



**LIBERTY & LAW**

June 2022

Volume 31 Issue 3

# IJ LEADS THE FIGHT AGAINST ABUSIVE FINES AND FEES

Published Bimonthly by  
the Institute for Justice

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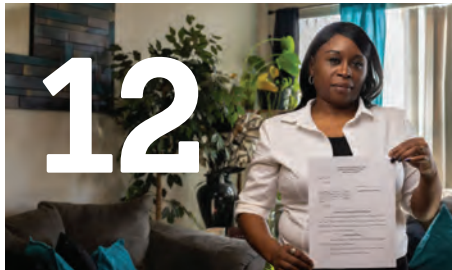
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### About the publication:

*Liberty & Law* is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication, activism, and research, advances a rule of law under which individuals can control their destinies as free and responsible members of society. IJ litigates to secure economic liberty, educational choice, private property rights, freedom of speech, and other vital individual liberties, and to restore constitutional limits on the power of government. In addition, IJ trains law students, lawyers, and activists in the tactics of public interest litigation.

Through these activities, IJ challenges the ideology of the welfare state and illustrates and extends the benefits of freedom to those whose full enjoyment of liberty is denied by government.

### Editor:

Paul Sherman

### Layout & Design:

Laura Maurice-Apel

### General Information:

(703) 682-9323

**Donations:** Ext. 399

**Media:** Ext. 205

**Website:** [www.ij.org](http://www.ij.org)

**Email:** [general@ij.org](mailto:general@ij.org)

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# IJ LEADS THE FIGHT AGAINST ABUSIVE FINES & FEES

BY BILL MAURER

On April 4, the Institute for Justice launched its 14th suit challenging abusive fines and fees, this time in Brookside, Alabama. In addition to litigating in 11 states, we have produced groundbreaking strategic research studies and garnered significant media coverage to inform the public of the problem. In just a few years, IJ has gone from having no fines and fees cases to being one of the leading organizations fighting this abuse nationwide. How did this happen?

It started with a tweet. IJ had been litigating a free speech case in St. Louis for years. To keep up with the issue, I followed the *St. Louis Post-Dispatch* on Twitter. One day, the paper tweeted about a St. Louis suburb, Pagedale, that had made harmless conditions illegal so that it could generate revenue. It was ticketing people for things like having mismatched blinds, kiddie pools in the front yard, and basement windows without drapes.

My IJ colleagues and I thought, “This cannot be constitutional,” and we were right. A few years later, we obtained a consent decree on behalf of those Pagedale had ticketed that stopped the city’s policing for profit and reorganized its municipal court system.

In litigating the Pagedale case, however, we discovered that city was not alone in abusing its

enforcement powers. Across the country, state and local governments use their criminal and civil enforcement systems not to protect the public but rather to raise revenue, often from the poorest and most vulnerable among us. In addition, many of the court systems the government uses to extract this

money are courts in name only. They lack basic procedural protections for defendants and operate less as a system of justice and more as a machine for squeezing money from people.

When the government takes an individual’s freedom or property, the potential for abuse is at its zenith. This is why the Constitution demands that defendants be provided with rigorous procedural protections. When the government prosecutes people to raise money, and does so in an unfair process, this violates the Constitution’s guarantee of due process.

But although the problem of municipalities treating their

citizens like ATMs was more widespread than we ever imagined, it was also a problem well suited to IJ’s brand of strategic public interest litigation. And in just a few short years, IJ has become the nation’s leading legal advocate against abusive fines and fees.

We did it the IJ way, diving headfirst into challenging these abusive systems, embarking on an aggressive litigation strategy to challenge such

**WHEN THE GOVERNMENT PROSECUTES PEOPLE TO RAISE MONEY, AND DOES SO IN AN UNFAIR PROCESS, THIS VIOLATES THE CONSTITUTION’S GUARANTEE OF DUE PROCESS.**



Vincent Blount and Valarie Whitner stand in front of their home in Pagedale, Missouri. The couple were clients in IJ’s first case challenging abusive fines and fees, which we won.



# TACKLING TAXATION BY CITATION IN BROOKSIDE, ALABAMA

BY SURANJEN SEN

For years, Brookside, Alabama—a town of 1,200 residents and virtually no serious crime—has used its police and municipal court to maximize revenue. Officers stop drivers under trivial or fabricated pretenses, drum up multiple citations, and then tow their cars to hold for ransom. Over just three years, Brookside's revenues from fines and forfeitures increased from roughly \$50,000 in 2017 to more than \$600,000 (half the town's annual revenue) in 2020. And under the town's keep-what-you-catch policing scheme, more than \$500,000 went right back to the police in 2020 alone. Remarkably, both the mayor and the recently resigned police chief believe those numbers are *still* too low.

As you might imagine, IJ disagrees. So we rushed to Brookside to investigate, conducting weeks of field interviews where we heard endless stories of government abuse. And in April, we launched a massive class action on behalf of all the town's victims—one of our largest fines and fees cases yet.

One of our clients is Brittany Coleman. On her birthday, Brookside police pulled Brittany over, falsely alleging she was tailgating her boyfriend's car. Officers handcuffed her for no reason and searched her car for 30 minutes. They found nothing; still, they charged Brittany with marijuana possession and towed her car. And even though the marijuana charge failed for lack of evidence, Brittany still paid almost \$1,000 in towing fees and court costs. Sadly, Brittany's experience is typical.

As bad as they are, Brookside's abuses are only the natural consequence of incentives to generate revenue through citations. By fighting back, we are placing governments across the country on notice: Abusive fines and fees are unconstitutional, and IJ will not allow governments to get away with them. ♦

Suranjan Sen is an  
IJ Law & Liberty Fellow.



systems wherever we find them, producing strategic research to expand what we know of the problem, speaking across the country, writing media documents and law review articles, and meeting with officials at the U.S. Department of Justice and the White House.

Our new suit against Brookside's policing for profit scheme, described at right, is our latest challenge to fines and fees abuses, and it won't be the last. We will continue to file and vigorously litigate cases until the U.S. Supreme Court recognizes that a justice system tainted by financial interest and without opportunity for a fair hearing is contrary to the Constitution and the guarantee of limited government enshrined in it. ♦

Bill Maurer  
is managing  
attorney of IJ's  
Washington Office.



In April, IJ filed a class action lawsuit on behalf of victims of Brookside, Alabama's outrageously abusive fines and fees policing, including IJ clients **Chekeithia Grant** and **Alexis Thomas** (top, left to right), **Brandon Jones** (middle), and **Brittany Coleman** (bottom right).





# VICTORY AND OPPORTUNITY

## FOR GEORGIA'S LACTATION CONSULTANTS

BY RENÉE FLAHERTY

Mary Jackson shouldn't need a government license to help women learn to breastfeed. In March, the Fulton County Superior Court agreed and struck down Georgia's unconstitutional licensing law for lactation consultants. And now that the state has appealed, Mary and IJ will soon return to the Supreme Court of Georgia to defend her victory and set groundbreaking precedent.

*Liberty & Law* readers will recall that Georgia's law, which required lactation consultants to obtain the equivalent of an advanced degree, was the first of its kind in the country. Mary and her nonprofit, Reaching Our Sisters Everywhere (ROSE), partnered with IJ to challenge the law in 2018. Then, in 2020, IJ secured an important victory at the Supreme Court of Georgia, which reversed the trial court's

Lactation consultant **Mary Jackson** and her nonprofit, **Reaching Our Sisters Everywhere (ROSE)**, joined with IJ to challenge a new Georgia licensing requirement that would stop them from helping new mothers learn how to breastfeed. In March, a judge struck the law down.



WITH HELP FROM MARY, ROSE MEMBERS, AND EXPERT WITNESSES,  
IJ PROVED THAT LACTATION CONSULTING IS SAFE AND THAT  
FAMILIES NEED MORE PROVIDERS, NOT LICENSING.

dismissal of the case and affirmed that Georgia's high court has "long interpreted the Georgia Constitution as protecting a right to work in one's chosen profession free from unreasonable government interference."

After that first-round victory, the case went back to the trial court, where IJ attorneys conducted discovery and built a record proving that licensing lactation consultants isn't necessary to protect the public. Indeed, the facts showed that the law would have forced hundreds of skilled people like Mary out of work, leaving many families without the care they need. With help from Mary, ROSE members, and expert witnesses, IJ proved that lactation consulting is safe and that families need more providers, not licensing.

Our evidence was so compelling that the very same trial court judge who initially dismissed Mary's case saw the record and changed his mind. He ruled that the law violates the Georgia Constitution's equal protection clause because it arbitrarily excludes people like Mary from helping families while allowing

others to continue working. As a result, he held the licensing scheme unconstitutional.

Now that the state has appealed our loss, IJ will have the chance to defend its equal protection victory. This is yet another example of IJ taking a trial court victory in an economic liberty case to a state supreme court. In 2015, the Supreme Court of Texas held that requiring eyebrow threaders to obtain cosmetology licenses was unconstitutional in IJ's case *Patel v. Texas Department of Licensing and Regulation*. That watershed case established that the Texas Constitution provides greater protection for economic liberty than its federal counterpart. And we have been building on that precedent ever since.

Mary and ROSE are excited for the chance to ensure that everyone in the Peach State has the right to earn an honest living free from unreasonable government interference. Stay tuned! ♦

Renée Flaherty is  
an IJ attorney.



A final victory for **ROSE** and IJ at the Supreme Court of Georgia will help protect the right of everyone in the Peach State to earn an honest living.





# IJ FIGHTS BACK AGAINST RIGGED FORFEITURE RULES

**Cristal Starling** examines the damage to her door after police raided her apartment. Although they found nothing illegal and never charged her with a crime, police seized more than \$8,000 from her.

## BY SETH YOUNG

For years, IJ has led the fight against civil forfeiture. But our latest case shows what civil forfeiture looks like when IJ isn't involved and how unfair procedural rules can deprive innocent people of their hard-earned money. Now we are working to change those rules, to give forfeiture victims a fighting chance even when they don't initially have IJ on their side.

Those victims include Cristal Starling, a resident of Rochester, New York, who has cared for her 6-year-old grandnephew since he was a baby. Her dreams of turning her mobile food cart business into a food truck were

dashed when police seized \$8,040 she was going to spend on used equipment. Police seized the money when they raided her apartment to arrest her now-ex-boyfriend on suspicion of dealing drugs.

Nothing illegal was found in Cristal's apartment. She was never arrested, charged, or convicted—and her ex-boyfriend was acquitted of all charges by a Rochester jury. But none of this mattered to Rochester Police, who had turned Cristal's cash over to the federal Drug Enforcement Administration (DEA) to be forfeited.

Cristal fought the forfeiture and made it deeper into the system than most people, and the DEA offered to give her half her money back

**Nothing illegal was found in Cristal's apartment. But none of this mattered to Rochester Police, who had turned Cristal's cash over to the federal Drug Enforcement Administration to be forfeited.**



After challenging the seizure without a lawyer, **Cristal** lost on a technicality. She's teamed up with IJ to fight for a chance to go to court and get her money back—money she saved to expand her food cart business.



to settle the case. But Cristal rejected the offer and sought the return of all her money.

Unfortunately, Cristal found herself caught in one of the system's many pitfalls. After Cristal filed a claim to her money in the administrative system, the forfeiture was moved into the courts. The move meant that Cristal needed to file a second claim, but she—acting without a lawyer—didn't know that and missed the deadline to file.

In another type of court proceeding, Cristal would have been excused for missing the deadline and her case would have moved forward normally. But in civil forfeiture, deadlines and procedural rules are harshly applied. So even after Cristal filed in court and made it plain she wanted to fight the forfeiture, the district court entered judgment against her based only on the missed deadline and without considering the merits of her claim.


Sadly, this is typical of civil forfeiture. IJ's comprehensive *Policing for Profit* report shows that the vast majority of victims lose their property without a court ever hearing their case. This is because the amount seized is usually too small to make it financially feasible to hire an attorney, and victims then can't make it through the maze of forfeiture procedures alone. Moreover, because civil forfeiture

is outside the criminal justice system, owners do not have a right to a lawyer if they can't afford one.

When the district court finally forfeited Cristal's money, she thought her case was over. But—because she fought so hard and got so far—the district court had to issue a written opinion that was docketed, allowing IJ to find Cristal and offer to carry on the fight. Now Cristal, represented by IJ, is appealing to the 2nd U.S. Circuit Court of Appeals to ask it to reverse the lower court's judgment and send her case back so she can finally get her day in court. The Constitution—and due process—demands nothing less. ♦

Seth Young is an  
IJ Law & Liberty Fellow.





After officials from the Tennessee Wildlife Resources Agency searched Hunter Hollingsworth's land in rural Benton County without a warrant, even installing cameras, he and IJ sued to end this illegal surveillance.

# VICTORY IN TENNESSEE!

## Court Strikes Down Law Allowing Warrantless Spying on Private Land

BY JOSH WINDHAM

One of Tennessee's most intrusive surveillance practices has finally been hunted down. For decades, a state law empowered Tennessee Wildlife Resources Agency (TWRA) officers to enter private land and spy on its owners without a warrant. But in March, IJ clients Terry Rainwaters and Hunter Hollingsworth persuaded a state court to declare that law "unconstitutional, unlawful, and unenforceable."

The decision comes as a huge relief for Terry and Hunter, who own farms in rural Benton County.


**IJ clients Terry Rainwaters and Hunter Hollingsworth sued the Tennessee Wildlife Resources Agency after finding hidden cameras its officers had installed on their land.**

They sued TWRA after finding hidden cameras its officers had installed on their land. And that was just the tip of the iceberg. Discovery revealed that TWRA officers have long treated Terry's and Hunter's farms like public property—entering repeatedly without permission, sneaking around for hours dressed in camouflage, and taking hundreds of secret photos and videos, all without a warrant.

TWRA had no shame about it. The agency invoked a statute that allows TWRA officers to "go upon any property, outside of buildings, posted or otherwise," to look for evidence of hunting violations. And TWRA defended the statute under a longstanding U.S. Supreme Court rule—the "open fields doctrine"—that says private land gets no Fourth Amendment protection.

But IJ knew better. The Tennessee Constitution protects "possessions" from warrantless searches and forbids "general warrants." When the Tennessee



A man with sunglasses on his head, wearing an orange long-sleeved shirt, stands with one hand on his hip and the other resting on the side mirror of a light-colored vehicle. He is outdoors on a dirt path with trees and greenery in the background.

Although the U.S. Supreme Court has held that land not directly surrounding a home gets no Fourth Amendment protection, IJ sued under the Tennessee Constitution—and won. Now state wildlife officials can no longer enter IJ client **Terry Rainwaters’** property without a warrant.

Constitution was adopted, it was widely held that a person could possess land. And general warrants—broad orders to search property without limiting the scope of the search—were among the causes of the American Revolution.

Armed with Tennessee’s distinct constitutional text, IJ argued that TWRA’s warrantless searches, and the statute authorizing them, were unconstitutional.

The Benton County Circuit Court agreed. The court, relying on the Tennessee Constitution, held that Terry’s and Hunter’s farms are the sort of properties that “quintessential[ly]” get protection from warrantless searches. The court found “compelling [the] comparison of the statute to a general warrant, which of course is also constitutionally prohibited.” And based on these holdings, the court struck down TWRA’s authorizing statute and declared it “unenforceable” statewide.

The decision will have an immediate impact, both in Tennessee and beyond. The vast majority of land in Tennessee is privately owned. Now landowners across the state can confidently tell the government, “Come

back with a warrant.” Not only that, but 16 other states have constitutions that similarly protect “possessions” from warrantless searches. (That includes Pennsylvania, where IJ is currently litigating this same issue.) Courts in these states can, and should, look to Tennessee as a model for how to interpret their constitutions in a way that honors landowners’ right to be free from warrantless searches.

Like all IJ victories, this is the start of something far bigger. For one thing, TWRA may choose to appeal, which would provide an opportunity to enshrine these important constitutional protections in Tennessee’s appellate courts. But our victory in Tennessee also serves as a key building block in IJ’s broader national effort under our recently launched Project on the Fourth Amendment to ensure that landowners everywhere get the constitutional protections they deserve. ♦

Josh Windham is  
an IJ attorney.





# A TEXAS PROSECUTOR PLAYED JUDGE FOR 20 YEARS; NOW IJ IS HOLDING HIM ACCOUNTABLE

BY ALEXA GERVASI

Every grade-school American social studies class teaches that, in the United States, we have a system of separation of powers. To the Founders, it was obvious that the executive branch must be separated from the judicial branch, both of which must be separated from the legislative branch. After all, James Madison explained, quoting Montesquieu, if a judge were also a prosecutor, “the judge might behave with all the violence of an oppressor.”

Despite this centuries-old command, Midland County, Texas, for 20 years employed lawyer Ralph Petty as both an assistant district attorney by day and a law clerk to Midland County’s judges by night. In other words, Petty worked for the executive branch as a prosecutor while also working for the judicial branch as judges’ right-hand adviser in his own cases and in cases where his primary employer—the District Attorney’s Office—was a party.

Throughout the course of his unconstitutional dual employment, Petty played prosecutor and judge in more than 300 cases. Yet neither Petty nor those who oversaw his moonlighting have ever been held accountable—that is until the Institute for Justice filed a lawsuit on behalf of Erma Wilson in April.

In 2000, Erma was arrested for possession of a controlled substance after officers claimed to have found drugs near her on the ground in a high-crime area. The officers told Erma that unless she told them who the drugs belonged to, she would be taken to jail. Erma didn’t know, so she was arrested.

Maintaining her innocence, Erma rejected every plea offer she received and took her case to trial, putting her faith in the Constitution and the due process it promises. Erma’s trust, unfortunately, was misplaced. She was convicted. And it would be two decades before records revealed that Petty, while also a prosecutor, was the law clerk on Erma’s case.



Twenty years ago, a felony conviction derailed **Erma Wilson's** dream of becoming a nurse. Unbeknownst to her, the man who prosecuted her was also working for the judge overseeing her case. Now Erma has joined with IJ to vindicate her right to a fair trial.



## ERMA IS NOW 20 YEARS INTO A LIFELONG PUNISHMENT DESPITE NEVER RECEIVING A FAIR TRIAL.

The lasting consequences of Erma's conviction run much deeper than the eight years of probation she received. Since she was 9 years old, Erma has dreamed of becoming a registered nurse. But Texas denies registered nursing licenses to people convicted of drug-related offenses. So Erma's dream has gone unfulfilled. Unable to pursue her chosen career, Erma has at times struggled to make ends meet and provide for her children because employers were hesitant to hire someone with a felony record.

Erma is now 20 years into a lifelong punishment despite never receiving a fair trial. And though nothing can be done to give her those years back, she can fight to hold the wrongdoers accountable and ensure that similar violations do not happen to others.

Erma's fight is also a chance for IJ to take on the pernicious doctrine of "prosecutorial immunity." This judge-made doctrine makes a mockery of constitutional protections by shielding prosecutors from liability even for flagrant constitutional violations. And as those familiar with IJ's Project on Immunity and Accountability know, such doctrines are almost always successful. But though fighting back against them isn't easy, IJ is prepared to tackle these doctrines head on and demonstrate their inapplicability to this case and beyond.

When government actors abandon the Constitution's most fundamental demands, the law must hold them responsible. So, too, for Ralph Petty and Midland County. ♦

Alexa Gervasi is an IJ attorney.



## IJ ASKS FEDERAL APPEALS COURT TO AFFIRM THAT THE CONSTITUTION APPLIES TO JUDGES, TOO

Rogue prosecutors like Ralph Petty of Midland, Texas, aren't the only government actors who claim absolute immunity from lawsuits—rogue judges also get to take advantage of this judge-made doctrine. But neither prosecutors nor judges could historically avail themselves of this impenetrable shield, and Congress has never included it in the language of its civil rights statutes.

That's why, this spring, IJ joined the fight against judicial immunity in a case against a Missouri state court judge who threw two children in jail, without a hearing or court order, because the children voiced their disagreement with the judge's ruling in their parents' custody dispute. When the children sued for violations of their civil rights, the judge invoked judicial immunity, arguing that being a judge protected him from liability for his blatantly unconstitutional actions.

In our brief in this case, now before a federal appeals court, IJ explained that judicial immunity has never protected rogue judges who use their titles to abuse people with whom they disagree. True, the U.S. Supreme Court has recognized absolute immunity for judges, but only for traditional judicial activities, which the unlawful jailing of the children was not. IJ's brief also highlights the historical flaws in the Supreme Court's own precedents, which overestimated the extent of judicial immunity at English common law. Those precedents also ignored Congress' intent to abolish judicial immunity altogether in suits against state court judges when it passed a major civil rights statute in the wake of the Civil War.

Given the doctrine's questionable historical pedigree, IJ is urging the court not to expand judicial immunity further. Judges are government officials. They should not be able to ignore the Constitution simply because they also wear a robe. ♦

# FINAL VICTORY

## For Property Owners in the Tar Heel State!


BY ARI BARGIL

There's a bit more Southern hospitality in North Carolina thanks to IJ's appellate victory striking down an unlawful ban on residential rental properties in Wilmington. In its April decision, an appeals court reaffirmed IJ's 2020 trial court victory, declaring that Wilmington's ordinance placing a hard cap on rental properties in the city was void and unenforceable. As a result of IJ's victory, property owners throughout Wilmington can continue offering their

**If renting one's property does not impair neighbors from enjoying the general use of theirs, the government cannot intervene.**

properties for rent without the interference of the government, so long as they do not run afoul of a handful of regulations governing basic neighborly conduct. In other words, if renting one's property does not impair neighbors from enjoying the general use of theirs, the government cannot intervene.

The court of appeals' decision was the culmination of nearly two years of litigation. The case began in August 2020, soon after Wilmington enacted an ordinance requiring owners of rental properties to register with the city—a process that first



**David and Peg Schroeder** are free to rent out their Wilmington, North Carolina, home after teaming up with IJ to challenge the city's rental ordinance, which essentially distributed property rights through a lottery.



required entry into a lottery system that sought to limit and geographically separate the rental properties in town. Those who won the lottery could offer their properties for rent, while those who lost the lottery were forbidden from doing so. For the many who had been offering their properties lawfully before the city enacted its ordinance, but who did not win the city's lottery, the city ordered that they cease renting within a year. That is what happened to IJ's clients in this case, Peg and David Schroeder, who had invested about \$75,000 renovating a home they own so that they could rent it out.

The right to rent property to others is a cherished and historically important element of property rights. The city's registration and lottery not only trampled on that right, but they did so in direct conflict with state law. In fact, the North Carolina General Assembly enacted a statute several years before with the clear goal of preventing municipalities like Wilmington from passing ordinances precisely like the one it passed.

That this statute existed was not unknown to the members of the Wilmington City Council. Nor was its intended purpose—stopping local governments from overregulating residential rental property—unclear to anyone else who took the time to look into the matter.

But lawmakers in Wilmington took a more cynical view, reading the statute as actually empowering cities to enact precisely the regulations that the law sought to forbid. And if you disagree, they seemed to taunt, "Sue us."

And so we did. Indeed, IJ is uniquely positioned to fight these types of battles on behalf of clients who otherwise would have no choice but to surrender their rights. Along with committed clients like Peg and David, IJ stands on principle in the face of crafty bureaucrats and their armies of lawyers. And, time and again, we win. ♦

Ari Bargil is an IJ attorney.



Panelists discussed important cases in the D.C. Circuit Court of Appeals at an April 6 live recording of IJ's Short Circuit podcast.

## National Press Club Hosts IJ's Short Circuit Live Podcast

On April 6, the National Press Club played host to a live recording of IJ's popular Short Circuit podcast. Joining us to discuss three recently released D.C. Circuit opinions were three former D.C. Circuit clerks who have since grown into superstars of the U.S. Supreme Court bar—Lisa Blatt, Paul Clement, and Kelsi Brown Corkran. Lisa and Paul are two of the most prolific litigators to appear before the Court in its history, with Lisa arguing over 40 cases before the Court and Paul participating in over 100. Kelsi's remarkable record includes securing three major civil rights victories in the Supreme Court, two of them just last term.

While the conversation centered on three court decisions, it covered so much more than that, including a discussion of the D.C. Circuit's unique history, which took it from a very precarious position during the Civil War—when it was disbanded and then reconstituted with sympathetic judges—to the second most powerful court in the nation. The panelists also shared stories of clerking for three D.C. Circuit judges: Lisa clerked for then-Judge Ruth Bader Ginsburg, Paul for Judge Laurence Silberman, and Kelsi for Judge David Tatel, three judges whose legacies mark them as titans of the D.C. Circuit.

The case law segment also did not disappoint and featured lively discussion about the executive privilege invoked by former President Trump in the context of the January 6 Committee investigations, the constitutionality of the TSA screening procedures instituted in the wake of the 9/11 attacks, and the activities of pharmaceutical companies during the most violent phase of the Iraq invasion.

Our next Short Circuit Live recording will take place in New York in the fall. Hope to see many of you there! ♦

# Crowning Victory:

## IJ Secures Extension of Braiding Freedom in Idaho

BY CAROLINE GRACE BROTHERS

As *Liberty & Law* readers know, IJ has led the charge to disentangle African-style hair braiders from unnecessary and burdensome licensing requirements for the past three decades. When IJ was founded, no state permitted hair braiders to operate lawfully without a license. And when IJ established its National Braiding Initiative in 2014, only 11 states allowed braiders to work without needless licenses. But in March of this year, on the heels of an IJ lawsuit, Idaho became the 32nd state to eliminate licensing requirements of any kind for African-style braiders.

Before the lawsuit, Idaho braiders were required to obtain a cosmetology license before they could legally braid hair for a living. But African-style hair braiding—a method of natural hair care that does not involve cutting, perming, or dyeing hair—is distinct from the practice of cosmetology. Though Idaho does not even require cosmetology schools to teach students African-style braiding techniques, braiders had to complete 1,600 hours of training in cosmetology school—which can cost more than \$20,000—to qualify for a license. To top

it off, braiding hair without a cosmetology license was a crime, punishable by a misdemeanor charge and a fine of up to \$1,000 per violation.

In short, even though IJ clients Tedy Okech, Charlotte Amoussou, and Sonia Ekemon have over 60 years of experience practicing African-style braiding between the three of them, the state required them to spend thousands of dollars and at least a year of their lives learning irrelevant skills before they could use their braiding expertise to support their families.

But the government has no business licensing something as safe and as common as hair braiding. Idaho's arbitrary and irrational licensing requirements for braiders ran afoul of the right to earn an honest living protected by the U.S. Constitution, which is why Tedy, Charlotte, and Sonia teamed up with IJ to file a lawsuit challenging the state's cosmetology licensing regime in federal court.

In response to the public outcry, and just two days after IJ filed suit, the Idaho House of Representatives introduced a bill—based on IJ's model Braider Opportunity and Freedom Act—to completely exempt braiders from the requirement to obtain a cosmetology license. Two weeks later, the governor signed the bill into law after it sailed through the Legislature unanimously. The law took effect immediately, so Idaho entrepreneurs like Tedy, Charlotte, and Sonia are now free to earn an honest living by growing their braiding businesses.





This legislative victory only happened because of our litigation, and it represents the latest step in IJ's commitment to ensure the economic liberty of all Americans. Since 1991, IJ has represented braiders to defeat licensing requirements across the country. With the passage of its new law, Idaho has joined 31 other states in eradicating barriers to braiding.

Thanks to IJ's tireless efforts, only four states still require braiders to obtain a cosmetology license, while another 14 states and Washington, D.C., have a specialty license for braiders that does not require a full cosmetology education. And if our nearly overnight success in Idaho is any indication, even those few barriers won't hold braiders back much longer. ♦

Caroline Grace Brothers  
is an IJ attorney.



Just two days after IJ filed suit against Idaho's burdensome and nonsensical cosmetology licensing for African-style hair braiders, the Legislature moved to abolish the requirement. The new law frees Idaho hair braiders like IJ clients **Tedy Okech** (left), **Sonia Ekemon** (middle), and **Charlotte Amoussou** (right) to earn an honest living.

## New *Baking Bad* Report Shows Which States Rise to the Occasion for Food Freedom

BY NICK SIBILLA

Last fall, following a lawsuit by IJ, New Jersey became the final state in the nation to eliminate its complete ban on selling home-baked goods. Thanks to our efforts, a sea change in the law has occurred: Every state now has at least a "cottage food" law on the books, allowing the sale of home-baked goods and usually other shelf-stable treats such as candy, cereal, dry mixes, jams, jellies, and the like.

The results are a boon for entrepreneurs, who no longer have to rent prohibitively expensive commercial kitchen space and can instead turn their own home kitchens into business incubators. Tens of thousands of home-based food businesses are now active nationwide, with growth accelerating amid the pandemic.

But state laws can vary dramatically in terms of what foods can be sold, where they can be sold, how much a home baker can earn, and the amount of red tape entrepreneurs must endure before they can start selling.

To better understand the challenges cottage food sellers face, IJ recently published *Baking Bad*, which provides the most comprehensive, up-to-date look at nearly 70 different homemade food programs in all 50 states and the District of Columbia. Using 17 distinct criteria, *Baking Bad* grades states based on how well they secure economic opportunity for anyone who wants to turn their love of home baking, canning, pickling, or cooking into a business.

Clinching the report's only A grade is Wyoming, which has the broadest "food freedom" law in the nation, allowing individuals to make and sell whatever they please from their home kitchens. Meanwhile, Rhode Island ranks dead last because it allows only farmers to sell homemade food, a restriction that renders 99.8% of the state's population ineligible.

Already since the report was published in March, both South Dakota and Tennessee have made it easier to start and run a home-based food business, joining more than 20 other states where we have helped change the law. And in the coming months, *Baking Bad* will help us continue identifying potential litigation targets and further bolster our legislative efforts nationwide. ♦

Nick Sibilla is an IJ writer  
and legislative analyst.



# AN EGGSTRAVAGANT SUCCESS!

## Record Numbers Attend Carnival to Support Opportunity Scholarship Program

BY DEANNA MCCOLLUM

The Institute for Justice has supported the Opportunity Scholarship Program (OSP)—the educational choice program in Washington, D.C.—since its creation in 2003, and over the past 19 years, the program has served as a lifeline for thousands of struggling families who otherwise couldn't afford to rescue their children from failing and dangerous public schools in the nation's capital.

Despite the incredible opportunity the OSP provides to those in the District who need it most, D.C.'s families have had to regularly fight for the program's survival as Congress debates whether to reauthorize it. Ultimately, at the core of the debate are the futures of vulnerable children in D.C.

To support the OSP, IJ's activism team has helped build two initiatives: D.C. Parents for Opportunity, an advocacy network of nearly 400 parents, and Serving Our Families, which over the past year has worked one on one with 443 families to help place students in schools that best meet their needs.

The highlight of IJ's community programming to build these initiatives and recruit new OSP participants is an annual carnival that we, unfortunately,

had to put on hold for two years because of the pandemic.

But in April, we came back in a big way, hosting our first-ever spring-themed "Eggstravaganza," complete with an egg hunt featuring thousands of eggs and an appearance from the Easter Bunny. After rigorous preparation and canvassing, we were prepared to welcome more than 600 guests to this event. In the end, **over 1,300 people attended**. This massive spike in attendance made this year's carnival hands-down our largest and most successful ever.

Events like these help us stay connected with parents, recruit more families to the program, and reinforce the positive reputation of the OSP in D.C. They are an important—and fun!—complement to IJ's other efforts, including the research, testimony, outreach, coalition-building, and organizing IJ uses to raise public awareness, generate goodwill, and hold decision-makers accountable.

After this year's rousing success, we look forward to even more growth in scholarship applications and even stronger partnerships with parents to ensure the longevity of the OSP. ♦

Deanna McCollum  
is an IJ activism  
coordinator.





# 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/  
june-2022-headlines](https://iam.ij.org/june-2022-headlines)



## The Atlanta Journal-Constitution

**Licensing Law Ruling A Victory For Georgia Lactation Consultants**

March 4, 2022

## Idaho Statesman

**3 Idaho Refugees Want To Braid Hair Without A License. They Say State Won't Let Them.**

March 8, 2022

## AP Associated Press

**Bill Would Lift Idaho's Hair Braiding License Requirement**

March 10, 2022

## ALCO

**National Group Sues Brookside Over Its 'Criminal-Justice System For Profit'**

April 4, 2022

## Democrat & Chronicle

**Rochester Woman Fights To Get Back \$8K Seized In Raid; She Was Not Charged, No Drugs Found**

April 6, 2022

## reason

FREE MINDS AND FREE MARKETS

**The Feds Will Return More Than \$1 Million In Marijuana Money That California Cops Stole From Armored Cars**

April 14, 2022

## Orlando Sentinel

**Florida Health Coach Fights For Her Right To Speak**

April 14, 2022



## REUTERS

**Fallout Mounts From Texas Prosecutor's Moonlighting Job As Judicial Clerk**

April 18, 2022



West Virginia's Hope Scholarship Program will empower me to provide my kids with the education that best fits our family.

But defenders of the status quo have sued to shut the program down.

I am fighting back to protect educational choice.

And I will win.

*I am IJ.*