

Volume 20 Issue 6

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Published Bimonthly by the  
Institute for Justice

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## IJ Opens New Florida Chapter Launch Case Defends Street Vendors

IJ client **Silvio Membreno** is a flower vendor in Hialeah, Fla., who is challenging that city's anticompetitive vending restrictions. Silvio declares, "We're not asking for a handout. This is about being able to earn a living."

By Elizabeth Price Foley

Street vendors are the embodiment of the Land of Opportunity. Whether it is selling newspapers in New York City, hot dogs in Chicago or cheesesteaks in Philadelphia, the image of a hard-working street vendor climbing his way up the economic ladder is familiar to all Americans. Vending provides a perfect way to enter the economic mainstream, especially for the poor and newcomers to our nation; it merely requires hard work and a dream for a better life.

There is no more inspiring example of this than IJ client Silvio Membreno. Fifteen years ago, Silvio came to America from Nicaragua in search

of a better life. And he found it: For 15 years, he has been earning an honest and decent living as a flower vendor in and around the city of Hialeah, Fla. Silvio not only supports his own family this way, but also helps employ more than 30 other flower vendors, who sell the beautiful and fragrant flowers Silvio imports from Ecuador.

Unfortunately, as documented in IJ's *Streets of Dreams* study, local governments are making it all but impossible for street vendors to earn an honest living. That is what is happening in Hialeah. It is perfectly legal to work as a street vendor in Hialeah,

**Florida Chapter** continued on **page 11**

# HAILING FREEDOM

## For Milwaukee Taxi Entrepreneurs



"I should be able to apply for a taxi license just like all the other licenses that the city offers," says IJ client **Ghaleb Ibrahim**. "All that I want is to own my own business."

### By Anthony Sanders

The Institute for Justice is returning to its roots in a big way. One of IJ's first cases successfully challenged the prohibition on new taxicab companies in Denver. That case allowed our clients to found Freedom Cabs, Denver's first new cab company in nearly 50 years.

Another version of Freedom Cabs may be coming soon, this time to Milwaukee. IJ clients Ghaleb Ibrahim, Jatinder Cheema and Amitpal Singh are all experienced taxi drivers who simply want to own their own cabs. But, because of the city's anticompetitive taxi regulations, they would have to pay an existing taxi owner about \$150,000 to legally own a cab. This is because the city of Milwaukee only allows 321 taxis on its streets. If you want a taxicab license, you must buy it from an existing owner. Because demand for cab licenses exceeds their artificially limited supply, the price is more than an average Milwaukee home.

Owning a taxicab should not cost more than owning a house. And so, in September, IJ sued the city on behalf of these drivers asking the court to strike down the government-imposed cap on the number of cabs that may

legally operate in Milwaukee. The cap violates our clients' right to earn an honest living, protected under the Wisconsin Constitution.

All of our clients are immigrants simply following the American Dream. For example, Ghaleb Ibrahim immigrated more than 30 years ago and has driven a taxicab for much of that time. At first he liked the job. He was free to set his own hours and provide a needed public service—transportation. Then the city imposed the cap. Restricted by the monopoly, the price of permits then predictably rose, and cab permit holders began charging drivers exorbitant taxi rental rates, well above what would be allowed in a free market. Faced with this situation, Ghaleb had to leave the occupation. He wants back in, but only if he can own his own cab.

Entrepreneurs and consumers—not the government and a self-interested cartel—should decide how many taxicabs operate in Milwaukee. Running a taxicab does not require formal education or much financial capital, just hard work and the desire to succeed. The only things the city can constitutionally require are—at most—an insured and inspected vehicle and a clean driving record. Anything more

than that stifles entrepreneurship and simply protects existing businesses from competition—the last thing the government should be doing in this economic climate.

This issue resonates with anyone who has tried to catch a cab in Milwaukee. Our launch was very successful, with favorable coverage in the *Milwaukee Journal-Sentinel* and local television news, as well as interviews on talk radio and public radio. The *Journal-Sentinel* editorial board endorsed our lawsuit, calling for the city to lift the cap and "let the market decide."

Exactly right. Our clients are not looking for a handout or any special favors. They simply want to let the market—that is, freedom—decide what taxi services best meet consumers' needs. And IJ won't rest until we have ensured that both our clients and the marketplace itself, are free from these needless government restrictions. ♦

**Anthony Sanders** is an IJ Minnesota Chapter staff attorney.







IJ clients **Juana Gutierrez**, left and center, and **Angel Martinez**, right, joined with IJ's Arizona Chapter in a quick and successful bid to trim the state's licensing of eyebrow threaders.

## IJ-AZ Scores Quick Victory For Arizona Threaders

By Tim Keller

Five Arizona entrepreneurs have proven once again that you can stand up to government bureaucrats and vindicate your civil rights. In June, five threaders teamed up with the Institute for Justice Arizona Chapter to file *Gutierrez v. Aune*, a lawsuit against the Arizona Board of Cosmetology, challenging the board's requirement that threaders first obtain a cosmetology license to use cotton thread to remove facial hair.

Threading is an all-natural method of removing human hair—most commonly from around the eyebrows—using nothing more than a single strand of cotton thread. There are no sharp objects or chemicals involved. A threader winds the thread between his or her fingers to form a loop that can be opened and closed to trap and remove hair from its follicles. Threading is cheaper and faster than other hair removal techniques. It costs approximately \$10 and takes between five and 10 minutes to complete, depending on how much hair is removed. Threading also creates vibrant competition with other hair removal practices, creates jobs and keeps prices low for consumers.

Four months after filing the case, IJ-AZ negotiated a victory for economic liberty with the Arizona Attorney General's Office in the

form of a "consent judgment." The judgment, which was signed by a judge and is enforceable like any other judgment, prohibits the board from requiring cosmetology licenses for any threader in Arizona. Further, the board cannot subject threaders to regulation, harassment or other penalties.

The judgment brought a swift victory and a successful end to the litigation. Our clients filed this case to vindicate one of their most precious constitutional rights—the right to earn an honest living free from unreasonable government regulation—and they accomplished their mission.

For a long time, threading was unregulated in Arizona. But the board recently declared that threading fell within its jurisdiction and began requiring all threaders to obtain a board-issued cosmetology license. To be eligible to take the licensing exam, which does not test an applicant's knowledge of threading, a would-be threader had to take *at least* 600 hours of classroom instruction at a cost of more than \$10,000—not one of these hours would teach threading. That requirement has now been zapped off the books.

"I am so grateful that I can now work without having to get a completely unnecessary license," said Juana Gutierrez, an eyebrow

threader and IJ-AZ's lead client. "I can focus on my work rather than looking over my shoulder for some government inspector demanding to see my license."

The consent judgment comes at a perfect time for threader Yesinia Davila, who recently moved from California to southern Arizona. California exempts threaders from having to obtain a full-blown cosmetology license. She came to Arizona with the intention of opening her own threading business, but very nearly had to open that business across the border in Mexico in order to avoid Arizona's absurd licensing requirement. Yesinia, though not an IJ-AZ client, will nevertheless be protected by the judgment and is now laying the groundwork to pursue her dreams in Arizona.

After 10 years of litigating in the Grand Canyon State, IJ-AZ has never lost an economic liberty challenge. We will continue that fine tradition in the coming years as we seize every opportunity to protect the right to earn an honest living. ♦

**Tim Keller** is the IJ Arizona Chapter executive director.





# 20 Years of IJ

By Chip Mellor

As our 20th anniversary year draws to a close, we can look ahead with the knowledge that the IJ approach to public interest law offers tremendous potential to secure constitutional protection for liberty at a crucial time in American history. In our first 20 years, we have gone from a struggling start-up with three attorneys and a unique-but-untested litigation plan, to a nationwide law firm with 33 attorneys, seven offices, a \$13-million-dollar budget and, most importantly, a track record of success that proves the effectiveness of our approach.

The confidence with which we face the future is also based on the talent we have attracted and retained. Because the law in favor of government is so entrenched, nothing less than first-rate lawyering has a chance of overturning it. That is just what IJ attorneys provide consistently and creatively. It is no coincidence that we have had five U.S. Supreme Court cases in recent years and that we have won major victories in courtrooms throughout the nation.

But as we knew from the outset, litigation alone is not enough. It must be accompanied by other efforts that are carefully integrated into our strategy. Our communications work has been instrumental in IJ's ability to set the terms of national debate in all four of our pillars—protecting property rights, economic liberty, school

choice and free speech. In fact, it has been so successful that we have won 18 national awards for our communications work from our media relations to web design.

IJ is pioneering another realm of public interest law with our strategic research. Our strategic research produces rigorous social science research that is used to advance our litigation. It must be of such integrity that it can

**“We know that our supporters place not only their dollars, but their trust, in us. That makes them a very special part of everything we do and inspires us to achieve well beyond our grasp.”**

withstand attacks by the other side's lawyers and experts, hostile academics and skeptical media, and ultimately earn the respect of the judge. It has never failed to meet this challenge.

Add to all that our efforts to train and organize citizens to protect their rights, which not only enhances our litigation, but also achieves victories without having to go to court. We have seen these kind of grassroots victories play out time and again as we work in neighborhoods across the country, with recent successes from New Jersey to Minnesota and beyond.

Even though we stay far away from politics, we are often able to secure favorable legislative victories by providing in-depth expertise and organization in state legislative battles, leading to new reforms that advance individual

liberty.

In every case the Institute for Justice pursues, we bring all of these dimensions, carefully integrating them to secure victories in court, in the court of public opinion or legislatively. That is how we can make such an impact against such long odds.

All of this requires hardworking, passionately dedicated IJ staff. But it also requires a stalwart and growing base of supporters who are ready to join with us and to make history over the next 20 years as we work together to secure a rule of law essential to a society of free and responsible

individuals. We know that our supporters place not only their dollars, but their trust, in us. That makes them a very special part of everything we do and inspires us to achieve well beyond our grasp.

The need for constitutional limits on government grows every day. We certainly will not run out of government officials to sue anytime soon. That means that IJ has an exciting and busy future.

With such high stakes, we ask ourselves, with the experience and proven approach that we have, how can we not try? And if we try, how can we do anything but succeed? ♦

**Chip Mellor** is IJ's president and general counsel.



## Will, Gigot & Stossel Share Their Thoughts On the Institute for Justice

Over the Institute for Justice's first 20 years, *Washington Post* syndicated columnist George F. Will, ABC and Fox News host John Stossel and *Wall Street Journal* editorial page editor Paul Gigot have often teamed up with IJ to advance the cause of freedom. These journalistic luminaries joined together to kick off the Institute for Justice's recent 20th Anniversary Celebration. Here is a little of what they had to say.



### George F. Will

"Pound for pound, the Institute for Justice, which punches way above its weight, is the biggest force multiplier in Washington."



### Paul Gigot

"The Institute for Justice's cases deal with the common man . . . with the people who otherwise wouldn't have a champion. IJ finds cases that accentuate the fact that freedom helps the average person, it helps them compete against big government or big business."



### John Stossel

"For years now, I have been proud to feature the Institute for Justice's great work in my news reporting, on issues like property rights, economic liberty, freedom of speech and school choice. The Institute for Justice opened my eyes to all sorts of new ways of thinking about liberty."





# IJ Sets the Terms of the Debate With the Call for Judicial Engagement

IJ Senior Attorney and CJE Director **Clark Neily** has taken the *Judicial Engagement vs. Judicial Activism* debate on the road with more than 20 debates in the past two months. He is seen above debating Professor **Christopher Sprigman** at the University of Virginia.

By Clark Neily

The Institute for Justice's Center for Judicial Engagement continues to set the terms of the debate with the release of a strategic research report debunking the myth of judicial activism, the kickoff of a national debate series, and high-profile attention from courts and commentators.

The strategic research report, *Government Unchecked*, examines the charge that the U.S. Supreme Court is striking down so many laws as to impair the other branches' legitimate policymaking efforts. Or, as former Senator Arlen Specter put it more colorfully, the U.S. Supreme Court "has been eating Congress' lunch by invalidating legislation with judicial activism." As the figures on the next page make clear, that assertion is unsubstantiated and inaccurate. The fact is, government will produce at least some unconstitutional enactments, and a properly functioning judiciary must therefore have a strike-down rate greater than zero. The relatively tiny number of decisions declaring laws unconstitutional shows that far from "eating Congress' lunch," the Supreme Court is barely sweeping up the crumbs.

The Center also launched a debate series this fall, working with the Federalist Society to bring the concept of judicial engagement to law schools nationwide. The series has featured more than 20 events, including high-profile debates at Harvard, Yale, Duke, Virginia, Texas and Northwestern, with plenty more to come. Among the highlights was a debate at Georgetown with leading conservative Ed Whelan, a sharp critic of judicial engagement who believes courts should be far less active in limiting government power.

Even though IJ coined the term just a few years ago, "judicial engagement" has already received a number of high-profile mentions. For example, in striking down Obamacare's individual mandate in August, the 11th U.S. Circuit Court of Appeals explained that when Congress exceeds the limits of its authority, "the Constitution requires judicial engagement, not judicial abdication." In October, prominent Supreme Court reporter Linda Greenhouse wrote a detailed piece about the Center for Judicial Engagement for the *New York Times*' Opinionator blog in



Watch the Georgetown Law Center debate with IJ's **Clark Neily** versus leading conservative **Ed Whelan**, a sharp critic of judicial engagement who believes courts should be far less active in limiting government power. [iam.ij.org/GtownDebate](http://iam.ij.org/GtownDebate)

which she quoted from the Center's declaration and expressed the hope that, while she may not agree with its objectives, public embrace of the term "engagement" might send the charge of "judicial activism" into retirement.

The question is not whether judges should be activist or restrained, but whether they are properly enforcing constitutional limits on government power. That is judicial engagement, and we expect to see a lot more of it. ♦

**Clark Neily** is director of IJ's Center for Judicial Engagement.





*Arlen Specter: The U.S. Supreme Court  
“has been eating Congress’ lunch by invalidat-  
ing legislation with judicial activism.”*

Through rigorous research, IJ set out to check that claim by comparing the total number of laws and regulations passed with the total number struck down by the U.S. Supreme Court. The results were startling:

- Congress passed 15,817 laws from 1954 to 2002. The Supreme Court struck down 103—or just two-thirds of one percent.
- State legislatures passed 1,006,649 laws during the same period. The Court struck down 452—or less than one-twentieth of one percent.
- The federal government adopted 21,462 regulations from 1986 to 2006. The Court struck down 121—or about a half of a percent.
- In any given year, the Court strikes down just three out of every 5,000 laws passed by Congress and state legislatures.



This report is available for download at  
[www.ij.org/4049](http://www.ij.org/4049)

## In-Depth Podcasts From IJ’s Constitutional Experts

IJ has recorded a number of new podcasts designed to give mini-history lessons without needing to set foot in a classroom. Topics of discussion include:

- The Rational Basis Test
- Judicial Activism
- The history of the *Lochner v. New York* case
- Economic Liberty in the U.S. Constitution

Listen to IJ attorneys discuss the principles we fight for as we advance a rule of law under which individuals can control their destinies as free and responsible members of society. Each podcast is around 30 minutes and gives in-depth analysis from our constitutional experts. Podcasts are great to listen to while commuting, on trips or even while doing household chores.

Download current podcasts at [www.ij.org/freedomcast](http://www.ij.org/freedomcast) and check back each month for new ones!◆

## Send Us Freedom-minded Students: IJ Seeks Summer Clerks

IJ is accepting applications for summer law clerks, as well as undergraduate and graduate interns. Clerks and interns play an integral role in the Institute’s fast-paced litigation, taking on legal research, brief writing, client interviews and other responsibilities. Internships are offered at our Arlington, Va., headquarters. Law clerkships are offered at our headquarters and state chapter offices in Tempe, Ariz.; Miami, Fla.; Minneapolis, Minn.; Austin, Texas; and Seattle, Wash.

For more information on IJ’s student programs, visit [www.ij.org/students](http://www.ij.org/students). Interested students should submit their application materials through IJ’s student website at [www.ij.org/internships](http://www.ij.org/internships). Applications for summer 2012 positions are due January 5, 2012.◆



# IJ Fights Effort to Take Family Motel Through Civil Forfeiture

By Scott Bullock and Larry Salzman

Civil forfeiture—where the government can take and sell your property without ever charging you with a crime, let alone convicting you of one—is one of the greatest threats to property rights in the nation. To make matters worse, such forfeitures often fund law enforcement officials' budgets, giving them a direct financial incentive to abuse this power. Perhaps nowhere is this abuse more evident than in the case IJ just took on in Tewksbury, Mass.

There, the federal government has teamed up with the local police department to file a forfeiture action against the Motel Caswell, located on Main Street in Tewksbury (about 30 miles outside Boston). The motel was built in 1955 and is owned by Russ and Pat Caswell. Russ watched his father build the motel when he was a boy, and he has been involved in the operation and eventual ownership of it for most of his life. For decades, it prospered as reasonably priced overnight accommodations for families on road trips and truckers traveling on the newly built interstate highway system.

Over the years, as travelling patterns changed and truckers began sleeping in their rigs, the Motel Caswell faced the same decline as many motels and readjusted to become budget accommodations that still served travelers, but also lower-income folks who needed a place to stay. The Motel Caswell is not the Ritz, but it provides affordable housing without government subsidies. Meanwhile, Tewksbury, like many communities, has had problems with drug activity and crime and unfortunately those problems occasionally bleed over to the motel.





**“The U.S. Department of Justice and the Tewksbury police department now demand that the Caswells forfeit their entire property—worth more than a million dollars—because a tiny fraction of people who have stayed at the motel during the past 20 years have been arrested for crimes.”**

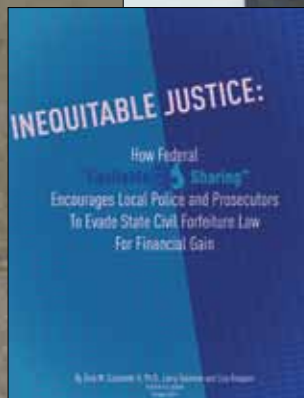


IJ client **Russ Caswell** and his family have owned and operated the Motel Caswell in Tewksbury, Mass., for two generations. They stand to lose it through the abuse of civil forfeiture.

The U.S. Department of Justice and the Tewksbury police department now demand that the Caswells forfeit their entire property—worth more than a million dollars—because a tiny fraction of people who have stayed at the motel during the past 20 years have been arrested for crimes. The arrests the government complains of represent less than .05 percent of the 125,000 rooms the Caswells have rented over that same period of time. In fact, the government’s lawsuit identifies only five drug incidents leading to approximately 10 arrests between 2001 and 2009 as the basis of the forfeiture.

Incredibly, the government does not allege that the Caswells themselves have done anything illegal. Indeed, they have no criminal record whatsoever and even the police admit that the Caswells have always cooperated with them to prevent and report crime on their property. But under civil forfeiture laws, innocent people can still lose their property—with no compensation whatsoever—if the government believes it was used to “facilitate” a crime.

Along with taking on the Caswell case, IJ also released a new report titled, *Inequitable Justice: How Federal “Equitable Sharing” Encourages Local Police and Prosecutors to Evade State Civil Forfeiture Law for Financial Gain*, which examines a federal law enforcement practice known as “equitable sharing.” This program, which the government is using against the Motel Caswell, enables—indeed, encourages—state and local police and prosecutors to circumvent the civil forfeiture laws of their states for financial gain.



This report is available for download at [www.ij.org/4064](http://www.ij.org/4064)



Watch the IJ case video

IJ will stop this outrageous abuse of power and save the Motel Caswell. We will also put much needed limits on government’s forfeiture power under the U.S. Constitution and federal law. ♦



**Scott Bullock** is an IJ senior attorney and **Larry Salzman** is an IJ staff attorney.



SCHOOL CHOICE NEWS:

# IJ Defends Nation's First Publicly Funded Education Savings Account Program

By Tim Keller

It is said that no good deed goes unpunished. In Arizona, it seems that no good school choice program goes unchallenged in court. The ink was barely dry on the nation's first publicly funded education savings account program—a program designed to benefit children with disabilities—when the Arizona Education Association filed suit to halt its implementation.

Arizona's "Empowerment Scholarship Account Program" is a brand new form

of school choice. The program is simple and straightforward. In exchange for a parent's agreement not to enroll their special-needs student in a public or charter school, the state will make quarterly deposits into an empowerment account in an amount slightly less than what the public school would have received to educate the child (thus saving the state money). Parents can then use those funds for any mix of the wide array of educational options permitted by the program, including paying tuition or fees at a private school, purchasing educational therapies or services from a licensed or accredited provider, educating their child at home, or hiring an accredited tutor.

One of the children who will benefit is Lexie Weck. Lexie, a ten-year-old girl with cerebral palsy, autism and mild mental retardation, is no stranger to

the school choice debate. Lexie and her mother, Andrea Weck Robertson, became the face of the school choice movement in 2006 when they intervened in *Cain v. Horne* to defend a voucher program for children with disabilities from a prior teachers' union lawsuit. Lexie used that program to escape a public school system that refused to meet her needs and to attend

a private school where she flourished.

In *Cain*, the Arizona Supreme Court struck down the voucher program because parents had "no choice; they [had to] endorse the check" over to a private school. The Court said this constraint on parental choice ran afoul of the Arizona Constitution, which prohibits giving state aid directly to private schools. Although it is ironic that a program that gave parents a genuine and free choice between district, charter and private educational options was construed to limit parental choice, no such characterization can be made of the Empowerment Scholarship Account Program.

The money deposited in Empowerment Accounts is controlled by parents. Parents can thus tailor their child's educational program by choosing from a broad menu of educational

options and services. In that way, it is abundantly clear the program aids individuals—not private schools.

Since the court's decision in *Cain*, parents like Andrea have relied on a scholarship tax-credit program named after Lexie for tuition assistance. But unfortunately, that program has not resulted in many scholarships and the funding is uncertain from year to

year. The Empowerment Scholarship Account Program, however, gives parents hope for a stable and

reliable program. And there is a reason to believe the Arizona courts will uphold the program: It is designed to comply with the *Cain* decision.

Although the teachers' unions seek to limit parental choice, Andrea and Lexie, along with several other parents of special-needs students, have teamed up with IJ to intervene in the lawsuit and defend Arizona's Empowerment Scholarship Account Program. A lot is riding on the outcome of this case. There are thousands of Arizona children with disabilities who need an alternative to public schools. We will not rest until we have secured their parents' right to choose the best education for their child. ♦

**Tim Keller** is the IJ Arizona Chapter executive director.







IJ vending client **Silvio Membreno** is surrounded by the Institute for Justice team at the launch of his lawsuit against the city of Hialeah, Fla.

**Florida Chapter** continued from **page 1**  
yet the city's vending law makes it impossible to be an *effective* street vendor. Designed to protect local brick-and-mortar businesses from competition, the city's laws do their job all too well, with huge costs to vending entrepreneurs and consumers alike.

The centerpiece of Hialeah's regulations is a "proximity restriction" that makes it illegal for a vendor to work within 300 feet of any store selling "the same or similar" merchandise. In other words, a vendor must be at least a football field away from any store with which he *might* compete—not because the city is trying to protect public health or safety, but because it is trying to protect entrenched businesses from healthy competition by vendors.

The law also prohibits vendors from standing still. Unless they are actually in the middle of a transaction, vendors must be in constant motion, even when they are on private property with the owner's consent. Amazingly, the law seems to assume that people will be safer if street vendors are in constant motion, moving slowly around a parking lot or walking through intersections, instead of vending the way that makes sense: finding a spot where they can stop, sell and be safe.

In addition, the Hialeah law forbids vendors from placing their merchandise, supplies or equipment on the ground—again, even when on private property with the owner's permission. If vendors cannot display their merchandise or equipment on the ground, they cannot sell and cannot effectively compete. Flower vendors, such as Silvio, cannot even lawfully set a bucket of flowers on the ground near their feet. Yet brick-and-mortar stores are allowed to display flowers and other merchandise on the ground outside their buildings.

Silvio and the Florida Association of Vendors, a nonprofit membership organization comprising many of Hialeah's street vendors, have teamed up with the Institute for Justice to challenge Hialeah's restrictive vending laws. In a lawsuit filed in October 2011 in the Circuit Court in Miami-Dade County, Silvio argues that the city of Hialeah has infringed his right to earn an honest living under the Florida Constitution. A win for Silvio means economic freedom not only for Hialeah's street vendors, but also for entrepreneurs throughout Florida.



IJ's new Florida Chapter Executive Director **Elizabeth Price Foley** discusses the Chapter's inaugural lawsuit at a Miami press conference.

This lawsuit marks an important continuation of IJ's now 10-year history of litigating for liberty through state chapters. We have every hope and expectation that the IJ Florida Chapter will earn the kinds of victories for constitutional rights that have been trailblazed by our Arizona, Minnesota, Texas and Washington chapters, not to mention earlier IJ litigation advancing our core mission. It is time for Florida to reap the benefits of full-time fighters for freedom in the IJ fashion. ♦

**Elizabeth Price Foley** is the IJ Florida Chapter executive director.



# IJ Defends Mississippi Citizen Speech

By Paul Avelar

Through our Citizen Speech Initiative, IJ has undertaken a nationwide fight against “campaign finance” laws that restrict grassroots speech, political involvement and democracy. These laws, which are often most pernicious at the state and local level, affect everyone who wants to speak about politics. IJ is now advancing its fight with our new Mississippi citizen speech case.

Vance Justice, Sharon Bynum, Matt Johnson, Alison Kinnaman and Stan O'Dell are likeminded friends and neighbors who live in Mississippi—one of just seven states that has not reformed its eminent domain laws since *Kelo*. But in the 2011 election, Mississippians have the chance to vote on Initiative 31, which will create much-needed reforms.

These friends merely wanted to inform their neighbors about Initiative 31 and government abuse of eminent domain—an important issue that affects us all. Instead, they are learning a lesson in government abridgment of free speech—also an important issue that affects us all.

Under Mississippi law, anytime two or more people join together to spend more than \$200 to support or oppose a ballot issue, they become a fully regulated political committee. They must register with the state; appoint a director and treasurer; file monthly, annual and other periodic

reports of their activities; and keep track of every dollar that is spent or contributed—including the gas used to drive to a copy shop to pick up flyers. Even an individual who spends more than \$200 has to report the same information.

These requirements are so burdensome and expensive to administer that the U.S. Supreme Court has already ruled them unconstitutional for corporations and unions. And they are so complex that they create traps for the unwary by criminalizing free speech. Even innocent mistakes can result in fines and worse.

These laws also require people to disclose personal information—names, addresses, telephone numbers, occupations and employers—to the government. The government then puts all that information on the Internet. This can open people to retaliation from employers or political opponents and scares people away from political involvement.

In conjunction with the lawsuit, IJ also released *Full Disclosure: How Campaign Finance Disclosure Laws Fail to Inform Voters*

and *Stifle Public Debate*, by David M. Primo, Ph.D. This report is the culmination of IJ's

research on mandatory disclosure—a one-stop source for information about what mandatory disclosure does and does not do. Through an original experiment, Dr. Primo showed that in a world where information about politics is everywhere, any additional benefit from mandatory disclosure is virtually nonexistent. Thus, mandatory disclosure does not do the things reformers promise; it only imposes onerous burdens on speech and scares people away from political engagement—resulting in less speech.

In America, the only thing you should need to speak is an opinion. But thanks to burdensome campaign finance laws, you also need a lawyer. This is why IJ is here to stand with citizens like Vance, Sharon, Matt, Alison and Stan, and to stand up for citizen speech. ♦

**Paul Avelar** is an IJ Arizona Chapter staff attorney.



This report is available for download at [www.ij.org/4105](http://www.ij.org/4105)



**“These laws also require people to disclose personal information—names, addresses, telephone numbers, occupations and employers—to the government. The government then puts all that information on the Internet. This can open people to retaliation from employers or political opponents and scares people away from political involvement.”**





## The Freedom Market:

Help us spread a little freedom  
this holiday season

Gifts for freedom lovers:  
[fmarket.ij.org](http://fmarket.ij.org)



Acrylic Cup and Straw  
**\$10**



20th Anniversary Ornament  
**\$15**



IJ Logo T-Shirt  
**\$15**



Wine Opener  
**\$9**



Flip Flops  
**\$10**



Commemorative Calendar  
**\$10**



Grocery Tote  
**\$3**



Born Libertarian Onesie  
**\$20**

**\$5 flat shipping for all orders.** Standard shipping only. Offer ends December 16th.

# Washington Ferry Monopoly Leaves Economic Liberty High and Dry

By Michael Bindas and Larry Salzman

In October, IJ filed a lawsuit to sink the government-imposed ferry monopoly on Washington's Lake Chelan and allow entrepreneurs like Jim and Cliff Courtney to set sail.

Jim and Cliff are fourth-generation residents of Stehekin, a remote community on the northwest end of the 55-mile-long lake. For decades, Stehekin has been a popular destination for tourists and outdoor enthusiasts. In fact, the Courtney family owns a rustic ranch and outfitter in the community.

But getting to Stehekin can be a bit of a challenge: It's only accessible by boat, plane or foot.

For years, Jim and Cliff listened as their customers complained about the inconvenient schedule of the lake's lone ferry operator. Much of the year, it runs a single boat, which makes only one trip per day, three days per week. During peak summer months, it operates two boats, but each still only makes one trip per day and, absurdly, both boats depart at the same time each morning, headed in the same direction. That means vacationers from Seattle or Spokane must often spend an extra night in Chelan, on the lake's southeast end, in order to catch one of the early morning ferries to Stehekin.

Several years ago, Jim decided to launch a competing ferry, but a state law makes it illegal to operate a ferry without a "certificate of public convenience and necessity."

What does it take to get a certificate? Either the consent of the existing ferry operator (which essentially gives existing businesses veto power over potential competitors) or convincing the government, in a trial-like proceeding, that the existing operator's service is unreasonable and inadequate, and that the "public convenience and necessity" require additional service. The existing operator gets to participate and argue why the newcomer should be kept out of the market.

Needless to say, Jim did not get his certificate. In fact, the state has allowed only one ferry operator on Lake Chelan since the 1920s.

Like most Americans, the Courtney brothers know that consumers and entrepreneurs—not the government—should decide whether a ferry business is "necessary." So they teamed up with IJ to sink the Lake Chelan monopoly.

What will we use to sink it? The Privileges or Immunities Clause. As regular *Liberty & Law* readers know, this provision of the 14th



IJ clients **Cliff and Jim Courtney** are entrepreneurs who want to provide convenient ferry service across Lake Chelan, Wash., but are barred by the state government from doing so.

Amendment was adopted in the wake of the Civil War to protect the economic liberty of newly freed slaves and other Americans. But in the *Slaughter-House Cases*, the Supreme Court gutted the Privileges or Immunities Clause by construing it to protect only a handful of very narrow rights.

Fortunately for Jim and Cliff, one of the few rights that *Slaughter-House* recognized is "the right to use the navigable waters of the United States." That may seem pretty arcane, but for Jim and Cliff, it is anything but: The right to use Lake Chelan, which the federal government has designated a navigable waterway, is essential to the pursuit of their livelihood—that is, to their economic liberty.

By challenging the ferry monopoly, we will achieve one of IJ's founding goals: reinvigorating the Privileges or Immunities Clause. We'll restore the clause to its proper place as the primary bulwark of economic liberty and, in so doing, allow entrepreneurs like Jim and Cliff to chart their own course free from excessive government regulation. ♦



Watch the IJ case video



**Michael Bindas** is an IJ Washington Chapter senior attorney and **Larry Salzman** is an IJ staff attorney.





### About the publication

*Liberty & Law* is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication, activism and research, advances a rule of law under which individuals can control their destinies as free and responsible members of society. IJ litigates to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties, and to restore constitutional limits on the power of government. In addition, IJ trains law students, lawyers and 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

### Freedom Watch (Fox Business)



**IJ Senior Attorney Scott Bullock:** “Civil forfeiture laws in Massachusetts and throughout the country are very, very broad. And it’s one of the reasons why civil forfeiture has to be done away with. Criminal forfeiture, after somebody is convicted of a crime, if you want to take away the property he got illegally, that can be legitimate.

Civil forfeiture is when the government takes people’s property away from them regardless of whether or not they’ve been convicted of any crime or even arrested for any crime. One of the most outrageous things about the Massachusetts case is that this forfeiture would probably be illegal under state law, so the local police department transferred it to the feds, and now the U.S. Attorney is after the Motel Caswell and they’re going to split the proceeds of this forfeiture. This is about making money.”

### KTVK-3TV (Arizona Family Channel)

#### IJ Arizona Chapter Director Tim Keller:

“A parent with a child of special needs can apply to the state and get 90 percent of the funds that the state would have spent on that child in the public school and have it deposited into an education savings account. It’s not the public school’s money. The money is set aside to educate children. If parents lose this program, many of them will be forced to put their children back into public schools that were not meeting their unique educational needs.”



### Milwaukee Journal Sentinel

“The City of Milwaukee needs more transportation options. It needs more buses, more express bus service, rail options and good streets. It also could use more taxicabs, part of any big city’s transportation options. So why is there a cap on the number of cab permits the city allows, and why should it cost \$80,000—or \$150,000 (estimates vary)—to get one?

It shouldn’t—and there shouldn’t be a cap. Which is why three cabdrivers and a public interest law firm are filing suit to change the city’s medieval cab permit system. Here’s hoping the Common Council sees the sense in their argument and drops the cap before the city spends too much on lawyers’ fees.”

**“IJ Senior Attorney**

**Bert Gall [is] the**

**patron saint of**

**food trucks”**

*The Wall Street Journal*



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