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Inside This Issue

IJ in Atlantic City to Stop
Eminent Domain Abuse

2

Arkansas Orthodontist
Takes on Dental Cartel

6

Braiding Initiative
Aims for Freedom
For All Entrepreneurs

8

IJ Files 20th
School Choice Case

12

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IJ Clients **Tonia Edwards** and **Bill Main** celebrate their victory for the right to speak for a living.

Tour Guides Win Major Free-Speech Fight

By Robert McNamara

One of the hallmarks of IJ's success is our resilience and our never-wavering commitment to liberty. That resilience paid off in a big way in June with a resounding victory for occupational speech when the U.S. Court of Appeals for the D.C. Circuit unanimously struck down Washington, D.C.'s tour-guide licensing scheme. The court found that these rules—which literally make it illegal to describe things to paying tour groups without first passing a special multiple-choice test—violated the basic First Amendment right to talk for a living.

Readers of *Liberty & Law* may remember that we filed our first tour-guide suit in Philadelphia more

than six years ago. In 2008, IJ challenged that city's law making it illegal to give a tour of the city's main tourist area without passing a history test. Soon after we filed the lawsuit, a federal judge blocked Philadelphia from enforcing its anti-speech law for six months; the city subsequently announced that it would not enforce its tour-guide law.

Seeking to build on that victory, we filed a similar challenge in 2010 in D.C. on behalf of Bill Main and Tonia Edwards, who own and operate 'Segs in the City,' a Segway-based tour company that provides guided tours of D.C.'s monuments, embassies and more. It has taken Bill and Tonia four years of slog-

Free Speech continued on page 5

New Jersey and a Bankrupt Casino Want to Bulldoze a Home and Replace It with...

NOTHING.

By Robert McNamara

Charlie Birnbaum's is a classic American story. His parents—both immigrants and survivors of the Holocaust—left him many things: a love of this country, a deep passion for music and a home right near the boardwalk in Atlantic City. That home—his parents' foothold in their adopted country—has been a source of love, tragedy and renewal for the Birnbaum family for the past 50 years. Charlie

now keeps an apartment and piano studio on the ground floor; the top two floors are given over to longtime tenants who pay below-market rents; and every inch of the building represents Charlie's memories of his parents and family, all the way from the roof he used to work on with his father to the front steps he maintains with the help of his son-in-law today.

But all of this—the house, the memories, everything—will be destroyed if a New Jersey state agency called the Casino Reinvestment Development Authority (or "CRDA") has its way. CRDA wants to take the Birnbaums' longtime family home as part of

a proposed redevelopment plan surrounding the Revel Casino—a new luxury resort that has filed for bankruptcy twice in as many years.

But the kicker is what CRDA plans to do with Charlie's property: absolutely nothing. It has no plan for the property and it even admits as much. It just wants to take the home, bulldoze it and then think about what kind of development goes there.

It is difficult to overstate how sweeping CRDA's claims to power are. It claims, quite literally, that it should be allowed to take any piece of land in Atlantic City it wants, for any reason—or, in Charlie's case, for no reason at all. The problem is that for too long local courts have allowed the agency to get away with whatever it wants, which has



state agency called the Casino Reinvestment Development Authority (or "CRDA") has its way. CRDA wants to take the Birnbaums' longtime family home as part of

BIRNBAUM FAMILY HOME



Charlie Birnbaum's parents survived the Holocaust and, after moving to the U.S., survived many hurricanes in their Atlantic City home. But their beloved three-story walk-up apartment building within sight of the ocean and Atlantic City's famed boardwalk is being threatened by a government agency bent on taking it for the benefit of a bankrupt casino.

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led the agency to start acting like there is nothing to stand in its way. While the New Jersey Supreme Court increased protections for property owners against eminent domain abuse in 2007, it has not yet considered a case about the scope of CRDA’s power.

That is where IJ comes in. On May 20, we stood up in court with Charlie to defend the simple proposition that property rights are

sacred and they cannot be cast aside simply based on the bare assertion of self-interested state officials.

The results so far have been heartening. CRDA has believed from day one that it is entitled to take the Birnbaums’ home today and knock it down tomorrow, with no interference from the courts. It even started issuing eviction notices to tenants in the buildings it was planning to acquire months before the case went to court. But IJ’s powerful legal arguments—coupled with a wave of media attention and outrage—have stopped this ill-conceived and illegal land grab in its tracks.

Charlie’s case is just one example of a resurgence in eminent domain abuse undertaken by lawless, land-hungry bureaucrats who are determined to evade any limits on their power. As

regular readers of *Liberty & Law* will remember, the U.S. Supreme Court’s disastrous ruling in *Kelo v. City of New London* caused an overwhelming, nationwide wave of resistance to eminent domain abuse. Forty-four states changed their laws to make eminent domain abuse more difficult, and almost a dozen state courts issued important decisions that protected property owners. The message was unequivocal: Americans would no longer stand for this kind of abuse of property rights.

Unfortunately, New Jersey state officials seem to be part of the stubborn group of bureaucrats who refuse to listen to that message. IJ is committed to standing by Charlie and his family until the whole state hears us loud and clear. ♦

Robert McNamara is an IJ senior attorney.



REVEL CASINO

IJ client **Charlie Birnbaum** is joined by IJ attorneys **Robert McNamara**, left, and **Dan Alban** on the right at the launch of Charlie’s case against Atlantic City.

TURNING THE SPOTLIGHT ON ECONOMIC LIBERTY

By Chip Mellor

IJ strives to set the terms of debate in all we do. Most notably, that involves elevating public appreciation of the principles at the heart of our work. We take on issues that affect people of modest means who lack access to media or political clout, which means the general public and the media may be unaware of how widespread and important these issues are. Our challenge, as we percolate issues up the appellate ladder in court, is to raise these issues to national awareness. We did that with school choice and eminent domain abuse and we have now done it with economic liberty, as recent coverage of occupational licensing attests.

Challenges to occupational licensing laws lie at the heart of our economic liberty work because the laws so often arbitrarily deny people their right to pursue an honest living. In the 1950s one in 20 people needed the government's permission in the form of a license in order to work. Today that figure approaches one in three, and frequently these laws do nothing more than protect existing businesses from competition. We work hard to show how ubiquitous and harmful these laws are in occupation after occupation. The most comprehensive national assessment to date, our 2012 strategic research report *License to Work*, documented how widespread and burdensome licens-

ing laws are for lower-income workers and aspiring entrepreneurs in 102 occupations in all 50 states and the District of Columbia. Meanwhile, over the last several years, we ramped up our economic-liberty-related litigation significantly, achieving major victories along the way.

With increasing media interest, we could see the issue gaining greater momentum and crossing over to new outlets and reaching new audiences. In April, Andie Dominick of *The Des Moines Register* was named a Pulitzer Prize finalist for a series of editorials criticizing licensing laws in Iowa, drawing

[Occupational licensing laws are] “a serious problem for the American economy, hampering growth and burdening the system with nonsensical rules and regulations.”

— CNN’s Fareed Zakaria

heavily on *License to Work* and the expertise of IJ staff. University of Minnesota Professor Morris Kleiner recently took to the pages of *The New York Times* to declare that the “growth of occupational regulation has prompted rare bipartisan opposition.” He’s right. CNN’s Fareed Zakaria also decried on his show that occupational licensing laws are “a serious problem for the American economy, hampering growth and burdening the system with nonsensical rules and regulations.”

The same week, Boston University Law School Professor James Bessen systematically dismantled occupational licensure on

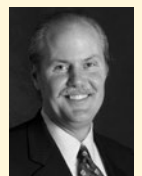
Vox.com, a brand-new media forum edited by well-known left-leaning bloggers Ezra Klein and Matt Yglesias. Citing *License to Work* and highlighting several IJ cases, Bessen explains how “at a time when too many Americans are out of work, excessive licensing regulations create a serious barrier to economic opportunity for workers.” In *Room to Grow*, a much-discussed new book sponsored by the American Enterprise Institute and edited by Yuval Levin, licensing laws are recognized as an impediment to economic growth. And recently, *The Economist* ran two features on the negative impact of occu-

pational licensing in the same issue. The author urged, “Reviewing every existing licence would be a start: do you really need the state’s permis-

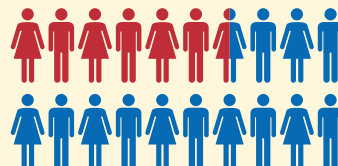
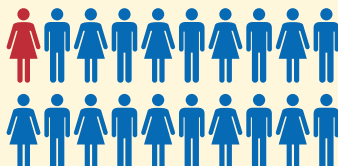
sion to be an interior designer or hairdresser ... Leviathan’s tentacles are strangling economic growth, and cutting some of them back would be a cheap way to promote it.”

We still have a way to go before we restore constitutional protection for economic liberty, but we can take heart that occupational licensing laws are now viewed with skepticism by liberals, conservatives and libertarians. That’s real progress and it provides the foundation for future success. ♦

Chip Mellor is IJ’s president and general counsel.



**In the 1950s
one in 20 people
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or permit in order to work.**



**Today that figure approaches
one in three.**



August 2014

IJ clients **Tonia Edwards** and **Bill Main** with IJ Senior Attorney **Robert McNamara** and IJ President **Chip Mellor** at a press conference announcing the lawsuit in 2010, and after the appellate argument in May.

Free Speech continued from **page 1**
 ging through the federal courts, with IJ's litigators at their side, to finally get an appellate court decision.

It was worth the wait: "This case is about speech and whether the government's regulations actually accomplish their intended purpose," the opinion begins. "Unsurprisingly, the government answers in the affirmative. But when, as occurred here, explaining *how* the regulations do so renders the government's counsel literally speechless, we are constrained to disagree."

"The First Amendment protects everyone's right to talk for a living, whether they do so as a journalist, a stand-up comedian or a tour guide. The fact that the government labels a regulation 'occupational licensing' does not cancel the protection of the First Amendment, any more than it cancels the protection of any other part of the U.S. Constitution."

The court also took a stand against unnecessary licensing in general, asking "Perhaps most fundamentally, what evidence suggests market forces are an inadequate defense to seedy, slothful tour guides? To state the obvious, Segs in the City, like any other company, already has strong incentives to provide a quality consumer experience—namely, the desire to stay in business and maximize a return on its capital investment."

With this opinion, the court dealt a major blow to the forces of overregulation. For years, IJ has battled government licensing agencies that regulate all kinds of speech—from the advice of dieticians to the stories and folktales of tour guides—and in every case, government officials have argued that the First Amendment simply does not apply to occupational

licensing. The D.C. Circuit—one of the most influential courts in the country—has now squarely faced that argument and named it for what it is: nonsense.

And that has to be correct. The First Amendment protects everyone's right to talk for a living, whether they do so as a journalist, a stand-up comedian or a tour guide. The fact that the government labels a regulation "occupational licensing" does not cancel the protection of the First Amendment any more than it cancels the protection of any other part of the U.S. Constitution. *All*

government power is limited by the Constitution and courts have a duty, as the appellate court did here, to carefully examine evidence to make sure government is only exercising power within those limits.

Of course, the fight for occupational speech is not over—and it will not be over until we put government licensing boards out of the speech-squelching business once and for all. But this victory marks a major step forward in our efforts—one that was years in the making, but one that will continue to pay off for decades to come. ♦

Robert McNamara is an
 IJ senior attorney.



IJ client and licensed dentist **Dr. Ben Burris** has been attacked by the Arkansas State Board of Dental Examiners for charging too little.

Arkansas Orthodontist Wants Dental Board To (Em)brace Economic Liberty

By Matt Miller

Dr. Ben Burris is a licensed dentist and orthodontist who owns Braces By Burris, one of the largest orthodontic practices in the U.S. He has 11 offices throughout Arkansas and employs more than 100 people. In part because of his success, it is important to Dr. Burris that he give back to his community. In 2013, he started offering low-cost teeth cleanings to people who could not otherwise afford them. But within weeks of starting the program, the Arkansas State Board of Dental Examiners threatened to revoke both his dental and orthodontist licenses. Why? Because the state flat-out bans licensed dental specialists, like orthodontists, from doing even simple den-

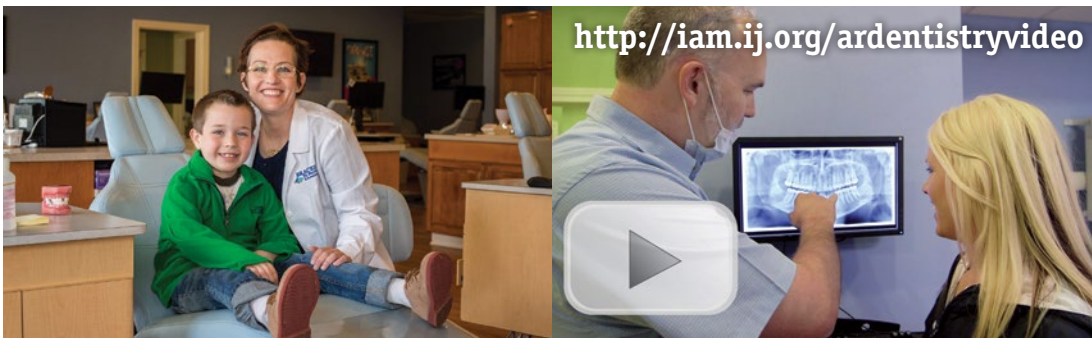
tal work outside of their specialty. Seven other states have similar laws that force orthodontists and other dental specialists to strictly limit their practice to their area of specialization.

Dr. Burris has long been troubled by the large number of Americans who cannot afford dental care. In 2008, he established Smile for a Lifetime, which provides free braces to kids who cannot afford them. Smile for a Lifetime has grown rapidly. It now has over 150 chapters across the country and gives away approximately \$6 million in free braces every year.

Smile for a Lifetime has been a huge success. Now Dr. Burris wants to address a bigger problem. He estimates that 50 percent

of Arkansans do not receive regular dental care. In an effort to change that, Dr. Burris started offering teeth cleanings for \$99 for adults and \$69 for kids. This was approximately one-third to one-half the normal price for individuals without insurance.

Within weeks of offering his low-cost cleanings, Dr. Burris was contacted by the Dental Board and informed that his cleanings violated Arkansas law. By offering teeth cleanings at his orthodontics office, Dr. Burris was risking his license without even knowing it. At a hearing before the Board, Dr. Burris was informed that his dental and orthodontic licenses would be in "extreme jeopardy" if he did not stop offering the cleanings.



IJ client **Dr. Elizabeth Gohl**, left, has joined the fight to eliminate protectionist laws and expand access to affordable dental care.



That would ruin Braces By Burris and put Dr. Burris' 100-plus employees out of work. Faced with this threat, he agreed to suspend the program.

Studies estimate that the price of dental care is driven up by 12 percent simply because of unnecessary government restrictions on who can provide services. Dr. Burris tried to break the old model. Then Arkansas threatened to destroy him for it. Now he is fighting back. He is joined by his colleague, Dr. Elizabeth Gohl. She is a former Navy dentist and licensed orthodontist who was told she could not even participate in charity dental work because she has an orthodontist license in addition to her dental license. Bizarrely, general dentists, who receive less training than orthodontists, can perform any kind of dental work, including orthodontics and other complex procedures that are normally performed by specialists. This scheme—which is as senseless as it sounds—does nothing to protect the public and everything to protect general dentists, who want to serve as the gatekeepers for their patients' dental care.

Dr. Burris and Dr. Gohl have joined with IJ to sue the Arkansas Dental Board because the government cannot prevent people from doing work that they are perfectly qualified to do. If we are successful, it will mean that more medical professionals across the state will be able to put their skills to work providing services to those in need. ♦

Matt Miller is the executive director of IJ Texas.



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Braiding Freedom

Visit the new website braidingfreedom.com to find out how braiders are standing up for the right to earn an honest living.

Braiding Initiative Seeks to Untangle Restrictions On Natural Hair Braiders

By Paul Avelar

Natural, African-style hair braiding has been around for more than 5,000 years. It is a time-tested, safe practice that uses no dyes or chemicals and is deeply rooted in African cultural heritage, carrying with it significant historical importance.

Government has no business licensing something as safe and common as braiding hair. Nevertheless, in 24 states, governments force braiders to spend up to \$20,000 or more on thousands of hours of irrelevant training that teach nothing about hair braiding.

Since our founding in 1991, IJ has defended the rights of braiders to earn a living. Washington, Arizona, Minnesota, Mississippi, Ohio and the District of Columbia have all changed their laws in response to our lawsuits. In California and Utah, IJ succeeded in having federal courts strike down braider-licensing laws as unconstitutional. These cases, with their easy-to-understand facts and fantastic clients, have put economic liberty back into the courts' and the public's consciousness.

To continue the momentum, IJ launched its National Braiding Initiative in June to increase braiding freedom and continue to build economic

liberty precedent that benefits entrepreneurs and workers in all occupations. We launched three federal lawsuits in three states on the same day to kick off our new initiative.

In Arkansas, before braiders can even touch a client's locks, they first have to obtain a cosmetology license, which requires 1,500 hours of irrelevant training that costs more than \$16,000. Missouri has the exact same requirements. In both states, this training teaches absolutely nothing about African-style hair braiding. In Missouri, the classes devote 110 hours to teaching how to give manicures and arm and hand



Download *Untangling Regulations: Natural Hair Braiders Fight Against Irrational Licensing* at www.ij.org/untangling-regulations.



IJ clients, clockwise from top, Washington state braider **Salamata Sylla**, Arkansas braider **Nivea Earl** and Missouri braider **Tameka Stigers**, have each filed suit in their state to free themselves and other entrepreneurs from restrictive regulations.

massages—services braiders have no interest in offering. In fact, it takes far more time and money to get a cosmetology license than it takes to become a licensed emergency medical technician in each state. We have teamed with successful braiders—Nivea Earl and Christine McLean in Arkansas; Joba Niang and Tameka Stigers in Missouri—to ensure that all braiders are free to earn an honest living.

In Washington, we are reinforcing our prior victory. Although the Department of Licensing declared that braiding did not require a license when we previously sued them in 2004, last year they warned braider Salamata Sylla that she needed to obtain a cosmetology license to continue her braiding business. The Department's unexplained about-face—without notice or explanation—means that braiders in



Watch the IJ video: The Fight for Braiding Freedom

Washington will once again have to get a cosmetology license just to braid hair.

The multi-state launch received excellent media attention. It was top news on the AP wire, and we received favorable coverage from coast to coast, as well as in the UK's *The Guardian*. We have also launched BraidingFreedom.com, a new website to promote all of our braiding work.

IJ has also released a report about braiding laws across the coun-

try. *Untangling Regulations* is the go-to resource for media and other researchers on braiding laws and also includes information about the effects of burdensome specialty licenses on braiders. With this information, we will equip advocates of braiding freedom to push for minimal, if any, licensing requirements for braiders.

This initiative is about more than braiding hair. The precedent we set with victories will pave the way for thousands of hard-working men and women in other fields to enter the workforce and provide for themselves and their families through honest enterprise. ♦

Paul Avelar is an IJ attorney.



“This initiative is about more than braiding hair. The precedent we set with victories will pave the way for thousands of hard-working men and women in other fields to enter the workforce and provide for themselves and their families through honest enterprise.”

Mythbusting the IJ Way: Latest Report Proves Street Food is Safe

By Dick Carpenter

Longtime fans of IJ have heard us say, “We change the world, and we have fun doing it!” That is especially true on our strategic research team, where we often engage in our own version of Mythbusters. Like the popular television show, we put myths (often masquerading as fact) about free speech, property rights, economic liberty and school choice to the test with cutting-edge social-science research. Our latest edition tests a long-standing myth used by city officials to justify draconian regulations on food vendors: food trucks and carts are unsanitary and unsafe.

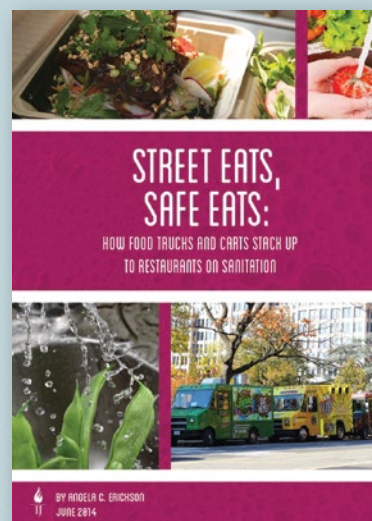
Our results show quite the opposite.

In IJ’s latest strategic research report, *Street Eats, Safe Eats: How Food Trucks and Carts Stack Up to Restaurants on Sanitation*, Senior

Research Analyst Angela Erickson examined several years of food-safety inspections from seven major American cities: Boston, Las Vegas, Los Angeles, Louisville, Miami, Seattle and Washington, D.C. In each of these cities, mobile vendors are subject to the same health codes and inspection regimes as restaurants. Using sophisticated econometrics, she compared the average number of violations among food trucks and carts to those of restaurants and other food establishments after controlling for things like weather, variations in traffic and seasonal fluctuations in demand.

In every city, food trucks and carts averaged fewer violations than restaurants, and in all of the cities except Seattle, the differences were statistically significant. Not to worry in Seattle, though: the results simply mean mobile vendors there were just as clean as restaurants.

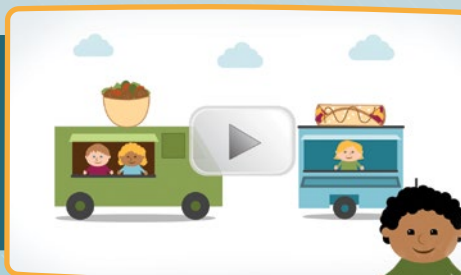
Like so many of our reports, *Street Eats, Safe Eats* is on the leading edge of an



Download *Street Eats, Safe Eats* at ij.org/street-eats-safe-eats.

important legal and policy issue, as no one else has done research like this. Angela’s complex analysis crushes the pitiful anecdotal comparisons made by

watch the
VIDEO
IJ.ORG/VENDING



FACT or MYTH: Street food is unsafe



It's Safe:
MYTH
BUSTED

food-vendor critics.

For example, last year a *Boston Globe* article portrayed food trucks as comparatively unsafe using little more than anecdotes and simple percentages. It is not too surprising, then, that our opposite results, using more advanced analyses, were featured in the *Boston Globe*, *Metro Boston* and *Boston Magazine*, plus an op-ed Angela wrote for the *Boston Herald*.

The same thing happened in Louisville, where a television newscast last year featured the city's chief health inspector laughing at the idea of eating from a food truck and claiming—with no evidence—"We feel you can operate safer from an actual building." Results from *Street Eats*, *Safe Eats* showing food trucks in the city are actually safer than restaurants were highlighted in the *Louisville Courier-Journal* and *Business First of Louisville*.

City councils that make decisions about vendor regulations often rely on little more than the opinions of health inspectors and pressure from vendors' brick-and-mortar restaurant competition. That's why testing myths with sound research like *Street Eats*, *Safe Eats* is so important.

The flawed idea that street food is unsafe should not justify burdensome, anti-competitive regulations like bans and limits on when and where mobile vendors may work. Bans and limits do not improve public health—they stifle entrepreneurship, destroy jobs and limit consumer choice. The recipe for clean and safe food trucks and carts is simple—the same inspections used for restaurants.

Myth busted. ♦

Dick Carpenter is IJ's director of strategic research.



IJ's Strategic Research Makes Media Waves Nationwide

In military terms, a force multiplier dramatically increases the impact of a group. This is precisely what *Street Eats*, *Safe Eats* has become in our already-successful National Street Vending Initiative.

In just the first three weeks after the report's release, it was featured in 133 separate news stories in 55 different cities, including seven statewide, 16 regional, 34 national and two international outlets. *Street Eats*, *Safe Eats* saw coverage in some of the nation's most prominent newspapers, such as the *Los Angeles Times*, *Miami Herald* and *Seattle Times*. It exploded through new media, with stories on *Vox*, *Yahoo!*, *Self*, *Time* magazine and *Fox News* online, *Huffington Post*, and foodie blogs like *Eater*, *Bon Appetit* and even the Food Network's blog, just to name a few.

The report also enjoyed widespread coverage on television. Through news "packages" created by CNN, NBC and FOX, television stations in major media markets all over the country picked up stories about the report and added their own local content, including interviews with food-truck owners and health officials, as well as basic statistics about local inspection reports that confirmed our results.

This extensive coverage multiplies IJ's ongoing efforts—including three vending cases and activism in 47 cities—to free food trucks and carts from onerous local regulations.

"Now you can feel just a little safer about your fast food options around town. Food truck eats, get in our bellies!"

– *Self* magazine, June 19

"The law firm, Institute for Justice, said regular city inspections have helped to limit the number of health code violations issued to food truck vendors. However, the researchers recommended that vendors not be subjected to additional regulations, such as limitations on where and when they may operate. Such regulations would only serve to protect restaurant industry interests, rather than serving to make food products safer. Regulations in New York City, for example, supersede those for traditional restaurants, requiring longer waits for permits."

– *Yahoo! Health*, June 24



Georgia school choice clients the **Quinoneses**, left, and the **Lamp** family, right.

IJ Defends School Choice in the Peach State

By Tim Keller

Georgia's thriving six-year-old Tax Credit Scholarship Program is the most recent educational choice program to be challenged in court. IJ swiftly and successfully intervened in the case to defend the program on behalf of the parents and children whose lives have been improved thanks to the generosity of their fellow Georgians. The Georgia case marks the 20th time IJ has intervened on behalf of parents in a school choice lawsuit and means IJ is actively defending school choice programs in five states.

Enacted in 2008, the program serves over 13,000 Georgia students who rely on the privately funded scholarships generated by donations to the state's various Student Scholarship Organizations (SSOs). SSOs are private, nonprofit charitable organizations that provide private school scholarships to deserving families. Individuals and corporations receive dollar-for-dollar tax credits against their income-tax liability for their donations to SSOs. This year, there were \$58 million in tax credits available. The entire amount was claimed in just 22 days by donors who wanted to give parents the ability to choose the best educational option for their kids.

Each of the families IJ represents received a scholarship from Georgia's largest SSO, the

Georgia GOAL Scholarship Program. Robin Lamp, IJ's lead client, is a single parent with two daughters who works three part-time jobs to make ends meet. After watching her daughters' academic achievement decline in public school, Robin wanted to send her daughters to Eagle's Landing Christian Academy because of its rigorous academics. Thanks to the scholarship program, she was able to do so.

"The Georgia case marks the 20th time IJ has intervened on behalf of parents in a school choice lawsuit and means IJ is actively defending school choice programs in five states."

Ruthie Garcia is also a single mom. Her two youngest children depend on scholarships to attend the Heritage Academy, a private, independent religious school in Augusta educating children from diverse economic, racial and ethnic backgrounds. Sadly, Ruthie learned firsthand how bad things were in the local public schools in Augusta when she interned at a local public middle school while pursuing her Master of Arts in teaching.

The Quinoneses have three young children and have learned that the most difficult aspect of parenting is finding a good school. The Quinones family has endured some very difficult

times financially. Work has been sporadic for Mr. Quinones, and Mrs. Quinones is a student herself. If not for the scholarship program, their children would not be able to attend the Notre Dame Academy, where they are nurtured emotionally and growing academically.

Georgia's program is making a real difference in the lives of kids. About 50 percent of GOAL's scholarship recipients belong to families with an adjusted gross income of less than \$24,000, and 36 percent of its scholarship recipients are minorities.

Typically, educational choice programs are challenged as soon as they are enacted. But the Georgia lawsuit may be a harbinger of future legal challenges to longstanding programs. In May, plaintiffs in a five-year-old Florida lawsuit filed a motion to amend their complaint challenging the adequacy of Florida's public school system. They are challenging the constitutionality of Florida's two decades-old school choice programs, and IJ stands ready to make Florida our 21st lawsuit defending parents and our sixth active school choice case. ♦

Tim Keller is executive director of IJ Arizona.



IJ Helps Bring Civil Forfeiture Reform To Minnesota

By Lee McGrath

IJ is the national law firm for liberty. We litigate for a living. But there are times when IJ uses other tools—like legislative advocacy—to protect fundamental constitutional rights. Our most iconic legislative achievement occurred after the U.S. Supreme Court's awful *Kelo v. City of New London* decision in 2005, when IJ turned to state legislators and channeled public outrage into constructive action to reject the Court's ruling that eminent domain could be used for private development. Nine years later, 44 states have enacted legislation or passed constitutional amendments that better protect property owners from eminent domain abuse.

But we haven't stopped there; IJ's work at state legislatures continues. On May 7, Minnesota increased protections against the latest threat to property rights—civil forfeiture—when Gov. Mark Dayton signed into law significant reforms requiring property owners to first be convicted of a drug crime before their property can be taken by the government.

Civil forfeiture makes it easy for law enforcement to seize and keep property, even if the owner has never been convicted of or even charged with a crime. Cash, vehicles, homes and other property can be seized if police merely suspect they were used in crime. Under Minnesota's former law, it was then up to the property owner to sue in civil court and show that the property was not linked to the suspected drug crime. More than 95 percent of the time, prop-

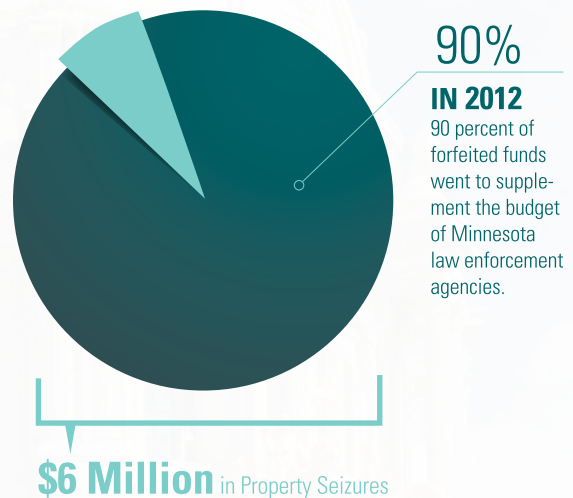
erty owners charged with a drug crime do not file a civil lawsuit to get their property back.

IJ formed a broad coalition that included the ACLU, the Minnesota Association of Criminal Defense Lawyers and others to push for reforms based on a self-evident proposition: No one acquitted in criminal court should lose his property in civil court.

This simple message was so powerful that more than 20 percent of members of Minnesota's House of Representatives from across the political spectrum sponsored the legislation and, at a critical point when the bill was being held up by a committee chairman friendly to law enforcement, the editorial board of the *Minneapolis Star Tribune* called for its enactment. Once over that hurdle, legislators in the House and Senate voted for the bill 120-0 and 55-5, respectively.

According to the state's own reports, Minnesota law enforcement agencies engaged in nearly 7,000 seizures of property in 2012, worth more than \$6 million—90 percent of which went to supplement the budget of law enforcement agencies.

Forfeitures involving controlled substances accounted for 47 percent of reported incidents, but the value of property seized averaged only about \$1,250 per seizure. The typical seizure



in Minnesota was so small that it made little sense for even an innocent person to litigate to get back his property because of the high cost of hiring a lawyer.

Under the new law, the state will have the burden to prove that the seized property is part of the proven crime. By switching the burden of proof to the government, the new law makes it more likely that innocent Minnesotans can get their property back. In that way, the legislation is an important step toward greater protection of property rights and establishes a model for other states to follow.

And we will continue to look for select opportunities across the country to protect constitutional rights and complement our litigation outside the courtroom. ♦

Lee McGrath is IJ's legislative counsel.



THE ATTACK ON FOOD FREEDOM



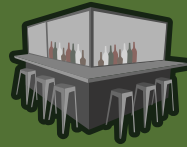
NEW YORK



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DENVER

Your right to drink, buy, sell, cook, raise, produce, grow, share and eat the foods you want is in the crosshairs of lawmakers and bureaucrats.

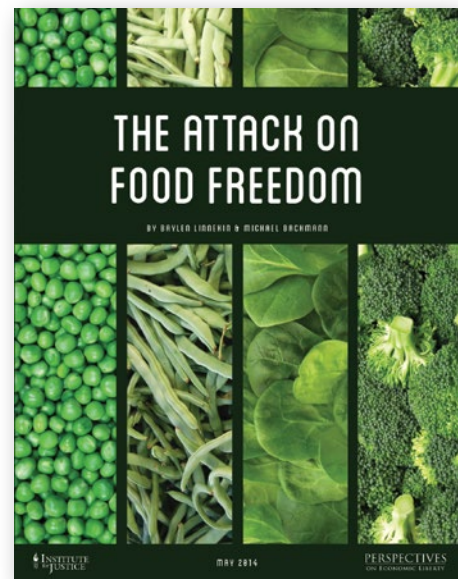
New Report Highlights Ongoing Battle Between Government and Food Freedom

In California, the federal government seized half of a couple's raisin crop—worth half a million dollars—without compensation. In Utah, restaurants have to erect a literal wall between customers and bartenders. And Houston prohibits residents from sharing food with the poor. From bans on front-yard vegetable gardens to bans on subjectively “large” sodas, a new report published by the Institute for Justice makes a compelling case that food freedom is under attack—along with the economic liberty of food entrepreneurs.

The Attack on Food Freedom, by Baylen Linnekin of Keep Food Legal, documents the many ways that food freedom and economic liberty are under attack. Linnekin defines “food

freedom” as the right to grow, raise, produce, buy, sell, share, cook, eat and drink the foods you want. He explains how overzealous food-safety regulations, bureaucratically imposed hoops, and hurdles and laws aimed at the “new” public health—the government's effort to promote what it has decided is a “healthy” lifestyle—are all undermining our right to eat what we want and the food entrepreneur's right to earn an honest living.

The Attack on Food Freedom is the first installment of Perspectives on Economic Liberty, a new series of independently authored reports published by IJ, and part of our National Food Freedom Initiative. Contact Christina Walsh at cwalsh@ij.org for your own copy. ♦



Download *The Attack on Food Freedom* at ij.org/perspectives-food-freedom.

VISIT IJ.ORG/FOODFREEDOM

Volume 23 Issue 4

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 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 Real Story with Gretchen Carlson Fox News

"The Institute for Justice combed through more than 260,000 food safety inspection reports from seven major U.S. cities. And what did they find? Food trucks and carts tend to score as well or better than brick-and-mortar restaurants."



The Wall Street Journal

IJ Litigation Director Dana Berliner: "The condemnation of Charlie Birnbaum's building in Atlantic City is a classic example of eminent-domain abuse. The agency has no plan for the property. Promises of economic growth are made with no plausible substantiation of how it will happen. Mr. Birnbaum's house is at the very edge of the area being taken and could easily be left alone."

The Economist

"Mr. Main never took the exam to become a tour guide, so your correspondent braced herself to hear a torrent of errors. Would he claim that the White House was once destroyed by aliens, as in the film 'Independence Day'? No. Actually, he was pretty good. Yet he could be jailed for 90 days if caught. Washington requires all guides to pay \$200 and take an exam. That adds up: Segs in the City, the firm Mr. Main runs with his wife, Tonia Edwards, employs a dozen guides."

George F. Will (syndicated column)

"Minnesota says it has 10,000 lakes. The state also has, according to Anthony Sanders, '10,000 campaign finance laws.' He exaggerates, but understandably. As an attorney for Minnesota's chapter of the Institute for Justice, a libertarian public-interest law firm, Sanders represents several Minnesotans whose First Amendment rights of free speech and association are burdened by an obviously arbitrary, notably complex and certainly unconstitutional restriction."

Washington Post

"'At the heart of our economic system is the idea of change, and that government can't be in the business of protecting old models,' says Lee McGrath, an attorney with the libertarian-leaning Institute for Justice that has jumped into the lawsuit, representing drivers like [Dan] Burgess. 'If there were medallions associated with the buggy whip, we probably would still have them today.'"

**"It's not just car-sharing
services that suffer
regulatory attack..."**

**A public-interest law
firm called the Institute
for Justice has made
a career out of attack-
ing dumb occupational
regulations."**

—Glenn Reynolds,
USA Today



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*Terry Debko and daughter Sandy Thomas
Fraser, Michigan*

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