms are insufficient to stem the problem. That is why IJ will continue to litigate to strike down these profit-driven seizures as unconstitutional violations of due process.

IJ is taking Charles' case to get his money back and to protect thousands of others like him from having their money seized at airports.

With this case, IJ has brought national attention and public scrutiny to airport seizures. The popular website Vox.com published an in-depth story on Charles, which became one of its most-read stories and exploded on social media. Charles' story has resonated with thousands of people.

Carrying large amounts of cash is not a crime, and law enforcement should not treat people who carry cash like criminals. A victory for Charles will vindicate not just his right to be free from the unjust taking of his cash; it will also vindicate the right of every American to be free from unjust confiscation of currency and other property. ♦

Renée Flaherty is an IJ attorney.



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About the publication

Liberty & Law is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication, activism and research, advances a rule of law under which individuals can control their destinies as free and responsible members of society. IJ litigates to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties, and to restore constitutional limits on the power of government. In addition, IJ trains law students, lawyers and 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

CNN

IJ client Charlie Birnbaum: “People all their life are looking for a special place to be. Well, I have it in this place. I may lose it, it may be gone next year, but I’m going to be able to sleep at night saying I didn’t just let them bulldoze it without a fight. And that’s something that’s going to be with me until the day I’m gone.”



Minneapolis Star Tribune

“We’re one step closer to Minnesota’s home-based bakers having the freedom to earn an honest living,” said attorney Erica Smith of the Virginia-based Institute for Justice, who filed the case in 2013 on behalf of home bakers Jane Astramecki and Mara Heck, who want to earn more for their cakes, cookies and jams. “These foods are perfectly safe, and consumers should be free to purchase them.”

Politico

“If the First Amendment is ever going to apply to protect the free speech rights of licensed professionals and their clients, then it is going to apply in the context of Ron Hines and his case,” [IJ Senior Attorney Jeff] Rowes said at a Cato Institute event.

Business Insider

“Police and prosecutors cannot treat citizens like ATMs,” IJ Attorney Renée Flaherty said in a statement.

The Economist

“Research from the Institute for Justice, a libertarian group, found that California’s more relaxed cottage-food law of 2013 launched more than 1,200 new businesses within a year. In Texas, where lawmakers eased home-made food rules in 2013, more than 1,400 people are now licensed to sell their treats from home.”

"The Institute became known as a model for advocacy groups in the use of public relations and grassroots activism as part of its litigation strategy."

—National Law Journal



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Cheers!

I am IJ.

Michael Peticolas
Dallas, Texas

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