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How IJ's Unique Narrative Counters Government Growth



By Chip Mellor

Recent events in the housing and financial sectors prompted me to reread *Crisis and Leviathan* by Robert Higgs. Higgs shows how throughout American history crisis has served as a catalyst or excuse for government growth and how, once the crisis ends, government does not return to its previous size. Higgs devotes considerable time to examining the Depression and New Deal. His thesis is vindicated as Roosevelt comes into office with sweeping legislative changes and issues 200 executive orders on an emergency basis in his first year in office. Rereading Higgs' account of the Depression was sobering, but it also offered hope because as glum as things may be, we are not yet in circumstances as calamitous as the Depression, economically or politically. But if we are to avoid a similar fate, we must heed the lessons of that time.

Two lessons are most pertinent to the Institute for Justice: one comes from the courts and the other

comes from public opinion. Those of you who have read *The Dirty Dozen*—a book co-authored by IJ board member Bob Levy and me on the 12 worst modern decisions of the U.S. Supreme Court—will recall that the New Deal was possible only because the High Court upheld key New Deal programs and in doing so effectively amended the Constitution. The Court gutted the Contracts Clause (allowing government to abrogate contracts at will), expanded the reach of federal economic regulation into the most-local of activities, ratified massive redistribution of wealth, and relegated economic liberty and property rights to second-class status under the Constitution. True to Higgs' thesis, those powers never subsided; indeed, they grew and endure today. If the current crisis worsens, we can expect courts at all levels to be called upon to ratify even more sweeping assertions of government power.

Counter-Narrative continued on page 2

IJ's Cases, Clients & Advocates Offer Counter-Narrative At Crucial Time

Counter-Narrative continued from page 1

Right now it seems that the majority of the public has accepted the government's intervention through the recent Emergency Economic Stabilization Act. But the skepticism and lack of enthusiasm that greeted it attest to the fact that we have not yet gotten to the point where people reflexively or instinctively call for more government.

That could change.

We hear daily the drumbeat of claims that capitalism is dead and the free market discredited, that this crisis arose from deregulation and that salvation lies in reregulation. The question now is whether this narrative will take hold and become pervasive conventional wisdom.

Courts are not immune to public opinion. Indeed, the U.S. Supreme Court ultimately upheld the New Deal only after two swing justices permanently and aggressively voted with the liberal bloc. In many scholars' opinion that change was attributable to the two swing justices' reaction to the public sentiment

expressed in Roosevelt's landslide re-election in 1936. When reaction to public opinion goes that far, we have a sea change that becomes institutionalized, which is just what happened with the New Deal. As noted constitutional scholar Edward Corwin observed, "The change which the views of a dominant section of the American people underwent

"As you read about the clients featured in this and future issues of *Liberty & Law*, ask yourself what it would mean, in the midst of today's rising statist tide, if these voices were not heard, if these stories were not told and woven together, if these battles were not fought. Where else will we hear such a counter-narrative?"

between 1929-1937 was nothing short of revolutionary and it was accompanied in due course by a corresponding change in attitude toward constitutional values."

If the narrative that is being told about the cause of the financial crisis and the need for activist government takes hold, and if it spreads beyond the financial markets, our nation and way of life will be permanently transformed. Sadly, there are plenty of orga-

nizations and individuals who advocate such change.

This is where IJ comes in. We offer a *counter-narrative*. I don't mean just another story, anecdote or version of events. I mean a cultural and constitutional narrative that plays out consistently and compellingly in each of our cases and in the media and activism that flow from them.

There is a reason we win cases, and it is not just because we have excellent lawyers. There is a reason we consistently get favorable media, and it's not just because we have an outstanding media team. Each case is part of a larger narrative

that confirms what people, *deep down*, know or want to believe about America: ours is a nation of good people trying to live peaceful, productive lives. We are a people whose courage and hard work—not government—make success possible and reaffirm the values we hold dear. And for us, government too often is the problem not the solution.

We must spread this counter-narrative ever more effectively across the nation. More

"Each IJ case is part of a larger narrative that confirms what people, *deep down*, know or want to believe about America: ours is a nation of good people trying to live peaceful, productive lives."

What the Institute for Justice Has Achieved Thanks to *Your* Investment

than ever, we will have to make courts want to rule for our clients. We will have to make the public root for our side to win. We will have to show how the principle in one case embodies a vital principle in a much larger context. And using our time-tested approach, that is just what we will do.

As you read about the clients featured in this and future issues of *Liberty & Law*, ask yourself what it would mean, in the midst of today's rising statist tide, if these voices were not heard, if these stories were not told and woven together, if these battles were not fought. Where else will we hear such a counter-narrative?

In the coming months, IJ will do its part to keep the current crisis from creating a Leviathan that grows unchecked. It will require harder work than ever before. But the magnitude of the task is in itself a call to action. We thank each of you for answering that call with us. ♦

Chip Mellor is IJ's president and general counsel.



Budget

\$10,450,000 annual budget
97% of IJ donors who donated \$25,000 or more renewed their support (FY 2008)

Growth

57 Staff (including 25 Lawyers)
4 Chapters
1 Clinic

A Record of Success & Impact

4 U.S. Supreme Court cases litigated since 2002 employing IJ's vision of public interest litigation
60 Wins (through litigation, legislation & settlement)
18 Losses
77% of all IJ cases since our founding in 1991 ended in a victory for freedom
16,122 properties saved post-*Kelo*
190,000 children in school choice programs nationwide

From a National Organization to a Nationwide Organization

Offices located in:

Arlington, Va. (Headquarters)
Austin, Texas
Chicago, Ill.

Tempe, Ariz.
Minneapolis, Minn.
Seattle, Wash.

Nationally Acclaimed

1997 Public Relations Society of America's Bronze Anvil for op-ed and editorial placement
2000 International Association of Business Communicators' Silver Inkwell for media relations
2001 Outdoor Advertising Association of America's Silver Medal for best media plan
2004 Bulldog Reporter's Silver Prize for media relations
2005 Washingtonian magazine's Best Places to Work Award
2005 MarCom Creative's Platinum Award for eminent domain media relations
2006 & 2007 Webby Award Official Honoree (also nominated in 2005)
2007 Davey Award's Silver Prize for "Not for Sale" DVD
2007 MarCom Creative's Gold Award for "Not for Sale" DVD
2007 W's Silver Award for Castle Coalition website
2007 Apex Grand Award for "Eminent Domain Abuse Survival Guide"
2007 Hermes Creative Award for "Hands Off My Home" poster

Four-Star Charity



Recognized for Responsibility

IJ has earned Charity Navigator's "4-star Charity" rating for seven straight years. IJ is one of only 38 organizations (out of more than 5,400 rated nationwide) to receive this distinction.

Taking on Florida's Political Speech Police

By Valerie Bayham

One would think that civic groups would be free to discuss important political issues. After all, free political speech is among the foundational principles protected by the First Amendment. But if you live in Florida, you would be woefully wrong.

Thankfully, the Institute for Justice is on the case.

On October 8, 2008, IJ filed suit against the Florida Secretary of State and the Florida Elections Commission. Joined by a community group, a college club and a national watchdog organization—the Broward Coalition, the University of Florida College Libertarians and the National Taxpayers Union, respectively—we are fighting Florida's regulatory red tape that is shutting ordinary citizens out of politics.

On October 29, we achieved an important first-round victory when a federal judge issued a preliminary injunction suspending Florida's law and freeing our clients and others like them to speak before the November election.

Under what amounts to the Sunshine State's statewide "no speech zone," virtually all speech about candidates or pending ballot issues is restricted. The state considers any group that merely mentions a candidate or ballot issue in a paid communication distributed to the public to be an "electioneering communications organization." An individual that spends \$100 is caught by these laws, too.

Once captured, a group must register its speech with the government. It must then appoint a campaign treasurer, designate a bank depository, make regular reports, record expenditures and disclose *all* its donors. Even more alarming, any violations can result in a fine of up to \$1,000 and even jail time.

The Broward Coalition—a group of condominium owners, homeowner associations and community organizations near Ft. Lauderdale—puts out a monthly newsletter dedicated to helping its members and the larger community make decisions about issues that affect them locally, statewide and nationally. In the lead-up to the November election, the Coalition wanted to mention some of the statewide ballot issues. But as an all-volunteer group with a tight budget, the Coalition could not afford to spend the time or money



Above, IJ Staff Attorney **Valerie Bayham** addresses media at the launch of IJ's case to strike down Florida's speech law. Right, clients **Charlotte Greenbarg** and **Kristina Rasmussen** with IJ attorneys Bert Gall and Valerie Bayham.



to comply with the law. Without the preliminary injunction, the Coalition would have had to remain silent.

Florida's law chills the speech of other groups as well. The UF College Libertarians planned to advertise campus talks by local liberty-minded candidates, but they could not mention a candidate's name if the communication reaches 1,000 potential voters. The National Taxpayers Union had to leave Florida off its annual guide reviewing the tax implications of various state ballot issues.

Our clients and other community groups add valuable voices to the public debate. Although political pros can hire an army of lawyers and accountants, ordinary citizens and small groups do not have the experience or the resources to navi-

gate the complex web of regulations, which means that politics becomes simply an insider's game. We end up with less political speech and less-informed voters.

Florida's political speech law demonstrates how the nation's campaign finance laws have grown until they have swallowed the First Amendment whole. Fortunately Judge Stephen Mickle recognized that fact.

And with committed clients and a dedicated legal team—led by Senior Attorney Bert Gall—the Institute for Justice plans to bring this law to a permanent end. ♦

Valerie Bayham is an IJ staff attorney.



right to free speech

IJ Fights on Two Fronts to Free Political Speech in Colorado

By Lisa Knepper

Thanks to IJ litigation, Colorado has become a major battleground in the fight to free political speech from campaign finance restrictions. Colorado's laws, like those in many states, tie up speech about issues on the ballot in a dizzying array of legal requirements and burdensome red tape—making it nearly impossible for grassroots groups and nonprofits to speak out without an army of lawyers and accountants.

IJ achieved a partial victory on behalf of one such group in September, when a federal judge ruled that Karen Sampson and five of her neighbors in the small subdivision of Parker North, Colo., had been wrongfully sued for putting up yard signs, sending flyers and talking with neighbors about opposing the proposed annexation of their neighborhood into a nearby town.

The two lead proponents of annexation had threatened the group with “investigation, scrutiny and sanctions” for campaign finance violations. Those supposed violations amounted to failing to register as an “issue committee” and not filing regular reports that rival IRS forms in their complexity.

The judge recognized that the lawsuit had little to do with enforcing the law and everything to do with shutting the group up. And that's exactly what Colorado's campaign finance laws make possible by empowering anyone in the state to sue anyone else for violating the law.

Unfortunately, the judge left in place the very law that made the harassing lawsuit possible, practically inviting similar abuses in the future. Without any legal analysis and ignoring evidence in the case, the court's ruling let stand Colorado's complicated regulations that bind even simple grassroots advocacy in red tape.



IJ client Karen Sampson, of Parker North, Colo., has fought for her right to speak freely in political campaigns.

To fully vindicate the right to speak freely, IJ and the Parker North neighbors are appealing the ruling to the 10th U.S. Circuit Court of Appeals.

As Karen said, “No one should be afraid to speak about issues or politics for fear of being sued, and no one should have to hire a lawyer to plant yard signs. We're fighting this law because we want to make sure free speech is protected and that no one else has to go through what we did.”

Indeed, others in Colorado have found themselves sued for their speech. In 2005, the Independence Institute, a nonprofit, free-market think tank in Golden, Colo., was sued for speaking out against two tax-raising referenda and failing to register as an issue committee.

Just as with the Parker North neighbors, the Independence Institute was sued by an activist on the other side of the issue. Incredibly, more than 500 Colorado nonprofits endorsed the two referenda, but only the Independence Institute was sued for its speech.

IJ stepped in to challenge Colorado's campaign finance laws on the Independence

Institute's behalf, and a state appellate court heard oral argument in that case in September.

Both cases illustrate the danger of allowing government to regulate political speech.

“Campaign finance laws invite political operatives to abuse the system to silence opponents,” said IJ Senior Attorney Steve Simpson, the lead attorney on both cases. “The First Amendment was designed to encourage political speech and participation, but that's exactly what laws like Colorado's are suppressing.”

Not only do campaign finance laws stifle speech by tying it up in red tape, they have led to the spread of politics-via-litigation as political debates increasingly move out of the voting booth and into the courtroom.

That's not what America's Founders intended and that is what IJ's campaign finance litigation is determined to stop. ♦

Lisa Knepper is IJ's director of communications.





IJ FIGHTS EMINENT DOMAIN SCHEME THAT WOULD ROB FROM PETER TO GIVE TO ST. PAUL

Karen Haug, CEO of Advance Shoring Co., poses on a jib on the 12-acre site of her family business in St. Paul. The St. Paul Port Authority is trying to take her property through eminent domain for private gain.

By Lee McGrath

Most local governments would be pleased to have in their city a profitable, tax-paying, unsubsidized, 48-year-old family business that pays its 43 employees an average wage of \$24 per hour with full benefits.

But not St. Paul, Minn.

The St. Paul Port Authority, a development agency tasked with bringing business into St. Paul, is kicking out just such a company.

On Sept. 15, Karen Haug, owner of Advance Shoring Co., received notice that the Port Authority plans to use eminent domain to condemn nearly 10 of the 12 acres her company uses to store cranes, scaffolding and equipment that it leases to construction companies. For almost 20 years, the Port Authority has coveted Advance's property and has sought to hand it over to someone else for private economic development.

Its current actions are an attempt to use a trumped-up environmental concern to return Minnesota to the bad old days when city central planners had a free hand to push for their pet projects by abusing eminent domain powers, using boatloads of taxpayer dollars, and turn property and subsidies over to private developers for so-called "economic development." The developer gets the land and a sweetheart deal, the Port

Authority gets to crow about a new project, the government planners get to keep their phony jobs and the rightful landowner gets the boot.

The Port Authority describes its redevelopment mission as acquiring sites "too risky" to develop because of pollution and it claims that Advance's site must be taken for environmental remediation. What the Port Authority refuses to acknowledge, however, is that Advance's property complies with all of the state's environmental directives. Indeed, as the state's own environmental protection agency found, Advance's property does not pose a threat to the public's health or safety.

The real story here is that the Port Authority is acting well outside its mandate, using environmental scare tactics and engaging in eminent domain abuse for so-called "economic development"—the very thing the Minnesota Legislature made illegal in May 2006, a year after the U.S. Supreme Court's infamous *Kelo* decision.

Instrumental in lobbying for those legislative reforms, the IJ Minnesota Chapter is now defending Karen's property. The

chapter will show the absurdity of the Port Authority kicking out a St. Paul business that has thrived by helping, literally, to build the city, only to make way for a private development project that has no developer and no tenants and requires subsidies of more than \$10 million. This abuse of eminent domain is contrary to what Minnesotans just two years ago overwhelmingly said that they do not want government doing—abusing eminent domain for private gain.

The fight has just begun. Karen and IJ-Minnesota have united and are determined to protect her company, her employees' jobs and every Minnesotan's right to be free from bureaucrats who refuse to follow the legislative protections of homes, businesses and farms enacted a year after *Kelo*. ♦

Lee McGrath is the IJ Minnesota Chapter executive director.



VICTORY

for

Music Row Entrepreneur Joy Ford In Nashville Eminent Domain Dispute

By Scott Bullock

After standing up to eminent domain abuse in Nashville, Music Row entrepreneur Joy Ford will not only get to keep her building, she will also receive more and better land to use as parking for her business. A landmark agreement was worked out by IJ between Ford and the developer through private negotiation, not government force.

As we reported in the last *Liberty & Law*, Nashville's Metropolitan Development and Housing Agency (MDHA) filed an eminent domain action against Ford in June 2008 to obtain her business and land so that it could give them to a Houston-based private developer, Lionstone Group, to construct an office building on the city's storied Music Row. Despite its location, the building was slated to hold tenants that had absolutely nothing to do with music—country or otherwise.

IJ agreed to represent Ford in July, taking apart the agency's argument that it could condemn her property. In our answer, we in part relied on new Tennessee legislation passed at the urging of our Castle Coalition in the wake of the U.S. Supreme Court's *Kelo* decision. Tennessee's new law established greater protections for Tennessee property owners like Ford. The MDHA was also subjected to withering criticism in the court of public opinion thanks to IJ's Vice President for Communications John Kramer. People recognized that by condemning Ford's business, Country International Records, Nashville was not only violating the Tennessee Constitution and state law, it was taking a piece of its heart and soul in the process.

Under intense public pressure and facing a strong legal challenge in court, MDHA, in August, dropped its eminent domain suit against Ford's building but demanded that

Ford settle by giving up virtually the entire back portion of her long, narrow parcel of property. Ford rejected this demand, but came up with an alternative proposal: She would exchange a portion of the back of her property for more accessible land owned by Lionstone on the east side of her building. After weeks of intense negotiations between the developer, Ford, IJ and our local counsel and eminent domain lawyer Jim Fisher, Lionstone agreed to the proposal. The agreement is solely a swap of land; no money was exchanged. In addition to getting better land for her business, Ford also received about 1,500 more square feet of land.

The agreement demonstrates what can happen when private parties sit down to negotiate without involving the government. MDHA did not participate in the negotiations between Ford and Lionstone.

Ford is elated with the agreement. As she said from the beginning of this controversy, her battle was never about money. It was about protecting her rights and keeping her family's legacy on Music Row. Now Ford will have a better and more accessible parking area for her clients' cars, trucks and buses when they visit Country International.

Although Ford achieved victory in her battle, she is not done with her fight against eminent domain abuse, pledging to work with other property owners and local legislators to stop eminent domain abuse throughout the state.

As Ford told us, the whole saga cries out for a country song, and a few of the songwriters that she works with are already coming up with ideas. As country singer David Allen Coe, who knows Joy and has written songs at Country International, might add, all the emi-



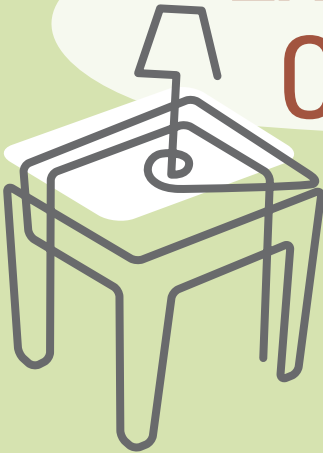
Top, IJ Senior Attorney **Scott Bullock** celebrates a victory for property rights with **Joy Ford**. Above, **Joy** and stepson **Carroll Ford** were ready to fight for what was rightfully theirs.

nent domain song would need are mentions of mama, trains, truck and prison, and someone might have a hit!♦

Scott Bullock is an IJ senior attorney.



Exposing the Connecticut and Oklahoma Interior Design Cartel



By Clark Neily

IJ delivered a one-two litigation punch to the interior design cartel in September, filing new cases in Connecticut and Oklahoma. These cases join three others we have pursued to defeat a classic cartelization effort being waged nationally by the American Society of Interior Designers.

As documented by IJ's Director of Strategic Research Dick Carpenter in his study *Designing Cartels*, the monopolists have adopted an incremental strategy whereby they first lobby for "title acts" that regulate who may use the term "interior designer," and then follow up with full-blown occupational licensure—in the form of "practice acts" that regulate who may actually perform interior design work. IJ has countered that strategy by challenging title acts in court before they can mutate into practice acts, thus destroying the cartel's carefully laid scheme for industry domination.

Susan Roberts is the lead plaintiff in our Connecticut challenge, and, like all IJ economic liberty clients, she is trying to pursue her version of the American Dream in the face of oppressive

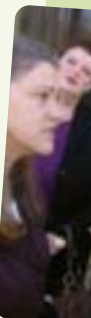
government regulations. After her first career as a bookkeeper, Susan began taking classes at the Connecticut Institute of Art and Design. It was supposed to be a two-year program, but Susan needed to make money to support her family, so she opened an antique store and interior design shop called the Idea Factory in 1982. The business thrived, which was great for Susan and her family, but it also put her on the radar screen of the interior design cartel, which dispatched bureaucrats to demand that she stop calling herself an "interior designer." Susan duly complied—barely, and with tongue firmly in cheek—by changing her business cards to read: "Susan Roberts—designer of interiors." Joining Susan in the Connecticut challenge are Lynne Herrmann and Cindy Lopez, both of whom have worked as interior designers in Connecticut for years but are now prevented from using that forbidden term because they refuse to jump through state-mandated hoops to obtain a license to accurately describe themselves and their businesses.

A few weeks later, IJ took the fight right to the cartel's front doorstep by challenging its most recent legislative prize, a title act in Oklahoma. Just like the laws IJ successfully challenged in New Mexico and continues to battle in Texas and Connecticut, Oklahoma's interior design law allows anyone to *practice* interior design, but requires a license to use the terms "interior design" and "interior designer." Our

lead plaintiff in Oklahoma, Kelly Rinehart, has her own interior design business, more than ten years of interior design experience and even a degree in interior design from Oklahoma State University. But because she refuses to take the government-mandated national licensing exam, she cannot refer to herself as an interior designer. Fellow plaintiffs Maria Gore and Jeffrey Evans are also experienced, highly talented interior designers, who, like Kelly, are forbidden by state law from speaking freely about the services they lawfully provide.

The Connecticut and Oklahoma case filings bracketed a month of intense effort on the Institute for Justice's part to spotlight this issue and bring maximum pressure to bear on the interior design cartel. Dubbed "Interior Design Freedom Month," this effort featured intense media coverage generated by IJ's Assistant Director of Communications Bob Ewing and the release of a new study by Dick Carpenter entitled *Designed to Mislead* (see sidebar) that demolishes the cartel's spurious justifications for titling laws like the ones in Connecticut and Oklahoma, as well as Texas, where IJ's challenge is set for trial in December.

The attempted cartelization of the



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Arizona Chapter Staff Attorney **Jen** speaks to the media at the launch challenge to Oklahoma's licensing law for interior designers.

interior design industry by industry insiders represents one of the most flagrant affronts to economic liberty

IJ has ever encountered, and we are making the most of it. Besides challenging the cartel's handiwork in court, we have brought all of IJ's other tools to bear—including media relations, grassroots outreach and strategic research—to beat back this anti-competitive attempt to snuff out free enterprise.

With these cases, IJ is protecting the ability of interior design entrepreneurs to follow their calling free from arbitrary and unreasonable government regulations. Moreover, IJ is using the interior design fight as an object lesson in economic liberty and particularly the critical role of courts in preventing interest groups from manipulating the political process to promote their own selfish agenda and destroy the system of free enterprise upon which this nation was founded and upon which our future prosperity depends. ♦

Clark Neily is an Institute for Justice senior attorney.



The Institute for Justice's new strategic research report, *Designed to Mislead: How Industry Insiders Mislead the Public About the Need for Interior Design Regulation* is available at www.ij.org/publications/other.



New IJ Report Shows How Cartel Is “Designed to Mislead”

Why must state governments stop interior designers like Susan Roberts and Kelly Rinehart from calling themselves interior designers? According to the design cartel that backs these “titling” laws, they are essential to keep people from being “misled.”

Only those with a specialized education, and who have both served an apprenticeship and passed an exam are truly “interior designers,” says the cartel. Anyone else, even if they lawfully do interior design work, supposedly misleads the public by using the title.

The Institute for Justice's strategic research team decided to find out if, in fact, consumers or industry members agree. We polled 1,400 consumers and reviewed top industry publications. And the results, published in September in *Designed to Mislead: How Industry Insiders Mislead the Public About the Need for Interior Design Regulation*,

show it is the cartel that is doing the misleading.

IJ's Director of Strategic Research Dick Carpenter found that the public does not associate “interior designer” with credentials required by states like Oklahoma and Connecticut. Instead, the public thinks “interior designers,” first and foremost, design interiors. Likewise, leading interior design publications pay no attention to state-mandated qualifications when they call people “interior designers.”

Both the public and the editors of leading industry publications think “interior designers” are defined by what they do, not by arbitrary state requirements. It appears that imposing these credentials by law when they lack any basis in evidence is what misleads the public—not designers like Susan and Kelly who honestly describe what they do. ♦

Why I Joined IJ's Four Pillars Society

By Brian Schar

Even before I started law school at the University of Southern California in 1994, I was a supporter of and contributor to the Institute for Justice. Freedom and liberty were always important values in our house growing up, and they were values that I carried with me into adulthood. When I made the decision to go to law school, I already knew about IJ's summer Law Student Conference from reading *Liberty & Law*, and I was an enthusiastic applicant to the program in 1995.

At the conference, I met smart and motivated law students from around the country and learned a lot about public interest law in the service of liberty—I also had a lot of fun. On top of that, Eugene Volokh of UCLA School of Law, one of the instructors at the summer program, was an invaluable advisor to me after the conference. Despite a very busy schedule, he kindly offered suggestions on my law review note and motivated me to submit it to a variety of scholarly publications, which led to its publication in the debut issue of the *Texas Review of Law and Politics*.

Back then, I thought I wanted to be a litigator, and I hoped to help the Institute on a pro bono basis after I finally graduated from law school. However, after graduation, I learned two important things—one being that law firm associate life left precious

little time for pro bono work, and the other being that I had more of a talent for patent prosecution than for any kind of litigation. Now, as in-house patent counsel for a publicly traded company, the most effective way that I can help IJ is to contribute financially to the cause of liberty. Joining the Four Pillars Society was a painless way for me to provide valuable assistance to the Institute for Justice in its vital work.

We who fight for liberty are outnumbered and outspent by the multitudinous interests who depend on the state. What's more, we have to fight on all fronts at all times, and at both the state and federal levels. We cannot cede any of these battlegrounds. This has never been more true than at the present time, as federal power in the economic sphere has exploded

in scale and in illegitimacy to a degree unimaginable even months ago.

The Institute for Justice has effectively, economically and successfully fought on behalf of individual liberty on all fronts. But IJ wins not only in the courtroom. The Institute has built strong and diverse coalitions around issues such as eminent domain, and aggressively and truthfully waged a public relations war on behalf of liberty. The Institute for Justice has an impressive track record that merits the support of those who believe in individual liberty. I am proud to support IJ as a member of the Four Pillars Society. ♦

Brian Schar is an IJ donor and member of the Institute's Four Pillars Society.



Four Pillars Society

IJ's Four Pillars Society

Join the Four Pillars Society by making the Institute for Justice part of your legacy. Bequests, gifts of IRAs or life insurance, and "life income" plans such as charitable gift annuities or charitable remainder trusts qualify you for membership. These gifts provide IJ with the financial support we need to triumph over tyranny and advance liberty for all Americans. For more information, contact Melanie Hildreth at (703) 682-9320 x. 222 or mhildreth@ij.org.

Make Tax-Free Gifts From Your IRA

Important Note for Year-End 2008

In October 2008, Congress re-authorized a law that allows donors to make tax-free charitable gifts from both traditional and Roth individual retirement accounts. IRA owners age 70½ and older can transfer up to \$100,000 tax-free to charitable organizations like the Institute for Justice (tax ID 52-1744337).

If you are 70½ or older and are required to take minimum withdrawals, but do not need them for personal use, this may be a great way to make a gift to IJ and help us in the fight for freedom. The provision will be in effect for tax years 2008 and 2009—to take advantage of this opportunity for tax year 2008, you must act by December 31.

Here is an example of how this provision works: Suppose John Q. Justice has \$500,000 in an IRA and will be required to withdraw approximately \$25,000 this year. Suppose he also wants to contribute \$20,000 to IJ. John can authorize the administrator of his IRA to transfer \$20,000 to IJ and \$5,000 to himself. The \$20,000 distributed to IJ will not be subject to tax but will be counted toward his annual minimum distribution.

(Please note that IRA administrators don't always include the donor's name on distribution checks. If you decide to make a gift from your IRA, please let us know so that we can identify your gift and thank you properly.)

If you have questions about gifts of retirement assets, please feel free to contact Melanie Hildreth at mhildreth@ij.org or (703) 682-9320 ext. 222, or by mail at 901 North Glebe Road, Suite 900, Arlington, VA 22203.◆



IJ client **Jim Roos** stands in front of his building-sized mural that protests St. Louis' abuse of eminent domain. Roos is not only battling the taking of his building, he is also working with IJ to fight against the city's effort to quash his free speech rights.

IJ Earns Important Civil Rights Decision From 8th U.S. Circuit Court of Appeals

By William R. Maurer

Earlier this year, the 8th U.S. Circuit Court of Appeals set an important civil rights precedent when it held that government agencies may not escape liability when they interfere with fundamental rights especially when such agencies have no legal power to act. This decision will help protect the constitutional rights of all Americans from the actions of rogue government officials acting in areas where they have no authority.

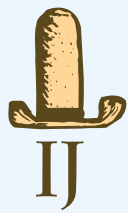
At issue is a mural protesting St. Louis' awful history of eminent domain abuse. Jim Roos and his non-profit housing organizations painted the sign on the side of a building located in an area designated as blighted by the city. His mural soon drew the attention of the city, which has authority under Missouri law to regulate signs, and the city's Land Clearance for Redevelopment Authority (LCRA), which does not. Both entities sought to force Roos to remove the mural, claiming that it was illegal.

Represented by the Institute for Justice, Jim fought back and sued both agencies in federal court under the federal civil rights laws, arguing that the efforts to suppress the mural violated the First Amendment. However, the district court dismissed Jim's suit against the LCRA, concluding that because the agency had no authority to regulate signs, it could not be sued over its efforts to shut down this protest of its actions.

Jim appealed to the 8th U.S. Circuit Court of Appeals, which unanimously reversed the district court and reinstated Jim's claims against the LCRA. The court held that the district court had missed the essence of the entire suit—that the LCRA's "purported exercise of authority infringed on their constitutional rights" and ordered that the "case should proceed further in the litigation process."

This decision affirms a fundamental principle of American law—the government can be held accountable when it interferes with constitutional rights,

Mural continued on page 14



INSTITUTE FOR JUSTICE PARTNERS RETREAT



IJ clients, donors, attorneys and friends gathered in Austin, Texas, October 16-19 to celebrate IJ's successes and showcase IJ's future plans. Client panels, evening dancing, vigorous discussions and a keynote address by Wall Street Journal Editorial Page Editor Paul Gigot provided a memorable time for all. We host IJ Partners Retreats only once every few years; look for the next one to coincide with our 20th Anniversary in 2011.

IJ Clients Share the Message of Freedom



By John E. Kramer

As you have seen, the Institute for Justice always makes a special effort to put a human face on our issues: to put our clients front and center and let them speak for themselves. That is just the approach we recently took in a collection of videos that we will soon promote nationwide. But before the rest of the country gets to see what we created, we thought we would give you, our *Liberty & Law* readers, a sneak peek as a thank you for all your support.

Three of the videos are narrated by our clients, each telling her own story about why she is fighting for school choice, free speech or against eminent domain abuse. The fourth video is designed as much to entertain as to inform. That video features IJ's fight on behalf of the Arizona steakhouse San Tan Flat in its battle against Pinal County's petty bureaucrats . . . and believe us: when you see this video, you'll understand just how petty some government officials can get.

At the Institute for Justice, we are always looking for new, inspiring and creative ways to share the message of freedom to mainstream audiences who might otherwise never consider these important issues. We hope you agree that these videos should open minds and move hearts.

To view the videos, visit: www.IJ.org/FreedomFlix. ♦

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





IJ Washington Chapter Executive Director **William Maurer** speaks to the media in front of a group of citizens who oppose eminent domain abuse and support **Jim Roos'** mural and his right to free speech.

With this victory in hand, we can now turn to the substance of Jim's claims: vindicating Jim's right to protest the abusive actions of government officials.

Mural continued from **page 11**

even when the government acts beyond its legal authority. This was the entire point of the post-Civil War federal civil rights acts, which sought to protect federal rights even when local governments took actions that were illegal or even criminal. The 8th Circuit's decision will help protect the rights of citizens within its jurisdiction from government officials acting beyond the powers granted to them by the state legislature.

Jim's case now returns to the district court, where his action against the city of St. Louis has been proceeding. With this victory in hand, we can now turn to the substance of Jim's claims: vindicating Jim's right to protest the abusive actions of government officials. Local officials in Missouri now understand, however, that their very lack of authority cannot save them from liability when they trample fundamental constitutional rights. ♦

William R. Maurer is executive director of the Institute for Justice Washington Chapter.



Judge Delivers Blow to **ARIZONA** "Clean Elections" Scheme

IJ's long-running First Amendment challenge to Arizona's so-called "Clean Elections" law moved closer to success in October when a federal district judge found a key part of the scheme unconstitutional.

Relying on *Davis v. FEC*, a case the U.S. Supreme Court decided last term, Judge Roslyn O. Silver concluded that "matching funds" provided to taxpayer-funded candidates burden the speech of those who run on voluntary private donations.

With matching funds, publicly funded candidates receive more government funding to spend on their own speech when their privately supported opponents raise money above a certain limit. IJ client and state Rep. Rick Murphy faced three publicly funded opponents, so for every dollar he raised, the government doled out three to be spent against him. His best bet was to stay silent.

That is one way Arizona's system suppresses speech and tilts the playing field toward candidates who run on taxpayer funds.

Although Judge Silver denied requests from IJ and the Goldwater Institute, which is also challenging the law, to halt matching funds in advance of this November's general election, she indicated that the scheme is likely unconstitutional. That gives the candidates and the independent groups that IJ represents a great opportunity to put an end to Arizona's system of taxpayer-funded elections once and for all. ♦

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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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ABC
20/20

IJ Client Becky Cornwell: "The lawsuit was used in an effort to shut us up about the annexation. They wanted to scare us enough and clobber us with these [campaign finance] laws, so that we wouldn't talk about it anymore."



FOX
WZTV-TV



IJ client Joy Ford: "I am so, so happy that this is all over and I can stay here! I can't begin to tell you how much this means to me to have this load lifted off of my head. It is wrong for somebody to just come along and take [private property]."

Washington Post

"It used to be that when a horse was tense, stressed out from a day at work or fried from time spent in a hellacious commute, Mercedes Clemens was there to help. The Gaithersburg massage therapist could lay her healing hands on the beast's body and unkink the knots. That was before she got an official letter telling her in no uncertain terms that by massaging horses, she was breaking the law . . . Mercedes persuaded the Institute for Justice, a libertarian public interest law firm in Arlington, to help her. She's suing the chiropractic board and the Maryland State Board of Veterinary Medical Examiners for the right to massage horses."

Hartford Business Journal

"The [interior designer] lawsuit, filed in Hartford Superior Court, is brought to us by the merry little band of libertarian cowboys known as the Institute for Justice—the same mischievous lawyers who tortured Connecticut and New London about the eminent domain case that staggered all the way up to the U.S. Supreme Court."

We believe people should be free to control their own destinies, both now and in the future.

We are leaving a legacy of liberty by including IJ in our will.

We are investing in freedom.

We are IJ.



*Katie and Jeremy Bencken
Four Pillars Society members*

www.IJ.org

*Institute for Justice
Litigating for Liberty*

“The Washington-based Institute for Justice, the nation’s only libertarian public interest law firm, stepped in and went to bat for the little guys.”

—Las Vegas Review-Journal



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