

# Liberty & LAW

February 2016

Volume 25 Issue 1

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## IJ SUES TO DEFEND AGAINST FREE SPEECH ATTACK



Colorado's campaign finance laws mean people like IJ client **Tammy Holland** need an attorney if they want to speak out against the government.

By Paul Sherman

If you want to talk about politics in Colorado, you had better have a defense attorney on speed dial. That is because, unlike most states, Colorado has outsourced the enforcement of its complex system of campaign finance laws to every disgruntled politico with an ax to grind. The all-too-predictable result is that these laws are now being wielded as weapons to entrench political incumbents and to silence dissent.

IJ client Tammy Holland learned this the hard way. Tammy is a resident of Strasburg, Colorado, where she lives on a farm with her husband and sixth-grade son. Tammy is also a passionate opponent of Common Core curriculum and high-stakes testing, which she believes impoverish education

and subject students to unnecessary anxiety.

To voice her disapproval and raise awareness of these issues, Tammy took out a series of ads in her local newspaper, *The I-70 Scout*. The most recent of these was in September 2015, a couple of months before the local school board election. In it, she urged voters to familiarize themselves with the entire slate of candidates running for school board, which included six new candidates who were challenging the incumbent school board members.

That is where Tammy's troubles began—for placing an ad in the newspaper, she found herself sued not once, but twice, by school board officials.

How can merely voicing your opinion land  
**Colorado Campaign Finance** continued on page 9

# POLICING THE POLICE

## In New Mexico

By Rob Frommer

When important changes in the law occur, it can be tempting to declare victory and go home. But that has never been the IJ way. We are in it for the long haul and always make sure that pro-freedom reforms have their desired effect, as our latest lawsuit in New Mexico demonstrates.

*Liberty & Law* readers are well familiar with IJ's campaign to end civil forfeiture at the state and federal levels. We scored an important victory in that fight in May 2015, as New Mexico became the first state in recent history to effectively abolish its civil forfeiture program. Now, IJ is filing suit to make sure that local police and prosecutors actually adhere to those reforms.

The reform bill itself was the product of hard work and creative thinking by IJ. We uncovered video in late 2014 of a New Mexico city attorney speaking at a civil forfeiture conference. The city attorney claimed that law enforcement officials could be "czars" if their forfeiture programs were expanded to take in more "little goodies." Although these musings laid bare the perverse profit incentive at the heart of civil forfeiture, they would have disappeared, unnoticed, but for IJ's communications team, which brought them to the attention of *The New York Times*.

Legislators in New Mexico wanted to transform the resulting public outrage into action. Fortunately, IJ's legislative team had already crafted model legislation to end civil forfeiture. Legislators in New Mexico took that bill and, with some minor tweaks, introduced it on the floor. And when law enforcement sought to stymie the bill, IJ Legislative Counsel Lee McGrath counseled the legislators on how to outmaneuver the foes of liberty. In the end, both houses of the Legislature voted unanimously in favor of the bill, and Gov. Susana Martinez, a former prosecutor, reluctantly signed it into law.

But the fight was far from over. Before the ink on the bill was dry, several municipal officials in New Mexico announced they would not follow the law, wrongly believing it only applied to state officials—even though the law clearly abolishes civil forfeiture throughout the state.

Municipal officials have millions of reasons not to follow the law: In Albuquerque, for instance, the city's vehicle forfeiture program brings in more than \$1 million per year.

Albuquerque's program is a veritable civil forfeiture machine. The city seizes vehicles based on mere suspicion of a crime and then forces property owners to pay a \$50 fee just to get a hearing. At the hearing, property owners must prove their own innocence to get their property back. And they must make that showing to an administrative hearing officer, an employee of the city who has been a vocal defender of the city's program in the press.

Incredibly, even if property owners succeed in proving their innocence, they can be charged storage fees of up to \$10 per day. Those storage fees only grow larger the longer property owners fight, and in some cases, fees can surpass the value of the car.

Albuquerque's program is now illegal and it has to end. That is why on November 18, 2015, IJ sued Albuquerque on behalf New Mexico state Sens. Lisa Torracco and Daniel Ivey-Soto, who were at the forefront of the law's passage.

Our claim is simple: The recent reforms apply throughout the state, including in Albuquerque and other recalcitrant cities. Victory will end not only Albuquerque's forfeiture program but similar programs across New Mexico. And IJ will continue to keep watch to make sure. ♦

**Rob Frommer** is  
an IJ attorney.



# SUPPORT IJ IN THE LONG TERM BY PLANNING NOW

By Melanie Hildreth

## Are you looking for a no-hassle way to support IJ? How about one that costs you nothing now?

A bequest—that is, a gift through a will or living trust—is the easiest and most common way to include a charity in your long-term financial planning. At the same time, these gifts are vitally important to IJ's future.

### How do I know if a bequest is a gift I may want to consider?

A gift through your will might be a good option for you if the following are true:

- You want to help ensure IJ's future strength and success.
- Long-term planning is more important to you than an immediate income-tax deduction.
- You want the flexibility of a gift commitment that does not affect your current cash flow and that you can change or revoke at any time.

### How do I make a bequest to IJ?

You can make IJ the beneficiary of a specific amount from your estate or of a residual bequest, which comes to us after your estate expenses and specific bequests are paid.

Including IJ in your plans can be as simple as adding a codicil to an existing will. Simply review the following language with your attorney:

*I give, devise, and bequeath to the Institute for Justice, Tax ID #52-1744337, located at 901 North Glebe Road, Suite 900, Arlington, Virginia 22203, (insert total amount, percentage, or remainder of estate) to be used for general operations (or for the support of a specific program).*

You can find other sample language and a simple sample codicil at [www.ij.org/FourPillarsSociety](http://www.ij.org/FourPillarsSociety).

### What if I recently updated my will but would like to make provisions for IJ in my plans?

If you are not in a position to change your will at the moment, consider designating IJ as the beneficiary of your retirement plan, insurance policy or other cash account.

Because of the unfavorable tax consequences of leaving tax-deferred accounts (like many retirement plans) to non-spousal beneficiaries, these assets can be particularly good candidates for charitable giving. Like charitable bequests, these gifts may be revoked if your plans or circumstances change.

Making the gift is very easy to do—simply contact your plan administrator and ask for a beneficiary designation form. Note that you would like the Institute for Justice (Tax ID #52-1744337), of Arlington, Virginia, to be a beneficiary of all or a percentage of the account, and return the form to your administrator.

For more information about how best to fit your giving to your individual situation, please consult your professional advisors.

### What do I do once I have made a gift through my will or retirement account?

Please let us know! If you have made arrangements to include IJ in your will or other long-term financial plans, we would be very grateful for the opportunity to thank you for your generosity.

Furthermore, these types of gifts qualify you for membership in the Four Pillars Society, a special group of IJ supporters who have made a commitment to defending and preserving liberty through their estate plans.

To let us know about your gift, or if you have any questions about how to make a gift or about the Four Pillars Society, contact me any time at

[melanie@ij.org](mailto:melanie@ij.org) or (703) 682-9320 ext. 222. ♦

**Melanie Hildreth** is IJ's vice president for external relations.



*Four Pillars Society*





IJ teamed up with **Rafael Lopez** to sue San Antonio, but the city repealed its food-truck law because of a different IJ victory.

## A Hair Braider, Eyebrow Threader And Food-Cart Owner Walk Into IJ...

By Robert McNamara

The hallmark of IJ's economic liberty litigation has always been our strategic vision. We win victories for our clients, yes, but we are always after bigger game: We are trying to build a rule of law that protects the right of *everyone* to earn an honest living free from unnecessary government interference. We fight for hair braiders and florists and taxi drivers not just because we care about those occupations, but also because their rights are all directly connected—to each other's rights, to your rights and to mine. By protecting one occupation, IJ hopes to protect them all.

That is why there is nothing more gratifying than seeing our strategic plan play out in real time. The most recent example of this comes from our challenge to San Antonio's food-truck regulations, which made it illegal for food trucks to operate within 300 feet of any business that sold food without written permission from that business, even if the truck's owner operated on his own private property. This past October, a group of local entrepreneurs, led by IJ Attorney Arif Panju, filed a lawsuit claiming that this law violated their right to earn an honest living under the Texas Constitution. And they won. In fact, they won almost instantly: San Antonio repealed the law just over a month later.

Why did the city crumble so quickly? Its attorneys took a look at a recent case in which the Texas Supreme Court had struck down the state's licensing requirements for eyebrow threaders, and they decided the city had no chance of winning in court. That case, as loyal readers of *Liberty & Law* may have already guessed, was *Patel v. Texas Department of Licensing and Regulation*, a lawsuit designed and ultimately won by IJ's own Wesley Hottot in June 2015.

To be sure, the two cases are about very different occupations (eyebrow threading versus food trucks) and very different regulations (an occupational license versus an anti-competitive limitation on where trucks could operate). But as San Antonio's lawyers correctly recognized, both cases boiled down to the same question: How seriously should courts take the idea of economic liberty? In IJ's eyebrow-threading case, the Texas Supreme Court announced that it took that idea very seriously indeed. And that legal rule made all the difference in IJ's food-truck case, as it will make all the difference in countless other situations, whether IJ is directly involved or not.

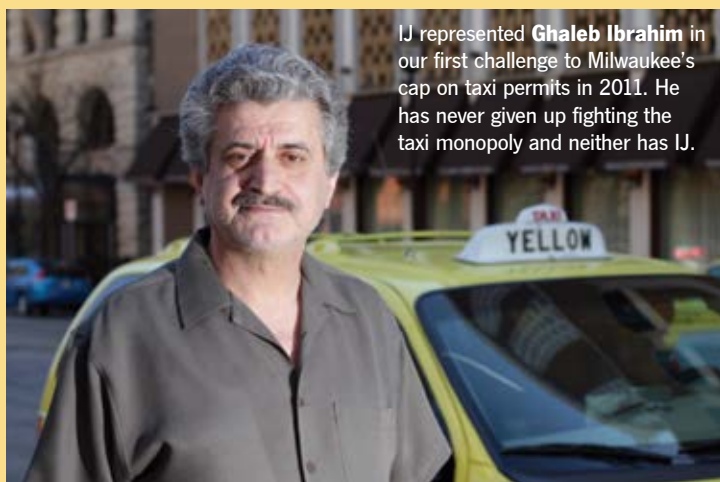
This, ultimately, is the goal of IJ's litigation work. Not just to have a series of victories in high-level appellate courts—though we will have those, too—but to make government officials realize on their own that these laws are unconstitutional. Of course, government officials can be slow to learn their lesson, which is why IJ's litigators are always filing new cases to hold the government to account. But as we win more and more of those cases, it becomes more and more common for anticompetitive regulations like this to be repealed without our ever setting foot in a courtroom. Every time that happens, every one of us, no matter what our occupation, becomes a little more free. ♦



IJ client **Ash Patel**'s case helped protect the right of *all* entrepreneurs to earn a living.

**Robert McNamara** is an IJ senior attorney.





IJ represented **Ghaleb Ibrahim** in our first challenge to Milwaukee's cap on taxi permits in 2011. He has never given up fighting the taxi monopoly and neither has IJ.

## Milwaukee Taxi Drivers Defeat Monopoly

By Anthony Sanders

Monopolists do not like giving up their monopolies—and that has been especially true in IJ's four-year battle against Milwaukee's taxi cartel.

IJ first challenged the city's rigid cap on taxi permits in 2011. Two years later, we won when a federal court ruled the cap unconstitutional. In response to this ruling, Milwaukee lifted the cap completely and became one of the freest cities in the U.S. for drivers looking to enter the cab market. Drivers who had waited years for this were finally able to start their own businesses.

But the monopolists did not give up. The taxi cartel, unhappy about losing its protectionist system, sued to halt the reforms just a few months after the cap was lifted. The already-established cab companies wanted a permanent monopoly to charge above-market prices and to pay their drivers below-market wages. They claimed they were entitled to tens of millions of dollars lost after the city lifted the permit cap.

So IJ intervened in the cartel's case on the side of freedom and on behalf of new entrants into the market. We represented Jatinder Cheema—our client from IJ's earlier lawsuit—and Saad Malik, two taxi drivers who were only recently able to start their own cab businesses. Before IJ challenged the cap in

**Milwaukee Taxi Drivers** continued on page 10



**Abdikadir "Abdi" Abdisalan** has started his own cab company, thanks to IJ's work.

## IJ Brings Taxi Freedom To San Diego

Let the taxis roll! In November 2015, a San Diego judge handed IJ another transportation victory when he ruled that the Metropolitan Transit System (MTS) could abolish a 30-year-old cap on the number of taxi permits in the city. A group of established cab companies had sued, claiming that MTS needed to do a pointless environmental study—and pay them millions of dollars—before it could issue a single new taxi permit. The case threatened to put a freeze on transportation freedom in San Diego, but with IJ's help, anyone can now own a taxi.

IJ intervened in the case on behalf of longtime San Diego taxi drivers Abdi Abdisalan and Abdullahi Hassan. Abdi and Abdullahi had wanted for years to start their own cab businesses but were stymied by the permit cap; due to the artificial shortage of permits, they had to pay hundreds of dollars every week in lease fees to existing permit holders. In April, we helped MTS defeat a motion that could have reinstated the permit cap. That ruling allowed MTS to issue new permits. As a result, Abdi and Abdullahi now own their own businesses. Although IJ expects the taxi companies to appeal the judge's most recent ruling, they will face long odds to have it overturned.

The ruling lets taxi drivers and riders—not government bureaucrats—decide the number of cabs on the road. Over the last 20 years, IJ has vindicated that principle in cities across the U.S., and we are now proud to add San Diego to that growing list.

No one should have to lease the right to earn an honest living. ♦



# *Free the Cookies,* **EXPAND ECONOMIC LIBERTY**

By Michael Bindas

The latest case in IJ's National Food Freedom Initiative takes us to Wisconsin, where government officials are hard at work protecting the public from the menace of homemade cookies.

Yup . . . cookies.

Wisconsin is one of only two states in the nation to completely ban the sale of home-baked goods—even those the government deems “not potentially hazardous,” such as cookies, breads, scones and cakes. Sell a homemade cookie in Wisconsin and you and your scofflaw self may be on your way to jail for six months.

But now three culinarily talented and courageous entrepreneurs are fighting back against the state's cookie crackdown. On January 13, Lisa Kivirist, Kriss Marion and Dela Ends teamed up with IJ to file a state constitutional challenge to the ban on home-baked goods.

Lisa, Kriss and Dela are farmers from rural Wisconsin; Lisa and Kriss also operate bed-and-breakfasts in their homes. Like many farmers and

rural residents, they look for ways to supplement their income, and selling baked goods is a great way to do it. They would love the freedom to sell cookies, breads and muffins to friends and neighbors, to customers at nearby farmers' markets and to their farm and bed-and-breakfast guests. But Wisconsin prohibits them from doing so.

The state's ban makes no sense and is certainly not about health and safety. Home-baked goods are safe. Virtually every other state in the nation allows their sale, and no one is dropping dead from home-made scones.

The ban is also irrational. After all, Wisconsin allows the sale of many other homemade goods, including cider, pickles, salsas, jams and jellies. Homemade baked goods are just as safe as—if not safer than—these other foods, yet their sale is prohibited.

So what is the ban really about? Economic protectionism. Just consider the fact that when bills have been introduced in recent years to eliminate the ban, industry groups such as the Wisconsin Bakers

From left: IJ clients and bakers **Dela Ends**, **Lisa Kivirist** and **Kriss Marion**.





Association have run to their patrons in the Legislature, urging them to oppose the bills. And so far, they have won.

But not for long. Lisa, Kriss and Dela are three tough cookies, and with IJ's help, they will take down the ban on home-baked goods. And when the cookie ban crumbles, we will have created important economic liberty precedent not just for them and other home-baking entrepreneurs, but for all Wisconsinites. We will also have advanced the mission of IJ's National Food Freedom Initiative, which is to ensure that all Americans are free to produce, procure and consume the foods of their choice. ♦

**Michael Bindas** is an  
IJ senior attorney.



Bakers in Wisconsin can go to jail for up to six months if they sell baked goods made in a home kitchen.





**Kendra Espinoza** is a single mom who needs Montana's tax-credit scholarship program to send her daughters to private school.

## Big Sky Country Is School Choice Country

By Erica Smith

2015 was a busy time for IJ's school choice team. We had two major victories from the Alabama and North Carolina Supreme Courts, five states enacted new choice programs and we stepped in to defend one of those new programs from attack in Nevada.

2016 is showing no signs of a school choice slow-down. After working to bring school choice to Montana for almost 10 years, we were thrilled when the Legislature finally passed a tax-credit scholarship program—without the governor's signature—in May 2015. But before the program was able to go into effect, it came under attack. In late December, IJ stepped in to protect the program. The case is a perfect example of how local politics can deprive children of school choice if it is left unprotected.

The program provides a modest tax credit (up to \$150 annually) to individuals and businesses who donate to private scholarship organizations. Those scholarship organizations then use the donations to give scholarships to families who want to send their children to private schools. The program has the potential to be a boon to those who cannot afford to pull their children out of failing public schools and to those who currently make tremendous financial sacrifices to do so.

That is, it did until politics got in the way. The state Department of Revenue proposed a rule that would deny choice to the majority of families eligible under the program by limiting scholarships to only those who wish to attend

nonreligious private schools. As most of the private schools in the state are religious, the rule virtually guaranteed the program's failure.

IJ staff testified against the rule at a public hearing, explaining that it would be both invalid and unconstitutional. As we argued, the rule exceeds the Department's authority by contradicting the clear intent of the Legislature to make scholarships available for students to attend all private schools. The rule also discriminates against religion in violation of both the Montana and U.S. Constitutions' Religion and Equal Protection Clauses. The government cannot exclude a religious option from an otherwise neutral benefit program.

In an unexpected twist, the Montana attorney general also submitted comments against the rule, agreeing with IJ that it was unconstitutional and making clear that it would not defend the rule in court if challenged. The Department passed the rule anyway.

IJ filed suit in state court only hours after the rule was adopted, representing three families who wish to use scholarships to send their children to religious schools. The government should not be able to play politics with children's education—or their constitutional rights. We are confident that the Montana courts will agree. ♦

**Erica Smith** is an IJ attorney.







February 2016

**Tammy Holland** was sued by two school board officials simply for placing an ad in a local newspaper, voicing her disapproval for Colorado's public education system.

**Colorado Campaign Finance** continued from **page 1**  
you in court? It happened because in Colorado, unlike in virtually every other state in the country, any citizen may file a private lawsuit to enforce the state's campaign finance laws. The Colorado secretary of state is required to forward all such complaints to the Office of Administrative Courts, triggering full-blown litigation. There is no process for screening out frivolous complaints, and if you want an attorney to defend you, you will have to pay for counsel out of your own pocket. Not surprisingly, complaints are routinely filed not out of legitimate concern for enforcement of the campaign finance laws, but to intimidate and silence political opponents.

That is exactly what happened in Tammy's case. After her ad ran in *The I-70 Scout*, Byers School District Superintendent Tom Turrell filed a complaint alleging that Tammy had violated Colorado campaign finance laws by failing to register as a "political committee." But this requirement does not apply to ads like Tammy's, which did not call for the defeat or election of any candidate. Superintendent Turrell's complaint also claimed that Tammy had somehow violated federal campaign finance law, even though the federal requirements he cited are totally inapplicable to speech about local elections.

After Tammy hired a lawyer, Superintendent Turrell dismissed his complaint. But when Tammy refused to drop her request to recover attorneys' fees for defending herself against Superintendent Turrell's baseless complaint, she

found herself hit with a second—and identical—complaint filed by Byers School Board member Tom Thompson III. Although Tammy fully believes she violated no law, she wants to ensure that neither she nor any other Coloradan is subject to this abusive system in the future. So Tammy has teamed up with IJ to fight back.

States should not be regulating political speech in the first place, but, to the extent they do, the First Amendment requires that those regulations be enforced by a neutral government official who has an obligation to abide by the U.S. Constitution. That is why on January 21, in addition

to challenging the latest administrative complaint against Tammy, IJ filed a federal lawsuit against the Colorado secretary of state to strike down Colorado's unconstitutional system of private campaign finance enforcement.

In a society that values free expression, nothing could be more dangerous than giving

incumbent politicians or their cronies the power to sue people who merely mention their name in the newspaper. When Tammy's lawsuit is successful, speakers throughout the state will be able to breathe a sigh of relief, and would-be censors will have one less weapon to wield against those whose only crime is voicing their opinion. ♦

**Paul Sherman** is an IJ senior attorney.



**Milwaukee Taxi Drivers** continued from page 5

2011, Milwaukee only allowed 321 cabs to operate. This caused the price of a taxi permit to rise from \$85 to over \$150,000—more than an average Milwaukee house.

In December 2015, a federal judge wholly rejected the claims of the cartel and ruled that just because you own a legally protected monopoly *today* does not mean you can expect it to continue indefinitely.

The judge relied heavily on a similar IJ case in Minneapolis, where that city lifted its cap on the number of taxis. IJ represented taxi entrepreneur Luis Paucar in that case, intervening on the same side as the city, as we did in Milwaukee. The case was dismissed and the taxi cartel appealed to the 8th U.S. Circuit Court of Appeals, which agreed that there is no constitutional right to have the government protect a monopoly. That case has also been cited in other recent unsuccessful challenges to deregulation,

including in IJ's case in Chicago, where we represent drivers for ridesharing services such as Uber and Lyft.

Milwaukee is now a vibrant transportation market. And spurred by IJ's success, Saad took it one step further and led a successful effort to deregulate the taxi system at Milwaukee's airport in the fall of 2015.

But the Milwaukee taxi cartel has still not given up. It has appealed to the 7th U.S. Circuit Court of Appeals, which covers not only Milwaukee but also Chicago. A victory in the court of appeals could help our clients in our ridesharing lawsuit in Chicago as well as preserve a robust taxi market in Milwaukee. We will continue to be there to defeat economic protectionism—in Milwaukee, Chicago and wherever transportation freedom is threatened. ♦

**Anthony Sanders** is an IJ senior attorney.



IJ has represented a wonderful and principled group of taxi drivers who refuse to give up until the taxi cartel is dismantled for good.





Volume 25 Issue 1

**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

**WKOW 27 Madison**

“The rest of the country is doing incredibly well with helping launch small scale food business[es]. With the lawsuit we’re addressing the constitutionality of the issue that we as entrepreneurs [and] as citizens of Wisconsin have a right to earn a livelihood,” said **[IJ client] Lisa Kivirist**, Owner of Inn Serendipity Bed & Breakfast in Browntown.”

**Fox News**

“This is a common ‘policing for profit’ scheme that we see across the country—governments using their citizens as ATMs,” **[IJ Attorney Joshua] House** told Fox News. “... The city is so financially dependent, and because of that dependency, they have an incentive to find nitpicky violations and convict people for them.”

**Buzzfeed**

“The profit incentive created by civil forfeiture is so strong, officials charged with upholding the law are now the ones breaking it,” said **Robert Everett Johnson, a staff attorney for the Institute for Justice**, in a press release. “Albuquerque’s law enforcement officials seem to think that they are above the law. But if they won’t listen to the state legislature, they’ll have to answer to a judge.”

**The Washington Post**

**IJ Senior Attorney Paul Sherman:** “The money spent by political campaigns, just like the money spent by book publishers and newspapers, is spent communicating to the public. And if Congress enacted punitive taxes aimed at curtailing the speech of book publishers or newspapers, no one would doubt that such taxes violated the First Amendment.”

**“The Texas legislature  
in all its majesty is  
challenged by the wee  
but mighty Institute  
for Justice. It exists  
to quell lawless  
legislators.”**

—George Will



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I am one of Philadelphia's most prominent artists.

But the city wanted to seize my studio to replace  
it with a grocery store and a parking lot.

I worked with IJ's activism team  
to fight City Hall, and I won.

*I am IJ.*

James Dupree  
Philadelphia, Pennsylvania

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