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Liberty & LAW

WE WON'T BACK DOWN



For 25 years, principled clients like **Lonzo Archie**, right, have refused to give in to the unconstitutional acts of government.

WHAT IJ DOES TO WIN FOR OUR CLIENTS AND INDIVIDUAL LIBERTY

By Scott Bullock

I will never forget meeting with the Archie family in Canton, Mississippi, during our eminent domain case there in 2002. This was a family of very modest means and the state was trying to take its land through eminent domain to give to Nissan to build an auto plant. Once we got involved, Mississippi offered the Archies a lot more money for their property. I told the family that I thought we could win at the Mississippi Supreme Court and recommended that we keep going, but it was a huge financial risk to hope for a victory while walking away from a significant amount of cash. The Archies stood firm. They turned the state down; the Supreme Court stopped the condemnations dead in their tracks; and the state and Nissan decided to drop the eminent domain

actions. The Archies are on that land and in their homes to this day.

This September, IJ celebrates its 25th anniversary. A hallmark of our work for more than two decades is that we pull out all the stops to win for our clients and the Constitution. It takes unyielding determination to reach those results, and that is true whether the case lasts for six hours (like our recent victory in the Muskogee, Oklahoma, forfeiture case) or six years (like our victory in the National City, California, eminent domain case on behalf of a youth boxing gym). But like the Archie family, we refuse to give up.

Why are our cases so intense and difficult? One reason is that the government has so much power and, in litigation, it holds all the advantages.

Standing Ground continued on page 6

IJ Bakes Up A Fresh Forfeiture VICTORY In Connecticut

By Robert Everett Johnson

For three generations, the Vocatura family has been baking fresh Italian bread in Norwich, Connecticut.

The current generation can tell you stories about crawling into the industrial-sized ovens as children (while the ovens were off, of course) and riding the trays like a carousel. Now they work around the clock to keep the bakery going, baking at night and working retail through the day.

The family's nightmare started in May 2013, when eight armed IRS agents descended on the bakery and began asking questions about a series of under-\$10,000 cash deposits (the bakery was a cash-only business). The agents informed the Vocaturas they had seized the bakery's entire bank account.

When IJ met the Vocaturas, they had almost given up hope. Federal prosecutors and the IRS had been hounding the family for years, first seizing over \$68,000 and then threatening the Vocaturas with additional forfeitures and time in prison—all because of how they deposited money in the bank.

But IJ was able to turn the situation around and in the process was able to help other small businesses facing similar abuse.

As regular readers of *Liberty & Law* are aware, IJ has litigated a series of similar cases involving "structuring" laws. These laws—which make it a crime to limit the size of bank deposits to evade federal reporting



IJ client **David Vocatura**



Watch IJ's video on this case.

ij.org/ct-bakery

requirements—were designed to target real criminals but have been applied to small businesses accused only of doing business in cash.

As news reports about IJ's prior structuring cases began to generate substantial public outrage, federal prosecutors handling the Vocaturas' case apparently decided to lie low. For about a year, the Vocaturas heard nothing from the government.

But then, in February 2016, the government reappeared. This time, prosecutors were demanding that the Vocaturas plead guilty to *criminal* structuring charges. Under the proposed plea agreement, the Vocaturas would have faced 37 to 46 months' imprisonment and would have had to forfeit an additional \$160,000 on top of the \$68,000 already seized.

Enter IJ. For years, the government had been holding the Vocaturas' money without bringing its case before a judge. To subject the govern-

ment to much-needed judicial oversight, IJ filed suit in federal court demanding the return of the bakery's \$68,000.

The change in the government's attitude was speedy and profound. Within hours, the government announced that it would return the \$68,000. Whereas not long ago the government had been demanding an additional \$160,000, now the government was tripping over itself to give the Vocaturas' money back.

And the change did not stop there. Not long after the Vocaturas' case was discussed at a congressional oversight hearing, the IRS announced that it was sending letters to 700 property owners who had money seized under the structuring laws—informing

them that they could petition the IRS to get their money back. This announcement was inspired by IJ's use of such petitions in previous cases.

The government is happy to take money in private, beyond public scrutiny. But IJ exists to drag the government into the light, where its actions can be judged. For the Vocaturas—and hundreds of other property owners—that has made all the difference. ♦

Robert Everett Johnson is an IJ attorney and the Institute's Elfie Gallun Fellow in Freedom and the Constitution.



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FROM
KELO
TO
ATLANTIC CITY:

IJ CONTINUES THE FIGHT TO PROTECT PROPERTY RIGHTS

By Robert McNamara

It has often been said that eternal vigilance is the price of liberty. And it is true: Winning decisive victories is important, but only if you stick around to make sure that the opponent you put down stays down.

There may be no better example of this than IJ's battle against eminent domain abuse. The battle against the unholy alliance of land-hungry developers and tax-hungry bureaucrats that surrounded IJ's *Kelo* case was one for the history books—and, it turns out, one for the movie screens. (A film adaptation of the story, *Little Pink House*, is expected to hit theaters in 2017.) And it was a battle we won. While the U.S. Supreme Court ruled for the government in *Kelo*, the decision caused a wave of public outrage that (along with IJ's *Hands Off My Home* campaign) led 44 states to change their laws to better protect property rights and nine state supreme courts to make it more difficult for the government to use eminent domain. California abolished its redevelopment agencies altogether. And property owners across the country were emboldened to stand up for themselves by IJ's Castle Coalition, which used political pressure and activism to stop city officials from condemning private property in the first place.

As a result, eminent domain abuse slowed dramatically and, in many places, halted entirely. There were still major prop-

erty rights fights—among them IJ's successful defense of the Community Youth Athletic Center's boxing gym in California and our ongoing defense of Charlie Birnbaum's longtime family home in Atlantic City—but there was no question that the land grabbers were in full retreat.

But nothing stays down forever, particularly not things that are as profitable as using government power to steal people's homes and small businesses. As real estate values have recovered from the financial crisis and, perhaps, as local officials have begun to forget how unpopular eminent domain abuse is, more and more local governments are yielding to the temptation to do a little real-estate speculation—using, of course, other people's real estate. California has created brand-new redevelopment agencies, while officials in other states across the country have begun a quiet but nonetheless full-scale assault on property rights. IJ's activism team, Liberty in Action, is currently fighting more instances of eminent domain abuse than at any point in the past three years.

What does all this mean? It depends on where you are: Many states, like Ohio, where IJ won a landmark victory for property rights in the state's highest court several years back, or Florida, where IJ helped pass a best-in-class constitutional amendment prohibiting eminent domain for private gain, remain safe havens. And a few states like New York never stopped abusing eminent domain

"NOTHING STAYS DOWN FOREVER, PARTICULARLY NOT THINGS THAT ARE AS PROFITABLE AS USING GOVERNMENT POWER TO STEAL PEOPLE'S HOMES AND SMALL BUSINESSES."

IJ Clinic Helps Keep Fashion Entrepreneur Trucking Along

Beckie Mueller operates the North & Hudson fashion truck.

By Stacy Massey

in the first place. Many more states lie in the middle, with more protections in place than there were before *Kelo* but nonetheless with a real possibility that highly motivated government officials could make an under-the-radar return to the bad old days of eminent domain abuse.

The good news, though, is that IJ has great radar. The heart of our eminent domain work—the heart of all our work, really—is that we are always focused on the next fight instead of the last one. That was the key to the *Kelo* backlash; rather than focusing on a loss in the Supreme Court, we immediately pivoted toward fighting for property rights in the states. That will be the key to the next phase of our eminent domain battle: years of preparation that will allow us to meet the next wave of eminent domain abuse head-on.

Ten years ago, a whole country's worth of government officials learned that eminent domain abuse is more trouble than it's worth. But a new generation of officials is rising—and IJ, with the help of supporters like you, will be happy to teach them that same lesson. ♦

Robert McNamara is an IJ senior attorney.



Starting a business should only take an idea and the drive to succeed. But if you want to start a business in Chicago, you need an attorney to help push things through City Hall. When Beckie Mueller left the financial industry to go to fashion school, she had a plan. Beckie would complete school and open a shop on wheels to sell her own creations, designed and manufactured in Chicago. She dreamed of starting a whole new kind of business in the Windy City—a mobile boutique. Beckie had read and could recite the city code—a *street peddler is a person who moves from place to place, whether on private property or on the public way, selling from a wagon, motor vehicle, hand cart, push cart or other vehicle.*

But the government had a different plan for Beckie. In early 2015, city officials refused to issue her a peddler's license. Instead, the city suggested that she work exclusively out of festivals and farmers' markets. Beckie had invested a large portion of her savings in building out her new business—a big, customized walk-in-closet on wheels called North & Hudson—and she knew that operating exclusively at weekend events wasn't a viable option. When things got sticky with the city, Beckie reached out to the IJ Clinic on Entrepreneurship.

What Beckie did not know is that in 2012, Chicago created the emerging business permit to allow innovative businesses like North & Hudson to operate. The idea was that issuing a two-year emerging business

permit would give the city two years to conjure up regulations for businesses that did not quite fit into other licensing categories. The goal was to cut through red tape and let innovation flourish in Chicago. But that is often not how cities operate. Unfortunately, in the years since the license was created, Chicago had issued only one of its shiny, new emerging business permits.

After the IJ Clinic began working with Beckie and after 14 months of lobbying the city, the Clinic and Beckie got something to celebrate. In June 2016, after taking more than a year to devise its requirements, Chicago finally offered North & Hudson an emerging business permit.

Beckie used to spend the majority of her time trying to find an event where her mobile boutique was welcome. Though her dream was unjustly deferred, she's now free to share her fashions whenever and wherever she'd like. In fact, Beckie's family is sharing in the success. While shirts, scarves and dresses are Beckie's domain, her mom creates all of North & Hudson's jewelry and accessories. Should it take a lawyer to get a license for a business as innocuous as North & Hudson? Of course not. But as long as it does, the IJ Clinic will be here in Chicago, helping entrepreneurs like Beckie through the process. ♦

Stacy Massey is the office and community relations manager for the IJ Clinic on Entrepreneurship.





IJ client **Abbot Justin Brown**



IJ client **Leroy Jones**

“But at IJ, we and our clients do not settle. Unless the government repeals the law or lets people keep all of their property, we fight on.”

Standing Ground continued from page 1

Under modern constitutional jurisprudence, there is a presumption of constitutionality rather than a presumption of liberty. Therefore, people like IJ’s clients must typically rebut every conceivable justification for a law. That is a steep uphill climb.

In addition to having this presumption turned on its side, the government also throws up a slew of procedural roadblocks that are designed to keep a judge from reviewing substantive constitutional claims. We do not typically detail our fights on these issues (partly because we do not want to bore readers of *Liberty & Law*), but in so many of our cases, IJ lawyers must cut through legal thickets before even getting a chance to present the substance of our challenges.

Even if we get past these challenges, the government has many other tactics at its disposal. One of the most common is to try to settle the case by giving our clients something but stopping well short of a full victory. Maybe they will offer more money for a house being taken by eminent domain. Or offer to give back some of the cash taken from an illegal highway seizure. Or give our client—but no one else—a license to practice their occupation. Governments are used to playing like this because a vast majority of cases settle. Moreover, most people, especially low- or moderate-income folks, simply don’t have the money to fight.

But at IJ, we and our clients do not settle. Unless the government repeals the law or lets people keep all of their property, we fight on. We either achieve a complete win for our client or get a decision on the merits by a court. Ideally, we get both. And because we do not charge for our legal services, thanks to the generosity of our donors, our cases are often the only way the unconstitutional acts of government are challenged.

It is during the government’s attempts to essentially buy off our clients through settlement that their heroic nature comes shining through. There are so many instances of our clients turning down offers because they did not want to settle for half a victory and because they did not want the government abusing someone else’s rights in the future.

It is not easy playing chicken with people in power who have the unlimited pockets of the taxpayers at their disposal, but IJ and our clients have done it throughout our 25 years.

And how things have changed since our founding in 1991. In the early days, IJ was not very well known and did not yet have a track record of success. So government officials and their attorneys often did not take us very seriously. They thought they could keep fighting and prevail. That is no longer the case. When we get involved, governments now know that they are going to face the full force of IJ in



IJ client **Heather Coffy**



IJ client **Christine Anderson**



partnersclub

Become a Partner At the National Law Firm for Liberty

By Caitlyn Healy

The stakes for liberty grow greater by the day, and IJ's mission has never been more critical. Partners Club members play an essential role in driving IJ's success by contributing \$1,000 or more to our efforts each year. Their support forms the backbone of our work, providing more than 75 percent of our funding and enabling IJ to pursue our mission with unprecedented strength and sophistication. We invite you to increase your involvement in IJ's work by joining the Partners Club today.

As a Partner, you will receive special case updates directly from IJ President Scott Bullock and have exclusive opportunities to interact with IJ staff, clients and attorneys during Partners Club events. Last month, Partners were invited to speak by phone with Scott and Senior Vice President and Litigation Director Dana Berliner about IJ's unique strategy and how it overcomes the challenges of a shifting legal and political landscape.

In our 25 years, IJ has had a profound impact on the law and the broader movement for individual freedom. Partners know that the courts will play an increasingly indispensable role in preserving liberty, and they are committed to equipping IJ with the resources we need to succeed. For more information and to become a Partner, please visit ij.org/support/partners-club or contact me directly: 703-682-9320, ext. 221, and chealy@ij.org. ♦

court and in the court of public opinion. They also know that our activism team is going to rally the community against what the government is doing and that we will employ strategic research to expose the phony justifications provided by the government for its actions.

Today, we often see governments backing down when IJ comes to town. Governments learn that citizens cannot be bullied, and we are glad that our lawsuits cause politicians and bureaucrats to rethink their suppression of liberty. But we are always refining our tactics to ensure we get court rulings that government officials violated the Constitution. Sometimes that means we ask for nominal damages so a court still rules on the constitutionality of a law even if that law has been repealed during the course of the litigation. IJ has also filed class-action lawsuits (like our forfeiture challenge in Philadelphia) that will keep the case and issues alive even if the government eventually gives back the property that it tried to illegally forfeit.

In short, we are always searching for ways to maximize the chances of victory in order to advance individual liberty. As this political season unfolds during our 25th year, IJ is perfectly positioned to take on governments at the federal, state and local levels. As you know, our work is desperately needed. It will continue and grow stronger in the years and decades ahead. ♦

Scott Bullock is IJ's president and general counsel.



Caitlyn Healy is IJ's Partners Club manager.





IJ client **Shelia Champion**

A SWIFT VICTORY FOR ALABAMA ENTREPRENEURS

Shelia Champion's case is sure to be fresh in the minds of *Liberty & Law* readers. In the last issue, we let you know about Shelia's challenge to an Alabama law that made it illegal for her to sell biodegradable caskets and shrouds without obtaining an expensive, unnecessary funeral director's license and converting her cemetery into a funeral home.

Happily, victory has arrived for this entrepreneur. Exactly one month after IJ filed its lawsuit, the governor signed a bill that allowed Shelia and other entrepreneurs to sell caskets. The law removed sales of funeral merchandise from the definition of "funeral directing." This is a complete victory for Shelia and anyone else who wants to sell caskets in Alabama. Shelia is excited to grow her business and to provide an environmentally friendly, inexpensive alternative for her customers, and IJ has rid yet another state of an unnecessary, burdensome restriction on casket sales.

As IJ President Scott Bullock mentions in this issue's cover story, such a quick victory reflects how much has changed for IJ since its founding 25 years ago. Winning economic liberty cases was once regarded as impossible. Today, not only does IJ win them, but the government thinks twice before even facing IJ in court.◆



Above, 29 law students gather to learn how to practice public interest law at IJ's annual law student conference.



Below, **Clark Neily** addresses law clerks at IJ's first Judicial Engagement Fellowship conference.



HELPING THE NEXT GENERATION OF LAWYERS FOR LIBERTY RISE UP

By Clark Neily

At IJ, we always have one eye on the bureaucrat, government official or politician we are suing at a given time, and one eye on the future. We are always thinking not just about how we can make people more free today, but about what we can do for liberty tomorrow, next month, next year and even the next decade. One important aspect of this focus is to educate and inspire future generations of freedom fighters.

June was a busy month on that front, with IJ hosting its annual law student conference, which was attended by all 22 of the summer clerks working in our headquarters and five state offices plus seven law students whose passion for liberty came through loud and clear when they applied to attend the conference, or “boot camp” as it has affectionately come to be known.

As always, these top-notch students were given a crash course in libertarian public interest litigation. But this time we included a breakout session where students could choose a particular IJ effort—civil forfeiture,

economic liberty, First Amendment protection for signs, or exploitative municipal fines—and do a deep dive on that subject with an expert IJ litigator. The sessions gave students the chance to learn how they can take IJ’s success and fight for liberty regardless of whether they choose public interest work or a big law firm.

Just two weeks later we were at it again, as the Center for Judicial Engagement hosted its first Judicial Engagement Fellowship conference, designed to showcase IJ’s unique take on the proper role of judges in protecting *all* constitutional rights instead of just the small handful deemed “fundamental” by the U.S. Supreme Court.

The Fellowship attracted an array of graduates from America’s top law schools, all of whom were getting ready to begin or complete clerkships with prominent federal judges. The conference consisted of nine seminar-style discussion sessions led by leading liberty-friendly law professors and civil litigators (including former IJ clerks Alan Gura, who argued the *Heller* and

McDonald Second Amendment cases, and James Burnham, who conceived, designed and, with his team at Jones Day, litigated *Friedrichs v. California Teachers Association*, challenging compulsory agency fees for non-union public school teachers). The Judicial Engagement Fellows peppered faculty with thoughtful, challenging questions and demonstrated both a deep understanding of and a passion for constitutionally limited government.

Leviathan never rests, and neither do we. Whether we are keeping the country safe for honest enterprise and free speech, ensuring due process for victims of civil forfeiture or protecting parents’ right to choose the best school for their children, we never stop thinking about the future of liberty and ensuring that the pool of freedom-loving legal talent is constantly refreshed. ♦

Clark Neily is an IJ senior attorney and director of IJ’s Center for Judicial Engagement.



THE ROAD TO FREEDOM TRAVELED BY IOWA BRAIDERS

By Lee McGrath

In the last issue of *Liberty & Law*, we shared our big victory on behalf of African hair braiders in Kentucky, and we are excited to announce another major victory for hair braiders in Iowa. Braiders in the Hawkeye State no longer need to get a government-mandated cosmetology license before they can work and will now simply need to register with the state. Previously, hair braiders were forced to spend thousands of dollars on 2,100 hours of cosmetology training—training that had nothing to do with hair braiding. IJ sued in 2015 on behalf of Aicheria Bell and Achan Agit, two braiders who wanted to open up their own shops to support themselves.

After IJ filed the case and caused an uproar in the media, it became clear that Iowa did not want to defend this incredibly burdensome license in court. This meant that IJ Attorneys Meagan Forbes and Paul Avelar had to bring their expertise to the state Legislature, where lobbyists for cosmetology schools were working behind the scenes to end our lawsuit by getting legislators to enact more specific but still burdensome requirements for braiders.

Luckily, braiding freedom found a kindred spirit in state Rep. Dawn Pettengill, who introduced a bill to fully exempt braiders from Iowa's cosmetology licensing scheme. Her bill was based on IJ's model legislation that Kentucky and Nebraska enacted earlier this year. It looked like the bill was going to easily pass without any roadblocks from the cosmetology schools—until the 11th hour, when lobbyists persuaded the Speaker of the House to insert language regulating braiders into an appropriation bill that needed to pass. It would have mooted IJ's lawsuit and forced braiders to be regulated by the Department of Public Health and its industry allies. We fought hard against the provisions, but the House and Senate passed the bill and sent it to Gov. Branstad for his signature.

But that did not stop us.

IJ has had a relationship with the governor and his staff since 2013, when a group of IJers met with him to discuss the consequences of occupational licensing. He recognized then that

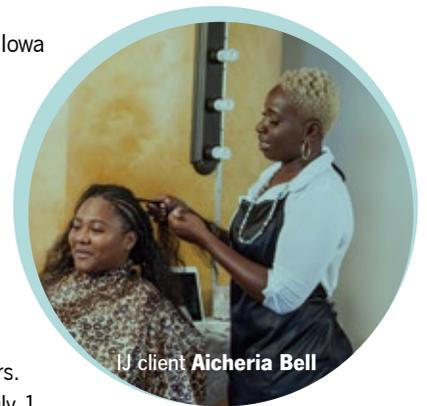
such laws hurt his goal of making Iowa the state with the nation's lowest unemployment rate.

We spoke to his staff about how the amendments restricted braiders' economic liberty. And on May 27, the governor vetoed the last-minute additions and signed into law just a single provision that establishes a simple registration requirement for braiders. The new law went into effect on July 1, meaning braiders from Davenport to Sioux City are working freely after submitting their names and addresses to the state.

After we got news of the veto, Meagan happily called Aicheria and Achan to let them know they would no longer need an expensive and burdensome license to braid hair. Both women were overjoyed, and we are already looking for opportunities to bring our victories in Iowa, Nebraska and Kentucky to other states during the 2017 legislative session.

This lawsuit highlights what IJ does best when faced with fierce opposition: combine our multifaceted expertise to achieve real results for our clients.

Most importantly, for Aicheria and Achan, it is a complete victory. We look forward to having an even more successful 2017 legislative session. ♦



IJ client **Aicheria Bell**



IJ client **Achan Agit**



Lee McGrath is IJ's legislative counsel.

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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

**NBC News KARK-TV:
Little Rock, Arkansas**



“[IJ client] **Ken [Leininger]** just wants to compete. He’s pursuing the American Dream. The Arkansas Constitution protects his right to do so. The city of Little Rock should get out of the way.”

The New York Times

“‘There is no labor economist who thinks [occupational licensing] is good for the economy,’ said **Lee U. McGrath**, legislative counsel in Minnesota for the Institute for Justice, a libertarian organization whose lawyers are representing Ms. [Grace] Granatelli in a lawsuit against the Arizona veterinary board.”

Ebony

“[Civil forfeiture is] the most corrupt and corrupting system in America,” said **Clark Neily**, an Austin, Texas-based lawyer with the Institute for Justice. “People have their belongings stolen from them. I use the word ‘stolen’ because that’s what it is.”

Christian Science Monitor

“‘[IJ clients] Hermine [Ricketts] and Tom [Carroll] are part of a nationwide movement of small-scale food producers and consumers who are tired of the government dictating what foods they can grow, sell, and eat,’ says **Michael Bindas**, a senior attorney for IJ who leads the group’s National Food Freedom Initiative. ‘This isn’t just about Hermine and Tom’s front-yard garden. This is about the right of all Americans to peacefully use their own property to support themselves and their families.’”

“The Institute for Justice has been particularly effective in protecting the liberty of people who just want a chance to succeed on their own, by persuading courts to invalidate ridiculous licensing regulations.”

—Forbes



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J U S T I C E

I write a parenting column that runs in more than 200 newspapers across the country.

Kentucky tried to ban my column there because I'm not a Kentucky-licensed psychologist.

I fought back because Americans don't tolerate censorship.

And I won.

I am IJ.



*John Rosemond
Charlotte, North Carolina*

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