LIBERTY & LAW
October 2017
Volume 26 Issue 5

Taking on the Federal Forfeiture Racket

Published Bimonthly by the Institute for Justice

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LIBERTY & LAW

October 2017 • Volume 26 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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Taking on the Federal Forfeiture Racket

BY ROBERT EVERETT JOHNSON

What comes to mind when you hear "munitions of war"? Whatever it is, it is likely not five low-caliber bullets—unless you are a U.S. Customs and Border Protection (CBP) agent. In that case, five bullets might be all the excuse you need to seize and forfeit a man's truck.

In September 2015, CBP agents seized Gerardo Serrano's Ford F-250 pickup truck using civil forfeiture because they found five bullets in the glove box. Nearly two years later, the agency still holds Gerardo's truck, although no judge has approved the seizure. Now Gerardo has joined with IJ to get his property back—and to rein in CBP's use of civil forfeiture.

Gerardo, a U.S. citizen born in Chicago, lives on a ranch in rural Kentucky where he raises pigs, chickens and turkeys. Like many rural Americans, he sometimes carries a gun in his truck.

When Gerardo decided to visit Mexico to see family, he left his gun behind. But he had no idea five bullets were still sitting in the glove box.

When CBP agents found the bullets at a border stop, Gerardo heard an agent cry out, "We got him!"

Gerardo showed the agents his concealed-carry permit. He told the agents he had forgotten the bullets were in the truck, and he offered to turn around and leave the border area if the bullets were a problem. He even offered to let the agents keep the bullets.

The agents told Gerardo he was free to go, but they were keeping his truck.

CBP claims Gerardo's truck is subject to civil forfeiture because five bullets are enough to make him an international arms smuggler. It says the truck was used to transport munitions of war. That phrase is actually in the notice CBP sent to Gerardo that let him know it was keeping his truck.

Even worse, almost two years have gone by, and CBP has never given Gerardo a day in court. CBP told Gerardo that if he wanted to see a judge, he had to post a bond equal to 10 percent of the value of the property. So Gerardo sent a check for almost $4,000. CBP promptly cashed the check, but Gerardo is still waiting for a hearing.

This kind of outrageous delay is common with civil forfeiture. The government takes months or years to bring a case to court and in the meantime it offers to settle for just a portion of the seized amount. In Gerardo's case, the government suggested he send another check as an "offer in compromise." It would then decide whether the amount was enough to give back the truck.

Almost two years have gone by and CBP has never given Gerardo a day in court.

Many property owners feel forced to settle. But Gerardo—with IJ's help—is fighting back.

Gerardo has filed suit, demanding the return of his property and an order requiring CBP to provide a prompt hearing whenever it seizes property. If successful, IJ and Gerardo will ensure other property owners get their day in court—without waiting years. That way, next time CBP decides to use civil forfeiture to keep someone's truck and abuse its authority, it will have to explain itself to a judge.◆

Robert Everett Johnson is an IJ attorney.

Customs and Border Protection seized **Gerardo Serrano's** truck using civil forfeiture two years ago because it found five bullets in his car. **Gerardo** is teaming up with IJ to get his truck back and to prevent this from happening to others. Gerardo is pictured with IJ Attorney **Robert Everett Johnson**, middle.

VICTORY
FOR CANCER PATIENTS

BY JEFF ROWES

All IJ cases are important, but our recent victory on behalf of cancer patients across the country could literally be the difference between life and death.

Eight years ago, IJ launched the first legal challenge to the National Organ Transplant Act (NOTA), taking on the federal law against compensating lifesaving bone marrow donors. The premise was simple. A bone marrow transplant involves giving a donor's immature blood cells to a patient dying of leukemia or some other deadly disease. Like all blood cells, these immature blood cells regenerate after donation so the donor loses nothing. Yet even though it is legal to compensate blood donors, compensating marrow donors was a federal crime that could land you in prison for five years. The ban on compensating donors, unsurprisingly, resulted in chronic shortages, costing thousands of lives every year.

We took on this unusual case to vindicate a basic principle of economic liberty: People will do useful, even lifesaving, things when they are compensated in a system of voluntary exchange. In the case of NOTA, by contrast, we operate according to principles that would have been familiar to citizens of the Soviet Union. Buyers cannot pay sellers and resources are distributed by a central planner—there is rationing, waitlisting and needless suffering.

Our initial goal was modest: Get the government to allow medical researchers and economists to run a pilot program focused on minority patients, who have the hardest time finding a matching marrow donor, to see if compensation would create more and better quality transplants. The form of compensation would be a mortgage payment, a scholarship or a donation to a charity of the donor's choice.

We prevailed in 2012 before the 9th U.S. Circuit Court of Appeals, which held that NOTA could not be applied to marrow donations that use the modern method of taking the immature blood cells directly from the bloodstream, as opposed to the more painful and invasive procedure of taking bone marrow from the hip. This was a huge step forward because the majority of donations occur this way.

Doreen Gummoe is an American hero. Her fight to save the lives of her daughters could help thousands of people waiting for a bone marrow transplant.

Sun Journal/Russ Dillingham

Then, before any research could get underway, the U.S. Department of Health and Human Services (HHS) proposed a new federal regulation that would have negated our court victory. We marshalled more than 500 public comments against the new rule (proposed federal regulations typically generate a handful of such comments), including one by Nobel Prize-winning economists. In our own comment, IJ explained to HHS that its proposed rule was illegal and that we would immediately challenge it in court if enacted.

As people across the country continued to die, including children such as our client's son Arya Majumder (who passed away at age 11 while our case was pending), HHS did . . . nothing. It sat on the proposed rule for years. Fed up with this inaction, Congress imposed a deadline of December 2016, a deadline that the agency ignored. This was frustrating because no research could even begin as long as there was a threat that the program could suddenly become illegal.

We were fed up, too. To drive the issue to the forefront, we produced our own award-winning short film, called *Everything.* It earned 17 laurels at film festivals across the country and applied important pressure on HHS (you can watch the 16-minute film at www.everything.movie). Behind the scenes, we also began preparing a lawsuit that would force HHS to act, either passing or rejecting the rule. This would allow research to proceed or provide us with the basis to challenge any new regulation.

The uncertainty came to an end, however, when HHS withdrew the proposed rule on August 1, 2017, thanks in part to the media coverage of IJ's litigation, the profile of the issue being raised by our short film, and our unwavering commitment to fighting the proposed rule. This happy news cleared the way for researchers to begin their pilot programs and for entrepreneurs to launch their own donor-compensation enterprises. Patients, doctors and transplant coordinators now have the freedom to do the one thing that will almost certainly lead to more donors: compensate them.

Even though it is legal to compensate blood donors, compensating marrow donors was a federal crime that could land you in prison for five years.

The path to victory in an IJ case often winds on for many miles. But, as our bone marrow case illustrates, perseverance will carry us to the end of the journey. And the freedom we ensure can not only make lives better, but also save them.◆

Jeff Rowes is an IJ senior attorney.

Arya Majumder, son of IJ client **Kumud Majumder**, died on April 25, 2010, after a lengthy battle with leukemia.

AP Photo/Nick Ut

With IJ's help, **Arya's** father carried on his court battle in his memory, ultimately winning a victory from the 9th U.S. Circuit Court of Appeals in 2012.

All **Jasna Bukvic-Bhayani** (bottom left) wants to do is teach makeup artistry to students like **Julie Goodall** (bottom right), but North Carolina won't let her unless she gets an additional government-mandated license.

Beauty and the Board of Cosmetology

North Carolina Silences Makeup Artist

BY MILAD EMAM

Jasna Bukvic-Bhayani is a professional makeup artist who wants to open up a makeup school. But North Carolina refuses to let her teach unless she agrees to turn her school into a full-fledged esthetics school that spends hundreds of hours teaching things makeup artists do not do, like hair removal and facials.

Jasna was surprised to learn this after she received a personal visit from a member of the North Carolina Board of Cosmetic Art Examiners, who found Jasna's Facebook ad for makeup instruction. The Board member told Jasna she was not allowed to talk about makeup unless she agreed to talk about things that are unrelated to makeup artistry and spend at least $10,000 on unnecessary equipment.

People like Jasna should not need the government's permission to provide useful information.

But makeup artistry is not the same as esthetics. Estheticians offer services like microdermabrasion, body waxing and facials. Jasna spent weeks pleading with the Board, but it refused to make this distinction. Instead the Board forces makeup artists who simply want to teach their craft to comply with its 600-hour, one-size-fits-all curriculum or face thousands of dollars in fines.

North Carolina has no problem with Jasna applying makeup to someone. The state requires almost everyone who applies makeup for a living to become a state-licensed esthetician before working, and Jasna went through 600 hours of schooling

several years ago to do just that. Yet the Board has a problem with Jasna *teaching* people how to apply makeup unless she gets an additional license and turns her makeup school into an esthetics school.

Jasna only wants to talk about makeup, and her students only want to learn how to apply makeup. Because Jasna cannot comply with the Board's demands, she has not been allowed to open her school.

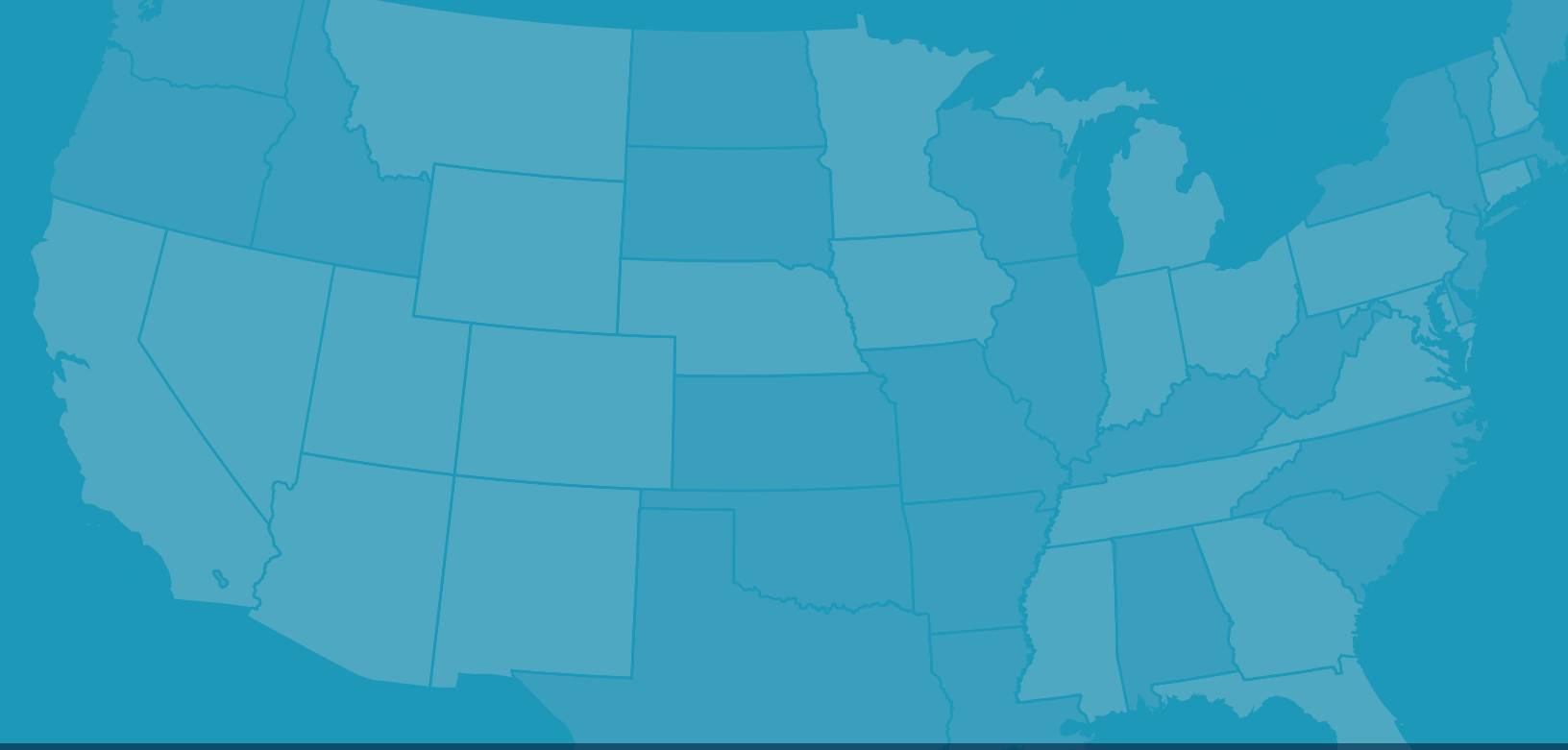
It does not make sense to force makeup schools to spend hundreds of hours teaching skills makeup artists do not use. People like Jasna should not need the government's permission to provide useful information.

That is why Jasna and her prospective student, Julie Goodall, teamed up with IJ in August to sue North Carolina in federal court. The U.S. Constitution protects the right to speak for a living—whether the speakers are authors, journalists or makeup artists like Jasna—and it protects the rights of listeners to hear from those speakers.

This case is part of a larger campaign to protect the rights of people who speak for a living. IJ has successfully challenged laws that threaten the free speech rights of tour guides, newspaper columnists and bloggers.

We will continue to fight until entrepreneurs who talk for a living—including Jasna—are free to speak without getting the government's permission.◆

Milad Emam is an IJ attorney.



IJ's Legislative Team Fights Civil Forfeiture Across the Country

BY LEE MCGRATH

IJ's Litigators for Liberty are not the only ones on the frontlines to end civil forfeiture. For the past few years, our legislative team has been waging its own battles in the marble hallways of Congress and state capitols across the United States. And this year, we made important gains with 10 states reforming their laws thanks to IJ's path-breaking work.

Fighting on multiple fronts is vital. As you will read later in this issue, the U.S. Department of Justice (DOJ) recently made it easier for federal prosecutors to forfeit more property under federal law. While this new directive is a setback for federal forfeiture reform, state legislators are moving full steam ahead to better protect private property and due process. This often includes enacting limits on federal prosecutors adopting forfeiture cases.

Since 2014, 24 states have reformed their civil forfeiture laws. IJ has been involved in almost all of these efforts, including the platinum-standard reforms in New Mexico (2015) and Nebraska (2016) that completely abolished civil forfeiture. In those states, a person must be convicted of a crime as a prerequisite to forfeiture of property. People unable to afford private attorneys receive public defenders to represent them and their property as all litigation takes place in criminal court.

This year, IJ continued its successes in the legislative sessions that ran from January to June. Meaningful protections were enacted in several states, including Connecticut and Minnesota. But the most important accomplishments were in Arizona and Colorado.

On April 12, Arizona Gov. Doug Ducey signed HB 2477 into law. Working with a broad coalition, Paul Avelar of IJ's Arizona office helped to advance the legislation, which raises the standard of proof in forfeiture litigation to clear and convincing evidence, implements new oversight of how agencies use forfeiture proceeds (including audits by the attorney general), and reverses

Since 2014, 24 states have reformed their civil forfeiture laws. IJ has been involved in almost all of these efforts.

a provision putting property owners on the hook for attorneys' fees. Now property owners can recoup fees if they prevail in a forfeiture action.

Less than two months later, Colorado Gov. John Hickenlooper signed into law HB17-1313, a bill that bolstered transparency. IJ and the ACLU teamed up to successfully advocate for the new law, which requires the creation of a searchable database of seizures, forfeitures, criminal charges, convictions and the use of forfeiture proceeds. When the database is up and running, it will provide data to challenge law enforcement's frequent claim that forfeiture is a valuable tool against international drug cartels. It will likely show that forfeiture is used overwhelmingly to litigate small seizures against property owners of modest means.

Most importantly, there are provisions in both new laws that limit local law enforcement agencies from benefiting from outsourcing forfeiture litigation to the DOJ. Arizona legislators included a minimum seizure amount of $75,000 before state agencies can contract with federal officials for forfeiture litigation. Colorado now prohibits state agencies from receiving a share of forfeiture proceeds from the federal government if the seizure is worth less than $50,000. The two provisions mean that approximately *90 percent* of cases that would previously have been litigated under federal law will now be litigated under state forfeiture laws and not outsourced to the DOJ. These provisions thus better protect the rights of people in Arizona and Colorado.

The fight, however, is far from over and IJ stands ready to bring the battle to end civil forfeiture to even more state capitols and to Congress next session.◆

Lee McGrath is IJ's senior legislative counsel.

Need an Easy Way To Give to IJ?

A beneficiary designation gift is a type of charitable giving with many benefits. Naming IJ as a beneficiary of a retirement plan (including IRAs and 401(k) and Keogh plans), a life insurance policy or a savings account helps to ensure IJ's future.

Beneficiary designation gifts do not require meeting with an attorney and they offer flexibility as they can be revoked or modified if your plans or circumstances change.

Because of the unfavorable tax consequences of leaving tax-deferred accounts to individual beneficiaries, these assets can be particularly good candidates for charitable giving. As a charitable gift, the full amount of the account goes to IJ and our fight for liberty with no tax penalty. You can consult with your tax adviser regarding the specific tax benefits for your situation.

Another option is making IJ a partial beneficiary of your plan. In that case, the plan administrator will withdraw IJ's share, providing an immediate gift to us and leaving the balance to benefit your heirs.

Beneficiary designation gifts are easy to make. Simply contact your plan administrator and ask for a beneficiary designation form. To name IJ as a beneficiary, provide our full legal name, address, and tax ID number: **Institute for Justice, Tax ID #52-1744337, located at 901 N. Glebe Road, Suite 900, Arlington, VA 22203**.

These gifts also qualify you for membership in the Four Pillars Society and—for a limited time—for a matching gift to IJ in your name. For more information about the Four Pillars Society or the matching opportunity, please contact Lindsey Adkins, IJ's Four Pillars Society manager, at LAdkins@ij.org.◆

SHORT CIRCUIT

We Read 6,000 Legal Opinions So You Don't Have To

BY SHELDON GILBERT

Bob and Addie Harte lived through an American nightmare. One early morning in 2012, they were woken up by a SWAT team breaking down their door, trashing their home and terrorizing their children for two hours—all because police mistook Addie's loose tea leaves for marijuana. Bob, Addie and their lawyer recounted in vivid detail what happened that morning at the Hartes' suburban Kansas home on a recent special edition of IJ's popular Short Circuit podcast.

IJ launched Short Circuit in 2015, and it has turned into an important resource for legal minds and anyone interested in the courts. The podcast features everything from in-depth longform stories about individual court cases—like the Hartes' lawsuit to hold the police accountable for raiding their home—to rapid-fire legal analysis of several noteworthy cases. Each podcast episode is downloaded over 1,500 times: a remarkable reach for a podcast about law and liberty.

The podcast is just another way IJ supporters can stay informed about what is going on in the broader legal world. Each week, IJ scours the federal court dockets for the most interesting and important appeals court opinions addressing individual liberty. Then every Friday afternoon, we share short, easy-to-understand descriptions of these cases with subscribers of our wildly popular Short Circuit email newsletter.

Mark Meranta, left, IJ's digital and social media producer, oversees the podcast's production. **John Ross**, center, and **Sheldon Gilbert**, right, are the hosts of Short Circuit. The podcast has become increasingly popular in the legal world.

Among the newsletter's more than 3,000 subscribers are some of the leading thinkers of our day, including judges, columnists, reporters, lawyers and top law professors—not to mention law students and others interested in following the goings-on of the federal courts. And Short Circuit's success keeps growing: *The Washington Post* began re-posting Short Circuit on its website last year, introducing IJ to an even broader audience.

Among Short Circuit's more than 3,000 subscribers are some of the leading thinkers of our day, including judges, columnists, reporters, lawyers and top law professors—not to mention law students and others interested in following the goings-on of the federal courts.

What explains the broad appeal of Short Circuit? In part, major news outlets frequently focus on high-profile U.S. Supreme Court cases, but the reality is that the High Court only reviews about 80 cases each year. Compare that to the 6,000 cases published by federal appeals courts last year alone. For the overwhelming majority of litigants, the lower federal appeals courts are the final stop on the road to justice.

Short Circuit fans keep coming back for more because they trust that IJ staff will read every single federal appeals court opinion (yes, all 6,000 last year!) and report on the most important cases with engaging, efficient summaries. Over the past two years, we have reported on more than 2,000 federal appeals court cases.

Keeping current on our courts does not have to be time consuming and it does not have to be boring: It just requires that you visit www.ij.org/short-circuit to subscribe.◆

Sheldon Gilbert is the director of IJ's Center for Judicial Engagement.

Pennsylvania LOCKS OUT Entrepreneurs

BY JOSH WINDHAM

Renting a private home on sites like Airbnb for a long vacation, a quick weekend getaway or even a business trip is becoming increasingly popular. And in high-tourism areas where competition is fierce, many homeowners are turning to marketing-savvy entrepreneurs to post and manage their listings. But Pennsylvania makes it a crime to help people post their properties online without first obtaining a burdensome real estate broker's license. Amid the rise of the sharing economy, this license makes life extremely difficult for entrepreneurs hoping to keep pace with a changing market. Nobody knows this better than Sally Ladd.

Pennsylvania makes it a crime to help people post their properties online without first obtaining a burdensome real estate broker's license.

Sally is a New Jersey-based entrepreneur who spent a career in the world of digital marketing before deciding to try something new. In 2013, she started managing vacation rentals in Pennsylvania's Pocono Mountains. Leaning on her Internet savvy, Sally built a small business based on saving property owners needless headaches and hassles by helping them post, market and book their homes online. She was able to do all of this on her laptop, from the comfort of her own home.

The business thrived. At 61 years old, Sally was especially excited that she had carved out a niche for herself in an ever-changing economy as she neared retirement. She was looking forward to working from home and using the business for supplemental income into her golden years.

But the Commonwealth of Pennsylvania stands in her way. In January 2017, Sally received a call from the state's Bureau of Professional and Occupational Affairs informing her that she was under investigation for the unlicensed practice of real estate—a criminal offense. Some digging revealed that in order to obtain the necessary license, Sally would have to open a physical office in Pennsylvania, pass two exams and spend three years working for an established broker.

Sally was devastated. There was no way she could afford to comply with such a burdensome regime just to continue running her modest business. And even if she could, Sally refused to spend three years of her life working under a broker—most of whom buy and sell prop-

Sally Ladd wants to use her digital marketing skills for a second career managing vacation rental listings, but Pennsylvania wants to force her to become a full-blown real estate broker.

erties—merely to continue posting rental properties online. Sally felt she had no choice but to shut down, but she is not giving up. What Sally does is not the same as what a real estate broker does. Real estate brokers devote most of their time to buying and selling houses and engage in months- and sometimes years-long transactions that require handling tens and often hundreds of thousands of dollars. All Sally does is help people post their vacation rentals online.

In late July, Sally teamed up with IJ to file a challenge to Pennsylvania's real estate licensing laws. The Pennsylvania Constitution provides strong protections for economic liberty, similar to those enjoyed in Texas thanks to IJ's 2015 victory on behalf of eyebrow threaders. Laws must bear a genuine relationship to public health or safety and cannot impose excessive burdens on the right to earn an honest living. Requiring Sally to obtain Pennsylvania's onerous real estate broker's license just to manage vacation rentals fails on both fronts.

As the sharing economy continues to grow, old licensing regimes are becoming increasingly obsolete. Today, approximately 40 states across the country impose restrictions similar to Pennsylvania's on vacation property managers. A victory in this case will put the rest of the country on notice that IJ is ready and willing to take on outdated real estate laws that make it difficult for entrepreneurs like Sally to innovate and compete.◆

Josh Windham is an IJ attorney.

Turning DIRT Into A Supreme Appeal

BY ROBERT MCNAMARA

The typical IJ case takes a lot of up-front investment: We file a major lawsuit, litigate for years in the courts of law and in the court of public opinion, and, eventually, work toward victory. And we use that method for good reason: Our greatest chance of success will always come with cases we have litigated ourselves, from the ground up.

But we are also committed to advancing our mission any way we can, which means every now and then, IJ has the opportunity to litigate a case we did not initiate—to take someone else's case and use it to change the law. This does not happen often, but we are always on the lookout for a case that presents that opportunity.

Chad Jarreau was a successful dirt farmer in Louisiana. Now he could be the face of an important property rights case at the U.S. Supreme Court.

And when we find those cases, they can make a big impact; we have adopted cases that turned into everything from big free speech victories to a unanimous decision from the Colorado Supreme Court giving Mile High Cab the right to start its business. This fall, we are adopting yet another high-stakes opportunity that could pay off in a major way down the line.

The case itself is mostly about dirt. Yes, dirt! Chad Jarreau of Louisiana is (or was) a dirt farmer. He would cut large pits into his land about an hour south of New Orleans, repeatedly drain them, and then churn them for days or weeks on end, until he had fine-grained sandy dirt that was useful for construction projects. Dirt is actually big business, and Chad was very successful right up until the local levee district invoked eminent domain to take his land so it could mine the dirt itself for use in levee construction.

Building levees is admittedly a public use, and Chad did not contest that the government had the right to take the land to build levees to protect the region from flooding. But the U.S. Constitution requires that the government pay for what it takes. After a trial, a Louisiana state court judge held that

Dirt is actually big business, and Chad was very successful right up until the local levee district invoked eminent domain to take his land so it could mine the dirt itself for use in levee construction.

land in Chad's area was not very valuable, so the levee district only owed Chad about $10,000 for the land. The judge also held that Chad's dirt business was very valuable and that losing the land had cost Chad more than $150,000 in damages. On appeal, however, the Louisiana Supreme Court held that the government does not have to pay for businesses it destroys through eminent domain, leaving Chad with only about $10,000 in compensation for a $150,000 loss. After the state Supreme Court ruling, Chad's lawyers—longtime IJ friends—asked us to step in to take the case to the next level.

So we did, asking the U.S. Supreme Court to review the case. The High Court has not actually taken a case about eminent domain and business damages since the 1940s, and far too many lower courts have been allowing condemnations to destroy businesses without compensation. That is why we have taken on Chad's case, asking the Supreme Court to put a stop to these uncompensated takings once and for all.

Asking the Supreme Court to hear a case is always a long shot—the Court hears only a tiny percentage of the cases it is asked to take every year. But taking high-stakes shots like this is part and parcel of IJ's devotion to making sure no stone—or pile of dirt—goes unturned in the never-ending fight to protect our constitutional freedoms.◆

Robert McNamara is an IJ senior attorney.

Karen Sampson
A Hero for Free Speech

This past August, the Institute for Justice lost a hero and a dear friend. Karen Sampson, the lead plaintiff in IJ's 2006 challenge to Colorado's burdensome campaign finance laws, passed away at her home in Parker North. Karen's home was at the center of a free speech fight in which the state's campaign finance laws were exploited as a means to silence Karen and her neighbors when they opposed the annexation of their neighborhood to the nearby town of Parker.

Joining with IJ, Karen echoed the words heard so often from our clients over the years—words that nonetheless remain inspiring each time we hear them: "I am pursuing these actions through IJ because I don't want what happened to me to happen to anyone else."

Ultimately, Karen won. Even after her victory, however, she continued to support IJ and other free speech clients across the nation in their fight for freedom. Karen was so appreciative of IJ's work that she became a member of our Four Pillars Society, including IJ in her estate plans to ensure we have the resources needed to litigate for years to come.

Karen's dedication to IJ's mission was typical of the good will, leadership and resilience she demonstrated as a client. And while we grieve her passing, we celebrate the legacy of liberty she leaves behind.◆

The Civil Forfeiture Empire Strikes Back—
And IJ Hits Back Harder

BY ROBERT EVERETT JOHNSON

For the past two years, civil forfeiture has been in retreat. Twenty-four states have reformed their laws. Thirteen states now require a criminal conviction to forfeit property. And a bipartisan coalition in Congress has called for federal reform.

Even federal prosecutors took modest steps to stop abuse, as former Attorney General Eric Holder announced a policy change in 2015 limiting civil forfeiture.

As regular readers of *Liberty & Law* are aware, IJ has pushed almost all of these developments.

But now the new attorney general, Jeff Sessions, is pushing the other way. He is enacting a different kind of change, rolling back protections for property owners.

U.S. Attorney General **Jeff Sessions** has overturned important reforms and IJ has vowed to fight back.

In July 2017, the attorney general announced that he was reversing the Holder-era reforms. The attorney general has said he supports civil forfeiture and wants to see more of it.

That is bad enough, but these federal policy changes also threaten to undermine state reforms.

The attorney general is clearing away restrictions on so-called equitable sharing, which allows state police to seize property and transfer it to federal prosecutors for forfeiture under federal law. This allows police in states with strong protections for property owners to circumvent reform.

Imagine, for instance, your property is seized in a state that requires a criminal conviction to forfeit property. Using equitable sharing, state police can disregard those protections and take your property without convicting you of anything.

Then state police get a kickback of up to 80 percent of the value of the property. In other words, the federal government pays state police to disregard state law.

Bad news. But IJ is fighting back, and proponents of civil forfeiture are once again playing defense.

Immediately following the attorney general's announcement, IJ launched a multi-pronged counterattack.

Our communications team sprang into action, and IJ was seemingly everywhere—appearing on cable news, placing stories with print reporters and flooding the editorial pages. Coverage of the attorney general's announcement was almost uniformly negative.

On the legislative front, IJ has provided guidance to help state legislators safeguard their reforms. IJ's model legislation restricts state law enforcement from engaging in equitable sharing, thwarting efforts to undo state reforms. Several states adopted that aspect of the IJ model even before the attorney general's announcement.

IJ has also been working in Congress to undo the attorney general's announcement—and to use the public outrage generated by the announcement to push forward broader reform. Two reform bills are pending in Congress, and since the attorney general's announcement more senators and representatives have stepped forward in support.

Meanwhile, IJ continues to push ahead in the courts, including by filing a new civil forfeiture lawsuit against the federal government (see article, page 4). With the U.S. Supreme Court signaling its interest in civil forfeiture in several recent opinions, the judicial branch seems poised to restrain this unconstitutional practice.

No fight is won in a day, and the other side always fights back. But IJ's determination and resilience have transformed an apparent setback into an even stronger push for reform.◆

Robert Everett Johnson is an IJ attorney.

No fight is won in a day, and the other side always fights back. But IJ's determination and resilience have transformed an apparent setback into an even stronger push for reform.

IJ Attorney **Robert Everett Johnson** has testified multiple times before Congress on the inherently abusive nature of civil forfeiture.

NOTABLE MEDIA MENTIONS

The New York Times

Connecticut Should Be Tesla Country
July 7, 2017

Chicago Tribune

Street Vendors Get Legal With New Shared Kitchen
July 22, 2017

the Atlantic

D.C.'s Misguided Attempt To Regulate Daycare
July 11, 2017

THE WALL STREET JOURNAL

Money For Marrow, Finally
August 8, 2017

NBC NEWS

Under Sessions' Plan, Government Will Seize More People's Property
July 18, 2017

food network magazine

Bakers Beware!
September 2017 edition

CNN

Justice Department Paves Way For Increased Asset Seizures
July 19, 2017

YAHOO! NEWS

A Legal Fight Over New York City Dog-Sitters Highlights A Bigger Problem In America
July 25, 2017

THE TIMES

(London, U.K.)
Welcome To America, Land Of The Regulated
August 29, 2017

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