



LIBERTY & LAW

February 2021

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LEVELING
Property Owners

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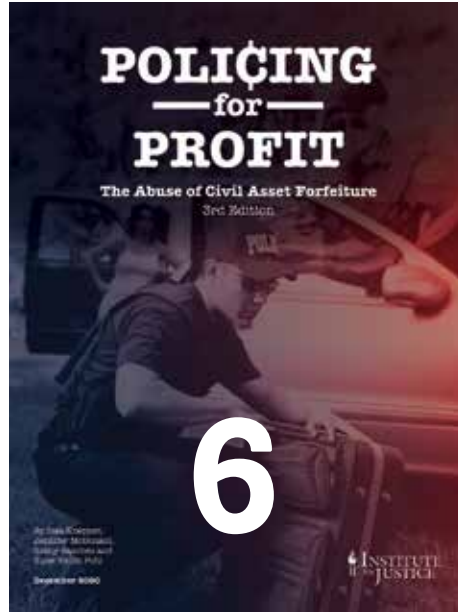
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About the publication: *Liberty & Law* is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication, activism, and research, advances a rule of law under which individuals can control their destinies 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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BIG APPLE RAISES REVENUE BY

LEVELING PROPERTY OWNERS

BY WILLIAM MAURER

What does the Empire State Building have in common with a rooftop pigeon coop in Queens? Both are overseen by New York City's Department of Buildings (DOB)—and subject to the department's nightmarishly complex regulatory system and unconstitutional enforcement processes. The DOB uses its code enforcement power to raise revenue, stacking fine after fine on property owners for often trivial violations. In recent years, most of these skyscraping fines have fallen not on politically powerful developers but on small property owners like IJ client Joe Corsini.

Like thousands of New Yorkers, Joe likes keeping pigeons and started building a coop on the roof of his duplex in Queens. Urban pigeon keeping is a long and storied tradition in the Big Apple. Throughout the mid-20th century, hundreds of coops dotted rooftops in all five boroughs, and

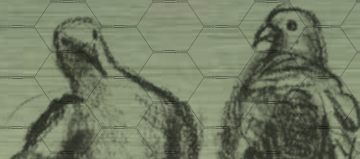
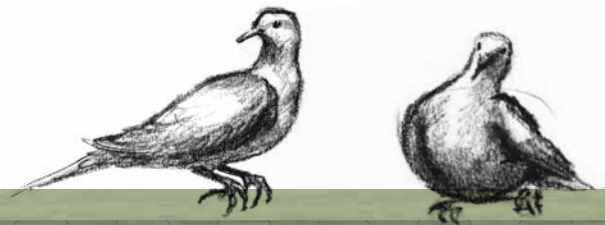
All told, the city issued Joe eight tickets totaling \$11,000—all for attaching chicken wire to a few pieces of wood.

Joe's father and grandfather also cared for the birds. But when Joe decided to build his own coop, he didn't realize he was supposed to get a permit first.

For that oversight, the DOB cited Joe for work without a permit. To bring the coop into compliance, Joe hired an architect to file a formal permit application—which the city repeatedly denied for reasons like not including an overhead sprinkler in the coop. Meanwhile, the city's fines continued to accrue because Joe did not have a permit, even though it also refused to give one to him. Finally, Joe gave up and disassembled the coop.

All told, the city issued Joe eight tickets totaling \$11,000—all for attaching chicken wire to a few pieces of wood.

Joe's fines pale by comparison to those of his fellow Queens resident Emilene Petrus, who was fined more than *\$1 million* for renovating her





After IJ client **Joe Corsini** built a pigeon coop on the roof of his duplex, the New York City Department of Buildings fined him thousands of dollars for work without a permit—fines that accrued even as he worked with the city for official approval. He's teamed up with IJ to challenge the city's unconstitutional enforcement scheme.

house without a permit—more than her home is worth. Yet another owner received more than \$400,000 in fines for an unpermitted garage and bathroom—even though they were installed by the home's previous owner. The city typically seeks the maximum penalty for every fine, making no distinction between an experienced midtown Manhattan developer and an unlucky new homeowner in Staten Island.

This system is not just abusive and irrational—it is unconstitutional. New York may ensure that buildings are safe places to work or live. But it cannot ignore the 14th Amendment. A DOB violation provides no opportunity for property owners to defend themselves and no right to judicial review. That cannot be described as a process at all—let alone one meeting the standards of due process the 14th Amendment

requires. Moreover, the Constitution demands that fines be proportionate—not driving people into poverty for harmless or minor violations.

In December, IJ joined Joe in challenging New York's constitutionally deficient system in federal court. The suit is the latest in our nationwide fight against taxation by citation on behalf of property owners who have been fined thousands of dollars for violations ranging from curtainless windows to unmowed grass to unpermitted flower boxes (see page 8). In representing Joe against New York City's building bureaucracy, IJ will make clear that no city—no matter how big—is above the Constitution. ♦

William Maurer is managing attorney of IJ's Washington office.



The Case for Abolishing Civil Forfeiture Has Never Been Stronger—or More Urgent

BY LISA KNEPPER

In 2015, New Mexico adopted landmark reforms abolishing civil forfeiture and ending the perverse profit incentive that rewarded law enforcement for engaging in the practice. Police and prosecutors bemoaned the new law, which was based on IJ's model for comprehensive forfeiture reform, as a gift to criminal organizations. They predicted a tidal wave of crime. Five years later, the data are in—and the tidal wave was never even a ripple.

These groundbreaking results lie at the heart of the third edition of IJ's flagship forfeiture study, *Policing for Profit*, released in December. Using sophisticated statistical techniques, IJ compared crime rates in New Mexico to those in neighboring Colorado and Texas before and after the 2015 reform. We found no increase in crime, indicating strong forfeiture reform does not compromise public safety. In short, state and federal lawmakers can safely follow New Mexico's lead.

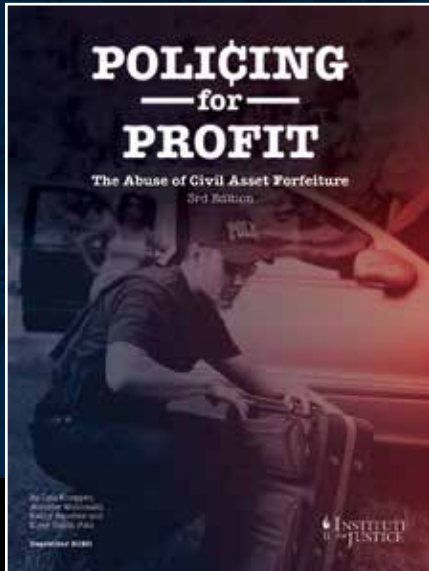
And they should, as the rest of *Policing for Profit* amply demonstrates. This new edition presents the largest ever collection of forfeiture data—17 million data points covering 45 states, the District of Columbia, and the federal

government—and finds that even with significant progress on the litigation and legislative fronts, forfeiture remains a massive nationwide problem. Since 2000, states and the federal government have forfeited at least \$68.8 billion—that we know of. Not all states provided complete data, so this figure likely drastically undercounts forfeiture's true scope.

Not only is forfeiture big, but it simply doesn't work. The New Mexico analysis adds to prior IJ research finding no evidence that forfeiture is an effective crime-fighting tool. Moreover, new data—available for the first time in *Policing for Profit*—show most forfeitures are hardly targeting major criminals like Bernie Madoff and El Chapo. In fact, data from 21 states show half of all currency forfeitures are worth less than \$1,300. In a few states, the typical cash forfeiture is just a few hundred bucks.

These tiny amounts underscore the fundamental unfairness of civil forfeiture. For someone who had a few hundred dollars seized, it's simply not worth it to hire an attorney to navigate complex civil forfeiture laws that are stacked against them at every turn. But for law enforcement, a lot of small-dollar forfeitures add up to a major windfall.





Read the report:
<https://ij.org/report/policing-for-profit-3/>

That's why ending civil forfeiture is essential. And thanks to IJ's efforts (see sidebar), interest in reform among the public and lawmakers has skyrocketed. Since the second edition of *Policing for Profit*, 32 states and the federal government have adopted reforms. While many of these new laws represent important strides, critical work remains. None have—yet—matched New Mexico's gold-standard 2015 bill. And evidence suggests forfeitures may spike in the coming months as law enforcement agencies face budgetary pressure due to the pandemic. Forfeiture reform has never been more urgent.

Fortunately, with the third edition of *Policing for Profit*, the case for reform has never been stronger or more tailored to each state. IJ will use this research and every tool at our disposal to, once and for all, end civil forfeiture and the profit incentive that fuels it. ♦

Lisa Knepper is an IJ senior director of strategic research.



IJ's Civil Forfeiture Work Seizes the Spotlight—and Secures Change

The day before IJ published the third edition of *Policing for Profit*, highly regarded investigative journalism outlet *ProPublica* previewed our findings in an exclusive story headlined “Police Say Seizing Property Without Trial Helps Keep Crime Down. A New Study Shows They’re Wrong.” Ten years ago, this type of high-profile news coverage of the once obscure issue of civil forfeiture would have been unthinkable.

Now, thanks to IJ, civil forfeiture is widely known as an outrageous abuse of property and due process rights. Since we published the first edition of *Policing for Profit* in 2010, media mentions of civil forfeiture have increased 30-fold, and more than 350 editorials from nearly 140 outlets have argued for reform or outright abolition of the practice, often citing our research. Polling consistently finds sizable majorities of Americans oppose forfeiting property from people without convicting them of any crime.

And IJ's results are not limited to the opinion pages. Since setting our sights on civil forfeiture, we've successfully litigated nearly two dozen forfeiture cases, including one that shut down the massive forfeiture machine in Philadelphia. We ended an IRS forfeiture program that seized millions of dollars from thousands of Americans' bank accounts without proof of wrongdoing. We've inspired legislative reform in a total of 35 states and D.C. And \$17 million in seized assets has been returned to innocent owners thanks to IJ's efforts.

This sea change demonstrates the power of IJ's unique combination of litigation, strategic research, communications, and legislative advocacy. More importantly, it lays the groundwork for meaningful reform that, as the third edition of *Policing for Profit* makes clear, is more urgent than ever. ♦

IJ Soars in to Fight Outrageous Fines and Fees in Eagle, Wisconsin

BY KIRBY THOMAS WEST

Erica and Zach Mallory purchased property in Eagle, Wisconsin, to establish Mallory Meadows in 2016. They hoped the family farm would one day enable them to retire from their day jobs. Unfortunately, their dream of idyllic rural living turned into a nightmare when they found themselves in the crosshairs of the town's code enforcement scheme.

When Erica spoke out on behalf of

neighbors she believed had been unfairly targeted by code enforcers, she found her own small farm under those enforcers' microscope. The Mallorys became the subjects of an enforcement action threatening \$20,000 in liability for offenses like having too-tall grass, an unpermitted flower box, and two livestock more than the limit.



Eagle, Wisconsin, threatened IJ clients **Zach and Erica Mallory** with thousands of dollars in fines for minor code violations, such as an unpermitted flower box, after the couple spoke out about the town's unjust code enforcement practices.



Joe and Annalyse Victor joined forces with IJ after facing \$87,900 in fines for parking trucks on their rural property, including more than \$20,000 payable to the private law firm the town hired to help aggressively enforce code violations.

The connection between the Mallorys' political engagement and the enforcement actions against them is not speculative. In an email to Erica, a board member noted that the Mallorys had "ticked off all the board members with [their] meeting comments," leading the board to "vote with emotion" to pursue the enforcement action.

Targeting residents in retaliation for political expression violates the right to criticize the government that is core to the First Amendment's guarantee of free speech. And the First Amendment is not the only constitutional protection Eagle's fines and fees system disregards. The town engaged a private firm, the Municipal Law & Litigation Group, as its town attorney. The firm charges an hourly rate to direct enforcement actions, which gives it a strong incentive to draw those actions out. Then, in addition to subjecting victims to monthslong headaches, the firm puts them—not the town—on the hook for its bills. As a result, inconsequential violations become tens of thousands of dollars in liability.

Take for example the \$87,900 judgment against Joe and Annalyse Victor. Joe, a truck driver, noticed that the prior owner of his 10 acres of rural land parked his trucks on the property. Joe confirmed that his neighbors didn't mind and

then did the same. Then Eagle cited the Victors for violations related to their trucks and, as they scrambled to comply, enforced the fines in court without notifying the Victors of the hearing. The town's attorney went so far as to ask the judge to threaten Annalyse with six months in jail unless the couple paid every dollar immediately. That makes sense when you consider that more than \$20,000 of the jaw-dropping \$87,900 judgment was attorney fees payable to—you guessed it—the Municipal Law & Litigation Group.

The town of Eagle is small, but the constitutional problems with its code enforcement process are massive. And, as the cover story of this issue of *Liberty & Law* describes, these problems are endemic in similar enforcement schemes in cities, large and small, across the country. That's why the Mallorys and Victors joined with IJ to take a stand against this rampant violation of constitutional rights and put an end to local governments' ability to prioritize their own financial gain over public health and safety. ♦

Kirby Thomas West
is an IJ attorney.



The town of Eagle is small, but the constitutional problems with its code enforcement process are massive.



Long-Awaited **VICTORY** for Virtual Veterinarian

BY JEFF ROWES

IJ victories require perseverance. We must overcome bad precedent, entrenched opposition, and, sometimes, losses in court. When we lose, our perseverance may take the form of a media blitz to shame our adversaries into reform or a legislative push to repeal a bad law. It might also mean heading back to court for a rematch.

In December 2020, Dr. Ron Hines, a veterinarian in Brownsville, Texas, won his First Amendment rematch with the Texas veterinary board, which fined and suspended him for offering his expert advice to pet owners online. Ron first teamed up with IJ in 2013 to challenge a law that required veterinarians to examine an animal in person before talking to its owner over the phone or internet.

Back in 2002, disability forced Ron to retire from the brick-and-mortar

practice of veterinary medicine. But, like many retirees, he still had a wealth of knowledge and experience to share with the world. He began using the internet to help pet owners across the country and around the globe. For 10 years, Ron helped hundreds of people care for their animals without incident, either for free or for a nominal fee to cover his expenses. Then in 2012, the Texas vet board cracked down on him, enforcing a law that made it illegal to talk to pet owners about their pets without first examining the animal in person.

IJ and Ron brought a free speech lawsuit as part of IJ's national effort to ensure that occupational speech—that is, speech people engage in for a living—receives the same First Amendment protection as any other speech. When we filed our case, courts often treated this kind of speech as a constitutional pariah, allowing the



IJ's years of legal advocacy for occupational speech paid off when we secured a long-fought victory at the 5th U.S. Circuit Court of Appeals on behalf of retired veterinarian **Dr. Ron Hines**, our fourth federal appeals court victory for occupational speech in 2020.

IJ will fight on to secure a complete and final victory that allows Ron to get back to doing what he does best: helping people and their pets.

government's ability to regulate occupations to trump the First Amendment in almost every case. As a result, we lost Ron's case in 2015, with the 5th U.S. Circuit Court of Appeals ruling that his emails and telephone calls—despite consisting only of words—were not really speech because he was a “professional.”

But IJ continued to forge ahead on occupational speech in our own cases and in amicus briefs in others. This paid off in a string of court victories, including a 2018 Supreme Court decision that adopted our view of occupational speech. The Court explained that speech is not unprotected merely because it is uttered by professionals. This landmark ruling enabled IJ and Ron to go back to court and right a wrong.

After two more years of hard-fought litigation, Ron prevailed before the 5th Circuit, which ruled that the 2018 Supreme Court decision had nullified his earlier loss and that the First Amendment indeed protects occupational speech. This was the *fourth* federal appeals court victory IJ secured in 2020 in an occupational speech case. In just over 10 years, IJ has prompted a complete about-face by the courts on the issue of occupational speech, transforming free speech law from “of course occupational speech isn't protected” to “of course it is.”

This victory for telemedicine couldn't have come at a more important time. As the pandemic has made clear, telepractice is essential in all fields. IJ will fight on to secure a complete and final victory that allows Ron to get back to doing what he does best: helping people and their pets. Meanwhile, with the First Amendment now on their side, countless other professionals and their clients will also have robust legal protection against pointless and often protectionist laws. ♦

Jeff Rowes is an IJ senior attorney.



GIVING SMARTER With Your IRA

Many of us have had the satisfaction of watching the money in our IRAs grow, tax free, for years. But the day inevitably arrives when Uncle Sam knocks at the door with an outstretched palm. At age 72, you are subject to Required Minimum Distributions (RMDs)—forced withdrawals meant to subject your IRA funds to taxation. By transferring these funds to IJ, however, those gains on your hard-earned money will never be taxed.

“Wait a minute,” you say. “Congress suspended RMDs for 2020 as part of the CARES Act—is giving from my IRA still an option?” The answer is yes! You must resume RMDs in 2021, and you are eligible to make Qualified Charitable Distributions (QCDs) as soon as you turn 70½—before you are required to make RMDs at all. With a QCD, you can direct your plan administrator to transfer up to \$100,000 per year from your IRA to IJ—tax free.

By reducing your IRA's value now, you will reduce the RMD for future years, which may help reduce future taxes. You may also be saving your family potential estate tax liability. This option is especially savvy for those who already plan to give to charity. Take for example an individual with a tax rate of 24% who does not plan to itemize. A \$10,000 gift directly from an IRA would save \$2,400 in taxes as compared to a gift of cash.

For more information on how to leverage your IRA through charitable giving, please visit ij.org/IRA-gifts. For questions about planned giving—including gifts of retirement assets—feel free to contact us directly at plannedgiving@ij.org. ♦

License to Zoom?

As Therapy Moves Online, IJ Fights for the Right to Talk Across State Lines

BY ROB JOHNSON

Like many people, Elizabeth Brokamp moved her job online when the pandemic began. She is a professional counselor—meaning she uses talk therapy to help people feel better—and online teletherapy has allowed her to continue helping people during a difficult time.

But by making use of new technology to continue her work, Elizabeth ran into a licensing thicket. Because she provides counseling online, it makes no difference to Elizabeth where her clients live. But, in the eyes of regulators, talking to a client in the wrong location turns counseling into a crime.

Elizabeth is licensed as a professional counselor in Virginia, where she is located, but she cannot talk to new clients just across the river in Washington, D.C., without a D.C. license. As a result, although Elizabeth has been contacted by District residents seeking her help, she has been forced to turn them away. And the problem is by no means limited to D.C., as many states have similar laws. Just



IJ client **Elizabeth Brokamp**, a Virginia-based professional counselor, is fighting for her right to free speech by challenging a Washington, D.C., law that forbids her from offering counseling to District residents online.

keeping track of every state's licensing laws would be a full-time job.

These restrictions violate the First Amendment. Counseling is speech: Elizabeth does not prescribe medicine or perform medical procedures. Literally all she wants to do is talk to clients over internet video, and the Constitution protects her right to do just that.

Elizabeth teamed up with IJ to challenge D.C.'s restrictions on her use of teletherapy. Ultimately, though, the case is about a broader principle. Counselors like Elizabeth have the same right as anyone else to talk to willing listeners—no matter where they reside.

The fact that Elizabeth can even make that argument is a testament to IJ's work in other cases. Not long ago, many courts held that, while the First Amendment might apply to journalists, professors, and artists, other occupations somehow fell outside its scope. But of course the First Amendment says nothing of the sort, and IJ has persuaded courts to recognize that in cases involving tour guides, nutritionists, interior designers, and (as described on page 10) a veterinarian named Ron Hines. As a result, we have built a body of law under which Elizabeth's arguments are not just reasonable but obviously correct.

The government needs to get out of Elizabeth's way. And, more broadly, the government needs to get out of the way of counselors across the country who are making greater use of teletherapy during the pandemic. Teletherapy is innovative, safe, and—when all is said and done—nothing more than speech. ♦

Rob Johnson is an IJ senior attorney.



Counseling is speech: Elizabeth does not prescribe medicine or perform medical procedures. Literally all she wants to do is talk to clients over internet video, and the Constitution protects her right to do just that.

Law Enforcement Veteran ASKS SUPREME COURT TO PROTECT HIS RIGHTS—AND THE CONSTITUTION

BY ANYA BIDWELL AND PATRICK JAICOMO

Jose Oliva, a 75-year-old Vietnam veteran and grandfather, spent his life serving his country. After years in the U.S. Air Force, he worked for more than three decades in law enforcement at federal, state, and local agencies. Now, he is fighting for his constitutional rights—and the rights of others like him—after he was violently assaulted by federal police officers.

In February 2016, Jose was on his way to a routine dentist appointment at the El Paso, Texas, Veterans Affairs hospital. As he had many times before, Jose got in line to go through security. After he placed his belongings into a plastic bin, a security guard and federal officer asked Jose for his ID. Jose pointed to the bin, where he'd just put the ID. Irritated by a perceived lack of deference, the officer came around the conveyor belt. When a second officer gestured for Jose to proceed to the metal detector, the first attacked Jose from behind, placing him in a chokehold and slamming him to the ground. Two other officers piled on.

The attack left Jose with shoulder damage that two surgeries could not repair and destroyed the gold watch he'd received in honor of his service in law enforcement. It also outraged his sense of justice. So he sued the officers for violating his constitutional

rights. Predictably, they claimed qualified immunity—the court-created legal doctrine that shields most government officials from accountability in court, no matter how egregious their actions. Jose prevailed at the district court, but the officers appealed, and the 5th U.S. Circuit Court of Appeals held that, even if qualified immunity does not apply, Jose still can't sue because his assailants happened to be federal, rather than state, officers.

Federal officers are not above the U.S. Constitution, and Jose must be able to hold them accountable for violating his rights.

ing his rights. If allowed to stand, this ruling means any federal official in Texas, Mississippi, and Louisiana—the three states within the 5th Circuit's jurisdiction—is free from all meaningful constitutional oversight.

IJ is not about to let that happen. In January, we joined Jose in asking the U.S. Supreme Court to overturn the 5th Circuit's ruling. This case is part of IJ's Project on Immunity and Accountability and our fight to ensure that all Americans have a way to hold government officials accountable in court when their constitutional rights are violated. ♦

The 5th Circuit is wrong. Federal officers are not above the U.S. Constitution, and Jose must be able to hold them accountable for violat-

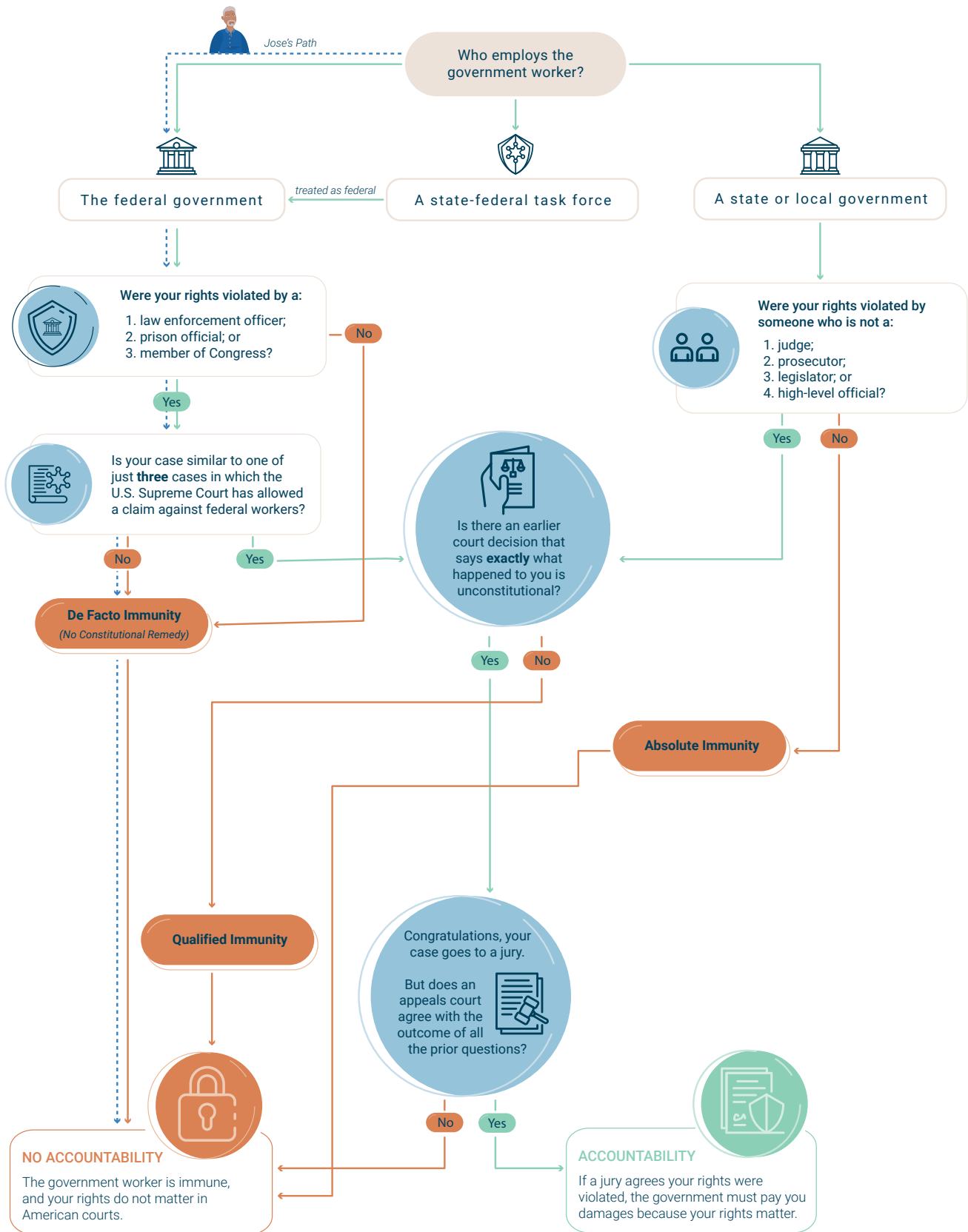
Anya Bidwell and Patrick Jaicomo are IJ attorneys.



Jose Oliva is fighting for his constitutional rights—and the rights of others like him—after he was violently assaulted by federal police officers.

A Government Worker Has Violated Your Constitutional Rights.

Can You Hold the Perpetrator Accountable?



VICTORY

FOR FOOD TRUCKS IN SOUTH TEXAS

BY ARIF PANJU

Operating a small business is challenging enough these days without the government picking winners and losers. But that's exactly what city officials did to food truck owners hoping to earn a living in South Padre Island, Texas. This past December, IJ ended that blatant protectionism.

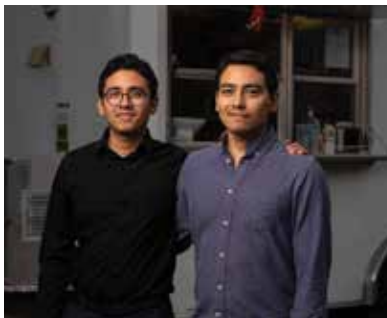
Until 2016, this Texas tourist destination in the Rio Grande Valley banned mobile food vendors from serving crowds of hungry beachgoers. When the city finally allowed food truck entrepreneurs in, local restaurant owners complained. In response, the City Council allowed them to rewrite the ordinance and add two anticompetitive provisions. The new provisions capped the number of food truck permits at a mere 12 and required applicants to obtain the signature of a local restaurant owner—their brick-and-mortar competitors—to even qualify for one of the permits.

IJ sued, and the district court struck down both the city's absurd permit cap and the restaurant-permission scheme that allowed local restaurant owners to act as gatekeepers to food truck permits. This victory removes both barriers for food truck owners like IJ clients SurfVive,

a local nonprofit that promotes healthy food options, and brothers Anubis and Adonai Avalos, who operate a vegan food truck in nearby Brownsville, Texas, when they are not teaching music. Each stood shoulder to shoulder with IJ through 21 months of intense litigation.

IJ's latest victory on behalf of food trucks is also reflective of our strategic approach to creating long-term legal change. This challenge against South Padre Island builds upon our 2015 victory in *Patel v. Texas Department of Licensing and Regulation*—IJ's landmark Texas Supreme Court win for eyebrow threading entrepreneur Ash Patel. *Patel* cemented meaningful judicial review in economic liberty challenges under the Texas Constitution. IJ's challenge in the Rio Grande Valley not only applies that precedent but also seeks to extend it by establishing that laws serving only to pick winners and losers in the marketplace violate the Texas Constitution.

The city has appealed this decision, so IJ will press on to defend our victory—and the rights of all Texas entrepreneurs—at the court of appeals. ♦



Brothers Adonai (left) and Anubis (right) Avalos are free to operate their food truck in South Padre Island after an IJ victory struck down an anticompetitive law that severely restricted food trucks on the island.

Arif Panju is managing attorney of IJ's Texas office.



Local nonprofit SurfVive, led by Ryan Macaulay and Erica Lerma, can now offer healthy food from their food truck thanks to IJ's latest victory for food freedom.

Windy City Entrepreneurs Aim for the Sky in South Side Pitch Competition

BY ERIK CASTELAN

With challenges come opportunities. This was the mantra of the 2020 South Side Pitch competition, the IJ Clinic on Entrepreneurship's annual *Shark Tank*-style event.

In the past, the event has given South Side startups a chance to compete for prizes to help launch their businesses. But with so many existing businesses struggling this year, the IJ Clinic decided to focus on established businesses that have helped build up the South Side community but are fighting to keep their doors open amid the ongoing pandemic. We also took the event to a virtual platform and livestreamed and uploaded each participant's pitch to our Facebook and YouTube accounts for everyone to see.

This year's competition connected us to some incredible finalists who are constantly finding ways to reinvent themselves and their businesses to better serve their customers. Winners were selected based on the evaluations of judges and the votes of audience participants.

First place went to The Black Mall, a marketplace of Black-owned businesses that includes an online business directory and a brick-and-mortar shop selling products from more than 50 Black-owned businesses. The



SOUTH SIDE PITCH



The Black Mall, founded by **Cassiopeia Uhuru** and **Dre Meekins**, won first place at the IJ Clinic on Entrepreneurship's 2020 South Side Pitch, an annual competition that promotes Chicago small businesses.

business also won the most votes from the public in the contest's semifinal round and plans to use the \$11,000 prize to upgrade its website and expand its fulfillment center.

New Magnolia Garden Center, a U-pick farm and garden center, took second place and a cash prize of \$7,000. Entrepreneur Tia Gadberry loved gardening so much that she turned her passion into a dream. She opened an urban farm after noticing her neighborhood lacked an adequate selection of fruits and vegetables.

Third place and \$5,000 went to Lemonade Land, which was born out of the pandemic as an outdoor space for small- and micro-businesses to safely sell their products. With the help of local businesses and residents, it opened a pop-up marketplace in an abandoned plot of land.

At IJ, we are constantly inspired by the courageous and ambitious entrepreneurs we work with. And like them, we will keep responding to times of challenge with new tools and resources that allow hardworking people—in Chicago and throughout the nation—to earn a living and bring prosperity to their communities. ♦

Erik Castelan
is operations and
community relations
manager at IJ's Clinic
on Entrepreneurship.



Shelter in Place— if Zoning Officials Let You

BY DIANA SIMPSON

Imagine that you have a piece of property that you want to use. But first you need to get a permit from the town. You check off each code requirement, pull together your application with a professional site plan, and set off for a hearing. But there's one last thing you didn't account for: bureaucrats who don't want you in town.

Sadly, this isn't a hypothetical—it's the injustice the Catherine H. Barber Memorial Shelter is facing in North Wilkesboro, North Carolina.

For more than 30 years, the Barber Shelter has provided a warm and safe place to sleep for people experiencing temporary homelessness.

The Barber Shelter was looking for a new space when a retired local dentist generously offered to donate his office building. It is perfect: it is just the right size, it is in a great location for a shelter (nonresidential and near public transit), and it satisfies all the North Wilkesboro zoning code requirements.

But the town wasn't pleased with the development. "The issue here is that it meets the zoning requirements, but that doesn't mean it belongs there," said the chair of the Board of Adjustment in denying the Barber Shelter's permit. Because the

shelter met every objective requirement, the board's objections became more nebulous: It would lower neighboring property values and not be "harmonious" with its neighbors, which are typical businesses that serve people of modest means, like a cell phone store and a dollar store.



After North Wilkesboro, North Carolina, denied a permit to the Catherine H. Barber Memorial Shelter—despite the building meeting all zoning requirements—the shelter joined with IJ to challenge the town's arbitrary and illegal decision.

But the Constitution doesn't have a harmony exception. And it's illegal for the government to use its zoning power to penalize or arbitrarily restrict the property rights of certain kinds of people or certain types of places.

This case is much bigger than a modest shelter in a small town. Governments should not be able to veto productive, valuable uses of property

without a very good reason. North Wilkesboro's Board of Adjustment lacked *any* legitimate reason to deny the Barber Shelter its sought space. In doing so, the board violated both the U.S. Constitution and North Carolina property law. The Barber Shelter has teamed up with IJ to defend its right to serve the needy at this location and to ensure that all property owners—in North Carolina and beyond—are treated equally. ♦

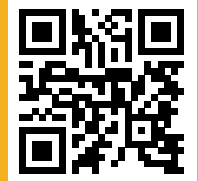
Diana Simpson is an IJ attorney.



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THE TOPEKA CAPITAL JOURNAL cjonline.com

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November 22, 2020

When it comes to Nariah's education, I don't have time to waste.

I want her to get the education she needs to grow, learn, and thrive.

When the teachers' union filed a lawsuit against school choice in my home state of North Carolina, I teamed up with IJ to fight back.

I am IJ.