

December 2010

Volume 19 Issue 6

Inside This Issue

IJ's Time to Shine

2

IJ Wins
Major Free Speech
Victory

3

Freedom for Farmers

8

Arizona Tax Credit
Goes to U.S. Supreme Court

9

Published Bimonthly by the
Institute for Justice

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Liberty & LAW



IJ's New City Studies: Want to Create Jobs? Remove Red Tape.



The Institute for Justice's city studies feature real-world entrepreneurs from eight different cities across the nation. Chicago entrepreneur **Dee Busch**, left, says requiring her to obtain a landscape architecture license would only raise the cost to consumers; it would not raise the quality. When **Nick Harris** started Nick's Towing Service, he could work anywhere in the city of Houston. But the city gave just 11 towing companies the exclusive right to freeway tows, and now Nick is shut out of the freeway market.

By Dana Berliner

Let's face it: American government at every level works diligently to stop entrepreneurs from ever getting their small businesses off the ground. Sure, government officials claim they support entrepreneurship. But in reality, they often just support a few hand-picked or politically connected businesses, granting virtual monopolies to favored businesses while shutting out newcomers. They do not support true freedom or entrepreneurship.

Since our founding in 1991, the Institute for Justice has litigated to free would-be entrepreneurs from arbitrary and abusive government action. In that span, we have represented hairbraiders, casket sellers, computer repair techs, book peddlers, florists, vacuum vendors, interior designers, bagel and doughnut shop owners, eyebrow threaders, taxi drivers, limo drivers, van drivers, tour guides, people who file horses' teeth

City Studies continued on **page 4**

Need for Judicial Engagement Makes IJ More Critical Than Ever

By Chip Mellor

Although the recent election brought a welcome rebuke of the statist juggernaut and fiscal irresponsibility, it will not be enough to ensure that federal and state legislatures refrain from business as usual. Only constraints imposed on government by the Constitution will do that. This means courts must fulfill their role, which James Madison described as acting as “bulwarks of liberty.” Unless the judiciary fulfills this role and upholds constitutional limits on government, we will be left to rely on the self-restraint of government officials. History and common sense show that to be no limit at all.

For too long the courts have deferred to legislative and executive authority, effectively amending the Constitution in the process. The result is that today, key provisions of the Constitution designed to limit government power have been negated (including the Privileges or Immunities Clause, and the Contracts Clause) or transformed into Orwellian grants of greater government power (as we have seen with the Commerce Clause, the General Welfare Clause and the Takings Clause). It is no exaggeration to say that to the extent that there is debate, it is over whether there are provisions of the

Constitution that provide any meaningful limit on government authority. That is where the Institute for Justice comes in and why we look to the next year with eager anticipation.

All of our cases involve constitutional provisions that must be restored if we are to have the freedom envisioned by the Founders. IJ is already preparing a bumper crop of cases we will launch in the next year vindicating economic liberty, property rights, free speech and school choice. Each case will serve as a civic alarm clock for the judge it comes before, urging judicial engagement on vital constitutional issues to replace the blind deference judges have too often given to the other branches of government when those branches exceed their constitutional authority. Simply put, the Institute for Justice intends to forcefully, persuasively and persistently make the case that the courts must strike down laws and government actions that exceed the constitutionally enshrined limits on the power of government.

Texas Supreme Court Justice Don Willett described what this means in a recent opinion: “There must remain judicially enforceable constraints on legislative actions that are irreconcilable with constitutional commands. If legislators come to believe that the police

power is an ever expanding constitutional trump card they can play whenever it suits them, overreaching is inexorable.” He wrote that if courts defer such that the legislature has limitless power to declare its actions justified by the police power, “At that constitutional tipping point, adjudication more resembles abdication.”

That makes eminent sense, but because of the precedents that are the legacy of decades of judicial deference, it will require tenacious and long-term advocacy.

The good news, however, is that the recent excesses of the federal government have made all but the most obstinate disciples of judicial “restraint” recognize how dangerous unchecked legislative and executive power can be. Thus, the country is ready like never before for a concentrated effort to revitalize the Constitution through the courts. And no one is better equipped than IJ to do that. IJ’s program combines cutting-edge litigation, award-winning media relations, in-depth strategic research, energetic grassroots mobilization and expert legislative counseling to maximize the real-world impact of every case we take on.

As the Institute for Justice enters its twentieth year, that time-tested approach gives us confidence and optimism about meeting the challenges ahead. ♦

“The Institute for Justice intends to forcefully, persuasively and persistently make the case that the courts must strike down laws and government actions that exceed the constitutionally enshrined limits on the power of government.”

Chip Mellor is IJ’s President and General Counsel.



IJ Scores Major Free Speech Victory For Parker North Neighbors

By Steve Simpson

In November, a federal appellate court ruled that six neighbors in the tiny subdivision of Parker North, Colo., should not have been forced to register with the government and comply with burdensome campaign finance laws simply for opposing a ballot issue involving the annexation of their neighborhood.

In *Sampson v. Buescher*, a panel of the 10th U.S. Circuit Court of Appeals unanimously recognized the severe burden Colorado's campaign finance laws imposed on grassroots political activists. The court ruled, "The average citizen cannot be expected to master on his or her own the many campaign financial-disclosure requirements set forth in Colorado's constitution, the Campaign Act, and the Secretary of State's Rules Concerning Campaign and Political Finance."

IJ client Karen Sampson said, "This ruling is a complete vindication of what we've said all along. Campaign regulations and red tape serve no purpose in local ballot issue elections other than to make political participation more difficult for ordinary citizens."

For a brief and funny video discussing this lawsuit, visit IJ's site: www.ij.org/2504.

Sampson and her neighbors first learned about Colorado's campaign finance laws when they organized to oppose the annexation of their neighborhood into the adjacent town



"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 put up yard signs."

—IJ client Karen Sampson

of Parker. The group talked to neighbors, circulated postcards and planted yard signs. But in Colorado and other states, when two or more people spend more than \$200 to speak out about a ballot issue, they must register with the state as an "issue committee" and comply with rules and regulations that rival the tax laws in their complexity. Issue committees must appoint a registered agent, open separate bank accounts, and disclose all contributions and expenditures of more than \$20 for things like yard signs and fliers. Because Sampson and the others failed to register with the government before speaking, the principal proponents of the annexation used Colorado's campaign finance laws to sue them.

This ruling means that grassroots political activists in Colorado and the other states in the 10th Circuit can speak freely without fear of being

sued by their political opponents. The Court recognized that states have little or no interest in requiring groups that simply wish to speak out for and against ballot issues to register and comply with complicated disclosure rules.

Freedom of speech means that citizens, not government, get to decide whether to disclose their identities when they speak out about ballot issues. For those who don't trust anonymous speech, the solution is to not listen to it.

The court's decision is supported by IJ's strategic research. *Campaign Finance Red Tape*, Dr. Jeffrey Milyo of the University of Missouri asked 255 people to fill out the registration and disclosure forms for a small political group. Not one participant managed to do so correctly. The average correct score was just 41 percent.

Parker North continued on page 10

IJ's New City Studies: Creating New Jobs is Easier When Government Gets out of the Way



WASHINGTON, D.C.: **Edward Lobban**, who runs Fireside Restaurant in Southeast D.C., was frustrated with the entire permitting process to which he said, "If it was my money alone, I would have given it up."



NEWARK: Having sunk everything they have into their business, **Sadie Galarza** and **Michelle Rosado** depend on getting people up to the window of their food truck at lunchtime. Red tape, however, threatened to stop their business before it ever got started.

City Studies continued from page 1

and even a person who massages horses for a living.

Watching the alarming growth of regulation and red tape imposed on small businesses, we recognized that even more needs to be done to protect the rights of small businesspeople. IJ launched a nationwide campaign to promote economic liberty, which, of course, includes more litigation. But we also thought it was vital to expose how government barriers affect individual entrepreneurs throughout the country. And so, thanks to a grant from the Diehl Family Foundation, the Institute for Justice spent the past year conducting studies identifying barriers to entrepreneurship in eight cities around the nation—Chicago, Houston, Los Angeles, Miami, Milwaukee, Newark, Philadelphia and Washington, D.C.

The studies found entrepreneurs who are sources of boundless energy, bursting with ideas for new businesses and the determination to put their plans into action. These people act as engines for job creation, economic growth, and new products and services. Unfortunately, all too often, their pursuit of an honest living is burdened or banned by big



Watch IJ's video, "Why Can't Chuck Get His Business Off the Ground?" which has already earned more than 100,000 views.

government. These are individuals like Laura Sue Mosier, who transformed an historic building in Milwaukee into a bed and breakfast only to be socked with more than \$100,000 in extra operating expenses due to government mandates, and Jim Purtee, who created a vibrant new market for inflatable advertising in Houston, Texas, until the city rewarded him by banning such ads altogether.

Cities and states throughout the country hamper entrepreneurship and job creation at virtually every turn, burying them in mounds of paperwork; lengthy, expensive and arbitrary



Philadelphia entrepreneur, **Aaron Ultimo**, left, has waited more than one year for a government-issued license to serve beer. “Every week that goes by is less revenue in the government’s pocket,” he points out. **Nasir Kahn** opened his dream business, a hot dog restaurant, in Milwaukee, investing his and his wife’s savings, only to have a city alderman arbitrarily shut it down on his first day.

permitting processes; pointless educational requirements for occupations; or even just outright bans.

In every city we studied, overwhelming regulations destroyed or crippled would-be businesses at a time when they are most needed. For example, to operate a used bookstore in Los Angeles, the government demands that the owner get a permit from the police; record the personal information of everyone who brings in books for exchange or resale, including their names, addresses and book titles; and make this information available to the police. In some cases, the bookstore owner even has to *thumb-print* patrons who bring in *books* and file daily reports with the police. In Washington, D.C., to give sightseeing tours for compensation, the city requires you to first get a government-issued license. Similar requirements exist in Philadelphia and elsewhere. So, as tour guides pass the National Archives, which houses originals of the Constitution and the Bill of Rights, they don’t have the freedom to describe those charters of freedom without first getting the government’s permission.

Time and again, these reports document how local bureaucrats believe they should

dictate every aspect of a person’s small business. Government officials want to choose who can go into which business, where, what the business should look like and what signs will be put in the windows. And if that means that businesses fail, or never open, or can operate only illegally, or waste all their money trying to get permits so they have nothing left for actual operations, that’s just too bad. This attitude would be bad enough in prosperous times, but in a period of financial strain and high unemployment, it’s also incredibly foolish.

The studies were released in October and have already received significant media coverage, including an editorial from *The Wall Street Journal*, an op-ed I co-authored with Chip Mellor for *USA Today* online, and op-eds and news pieces in the cities studied.

In the coming months, we will use these studies as a source for new litigation, to advance the cause of entrepreneurs nationwide and to remove some of the barriers that crush entrepreneurs struggling to start or grow their businesses. ♦

Dana Berliner is an IJ senior attorney.



LOS ANGELES: **Jill Bigelow’s** most frustrating experience while trying to open her restaurant was when an inspector would not allow her to open because her previously approved wall tile did not have enough “reflective value.”



MIAMI: Little Havana’s historic character comes with a price for local businesses, which must get government permission for minor alterations to their buildings. **Marta Ismail** waited seven months for permission for an awning outside her gallery.



Keep Out!

Campaign Finance Laws as Barriers to Entry

By Lisa Knepper

Entrepreneurs bring vitality to the marketplace, driving innovation and change. But all too often, established interests respond to such competition not by competing in turn, but by colluding with government to pass laws like occupational licensing rules that keep upstarts out of the market.

In the political arena, campaign finance laws have the same effect, as University of Missouri economist and campaign finance expert Jeffrey Milyo shows in a new IJ strategic research report, *Keep Out: How State Campaign Finance Laws Erect Barriers to Entry for Political Entrepreneurs*. (For a copy of the report, visit: www.ij.org/KeepOut.)

“Whether it is the civil rights movement of the 1960s or today’s tea party movement, outsiders in American politics have always played a crucial role in challenging the status quo by pushing new ideas to the fore and inspiring newcomers to run for public office,” writes Milyo.

Such political entrepreneurs bring vibrancy to American democracy and keep the political establishment on its toes. Yet campaign finance laws in all 50 states erect barriers to entry that effectively tell newcomers to keep out.

Milyo shows how contribution limits and campaign finance red tape make it harder for political entrepreneurs to form new groups and reduce the resources available for political advocacy.

Consider IJ’s clients in our Citizen Speech case in Florida (see previous page). They wanted to make *their* voices heard with their own message—not donate to support some other more-established group’s message. But



Download the report: www.ij.org/KeepOut.

Florida ties them up in red tape if they speak out on their own.

Or consider *SpeechNow.org*. The group wanted to defeat candidates who favor campaign finance laws, but federal contribution limits made large donations to its efforts illegal. Milyo shows that such new groups in particular need large contributions—political venture capital—to get off the ground and attract support. With help from the Institute for Justice and the Center for Competitive Politics, SpeechNow.org defeated the federal limits, but similar laws remain in nearly two dozen states.

To political pros, these laws are barely nuisances. But to would-be political entrepreneurs, they are barriers to the political arena. That is how campaign finance laws lead to fewer new voices and cement the status quo. Indeed, that is entirely the point. ♦

Lisa Knepper is IJ’s director of strategic research.



Camp Politics Video Teaches with Humor

Public policy and legal issues may start out as boring and complicated topics, but no one ever said they must stay that way.

So, to better help the public understand the dangers of government-imposed campaign finance restrictions, the Institute for Justice breathed some life and humor into this often dry and complicated subject. Through a video called “Camp Politics,” which was written by IJ Senior Attorney Bert Gall, the Institute for Justice showed how politicians use campaign finance laws to silence their political opponents. As part of the Institute’s broader Citizen Speech initiative, IJ is working to illustrate how these laws harm ordinary people who want nothing more than to speak to their friends and neighbors about politics.

Our tongue-in-cheek video (available at www.ij.org/CampPolitics) focuses on the dirty little secret behind campaign finance laws: Incumbent politicians like them because they make it harder for those outside the political establishment to speak out against their reelection. Camp Politics offers a mock advertisement for a children’s summer camp that trains aspiring politicians. At Camp Politics, kids learn how to kiss babies, survive scandals, dine on pork, and—most importantly—circumvent the First Amendment in order to remain in office.

Although we want the video’s viewers to laugh, our primary goal is to show them that there is nothing funny about the damage these laws do to Americans’ First Amendment rights.

So far, 20,000 viewers have enjoyed their trip through Camp Politics. If you have not visited yet, be sure to enjoy this video today and share it with your friends. And while you are at it, check out the Institute’s videos on other cases, too. ♦





Thanks to a legislative amendment spurred by IJ litigation, the **Bergmann** family of Lake Elmo, Minn., may now sell pumpkins from Wisconsin and Nebraska, and Christmas trees from North Carolina on their Minnesota farm.

An IJ Victory Down on the Farm

By **Anthony Sanders**

Farmers and consumers in Lake Elmo, Minn., and across the nation recently won a victory for interstate trade and farming freedom. Thanks to pressure brought to bear by an IJ lawsuit filed in May of this year—as detailed in the August 2010 edition of *Liberty & Law*—the Lake Elmo City Council repealed its ban on farmers selling produce grown outside the city. Now, farmers may make those sales once they apply for a simple permit.

The change is an important victory not only for our clients, the Bergmann family, who may now keep selling produce grown outside the city as they have done for almost 40 years, but it also protects the right of our out-of-state clients from Wisconsin, Nebraska and North Carolina, who merely wanted to sell their pumpkins and Christmas trees to the Bergmanns. IJ helped the city of Lake Elmo better appreciate that the right to interstate trade is protected by the Constitution's Commerce Clause.

The case demonstrates how pressure from principled litigation can shape legisla-

tion. Three months after filing our suit, a federal magistrate judge issued an opinion recommending that our motion for a preliminary injunction be granted. He stated that the city's ordinance likely "unconstitutionally discriminates against interstate commerce" because it "squashes competition . . . altogether, leaving no room for investment from outside." Recognizing that the law could have a devastating effect on interstate trade, he stated that the result from enforcement of the law "will be the obliteration of the Lake Elmo markets in pumpkins and Christmas trees. . . . In fact, Plaintiffs have shown that the markets will be wiped out."

With a likely defeat staring them in the face, city officials made sure that they passed a new ordinance allowing sales of interstate produce, such as the pumpkins and Christmas trees our clients sell, without discriminating in favor of produce grown in-state rather than out-of-state.

IJ's victory in this case will help farmers in future legal fights tear down government-imposed restrictions on what they may sell on their land. Nationwide,

a patchwork of zoning regulations forbids farmers from freely selling their own products to each other and their customers. Some jurisdictions allow farmers to sell only products they grow while others require that no more than a certain percentage of their sales be grown elsewhere. As IJ demonstrated in this case, many of these restrictions have an adverse impact on interstate commerce and unconstitutionally favor local interests over America's nationwide marketplace. The Institute for Justice will be on the lookout for similar challenges that help us preserve our nation's long history of free and open trade among the states.

Because of this victory, the Bergmanns and our other clients will not only help their customers celebrate the holidays, but they themselves can celebrate the important role they played in vindicating the kind of free and open marketplace that America's Founders envisioned. ♦

Anthony Sanders is an IJ Minnesota Chapter staff attorney.





IJ attorneys **Dick Komer**, left, and **Tim Keller**, right, look on as IJ client **Glenn Dennard** speaks after the U.S. Supreme Court argument in *Garriott v. Winn* to defend Arizona's school choice tax credit program.

School choice showdown at U.S. Supreme Court

By Tim Keller

On a bright, clear and cold November morning in the heart of our nation's capitol, 800 smiling Arizona children faced out from the U.S. Supreme Court while the Justices inside questioned lawyers about the constitutionality of a tax credit scholarship program those children rely on to attend private schools—schools chosen by their parents. And IJ was in the thick of the battle to save these children's educational futures. IJ represents parents and children in the case who use these scholarships and hope to preserve this educational lifeline.

The children outside the courtroom were not physically present, but—thanks to the creativity of IJ's Director of Activism and Coalitions

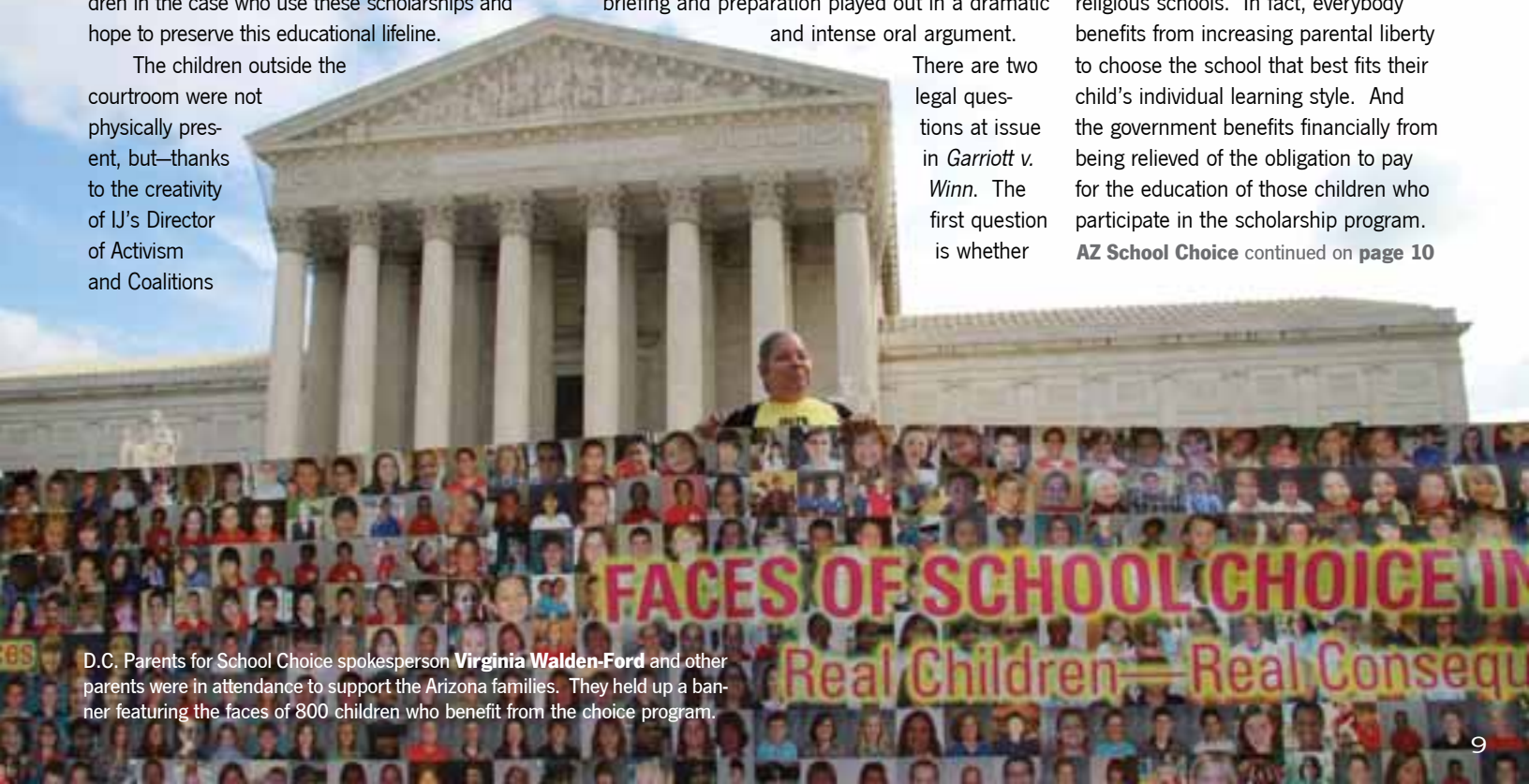
Christina Walsh and the graphic design wizardry of IJ's Production and Design team members Don Wilson and Robyn Patterson—the children were there when we unfurled a 50-foot banner featuring photographs representing many of the 27,000 children who depend on the scholarship program. The banner declared in simple and stark terms: "Faces of School Choice in Arizona: Real Children, Real Consequences."

Inside the courtroom, months of intense briefing and preparation played out in a dramatic and intense oral argument.

There are two legal questions at issue in *Garriott v. Winn*. The first question is whether

a small handful of Arizona taxpayers who oppose school choice even have "standing" to challenge the program. The standing question asks whether the plaintiffs have been harmed by the program. Through our litigation and briefing, IJ has consistently argued that these plaintiffs have not been harmed because they have not paid a single penny in taxes to support private or religious schools. In fact, everybody benefits from increasing parental liberty to choose the school that best fits their child's individual learning style. And the government benefits financially from being relieved of the obligation to pay for the education of those children who participate in the scholarship program.

AZ School Choice continued on page 10



D.C. Parents for School Choice spokesperson **Virginia Walden-Ford** and other parents were in attendance to support the Arizona families. They held up a banner featuring the faces of 800 children who benefit from the choice program.



Watch IJ's video, "Karen Sampson & Free Speech."

Parker North continued from page 3

Each person could have been subject to fines and penalties in real life. Like those in Parker North, participants found the red tape was "worse than the IRS!" and said it would make them less likely to get involved in politics. Milyo's research was featured on ABC's 20/20.

This is yet another important victory in the Institute for Justice's efforts to protect free speech from government-imposed restrictions in the guise of so-called campaign finance "reforms." In March, IJ, working together with the Center for Competitive Politics, won in the D.C. Circuit Court of Appeals on behalf of SpeechNow.org, a group of individuals who are now free to pool their money without limits to run independent political ads for or against candidates based on their support for the First Amendment. As of last month, at least 50 new SpeechNow-styled groups were established to participate in the 2010 election. Last year, IJ successfully challenged Florida's "electioneering communications" law—the broadest regulation of political speech in the nation. And on November 23, the U.S. Supreme Court will have considered whether to accept the Institute for Justice's challenge to Arizona's so-called "Clean Elections" system.

With all of this progress, plus the launch of IJ's Citizen Speech endeavor, IJ continues to set the pace and the direction in the fight for free speech. ♦

Steve Simpson is an IJ senior attorney.



School choice back at the U.S. Supreme Court

AZ School Choice continued from page 9

If the Court determines the plaintiffs were not harmed, it will not reach the second question, which asks whether the program violates the Establishment Clause's prohibition against laws "respecting an establishment of religion." The Court has consistently upheld school choice programs—like Arizona's—that are based on private choice, where private individuals rather than government bureaucrats choose where the aid is used. And private choice is the defining characteristic of Arizona's scholarship program.

But the Court's liberal bloc—Justices Ginsburg, Breyer, Kagan and Sotomayor—asked questions that seemed generally hostile to the program. The questions Chief Justice Roberts and Justices Scalia and Alito asked suggested they believed the program operates like the Cleveland school voucher program the Court upheld in its 2002 *Zelman v. Simmons-Harris* decision (a decision in which Justice Kennedy joined). Justice Thomas, as is his custom, asked no questions, and the Court's presumptive swing vote, Justice Kennedy, asked probing questions of both sides.

Now comes the hardest part of all—waiting for a decision, which is expected to be announced sometime this spring. When it does come, we expect the Court will, even if by a narrow margin, reaffirm that the Constitution permits school choice programs that empower parents to choose the school best suited to meet their child's educational needs.



Watch IJ's video, "Arizona School Choice Fight Goes to U.S. Supreme Court."

That will help set the stage for next year when we expect to see a groundswell of new legislative initiatives for school choice across the nation. IJ will be on call to help craft and defend those programs, too, even if it means another long journey to the Supreme Court. ♦

Tim Keller is the IJ Arizona Chapter executive director.



Quotable Quotes

Fox Business

Stossel



IJ Senior Attorney Dana Berliner: “City and state governments, and the federal government, really see it as their role to prevent people from going into and starting small businesses, really from doing anything creative.”

WTTG-TV (Fox)

Washington, D.C.

IJ Staff Attorney Robert McNamara:

“In this country, we rely on people to decide who they want to listen to. We don’t rely on the government to decide who’s going to be allowed to speak. The First Amendment protects your right to communicate for a living. And that’s true whether you’re a journalist, a stand-up comedian or a tour guide. ”



WTLX-TV (ABC)

Tallahassee, Florida



IJ Staff Attorney Paul Sherman: “The First Amendment protects the right of individuals to speak and think for themselves. And our clients’ political message has nothing to do with their identity. ”

Entrepreneur Magazine

“This week, the nonprofit Institute for Justice in Virginia released a series of studies of business conditions in eight major cities, including Chicago, L.A. and Washington, D.C. . . . In essence, the growing complexity of local and state laws about how and whether you can operate a particular type of business in a particular place are choking the life out of small business.”

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We produce immediate, real-world results for our clients and others like them, while restoring constitutional limits on the power of government.

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—The Wall Street Journal



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My home means everything to my family and me.

But my city wanted to take my property away
so a politically connected developer could build condos.

I fought to protect my property rights . . . and yours.

And I won.

I am IJ.



*Lori Ann Vendetti
Long Branch, New Jersey*

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