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# Liberty & LAW

## IJ STOPS HIGHWAY ROBBERY



### The Fastest VICTORY in the South: How IJ Launched and Won a Case in Six Hours

By Dan Alban

IJ recently scored a major victory on behalf of a Burmese Christian rock band that had \$53,000 seized by Oklahoma police using civil forfeiture. Haven't heard of this case before? That may be because a mere six hours after we announced the lawsuit on April 25, the Muskogee County District Attorney dropped the case like a hot potato and gave the band back its money that *very same day*.

The facts of the case are just as remarkable as the speed of the victory. Muskogee law enforcement seized and tried to forfeit over \$53,000, most of which had been raised for charities (including an orphanage for refugees) in Burma and Thailand by the Klo & Kweh Music Team, a Burmese Christian rock band on a U.S. tour. Yes, that's right: The Muskogee

District Attorney actually tried to take money from orphans. And if their money is not safe from forfeiture abuse, then *nobody's* money is safe.

That is why IJ challenged this forfeiture on behalf of the band, its U.S. tour manager—a former Karen refugee and naturalized U.S. citizen named Eh Wah—the Thai orphanage whose donations were seized, and the Karen Christian Church in Omaha, Nebraska, which sponsored the tour. (The Karen people are an ethnic minority of Burma and Thailand.)

The trouble for Eh Wah and the band began in late February, when Eh Wah was stopped by the Muskogee County Sheriff's Office for a broken brake light while driving home to Dallas during a tour break. During the stop, a drug dog deputies called to the

**Muskogee Forfeiture** continued on page 9



My client **Joey Vanoni** started the Pizza di Joey food truck to fulfill his lifelong dream of owning a pizzeria.

# Charm City's Less-Than-Charming Vending Laws

“

The city banned mobile vendors, including food trucks, from operating within 300 feet of any brick-and-mortar business that sells the same type of food, product or service.

”

By **Greg Reed**

The customer is king. At least, they are supposed to be. But in Baltimore, government officials—not customers—decide where people get to shop and eat. And that heavy-handed approach is making it nearly impossible for the city's mobile vendors to earn a living and build thriving businesses.

Two years ago, the city banned mobile vendors, including food trucks, from operating within 300 feet of any brick-and-mortar business that sells the same type of food, product or service. So while a taco truck is banned from operating near a Mexican restaurant, a grilled cheese truck can park right out front. And since Baltimore has a big restaurant scene, this makes it especially hard for vendors to find a block that does not have a business that sells the same thing. The result: Consumers are left with fewer shopping and dining choices and fledgling businesses are left with fewer opportunities to succeed.

This “300-foot rule” hits Baltimore’s food truck industry particularly hard. Take, for example, IJ client Joey Vanoni. A Navy veteran, Joey opened his food truck, Pizza di Joey, after returning from Afghanistan in 2013. Several job opportunities Joey had lined up were no longer available, so he decided to pursue his lifelong dream of opening his own pizza business. Joey’s truck not only serves authentic, New York-style pizza, it also enables Joey to provide jobs to his fellow veterans. He is the kind of entrepreneur that Baltimore should welcome with open arms.

Instead, Baltimore makes it illegal for Joey to operate within 300 feet of any place that sells pizza. If he parks even one foot too close, Joey could be given a \$500 fine for *each violation* and possibly lose his mobile vending license. As a result, Joey increasingly relies on private events to stay in business and has been forced to cut back on the hours he can schedule his fellow veterans to work.

Or look at IJ client Nikki McGowan. She opened her food truck, Madame BBQ, in 2015 as an extension of the culinary business she had founded to support her three children as a single mother. But Nikki has a hard time finding an area in Baltimore free of restaurants that sell pulled pork sandwiches; she regularly avoids the city altogether.

Baltimore’s 300-foot rule has one and only one purpose: protecting brick-and-mortar businesses from competition. Because the rule turns on whether a food truck sells the same type of food as any nearby business, Joey would face a \$500 fine for operating near a pizzeria, but Nikki would not. And while Joey could sell slices near a barbecue joint, Nikki would be breaking the law by vending near one. Clearly, the law has nothing to do with actual health and safety concerns and everything to do with limiting competition.



IJ client **Nikki McGowan** operates the Madame BBQ food truck.



Watch IJ’s video on this case.

If **Joey** parks within 300 feet of any place that sells pizza, he could be given a \$500 fine for each violation and possibly lose his mobile vending license.

That is why Joey and Nikki have teamed up with IJ to challenge the 300-foot rule under the Maryland Constitution. Our lawsuit will defend the economic liberty of Baltimore’s mobile vendors and all entrepreneurs throughout Maryland. This is the latest case in IJ’s National Street Vending Initiative, through which the Institute has defended street vendors across the country against anticompetitive, protectionist regulations. ♦



**Greg Reed** is an IJ attorney.

# IT'S JUST A (Cardboard) BOX



**Shelia Champion** owns the eco-friendly The Good Earth Burial Ground in Alabama. But she needs to become a licensed funeral director to sell her cardboard caskets.

## By Renée Flaherty

Readers of *Liberty & Law* do not have to be convinced that you should not need to become a licensed funeral director to sell a box. And you will remember IJ persuaded the 5th and 6th U.S. Circuit Courts of Appeals of that same thing when they struck down similar restrictions on casket sales in Louisiana and Tennessee. Now we are bringing those victories to Alabama with Shelia Champion, owner of The Good Earth Burial Ground in Hazel Green, Alabama.

The Good Earth is a “green” cemetery—part of an emerging trend to make funerals more intimate, less expensive and more environmentally friendly. The Good Earth is a wild, untended forest; Shelia will only allow burial in biodegradable caskets or shrouds and allows embalming only with non-toxic, biodegradable chemicals. She also encourages families to be more involved in the burial process and provides guidance on home funerals. The Good

Earth is both a modest means to supplement Shelia’s retirement income and a meaningful way for her to serve the community.

But of course, it would not be an IJ case if there were not someone in government standing in this entrepreneur’s way. Shelia’s caskets are literally cardboard boxes, her urns could be made of cornstarch and her shrouds might be quilts. But under Alabama law, it is a crime for anyone other than a licensed funeral director to sell any of these things. Alabama forces entrepreneurs like Shelia to spend years of their lives and thousands of dollars to get a funeral director’s license or face one year in jail and up to \$6,000 in fines—just for selling a box.

Alabama’s casket-sales restriction exists for one reason only: to protect licensed funeral directors from competition. Shelia’s inexpensive, environmentally simple approach to end-of-life planning is a threat to the funeral industry status quo. Innovation requires

the freedom to think outside the box—or, in Shelia’s case, to make that box affordable and biodegradable.

The government cannot restrict entrepreneurs’ right to make an honest living just to protect the private financial interests of a privileged few. There is stark disagreement among the federal courts about whether this sort of protectionism is constitutional.

That is why this case is about more than caskets. This case is a part of IJ’s long-term effort to present that issue in federal and state courts across the U.S. Our ultimate objective is to put the question of economic protectionism before the U.S. Supreme Court. A casket may be just a box, but the fight for economic liberty will vindicate the rights of all entrepreneurs. ♦

**Renée Flaherty** is an IJ attorney.





IJ client **Melissa Jankowski** and her daughter.

## Defending School Choice for All

By **Michael Bindas**

In our five-year-old battle to secure educational choice in Douglas County, Colorado, we have faced a lot of strange twists and turns. Events recently took an even stranger turn, but we are as confident as ever that victory is near.

In 2011, the Douglas County Board of Education adopted the Choice Scholarship Program, a school choice program that provided scholarships to children to attend private schools, religious or non-religious alike. But the program was immediately challenged by the ACLU and Americans United for Separation of Church and State, which filed a lawsuit arguing that by including religious options alongside non-religious ones, the program violated the “Blaine Amendment” in Colorado’s state Constitution.

Regular readers will no doubt be familiar with the state Blaine Amendments, which are relics of 19th-century anti-Catholic bigotry. They were adopted with two objectives: preserving the overtly religious, non-denominational Protestant character of 19th-century public schools and denying public funding for Catholic schools. In 2000, four U.S. Supreme Court Justices called for these provisions to be “buried now.”

Using these vestiges of bigotry in state constitutions as a weapon to deny educational opportunity to children is not only abhorrent—it violates the *federal* Constitution. That is precisely what IJ argued when we stepped in to defend the program in 2011.

Initially, a state trial court agreed with the school choice opponents and struck down the program. The Colorado Court of Appeals reversed that decision and

upheld the program. But then the Colorado Supreme Court reversed *that* decision and once again struck the program down.

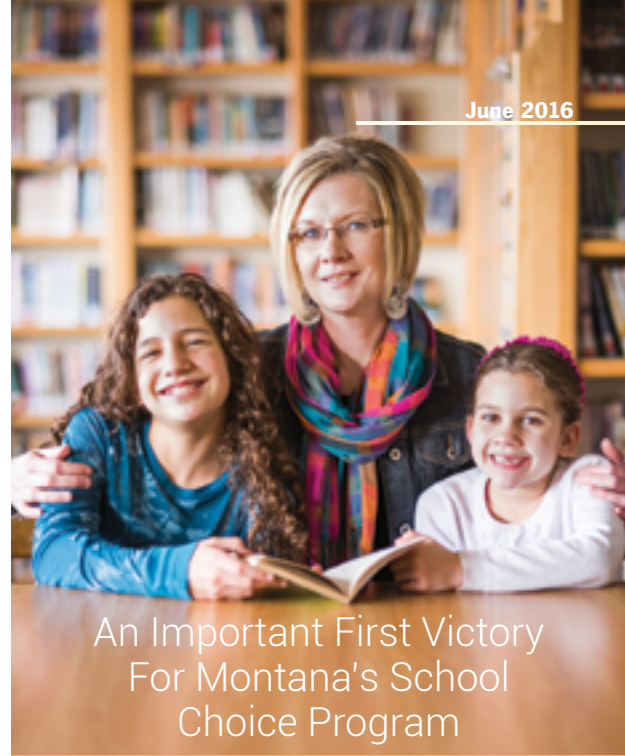
In the fall of 2015, IJ asked the U.S. Supreme Court to review the Colorado Supreme Court’s judgment. We do not expect to hear from the Court until the fall of 2016, at the earliest.

Apparently, the Douglas County Board of Education got tired of waiting around and, in March of this year, passed a new school choice program—the School Choice Grant Program—which, in an attempt to comply with the Colorado Supreme Court’s judgment, *excludes* religious options. Presumably, the Board took this action to provide families as much choice as it could, even if it means denying them the choice of a religious school.

IJ, however, refuses to sit by while parents are denied the opportunity to choose any school if it is the best option for their child. In April, we filed a constitutional lawsuit in federal court in Denver, challenging the exclusion of religious schools from the new program. We filed the case on behalf of three Douglas County families who are eligible to participate in the new program but for the fact that they wish to send their children to a religious school.

By bringing this new case, we hope to obtain a final answer to the question that looms large over the notorious Blaine Amendments: Can they be used as a weapon to deny a child the option of attending the school their parents believe is best for them, simply because that school happens to be religious? We are confident that the U.S. District Court or the Supreme Court will answer that question with a resounding “No!” ♦

**Michael Bindas** is an IJ senior attorney.



## An Important First Victory For Montana’s School Choice Program

By **Erica Smith**

In April, a Montana court ruled that the state Department of Revenue cannot exclude children who attend religious schools from receiving scholarships under Montana’s new tax-credit scholarship program. This ruling restores the program to the way the Legislature intended—by allowing families to apply for scholarships to attend the school of their choice. The court said the injunction will stay in place “until further order.”

Montana’s tax-credit scholarship program was enacted in May 2015 and provides a modest tax credit (up to \$150 annually) to individuals and businesses that donate to private scholarship organizations. Those scholarship organizations then use the donations to give scholarships to families who want to send their children to private schools. The Department of Revenue claimed it had the authority to exclude families attending religious schools from the program. IJ quickly jumped in to protect it.

IJ client Kendra Espinoza, pictured above, was especially grateful for this victory. Last year, Kendra took on a second job cleaning houses in order to send her two daughters to Stillwater Christian School after they were bullied and neglected in public school. Now her girls are thriving at Stillwater. Kendra hopes the program will help her keep her girls at Stillwater. In the meantime, IJ will continue litigating the case to ensure the program stays put. ♦

**Erica Smith** is an IJ attorney.



A photograph of a man, Hinga Mbogo, working in a garage. He is wearing a white short-sleeved button-down shirt with a name tag that says "Hinga Automotive" and a blue baseball cap. He is looking up at the underside of a car that is elevated on a lift. The background shows a typical garage setting with various tools and equipment.

# Dallas Seeks to **SHUTTER 30-YEAR-OLD BUSINESS**

To Clear Way for Macaroni Grill

By Bill Maurer

For more than 30 years, Hinga Mbogo has been fixing the cars of Dallas residents at his shop on Ross Avenue. He was raised on a farm in Kenya, where he developed a love for mechanics in his youth by repairing broken-down farm vehicles.

Hinga fell in love with Dallas on a visit and moved there to fulfill his dream of owning his own repair shop. He opened his shop in 1986 and has since become one of the city's most trusted mechanics.

But Dallas has been trying to shut him down for more than a

decade in order to clear the way for, as one city councilmember put it, "a Starbucks or Macaroni Grill." In 2005, Dallas changed the zoning along Ross Avenue, where Hinga's Automotive is located, to specifically exclude auto-related businesses. Using an oppressive and little-known



**Hinga Mbogo** has owned his car repair shop for 30 years, but Dallas is using zoning laws to force him out.

process called “amortization,” the city gave businesses that did not conform to the new zoning rules a certain number of years to continue to operate. At the end of that time, the now-illegal businesses had to cease operation. And the city would not have to pay any of them a single dime. In many states, when cities change their zoning laws, they permit already-existing businesses to be grandfathered into the new scheme, meaning they are allowed to stay in business without having to worry about being zoned out by the city. But not in Dallas. Dallas allows businesses to continue to operate but puts an artificial cap on how many years they can do so.

Conforming to the new zoning rule would force Hinga to stop fixing cars at his property. Hinga is tenacious and has been fighting to keep his business alive. But his time has run out. On April 13, the Dallas City Council denied his request to stay on Ross Avenue a few more years. Councilmembers proclaimed their support for private property rights but nonetheless voted to apply the zoning rules to Hinga so that they can fulfill their “vision” of Ross Avenue as a “gateway” to the Arts District.

This disdain for a long-time business is not surprising. Immigrant and minority-owned businesses are often the targets of planners with a vision of a sterile, homogeneous cityscape

that looks just like every other centrally planned, gentrified area.

IJ mobilized a massive media, lobbying and activism effort to help Hinga save his property. More than 82,000 Americans signed a petition on Change.org urging the city of Dallas to do the right thing. Dozens protested outside City Hall. People spoke at the City Council meeting and, when they could not speak, they stood in the audience in solidarity. Media outlets from around the country including *The Wall Street Journal*, which published an editorial, covered the story. Dallas nonetheless decided to stop a much-beloved entrepreneur from earning his livelihood. Hinga must now seek other ways.

Amortization is an abuse of property rights because the city does not need to pay Hinga anything before driving his business away. Unfortunately, for decades, courts have allowed municipalities to abuse property owners through amortization. IJ is fighting together with Hinga to end this pernicious practice and establish that, in America, the government cannot destroy businesses just because a planner has a “vision” of a city that does not include businesses they do not like. ♦

**Bill Maurer** is the managing attorney of IJ Washington.



# BRAIDING FREEDOM Comes to Kentucky

By Christina Walsh

Liberty in Action recently scored a major victory for African-style hair braiders in Kentucky when the Commonwealth passed a law that exempts braiders from needing to get a government-issued license to braid hair. Previously, braiders were forced to take 1,800 hours of unnecessary cosmetology training and spend six months as an apprentice before they could work legally.

*"When I asked them why they came to the U.S., every answer was the same: 'I was in search of a better life.'"*

I traveled to Louisville to meet with braiders and organize them into an effective voice for braiding freedom: The Kentucky Hair Braiders Association. The women I met are passionate about their craft, entrepreneurship and freedom. They are first-generation immigrants from West Africa; most came here within the past 15 years. When I asked them why they came to the U.S., every answer was the same: "I was in search of a better life."

Imagine their surprise when they were then told that something they brought with them from Africa—something

they learned from their mothers and have been practicing since childhood—was illegal without a cosmetology license.

Braiders do not use heat or chemicals. Braiding is a perfectly safe practice. Yet to work legally, braiders were forced to spend thousands of dollars and thousands of hours learning practices they do not do—or else work illegally.

Their new country made them outlaws. These women were forced to work

out of their homes and in the shadows. All they want to do is earn an honest living, open up shops and employ people.

IJ teamed up with Americans for Prosperity to introduce our bill, which exempts braiders from the state's cosmetology requirements, and we found strong champions for our cause on both sides of the aisle.

We rallied a dozen braiders at the hearings before the House and Senate Licensing Committees in Frankfort. One state senator remarked that a braider's testimony was the most beautiful story

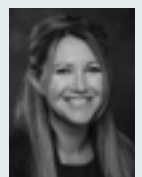
he had heard during his years in office. The Senate committee, House committee and full Senate all passed our bill unanimously.

Then Rep. Hubert Collins—whose wife chairs the Kentucky Board of Hairdressers and Cosmetologists—introduced a last-minute floor amendment that would still have made it impossible for braiders to work legally.

But in the face of overwhelming support for our cause, Rep. Collins did not even bring his amendment up for a vote—he simply voted no. Our bill passed the House 86–8 and was signed into law by the governor.

The braiders are overjoyed that they can now work legally, and Kentucky is now the 18th state to deregulate hair braiding. We look forward to watching the braiders grow their businesses as they enjoy the opportunity that freedom provides. And IJ will continue to untangle braiding regulations until braiders in every state can enjoy the right to earn an honest living. ♦

**Christina Walsh** is IJ's director of activism and coalitions.







Eh Wah is the U.S. tour manager for a Burmese Christian band, but he recently acquired a new title: forfeiture victim.

## MUSKOGEE D.A. DROPS FORFEITURE CASE AGAINST CHRISTIAN ORPHANAGE, CHURCH AND BAND

**Muskogee Forfeiture** continued from **page 1** scene alerted on Eh Wah’s car, supposedly indicating the presence of drugs. Deputies searched the car and found over \$53,000 in cash, but no drugs or drug paraphernalia.

Deputies interrogated Eh Wah for over six hours about the cash. He tried to explain that it was mostly proceeds from ticket sales and church offerings raised at concerts (the band had played in 19 U.S. cities), as well as some direct donations to the orphanage, and personal money for himself and a band member. Although the deputies looked at numerous concert pictures on Eh Wah’s phone, visited the band’s website and even called the band’s leader to confirm his story, they said they did not believe Eh Wah. He was released after midnight with a warning for the brake light, but deputies kept all of the cash.

The Muskogee DA not only filed papers to forfeit the cash but also issued a felony warrant for Eh Wah’s arrest, charging him with acquiring proceeds from drug activity even though officers had found no drugs. The affidavit supporting the warrant was just six sentences long and didn’t describe any illegal behavior. This was a blatant attempt to strong-arm Eh Wah into surrendering the cash as part of a plea deal.

When this bogus criminal charge was filed, we immediately reached out to our Human Action Network and found a local Oklahoma criminal defense attorney who could represent Eh Wah against the criminal charge. Then we set to work preparing to file the forfeiture case in just two weeks.



Watch IJ’s video on this case.

Among other challenges, we had to find notaries for our clients in Burma and rural Thailand during the Burmese Water Festival and New Year’s celebration, which essentially shut down the country for a week and a half. Meanwhile, our media and production teams worked at breakneck speed to line up an exclusive with *The Washington Post* and create a compelling video telling Eh Wah’s story.

While the victims in this case were certainly atypical, this sort of forfeiture story is, unfortunately, all too common in Oklahoma, which

has some of the worst civil forfeiture laws in the country. According to IJ’s report *Policing for Profit*, Oklahoma law enforcement can keep up to 100 percent of the proceeds from forfeitures. Between 2000 and 2014, law enforcement seized \$99 million, the vast majority—72 percent—derived from cash forfeitures.

Unfortunately, a bill that would have reformed Oklahoma’s civil forfeiture laws was defeated earlier this year by a strong law enforcement lobby, which claimed there was no need for reform in Oklahoma.

In the end, this case was truly done the IJ Way and produced amazingly fast results. By moving quickly and bringing facts to light, we were able to deliver swift justice to our deserving clients. Not all government officials will see the writing on the wall and admit defeat, which is why IJ will continue to increase its efforts to fight civil forfeiture in the courts of law, in the court of public opinion and in legislatures. Hopefully, this case will be a catalyst for renewed forfeiture reform in Oklahoma and across the U.S. ♦

**Dan Alban** is an IJ attorney.



## Taking the Battle Against **OCCUPATIONAL LICENSING** to the Next Level

By Clark Neily

In 1954, U.S. Supreme Court Justice William O. Douglas wrote in a dissenting opinion that the right to work was “the most precious liberty that man possesses.” Less than a year later, however, he authored the Court’s opinion in *Williamson v. Lee Optical of Oklahoma, Inc.*, unanimously upholding what amounted to a state ban on opticians and formally adopting the “rubber-stamp” rational basis test for economic liberty claims against which IJ has been fighting since we opened our doors in 1991.

Of course, Douglas had it right the first time: Occupational freedom is a fundamental and indeed quintessentially American right, notwithstanding more than half a century of judicial indifference. And guess what? People are starting to realize it. Word is getting out. Heck, the White House even published a report last summer titled *Occupational Licensing: A Framework for Policymakers* that is chock-full of observations, conclusions and prescriptions that could have been lifted from the pages of IJ’s own publications. (Yes, we provided some input.)

IJ has racked up more economic liberty wins than any public interest firm in the nation. We have filed 79 economic liberty cases since 1991, winning more than three out of four through court decisions, settlements or legislative repeal. And what we have learned from those experiences is to choose wonderful cli-

ents, tell their stories both in court and in the court of public opinion, and attack occupational overregulation on multiple fronts—because what happens in courts influences what happens in legislatures and vice versa.

In keeping with that strategy, IJ has launched an ambitious and far-reaching campaign to roll back occupational licensing schemes in targeted states. The campaign kicked off this spring with a National Economic Liberty Forum, during which more than 50 lawyers, activists, journalists, bloggers and scholars assembled in Dallas to discuss the importance of occupational freedom and chart a path toward greater economic liberty in America.

It was an incredibly inspiring conference, featuring presentations by IJ’s Lisa Knepper, Dick Carpenter and Lee McGrath, along with distinguished economist Morris Kleiner, who literally wrote the book on occupational overregulation, and Federal Trade Commissioner Maureen Ohlhausen, who delivered a rousing lunchtime keynote speech titled “Occupational Licensing from Hammurabi to Hair Braiding.” Former IJ client Melony Armstrong capped off the event with a moving dinner speech in

which she described her journey from would-be braider in her home state of Mississippi to entrepreneur extraordinaire and economic liberty crusader.

The next step in the campaign is to hold state-level follow-up conferences in four states, including Arizona and Michigan. Those conferences will devise concrete strategies for legislative reform. Simply put, we are putting a bullseye on oppressive occupational regulation and enlisting the aid of like-minded legislators to go after it at the source: inside the walls of our state capitols. By equipping activists and policymakers to advocate for change, IJ will open the doors to opportunity and clear the way for people to pursue their version of the American Dream—without having to ask the government’s permission. ♦

Clark Neily is an IJ senior 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

**CBS News Philadelphia**

“Fundamentally the CRDA’s [Casino Reinvestment Development Authority] approach is that they want to take Charlie’s [Birnbaum] place, knock it down and then think really hard about what might go there instead. That’s just not enough,” said **[IJ Senior Attorney Robert] McNamara** after court.”



**NBC News**

“Muskogee has no excuse for this gross miscarriage of justice,” **[IJ Attorney Dan] Alban** said in a statement. ‘Based on next to no evidence, what started as an ordinary traffic stop turned into a nightmare. They turned a man’s entire life upside down.’”

**The Wall Street Journal**

“Amortization in [Hinga Mbogo’s] case violates Mr. Mbogo’s property rights, and its retroactivity strips him of due process. That should alarm Texas voters, who acted to protect property rights after the U.S. Supreme Court’s notorious *Kelo* decision in 2005. In 2009 the state, with overwhelming support from voters, amended its constitution to ban private takings in the name of economic development.

“Like eminent domain, amortization takes advantage of property owners, often those of small means who are least equipped to fight. **Mr. Mbogo has the support of the Institute for Justice and others in Dallas.** We hope the city gets its wheels realigned.”

**Yahoo News**

“When the state says the process for becoming a licensed makeup artist should be more rigorous than it is for jobs involving life-or-death situations, something is seriously wrong,” **noted a recent report by the Institute for Justice**, an activist libertarian law organization that fights for issues including economic freedom and First Amendment rights.”


**“The Institute for Justice provides an invaluable public service by shining a light on this type of nonsense.”**

—*Las Vegas Review-Journal*  
editorial on IJ's commercial  
speech work



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*We are IJ.*

*Valarie Whitner and Vincent Blount  
Pagedale, Missouri*

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