



LIBERTY & LAW

June 2020

Volume 29 Issue 3

ARE GOVERNMENT OFFICIALS ABOVE THE LAW?

IJ RETURNS TO THE U.S. SUPREME COURT TO ARGUE FOR ACCOUNTABILITY

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the Institute for Justice

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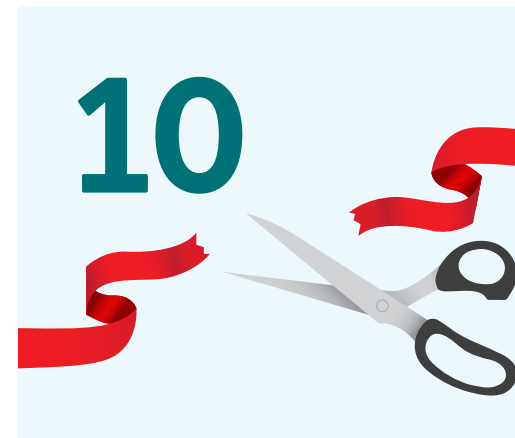
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About the publication:

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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ARE GOVERNMENT OFFICIALS **ABOVE THE LAW?**



James King was a law-abiding Michigan college student when plainclothes officers mistook him for a petty thief and brutally beat and choked him. With IJ's help, James will seek justice at the U.S. Supreme Court.

IJ RETURNS TO THE U.S. SUPREME COURT TO ARGUE FOR ACCOUNTABILITY

BY PATRICK JAICOMO

IJ launched our Project on Immunity and Accountability earlier this year to defend a simple principle: Government officials are not above the law. If you and I must follow the law, the government and its agents must follow the Constitution. IJ will now advance that argument before the U.S. Supreme Court, which this spring agreed to hear the IJ case *Brownback v. King*.

Our client James King's harrowing story is a striking example of what can happen when officials are allowed to evade accountability for abuses of power. In 2014, James, then a 21-year-old college student, was walking to his internship at a local nonprofit in Grand Rapids, Michigan, when two men in shabby street clothes approached him. Without identifying themselves, the men trapped James against a black SUV and asked him a series of questions. When one of them took his wallet, James concluded he was being mugged and ran. After a few steps, the men tackled him, choked him unconscious, and severely beat him. James screamed for passersby to call the police, and they did. But when the police arrived, James was stunned when they arrested him—not his assailants.

As it turned out, the two men were a police officer and an FBI agent working undercover on a joint task force and looking for a young man wanted for stealing cans and liquor from his boss's apartment. Instead, they found James, who had done nothing wrong and did not resemble the thief. Adding insult to injury, when uniformed police arrived after James' beating, an officer forced witnesses to delete video of

Accountability continued on page 17

Update on IJ's Project on Immunity and Accountability

As James King's case illustrates, IJ's new Project on Immunity and Accountability is already bearing fruit. Meanwhile, the high court is still considering our petition on behalf of Shaniz West, whose house was destroyed when local authorities bombarded it with grenades and then relied on qualified immunity to evade accountability.

And James and Shaniz are not alone. Since IJ launched our initiative, we have taken up the case of the Lech family of Colorado, whose house was also destroyed by local government. In the Lechs' case, a shoplifter who was fleeing local police broke into their home, seemingly at random, to take refuge. The authorities decided that the most efficient way to get the shoplifter out would be to remove the things he was hiding behind: the four walls of the Lech home.

Later, rather than offer to compensate the innocent family for the damage done, the town government claimed that the Constitution's Takings Clause, which requires the government to provide compensation when it takes or destroys private property, does not apply whenever the government is using its "police power." This argument is as sweeping as it is wrong, and IJ has taken on the Lechs' case to ensure that local governments cannot destroy private property with impunity.

With these cases—and more to come—IJ is ensuring that the Constitution's promise of individual rights is enforced in the real world. ♦



Police destroyed **Shaniz West's** house with tear gas grenades, then claimed they owed her no compensation. Shaniz and IJ have asked the Supreme Court to hear her case.



Terry Rainwaters (top) and **Hunter Hollingsworth** have teamed up with IJ to stop the Tennessee Wildlife Resources Agency from conducting warrantless surveillance on their private land.

Property Owners Sue to Ensure “No Trespassing” Signs Apply to Government, Too

BY JABA TSITSUASHVILI AND JOSHUA WINDHAM

Americans expect their private property to be off limits to wandering feet and prying eyes—especially when those feet and eyes belong to government officers. Indeed, the Constitution’s protection from unwanted intrusions dates to the Founding, and it’s just as crucial in the era of modern surveillance technology. But in the Volunteer State, officers from the Tennessee Wildlife Resources Agency (TWRA) are turning that principle on its head: They trespass on private land without a warrant, snoop around, record video footage, and even install cameras in people’s trees to watch them 24/7.

TWRA’s activities are incredibly invasive. Just ask Terry Rainwaters and Hunter Hollingsworth, landowners in Camden, Tennessee, who have experienced these abuses firsthand.

Terry’s land is his sanctuary. It’s where he lives with his son, rents to a long-term tenant, farms, and hunts. Hunter’s attachment to his land, which has been in his family for decades, is similar. It’s where he grew up fishing, hunting, and cooking over campfires with his dad—traditions he carries forward today with his friends.

Like everyone else, Terry and Hunter expect privacy on their land. So naturally, both have clear “No Trespassing” signs posted on the gates at the entrances to their properties. But that hasn’t stopped TWRA from treating their lands like public property.

For years, TWRA officers have been entering Terry’s and Hunter’s properties—without warrants or probable cause—to snoop for potential hunting violations. Worse, TWRA officers have installed cameras in trees on both properties to conduct 24/7 surveillance of the men’s private activities and guests. This is an egregious invasion of property and privacy

rights—one that, understandably, has left both Terry and Hunter feeling anxious that the government is constantly watching them on their own land.

TWRA’s only justification? Both Terry and Hunter had licenses to hunt in so-called open fields on their properties. Starting with Prohibition and accelerating with the War on Drugs, the U.S. Supreme Court has held that open fields—private lands beyond a house and its immediately surrounding area—are not covered by the Fourth Amendment’s protection against warrantless searches. As a result, TWRA’s warrantless searches would receive zero scrutiny in federal courts.

What TWRA ignores, though, is that Tennessee courts are not bound by the U.S. Supreme Court’s misguided open fields doctrine. In fact, the Tennessee Supreme Court has rejected that doctrine when interpreting the Tennessee Constitution. And rightly so: Under the federal rule, much of the private land in Tennessee would be a constitution-free zone that officers could enter and search as they please. But under the Tennessee Constitution, warrantless intrusions like TWRA’s receive genuine scrutiny and have even been struck down.

Terry and Hunter are fed up with TWRA’s intrusions, so they teamed up with IJ to put a stop to them. In April, IJ filed a lawsuit in Tennessee state court to defend Terry’s and Hunter’s right to be free from warrantless searches and surveillance on their private land—and to establish, once and for all, that “No Trespassing” signs apply to the government, too. ♦

Jaba Tsitsuashvili
and Joshua Windham
are IJ attorneys.





A New Weapon in IJ's Fight Against Abusive Fines and Fees

BY MINDY MENJOU

IJ's battle against abusive fines and fees has never been more important. With the COVID-19 shutdown, cities and towns are likely to find themselves strapped for cash in the coming months. If the last recession is any indication, many will see "taxation by citation" as an easy fix. Thanks to IJ strategic research, however, we have a formidable new weapon with which to fight back when that happens: a database. Yes, a database. Let's back up a little.

Municipal taxation by citation is often thought of as a local issue, but a broad range of state laws may encourage this behavior. To get a better sense of how big this problem may be, we scoured the laws of all 50 states and identified 52 relevant legal factors across seven categories. We then scored the states' laws on those factors and ranked the states overall and on each category. The rankings reflect how likely state laws may be to encourage municipal fines and fees abuse.

Released in April with the report *Municipal Fines and Fees: A 50-State Survey of State Laws*, the resulting database is the first comprehensive accounting of state

IJ's new database is the first comprehensive accounting of state laws relating to municipal fines and fees.

laws relating to municipal fines and fees. Reformers and researchers can use the database to explore similarities and differences among the states and pinpoint laws or groupings of laws that may be promoting—or preempting—taxation by citation.

Take, for example, the two states that rank best and worst overall, North Carolina and Georgia. The most important factor driving their ranks is municipal courts. Georgia municipalities can operate their own courts to process citations, while North Carolina municipalities cannot.

Present in 28 states, municipal courts are often susceptible to municipal pressure to impose fines. Not only that, but, as we've seen in our taxation-by-citation cases in Doraville, Georgia, and elsewhere, they open the door to other practices that may facilitate abuse. Such factors are simply non-issues in states without municipal courts.

Beyond municipal courts, the data point to three other issues of major concern. First, very few states restrain municipalities' financial incentive to pursue fines and fees. Only two—Kentucky and Missouri—cap

Fines and Fees continued on page 17

IJ's Wave of Legislative Victories Lifts Economic Hopes

BY JUSTIN PEARSON

Everyone knows this is a tough time for small businesses. But in state capitals around the nation, a wave of help is on the way, and IJ's legislative reform team is the force creating it.

The wave can already be seen from Florida's sandy beaches, where IJ was instrumental in passing one of the largest occupational licensing reform bills anywhere, ever. Thanks to a yearslong effort by IJ and our allies, the Sunshine State will no longer require licenses for many workers, including interior designers, hair braiders, nail technicians, hair wrappers, makeup artists, and boxing timekeepers. The bill relaxed requirements for many others as well, including barbers, landscape architects, contractors, diet coaches, and geologists. Even food trucks got in on the fun, with the Legislature putting an end to food truck bans statewide.

IJ has also increased food freedom. In the past few months alone, IJ persuaded legislatures to make it easier to sell homemade shelf-stable food in Maryland, Washington state, and Wyoming. Not to be outdone by its state counterparts, the D.C. Council passed IJ's bill allowing direct-to-consumer food sales in our nation's capital.

Idaho and Utah, meanwhile, tackled collateral consequences for occupational licensing, basing

reforms on IJ model legislation and testimony. Both states repealed vague "moral character" requirements that unfairly blocked many ex-offenders from becoming licensed.

And we're just getting warmed up. When the COVID-19 pandemic led many state legislatures to temporarily postpone their sessions, IJ had 60 bills pending. Over three-quarters were economic liberty bills. Some of those bills will be passed once the legislative sessions resume. Others will need to wait until 2021. All will have a real-world impact.

Here's an example: After the Mississippi Legislature passed IJ's hair-braiding reform bill, over 2,600 braiders registered to practice. That

job growth resulted from reforming just one license. Most of IJ's bills, including the one that passed in Florida, are exponentially larger.

Things are tough out there right now, but IJ is working hard to make it easier for America's small-business owners to ride a nationwide wave of reform and opportunity back into business. Surf's up. ♦

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



In Mississippi, IJ pushed through licensing reform that made it possible for people to earn a living braiding hair in the state. More than 2,600 braiders have registered.

Things are tough out there right now, but IJ is working hard to make it easier for America's small-business owners to ride a nationwide wave of reform and opportunity back into business.

Opening Opportunities and Challenging Government Abuse:

IJ RESPONDS TO COVID-19

BY SCOTT BULLOCK

The trying past few months have demanded the best of all of us—and the Institute for Justice is no exception. Though many industries have ground to a halt, courts nationwide remain open, arguments are happening (albeit on Zoom), filing deadlines are in place, and our clients' rights must still be vindicated. In addition to pushing our mission forward with a record number of active cases, IJ staff and attorneys are creatively and persistently finding ways we can respond to the COVID-19 pandemic that play to our strengths and experience.

IJ's institutional response to COVID-19 taps our established expertise to provide immediate real-world assistance to the individuals and businesses working to improve the situation. In sum, we are opening opportunities, especially in the medical field and for small businesses, while also standing guard against the government overreach that inevitably arises during a crisis.

We are opening opportunities, especially in the medical field and for small businesses, while also standing guard against the government overreach that inevitably arises during a crisis.

We're breaking down systemic barriers in medicine by challenging certificate of need requirements, as described on page 12. And we are increasing access to care during the crisis by challenging arbitrary licensing laws that prevent qualified individuals from offering services. For example, we have called on eight states to lift unnecessary restrictions preventing nurse practitioners from offering their services at overburdened hospitals.

We are providing direct assistance to local entrepreneurs through the Shop In Place project launched by the IJ Clinic on Entrepreneurship in Chicago, which we've now expanded to other cities (see page 14). And the sweeping economic liberty legislative reform described on page 9 will be crucial as lockdowns ease and millions of unemployed people try to get back to work.

We are also acutely aware that governments throughout history have used crises to seize power and to restrict liberty. So IJ is closely monitoring federal and state responses and looking out for abuses that we are well positioned to address. For instance, we wrote Michigan Gov. Gretchen Whitmer, urging her to rescind her executive order closing—without justification—independent garden centers and nurseries during a time when people should be able to make use of their own land to grow food. The governor responded by modifying the order and reopening the centers.



As this crisis recedes, we will do our part to ensure that any emergency and supposedly temporary powers assumed by the government do not become permanent. We will also cement favorable reforms that loosened up licensing requirements and other regulations during the pandemic. A full and up-to-date list of all IJ's COVID-19 related activities is available at ij.org/COVID-19.

Meanwhile, our other essential work goes on. As you can see in this issue's cover story, we are positioned to defend individual rights in a dramatic way with our ninth case before the U.S. Supreme Court. This case on behalf of James King has the potential to enforce crucial checks on government abuse, and it comes a mere three months after we first launched our Project on Immunity and Accountability. We also filed a pathbreaking search and seizure challenge in Tennessee (see page 6), and we launched a fines and fees database that documents the nationwide scope of laws enabling "taxation by citation" and will serve as an invaluable and timely resource for researchers, reporters, and reform advocates (see page 8).

There is no script for the times in which we find ourselves. We shift and adapt to changed circumstances. We improvise. But in everything we do, IJ is always grounded in our core principles—fighting for the rights of individuals to pursue their destinies and challenging abuses by government when it exceeds its constitutionally prescribed powers. ♦

Scott Bullock is IJ's president and general counsel.



RESCHEDULED: IJ's Partners Retreat Moved to Fall 2021

As we've detailed in this issue of *Liberty & Law*, IJ is moving quickly to respond to the challenges presented by the COVID-19 pandemic. We have also decided, given the current circumstances, to postpone our 2020 Partners Retreat until **October 21–24, 2021**.

Partners Retreats take place just once every few years and offer a rare look inside IJ's strategy, progress, and vision for the future. We want to ensure that as many IJ supporters as possible can join us for this important event, and we believe the fall of 2021 will be a more opportune moment to gather and celebrate what we are accomplishing together for liberty.

The 2021 Partners Retreat will still take place at The Resort at Pelican Hill in beautiful Newport Beach, California, and feature inspirational and engaging presentations from IJ attorneys and staff, nationally known guest speakers, and our heroic clients.

Members of IJ's Partners Club, Guardians Circle, and Four Pillars Society will receive additional event updates in the coming months. If you would like to attend the 2021 Partners Retreat and are not part of one of these groups, please contact Megan Cook to increase your commitment to IJ today: mcook@ij.org, (703) 682-9320, ext. 230. ♦

INSTITUTE FOR JUSTICE
PARTNERS RETREAT



Home health care entrepreneur **Marc N'da** of Nebraska (top) and ophthalmologist **Jay Singleton** of North Carolina are fighting back against certificate of need laws that reduce access to health care and stifle innovation.

IJ Won't Be CONned:

Two New Lawsuits Challenging State Certificate of Need Laws

BY WILL ARONIN AND RENÉE FLAHERTY

COVID-19 is not the only thing testing the limits of our health care system. For decades, lobbyists have persuaded states to enact certificate of need—or “CON”—laws, which grant entrenched players the power to keep would-be competitors from opening shop. Unsurprisingly, these policies have reduced the quality and quantity of medical care for patients. Studies even show that CON laws reduce the number of hospital beds by 10%.

Liberty & Law readers know that IJ has been challenging CON laws for several years. But now, with the pandemic highlighting the importance of increased innovation and access to care in the medical field, IJ is redoubling our efforts. In April, we filed new lawsuits in Nebraska and North Carolina challenging those states’ CON laws.

In Nebraska, IJ is fighting on behalf of Marc N'da, a refugee from the African nation of Togo and a perfect example of the American Dream in action. Marc came to this country in 2002 with \$60 in his pocket. He attended school, opened a home health care agency, and now employs more than 250 people. He provides care for the elderly and disabled, often driving customers on their daily errands. Thanks to Nebraska’s CON regime, however, although Marc can drive patients to Walmart, he cannot drive them to the Walmart pharmacy. That’s because Nebraska considers driving to a pharmacy or a routine medical checkup to be “non-emergency medical transportation” that requires a CON.

The harm goes beyond the irrationality of treating rides to a grocery store differently from rides to a pharmacy or doctor’s office. Existing CON-holders have exploited their government-protected oligopoly. For years, Marc’s patients suffered from poor

As is often the case with CON laws, the result is less care for those who need it and no incentive for existing players to improve.

service from these entrenched companies. It was because he witnessed this lack of care that he finally decided to start his own company and compete.

But—as you may have guessed—when Marc applied for a CON, his would-be competitors objected. Ultimately, the Nebraska Public Service Commission (PSC) admitted that Marc was “fit, willing, and able.” But that wasn’t enough. The PSC still denied him a government permission slip to operate because he couldn’t prove that his entry would be “harmless” to his competition. As is often the case with CON laws, the result is less care for those who need it and no incentive for existing players to improve.

IJ’s lawsuit in North Carolina takes on a similar regime. Our first foray against the state’s CON law was in 2018, on behalf of Winston-Salem surgeon Dr. Gajendra Singh. Unfortunately, in part due to the costs imposed by the law, Dr. Singh was forced to close his imaging center earlier this year. But although Dr. Singh’s case cannot go on, Dr. Jay Singleton teamed up with IJ to continue the fight.

Dr. Singleton owns an ophthalmology practice with a state-of-the-art outpatient operating facility in New Bern, which North Carolina refuses to let him use. A board influenced by industry insiders has decided that there is no “need” for Dr. Singleton’s facility. Instead, he is legally required to operate at the local hospital, which charges thousands of dollars more. Even now, when a private outpatient facility is less crowded and arguably safer for Dr. Singleton’s patients than a large hospital, CON laws still put protecting favored industries over patient care.

CON laws must be eliminated. With COVID-19 testing our health care resources, 22 states have waived or suspended their CON laws governing hospital beds and some other essential services. While that’s an important first step, a temporary fix is not enough. IJ is committed to using these two lawsuits, and others, to establish that these protectionist laws are unconstitutional and can never return. ♦

Will Aronin and Renée Flaherty
are IJ attorneys.



IJ is helping medical entrepreneurs challenge certificate of need laws in states across the country.





IJ Clinic clients **Back of the Yards Coffee**, **Haji Healing Salon**, and **Cut Cats Courier** are safely open for business during the pandemic.

IJ Helps Small Businesses Keep Their Doors ★ Open—Online ★

BY BETH KREGOR

Here in Chicago, the IJ Clinic on Entrepreneurship works tirelessly to help low-income entrepreneurs overcome the city's infamous regulatory maze and launch their businesses. So when a global pandemic brought the nation and the economy to a standstill, we went into overdrive to help local entrepreneurs stay in business.

The idea? Develop and promote a website connecting Chicago consumers confined to their homes with small businesses offering the goods and services they need, such as cleaning products and educational supplies. The result? ShopInPlaceChi.com: a clean, elegant site that includes mapping technology and sorting tools so Chicagoans can easily patronize small businesses in their own neighborhoods or across town. Businesses can easily submit their information

online, and they can access legal resources the IJ Clinic wrote and compiled to explain how local, state, and federal regulations have changed—and are changing—as a result of the COVID-19 crisis.

ShopInPlaceChi.com was an immediate success. Just one month after launching with seven business listings, the website highlighted more than 440 local businesses providing essential goods and services in 20 categories. This one-stop shop for supporting local entrepreneurs has also garnered more than 42,000 site visits and been featured on multiple TV news and public radio segments, sharing the positive story of the bold entrepreneurs making life easier and healthier for customers during a hard time. It's also been a lifesaver for hardworking—and hard-pressed—small-business owners. Dozens have taken the time to reach out and thank us for supporting them with the site.

You don't need to be in Chicago to take advantage of the site and support local small businesses and

 **Shop In Place Chicago**

ShopInPlaceChi.com



For years, the IJ Clinic has served local small businesses like **Service in Bloom**, **Greenlawn Landscaping**, and **Little Rascals Playroom**.

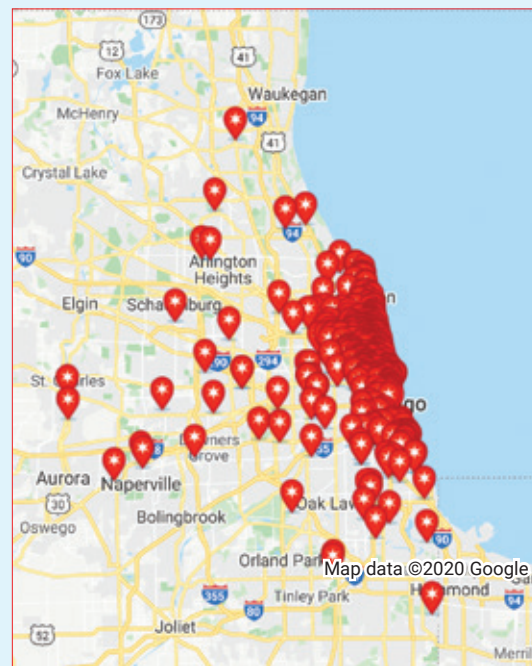
This one-stop shop for supporting local entrepreneurs has also garnered more than 42,000 site visits and been featured on multiple TV news and public radio segments.

IJ Clinic clients! How about a history happy hour presented by tour company Chicago Detours? Or perhaps an anxiety-reducing yoga class taught remotely by Haji Healing Salon? You can also learn to make your own sneakers with a kit from the Chicago School of Shoemaking or elevate your morning coffee ritual with beans roasted by Back of the Yards Coffee.

Plus, Shop In Place may be coming to a city near you! People from all over the country have inquired about bringing this exciting resource to their cities, and we are happy to assist. IJ has already launched ShopInPlaceDC.com, and we are planning to add more cities in the weeks ahead.

ShopInPlaceChi.com contains hundreds of examples of entrepreneurs struggling to survive in these unprecedented times with hustle and heart. Our role at the IJ Clinic is to provide the real-world support they need at the moment they need it most. ♦

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



ShopInPlaceChi.com shows the locations of many businesses that are ready and willing to serve customers.

How the New CARES Act May Affect Your Charitable Giving

BY ROB PECCOLA

During these anxious times, IJ's work guarding against government overreach is more important than ever—and so is your support. The legislative response to the COVID-19 pandemic has impacted every aspect of American life, and charitable giving to organizations like IJ is no exception.

On March 27, 2020, President Trump signed a sprawling \$2 trillion emergency spending bill: the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act. Buried in its hundreds of pages, the Act has provisions that could benefit you financially when you give to a nonprofit like IJ. Here are a few specific items worth considering when you talk with your financial advisor.

100% of Adjusted Gross Income Available in 2020 for Cash Gift Deductions

For the 2020 tax year *only*, donors may deduct up to 100% of their adjusted gross incomes for cash gifts made to public charities. In the past, the highest share of income that a donor could deduct was 60%, so this is a dramatic change. We know that many readers would rather see their money go to IJ than to the federal government, and this is a new way to make that happen.



Your tax-deductible donation to IJ helps us fight for the rights of Americans like **Kendra Espinoza** and her daughters.

New \$300 Charitable Deduction for Non-Itemizers

The CARES Act amended the Internal Revenue Code to allow taxpayers who do not itemize deductions to nevertheless deduct up to \$300 (\$600 for a married couple) for cash gifts to charity on top of the standard deduction. This above-the-line deduction, though modest, is welcome.

Required Minimum Retirement Distributions Waived in 2020

This tax year, the IRS will not require mandatory distributions from retirement accounts like IRAs. This is a helpful change for those who want those accounts to have time to recover. If you are already thinking about donating retirement assets to charity, however, the minimum age for making a tax-free transfer from an IRA to an organization like IJ remains 70½, and the annual limit remains \$100,000. With cash gifts deductible in 2020 to the full extent of adjusted gross income, some donors may want to consider withdrawing from a retirement account, contributing a larger amount to charity, and offsetting the withdrawal with a deduction.

For more information on gift planning opportunities, please feel free to contact us directly at plannedgiving@ij.org. We greatly appreciate your support and thank you for your commitment to IJ. With your help, IJ will vigilantly fight for liberty during this pandemic and beyond. ♦

Rob Peccola is an IJ attorney and special counsel to IJ's Four Pillars Society.



Accountability continued from page 5

the incident. The local prosecutor then charged James with several violent felonies. Defending him against the charges cost James' family their life savings, but James prevailed, and a jury acquitted him on all charges.

In 2016, James filed a federal lawsuit against the officers for violating his rights. In response, the officers asked the trial court to dismiss the case. They argued that they were shielded by qualified immunity—a doctrine the Supreme Court created in 1982 that protects officers from accountability for even the most outrageous constitutional violations. The trial court agreed. James appealed, and the 6th U.S. Circuit Court of Appeals reversed the trial court's decision, ordering the case to proceed.

Before litigation could resume, however, the U.S. Solicitor General asked the Supreme Court to hear the case—and the Court accepted. Now that qualified immunity cannot spare the officers from accountability, the government wants the Supreme Court to create a new layer of protection for all federal officers. IJ will urge the nation's highest court to reject that expansion of government immunity and make federal officers more—not less—accountable for their unconstitutional acts.

James' case is the first in IJ's Project on Immunity and Accountability to reach the U.S. Supreme Court and IJ's ninth trip to the Court since 2002—including four cases in the past two years. A victory for James will stop the government from inventing yet another type of immunity and create precedent we will build on as we fight to ensure that the Bill of Rights is not an empty promise. ♦

Patrick Jaicomo is an IJ attorney.



Fines and Fees continued from page 8

municipal fines and fees revenue, and no state requires municipalities to send all municipal court revenue to a non-municipal fund.

Second, while 35 states have laws in line with U.S. Supreme Court precedent barring courts from incarcerating people only because they cannot pay fines and fees, 15 fail to provide this or other critical safeguards to help poor people stay out of jail for victimless infractions.

Finally, few states protect people from driver's license suspensions when they cannot afford to pay traffic fines and fees—though reformers are starting to persuade legislatures to abandon this harsh means of trying to compel payment.

Too many states give municipalities ample incentive and means to abuse fines and fees. This is an ever-present concern but a particularly pressing one in times like these. Thankfully, IJ's research points the way to reform, and we will leverage that information through our litigation and advocacy until municipalities across the country stop treating their residents like ATMs. ♦

Mindy Menjou is IJ's research editor.



James King's case will determine whether federal officers who abuse people's rights will have yet another means of shielding themselves from accountability.





Abby brought her keen intellect and thoughtful insights to every discussion while always being gracious and devoted to the IJ mission.

Remembering IJ Board Member *Abby Thernstrom*

BY CHIP MELLOR

Abigail Thernstrom served with distinction as an IJ board member from 1995 until her death in April 2020. We could not have asked for a better board member all those years. Abby brought her keen intellect and thoughtful insights to every discussion while always being gracious and devoted to the IJ mission.

Abby joined the IJ board because she shared our steadfast commitment to principle and to achieving a rule of law that would empower all in our nation to live freely and responsibly. When she became a board member, IJ was a much smaller organization than it is today. In order to achieve our potential, we had to take risks and pioneer new approaches to public interest law. The board of directors had to confidently commit to long-term strategies that were, at that point, untested and that often had scant margin for error. Like the rest of IJ's board, Abby enthusiastically embraced this challenge, never wavering, always ready to offer advice and questions that helped us navigate uncharted waters. IJ is a stronger organization today because of her long-running contributions.

Abby was a scholar who devoted herself to racial equality, even when that meant challenging prevailing orthodoxy. She came out

of the political left but eventually could not ignore the shortcomings of traditional civil rights policies. She began to ask hard questions and marshal massive amounts of data. Then she fearlessly put forth her conclusions. Abby and her husband, scholar Stephan Thernstrom, published the provocative and important *America in Black and White: One Nation, Indivisible* in 1997. Their book's data demonstrated both the progress made by African Americans and the need to build on that progress. But they rejected the notion of business as usual. Still passionately committed to racial equality, the Thernstroms concluded that affirmative action was ultimately failing its intended beneficiaries. They argued for color-blind policies and quality education for black youth. They saw educational choice as a vital means of closing the education gap. Among other distinctions, Abby also served on the Massachusetts state board of education and the U.S. Commission on Civil Rights.

We treasured Abby as a board member, and I deeply valued her friendship. She will be missed. ♦

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



IJ MAKES HEADLINES

These articles and editorials are just a sample of recent favorable local and national pieces IJ has secured. By getting our message out in print, radio, broadcast, and online media, we show the real-world consequences of government restrictions on individual liberty—and make the case for change to judges, legislators and regulators, and the general public.

Read the articles at
[iam.ij.org/
june-2020-headlines](http://iam.ij.org/june-2020-headlines)



The Washington Post

**Supreme Court To Hear Case
Of Michigan Man Beaten By
Plainclothes Police**

March 30, 2020

CAR AND DRIVER

**Man Wins Multiyear Battle To Prove
Yellow Lights Should Last Longer**

March 4, 2020

Miami Herald

**Feds Grab \$15,000 From Miami
Mom's 'Quince' Savings For
Daughter. Now She's Fighting Back.**

March 10, 2020

AP Associated Press

**Judge: School Choice Advocates
Can Intervene In Voucher Case**

March 6, 2020

The Atlantic

**Maybe We Never Needed
All That Red Tape**

April 15, 2020

SOUTH FLORIDA SunSentinel

**Occupational Licensing Reform
Shields Small Business Owners
From Heavy-Handed Government
Interference**

April 22, 2020

WASHINGTONIAN

**This Online Business Directory Is
Making It Easier To Support DC
Small Businesses During
The Pandemic**

April 9, 2020



I've been fighting for veterinary telemedicine for years.

Now, more than ever, telemedicine is
critical for people, too.

It's not just a good idea.

It's free speech.

I am IJ.