



**LIBERTY & LAW**

June 2019

Volume 28 Issue 3

# REVVING UP AGAINST CHICAGO'S IMPOUND RACKET

IJ Clinic on Entrepreneurship Celebrates 20 Years in Business • IJ Files Suit Against Short-Sighted Indiana Law

Published Bimonthly by  
the Institute for Justice

IJ Sets Sail on the Seas of Administrative Law • Dave Kennedy Fellowships Honor Founding IJ Board Chairman  
Activism Victories from Homeowners to Home Bakers • IJ Obtains Historic Ruling in Florida Food Truck Case

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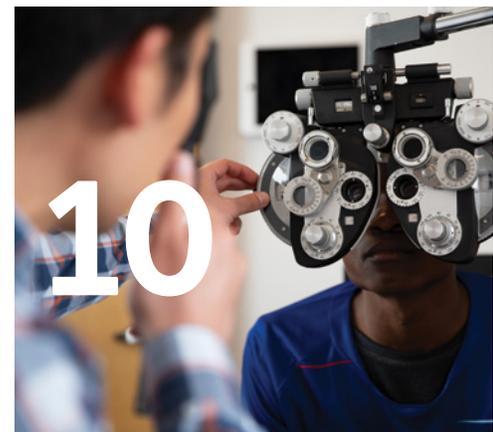
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## LIBERTY & LAW

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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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# REVVING UP AGAINST CHICAGO'S IMPOUND RACKET

BY DIANA SIMPSON

When Veronica Walker-Davis' car was damaged in an accident, she took it to a Chicago body shop for repairs. As the days without her car stretched into weeks, she started to worry, becoming less and less comforted by assurances that the shop was "just waiting on parts." Finally, the shop came clean—an employee had taken the car for a joyride and been pulled over. When police discovered he was driving on a suspended license, they impounded the car.

It got worse from there. Veronica discovered that the government would not return her family car unless she paid thousands of dollars in fines and fees—for someone else's crime.

Welcome to Chicago's impound racket. While outrageous, Veronica's story is not unique. In 2017 alone, Chicago impounded more than 22,000 cars, including cars owned by people who committed no crime, and imposed more than \$28 million in related fines and fees. That's why Veronica and her husband, Jerome, joined IJ in a class action lawsuit challenging Chicago's impound scheme—and its myriad violations of constitutional rights.

Chicago tows and impounds cars for dozens of offenses—including littering, playing audio that can be heard 75 feet away, and carrying spray paint. Each violation carries an administrative fine of up to \$3,000, and the city charges a towing fee plus daily storage fees that compound quickly. As if that weren't



## In 2017 alone, Chicago impounded more than 22,000 cars, including cars owned by people who committed no crime, and imposed more than \$28 million in related fines and fees.

enough, the city holds impounded cars hostage, refusing to release them until the owners pay everything.

Once your car is impounded, getting it back requires navigating a bureaucratic quagmire. The city is supposed to send you notice after impounding your car, but that notice is slow to arrive, if it ever does. You then have to make your way downtown at least three times—once to request a hearing and twice more to attend hearings—without the use of your impounded car. And once you're in "court," you face off against the city's attorney in an upside-down world where innocence is rarely a defense.

Nobody should be forced to pay for someone else's crime. Thanks to IJ's historic U.S. Supreme Court victory in *Timbs v. Indiana* earlier this year, it is clear that the Excessive Fines Clause of the Eighth Amendment applies to all levels of government, including the city of Chicago. Winning this case will allow IJ to build on this victory, establishing that *any* fine against an innocent owner is excessive.

Moreover, the government must have a good reason to take someone's property and an equally good reason to keep it. Chicago's only justification for keeping cars is to force their owners to pay up.

This slew of constitutional violations gives IJ the opportunity to bring multiple legal claims, each of which would establish groundbreaking new protections for private property rights or the right to due process. And by seeking class certification, IJ hopes to represent not only brave owners like Veronica and Jerome but also the thousands of others subjected to this scheme.

This challenge is complex, sweeping, and high stakes. It seeks systemic change in an area where abuse is rampant—just the kind of battle IJ is uniquely positioned to wage. ♦



Spencer Byrd (above) and Jerome Davis and Veronica Walker-Davis (below) did absolutely nothing wrong, but Chicago still seized their cars and held them for ransom while charging our clients thousands of dollars in fines and fees under the city's unconstitutional impound scheme.



Diana Simpson is  
an IJ attorney.





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# IJ Represents Pennsylvania Reporter in Fight for Forfeiture Records

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BY KIRBY THOMAS WEST

Every year, the Lancaster County District Attorney's office uses forfeiture to take hundreds of thousands of dollars in cash and other property from Pennsylvania citizens. Under Pennsylvania law, the DA's office is able to spend the proceeds with few restrictions and almost no public oversight. Carter Walker, a young reporter for LNP Media Group in Lancaster, is working hard to change that.

As part of his investigative reporting, Carter filed a public records request with

**Under Pennsylvania law, the DA's office is able to spend the proceeds with few restrictions and almost no public oversight.**

the local DA's office under Pennsylvania's "Right-to-Know" law, asking for information about what kind of property the DA is taking through forfeiture and how the office is spending the proceeds.

But when the Pennsylvania Office of Open Records ordered the DA to make this information available, he opted to fight Carter's request for information in court. That's when IJ

stepped in, teaming up with Carter to ensure that district attorneys across Pennsylvania must make information about their forfeiture

## IJ wrote the book—literally—on how to apply public records requests to the world of forfeiture.

practices and the property they confiscate under them available to the public.

Local reporting, like Carter's and LNP's, plays a crucial role in the national fight for forfeiture reform by giving the public—and public interest litigators—the information they need to hold public officials accountable. This information often comes from public records requests made under state or federal transparency laws. By analyzing records of individual forfeitures and expenditures of forfeiture proceeds, reporters can provide a snapshot of how the system operates and shine a light on potential wrongdoing.

IJ wrote the book—literally—on how to apply public records requests to the world of forfeiture. We relied heavily on public records requests to produce our comprehensive forfeiture report, *Policing for Profit*, which drove forfeiture from obscurity to a focal point of national outrage and has been cited hundreds of times in local and national media outlets, as well as in

legal briefs, legislative testimony, political speeches, and even court opinions. It is vital that as many reporters as possible have open access to forfeiture information so they can add to the national conversation IJ started. Their reporting also offers a valuable source of leads for potential IJ litigation.

U.S. Supreme Court Justice Louis Brandeis famously once said, "Sunlight is the best disinfectant." As IJ's friends and supporters know, the world of forfeiture could use lots of disinfecting. By joining forces with Carter and LNP, IJ will help shed light on forfeiture in Pennsylvania. In the process, we will advocate for the right of all Pennsylvanians to know how their government is taking property and how it spends the proceeds. ♦

Kirby Thomas West is  
an IJ attorney.



The public must have access to information that exposes how forfeiture is used in their communities. That's why Pennsylvania reporter **Carter Walker** and his employer, LNP Media Group, are teaming up with IJ to ensure that forfeiture records in the state are available to all.

# IJ CLINIC ON ENTREPRENEURSHIP —AND ITS CLIENTS— CELEBRATES 20 YEARS IN BUSINESS



A map of just some of the IJ Clinic's 242 clients served.

BY BETH KREGOR

In 1997, two University of Chicago law students attended IJ's Law Student Conference and were inspired to use their legal training to help low-income entrepreneurs earn an honest living. They brought their idea to the dean of the law school and, working hand in hand with IJ, designed a clinic that would teach law students how to help entrepreneurs overcome government red tape and get into business. It was an experiment for both IJ and the University of Chicago Law School.

In the 20 years since the IJ Clinic's debut, this experiment has been an unqualified success. The Clinic has directly served 242 small businesses founded by low-income entrepreneurs and has trained 272 students to be thoughtful, careful counselors for those businesses. Through workshops, conferences, and trainings, we have provided vital resources to hundreds of other men and women, helping them transform their lives and bring innovation and opportunity to underserved communities.

In the years to come, we will provide top-notch legal assistance to a new generations of entrepreneurs. We will guide fresh classes of law students as they draft contracts, counsel clients, tackle regulatory barriers, and learn to become advocates for entrepreneurs. We will engage and empower new communities



Left: Nearly 10 years after his time with the IJ Clinic, **KenTech** founder **Kenneth Coats** is still smiling ear to ear. In 2018, his business was listed in the Top 25 fastest growing security companies in America by Inc. 5000.

Right: Just Us Lawn Care, now **Urban Roots Inc.**, came to the IJ Clinic in 2010 looking for help with customer contracts. Ten years later, the company is much larger and impressively efficient at providing much-needed snow removal in the Chicago area.





Left: When a group of a dozen bicycle messengers approached the IJ Clinic about forming a worker-owned cooperative, they likely never imagined that, years later and thanks to the Clinic's students, **Cut Cats Courier** would have an operating agreement that accommodates more than 60 owner-operators!

Right: Years after working with the IJ Clinic, **Patchwork Farms** is still planting seeds and insisting on outdoor meetings. Students helped Patchwork understand how an urban farm fits into Chicago's licensing code.



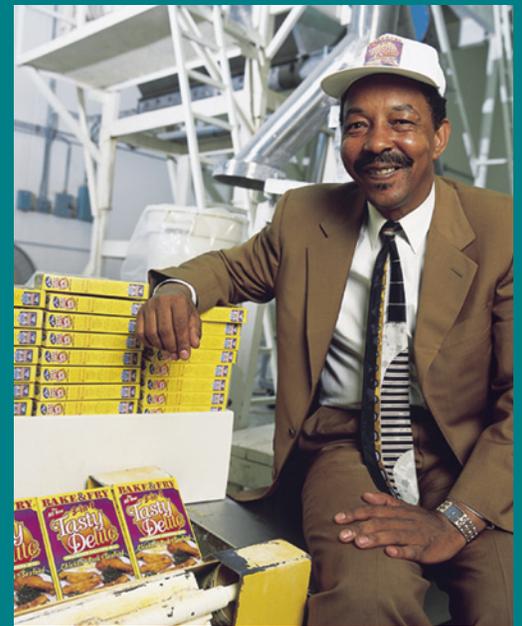
seeking the freedom to earn an honest living, while working to change the laws that stand in their way.

And we will do more: From launching a podcast that showcases the stories of entrepreneurs building businesses in Chicago to releasing a report that identifies the key laws and policies that hamstring Chicago entrepreneurs and outlines potential reforms, we will clear the way for more innovation and opportunity.

The IJ Clinic was founded on the belief that one entrepreneur has the power to make the world a better place. Over the next 20 years, we will empower countless more hardworking men and women to pursue their dreams and make the city a more vibrant and prosperous place for all. ♦



Beth Kregor is the director of the IJ Clinic on Entrepreneurship.



Above: One of the IJ Clinic's very first clients, **Darryl Brown** of **Tasty Delite**, was proud to sell his seasonings and breadings in grocery stores throughout Chicago!



Left: In 2017, after years of working with the IJ Clinic to legalize street vending in Chicago, the **Street Vendors Association of Chicago** celebrated opening a shared kitchen space where vendors' businesses can cook and grow.

Right: In 2012, **Service in Bloom** founder **Damita McCoy** wondered if she'd ever be able to get her home care business off the ground. The IJ Clinic helped her get and maintain a license, and now she has a roster of elderly clients who value the support she provides.



# IJ Files Suit

## Against Short-Sighted Indiana Law

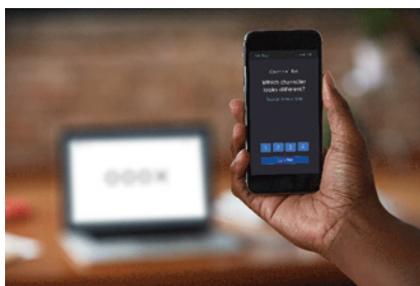
BY JOSHUA WINDHAM

States across the country are embracing telemedicine as a safe and effective means of expanding access to health care. In 2016, Indiana attempted to join the movement when it passed a law legalizing telemedicine in virtually all settings. There was just one problem. Despite the state's broadly encouraging approach to telemedicine, the law banned doctors from using it to prescribe three specific things: opioids, abortion-inducing drugs, and eyeglasses.

Opioids and abortion-inducing drugs present unique concerns and are common exceptions to these laws. But how did *glasses* end up on Indiana's blacklist?

The story starts in 2014, when technology company Visibly (then called Opternative) launched the world's first online vision test. The idea was simple: Customers could use their smartphones and computers to take a vision test from home and have their results sent to a licensed ophthalmologist (a medical doctor), who would then decide whether to write a prescription for new lenses. This technology was not only simple and convenient—it

was effective. Since launching, Visibly has received an overwhelmingly positive response and now successfully operates in 39 states.



Established businesses in Indiana that make most of their money selling eyeglass frames saw **Visibly's** innovative technology as a threat to their profit margins, so they lobbied the state legislature to ban the company's technology.

Visibly even did so in Indiana—for a time. Starting in 2015, doctors used Visibly to provide quicker, easier access to corrective lens prescriptions to dozens of satisfied Hoosiers. But that all came to a halt in 2016 with the enactment of Indiana's telemedicine law, which was corrupted by the one group Visibly's technology does not benefit: traditional optometrists.

Unlike ophthalmologists, optometrists are not medical doctors. They can, however, write vision prescriptions, and they make most of their money selling expensive eyeglass frames for those prescriptions in their brick-and-mortar offices. Visibly's technology, which is specifically designed to spare customers from having to leave home for routine vision tests, makes that model obsolete. So naturally, when Indiana's telemedicine law was first proposed, optometrists vigorously opposed it until language was added banning the use of Visibly's technology.

## Support IJ through AmazonSmile

Using government power to protect private businesses from competition is unconstitutional. That's why **Visibly** teamed up with IJ to ask Indiana courts to strike down the state's protectionist ban.



The bizarre result is that Indiana doctors are now permitted to write prescriptions for virtually all medical devices and substances as long as they meet the standard of care in their areas of practice—but they could be penalized and even lose their license if they use Visibly to prescribe corrective lenses.

There is no health or safety justification for this carve-out. Visibly, like all other telehealth technologies, is just a tool doctors can incorporate (or not) into their practices. Ophthalmologists across the country have decided to use that tool, consistent with the standard of care in their field, to make life easier for patients. There is no reason why they cannot be trusted to do so in Indiana, too.

But banning doctors from using Visibly's technology was never meant to protect patients. In 2016, Visibly teamed up with IJ to challenge a similar ban in South Carolina that was also pushed by brick-and-mortar optometrists. Although that lawsuit is ongoing, internal documents from the optometry lobby reveal a nationwide campaign designed to shut down Visibly for one reason only: to protect optometrists' bottom lines.

Now, Visibly and IJ are taking the fight for economic liberty to Indiana. The state constitution protects innovators' right to earn an honest living and forbids legislators from handing out special protections to favored business groups. Visibly's lawsuit, which challenges Indiana's protectionist ban on its technology, simply asks Indiana courts to stand up for these principles. Because at the end of the day, it's doctors and patients—not lawmakers or special interest groups—who should be deciding which new technologies to adopt. ♦

Joshua Windham is  
an IJ attorney.



If you love what you're reading in this and other issues of *Liberty & Law* and want an easy way to do even more to support our work, please consider selecting the Institute for Justice as your designated charity for Amazon purchases through AmazonSmile.

Since 2013, Amazon has given shoppers the option to donate 0.5% of every purchase to the nonprofit of their choice. That means some of the money you pay to Amazon goes to IJ—at no additional cost to you. So far, IJ has received over \$20,000 in donations from Amazon through the AmazonSmile service.

What's the catch? Most people forget to use the link [smile.amazon.com](https://smile.amazon.com) when shopping. The AmazonSmile page looks and operates like Amazon's main website, and only when you start at that page will your purchases trigger a charitable donation. One easy way to ensure that you never forget to log into the AmazonSmile page is to create a bookmark in your browser, or to download a browser extension on your desktop that will automatically redirect you to AmazonSmile from the main Amazon site.

For instructions on how to add an extension to your desktop browser, or to learn more about this easy way to support IJ, visit IJ's website at [ij.org/support/other-ways-to-give](https://ij.org/support/other-ways-to-give). If you need assistance, please contact Janell Cutrer by email at [jcutrer@ij.org](mailto:jcutrer@ij.org) or by phone at (703) 682-9320, Ext. 243. ♦

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# IJ SETS SAIL ON THE SEAS OF ADMINISTRATIVE LAW

**Captain Matthew Hight** completed two years of training and paid nearly \$200,000 to pursue a career as a sea pilot on the Great Lakes, but a private association is using its power with the U.S. Coast Guard to prevent him from getting a license or a job.



**BY ANTHONY SANDERS**

Imagine you wanted to work as a lawyer in a specific city. Once you got your law license, you would assume you could work for any employer in the city or even start your own practice.

Now imagine there is only one law firm in the city and it has to give its blessing before you can even get your license. Once it does, the only place you are permitted to work is at that same firm. What's more, suppose this backward monopoly system is set—and maintained—by federal law.

Sound crazy? Welcome to the morass of federal laws that govern sea pilots, the professionals who navigate ships. A pilot takes over from a ship's captain when the ship comes into port, applying his knowledge of local waterways to guide the vessel safely to harbor.

Captain Matthew Hight wanted to turn his 20 years of experience in the Merchant Marines—including eight years as a ship's master—into a career as a pilot on the Great Lakes. He trained for two years with the St. Lawrence Seaway Pilots Association, piloting ships on Lake Ontario over 200 times and preparing to “buy in” to the Association's membership at a cost of over \$200,000.

But then, after Captain Hight had a disagreement with the Association's president, the Association suddenly informed the U.S. Coast Guard that it recommended against granting Captain Hight a license. The Coast Guard automatically deferred to the Association, and the captain unexpectedly found himself marooned with no license, no job, and no way to go back to work.

Even if Captain Hight had wanted to go elsewhere for his license, he couldn't have: The Coast Guard decrees that all pilots in that part of the Great Lakes

must be trained by, and work for, the Association. What's more, the Coast Guard has granted the Association veto power over who gets a license. The effect of these rules is to create a monopoly so strong that the Association is free to keep individuals it does not like out of work.

But private interests should not be able to wield government power to crush individual initiative and arbitrarily shut people out of their chosen occupations. This spring, IJ filed a federal lawsuit to vindicate Captain

Hight's right to earn a living and the Constitution's guarantees of due process and freedom of association.

Captain Hight's situation is also a dramatic display of—and opportunity to challenge—federal administrative overreach. For too long, courts have deferred to administrative agencies in interpreting those agencies' own regulations and statutes, with

minimal accountability or concern for individual rights. Even worse, agencies like the Coast Guard now delegate their own lawmaking power to private actors and impose requirements that force entrepreneurs to placate their competitors in the marketplace. This unconstitutional behavior must end, and this case is one of several challenges IJ is filing to hold the administrative state accountable.

Captain Hight has a long fight ahead of him before he's back out on the water, but the Constitution is on his side. In recent years, the Supreme Court has grown more concerned with the excesses of administrative agencies and the delegation of lawmaking power. IJ is litigating to turn that concern into action, both by land and by sea. ♦



Anthony Sanders is an IJ senior attorney.



**Private interests should not be able to wield government power to crush individual initiative and arbitrarily shut people out of their chosen occupations.**

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# Dave Kennedy Fellowships

## Honor Founding IJ Board Chairman

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**Dave Kennedy**, pictured with IJ Founding President and General Counsel **Chip Mellor** (above) and with IJ's full board of directors (below), was a dear friend to IJ from when we first opened our doors in 1991.



### BY CHIP MELLOR

Today, the Institute for Justice is a nationwide force for liberty. But it wasn't always so. When we started IJ in 1991, we had five employees and an unprecedented vision of a new approach to public interest law. And we had Dave Kennedy as chairman of our board of directors.

Dave brought a unique blend of integrity, strength, and humility that proved indispensable to helping us meet the challenges and opportunities of those early years. Dave went on to serve as IJ's chairman for 25 years. And as we built IJ, we built our board of directors as well. With Dave's leadership, the board became the foundation for IJ's success.

In addition to our devotion to liberty, Dave and I shared a love for the West. The wide open spaces and rugged individualism of the West resonated deeply with Dave. He served as Wyoming attorney general and practiced law in Sheridan, Wyoming, for many years. He then moved to Ann Arbor, Michigan, to assume the presidency of the Earhart Foundation. While there, he supported the work of conservative and libertarian scholars and students. Throughout his life, Dave's abiding commitment to America's founding principles never wavered.

To honor his legacy, IJ has endowed our highly selective summer clerkship program and established Dave Kennedy Fellowships to train dozens of students every summer.

Dave Kennedy Fellows at IJ will make real and important contributions to our strategic litigation. They will also personally benefit from rigorous legal and media training, inspirational mentorship opportunities, and a liberty-oriented speaker series. In short, they will learn how to apply their idealism and philosophy to change the world.

*Dave always understood the importance of the long-term approach at the heart of IJ's strategy, and he always appreciated the need to develop the next generation of leaders to carry the torch of liberty. There is no better namesake for this vital component of IJ's mission.*

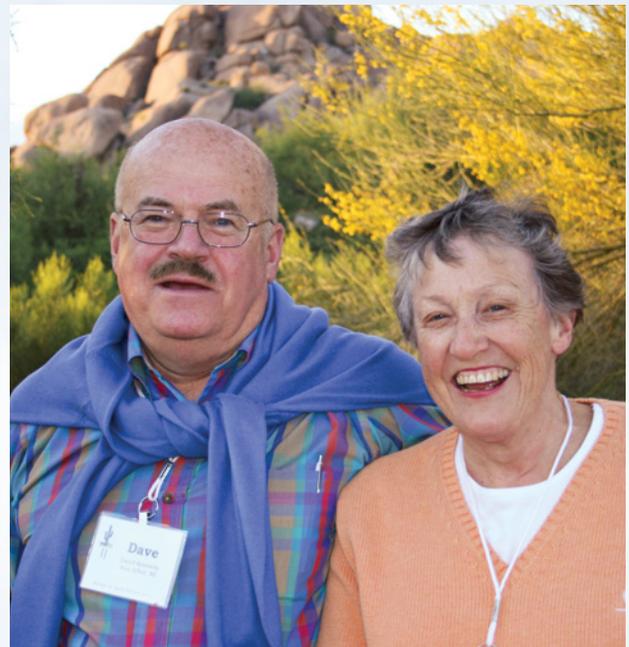
Dave Kennedy Fellowships will provide a foundation for long-term relationships with IJ. For example, half of our current attorneys were clerks at IJ during their law school tenure. Other clerks have gone on to help advance IJ's mission in other ways. They have filed amicus briefs, litigated Freedom of Information Act cases to help IJ pry important information from recalcitrant government entities, litigated their own pro bono cases, and served as local counsel in IJ cases.

This summer, 20 Dave Kennedy Fellows will receive \$7,000 stipends for their work. This new financial commitment highlights the importance IJ places on recruiting and training the next generation of litigators for liberty.

Dave always understood the importance of the long-term approach at the heart of IJ's strategy, and he always appreciated the need to develop the next generation of leaders to carry the torch of liberty. There is no better namesake for this vital component of IJ's mission. While Dave served as IJ's chairman, his courage and kindness provided a model for all of us. Dave Kennedy Fellows will proudly carry forth our mission and learn the importance of bringing those same traits to their work every day.

For over 25 years, Dave Kennedy was devoted to IJ's mission. Dave passed away in March, and while I have lost a dear friend and mentor, I take comfort in the fact that nothing would have made him happier than for IJ to continue to pursue that mission tirelessly. That's just what we will do. Dave would have expected nothing less. ♦

Chip Mellor is IJ's founding president and general counsel and chairman of IJ's board of directors.



**Dave Kennedy** and his wife, **Sally**, helped IJ achieve our current position of strength and impact. To honor Dave's legacy, and to train the next generation of leaders in IJ's mission, IJ has endowed our summer clerkship program and established Dave Kennedy Fellowships.

# From Homeowners to Home Bakers, IJ Celebrates Activism Victories

BY CHRISTINA WALSH

The property owners, entrepreneurs, and families IJ's activism team works with share a fundamental struggle: The government is stopping them from doing the simple things every American has the right to do. IJ has worked with hundreds of communities across the country, educating, organizing, and mobilizing victims of government abuse to defend their rights outside the courtroom. We recently celebrated two victories that showcase the importance—and the power—of this unique aspect of IJ's public interest strategy.

IJ Activism Coordinator **Andrew Meleta** canvassed Leonia, New Jersey, to mobilize property owners after the town attempted to use a blight designation to take their homes.



## Ending Eminent Domain Abuse in New Jersey

Fighting eminent domain abuse was IJ's first foray into activism, and we remain the experts on the front lines stopping land grabs wherever they arise—which is often in New Jersey, home to our most recent victory.

Property owners in the small town of Leonia contacted IJ after they received notices that the town was conducting a "condemnation redevelopment study" of their neighborhood. But when we toured what officials hoped to declare a "blighted" area, we found a well-kept, thriving community of homes and small businesses. Officials were discussing redevelopment around a forthcoming train station—apparently through force, if necessary.

We met with 30 property owners and organized "Leonia United" to stop this bogus blight study. We publicly launched the campaign with a press release, a statement to the town, a mailer sent to every household, and a Facebook page. Meanwhile, IJ Activism Coordinator Andrew Meleta and a team of volunteers canvassed the entire town with flyers, door hangers, and yard signs. More than 80 people attended the standing-room-only community town hall we hosted, including council and planning board members and the mayor himself. Faced with emboldened and organized property owners, the council voted at its next meeting to remove the authorization of eminent domain from the study. This victory brings IJ's total number of properties saved from condemnation to more than 20,000.

**Until this spring, it was illegal for home bakers in West Virginia to sell their cakes and cookies anywhere but farmers' markets and community events—denying them desperately needed access to the first rung of the economic ladder.**



West Virginia recently became a model for food freedom when it passed legislation removing barriers for home bakers, thanks to IJ's efforts.

### **Empowering Entrepreneurs in West Virginia**

Ten years ago, we expanded our activism efforts beyond eminent domain to all the areas where IJ operates. Our defense of food freedom in particular has presented huge opportunities to break down big barriers for would-be entrepreneurs.

For instance, until this spring, it was illegal for home bakers in West Virginia to sell their cakes and cookies anywhere but farmers' markets and community events—denying them desperately needed access to the first rung of

the economic ladder. So IJ Activism Associate Melanie Benit teamed up with IJ Attorney Erica Smith to bring food freedom to the country roads of West Virginia. They secured 30 co-sponsors for legislation to allow the sale of non-hazardous homemade foods from home, online, and in retail shops, and Melanie developed a network of over 250 home bakers and supporters statewide who advocated for change. Thanks to this outpouring of support, testimony from IJ, and media coverage, West Virginia is now a model of economic liberty in this important and growing area of entrepreneurship.

At IJ we know that people can be effective advocates both inside and outside the courtroom. We are proud to inspire and equip them to fight. ♦

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





Food truck owners **Benny Diaz** (left) and **Brian Peffer** (right) are free to vend in Fort Pierce, Florida, after IJ obtained a historic ruling securing their right to earn an honest living.

# Free to Compete: IJ Obtains Historic Ruling in Florida Food Truck Case

BY JUSTIN PEARSON

One of the hardest parts of being an IJ attorney is that we routinely set out to do things that no one has ever done before. One of the best parts of the job is when we succeed. Perhaps nowhere is this challenge—and payoff—bigger than in our defense of the right to earn an honest living. Just ask small-business owners Benny Diaz and Brian Peffer.

Benny and Brian each own and operate food trucks near Fort Pierce, Florida. Knowing that Benny's and Brian's many fans follow their trucks wherever they go, local business owners invited them to set up on their properties in Fort Pierce. Unfortunately for these business owners, Benny and Brian, and their customers, a handful of Fort Pierce's restaurant owners had persuaded the government to ban competition, making it a crime to operate a food truck within 500 feet of any restaurant.

To overcome this ban, Benny and Brian faced a daunting challenge. Regular readers of *Liberty & Law* will know that laws like this are subject to the most extraordinary sort of judicial deference: the rational basis test.

The extent of that deference is such that, when IJ was founded in 1991, no federal appellate court had struck down this kind of protectionist economic regulation since before the New Deal—an unbroken, decadeslong streak of government wins at the expense of economic liberty.

But through 28 years of strategic, incremental victories, IJ has changed the game on this issue. As a result, we set out not only to win for Benny and Brian but also to secure a preliminary injunction—a ruling that said we were so likely to win this case that our clients should not even have to wait for a final verdict to start competing. In 1991, a ruling like that was unthinkable.

No longer. In February, the court ordered a preliminary injunction in a rational basis case, freeing Benny and Brian to operate their food trucks in Fort Pierce for the duration of the litigation. With this decision under our belt, the likelihood of turning our preliminary victory into a permanent one is better than ever. ♦

Justin Pearson is managing attorney of IJ's Florida office.



**When IJ was founded in 1991, no federal appellate court had struck down this kind of protectionist economic regulation since before the New Deal.**

# NOTABLE MEDIA MENTIONS

*the Atlantic*

**The Supreme Court Resuscitates  
The Eighth Amendment**

March 13, 2019



**BILLINGS GAZETTE**

**U.S. Supreme Court Asked To Take  
Up Montana Religious School  
Tax Credit Case**

March 14, 2019



**Defining What's Excessive In Police  
Property Seizures Remains Tricky**

April 9, 2019

**AP Associated Press**

**Arizona Becomes First State To  
Match Out-Of-State Work Licenses**

April 11, 2019

*The Washington Post*

**When The Government Persecutes  
You, Then Forbids You From  
Talking About It**

April 18, 2019

**Bloomberg  
Law**

**INSIGHT: SEC Gag Orders  
Threaten Free Speech**

April 30, 2019

**IndyStar.**

PART OF THE USA TODAY NETWORK

**You Can Do A Vision Test From  
Home In 34 States And Go Buy  
Glasses, But Not In Indiana.**

**Here's Why.**

April 11, 2019

**Chicago Sun-Times**

**EDITORIAL: A Fix For Chicago's Car  
Impoundment System  
Is Long Overdue**

May 1, 2019

**AP Associated Press**

**City Of Chicago Sued Over  
Vehicle Impound Policy**

April 30, 2019

The FDA says I can't call pure skim milk "skim milk"  
because I do not inject it with additives.

But business owners have the right to tell the truth,  
and that is what I am doing.

I am fighting for my right to free speech.

*I am IJ.*

