



LIBERTY & LAW

October 2021

Volume 30 Issue 5

30 YEARS
1991-2021

THE DEA TOOK THIS INNOCENT MAN'S LIFE SAVINGS

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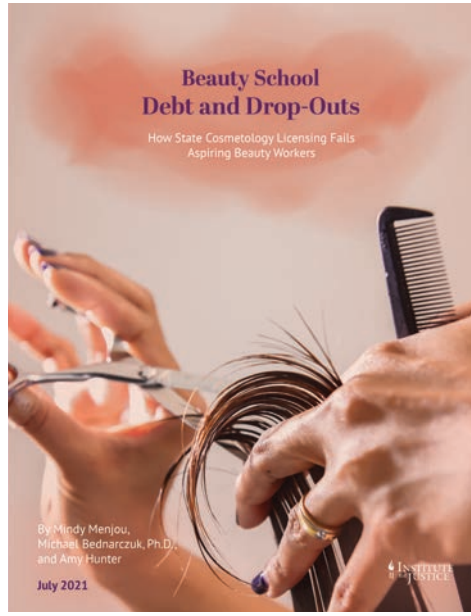
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Liberty & Law is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication, activism, and research, advances a rule of law under which individuals can control their destinies as free and responsible 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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Meet the New Orleans Man Fighting the DEA for His Life Savings

BY DAN ALBAN AND JABA TSITSUASHVILI

Civil forfeiture turns bedrock principles of our legal system on their heads. It ensnares people in byzantine legal procedures designed to result in uncontested forfeitures, and it forces Americans to prove their own innocence to keep their property. That is exactly where Kermit Warren, a Hurricane Katrina survivor from New Orleans' Lower Ninth Ward, finds himself: battling the federal government for his hard-earned and much-needed life savings.

Kermit is a grandfather, the head deacon of his church, and an entrepreneur. He has worked many jobs, including Katrina recovery with the Army Corps of Engineers. When the coronavirus pandemic hit, he lost his shoeshine job at the Roosevelt Hotel. Luckily, Kermit had hauled scrap as a side gig for years. He had the know-how to turn that into a full-time business with his son Leo, who was also laid off.

To make their business a reality, they needed a tow truck. Over the years, Kermit had diligently set aside cash every week. Those savings coupled with a small inheritance meant he had nearly \$30,000 to dedicate to his venture, which he used to negotiate a favorable cash price for a tow truck near Columbus, Ohio. He and Leo flew north, planning to drive the truck home. After inspecting the vehicle, however, they realized the truck was not right for them. So they went to the airport and bought one-way tickets back to New Orleans.

Just before they boarded, three Drug Enforcement Administration officers approached them and began asking accusatory questions about the cash they carried. Thanks to the DEA's "see cash, seize cash" policy—which IJ is challenging separately in a nationwide federal class

action lawsuit—the officers were uninterested in Kermit's answers or in evidence of the source and purpose of his money. They took his cash, gave him a receipt, and sent him on his way.

Neither Kermit nor Leo has been charged with any crime, but the government is trying to keep the money through civil forfeiture based on flimsy, vague allegations that do not tie Kermit or his cash to any wrongdoing. This is wrong: The government must provide evidence of criminality to forfeit property. If it can keep cash based on the kind of mere innuendo offered in Kermit's case, there are virtually no limits to the power civil forfeiture affords the government—or to its destruction of the presumption of innocence.

Making matters worse, the DEA and other federal agencies have a strong incentive to forfeit as much as possible: Forfeiture proceeds are kept by the Department of Justice and doled back out to law enforcement, allowing them to self-fund without congressional oversight. And, unsurprisingly, the people often targeted are those with the fewest resources with which to fight back.

Fortunately, Kermit has IJ to stand with him in his battle for his life savings. Together, we are committed not only to getting his property back but also to ending civil forfeiture for everyone. ♦

Dan Alban is an IJ senior attorney and Jaba Tsitsuashvili is an IJ attorney.





IJ client **Kermit Warren** is fighting for the return of nearly \$30,000 in cash—money he planned to invest in a tow truck to launch his new business.

New IJ Research Holds a Mirror to the Ugly Face of *Beauty Licensing*

BY MINDY MENJOU

IJ supporters know that we've long fought to exempt natural hair braiders, eyebrow threaders, and other niche beauty service providers from burdensome licensing requirements. We also challenge and end so-called good character requirements that prevent aspiring beauty workers from becoming licensed because of long-past and irrelevant criminal histories. But we've never taken on cosmetology licensing itself directly—until now.

IJ's latest strategic research report, *Beauty School Debt and Drop-Outs: How State Cosmetology Licensing Fails Aspiring Beauty Workers*, is the first to explore what it looks like to complete the education required for state cosmetology licenses. Using federal data on cosmetology schools nationwide, the report finds that traditional cosmetology school—required for a state license to work—is a raw deal for many aspiring beauty workers.

Specifically, the report finds that state-mandated cosmetology school is expensive and time-consuming. On average, it costs more than \$16,000. Many students

are lower-income, and most take on sizable debt, typically borrowing over \$7,300 in federal student loans.

Despite the high cost, cosmetology schools do a shockingly poor job of graduating students on time—or even at all. On average, less than a third of students graduate on time. And even with another year in school, more than a third still don't graduate. As a result, students are delayed or blocked from working and may have to pay their schools even more money.

Making matters worse, this investment rarely pays off in terms of earnings. Cosmetology school students who graduate and become licensed can expect to make just \$26,000 a year on average. This is less than restaurant cooks, janitors, or concierges, none of whom must invest in costly education to work.

The new report also casts doubt on whether forcing aspiring beauty workers into costly and lengthy schooling is necessary to protect the public. We know from IJ's landmark study *License to Work* that state education requirements differ quite dramatically—from 1,000



Read the report at
ij.org/report/beauty-school-debt-and-drop-outs

hours in New York to 2,100 in Iowa, Nebraska, and South Dakota—even though the risks associated with cutting hair are unlikely to vary much from state to state. Yet, as *Beauty School Debt and Drop-Outs* finds, a whopping 95% of cosmetology programs exactly match state mandates. Most tellingly, when states reduce licensing hours, schools quickly fall in line by reducing their own.

If there were anything inherent to cosmetology that required a certain number of hours in school, we would expect to see greater consistency in program hours—to say nothing of licensing hours—across states as well as greater reluctance on the part of schools to lower hours in the face of changing state mandates.


The current system of state cosmetology licensing is a failed model of professional development that succeeds mostly in transferring wealth from students and taxpayers to cosmetology schools. Over the years, IJ has freed braiders, threaders, and others from this system. Now we are escalating our efforts, showing state legislators that the system isn't working for traditional cosmetologists either. They should refocus regulation on what matters: safe, sanitary practices at the point of service. When it comes to cosmetology licensing, the government needs to cut it out. ♦

Mindy Menjou is IJ's research publications manager.



Over the years, IJ has freed braiders, threaders, and others from this system.

Now we are escalating our efforts, showing state legislators that the system isn't working for traditional cosmetologists either.



At just 16 years old, **Hamdi Mohamud** was sent to federal prison because a federal task force officer falsely claimed she tampered with a witness in an ongoing—and bogus—federal investigation. The innocent teen spent 17 months in jail.

IJ SEEKS TO END NEAR-ABSOLUTE IMMUNITY FOR FEDERAL OFFICERS

BY ANYA BIDWELL

By now, many of our readers have heard of qualified immunity. It is a pernicious legal doctrine that shields government officials from accountability for violating someone's rights unless a court has previously ruled that it was "clearly established" those precise actions were unconstitutional. If no such decision exists—or if it exists but in another jurisdiction—the official is immune from suit, even if the official intentionally, maliciously, or unreasonably violated the law or the Constitution.

While overcoming qualified immunity is very difficult, it is still possible.

Even judges highly deferential to the government feel compelled to at least occasionally let cases involving excessive force, for instance, proceed. After all, it is hard to argue that a local police officer in Louisiana—to give one recent example—was not already on notice that

gratuitously punching a nonthreatening arrestee in the ribs would violate the Fourth Amendment's prohibition on the use of unreasonable force.

Yet, even when qualified immunity is no longer an obstacle, there is a large class of officials who still cannot be sued: the more than 100,000 who work for the federal government. This creates a stark difference in litigation

outcomes. Although the Louisiana officer could be sued for his use of excessive force, a court threw out a Fourth Amendment suit against federal police who assaulted a patient at a Veterans Affairs hospital in Texas. In both cases, the

plaintiffs overcame qualified immunity. But because the VA law enforcement agents happened to work for the federal government, they were off the hook.

In other words, in America today, a federal badge equals near-absolute immunity.

Even when qualified immunity is no longer an obstacle, there is a large class of officials who still cannot be sued: the more than 100,000 who work for the federal government.



Federal officers should not be immune from accountability when they violate constitutional rights. IJ's cases on behalf of Hamdi and Kevin Byrd (above) of Texas ask the U.S. Supreme Court to enforce those rights.



This exemption to accountability for federal workers has no basis in history or common sense. That's why, in August, IJ filed two new petitions asking the U.S. Supreme Court to rein in the preferential treatment of federal officers.

Our client in the first petition is Hamdi Mohamud, an innocent Somali refugee who at age 16 was wrongly imprisoned for nearly two years. The reason? A federal task force officer lied and falsely implicated her in a crime, solely to protect an informant and attempt to salvage an unraveling, unrelated investigation.

The second case is on behalf of Kevin Byrd, a mechanic who was held at gunpoint and unlawfully detained by an officer working for the Department of Homeland Security. Kevin was investigating the agent's son's involvement in a drunk driving accident, and the officer wished to stop him.

Both Hamdi and Kevin overcame qualified immunity—only to watch their cases evaporate because the officers who violated their rights carried federal badges. If not for America's current dual-track system of constitutional accountability, both cases would have proceeded to trial.

For the first 200 years of this nation's existence, Americans could sue federal officers for unconstitutional conduct. That was consistent with the founding principle that for rights to have meaning, they must be enforced. Now the U.S. Supreme Court has two more opportunities to reaffirm this principle. We will not give up until it does. ♦

Anya Bidwell is an IJ attorney and the Elfie Gallun Fellow in Freedom and the Constitution.





30 YEARS OF IJ

Taking Stock as We Ramp Up for the Decades Ahead



See an overview of IJ's past 30 years at iam.ij.org/Timeline30th

BY SCOTT BULLOCK

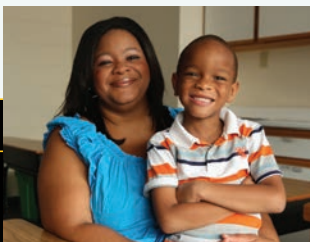
The night before IJ first opened its doors in the fall of 1991, I made a pilgrimage to commune with “TJ” at the Jefferson Memorial, just across the National Mall from IJ’s first offices on Pennsylvania Avenue. I was a 24-year-old kid who had just graduated from law school and taken the bar exam. I was going to my dream job, the reason I went to law school in the first place—to practice constitutional law to protect the rights of individuals from abuses by government.

IJ at that time was just me, our two co-founders—Chip Mellor and Clint Bolick—and a couple of support staff. We had one case and one donor, and no one really knew who we were. We all knew that our chances for success were precarious and that we would have to build our reputation and track record one hard-fought case and project at a time.

For 25 years, I served as an IJ attorney in the litigation trenches. Then, in 2016, I had the privilege of becoming the organization’s second president. As I reflect on these past three decades, I can see how much the world has changed as a direct result of our work:

- On September 3, 1991, precisely one educational choice program existed, and the legality of school choice was very much in doubt. Today, IJ has successfully defended 24 choice programs and won three U.S. Supreme Court victories for families.
- Economic liberty had been a dead letter in the law for close to 60 years when IJ started, and occupational licensing was discussed only by a handful of free-market economists. We have now won multiple precedent-setting state and federal court cases protecting the right to earn a living. What’s more, people across the ideological spectrum recognize that occupational licensing creates enormous and largely unnecessary barriers to work for far too many Americans.

In 30 years, IJ has changed the legal landscape for individual liberty, winning precedent-setting cases, legislative reforms, and grassroots fights for educational choice, economic liberty, free speech, and property rights.



- When we began litigating, free speech involving commercial and political matters was given scant protection by the courts. Today, the U.S. Supreme Court agrees with us that suppression of both these kinds of speech should be scrutinized just like suppression of other speech. Though the culture of free speech is under attack in several quarters, never in American history have free speech rights been better protected by the courts.
- At IJ's founding, property rights were treated as second-class rights, and eminent domain abuse and civil forfeiture were rampant throughout the country. Now eminent domain abuse is limited to a few holdout states. And although civil forfeiture remains a serious threat to property rights, IJ has curtailed it at both the state and federal levels.

In the past five years alone, we have grown our budget by 50%, our staff by 55%, and the number of cases we're litigating by 95%. We've launched our new Project on Immunity and Accountability, helping rocket issues like qualified immunity to national attention and foster reform. This summer, we received—for the 20th consecutive year—Charity Navigator's highest rating for our commitment to financial health, accountability, and transparency. And this fall, we will argue our 10th case at the U.S. Supreme Court.

From our humble origins, thanks to our more than 8,500 generous donors and our incredibly talented and productive staff, IJ is now a force that those in power must reckon with when they violate constitutional rights. As proud as I am of all that we have accomplished together, I am even more excited about the future and the profound and positive difference we can make to end widespread abuses of power and secure the rights that allow all Americans to pursue their dreams. ♦

Scott Bullock is IJ's president and general counsel.



FOUR PILLARS SOCIETY SUPPORTS IJ'S FUTURE

Looking at the Institute for Justice today, it is hard to imagine that 30 years ago it consisted of only a handful of attorneys and staff setting out to challenge abusive and overreaching government.

IJ's planned giving program, our Four Pillars Society, established 15 years ago, similarly began on a much smaller scale. Back then, the Society consisted of 17 donors who wanted to support liberty for generations to come. As you can see in this issue of *Liberty & Law*, their investment in IJ is paying dividends in freedom and opportunity.

Today, we invite you to join the more than 670 Four Pillars Society members who are making that same commitment to the future.

To become a member, simply include IJ in your will or make us the beneficiary of a retirement account or life insurance policy—and tell us about your decision so we can thank you properly! We can also work with you to establish a charitable trust or other types of gifts that support IJ for the long term. To discuss any of these options or notify us of your intent, please contact Melanie Hildreth at (703) 682-9323, ext. 222, or mhildreth@ij.org, and she would be happy to assist you.

The past 30 years have demonstrated that you can be confident that the organization you support today will be making a difference on the issues that matter to you for years to come. Thank you for your support now, and we look forward to welcoming you to IJ's Four Pillars Society. ♦



GOVERNMENT theft AUTO


BY WILL ARONIN

Normally, there's a word for taking someone's property and keeping it: theft. Yet, for Wilmington, Delaware, and its private towing contractors, taking property and keeping it is just standard towing and impound procedure.

The city's program is transparently abusive and blatantly unconstitutional. Here's how it works: Wilmington outsources its municipal program to private companies, "paying" for these services by giving the towing companies the power to keep people's cars. The city gets the service at no cost, and contractors make money by keeping and scrapping many of the cars they tow. Vehicle owners, meanwhile, lose everything.

The system is a cash cow for Wilmington. The city issues a lot of parking tickets and then tells its contractors to tow any legally parked car with \$200 or more in outstanding fines. Once they take your car, the only way to get it out of the pound is to pay Wilmington every penny it demands for parking tickets, plus penalties and fees. If an owner cannot afford to pay the full amount within 30 days, the private companies scrap the car and keep the full value for themselves. Outrageously, the city doesn't even credit the value toward the owner's parking tickets!

Take, for example, what happened to IJ client Ameera Shaheed. Wilmington ticketed Ameera's legally parked car five times in five days, with fines totaling more than \$200. Then, while her ticket appeal

A woman with dark hair pulled back, wearing a dark jacket with a white stripe, stands in the foreground. In the background, a car is being lifted by a crane in a lot, with a green fence and some vegetation behind it.

Wilmington, Delaware, runs a lucrative but unconstitutional towing and impound program, which seizes and keeps the cars of people like **Ameera Shaheed**, whose legally parked car was ticketed five times in five days.

was pending, one of the city's towing companies took her car. Ameera is disabled, lives on a fixed income, and needs her car to get around. But the city didn't care. Because Ameera couldn't afford to pay the full ransom within 30 days, Wilmington and the towing company scrapped her car. The city didn't credit the car's value toward Ameera's parking tickets and sent her debt collection letters for the full amount—with additional penalties continuing to accrue. On top of that, because the city claims she still owes the same ticket debt, Wilmington could immediately tow Ameera's next car, if she could afford one.

Ameera is not alone. In 2020, the city's towing company "kept" at least 987 cars—nearly 40% of those it towed. And even paying the city's ransom doesn't guarantee your car's safety. Our client Earl Dickerson paid his tickets, and the towing company still scrapped his car after demanding more than \$900 in additional fees. As in Ameera's case, the towing company kept the full value for itself.

IJ intends to end Wilmington's unconstitutional towing and impound program for good. We are already suing Chicago over the exorbitant fees it charges when it impounds cars. Together, these cases will give us ample opportunity to show cities that the Constitution doesn't permit them to use the public as their piggy banks. ♦

Will Aronin is an IJ attorney.



Earl Dickerson's car was scrapped as part of Wilmington's towing program. "As far as I'm concerned, it was stolen," he said.



Haji Healing Salon owner Aya-Nikole Cook (far right) celebrates Chicago's sign reform with IJ's Erik Castelan, Erion Malasi, and Andrew Wimer.


SIGNS OF PROGRESS IN CHICAGO

Haji Healing Salon, a client of IJ's Clinic on Entrepreneurship at the University of Chicago Law School, opened a new location in a brand-new building this spring. The double storefront has room for a retail shop selling plants, tonics, herbs, and skin care products, as well as space for healing services like community acupuncture, yoga classes, and meditation sessions. To launch the business in a new neighborhood during a pandemic, Haji had to let the community know what the business was all about. But Chicago law made that almost impossible.

Haji could not install a sign that extended over the sidewalk so passersby would notice it unless the entire Chicago City Council of 50 aldermen voted to approve it. Haji could not put a chalkboard out on the sidewalk explaining what the business offered and showing it was open without risking a significant fine. Haji could not fill a window with pictures and graphics introducing the innovative business model.

The IJ Clinic advocated to change these over-the-top restrictions on signage for years. Back in 2010, we published a chart showing just how convoluted the process was. We urged several mayoral administrations to push for change. We also organized community groups and small-business owners to support the reform effort.

Finally, this summer, the City Council passed ordinances allowing most signs without City Council approval and making sidewalk signs legal. Some aldermen begrudged the loss of power over businesses, but the pressure from our grassroots organizing was impossible to deny. There are signs of a new day in Chicago, for Haji Healing Salon and other small businesses like it. ♦



Stephen Lara joined with IJ to fight the outrageous seizure of nearly \$90,000 in cash by the Nevada Highway Patrol. His lightning quick victory against civil forfeiture is just the beginning of our fight to end this abusive practice in Nevada.

ALL IN A DAY

A Case Launch, a Victory, and a Declaration of War on Federal Forfeiture

BY WESLEY HOTTOT

Stephen Lara did everything right. But, as readers of *Liberty & Law* know well, even innocent people aren't safe from civil forfeiture.

Stephen is a 39-year-old retired Marine from Lubbock, Texas. He is a devoted father of two teenage daughters and, once a month, he drives from Texas to see them in California, where they live with their mother. Eager to be closer after spending the pandemic in Texas caring for his elderly parents, he has been shopping for a home near the California-Nevada border.

In February 2021, Stephen was making his usual trip west through Reno when he was pulled over by the Nevada Highway Patrol for supposedly following a tractor-trailer too closely.

The officer complimented Stephen's driving, thanked him for observing the speed limit, and explained that NHP was "conducting a public information campaign" to help drivers avoid danger. Confident that the officer was only there to help, Stephen cooperated with his escalating investigation, even

volunteering that he was carrying a large amount of cash.

Stephen Lara did everything right. But, as readers of *Liberty & Law* know well, even innocent people aren't safe from civil forfeiture.

In less than 24 hours, the DEA had learned of our lawsuit, answered hard questions from *The Washington Post*, and committed to reviewing its policies for federal adoptions.

Ninety minutes later, Stephen had been robbed of his life savings—\$86,900—which he carried with him after a spate of robberies in his parents’ neighborhood. The officer who pulled Stephen over wanted to let him go; he was overruled by NHP Sergeant Glenn Rigdon, who ordered the money seized specifically so that it could be “adopted” by the U.S. Drug Enforcement Administration.

“Adoption” is a process by which federal law enforcement agencies can take over a seizure by state and local law enforcement. If the federal government is successful in forfeiting the property, its “equitable sharing” program guarantees the state or local agency that seized the property up to 80% of the proceeds for use in the agency’s budget.

In Stephen’s case, the DEA sat on his life savings for months, ignoring the legal deadlines requiring it to charge Stephen with a crime, begin a civil forfeiture case against his property, or return the money within six months of seizure. The DEA did none of those things. So, on August 30, IJ sued it in federal court on Stephen’s behalf.

Early the morning of September 1, the agency announced it would return all of Stephen’s money. In less than 24 hours, it had

learned of our lawsuit, answered hard questions from *The Washington Post*, and committed to reviewing its policies for federal adoptions.

I was with Stephen when we learned he would be getting his money back. Filled with joy, he told us, “This isn’t over.”

And it isn’t. At the same time we filed in federal court, we also filed a major constitutional challenge in state court. Our state case aims to make federal adoptions impossible in Nevada as violations of the state constitution’s guarantees of reasonable seizures supported by probable cause and due process of law—not based on mere suspicion or for the financial benefit of the seizing agency. If we are successful, it will be the first time a state court has struck down federal adoptions. And a victory will take the profit motive out of roadside seizures. ♦

Wesley Hottot is an IJ senior attorney.



Family Farm Wins Early Victory Against Local Retaliation

BY ALEXA GERVASI AND MARIE MILLER

This summer, Erica and Zach Mallory of Eagle, Wisconsin, scored an important victory for the freedom to speak out against government abuses. A federal court ruled for them and for IJ in our challenge to unconstitutional retaliation from local government officials who didn't like the Mallorys' criticism of their bad behavior. The judge ordered Eagle to stop enforcement actions against the couple while their case continues.

Back in November 2020, IJ stepped in to help Erica and Zach, who own a family farm in Eagle, a small town in southeastern Wisconsin. The Mallorys started speaking out against actions by local government there when they noticed neighbors being treated unfairly. Unhappy with these criticisms, town officials soon came after the Mallorys, issuing citations for petty code violations like patches of grass being too tall and an unpermitted flower box. The Mallorys tried to

Erica and Zach Mallory should not have to pay thousands of dollars in fines for trivial code violations simply because local government officials in Eagle, Wisconsin, didn't like it when the couple stood up for their neighbors.



The Constitution promises all Americans the freedom to criticize the government without reprisal—a promise that extends to those who live in big cities and small towns alike.

comply with the ordinances enforced against them, making numerous changes to their property. The town wouldn't relent; instead, it repeatedly inspected the Mallorys' farm and threatened them with tens of thousands of dollars in fines.

So the Mallorys joined with IJ to hold the town accountable for its retaliatory, unconstitutional ordinance enforcement practices. Eagle's actions violate the First Amendment's protections against government retaliation, and the town's enforcement methods violate due process. For instance, Eagle relies on an hourly paid law firm to enforce its code, then passes its hefty legal bills on to accused town residents. The town also begins racking up fees against residents without any proof that the violations it alleges actually occurred.

The Mallorys' case began in a Wisconsin state court but was soon transferred to a federal district court, where the Mallorys asked for protection from the town's abuses while their case is ongoing by requesting a preliminary injunction. The town, meanwhile, asked the court to dismiss the Mallorys' case altogether.

In August, the court granted our request for a preliminary injunction, prohibiting Eagle officials from entering the Mallorys' property or calculating fines and fees while the case continues. And it mostly

denied the town's request for the Mallorys' claims to be dismissed. The court ruled that the Mallorys' retaliation claim will proceed in federal court and that their claims that the town's enforcement system violates due process must go back to the Wisconsin state court for resolution.

In ruling for us, the court indicated that the Mallorys have made "a 'strong showing' of success" on their free speech claim. The court was particularly persuaded by one town board member's email telling Erica that the board had "voted with emotion" to take enforcement actions against the Mallorys because Erica had "literally ticked off all the board members with [her] meeting comments and on [F]acebook." As the court recognized, this email provides strong evidence of the town's retaliatory motive.

IJ will build on this early victory to ensure that the Mallorys' rights are ultimately vindicated and local government leaders in Eagle are held accountable. The Constitution promises all Americans the freedom to criticize the government without reprisal—a promise that extends to those who live in big cities and small towns alike. ♦

Alexa Gervasi and Marie Miller are IJ attorneys.





All Dennis and Cathy Griffin want to do is send their grandson, Clayton, to the school that is best for him. Thanks to changes in New Hampshire's educational choice program, they can participate in the state's tuitioning program and do just that.

for Educational Choice in New Hampshire!

BY KIRBY WEST

As the new school year begins, families across New Hampshire are enjoying new choices for their kids' education. Thanks to a major legislative victory spurred by an IJ lawsuit, people like IJ clients Dennis and Cathy Griffin, who live in a New Hampshire "tuitioning town," are now eligible for tuition payments for their students even if they choose a religious, rather than secular, private school.

New Hampshire's tuitioning towns, like those that are the subject of IJ litigation in Maine and Vermont, are towns that lack public schools for at least some grade levels. For those grade levels, tuitioning towns instead pay tuition for their students to attend private schools or public schools in other districts. Until the passage of this legislation, New Hampshire families in tuitioning towns were ineligible for these tuition payments if they chose to send their children to religiously affiliated private schools, even if they were the best or closest option for the family.

Dennis and Cathy joined IJ last August in filing a constitutional challenge to New Hampshire's exclusion of religious schools from the town tuitioning program. That challenge, launched on the heels of IJ's victory in *Espinoza v. Montana Department of Revenue*, argued that

New Hampshire's exclusion violated the rule set out by the U.S. Supreme Court in *Espinoza*—namely, that the First Amendment bars states from excluding religious schools from generally available educational choice programs solely because the schools are religious.

The First Amendment bars states from excluding religious schools from generally available educational choice programs solely because the schools are religious.

The lawsuit caught the attention of the New Hampshire legislature, which soon began exploring a legislative remedy to the problem.

In the spring, the legislature passed a bill eliminating the

exclusion of religious schools from the tuitioning program. IJ supported the legislature as it considered the bill with testimony before both the New Hampshire House of Representatives and Senate.

Governor Sununu signed the bill in July, ensuring that New Hampshire families in tuitioning towns could look forward to the new school year with the ability to choose the best schools for their children. For Dennis and Cathy, that means their grandson, Clayton, can participate fully in the state's tuitioning program as he begins eighth grade at the school that's right for him. ♦

Kirby West is an IJ attorney.



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/
october-2021-headlines](http://iam.ij.org/october-2021-headlines)



TwinCities.com
PIONEER PRESS

St. Paul Officer Center Of Supreme Court Petition Seeking To Remove Immunity Protections From Federal And Deputized Officers

August 22, 2021

reason
FREE MINDS AND FREE MARKETS

A Federal Cop Devised A Bogus Sex Trafficking Ring And Jailed This Teen For 2 Years. The Cop Can't Be Sued.

August 12, 2021

AP Associated Press

Ruling Helps Protect Homeless People From Having Cars Towed

August 12, 2021

THE TENNESSEAN
A GANNETT COMPANY

Tennessee Supreme Court Takes Up Appeal On Nashville Rules About Home-Based Recording Studios

July 22, 2021

OIL CITY NEWS

Loophole: Casper PD's 'Expanding' DEA Relationship Comes With Policing-For-Profit Risk

July 2, 2021

THE WALL STREET JOURNAL

Supreme Court To Consider New Case On Tuition Aid For Religious Schools

July 2, 2021

REUTERS

Will SCOTUS Keep Passing On Chances To Address Police Immunity?

August 12, 2021

USA TODAY

Federal Surveillance Machine Looking Through Your Bank Accounts And Cryptocurrency

August 10, 2021

The Des Moines Register

Opinion: Expand Access To Health Care, Get Rid Of Iowa's Harmful Certificate Of Need Law

August 1, 2021

We wanted to send our daughter to a school that reinforced our values.

But Maine barred us from using its school choice program
because we chose a school that teaches religion.

We teamed up with IJ to defend our rights, and now
IJ will argue our case before the U.S. Supreme Court.

We are IJ.

