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Inside This Issue

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Victory for Ohio Homeowners

How IJ Won Unanimous Ohio Supreme Court Decision In Eminent Domain Abuse Case

By Chip Mellor

Resilience is a quality that's easy to describe, but difficult to show.

Resilience is one characteristic that defines the team of attorneys and support staff we've assembled here at the Institute for Justice.

Merely one year after enduring a gut-wrenching legal setback with the *Kelo* case, the Institute for Justice not only spearheaded legislative reform limiting the use of eminent domain in 30 states, but also briefed, argued and ultimately won a tremendously difficult eminent domain case before the Ohio Supreme Court, setting the foundation for future legal victories at both the state and federal levels. The Ohio Supreme Court unanimously ruled that the City of Norwood could not take the homes of our clients to expand a shopping mall.

Here is why this victory was so important and what it means for the future.

The U.S. Supreme Court in *Kelo* noted that while the federal Constitution would no longer protect property owners from eminent domain for private gain, state courts and legislatures were free to provide higher levels of protection. Nevertheless, in the wake of *Kelo*, any state supreme court could take the easy way out and simply adopt the *Kelo* majority's reasoning. As the first eminent domain case argued and decided by a state supreme court in the post-*Kelo* world, the Ohio Supreme Court's decision would be the bellwether, setting the standard for other state supreme courts to protect or reject private property rights in the context of eminent domain.

The Ohio Supreme Court set the gold standard in this regard. In describing the importance of property rights in the American system of constitutional

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An Economic Liberty Lawsuit with TEETH

IJ Minnesota Chapter client **Chris Johnson** (right), shown with his father **Jim Johnson**, is subject to fines and even jail time for practicing his craft.

By Lee McGrath

Does a Minnesotan who files horse teeth for a living have much in common with a New York jitney van driver, a Tennessee casket seller or a California hairbraider?

You betcha!

All their pursuits of an honest living have, at one time or another, been blocked by government-imposed licensing laws advocated by existing businesses seeking to use government power to fence out new competitors.

Occupational licensing laws—laws the government enforces to limit who can practice an occupation or trade—are the type of regulations that established professions love. They protect entrenched interests from competition, prevent entrepreneurs from filling specialized niches, and inflict higher prices, lower quality and fewer choices on consumers.

Studies show that licensing laws generally fail to protect public health and safety beyond what competition and ordinary legal remedies, such as contract or fraud claims, would achieve. Such laws do nothing more than create government-imposed cartels that protect insiders' profits.

Just as masons "float" mortar to make it smooth, horse teeth "floaters" manually file down points and level a horse's teeth. Horses need to have their teeth floated because their modern diet is not sufficiently abrasive to maintain the evenness of their teeth. If the points are not floated, it may become painful for a domestic horse to chew or hold a bit.

Chris Johnson of Hutchinson, Minn., is a third-generation horse teeth floater. His great-uncle floats teeth in Oklahoma and his father, Jim, a floater for nearly 20 years who lives in Sacred Heart, Minn., taught Chris the trade. Chris can offer a more cost-effective service than veterinarians who use expensive sedatives and power tools. He calms the horse naturally and floats its teeth manually using a simple file.

"Veterinarians—who charge two to three times more than floaters—could not compete with Chris, so they looked to Minnesota's Board of Veterinary Medicine to protect the economic booty that they could not earn in the market."

Veterinarians—who charge two to three times more than floaters—could not compete with Chris, so they looked to Minnesota's Board of Veterinary Medicine to protect the economic booty that they could not earn in the market.

Like many occupational licensing boards, Minnesota's Board of Veterinary Medicine is comprised almost entirely of practitioners—providing ample opportunity for "capturing" governmental power to advance their members' economic interests.

As a result of the Veterinary Board's lobbying efforts, Chris is limited to two options under Minnesota's law: He can either

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B&B Victory

The victory for Institute for Justice clients **Blayne** and **Julie McAferty** keeps them secure in their business and free from unnecessary government interference.

By Michael Bindas

After a year and a half of fighting to vindicate their right to earn an honest living, Institute for Justice clients Blayne and Julie McAferty can keep their Greenlake Guesthouse open for business. In August, the Seattle City Council amended the City's bed-and-breakfast ordinance to eliminate its senseless ban on "exterior structural alterations." The City had earlier relied on that provision in ordering the McAfertys to shut down their B&B.

The McAfertys' ordeal began nearly three years ago. Encouraged by a then-recently enacted ordinance allowing B&Bs in single-family, residential neighborhoods, they decided to pursue their dream of opening their own B&B.

They found a home with potential in Seattle's Green Lake neighborhood but realized it would need some work. Concerned about a provision in the ordinance that prohibited "exterior structural alterations . . . made to accommodate [a] bed and breakfast," they sought the City's assurance that their plan to add two window dormers would be allowed. The City provided that assurance, explaining that the ordinance merely prohibited the addition of an exterior structure like a parking structure that would detract from the home's residential character.

On that basis, the McAfertys bought the house and, with a City-issued remodeling permit, turned it into the Greenlake Guesthouse.

Just a few months after the McAfertys opened their doors, however, the City issued them a notice of violation ordering them to shut down or face fines of $75 per day. In a reversal of its position prompted by the complaints of a particular neighbor, the City now maintained that the window dormers *did* violate the ban on exterior structural alterations.

Bizarrely, the dormers would have been perfectly legal on any other home in the neighborhood. It was only because the McAfertys added them to facilitate a B&B that they were deemed illegal.

Represented by the Institute for Justice Washington Chapter, the McAfertys challenged the senseless ban as an unconstitutional infringement of their economic liberty—the right to earn an honest living. Within days of the lawsuit, the City agreed to stay any enforcement against the McAfertys and to work toward a legislative solution.

The result—a year and a half in the making—was worth the wait. The bill that passed in August eliminates the ban on exterior structural alterations and allows B&B owners to make alterations consistent with the development standards of the underlying neighborhood. In other words, the bill treats a B&B the same as any other home in the neighborhood.

It also changes from three to five the number of guest rooms that B&Bs in single-family, residential neighborhoods may have. That is a big boost for would-be B&B owners, because industry studies show that five rooms is an important benchmark for economic viability. It is also great news for B&B patrons, because the leading guidebooks that rate B&Bs typically do not review establishments with only three rooms.

From the very start, IJ recognized the importance of the McAfertys' struggle. Unfortunately, it is one we've witnessed time and again, where individuals want to provide a good and important service to their community but are blocked from doing so by the heavy hand of government. We wish the McAfertys the best of success in their now-secure enterprise. And if you're ever visiting Seattle, you know where to stay!♦

Michael Bindas is an Institute for Justice Washington Chapter staff attorney.

Arizona Hairbraiders Declare Independence From State Cosmetology Regime

Institute for Justice Arizona Chapter Executive Director **Tim Keller** and IJ client **Essence Farmer** celebrate the opening of her shop. Farmer is also joined by family and friends at the grand opening of Rare Essence Studio.

By Tim Keller

On a hot Arizona night this past July, I experienced one of the most gratifying moments of my career as an IJ attorney. Standing in a small shopping center in Glendale, with my arm around IJ client Essence Farmer's shoulder, the sign hanging from her new storefront said it all: Grand Opening.

Two and a half years ago, Essence Farmer asked the Institute for Justice Arizona Chapter (IJ-AZ) for help because her American Dream was more like a nightmare because of Arizona's occupational licensing laws. The State demanded that she license and register her hands or face fines and up to six months in jail. No, she's not a martial arts expert or a secret agent. She is a natural haircare practitioner whose entrepreneurial spirit has sustained her in a long fight for independence.

To obtain a license to braid hair, the Arizona Board of Cosmetology required 1,600 hours of training, at a cost of $10,000 or more. Not one hour of the State-mandated curriculum requires instruction in the art of hairbraiding. Perhaps worse is that the bulk of the training would have exposed Essence to harsh chemicals that are anathema to her practice.

An all-natural technique, hairbraiding requires *no* chemicals. Instead, she works with the innate texture of the hair to create intricate, individualized braids. Thus, natural hairbraiding is not just about aesthetic beauty; it is also a way to reverse the damage created by years of harsh chemical treatment.

Essence and IJ-AZ filed a lawsuit to untangle the mess created by Arizona's onerous cosmetology regime. The case caused a media uproar. The absurdity of allowing only licensed cosmetologists (who are not trained in cosmetology schools to lock, twist or braid hair naturally) to perform natural hairbraiding was obvious to all but those in the cosmetology industry. Absent training from someone like Essence, cosmetology school graduates do not possess the skills required to braid hair naturally.

At the most basic level, people understood that preventing braiders from pursuing their trade violated one of our most precious, though oft-forgotten, civil rights: the right to earn an honest living without unreasonable government interference. This visceral reaction to the injustice of Arizona's cosmetology cartel caused the state Legislature to intervene and exempt natural hairbraiders from the Cosmetology Board's jurisdiction.

With her way clear to embark on her American Dream, Essence put in motion her plans to open her new business. After navigating the local permitting process, Essence launched *Rare Essence Studio*. The grand opening was a joyous celebration. Family, friends and clients packed the studio to celebrate the freedom that made Essence's new business possible. Her pastor prayed a blessing, and Essence and I talked about the rough days she endured before taking her first step up the proverbial economic ladder.

The "essence" of liberty is freedom from unjust or undue governmental control. And now Essence Farmer is busy using her hands to demonstrate the tangible benefits of liberty.♦

Tim Keller is the executive director of the Institute for Justice Arizona Chapter.

15 Years of Training Students in the IJ Way

By Shaka Mitchell

This July marked the 15th year of the Institute for Justice's annual Law Student Conference. The three-day symposium provides highly motivated law students from around the country the opportunity to learn about public interest law the "IJ Way."

IJ President and General Counsel **Chip Mellor** explains IJ's public interest litigation tactics and strategies.

The 2006 class of students came from 27 law schools and two foreign countries, but the seminars were not exclusively attended by students. The conference is a great time for new and . . . shall we say . . . "established" IJ staff members to learn directly from several national legal experts brought in to teach the students. This year's instructors included law professors Randy Barnett, Doug Kmiec and Todd Zywicki; the Cato Institute's Dr. Roger Pilon; and attorney (and IJ Law Student Conference alumnus) James Ho. Each presented students and IJ-ers alike with new ways to think about public interest law.

The Honorable Douglas Ginsburg, chief judge of the U.S. Court of Appeals for the District of Columbia, gave Saturday night's keynote address and challenged students to think about the interplay between economics and the law.

At the close of the weekend, each student became a member of IJ's Human Action Network—our group of IJ-trained attorneys who help us fight for freedom nationwide at the grassroots level. And, if previous years are an indication, many will go on to distinguished clerkships, positions in academia and the private bar, seats on the bench and even careers in public interest law.

We are proud to be a part of that development and eagerly anticipate next year's conference.◆

Shaka Mitchell is IJ's outreach coordinator.

BLIGHT?
SAME STORY DIFFERENT TOWN

IJ client and Long Branch resident **Lori Vendetti** with **Chip Mellor**, **Scott Bullock** and **Jeff Rowes** announce that IJ has joined the homeowners to appeal the City's bogus blight designation. **Scott Bullock** (right) states, "Here, the government is taking poorer folks' homes to build homes for the wealthy. This unlawful and unconscionable land-grab must be stopped."

By Jeff Rowes

In a state already notorious for eminent domain abuse, Long Branch, N.J., is distinguishing itself as the worst of the worst. The City is trying to seize beautiful beachfront homes in a middle-class neighborhood called MTOTSA (an acronym for the streets Marine Terrace, Ocean Terrace and Seaview Avenue), so it can hand them over to private developers who plan to make tens of millions of dollars building fancy condos for the wealthy. Just as it has done in so many other cases, the Institute for Justice has joined the homeowners in their fight to save their cherished homes.

The City of Long Branch tries to justify this land-grab by claiming that it is curing urban "blight." The only problem, however, is that MTOTSA is not, nor has it ever been, "blighted." Instead, it is a charming collection of architecturally unique cottages and bungalows, some dating to the World War II era. Many of the homes have been in the same families for generations. Today, as throughout its colorful history, MTOTSA is a melting pot, home to everyone from children to retirees in their nineties.

As in any thriving neighborhood, these residents are the heart of MTOTSA. Everyone who visits Long Branch sooner or later bumps into Al Viviano, a 93-year-old retired blacksmith and 60-year Long Branch resident who cheerfully runs errands on his scooter. Or you might see 12-year-old Daisy Hoagland, who won a school essay contest writing about eminent domain abuse, playing with her two little sisters in their yard. Perhaps the most poignant story belongs to 80-year-old Rose LaRosa, who still lives in the home her father bought in 1944 as a tribute to her brother who urged his father to buy the home shortly before he perished in fierce combat in the skies of Europe.

IJ Clients **Anna DiFario** and **Lori Vendetti**.

Unfortunately, in Long Branch, as in so many other cities across the country, the rights of people like Al, Daisy and Rose do not count because the City cannot tax them very heavily and developers cannot make big profits off them. Once these facts are understood, it becomes obvious that condemning MTOTSA has nothing to do with eliminating so-called blight and everything to do with the political and financial ambitions of those who stand to gain from destroying this beautiful neighborhood. Long Branch is using government force to replace modest homes with expensive ones and working-class families and retirees with richer people from big cities like Newark and New York.

The MTOTSA homeowners recently suffered a setback when the Monmouth County Court approved the condemnations without even affording the homeowners an opportunity to present evidence in defense of their homes. IJ has now joined them and their local attorney in the appeal and we will stand by them until we have vindicated their fundamental right to be secure in the homes they love. As we successfully did in Norwood, Ohio, we plan to argue that the state constitution provides greater property rights protection than does its federal counterpart under the dreadful *Kelo* decision. By advancing property rights in Long Branch—which has attracted nationwide attention, most recently on the cover of *Parade* magazine—we will not only save our clients' homes, but set yet another important precedent for others in New Jersey and beyond who are fighting their own battles against eminent domain abuse.♦

Jeff Rowes is an IJ staff attorney.

IJ Appeals Maine School Choice Case To U.S. Supreme Court

Some towns in Maine are too small to have their own public schools. Instead, such "tuitioning" towns pay tuition for parents to send their children to any public or private school they choose—except religious schools, which are banned from the program by State law. In *Anderson v. Town of Durham,* the Institute for Justice has asked the U.S. Supreme Court to declare the State's discriminatory tuitioning program unconstitutional under the free speech, free exercise and equal protection provisions of the U.S. Constitution.

After more than 100 years of religious neutrality and inclusion, in 1980 Maine suddenly kicked children whose parents selected religious schools for them out of its tuitioning program, citing federal Establishment Clause concerns. But even after the U.S. Supreme Court dispelled those concerns in *Zelman v. Simmons-Harris* (2002), a case also litigated with the help of the Institute for Justice, Maine refused to go back to a principle of nondiscrimination. IJ then sued the State on behalf of eight families who were denied tuitioning funds based on their preference for religious schools. The Maine Supreme Court upheld the discriminatory tuitioning program based on a fundamental misconception of U.S. Supreme Court precedent.

In *Anderson*, the Institute for Justice has asked the Court to make clear that the wholesale exclusion of religious options from an otherwise neutral and generally available scholarship program violates the basic nondiscrimination principles of the U.S. Constitution. Such a precedent could present a major step forward for school choice nationwide by undercutting the legal claims of choice opponents. Those opponents argue that state constitutions require the kind of anti-religious discrimination that Maine practices. IJ's effort is supported by outstanding friend of the court briefs from the states of Florida, Texas and Alabama, as well as the Alliance for School Choice, the Friedman Foundation, Black Alliance for Educational Options (BAEO) and Hispanic Council for Reform and Educational Options (HCREO).♦

How Ohio Was Won

Ohio continued from **page 1**

governance, the Court cited with approval *Takings* by Richard Epstein, works by Bernard Seigan and John Locke, natural rights, and the liberty-enhancing provisions of the Northwest Ordinance. Based on these, the Court expressly recognized the importance of court review of eminent domain, saying, "Inherent in many decisions affirming pronouncements that economic development alone is sufficient to satisfy the public-use clause is an artificial judicial deference to the state's determination that there was sufficient public use." The Court went on to reject "rote" deference and unequivocally struck down the use of eminent domain for economic development alone.

you to think about which of the dozens of neighborhoods that you pass would not be 'deteriorating' under Norwood's definition; which of them have no diversity of ownership, no older buildings, no cul-de-sacs, no driveways people have to back out of. Those neighborhoods are full of people like Carl and Joy Gamble, and unless this court rules in their favor today, all of these neighborhoods will be subject to condemnation for private development under Ohio's Constitution."

The Court took this to heart. It ruled the term "deteriorating area" was unconstitutionally vague as a justification for taking private property and was "a standardless standard."

Throughout the case, we were constantly

"In describing the importance of property rights in the American system of constitutional governance, the Court cited with approval *Takings* by Richard Epstein, works by Bernard Seigan and John Locke, natural rights, and the liberty-enhancing provisions of the Northwest Ordinance."

IJ clients **Carl** and **Joy Gamble** (left) fought a principled fight and emerged victorious. Center, the City and the developer had marked the Gambles' home for destruction. Right, IJ clients and staff gather to celebrate the Ohio victory. They are, from left, IJ attorney **Dave Roland**, **Carl** and **Joy Gamble**, IJ supporter **Bruce Hassel**, IJ senior attorneys **Bert Gall** and **Scott Bullock**, IJ clients **Nick Motz** and **Joe Horney**, and IJ senior attorney **Dana Berliner**.

But even that was not enough to protect Ohio homes because the City of Norwood asserted the neighborhood in question was "blighted" and met the statutory definition of a "deteriorating area," justifying the condemnation. So what did the City base this conclusion on? There was a "diversity of ownership" among the properties—essentially, each person owned his or her own home.

As IJ Senior Attorney Dana Berliner urged in her powerful closing argument to the Court, "As the members of this court drive home today, I ask

aware of just how much our clients stood to lose and how the entire process favored the government. As in so many states, once condemnation is exercised in Ohio, the property's title immediately passes to the government. Existing buildings can be destroyed before the rightful owners can have their rights adjudicated by an appeals court. That is just what Norwood tried to do with the home of Joy and Carl Gamble (see next page). The City planned for demolition even as we urged first the trial court and then the court

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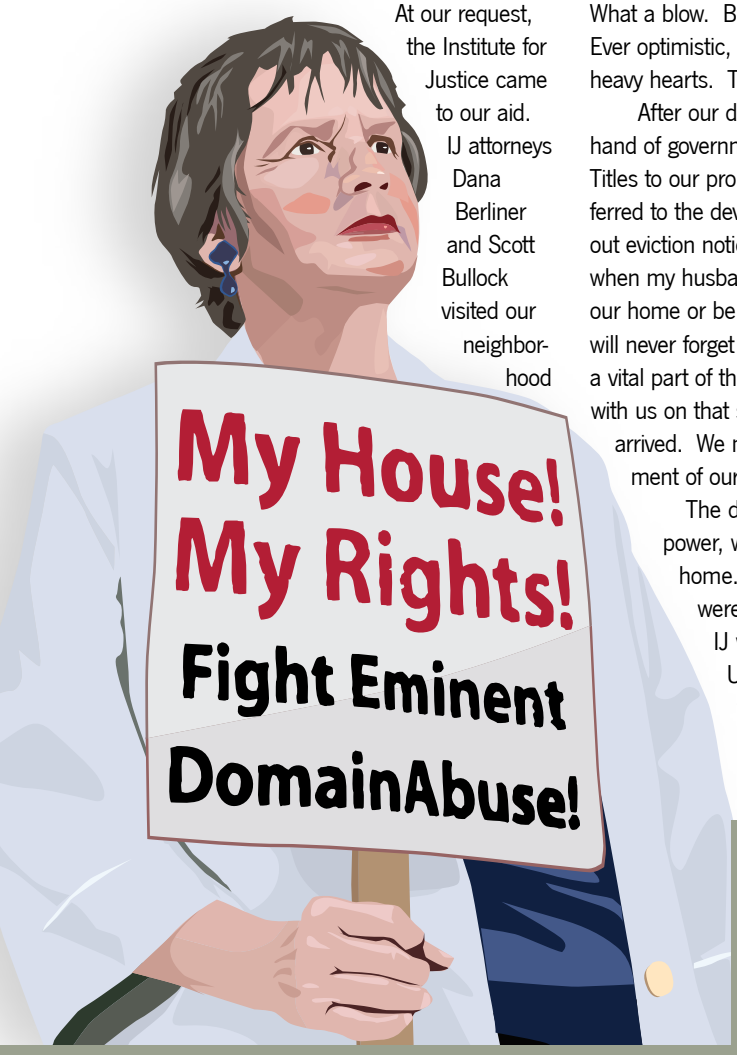
IJ and the Fight for Our Home

By Joy E. Gamble

More than four years ago, my husband, Carl, and I sold our small grocery store and looked forward to settling into retirement in our home of 35 years. But soon after doing so, our ordinary, working-class but well-kept neighborhood was targeted for redevelopment in the form of a shopping mall, office buildings and apartments. A multi-millionaire developer, craving more multi-millions, teamed up with a heavily-in-debt City craving more tax revenue. The land-grab was on.

At first, there were about 20 people who didn't want to sell in our neighborhood. But then the fearful words "eminent domain" were in the air. Many of those 20 couldn't withstand the pressure and sold. The remaining ones did not want to give up, but we needed help.

We found it.



At our request, the Institute for Justice came to our aid. IJ attorneys Dana Berliner and Scott Bullock visited our neighborhood and talked to the residents and our supporters, telling us that we could fight—and win!

They had formidable forces to contend with. Did that deter the Institute? Never. They saw there was an injustice afoot. A constitution needed upholding. Private property needed protecting. Into the fray.

To use eminent domain, the City needed to label us "blighted." A paid-for-by-the-developer study put the "blight" and "deteriorating" label on us.

IJ took on our case and devoted a large investment of their resources to protecting us. A lengthy trial was held. Dana, Scott and the rest of the IJ team, including our expert witnesses, demolished the City's arguments. Even the trial judge had to rule that our neighborhood was not blighted, but she still held that our homes could be taken because we were "deteriorating." What a blow. But the Institute wasn't defeated. Ever optimistic, there were no long faces or heavy hearts. They made plans to appeal.

After our defeat at the trial level, the heavy hand of government really went into action. Titles to our properties were promptly transferred to the developer, who immediately sent out eviction notices. Then came the fateful day when my husband and I were forced to flee our home or be taken out in handcuffs. We will never forget how IJ attorney Bert Gall, now a vital part of the litigation team, flew out to be with us on that sad day when the moving van arrived. We moved into the finished basement of our daughter's home in Kentucky.

The developer, with his new-found power, was dead set on destroying our home. Frankly, my husband and I were beginning to lose hope, but IJ was not going to abandon us. Undeterred, they went straight to the Supreme Court of Ohio with the plea to save the remaining homes. The Court issued an injunction. The homes would remain standing pending our appeal. At last, a small win.

The First District Court of Appeals in Ohio, however, simply rubber-stamped what the trial judge had done. Again, defeat.

Did the Institute lose hope? Never. Against what seemed like insurmountable odds, they went back to the Ohio Supreme Court and pleaded with the justices to listen to our case in its entirety. The Court agreed.

While my husband and I were languishing in northern Kentucky, the Institute was once again hard at work—filing our legal briefs and getting other groups to file briefs in the case. On January 11, 2006, the Supreme Court of Ohio heard our case and the entire IJ team prepared for and came out for the argument. John Kramer, IJ's vice president for communications, made sure that the media knew the importance of this case. The courtroom was packed with our supporters, reporters and cameras. The justices listened intently as Dana told them that our so-called deteriorating neighborhood was no different than millions of neighborhoods across the country.

At last, the decision. We won . . . unanimously! The Hamilton County Court was wrong. The court of appeals was wrong. And the City was wrong. We were getting our home back. A great weight was lifted off our shoulders. We didn't go through all that for nothing. And all of the Institute for Justice's countless briefs and filings, time and travel, and hard work were not in vain. But even more importantly, it means that all citizens in Ohio are now protected from these types of abuses.

What an incredible day for justice in America!♦

Joy E. Gamble is an Institute for Justice client and remains a homeowner in Norwood, Ohio.

"At last, the decision. We won . . . unanimously! The Hamilton County Court was wrong. The court of appeals was wrong. And the City was wrong. We were getting our home back."

Floating continued from **page 2**

become a licensed veterinarian (at a cost of approximately $100,000 over a four-year course of study during which time he will never actually be taught how to practice his trade) or he can pass an exam given by the International Association of Equine Dentistry (IAED), based in Texas. The second option, however, is a false choice: Before you can float your first horse's teeth, you must pass the IAED's test, but to qualify to take the test, you must float 250 horses' teeth under the supervision of an existing IAED member. Not only are there no IAED members in Minnesota to supervise, it is illegal to float without a license. In other words, the IAED option is a Catch-22 in which you have to break the State's law to abide by it.

But Johnson is not accepting the new regulations without a fight. He joined with the Institute for Justice Minnesota Chapter to file suit on August 16 challenging these laws.

As in IJ's past cases on behalf of jitney drivers, casket retailers and hairbraiders, Johnson is fighting for his livelihood. His lawsuit is about restoring the vision of America as the Land of Opportunity for all entrepreneurs who dream of setting their own course free from government coercion and needless constraints. In the end, we hope to show it is these needless regulations—and not Johnson's equine clientele—that are long in the tooth.♦

Lee McGrath is the executive director of the Institute for Justice Minnesota Chapter.

"His lawsuit is about restoring the vision of America as the Land of Opportunity for all entrepreneurs who dream of setting their own course free from government coercion and needless constraints."

Victory in the Ohio State Supreme Court

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of appeals to stay the demolition pending the final resolution of the court case.

Both courts refused.

In what he called "the ultimate Hail Mary pass," IJ Senior Attorney Bert Gall prepared an emergency appeal to the Ohio Supreme Court. With the demolition looming, and the doors of the home already spray painted with neon orange Xs marking it for destruction, the Gambles sadly packed up their belongings and moved into the finished basement of their daughter's house in Louisville, Ky.

But within 22 days, in a moment that no Hollywood screenwriter could improve upon, we learned Bert had scored a touchdown.

Our conference room was packed with staff and clients who had just returned from the oral argument in the *Kelo* case. We were all experiencing a wave of exhilaration and exhaustion as we talked over lunch. Suddenly, IJ Vice President for Communications John Kramer burst into the room saying, "Bert, I have the Associated Press on the line and they want your comment on the Ohio Supreme Court's decision to stay demolition of the Gambles' house pending appeal." Stunned silence quickly turned into whoops of joy as Bert, beaming with elation, hurried out to take the call. In its final opinion, the Ohio Supreme Court ruled that from now on, lower courts have the authority to stay demolitions as property owners assert their rights.

We call such experiences "IJ Moments" and this case was filled with them.

Another IJ Moment occurred during the trial, when IJ Senior Attorney Scott Bullock brought Joy Gamble to the witness stand. As Scott masterfully elicited her testimony about her home of 35 years and her desire to remain, the eyes of all but those with hardened hearts filled with tears. The human toll of eminent domain was never more dramatically articulated for all to understand.

"Although the judiciary and the legislature define the limits of state powers, such as eminent domain, the ultimate guardians of the people's rights, as evidenced by the appellants in this case, are the people themselves."

—Ohio Supreme Court

We were up against a terrible recent U.S. Supreme Court precedent, difficult Ohio law, a powerful developer and his lawyers, tough politics and absolutely grueling deadlines. The fact that we prevailed with a unanimous decision is a tribute to the tireless work and resilience of many people at IJ. Indeed, at one time or another, almost everyone here contributed to the effort. In the end though, the final sentence of the Ohio Supreme Court opinion captured why this effort was so important. The court stated, "Although the judiciary and the legislature define the limits of state powers, such as eminent domain, the ultimate guardians of the people's rights, as evidenced by the appellants in this case, are the people themselves."

Armed with the legal and moral authority of the opinion from the Ohio Supreme Court, advocates at the Institute for Justice and across the nation are better armed than ever before to wage the fight against the tyranny of eminent domain abuse. It is a fight that we must win and will win.♦

Chip Mellor is IJ's president and general counsel.

Volume 15 Issue 5

About the publication

Liberty & Law is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication and outreach, 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 policy 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

Boston Herald

IJ President and General Counsel Chip Mellor: "All across America, entrepreneurs of modest means are under assault. They face laws and regulations that are rigged in a way to keep them out of the marketplace and prevent them from earning an honest living."

ABC
WTNH Hartford

IJ New London client Michael Cristofaro: "This was nine years of people's lives. Nine years where people couldn't enjoy their homes. Nine years of fighting for something you truly believed in."

Cincinnati Enquirer

"Joe Horney let out a scream of joy when he heard Wednesday morning that the Ohio Supreme Court had rejected Norwood's right to take his two-story rental house and the properties of two former neighbors. 'I am so excited. Wow. I can't wait to see my old place. I feel like giving it a big hug . . . Owning property is a fundamental right. I'm a man of principle. That's what this was all about . . . I'm thrilled to own my house again. It was the first property I owned. I put my heart and soul into it.'"

Associated Press

"The Ohio Supreme Court ruled unanimously on Wednesday that Norwood cannot take private property by eminent domain for a $125 million project of offices, shops and restaurants, finding that economic development isn't a sufficient reason under the state constitution to justify taking homes. The case was the first challenge of property rights laws to reach a state high court since the U.S. Supreme Court last summer allowed municipalities to seize homes for use by a private developer."

Essence Farmer
Glendale, Arizona

www.IJ.org

Institute for Justice
Economic liberty litigation

"[The Institute for Justice] recently scored a sweeping victory in the Ohio Supreme Court, where justices ruled that its clients . . . could not be evicted to make way for development."

—Fortune Small Business Magazine

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