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Liberty & Law

Inside This Issue

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The Harder the Fight, THE SWEETER THE VICTORY

Thanks to IJ's victory, North Carolina children like **Faith Perry** can qualify for a scholarship to attend a school that best fits their educational needs.

IJ'S SCHOOL CHOICE WIN IN NORTH CAROLINA

By Dick Komer

IJ has spent the last year and a half doing battle in North Carolina, defending the state's school choice program from two different lawsuits. But on July 23, it was worth the blood, sweat and tears when the North Carolina Supreme Court ruled the state's Opportunity Scholarship Program is constitutional, reversing a lower court decision. The program, enacted in 2013, provides scholarships of up to $4,200 to low-income families to use for a private school of their choice. IJ intervened on behalf of North Carolina parents to help the state defend its program.

These two cases show the importance of IJ's work representing parents who want to use scholarship programs for their children. After the trial judge declared the program unconstitutional, it was IJ, not the state of North Carolina, that got the state Supreme Court to allow the program to award scholarships for the 2014–2015 school year. And it was IJ that successfully asked the North Carolina Court of Appeals to allow over 1,200 students to use scholarships during the first year of the program. And finally, it was IJ that succeeded in getting the North Carolina Supreme Court to grant expedited review so the program would not be delayed.

Defending School Choice continued on **page 9**

Bill and Rebecca Dunn's (front center) Liberty Defense Fund will ensure IJ keeps fighting for our clients (background) for years to come.

IJ Donors Come Together To Leverage Liberty

BILL AND REBECCA DUNN
LIBERTY DEFENSE FUND

"IJ announced the challenge grant at its Partners Retreat in Palm Beach last October. In less than a year, more than 250 donors had signed on, raising more than $15 million in new and increased support for IJ when combined with the matching funds from Bill and me as trustees of Dunn's Foundation."

By Rebecca Dunn

One thing my husband, Bill, and I have come to understand about IJ is that when it faces a challenge, it rises to the occasion and exceeds expectations. IJ's work over the past year to engage hundreds of IJ donors to meet the $10 million Bill and Rebecca Dunn Liberty Defense Fund challenge grant is no exception.

Bill and I have long believed that IJ is uniquely positioned to make a powerful impact on the course of our nation's history. We know that unless government abides by the Constitution, our liberty will be at the mercy of politicians and government officials. And the best way to ensure that government is constrained by the limits placed upon it by the Founders is for courts to play their essential role, as Madison wrote, "an impenetrable bulwark against every assumption of power" by the legislative and executive branches.

That's where IJ comes in—it files the right cases at the right time, and it litigates them with an inspirational *joie de vivre*. IJ is enormously effective, winning nearly three out of every four cases it files. So Bill and I worked with IJ in 2014 to come up with a challenge grant that would further increase IJ's effectiveness as the "National Law Firm for Liberty."

Our goal was twofold. First, we wanted to broaden IJ's base of support. Specifically, we wanted to encourage new donors to give to IJ, existing donors to increase their support and lapsed donors to renew their support. A second and equally important goal was to encourage other IJ donors to make new challenge grants for the benefit of IJ. We saw the impact that similar challenge grants had at IJ and other organizations so, as part of our challenge to IJ, we asked that it share a copy of the Dunn Liberty Defense Fund grant agreement with other similarly situated donors to encourage them to issue their own challenge grants.

IJ announced the challenge grant at its Partners Retreat in Palm Beach last October, and IJ's donors really stepped up to the plate! In less than a year, more than 250 donors had signed on, raising more than $15 million in new and increased support for IJ when combined with the matching funds from Bill and me as trustees of Dunn's Foundation. What this means is that IJ is well-positioned to serve as a leading legal advocate for liberty, and it will be able to sue more overreaching government officials than ever before.

Providing our challenge grant to IJ was an enormously rewarding experience. Bill and I are grateful to IJ for playing such an integral role in ensuring America lives up to its promise as a place where people from all walks of life can enjoy the benefits of freedom. We are also grateful to our fellow IJ donors for providing IJ with the financial wherewithal to succeed at this vitally important mission.◆

Rebecca Dunn and her husband **Bill** are Palm Beach philanthropists who have been IJ donors since 1994.

IJ client **Bob Wilson** fought for his First Amendment right to display a protest sign against the city of Norfolk, Va., on his property.

The Signs Point to Victory For Central Radio

By Robert Frommer

For almost 25 years IJ has defended the right of individuals to express themselves by displaying signs. We bring these cases both to protect our clients' free-speech rights and to push for wholesale legal change. Now, after years of work, a landmark decision by the U.S. Supreme Court has fully adopted IJ's position on a critical First Amendment issue. This ruling will benefit speakers across the nation, including our clients who own Central Radio, a company that builds and repairs ship-based radio equipment in Norfolk, Va.

As *Liberty & Law* readers may recall, IJ brought suit on behalf of Central Radio after it hung a banner to protest a Norfolk agency's attempt to take its property using eminent domain. Almost immediately, Norfolk said the banner had to come down, although it could have stayed up if it had instead depicted a government flag or a "work of art." In other words, Norfolk city officials decide which signs stay up or come down based on what the signs say.

Traditionally, laws like Norfolk's had to survive "strict scrutiny"—the most demanding standard of judicial review. In St. Louis, IJ represented Jim Roos after the city like Norfolk cited him for displaying an anti-eminent-domain mural on a threatened building. The 8th U.S. Circuit Court of Appeals struck down St. Louis' sign code after declaring that it was subject to strict scrutiny because it forbade Jim's mural while allowing similarly sized government flags and works of art.

By contrast, the 4th U.S. Circuit Court of Appeals, whose jurisdiction includes Virginia, repeatedly held that speech restrictions are subject to strict scrutiny *only* if the government's motive is censorship. In 2010, we represented Kim Houghton, an entrepreneur forced by Arlington, Va., to cover up her whimsical mural of cartoon dogs, bones and paw prints. The 4th Circuit upheld Arlington's sign code—even though it contained exemptions like those in St. Louis' code—because its alleged purpose was to promote traffic safety and aesthetics rather than censor speech. The 4th Circuit followed this same approach in Central Radio's case and upheld Norfolk's sign code.

But IJ never says die. Besides our front-line litigation we submitted amicus briefs to the U.S. Supreme Court asking it to resolve this issue. In *Reed v. Town of Gilbert*, a case similar to our commercial speech cases, IJ submitted an amicus brief on behalf of 10 IJ clients who asked the Court to return the First Amendment to its roots by holding that a law is subject to strict scrutiny *either* if it requires officials to inspect a message's subject to decide how to regulate it *or* if its purpose is to censor.

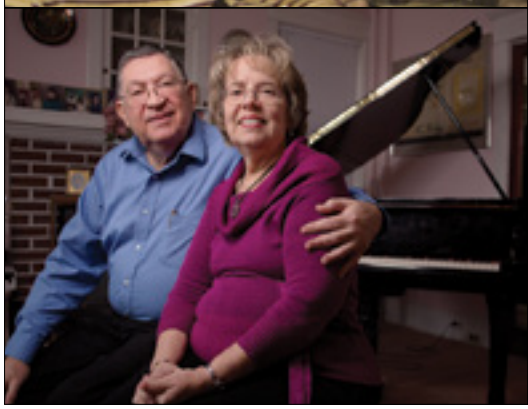
In June, the Supreme Court answered the call. In an opinion that some are calling the most important First Amendment decision in 30 years, the Court in *Reed* broadly proclaimed that IJ's position was the law of the land. The Court's decision in *Reed* restored the speech protections that all Americans had historically enjoyed.

Moreover, *Reed* breathed new life into Central Radio's lawsuit. Two weeks after the decision, the Supreme Court told the 4th Circuit to reconsider Central Radio's case in light of the test that IJ had put forward. We fully expect the 4th Circuit to give Central Radio the victory it deserves.

And, if it doesn't, then IJ will just have to return to the Supreme Court and make history once again.◆

Robert Frommer is an IJ attorney.

Achieving the **UNACHIEVABLE** For CHARLIE BIRNBAUM



Charlie, seen above with his sister, mother and father, has fond memories from his youth growing up in his house. Today, **Charlie** and his wife, **Cindy**, sit in front of his grand piano.

By John E. Kramer

When a judge issues a ruling, he or she is basically saying, "My mind is made up. Here is my decision, and it is final."

Rarely—very rarely—do judges change their minds once opinions are issued. Indeed, in IJ's nearly 25-year history, and out of hundreds of cases we have litigated, we can count on a few fingers the number of times that this has happened, and usually it was because a higher court forced a judge's hand.

In the face of those unlikely odds, IJ attorneys Bob McNamara and Dan Alban returned to court in January of this year and asked New Jersey Superior Court Judge Julio Mendez to reverse his November ruling in which he said the Casino Reinvestment Development Authority (CRDA) could take the long-time Atlantic City family home of our client Charlie Birnbaum, even without a specific need or plan for Charlie's land.

IJ teamed up with Charlie, a professional piano tuner, in May 2014 after CRDA gave itself the authority to seize properties as part of a "mixed-use development" project for the bankrupt Revel Casino. After January's hearing, on what is called in the law a motion for reconsideration, we waited. We knew the odds were heavily against us, but we were hopeful for Charlie.

And then the improbable happened. In August, Judge Mendez ruled that CRDA may not condemn Charlie's home unless it comes forward with evidence justifying the taking—something it has entirely failed to do. The order gives CRDA 180 days to "reevaluate the feasibility of the proposed project" and provide the court with more evidence to justify the taking, which the judge went on to say the court "lacks confidence" it can do.

We were thunderstruck to say the least. Certainly this is not the ultimate ruling we

IJ client **Charlie Birnbaum** stands on the roof of his Atlantic City home.

seek, but this turnabout was a great reward for Bob, Dan and Charlie's unwavering faith in the rightness of our stance—that the government cannot just take someone's home for any reason or no reason whatsoever, that such takings can only be allowed if it is for some specific and clearly stated public use. CRDA is now on its heels, and IJ will not rest until this abusive agency is forced to back down and leaves our client alone once and for all.

The ruling was yet another demonstration of the judicial philosophy that IJ fights for every single day: judicial engagement, where judges do not just take the government's word but, rather, actually look at the evidence and truly judge what is going on.

Resiliency is a hallmark of IJ and its advocates. And this ruling demonstrates why that characteristic is so important if we are to win for our clients.◆

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

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To learn more, please visit the website below or contact Sarah Lockwood at IJ at (703) 682-9320 ext. 239 or at sarah@ij.org. Thank you for your support of the Institute for Justice through AmazonSmile!◆

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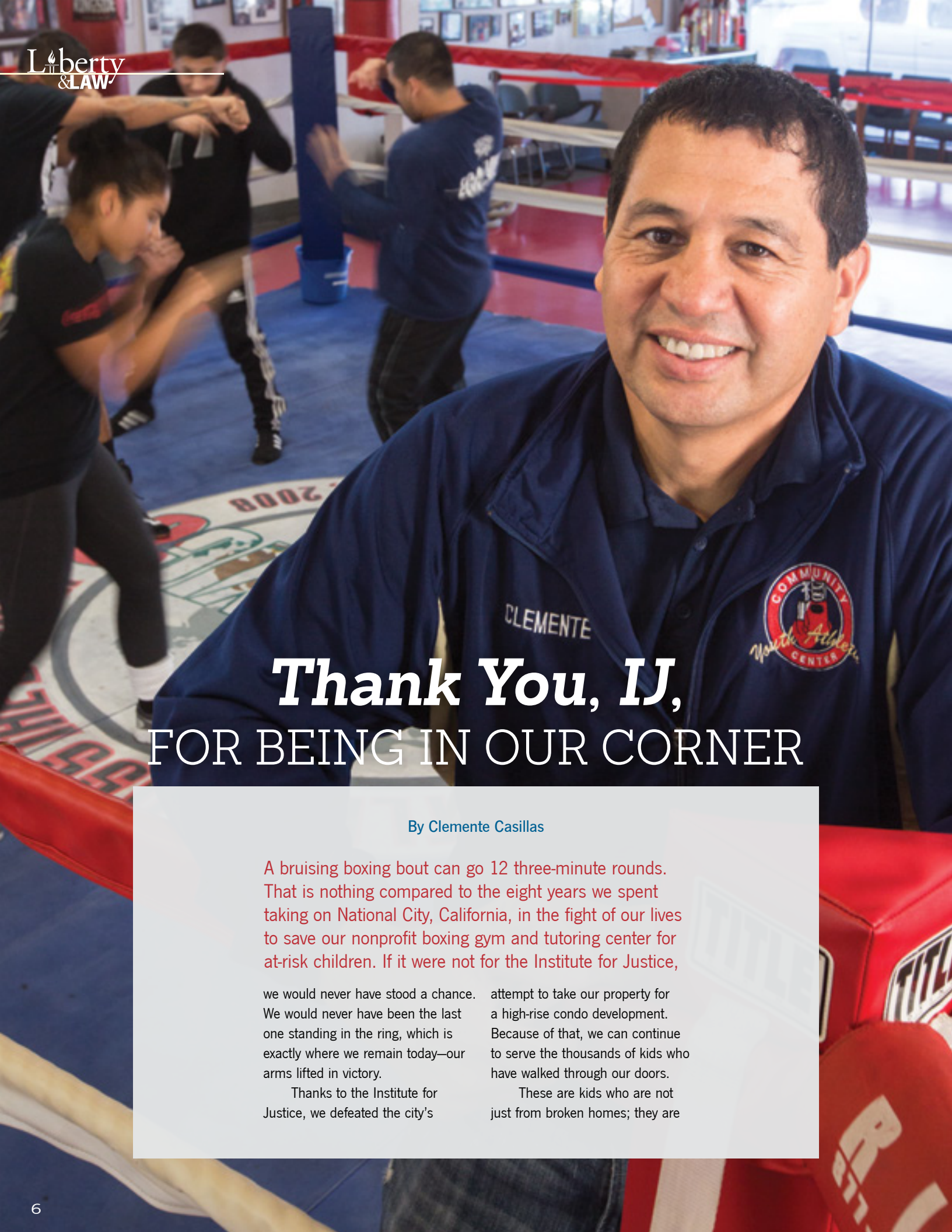


Thank You, IJ, FOR BEING IN OUR CORNER

By Clemente Casillas

A bruising boxing bout can go 12 three-minute rounds. That is nothing compared to the eight years we spent taking on National City, California, in the fight of our lives to save our nonprofit boxing gym and tutoring center for at-risk children. If it were not for the Institute for Justice,

we would never have stood a chance. We would never have been the last one standing in the ring, which is exactly where we remain today—our arms lifted in victory.

Thanks to the Institute for Justice, we defeated the city's attempt to take our property for a high-rise condo development. Because of that, we can continue to serve the thousands of kids who have walked through our doors.

These are kids who are not just from broken homes; they are

CYAC kids, parents, IJ attorneys and local counsel have reason to celebrate now that the Community Youth Athletic Center is no longer under the threat of eminent domain.

often themselves broken–physically, mentally and spiritually. All they want is to find a safe haven from neighborhoods that are infiltrated by gangs and, often, hopelessness. At the Community Youth Athletic Center, we take it upon ourselves to build these kids back up, showing them how strong, smart and successful they can be. Some of them have gone on not only to compete at the national championship level in boxing but also to do even bigger and better things with their lives.

This is what the city was trying to shut down for the benefit of a condo developer. This is what the Institute for Justice has saved.

For those of you who know IJ attorney Dana Berliner, the first word that comes to mind when you think of her may not be fighter, but that's exactly what she is. She is a tenacious fighter.

From the very start, she was fully committed to our success, guiding us on what we needed to do to save our center. In the first days of this battle, she directed me and one of our board members, Victor Nuñez, to drive around in my jeep with Victor standing up in the back taking pictures of every single property up and down our main street so we could help her document all the mistakes the city had made with its blight designation. And when she appeared in court, she could talk without referring to her notes in amazing detail to the judge, persuading him on why we should win. That, for me, was one of the most amazing moments of this years-long fight. Without ever referring to her notes, she never flinched. Because of her incredible mind and heart, we scored a knockout.

And IJ attorney Jeff Rowes was just as smart, just as articulate and just as committed. As with everyone on the IJ team, he was in this fight for the right reasons. He was here to save our facility and to make sure that we could continue to serve the kids who so badly need our help. Like every good fighter, Jeff was absolutely relentless in his attack on National City, never letting up until we won.

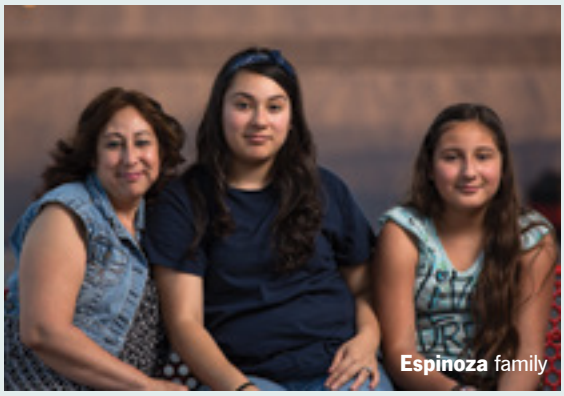
Throughout the fight, IJ made sure we earned media coverage that focused on what we do for the kids we serve and what the city was trying to do. This gave us a lot of encouragement. It reminded us that the city was the one that was wrong and that what we were doing was right and worth fighting for.

While our case is now over and our center saved, IJ always will be part of the CYAC community. We could not be more grateful for IJ's help.◆

Clemente Casillas is a former IJ client and president of the Community Youth Athletic Center.

High Noon for Nevada School Choice: IJ Defends Program from Attacks


Hairr family


Espinoza family


Allen family


Robbins family

By Keith Diggs

The legal gunslingers of IJ are getting ready for a school choice showdown in the Wild West. The last issue of *Liberty & Law* briefly mentioned that Nevada had enacted the nation's first nearly universal educational savings account program, also known as an "ESA." And now IJ will defend the program in court against two lawsuits filed since late August.

Under the new program, which goes into effect in 2016, parents with a child in public school can use their tax dollars to choose a combination of educational goods and services that best fits the needs of their children. For example, ESA funds can be spent on private school tuition, textbooks, tutors, distance learning and even classes at Nevada community colleges. ESAs will open the door for the innovation that modern technology has brought to other sectors like transportation (think Uber) and retail (think Amazon).

IJ represents five families throughout Nevada, including Aimee and Heath Hairr, who have five adopted children. Aurora Espinoza, a single mom who works full time to make ends meet, has two daughters in some of the worst public schools in the state. Lara Allen's four children, all of whom are gifted or have special needs, need more than what the public schools can offer. And two of Liz Robbins' seven children have a severe tissue disorder that requires frequent tests and invasive surgeries that keep them from regularly attending public school.

ESAs will give IJ's clients the educational choice they need and deserve. For the most part, the public schools have treated these families indifferently or worse. Some of their kids have been bullied, assaulted, neglected or unchallenged. They deserve the opportunity the ESA program will give them.

Unfortunately, both the ACLU and the Education Law Center (ELC) have filed suit to stop the ESA program. The ACLU says the ESA program violates the Nevada Constitution's prohibition against using public funds "for sectarian purposes." The ELC claims the government cannot constitutionally provide educational options outside of the public schools. Both arguments fall flat. As IJ has successfully argued before the U.S. Supreme Court and several state Supreme Courts, properly constructed educational choice programs do not unconstitutionally fund religion. All the government is doing is handing the reins over to parents who decide how to use their education dollars. Furthermore, nothing in the Nevada Constitution says it is unconstitutional for the government to provide educational choice outside of the public schools.

That is why IJ has teamed up with Nevada families to intervene in these lawsuits and defend the ESA program. IJ will fight for as long as it takes to protect one of the best education reforms in the country.◆

Keith Diggs is an IJ attorney.

IJ intervened to defend North Carolina's Opportunity Scholarship Program in February 2014. At a press conference were, from left, **Darrell Allison** with Parents for Educational Freedom in NC, IJ clients **Gennell Curry** and **Cynthia Perry**, and IJ attorneys **Dick Komer** and **Renée Flaherty**.

SCHOOL CHOICE WIN IN NORTH CAROLINA

Defending School Choice continued from **page 1**

IJ's final Hail Mary pass to the North Carolina Supreme Court came this July, five months after the Court held oral argument (during an unusual Southern snowstorm!). Time was running short for implementation of the second year of the program, and we did not want the program's success to be compromised again. So we asked the court to make an exception to its procedures and issue a decision early. And once again the court caught IJ's pass, upholding the program's constitutionality a month early. As a result, hundreds, if not thousands, more families were able to take advantage of the scholarships in August.

This litigation was co-counsel Renée Flaherty's introduction to the challenges of public interest litigation, where judges can adopt choice opponents' meritless theories to deny deserving families essential educational opportunities. As always, IJ set the terms of the debate and maintained the pace of litigation with our repeated successful appeals, never giving opposing counsel a moment's rest.

In addition to the importance of representing parents, the North Carolina victory also vindicates IJ's willingness to delve into each state's unique constitutional history. In rejecting the other side's arguments, the North Carolina Supreme Court agreed with us that the state constitution allows North Carolina to provide scholarships to families for private schools. IJ's experience in ferreting out the historical basis for particular constitutional language proved especially helpful in persuading the Supreme Court to allow the North Carolina Legislature to empower parents to choose their children's schools.

Cynthia and her daughter, **Faith.**

Each new school choice victory builds on the foundation laid by our earlier victories, and North Carolina now joins the growing list of states with statewide school choice programs. The momentum for school choice continues to build, and sustaining the constitutionality of North Carolina's new program ensures that more states will consider, and enact, programs to enhance parents' ability to choose the best available education for their children.◆

Dick Komer is an IJ senior attorney.

SUCCESSFULLY NAVIGATING CHICAGO'S BUREAUCRACY

IJ Clinic client **Amanda Scotese**, tour guide and owner of Chicago Detours, is celebrating five years of being in business and successfully navigating Chicago's bureaucracy.

By Beth Kregor

Being an entrepreneur rarely goes according to plan.

Just ask IJ Clinic on Entrepreneurship client Amanda Scotese. Her business, Chicago Detours, just celebrated its fifth anniversary. Chicago Detours is a creative and fun tour-guide business that teaches guests about the history, creativity, political maneuvering and hard work of the people who built Chicago. The tours are fun and unique for both visitors and residents. But it takes years of hard work behind the scenes to become a successful small business, like Amanda's.

Since 2011, the IJ Clinic has worked with Amanda to guide her through the legal twists and turns of opening up a small business in Chicago. Thankfully, Chicago does not have onerous licensing restrictions for tour guides like the ones that IJ has challenged in Washington, D.C., New Orleans, Savannah and Philadelphia. But the legal requirements of employment law and corporate governance are often overwhelming.

When we asked Amanda where her business would be without our help, she said, "I can't imagine actually! I had no idea how much legal help I needed. It has been invaluable." Clinic attorneys and law students analyzed trademark questions, tax questions, employment questions and much more. We have written the agreements that the business uses with tour guides, customers and contractors. We have even mapped out the copyright protection for maps. Because Amanda is so creative and entrepreneurial, she keeps us busy. Her new business plans and her insightful questions have been a training ground for many law students over the years. We have seen firsthand the hard work of Amanda and other entrepreneurs like her, whose businesses build our city.

But fun was at the forefront in August, when I was lucky enough to attend the Fifth Anniversary Bash for Chicago Detours. Part of the party was getting a sneak peek of its new "Big Shoulders Bar and Food Bus Tour." We drove through historic neighborhoods, learning about the waves of immigrants who marked their neighborhoods with their architectural styles and culinary traditions. We hopped out to look in old speakeasies, meet local entrepreneurs and taste local flavors. We imagined the lives of the people who worked in the stockyards when Chicago was the "Hog Butcher to the World." At the end, we gathered at a mansion from the Gilded Age and toasted the success and growth of Chicago Detours over these five years.

We are so proud that Chicago Detours has reached this milestone on its journey. Only 50 percent of businesses survive for five years, and Chicago Detours has overcome many obstacles to make this business work on a small budget in a tough economy. The creativity and hard work of people like Amanda are invaluable to their customers, their community and their economy. Chicago may not be the Hog Butcher to the World anymore, but when strong, persistent entrepreneurs like Amanda team up with the IJ Clinic, we can still be the City of Big Shoulders.◆

Beth Kregor is the director of the IJ Clinic on Entrepreneurship.

Volume 24 Issue 5

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

Fox News

IJ Attorney Rob Johnson on IJ's IRS petitions lawsuit:
"The government needs to do the right thing and give back the money it took."

The Economist

"'[New Jersey's headstone] law is one of the most blatant examples of economic protectionism in the country,' says **Jeff Rowes, a lawyer with the Institute for Justice,** a libertarian law firm which argues the law is unconstitutional in a federal lawsuit filed on July 21st."

The Wall Street Journal

"Last month the Treasury and President Obama's Council of Economic Advisers put out a report that looked at employment data from the states and concluded that 'licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines.

The report...adds to a growing political consensus that state licensing rules are off the rails.... Special credit goes to the free-market **Institute for Justice**, which has combatted these rules since the early 1990s...."

The Roanoke Times

"'The government's agreement or disagreement with a particular message should not—and constitutionally cannot—play a role in dictating which speakers are subject to enforcement,' **[IJ attorney Sam Gedge]** wrote."

“I also salute...our partners from the Institute for Justice, for their tireless work in representing parents in this case.”

—Darrell Allison, President of Parents for Educational Freedom in North Carolina

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