



**LIBERTY & LAW**

August 2017  
Volume 26 Issue 4



# Unanimous:

## Georgia Supreme Court Rules for School Choice

Published Bimonthly by  
the Institute for Justice

Exposing Iowa's CON Job • Louisville Saddles Food Trucks With Protectionism • Victory for the Slatik Family in California  
Crumbling Wisconsin's Cookie Ban • We Are #PRidgeStrong • Big School Choice Victory in Big Sky Country

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# LIBERTY & LAW

August 2017 • Volume 26 Issue 4

**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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# UNANIMOUS:

## Georgia Supreme Court Rules for School Choice

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BY TIM KELLER

This is an exciting issue of *Liberty & Law* for school choice. We are pleased to report *four* different victories for choice, starting with our sweeping victory before the Georgia Supreme Court, which continues our unbroken winning streak on every tax credit case IJ has litigated. In this case, the court unanimously held that the taxpayers who filed the lawsuit over Georgia's tax-credit scholarship program are not harmed by the program because it is funded by private, charitable donations, not from the state treasury. Therefore, the plaintiffs did not have legal standing to maintain their lawsuit. This victory means there is no question that tax credit programs are funded with private donations and that parents like IJ client Robin Lamp can continue to decide what school is best for their children.

**This victory means there is no question that tax credit programs are funded with private donations and that parents like IJ client Robin Lamp can continue to decide what school is best for their children.**

When Robin—a single mom working multiple jobs—realized her first-born daughter had fallen nearly a year behind in her assigned public school in suburban Atlanta, she did not sit idly by. She enrolled both of her girls in a private school that would take their academic performance seriously.

But no matter how much Robin saved from her various paychecks, no matter how many vacations she skipped and no matter how many meals she cooked at home, she could not afford the private school's tuition on her own. Thankfully, she did not have to.

In 2008, Georgia enacted a tax-credit-funded scholarship program. Individual and corporate taxpayers who choose to contribute money to qualified Student Scholarship Organizations (SSOs) receive dollar-for-dollar tax credits against their state income taxes—up to \$1,000

The Quinones family will be able to continue sending their kids to private school, thanks to IJ's victory for Georgia parents.



for individuals, \$2,500 for families and \$10,000 for businesses. SSOs are private, nonprofit charities that provide scholarships to students to access private schools. The total amount of tax credits is capped at \$58 million annually, and credits are available on a first-come, first-served basis.

Georgians are so eager to fund the program that the tax credits disappear in a matter of days. Since its enactment, Georgia's tax-credit scholarship program has grown rapidly and is currently one of the largest school choice programs in the country.

When Robin learned her daughters would receive scholarships, she said she felt like she'd "won the lottery." But soon came a legal challenge to the program. Robin suddenly found herself in the shadows of worry as a constitutional cloud hung over the program that empowered her to exercise her right to direct the education and upbringing of her children.

The lawsuit, filed in 2014 by a group of state taxpayers, claimed that Georgia's scholarship program violated several provisions of the state constitution, most prominently a provision declaring that "no money shall ever be taken from the

public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution."

IJ has faced similarly worded provisions since the earliest days of our school choice work. But scholarships that empower families to choose from a variety of educational options are awarded "in aid of" parents and students, not "in aid of" schools. When defending a tax credit program, IJ argues further that the monies donated to SSOs are not "taken from the public treasury." In other words, the donated funds are private, not public, dollars. This argument carried the day in Georgia.

Since IJ opened its doors more than 25 years ago, there has not been a single day that we have not been litigating somewhere in this country to defend a school choice program from legal attack. Our strategic approach to school choice litigation has allowed us to build a body of positive, protective precedent that is, one case at a time, changing the world. ♦

Tim Keller is the managing attorney of IJ Arizona.



**Robin Lamp**, center, saved for years to send her daughters to better schools. Georgia's tax credit program helped ensure her daughters had access to a good education.



# EXPOSING IOWA'S CON JOB

BY DARPANA SHETH

IJ supporters may already be familiar with certificate-of-need (CON) laws, which essentially amount to a government permission slip to compete. IJ takes on these laws in the transportation and vending industries, where they stifle competition by allowing existing businesses to veto the opening of new businesses near them. But, as IJ client Dr. Lee Birchansky knows firsthand, certificate of need can be particularly harmful when required for medical services.

Iowa is one of 28 states that make it illegal for doctors to open an outpatient surgery center without proving to a state bureaucrat that there is a “need” for the center in the proposed area. The application process is costly and cumbersome—resembling full-blown litigation with attorneys, consultants and judicial appeals.

And because separate laws already govern who can practice medicine and what kinds of medical treatments doctors can provide, Iowa’s CON requirement has nothing to do with protecting health or safety. In other words, Iowa requires a certificate of need from licensed professionals who want to offer medical services that are perfectly legal.

Worse, Iowa does not apply its CON requirement evenly. It has a big loophole for existing medical facilities, which can expand or open new surgery centers, as long as the new centers cost less than \$1.5 million. And many hospitals take advantage of this loophole while vocally opposing doctors like Dr. Birchansky who want to open up their own centers.

For 20 years, Dr. Birchansky has been trying to perform cataract surgeries in an outpatient surgery center right next to his medical office. But he has been denied a certificate of need four times. At each and every turn, the two local hospitals have opposed his applications, claiming there is no need for additional surgery centers, all the while using the loophole to expand their own centers without going through the CON process.

Exemplifying the “IJ Way,” Dr.

Birchansky remained positive and resilient.

He teamed up with IJ to sue officials of Iowa’s Department of Health, challenging the constitutionality of Iowa’s certificate-of-need requirement for outpatient surgery centers.

Seven years in the making, the lawsuit builds on our first challenge to medical certificate-of-need requirements. In 2012, we challenged Virginia’s CON requirement as irrational, serving only



## Certificate-of-need laws amount to a government permission slip to compete.

to protect existing facilities and hospitals from competition, which is not a legitimate government interest. Unfortunately the 4th U.S. Circuit Court of Appeals dismissed our lawsuit. But instead of giving up, we decided to ramp up our litigation efforts and join forces with Dr. Birchansky to challenge Iowa's law in a different federal court.

This new lawsuit affords us an opportunity to create a circuit split that we can take all the way to the U.S. Supreme Court. We also represent a patient of Dr.

Birchansky's to show that Iowa's CON requirement violates Americans' rights to seek routine, safe and effective medical treatment from qualified doctors.

Ultimately, doctors and patients—not state officials—are in the best position to decide which health care services are needed, and we look forward to proving that the U.S. Constitution gives them the right to do exactly that. ♦

Darpana Sheth is an IJ senior attorney.



Dr. Lee Birchansky has been denied permission to open a new medical facility by the state of Iowa four times.



# Louisville Saddles Food Trucks With Protectionism

BY ARIF PANJU

The Derby City may embrace competition on the horse track, but Louisville, Kentucky, is betting against food trucks by using government power to give a leg up to its favorite brick-and-mortar businesses. That is why IJ teamed up with two Louisville food truck entrepreneurs to challenge the city's anticompetitive 150-foot proximity ban. This case is the newest front in our National Street Vending Initiative, which seeks to legalize street vending across the nation.





IJ clients **Troy King**, left, and **Robert Martin**, right, are suing Louisville to change its unconstitutional food truck laws.

Louisville makes it illegal for food trucks to vend within 150 feet of a restaurant that sells “similar” food without the restaurant’s permission. As a result, large swaths of Louisville have become “no-vending zones,” where food trucks are effectively banned. To have any chance at vending within 150 feet of a restaurant that sells similar food, food trucks must first get written permission slips from the very brick-and-mortar competitors the law is designed to protect. Nobody should need their competitors’ permission to operate a business.

Worse still, the 150-foot ban arbitrarily treats food trucks differently based on what they sell. So while a food truck serving burgers is banned from operating within 150 feet of a burger joint, a pizza truck can park right out front. As if that were not enough, a restaurant that does not sell similar food can force a nearby food truck to shut down at any time by simply adding food to its own menu that is similar to whatever food the truck sells.

Among the vendors caught in Louisville’s crosshairs are Troy King and Robert Martin. City officials forced Troy to shut down his food truck, Pollo, by threatening to fine him and tow the truck away simply because he was vending within 150 feet of a restaurant selling chicken. Robert stopped bringing his food truck, Red’s Comfort Foods, which serves gourmet hot dogs and sausages, downtown after city officials cited him for serving customers within 150 feet of a restaurant that serves pork and

bread. But whether you can operate your business should not turn on whether a competitor sells the same thing.

This case seeks to extend a victory in another IJ case that

involved the government attempting to use its power to stifle competition. In a landmark 2002 ruling, the 6th U.S. Circuit Court of Appeals—which includes Kentucky—held that economic protectionism is not a legitimate government interest. In that case, the court struck down a law involving the sale of caskets and designed to protect licensed funeral directors from competition. Similarly, Louisville’s 150-foot proximity ban also protects a discrete

interest group from competition.

Food truck entrepreneurs operate their vending businesses to support themselves and their families, but Louisville shuts them down to protect restaurants from food truck competition. This law has greatly harmed the vending community, including our clients, so IJ teamed up with Troy and Robert to fight back and challenge the constitutionality of Louisville’s 150-foot ban in federal court.

And IJ will keep on fighting for all startup entrepreneurs until the courts rule once and for all that it is customers, not the government, who get to pick winners and losers in the marketplace. ♦



Arif Panju is the managing attorney of IJ Texas.





IJ helped **James Slatic** and his family get their money back after a 15-month battle.

# VICTORY

## For the Slatic Family In California

**BY RENÉE FLAHERTY**

Big news out of San Diego! In May, a court ordered the District Attorney's Office to return every last penny of the more than \$100,000 it seized from the Slatic family using civil forfeiture. This important victory came after a 15-month battle before two different courts and three different judges. In the face of great odds, the Slatic family and IJ persisted. That persistence paid off when a judge agreed that the DA had no grounds to hold the money.

*Liberty & Law* readers will recall that the DA seized the Slatic family's money in February 2016, following a raid on James Slatic's legal medical marijuana business. The DA seized more than \$55,000 from James' personal bank account, more than \$34,000 from his wife, Annette, and more than

\$5,600 each from their teenage daughters, Lily and Penny, who had saved the money for college.

This happened even though James Slatic had operated his medical marijuana business legally and openly for over two years and even though his family never had any involvement

in his business. In November 2016, IJ stepped in to help get the family their money back.

California's courts are not an easy place to litigate, but we never once thought about giving up. Two judges denied IJ's three separate motions asking the government to return the money. When the DA missed a February 2017

deadline to file a formal lawsuit to forfeit the money, she still refused to return it and attempted to file a case anyway. The case was assigned to a judge who ruled in March that the DA

**The DA seized more than \$55,000 from James' personal bank account, more than \$34,000 from his wife, Annette, and more than \$5,600 each from their teenage daughters, Lily and Penny, who had saved the money for college.**

had missed the mandated deadline. Ultimately, the judge ordered the prompt return of every penny taken from the family, ruling,

[The] money that [the] People are holding does not appear to have any evidentiary value on its own, and it cannot be declared contraband without due process.

This case exemplifies IJ's perseverance. While most attorneys and their clients would have thrown in the towel after one, two or three unsuccessful attempts to get the money back, IJ and the Slatics did no such thing. The team persisted through hearing after hearing and ream after ream of paper filed with the court, even when we were bounced from judge to judge and told "no" again and again.

Thanks to the generous support of IJ's donors, we had the resources and grit to fight to the end for the Slatics. But most people who find themselves caught up in the civil forfeiture machine are not so lucky.

The Slatics' victory vindicates the right of every Californian to be free from the unjust seizure of their property. The victory also affirms that no matter what obstacles IJ faces, we will fight on behalf of clients like the Slatics across the country to end civil forfeiture. ♦

Renée Flaherty is an IJ attorney.



Final victory for families like the **Andersons** in Douglas County, Colorado, is within reach, thanks to the U.S. Supreme Court.

## U.S. Supreme Court Delivers Two Victories For School Choice

Students may be taking a break from school this summer, but IJ's fight for school choice knows no rest. That is OK with us, because we have results to show for it.

On June 26, the U.S. Supreme Court issued a major decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, which held that Missouri violated the Free Exercise Clause of the U.S. Constitution when it relied on the "Blaine Amendment" in its state constitution to exclude a religious preschool from a state program that provides grants for schools and other nonprofits to resurface their playgrounds. As IJ noted in its "friend-of-the-court" brief in the case, Blaine Amendments—found in some 37 state constitutions—are the favored weapons of school choice opponents, who rely on them to try to deny parents the ability to choose the schools that are best for their children.

It is hardly surprising, then, that the day after it ruled in *Trinity Lutheran*, the U.S. Supreme Court vacated a 2015 judgment of the Colorado Supreme Court in which the justices of that court struck down a Douglas County school choice program under Colorado's Blaine Amendment. At the request of IJ, which represents families whose children had received scholarships under the program, the U.S. Supreme Court remanded the case to the Colorado Supreme Court for "further consideration in light of *Trinity Lutheran*."

These back-to-back developments are major milestones toward IJ's long-term institutional objective of removing Blaine Amendments as impediments to school choice. These sordid provi-

School Choice continued on page 13

# CRUMBLING

## Wisconsin's Cookie Ban

BY ERICA SMITH

Wisconsin is now both freer and more delicious, thanks to IJ's latest victory for economic liberty. On May 31, a Wisconsin trial court struck down the state's ban on selling home-baked goods. The judge found the ban violated Wisconsinites' constitutional right to earn an honest living because it did not genuinely protect the public. Instead the ban served only to protect industry insiders from competition.

Before IJ won in court, Wisconsin was one of only two states (the other being New Jersey) that banned the sale of home-baked goods. In Wisconsin, before a person could sell even one cookie, they first had to get a license and rent or build a commercial-grade kitchen that was separate from their own home kitchen. Renting or building a commercial kitchen costs tens of thousands of dollars, and is simply not a viable option for home bakers, farmers or hobbyists who just want to sell some cookies or muffins to help support their families.

As the judge found, these onerous requirements had nothing to do with safety. The undisputed evidence in the case showed there was no example of anyone, anywhere, ever getting sick from an improperly made baked good. In addition, the state allowed the sale of many other homemade foods, including canned goods, apple cider, popcorn, honey and syrups, with little or no regulation, even though these foods actually pose greater risks than any posed by baked goods.

All the evidence showed that the ban on selling home-baked goods served only one purpose, and that was protecting commercial bakers from competition. In fact, IJ's three clients—Lisa Kivirist, Kriss Marion and Dela Ends—had fought for years in the Legislature

to get this ridiculous law repealed. But despite bipartisan support in both houses for repealing the ban and bills passing unanimously twice in the Senate, one man stood in the way: Assembly Speaker Robin Vos. Speaker Vos used his position to make sure that

the bills never received a vote in the Assembly. The Speaker has stated quite candidly that he was motivated to protect commercial bakers from competition.

Indeed, the only other opponents to repealing

the ban were commercial bakers, represented by three powerful lobbying groups: the Wisconsin Bakers Association, Grocers Association and Restaurant Association. In the height of hypocrisy, the Wisconsin Bakers Association had itself been selling 400,000 cream puffs every year at the state fair without a license or commercial kitchen, using an exemption for "nonprofit" groups.

In what has become the government's pattern in these types of cases, the state argued that the law was justified because it was "conceivable" that a home-baked good might present a health risk. But Judge Duane Jorgenson refused to blindly defer to the government and rubber stamp the law. In an opinion that will surely help protect economic liberty for years to come, the judge said that laws must have more than a "speculative" justification and, instead, must have a "real and substantial connection" to protecting the public welfare. This law, obviously, did not.

The state is currently considering an appeal. If that happens, IJ will be there to keep fighting to protect the right to economic liberty both in Wisconsin and nationwide. ♦

**All the evidence showed that the ban on selling home-baked goods served only one purpose, and that was protecting commercial bakers from competition.**

Erica Smith is an IJ attorney.





Dela Ends, top left, Lisa Kivirist, top right, and Kriss Marion, bottom, took on Wisconsin's cookie cartel—and won.



School Choice continued from page 11  
sions are vestiges of 19th-century anti-Catholic bigotry. Colorado's is a typical example. Like Blaine Amendments in other states, it was designed to preserve the generic Protestant nature of the era's public schools—which were overtly religious but not “controlled by any church or sectarian denomination”—while denying aid to Catholic schools.

Today, school choice opponents have seized on these engines of animus against Catholics and transmuted them into engines of discrimination against all religion. Almost invariably, when a school choice program is adopted in a state with a Blaine Amendment, school choice opponents run to the courthouse to challenge the program arguing that the Blaine Amendment bars the inclusion of religious options. IJ's position, on the other hand, is that the government must remain neutral with regard to religion, and that parents should have the right to choose the best school for their children, whether it be public or private, religious or secular.

Of course, the U.S. Supreme Court's decision in *Trinity Lutheran* calls school choice opponents' argument into question and on remand in the Douglas County case, the Colorado Supreme Court will have to confront the issue head-on. If that court gets the answer right, then Douglas County's scholarship program could be up and running in the very near future. If it gets the answer wrong, then IJ may soon be back at the U.S. Supreme Court, where we will secure a decision that puts the issue to rest once and for all—and that makes the dream of increased educational opportunity a reality for millions more of America's children. ♦

## JOURNEY TO FREEDOM



Chosen by a diary awaiting for freedom, Elfie risked her life to escape East Germany's East Germany. Her courage and determination inspired the fight for liberty.

"When I finally got through the border (border is closed) I ran for about 20 yards. I wanted to shout, 'I am free, I am free,' but no words came from my lips because by then my heart was in my throat. There I stood in silence, feeling no one else's presence. That moment with me was the last to the world."



IJ Attorney **Sam Gedge** stands in front of the Elfie Gallun Journey to Freedom display at IJ's headquarters.

### IJ Names a New Elfie Gallun Fellow in Freedom and the Constitution

Readers of *Liberty & Law* know that IJ stories are powerful because they are about real people who are motivated to fight government abuse—not simply to improve their own lives but also to secure freedom for others.

One of the stories we are privileged to tell is that of Elfie Gallun, a longtime friend and supporter of IJ. Driven by a deep yearning for freedom, Elfie risked her life to escape communist East Germany as a young girl. In her new life in America, Elfie never lost sight of how precious our liberties are—or the fact that we must be constantly on guard against attempts to erode them.

Elfie and her husband, Ned, founded the Elfie Gallun Fellowship in Freedom and the Constitution at IJ because of IJ's essential role in the fight to defend the U.S. Constitution and the liberties it secures for all Americans. This summer IJ named Sam Gedge as our second Elfie Gallun Fellow. In addition to his litigation work, Sam will publish written materials and speak to a variety of audiences about the vital role the Constitution plays in protecting our most precious freedoms. A graduate of Harvard Law School, Sam has already launched cases battling civil forfeiture and overzealous licensing boards, which generated widespread coverage and conversation in media outlets from *Wired* and *The Atlantic* to the U.K.'s *Daily Mail*.

We were deeply saddened when Ned passed away last winter. We carry on to protect the liberties that he so valued, and to tell Elfie's story of courage and determination, which inspires us in our ongoing fight for liberty. ♦

# Turning Chicago Streets Into Streets of Dreams

BY STACY MASSEY

Chicago street vendors are enjoying a victory that was more than eight years in the making. In 2009, the leaders of the city's vendors' association read our study on the Windy City's licensing laws called *Regulatory Field: Home of Chicago's Laws* and contacted author and IJ Clinic on Entrepreneurship Director Beth Kregor. The vendors' representatives were glad Beth had touched on barriers to vending in her report but said she was only seeing the tip of the iceberg. Tamale vendors were regularly stopped, fined and even arrested for selling homemade food in their neighborhood of Little Village. There was nothing they could do to defend themselves because there was no license they could get to operate legally. From that day forward, the IJ Clinic has focused on securing economic liberty for Chicago's pushcart vendors—many of whom are immigrants.

Before the Clinic got involved, the Chicago City Council paid more heed to restaurants' requests to shut out competition than a street vendor's right to earn an honest living. Lawmakers listened to unfair prejudices against hard-working vendors instead of pleas for ordinances aimed at creating a license. But between 2009 and 2015, the IJ Clinic worked tirelessly with the vendors' association to draft and pass an ordinance legalizing street food.

For most vendors, the new law presented an opportunity to come out of the shadow economy and play by the Health Department's rules. But low-income Mexican immigrants in Little Village were still living in fear, because there was no affordable licensed kitchen space where they could comply with the law they helped to pass. The Clinic's work was not done. In order to fully comply with the law, vendors must prepare their foods in a commercial kitchen.



IJ Clinic Director **Beth Kregor** shares a laugh and good eats with some of Chicago's vendors at their kitchen's grand opening.

But many already established commercial kitchens in Chicago are full or too expensive. The vendors realized they could open up their own space that better met their needs. To assist them, we shifted from a coalition partner to the attorneys for the vendors. The IJ Clinic represented the newly formed nonprofit Street Vendors Association of Chicago (SVAC), as members pooled their money and manpower together to open their very own shared kitchen.

SVAC vendors do not have much but what little they do have, they are willing to invest in a piece of the American Dream. The Clinic sat in on an SVAC meeting last winter and watched as each of the vendors pledged \$100, \$200—sometimes \$300—toward making the shared kitchen a reality so they could finally operate legally.

Mighty as the vendors of SVAC are, their journey would have been impossible without the IJ Clinic. We helped vendors understand the law and change it, and now—the last and most monu-

mental piece—we are helping them build infrastructure to comply with the law. Not too long ago, vendors risked hefty fines or even arrest for selling food to provide for their families. Thanks to the Clinic, vendors now have a clear path for building prosperous, legally compliant businesses.

During the SVAC kitchen ribbon-cutting celebration on June 14, vendors spoke optimistically about growing their businesses. The ribbon cutting was an event that marked their nearly decade-long journey to change the law and serve delicious treats on Chicago's streets without fear of harassment, fines or arrest. The IJ Clinic is proud to represent SVAC, and we will continue to fight until Chicago becomes freer for all entrepreneurs. ♦

Stacy Massey is the community relations manager for the IJ Clinic.



Chicago's vendors have spent the past eight years fighting to change city law.



# We are #PRidgeStrong

BY CHRISTINA WALSH

Earlier this year, IJ sued the city of Charlestown, Indiana, because the residents of the Pleasant Ridge neighborhood have spent the last three years on the chopping block. Their mayor, Bob Hall, has made it his personal mission to bulldoze this entire working-class neighborhood—full of modest but much-loved and well-kept homes—so a private developer can build an upscale subdivision. But these courageous residents are not going anywhere. While our attorneys argue their case in court, IJ’s activism team has been busy working with residents to ensure the public sees why Pleasant Ridge is worth fighting for. To that end, we teamed up with our clients to host a carnival in the neighborhood in June. Residents from Charlestown and the surrounding region met the friendly folks of Pleasant Ridge and heard their stories and enjoyed some food and fun.

**While our attorneys argue their case in court, IJ’s activism team has been busy working with residents to ensure the public sees why Pleasant Ridge is worth fighting for.**

On a sunny Saturday afternoon, residents and over 150 guests enjoyed live music, games and prizes, face painting, food and drinks, and three inflatable bounce houses. We also had a photo booth with the neighborhood’s motto “#PRidgeStrong” on the backdrop, and #PRidgeStrong temporary tattoos that both young and old wore proudly.

A key feature of the event was a scavenger hunt, in which guests visited 15 different homes in Pleasant Ridge, where they would find the homeowner’s story on a board in their front yard and have to answer questions. The participants were able to see firsthand some of the lovely homes that Mayor Hall wants to bulldoze. As they walked through the neighborhood, our clients’ nice homes were marked with Pleasant Ridge signs to distinguish them from the dilapidated developer-owned properties. By directly engaging with the stories of neighborhood resi-



dents, carnival guests were better able to understand what Mayor Hall's land grab really means to the people who stand to lose their homes.

One of the many ways that Pleasant Ridge residents have supported one another is by helping the elderly and disabled to maintain and repair their homes. The effort paid off. By the day of the carnival, the homeowners' houses were fit for a real estate brochure photo shoot, making a total mockery of the city's claim that all of the houses in Pleasant Ridge are "substandard."

As a result of the community outreach, the people of Pleasant Ridge have renewed their determination to hang onto their homes and their neighborhood. Jan Carter, the daughter of longtime resident Arretta Griffin, says that her mother has "got the fight back in her," and that they are now planning to remodel her back porch using red cedar Jan's father—who passed away two years ago—left in the garage. This will allow Arretta to "be with him in her new sanctuary on the back porch." Clearly, Arretta has no plans

to leave the house she has owned and built memories in for 48 years.

Our clients had a great time and ended the day with a trip down our inflatable slide. They shared their stories with the broader community, built more support for Pleasant Ridge and sent Mayor Hall a very loud message: We love our homes, and we are not going anywhere, because we are #PRidgeStrong. ♦

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



IJ staff and Pleasant Ridge residents spent the day showing the city of Charlestown what a vibrant and close-knit community Pleasant Ridge is.



Photo by GradImages

## Mellor Delivers Scalia Law School Commencement Address

In May, IJ chairman of the board and co-founder Chip Mellor gave the 2017 commencement speech at the Antonin Scalia Law School at George Mason University.

In his speech, "The Opportunity Cost of Inertia," Mellor told the graduates not to give up on their dreams because they face long odds:

When we started the Institute for Justice nearly 30 years ago, there were plenty of people . . . who expressed skepticism about the viability of such a different kind of public interest law firm. They cautioned that the goals were so lofty that failure was a real possibility, even likely. One friend went so far as to ask me why I thought I should be the one to try to change constitutional jurisprudence that had been entrenched over decades. My response was always the same. The need for constitutional constraints on government power has never been more urgent, so how can we not try to secure liberty, and no one else is doing what we propose, so why not me?

Mellor urged the class to be "entrepreneurs for liberty" and pressed them to break through the inertia of life and careers so they can say they *made* their lives happen, not just that they *let* their lives happen. ♦

# Big School Choice VICTORY

## In Big Sky Country



IJ is representing **Kendra Espinoza**, who wants to use Montana's program to send her daughters to private school.

BY DICK KOMER

The victories keep on rolling for IJ's school choice litigation! In May, IJ scored a big win for Montana families when a district court ruled that the Montana Department of Revenue made a "mistake of law" when it tried to exclude students attending religious schools from the state's school choice program. The program is now back to doing what the Montana Legislature intended: allowing all low-income families to apply for scholarships to attend the private schools of their choice—religious or secular.

This case provided IJ with a unique opportunity to go on the offensive to protect school choice. Usually IJ steps in to defend programs after a program has been challenged in court—in other words, we are not the ones filing the lawsuits. But the Montana Department of Revenue left us no choice when it refused to administer the program correctly.

Montana passed its first-ever school choice program in May 2015. It is a modest tax credit for donations to scholarship-granting organizations. The program allowed all private schools to participate by accepting scholarship students, but the Department of Revenue decided to exclude all religious schools from participating. It based this rule on the Montana Constitution's Blaine Amendment. The provision, like all Blaine Amendments, prohibits the state from aiding religious schools but says nothing about aiding parents.

In Montana, religious schools constitute a significant majority of private schools, and if the Department were allowed to exclude them, the tax credit program would have failed. This is why we viewed it as important to overturn the rule. The whole point of school choice programs is to give parents the broadest array of options possible to meet their children's educational needs, and to let *parents* decide what education is best for their children.

So IJ filed suit against the Department of Revenue on behalf of three parents in December 2016. In an unusual devel-

opment in an unusual case, the Montana Attorney General's Office declined to represent the Department, which has had to rely on its own attorneys.

This case represents the first time that a state department of revenue has relied on a Blaine Amendment to distort implementation of a tax-credit scholarship program. Previously, outside parties have challenged the constitutionality of similar rules, and IJ has represented parents as intervening defendants alongside state departments of revenue. The Department's unprecedented action has meant that we represent the parents as plaintiffs—and we used that status to get the rule temporarily suspended and to win our district court victory, which included an order granting a permanent injunction of the rule.

Our first line of argument for challenges to tax credit programs is that tax credits do not constitute "appropriations" or payments of state funds subject to the strictures of state Blaine Amendments. This argument proved successful not just with the judge in Montana. As you read earlier, the Georgia Supreme Court unanimously rejected a challenge to a similar program using the same argument, and the U.S. Supreme Court clarified in *Trinity Lutheran v. Comer* that state Blaine Amendments cannot exclude churches from generally available public benefit programs. These three victories mean that the Montana Department of Revenue's positions just became much harder to defend.

Regardless, the Department's director has already told the press that he intends to appeal to the Montana Supreme Court, and we look forward to continuing to fight for the right of Big Sky parents to pick the best educational options for their children. ♦

**The program is now back to doing what the Montana Legislature intended: allowing all low-income families to apply for scholarships to attend the private school of their choice—religious or secular.**

Dick Komer is an IJ senior attorney.



# NOTABLE MEDIA MENTIONS

**The  
Economist**

**How American Cities Keep Food Trucks  
Off Their Streets**  
May 22, 2017

**AP Associated Press**

**Selling Homemade Baked Goods Now  
Legal In Wisconsin, Judge Rules**  
May 31, 2017

**techdirt**

**Licensing Body Agrees To Temporarily  
Allow Man To Criticize The Government  
Without A License**  
June 1, 2017

**The Atlanta Journal-Constitution**

**Georgia Supreme Court: Tax-Credit  
Private School Scholarship Program Is  
Constitutional**  
June 26, 2017

**THE WALL STREET JOURNAL**

**Supreme Court Religious Bonus**  
June 27, 2017

**The Boston Globe**

**New England Is Trying To  
Untangle Hair Braid Licensing**  
June 21, 2017

**courier-journal**

[Louisville, Kentucky]  
**Let Me Sell My Taco! Food Truck Own-  
ers Bite Back Over City Rules On Where  
They Can Operate**  
June 28, 2017

**The New York Times**

**Supreme Court Ruling Could Shape  
Future Of School Choice**  
June 27, 2017

**The Washington Post**

**D.C. Child Care Workers Push Back  
Against New College Degree  
Requirements**  
June 6, 2017

**ORANGE COUNTY  
REGISTER**

**Corporate 'Bottleneckers' Are Rigging  
The System Against Consumers**  
June 14, 2017

Washington, D.C., officials wanted to throw us in jail for 90 days for giving tours without a license.  
But our customers—not the government—get to decide if they want to listen to us.

We stood up for our First Amendment right to speak for a living.

And we won.

*We are IJ.*

