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By Justin Pearson

In December, IJ scored a major victory when an Arkansas judge struck down Little Rock's government-created taxi monopoly as unconstitutional. We represented Ken Leininger, who wanted to start a new taxi business after spending years driving for the city's sole taxi company. But the city banned new companies from competing with the one taxi business in town. That is when IJ stepped in and sued Little Rock to help Ken achieve his dream.

The ruling is an important victory for transportation freedom and economic liberty. The Pulaski County Circuit Court determined that both barriers challenged by our lawsuit—the public convenience and necessity requirement and the requirement of no impact on the monopoly company—were unconstitutional.

This alone would have been a huge accomplishment, but what makes the win even more effective is the way we achieved it. We won by reviving two separate, mostly dormant constitutional doctrines, while simultaneously combining them in a unique manner to create a new tool for liberty. In other words, we won by using cutting-edge constitutional theories to achieve real-world results.

First up was the Arkansas Constitution's antimonopoly clause. The last time a plaintiff won by

Little Rock continued on page 7







Karen and Bruce Tuscher worked with IJ's activism team to rally their neighbors and stop their town from using eminent domain to take their home.

KEEPING A HOME FOR THE HOLIDAYS

By Paige Halper

After more than a year of fighting to protect their home of 37 years from eminent domain abuse, Karen and Bruce Tuscher have shown you can fight City Hall.

Karen and Bruce first learned that their property was under attack through a letter inviting them to a special Planning Board meeting in May 2015. At the meeting, they were presented with the town's urban renewal plan, which proposed drastic changes to their quiet, rural neighborhood. This included seizing the Tuschers' and their neighbors' properties to hand over to a developer, who already owned 127 acres in the area. In a confidential letter to the Board of Selectmen obtained through a public records request, the developer asked the

town to create a so-called urban renewal area in order to accommodate a larger development. It was clear this plan was about the city doing a land-hungry developer's bidding.

The Tuschers were heartbroken when they were told that the home they raised their family in could be bulldozed to make way for a million-plus-square-foot distribution center and other private development.

With their home listed as "to be acquired," the Tuschers teamed up with IJ's activism team to take on the town. IJ worked closely with well-known columnist Jeff Jacoby of *The Boston Globe* to expose the behind-the-scenes landgrab. On the night of the Redevelopment Authority's November 2016 meeting, IJ hosted and moderated an educational panel featuring Karen, Bruce and two local activists. Over dinner, 60 neighbors learned what the plan meant

for their community and read Jacoby's hard-hitting column, which had come out the day before.

Following the dinner, community members joined together and rallied outside town hall in support of Karen and Bruce's fight to keep their home. Holding signs that read "No Carver Urban Renewal," the crowd filled the meeting room and overflowed into the hallway. During the public comment period, residents presented moving testimonies. Even the developer stated that the Tuschers could be left alone, although he might want a "foot" of their property. That week, the Redevelopment Authority moved the Tuschers' property to a "partial acquisition" listing.

But local activists would not back down. To fully protect the Tuschers' property rights, their entire property needed to be removed from the acquisition list. A partial acquisition designation was no guarantee that they would keep all the property they worked so hard to own.

In December, the Redevelopment Authority finally yielded to the pressure from the public and IJ and removed the Tuschers' property from the plan completely. Carver's Planning Board and Board of Selectmen approved the plan with final approval pending by the Department of Housing and Community Development. IJ will be there to fight until the Tuschers can rest easy knowing that their next holiday will be spent exactly where it should

Paige Halper is IJ's activism coordinator.

be—in their home.◆





Oscar-nominated actress **Catherine Keener**, above, plays IJ client Susette Kelo in the film *Little Pink House*, the story of *Kelo v. City of New London*.

Santa Barbara International Film Festival Hosts World Premiere Of Little Pink House Movie

Little Pink House is a feature film that tells the true story of IJ client Susette Kelo, a blue-collar woman whose historic fight to defend her home and neighborhood from government and corporate power brokers went all the way to the U.S. Supreme Court—a battle that inspired the nation. The film stars two-time Academy Award nominee Catherine Keener and Emmy nominee Jeanne Tripplehorn, and it features the original song Home Free, written and performed by Rock and Roll Hall of Fame inductee David Crosby of Crosby, Stills & Nash.

Little Pink House is the product of a multi-year collaboration between the Institute for Justice and filmmakers Courtney Moorehead Balaker and Ted Balaker of Korchula Productions, and it will premiere at the Santa Barbara International Film Festival (sbiff.org) in February. SBIFF is among the nation's marquee film festivals; this year it will present awards to Emma Stone, Ryan Gosling and Denzel Washington, and this past year its programming included premieres of films starring actors Jeff Bridges, Christian Bale, Natalie Portman and Cate Blanchett. The festival runs from February 1 to 11, and the Little Pink House premiere is scheduled to take place on February 2.

Please visit **facebook.com/ LittlePinkHouseMovie** to stay updated on news about the film.

The world premiere will kick off the Little Pink House outreach campaign, a multifaceted, multistate effort to change public policy and educate viewers about eminent domain abuse, the importance of property rights, and the difference between corporate cronyism and the free market. IJ seeks to use this movie as a vehicle to reach new audiences and tell Susette's story.

HOW IJ HELPED BLAZE A TRAIL WITH THE BAGEL KING OF SEATTLE

By Bill Maurer

The experience of IJ's client Dennis Ballen and his bagel shop, Blazing Bagels, shows what can happen when an entrepreneur provides the public with something they want. What began as a small shop in a difficult-to-find location—with only 10 employees and selling 500-600 bagels per day-is now a successful and growing Puget Sound business, with 110 employees and three locations selling around 36,000 bagels per day. In 2013, the Puget Sound Business Journal recognized Blazing Bagels as one of the fastest growing businesses east of Seattle. To reach this success, however, Dennis has had to fight back against a heavy-handed government set on squelching his speech.

Dennis began Blazing Bagels after he was laid off from his job selling office supplies. In 2000, he started selling bagels from a cart to local businesses at breakfast and lunch time. His business was a hit. He learned how to make his own bagels and opened his first shop in Redmond, Washington, in 2002. The bagels were excellent, but Dennis needed to attract customers to his shop, which was off a main road in the city. He hired people to stand on the corner and

direct people to the store with a sign. That brought Dennis to the attention of the city of Redmond, which tried to shut down his use of portable signs, even though the city permitted identical signs for politicians and real estate agents. The city claimed Dennis' signs were dangerous and unattractive, but nonetheless permitted similar signs advertising different things.

Dennis teamed up with IJ to sue Redmond in federal court in 2003. We won at the trial court and, after the city appealed, we won at the 9th U.S. Circuit Court of Appeals. In 2006, the appeals court held that the city's sign code was an unconstitutional content-based regulation of speech. The decision marked an important step in free speech jurisprudence, with the U.S. Supreme Court adopting similar reasoning in 2015.

In his journey to becoming a bagel magnate, Dennis has provided many things: jobs to his employees, financial security to himself and his family, and terrific bagels to hungry customers in the Seattle area. But he has also provided some things not many small-business owners get to offer—he has made our country a little more free and helped protect the First Amendment from unreasonable governmental regulations.

Now entering its 17th year, Blazing Bagels looks to continue to serve delicious bagels (with a bit of liberty baked in) for years to come. And Dennis continues to be an inspiration at IJ, demonstrating how the power of one entrepreneur can change everything.

Bill Maurer is the managing attorney of IJ Washington.





IJ client **Dennis Ballen** fought Redmond's sign ban and now runs a bagel mini-empire.



IJ client Arlene Harjo and IJ Attorney Robert Everett Johnson in happy spirits the day Arlene got her car back.

Arlene's story is not unique.

Albuquerque seizes over 1,000 cars

every year and about half are owned

by somebody other than the driver.

By Robert Everett Johnson

For eight months, Arlene Harjo's car sat in an impound lot in Albuquerque, New Mexico. Now, thanks to IJ, the city has given back the car. But this is not the end of the story: Arlene will continue to fight to shut down Albuquerque's civil forfeiture machine.

Arlene's story began early on a Saturday afternoon, in April 2016, when she let her son borrow her car to drive to the gym. Night came, and Arlene grew frantic as her son had not returned. The next morning,

she learned her son had driven to see his girlfriend—not to the gym—and had been arrested for drunken driving.

Arlene committed no crime. But the city seized her car regardless, arguing that it was subject to civil forfeiture because her son had used it to break the law.

Arlene's story is not unique. Albuquerque seizes over 1,000 cars every year and about half are owned by somebody other than the driver.

It gets worse. The city seizes all that property even though New Mexico passed landmark reforms in 2015 *abolishing* civil forfeiture. City officials are not following the law.

As longtime readers of *Liberty & Law* may remember, IJ laid the groundwork for New Mexico's abolition of civil forfeiture. We exposed civil forfeiture horror stories in the state, helped to draft the reforms and shepherded them through the Legislature. Then, when we learned that Albuquerque was continuing to take property, we joined with two state senators to sue the city to enforce the law.

Not long after the city seized Arlene's car, in May 2016, a judge dismissed IJ's lawsuit on behalf of the senators because they had not personally had property seized. The timing was

fortuitous. We found Arlene's case through a search of public court documents, called her up and asked if she would join our fight.

Arlene agreed and became a plaintiff in a new lawsuit against the city.

Fast forward to December 2016. IJ filed court papers

spelling out our full case against the city. One week later, city officials emailed to say they were returning Arlene's car.

City officials said they had reviewed dashcam video of the sei-

zure and belatedly realized that it had occurred outside city limits—meaning the city lacked jurisdiction to take the car in the first place.

Oops!

If IJ had not sued on Arlene's behalf, it seems safe to say that nobody from the city would ever have noticed this all-important fact.

The city sought to have Arlene's lawsuit thrown out as a result of its confession, on the ground that Arlene (having recovered her car) was no longer being harmed. But, at a recent hearing, the court allowed the case to continue.

Arlene, after all, was harmed when the city held her car for eight months. The city cannot change that fact by giving the car back now.

So now Arlene has her car, and her lawsuit will go forward. Arlene—and IJ—will continue fighting until civil forfeiture in New Mexico is abolished once and for all.◆

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



SECURING THE FUTURE OF LIBERTY

IJ Sets New Selz Legacy Challenge Goal

By Melanie Hildreth

As you may recall from last October's *Liberty & Law*, this past fall we launched the Bernard and Lisa Selz Legacy Challenge. Inspired by a generous \$2 million challenge grant from longtime donors Bernard and Lisa Selz, we set a goal of securing \$50 million in planned gift pledges by January 2019.

We were blown away by the early response. In only three months, we secured over \$48 million in pledges—bringing us 97 percent of the way to that original \$50 million goal. Making each of these gifts go even further, Bernard and Lisa contributed current matching funds of over \$1 million dollars to the Institute for Justice.

But at IJ, we never rest on our laurels. With the excitement this challenge has generated, we are doubling our efforts and setting a new goal of \$100 million. And there is still over \$700,000 in matching funds to earn.

Please join us and make the enduring impact of the Institute for Justice a part of your legacy by including IJ in your

will or other estate plans. For every bequest pledge we receive, Bernard and Lisa will provide a current cash donation to IJ worth 10 percent of the pledged gift's value—up to \$25,000 per pledge.

The gifts generated by this campaign are funding IJ's fight now and securing the future we create with our victories for liberty inside and outside the courtroom. We will continue to wage this campaign to meet our new \$100 million goal and to earn the matching funds that Bernard and Lisa have so generously offered. All of us at IJ encourage you to participate in the Selz Legacy Challenge and set the stage for IJ's success for generations to come.

Melanie Hildreth is IJ's vice president for external relations.



In only three months, we secured over \$48 million in pledges—bringing us 97 percent of the way to that original \$50 million goal.

MAXIMIZE YOUR FUTURE GIFT TO IJ

When you make a gift to the Institute for Justice in your estate plans, you help us restore constitutional limits on government power and defend individual liberty as long as it is challenged. By acting now, you can generate an immediate cash donation thanks to the generosity of Bernard and Lisa Selz.

To participate in the Selz Legacy Challenge:

- Name the Institute for Justice in your will, or as a beneficiary of your retirement plan, savings account or life insurance policy, helping us defend individual liberty well into the future.
- Complete a Selz Legacy Challenge matching form. One is included in this newsletter.
- A matching donation equal to 10 percent of your future gift's value—up to \$25,000—will be made in your name, to support IJ's fight today.

If you know now that you would like to participate in the Selz Legacy Challenge, or if you would like more information, please return the pledge form included in this issue of *Liberty & Law*, or contact Melanie Hildreth at melanie@ij.org or (703) 682-9320 ext. 222.



Little Rock continued from page 1 asserting this clause was over a half century ago. People had forgotten about it, but through a combination of exhaustive research and creative, entrepreneurial strategizing, IJ became confident that this

clause could once again become an important tool for freedom.

Our second path to victory involved a rarely used legal tactic called a "judgment on the pleadings." This means asking the judge to make a decision without having

to spend months collecting evidence. Such motions are rarely granted, but that did not stop us from pursuing this bold approach.

Our innovative and cutting-edge gameplan paid off. The result is a court ruling that not only says the protectionist barriers we challenged are unconstitutional, but also finds that these types of barriers must always be deemed unconstitu-

tional if a city has given all of its permits to one company. The government's supposed justifications for these barriers do not matter, nor do any other facts or evidence. By giving all permits to one company, the city violated the Arkansas

Constitution's antimonopoly clause.

It remains to be seen whether the city will appeal. However, if this ruling is allowed to stand, then we will have managed to revive, and in many ways will have created, another valuable tool for liberty.

And we will have succeeded because of hard work, creativity and a team effort spanning many years. After all, that is the IJ Way.◆

Justin Pearson is the managing attorney of IJ Florida.





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IJ SUES FEDS FOR FORFEITURE RECORDS

Late last year, IJ sued two federal agencies—the IRS and U.S. Customs and Border Protection—for flouting the Freedom of Information Act (FOIA) and hindering access to databases detailing the government's forfeiture activity.

IJ requested the databases in March 2015, but over a year and a half later, neither agency has produced any forfeiture records. The IRS demanded more than \$750,000 for its database, despite FOIA law mandating a waiver of such fees for requests in the public interest. Customs and Border Protection denied our request outright, wrongly claiming its database constitutes law enforcement "techniques or procedures" instead of just data about seizures and forfeitures.

By contrast, the Department of Justice (DOJ) shared its forfeiture database with us without charge, within just a few months and after redacting sensitive information—showing that it can easily be done. The DOJ's data were used extensively in IJ's second edition of *Policing for Profit*.

Transparency is critical to holding government agencies accountable, particularly when they can seize and keep property without ever convicting owners of a crime. We are confident the courts will agree. ◆

TRANSPARENTLY BAD

SHINING A LIGHT ON POOR ACCOUNTABILITY IN FORFEITURE PROGRAMS NATIONWIDE

By Mindy Menjou

After publishing nearly a dozen studies on forfeiture, IJ's strategic research team has learned a great deal—not least, that there is still too much about the use of forfeiture that remains hidden from public view. Our 12th forfeiture report, Forfeiture Transparency & Accountability: State-by-State and Federal Report Cards, released in January, examines this troubling lack of transparency in forfeiture programs nationwide.

Given the vast power forfeiture confers on law enforcement agencies—and the perverse incentives it creates for them to take property—forfeiture programs should at the very least have to meet high standards of transparency and accountability. Yet nearly every state, the District of Columbia and both the U.S. departments of Justice and the Treasury fail at one or more of the basic elements of transparency and accountability graded in our study:

- Tracking seized property.
- Accounting for forfeiture fund spending.
- Statewide forfeiture reports.
- Accessibility of forfeiture records.
- Penalties for failure to file a report.
- Financial audits of forfeiture accounts.

As a result, legislators and the public are too often left in the dark about law enforcement's forfeiture activity. For instance, few states require law enforcement to record whether forfeitures happen under civil or criminal procedures or whether individuals whose property was seized were ever charged with a crime, making it difficult to know if forfeiture is targeting real criminals or innocent property owners.

Likewise, too few states demand an accounting of how law enforcement spends the proceeds from the property it takes through forfeiture: Agencies in 33 states face no reporting requirements for their forfeiture fund spending. Permitting agencies to self-finance through forfeiture creates improper incentives and undermines the legislature's power of the purse. Shrouding this spending in secrecy only makes these problems worse.



View the report at http://ij.org/report/forfeiture-transparency-accountability

But our report cards don't just tell states that they are failing—they also show them exactly what they must do to improve. States must at a minimum require that agencies carefully track the properties they seize. They must monitor spending from forfeiture funds and subject those funds to routine audit. They must compile regular statewide reports detailing forfeiture activity and spending and make those reports or other forfeiture records easily available online by law. And they must penalize agencies for failing to file those reports as required.

Working hand in hand with IJ's model forfeiture reporting legislation, our report cards give legislators custom blueprints for putting these principles of transparency and accountability into law, just in time for the 2017 legislative sessions and at a time when interest in forfeiture reform is high.

Of course, improved transparency is not a substitute for the abolition of civil forfeiture or radical reform. It will not fix the fundamental problems with civil forfeiture—namely, the property rights abuses it permits and the temptation it creates to police for profit. As IJ has long argued, civil forfeiture should not exist in a truly free society. But improved transparency is vitally important for bringing forfeiture activity and spending into the light of day, where legislators, the public and, naturally, IJ's strategic research team can scrutinize it and continue to build the case for ending this fundamental threat to private property rights.

Mindy Menjou is IJ's research editor.





IJ client Charles Clarke

SMOOTH LANDING FOR AIRPORT FORFEITURE VICTIM

In an early Christmas present, the federal government dropped its forfeiture case against Charles Clarke, the college student who had his money seized three years ago at the Cincinnati/Northern Kentucky International Airport, and gave back his \$11,000 plus interest. IJ first represented Charles in 2014 and the case quickly gained national attention.

As the judge in the case noted, Charles consistently maintained that the money was his life savings, the majority of which came from documented educational benefits he received because his mom is a disabled veteran as well as money he earned from working. He normally stored his life savings in his mom's house, but with his mom's impending move within Florida, he took the money with him on a two-month trip to Cincinnati to visit friends and relatives.

The settlement was the product of negotiations that began in November 2016. Charles was elated when he received the money in December and relieved that the whole ordeal is now behind him.

Unfortunately, many other Americans are being victimized by forfeiture laws at the state and federal levels. IJ will continue to fight to end this abusive practice.



Over the past 25 years, IJ has successfully defended school choice programs across the U.S. The families we've helped, including the ones pictured, simply want their children to thrive academically.

Georgia Educational Freedom On Our Mind

On January 23, IJ Senior
Attorney Tim Keller appeared
before the Georgia Supreme
Court, arguing that it should turn
back a legal challenge to a popular tax-credit scholarship program.
By using tax credits to incentivize
private donations, the program
helps over 13,000 children attend
the schools their parents choose
for them.

Opponents of school choice cast a cloud of uncertainty over the program's future when they filed a lawsuit in state court in 2014 to try to shut down the program. IJ quickly intervened in the lawsuit on behalf of four Georgia families and worked alongside attorneys for the state to get the lawsuit dismissed. And when the plaintiffs petitioned the Georgia Supreme Court to hear their appeal. IJ encouraged the Court to take the case and rule against the plaintiffs so that parents will no longer have to be uncertain about the program's-and their children's-future. Under IJ's watch, courts have upheld every tax credit program that has been challenged.

We expect a decision from the Court later this year and we hope to report good news from the Peach State in a later issue.

2017 IS THE YEAR OF School Choice

By Erica Smith

School choice continues to build momentum. In 2016, IJ successfully defended five school choice programs and helped another state write legislation for new programs. We expect 2017 to be another great year—maybe the best so far.

The legal victories were huge. In Florida, we successfully defended two popular programs that serve more than 87,000 children, but school choice opponents have appealed that decision. We are confident we will win again. In Montana, we persuaded a trial court to issue a temporary injunction to stop a state agency from excluding students attending religious schools from the state's new scholarship program. Our position—and the proper constitutional one—is that parents should be able to decide what school is the best fit for their children. As a result of this victory, Montana children attending religious schools will receive scholarships this month for the first time.

In Nevada, we successfully defended the constitutionality of what has the potential to be the largest program so far—a universal education savings account program. Unfortunately, although the court agreed with us on all the substantive arguments, it held that the state had not properly funded the program, a problem we hope the Legislature will soon rectify.

The stakes for school choice litigation are even higher in 2017. Soon the Montana trial court will hold a hearing on whether to make its injunction permanent, and we expect that case to arrive at the Montana Supreme Court shortly thereafter. And as you read left to this article, the Georgia Supreme Court held a hearing on whether to affirm our 2016 victory protecting Georgia's longstanding tax-credit

scholarship program. The decisions in these cases will affect thousands of families.

Perhaps the most significant case for school choice, however, is the U.S. Supreme Court case, Trinity Lutheran Church of Columbia, Inc. v. Pauley, in which we authored an amicus brief last year. Trinity Lutheran concerns whether the government can use state constitutional provisions known as "Blaine Amendments" to discriminate against religious institutions in allocating public funds. Blaine Amendments restrict public funds from "aiding" religious institutions, and they have been used for years to limit or block school choice programs even though these programs aid families, not schools. An opinion limiting or striking down Blaine Amendments would have significant benefits for school choice nationwide. The Court will likely hear the case this spring.

In addition to our litigation work, we have also been very busy in the state legislatures. In South Dakota, we helped pass a tax-credit scholarship program last March, which kicked off with a \$150,000 donation from a local business. The same month, Maryland passed a voucher program. There are now 58 school choice programs in 28 states and D.C. We plan to add to that list. In 2016, we worked on bills in Kentucky, Missouri, Tennessee, Texas, West Virginia and Wyoming. We are eager to see some of those bills hit the floor this term.

2017 will undoubtedly bring new hope and opportunities for countless families. It only gets better from here.◆

Erica Smith is an IJ attorney.



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About the publication

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

Through these activities, IJ challenges the ideology of the welfare state and illustrates and extends the benefits of freedom to those whose full enjoyment of liberty is denied by government.

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Quotable Quotes

CBS Chicago



"'Chicago's food truck community has been hamstrung by the 200-foot rule,' [IJ Senior Attorney **Robert**] **Frommer** told reporters after the 90 minute hearing. 'This case demonstrates one of the fundamental questions here in Illinois, whether the government can pick and choose winners in the marketplace.'"

Rolling Stone

"'No one's been charged with a crime—not [IJ client] James [Slatic], not his wife, not his daughters and not anyone involved in the business,' says [IJ] lawyer, **Wesley Hottot**. But, he explains, law enforcement in San Diego has initiated civil forfeiture procedures to retain the \$150,000 in assets it took from the family. 'The government should not be able to take everything a family owns based on one police officer's suspicion that one family member committed a crime,' he says."

TechCrunch

"[IJ Senior Attorney **Robert**] **McNamara** said, 'Although telemedicine is actually generally legal in South Carolina...the state has a law on the books banning online eye exams specifically. That's not because telemedicine is more dangerous for ophthalmologists than it is for dermatologists and their patients. It's because private businesses successfully lobbied the state legislature to keep [IJ client] Opternative out.'"

IJ's Evan Bernick and Clark Neily in USA Today

"The rule of law set forth in our Constitution is prized by Americans who otherwise differ on countless issues of importance. The courts are our last, best hope of redress against abuses of government power. The next president will face the daunting task of uniting a fractured nation. An engaged judiciary is a necessary part of doing so."

"[The Institute for Justice are] publicinterest litigators who never received the 'You can't fight city hall' memo."

-George F. Will



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