



LIBERTY & LAW

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IJ Wins First Round Against **FBI Cash Grab**

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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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FBI VAULTS OVER THE CONSTITUTION TO ILLEGALLY SEARCH AND SEIZE SAFE DEPOSIT BOXES

Store it... Insure it!

Serving Beverly Hills Since 2011!

BY ROBERT FROMMER

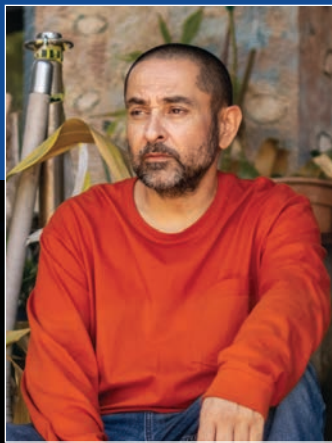
Everyone has the right to contract for a safe, private place to store their property. That's what Jeni Pearsons and Michael Storc wanted for their retirement nest egg. But now Jeni, Michael, and hundreds of other innocent people must fight to keep what's theirs after the federal government broke into their safe deposit boxes, rifled through their belongings—and stole them all.

Jeni and Michael live in Los Angeles. Seeking to diversify their savings, they bought a few hundred dollars of silver whenever they had extra cash. To keep their property safe, they rented a safe deposit box at a California company called U.S. Private Vaults.

Unbeknownst to Jeni and Michael, the U.S. Attorney in Los Angeles alleged that U.S. Private Vaults violated federal law. The government decided to search the company's property and seize items connected to the business. Though it suspected the company of wrongdoing, there was no reason to suspect any individual box holder of wrongdoing. The government promised it would not search anyone's box and obtained a warrant that specifically "[did] not authorize a criminal search or seizure of the contents of the safety deposit boxes."

The government lied. Upon executing the warrant, Federal Bureau of Investigation agents rummaged through the contents of every owner's box. They ran any cash they found by drug-sniffing dogs, tore open sealed envelopes, and made copies of documents. They took video of their search through

After the FBI seized her retirement savings, **Jeni Pearsons** joined IJ's class action suit against the government's illegal search and seizure of hundreds of safe deposit boxes.



The government illegally took property from nearly 400 people—including IJ clients **Jennifer and Paul Snitko** (left), **Joseph Ruiz** (center), and **Travis May** (right)—and is now trying to keep more than \$85 million.

heirlooms and other possessions. Though their search authority was explicitly limited to determining a box's owner in order to return property, agents opened and searched a box even when information about the owner was clearly provided. In the end, they seized everyone's belongings.

The FBI defied its warrant and box holders' Fourth Amendment rights—and it gets worse. The federal government compounded its illegal search and seizure with an illegal cash grab. After holding renters' property for several months, the government moved to take more than \$85 million in cash and millions more in precious metals and jewelry stolen from Jeni, Michael, and nearly 400 others using civil forfeiture.

So Jeni, Michael, and several other box holders teamed up with IJ to launch a class

action lawsuit challenging the government's raid as an illegal search and its attempted forfeitures as unconstitutional under the Fourth and Fifth Amendments.

We won an early victory less than a month after we filed suit when a federal court granted us a temporary restraining order against the government, noting that there is "no factual basis for the seizure of Plaintiffs' property whatsoever." We will expand this victory to ensure that every individual who had property seized in the raid is afforded the protections the Constitution guarantees. ♦

Robert Frommer is an IJ senior attorney.




IJ DEFENDS IOWA RENTERS' FOURTH AMENDMENT RIGHTS

BY JOHN WRENCH

Imagine two identical homes on any street in the United States. The only difference is that House A is not a rental property, and House B is. A government inspector walks up to House A, knocks on the door, and demands entry to conduct a routine inspection for code violations. The owner of House A declines, so the inspector moves on to the next home. At House B, the inspector similarly demands entry and the person living there similarly declines. Undeterred, the inspector goes to court and obtains an “administrative warrant,” returns to House B, and enters over the objections of the person living there—all without any evidence that there is a code violation or any other issue with the property. The inspector then searches every nook and cranny of the person’s home, opening closets, seeing religious and political information, and revealing what’s underneath beds.

In Orange City, Iowa, that nightmare scenario is real life. The city’s rental inspection ordinance requires property owners to obtain a permit to lease their property. Before it will issue those permits, however, the city demands that

A photograph of a man and a woman standing on a wooden porch railing in front of a house. The man, on the left, has a beard and is wearing a blue long-sleeved shirt. The woman, on the right, has dark hair and glasses, wearing a denim jacket over a light-colored top. They are both looking towards the camera. The background shows a white house with a green door and some foliage.

Orange City renters **Bryan Singer** and **Erika Nordyke** don’t want strangers snooping around their home. They’ve teamed up with IJ to protect their privacy.



IJ is challenging Orange City, Iowa's warrantless rental inspections to protect the property and privacy rights of tenants and landlords alike. IJ clients left to right: Tenant **Amanda Wink**, landlord **Bev Van Dam**, and landlord **Josh Dykstra**.

an inspector enter each renter's home and conduct invasive searches. And if a renter refuses to let the inspector into their most private spaces—as most homeowners would certainly do—the inspector can obtain an administrative warrant by simply showing that someone rents their home.

A coalition of Orange City tenants and their landlords are challenging the city's abusive inspection ordinance. One of those tenants, Amanda Wink, rents a single-family home from landlords Bev and Bert Van Dam. Amanda, who shares the home with her fiancé, children, and two dogs, moved back to her hometown of Orange City for more privacy. Because she is pregnant and her fiancé is often away from home as a truck driver, she is firmly opposed to having strangers in her home. But under Orange City's inspection ordinance, an inspector can get an administrative warrant to forcefully enter and search Amanda's home even though there is nothing wrong there.

Under the Fourth Amendment, the government cannot normally enter your home without a warrant supported by probable cause. But in the 1967 case *Camara v. Municipal Court*, the U.S. Supreme Court

invented administrative warrants, which allow the government to enter renters' homes using a watered-down version of probable cause. The Iowa Supreme Court, however, has repeatedly held that the Iowa Constitution is more protective than the Fourth Amendment when it comes to searching Iowans' homes.

This isn't the first time IJ has challenged unconstitutional inspection ordinances or made use of the property rights and privacy provisions in state constitutions to protect our clients. In Pottstown,

Pennsylvania, we are fighting similar abuse under the Pennsylvania Constitution alongside a coalition of tenants and landlords.

The sanctity of someone's home does not depend on whether they own or rent. If Orange City wants to enter and search a tenant's home without their consent or evidence of a code violation, it should have to comply with the same requirement for entering a property owner's home: Get a warrant supported by probable cause. ♦

The sanctity of someone's home does not depend on whether they own or rent.

John Wrench is an IJ attorney.



Long Island Town Tries Every Tool in the Box to Stop Family-Owned Hardware Store

BY ARIF PANJU

Success in business should depend on a lot of things: The quality of your product. Your customer service. Your marketing savvy. What shouldn't it depend on? How much local bureaucrats like you. Unfortunately, all too often, city and county officials act as though that is the only thing that matters.

So it is with the Brinkmann family's hardware business. Originally founded by Pat and Tony Brinkmann in 1976, Brinkmann's has grown into a regional success story with four Long Island locations that manage to compete with big box stores, largely thanks to the hands-on approach of Pat and Tony's two sons and daughter.

But when the Brinkmanns wanted to open a new branch of their store on land they'd purchased in Southold, New York, they were met with immediate and unrelenting hostility.

The town didn't want outsiders building on its main thoroughfare, but there was no legitimate basis for denying the family business the right to open there. So it embarked on a series of regulatory delays and demands, hoping the Brinkmanns would just give up and go away.

Southold officials demanded \$30,000 in fees for an "impact" study long after the family had spent thousands on engineers to design the new store. The mayor called the head of the local bank personally to try to induce it to back out of its contract with the Brinkmanns. The town council implemented a "moratorium" on building permits that seemed to apply

only to the Brinkmanns, with the town offering case-by-case exemptions for other projects.

The Brinkmanns pushed through the bureaucracy: They paid the exorbitant fees. They

The town of Southold, New York, embarked on a series of regulatory delays and demands, hoping the Brinkmanns would just give up and go away.

Brothers **Ben** and **Hank Brinkmann** did everything by the book to open a fifth branch of their hardware store in Southold, New York. Now Southold is trying to force them out with a pretextual eminent domain claim.



prevailed in a lawsuit challenging Southold's bogus moratorium. They stood firm and insisted that they had complied with the town's requirements and that their permit should be processed. Finally, almost five years after starting their project, they were on the cusp of breaking ground.

Then the town decided to change the rules again and started a hearing to take the Brinkmanns' land through eminent domain.

As those familiar with IJ's work in this area know, eminent domain can be used to take private property only for a public use. So Southold claimed to suddenly want to build a park on the property. The town had expressed no interest in building a park until the Brinkmanns applied for a building

Brinkmann's continued on page 22



IJ clients **Drs. Todd Bergland** (left), **Carol Bridges** (center), and **Cara Harrop** (right) are free to dispense medication to their patients after IJ's lawsuit prompted a change in Montana law.

New Montana Law Prescribes More Competition in Health Care

Another protectionist law bites the dust.

Forty-four states and D.C. allow doctors to dispense the medications they prescribe. Until recently, Montana was an outlier. The state effectively banned doctors from filling prescriptions for patients unless they practiced more than 10 miles from the nearest pharmacy.

This ban was never about protecting patients. Doctor dispensing is safe and convenient, and it expands patient choice. Instead, it was about protecting pharmacies from competition.

So last year, IJ teamed up with three family doctors and filed a lawsuit to strike down Montana's protectionist ban. The case quickly caught the eye of two key groups: lawmakers and pharmacists.

Lawmakers, eager to cut unnecessary red tape during the pandemic, saw an opportunity to help doctors serve patients. They proposed a bill to eliminate Montana's ban.

Pharmacists felt compelled to act. The Montana Pharmacy Association had spent decades lobbying to keep the ban in place. But IJ's case prompted a change of heart: Rather than oppose the bill, the Association publicly endorsed it, admitting that "at the root of our previous opposition to similar bills was protectionism" and that it was time to put patients first.

After that shocking admission, the writing was on the wall for Montana's ban. The bill flew through the Legislature, receiving near-unanimous support on the way to making Montana the 45th state to legalize doctor dispensing.

IJ's experience in Montana offers a valuable lesson: Sometimes, the best remedy for protectionism is simply to expose it to sunlight. ♦



A License to Discuss Math Is a Formula for Censorship

BY ROBERT MCNAMARA

Wayne Nutt is an engineer. For four decades, he practiced engineering, mostly in North Carolina. Like many engineers, he designed and built all manner of useful things in his career, and, like many engineers, he did so without needing a government license. Because Wayne worked for big manufacturers instead of building public works, he was exempt from North Carolina's licensing requirements for engineers.

But now that Wayne is retired, he no longer wants to practice engineering. He just wants to talk about it. Wayne, like many engineers, has trouble keeping quiet when he sees something wrong or notices a mistake. He wants to help get it right. So in retirement, he has found himself deploying his hard-won expertise to testify at town council meetings and write letters to government officials. Most recently, Wayne served as a volunteer expert witness on behalf of a group of homeowners whose property was flooded in a storm, providing the kind of testimony that, as described on page 11, IJ itself often relies on to explain or clarify issues for a court.

The trouble is that all of this is a crime according to the North Carolina Board of Examiners for Engineers and Surveyors.

Not the part where Wayne designed and built things like hydraulic pipes—that was all fine. It's just talking about it, the Board says, that breaks the law.

In the government's view, only licensed engineers can talk about engineering—even if unlicensed engineers can do an awful lot of actual engineering. In the government's opinion, Wayne can either get a license or shut up. Wayne does not want

to be a licensed engineer because, at 77, he's not looking to start a brand-new career. And he does not want to shut up because, well, he's Wayne Nutt.

That is why Wayne has teamed up with IJ to file a major federal lawsuit as part of the next frontier in our long-running battle to protect the basic right to speak without first obtaining a special license from the government. North Carolina seems to think that it has a monopoly on who can

talk about engineering and that Wayne can be thrown in jail for doing math without permission. With IJ's help, Wayne will do the same thing that got him in trouble in the first place: politely but firmly prove it wrong. ♦



Robert McNamara is an IJ senior attorney.



Wayne Nutt has decades of experience as an engineer, but a North Carolina licensing board is trying to stop him from talking about engineering.



The Litigator's Notebook: How IJ Uses Experts to Prove the Case

BY DANA BERLINER

IJ litigation isn't only about abstract principles of constitutional law, although legal theory is an indispensable part of what we do. We must also provide real-world evidence that convinces courts that we should win. Of course, we present testimony from our own clients, and we cross-examine representatives of the government body that violated their rights. We present lots of documents. But one of the lesser-known parts of litigating a case is using expert witnesses effectively.

Experts play a variety of roles in IJ cases. We sometimes use experts just to give the landscape of an area. Most judges do not know how the funeral industry works, for example, or what eyebrow threading is. In these situations, experts educate the judge about the backdrop of the case so that the rest of the evidence makes sense.

Having someone who can accurately and effectively synthesize information from large numbers of documents can also be extremely useful. Often, we receive thousands of documents from the government, and we need to present evidence about what those documents say. We cannot expect that a judge will go through boxes of paperwork and painstakingly track data; instead, we have an expert do that. For example, in a property rights case challenging a city's demand that renters submit to warrantless searches—much like our case in Orange City, Iowa, described on page 6—we engaged an expert to go through hundreds of home inspection reports and see if those inspections actually turned up conditions that were genuine health or safety problems. (The answer? No.)

Experts can also speak from their knowledge of an area. In a lawsuit over a ban on the sale of homemade baked goods, for instance, an expert food microbiologist testified that he had never seen a report of someone getting sick from a homemade

cookie. In one of our hair braiding cases, our expert testified about the fact that the cosmetology curriculum the state required braiders to complete did not teach braiding. She showed that by pointing to pictures of her own work in the standard cosmetology textbook and noting that the textbook incorrectly explained the techniques used.

Other times, getting to the information at the heart of a case requires experts to do an experiment. In a food truck case, for example, an expert studied foot traffic patterns near both restaurants and food trucks to see if food trucks blocked sidewalks, as our opponents claimed. (The answer? No.) In our lawsuit against Albuquerque's civil forfeiture program, our expert determined that the program was completely self-funding, meaning that employees' salaries and jobs depended on the city taking enough money.

Yet another way that experts help us is by reading the report of a competing expert and letting us know the best questions to ask at deposition. In one challenge to outrageous property code fines, our expert advised us to ask questions about standard municipal accounting practices to see if they were followed. (The answer? No.) We then showed the court that the city's dependence on fines also differed from standard financial practice, giving the court just one more reason to strike down the city's abusive policies.

With the help of expert witnesses and many other types of evidence, we show courts that financial incentives infect local government fining and forfeiture practices and that claims about the benefits of regulations that stifle entrepreneurship are completely false. Again and again, we combine strong evidence with convincing legal arguments and constitutional principles to make the world a freer place. ♦

Dana Berliner is IJ's senior vice president and litigation director.





CERT GRANTED:

IJ Goes Back to the U.S. Supreme Court to Defend Educational Choice

BY MICHAEL BINDAS

On July 2, IJ—and parents who desperately want greater educational opportunity for their children—received some very welcome news from the U.S. Supreme Court: The Court announced that it would take up IJ’s challenge to Maine’s exclusion of religious options from the state’s educational choice program. This marks IJ’s 10th trip to the high court—and a chance to resolve one of the remaining big constitutional questions around educational choice.

In Maine, many small towns operate “tuitioning” programs. If a student lives in a town that neither operates its own public high school nor contracts with a school to educate its resident students, the town pays tuition for the student to attend the school of their parents’ choice—public or private, in-state or out-of-state

There is one choice, however, that

parents may not make: any school that provides religious instruction. In other words, the state will—and does—pay for students to attend some of New England’s most elite secular prep schools, but it takes off the table a Jewish day school, Islamic school, or local Catholic parish school.

Readers may recall that IJ’s 2020 victory in *Espinoza v. Montana Department of Revenue* dealt with a similar kind of limit to parents’ options in an educational choice program. In that case, the Court ruled decisively that states cannot pass a generally available educational choice program and then prevent parents from choosing a religious school as part of the program. Nevertheless, the 1st U.S. Circuit Court of Appeals upheld Maine’s religious exclusion.

That’s because, according to the 1st Circuit, Montana’s

The 1st Circuit readily acknowledged that excluding schools because they are religious is unconstitutional, but it held that excluding schools because they do religious things is just fine. We trust the Supreme Court will see things differently.



IJ is headed back to the U.S. Supreme Court on behalf of Maine families like the **Carsons** (opposite page), the **Nelsons** (above left), and the **Gillises** (above right) so they and families across the country can choose the educational options that meet their children's needs.

exclusion in *Espinoza* turned on the religious status or identity of the excluded schools, whereas Maine's religious exclusion turns on the religious use to which a student's benefit would be put: namely, whether the schools teach religion.

Seem like hairsplitting? It is. But to the 1st Circuit, this religious "status" vs. religious "use" distinction was a distinction with a constitutional difference. The court readily acknowledged that excluding schools because they *are* religious is unconstitutional, but it held that excluding schools because they *do* religious things is just fine. We trust the Supreme Court will see things differently.

Our victory in *Espinoza* last summer paved the way for greater educational opportunity for America's schoolchildren. The decision, coupled with parental frustration at the way the public school establishment has handled the pandemic, resulted in a spate of new

and expanded choice programs in the 2020–2021 legislative session. But opponents of choice are a dogged bunch, and they have been seizing on the 1st Circuit's warped reasoning to try to defeat those efforts and deny greater parental choice in education.

IJ won't let that happen. We will defend and expand our victory in *Espinoza* so that children can access the schools that will best meet their unique, individual needs. For some, that may be a school with a great STEM curriculum; for others, one with a strong arts program or language immersion classes. And for others still, it may be a school that provides religious instruction alongside its general education program. Parents know better than anyone what will work best for their kids, and IJ will ensure that the government cannot deny them that choice. ♦

Michael Bindas is an IJ senior attorney.



DOUBLE THE FREEDOM, DOUBLE THE FUN

For Second Straight Year, Florida Sets the Standard
in Economic Liberty Reforms

BY JUSTIN PEARSON

In 2020, Florida enacted IJ's historic overhaul of the Sunshine State's occupational licensing barriers. It turns out that the Florida Legislature was just getting warmed up—and IJ was happy to help every step of the way.

This spring, Florida lawmakers passed 10 different economic liberty bills actively supported by the Institute for Justice. Sometimes, we even wrote them.

The IJ-backed bills targeted a wide range of industries. To make life easier for home-baking businesses, Florida's cottage food reform raises the state's annual revenue cap, overrides local red tape, allows business partnerships to form, and legalizes shipping cottage foods. (For more good news on food freedom, see page 16.) For alcohol sales, restaurants with full liquor licenses can sell cocktails to go, while craft distillers saw their production limits rise from 75,000 to 250,000 gallons.

Other reforms provided regulatory relief through greater flexibility. Barbers can now cut hair outside of barbershops. Volunteer ambulance services no longer need a certificate of need. And alarm system contractors can start installing systems while their permit applications are pending.

This spring, Florida lawmakers passed 10 different economic liberty bills actively supported by the Institute for Justice.

Florida's latest slate of reforms also reined in protectionist local governments run amok. A new home-based business reform says that if you are not bothering anyone by working from home, then

local governments must leave you alone. Another reform bans local governments from imposing licenses on a long list of occupations. After all, a job safe in one town does not suddenly become dangerous the next town over. Finally, a new law will speed up the permitting process by requiring local governments to refund

part of a would-be worker's application fee if they take too long.

Together, these reforms hammer home the principle that consumers, not the government, should pick winners and losers in the marketplace. For the second straight year, the Florida Legislature has expanded economic freedom and opportunity for the state's residents. ♦

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



South Carolina Court of Appeals Puts Economic Liberty in View for Eyeglass Startup



BY JOSHUA WINDHAM

When you sue the government for violating your rights, one of its favorite moves is to argue that the court has no power to decide your case. These arguments can take many forms, but one that shows up in many IJ cases is the argument that our client is not really injured, so there is nothing the court can do to help.

That's what happened in a case IJ has been litigating for a few years now in South Carolina. In 2016, we partnered with tech startup Opternative (now called Visibly) to challenge a protectionist law that banned eye doctors from using its online vision-testing software to prescribe glasses. Two years into the case, the state argued that Visibly was not really injured because the law banned only its "particular business model," and Visibly could offer a different product—one that did not operate purely online—to get around the law.

The trial court agreed and dismissed the case. The implications of the court's decision were shocking. By its logic, *nobody* could sue the government for restricting their right to earn a living. The government could ban any economic

activity (no matter how benign) or pass any regulation (no matter how irrational) and defeat all legal challenges by arguing, "Well, you're free to go do something else."

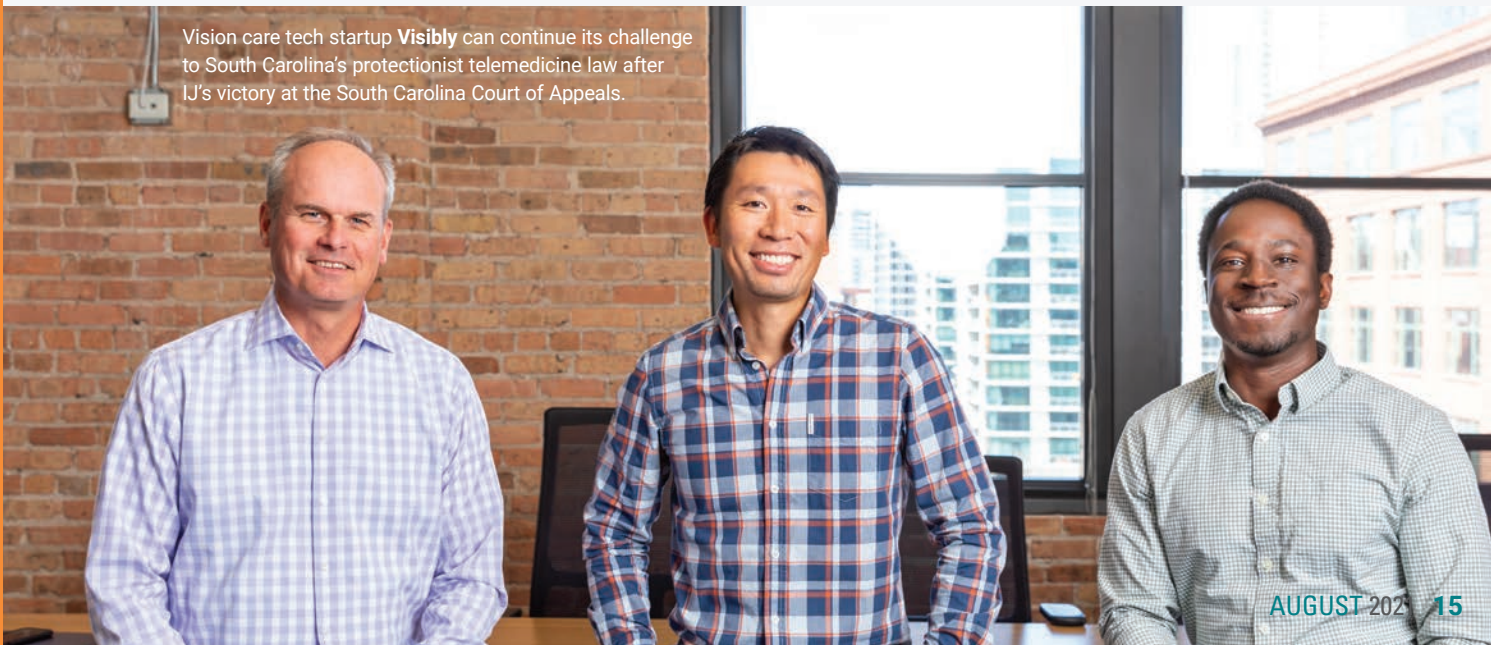
So we appealed. And in May, the South Carolina Court of Appeals reversed the trial court decision. The appellate court flatly rebuked the lower court's logic, holding that when a plaintiff "is prohibited from engaging in business under the business model it desires," that is a constitutional injury that courts can remedy. The decision sends a strong message to lower courts that, in South Carolina, the government cannot restrict people's economic liberty with impunity.

Now Visibly's case heads back down to the trial court, which will have to decide—at long last—whether South Carolina's ban is constitutional. ♦

Joshua Windham is
an IJ attorney.



Vision care tech startup **Visibly** can continue its challenge to South Carolina's protectionist telemedicine law after IJ's victory at the South Carolina Court of Appeals.



IJ DELIVERS

FOOD FREEDOM NATIONWIDE

BY ERICA SMITH

IJ launched our National Food Freedom Initiative in 2013 to make it possible for more people to buy and sell the foods of their choice. We celebrated a new milestone this year, when IJ's advocacy prompted nine states to expand people's ability to sell homemade or "cottage" foods.

Cottage food laws allow people to make food for sale in their home kitchen, without having to spend tens of thousands of dollars to rent a commercial kitchen space. This is a great option for budding food entrepreneurs who want to test out their recipes before opening a storefront, and it is an important way for families and farms to bring in extra income to make ends meet. The pandemic taught everyone that the flexibility to make money from home is more important than ever.

Despite all these benefits, many states still severely restrict the sale of homemade foods. Most states allow the sale of only certain foods, like snacks, desserts, and dry goods. Other states require burdensome licensing or limit where foods can be

sold. Some cities even ban the sale of homemade food altogether. As regular readers of *Liberty & Law* know, IJ has successfully sued four states to remove these kinds of restrictions, and we have other lawsuits pending in Wisconsin and New Jersey. We make these victories go even further by using them to support the case for cottage food reform in state legislatures.

Nine states—Alabama, Arkansas, Florida, Illinois, Indiana, Minnesota, New Mexico, Oklahoma, and Wyoming—passed cottage food reforms in spring 2021. In each of these states, IJ helped draft the bill, organized support from entrepreneurs and lawmakers, and shepherded the legislation through multiple committees until it reached the governor's desk.

These reforms covered everything from eliminating local bans on selling cottage foods and removing permit requirements to lifting sales caps and allowing sales online and to retailers. The bill in Oklahoma was especially expansive. It allows people to sell almost any homemade food except meat, making Oklahoma one of only a few states to allow sales of foods that require refrigeration. Now



Oklahomans can enjoy homemade soups, pizzas, and more—made fresh right in their communities.

Achieving these reforms is not easy. Every cottage food bill is opposed by government agencies and lobbying groups, often representing bakeries, restaurants, and other established players. They argue that homemade food may make people sick. Yet homemade food is sold in 49 states and D.C., and foodborne illness from these sales is almost unheard of. So long as consumers are fully informed, they should be able to choose what they eat. Opponents also argue that existing commercial establishments should be protected from competition from would-be cottage food producers. But this is America; everyone should be free to compete.

We are cooking up plans for even more reforms in 2022. In the meantime, this year's changes will create thousands of new entrepreneurial activities, which will in turn stimulate local economies and bring consumers more choice. ♦

Erica Smith is an IJ
senior attorney.



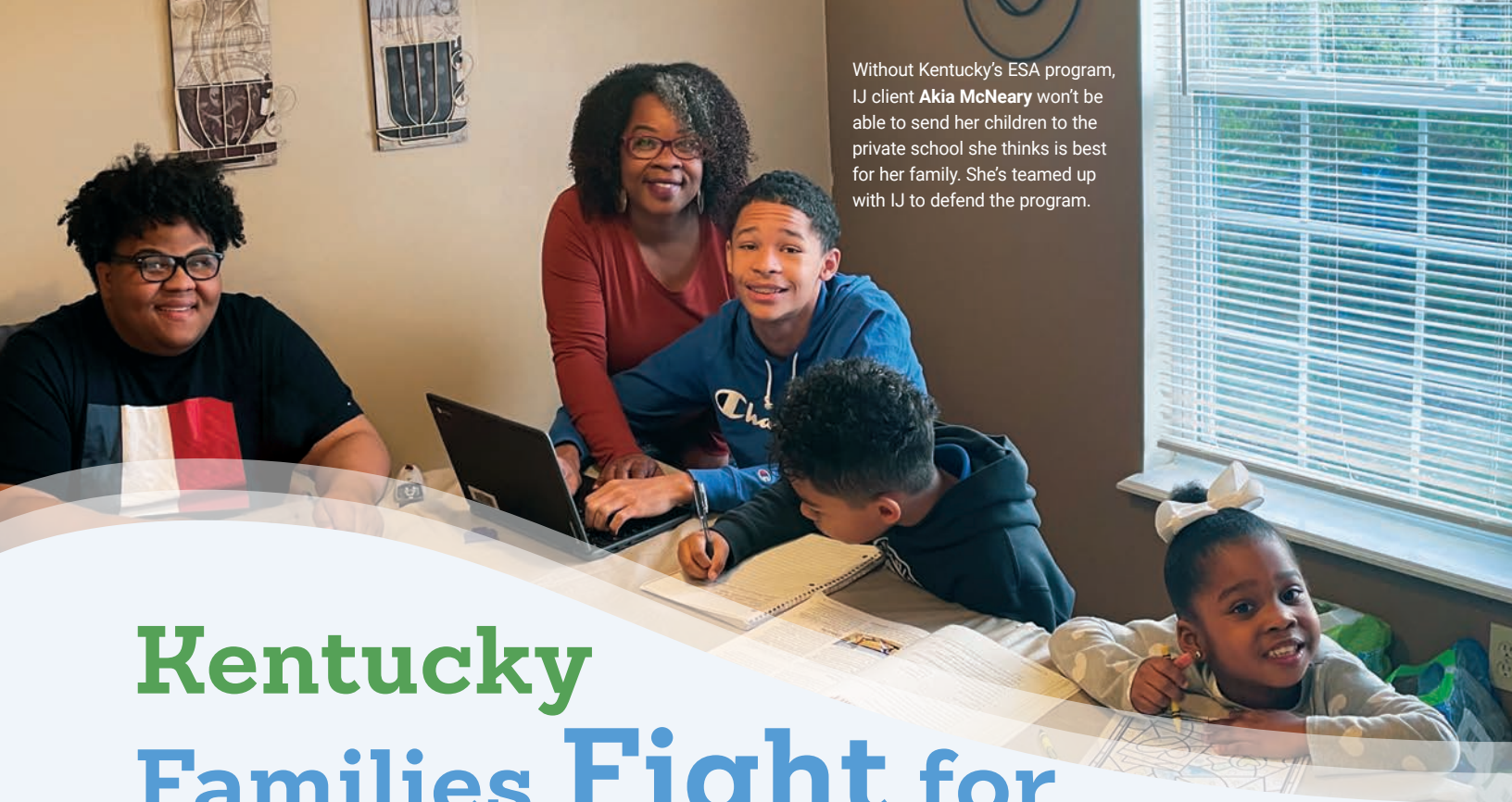
OTHER LEGISLATIVE HIGHLIGHTS

As this issue of *Liberty & Law* makes clear, IJ ran the tables in state legislatures this year, securing important and sweeping reforms on issues ranging from qualified immunity to food freedom to occupational licensing. Here are a few other highlights from the 2020–2021 legislative session that advanced economic liberty:

- ♦ In Indiana, Kansas, and Kentucky, we successfully codified IJ's recent U.S. Supreme Court victory in *Tennessee Wine and Spirits Retailers Association v. Thomas*. These states repealed laws that required aspiring business owners to live in a state—sometimes for years—before they could sell alcohol there.
- ♦ We helped Arkansas and Massachusetts repeal onerous cosmetology licensing requirements for hair braiding, shampooing, and hairstyling.
- ♦ In Montana and Tennessee, IJ helped to pass much-needed certificate of need reform involving hospitals and long-term care facilities.

It was a banner year for entrepreneurs—and for all Americans who simply want to be free to innovate, enter an occupation, and make choices about their own lives. Stay tuned for more in 2022! ♦





Without Kentucky's ESA program, IJ client **Akia McNeary** won't be able to send her children to the private school she thinks is best for her family. She's teamed up with IJ to defend the program.

Kentucky Families Fight for Educational Freedom

BY MILAD EMAM

With public schools around the country having closed their doors over the past year and a half, support for educational choice is surging. Parents frustrated with the status quo are increasingly considering alternatives to their neighborhood public schools. Thanks to this enthusiasm, 18 states have enacted or expanded educational choice programs this year.

One of those states is Kentucky, which recently passed a historic education savings account program. Kentucky has never passed an educational choice program before, despite our allies' diligent efforts. This year, with IJ's help, the Bluegrass State authorized ESAs that will enable thousands of children to get a better education. Families can use these accounts for textbooks, tutoring, and—in counties with more than 90,000 residents—private-school tuition.

Kentucky's pathbreaking ESA program is one of the nation's biggest: It authorizes up to \$25 million in annual ESA

contributions. Also, both middle- and low-income families are eligible to participate—the program's income cap for a family of four is about \$85,000. The program will be financed entirely by voluntary contributions. Donors who subsidize ESAs will in turn be eligible for matching tax credits.

For IJ's clients, this program could be a game changer. Akia McNeary, for example, enrolled her son in a private school that she felt was safer and a better learning environment for him than the public school to which he was assigned. For those reasons, she would like to enroll her daughter at the same school but, without an ESA lifeline, she cannot afford to send both children. Enrolling her son alone was a tremendous financial hardship—her husband worked two jobs while she also worked full time to make ends meet.

Sadly, as expected, defenders of the education status quo have challenged Kentucky's ESA program in court. In early June, a coalition of public school districts teamed up to file



If the government is going to play a role in education, its responsibility is not to prop up public schools at any cost but to help ensure that children learn.

suit. According to them, the ESA program violates the Kentucky Constitution's provision for an "efficient system of common schools," among other provisions. To protect the ESA program and the families who will rely on it, IJ moved to intervene in this lawsuit on behalf of Akia and other parents like her.

Our defense of this program is critical for two reasons. First, without our intervention, families like Akia's may not be able to keep their children in the schools of their choice. Without access to ESAs, many children could be stuck with a status quo that isn't working for them. Second, a victory in Kentucky will benefit choice programs in other states. That's because the public school lobby's argument—that enabling educational choice would unconstitutionally

threaten the public school system—is an argument raised in many other contexts.

But, as we argue in this case, ESA programs like Kentucky's simply offer families alternatives. And there's nothing wrong—let alone unconstitutional—with offering alternatives to public schools. If the government is going to play a role in education, its responsibility is not to prop up public schools at any cost but to help ensure that children learn. Empowering parents to pursue the environment that works best for their children is a great way to do that. ♦

Milad Emam is
an IJ attorney.





IJ clients **Robert Reeves** and **Stephanie Wilson** are fighting back against Detroit's abusive car seizures. Prosecutors have responded by filing bogus criminal charges and defying court orders.

DETROIT DEPLOYS DIRTY TRICKS TO KEEP SEIZED PROPERTY

BY JAIMIE CAVANAUGH

In February 2020, IJ sued Wayne County, home to Detroit, to end its decadeslong pattern of taking cars and holding them ransom for \$1,000 or more. Although IJ filed this lawsuit in federal court, behind the scenes, the county has forced IJ to battle in state court to protect our clients' rights.

Liberty & Law readers may recall that Robert Reeves' car was seized when law enforcement alleged his acquaintance tried to sell stolen construction equipment. That was bad enough. But when Wayne County learned Robert had become a plaintiff in the federal lawsuit, it charged Robert criminally to complicate the federal proceedings. These charges were baseless, and IJ

was sure they would fail. We prevailed in February 2021, when a judge ruled the county charged Robert without probable cause.

IJ and Robert celebrated, and the story should have ended there. But the county, trying to justify its

bad actions, *refiled* criminal charges against Robert.

It is now arguing that a prosecutor's mistake—not Robert's innocence—led to the court's dismissal of the original charges. That means that, rather than being able to request the return of his

vehicle, Robert was back in court fighting more bogus charges in July. And the county's dirty tactics aren't limited to Robert. IJ client Stephanie Wilson's car was seized nearly two years ago, even though

Stephanie's and Robert's cases show just how far prosecutors will go to punish those who threaten their ability to seize and keep property through civil forfeiture.

police found no evidence of wrongdoing. The county kept the car locked up for months because Stephanie refused to pay thousands of dollars for its return.

Stephanie's hopes were lifted when, in April, a judge agreed there was no evidence of wrongdoing and ordered the county to return the car "immediately." But the following week, when Stephanie went to pick up her Saturn Ion, the private tow yard working with the county would not cooperate. Instead—acting on instruction from the Wayne County Prosecutor's Office—the tow yard said it was not authorized to release the vehicle. Stephanie spent hours at the tow yard, but even a stern call from the judge's chambers could not persuade the tow yard to comply without the green light from the prosecutor. After exhausting all her options, Stephanie left without her car.

IJ's team escalated our efforts on her behalf, asking the court to enforce its order. At a hearing a few days later, the judge was visibly upset that the prosecutor's office had obstructed the release of Stephanie's car. Again, he ordered its immediate release. That afternoon, after waiting 22 months, Stephanie retrieved her car from the tow yard.

Stephanie's and Robert's cases show just how far prosecutors will go to punish those who threaten their ability to seize and keep property through civil forfeiture. In both instances, the prosecutors heaped legal troubles on IJ clients to bully them into giving up their federal constitutional challenge.

Luckily, Robert and Stephanie—like so many IJ clients—are not easily intimidated. They are committed to ending Wayne County's unconstitutional forfeiture machine. And, whatever roadblocks arise, IJ will fight for them until that final victory. ♦

Jaimie Cavanaugh is
an IJ attorney.



New Mexico Leads the Way on Government Accountability

IJ's work to increase government accountability has seen progress on the legislative front over the past year. One highlight has been in New Mexico, where lawmakers enacted landmark legislation ending qualified immunity and allowing individuals in that state to hold state government agencies and officials accountable in state court when their constitutional rights have been violated.

Qualified immunity, a court-created doctrine that effectively prohibits ordinary Americans from bringing lawsuits against government officers for constitutional rights violations, has stark real-world consequences. It does nothing to protect officers who make split-second decisions or other hard calls in the field—other legal and constitutional provisions do that. What qualified immunity does do is shield government workers from accountability for conduct that is objectively unreasonable or even horrific. Though qualified immunity is still viable in federal court—only Congress or the U.S. Supreme Court can fully end the doctrine nationwide—New Mexico shows how much a state can do to protect the rights of its residents.

Now the gold standard in the ongoing fight to end qualified immunity nationwide, New Mexico's reform was months in the making. This past November, the New Mexico Civil Rights Commission released a groundbreaking report—produced with IJ's input—recommending that the state adopt legislation designed to end qualified immunity. The draft legislation closely mirrored the model legislation that IJ submitted to the committee, titled the Protecting Everyone's Constitutional Rights Act. IJ worked alongside a broad bipartisan coalition in support of the bill, including the Innocence Project, the ACLU, and Americans for Prosperity. The legislation was signed into law in April.

IJ also introduced a version of PECRA in New Hampshire earlier this year, and we are working with council members in the District of Columbia to introduce municipal legislation. As the D.C. Police Reform Commission put it in May, "IJ has been on the front line of this issue across the country." ♦

Brinkmann's continued from page 9

permit for their hardware store. What's more, if the town simply wanted a park, the vacant land next door to the Brinkmanns' proposed store is currently for sale.

But the town doesn't even pretend it actually wants to build a park—or anything at all. Instead, town officials say the Brinkmanns' land will be turned into a "passive park," with no park-related facilities for the community to enjoy.

That's not a "park"; it's a vacant lot.

A vacant lot is not a public use. Getting rid of out-of-town entrepreneurs who might out-compete existing businesses is not a public use. And taking land for one reason when it's really for another reason is

an illegal pretextual taking. That is why the Brinkmanns have teamed up with IJ to file a federal lawsuit challenging the taking of the Brinkmanns' land. The law must apply neutrally to everyone, and consumers, not local officials, should decide which stores succeed and which ones fail. As town leaders in Southold seem to have forgotten those basic truths, we at IJ are happy to step in and remind them. ♦

The town doesn't even pretend it actually wants to build a park—or anything at all. Instead, town officials say the Brinkmanns' land will be turned into a "passive park," with no park-related facilities for the community to enjoy.

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



Watch the case video!



iam.ij.org/Brinkmanns

IJ MAKES HEADLINES

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

Read the articles at
[iam.ij.org/
august-2021-headlines](http://iam.ij.org/august-2021-headlines)



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courier journal

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June 8, 2021

Police put my son on a list because a computer algorithm
predicted he might commit future crimes.

So, practically every day, officers visited my house,
banged on my door, and peered in my windows.

They call it “predictive policing,”
but I call it harassment.

I am fighting back.

I am IJ.