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# Liberty & LAW

## Life-saving Win:

**IJ Earns Major Legal Victory  
on Behalf Of Cancer Patients  
& Their Families**



IJ client **Akiim DeShay** seeks a bone marrow donor match, but a federal law has hampered that search. Thanks to a recent federal appeals court victory by IJ, a pilot program designed to attract more bone marrow donors may now start moving forward.

**By Jeff Rowes**

On December 1, 2011, the 9<sup>th</sup> U.S. Circuit Court of Appeals handed down an important decision in favor of IJ and its clients that may mean the difference between life and death for those suffering from deadly blood diseases. The court held that the U.S. Attorney General could not lawfully apply the National Organ Transplant Act, which prohibits organ sales, to the compensation of bone marrow donors as long as the donated marrow cells are obtained using the same method for donating blood cells and plasma.

This decision will enable IJ client MoreMarrowDonors.org to move forward with its plan to create a pilot program to determine whether the compensation of marrow-cell donors will lead to more and better transplants for the thousands

of people now searching for a donor. Thousands of Americans die every year awaiting a compatible donor.

Matching patients and donors is extremely difficult because of the deep genetic compatibility necessary for the transplant to work. Only 30 percent of patients will have a compatible donor in their family. The rest must turn to a national registry of potential donors, which, despite having the genetic profiles of several million people, frequently cannot match patients with ready, willing and able donors.

The odds are particularly bad for minority donors, including people of mixed racial heritage. African-Americans, for example, will find a matching donor on the registry only about a quarter of the time.

**Bone Marrow** continued on page 9



Thanks to the trial court's ruling, IJ clients **Monica Poindexter** (above) and **Heather Coffy** (right) can continue to pick the schools that best suit their children's educational needs.

## SCHOOL CHOICE WINS AGAIN IN INDIANA

### Bert Gall

IJ has scored yet another big win for school choice in the Hoosier State.

This past July, IJ joined Indiana in defending the state's new Choice Scholarship Program—which allows low- and middle-income families to obtain publicly funded scholarships that they may use to attend private schools or public schools outside of their school district—from a lawsuit supported by the National Education Association and the Indiana State Teachers Association. As we reported in the October issue of *Liberty & Law*, we defeated the unions' attempt to get a state trial court to issue a preliminary injunction against the program that would have shut it down until the court reached a final decision on its constitutionality. Nearly 4,000 children are now participating in the program, the fastest start ever for any school choice program.

Now, we have even better news to report. After a court hearing in December in which Indiana Solicitor General Tom Fisher and I argued in favor of the program's constitutionality, Marion County Superior Court Judge Michael Keele granted IJ's motion for summary judgment and issued a final ruling that rejects all of the unions' legal claims.

In its January 13 decision, the court rejected the unions' principal contention that the Choice Scholarship Program (CSP) improperly benefits private religious schools. The court held that the program "is not in place 'for the benefit' of religious schools. To the contrary, the CSP bestows benefits on scholarship recipients who may then choose to use the funding for education at a public, secular private, or religious private school." The court also recognized that a ruling for the unions would have had the radical result of placing in jeopardy "a host of other longtime religion-neutral state programs [such as the Frank O'Bannon Grant Program, which provides scholarships to students attending college, including private religious colleges] whereby taxpayer funds are ultimately paid to religious institutions by way of individual choice."

The court's ruling represents a major win for the parents in Indiana who, like IJ clients Heather Coffy and Monica Poindexter, are currently using Choice Scholarships to provide their children with a quality education that was not available to them in the public schools. Furthermore, the ruling means that even more parents and students will be able to participate in the program, which has the potential to become the largest of its kind in the nation.





Although the teachers' unions have appealed the ruling, we are confident that the trial court's well-reasoned decision—in which it agreed with IJ's legal arguments while systematically dismantling those offered by the unions—will not be overturned. Indeed, because we are confident in the program's constitutionality, we are pushing to get the case to the Indiana Supreme Court as soon as possible. Our goal is to get a final ruling from that court this year that will dispose of the unions' lawsuit once and for all. Once that happens, the cloud of legal uncertainty created by the lawsuit will completely disappear. Moreover, a win at the Indiana Supreme Court will have national significance because it will create persuasive legal precedent that courts in other states can look to when evaluating the constitutionality of

their own school choice programs.

The bottom line is this: The Choice Scholarship Program is perfectly consistent with the Indiana Constitution. The teachers' unions will keep fighting the program because it conflicts with their self-serving agenda of preventing competition in the educational marketplace. But we will redouble our efforts to make sure that they fail—and that school choice for Indiana families remains a reality.

Stay tuned. We hope to report on a victory before the Indiana Supreme Court later this year. ♦

**Bert Gall** is an  
IJ senior attorney.





IJ clients, from left, **Kim Sjostrom, Brad Sonnentag, and Robert and Rebecca McCaughtry** have steadfastly sought the right to challenge the constitutionality of the Red Wing, Minn., rental home inspection law. Thanks to IJ's recent Minnesota Supreme Court victory, their constitutional challenge will move forward.

## Minnesota Supreme Court Ruling Advances Property Owners' and Renters' Challenge To Unconstitutional Inspection Scheme

By Dana Berliner

On December 28, 2011, the Minnesota Supreme Court handed down an important victory for Red Wing property owners and renters, and for citizens across the state of Minnesota. The court allowed a property rights case to go forward that had been tied up by procedural wrangling for more than five years. The case challenges Red Wing's rental inspection program, under which the city can enter and inspect people's homes without any evidence that a code violation has taken place. The decision, which seriously examined the facts of the case and the practical impact of the law on plaintiffs' rights, is a model of judicial engagement.

Nine landlords and two tenants from Red Wing, Minn.—who are represented by IJ—object to Red Wing's rental inspection law. Many cities across Minnesota—including Minneapolis, St. Paul, Duluth and Rochester—have ordinances like Red Wing's that allow government officials to conduct housing inspections of all rented homes in the city, even if the tenant refuses to consent to the search and even if the government has no reason to believe there is a problem with the rental home or even with the building.

Red Wing's unconstitutional inspection program allows government inspectors to poke around in practically every nook and cranny of rented homes—even closets and bathrooms. Over the past four years, Red Wing had tried three times to get what are called “administrative” warrants to force entry into these homes after the tenants and landlords refused to consent to the searches. Unlike a typical search warrant, an “administrative” warrant does not require individual probable cause—in other words, the government does not need any evidence that the law has been violated. It simply says there is a general reason to search. In the case of rental inspection programs, cities simply say that they have an inspection program and that they need to conduct searches in order to make sure everyone is complying with all housing codes. If the administrative warrant is granted, the government is then free to search the homes of renters against their wishes.

Even though Red Wing had been trying aggressively to get these warrants to search our clients' homes and properties, and even though Red Wing had stated unequivocally that it would continue to seek entry to the homes, both the trial and



appeals courts had said that the tenants and landlords did not have standing to challenge the rental inspection law. It looked like our clients were going to have to wait until *after* an unconstitutional search in order to challenge it. Now, thanks to the Minnesota Supreme Court, the courthouse door is open and our clients will find out if the law is constitutional *before* it is used against them.

As the Minnesota Supreme Court pointed out, "The City has actually begun enforcing the rental inspection ordinance against appellants." Therefore, there is a real dispute over our clients' rights, and the courts can proceed to address whether the law is unconstitutional.

Landlord Robert McCaughtry, one of our clients, has had enough of the city's inspection program. He said, "It is wrong for the city to force its way into people's homes without any evidence of a problem or code violation. I'm grateful that we'll finally get our opportunity to show that this program is unconstitutional."

The Minnesota Supreme Court sent the case back to the Minnesota Court of Appeals to consider whether the Minnesota Constitution forbids administrative search warrants, particularly administrative search warrants for people's homes. We argue, to the contrary that the Minnesota Constitution requires actual probable cause to believe that someone is violating the law before the government may conduct a search against someone's will. If we are successful, the decision will protect all Minnesotans and set important precedent throughout the country. ♦

**Dana Berliner** is IJ's litigation director.



**Carlos Barragan**, right, is now free to train and inspire National City, Calif., youth at his boxing gym and mentoring center without the government threatening eminent domain. His case recently sparked another court victory, this one for open meetings in California.

## IJ Earns Twofold Victory In California

By William R. Maurer

Call it a twofold win that will both advance government transparency and help fight eminent domain abuse.

On November 10, 2011, the San Diego Superior Court issued an order temporarily enjoining National City from using changes to its main land-use documents as the basis for a finding of blight. The changes to the documents—and the ability to use them to justify a new blight designation—could have had devastating effects on the Institute for Justice's client, the Community Youth Athletic Center (CYAC).

After IJ and CYAC prevailed against National City in its efforts to renew its blight designation in order to facilitate the condemnation and transfer of CYAC's gym to private developers, National City passed significant—and potentially destructive—changes to its documents governing land use. These changes could have generated a new blight designation and another effort to take CYAC's property.

IJ quickly identified a major problem with what the local government was trying to do: National City's Planning Commission had failed to comply with California's open public meetings law. That law requires the city to issue an agenda prior to the hearing listing the documents on which the commission would vote; the commission's agenda instead described all ten documents in one meaningless catch-all phrase. CYAC and IJ sued to force the city to start the entire process over.

Soon after the court issued the injunction, the city capitulated and decided to re-notice and re-hold the hearing. In the meantime, the California Supreme Court issued a decision upholding California's new law abolishing redevelopment agencies, thus sparing CYAC from new threats of eminent domain abuse.

IJ's tenacity and its willingness to follow up its victories helped CYAC win yet another round in its fight against National City. And we'll continue fighting until this inspiring gym that helps keep at-risk kids off the street is safe from the wrecking ball once and for all. ♦

**William R. Maurer** is executive director of the IJ Washington Chapter.





# LICENSED TO SPEAK?

## New Orleans Tour Guides Challenge Speech Licensing Requirements

IJ client **Mary LaCoste** (top) and IJ clients **Candance Kagan** (left), **Annette Watt** (center) and **Jocelyn Cole** (right) are New Orleans tour guides challenging the city's licensing scheme.

By Matt Miller

I was not required to get a license from the government to write this story. Indeed, if the government attempted to require such a license, I would have swift redress under the First Amendment. But if I were to walk around New Orleans and talk about the Crescent City to tourists, the city would require me to first obtain a government-issued license. It may seem absurd, but the city of New Orleans' 500 tour guides must each possess a city-issued license in order to talk about their town. That is why—after filing similar cases in Philadelphia and Washington, D.C.—IJ is back in court to defend the First Amendment rights of tour guides. The license requirement applies to every kind of tour, including ghost tours and the ever-popular vampire tours of the

French Quarter. Before a guide can tell you about the history of Jackson Square or point out where Tom Cruise filmed *Interview With a Vampire*, that guide must pass a written examination approved by the city, urinate in a cup for a drug test and submit her fingerprints to the FBI for a background check.

Anyone caught guiding tours without a license can spend up to five months in jail and be fined up to \$300 per day. The local tour-guide community is rightfully upset about the licensing requirement. They tell stories of city inspectors approaching tour-guide groups and ordering them to disband if they do not possess a city-issued license. The tour guides view themselves no differently than writers or teachers: They educate and entertain for a living. They understand







Watch the IJ case video.

that the First Amendment protects their right to speak, just like it protects my right to write this story and your right to read it.

That is why four New Orleans tour guides have joined with the Institute for Justice to sue the city over its tour guide licensing law. The city cannot make you pass a history exam or be fingerprinted for the FBI in order to speak. If a tour guide embellishes a story or gets a date wrong, that's just too bad. It is no different than an iPod audio tour of the Garden District making the same mistake yet iPod tours do not require licenses. In both cases, the government has absolutely no interest in playing truth police; such decisions are best left to tour guides and their customers.

If our clients are successful, their lawsuit will eliminate a ridiculous and wasteful law that harasses speakers based on the content of their speech and uses city resources that are better spent protecting people from actual danger. Far from being part of the problem, tour guides—and other Big Easy entrepreneurs—are a big part of the solution for New Orleans as it continues to rebuild after Hurricane Katrina and the national economic crisis. Rather than weighing them down with senseless restrictions on their speech, the city should be allowing tour guides to continue showing visitors around the best of what New Orleans has to offer. ♦

**Matt Miller** is executive director of the IJ Texas Chapter.



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Visit our website at [www.ij.org/donate](http://www.ij.org/donate) to enroll, or contact Mary Quintanilla at [mary@ij.org](mailto:mary@ij.org) or 703-682-9320 ext. 239 for more information. ♦



# Stifling Citizen Speech In Arizona

By Steve Simpson

The Institute for Justice won an important victory for free speech on November 3, 2011, when we secured a preliminary injunction against Arizona campaign finance laws that prevented Dina Galassini, a resident of Fountain Hills, Ariz., from holding a peaceful protest against a town bond issue.

In early October, Dina sent an email to 23 friends and neighbors criticizing the bond issue and asking them to join her in speaking out against it. She scheduled two protests on street corners so she and her friends could express their opposition to the bond issue to other residents of Fountain Hills. Little did Dina know that in Arizona, like many other states, you need more than an opinion to join with others to speak about politics—you also need a lawyer.

Within a week of sending her email, Dina received a letter from the town clerk urging her to “cease any campaign related activities” until she had registered as a “political committee” and complied with “all of the requirements associated with a PAC.” (A PAC is a Political Action Committee.) According to the clerk,

although an individual acting alone is not a political committee, “if any additional person or persons join the effort,” they must register as a PAC “prior to **any** electioneering taking place.”

Under Arizona law, even groups that intend to spend less than \$500 must register with the government before distributing any literature, making signs or passing out flyers. Even if they do not intend to raise funds from others, the fact that their speech has value is enough to qualify them as PACs. Under the law, they must appoint a treasurer and chairman; they must designate a bank account; they must put notices on their signs stating that they were “paid for” by a PAC; they must track their activities and be prepared to open their files to the town; and they must file a notice of termination when the election is over.

Dina was stunned. She never thought the simple act of joining with others to voice her opposition to a local bond issue could land her in legal hot water. She cancelled her protests and began speaking to attorneys.

On October 26, 2011, the Institute for Justice filed suit against the town of Fountain Hills for violating Dina's First Amendment

Dina Galassini (above) and friends protesting a bond issue in Fountain Hills, Ariz.

rights. On November 3, 2011, after a full evidentiary hearing, a federal court in Phoenix enjoined the enforcement of the campaign finance laws against Dina and her friends. The Court concluded that Dina was likely to succeed in her case against the town and that requiring her to register with the town and comply with red tape simply to speak out chilled her right to freedom of speech.

Although the laws prevented Dina from speaking out when she wanted, she was able to hold her protest two days before the end of mail-in voting on November 8 and her side of this fight ultimately won. Not everyone is lucky enough to get free legal representation so quickly, however, so Dina, with IJ's help, will press forward in her case for a ruling that will free up all Arizonans from burdensome campaign finance laws. ♦

Steve Simpson is an  
IJ senior attorney.







Clients from IJ's case challenging government-imposed restrictions on compensating bone marrow donors have earned a significant victory before the 9<sup>th</sup> U.S. Circuit Court of Appeals. Among our clients are **Doreen Flynn** (left), **Mike Hamel** and his wife, Susan (center), and **Kumud Majumder** (right).

**Bone Marrow** continued from **page 1**  
MoreMarrowDonors.org's hope is that strategic compensation will induce more people to join the registry and, perhaps more importantly, induce them to go through with donation if ever asked.

Consider the tragic story of Penny Lindenberg. The married mother of two young girls was diagnosed with leukemia but had no matching marrow donor in the family. There were four matching donors on the registry, but none was willing or available to go through the safe, but uncomfortable, donation procedure. Penny died last year, and her husband Brian said of the matching potential donors' refusal to step forward, "Now I have two girls at home without a mother, and lots of lives are ruined." Who can doubt that Penny's chances of persuading a donor to save her life would have been higher had she been able to compensate the donor for time and inconvenience?

This victory is a tribute to our clients, many of whom—either as the parents of sick children or as a leading bone marrow doctor—have a lot at stake in challenging the status quo. We want to acknowledge the special courage of the Majumder family, whose beloved 11-year-old son Arya died of his leukemia a few months after we launched the case. Arya, who attended the launch in Washington, D.C., in October 2009 while in remission, was

an inspiration to all of us and his family never wavered in their support of our effort after Arya's passing in early 2010 when his cancer returned.

Although we won a major victory, along with significant and positive media attention from news outlets across the nation, the fight may not be over. On January 17, 2012, the Attorney General filed a petition requesting that the full 9<sup>th</sup> Circuit rehear the appeal and overturn the decision of the three-judge panel. Rehearing is very rare and we do not expect the court to grant the Attorney General's petition. If rehearing is granted, however, then the case will be re-briefed and reargued. If rehearing is denied, then the Attorney General may seek review in the U.S. Supreme Court, which may give us the opportunity to vindicate the principles of liberty in the highest court in the land.

This past December's victory is a vindication for IJ's high-stakes litigation strategy, and we will use the same passion, purpose and calculated risk-taking to defend freedom—for our clients, for people like Penny Lindenberg and Arya Majumder, and for thousands of others whose names we will never know. That is the IJ way. ♦

**Jeff Rowes** is an IJ senior attorney.



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**—Jason Orr, Fall 2009 Maffucci Fellow and 1L at Harvard Law**



## Can the Government Arbitrarily Restrict Property Rights?

### *IJ Seeks to Bust a Cap on Rental Properties*

#### Katelynn McBride

Crushing property rights sometimes seems like a government pastime. Winona, a river town in southeastern Minnesota, is the latest offender with its destructive ban on renting out homes.

In Winona, only 30 percent of homes on a given block may receive a government-issued license entitling the owner to rent them out. As soon as 30 percent of the properties on a block obtain rental licenses, no other property on that block may receive a rental license. That means if 30 percent of your neighbors have already secured rental licenses, you will be turned away even if your neighbors with licenses live in their homes and don't rent them out and even if your home is perfectly safe and your tenants would be perfectly law abiding.

Winona homeowners who have been denied the right to rent out their homes have joined with the Institute for Justice Minnesota Chapter to challenge the city's unconstitutional rental ban in the hopes of protecting the property rights of all Minnesotans.

Ethan Dean owns a home in Winona and he is currently serving as a U.S. advisor in Afghanistan after serving four previous stints in Iraq. While working abroad, Ethan was left with a home that he could not sell and that the government would not allow him to rent. Ethan has been granted a temporary permit, but it will expire soon. Because of this senselessly heavy-handed and ill-conceived government policy, he is left not knowing how he will pay his mortgage in the long term.

Ethan and three other Winona homeowners represented by IJ are challenging Winona's rental ban as violating the Minnesota Constitution. IJ's lawsuit is the first challenge to such rental bans, which are slowly spreading from Winona to other Minnesota cities. The goal is to nip these acts of grassroots tyranny in the bud before they spread elsewhere.

The effects of rental-property bans can be devastating. When life's circumstances change and Winona homeowners must unexpectedly move to another town to pursue other opportunities, the question of how the mortgage will get paid looms large. In

our sluggish economy and housing crash, many homeowners are struggling to sell their homes. Renting is the next-best option for those who do not want to lose a significant amount of money or, worse, lose their homes entirely.

Not only does the rental ban forbid homeowners from covering their mortgages with rental income, but it also damages their property values and their ability to sell their homes in the first place. Potential buyers who may want to rent out a property after purchase lose interest after they learn a property can't be rented. This pushes housing prices—and homeowners' ability to sell—down even further.

Your right to use your property should not depend on the actions of your neighbors. This has been long understood, but too often forgotten. IJ's role is to remind petty tyrants that their power is limited. ♦

**Katelynn McBride** is an IJ Minnesota Chapter attorney.





# IJ Clinic Entrepreneur Succeeds Despite Government Interference

IJ Clinic on Entrepreneurship client **Kenneth Coats** personifies the entrepreneurial ambition found in inner-cities across the United States. The IJ Clinic has helped Coats create businesses that help others get to work.

By Erika Pfleger

Politicians promise to create jobs, but instead they keep piling on burdensome regulations. IJ Clinic client Kentech Consulting could show them a thing or two about how jobs are really created.

Kenneth Coats founded Kentech in 2007 in response to a problem he observed in his community: People—especially young adults—were struggling to find employment because of misleading or extraneous information in their records. As an entrepreneur, Ken didn't just see the problem—he resolved to do something about it by creating a low-cost, web-based record expungement service that gave customers correct information at a lower cost than hiring an attorney. But the Illinois Attorney General accused Kentech of the unauthorized practice of law and shut the service down.

"I was devastated," says Ken, who had left his job to start this business because he wanted to make a living by serving his community. Although his spirit was bruised, Ken refused to quit. He reinvented Kentech as a background screening business with a twist—Ken uses his tech

savvy and business experience to provide customers with accurate information about potential tenants or employees in streamlined, paperless reports.

The reinvented business has still had to struggle against restrictive laws. "The type of work we do—you can't sneeze without it involving a law," says Ken.

That is where the IJ Clinic on Entrepreneurship comes in. IJ Clinic students at the University of Chicago Law School have advised Kentech on laws governing private detective licenses, credit reporting, fingerprint processing licenses and more to make sure that his agreements are sound and his business can flourish. Ken said the IJ Clinic's legal counsel helped him navigate these obstacles and was indispensable during Kentech's transition process and beyond.

In turn, the law students have had an eye-opening experience. They have seen first-hand how destructive anticompetitive regulations can be, suppressing creativity and depriving customers of options. But they have also been inspired by Ken's entrepreneurial creativity and perseverance.

After years of slowly rebuilding, Ken's

business was stable by early 2011. He was the sole full-time employee, with several contractors and steady customers. Then, according to Ken, "Christmas came early!" in mid-December: Kentech secured a large, five-year contract. After a flurry of activity to boost staff, Kentech closed the year with nine employees and a team of more than 20 contractors. His risk-taking and innovation paid off.

To add to his holiday joy, Ken was selected to join the highly competitive Goldman Sachs 10,000 Small Businesses program, which recognizes the critical role that small businesses play in job creation. The program identifies and mentors entrepreneurs who are well-positioned to create substantial new private sector jobs.

Ken has not given up on his initial vision for a record expungement service. Long-term, he hopes to use some of Kentech's profits to fund a legal clinic—like the IJ Clinic—and use his software program to help low-income individuals clear their records so they, too, can get to work.

For now, he's focused on investing in Kentech. "I look at all the people who work here now," Ken said, "and it feels really good to create these jobs for others."

His resolution for 2012: keep growing. The IJ Clinic's resolution for all of our clients is equally clear: keep helping. ♦

**Erika Pfleger** is assistant director of the IJ Clinic on Entrepreneurship.



# New Reports Counter School Choice Opponents' Myths with Facts

By Lisa Knepper

As regular readers of *Liberty & Law* know, seldom does a new school choice program go unchallenged in court. Indeed even the proposal of a program will be met with cries that expanding educational choice to include private and religious schools is unconstitutional.

In a series of reports dating to the earliest days of IJ's strategic research program, we have carefully documented how these constitutional claims from school choice opponents run counter to the reality that states already have similar voucher and tax credit programs. We recently released the seventh and eighth reports in that series, focusing on vouchers in Indiana and tax credits in Idaho.

Like the federal government through Pell Grants and the G.I. Bill, states have long offered post-secondary scholarships that students can take to any school they choose, public or private, religious or non-religious. Indiana is no exception, with five decades-old scholarship programs students use to attend a wide array of schools, including religious institutions such as Notre Dame, Franklin College and Manchester College.

Choice in Indiana extends to K-12, where long-standing programs offer textbook and transportation assistance on a per-student basis to children in private schools, including religious schools. Altogether, Indiana's nine



Download *Expanding Choice* and *Opening the Schoolhouse Doors* at [www.ij.org/schoolpubs](http://www.ij.org/schoolpubs).

voucher-style programs provide about \$279 million in aid to more than 120,000 students.

As IJ Research Analyst Angela C. Erickson shows in *Opening the Schoolhouse Doors*, Indiana's new Choice Scholarship Program, the nation's most expansive, fits perfectly within the state's history of school choice and simply brings more schooling options within the financial reach of more families.

The report makes clear just how out of step with reality the teachers' unions' lawsuit challenging Indiana's program is. As Angela put it, "A parent relying on the Choice Scholarship Program to send her child to a Catholic high school is no different than a Hoosier Scholar or a Frank O'Bannon Scholar choosing to attend Notre Dame."

Just as IJ attorneys were filing final briefs and preparing for oral argument in defense of the program, Angela published an article co-authored with IJ Director of Strategic Research Dick Carpenter in *Indiana Policy Review* detailing Indiana's long history of school choice, and she argued in op-eds in two Indiana newspapers that this shows that the new choice program is indeed consistent with the Indiana Constitution.

Meanwhile, Dick authored a new report, *Expanding Choice: Tax Credits and Educational Access in Idaho*, which documents more than a dozen tax credits in Idaho similar to a proposed scholarship tax credit program. In fact, one of these credits encourages donations to private and religious schools—some of the very same schools families would be free to choose through a scholarship tax credit program. The only difference between the existing and proposed credits is that instead of going directly to the schools, private donations would go to scholarship-granting organizations that would enable more families to afford those schools.

IJ and the Friedman Foundation for Educational Choice released the report as part of a joint effort in support of a scholarship tax credit bill that the Idaho legislature will consider in its upcoming session.

School choice is a common-sense policy rooted in decades of similar policy solutions. When opponents claim otherwise, we will be there to counter their myths with facts. ♦

**Lisa Knepper** is an Institute director of strategic research.





# Dentists vs. Smiles

By Paul Sherman

Lisa Martinez is an entrepreneur from Ledyard, Conn. Looking for a job that would let her be her own boss and give her a flexible schedule to spend time with her young children, Lisa opened up a teeth-whitening boutique in a shopping mall. There she sold an over-the-counter teeth-whitening product and instructed her customers on how to apply it to their own teeth, just as they would at home. This was a boon for her customers, because Lisa charged only about 25 percent of what a dentist would charge for similar services.

Any longtime IJ supporter can probably guess what happened next.

In a classic example of economic protectionism, the Connecticut Dental Commission issued a declaratory ruling that only licensed dentists may offer teeth-whitening services. Violating the ruling could get Lisa charged with the unlicensed practice of dentistry, a felony offense punishable by up to five years in jail, *per customer*, or up to \$25,000 in civil fines.

Even though millions of Americans use identical teeth-whitening products at home every day, Lisa had no choice but to close down her successful business. Lisa now works as a flight attendant, a job that pays less and requires her to spend time away from her family.

Lisa's story is, unfortunately, not unique; dental boards across the country have started cracking down on non-dentist teeth whitening in an effort to monopolize this lucrative subfield.

But when the Connecticut Dental Commission went after Lisa, they may have bitten off more than they can chew. Now, with help from the Institute for Justice, Lisa is fighting back. On November 15, 2011, IJ filed a lawsuit in federal court on behalf of Lisa and Smile Bright, a teeth-whitening company owned by Connecticut entrepreneurs Steve Barraco and Tasos Kariofyllis, to strike down Connecticut's dental monopoly on teeth whitening.

The Dental Commission's ruling violates the 14<sup>th</sup> Amendment to the U.S.

Constitution, which protects the right to earn an honest living subject only to reasonable government regulation. And the Dental Commission's ruling is patently unreasonable. The FDA regulates teeth-whitening products as cosmetics, which means that anyone, even a child, can buy the

strongest commercially available teeth-whitening product and apply it to his or her own teeth with no prescription, no supervision and no instruction.

These products are also safe; the American Dental Association states that the most common side effects are temporary tooth or gum sensitivity. More importantly, whatever minor risks come along with teeth whitening are exactly the same whether a person applies those products to his or her own teeth at home or at a shopping mall or salon.

The real reason for the Dental Commission's ruling is to protect licensed dentists from honest competition. But, as IJ has established in our groundbreaking litigation on behalf of hairbraiders, casket retailers and others, that is not a legitimate use of government power.

Although Lisa's fight is just beginning, the case has already garnered national media attention, including coverage in *The Wall Street Journal* and *Associated Press*, and dental boards across the country are on notice that IJ is watching them. As a result, a victory in this case could have implications for teeth-whitening entrepreneurs nationwide. Now that's something to smile about. ♦

Paul Sherman is an IJ attorney.



IJ client **Lisa Martinez** was forced to shut down her teeth-whitening boutique after the Connecticut Dental Commission ruled only licensed dentists could offer teeth-whitening services.



Watch the IJ case video.





## IJ Arizona Chapter Celebrates Tenth Anniversary

By Deborah Simpson

It has been 10 years since IJ announced that the cavalry was coming to Arizona in the form of the Institute for Justice's first-ever state chapter—an institution that would be dedicated to vindicating the rights of Arizonans under the Arizona and federal constitutions. Ever since the chapter opened its doors in October 2001, it has been leading the fight for individual liberty in Arizona.

From the beginning, the Arizona Chapter litigated like it had something to prove, kicking things off with one of IJ's most important victories: preventing the town of Mesa from using eminent domain to take Randy Bailey's brake shop. That decision by Arizona's Court of Appeals now protects the property of all Arizonans from local and state governments. To cap it off, Randy became a national media sensation after journalistic legend Mike Wallace interviewed him for a feature on CBS News' *60 Minutes*.

IJ-AZ followed that success with other quick victories striking down warrantless searches in Yuma and deregulating African hairbraiders. Essence Farmer, IJ-AZ's successful hairbraiding client, is currently preparing to open her second braiding salon. If not for IJ-AZ's help, Essence would have closed her doors back in 2003.

Equally impressive as these early wins is IJ-AZ's uncanny ability to wipe bad laws off the books without even having to file a lawsuit, thus avoiding the courts entirely. Illustrating that the pen is often mightier than the gavel, Tim Keller, IJ-AZ's executive director, has on eight different occasions

used "litigation by letterhead"—that is, letters threatening bureaucrats with a lawsuit—to warn off the government and protect the rights of individuals. Considering the cost differential between one letter and a full-blown lawsuit, Tim is perhaps the most efficient lawyer at the Institute for Justice.

Tim has been fighting and winning path-breaking battles for every one of the chapter's first 10 years, having started at IJ-AZ fresh off of a clerkship to become the chapter's first staff attorney and then the chapter's executive director. He has litigated cases in every one of IJ's pillar areas and was involved in both of IJ's victorious cases in the U.S. Supreme Court this past term, *Arizona Christian School Tuition Organization v. Winn* and *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*. In addition to the letterhead victories, the chapter has litigated another 17 cases, winning more than 80 percent of them. Pretty impressive for an outfit that only takes cases where the odds and the law are stacked against it.

The first of IJ's state chapters, Arizona has served as a cornerstone and a model for the Institute for Justice's entire state chapters project, which now also boasts chapters in Florida, Minnesota, Texas and Washington. IJ-AZ will continue to lead the charge for liberty in Arizona for the next 10 years and beyond. ♦

Deborah Simpson is IJ's managing vice president.



## IJ Accepting 2012 Law Student Conference Applications

The Institute for Justice is accepting applications for IJ's 2012 annual Law Student Conference. The conference will be held June 22-24, 2012, at the George Washington University in downtown Washington, D.C.

Each year the Institute for Justice brings 40 top law students to our nation's capital to learn how to use law as a force for freedom. In addition to IJ attorneys and staff, previous faculty have included Georgetown University Law Center Professor Randy Barnett, George Mason University School of Law Professor Todd Zywicki, and founder and director of the Cato Institute's Center for Constitutional Studies Roger Pilon. Previous conference keynote speakers include well-known judges and justices from around the nation, each of whom offered their view from the bench of public interest law.

For more information on IJ's student programs, visit [www.ij.org/students](http://www.ij.org/students). Interested students should apply through the Institute for Justice's student website at [www.ij.org/students](http://www.ij.org/students).

**The deadline to apply for the 2012 Law Student Conference is March 1, 2012. ♦**





**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

## *The Wall Street Journal*

"Chip Mellor . . . runs the most influential legal shop that most people have never heard of. Mr. Mellor is the 61-year-old chief of the Institute for Justice, which has been celebrating its 20th anniversary of guerrilla legal warfare on behalf of individual freedom. He's worth getting to know because he and his fellow legal battlers are behind a larger campaign to restore some of the Constitution's lost rights. And they're often succeeding."

## *Stossel*

### *Fox Business News*

"We've been successful in the Supreme Court in protecting economic liberty, private property rights and school choice. But it's not one or two cases that are really our biggest victory. Our biggest victory is demonstrating that the kind of public interest law that we practice is a strategic libertarian approach to securing constitutional protection for our most precious liberties, and it really is a powerful tool for doing just that. Our track record does speak for itself. And that is what we consider our biggest success."



## *Radley Balko*

### *The Agitator*

"Another important case from the Institute for Justice shows how laws passed under the guise of disclosure and clean elections quickly become a barrier to free speech and civic engagement . . . *Justice v. Hosemann* is part of a broader IJ campaign to overturn similarly burdensome campaign finance laws around the country."

## *George F. Will*

### *The Washington Post*

"How did America reach the point where aspiring entrepreneurs, seeking to improve their lot by improving other people's choices, must approach government on bended knee to beg it to confer upon them a right—the right to compete? . . . The Courtney brothers are represented by the Institute for Justice, which battles government infringements of individuals' liberties—particularly economic liberties."

**“Move over, ACLU. Chip Mellor, president of one of America’s most influential law groups is expanding freedom on political speech, organ transplants and other economic frontiers.”**

—The Wall Street Journal



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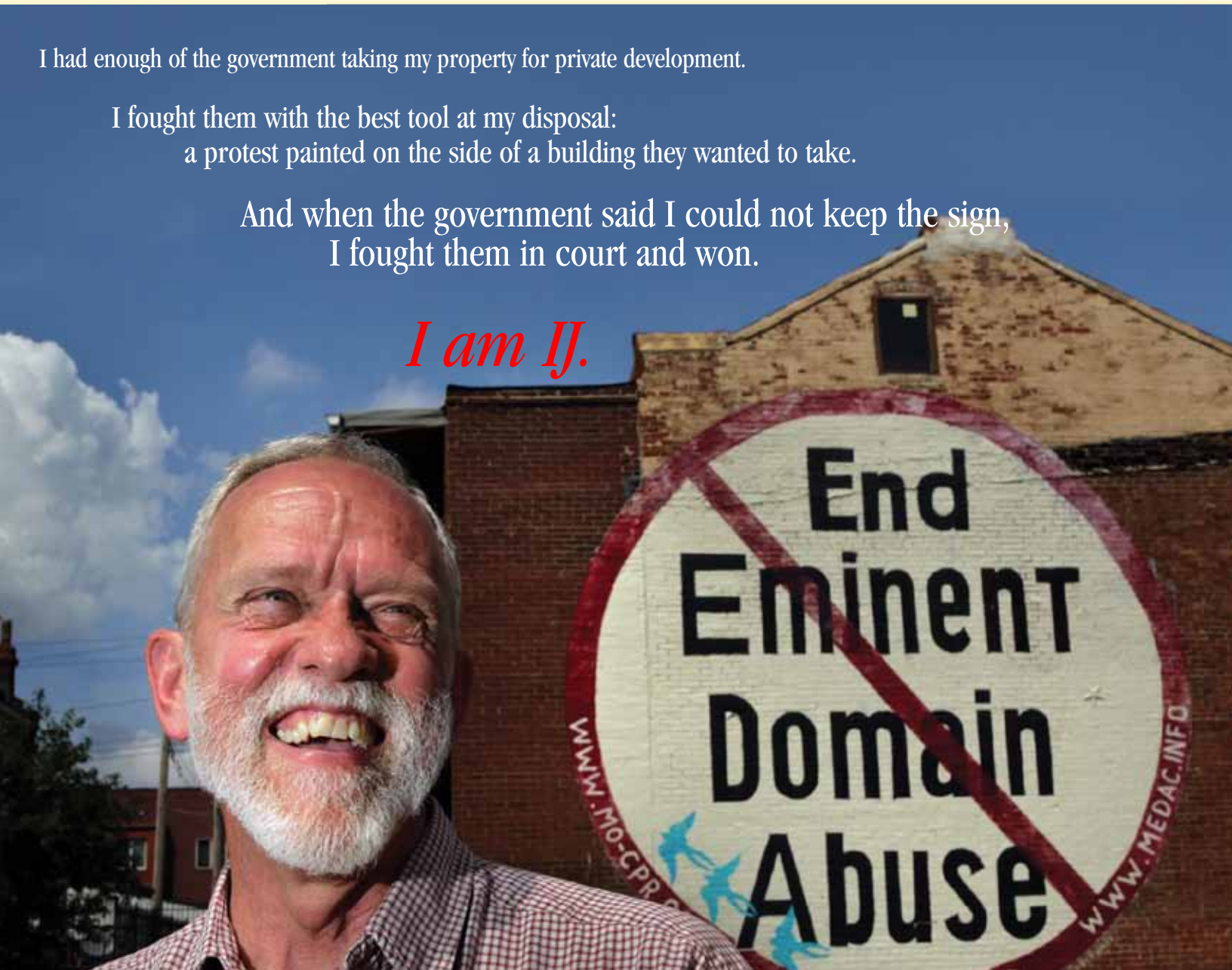
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J U S T I C E

I had enough of the government taking my property for private development.

I fought them with the best tool at my disposal:  
a protest painted on the side of a building they wanted to take.

And when the government said I could not keep the sign,  
I fought them in court and won.

*I am IJ.*



*Jim Roos*  
*St. Louis, MO*

[www.IJ.org](http://www.IJ.org)

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