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School Choice VICTORY Keeps IJ's Win Streak Alive

IJ clients the **Quinones family**.

By **Tim Keller**

School choice is alive in Georgia! IJ recently scored a major courtroom victory in the Peach State on behalf of more than 13,000 students.

These students rely on a school choice program to escape poorly performing public schools in favor of private schools that better meet their unique learning needs.

“Just as there is no one-size-fits-all approach to educating children, there is no one-size-fits-all approach to designing school choice programs.”

Georgia's school choice program is funded by private contributions to private charities, like the

Georgia GOAL Scholarship Program, which awards scholarships to families based on financial need. Adopted in 2008, the program permits both corporate and individual taxpayers to contribute to such

scholarship organizations and then claim an income tax credit for the donation. The amount of tax credits available to taxpayers is

capped at \$58 million, but the program is so popular that the cap was reached on Jan. 4 this year.

School Choice continued on **page 11**

Kicking Government Out Of The Driver's Seat

By Allison Daniel

For the past 25 years, IJ has been at the forefront of transportation freedom, from opening up taxi markets in Denver, Cincinnati and Milwaukee to representing ridesharing drivers in Chicago. At the same time, we have worked tirelessly to find and strengthen unique provisions in state constitutions that provide even greater protection for individual liberty than the U.S. Constitution does. Both of these long-term fights are bearing fruit in our latest transportation case in Little Rock, Arkansas. Little Rock has only one taxi company and it is illegal to start a second one. City law actually requires would-be taxi companies to prove that they will not harm the bottom line of the local taxi monopoly before they can receive permission to operate—a test that, unsurprisingly, nobody has passed.

This is unconstitutional. That is why, in March, IJ teamed up with a Little Rock taxi driver to challenge the law in state court.

After eight years working as a driver for Yellow Cab, Little Rock's only taxi company, Ken Leininger decided to start his own business. Confident he could deliver a better experience for customers and drivers alike, he founded Ken's Cab and got ready to out-compete the monopoly.

Ken did not know that the city of Little Rock made that illegal.

Unaware of the city's monopoly setup, Ken applied for Little Rock taxi permits for his new business early last year. The city's Fleet Services Department reviewed his application and determined that he met all the legal requirements, except one: the rule against competing with Yellow Cab.



IJ client **Ken Leininger** started Ken's Cabs, a taxi company that uses only hybrid cars and offers a reliable service at a competitive price. But the city of Little Rock does not want him to operate.

When Yellow Cab objected to his application, Fleet Services denied it. Stunned, Ken appealed the decision to the Little Rock Board of Directors. When the Board heard Ken's appeal at its meeting in October, Fleet Services again admitted that Ken met all the other requirements. Some board members even voiced concern over the fact that Little Rock had created a monopoly, but Yellow Cab's owner asked the Board to reject Ken's appeal. And the Board did exactly that.

Like most entrepreneurs, Ken was not going to give up easily, especially when he felt that consumers—not the government—should decide whether a new taxi business is necessary. So he teamed up with IJ to end the Little Rock taxi monopoly.

Little Rock's government-made taxi monopoly is not only wrong and anticompetitive, it is also unconstitutional. The Arkansas Constitution, like many state constitutions, expressly protects Arkansas citizens from the establishment of monopolies and declares government-created monopolies "contrary to the genius of a republic." Revitalizing that protection will not only mean the end of Little Rock's taxi monopoly, it will also mean greater protection for entrepreneurs statewide.

By challenging the taxi monopoly under the Arkansas Constitution, we will continue IJ's battle for transportation freedom around the country. In so doing, we will allow entrepreneurs like Ken to drive their own way, free from excessive government regulation. ♦

Allison Daniel is an IJ attorney.



“The city’s Fleet Services Department reviewed his application and determined that he met all the legal requirements, except one: the rule against competing with Yellow Cab.”



IJ BRINGS THE ANTI-OCCUPATIONAL LICENSING THUNDER TO CONGRESS

When members of the U.S. Congress wanted to learn about occupational licensing, they naturally turned to IJ. After all, for decades, IJ has led the fight against arbitrary and irrational licensing restrictions.

So, in February 2016, IJ Attorney Robert Everett Johnson and IJ client Bill Main ventured to Capitol Hill to give Congress a piece of their mind.

IJ and Bill previously teamed up to bring a First Amendment lawsuit challenging Washington, D.C.'s tour guide licensing law—a lawsuit that ended with a victorious appellate decision. Bill told members of Congress about his experience with D.C.'s law.

Members were receptive to IJ's message. Sen. Mike Lee, for instance, observed that, "as more and more professions become subject to burdensome licensure requirements, this issue has come to involve basic freedom—the freedom to work and provide for one's family." IJ has been saying exactly that for decades.

Increasingly, IJ's advocacy is yielding dividends, as a bipartisan consensus has begun to emerge against occupational licensing. Even the White House put out a report critical of the practice.

Our ideas are catching fire. And whether it is in the marble halls of Congress or in the courtroom, IJ will continue to fight until the right to earn an honest living is protected for *all* entrepreneurs. ♦



"GRANTED IN FULL"

HOW KEN QURAN GOT BACK HIS RETIREMENT

By Robert Everett Johnson

"Is anyone expecting a fax from the IRS?" That question—sent around IJ's offices by email—heralded a major break in the fight against civil forfeiture.

The IRS had agreed to give back more than \$150,000 taken from a North Carolina convenience store owner.

And, in doing so, the IRS had opened a pathway for hundreds of civil forfeiture victims to also seek to get their money back.

Regular readers of *Liberty & Law* will recall Ken Quran's story. Ken came to America in 1997 with just \$3,000. He bought a small convenience store, working days and nights for years to build the business.

Ken was able to put his kids through college, and, finally, he was looking toward retirement.

Then, in June 2014, IRS agents and local police showed up at his store. They blocked the entrance and demanded that Ken sign a piece of paper. At the top, it said: "Consent to Forfeiture."

The agents informed Ken that they had seized all the money in his bank account because he regularly withdrew cash in amounts under \$10,000. The agents called that "structuring," invoking a law designed to target criminals but increasingly applied to innocent small-business owners.

Ken initially declined to sign the agents' paper, telling them he could not read English very well. But the agents persisted and Ken eventually signed.

By the time the case came to IJ's attention, it seemed Ken's money was gone forever.

And Ken was not alone. Between 2007 and 2013, the IRS took \$43 million from over 600 property owners, based on nothing more than a series of under-\$10,000 cash transactions.

The IRS would not take that money today. In October 2014, in response to IJ's litigation and communications efforts, the IRS announced a policy change severely restricting its use of the structuring laws. But that announcement came too late for Ken and other property owners whose money was taken before the policy change.

So IJ came up with a plan.

IJ dusted off an obscure legal statute authorizing something called a "petition for remission or mitigation." IJ filed just such a petition, asking the IRS to give Ken his money

Structuring Petitions continued on page 6

**“BY THE TIME THE CASE
CAME TO IJ’S ATTENTION,
IT SEEMED KEN’S MONEY
WAS GONE FOREVER.”**



Ken Quran spent almost two years not knowing if he was going to get his retirement savings back.

IJ IS IN THE ROOMS WHERE FORFEITURE REFORM HAPPENS

When IJ talks, people listen—including state legislators wanting to reform forfeiture laws.

Over the past two years, IJ successfully advocated for forfeiture reforms in Michigan, Minnesota, Montana, Nevada and the District of Columbia, as well as for the complete abolition of civil forfeiture in New Mexico.

In 2016, IJ’s involvement in state reforms has grown. IJ attorneys are taking our model legislation and advocating for reforms across the United States. Current projects include redirecting forfeiture proceeds to the general fund in New Hampshire; overhauling how civil forfeiture is conducted in Florida; replacing civil forfeiture with criminal forfeiture in Nebraska; limiting Maryland’s outsourcing of forfeiture cases to the federal government; and establishing standing for innocent joint-owners in Minnesota.

IJ’s nationwide advocacy for greater protection of property rights is best illustrated by what happened over just two days in February. On Feb. 10 and 11, IJ’s legislative counsel Lee McGrath testified in Lincoln, Nebraska; IJ Attorney Rob Peccola spoke before the Maryland Senate; and IJ Florida Managing Attorney Justin Pearson testified on the need for reform in Tallahassee.

Backed by IJ’s landmark strategic research and media savvy, IJ will not stop until every state has abolished or radically reformed its forfeiture laws. ♦



Ken Quran works at his store all day, every day, to provide for his family. Now, thanks to IJ, he can afford to retire.

“FOR THE FIRST TIME IN YEARS, KEN COULD SEE HOW HE COULD AFFORD TO RETIRE.”

Structuring Petitions continued from **page 4** back. IJ also filed a petition on behalf of Randy Sowers, a Maryland dairy farmer who had \$29,500 taken by the IRS. Six months had passed and we still had not heard from the IRS, so we teamed up with CNBC and *USA Today* to bring more attention in the media.

It was a long shot—the civil forfeiture equivalent of a pardon petition.

And it worked.

When the IRS’s fax came into IJ’s office, it said that Ken’s petition had been “granted in full.” Ken was getting back all the money the IRS had seized.

For the first time in years, Ken could see how he could afford to retire.

And, just as important, the IRS’s decision set a precedent for other property owners. The IRS still has not ruled on Randy Sowers’ petition, but there is no reason why it should be treated differently.

The IRS has done the right thing for Ken. IJ will not rest until the IRS does the same for Randy and others as well. ♦

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



IJ client **Lyndon McLellan**

Court to IRS: Make This Right

Only a few weeks before the IRS gave Ken Quran his entire bank account back, IJ struck another blow in the fight against civil forfeiture. A federal judge in North Carolina ruled that the government would have to pay attorneys' fees and interest to Lyndon McLellan, a convenience store owner who had \$107,000 seized and then returned by the IRS.

As readers of *Liberty & Law* will remember, the IRS seized Lyndon's bank account under structuring laws because he deposited money in amounts under \$10,000. Lyndon's story caught the public's attention and the IRS agreed to return the money after a storm of public outrage.

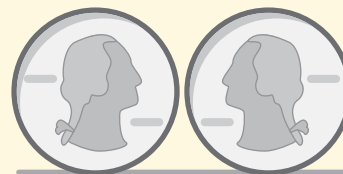
Then the IRS tried to walk away as if nothing had happened, arguing that it could not be required to pay Lyndon's expenses or even interest on his money.

IJ was not going to let that happen. And thankfully, on Feb. 2, an engaged judge held the IRS to account, ruling that:

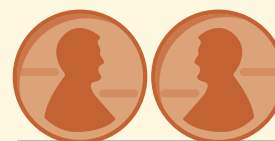
The damage inflicted upon an innocent person or business is immense when, although it has done nothing wrong, its money and property are seized. Congress, acknowledging the harsh realities of civil forfeiture practice, sought to lessen the blow to innocent citizens who have had their property stripped from them by the Government. . . . This court will not discard lightly the right of a citizen to seek the relief Congress has afforded.

The decision sets a powerful precedent for other civil forfeiture victims. Indeed, just days after the decision was issued, IJ turned around and cited it to another federal court in another case.

Civil forfeiture allows government to turn innocent lives upside down. Now, thanks to IJ, government will have to pay to set things right. ♦



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For more information, please contact Lexi Osborn at (703) 682-9320 ext. 259 or at losborn@ij.org. Thank you for helping support us in the fight for freedom. ♦

CHARLESTON SHOWS NO *Southern Hospitality* FOR TOUR GUIDES

By Arif Panju

Over the past eight years, IJ has filed four lawsuits challenging tour guide licensing schemes, winning three of those lawsuits in Philadelphia, Washington, D.C., and Savannah, Georgia. But our fifth case, in Charleston, South Carolina, challenges probably the most outrageous tour guide licensing law IJ has seen.

There are thousands of stories to be told about Charleston. But picking your favorite and telling it to a tour group without the government's permission can land you in jail. In Charleston, it is illegal to tell stories to paying tour groups without a license—and city officials have unparalleled power to decide what stories are allowed to be told.

The licensing process has two steps: First, would-be guides have two hours to complete a 200-question written exam. Then, if you score 80 percent or higher, you qualify for a second test: an oral exam graded on a pass-or-fail basis.

To pass the written exam, you must memorize the city's "official" government-approved history. The written exam's 200 questions can cover anything in the 490-page *City of Charleston Tour Guide Training Manual*. Want to tell stories about the colonial era? You also have to bone up on Stephen Colbert (who, the city wants you to know, grew up in Charleston).

And if you make it to the oral exam, you are judged on the words that you speak. The government's testing officials randomly call on applicants, select a page from the training manual, and require that person to "act as a guide" and describe whatever the testing officials choose.

Kim Billups is ready to open her tour guide business, but Charleston makes it virtually impossible to become a tour guide.





Mike Warfield took the licensing exam twice and had to turn down a job offer.



Michael Nolan loves Charleston so much, he retired there. He wants to be a tour guide to combine his loves of history and Charleston.

Unsurprisingly, this system keeps a lot of people out of the tour guide business. Among them are IJ clients Kim Billups, Mike Warfield and Michael Nolan.

Kim, Mike and Michael were well on their way to earning a living as tour guides last year before learning they needed a license. Kim was readying her own small business called Charleston Belle Tours, with a beautiful antebellum dress ready to go and her business cards printed. Mike had received a job offer to give ghost and pub tours. And Michael, after spending a career as an editor in book publishing, began his retirement in Charleston and wanted to put his storytelling skills to work.

All three walked into the city's licensing exam last November prepared, took a test with questions resembling nothing like what they had studied and walked out knowing they had failed.

Any law that makes you pass a history exam and an oral exam before you can tell

stories about Charleston flunks every test under the First Amendment.

The First Amendment protects everyone's right to talk to a willing audience about whatever topic they choose without first getting the government's permission—that is true for tour guides just as it is for journalists and comedians.

That is why, on Jan. 28, IJ filed a federal lawsuit against the city of Charleston

to strike down the city's tour guide licensing scheme. Tour guides are storytellers and the government cannot be in the business of deciding what stories are important or who is allowed

to tell them. Tour guides should be allowed to speak to anybody who wants to listen to them, not be forced to take a government-mandated test. ♦

Arif Panju is an IJ attorney.



Join IJ on a trip to Charleston in our latest video. ij.org/case/charleston-tour-guides

“THE FIRST AMENDMENT PROTECTS EVERYONE’S RIGHT TO TALK TO A WILLING AUDIENCE ABOUT WHATEVER TOPIC THEY CHOOSE WITHOUT FIRST GETTING THE GOVERNMENT’S PERMISSION.”

COULD YOU PASS THE TEST?

Here is a small selection of the facts in the 490-page *City of Charleston Tour Guide Training Manual*:

- The names of 40 separate cities/areas/neighborhoods in the metro area.
- The number of hotel rooms in the area.
- The enrollment figures at 10 separate universities.
- The names and brief histories of 55 notable people with ties to Charleston, ranging from John C. Calhoun and William Henry Drayton to Stephen Colbert and Darius Rucker of Hootie and the Blowfish.
- The names and years of 26 movies and TV shows affiliated with Charleston.
- The stories of 109 separate historical events, some of which go into a significant degree of detail.
- Six full pages of archaeology and prehistory of Charleston, including “the first settlers [who] were Old World Stone Age hunter-gatherers who migrated here from arctic zones.”

The Right To Be LEFT ALONE

IJ clients **Jason** and **Jacki Wiebesick** are two property owners standing up for their tenants and property rights by challenging Golden Valley's rental inspections law.

By **Anthony Sanders**

Your home is supposed to be your castle, regardless of whether you own it or rent it. You are free to leave dishes in the sink or clothes on the floor—unless you live in Golden Valley, Minnesota. This Minneapolis suburb has asked a state appellate court for a warrant to inspect the rental property of IJ clients Jason and Jacki Wiebesick to check that their tenants are literally keeping the house clean. If they are not, the Wiebesicks face fines. If you think this sounds like a violation of the Fourth Amendment, then you are correct. Now IJ and the Wiebesicks are fighting for more than just the right to leave dirty dishes in the sink—we are fighting for the fundamental right to be secure in your home and free from illegal government searches.

Jason and Jacki own and live in a duplex in Golden Valley. For decades they have rented out the unit next to their home. Jason and Jacki are extremely protective of their tenants' privacy and when the city told them they needed to allow the rental unit to be inspected in order to keep their rental license, the Wiebesicks hesitated to let city officials in. The city demanded to inspect the unit without providing any evidence the rental unit was out of compliance with the city's housing code. The Wiebesicks and their tenants have nothing to hide, but as a group they decided they did not want Golden Valley officials trampling through their bedroom and bathroom.

Instead of backing off, officials went to court—without telling Jason and Jacki or their tenants. The city tried to get a so-called administrative warrant rather than a criminal warrant. With an administrative warrant, the city did not need to prove that anything was wrong with the unit.

This was not the first time the city had been sneaky. In 2012, city officials were successful in getting an administrative warrant against the Wiebesicks when former tenants also objected to an inspection. But this time, the judge refused to grant the city a warrant.

Golden Valley is not the only city in Minnesota to seek evidence-free administrative warrants to search rental homes. Cities including Minneapolis, St. Paul, Bloomington and Woodbury have been successful in getting administrative warrants for mandatory inspections. And they get away with this because the U.S. Supreme Court has previously ruled that the same standard of proof needed for police does not apply to housing inspectors, since the government is not looking for evidence of a crime.

Fortunately, in 2013, the Minnesota Supreme Court decided that the Minnesota

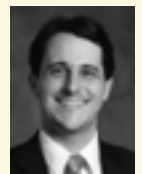
Constitution may provide greater protections than those offered by the U.S. Constitution's Fourth Amendment. Longtime readers may remember a similar IJ case in Red Wing, where the Court stated that although this relaxed standard for housing inspections is the

“Your home is supposed to be your castle, regardless of whether you own it or rent it. You are free to leave dishes in the sink or clothes on the floor—unless you live in Golden Valley, Minnesota.”

rule under the federal Constitution, that may not be true for the Minnesota Constitution. The Court left open the possibility of resolving this issue in the future, and that could very well happen in this new rental inspections case.

Golden Valley has appealed the denial of its warrant application to the Minnesota Court of Appeals, and IJ is representing the property owners before the appellate court. The case will be argued this spring and may head to the state Supreme Court soon after. The Court will then resolve a crucial question: Is your home still your castle? As always, IJ will fight to get the answer right. ♦

Anthony Sanders is an IJ senior attorney.





Robin Lamp is a single mom who can continue to send her daughters to private school thanks to IJ.

School Choice continued from page 1

Just as there is no one-size-fits-all approach to educating children, there is no one-size-fits-all approach to designing school choice programs. But one of the most enduring and constitutionally sound school choice policies is to fund programs with a tax credit mechanism. At present, there are 20 scholarship tax credit programs operating in 16 states. Although the ins and outs of each program vary from state to state, as a general matter the programs provide private individuals or corporations with a tax credit for their voluntary donations to nonprofit organizations that use the donated funds to provide elementary and secondary students with scholarships to attend private schools.

Time and time again, IJ's merry band of school choice litigators, led by the ebullient Dick Komer, has been called upon to defend school choice programs from legal attack. In fact, there has not been a single day in IJ's history that we have not been in court somewhere in this country defending a school choice program. And in that 25-year span, IJ has never lost a challenge to a school choice program funded by tax-credit-eligible donations to private charitable organizations.

“Thanks to IJ’s perseverance and prior legal precedents, tax credit scholarship programs will continue to change lives nationwide.”

One of the reasons that IJ has never lost a tax credit case is because we established a vital principle in our very first case defending a tax credit program, namely that tax-credit-eligible donations to private charities are private funds, not public funds.

In 1999, in *Kotterman v. Killian*, the Arizona Supreme Court said, “For us to agree that a tax credit constitutes public money would require a finding that state ownership springs into existence at the point where taxable income is first determined, if not before.” And 10 years later, the U.S. Supreme Court affirmed that principle in another IJ case, *Arizona Christian School Tuition Organization v. Winn*, when it said that any “contrary position assumes that income should be treated as if it were government property

even if it has not come into the tax collector’s hands.” Because IJ established that tax credit scholarship programs are funded with private dollars, constitutional provisions that prohibit certain uses of appropriated “public funds” simply do not apply, as a matter of their plain text, to tax credit scholarship programs. IJ’s role defending school choice programs is crucial because—in addition to giving a voice to those individuals with the most at stake, the parents and children who benefit from

the programs—IJ litigates with a strategic focus on obtaining legal precedent that can be exported to other states in defense of educational freedom.

In Georgia, we gave voice to families like the Quinoneses, who rely on the tax credit program to send their children to the Notre Dame Academy, a school that shares the family’s values and provides a high-quality education. After the family painting company went out of business, finding steady work was difficult. The Quinoneses tried their local public schools, but their children’s educational experience was disappointing. Their GOAL scholarships provided a lifeline that rescued the Quinoneses kids’ education from shipwreck.

And the Quinoneses’ story is just the tip of the iceberg. Through 2014, 9,048 students have received GOAL scholarships. The average value of those scholarships has been \$3,721 per student. In 2014, the average household income of scholarship recipient families was \$26,738, and since their inception 36 percent of scholarships have been awarded to minority recipients. Thanks to IJ’s perseverance and prior legal precedents, tax credit scholarship programs will continue to change lives nationwide. ♦

Tim Keller is managing attorney of IJ Arizona.





IJ PUTS POLICING FOR PROFIT ON TRIAL IN THE HOOSIER STATE

Jack and Jeana Horner are among the hundreds of people who find themselves caught in Indiana's forfeiture machine.

By Sam Gedge

Over the past few years, readers of *Liberty & Law* have read story after story about how civil forfeiture not only allows law enforcement to seize property without convicting you of a crime but also gives agencies a direct financial incentive to take as much as possible. And civil forfeiture is a booming industry for police in Marion County, Indiana—even though this type of “policing for profit” is unconstitutional under the state Constitution. Under the Indiana Constitution “all forfeitures which may accrue” must go to schools—not law enforcement.

Even though the law could not be clearer, police and prosecutors in Marion County—which includes Indianapolis—have not sent one penny of civil forfeiture money to the schools since before

many current students were born. Instead, 100 percent of the money is being pocketed as “law enforcement costs” by the Marion County Prosecutor’s Office, the Indianapolis Metropolitan Police Department and other law enforcement agencies. The profit incentive created by civil forfeiture is so strong that the officials charged with upholding

“CIVIL FORFEITURE IS A BOOMING INDUSTRY FOR POLICE IN MARION COUNTY, INDIANA—EVEN THOUGH THIS TYPE OF ‘POLICING FOR PROFIT’ IS UNCONSTITUTIONAL UNDER THE STATE CONSTITUTION.”

Indiana law are actually the ones breaking it.

It is no secret what is happening, either. Indianapolis police and prosecutors have actually written memos detailing how the agencies split up the property they forfeit. Without fail, law enforcement gets everything and the schools get nothing.

All too often, this leads to cases where prosecutors and police claim outlandish sums as “law enforcement costs.” Indy prosecutors, for instance, have claimed \$12,000, \$13,500, and even \$17,000 as the cost of litigating forfeiture cases where the other side did not even show up in court.

Unsurprisingly, this pulls innocent property owners into the upside-down world of civil forfeiture. Jeana and Jack Horner, for example, lent two of their vehicles to their son to help him get back on his feet while he was participating in a work-release program. While driving one of the cars, their son was pulled over and arrested for marijuana possession. Jeana and Jack, who owned both cars, were never charged with any crime.

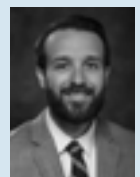
But the police went after the car anyway. They filed a civil forfeiture action against the car the son had been driving

and, for good measure, they seized the Horners’ second car, too. Jeana and Jack had nothing to do with their son’s misbehavior, but Indianapolis prosecutors did not care. It took nearly a year after the vehicles were seized—and after Jack, seriously ill, had bought another car—for a court to order the government to return the property.

Now, Jeana and Jack have teamed up with IJ and other Hoosier families to take on one of the root problems with civil forfeiture in Indiana: law enforcement’s unconstitutional profit motive.

The Horners cannot get back the nine months they spent fighting to recover their cars, but they can fight to undo Indiana’s forfeiture system. That is why they are challenging the profit incentive that has been fueling Indianapolis’ forfeiture program for far too long. Jeana and Jack’s experience spotlights the injustice of a system where actual law enforcement takes a backseat to law enforcement budgets. The solution is as simple as it is urgent: Police and prosecutors—like everyone else—need to follow the law. ♦

Sam Gedge is an IJ attorney.



PUTTING THE RATIONAL BASIS TEST TO THE TEST

By Clark Neily and Evan Bernick

Four years ago, it would have been an unthinkable project: Convince a group of influential, widely respected constitutional scholars to write papers about whether the default standard of review in constitutional law is itself unconstitutional. Convince one of the most prestigious law schools in the country to host a symposium at which those papers are presented. Convince a collection of up-and-coming constitutional scholars who are already making their mark to attend. And keep a focused but spirited discussion going for an entire day.

But IJ's Center for Judicial Engagement has constantly challenged the status quo since it was established in 2011, and we were more than up to the task. Working together with Professor Randy Barnett, who heads the Georgetown Center for the Constitution, CJE hosted a day-long symposium at Georgetown University Law Center dedicated to the question, "Is the Rational Basis Test Unconstitutional?" Papers were presented by (among others) IJ friend Professor Richard Epstein, whose scholarship highlighting the importance of property rights and economic liberty has had a tremendous influence upon American legal thought; Professor Suzanna Sherry, one of the most widely cited legal scholars in the country; Dean Erwin Chemerinsky, recognized in 2014 as the most influential person in legal education in the U.S.; and IJ's own Dana Berliner. Professor Ilya Somin, who recently published *The Grasping Hand: Kelo v. City of New London and the Limits of Eminent Domain*, and the two of us were also among the participants.

As IJ attorneys know from experience litigating under the rational basis test in economic liberty and property rights cases, the test is unique in requiring judges to decide constitutional cases on the basis of speculation and conjecture rather

than fact. Unlike all other constitutional standards, the rational basis test as set forth by some judges does not require the government to offer a genuine explanation for its actions, does not require the government to support its factual assertions with evidence, and may even require judges to invent justifications for challenged laws when the government's arguments fall short. It is the jurisprudential equivalent of a rigged carnival game.

If that sounds a bit over the top, none of the scholars at the symposium took issue with that characterization of the rational basis test. What disagreements there were involved concern that strengthening the rational basis test or replacing it with a more rigorous framework would obliterate the welfare state.

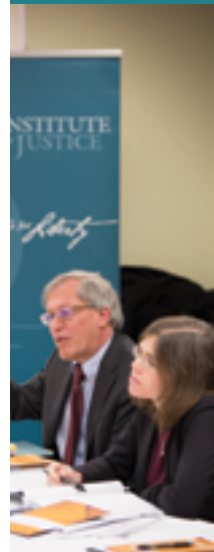
In response, we made plain that judicial engagement is a modest ask. We are simply asking that judges require an honest, reasoned explanation from government officials when they burden Americans' peaceful pursuits of happiness. That is what the U.S. Constitution requires, and that is what Americans expect and deserve from judges who enforce it. If that is not possible under the rational basis test, then we must seriously consider whether the default standard for deciding constitutional cases is itself unconstitutional. By the end of the symposium, that critically important inquiry was well underway, and CJE looks forward to continuing it. ♦



Clark Neily is an IJ senior attorney and director of the Center for Judicial Engagement.



Evan Bernick is assistant director of the Center for Judicial Engagement.



LIBERTY IN ACTION SAVES “MAYBERRY”

IJ's activism team scored a huge victory for property rights when the town of Mount Airy, North Carolina, abolished its redevelopment commission and removed private properties from its redevelopment plans.

Mount Airy is the basis for the fictional town of Mayberry, the setting of *The Andy Griffith Show*. It is a quiet town and was home to the late, great Andy Griffith himself. But it quickly became the battlefield for a property rights struggle that enveloped the entire town, sculpting the landscape of a city commission election and leading to the dissolution of a rogue redevelopment commission.

In the center of Mount Airy lies an abandoned factory known as the “Spencer’s property.” Intending to revitalize the site, the City Board of Commissioners created the Mount Airy Redevelopment Commission (RDC), giving the new authority specific instructions to plan only for the redevelopment of the government-owned properties and to keep away from private property. Unfortunately, that is not what happened.

A city commissioner appointed to serve on the RDC included private businesses and homes in the redevelopment plan, against the wishes of his colleagues on the Board of Commissioners. In September 2015, the RDC promulgated the Westside Redevelopment Plan, recommending that the city declare 20 properties “blighted” and

append them to the Spencer’s property for redevelopment. If property owners did not cooperate, the RDC could authorize eminent domain.

The attempted land grab dominated the local news and led to pointed questions during the election for four of the five city commissioners’ seats and the vacant position of mayor. The RDC planted a challenger in each election, but each fell to a candidate who opposed the redevelopment of private properties.

IJ's activism team organized the property owners and created the Mount Airy Property Rights Alliance with one mission: Remove the private properties from the plan. MAPRA and IJ received excellent media coverage and worked closely with local activists to send a clear message to the Board of Commissioners that something must be done.

Supported by IJ, MAPRA demanded respect for their property rights at a public hearing of the Board of Commissioners, which then voted 4–1 to dissolve the RDC and manage the project themselves. Barely a week later, the commissioners voted to redraw the boundaries of the redevelopment plan, removing every privately owned property from its footprint. It is another victory for IJ's activism team, which has saved more than 16,000 homes from eminent domain abuse. ♦

“Mount Airy is the basis for the fictional town of Mayberry, the setting of *The Andy Griffith Show*. It is a quiet town and was home to the late, great Andy Griffith himself. But it quickly became the battlefield for a property rights struggle that enveloped the entire town.”

Volume 25 Issue 2

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

PBS Nightly Business Report



“The IRS took Ken’s money without ever accusing him of doing anything wrong,” said **Robert Johnson, the attorney representing [Ken] Quran** and other small businesses impacted by the IRS policy. “The IRS realized it was wrong when it changed its policies and it has done the right thing in giving it back. That money should have never been taken in the first place, and I hope this is just the beginning.”

Bloomberg Business

“Licensing doesn’t ensure that people are honest,” **[IJ Attorney Dan] Alban** said, arguing that education requirements would do little to fight fraud by tax preparers who try to inflate customer refunds (and thus, their fees). Burdensome rules would only push part-time and mom-and-pop preparers out of the business, driving up prices and benefiting larger firms, he said.”

Associated Press

“Wisconsin’s home-baked-good ban has nothing to do with safety and everything to do with politics and protectionism. Commercial food groups, like the Wisconsin Bakers Association, have lobbied to keep the ban in place in order to protect themselves from honest competition,” said **Erica Smith, the lead attorney on the Wisconsin baked goods case.**”

The San Diego Union-Tribune

“In California, barbers and cosmetologists devote about one year to education or experience, and EMTs (emergency medical technicians) only one month,” explained (in prepared testimony) panelist **Dick Carpenter, of the libertarian Institute for Justice.**”

**“The Institute for
Justice [is] possibly the
most savvy anti-
government litigation
shop in the country.”**

—ThinkProgress



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For more than 30 years, I've prepared taxes out of my home.

But then the IRS said I needed to pass an exam,
pay fees and take hours of classes to keep working.

I fought for my right to earn an honest living
without getting a permission slip from the IRS.

And I won.

I am IJ.

*Elmer Kilian
Eagle, Wisconsin*

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