



LIBERTY & LAW

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Protecting Free Speech In The Sunshine State

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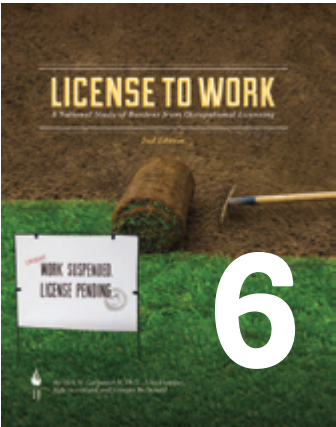
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About the publication:

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, educational 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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Protecting Free Speech in the SUNSHINE STATE

BY PAUL SHERMAN

Eat less sugar and more vegetables. Cut back on carbs and alcohol. Commonsense dietary advice? Absolutely. But in the state of Florida, it is also a crime.

Heather Kokesch Del Castillo of Fort Walton Beach, Florida, found that out the hard way. Heather's life of "crime" began in 2014, when she founded Constitution Nutrition while living in California. As a privately certified health coach and CrossFit trainer, she worked with clients to help them improve their diets, set reasonable weight-loss goals and live a healthier lifestyle. Heather's work was perfectly legal in California. But then her husband, a career Air Force officer, was transferred to Florida.

Unfortunately for Heather, Florida is one of 36 states that license the practice of dietetics—and Florida defines the practice of dietetics so broadly that it seemingly covers any individualized dietary advice offered for pay.

Although Heather has never held herself out as a licensed nutritionist or dietitian, the Florida Department of Health—acting on a complaint from a licensed dietitian—slapped her with an order to cease and desist providing nutritional advice and demanded that she pay over \$750 in fines and costs. Facing the possibility of thousands of dollars in additional fines or even jail time if she continued offering dietary advice, Heather did as the state ordered and shut down. And she has been turning away willing clients ever since.

Heather's story is not unique; occupational licensing boards are increasingly operating as censors, a trend that is driven in part by the explosive growth of occupational licensing. And these burdens are particu-

larly acute for military families like Heather's. When members of the U.S. military are relocated from one state to another, their spouses often find that they are subject to new licensing laws that did not exist in their previous state or that their existing professional credentials are not transferable to their new state.

But this sort of censorship cannot be squared with the First Amendment. Advice about what people should eat to stay healthy is surely as old as language, and the government has no power to give any group a monopoly on advice about a common topic of life. Just as the

government cannot require a license before an author can write a book of dietary advice, the government cannot require a license for speakers like Heather.

That is why Heather is fighting back. On October 3, 2017, Heather joined with IJ to file a lawsuit in federal court to strike down Florida's government-granted monopoly on speech about diet. Heather's lawsuit is part of our cutting-edge fight to protect occupational speech from government censorship.

Together, we will set an important precedent that will vindicate

Heather's right—and the right of all Floridians—to offer nutritional advice and health coaching without the fear of being prosecuted or shut down by the government. And, ultimately, we will vindicate the principle that occupational licensing laws do not trump the First Amendment. ♦

Paul Sherman is an IJ senior attorney.



The government has no power to give any group a monopoly on advice about a common topic of life.





Heather Kokesch Del Castillo wants to give diet advice online and in person to willing customers, but Florida has threatened her with thousands of dollars in fines.



LICENSE TO WORK

IJ Leads the Licensing Reform Wave

BY LISA KNEPPER

Advice gurus preach the virtue of making your own luck—harnessing fate through vision, hard work and perseverance. For 26 years, that is how IJ has been advancing liberty, and there is no better example than the release last month of the second edition of our landmark study *License to Work* amid a national tidal wave of support for occupational licensing reform.

It is a tidal wave that IJ started and that we are perfectly poised to ride.

Since IJ was founded in 1991, we have been working to untangle the licensing red tape that strangles countless aspiring workers and entrepreneurs by forcing them to get needless government permission slips to pursue the jobs of their choice. Case by case, we have laid bare the human consequences of licensing laws that are often designed more to protect industry insiders from competition than to protect the public from

shoddy service. And while racking up legal and legislative victories, we have steadily built awareness and outrage.

And we have used strategic research to further elevate the issue—most notably with the first edition of *License to Work* in 2012. As the first-ever study to document licensing requirements for lower-income occupations across all 50 states and the District of Columbia, it showed that licensing is not only widespread, but also overly burdensome and frequently irrational.

In the five years since, those core findings have become accepted wisdom and *License to Work* has become the go-to source on licensing. Today, licensing reform is a bipartisan

issue, championed by both the present and immediate past presidential administrations, as well as in state capitols across the country. Just this year, the Federal Trade Commission (FTC) started an Economic Liberty Task Force focused, in part, on occupational licensing. U.S. Secretary of Labor Alexander Acosta has spoken out repeatedly in favor of curbing needless, anticompetitive occupational licensing requirements with the goal of opening opportunities for entrepreneurs and job seekers. Secretary Acosta

continues to make licensing reform one of his signature issues and has hired staff to conduct research and public advocacy on the issue. The three leading organizations in state policy, the National Conference of State Legislatures, National



102 Occupations

50 States & DC

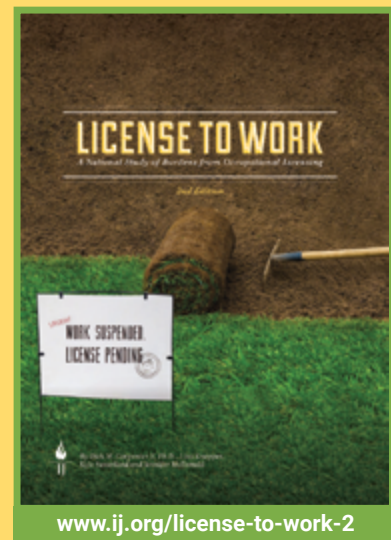


Governors Association and Council of State Governments, are undertaking a multi-year project to support reform efforts in select states. And the list of organizations calling for reform spans the ideological spectrum: the Brookings Institution's Hamilton Project, California's Little Hoover Commission, the Cato Institute, the Heritage Foundation, the Mercatus Center, the American Legislative Exchange Council and more.

With reform momentum at an all-time high, our new *License to Work* "could not have come at a better moment for our nation," as Acting FTC Chairman Maureen Ohlhausen remarks in the report's foreword. And IJ is well positioned to direct that momentum toward meaningful change. The new *License to Work* not only offers the most comprehensive and up-to-date licensing data for lower-income occupations, but it also builds on IJ's hard-won lessons from years of fighting anticompetitive licensing laws. It gives lawmakers alternative policy solutions that can protect consumers without erecting barriers to honest work, as well as concrete strategies for reform.

The second edition is the product of years of work by IJ's strategic research team, most especially Research Associate Kyle Sweetland, who spent more than two years collecting its core data. It will take a similarly sustained effort by the entire IJ team to pare back today's overgrown thicket of licensing laws, but we will persevere until every American enjoys the right to earn an honest living. ♦

Lisa Knepper is IJ's director of strategic research.



License to Work: Key Facts

The second edition of IJ's *License to Work* documents licensing barriers for 102 lower-income occupations across all 50 states and the District of Columbia. It finds:

- On average, these licensing laws force aspiring workers to spend nearly a year in education or training, pass one exam, and pay more than \$260 in fees.
- Most of the 102 occupations are unlicensed somewhere, suggesting they can be safely practiced without a government-issued license.
- In most states, it takes 12 times longer to get a license to cut hair as a cosmetologist than to get a license to administer life-saving care as an emergency medical technician.
- California ranks as the worst state for lower-income licensing, licensing a large number of occupations and imposing steep requirements. Wyoming licenses the fewest occupations and imposes some of the lightest requirements.

IJ Lands a Forfeiture Victory

And Launches a Broad Class Action Attack

BY ROBERT EVERETT JOHNSON

Two years and 28 days after the federal government seized his truck, Gerardo Serrano climbed into the cab, turned the key and drove off. On the way out of the parking lot, he called: "Institute for Justice, thank you! I love ya!"

As readers of *Liberty & Law* will recall, Customs and Border Protection officials seized Gerardo's truck using civil forfeiture because they found five forgotten bullets in the glove box during a search at a border crossing. Gerardo demanded a hearing before a judge—posting a bond of almost \$4,000 for the privilege—but two years later still had not seen the inside of a courtroom.

Tired of waiting, Gerardo joined with IJ and sued. Weeks later, the government surrendered, calling to say Gerardo could pick up his truck anytime.

It is, by now, a familiar story: The government seizes property, and refuses to give it back, but immediately changes its tune when IJ brings a case. The same thing has happened in nearly all of IJ's recent civil forfeiture cases.

There is a lesson to be drawn from the pattern. Civil forfeiture thrives away from public scrutiny, and the government retreats when forced to justify itself in court. That is precisely why IJ's work is so valuable, as we drag abuse into the light.

At the same time, lasting change requires more than victory in a single case. IJ's ultimate goal is to secure judicial decisions bringing civil forfeiture to an end. When the government backs down

without a fight, it frustrates that objective. By refusing to defend its actions, the government denies courts the opportunity to say it did something wrong.

In that light, the government's habit of backing down whenever challenged assumes a more sinister aspect. The government uses a strategy of tactical retreat to evade judicial review.

That is why, in many ways, the most important part of Gerardo's fight is still to come. IJ filed the case as a class action, meaning IJ sued on behalf of every U.S. citizen who has had a vehicle seized by Customs and Border Protection. Although Gerardo has recovered his truck, he will continue to represent that entire class and his case will move forward.

In many ways, the most important part of Gerardo's fight is still to come.



Customs and Border Protection gave **Gerardo Serrano** his truck back just weeks after IJ stepped in.

That class consists of hundreds or even thousands of people. In just one year, the government seized 122 vehicles at the same border crossing where Gerardo's truck was seized. And that is just one border crossing, with many more vehicles seized nationwide.

On behalf of the class, Gerardo is seeking an order requiring that government provide a prompt hearing whenever it seizes property. Property owners should not have to wait months or years for their day in court. The government should have to justify a seizure to a judge within a matter of days.

Gerardo's case shows the value of a prompt hearing. If the government had been forced to go to court immediately after seizing Gerardo's truck, it would have taken days rather than years for Gerardo to get his property back. Indeed, if the government knew it would have to account for its actions to a judge, it might never have seized Gerardo's truck in the first place.

In addition to fighting for the class, Gerardo also continues to fight on his own behalf. Among other things, the government still holds the \$4,000 that it demanded as a condition of providing a hearing, and Gerardo is determined to get that money back with interest.

So, even as we pause to celebrate another victory, IJ will continue to press forward until we put the government's civil forfeiture racket to an end. ♦

Robert Everett Johnson
is an IJ attorney.



Gerardo's case is far from over. He and IJ are now fighting to make sure this does not happen to anyone else.



From left, **Dela Ends**, **Lisa Kivist** and **Kriss Marion** stood up for the right to earn an honest living, and secured a victory for every Wisconsin baker.

Another Sweet VICTORY For Wisconsin Home Bakers

In October, we had another exciting victory in Wisconsin. In the last issue of *Liberty & Law*, we announced that a state judge had declared the state's ban on selling home-baked goods unconstitutional on May 31. We were thrilled by the judge's excellent opinion, and bakers in the Badger State were eager to get baking—but Wisconsin had a different idea. The state continued to enforce the ban, threatening home bakers with jail time and hefty fines. Wisconsin justified its actions by arguing that the judge's ruling meant only the three bakers we represented were allowed to legally bake and sell their goods.

In response, we immediately alerted the judge and provided plenty of evidence to show that he absolutely had the power to protect bakers who were not part of our lawsuit. We had another hearing before the court, filed more briefs and generated multiple media stories. It paid off when the judge ruled that his previous opinion *did* in fact cover all home bakers. The ruling caused hundreds of home bakers to celebrate, and we are still receiving thank you messages from bakers all across Wisconsin. ♦



IJ Scores Sweeping Change Through Perseverance And Innovation

BY SCOTT BULLOCK

In September of last year, IJ embarked on our second quarter-century defending vital constitutional liberties. And this past year captured perfectly how IJ's perseverance and innovative strategies open up new avenues for freedom across all areas of our mission.

How does this persistence and innovation pay off? Take for instance the nationwide attention on occupational licensing, civil forfeiture and educational choice, three issues IJ pioneered. Interest has never been higher, and the next few years are going to be critical for maximizing opportunities in all of these arenas.

Occupational licensure and civil forfeiture each generate massive encroachments on individual liberty, depriving hundreds of thousands of Americans of their livelihood and their property. To provide a sense of scope, the percentage of American workers who need a license—that is, those who need the government's permission to earn a living—far outstrips both union members and minimum-wage earners at roughly 25 percent of the workforce.

In the case of forfeiture, last year alone, the U.S. Department of Justice forfeited over \$1.8 billion using forfeiture laws—and that does not count the money that other federal agencies or states took in, which is hundreds of millions of dollars more.

IJ stepped up to challenge government abuses in both of these areas. We are pressing forward in our decades-long campaign to curtail arbitrary and unnecessary government licensing regimes, and November's publication of the second edition of our seminal study *License to Work*—the go-to guide on this issue—is only going to heighten interest in occupational licensing. That will open up even more litigation and legislative opportunities for IJ. We will continue to focus much of our work



For more than 25 years, IJ has led the fight to defend individual liberty. Our cutting-edge litigation, combined with research, grassroots activism and advocacy, and communications has secured constitutional rights, not just for our clients but for all Americans for years to come.



on challenging economic protectionism in entry-level occupations like transportation, vending, braiding and many more.

At the same time, we are also building on our successes in these areas by taking on protectionism in more innovative ways, including challenging the rampant protectionism in the health care field.

A prime example is our recent cutting-edge case in South Carolina to defend a telemedicine startup from attack by the state and the optometry lobby. Moreover, we are taking on pathbreaking cases at the intersection of economic liberty and the First Amendment, including our challenge to Florida's attempt to license the speech of a military spouse who is simply talking about how to lead a healthy life (featured on this issue's cover).

We are also building on our successes in these areas by taking on protectionism in more innovative ways.

Meanwhile, as readers of *Liberty & Law* know, through our persistence we have made enormous strides in curtailing the pernicious practice of civil forfeiture through litigation, media exposure and legislative change. And we are directly confronting the current attorney general's call to revitalize civil forfeiture at the federal level.

His actions have only increased interest in the issue across the ideological spectrum and emphasized the urgent need to radically reform or abolish these laws.

We plan on bringing even more forfeiture challenges at the federal level and in the states. Our ultimate goal is to get the issue before the U.S. Supreme Court, which has not heard a civil forfeiture case in almost two decades. This

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IJ Clinic's South Side Pitch Event Shows Chicago Is Hungry for Innovation

BY STACY MASSEY

For the past four years, the IJ Clinic on Entrepreneurship has proudly hosted the South Side Pitch, our *Shark Tank*-style event that highlights entrepreneurs and up-and-coming businesses from the South Side of Chicago. Every finalist seeks to remind people that South Siders have innovative and entrepreneurial ideas on how to solve the problems in their communities.


And this year was no exception.

First-place winner Donna Beasley hooked the audience from the start of her pitch:

"A year ago, I decided to buy books for my niece's birthday.

I went to FOUR bookstores downtown, and I did not find one book that featured children of color." At this realization, Beasley did not get mad; she got entrepreneurial. She knew that she was not the only woman of color seeking books that reflect the diverse people in her life. She took that knowledge and ran with it. Beasley and her art director, Angela Williams, just launched a subscription-model digital library of multicultural children's books called KaZoom Kids Books.

Re:work Training—a software sales program for individuals with only a high school diploma—took second place. The training program has successfully helped 80 percent of its first-round cohort members climb three tax brackets after just eight weeks of software sales training. Back of the Yards Coffeehouse and Roastery took third place. The coffee shop opened in one of Chicago's high-crime neighborhoods—a place



The South Side Pitch has become one of the hottest events in Chicago. The *Shark Tank*-style event gives the IJ Clinic the chance to show how vital economic liberty is to underserved communities. IJ Clinic Director **Beth Kregor**, right, kicked off the Pitch with a rousing introduction.



the founders refer to as a “coffee desert.” The coffee shop has demonstrated that businesses can be profitable in even the harsher areas of Chicago. The founders look forward to watching more businesses move into the neighborhood.

This year, nearly 170 South Side businesses competed for a chance to present on the South Side Pitch stage.

Two of this year’s five finalists had also applied in previous years. The Clinic is hopeful that some of this year’s audience members will be next year’s finalists. And the confidence and feedback given to finalists has led to further success. Previous South Side Pitch finalists include Rumi Spice, a saffron-importing company that recently appeared on *Shark Tank*, and Timing and Racing Around the Clock, a startup that was invited to participate in Y Combinator, a competitive

Silicon Valley incubator that has hosted regulation-busting companies like Airbnb.

The South Side Pitch has become one of the hottest events of the year for entrepreneurs and community members,

giving the IJ Clinic the opportunity to promote the vital role economic liberty plays in improving the lives of South Siders. As we know all too well, when

government gets out of the way and lets innovation flourish, great things can happen. It is an honor to host this event championing entrepreneurs in a place where, all too often, crime and violence steal the spotlight from sharp, problem-solving entrepreneurs. ♦

Stacy Massey is the office and community relations manager at the IJ Clinic.



This year, nearly 170 South Side businesses competed for a chance to present on the South Side Pitch stage.

Even animals—and their humans—came out to support the five finalists as they pitched their businesses to the panel of judges, including IJ Clinic Assistant **Amy Hermalik**, second from left.



Innovation continued from page 11

past spring, Supreme Court Justice Clarence Thomas wrote that civil forfeiture “has led to egregious and well-chronicled abuses.” He went on to say that he was “skeptical that this historical practice is capable of sustaining, as a constitutional matter, the contours of modern practice,” indicating that the Court is likely to reconsider the constitutionality of forfeiture in a future case. IJ will push forward to ensure that, when the time is right, the Justices have the right case before them to greatly curtail, if not end, civil forfeiture once and for all.

Our first-round victory in the Serrano forfeiture case (featured on page 10) demonstrates how IJ can now succeed in difficult battles—like getting Customs and Border Protection to fold in under a month—while also tackling increasingly complex litigation. The Serrano case is the fourth class action we have filed in three years.

We are doing this because we are seeing a growing inclination

on the part of the government to throw in the towel in an attempt to moot our lawsuits. By filing our cases as class actions, we help ensure that a government agency cannot avoid public and judicial scrutiny by simply dropping its abuse against our individual client, like Gerardo. Developing and deploying innovative strategies like these substantially increases the complexity of our litigation, but it is essential to staying ahead of the government in court.

To turn to another core area of IJ’s long-term litigation, consider our work on educational choice.

There has never been a day in IJ’s history when we have not been litigating on behalf of an educational choice program, and to date we have successfully defended 22 programs. In 2017 alone, IJ has secured three crucial victories for choice, including a unanimous ruling from the Georgia Supreme Court allowing that state’s popular tax-credit scholarship program to continue. And in our Colorado case, the U.S. Supreme Court issued an order that breathed new life into our six-year defense of an innovative district-level school choice program. What’s more, the Court’s decision opened up new and exciting paths to expand educational opportunities in states that have previously been hostile to choice. We will leverage these developments aggressively in the months and years ahead to spread educational freedom.

Governments are always finding

new methods to expand power and to limit individual rights. So IJ must be there. We will use the wisdom and experience

we have gained through more than two and a half decades of litigating for liberty. We will persist in championing our issues while constantly innovating to protect liberty. We can do that because of the support of thousands of people like you. Thanks so much for making our work possible. ♦

Scott Bullock is IJ’s president and general counsel.



IJ’s work has made a profound impact for families, entrepreneurs, grassroots activists and property owners by promoting a rule of law that limits the size and scope of government power. IJ will always remain vigilant against new attacks on our most important constitutional rights, and our work could not be done without the help of our generous supporters.





NOTABLE MEDIA MENTIONS



**Supreme Court's Cell Phone Tracking
Case Could Hurt Privacy**

October 27, 2017



**Selling Your Homemade Cakes In This
Southern State Could Land You In Jail**

August 25, 2017



**Kentucky Man Sues After Law
Enforcement Seizes His Car Without
A Charge**

September 27, 2017



**How We Can Fight Back Against Jeff
Sessions' New Highway Robbery Policy**

August 24, 2017



**California Today: Outpouring Over An
Aggrieved Hot Dog Vendor**

September 13, 2017



**Seized Assets: Sessions Reinstates
Policy Allowing Police To Seize Cash,
Property**

July 22, 2017



**Mayor Fined Renters Out Of Homes So
Builder Could Replace Them With The
Rich, Lawsuit Says**

September 8, 2017

I believe people should be free to control their
own destinies, now and in the future.

I am leaving a legacy of liberty
by including IJ in my will.

I am investing in freedom.

I am IJ.

