



**LIBERTY & LAW**

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# **JAILED FOR CRITICIZING LOCAL GOVERNMENT**

**and How IJ Is Fighting Back**

Published Bimonthly by  
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IJ's Project on Immunity and Accountability Picks Up Steam • 6  
Wisconsin Food Trucks Enjoy the Sweet Taste of Victory • 8  
Free Trade Uncorked in Minnesota • 9  
New \$1 Million Challenge Grant Aims to Grow IJ's Base of Support • 10

# contents

## **4 Criticize Local Government, End Up in Jail**

Will Aronin

## **6 IJ's Project on Immunity and Accountability Picks Up Steam**

Scott Bullock

## **8 Wisconsin Food Trucks Enjoy the Sweet Taste of Victory**

Milad Emam

## **9 Free Trade Uncorked in Minnesota**

Anthony Sanders

## **10 New \$1 Million Challenge Grant Aims to Grow IJ's Base of Support**

Melanie Hildreth

## **12 Double Wins for Second Chances: Victories in IJ's First "Fresh Start" Case**

Andrew Ward

## **14 Justice at Last for Victims of NYC's No-Fault Eviction Law**

Sam Gedge

## **16 Free to Rent: Victory for Property Owners in the Tarheel State**

Adam Griffin

## **17 Oklahoma Tries to Take a Bite Out of the First Amendment**

Justin Pearson



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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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# Criticize Local Government, End Up in Jail

## IJ Sues City that Arrested a Woman for Speaking Out Against It

BY WILL ARONIN

Sylvia Gonzalez ran for city council in her hometown on the outskirts of San Antonio for an old-fashioned reason: She wanted to make a difference in her community. Little did she know her efforts would land her in jail—and in the midst of a lawsuit with big implications for free speech and government accountability.

At 72 years old, Sylvia knocked on more than 500 doors during her campaign for Castle Hills City Council. In the process, she was disappointed to hear repeated complaints about local government and, in particular, the poor performance of the city manager. Sylvia promised to spearhead a petition calling for his removal if elected. After squeezing out a victory against the well-connected incumbent, Sylvia kept her word, organizing a petition calling for a vote of no confidence in a bureaucrat who had come under criticism for mistreating his employees and failing to address residents' concerns, like fixing their streets.

A nonbinding petition signifying the citizenry's displeasure with local government is an act of pure political speech clearly protected by the First

Amendment. But when the petition was submitted at her first council meeting, Sylvia made powerful—and motivated—enemies. The interests of the incumbents on the council were well represented by the city manager, and they had no interest in a change.

They began harassing Sylvia and devised a plan to remove her from the city council. They assigned a full-time police officer to investigate her. After two weeks of little action on the part of the officer, the mayor and the police chief brought in a “special detective,” who spent another month searching for a way to discredit her. In the meantime, Castle Hills claimed Sylvia wasn't properly sworn in and tried to replace her on the city council with the woman she'd just beaten.

When Sylvia resisted, city officials escalated their efforts, using the special detective's investigation to charge her with tampering with a government record—based on the absurd allegation that she had tried to steal her own petition during the very council meeting at which it was introduced. The officials then went further, issuing a warrant for Sylvia's arrest over this nonviolent misdemeanor

Castle Hills continued on page 18



With our case on Sylvia's behalf and the others in our Project on Immunity and Accountability, IJ will ensure that government officials who are charged with upholding the law are held accountable when they break it.

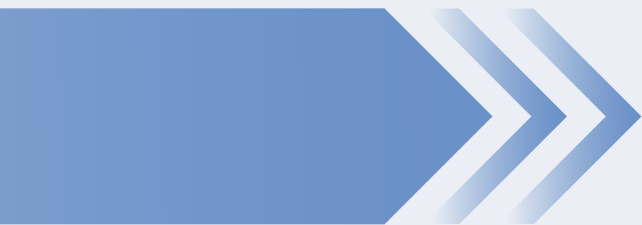
A man with short dark hair and a beard, wearing a light blue button-down shirt and a dark blue patterned vest, stands with his hands on his hips in front of the U.S. Supreme Court building. The building's facade features large white columns and a pediment with the inscription 'EQUAL JUSTICE UNDER LAW'. A fountain is visible to the left of the man.

# IJ'S PROJECT ON IMMUNITY AND ACCOUNTABILITY PICKS UP STEAM

BY SCOTT BULLOCK

The Institute for Justice launched our Project on Immunity and Accountability in January 2020 to fight judge-made doctrines that make it extremely difficult to hold government officials accountable for violations of constitutional rights. Little did we know that in less than 12 months we would have an accountability case before the U.S. Supreme Court—or that people would be marching in the streets denouncing immunity.

IJ client **James King** is asking the U.S. Supreme Court to make it possible for him to hold law enforcement accountable for a brutal assault. IJ argued his case at the high court on November 9.



As I described when we announced the initiative, IJ kept encountering immunity doctrines in our litigation, especially in property rights cases. Meanwhile, significant legal scholarship and policy work were underway—spearheaded by allies such as former IJ law clerk and University of Chicago law professor Will Baude and the Cato Institute—demonstrating that the idea of government immunity lacked a basis in the Constitution or in common law. IJ drew upon our experiences and this scholarly work to put together a comprehensive public interest legal initiative to challenge qualified immunity and other doctrines that permit government officials to evade accountability for wrongdoing.

When IJ puts together a major initiative like this project, we have strategic and ambitious plans. We also recognize that transforming the law and public opinion takes time. Our initiatives to curtail eminent domain abuse, civil forfeiture, and protectionist licensing schemes, for instance, took years to unfold. But the recent series of deaths and injuries at the hands of law enforcement, combined with the U.S. Supreme Court's consideration of—and ultimate refusal to hear—a string of truly outrageous qualified immunity cases, thrust this issue into the national spotlight in a way no one anticipated.

Many people in the free-market movement are familiar with the Overton window—a concept named after its creator, the late Joseph Overton of the Mackinac Center, that describes the way that changes in public opinion make formerly unknown or unpopular policy options feasible.

The Overton window on government immunity has shifted quickly, and IJ is perfectly positioned to take full advantage of this opportunity.

As *Liberty & Law* goes to print, we are representing James King before the U.S. Supreme Court in *Brownback v. King*, a case that will determine whether the Court will close another big loophole that allows officials who violate constitutional rights to escape accountability for their actions. And, as you can read in this issue's cover story, we are developing another immunity case from the ground up on behalf of Sylvia Gonzalez (page 4).

Qualified Immunity continued on page 18



# BOUND BY OATH

Podcast Returns to  
Examine Government Immunity

In November, IJ's Center for Judicial Engagement launched the second season of our legal history podcast, *Bound by Oath*. Season 2 jumps headfirst into the thicket of legal doctrines like qualified immunity that the U.S. Supreme Court has invented or repurposed over the past 50 years to shield the government from accountability.

To tell that story, the podcast features interviews with the real-life plaintiffs behind landmark government accountability cases, as well as cases that are more obscure. These conversations lay bare the stakes of the Court's retreat from one of the nation's core legal principles: For rights to have meaning, they must be enforceable.

The Founders would not have recognized a judiciary where judges routinely refuse to say what the law is or provide legal recourse for those whose rights have been violated. Nor would the Framers of the 14th Amendment (the stars of Season 1!), who sought to protect the liberties of all Americans, be keen to see the doors of federal courthouses steadily closing to civil rights claims. At IJ, we're fighting to reverse that trend, and Season 2 starts with IJ's own accountability case *Brownback v. King*, which we argued on November 9.

You can find *Bound by Oath* Season 2 on Apple or Google podcasts, on Spotify, or wherever you get your podcasts. ♦

# Wisconsin Food Trucks

## Enjoy the Sweet Taste of Victory

BY MILAD EMAM

It's been nearly a decade since IJ rolled out our National Street Vending Initiative. In that time, we have worked on the ground with entrepreneurs from Los Angeles to New York and won important court victories against protectionist restrictions that use government power to close the door—and the streets—to competition and innovation.

Our latest victory is a perfect example of how these fights play out—and what it means when we win them. IJ's clients, the Hadraba and Howard families, purchased and painstakingly revitalized a cherry orchard and historic market in the small tourist town of Fish Creek in Wisconsin's Door County. Their plan was to start their own business—a dream as American as the cherry pie they sold there. To offer burgers and barbecue, too, they opened a food truck in their store's parking lot.

It was a sweet setup. Unfortunately for our clients, their town's board—chaired by the owner of a local brick-and-mortar restaurant—thought the competition they provided was the pits.

The day Chris Hadraba opened the food truck, the chairman paid him a visit. Chris showed him all the right permits and licenses and thought the business was in the clear. He and his partners were shocked when the town board instead chose to demand that the county revoke

their permit. When the county refused, the town banned food trucks, ultimately making it impossible to vend in areas containing brick-and-mortar restaurants without risking fines of \$500 per day.

IJ joined with the Hadrabas and Howards to challenge this blatant protectionism. The town's response? To claim it wasn't protectionist, arguing it had actually banned food trucks for the sake of traffic safety, town "character," and property taxes.

The state trial court didn't buy it. The judge carefully examined the facts and concluded that the town's laws had no relation to the three reasons it gave for them in court. In a decisive ruling in our favor, the court held that the town's vending laws represented the illegitimate "use of public power to suppress competition from one entity for another special interest's financial benefit" and was "nothing less than illegal and unconstitutional economic protectionism."

This decision matters. The government regularly offers plausible-sounding rationales for anticompetitive restrictions that just don't hold water under examination. Rulings like this one take economic liberties seriously and ensure that the government can't simply pick winners and losers in the marketplace. That is a victory worth savoring. ♦



When **Chris Hadraba** opened a food truck outside the store he co-owns, the town board didn't like the competition against brick-and-mortar restaurants and outlawed food trucks.

Milad Emam is an IJ attorney.



Couples **Chris and Jessica Hadraba** (left) and **Lisa and Kevin Howard** (right) are free to add a food truck to their property thanks to one of IJ's latest wins for food freedom.



# Free Trade uncorked!

## IN MINNESOTA

Thanks to an IJ victory for economic liberty, Alexis Bailly Vineyard and owner **Nan Bailly** can use the grape varieties their customers want and expect.

BY ANTHONY SANDERS

Making wine in Minnesota just got a lot easier thanks to a top-shelf ruling from a federal judge. The victory is the culmination of a lawsuit IJ filed on behalf of two Minnesota farm wineries in 2017, challenging a protectionist law mandating that farm wineries use mostly Minnesota grapes in their vintages.

We argued that the cap violated the Commerce Clause of the U.S. Constitution, and the court agreed, writing that “the Act’s in-state requirement expressly favors and benefits in-state economic interests” and the cap “is discriminatory on its face.” That discrimination meant there was a heavy burden on Minnesota to show that its law was necessary to protect the public—something so obviously false that the state didn’t bother to try. The court summed it up: “There is no suggestion in the record or the parties’ arguments that the Act’s in-state requirement serves any interest other than favoring Minnesota’s economic interests over similar out-of-state economic interests.” With that capitulation, the law could not survive when faced with the Constitution’s bouquet of free-trade protections.

IJ’s clients Alexis Bailly Vineyard and Next Chapter Winery have struggled for years to grow their businesses because of the law. It made any

expansion conditioned on either growing more grapes, which the entrepreneurs did not want, or buying grapes from other Minnesota farms, which they wanted even less. Instead, both wineries desired to mix locally grown grapes with grapes mirroring their consumers’ wishes, which range from California varieties to selections from nearby Wisconsin to cold weather fruits from the

Northeast to Old World gems from France.

The ruling allows that bottled-up potential to flow across Minnesota’s wine industry, not only to IJ’s clients but also to the nearly 100 other farm wineries in

the state. The judge’s opinion was also notable because it relied upon two previous IJ victories, both at the U.S. Supreme Court. Those were last year’s ruling for Doug and Mary Ketchum and against a Tennessee law restricting who could open a liquor store and the 2005 case *Granholm v. Heald*, which found bans on interstate shipping of wine directly to consumers unconstitutional.

Next time you raise a glass, feel free to clink it on behalf of this array of victories for free trade. ♦

**Next time you raise a glass, feel free to clink it on behalf of this array of victories for free trade.**

Anthony Sanders is an IJ senior attorney and director of IJ’s Center for Judicial Engagement.



# New \$1 Million CHALLENGE GRANT *Aims to Grow IJ's Base of Support*

BY MELANIE HILDRETH

The stories in this issue of *Liberty & Law*—and those from throughout this year—demonstrate that IJ's work to make America a more just and free place for everyone has never been more important. And we've never been more successful. Despite the challenges of 2020, we have more cases in litigation than ever before and have notched litigation victories that include wins at the U.S. Supreme Court, two state supreme courts, and four federal courts of appeals. That's on top of victories in legislatures and communities across the country that brought real-world change for countless Americans.

Two longtime IJ donors want this success to continue—and they want to secure it into the future. They recognize that, to accomplish this goal, it is critical that we bring on board new supporters: not only people who agree with IJ's mission and strategies, but also—crucially—those who will support it financially.

So they issued a \$1 million challenge grant to match, dollar for dollar, donations to IJ from new and lapsed supporters.

## How to Participate in the \$1 Million New Donor Challenge Grant

If you have never supported IJ before—or if it has been more than two years since your last gift—now is an opportune time to contribute. Your gift will be doubled thanks to the challenge grant, making your support for IJ go even further. What's more, while matching funds are available, the challenge grant donors also pledged to match second contributions from any donor who gives through this campaign.

To participate, simply return the envelope in this magazine with a donation by check or credit card or go online to [ij.org/donate](https://ij.org/donate). You can also contribute by phone by calling (703) 682-9323, ext. 399.

If you are already a supporter of IJ but want to be part of our push to earn the full \$1 million in matching funds, we would love to have your help!

Referrals are an incredibly important source of support, and some of IJ's most generous and steadfast contributors were first referred to us by a friend.

Referrals can be as simple as an email or conversation about an IJ case or issue you find particularly compelling. We would also be happy to send you extra copies of this issue of *Liberty & Law* to share or to send a copy directly to someone you recommend. If you would like extra issues of *Liberty & Law* or other IJ materials, simply email [melanie@ij.org](mailto:melanie@ij.org).

Another option is to sponsor a crowdfunding campaign through IJ's website. You can set goals, match donations, and tell your network why you believe supporting the Institute for Justice makes a difference. All contributions will go directly to our work fighting government abuse and protecting individual rights. Go to [ij.org/sponsor-a-crowdfunding-campaign-for-ij/](https://ij.org/sponsor-a-crowdfunding-campaign-for-ij/) to get started.

As we approach our fourth decade of litigating for liberty, there is no limit on what we can achieve with increased support for our strategic and principled approach to change. Thank you for putting IJ in a position of strength—and for helping secure our future at this extraordinary time. ♦

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



*Two longtime IJ donors issued a \$1 million challenge grant to match, dollar for dollar, donations from new and lapsed IJ supporters.*

## IJ GETS *Rave Reviews*

IJ's financial transparency and accountability to our donors are second to none, and our ratings from independent charity evaluators reflect this commitment to excellent stewardship of our resources. It's the reason IJ has earned Charity Navigator's top four-star rating 18 years in a row and maintains a Gold Seal of Transparency at GuideStar.

We now have another accolade to add: Top-Rated Nonprofit status at GreatNonprofits, a Yelp-like review site for charities that awards the ranking based on the number of positive reviews an organization receives.

Here is just a sampling of what our donors are saying about IJ:

**"With all the chaos in our country today, I believe a law firm that stands up for our individual liberties is more important now than ever before."**

— Lynn Griffin, North Carolina

**"Talk is cheap, but IJ takes legal actions—and wins."**

— Margaret Owen Thorpe, Minnesota

**"IJ is a constitutional bulwark against the ever-present encroachment of administrative zealots upon our civil liberties."**

— Heath Clarke, California

**"They are helping ordinary people find greater freedom to live the lives they most dearly want, and helping to create a fairer and more equitable society for all of us."**

— Kathy Gornik, Kentucky

You can read more reviews, and leave your own, at [greatnonprofits.org/org/institute-for-justice](https://greatnonprofits.org/org/institute-for-justice). ♦

# Double Wins for Second Chances

## VICTORIES IN IJ'S FIRST "FRESH START" CASE

BY ANDREW WARD

Thanks to a one-two punch this summer, some of the most vulnerable Pennsylvanians can now exercise their right to earn an honest living.

Two years ago, IJ launched our first "fresh start" case—a challenge to a law that unfairly bars people from working because of their criminal histories. We represented two Philadelphia-area women, Courtney Haveman and Amanda Spillane. Although both had criminal records resulting from problems with substance abuse years earlier, both had also put their pasts behind them. Courtney and Amanda were sober, steadfast, and ready to start their careers. Courtney wanted to help support her son, and Amanda wanted more than a fast-food job paying so little that she had to rely on food stamps.

Both decided to become estheticians, a kind of cosmetologist who focuses on skin care. They spent hundreds of hours and thousands of dollars at beauty school, and they

**After almost two years of hard-fought litigation, the Commonwealth Court of Pennsylvania agreed with IJ's arguments, calling it "absurd" that a cosmetologist would have to prove good character while a barber with the same criminal record would not.**

even lined up jobs at salons. But when they applied for licenses, Pennsylvania rejected them under an old "good moral character" law. Their criminal histories (which have nothing to do with cosmetology) meant they couldn't prove they were good enough people to work in skin care. And they weren't alone. Our lawsuit revealed that the commonwealth's character screenings routinely interrogated cosmetology applicants

with criminal histories, dredging up testimony about abusive past boyfriends, miscarriages, and even suicide attempts.

Bizarrely, however, there was no character

requirement for any other salon employee—not the receptionists handling cash and not the barbers sharpening their straight razors. In fact, Courtney herself ended up working in a salon during the lawsuit as a shampooist. If it was safe for her to wash hair without a character interrogation, it was clearly also safe for her to tweeze eyebrows. We used these facts to



Courtney Haveman sought a cosmetology license to better provide for her son, but Pennsylvania denied her application due to irrelevant criminal convictions from her past.

argue that the good moral character law's scope was so irrational that it violated the Pennsylvania Constitution. And we won.

After almost two years of hard-fought litigation, the Commonwealth Court of Pennsylvania agreed with IJ's arguments, calling it "absurd" that a cosmetologist would have to prove good character while a barber with the same criminal record would not. The court struck down the requirement statewide, and the commonwealth itself admitted the decision was correct.

And that's not all the good news. Pennsylvania also passed a new licensing law, inspired in part by IJ's lawsuit. That law repeals the dozens of other good moral character requirements remaining in other licenses. That means sweeping change in the Keystone State.

Still, there's more to be done. There are tens of thousands of other criminal-history-based laws that limit people's ability to provide for themselves. And there is a growing consensus that these harsh laws simply don't work. IJ is continuing the fight in California (see sidebar), and, thanks to your support, we'll keep on fighting. There are lots of people like Courtney and Amanda, and they, too, deserve a fresh start at earning an honest living. ♦

Andrew Ward is  
an IJ attorney.



IJ's victory against Pennsylvania's "good moral character" requirement for cosmetologists means **Amanda Spillane** can finally get an esthetician's license—and the fresh start she's earned.



## The Fight for a Fresh Start in California Picks Up Second Client—and Legislative Interest



Beyond our victory in Pennsylvania, IJ is also fighting for fresh starts in the Golden State. Last issue, we brought you the story of a preposterous California ban that restricts certification for emergency medical technicians (EMTs). The ban prevents people with felony records from becoming full-time firefighters—even though the state trains and deploys the same people to fight fires while they're incarcerated. Amid a record wildfire season, we're challenging this irrational ban. There are two updates to share.

First, we've partnered with a second plaintiff, a young man named Fernando Herrera. Fernando's two felony convictions mean he can never become an EMT—even though his convictions stem from fights when he was 14 and 15 years old. Fernando accepted responsibility, and the state trained him to be a first responder in prison. He has demonstrated that he's turned his life around, yet the ban forever treats him like a troubled teen.

Second, faced with the devastating fires and the indefensible ban, there has been an uptick in interest from California legislators and a new bill that would offer some inmate firefighters modest discretionary relief. While that is a step in the right direction, the ban itself remains in place and EMT authorities must still deny most applicants with felony records, even if they've been rehabilitated.

That's unconstitutional. And, building on our win in Pennsylvania, we're going to ensure California takes note. ♦

# JUSTICE AT LAST

## FOR VICTIMS OF NYC'S NO-FAULT EVICTION LAW



Although he did nothing wrong, laundromat owner **Sung Cho** faced eviction if he didn't agree to waive his rights. Now, Sung and IJ have won a court victory freeing him and thousands of other New Yorkers from abusive settlement agreements.

### BY SAM GEDGE

Almost four years to the day after launching a challenge to New York City's no-fault eviction law, New Yorker Sung Cho secured justice for himself and thousands of others.

Longtime *Liberty & Law* readers may recall Sung's story: He owns a laundromat in Manhattan and, just before Christmas 2013, he found himself targeted by the city's no-fault eviction machine. Undercover cops had come to his laundromat months before and asked customers and other members of the public if they wanted to buy stolen electronics. Two took the bait. Neither had any connection to Sung's business.

The New York City Police Department (NYPD) did not accuse Sung or his employees of wrongdoing. Instead, attorneys for the city threatened the laundromat with eviction simply

because it happened to be the place where the alleged offenses occurred.

As Sung scrambled to prepare for a Christmas Eve hearing, New York made an offer he couldn't refuse. It would retract the eviction demand if he would agree to three conditions: waive his Fourth Amendment right against warrantless searches, grant police unlimited

access to his security camera system, and allow the NYPD to impose future fines and sanctions for alleged criminal offenses without any opportunity for a

hearing before a judge. Faced with eviction, Sung accepted the city's terms.

His experience was far from unique. Through a program dating back to the 1990s, the NYPD often threatened to evict businesses and residents when somebody—even a total stranger—committed a crime at or near their

**Through a program dating back to the 1990s, the NYPD often threatened to evict businesses and residents when somebody—even a total stranger—committed a crime at or near their property.**

# Judicial Engagement in the Keystone State

Even in the bleakest parts of 2020, IJ had reason to celebrate, with a slate of important victories in state courts. In each, we used state constitutions to protect economic liberty where federal courts have fallen down on the job. Our track record includes great rulings in Georgia, Wisconsin, and the home of American liberty itself, Pennsylvania.

That work in court was complemented by IJ's Center for Judicial Engagement, which hosted a series of Judicial Engagement State Forums that focused on particular state constitutions and emphasized the need for state judges to enforce them in the face of state and local government abuse and overreach. Our first was in Minnesota this past February and, after a pandemic-related change to an online forum, we held our second in Pennsylvania in October.

Bringing together a wide variety of professors and practitioners—including Philadelphia lawyer and legal blogger of “How Appealing” fame Howard Bashman—the forum included in-depth discussions on judicial engagement, the expansive liberties the Pennsylvania Constitution protects, and what parts of it deserve more attention from the courts. One subject that came up over and over was IJ's recent series of victories for entrepreneurs. Engaging the legal community with IJ's success moving the law in the direction of liberty creates a virtuous cycle, making our perspective on these vital principles ever more common. We plan to keep up the forums, and the victories, in the new year. ♦

property. Once eviction proceedings were underway, prosecutors would bully the businesses and residents into signing away their rights.

In 2016, Sung partnered with IJ to file a lawsuit challenging these coercive agreements. The case wound through the federal courts for years. In early 2017, the city overhauled its no-fault eviction law to better protect people's rights. But that amendment did nothing to help the thousands who remained bound by unconstitutional settlements extracted in the past. So we forged ahead with our challenge. In early 2018, the trial court dismissed the case on procedural grounds. Later that year, the court of appeals overturned that decision, allowing the case to proceed.

Those years of perseverance paid off this October when we obtained full relief for Sung and countless other New Yorkers. The city signed a binding order declaring that the NYPD “shall not enforce or seek to enforce” any settlement secured under the old no-fault eviction law. The city also agreed to send notice of the order to the trial courts of the five boroughs, to the NYPD's Civil Enforcement Unit, and to properties targeted for evictions going back to 2014.

IJ's long-fought victory in New York vindicates the rights of Sung and thousands of other innocent New Yorkers—and the principle that no one should lose their home or business without being convicted of a crime. ♦

Sam Gedge is an IJ attorney.



# Free to Rent

## VICTORY FOR PROPERTY OWNERS IN THE TARHEEL STATE

BY ADAM GRIFFIN

This September, IJ scored a victory for property owners in Wilmington, North Carolina, when a judge there struck down a city ordinance that deprived property owners of their rights under an abusive amortization scheme.

IJ clients David and Peg Schroeder are lifelong members of the Wilmington community. After retiring to the mountains, they bought a townhome in Wilmington to preserve their ties to family and friends. Being sure to purchase where vacation rentals were allowed, they renovated the home for dual use as a personal residence and vacation rental.

Then Wilmington changed the rules on the Schroeders: The city enacted an ordinance making it illegal to use a property as a vacation rental without government permission, imposing a hard 2% cap on the number of properties that would be allowed to offer vacation rentals, and declaring that no property could rent within 400 feet of another vacation rental property.

To implement the ordinance, Wilmington entered property owners into a raffle. Winners were granted an exclusive privilege to rent. Losers lost their rights.

Under the ordinance, the Schroeders were losers—forefeiting their right to rent as well as tens of thousands of dollars in improvements. The city allowed the Schroeders one year to “amortize” their lost investment.

Readers of *Liberty & Law* may recognize “amortization” as an underhanded tactic that municipal governments use to take property without paying owners any compensation. Using amortization, a city gives a property owner a limited time to continue using their property for its current use before extinguishing that right. The result? Rather than compensate a property owner, the government forces the owner to work to pay themselves. That is unconstitutional.

Fortunately for the Schroeders and other losers in Wilmington’s scheme, a North Carolina judge agreed. The court ruled that Wilmington’s ordinance was illegal, freeing the Schroeders to rent their property. The city is appealing the ruling, but IJ will fight until we’ve vindicated once and for all the principle that cities cannot strip property owners of their rights—including the right to rent—without compensation. ♦

Adam Griffin is an IJ  
constitutional law fellow.



After Wilmington, North Carolina, tried to raffle away the property rights of **David and Peg Schroeder**, IJ scored a quick victory striking down the city’s illegal ordinance.

# Oklahoma Tries to Take a Bite Out of the First Amendment

BY JUSTIN PEARSON

As anyone who's seen a Cheerios box or Coca-Cola bottle knows, a product's name is often the biggest thing on it. Other words on product labels are usually much smaller, except for large warnings required to highlight dangers, like on cigarette labels.

But this year, at the meat lobby's request, Oklahoma will start treating safe and healthy vegan food as if it were cigarettes. Oklahoma's new law forces plant-based food businesses to overhaul their labels with disclaimers as big as their product names.

This new law is also a new tactic in the meat lobby's playbook. In 2019, IJ successfully challenged a Mississippi law that banned vegan food manufacturers from using terms like "veggie burger." Recognizing that outright bans like these are likely to keep losing, the meat lobby changed tactics, pressing instead for outrageous requirements for its competitors.

Oklahoma's new labeling requirement would have a devastating effect on companies like Upton's Naturals, a Chicago-based manufacturer of vegan foods that IJ also represented in Mississippi. Upton's Naturals markets its foods to consumers around the nation who are specifically looking for alternatives to meat. Unsurprisingly, Upton's Naturals' labels proudly state that its foods are "100% Vegan." But under Oklahoma's new law, clear labels with plain language like this become illegal in favor of government-approved mandatory disclaimers.

This law is unconstitutional. Under the First Amendment, advertising that isn't false or inherently misleading enjoys substantial constitutional protection. Laws restricting this type of speech—and compelling other speech—will be upheld only if the government can show that the laws address a real problem and burden no more speech than necessary.

Oklahoma's law has nothing to do with protecting consumers and everything to do with protecting the meat industry from honest competition. No reasonable consumer who buys Upton's Naturals' foods thinks he is buying animal meat. That is why Upton's Naturals teamed up with IJ to file a federal lawsuit challenging Oklahoma's unconstitutional compelled disclaimer requirement.

This case is just the latest in IJ's three-decade history of protecting people's right to speak truthfully to consumers. And with the support of readers like you—carnivore, herbivore, and omnivore alike—we will stop the Sooner State from taking a bite out of the First Amendment. ♦

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



**Castle Hills** continued from page 4

charge, just to be sure that she spent a day in jail. When the district attorney's office, which had been kept in the dark about the plan, learned what had happened, it dismissed the case—but not before Sylvia spent a terrible day sitting on a cold metal bench in a cell wearing handcuffs and an orange inmate shirt.

Exhausted and facing tens of thousands of dollars in legal bills, Sylvia was ready to give up her fight to hold city officials accountable. That's when IJ stepped in. We partnered with Sylvia to file a lawsuit against the officials who abused their power and violated Sylvia's First Amendment right to speak out against the government.

Sylvia's case shows just how flagrantly government officials can abuse their power when they choose to target someone and how badly they can hurt their citizens. That they can do this and then go on to claim immunity—as they did in Castle Hills when IJ filed suit—is even more outrageous. With our case on Sylvia's behalf and the others in our Project on Immunity and Accountability (page 6), IJ will ensure that government officials who are charged with upholding the law are held accountable when they break it. ♦

Will Aronin is  
an IJ attorney.



**Sylvia Gonzalez** teamed up with IJ to vindicate her First Amendment rights and hold city officials accountable.



**Qualified Immunity** continued from page 7

Both of these cases demonstrate that our project is larger than just the issue of qualified immunity for police officers that captured public attention this past summer. Although we are tackling qualified immunity, our strategy is broader and more ambitious than that issue alone. It is also important to remember that, although much of the recent focus on immunity has been on police misconduct, immunity shields *all* governmental workers—from city council members (as in Sylvia's case) to code inspectors to IRS agents to cops on the beat. More than 20 million people are employed by local, state, and federal governments, so the stakes in this fight are enormous and wide-ranging. IJ is and will be on the front lines in this fight to ensure that none of these officials are above the law. ♦

Scott Bullock is IJ's  
president and  
general counsel.



# 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  
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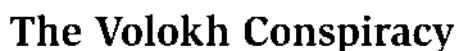
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California threatened to shut down my horseshoeing school  
for admitting students without high school diplomas.

The First Amendment protects the right to teach  
and to learn, so I fought for free speech in court.

And I won.

*I am IJ.*



Bob Smith  
Plymouth, CA

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