



LIBERTY & LAW

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FOR EDUCATIONAL CHOICE!

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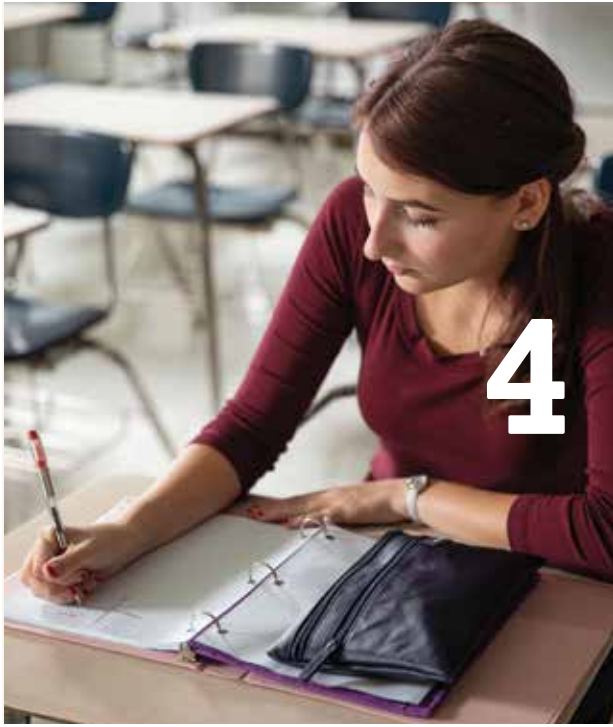
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Liberty & Law is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication, activism, and research, advances a rule of law under which individuals can control their destinies as free and responsible 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 illustrates and extends the benefits of freedom to those whose full enjoyment of liberty is denied by government.

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Supreme Court **VICTORY** for Educational Choice!

BY MICHAEL BINDAS

A U.S. Supreme Court victory is always a big deal. But one removing the last major constitutional cloud over educational choice? That's a *really* big deal. And on June 21, we got it in *Carson v. Makin*, a challenge to Maine's exclusion of religious options from that state's educational choice program for students who live in towns without a public high school.

When the modern educational choice movement was in its infancy, there were two major constitutional questions: Does the U.S. Constitution's Establishment Clause permit religious options in educational choice programs and, if so, can state law nevertheless bar religious options in them?

The Supreme Court answered the first question in *Zelman v. Simmons-Harris*, IJ's successful 2002 defense of a voucher program for children in the terribly performing Cleveland City School District. There, the Court held that religiously neutral educational choice programs that operate on the private choice of parents are perfectly permissible under the federal Establishment Clause.

Choice opponents, primarily the public school teachers' unions, then changed tactics, arguing that even though choice is permissible under the federal Constitution, it still violates state law—specifically, the Blaine Amendments found in some 37 state constitutions. These provisions, which are steeped

More families across America will be able to send their children to the schools they think best after IJ secured a resounding U.S. Supreme Court victory for educational choice on behalf of Amy, Dave, and Olivia Carson and other Maine families. Here, **Dave** and **Olivia** (third and fourth from left) stand outside the Court with some of the IJers who made this win possible.





IJ joined with three Maine families who wanted to send their children—**Alicia and Royce Nelson** (left), **Isabella Gillis** (middle), and **Olivia Carson** (right)—to schools excluded from a state educational choice program.



in 19th-century anti-Catholic animus, prohibit public funding of so-called sectarian schools.

IJ, meanwhile, argued that to apply these discriminatory provisions to bar educational choice programs would violate the Free Exercise Clause of the U.S. Constitution. It was that question—the constitutionality of a state bar on religious options—that would take two more decades after *Zelman* to fully resolve.

We got halfway there in *Espinoza v. Montana Department of Revenue*, the 2020 decision in which IJ convinced the U.S. Supreme Court that Montana violated the Free Exercise Clause by

prohibiting religious options in its educational choice program. That bar, the Court held, impermissibly discriminated against a parent's chosen school based on its religious *status* or identity.

Again, though, educational choice opponents immediately attempted an end run. They argued that even if a state cannot discriminate against a student's chosen school because of its religious status, it can still discriminate based on the religious use to which a student's aid might be put at the school: namely, religious instruction. Worse, the 1st U.S. Circuit Court of Appeals agreed, adopting that very reasoning to uphold Maine's exclusion of religious options four months after the Supreme Court's *Espinoza* decision.

Thankfully, the U.S. Supreme Court stepped in yet again and finally put the question to rest. On June

21, the Court handed down its opinion in *Carson*, holding that “regardless of how the . . . restriction [is] described”—as turning on religious status or, instead, religious use—it “exclude[s] otherwise eligible schools on the basis of their religious exercise” and thus “violates the Free Exercise Clause of the First Amendment.”

Does the U.S. Constitution's Establishment Clause permit religious options in educational choice programs and, if so, can state law nevertheless bar religious options in them?

In that simple, commonsense holding, the Court made absolutely clear that state law cannot be applied to bar religious options in educational choice programs. The Blaine Amendments, in other words, were effectively buried.

That means the Court's ruling has implications far beyond Maine, opening up opportunities to expand educational choice programs nationwide at a time when dissatisfaction with the public school system is at an all-time high. Thousands more kids will now have a shot at a quality education provided by a school of their families', not the government's, choosing. Moreover, the ruling in *Carson* is a powerful vindication of IJ's unwavering resolve—and a fitting culmination of IJ's three-decade-long fight to firmly establish the constitutionality of educational choice. ♦

Michael Bindas is an IJ senior attorney.



Victory for Parents

IN THE VOLUNTEER STATE

BY ARIF PANJU

When it comes to defending educational choice, IJ fights on multiple fronts. So at the same time IJ was setting major constitutional precedent at the U.S. Supreme Court (see p. 4), we were also fighting for choice before state supreme courts. And our most recent victory, before the Tennessee Supreme Court, is a perfect example of the value that IJ brings

Our most recent victory, before the Tennessee Supreme Court, is a perfect example of the value that IJ brings when we intervene in educational choice lawsuits on behalf of families.

when we intervene in educational choice lawsuits on behalf of families.

The fight in Tennessee began two years ago, when IJ entered two lawsuits to defend the Tennessee Education Savings Account (ESA) Pilot Program Act against a basket of legal claims. Readers may remember that Tennessee enacted the ESA program in May 2019, giving IJ clients Natu Bah, Builguissa



IJ joined with Shelby County, Tennessee, parents **Natu Bah** (insert) and **Builguissa Diallo** to defend an educational choice scholarship program for low- and middle-income families. In May, we won a victory at the Tennessee Supreme Court.



No matter how strongly the government feels about a school choice program, it will never have the same interest in defending that program as parents and their children.

Diallo, Star Brumfield, and thousands of families like theirs a lifeline—scholarships worth up to \$7,300 for low- and middle-income families in Shelby County and Metro Nashville. Families can use these scholarships for a wide array of educational expenses, including private school tuition.

Unfortunately for these families, the trial court seized on the lead claim in both cases challenging the ESA law, invoking the Tennessee Constitution's Home Rule provision. The court reasoned that because the ESA program is available only to students assigned to school districts in two counties, and those counties did not approve the program after it was passed by the state Legislature, it violates the counties' home rule authority. The court halted the program as parents were submitting applications—and the intermediate appellate court agreed.

Making the Tennessee Constitution's Home Rule provision sound like something resembling plain English is no easy task. At its core, a county's home rule authority concerns power. Shelby County and Metro Nashville claimed the home rule power to extinguish the only education benefit that gave children from low-income families a lifeline to escape two of this country's worst-performing school districts. But no such power exists.

That's where IJ's unique contribution to educational choice lawsuits comes in. Because no matter how strongly the government feels about a school choice program, it will never have the same

interest in defending that program as parents and their children. And that difference can have a major effect on litigation strategy and the arguments the parties put before the court.

So it was in Tennessee. As intervenors defending the program, IJ did not follow the state's lead, which focused on whether the plaintiffs had the right to sue. Rather, IJ centered the justices' attention on the plain text of the state constitution's Home Rule provision and argued it presented the clearest path to reversing the lower courts and reinstating the ESA program. And the Tennessee Supreme Court agreed: The high court affirmatively embraced the legal theory that IJ advanced and reversed the lower courts.

Tennessee's ESA program will remain the go-to educational option for thousands of Tennessee families of modest means assigned to failing schools, and it's all thanks to three moms who joined with IJ to fight for their children's education. And as the case returns to the trial court on the remaining claims, it is those moms—Natu, Builguissa, and Star—who will continue to lead the way in defending Tennessee's ESA program in court, following in the footsteps of so many other parents who have teamed up with IJ to defend choice for more than three decades. ♦

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





IJ Win in Wisconsin Vindicates Activist's Right to CRITICIZE GOVERNMENT OFFICIALS

BY JAMES T. KNIGHT II

Speak up about politics and you can expect to draw a fair amount of heat. People feel passionately about how their government is run, so handling disagreement comes with the territory.

But if you criticize a particularly thin-skinned government official, speaking up can also get you sued.

That's what happened to Kelly Gallaher, a local activist in Mount Pleasant, Wisconsin, when she dared to call the village attorney out for lying to the local newspaper. Kelly rose to local prominence opposing her hometown's threats to use eminent domain for a famously ill-advised development to benefit Foxconn. But Kelly ended up in Village Attorney Chris Smith's crosshairs over something comparatively mundane: opposing a proposal to extend the term lengths of

village board members from two years to three. Among other things, Kelly publicly argued that the term length change lacked sufficient public notice. Smith, who initially proposed the change, countered by telling the local newspaper that the change had been discussed for years.

That struck Kelly as false. She follows the village board meetings carefully and she would have known if this had ever come up. And when Kelly sent an open records request to Smith demanding records to substantiate his claim, he confirmed that no such records existed. So Kelly shared her research with the public and called Smith out for lying.

This kind of back-and-forth is normal in small-town politics. Smith's response, though, was not: Instead of explaining himself, Smith sued Kelly.

Speak up about politics and you can expect to draw a fair amount of heat. But if you criticize a particularly thin-skinned government official, speaking up can also get you sued.

The First Amendment protects the right to freely speak up about politics and other matters of public concern. But retaliatory lawsuits like this one are often more about terrifying defendants into silence than winning in the court room.

According to Smith, Kelly's words defamed him and caused him "emotional distress." What's more, Smith demanded punitive damages because Kelly's activism included hundreds of social media posts about local policy that made village officials look bad.

Smith's lawsuit was hardly on solid legal footing. After all, the First Amendment protects the right to freely speak up about politics and other matters of public concern. But retaliatory lawsuits like this one are often more about terrifying defendants into silence than winning in the court room. In fact, that's initially what happened to Kelly—before Smith sued her, he sent a threat letter demanding that Kelly retract her statements and promise never to speak about him in public again. Frightened and unsure about her ability to afford a legal defense, Kelly agreed to comply. Smith sued anyway.

But Kelly, like everyone in America, has



When Mount Pleasant, Wisconsin, community activist **Kelly Gallaher** criticized a local official, he retaliated by suing her for defamation. So Kelly teamed up with IJ to defend her free speech rights, and a month later a judge dismissed the defamation suit.

the right to criticize her own government—even if it hurts government officials' feelings. That is why Kelly teamed up with IJ to defeat Smith's bogus defamation lawsuit on the merits. With IJ's help, Kelly argued that her statements were not defamatory and that Smith had not cleared the high bar the First Amendment sets for public officials filing defamation suits. At

a hearing, a Wisconsin state judge agreed on both counts, dismissing Smith's lawsuit with prejudice and handing Kelly a resounding victory.

By refusing to be silenced, Kelly stood up not only to the village attorney of Mount Pleasant but to every government official looking to cow people into sacrificing their First Amendment right to speak. ♦



James T. Knight II is an IJ Law & Liberty Fellow.



SAY IT LOUD:

IJ TAKES ON THE FCC

BY DANIEL NELSON AND ANDREW WARD

WJBE is Knoxville's only Black-owned radio station. Besides airing R&B and popular hosts like Steve Harvey, it's also a fixture of the community. It features local news, up-and-coming artists, advertising for struggling local businesses, and, more recently, information about the pandemic. You'd think that's just the sort of thing the Federal Communications Commission would promote. Instead, the government is trying to shut the station down. Why? Because the owner made a false statement on his 2008 *personal* income taxes—years before he owned the station.

Longtime readers of *Liberty & Law* know that there are thousands of laws that irrationally limit people based on their criminal histories. IJ is fighting those laws in California and Virginia, and we won our battle against Pennsylvania's "good moral character" requirement for cosmetologists. Now we're taking up the fight against another "character" requirement, this time for the airwaves.

The legendary musician James Brown founded WJBE—it's short for James Brown Enterprises—in 1968 because other stations wouldn't play his music. Soon after, a young man named Joe Armstrong started working there to pay for college. WJBE

changed hands over the years, and it eventually went dark.

Meanwhile, Joe enjoyed a successful life of public service as a state representative. In 2012, he bought a radio station to resurrect WJBE. And he's been running it ever since without taking a salary. If the flood of awards at the station is any indication, he's doing something right.

Joe, however, also has a criminal record. He signed the 2008 tax return that his accountant had prepared knowing it was missing income. (He thought his accountant was paying taxes on the income separately.) He was acquitted of tax fraud and convicted of filing a false return. The judge called Joe's conviction an "aberration" in an otherwise "exemplary life." Joe served his probation, paid all

Knoxville continued on page 18



Watch the case video!
iam.ij.org/KnoxvilleRadio

Joe served his probation, paid all the taxes, and moved on years ago. Tennessee even restored his right to vote. All through it, he kept WJBE alive. But that's not enough for the FCC.

IJ Leads the Fight for a Fresh Start



BY MEAGAN FORBES

Earning an honest living is one of the best ways those convicted of crimes can successfully re-enter society. But nationwide, more than 15,000 laws prevent people with criminal records from pursuing their calling. And while IJ continues to challenge senseless barriers for people with criminal records in court (such as our defense of Joe Armstrong, described on p. 10), we are also aggressively lobbying statehouses for reform.

This year on the legislative front, we focused on eliminating one of the worst burdens for people with criminal records: the uncertainty of whether their criminal history will prevent them from getting an occupational license. For some, this uncertainty is enough to keep them from working toward a better life in a new occupation. But for others, the harm is even worse: Too

While IJ continues to challenge senseless barriers for people with criminal records in court, we are also aggressively lobbying statehouses for reform.

often, people with criminal records are forced to invest thousands of dollars and hundreds of hours in education and training before they even know whether their criminal history will foreclose their working in their chosen

occupation. Those who are later denied a license can be left financially devastated. And with no hope of repaying their educational debt through

honest work, it can be all too easy to slip back into a life of crime.

A straightforward solution to this problem is to create “predetermination” processes that allow people to get decisions from licensing boards about whether their criminal record would disqualify them from licensure *before* they invest their time and money in training for a new career. Nationwide, 22 states have already enacted predetermination processes. But not all of these laws are meaningful, and many states

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Through lawsuits and legislative efforts, IJ is fighting to remove unjust laws that stop Americans with criminal records from having the fresh start they've earned.



IJ Fights to Bring Government Data to Light

BY DANA BERLINER

In the course of IJ's work, we often need to get information from the government. That is particularly true of our strategic research work, where we collect huge quantities of data to present the most comprehensive information about, for instance, civil forfeiture or occupational licensing. And there are also times when we seek information about legislation—for example, to see if politically connected businesses are working with lawmakers to shut out their competitors.

You will not be surprised to learn that the government is less than delighted to receive our requests. Indeed, sometimes, it will refuse to provide things that we are entitled to under federal or state law, or it will produce documents with nearly all the information blacked out. But Americans are entitled to know what their government is doing. And although IJ rarely sets out to litigate under state or federal freedom of information laws, along the way, we often

establish important precedent that makes it easier for IJ and others to find out what their officials are up to.

This spring, we finally ended our lawsuit against the IRS when it turned over a forfeiture database we originally requested in 2015. At first, we secured only a partial victory in the trial court and had to go up on appeal. The IRS had claimed that its information was not a “database,” and since we asked for a “database,” it did not need to turn the information over. It also redacted (blacked out) 99% of the information that it did provide. On appeal, the U.S. Court of Appeals for the D.C. Circuit criticized the IRS for quibbling over technicalities and also held that it could not just redact huge categories of information.

The ruling sets important precedent for anyone who is trying to get large quantities of digital information, particularly when it has some relationship to law enforcement. It also got IJ what we had asked for: Since losing on appeal, the IRS has agreed to produce all the information we originally sought, and we have just begun analyzing the data.

Another recent victory comes out of Louisville, Kentucky. Years



After IJ won for Louisville, Kentucky, food truck owners **Troy King** (top) and **Robert Martin** (bottom), the city added new restrictions and forced IJ to sue for city records.



Not only do we have important information we can use to educate the public, but we also set precedent about the importance of government transparency and the impermissibility of using the law to hide public documents.

ago, IJ teamed up with Louisville food truck owners to challenge a law that prohibited them from operating near restaurants. The city changed the law, agreeing that food trucks could operate and that they would not be treated differently from restaurants. But as soon as the ink was dry on the federal consent decree, the city proposed an ordinance that would in fact restrict food trucks and treat them differently.

Curious as to how this proposal came about, we asked, in 2018, for the emails from the city councilmembers under the state open records act. They refused. Once again we were forced to sue, and we won. The court held that councilmembers didn't just violate the state's open records law—they violated it willfully and will have to pay statutory penalties for their misdeeds. We hope to finally get those emails soon.

When we sent in our records requests, we didn't anticipate spending years in litigation just to get basic information about federal and municipal government activity. We're glad we did, though. Not only do we have important information we can use to educate the public, but we also set precedent about the importance of government transparency and the impermissibility of using the law to hide public documents. ♦

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



In both of these cases, IJ was represented by outside lawyers, both members of IJ's Human Action Network and attorneys at Latham & Watkins (IRS) and Dentons (Kentucky).



Inspiring the Next Generation of Litigators for Liberty

In early June, 36 wonderfully inquisitive students from around the country and one international student joined IJ attorneys and staff in our headquarters office in Arlington, Virginia, for our 30th annual Law Student Conference.

Participants enjoyed a weekend filled with sessions where IJers explained complex legal theories in immersive and practical ways. Our team designed the program to inspire participants to seize public interest opportunities in the future. As one student put it, "I tried to choose my favorite panel or moment, but it wasn't possible because everything was so incredible. [IJ President] Scott Bullock said if we took one thing away from the conference, he wanted it to be inspiration. I am full of that now!"

This year, we were excited to add a few new sessions to our programming, including a mock litigation case discussion and a deep dive into the particulars of legal writing pertaining to public interest law. The mock litigation case discussion gave students the opportunity to hear what it's like to vet a potential IJ case. We then used the case we vetted together to simulate the experience of writing the introduction to a complaint, the initial document we file in court in IJ cases.

As always, one of our favorite sessions was the IJ client panel, which this year featured Anthonia Nwaorie (Houston Forfeiture), Marc N'Da (Nebraska Certificate of Need), Akia McNeary (Kentucky Educational Choice), and Rudy Carey (Virginia Fresh Start).

Participants in IJ's Law Student Conference leave not just trained and inspired but as members of IJ's Human Action Network, who often assist IJ with researching potential cases, writing *amicus* briefs, serving as local counsel, and litigating cases IJ is unable to litigate. And, in time, some even go on to become IJ attorneys themselves! ♦



PAY UP!

IJ Wins First-of-Its-Kind Victory for Texas Property Owner

BY JEFFREY REDFERN

On June 22, for the first time in history, a federal court awarded damages against a municipality as compensation for the intentional destruction of private property by the city's police.

The case concerned a SWAT raid that occurred during the summer of 2020. IJ client Vicki Baker was in the process of selling her home in McKinney, Texas, in order to finance her retirement in Montana. She had already relocated to Montana when an armed fugitive—who had kidnapped a teenage girl—took refuge in her house in McKinney. Vicki's adult daughter was at the house, preparing it for sale, but she fled when the fugitive showed up at the door. The fugitive had worked as a handyman around the house, but neither Vicki nor her daughter had seen him in over a year.

Vicki and her daughter called the police, who surrounded the house. The teenage girl eventually emerged from the house unharmed, but the fugitive refused to come out alive.

At that point, the McKinney SWAT team assaulted the house. They launched dozens of tear gas grenades through the windows, walls, and roof, saturating the structure with noxious chemicals. They used two armored personnel carriers to knock down the fence and front door. They literally blew up the garage door with explosives. And when they entered the house, they found the fugitive dead by his own hand.

The damage was extensive, requiring expensive repairs over the ensuing months. All of the personal property in the house—furniture, clothing, appliances, and so forth—was so saturated with tear gas that it could not be salvaged. Vicki's homeowner's insurance, like most policies, excludes coverage for the intentional acts of government agencies. When Vicki asked the city of McKinney to compensate her, she was told, "No, you won't see a dime."

That's when Vicki teamed up with IJ to file a federal lawsuit demanding just compensation under the Fifth Amendment to the U.S. Constitution.



In an unprecedented victory, a jury awarded IJ client **Vicki Baker** nearly \$60,000 after a Texas SWAT team intentionally destroyed her house while chasing a fugitive.

The McKinney SWAT team assaulted the house.
The damage was extensive, requiring expensive repairs over the ensuing months.
When Vicki asked the city of McKinney to compensate her, she was told,
"No, you won't see a dime."



Watch the case video!
iam.ij.org/TXSWAT

The Supreme Court has held that the Fifth Amendment “was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” In Vicki’s case, police made the call that destroying her home was the most expedient way to protect the public. And it is the public as a whole—not a random, unlucky homeowner like Vicki—who should bear the cost of that decision.

The federal district judge agreed, holding that McKinney is liable to Vicki under the Fifth Amendment. The case then proceeded to a jury trial to determine Vicki’s damages, as well as whether McKinney should also be held liable under a civil rights statute. The jury awarded Vicki \$59,656 in damages and found liability under the statute as well. The city has indicated it intends to appeal, and IJ will proudly defend the court’s verdict.

Vicki’s victory is especially significant because in the 2019 case of *Lech v. City of Greenwood Village*, a different federal court held that the government is immune from liability when a SWAT team destroys an innocent person’s home. IJ asked the Supreme Court to review that case, but the Court declined. In Vicki’s case, however, the judge explicitly rejected the *Lech* court’s approach, calling the analysis “untenable.” So Vicki’s case is the first step in establishing that “you break it, you buy it” applies to the police just like it applies to everyone else. ♦

Jeffrey Redfern is
an IJ attorney.



VICTORY IN OHIO!

State Drops Warrantless Inspection Scheme Following Taxidermist's Lawsuit

BY JOSH WINDHAM

After a quick hunt, IJ has mounted Ohio's intrusive taxidermy inspection scheme on the wall. For years, a state regulation allowed game wardens to enter taxidermy shops without a warrant to inspect records. It gave officers complete discretion over the scope of the inspections—and anybody who refused could be criminally prosecuted. But now, thanks to a lawsuit filed by IJ client Jeremy Bennett under our new Project on the Fourth Amendment, that's all changed.

Jeremy runs a taxidermy shop in Logan, Ohio. The shop is a private place: It sits just a few steps from Jeremy's front door. It's where he works to support his family. And his kids, who are homeschooled, do occasional lessons there. Jeremy doesn't want just anybody barging into his shop—and yet, until recently, that is exactly what Ohio's regulations allowed.

Because officers had total power to snoop around taxidermy shops for recordkeeping violations, Jeremy suffered years of intrusive inspections. Officers would show up unannounced, enter without permission, and spend hours rooting around. Things came to a head in 2020, when an officer showed up on one of Jeremy's busiest days of the year. After an hour, the officer asked to see a part of the shop that was closed for the season. When Jeremy asked him to come back in a few weeks, the officer said OK, left—and then sought criminal charges against Jeremy for "refusing" an inspection.

Jeremy was able to strike a plea deal and avoid jail time. But by that point, he had had enough. In November 2021, with IJ's help, Jeremy filed a Fourth Amendment lawsuit to strike down the warrantless inspection scheme. Within months, the state ordered its wardens to cease all warrantless inspections, amended its regulations to require consent or a warrant, and even agreed to pay Jeremy \$5,000—about what it cost him to defend against the bogus prosecution before IJ got involved.

Ohio's capitulation is a huge win for property rights. Taxidermists throughout the state can now tell game wardens to come back with a warrant before entering their shops. And governments everywhere are on notice that, if they unreasonably intrude on business owners' Fourth Amendment rights, they too will find themselves in IJ's sights. ♦

Josh Windham is an IJ attorney and IJ's Elfie Gallun Fellow in Freedom and the Constitution.



For years, Ohio game wardens snooped around **Jeremy Bennett's** taxidermy shop without a warrant, even threatening him with jail when he asked inspectors to come back later. Thanks to an IJ lawsuit, Ohio has ended these warrantless inspections.





IJ client and writer **Corban Addison** is due a big tax refund from Charlottesville, Virginia, after IJ won a state supreme court victory in a lawsuit challenging the city's unconstitutional business tax for authors.

Setting Limits on the Government's Power to Tax: Final Victory for Charlottesville Author

BY RENÉE FLAHERTY

An author shouldn't need a business license to sit at his desk and write stories. After all, the cost of a business license is intended to defray the public cost that businesses impose on their communities, such as increased traffic, burden on utilities, and the like. Requiring an author to obtain such a license—when he sees no customers, sells no goods, and provides no services—simply makes no sense.

Thankfully, in June, the Virginia Supreme Court agreed and affirmed IJ's trial court victory on behalf of Corban Addison, a Charlottesville author who had paid thousands of dollars into local government coffers just for the privilege of writing in the city limits. Now he and other authors in the city are getting that money back.

Corban first partnered with IJ to challenge Charlottesville's business license requirement in 2019, after the city surprised him with a tax bill after years of leaving him alone. But though the city was looking for new ways to raise revenue, it instead found a lawsuit.

After three hard-fought years of litigation, the Virginia high court's decision in some ways states the obvious. Charlottesville's money grab was a bridge too far because vague laws imposing taxes are to be construed against the government and in favor of the taxpayer. *Liberty & Law* readers may be surprised that this proposition was ever in question, and IJ is delighted to remove any doubt.

The decision has wide implications. Corban is just one of many authors and artists living and working in the Charlottesville area who have been

paying an unconstitutional tax. City tax officials have already begun calling some of these authors to inform them about the decision and promise them refunds. IJ challenged a similar tax in Albemarle County on behalf of bestselling author John Hart, and the decision in Corban's case clearly applies to him as well. Likewise, many other Virginia municipalities have virtually identical laws.

If Charlottesville wants to tax authors like Corban, it cannot do so by bureaucratic fiat—it's going to have to overhaul its code completely and vote on the matter publicly. And that is the way it should be. Democratic accountability is especially important where taxes are concerned. As a friend-of-the-court brief filed on IJ's behalf pointed out, business license taxes hurt businesses and consumers. At a minimum, business license taxes must be clear about who is being taxed and how much. That way, people can know which communities are the best fit for their businesses.

Thanks to this victory, Charlottesville-area authors will feel much more at home in their city. As for Corban, he has something else to celebrate because June also saw the launch of his latest book. Thanks to the support of *Liberty & Law* readers, more of Corban's hard-earned money can be put into promoting his work, creating new stories, and caring for his family. The same will soon be true for John Hart and many other Virginians. ♦

Renée Flaherty is an IJ attorney.



Knoxville continued from page 10
the taxes, and moved on years ago. Tennessee even restored his right to vote. All through it, he kept WJBE alive.

But that's not enough for the FCC. Based on a character law from 1934, it's begun a proceeding to take WJBE off the air. The logic is that Joe's tax conviction means he won't follow FCC rules. Problem is, that doesn't make any sense. Joe's conviction has nothing to do with WJBE. And he *has* followed FCC rules. There's been a bit of late paperwork, but other than that, WJBE's had a spotless record for a decade.

Now Joe's teamed up with IJ to defend the station that means so much to Knoxville. That's exciting for us because this is the first Fresh Start case in which we've defended a client in a federal administrative proceeding. Even inside the FCC, however, we're fighting for the simple principle we fight for everywhere else: that no one should be denied a license because of an irrelevant criminal conviction. We'll make sure the FCC hears that message loud and clear. ♦

Daniel Nelson
is an IJ Law &
Liberty Fellow, and
Andrew Ward is an
IJ attorney.



Joe Armstrong turned a defunct radio station into a hub for the Black community in Knoxville, Tennessee. Now the FCC is threatening to revoke his broadcast license because of an old mistake that has nothing to do with the station.

Fresh Start continued from page 11
continue to lack any process whatsoever.

This year, we set out to change that. We supported the introduction and advancement of bills to create predetermination processes in seven states, helping bring lawmakers and groups from across the political spectrum together to show a compelling need for change. And in total, we were able to help change the law in three states: Minnesota, Oklahoma, and Louisiana.

These new laws finally give people with criminal records a fair shot at becoming licensed. For example, before Minnesota changed its law, the state lacked any predetermination process. Now people will have the ability to request binding decisions from boards and rely on these decisions to plan their careers.

In Oklahoma and Louisiana, in contrast, we focused on improving processes that already existed. Both states already had predetermination processes for people with criminal records, but the processes were weak. In Oklahoma, old convictions that had no bearing on the applicant's ability to safely work could be used to bar people from becoming licensed. And Louisiana exempted more than a dozen boards from the state's process and standards for reviewing records.

In both states, we were able to help legislators close those loopholes and create fairer processes for when boards consider the implications of a person's criminal past. Importantly, these new laws also place reporting requirements on boards, which will create greater transparency moving forward.

People with criminal records who have paid their debts to society should have every opportunity to find meaningful work. As long as states continue to have arbitrary licensing restrictions that keep people from having a fresh start, IJ will maintain a full-court press to repeal the barriers that stand in their way. ♦

Meagan Forbes serves as
IJ legislative counsel.



IJ MAKES HEADLINES

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

Read the articles at
[iam.ij.org/
august-2022-headlines](http://iam.ij.org/august-2022-headlines)



THE ARIZONA REPUBLIC

**Appeals Court Reverses Decision That
Denied Man's Attempt To Get \$39,500
Returned To Him**

May 11, 2022

The Dallas Morning News

**Woman Awarded Nearly \$60K In
Damages After SWAT Team In
McKinney Destroyed Her Home**

June 22, 2022

abc NEWS

**Supreme Court Says Maine Cannot
Bar Religious Schools From State
Tuition Program**

June 21, 2022

milwaukee journal sentinel

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**Judge Tosses Out Defamation Lawsuit
Brought By Mount Pleasant Village
Attorney Against Critic Of Village
Government And Foxconn Project**

May 24, 2022

knox news.

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**WJBE Radio, A Cultural Touch Point
For Black Listeners, Fights FCC Move
To Strip License**

May 24, 2022

reason

FREE MINDS AND FREE MARKETS

**Exclusion Of Religious Schooling From
Generally Available School Choice
Programs Generally Unconstitutional**

June 21, 2022

AP Associated Press

**Court Clears Path For Long-Blocked
Tennessee School Vouchers**

May 18, 2022

AXIOS

**Supreme Court Rules Maine Violated
Constitution By Excluding Religious
Schools In Aid Program**

June 21, 2022

The Daily Progress

**Supreme Court Of Virginia Hears City's
Tax Ordinance Appeal**

April 21, 2022



**Supreme Court Decision For
Maine Parents Paves Road For
School Choice**

June 28, 2022



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J U S T I C E

Tennessee wildlife officers routinely trespass on my land—
without a warrant—and snoop around for hunting violations.

But private land isn't really yours if government
officers can enter whenever they want.

I am fighting to be free from these
unconstitutional searches.

I am IJ.



*Hunter Hollingsworth
Camden, Tennessee*

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