



LIBERTY & LAW

April 2019

Volume 28 Issue 2

VICTORY:

IJ Wins Unanimous U.S. Supreme Court Decision

Published Bimonthly by
the Institute for Justice

Engineering Some Much-Needed Justice in Oregon • IJ and Cato Team Up to Challenge Government Gag Orders
Educational Choice Secured in the Sunshine State • IJ Thwarts Another Attempt at Eminent Domain Abuse in New Jersey
Bringing Justice to Policing for Profit Victims in California • IJ Invests in D.C. Educational Choice

contents

4 **Victory: IJ Wins Unanimous U.S. Supreme Court Decision**

Wesley Hottot

6 **Engineering Some Much-Needed Justice in Oregon**

Sam Gedge

7 **IJ and Cato Team Up to Challenge Government Gag Orders**

Robert McNamara

8 **Educational Choice Secured in the Sunshine State**

Ari Bargil

10 **Victory for Atlantic City Piano Man: IJ Thwarts Another Attempt at Eminent Domain Abuse in New Jersey**

Dan Alban

12 **Bringing Justice to Policing for Profit Victims in California**

Jeffrey Redfern

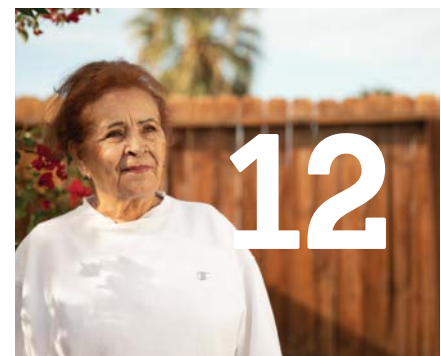
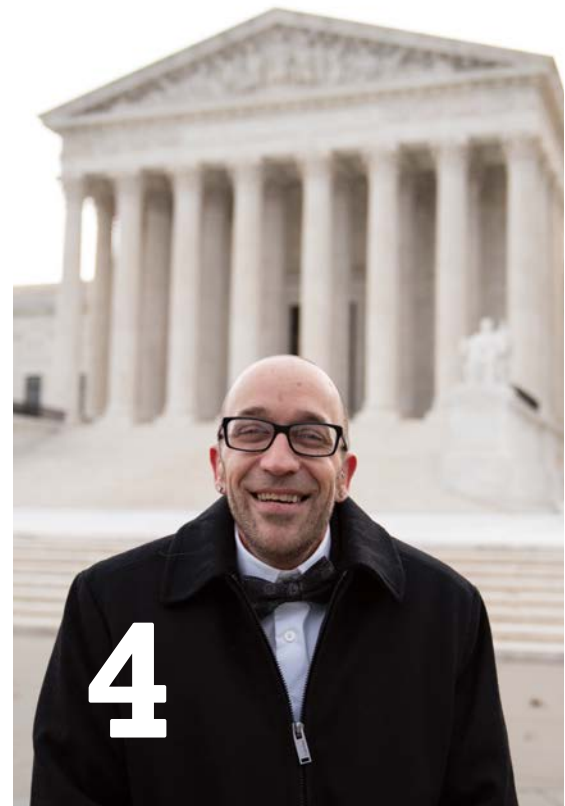
14 **Serving Families—and Serving Up Fun: IJ Invests in D.C. Educational Choice**

Christina Walsh

16 **The Long and Winding Road to Legal Victory**

Dana Berliner

19 **Notable Media Mentions**





LIBERTY & LAW

April 2019 • Volume 28 Issue 2

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.

Editor:

Melanie Hildreth

Layout & Design:

Laura Maurice-Apel

General Information:

(703) 682-9320

Donations: Ext. 399

Media: Ext. 205

Website: www.ij.org

Email: general@ij.org

Donate:

www.ij.org/donate

 facebook.com/instituteforjustice

 youtube.com/instituteforjustice

 twitter.com/ij

 instagram.com/institute_for_justice

VICTORY:

IJ Wins Unanimous U.S. Supreme Court Decision

BY WESLEY HOTTOT

In a historic decision that will have a lasting impact for liberty, the U.S. Supreme Court ruled 9–0 in IJ’s favor that the Eighth Amendment’s Excessive Fines Clause applies to state and local authorities. In *Timbs v. Indiana*, the Court deemed “overwhelming” IJ’s evidence that legal protections against excessive fines and forfeitures stretch back to Magna Carta and that they remain just as relevant—if not more so—today.

The case began in November 2017, when the Indiana Supreme Court determined that fines and forfeitures were essentially a Constitution-free zone because the U.S. Supreme Court had never ruled that the U.S. Constitution’s prohibition on excessive fines applied to state and local authorities. Effectively, that meant that state and local governments could take everything a person owned for even a minor crime or, using civil forfeiture, no crime at all.

Days after that decision, I flew to rural Indiana with fellow IJ attorney Sam Gedge to meet Tyson Timbs—a recovering addict whose \$42,000 truck was seized by the state over a first-time drug offense involving just a few hundred dollars. What’s more, the truck was forfeited *after* Tyson paid his court-ordered penalty and served out his punishment in full. When Tyson heard about IJ’s principled philosophy and record of success, he agreed to let us take over his case.

It is a remarkable accomplishment to persuade the U.S. Supreme Court to hear your case in the first place. The Court takes less than 2 percent of the cases that come before it. A tremendous effort—by IJ’s attorneys,

communications staff, production staff, and leadership—went into getting the Court to accept the case in June 2018. We then redoubled those efforts, bringing all aspects of our public interest arsenal to bear to ensure this landmark victory. When the decision came down, hundreds of media outlets covered the news, including

The Wall Street Journal, *The New York Times*, and *The Washington Post* in front-page stories.

In addition to the unanimous decision about excessive fines authored by Justice Ginsburg, two Justices—Thomas and Gorsuch—also agreed with IJ that the Privileges or Immunities Clause of the 14th Amendment is a meaningful source of rights. This matters because rehabilitating the Privileges or Immunities Clause after years of neglect by the high court is an important part of IJ’s long-term legal strategy, and doing so will

have important consequences in our fight for economic liberty and other vital rights.

The ruling in *Timbs* puts to rest the debate about whether there are limits on the government’s ability to take a person’s property. The Court affirmed that there are. The next pressing question is what exactly those limits look like. No one is better positioned to litigate that issue, and to protect all Americans from abusive fines, fees, and forfeitures, than IJ. ♦



The government used civil forfeiture to seize IJ client **Tyson Timbs’** \$42,000 truck after a first-time drug offense involving a few hundred dollars.

Wesley Hottot is an IJ senior attorney.





The ruling in *Timbs* puts to rest the debate about whether there are limits on the government's ability to take a person's property.



ENGINEERING

SOME MUCH-NEEDED JUSTICE IN OREGON

BY SAM GEDGE

Liberty & Law readers will recall the outrageous case of red light camera critic Mats Järnlström. Mats—a Swedish immigrant and longtime Oregon resident—made national headlines in 2017 after Oregon’s engineer licensing board fined him for writing about traffic lights and for calling himself, truthfully, an “engineer.”

For many people, Mats’ story displayed government overreach at its worst. Mats had become fascinated by an issue most of us don’t think much about: How exactly are yellow traffic lights timed? He came up with an idea for improving the mathematical formula for timing yellow lights. And he did what most people do when they come up with a new idea: He told others about it.

But things came to a screeching halt when Oregon’s engineering board learned about Mats. The agency launched a two-year investigation and fined him \$500. According to the board, Mats had broken its rules by sharing “special knowledge of the mathematical, physical and engineering sciences” relating to traffic lights and by describing himself as an “engineer” without being licensed in the state of Oregon.

In April 2017—just weeks after IJ sued the board on Mats’ behalf—the board began backpedaling furiously. It

admitted it was violating Mats’ First Amendment rights. It even volunteered a check for \$500 in a desperate effort to make IJ’s case go away.

But despite being willing to give Mats his money back, the board proved far less willing to change its ways going forward. Everyone who wasn’t Mats would have just had to take it on faith that the board would act responsibly in the future. Those half measures weren’t good enough for Mats or IJ. We pressed on, demanding meaningful relief for Mats and for all Oregonians.

After reviewing more than 18,000 pages of documents provided by the government during discovery, we uncovered a disturbing pattern of First Amendment

violations. Since the 1930s, the board had insisted that state-licensed Professional Engineers—those who can approve plans for a building or bridge—alone could describe themselves using the word “engineer.” All other engineers—software engineers, aerospace

engineers, and locomotive engineers, to name a few—could not. In recent years, moreover, the agency had been harassing people for using the word “engineer” in voter pamphlets, political ads, emails, blogs, websites, and even individual *photographs* on websites. In fact, the board’s role as censor was something of a joke within the

Despite being willing to give Mats his money back, the board proved far less willing to change its ways going forward. Those half measures weren’t good enough for Mats or IJ.

Oregon Speech continued on page 18

IJ and Cato Team Up to Challenge Government Gag Orders

BY ROBERT MCNAMARA

The Cato Institute, like any think tank, publishes a lot of books. And publishing books comes with challenges: Sometimes authors are late with revisions, and sometimes people disagree about the cover design. But this year, Cato came across a publishing problem it had never seen before: The book it wanted to publish was illegal.

A man who had written a harrowing tale of his prosecution at the hands of the Securities and Exchange Commission (SEC) approached Cato last year about publishing his book. About a decade ago, the SEC had accused him of truly staggering malfeasance, blasting out a press release that made him look like a cross between Bernie Madoff and Mephistopheles. As he tells it, after a lengthy and expensive battle, he ultimately agreed to admit to a couple of minor legal violations (nothing like the initial charges) in order to escape the increasingly crushing financial burden of defending himself.

Angry at his treatment by the government, he wrote a book to try to draw attention to what he views as extreme prosecutorial overreach—and Cato,


concerned as it is with criminal justice reform, wants to publish that book. It just can't.

The problem? In the original case, the SEC refused to agree to a settlement unless it contained a lifetime gag order preventing the defendant from ever publicly questioning any of the allegations against him. The SEC does this as a standard practice in every civil enforcement action it brings: If the SEC accuses you of doing five things and you ultimately agree to admit to only one of them, the SEC will not settle the enforcement against you unless you promise to never publicly challenge its allegation that you did the other four. The SEC's assertions in its press release have to be the last word on the topic.

The SEC seems to have invented this practice back in the Nixon administration, and other

Gag Orders continued on page 18

IJ is suing the SEC because government officials cannot be allowed to use the threat of overwhelming penalties and costly litigation to coerce people into forfeiting their First Amendment right to speak freely.



IJ client **Kenia Palacios** can continue to send her daughter to the school that best fits her needs after the Florida Supreme Court upheld two of the most popular school choice programs in the state this winter.

Educational Choice Secured in the Sunshine State

BY ARI BARGIL

IJ started off 2019 with a big win for educational choice. After years of litigation, we secured a ruling that, once and for all, preserves Florida's two most popular school choice programs: the McKay Scholarship Program for Students with Disabilities and the Florida Tax Credit (FTC) Scholarship Program.

We became involved in this case almost five years ago, when the plaintiffs in an already-sprawling education lawsuit added constitutional challenges to the McKay and FTC programs. Often, litigation challenging an educational choice program starts immediately after a new program is enacted but before students receive scholarships; in this case, both programs had been in place for nearly two decades and already become wildly popular. Thus, when IJ intervened to defend the

programs, we were not just ensuring the programs' long-term viability but also protecting the educational options of thousands of families in the Sunshine State who were already benefiting from choice. Recent research emphasizes that the programs work. According to the Urban Institute, FTC students are more likely than their peers to enroll in college and earn a degree. That made saving these lifelines for families all the more important.

After a five-week trial in the Florida trial court in 2016, IJ prevailed. Then, on appeal before the First District Court of Appeals in Tallahassee, IJ won another victory for parents and children in 2017. And finally, this January, after arguing the case before the Florida Supreme Court, we secured a final victory. Our success at every level in this case—the trial court, intermediate appellate court, and Florida Supreme Court—is a product

Our success at every level in this case—the trial court, intermediate appellate court, and Florida Supreme Court—is a product of IJ's perseverance and our decades of institutional expertise defending educational choice across America.



of IJ's perseverance and our decades of institutional expertise defending educational choice across America.

The payoff was huge. Thanks to IJ's efforts, approximately 130,000 students will keep their scholarships, and Florida parents need no longer worry about having to return their children to schools that were not meeting their needs. The Court's decision also spurred renewed interest in expanded educational choice in the state.

Florida continues to be a stronghold for educational choice in America, and IJ stands ready to keep it that way. ♦

Ari Bargil is an IJ attorney.



Continuing the Fight for Educational Choice in Montana at the U.S. Supreme Court

In December, Montana's Supreme Court became the first state supreme court in the country to strike down a tax-credit scholarship program. The court ruled 5–2 that the program violates the Montana Constitution's Blaine Amendment, reversing IJ's lower court victory in the process.

But there's a big silver lining in this loss: The decision positions IJ to bring the constitutionality of Blaine Amendments before the U.S. Supreme Court, an opportunity we have worked long and hard to achieve.

Blaine Amendments are state constitutional provisions that prohibit public funds from aiding religious schools. Even though educational choice aids families, not schools, courts have used Blaine Amendments to strike down programs that include religious options.

There are two problems with this. First, limiting children to just secular educational options violates families' rights to religious liberty. The U.S. Supreme Court has been clear that the government cannot force individuals to choose between following their religious beliefs and participating in a public program.

Second, limiting educational options defeats the whole purpose of choice programs: allowing families to choose the best education for their children. Religious schools are an important option, and even nonreligious families may prefer them—whether because of their academics, discipline, or close-knit communities. Parents, not the government, know what their children need.

In March, IJ filed a petition with the U.S. Supreme Court, asking it to take the case. We have been battling Blaine Amendments for almost 30 years, and we will keep fighting until we eliminate these barriers to educational opportunity once and for all. ♦



After the Montana Supreme Court struck down the state's tax-credit scholarship program, IJ filed an appeal with the U.S. Supreme Court, asking it to take the case on behalf of IJ client **Kendra Espinoza** and other parents who want to give their children the best possible education.



VICTORY for Atlantic City Piano Man: *IJ Thwarts Another Attempt at Eminent Domain Abuse in New Jersey*

BY DAN ALBAN

For five years, IJ has been fighting an eminent domain battle on behalf of Atlantic City piano tuner Charlie Birnbaum. As loyal readers of *Liberty & Law* will recall, a New Jersey state agency called the Casino Reinvestment Development Authority has been trying to take the home Charlie's parents first purchased in 1969 and replace it with ... nothing.

Literally nothing.

The state plans to take the home, knock it down, and then think really hard about what it might put there instead. Charlie, armed with the resolve he learned from his Holocaust-survivor parents, has had one consistent message for state officials: No way. I am not going anywhere.

In February, New Jersey's appellate court said the same thing: Charlie is staying put. In a unanimous opinion, the court affirmed IJ's initial victory in this case, which followed a trial held back in 2016. The trial court found that the government's attempt to take Charlie's property without any credible plan for doing anything with it was a "manifest abuse of the eminent domain power."

The state appealed that ruling, arguing that the judge had been wrong to impose any limits on its power at all. But the appellate court was unimpressed by the state's claim to unlimited authority. The most recent opinion makes clear not only that there

are limits on eminent domain in New Jersey but also that the courts stand ready to enforce them as necessary.

The government's arrogance was not unfounded. Before it tried to condemn Charlie's home, this state agency had lost only one condemnation case since it was first established in 1976. (Not coincidentally, that one loss was an IJ case, so perhaps the agency should have learned its lesson already.) But the appellate court's ruling shows that—at least when it comes to eminent domain—the times in New Jersey are very much a-changin'.

This decision may finally mark the end of five hard years of fighting in a case that showcases the best of IJ: the dedication of our staff, our lawyers, and—most of all—our clients. Charlie Birnbaum is an indomitable spirit whose courage and optimism exemplify everything that makes IJ clients remarkable. When IJ Senior Attorney Robert McNamara, the lead attorney on Charlie's case, called to tell him we had won, he had one question: "Is this a ruling that will help other people?" Assured that it was, he asked that we pass on his deepest gratitude to everyone who made it possible for him to stand up to overwhelming government force and to save the home that's been in his family for half a century.

So, on behalf of Charlie and all of us here at IJ, thank you for making this fight possible. Together, we truly are changing the world. ♦

Dan Alban is an
IJ senior attorney.



Five years after IJ first came to **Charlie Birnbaum's** defense, the home that has been in his family for decades is safe from the state's wrecking ball.

Bringing Justice to Policing for Profit Victims in California

BY JEFFREY REDFERN

Residents of Indio, California, are finally free from the city's tyrannical "for-profit prosecution" scheme thanks to IJ's recent victory on behalf of individuals like our client Ramona Morales. Ramona is a landlord and retired housekeeper who was criminally prosecuted by Indio because one of her tenants was keeping chickens illegally. Ramona pleaded guilty and paid a small fine but was later shocked to receive a bill for nearly \$6,000—the alleged cost of hiring a private law firm to prosecute her.

The firm, Silver & Wright, has dozens of California cities as clients. Its marketing pitch—"cost-neutral code enforcement"—is driven by the same kind of abusive tactics that the firm employed with Ramona: criminally charging people for minor infractions, extracting guilty pleas, and then surprising victims with massive bills for attorney's fees. IJ's research revealed dozens of property owners who had similar stories in the cities of Indio and nearby Coachella.

In February 2018, IJ filed a class action lawsuit on behalf of Ramona and other property owners who had lost thousands of dollars to this new incarnation of policing for profit. This scheme violates both the California and federal Constitutions, which prohibit criminal prosecutors from having a financial stake in the cases they bring. By outsourcing code enforcement to a private law firm with an incentive to make money off the cases, cities around California have abandoned their responsibility to ensure that criminal prosecutions promote justice, not the bottom line.



Ramona Morales paid nearly \$6,000 in attorney's fees after the city of Indio gave her a \$75 ticket for having a tenant with chickens in her backyard. Thanks to IJ's recent victory, Ramona and every Indio resident who was caught up in the city's policing for profit scheme will get their money back.

This past December, Ramona got some good news: Indio agreed to refund every penny collected from her and others who had been prosecuted. Additionally, the city promised to put a stop to its for-profit prosecution practice and cooperate with IJ's efforts to get class members' criminal records expunged. We expect that the court will soon give final approval to the settlement, which ensures the city can be held accountable for years to come.

But the fight isn't over. The city of Coachella and its

private prosecutors are continuing to fight to get IJ's case dismissed and deny justice to Coachella residents. To date, however, IJ has won every encounter. And along the way, we've obtained useful rulings about the importance of prosecutorial neutrality and about individuals' rights to challenge criminal convictions when they later learn that their convictions were unconstitutional.


What's more, IJ's efforts helped pass vital state legislative reform. When California

lawmakers learned what had been happening in Indio, Coachella, and other cities, they overwhelmingly passed a bill outlawing these schemes, which then-Gov. Jerry Brown signed into law.

This is great progress, and IJ will keep fighting—and winning—until the citizens of Coachella receive the same justice as the citizens of Indio and we secure yet another victory in our nationwide battle against policing for profit. ♦

Jeffrey Redfern is
an IJ attorney.





IJ will keep fighting—and winning—until the citizens of Coachella receive the same justice as the citizens of Indio and we secure yet another victory in our nationwide battle against policing for profit.

Serving Families— and Serving Up Fun: IJ Invests in D.C. Educational Choice

BY CHRISTINA WALSH

In January, during National School Choice Week, IJ celebrated the 15th anniversary of the D.C. Opportunity Scholarship Program (OSP) at our annual D.C. Winter Carnival. Nearly 1,400 parents and children attended, doubling last year's turnout and making it the most widely attended event in IJ's history.

At the carnival, children played games, had their faces painted, won books and prizes, and enjoyed a 27-foot slide, balloon artists, and tons of carnival food. Meanwhile, their parents had the opportunity to meet with a dozen different schools at a private-school fair organized by the program administrator, Serving Our

Children (SOC). This is a much anticipated event every year in the community and an opportunity for current OSP families to reconnect and for new families to learn about the program.

In light of the program's milestone anniversary this year, we significantly increased our outreach in the community in advance of the event. We canvassed early (freezing) mornings at Metro stops; appeared on a local urban radio station; mass-mailed thousands of homes; dropped off bookmarks, flyers, and slap bracelet invitations to dozens of libraries, participating schools, and public housing

developments; and much more.

This year's carnival was particularly momentous as

This is a much anticipated event every year in the community and an opportunity for current Opportunity Scholarship Program families to reconnect and for new families to learn about the program.



Nearly 1,400 parents and children attended the D.C. Winter Carnival, hosted by IJ and Serving Our Children this January.

IJ staff, including Attorney **Erica Smith**, volunteered their time to put together the largest event in IJ's history.

we celebrated the launch of a new initiative in collaboration with SOC: Serving Our Families (SOF).

SOF is dedicated to helping families with scholarships navigate the school application process, ensuring these families realize the full potential of the program. The process can be challenging and intimidating for many parents: The timing of scholarship awards can cause families to miss school application deadlines, finding a good school match for a student can be tricky, and establishing a new school routine is logistically tough. As a result, there are hundreds of families who are not using their OSP scholarships.

It is a tragedy that so many families are missing out on this opportunity to get their children into schools that better meet their needs. That's where SOF comes in. Staffed by IJ's dear friend Natasha Yeargin, a participating OSP parent who has already helped many other parents navigate the process, SOF



will provide the personal, hands-on support needed to allow the program to grow and thrive. It will also

survey parents who are not using their scholarships to identify other problems that could be addressed, cultivate an alumni network, collect student stories, connect families with existing support services, and help identify spokespeople to advocate for the program.

As the OSP prepares to face yet another reauthorization battle before Congress, this is a critical time to build the program's capacity and keep it on solid footing so future generations can enjoy the opportunities it creates. Our work with the D.C. program is yet another opportunity for IJ to advocate for long-term, life-changing changes to the law—and to create immediate, real-world benefits along the way. ♦

Christina Walsh is IJ's director of activism and coalitions.



While parents learned more about educational opportunities available through the D.C. Opportunity Scholarship Program, children played carnival games, enjoyed food and snacks, and took home books and prizes.



IJ client **Sung Cho** was a target of New York City's "no fault" eviction scheme. After city attorneys attempted to block IJ's lawsuit with procedural barriers, IJ painstakingly rebutted each argument to allow substantive litigation to move forward.

The Long and Winding Road to Legal Victory

BY DANA BERLINER

IJ knows all about litigating economic liberty, property rights, free speech, and educational choice cases. But readers of *Liberty & Law* may not know that IJ has also developed significant expertise in arcane issues of legal procedure. Because our cases go to the heart of government power, we find that our opponents are desperate to get our

lawsuits thrown out before a court can reach a decision on any important constitutional issues. In many of our cases, the first round of litigation is all about whether we are allowed to bring the suit at all. Only after that can we get down to the business of overturning unconstitutional laws.

Our federal class action challenge against New York City's "no fault" evic-

Because our cases go to the heart of government power, we find that our opponents are desperate to get our lawsuits thrown out before a court can reach a decision on any important constitutional issues.

When we face hurdles like this, it is important to remember that the reasons we are suing are worth the fight.

tion scheme is a perfect example of this pattern. As you may recall, this ordinance allowed the city to evict residents and business owners simply because a crime occurred on their property—even if they had absolutely nothing to do with it. This practice is a clear abuse of individual due process rights, and IJ sued to end it in late 2016.

New York City attorneys immediately asked the court to dismiss our case, throwing up a long list of supposed procedural barriers to block IJ's path. We carefully rebutted each procedural issue in our legal papers. When we arrived at oral argument, however, the court itself suggested yet another possible procedural problem: an obscure doctrine called "Rooker–Feldman" that would have prevented us from bringing the case in federal court. In spite of our additional legal briefing explaining why our lawsuit should proceed, the court decided the doctrine *did* apply and dismissed the case in early 2018.

But that kind of setback is hardly the end of the road for IJ. We appealed the lower court's decision to the 2nd U.S. Circuit Court of Appeals and, in late 2018, the appellate court reversed the lower court's decision, reinstated our case, and sent us back down to the trial court to resume our advocacy.

Back in the trial court, New York is trying once again to get its litany of procedural objections to stick. And, once again, IJ is painstakingly rebuffing each one. All in all, it will take close to three years—and possibly longer—just to clear away the brush so that we can at last litigate the merits of the case.

When we face hurdles like this, it is important to remember that the reasons we are suing are worth the fight. No-fault evictions are like civil forfeiture for renters, and the situation of IJ client Sung Cho, owner of a laundromat in Manhattan, is truly outrageous. In 2013, undercover police officers sold stolen iPods to people doing their laundry in his facility. There was no suggestion that Sung Cho had anything to do with the incident. Yet, thanks to the city's laws, he was still subject to eviction and deprived of his constitutional rights.

IJ intends to eliminate the appalling due process violations committed by the largest city in the country. And we will wade through years of procedural litigation if necessary in order to get there. ♦

Dana Berliner is IJ's senior vice president and litigation director.





Oregon engineer **Mats Järleström** was fined for publicly discussing the timing of traffic lights. IJ fought back for Mats' First Amendment right to speak freely—and won.

Oregon Speech continued from page 6
agency; at one meeting, officials quipped about “tak[ing] down Dilbert” for being an unlicensed (cartoon) engineer.

Armed with this evidence, Mats and IJ asked a federal court to end these abuses once and for all. And this past December, the court granted Mats almost all the relief he sought. It confirmed that Mats can describe himself as an “engineer.” It confirmed that he can share his theories about traffic lights. It voiced concern over “the Board’s history of overzealous enforcement actions,” and it declared the agency’s ban on the word “engineer” unconstitutionally overbroad.

If Mats’ case showcased government at its worst, it also showed IJ clients at their best. For ordinary Americans, being targeted by the government is frightening; even agencies no one has heard of wield formidable power, often with little oversight. Standing up to bullies takes courage. At IJ, it’s our privilege to represent people like Mats who have the grit to take on bullies and to make their communities freer. ♦

Sam Gedge is an IJ attorney and the Elfie Gallun Fellow for Freedom and the Constitution.



Gag Orders continued from page 7

law enforcement agencies have since followed suit. It’s easy to see why: Gag orders like this let law enforcement turn its already enormous powers to punish people into the ability to silence criticism of how it uses those powers. But the Constitution does not allow this kind of horse-trading: Government officials cannot leverage their discretionary powers—like the power to decide how to spend money or how vigorously to pursue a prosecution—to coerce people into trading away fundamental rights like their right to free speech.

Fortunately, the people at Cato know some good constitutional lawyers: us. And so Cato and IJ have joined forces to sue the SEC in a lawsuit that promises to establish that these sorts of gag orders are not just bad policy—they are unconstitutional.

Simply put, the SEC should not be in charge of determining who is allowed to criticize the SEC. The best way for citizens to know that law enforcement officials are not abusing their enormous powers is to ensure that there is vigorous—and free—public debate about how those powers are used. The SEC may think its enforcement activities are perfectly appropriate. Some of its victims disagree. And, if IJ has anything to say about it, soon you’ll be able to read all about it and decide for yourself. ♦

Robert McNamara is an IJ senior attorney.



Simply put, the SEC should not be in charge of determining who is allowed to criticize the SEC.

NOTABLE MEDIA MENTIONS

The Washington Post

Supreme Court Limits Power Of States And Localities To Impose Fines, Seize Property

February 20, 2019

NBC NEWS

Limiting Excessive Fines, Supreme Court Rules Against Seizing A Drug Seller's Luxury SUV

February 20, 2019

IndyStar.

PART OF THE USA TODAY NETWORK

U.S. Supreme Court: Range Rover Seizure Violated Protections Against Excessive Fines

February 20, 2019

THE WALL STREET JOURNAL

Supreme Court Rules Against Excessive State Fines

February 20, 2019



US Supreme Court Rules Against Excessive State Fines

February 20, 2019

Vox

Why The US Supreme Court's New Ruling On Excessive Fines Is A Big Deal

February 20, 2019

The New York Times

Supreme Court Limits Police Powers To Seize Private Property

February 20, 2019

RollingStone

The Supreme Court Unanimously Weighs In On Civil Forfeiture

February 20, 2019

CBS NEWS

Supreme Court Civil Forfeiture Case: Justices Back Man Whose \$40K SUV Was Seized Over \$400 Drug Sale

February 20, 2019

USA TODAY

Supreme Court Strikes Blow Against States That Raise Revenue By Hefty Fines, Forfeitures

February 20, 2019

Newsday

Court Ruling Sets Higher Bar For Police, Prosecutors In Asset Seizures

February 20, 2019



REUTERS

Constitution's 'Excessive Fines' Ban Bolstered By U.S. High Court

February 20, 2019

Los Angeles Times

Supreme Court Bolsters The Right Of Owners To Fight Police Seizures Of Property

February 20, 2019

FINANCIAL TIMES

US Supreme Court Ruling Curbs Use Of Fines And Forfeitures By Police

February 20, 2019

NEWYORKPOST

The Supremes Slap Down An Outrageous Government Racket

February 20, 2019

abc NEWS

Supreme Court Unanimously Rules To Limit States' Ability To Seize Private Property Involved In A Crime

February 20, 2019

CNN

Now We Know What Ruth Bader Ginsburg Was Doing

February 20, 2019

npr

Supreme Court Limits Civil Asset Forfeiture, Rules Excessive Fines Apply To States

February 20, 2019

AP Associated Press

'Excessive Fines' Ban Applies To States, Supreme Court Says

February 20, 2019

BuzzFeed

The Supreme Court Has Limited How Much Private Property States Can Seize

February 20, 2019

Editor's Note: One of the signature components of IJ's strategic and uniquely effective brand of public interest litigation is our work in the court of public opinion. We routinely secure in-depth and high-profile coverage of our cases in local and national media, creating the climate of interest and outrage necessary to enact sweeping legal change. Our victory at the U.S. Supreme Court in *Timbs v. Indiana*, described in this issue's cover article, is a perfect example of that. The headlines above are just a sample of the more than 220 print and broadcast pieces about the case in mainstream media outlets.

I want to provide safe, high-quality, and affordable
MRI scans for patients in need, but North Carolina's
certificate of need law stands in my way.

Patients and doctors—not the government—are
in the best position to determine which medical
services are needed.

That's why I'm fighting back.

I am IJ.

