



December 2016

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Of Uncertainty

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Liberty & LAW

DOUBLE VICTORY DOUBLE VICTORY



Drivers like **Ghaleb Ibrahim** in Milwaukee and **Dan Burgess** in Chicago took on taxi cartels and won.

MIDWEST TRANSPORTATION ENTREPRENEURS ARE FREE TO EARN AN HONEST LIVING

By **Anthony Sanders**

In October, IJ scored not one but two major federal court victories for transportation freedom—and they both happened on the same day. These groundbreaking decisions serve to solidify the ability of cities to push aside outdated protectionist regulations in order to make way for new entrepreneurs.

The first case came out of Milwaukee. Longtime readers of *Liberty & Law* will remember that we sued Milwaukee back in 2011 on behalf of a group of cab

drivers who simply wanted the right to own their own businesses but who found themselves blocked by the city's draconian cap on taxi permits. And we won that case. A state court judge sided with IJ and threw out Milwaukee's cap. But as soon as Milwaukee passed a law complying with the court's order, it was sued again—this time by incumbent taxi companies who were arguing that the U.S. Constitution gave them the right to a permanent monopoly over taxi services in

Transportation continued on **page 10**

IJ Is a Steady and Cutting-Edge FORCE FOR LIBERTY

By Scott Bullock

As IJ closes out its 25th year, we are seeing our long-term strategy in key mission areas yield tangible results. At the same time, we are laying the groundwork for new challenges to government efforts to curtail individual liberty in the decades to come.

IJ has been focused on the pillars of our mission—economic liberty, private property rights, school choice and free speech—since we opened our doors. These are essential American freedoms, but they were woefully underprotected by courts and largely ignored by the media and politicians. Slowly, over the course of 25 years, we established a track record of success in each of these areas. In the process, we transformed the law and improved the lives of thousands.

We are now seeing the fruits of this long-term mission. One of

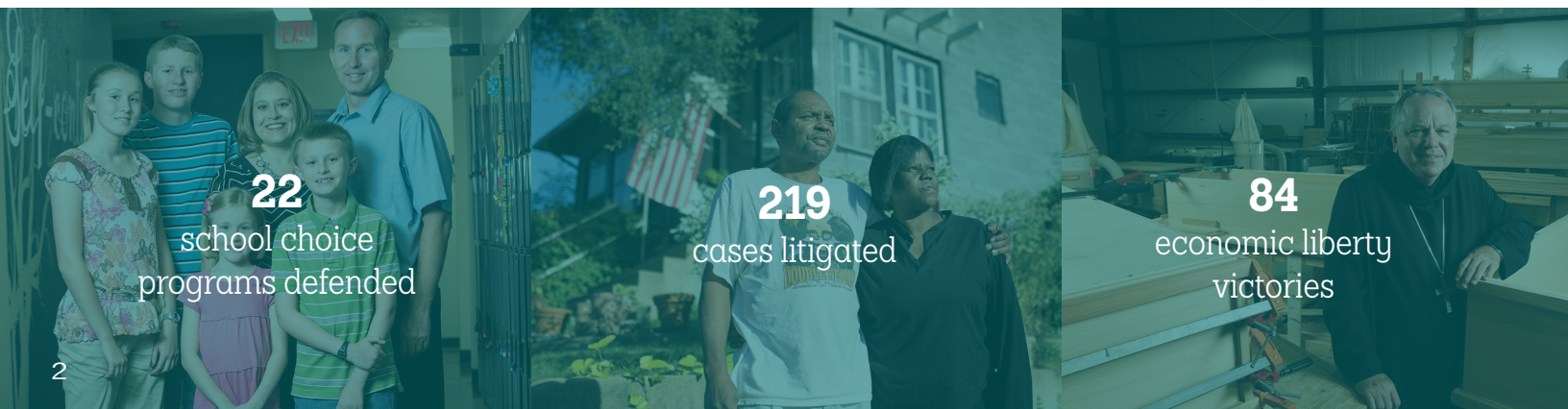
IJ's first targets was to take on what were then viewed as hopelessly entrenched taxi monopolies that existed in cities throughout the country. We first opened up Denver's transportation market and then built on that victory to take on similar monopolies in other cities. Taxi cartels fought us every step of the way. But the tide started to turn, and cities began to open their transportation markets to new companies, by choice or by court order after an IJ victory. Though we could not have foreseen the role technology would play in upending transportation today, IJ's cutting-edge work to remove legal barriers to entry in this industry laid the groundwork for the competition new companies like Uber and Lyft now provide. Desperately trying to hold on to their monopoly profits, the cartels responded by filing lawsuits

against cities that sought to push aside outdated protectionist transportation regulations.

As detailed on the front cover, IJ struck a pair of blows for transportation freedom when the 7th U.S. Circuit Court of Appeals issued a ringing endorsement of the free-market principles IJ has advanced for decades and a stinging indictment of the economic protectionism promoted by the taxi cartels. This ruling is a vindication of our long-term, strategic and incremental approach, and we will build on these cases and dozens of other IJ victories like them in the years to come.

We are also steadfastly committed to uncovering and exposing new methods that governments use to curtail our liberties. For instance, IJ's work to end civil forfeiture led to our discovery of similar systems

**IJ remains a sound, long-term investment in freedom
that yields real-world results.**



22

school choice
programs defended

219

cases litigated

84

economic liberty
victories

that dangerously shift law enforcement away from the impartial administration of justice and instead toward the shakedown of citizens. Our path-breaking class action lawsuit in Pagedale, Missouri, challenging taxation by citation, is one example and, in this issue, we explain our new lawsuit against New York City's unconstitutional "no-fault" eviction program.

Though we win nearly three out of four cases we file, we still do face losses and setbacks. But our long-term success is possible because we never give up. In a prime example, over the past two decades, IJ has made enormous progress on eliminating the abuse of eminent domain for private development.

After the U.S. Supreme Court handed down its abominable decision in *Kelo v. City of New London*, we took what was a setback in court and drove the backlash to the decision, which significantly curtailed the efforts of city councils and their accomplices in the private sector to grab land from home and small-business owners. Our post-*Kelo* strategy demonstrates that even when the Supreme Court goes in the wrong direction, IJ is nimble and strategic enough to pursue other methods to advance

our mission. Now, over a decade after the decision and with the partial upswing in the commercial real estate market, we are starting to see eminent domain abuse rear its corrupt head once again. So IJ has to be there and will be there to stop these abuses.

In the years to come, we will stay focused on our mission while always remaining on the cutting edge of the issues we take on and the strategies we employ, because we know that governments at all levels—federal, state and local—are always seeking new ways to grab power at the expense of liberty.

Amidst this desultory election year, IJ remains a sound, long-term investment in freedom that yields real-world results. In fact, we just learned that IJ remains in the top 1 percent of charities nationwide as rated by Charity Navigator for fiscal health, accountability and transparency. You can always count on IJ to be there to represent brave individuals who are willing to give new life to the guarantees set forth in the U.S. Constitution. ♦

Scott Bullock is IJ's president and general counsel.



IJ RECEIVES CHARITY NAVIGATOR'S HIGHEST RATING — 15 Years Running —

For the 15th consecutive year, IJ has earned Charity Navigator's highest four-star rating for demonstrating strong financial health and a commitment to accountability and transparency.



This is Charity Navigator's highest possible rating. In awarding IJ the four-star designation again this year, Charity Navigator wrote:

Less than 1 percent of the charities we evaluate have received at least 15 consecutive 4-star evaluations, indicating that Institute for Justice outperforms most other charities in America. This exceptional designation from Charity Navigator sets Institute for Justice apart from its peers and demonstrates to the public its trustworthiness.

What's more, IJ's overall high score on Charity Navigator's evaluation scale puts us at the top of the list of organizations with the most consecutive four-star ratings.

IJ's consistent excellent performance in these ratings is a result of careful stewardship and the highest professional standards across the organization. As the National Law Firm for Liberty, we have not only top-notch legal talent, but also administrative and development staffs who ensure we are in a position to act quickly and decisively to seize opportunities and produce real-world results for liberty.

Charity Navigator is the world's largest and most utilized evaluator of charities, assessing more than 8,000 nonprofits every year. ♦

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



IJ client **Bob McGinnity**'s home has been in his family for 50 years, but West Haven wants to replace it with a shopping mall.

IJ Returns to Connecticut to Defeat Eminent Domain Abuse

By Renée Flaherty

Eleven years after *Kelo v. City of New London*, IJ has returned to Connecticut to remind government bureaucrats that eminent domain abuse is wrong and unconstitutional.

Many readers will recall that in 2005, the U.S. Supreme Court shocked the nation when it upheld the condemnation of an entire neighborhood in New London for "economic development." And it was all for nothing: Where more than 70 homes and businesses once stood, there is now empty land filled with weeds. The promised new homes and businesses were never built, and the *Kelo* decision became infamous.

Kelo led to a nationwide backlash, and 44 states reformed their eminent domain laws. But now, cities and redevelopment agencies are trying to regain some of the power they lost. The past few years, IJ has been closely monitoring a national resurgence of eminent domain abuse.

IJ's activism team has been on the ground in West Haven, Connecticut, since July 2015, when it heard about a Texas developer's proposed plans for the "Haven South." The plan calls for land to

be acquired by the city and transferred to the developers so a large chunk of the West Haven waterfront (currently devoted to mixed commercial and residential uses) can be turned into an outdoor shopping mall.

Like New London, West Haven promises that the plan will create jobs and bring in revenue through property taxes, but it is not clear that the project will even be built. The developer has not yet secured its zoning permits, and it has no plans to build for at least another year.

Our activism team sprang into action, organizing property owners to protest West Haven's plan. They held rallies, hosted town hall meetings and put up billboards. They made the front page of the *New Haven Register* twice. Unfortunately, in August, the city began the process of taking homes and businesses through eminent domain. Not to be defeated, the activism team identified stellar IJ clients and brought the case to the litigation team.

Our clients Bob McGinnity and his elderly uncle live near the West Haven waterfront. Their properties have been in the family for over 50 years. Bob, a Navy veteran and retired train conductor, owns

and lives in the house he grew up in. Bob cares for his uncle, who recently suffered a debilitating stroke after the family heard news of West Haven's plans to take their homes. Bob and his uncle do not know where they will go if they lose their homes.

The developer does not even need the McGinnity homes. They are on the edge of the project, and omitting them would cost the plan only a few stores. Bob has even offered to sell the back portions of his properties while keeping the homes intact so that the project can move forward. But that is not enough for West Haven and the developer.

Handing over property to a private developer is not a public use. In September, IJ sued West Haven and its redevelopment agency to stop them from making the same mistake that New London made a decade ago. This case puts IJ on a path back to the Connecticut Supreme Court so that the state can reconsider the *Kelo* decision and stem the tide of eminent domain abuse across the U.S. ♦

Renée Flaherty is an IJ attorney.





IJ client **Aurora Espinoza** and her daughters want to use Nevada's ESA program to pay for a better education.

Nevada Supreme Court Upholds School Choice Program

Program Is Constitutional, but Families Will Still Have to Wait

By Tim Keller

IJ and Nevada parents recently set a landmark legal precedent when the Nevada Supreme Court upheld the state's nearly universal Education Savings Account (ESA) program. Open to every student who has attended a public school for at least 100 days, the program deposits approximately \$5,000 each year into an account that allows parents to individualize their child's educational program. Parents may spend ESA funds on tutors, homeschool curriculum, special education therapies, private school tuition and other authorized educational goods and services.

The Nevada Supreme Court rejected the argument made by the ACLU of Nevada that the ESA program unconstitutionally funds sectarian schools, holding that "[i]t is undisputed that the ESA program has a secular purpose—that of education—and that the public funds which the State Treasurer deposits into the education savings accounts are intended to be used for educational, or non-sectarian, purposes."

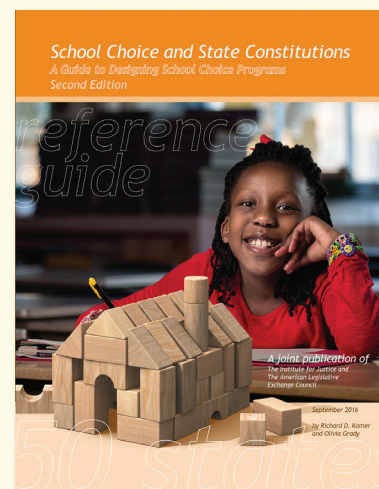
And in refusing to hold that Nevada's Constitution precludes the Legislature from funding educational

options outside of the public school system, the Court declared that "[t]o accept the narrow reading urged by the plaintiffs would mean that the public school system is the *only* means by which the Legislature could encourage education in Nevada. We decline to adopt such a limited interpretation."

The case relies upon prior IJ precedent and is certain to build momentum in the many states considering market-based education reforms.

Unfortunately, while clearing the constitutional roadblocks, the Nevada Supreme Court construed the program in a manner that left it without funding. And the recent elections in Nevada saw the state Legislature lose its pro-school choice majorities. Gov. Brian Sandoval has publicly stated that "[p]rotecting this program is a top priority for me," but the road ahead is rocky. You can trust that IJ will pull out all the stops to try to get this program restored so that parents and kids can benefit from it once again. ♦

Tim Keller is the managing attorney for IJ Arizona.



Read the report: <http://iam.ij.org/50stateSC>

A Roadmap for School Choice Success

Are school choice programs constitutional? As explained in the second edition of *School Choice and State Constitutions*—a joint publication of IJ and the American Legislative Exchange Council (ALEC)—the answer in nearly every state is “yes, if they are designed properly.” And in order to properly design a program in any given state, policymakers have to know the state of school choice law there. What are the relevant state constitutional provisions? What are the legal precedents interpreting those provisions? What types of school choice programs can survive a legal challenge based on those provisions?

School Choice and State Constitutions answers these questions for all 50 states. These answers are particularly important given that opponents of school choice are determined to try to shut down most new school choice programs through litigation based on state constitutional provisions. Reading the report—and then reviewing ALEC's model school choice legislation and consulting the legal experts on IJ's school choice team—will help policymakers to design programs that will likely survive an eventual legal challenge by the public school teachers' unions and their political allies. ♦



Ending Forfeiture In Arizona

By Paul Avelar

Less than one month after IJ teamed up with Terry and Ria Platt, an innocent elderly couple who had their car seized by Arizona law enforcement, we received news that Navajo County prosecutors would return the car. Little do they know that while we are celebrating this victory, it is only the start of our fight to abolish Arizona's forfeiture laws.

Arizona's forfeiture laws are so highly complex that understanding them is a struggle for attorneys, let alone the average person. Property owners face a rigged system where each turn can lead to a dead end. Owners have only 30 days to either petition the prosecutor to reconsider the forfeiture or ask permission to go to court to fight back. This process requires them to file complicated legal documents with a lot of information—many times without the help of a lawyer. Owners who miss the deadline or fail to comply with the legal requirements lose their property forever. Many times, the prosecutor—not a judge—decides what property to give back and

what to keep. And Arizona law allows law enforcement to keep 100 percent of what they forfeit, giving them a direct financial incentive to seize as much property and cash as possible.

No one knows this better than Terry and Ria Platt. Navajo County prosecutors have been using this system to keep the Platts from having their day in court. The Platts had their car seized after police pulled over their son—who does not own the car—for a window tint violation. The police found cash and a small amount of personal-use marijuana, both of which the son said were his. Even though Arizona law does not allow forfeiture of a car under such circumstances, the government still tried to take it.

Terry and Ria received a notice in the mail a few weeks after the seizure telling them the prosecutors would try to forfeit the car. They mailed back the paperwork before the 30-day window closed. But the Platts had unknowingly fallen into a trap called “uncontested forfeiture,” a type of administrative forfeiture in which there is no judge, only a prosecutor. The prosecutor refused to consider their petition. He declared it “null and void” and filed an application for forfeiture. That prohibited the Platts from fighting the forfeiture and granted the government a lower burden of proof, virtually assuring that Terry and Ria would be permanently stripped of their property rights. Much of what Arizona law



Ria and Terry Platt got their car back after IJ stepped in to help, but they are continuing the fight to end Arizona's forfeiture scheme.

enforcement takes in through civil forfeiture is taken using such procedures.

That is why IJ got involved to get the Platts back their car. We also filed a separate civil rights lawsuit against every agency that was trying to profit from the forfeiture of the Platts' car.

Once IJ was involved, the prosecutors quickly changed their tune. They dismissed the forfeiture and will return the car. But the prosecutors insist that they did nothing wrong and that they can legally do to people exactly what they did to the Platts. Moreover, Arizona law gives prosecutors seven years to again try to forfeit the car.

Even though the Platts will get their car back and this specific forfeiture proceeding is over—a clear victory—we will continue our lawsuit to strike down the system and laws that allowed this to happen. ♦

Paul Avelar is an IJ senior attorney.



ING FOR PROFIT



The Slatc family had all of their bank accounts seized by the San Diego District Attorney on the mere suspicion that James (center) might have committed a crime.

IJ Fights for a Family Of Innocent Owners In California

By Allie Daniel

Earlier this year, a California dream quickly became a California nightmare for one San Diego family when the government seized their every penny without warning and without charging anyone with a crime. How is this possible? Through civil forfeiture—one of the greatest threats to property rights in the nation.

In January 2016, the Slatc family was devastated when the San Diego District Attorney seized over \$100,000 in personal bank accounts belonging to James, his wife, Annette, and their two teenaged daughters, Lily and Penny. The seizure of the family's accounts was based on suspicion that James might have committed a crime by operating his legal medical marijuana business, Med-West Distribution.

Police accused Med-West of operating a “clandestine” drug lab, even though the business complied with state medical marijuana laws,

operated publicly for two years, registered with the city of San Diego, and paid hundreds of thousands of dollars in state and federal taxes. The police raided the building and took everything, including \$324,000 in cash, and shut the business down. Then, a few days later, the district attorney went after the Slatc family's accounts without charging them with any crime whatsoever.

James is a lifelong entrepreneur who has started more than 10 businesses, including Med-West. He has also been active in the medical marijuana movement at the state and federal levels and worked on ballot initiatives in Colorado, California and Nevada. Annette works as a radiology technician for the local Veterans Administration Hospital.

Their daughter Lily is a sophomore at San Jose State University and her sister, Penny, is a senior in high school—both of them maintained college savings accounts by working part-time jobs. While supportive of James' business endeavors, Annette, Lily and Penny never had any involvement with James' medical marijuana business.

Apparently unconcerned with constitutional restraints, the San Diego District Attorney cleared out the family's bank accounts—and has kept the money even though no one has been charged with a crime, no civil forfeiture case has been filed against the family's money and no apparent progress has been made in the investigation of Med-West. This case is not about crime fighting; it is about policing for profit. And the Slatc's situ-

ation illustrates the abusive nature of civil forfeiture at its worst.

IJ is fighting alongside the Slatc family to get their money back and to protect thousands of other civil forfeiture victims from having their money unconstitutionally seized. Under the California Constitution, the government must have probable cause to believe a crime has been committed before it can seize a person's property. Med-West is a legal business, a fact police and prosecutors ignored when they seized the family's bank accounts. And while California recently passed important reforms, police can still forfeit amounts of \$40,000 or higher without convicting or charging anyone with a crime. Until we fix the perverse financial incentive at the heart of civil forfeiture, the government will continue to seize money on even the thinnest of pretenses.

The San Diego District Attorney cleared out the family's bank accounts—and has kept the money even though no one has been charged with a crime and no civil forfeiture case has been filed against the family's money.

A victory for the Slatcs will not only get the family their hard-earned money back, but it will also vindicate the right of every Californian to be free from unjust seizure of their money and other property. ♦

Allie Daniel is an IJ attorney.



BIG APPLE, BIG PROBLEM

Challenging “No-Fault” Evictions in New York



Sung Cho has never been charged with a crime, but the NYPD is threatening to evict him and take his laundromat.

By Robert Everett Johnson

Just days before Christmas in 2013, Sung Cho arrived at his laundromat in Manhattan to find a bright orange eviction notice on the window. The NYPD had targeted Sung for eviction under New York City’s “no-fault” eviction law, which allows police to shutter properties simply because a crime occurred on the premises.

In Sung’s case, undercover police had come to the laundromat months earlier and asked customers and other members of the public if they wanted to purchase stolen electronics. Two people took the bait. Neither person had any connection to Sung’s business.

The NYPD alleged no wrongdoing whatsoever by Sung or his employees. Instead, the laundromat was threatened with eviction because it happened to be the location of these alleged stolen property offenses. Sung raced to prepare for a hearing, scheduled for Christmas Eve, at which he would have to convince a judge that his business should not be closed. But the most obvious defense that

Sung might raise—that he did nothing wrong—was irrelevant under the city’s law.

Then the NYPD made Sung an offer he unfortunately could not refuse: The NYPD would lift the threat of eviction so long as Sung signed an agreement waiving various constitutional rights. Under the agreement, Sung would allow warrantless searches

of his business, give police unfettered access to his video surveillance system and allow police to impose fines and sanctions for future alleged offenses without any prior hearing before a judge.

Sung’s case is part of a broader phenomenon. An investigation by

ProPublica and the *New York Daily News* covering just an 18-month period, from January 1, 2013, to June 30, 2014, found hundreds of no-fault eviction cases in which people were forced into agreements waiving their constitutional rights.

Now, Sung has joined with IJ to file a federal class action lawsuit to invalidate these coercive and unconstitutional agreements. Sung is joined by two other New Yorkers, David Diaz and Jameelah



Watch IJ’s latest video.



El-Shabazz, who were forced under threat of eviction to sign agreements kicking family members out of their apartments.

The basis for our lawsuit is simple: The government should not be using the threat of eviction to force people to waive their constitutional rights.

IJ raised a similar claim in an earlier class action lawsuit challenging Philadelphia's civil forfeiture machine. As regular readers of *Liberty & Law* may recall, Philly used civil forfeiture to coerce Chris and Markela Sourovelis into an agreement excluding their son from their home. It is no accident that New York's no-fault eviction law raises many of the same issues as civil forfeiture.

No-fault eviction is essentially civil forfeiture for people who rent, rather than own. Just as with civil forfeiture, police can target a home or business simply because it is somehow connected to an alleged criminal offense.

With this lawsuit, IJ is extending the fight against civil forfeiture to a new frontier. Regardless of whether someone rents or owns, nobody should lose their home or business without being convicted of a crime. ♦

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



IJ Texas Managing Attorney **Matt Miller** addresses the group at the Lone Star Liberty Conference.

Economic Liberty: **IN THE LONE STAR STATE**

In the past few years, Texas has become a beacon of economic liberty. Thanks to our victories for casket sellers, eyebrow threaders and—most recently—craft brewers, the Lone Star State has the highest standard of protection for economic liberty of any state under *both* the U.S. Constitution and its own state constitution.

On October 20, we held an all-day conference titled *Economic Liberty: Lone Star Leadership* on the implications of these cases and wider issues of judicial engagement, across the street from our Texas office. Participants included former and current Texas Supreme Court justices, Texas judges at other levels and Texas attorneys.

Our goal was to convey to prominent members of the Texas legal community how the constitutional law of economic liberty is developing for the better in Texas. This conference illustrates that not only does IJ change the law in court, but we also get that message out to specialists so that they can better use that precedent in their own cases. ♦



COURT: There Is No Constitutional Right to a Monopoly

Transportation continued from page 1

the city. Determined to defend our victory, IJ once again teamed up with Milwaukee cab drivers and intervened in the case, making a straightforward argument: There is no constitutional right to have the government protect you from economic competition.

In the second case, a group of established Chicago taxi companies filed a lawsuit against the city, also arguing that they had a constitutional right to a monopoly over transportation services, and, astonishingly, actually asked the court to order Chicago cops to go out and arrest people who were driving for ridesharing services like Uber and Lyft. IJ acted again, teaming up with a group of longtime Chicago residents who drove for different ridesharing companies to intervene to defend against this lawsuit as well.

Our interventions in these cases reflect a simple principle. If incumbent taxi companies can win a lawsuit like this—if a city even *settles* a lawsuit like this—no city will ever pass good free-market transportation reform again. That is the insight that propelled our first intervention in one of these cases more than 10 years ago, when we intervened in a lawsuit in Minneapolis and successfully defended the constitutionality of a free-market taxi law we had helped that city pass, and it has guided us in case after case ever since.

Back in Chicago and Milwaukee, both cases made their way to the 7th U.S. Circuit Court of Appeals after IJ victories in the trial courts. And in a surprise move, both cases were set for oral argument on the same morning. In an IJ first, we had to prepare for argument in two totally different cases only about 20 minutes apart—a daunting task made easier by the fact that IJ lawyers were the true experts in the room. We were the

only lawyers involved in both cases, the only ones who had been litigating this issue for over a decade, and the ones best positioned to show the judges that—even though the taxi companies in Chicago and Milwaukee were making different arguments—they were wrong for the same reason.

And it worked. Less than three weeks later, the court handed down two opinions by Judge Richard Posner, a prominent law-and-economics scholar before he was appointed to the federal bench by President Reagan, taking IJ's side in each case. With expansive language extolling competition, Judge Posner said that under the protectionist theory the incumbent taxi owners made, "[E]conomic progress might grind to a halt. Instead of taxis we might have horse and buggies; instead of the telephone, the telegraph; instead of computers, slide rules." Equally important, Judge Posner expressly connected the cases to IJ's earlier victory in the 8th Circuit in our Minneapolis taxi case, recognizing exactly what IJ advocates: Incumbent companies do not have a constitutional right to be protected from competition.

These decisions build on a series of IJ victories for transportation freedom in recent months. We successfully defended free-market reforms and opened markets up to competition in three other cities in the past year alone. This double victory in the 7th Circuit clears the way for even more cities to spread transportation freedom and let drivers earn an honest living. ♦

Anthony Sanders is an IJ senior attorney.



ROOTING FOR ENTREPRENEURS ON THE SOUTH SIDE OF CHICAGO

By Beth Kregor

The Curse of the Billy Goat supposedly placed on the Chicago Cubs in 1945 has finally been broken. And while baseball season is over, the IJ Clinic is still excited about a different type of game—the Third Annual South Side Pitch, our *Shark Tank*-style event that celebrates the vibrancy, innovation and hustle on Chicago's South Side.

The South Side Pitch gives budding entrepreneurs the chance to pitch their business ideas to a panel of expert judges from the finance, business and legal worlds to win cash and other prizes. And while Chicago's South Side is often associated with violence and poverty, this event highlights the Clinic's years-old campaign to highlight the growing number of small-business owners who are working hard to better their community.

More than 160 small-business owners applied for the chance to share their business ideas with important Chicago business leaders (including the vice president of Whole Foods), and the six finalists did not disappoint. Our first-place winner, Excuse Me Officer, is an app designed to increase law enforcement transparency. Our second-place winner was Oooh Wee! Sweet Tea, which sells delicious infused teas at stores across Chicago. The third-place winner was Justice of the Pies,

a small bakery that sells unique goods like smoked salmon quiche and sweet potato praline pie. Rounding out the finalists were a group of female veterans selling saffron from Afghanistan, a company making neckwear using a 3-D printer, and a startup that saves car owners time and hassle by taking vehicles to the mechanic for them.

The South Side Pitch has turned into one of the must-attend events for entrepreneurs, their customers and community members. Not only does it give business owners a chance to refine and reshape their business pitches and promote their ideas, it also helps community members see first-hand how economic liberty plays a key role in improving their neighborhood. At the IJ Clinic, we are proud to lift up and highlight people who are building their communities through entrepreneurship. ♦

Beth Kregor is the director of the IJ Clinic on Entrepreneurship.



Top, first place winner **Channing Harris** makes his pitch for Excuse Me Officer. Middle, finalist **Keyante Aytch** is using 3-D printing to revolutionize formal wear, and, bottom, attendees discuss which small-business pitch they like best.



By Robert McNamara

Benjamin Franklin told us that the only things that are certain in life are death and taxes, but that is not quite true. The world offers other certainties: The sun will rise, the sun will set, and innovative new technologies that offer more options for consumers will result in demands by existing businesses that the government step in to protect them from this new competition.

So it is with the Chicago-based internet startup Opternative. Opternative offers a simple promise: Get a new prescription for glasses from the comfort of your own home. While traditional eye exams involve a patient sitting in a chair looking at images and answering questions about what they see ("Better or worse?"), Opternative cuts out the middleman. Your home computer shows you a series of images, and you use your smartphone to interact with the software and answer questions. Then the results are emailed to a participating ophthalmologist, who (if appropriate) writes you a new prescription.

This service fills a real need. It is not a replacement for full-blown eye health exams (in-person eye doctors look for things like glaucoma that Opternative cannot test for), but doctors only recommend that most otherwise healthy patients get a full exam every five years or so. In many places, though, prescriptions for corrective lenses like glasses or contacts expire after only *one* year—way sooner than most people have any medical reason to get another in-person exam.

As you might expect, then, Opternative has proven strikingly popular and is already helping patients and ophthalmologists in almost 40 states. The problem is that online eye exams pose a major challenge to the long-standing business model of most optometrists. (Ophthalmologists are medical doctors who specialize in eye health; optometrists are limited-practice health care professionals. Both can prescribe corrective lenses.) Optometrists perform eye exams, but many of them make the bulk of their revenue by selling their patients expensive frames in brick-and-mortar stores. Opternative,

Entrenched business interests demand that legislators protect them from economic competition, and legislators oblige.



Opternative wants to change how people get eye exams but South Carolina has completely banned them from operating in the state.

which helps its customers avoid the hassle of annual trips to the brick-and-mortar stores, is a major threat to that revenue stream.

And so, predictably, the American Optometric Association has all but declared war on Opternative, lobbying from coast to coast to persuade states to ban the new technology—with some unfortunate successes. Despite the absence of any health or safety risks to patients, the state of South Carolina passed a law this summer banning Opternative or any technology like Opternative's. Gov. Nikki Haley vetoed the bill, but the Legislature overrode her veto.

Fortunately, the world offers another thing that is certain: IJ. As part of our ongoing commitment to fighting economic protectionism and building on our other successful challenges to economic regulations like our recent victories in Chicago and Milwaukee, IJ has teamed up with Opternative to file a major constitutional challenge to South Carolina's ban on online eye exams.

In one sense, this case is almost something out of science fiction. Opternative's technology—indeed, the smartphones that make Opternative's technology possible—would have been unimaginable just 15 years ago. In another sense, though, it is a tale as old as time: Entrenched business interests demand that legislators protect them from economic competition, and legislators oblige. But while the arrival of the forces of economic protectionism is inevitable, their victory is not—and IJ stands more than ready to vindicate the rights of innovators in South Carolina and beyond. ♦

Robert McNamara is an IJ senior attorney.

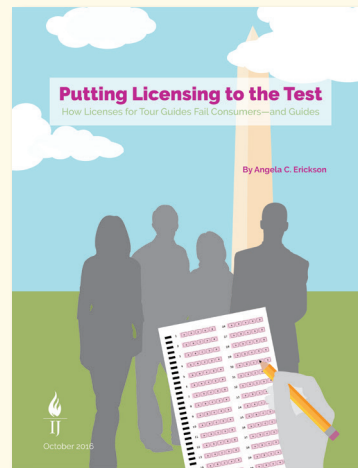


LICENSING TO GIVE TOURS? Research Shows It Doesn't Work

This October, IJ's strategic research team released an innovative study examining the effects of our 2014 federal court victory that struck down Washington, D.C.'s tour guide license as unconstitutional.

In addition to vindicating the First Amendment right of tour guides to speak for a living, the ruling cre-

ated ideal conditions for a before-and-after study of a policy change IJ brought about. In *Putting Licensing to the Test: How Licenses for Tour Guides Fail Consumers—and Guides*, Senior Research Analyst Angela C. Erickson examined 15,000 TripAdvisor reviews and found that customers rated guided tours just as highly after the District stopped licensing guides as they did before.



Read the report at
<http://iam.ij.org/DClicensing>

Instead of ensuring quality tours—D.C.'s claimed rationale—the license only created needless barriers to work. These findings add to a growing body of research that finds licensing's costs often outweigh its purported benefits. IJ will use these results to bolster our tour guide and other occupational licensing challenges nationwide. ♦



GOING TO THE HEAD OF THE CLASS

By Darpana Sheth

Being IJ means always being ready to take up the fight for liberty in a new way. One new approach in our property rights pillar is class action lawsuits. Class action lawsuits might have a reputation for creating windfalls for attorneys while producing trivial results for the plaintiff class members, but, in our hands, the class action approach allows us to directly defend the rights of as many people as possible in a single lawsuit. Class actions come in especially handy when the government is committing the same basic constitutional violation against hundreds or even thousands of people.

In our Philadelphia forfeiture case, for example, the constitutional problem is the city's routine use of forfeiture against thousands of its citizens. Similarly, in Pagedale, Missouri, the problem is the town's routine use of petty fines and fees as a source of revenue. And, in our latest case in New York, the city is threatening to evict innocent businesses to "punish" them for housing illegal markets—ones that the police had manufactured.

By bringing such cases as class actions, we can directly represent not only our clients, but also the countless others affected by the unconstitutional law. In doing so, we can obtain rulings that immediately require the government to stop unconstitutional practices against everyone, not just our clients.

Class actions serve another purpose. They prevent the government from easily giving up before we have a chance

to bring our case before a judge. In our Philadelphia forfeiture case, for example, the city wrongfully took our clients' home, and then, when confronted with IJ's representation of an otherwise defenseless family, gave the home back. If we had not brought this case as a class action, the case would have been over and Philadelphia could have carried on with its unconstitutional policies against everyone else without fear of judicial review. But by bringing all forfeiture victims in Philadelphia into the suit through the class action procedure, we are making sure that Philadelphia will have to answer for its outrageous use of forfeiture.

We do not undertake class actions lightly. They are resource intensive, and IJ attorneys and paralegals have had to learn unfamiliar and complex areas of procedural law. But we are dedicated to doing everything we can to safeguard liberty, so when we discovered property rights violations that required class action lawsuits, we became class action lawyers.

Our new work in this area illustrates how IJ will always rise to whatever challenges government poses to our core freedoms. And not only will we win for our clients and everyone whose rights are at stake, we will ensure that future generations are given the same protections. ♦

Darpana Sheth is an IJ attorney.



**A CLASS ACTION LAWSUIT ALLOWS US TO
DEFEND THE RIGHTS OF MANY PEOPLE IN A SINGLE LAWSUIT.
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Volume 25 Issue 6

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

WTNH-TV



Robert McNamara, IJ senior attorney: “*Kelo* was wrong when it was decided, *Kelo* is wrong today and we will absolutely ask the courts to overturn *Kelo*.”

Vox

“**Lee McGrath**, legislative counsel for the Institute for Justice, a national nonprofit that opposes civil forfeiture, said that police in most states with restrictions on civil forfeiture can still work with federal law enforcement officials to take people’s property without charging them with a crime.”

New Jersey 101.5

“‘Home baking is a way for baker entrepreneurs to start small, right away, without having to spend tens of thousands of dollars on professional equipment and commercial kitchen space,’ said **Brooke Fallon**, activism manager for the Institute for Justice. ‘If you have an oven and a recipe, you should be able to start a business, as long as you’re following the rules and doing it legally.’”

Austin American-Statesman

“‘The Texas Constitution prohibits the legislature from passing laws that enrich one business at the expense of another,’ Institute for Justice Senior Attorney **Matt Miller**, who represented the brewers in court, said in [a press release]. ‘This ruling is a victory for every Texas craft brewery and the customers who love their beer.’”

“Economists and (a few) politicians have talked about the problem of excessive occupational licensing regulations for years, but the Institute for Justice is one of the few places to do anything about it.”

—Glenn Reynolds
USA Today



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The city of Savannah made tour guides get a license just to talk.

I don't believe anyone should need the government's permission to tell a story.

I fought back, and I won.

I am IJ.

*Dan Leger
Savannah, Georgia*

www.IJ.org

*Institute for Justice
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