



The Kelo Case Hits the Big Screen

Published Bimonthly by the Institute for Justice

IJ Fights to End For-Profit Prosecution in California • Victory for Free Speech at the Colorado Supreme Court

IJ's Network of Volunteer Lawyers Expands the Fight for Liberty • Victory! Mario Levels Up, Unlocks Free Speech Achievement

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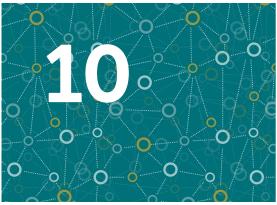
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whose full enjoyment of liberty is denied by government.

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The Kelo Case Hits the Big Screen

Little Pink House is a Tribute To Our Clients and to IJ

BY JOHN E. KRAMER

You know an organization has reached a new level when its stories are retold on the silver screen by major Hollywood stars.

In April 2018, Little Pink House, which recounts IJ's iconic case to save the homes of Susette Kelo and her neighbors, hits the big screen. The film stars two-time Oscar nominee Catherine Keener (Being John Malkovich and Capote) as Susette.

The movie, based on the book of the same name by Jeff Benedict, tells the true story of Susette Kelo, a small-town paramedic who leaves a bad marriage

and starts over in a new town. She buys a rundown cottage in New London, Connecticut, refurbishes it and paints it pink. Then she discovers powerful politicians are bent on bulldozing her blue-collar neighborhood to make way for condos and office buildings designed to benefit the new headquarters of pharmaceutical giant Pfizer, which is on the brink of releasing its new drug Viagra. The redevelopment effort is spearheaded by Susette's nemesis Charlotte Wells, played by Jeanne Tripplehorn (The Firm and Basic Instinct)—an ambitious and accomplished college president who has a to-die-for Rolodex. With IJ's help, Susette







The film documents how IJ's integrated approach to litigation, communications, activism and legislative outreach elevates our battles on behalf of ordinary Americans and transforms them into issues of national importance.

emerges reluctantly as the leader of her neighbors in an epic battle that goes all the way to the U.S. Supreme Court. Her fight inspires a nation and helps millions of Americans protect their homes.

As you will soon see, Little Pink House is in many ways a tribute to the courage of Susette and the other homeowners we represented, and an illustration of the power of IJ's litigation. The film documents the human cost of eminent domain abuse and features actors playing IJ cofounder and now-Board Chairman Chip Mellor, IJ President Scott Bullock, Senior Vice President and Litigation Director Dana Berliner and yours truly. It documents how IJ's integrated approach to litigation, communications, activism and legislative outreach elevates our battles on behalf of ordinary

Little Pink House continued on page 18



The real life Susette Kelo is an American hero who stood up against the government that wanted to bulldoze her neighborhood for a private developer.



Susette's case went all the way to the U.S. Supreme Court. The infamous decision led to a nationwide backlash against eminent domain abuse.

IJ Fights to End **For-Profit Prosecution** in California

BY JOSHUA HOUSE

For almost two decades, IJ has led the fight to end policing for profit, the troubling trend in which law enforcement uses citizens as ATMs. A recent case fighting this injustice expands on our work to end civil forfeiture and government's ability to pad

its budgets using excessive fines and fees. In California's Coachella Valley, a little-known for-profit policing tactic can turn minor infractions—like a \$225 ticket for having chickens in a suburban backyard-into a nearly \$6,000 bill from a private, forprofit law firm.

Welcome to the world of "prosecution fees," where cities outsource their code enforcement to a private law firm. In California, the law firm's business model is straightforward: Hire us to be your city's prosecutor and we will bill property owners for every second spent prosecuting cases at private firm rates—sometimes costing thousands more than the original fine. This unconstitutional scheme has turned otherwise minor infractions into big business for both Indio, California, and the law firm, at the expense of homeowners' due process rights.

Ramona Morales is a 79-year-old property owner who found herself inside the "prosecution fees" system.

Ramona is a housekeeper and retired Avon makeup saleswoman. Having learned about property investment from her housekeeping clients,

Ramona saved for years to purchase multiple small properties. She refurbished many of those proper ties herself with the help of family and friends. And she eventually sold some properties to longtime tenants at discounted prices.

In 2015, Ramona received two warnings, a crim-

inal citation, and even an arrest warrant, each saying that a tenant of hers was illegally keeping chickens. Overkill for a few chickens, but it appeared easy enough to resolve. Ramona made sure that the tenant complied by removing the chickens and then went to court to pay the citation. In court, she pleaded guilty and

explained to the judge that the chickens had been removed. She paid the \$225 in fines, fees and costs, believing the matter was over.

But nearly a year later, Ramona received a bill from Silver & Wright LLP, the law firm employed by Indio. The letter explained that the city was entitled to recoup all costs for the criminal prosecution and that those costs included the hourly rates billed by Silver & Wright. It requested that Ramona send a cashier's check of over \$3,000 made out to Silver & Wright.

None of this sounded right to Ramona. After all, she had already paid her fines. She decided to appeal the bill, but lost. Again, Ramona was billed nearly \$3,000-this time for the supposed cost of preparing for the appeal.

She was able to get a cash loan from her son, a U.S. Marine, to pay the fees. Yet she was left bewil-





Victory for FREE SPEECH

——— at the ———— Colorado Supreme Court

Where others see

only roadblocks, we

see opportunities.

BY PAUL SHERMAN

In a ruling that will benefit hundreds of citizens and political groups throughout the state of Colorado, the Colorado Supreme Court on January 29 unanimously ruled that pro bono and reduced cost legal services to political organizations cannot be regulated as political "contributions" under Colorado's campaign finance laws. The ruling in Coloradans for a Better Future v. Campaign Integrity Watchdog ensures that

political speakers cannot be hauled into court by their political opponents merely for seeking out legal help navigating Colorado's incredibly complex campaign finance system.

This case has its origins in the 2012 campaign for the Colorado Board of Regents, when a group called Coloradans for a Better Future (CBF) ran political ads criticizing Matthew Arnold, a Republican candidate for the Board. After Arnold lost the election, he turned to the courts, filing three separate campaign finance lawsuits against CBF. To escape this harassment, CBF shut down with the help of a volunteer lawyer. But this only triggered a fourth lawsuit by a group Arnold founded, Campaign Integrity Watchdog (CIW), alleging that the volunteer lawyer's services should have been reported as a campaign contribution.

Unfortunately, in April 2016, the Colorado Court of Appeals agreed, handing down a ruling that threatened hundreds or even thousands of political

speakers throughout Colorado.

To understand how dangerous this ruling was, it helps to understand that in Colorado, unlike in most states, any person may file a lawsuit to enforce the state's campaign

finance laws (as the sidebar notes, IJ is currently challenging this system in federal court). Not surprisingly, these lawsuits are routinely filed over trivial reporting errors by people looking to harass and intimidate their political opponents. Treating pro bono legal services as a contribution thus worked a double harm: It created



a new trap for the unwary, and it made it harder for small, unsophisticated groups to get the legal help they needed to navigate this regulatory minefield.

If the court of appeals' decision was grim, the chances for reversing that decision were even grimmer. Defunct and without legal representation, CBF had not filed briefs in the trial court or the appellate court. It had lost unanimously at the court of appeals. And its only hope was to persuade the Colorado Supreme Court to take the case.

Most law firms would have called the case hopeless, but IJ is not like most law firms. Where others see only roadblocks, we see opportunities. So we took over representation of CBF and convinced the Colorado Supreme Court not only to hear the case, but to issue an unprecedented order staying the precedential effect of the court of appeals' decision so that other groups would not face similar lawsuits while we fought to defend CBF.

Now, IJ's efforts have been rewarded: The Colorado Supreme Court unanimously reversed the court of appeals, adopting IJ's legal arguments 100 percent. That result is not just good news for political speakers in Colorado-it is a powerful vindication of the neversay-die spirit that helps IJ accomplish the impossible.

> Paul Sherman is an IJ senior attornev.



Private Enforcement In the Spotlight

IJ's Colorado Supreme Court win is just the tip of the First Amendment iceberg in the Centennial State.

Unlike every other state in the U.S., Colorado outsources enforcement of its campaign finance laws wholesale to "any person." That system is exploited relentlessly by politicians and their allies, who harness the full power of the state to target their ideological opponents. In the words of the state's most prolific complainant, the system is a tool for waging "political guerrilla legal warfare" against disfavored viewpoints. Even the state's courts have admitted that "if political partisans were barred from filing complaints, very few complaints would ever be filed."

This abuse-prone system is the focus of a separate First Amendment case IJ has been pursuing since 2016. IJ teamed up with Tammy Holland, the small-town mom who was sued twice by incumbent politicians for speaking out about politics in Colorado. Tammy is confronting Colorado's private-enforcement system head-on, with a First Amendment challenge in federal court. As her case explains, the state cannot police political speech by authorizing "any person" to haul their enemies into court. Keep an eye out for developments in Tammy's case as the year goes on.



IJ'S NETWORK OF VOLUNTEER LAWYERS EXPANDS THE FIGHT FOR LIBERTY

BY DANA BERLINER

At IJ, changing the world is a full-time job. But there are many lawyers around the country who work at private law firms yet still hope to do something, even part time, to make the U.S. a freer place. IJ gives them a way to do just that. In this past year alone, nearly 200 attorneys volunteered to expand our fight for liberty.

IJ began recruiting volunteer lawyers more than 20 years ago, when attendees of our first law student conference became part of our Human Action Network. The network is

now comprised of hundreds of former law clerks, law student conference attendees, friends and people who

volunteer when they learn about our work, all of whom we engage in a huge variety of ways. Lawyers in IJ's network serve as local counsel on the ground in most of our cases. They write friend-of-the-court briefs on behalf of IJ and on behalf of other people in IJ's cases. Volunteer lawyers assist entrepreneurs through IJ's Clinic on Entrepreneurship at the University of Chicago. Others do legal research projects in their spare time or volunteer for IJ in between

jobs. And we refer whole cases to volunteer attorneys when they are not quite right for us.

Although IJ's network has always been active, we have noticed a distinct rise in enthusiasm for pro bono work lately—from lawyers at private law firms and lawyers in State Policy Network groups. And IJ is expanding the types of projects that pro bono lawyers can do.

Most recently, IJ itself has been the plaintiff in a series of Freedom of Information Act (FOIA) lawsuits, which are important legal cases in their own right. And in each of these,

we have been represented by a team of lawyers from our network. Right now, IJ has four different FOIA lawsuits in progress,

where we are represented pro bono by four different law firms.

For example, when IJ's strategic research team wanted to conduct a study about hair braiding, it asked many state agencies for information. Illinois refused to respond. Represented by Jeffery Lula and others at the law firm of Kirkland & Ellis LLP, IJ sued. Some time after we sued, a new law went into effect that exempted these documents from FOIA.



Although the agency had no justification for withholding the information when we asked for it, the agency could now claim that the new law meant it never had to give us the information. This is an important question. If the agency wins, government entities could illegally withhold documents, get a new law passed justifying withholding the documents and then never need to produce them. The case was heard at the Illinois Supreme Court on March 15, 2018.

Another case, about whether the Georgia Legislature can refuse to produce documents about its new music therapy license requirement, is pending in the Georgia appellate court. We are represented by Alex Harris and other lawyers at Gibson Dunn.

Meanwhile, we have two cases seeking forfeiture databases of the Internal Revenue Service and Customs and Border Protection. These databases will allow IJ and other researchers to answer many questions about how often and in what situations the federal government uses civil forfeiture. IJ is represented in those suits by two former law clerks, Dan Muino at Morrison Foerster and Andrew Prins at Latham & Watkins LLP, as well as other lawyers on their teams.

There is so much to be done in fighting for liberty. And through strategic use of volunteer lawyers, IJ gives opportunities to other freedom lovers and can do even more to change the world.◆

Dana Berliner is the senior vice president and litigation director at IJ.



If you would like to volunteer, please contact Melissa LoPresti, IJ's litigation projects and training programs manager, at mlopresti@ij.org.



Liberty & Law readers may have heard of the Pineapple Fund, an organization created in December 2017 by an anonymous donor aiming to give away approximately \$86 million in Bitcoin. "Pine" accepted online applications for two months and received thousands of requests.

IJ applied, and we were proud and delighted to learn in January that we were one of only 58 charities so far selected to receive a grant. Other recipients include charities providing clean water and sanitation services to people around the world, digital rights watchdogs and advocates, organizations that teach kids to read and write, and many more.

At IJ, the Pineapple Fund donation will help us defend and secure the rights of hundreds of thousands of people like those you will read about in this issue of *Liberty & Law*, protecting them from government abuse and enabling them to live as free and responsible individuals. From IJ, our clients and so many others like them—thank you, Pine!





BY ROBERT FROMMER

It is tough enough being an entrepreneur. But if no one knows how to find your business, it becomes almost impossible. Because a business with no signs is a sign of no business, a vital part of IJ's First Amendment work is to strengthen speech protections for small businesses that use signs to advertise and announce their goods and services. Our recent victory in Orange Park, Florida, on behalf of a video game storeowner shows that pro-free-market policies and constitutional rights go hand in hand.

IJ client Scott Fisher, owner of Gone Broke Gaming, knows how hard it is for a new small business to get noticed. Located in a small strip mall off a major fourlane road, Gone Broke Gaming was easy to miss. In fact, Scott often heard from customers who said they could not find the place. Rather than sit idly by, Scott purchased a nine-foot inflatable of beloved video game mascot Mario, which he displayed outside during business hours.









Business instantly took off, but so did the interest of regulators. Even though Mario was a cute and safe addition to the community, regulators cited Mario as an "illegal" sign.

They said that Mario had to go, even though similarly sized inflatables put out as holiday displays could The government may not suppress certain messages based on whether officials like what those messages have to say.

stay. Although this made no sense, Scott complied. Unsurprisingly, once Mario disappeared, so did Scott's customers.

Of course, businesses have a constitutional right to use signs and other displays to advertise. That is why, in April 2017, IJ sued Orange Park, arguing that its treatment of Scott and other businesses violated the First Amendment. As the case progressed, officials' testimony made clear that Mario was prohibited only because Gone Broke Gaming sold video games; if Scott had instead put out an inflatable unicorn or Santa, then he would not have had any trouble.

Despite much disagreement in First Amendment circles, everyone agrees on one basic point: The government may not suppress certain messages based on whether officials like what those messages have to say. Once Orange Park recognized that this is what its sign code permitted, it threw in the towel. The town not only let Scott start displaying Mario once again, but it also agreed to extensively rewrite its offending sign code.

Thankfully,
Orange Park did
not have to start
from scratch. Due
to IJ's vast experience in litigating
sign cases, IJ
attorneys keep a

list of sign code best practices—ways to maximize freedom of speech while ensuring public health and safety. IJ has distilled these best practices into a series of recommendations for municipalities to adopt. And that is precisely what Orange Park did: Guided by IJ's model sign code, Orange Park revised large sections of its own sign code, which it finalized in January 2018.

With Mario back out front and customers coming through the door, Scott could not be happier. By working with IJ, Scott secured a win not just for himself, but for all the entrepreneurs in his community. That is precisely the kind of principled, real-world change that IJ will keep fighting for on behalf of entrepreneurs of all stripes.

Robert Frommer is an IJ senior attorney.



To read IJ's model constitutional sign code, visit: iam.ij.org/model-sign-code







Does the Eighth Amendment Protect Against State and Local FORFEITURES?



On behalf of Indiana resident Tyson Timbs, we have asked the U.S. Supreme Court to address a question that—remarkably—it has yet to clearly answer: Does the Eighth Amendment's Excessive Fines Clause protect Americans against overreach by state and local authorities?

BY SAM GEDGE

As Liberty & Law readers know, officials at all levels of government—federal, state and local alike—are increasingly relying on fines and forfeitures to bolster their budgets. That perverse profit incentive makes these kinds of sanctions one of the greatest threats to property rights in the nation today.

IJ's latest foray into combating unjust fines and forfeitures

finds us immediately before the U.S. Supreme Court. On behalf of Indiana resident Tyson Timbs, we have asked the Court to address a question that—remarkably—it has yet to clearly answer: Does the Eighth Amendment's Excessive Fines Clause protect Americans against overreach by state and local authorities?

Tyson's path to the U.S. Supreme Court began shortly after his father died, when he received more than \$70,000 in life-insurance proceeds and bought a new car. For years, Tyson struggled with drug addiction. Soon after buying

his car, he sold four grams of heroin to fund his addiction. The buyers were undercover officers, and police arrested him. They seized his car, too.

Tyson pleaded guilty, which led to house arrest, then probation, and \$1,200 in fees. Most importantly, the experience was a wake-up call. Tyson got his life back on track, taking steps to battle his addiction and getting involved in a community taskforce on substance abuse. He has been clean for three years now.

But the state of Indiana is more interested in Tyson's car, a Land Rover worth \$40,000.

Within months of his arrest, contingency-fee lawyers filed a forfeiture suit on behalf of the state. The trial court ruled for Tyson. Because taking Tyson's car would be "grossly disproportional" to his offense, the court decided that the forfeiture would violate the Excessive Fines Clause. The Indiana Court of Appeals agreed.

Then the Indiana Supreme Court stepped in. Breaking with at least 14 other state courts, the Court ruled that the Eighth Amendment provides no protection at all against fines and forfeitures imposed by the states. Until the U.S. Supreme Court intervenes, the court said, "we elect not to impose federal obliga-

tions on the State that the federal

government itself has not mandated."

So Tyson—with IJ at his back—is asking the U.S. Supreme Court to intervene.

It is critical that the Bill of Rights protect citizens not just against the federal government, but against states and municipalities, too. In fact, most of the Bill of Rights already applies to all levels of government.

The Excessive Fines Clause should be no different. State and local authorities—no less than the federal government—regularly misuse

economic sanctions. Recall IJ's case in Pagedale, Missouri, which fined residents to bolster its budget. Or our case in Muskogee County, Oklahoma, which seized \$53,000 from a Christian rock band. Indiana, Tyson's home state, even doubles down on the distorting effects of civil forfeiture by letting private lawyers act as contingency-fee prosecutors.

The Excessive Fines Clause is a vital check on unjust monetary penalties. And as the Indiana Supreme Court made clear, only the U.S. Supreme Court can answer once and for all whether the Clause protects citizens against rapacious state and local authorities. Stay tuned.



Tyson's case is about more than just a truck—it is about enforcing an important check on the government's power to punish people and take their property.

Sam Gedge is an IJ attorney and the Elfie Gallun Fellow for Freedom and the Constitution.



Overcoming Hurdles, THE IJ WAY

BY ROBERT MCNAMARA

The goal of IJ's litigation is to set important constitutional precedent in state and federal courts. To do that, though, we often must cut through a thicket of procedural obstacles before a court even addresses the merits of our claims. We often spare readers the details of these fights, but it is important, every now and then, to talk about exactly what these obstacles are—not just to demonstrate how outrageous they can be, but to illustrate how much of an uphill fight it is to vindicate liberty in the courts.

We are facing one such obstacle in our ongoing South Carolina court battle on behalf of the internet startup Opternative. Opternative offers a simple promise: online vision tests from the comfort of your own home. A computer shows you a series of images, just like you would see in a vision screening at an optometrist's office, collects your responses, and emails them to a statelicensed ophthalmologist who, if he decides

it is medically appropriate, can write you a new corrective-lens prescription via email.

Opternative's technology holds real promise to greatly expand people's access to eye care, but it is also a major threat to the business model of most optometrists. Optometrists are limited-practice eye-health providers who traditionally make a lot of money selling expensive eyeglass frames in the showroom attached to their exam rooms. But an Opternative customer can buy glasses anywhere, including on the internet. Giving consumers that option could cost optometrists millions of dollars in sales.

Unsurprisingly, optometrists are fighting back: In South Carolina, the optometrists' lobbying organization drafted—and persuaded the Legislature to pass—a law making it illegal to issue prescriptions based on online technologies like Opternative's.

Because IJ does not take protectionism lying down, we filed suit in South Carolina, standing up for the rights of Opternative and other startup companies to create



innovative technologies without being immediately banned by the horse-and-buggy crowd. But, earlier this year, the state trial judge ruled in favor of the government—not because the judge held the law constitutional, but because the judge held that the law had not "injured"

Opternative and so the company was not allowed to bring suit.

Now, to be clear, the law was specifically written to ban Opternative's technology, and it worked: The company stopped offering its

services in South Carolina once the law was passed. But being thrown out of the state was not "injury" enough for the court, which threw out the lawsuit.

We have already appealed this ruling, and we expect to win that appeal. But procedural hurdles like these draw out litigation, requiring more time, effort and money—all just to prove that a small business has the right to be in court in the first place.

Hurdles like these make it all the more important that IJ exists to provide entrepreneurs like Opternative (and all

our clients)
with the
resources,
wherewithal
and knowhow to
climb over
procedural
obstacles
like these en
route to ultimate victory.
And as we
achieve these
victories, it is

always a delight to report here in *Liberty & Law* that yet another example of government overreach has been struck down.

Robert McNamara is an IJ senior attorney.





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Little Pink House continued from page 5

Americans and transforms them into issues of national importance. Taking away your home is one of the most serious things that a government can do to a person, and Little Pink House shows that in stark relief.

The film marks the feature-film directorial debut of Courtney Balaker, who is joined in the project by her producer husband, Ted Balaker.

Little Pink House the movie is yet another demonstration of how IJ pursues a long-term vision in our work and how we continually work to look beyond the horizon for cutting-edge projects that will advance individual liberty. Five years ago, when we first contacted Courtney and Ted about pursuing this project, this movie was nothing more than a dream. But with its release this month in theaters across the country, we are on the cusp of a new effort that will reinvigorate the call for eminent domain reform and greater protection for property rights. IJ and the Balakers will continue our teamwork to employ Little Pink House as a vehicle to raise public awareness about this threat to property rights and advocate in courts of law, in legislatures and in the court of public opinion to stop eminent domain for private gain.

To learn more about what you can do to bring Little Pink House to a theater near you, see the sidebar on the right of this page. And be sure to share your experience on social media when you see the movie.

From our founding to today, the Institute for Justice continually challenges itself to be the best-to do all we can do as well as it can be done to advance individual liberty. Working to tell the Little Pink House story with those at the Hollywood level is yet another demonstration of that commitment to institutional excellence. We hope you enjoy the film! •

John E. Kramer is IJ's vice president for communications.



Visit the official Little Pink House website for more information:

www.littlepinkhousemovie.com

View the official Little Pink House trailer:

iam.ij.org/LPHtrailer

Little Pink House is scheduled to screen in these cities, with new cities being added each week:

- · April 15: New London (CT) (Special pre-release screening)
- April 20-26: New York City, Santa Monica (CA), Pasadena (CA), Atlanta (GA), San Francisco (CA), Berkeley (CA)
- April 25: Newport Beach (CA)
- April 27-May 3: Philadelphia (PA)
- May 1: Anchorage (AK)
- May 4–10: Denver (CO), San Diego (CA), Boston (MA)
- May 11-17: Dallas (TX), Pittsburgh (PA), Phoenix (AZ)
- May 15: Monterey (CA) (Schedule current as of March 2018)

For an updated list of screeninas. visit:

www.littlepinkhousemovie.com/ screening.html

Bring Little Pink House to a theater near you:

iam.ij.org/LPHscreening

Little Pink House is brought to the big screen by (from top): Catherine Keener, Jeanne Tripplehorn, producer Ted Balaker and director Courtney Balaker.



NOTABLE MEDIA MENTIONS



Occupational Licensing Blunts
Competition And Boosts Inequality

February 17, 2018



New Jersey's Home-Baked Goods Ban Prevents Mom From Extra Income

December 20, 2017

The New York Times

When Mercy Collides With The Law January 10, 2018 *KIAWYURKPUST*

New York Treats Corrupt Politicians Better Than Regular Citizens

February 18, 2018



The Winding Road: 4 Hair Braiders
Open Up About The Significance
Of Braids
March 2018 issue



