



LIBERTY & LAW

October 2020

Volume 29 Issue 5

THIS FIREFIGHTER IS FIRED UP FOR A FRESH START

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the Institute for Justice

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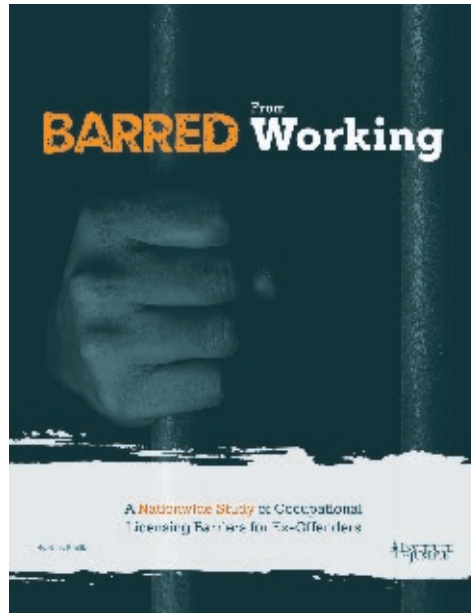
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About the publication:

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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Fired Up for a FRESH START



Dario Gurrola learned how to fight fires while incarcerated in California. Now, he's challenging a California law that permanently bans him and others like him from becoming career firefighters.

BY ANDREW WARD

Dario Gurrola lives and breathes firefighting. In hard-hit Northern California, he's on the front line right now, serving his community by protecting homes and lives. And he couldn't be more qualified. He's done all the training, he has dozens of certifications, and this is his fourth season fighting wildfires.

So what job does California prohibit Dario from doing full time? You guessed it. Firefighting. That's because, in California, a firefighting career—and the stability and pay that come with it—almost always requires an Emergency Medical Technician (EMT) certification, a basic credential verifying knowledge of CPR and first aid. Dario passed the EMT test, but he can't get certified. The reason? Two crimes he committed 15 years ago.

Dario struggled as a young adult, falling in with a tough crowd in high school and getting in trouble with the law as a result. While serving time for two felonies for fighting and illegally carrying a knife, he realized he had to turn his life around. He decided to devote his life to being a first responder. Since his release from prison in 2011, he's put his past behind him and proven he's qualified to be a firefighter. But now California is dousing his dreams.

The state categorically bans anyone with a felony conviction from getting EMT certification for 10 years after release. And it bars people with two felony convictions, like Dario, *forever*. Nothing Dario has done, and nothing he can

ever do, will change that. Instead, California turns away even the most qualified applicants, no matter the crime or the years since—even though California is desperate for extra help fighting a record number of blazes.

Most incredibly of all, California does this even though some of its most important firefighters are prisoners. Each year, thousands of incarcerated Californians work alongside state firefighters, extinguishing blazes and—in theory—learning job skills. Dario himself first learned to fight fires while he was in custody. But California still says he can never find fulfilling, long-term work as a firefighter.

Dario is not alone. More than 19 million Americans have a criminal record, making it exceedingly difficult for them to earn an honest living and become productive members of society. And nationwide, there are about 30,000 “collateral consequence” laws on the books—laws that limit people's rights because of past mistakes. What's worse, restrictions on the ability to work

CA EMTs continued on page 18

New IJ Report Exposes More Ways Licensing *Bars Americans From Working*

BY NICK SIBILLA

Nearly one in five Americans needs a license to work, while roughly one in three has a criminal record. Together, these growing twin trends in overregulation and overcriminalization have made licensing laws a major roadblock for people who committed crimes, served out their punishments, and seek a fresh start.

Thanks to IJ's litigation, research, and activism efforts, the burdens that occupational licensing laws place on workers—especially those in low-income occupations—are well known and well documented. "Collateral consequence" laws magnify these burdens by completely banning people with criminal backgrounds from working in myriad industries, from cosmetology to plumbing to athletic training. To shine a light on this often overlooked barrier to reentry, we recently published *Barred From Working*, which provides the most comprehensive, up-to-date look at licensing restrictions for ex-offenders.

Using 10 distinct criteria, *Barred From Working* grades all 50 states and the District of Columbia on how well they secure economic opportunity for workers with criminal records. Indiana earned the report's only A grade, while five states—Alabama, Alaska, Nevada, South Dakota, and Vermont—tied for last place due to an utter lack of safeguards.

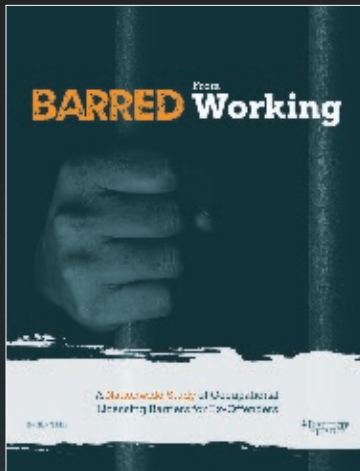
Since the report's release in June, Iowa and Missouri have already enacted sweeping reforms based on IJ's model legislation. Previously, both states afforded few protections for ex-offenders seeking licenses. Now, their laws rank among the top 10 nationwide.

And that's only the beginning. IJ has been invited to testify this fall before the New Jersey Civil Rights Commission

about collateral consequences and occupational licensing, and we will work to advance reform bills pending in Michigan, Ohio, and D.C.

Barred From Working has been cited by *MarketWatch*, *NBC News*, and *Today* and was the launching pad for an IJ op-ed campaign that placed pieces with *Crain's Chicago Business*, the *Des Moines Register*, the *Detroit News*, and *Forbes.com*.

For too long, collateral consequences have imposed a "civil death" on people with convictions. As IJ pushes our fight for economic liberty forward in courtrooms and statehouses nationwide, *Barred From Working* will help us identify potential litigation targets and bolster our legislative efforts on behalf of millions of people who desperately need—and have worked hard to earn—a second chance. ♦



Read the report:
www.ij.org/report/barred-from-working



Nick
Sibilla
is IJ's
writer and
legislative
analyst.



Memphis' Blight Court Left an Elderly Woman Homeless and Destitute

Now IJ Is Helping Her Fight Back

BY ROB PECCOLA

The Shelby County Environmental Court in Memphis, Tennessee, ruined Sarah Hohenberg's life.

The story of how this little-known housing court drove an elderly woman to homelessness and bankruptcy begins in 2009, when a tree fell on Sarah's home and caused significant damage. While she worked to get her insurance to pay for repairs, Sarah's neighbors sued her in Memphis' Environmental Court. The court's multiyear proceedings and ever-changing repair goalposts caused her to deplete her finances on lawyers and attempts to comply. In 2018, the court ordered her to sign over the deed to her house and, when she refused, ordered her to be arrested for contempt. Humiliated and destitute, Sarah fled the state as a fugitive. While she was away, Memphis removed her possessions from the house, leaving them in the street like garbage to be carried away.

All this happened without Sarah ever receiving a fair hearing.

Indeed, when IJ began investigating Memphis' Environmental Court, we soon learned that the word "court"

was a misnomer: Despite its authority to issue arrest warrants, the Environmental Court does not have even a veneer of due process protections. It is not governed by civil or evidentiary rules. It does not transcribe proceedings, swear in witnesses,


or create a record to review on appeal. Originally designed to provide streamlined procedures for abandoned homes, the court operated with secrecy and a lack of oversight that fostered blatant abuses of power, and it wasn't long before it began harassing owners of occupied homes.

In May 2018, I met one of those homeowners. I saw a man, clearly in ill health, limping out of the courtroom, and we spoke. His name was Joseph Hanson, and he described his experience with the court as "hell on earth." Like Sarah, Joseph found himself in Environmental Court quicksand when a tree fell on his home. Astonishingly, the court jailed him—multiple times—with no valid testimonial or evidentiary

basis. After searching his home without his consent, Memphis bulldozed the house and everything in it. Like Sarah, Joseph is now homeless.



Memphis' Environmental Court routinely forces people out of their homes without providing any due process protections. This was the home of an IJ client before the court demanded she sign over the deed.



After a tree fell on **Sarah Hohenberg's** house, Memphis' Environmental Court ordered her to give up her home or face arrest for contempt. Sarah and IJ are now suing the court that left her homeless and a fugitive.

This should not happen in America. That's why IJ is challenging the constitutionality of the Shelby County Environmental Court. The U.S. Constitution demands that any court proceeding that can result in individuals losing their homes—much less their liberty—operate with a fair process and significant procedural protections. The Environmental Court does not even come close to meeting this standard.

Making the problem even worse, Memphis holds up its court as a model, and cities like Cleveland and Detroit have created similar specialized housing courts, touting them as a means to “clean up” neighborhoods. These cities, like Memphis, are located within the 6th U.S. Circuit Court of Appeals. That means a victory in this case could have immediate and widespread results. IJ is acting now to ensure that these courts act within constitutional boundaries—and to protect private property and due process rights—before the abuse spreads further. ♦

Rob Peccola is an IJ attorney.





IJ LAUNCHES CUSTOMIZED LEGISLATIVE SERVICE TO FOSTER **RECOVERY AND REFORM**

BY CHRISTINA WALSH

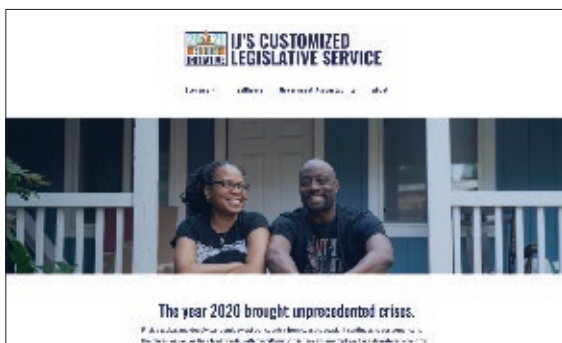
For almost 30 years, IJ has defended the constitutional rights of everyday people—not just inside courtrooms but also within the communities where family homes are cherished, livelihoods are built, and dreams are pursued. Our commitment has not wavered during this tumultuous year. On the contrary, IJ is working harder and more creatively than ever to respond to the twin crises of this year: the pandemic and its economic and health consequences, along with the current debate concerning law enforcement misconduct and the lack of accountability for government officials.

The 2021 Initiative: IJ's Customized Legislative Service is a new effort dedicated to providing real-world, effective solutions in IJ's areas of expertise.

COVID-19 continues to cost Americans their lives and their livelihoods. Unemployment has skyrocketed, and small businesses have shrunk or shuttered. At the same time, in the wake of the killing of George Floyd, the nation is grappling anew with the lack of accountability for law enforcement officers and other officials when they violate fundamental constitutional rights.

Longstanding policies have exacerbated these crises. The 2021 Initiative is designed to help state and local lawmakers and their staff identify those policies and then develop and implement solutions to forge a path toward recovery.

Through this initiative, IJ will work directly with policymakers on solutions tailored for their state or city. Our efforts will be guided by existing or newly conducted IJ research and surveys coupled with on-the-ground conversations and information gathering about demands for change that exist in the jurisdiction. We will then draft tailored, impactful, and responsive legislation. We will also provide collateral support as necessary, including legislative testimony, grassroots or media support, one-pagers, and additional research.



Visit the website at
www.2021initiative.com

Through this initiative, we will help lawmakers:



Create Economic Opportunity

We will help policymakers reduce barriers to work in their jurisdictions that are making it difficult or impossible for people to find new jobs or for small businesses to stay afloat in the wake of the pandemic.



Increase Availability of Health Care

We have done the research and can tell policymakers if their state has laws on the books that are restricting the ability of medical practitioners to provide much-needed care in the wake of COVID-19—and give them specific, concrete steps and customized bill language to make positive change.



Instill Accountability in Government

There are practical steps lawmakers can take to fix fundamental flaws in policing and regulatory policy, including qualified immunity and financially driven civil forfeiture and fines and fees schemes. These systems sow misconduct and distrust between officers and the populations they are supposed to serve and permit officials to act with impunity.

IJ will ensure that reforms are highly responsive to needs on the ground—not just models off the shelf. State reforms span all three areas, and local reforms focus on creating economic opportunity.

We are excited to get to work and facilitate our nation's recovery, empowering hardworking Americans to get back on their feet. We look forward to reporting the results of this new initiative in the year ahead. ♦

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



Real-World Results, in D.C. and Beyond

With the 2021 Initiative, IJ will go beyond simply identifying regulatory barriers. Instead, we'll work side by side with officials to cut red tape for the business owners of today and the budding entrepreneurs of tomorrow. For an example of how we've done this before, look no further than our experience—and success—on the ground in Washington, D.C.

Last year, we launched District Works, a city-based project aimed at making it cheaper, faster, and simpler to start a business in our nation's capital. This targeted, solution-oriented campaign has already generated important real-world reforms.

Complaints about D.C.'s red tape are nothing new. But to understand the obstacles, we dug into the regulations themselves and created a flowchart walking through the (incredibly complex) process of starting a business in the city. We hosted roundtables with entrepreneurs and used their feedback to present officials with specific, easily implemented ideas for change.

Those efforts paid off. D.C.'s licensing agency updated its dysfunctional website and collapsed licensing requirements, cutting the number of license categories from 128 to 12. Meanwhile, the D.C. Council reformed its cottage food laws, removing a \$50,000 income cap and allowing producers of homemade goods to sell online and in stores.

Most recently, D.C.'s licensing agency invited IJ to participate in a working group aimed at identifying barriers to business. Topics ranged from permitting to customer service, and we outlined concrete steps officials could take immediately to ease burdens on entrepreneurs. Eight of our 10 recommendations made it into the group's final report. We stand ready to help officials turn these proposals into action—and to help other jurisdictions follow in D.C.'s footsteps! ♦



IJ Defends Homeowners From Seattle's Renovation Extortion



BY PAUL AVELAR

Andre and Erika Cherry moved to Seattle to start their life together. They spent years saving to buy their first home: a small two-bedroom bungalow built in 1916. The house needed significant work—new ceilings, new plumbing, new wiring, and actual stairs to reach the second floor—but it was what they could afford.

In May 2019, the Cherrys were all set to begin their renovations and submitted their application for a building permit. That's when Seattle's "Mandatory Housing Affordability" ordinance (MHA) turned their dream into a nightmare.

This wildly misnamed law, passed after the Cherrys closed on their home, subjects owners in certain residential neighborhoods to expensive new regulations and fees when they apply for building permits. In the Cherrys' case, these fees totaled \$11,000. Why? According to the city, they were renovating their home too much—creating a "new structure." But the Cherrys bought a two-story single-family home, and their renovations would result in . . . a two-story single-family home.

Nevertheless, Seattle refused to issue them a renovation permit unless they paid the exorbitant fee or converted their single-family home into multifamily housing—and then rented out part of their home under yet more regulations.

MHA was controversial when enacted and remains controversial today. Seattle already had one of the most complex regulatory regimes for housing in the nation, making adding and renovating housing very expensive—and exacerbating the very housing affordability crisis Seattle then claimed to address with MHA. Instead, MHA simply adds more cost and complexity to Seattle's code.

Local governments often impose permit requirements on property owners that go well beyond what is reasonable

First-time homebuyers **Andre and Erika Cherry** bought a Seattle fixer-upper. When they applied for a permit to bring their home up to modern standards, the city demanded \$11,000 in fees.



Seattle quickly backed down from its extortion demand after IJ threatened a lawsuit, allowing the **Cherrys** to continue with their planned renovation.

The Cherrys cannot afford the city's costly demands, and they should not have to pay thousands in additional fees just to make their home safe and consistent with modern standards.

to protect public health and safety interests. These requirements become opportunities to coerce people into giving up their rights and paying out thousands of dollars in fees. The U.S. Supreme Court has recognized that this power gives rise to the threat of "out-and-out . . . extortion." That is what Seattle was doing to the Cherrys—until IJ got involved.

The Cherrys cannot afford the city's costly demands, and they should not have to pay thousands in additional fees just to make their home safe and consistent with modern standards. In July of this year, IJ sent a letter to the city demanding it end this renovation extortion, and we brought widespread attention to the city's demands with a front-page story in *The Seattle Times*. In August, Seattle backed down and approved the Cherrys' building permit without charging them exorbitant MHA fees.

Seattle may have escaped an IJ lawsuit this time, but the city can rest assured that we will be watching closely to make sure no other homeowners are subjected to the same abusive fees. ♦

Paul Avelar is managing attorney
of IJ's Arizona office.



Maximize Your Support Through Employer Matching Gifts

Did you know that an estimated \$4–\$7 BILLION in employer matching gift funds are unclaimed every year?

With employer matching gifts, it is possible to double or even triple your donation to IJ in minutes! Many companies sponsor matching gift programs and will match most charitable contributions made by their employees. Some employers will even match gifts made by retirees or spouses.

To find out if your company has a matching gift program:

- Visit www.ij.org/support/employer-match and enter your employer's name in the search box.
- If your company has a matching gift program, you will see more information on the minimum and maximum matching amounts, matching ratios, employee eligibility, and your company's matching gift program contact.

Have you already made your donation to IJ this year? It may not be too late to get it matched. Depending on your company, you can request a matching gift up to 12 months after your donation.

If you have questions about matching gifts, please contact Anne Komer at akomer@ij.org or (703) 682-9323, ext. 312. ♦

Here are a few companies that have matched employee gifts to IJ!

- Google
- Apple
- Pfizer
- Microsoft
- Medtronic
- NVIDIA
- Expedia
- American Express
- S&P Global
- Boeing
- Hewlett-Packard
- Dolby
- Goldman Sachs
- Texas Instruments
- Synopsys
- Bristol Myers Squibb

Ending Policing for Profit in the Palmetto State

BY ROBERT FROMMER

Longtime readers of *Liberty & Law* know the fight to end civil forfeiture requires both persistence and creativity. In Philadelphia, for instance, IJ launched our first class action lawsuit to shut down the city's massive forfeiture machine. And our groundbreaking studies, including our latest report exposing the Department of Homeland Security's "jetway robbery" (see page 13), show how civil forfeiture has become a multibillion-dollar threat to innocent Americans. Now, IJ is stepping into an ongoing forfeiture lawsuit to ask the South Carolina Supreme Court to end this abusive practice in the state once and for all.

Back in 2017, prosecutors seized and tried to permanently take Travis Green's money. After IJ's landmark U.S. Supreme Court victory in *Timbs v. Indiana*, the trial court asked whether South Carolina's forfeiture statutes could still pass constitutional muster. Leaning heavily on IJ's forfeiture victories in New Mexico and elsewhere, Travis' attorneys persuaded the court to strike down civil forfeiture entirely, forbidding officials from forfeiting his—or anyone else's—money in that judicial circuit.

Of course, prosecutors had too much money on the line to allow that decision to stand. As documented by an extensive investigative series that ran last year in *The Greenville News*, South Carolina officials seized and forfeited over \$17 million over a three-year period. So when those prosecutors appealed to the South Carolina Supreme Court to keep their gravy train running, IJ teamed up with Travis to defend this significant victory for the property rights of all South Carolinians.

After all, the trial court made the right call. Under South Carolina law, prosecutors don't have to prove owners did anything wrong to deprive them of their cash, cars, or even homes. Instead, property owners must prove their own innocence. That can take months, or even years, since South Carolina doesn't give owners prompt hearings. And though officials claim forfeiture targets criminal kingpins, more than half of cash seizures in South Carolina are for less than \$1,000—and one-third involve less than \$500. Unsurprisingly, many forfeiture victims give up or settle for pennies on the dollar.

Even worse, when South Carolina police and

prosecutors prevail, they keep at least 95% of forfeiture proceeds for their own use, which they can spend in questionable ways, including underwriting luxury travel, fancy vehicles, and even commercial real estate. With no in-state reporting requirements and few other accountability provisions, the true scale of abuse is anyone's guess. These incentives lead law enforcement agencies to chase dollars rather than criminals, organizing large-

Forfeiture incentives lead South Carolina law enforcement agencies to chase dollars rather than criminals, organizing large-scale events like "Operation Rolling Thunder," where they give trophies to officers who seize the most property.

scale events like "Operation Rolling Thunder," where they give trophies to officers who seize the most property.

South Carolina is a shocking picture of how civil forfeiture distorts law enforcement priorities, undermines official accountability, and weakens public confidence in the police. IJ stepped into this case to persuade the South Carolina Supreme Court to bring this abominable practice to an end once and for all. ♦

Robert Frommer is an
IJ senior attorney.



FASTEN YOUR SEATBELTS:

New IJ Study Finds Feds Seized \$2 Billion From Air Travelers

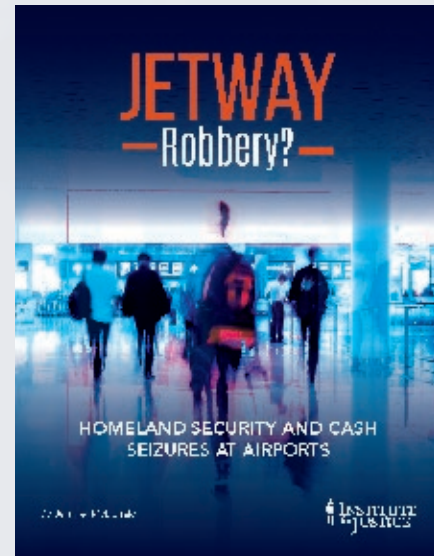
BY JENNIFER MCDONALD

In August, an exclusive story in *The Washington Post* made sure IJ's newest report, *Jetway Robbery? Homeland Security and Cash Seizures at Airports*, really took off. The report is a first-of-its-kind study quantifying just how often Department of Homeland Security (DHS) agencies seize cash at airports—and just how much currency has flowed into the federal government's coffers as a result.

It took a multiyear legal battle to get this report off the ground. When IJ filed our initial Freedom of Information Act request in 2015, seeking all records of property seized and forfeited by Customs and Border Protection, the agency refused to comply. IJ sued the agency in federal court and, four years later, finally obtained the data we requested. We quickly discovered why the agency was so anxious to keep its database under wraps. These new data confirm airport cash seizures are big business: Between 2000 and 2016, DHS agencies seized more than \$2 billion across more than 30,000 seizures.

IJ supporters are familiar with clients like Anthonia Nwaorie, a Houston nurse who had more than \$40,000 seized as she was boarding a flight to her native Nigeria, where she planned to use the money to build a free medical clinic for women and children. Her only "crime" was failing to file a form that she had no idea even existed. Such paperwork violations account for half of all currency seizures and over a quarter of the total value seized—more than half a billion dollars.

The study also casts doubt on proponents' argument that forfeiture fights crime. Less than a third of all cases were



Read the report:

www.ij.org/report/jetway-robbery

accompanied by an arrest, and only one in 10 involved an arrest when the government alleged a reporting violation. This suggests most such cases are mere paperwork violations without any other indication of criminal activity. And of the cash that is ultimately forfeited by the government, the vast majority is taken without any judicial oversight.

Federal law enforcement agencies are tasked with protecting Americans and finding and punishing criminals, but these findings suggest DHS airport currency seizure and forfeiture practices instead put innocent Americans at risk. IJ is making sure Congress gets the message: It's time to end this jetway robbery. ♦

Jennifer McDonald is IJ's senior research analyst.



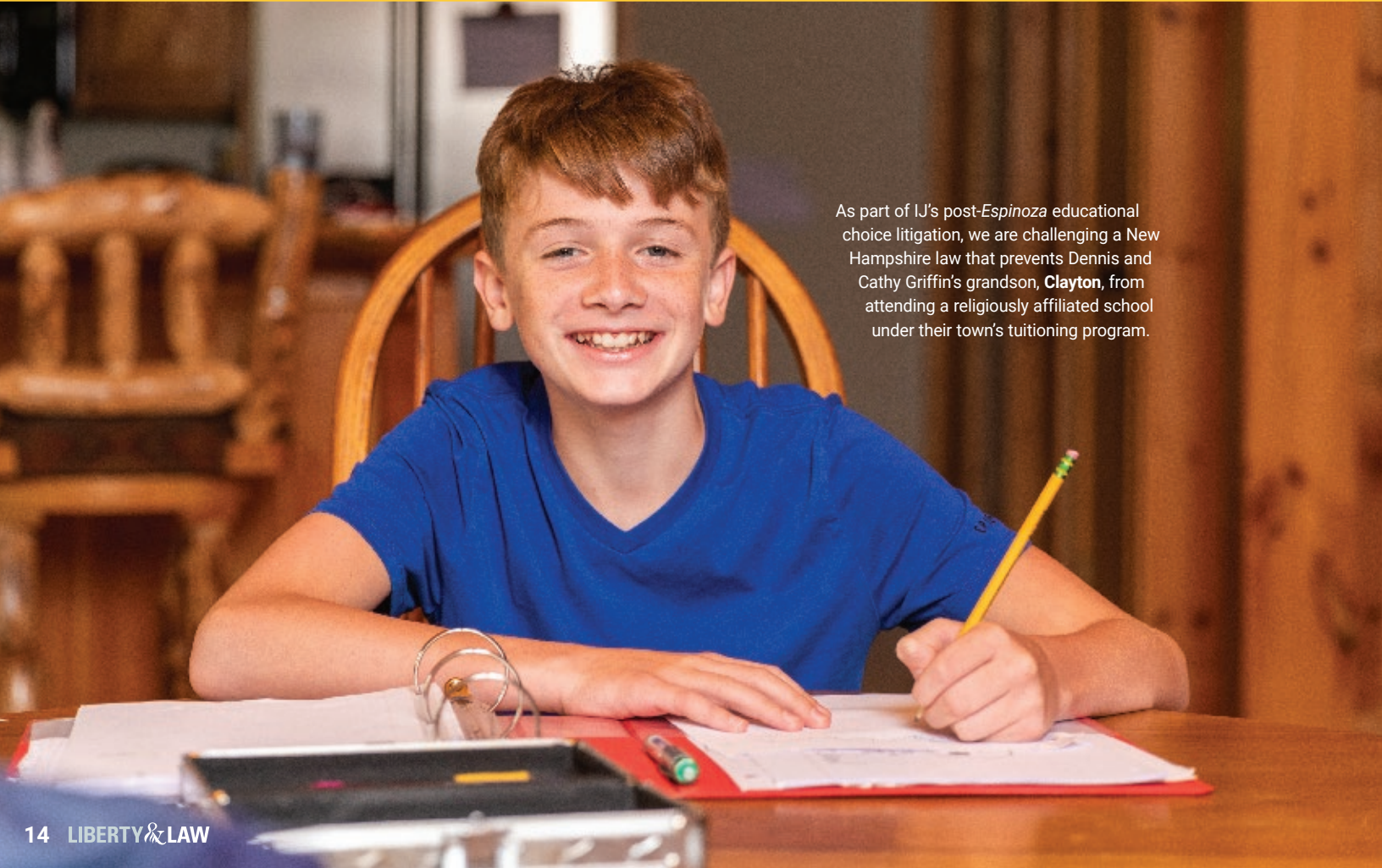
IJ's Educational Choice Litigation Bonanza

BY MELANIE HILDRETH

In August's *Liberty & Law*, we reported on IJ's landmark U.S. Supreme Court victory, *Espinoza v. Montana Department of Revenue*. Vindicating arguments IJ has been making for decades, the Court decisively removed the biggest single legal obstacle to educational choice. This victory could not have been better timed. America's education system faces a once-in-a-generation disruption, and the need for alternatives to the status quo—and the lengths to which entrenched interests are prepared to go to fight them—has never been clearer.

To see the legal aspects of this drama playing out in real time, look no further than the latest additions to IJ's educational choice docket.

We immediately filed post-*Espinoza* cases in New Hampshire and Vermont to strike down discriminatory statutes and replace bad precedent with the standard set forth in *Espinoza*—and give families in both states more schooling options. New Hampshire and Vermont each have town “tuitioning” programs, through which local districts that don’t operate public schools give parents the money to send their children to private schools. But in both places, the state prohibits families from using their tuition dollars at religious schools. As the Supreme Court affirmed in *Espinoza*, states cannot favor or disfavor religious options in choice programs, and IJ filed suit so that parents can use their tuitioning funds at the schools of their choice this school year.

A photograph of a young boy with light brown hair, wearing a blue t-shirt, sitting at a wooden desk. He is smiling and holding a yellow pencil over an open notebook. In the background, there are wooden chairs and a wall with a wooden panel. The lighting is warm and indoor.

As part of IJ's post-*Espinoza* educational choice litigation, we are challenging a New Hampshire law that prevents Dennis and Cathy Griffin's grandson, Clayton, from attending a religiously affiliated school under their town's tuitioning program.

In North Carolina, we moved to intervene and save the Opportunity Scholarship Program (OSP), which serves 12,000 low-income families, from renewed attack by teachers' unions and their allies.

Back in 2015, IJ defeated two separate challenges to the then-fledgling program and won a victory at the North Carolina Supreme Court. This summer, the unions dusted off their old lawsuit, gave it a minor facelift, and refiled it. Their claim? The OSP does not offer enough non-religious options or a guarantee of educational progress to the students who voluntarily participate. Their proposed solution to allegedly insufficient choice and accountability? Kill the program and remove all choice and accountability.

In South Carolina, we filed a friend-of-the-court brief at the state Supreme Court, arguing that its new one-time scholarship grants to parents do not violate the state constitution. If our opponents' arguments prevail, the new scholarships might not be the only casualty. There would be dire implications for

well-established higher education programs as well, and a bad decision could erect new legal barriers to the enactment of future educational choice programs.

On top of these new cases, we continue ongoing litigation in Maine, Nevada, and Tennessee. We are prepared to intervene if and when new cases are filed in any of several other states and are monitoring the rapidly developing situations all over the country to ensure that parents have as many options available to them as possible.

As the COVID-19 pandemic continues to leave families scrambling to find ways to safely give their children a good education, IJ is working tirelessly to support and expand options that meet their needs—and to protect existing opportunities from new attacks. ♦

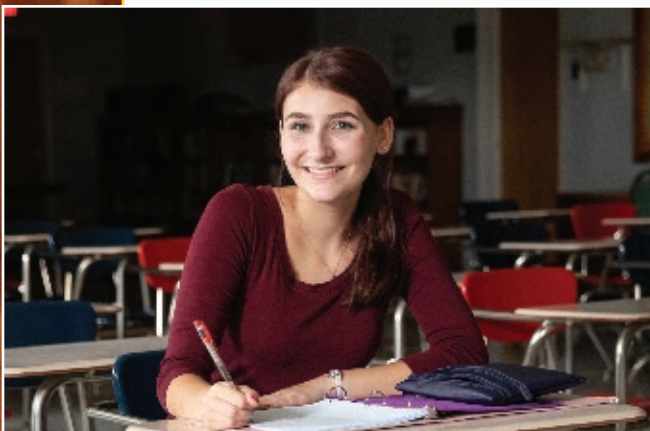
Melanie Hildreth is IJ's vice president for external relations.



Keysha Newell and her daughter (top) benefit from Nevada's tax-credit scholarship program, which IJ is currently defending in court. We are also challenging Maine's exclusion of religious options from the state's choice program on behalf of **Olivia Carson** (bottom left) and her family. IJ successfully defended North Carolina's Opportunity Scholarship Program in 2015 so that students like **Faith Perry** (bottom right) could get an education that fits their needs. Now, we're back to save the program from another baseless challenge.



As the COVID-19 pandemic continues to leave families scrambling to find ways to safely give their children a good education, IJ is working tirelessly to support and expand options that meet their needs—and to protect existing opportunities from new attacks.



IJ SCORES EARLY VICTORY

Combatting Kentucky's Certificate of Need Program

BY JAIMIE CAVANAUGH

Late last year, IJ filed a case in federal court challenging Kentucky's certificate of need (CON) laws on behalf of two entrepreneurs—Dipendra Tiwari and Kishor Sapkota. Dipendra and Kishor are immigrants from Nepal who would like to open a home health agency to serve Louisville's large and aging Nepali-speaking community, but Kentucky's CON laws stand in their way. This summer, we won a crucial early victory for Dipendra and Kishor and their small-business dream.

Liberty & Law readers may remember their story: In 2018, after noticing their neighbors could not find home health aides who spoke Nepali, Dipendra and Kishor applied for a CON to open a home health agency. But the government ignored the needs of their community and denied

their application shortly after it was opposed by Baptist Health, a \$2 billion health conglomerate with its own home health agency. This bald-faced economic protectionism insulates established health care providers from fair competition and deprives the Nepali-speaking community of access to better care.

"It's hard to picture this kind of central planning in most other American industries. Consider, for example, if Michigan had told Henry Ford he couldn't build a Model T factory because the market had enough Buicks."

- Federal Trial Court Judge Justin Walker

On the books in dozens of states, CON programs were conceived in the 1960s with the goal of controlling health care costs and increasing access to care. But they have proven to do the opposite. Because the process of getting a CON resembles full-scale litigation and can take years, states with CON laws have higher health care costs and fewer medical services per capita.

When Dipendra and Kishor joined IJ to challenge this scheme as unconstitutional, the state and the Kentucky Hospital Association moved to dismiss their

Nepali immigrants **Dipendra Tiwari** (left) and **Kishor Sapkota** (right) teamed up with IJ to challenge Kentucky certificate of need laws preventing them from opening a home health care business. This summer, we secured a first-round victory.



lawsuit. But we won a powerful first-round victory when federal trial court judge Justin Walker denied their attempt in August.

Judge Walker saw through the government's arguments and recognized CON laws for what they are—blatant protectionism. "It's hard to picture this kind of central planning in most other American industries," he wrote. "Consider, for example, if Michigan had told Henry Ford he couldn't build a Model T factory because the market had enough Buicks."

Indeed, a bedrock principle of the American economy is that competition drives innovation. Consumers receive better products and services when companies must outwork one another for business. By artificially restricting supply and stifling competition before it even begins, Kentucky cuts a check to existing multibillion-dollar hospital networks at the expense of everyday people in need of health care.

With IJ's help, Dipendra and Kishor are well on their way to vindicating their rights. Judge Walker's order is a crucial first step toward justice. The fight, however, is not over. IJ will not stop until Dipendra and Kishor, and others like them, can provide health care to those who need it—without unconstitutional interference from the government and industry incumbents. ♦

Jaimie Cavanaugh is
an IJ attorney.



Health Care CONs: A SURVEY

One of the cornerstones of IJ's response to the COVID-19 pandemic has been an invigorated push against certificate of need (CON) laws, which require health care providers to obtain government permission before starting or expanding services. The result of an ill-fated attempt to prevent "oversupply," CON laws have been slowly falling out of favor as states realize they limit access to health care and raise costs.

This August, IJ released *Conning the Competition*, a survey of CON laws in the 39 states and other jurisdictions that continue to artificially cap the provision of health care services. The report found no consistency among states' CON requirements, indicating that established business interests, rather than patient needs, drive the laws. For example, although several states exempt rural areas from CON laws entirely, Nevada requires certificates of need *only* for hospitals in rural areas.

Conning the Competition will guide IJ's efforts to challenge these counterproductive laws. The report also complements our new 2021 Initiative (see page 8), which will offer customized legislative solutions to help state and local governments recover from and rise above the crises of 2020. As documented in the report, 26 jurisdictions suspended CON requirements to increase the supply of medical services during the COVID crisis. IJ will push to make these changes permanent and to persuade new jurisdictions to repeal CON requirements once and for all. After all, it shouldn't take a pandemic for politicians to prioritize patients over economic protectionism. ♦



Read the report:
www.ij.org/report/connng-the-competition

CA EMTs continued from page 4

often apply even when they have no bearing on the job people with convictions want to do.

Banning Dario from receiving his EMT certification doesn't protect Californians; it just deprives them of a committed and qualified firefighter. If California trains prisoners to be firefighters, it can give Dario a basic certification for which he's already passed the test. So IJ has joined Dario in filing a federal lawsuit to strike down this irrational—and unconstitutional—ban.

The chance to support yourself matters. And it especially matters to people who have paid their debts and are struggling to reenter society. To ban people from working, the government must have a good reason. IJ will keep fighting to strike down unconstitutional laws like this one that deny Dario—and others like him—the second chance they have earned. ♦

Andrew Ward is
an IJ attorney.



Dario and other firefighters train for the job.

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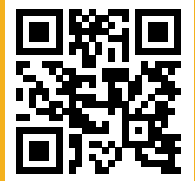
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These articles and editorials are just a sample of recent favorable local and national pieces IJ has secured. By getting our message out in print, radio, broadcast, and online media, we show the real-world consequences of government restrictions on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

Read the articles at
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I started a successful home business
selling homemade food.

Then a rogue state agency banned the sale
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the legislature had said it was legal.

I am fighting for my business
and my economic liberty.

I am IJ.