



**LIBERTY & LAW**

February 2023

Volume 32 Issue 1

# ***License to Work: Third Edition*** **Report Points the Way to a Better, Freer Future**

Published Bimonthly by  
the Institute for Justice

Seattle's Affordable Housing Ordinance Makes Housing Unaffordable • 6

IJ Wins Big Early Victory for Tiny Homes in Idaho • 8

Citizen Journalist Arrested for Filming Police Fights for Free Speech • 10

Bringing Down the Gavel on Judicial Immunity • 12

# contents

## **4** **License to Work: Third Edition Points the Way to a Better, Freer Future**

Mindy Menjou

## **6** **Seattle's Affordable Housing Ordinance Makes Housing Unaffordable**

Suranjan Sen

## **8** **IJ Wins Big Early Victory for Tiny Homes in Idaho**

Bob Belden

## **10** **Citizen Journalist Arrested for Filming Police Fights for Free Speech**

Tori Clark

## **12** **Bringing Down the Gavel on Judicial Immunity**

Tori Clark

## **14** **IJ Flies to the Michigan Supreme Court to Defend the Fourth Amendment's Property Rights Protections**

Mike Greenberg

## **15** **IJ Is Putting a Stop to Traffic Stop Abuse**

Marie Miller

## **16** **Fighting for Educational Freedom in the Granite State**

David Hodges

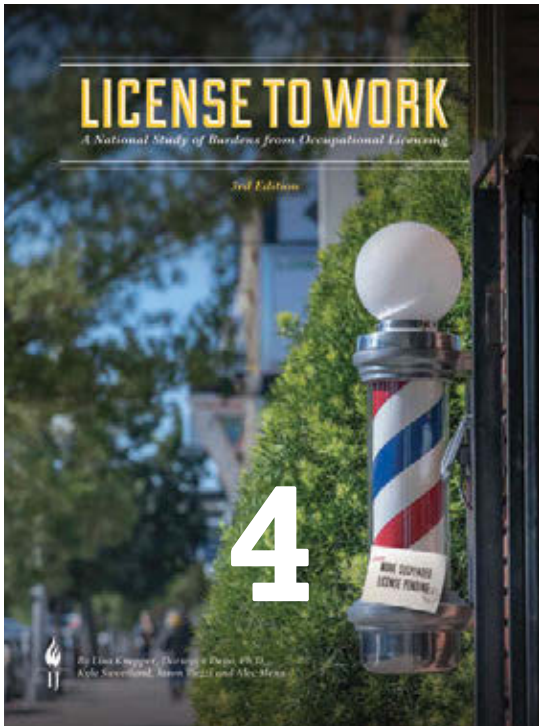
## **18** **Protecting Property Owners and Food Truck Entrepreneurs from Protectionism**

Trace Mitchell

## **20** **The California Homeowners Facing Million-Dollar Fines for Growing Vegetables**

Jared McClain





## LIBERTY & LAW

February 2023 • Volume 32 Issue 1

### 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 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)


### Donate:

[www.ij.org/donate](http://www.ij.org/donate)

 [facebook.com/instituteforjustice](https://facebook.com/instituteforjustice)

 [youtube.com/instituteforjustice](https://youtube.com/instituteforjustice)

 [twitter.com/ij](https://twitter.com/ij)

 [instagram.com/institute\\_for\\_justice](https://instagram.com/institute_for_justice)

# License to Work: Third Edition

## Points the Way to a Better, Freer Future

BY MINDY MENJOU

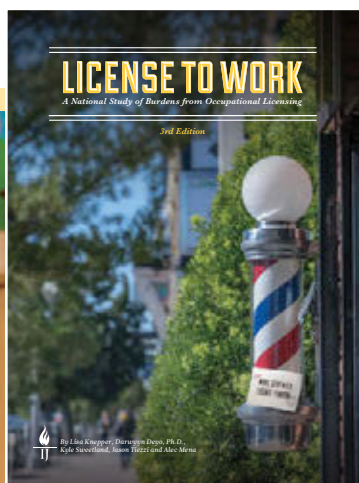
Most people would agree you don't need a college education to care for young children—but not District of Columbia regulators. As regular *Liberty & Law* readers know, day care providers in our nation's capital now need an associate degree to work—a requirement that unduly burdens these low-income workers, most of them women, many of them immigrants, while also making child care even more expensive and difficult to find.

But day care provider is far from the only occupation subject to unreasonable licensing requirements, as shown in the recently released third edition of IJ's landmark *License to Work* report, which documents licensing requirements for 102 lower-income occupations across all 50 states, D.C., and, for the first time, Puerto Rico.

Five years after the second edition, and 10 years after the first, licensing remains widespread and burdensome. Across the 50 states and D.C., our strategic research team identified more than 2,700 licenses. On average, getting a license requires nearly a year of education and experience, at least one exam, and \$295 in fees.

But there's some good news. Today, there are 10 fewer licenses on the books than in 2017. And nearly 20% of licenses became less burdensome. Most notably, education and experience requirements—the most burdensome licensing requirement type—fell by an average of 22 days.

Despite these encouraging findings, too many questionable licenses and unnecessary licensing burdens remain. For example, 88% of the 102 occupations we surveyed are unlicensed by at least one state, and 14 have been delicensed



Read the report at [ij.org/report/license-to-work-3](https://ij.org/report/license-to-work-3)

IJ client **Altagracia Yluminada “Ilumi” Sanchez** nearly lost her livelihood thanks to the District of Columbia's college degree requirement for day care providers. Ilumi was able to get a waiver, but the requirement stands to shut many other providers out of work.





*Many licensing burdens seem out of proportion to occupations' risks. Strikingly, 71 of the 102 occupations have greater average requirements than entry-level emergency medical technicians—including all the barbering and beauty jobs in the report.*

by at least one state, suggesting the jobs can be done safely without a license elsewhere. And as our *Too Many Licenses?* report found last year, even most government “sunrise” studies of licensing proposals decline to endorse licensing. That goes for 13 occupations studied in *License to Work*.

Moreover, many licensing burdens seem out of proportion to occupations' risks. Strikingly, 71 of the 102 occupations have greater average requirements than entry-level emergency medical technicians—including all the barbering and beauty jobs in the report. This is despite many reforms to those occupations over the past five years.

That is why IJ's legislative team is using *License to Work*, along with other recent strategic research, to push for more and better reforms across the nation, especially among cosmetology and other beauty occupations. These jobs can provide secure incomes to those trying to climb the economic ladder, but too many aspiring workers and entrepreneurs in these fields find themselves saddled with cosmetology school debt—or blocked from working at all.

Even now, IJ is working with legislators on bills to exempt various niche beauty services in more than half a dozen states, among other efforts. Meanwhile, our activism and communications teams are working to build public support for these much-needed reforms.

*License to Work* continued on page 22

## Occupational Licensing Doesn't Raise Quality

Occupational licenses impose heavy costs on workers, consumers, the economy, and society at large. Proponents justify these costs by arguing that licensing weeds out workers likely to provide inferior service. But is this true? New IJ strategic research finds no evidence to support the claim that licensing raises quality—and even finds some evidence that licensing can reduce it.

For six lower-income occupations drawn from *License to Work*, we compared Yelp ratings for businesses in neighboring states with licensing versus no licensing (or more burdensome licenses versus less burdensome ones). We focused on businesses near state borders to ensure the primary difference was the licensing regime. In all, we conducted nine comparisons, as some occupations had multiple state pairings.

In seven of the nine comparisons, we found no statistically significant difference in quality. So, for example, interior designers in licensed Nevada were rated no better than those in unlicensed California, even though Nevada requires six years of education and experience. The same went for barbers, locksmiths, manicurists, and tree trimmers.

In the two statistically significant comparisons, cosmetologist quality was higher in less burdensomely licensed New York than in more burdensomely licensed Connecticut and New Jersey.


These results, which are consistent with a long line of research, might not surprise our readers, who understand how ordinary market incentives are usually enough to promote quality. But they may surprise policymakers used to licensing boosters' talking points. That's why IJ's legislative and activism teams will be using these results, together with those from the third edition of *License to Work*, to persuade policymakers to rein in licensing's reach and burdens, not just for the six occupations we studied but well beyond. ♦



Read the report at  
[ij.org/report/raising-barriers-not-quality](https://ij.org/report/raising-barriers-not-quality)

# Seattle's Affordable Housing Ordinance Makes Housing Unaffordable

BY SURANJAN SEN

A group of five people, three men and two women, are standing on a wooden balcony in front of a house. The woman in the center is Anita Adams. They are all looking towards the camera. The house behind them has a grey roof and light-colored siding. There are trees in the background.

Lifelong Seattle resident **Anita Adams** (center) wants to build homes on her property for her children and father-in-law to live in, but she faces \$77,000 in fees under a Mandatory Housing Affordability ordinance that makes it more expensive to build housing.

You are probably not a housing economist. But you don't need a degree in economics to understand that making housing more expensive will, well, make it more expensive; that's just common sense.

Unfortunately, there is not much of that in Seattle, where the city—in the name of “housing affordability”—won't let people construct a home on their own property unless they either pay an exorbitant fee or build additional housing they do not want and will not use.

Anita Adams, a lifelong resident of Seattle's Central District, had always dreamed of owning her own home. After Anita married her high

**Seattle—in the name of “housing affordability”—won't let people construct a home on their own property unless they either pay an exorbitant fee or build additional housing they do not want and will not use.**



**The Adamses, like all Americans, should be allowed to build a house for their own family, on their own property, with their own money, without government standing in the way.**

school sweetheart, the young couple saved up and eventually bought the house on the corner—Anita’s favorite since she was a child. Anita hoped that her children could stay nearby as they grew into adulthood and started families of their own. So when their college dorms closed for COVID-19 (forcing them to move into Anita’s basement), Anita and her husband decided to take out a second mortgage and build them a house next door.

Seattle would allow the Adamses to build that house—for a price. Because of Seattle’s Mandatory Housing Affordability ordinance (MHA), Anita cannot receive a building permit unless she first deposits a lump sum of \$77,000 into the city’s “affordable housing” fund (and that’s not including other permitting fees, which add thousands more to the price tag). Alternatively, Anita could agree to construct two additional dwelling units and provide them as below-market “affordable housing” rentals—for 75 years. Like most Americans, Anita cannot afford to do that and still cover the costs of building her desired house. As a result, the space beside Anita’s home remains empty, and Anita’s children have had to leave town to find housing they can afford.

Why is Seattle doing this? Because MHA, as acknowledged by the Seattle mayor, was a deal with “major players,” including large developers, who, unlike their smaller competitors, can afford its upfront costs and pass them on to luxury clients.

Government cannot abuse permit applicants like this. The U.S. Supreme Court has held that land-use permitting demands must be related and roughly proportional to the impacts of the proposed new use. So if your new house would require an extension of

sewer lines, government can charge you for that; it cannot charge you for renovations to City Hall, nor can it charge you for extending sewer lines to the entire block. Otherwise the “permit condition” isn’t really a permit condition—it’s an opportunity to extort you, to use the permitting process to take your property (be it money, extra housing, or something else) without compensation, in violation of the Fifth Amendment’s Takings Clause.

Unconstitutional housing regulations, like MHA, harm ordinary people and violate property rights. They directly increase the cost of building a home and, consequently, make building lower- and middle-income developments uneconomical. They crowd out small builders, like the Adamses, who cannot absorb the costs on the front end. They contribute to ongoing housing shortages and indirectly increase rent. What makes housing “affordable” is that there’s plenty of it, and if you want more of something, you probably shouldn’t make it considerably more expensive to produce.

That’s why, in December, IJ filed a case against Seattle on Anita’s behalf, seeking to strike down MHA’s extortionate conditions on housing development. The Adamses, like all Americans, should be allowed to build a house for their own family, on their own property, with their own money, without government standing in the way. With IJ’s help, they intend to do just that. ♦

Suranjan Sen is an IJ attorney.





# IJ WINS *Big Early Victory* FOR *Tiny Homes* IN IDAHO

---

BY BOB BELDEN

When IJ sues, the government almost always tries to avoid facing the music by filing a motion to dismiss, which asks the judge to throw out the case without hearing any evidence. It is a critical step in our litigation that means the difference between having a chance to fight for our clients' rights or having a case end before it has even really begun. IJ recently faced such a motion after we sued the city of Meridian, Idaho, to get Chasidy Decker back in the tiny home on wheels she lived in on Robert Calacal's private property.

Readers may recall that IJ sued the city in August 2022 on behalf of Chasidy and Robert after the city forced Chasidy out of her home. And although Chasidy's home is tiny, the legal issues at the center of her case could not be more significant. Indeed, Chasidy and Robert's case raises cutting-edge

**Although Chasidy's home is tiny, the legal issues at the center of her case could not be more significant.**

property rights issues that have nationwide implications. Most notably, the case is a textbook example of how municipalities across the country use zoning codes not to protect public health and safety, but to trample property rights and make housing unaffordable. Sadly, courts have been all too complicit with these practices, treating zoning codes as almost exempt from constitutional limits.

It was no surprise, then, that the city asked the judge to throw out Chasidy and Robert's case, making all-too-familiar arguments that Idaho's constitutional protections for property rights don't amount to much of anything. But now we can happily report that IJ won this critical first-round victory when the judge denied the government's motion. As a result, we can now marshal evidence to show exactly how the city violated Chasidy's and Robert's rights under the Idaho Constitution.

The city of Meridian, Idaho, kicked **Chasidy Decker** out of her attractive tiny home not for any health or safety reasons, but because of arbitrary zoning rules that make it harder to find housing.





# How Practice Makes Perfect for IJ Attorneys

## The Robert A. Levy Moot Court Room at IJ HQ

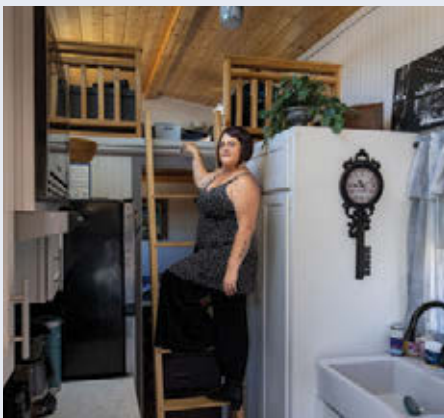
That's a big victory in property rights cases, like this one, where judges often defer to the government and accept implausible, evidence-free arguments. It's also a big victory here because we've already begun to find powerful evidence to make our clients' case. As just one example, we have been able to show that the city restricts tiny homes on wheels to a single RV park composing just 0.3% of the city, banning them in the other 99.7%. This is particularly valuable evidence because it affirms concerns the judge has already expressed that the city's zoning ordinances are in essence a total ban on such homes.

Most of all, though, our victory means that Chasidy has a fighting chance of vindicating her rights when the court finally decides the merits of her case. In the meantime, we're off to collect the evidence that will persuade the judge to allow Chasidy back into her tiny home on wheels for good. ♦

Bob Belden is an IJ attorney.



Chasidy teamed up with IJ to fight for her home, and we defeated the city's attempt to get the case thrown out. Next, we will make sure Chasidy can stay in her home for good.



When IJ lawyers go to court, they have to be ready for anything. Although our lawyers always have a presentation they are prepared to give, those scripts can go out the window the moment judges start asking questions. That questioning can be obvious or obscure, on deep constitutional issues or on trivial facts. There's no way to know until we step up to the lectern. And the best way to prepare for the unknown is to practice.

These practice sessions are called "moot courts," and every IJ lawyer does at least two before a court argument, with other IJ lawyers (and sometimes non-lawyers) playing the role of judges. To prepare, our in-house "judges" read hundreds of pages of legal briefing and then ask a broad range of questions, just like real judges do. Meanwhile, the lawyer stands at the lectern and tries to answer persuasively and concisely, all while trying to stay within the time limits the court has set for the argument.

For years, we held these moot courts in our standard conference rooms. But when we renovated our offices, the number one request from attorneys was to have a dedicated room set up like a courtroom so that we could truly recreate the feeling of arguing in court.

Thus was born the Levy Moot Court Room, honoring Bob Levy, an ardent IJ supporter and dear friend who served on IJ's board from 1996 to 2021.

The Levy Moot Court Room has all the trappings of a real courtroom—a lectern with a clock and lights to let lawyers know when their time is up, tables for counsel, and a bench for the judges. Unlike a standard courtroom, though, we also have screens for "judges" participating remotely. And we record all moot courts so lawyers can look back and see which answers worked and which did not.

This past November through the first part of December, we held 10 moot courts in the Levy Moot Court Room. Then we had three oral arguments on the same day—each lawyer honing their arguments with vigorous questioning in the moot court room. And sure enough, when our lawyers stepped into the real courtroom, they were ready for anything. ♦



Robert A. Levy

After a successful career in finance, Bob Levy went to law school and turned his attention toward advancing liberty and constitutional rights in the courts. He was IJ's first law clerk, and then later joined our board of directors. He served on IJ's board for 25 years, where we all benefitted from his brilliant mind, unflinching support, and always-on sense of humor. When he stepped down from IJ's board at the end of 2021, Bob wrote: "Under Chip's and Scott's superb leadership, IJ has revitalized and effectively rewritten the nation's legal framework in all four of IJ's pillar areas. My contribution – modest, at best – toward that effort is a source of great pride and contentment. But the real credit goes to IJ management and staff – immensely talented, enterprising, and dedicated." We are proud to name this training ground for IJ attorneys in honor of a person who has done so much to bring to life the guarantees of the Constitution.

# Citizen Journalist Arrested for Filming Police Fights for Free Speech

BY TORI CLARK

At IJ we often talk about our litigation pillars, like property rights or free speech. But the innumerable natural rights protected by the Constitution and the Bill of Rights don't always fall into neat categories. They often blend and overlap. And some of our most important cases combine two or more areas of IJ litigation.

Our latest example comes from Fort Bend County, Texas, where government efforts to silence an independent journalist implicate IJ's decades of experience defending free speech along with our cutting-edge Project on Immunity and Accountability.

Justin Pulliam is an independent journalist in Fort

Bend County who covers local government issues, often by going to the scene of events himself and filming on-the-ground footage. He also brings his own unique viewpoint to his reporting and political commentary, which is often critical of government officials—including those in the Fort Bend County Sheriff's Office (FBCSO).

Although Justin has been filming FBCSO deputies for years, his relationship with the department took a turn for the worse after a new sheriff took office in January 2021.

First, in July 2021, Sheriff Eric Fagan demanded that Justin be removed from a press conference at a public park because he was "not part of the local



Police in Fort Bend County, Texas, arrested independent journalist **Justin Pulliam** for filming them from 130 feet away, then charged him with a crime. He's joined with IJ to protect his First Amendment rights.



**Justin** is seeking to hold police accountable in a case that combines IJ's First Amendment litigation with our cutting-edge Project on Immunity and Accountability.



media.” Officers forced Justin to move across the parking lot, where he could neither hear nor meaningfully record Sheriff Fagan, while the Sheriff spoke to other news outlets.

Second, in December 2021, FBCSO officers arrested Justin while he was filming a mental-health call. He began filming about 130 feet away from the active scene, where other bystanders were also observing and with the permission of the family that made the call. But a deputy approached him and ordered him to move across the road. When Justin did not comply, the deputy arrested him. Justin was forced to undergo a strip search and spent hours in jail, during which Sheriff Fagan personally called Justin in for a meeting and became angry when he refused to speak without a lawyer present. Because of the arrest, Justin is now being prosecuted for interfering with a police officer under Texas state law—a Class B misdemeanor.

Journalism and political commentary like Justin’s are at the heart of the First Amendment. Today, there is scarcely a stronger constitutional right than the First Amendment right not to be retaliated against for

political speech and reporting that the government does not like. But as *Liberty & Law* readers well know, doctrines

like “qualified immunity” often make it impossible to hold government officials accountable even for obvious constitutional violations.

That’s why, in December 2022, IJ sued Fort Bend County and several FBCSO officers, including Sheriff Fagan, on Justin’s behalf. And Justin’s case does not merely seek an injunction prohibiting FBCSO officers from harassing him in the future—it also seeks damages for the violation of his constitutional rights.

Because Justin’s lawsuit seeks damages, the court will have to decide not only whether Justin’s rights were violated but also whether his rights were clearly established, putting the police on notice that their actions were unconstitutional and depriving them of qualified immunity. As a result, a victory for Justin won’t just vindicate his First Amendment rights—it will help ensure that future victims of similar retaliation are able to vindicate theirs. ♦

Tori Clark is an IJ attorney.



**Journalism and political commentary like Justin’s are at the heart of the First Amendment.**

# BRINGING DOWN THE GAVEL ON JUDICIAL IMMUNITY

BY TORI CLARK

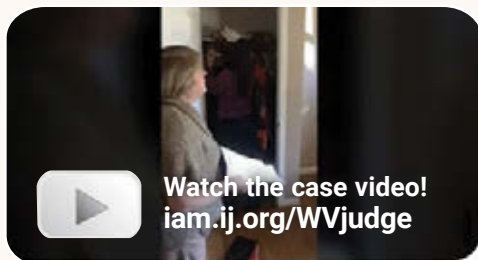
Judges take an oath to uphold and defend the Constitution, not violate and ignore it. Yet in Raleigh County, West Virginia, a family court judge is arguing that she shouldn't be held accountable for unconstitutionally forcing her way into Matt Gibson's home and searching it. Now Matt has joined with IJ in a case that represents the latest frontier in IJ's Project on Immunity and Accountability.

The Project on Immunity and Accountability, which began in 2020, is devoted to a simple idea: If we the people must follow the law, our government must follow the Constitution. Unfortunately, too often, government officials who violate the Constitution are shielded from liability by a variety of judge-made legal doctrines. These include "qualified immunity," the once-obscure doctrine that IJ's litigation and advocacy—along with advocacy by our friends at the



After a family court judge searched his home without a warrant, **Matt Gibson** joined with IJ to challenge the "judicial immunity" that shields judges from liability.





Cato Institute—have vaulted to national attention. They also include various forms of “absolute immunity,” such as the “prosecutorial immunity” that IJ is challenging in its case against former Midland, Texas, prosecutor Ralph Petty, who prosecuted IJ client Erma Wilson while at the same time moonlighting as a judicial clerk for the judge deciding Erma’s case.

It will come as no surprise that judges have also given themselves absolute immunity for their judicial conduct. Crucially, though, judges get this special protection only when they are acting as judges. Preserving this line between judicial and non-judicial conduct is thus vital to protecting our constitutional separation of powers and to ensuring that judges who abuse their position of authority by stepping outside their proper role are held to account.

Matt experienced this abuse firsthand in March 2020, when, during an in-court dispute between Matt and his ex-wife, Judge Louise Goldston abruptly halted proceedings and demanded that the parties meet at Matt’s home immediately. When Judge Goldston arrived, she ordered Matt to stop recording the encounter and then led a search party—including Matt’s ex-wife and the ex-wife’s attorney—through Matt’s home. The search party ultimately removed several items from the home without Matt’s permission, including items that belonged to Matt’s children and girlfriend.

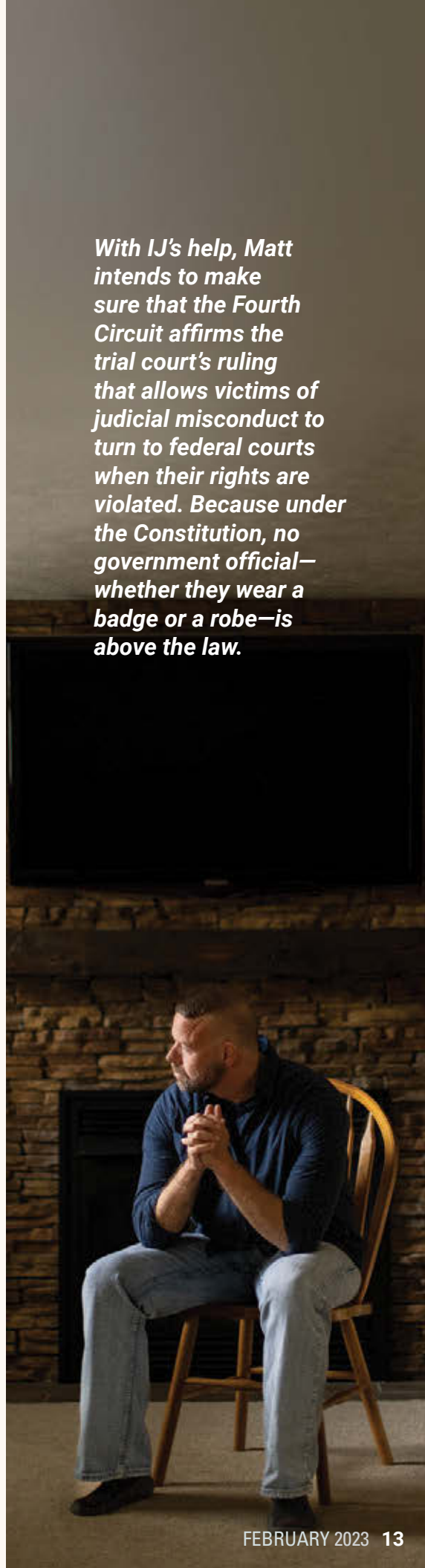
Because of her actions, Judge Goldston was disciplined for multiple ethics violations and ultimately censured and fined. But when Matt later sued Judge Goldston in federal court for violations of his constitutional rights, she claimed that “judicial immunity” shielded her from liability for her unconstitutional conduct. Although the trial court rejected her argument, she has now appealed to the 4th U.S. Circuit Court of Appeals.

With IJ’s help, Matt intends to make sure that the Fourth Circuit affirms the trial court’s ruling that allows victims of judicial misconduct to turn to federal courts when their rights are violated. Because under the Constitution, no government official—whether they wear a badge or a robe—is above the law. ♦

Tori Clark is an IJ attorney.



*With IJ’s help, Matt intends to make sure that the Fourth Circuit affirms the trial court’s ruling that allows victims of judicial misconduct to turn to federal courts when their rights are violated. Because under the Constitution, no government official—whether they wear a badge or a robe—is above the law.*



# IJ Flies to the Michigan Supreme Court to Defend the Fourth Amendment's

## PROPERTY RIGHTS PROTECTIONS



BY MIKE GREENBERG

The Fourth Amendment protects our right to be “secure” in our persons and our property. But how secure would you feel if you knew the government could deploy drones—small, unmanned, remote-controlled aircraft with high-powered cameras—to discreetly surveil you and your house, whenever it wants? IJ clients Todd and Heather Maxon learned their government had been spying on them in exactly that way for months.

The Maxons live on a rural five-acre property in northern Michigan’s Long Lake Township. Recently retired, Todd spends his free time collecting and tinkering with cars and other vehicles. Because their property has multiple outbuildings and is heavily wooded, Todd can—and does—keep the vehicles away from both the public’s and his neighbors’ view. In other words, Todd’s hobby is a private and harmless use of his homestead.

But that doesn’t matter to officials in the township’s code enforcement office. For years, they have been trying to pin some violation of the township’s zoning and nuisance code on Todd for keeping vehicles on his property. After previous efforts failed, the office in 2018 brought a new enforcement lawsuit against Todd—again claiming his keeping of vehicles in his backyard was illegal.

So how did the township gather evidence to support its allegations? At least three times over several months, it remotely flew a drone all around the property, capturing intrusive high-resolution photographs in the process. It never once sought—much less obtained—a warrant for its surveillance.

Unfortunately, as IJ has documented through our Project on the Fourth Amendment—which we launched in 2021—these sorts of government intrusions on private property are all

too common. For decades, courts have undermined Fourth Amendment protections through judicial inventions such as the “open fields doctrine,” which holds that the Fourth Amendment applies to only a property owner’s home and the immediately surrounding area, leaving government officials free to search any other part of the property. Combined with modern technology like drones or even—as IJ has seen in other cases—permanently placed hidden cameras, the open fields doctrine gives government investigators the power to monitor vast swaths of property 24 hours a day, all without a warrant.

Remarkably, when the Michigan Court of Appeals heard the Maxons’ case, it made this already bad situation worse: A 2-1 majority held that the rule requiring exclusion of unconstitutionally obtained evidence applies only to police officers pursuing criminal violations. In other words, all other government officials—and any government official investigating civil, rather than criminal, violations—can violate the Fourth Amendment consequence-free.

Our property rights deserve better. Now represented by IJ, the Maxons are appealing to the Michigan Supreme Court. The government’s use of cutting-edge drone technology to trespass on and surveil the Maxons’ property violated the Fourth Amendment. That is true under the law as it exists today, but—even more importantly—it is true under the view of the law set out in our Project on the Fourth Amendment, which will eventually see the pernicious open fields doctrine abolished. ♦



For months, Michigan’s Long Lake Township surveilled **Todd Maxon’s** home by drone without a warrant, looking for evidence he kept cars harmlessly out of view on his property.

Mike Greenberg is an IJ attorney.





# IJ Is Putting a Stop to Traffic Stop Abuse

BY MARIE MILLER

When Mario Rosales and Gracie Lasyone were pulled over in Alexandria, Louisiana, they at first gave the police officers the benefit of the doubt. Though the two were certain they had violated no law, they thought the officers might have made an innocent mistake. But it didn't take long for Mario and Gracie to realize the traffic stop was anything but innocent.

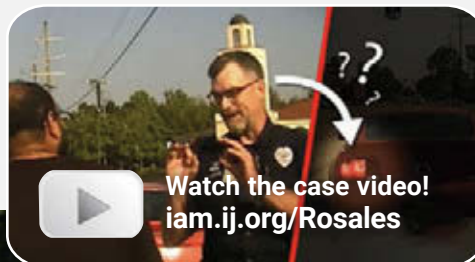
Mario and Gracie quickly realized they were victims of an abusive police practice in which police officers nationwide pull over motorists on the pretext of minor traffic infractions—even if no traffic law was

violated—with the actual goal of unconstitutionally searching for evidence of other crimes.

In Mario and Gracie's case, the officers claimed they pulled Mario over because he failed to use his turn signal. But the officers' dash cam and body cam footage clearly show the exact opposite: Mario used his blinker. And the officers' conduct following the stop also belies this claim. After pulling Mario over, the officers ordered him and Gracie out of the car, frisked Mario, and interrogated him and Gracie about a litany of drug crimes, none of which the police

had any reasonable basis for believing the two were guilty of.

Unfortunately, this kind of stop-first, justify-later  
Rosales continued on page 22



IJ client **Mario Rosales** was the victim of an abusive—but common—practice when Louisiana police pulled him over by falsely claiming he had violated a minor traffic law so they could search his car, despite having no evidence of wrongdoing.





## IJ's YouTube Channel Reaches a Quarter Million Subscribers

Now more than ever, video is the indispensable medium to connect with audiences. Video is art and entertainment, but it is also the most sophisticated way to distill complicated facts and casework for a diverse audience. Even though more than 500 hours of video are uploaded to YouTube every minute, IJ's videos cut through the noise and connect people nationwide with our clients' stories and the ideas of individual liberty. This past December, our YouTube channel hit a major milestone: reaching and then exceeding 250,000 subscribers.

Now IJ's core YouTube audience is growing faster than ever. Less than 1% of all YouTube channels have 100,000 subscribers, and IJ is among an even more exclusive group of creators with over 250,000 dedicated fans. Importantly, IJ's subscribers are not just passive onlookers—they are highly engaged fans who help spread our message far and wide.

IJ's videos bring viewers up close and personal with the people IJ is fighting for. Audiences hear our clients' words, see the sincerity in their eyes—and that human connection makes a stranger's story tangible and memorable. But the connection doesn't stop there. IJ's subscribers share our videos on social media platforms and are active in the comment sections, where they root for our clients, share their outrage, and ask questions. Each comment from an engaged viewer is a powerful signal to YouTube's recommendations, which helps put our videos in front of an even larger audience. But more than that, these comments show our audience is paying close attention and feels connected to our clients and passionate about IJ's issue areas. ♦



Institute for Justice  
@InstituteForJustice  
263K subscribers

[youtube.com/@InstituteForJustice](https://youtube.com/@InstituteForJustice)



## Fighting for Educational Freedom IN THE GRANITE STATE

BY DAVID HODGES

When it comes to schooling, Amy Shaw is practical. So when her older daughter began manifesting signs of neurodiverse behavior, Amy removed her from private school and enrolled her at the neighborhood public school.

But when that school also didn't work out, Amy looked for other options. The best one was a nearby private school with good academics and the flexibility to accommodate her daughter's needs. There was only one hitch: Tuition was out of reach for Amy and her husband.

Enter New Hampshire's Education Freedom Account Program. The program, which passed with IJ's support, provides education savings accounts (ESAs) to parents with a household income that is at or below 300% of the federal poverty line. Parents can then use the ESAs to pay for expenses like tuition, tutoring, and books.

For Amy and thousands like her, the program was a lifesaver. It enabled both her daughters to attend a school that fit their needs. Now both girls get individualized attention and the accommodations that they need to thrive.

Unfortunately, not everyone thinks that families should have these educational options. In December, the president of the New Hampshire chapter of the American Federation of Teachers filed a lawsuit challenging the program. The claim? Because



IJ is defending New Hampshire's Education Freedom Account Program in court so that families like the **Jacksons** can send their children to the schools that meet their needs.



the program is funded from an education budget that also contains certain designated funds, the program might take funds from restricted sources. Leaving aside the fact that the program amounts to less than 1% of New Hampshire's education budget, the New Hampshire Constitution permits the legislature to create educational options in addition to the traditional public school system.

IJ jumped into action. Less than a week after the lawsuit was filed, we moved to intervene to defend the program and represent the Shaws and two other families. In IJ's two previous educational choice cases in New Hampshire, IJ successfully defended the state's Tax Credit Program and led the charge to remove the sectarian exclusion from New Hampshire's "town tuitioning" program. With this latest lawsuit, IJ hopes to secure educational freedom once more in the "live free or die" state. ♦

David Hodges is an IJ educational choice attorney.



## IJ Racks Up Ed Choice Victories in Vermont and West Virginia

Vermont just got a little freer. Over two years ago, IJ challenged Vermont's "adequate safeguards" standard. This rule effectively barred Vermont parents from using the state's "town tuitioning" program if they wanted to send their kids to a religious school.

That's what happened to IJ client Mike Valente. Although not personally religious, he and his wife decided that the best school for their son was a local Catholic school. Unlike the neighborhood public school, the private school had good academics and provided quality services for their son. Sadly, their local school district, with encouragement from the state, denied the Valente family tuition. The same happened to two other IJ families.

But thanks to IJ's 2022 victory before the U.S. Supreme Court in *Carson v. Makin*, Vermont (and several local school districts) finally surrendered, agreeing that denying tuition on this basis is unconstitutional. Today, Vermont families like the Valentines can now have their children attend the school that is best for them—even if it happens to be religious.

Meanwhile, *Liberty & Law* readers may recall from our last issue that the West Virginia Supreme Court in October ruled that the Mountain State's near-universal educational choice program could go into effect. But what readers could not know at the time was the reasoning of the court, which came only after that initial ruling.

Now we are happy to report that the state's high court issued a full-throated endorsement of the constitutionality of the state's Hope Scholarship Program. The court's ruling is going to be critical in fighting off future challenges to educational choice programs because of how thoroughly it refutes the legal theories underlying many of those challenges.

Our victory in West Virginia is particularly special because West Virginia was the first state to enact a near-universal choice program, and now it is the first state to uphold the constitutionality of such an expansive program. This is a victory that will pay dividends for years to come. ♦

Two IJ victories for educational choice—in Vermont and West Virginia—free families like the **Valentes** (left) and the **Switzers** (right) to give their children the best educational options.



# PROTECTING PROPERTY OWNERS AND FOOD TRUCK ENTREPRENEURS FROM PROTECTIONISM

BY TRACE MITCHELL

Food trucks are a safe, efficient, and downright fun way for culinary entrepreneurs to serve their communities. And in recent years, food trucks have exploded in popularity—it seems that everyone loves them.

Well, almost everyone. Because if there's one thing IJ has learned over more than a decade defending the rights of food truck entrepreneurs, it is that one group consistently opposes their entry into the market: owners of brick-and-mortar restaurants.

So when the city of Jacksonville, North Carolina, was considering whether to open its streets up to food trucks, it came as no surprise to us when Jacksonville restaurant owners came out in force to oppose any change that would subject them to greater competition. Nor were we surprised when the City Council did what we've seen so many others do: cave in to special-interest demands at the expense of food truck entrepreneurs and consumers. At restaurant owners' behest, the Jacksonville City Council enacted rules that ban food trucks from more than 96% of the



General store owner **Nicole Gonzalez** (left) and food truck entrepreneurs **Anthony Proctor** (top right) and **Octavius Raymond** (bottom right) have partnered with IJ to challenge a Jacksonville, North Carolina, law that bans food trucks from 96% of the city.

city and otherwise make it virtually impossible for food trucks to operate.

But if we could have guessed the city and the restaurant owners' response, they should have guessed ours. Because now IJ has taken the city to court to end its restaurant protectionism.

Jacksonville's rules cover everything from where food trucks can operate to how they can advertise. Most egregiously, Jacksonville's rules ban food trucks from operating within 250 feet of certain properties, including any property with a brick-and-mortar restaurant, residences, or another food truck. Worse still, the city does not merely ban food trucks from operating on public roads; it bans them from operating entirely—even on private property, even with the owner's permission.

That doesn't just hurt food truck owners; it also hurts entrepreneurs like Nicole Gonzalez, the owner of Northwoods Urban Farm, a general store and small engine repair shop. Nicole would love to invite food truck owners Anthony "Tony" Proctor and Octavius "Ray" Raymond to vend from her store's large parking lot. And if Tony or Ray owned a restaurant, they would be allowed to vend there with no problem. But the city's ban means that Nicole's customers won't get to enjoy Tony's Florida-style seafood truck, The Spot, or Ray's cheesesteak truck, The Cheesesteak Hustle. Instead, to operate legally, Tony and Ray are forced to drive their trucks to Camp LeJeune and other cities and towns, spending more time on the road and less time serving customers.

That is where IJ comes in. Looking to build on our previous food truck victories by bringing novel claims on behalf of a property owner, IJ partnered with Nicole, Tony, and Ray to challenge these overly burdensome, unreasonable regulations under the North Carolina Constitution.

The right to invite others onto one's property to do business is a fundamental component of property rights. Permitting property owners to invite restaurants while forbidding them from inviting food trucks strikes at the heart of that right. After all, what's good for the restaurant-served goose is good for the food-truck-served gander—or cheesesteak. ♦

Trace Mitchell is an IJ litigation fellow.



## Scoring Big Wins for Property Rights with Strategic Amicus Briefs

Although the overwhelming majority of IJ's work in courts involves our own original litigation, we know from experience that we can help score big wins for liberty by filing amicus briefs—also called friend-of-the-court briefs—in carefully selected cases litigated by others. Just recently, we celebrated two such victories in Ohio and Nevada.

In Ohio, we filed an amicus brief in *Ohio Power Company v. Burns*, an eminent domain case involving a public utility's attempt to take an excessive easement on private farmland. Here, we got involved to defend IJ's landmark 2006 victory in *Norwood v. Horney*, in which the Ohio Supreme Court unanimously rejected the U.S. Supreme Court's infamous ruling in *Kelo v. City of New London*. Our brief argued that *Norwood* applies not only to cases challenging takings for nonpublic use but also to unnecessarily broad takings. And in an opinion that closely tracked IJ's brief, the Ohio Supreme Court once again unanimously agreed.

Meanwhile, in Nevada, IJ both filed a brief and participated in oral argument in *Mack v. Williams*, a case with major implications for one of our own: IJ client Stephen Lara's challenge to the Nevada Highway Patrol's unconstitutional forfeiture of his life's savings of \$87,000, without arresting him or charging him with a crime. The government in *Mack* argued that nothing in Nevada law explicitly permitted lawsuits like Stephen's, and Stephen's case was being held pending a ruling in *Mack*. Ultimately, and as IJ argued, the Nevada Supreme Court held that "a right does not, as a practical matter, exist without any remedy for its enforcement." Thanks to this ruling, Stephen will finally have the chance to vindicate his rights in court. ♦



# The California Homeowners Facing **MILLION-DOLLAR FINES** for Growing Vegetables

BY JARED MCCLAIN

Government fines and fees are supposed to be about protecting the public by discouraging harmful conduct, whether it be unsafe driving or maintaining an unsafe property. But across the country, local governments have instead begun using their power to enforce traffic, property, and other ordinances to raise revenue, trampling citizens' rights in the process.

At IJ we call it "taxation by citation," and we are the nation's leading litigators challenging these abusive fines and fees.

Our latest example comes from Humboldt County, California.

It all began when Californians legalized marijuana in 2017, and Humboldt officials saw green. They passed new ordinances to maximize the county's taxes and fees from commercial cultivation. Fearful of losing revenue, they also weaponized the building code to punish anyone who

**A single unpermitted greenhouse can bring \$30,000 in daily fines: \$10,000 for the greenhouse; \$10,000 because the county insists the owner must have moved 50 cubic feet of soil; and \$10,000 for unpermitted cultivation by alleging—without any investigation—that the greenhouse must have marijuana inside.**

might possibly be growing without a permit. Fines for minor violations that would ordinarily be a couple hundred dollars now jump to \$10,000 if the county thinks the violation has some nexus to marijuana.

And as the fines have gone up, the county's standards for issuing them have gone down. To identify potential violators, county officials now use satellite images to find properties with an unpermitted greenhouse or a graded flat of land. Then, without any further investigation, the county issues an average of three violations. A single unpermitted greenhouse, for example, can bring \$30,000 in daily fines: \$10,000 for the greenhouse; \$10,000 because the county insists the owner must have moved 50 cubic feet of soil; and \$10,000 for unpermitted cultivation by alleging—again, without any investigation—that the greenhouse must have marijuana inside.

Pictures confirming there's no marijuana will not get the county to drop the charges. Instead, the owner has just 10 days to return the land to its "pre-cannabis state," a murky concept that can

Humboldt County, California, residents **Corrine and Doug Thomas** (left) and **Rhonda Olson** (right) are facing millions of dollars in fines because their properties' previous owners once grew marijuana.



Local governments have begun using their power to enforce traffic, property, and other ordinances to raise revenue, trampling citizens' rights in the process. At IJ we call it “taxation by citation,” and we are the nation’s leading litigators challenging these abusive fines and fees.

include demolishing buildings and graded mountain roads. Those who dare contest the charges risk having their daily fines accumulate for 90 days.

This code enforcement dragnet catches plenty of harmless and innocent conduct. Humboldt has issued cannabis fines for a monastery’s garden, lavender and vegetable farms, and plenty of homesteaders who grow their own food. Blu Graham, for instance, faced \$900,000 in fines for a greenhouse because code enforcement said they knew he wasn’t “just growing asparagus.” They were right: Blu was also growing peppers to make salsa for his wife’s Venezuelan restaurant.

The county even fines new owners for their predecessors’ behavior. Rhonda Olson and Doug and Corrine Thomas all face millions in fines because previous owners once grew marijuana on their properties. The county demanded they spend hundreds of thousands of dollars to remove unpermitted structures and grading—not because of any safety concern, but simply because cannabis once touched it.

Meanwhile, anyone who appeals waits years for a hearing—the most basic component of due process—under the threat of life-ruining fines. It’s a kangaroo court system designed to coerce property owners into settling their cases and surrendering their rights. That’s not just unfair; it’s unconstitutional.

But now—represented by IJ—Blu, Rhonda, and the Thomases have filed a class action to stop Humboldt County’s abusive code enforcement. No one should be strong-armed into giving up their property rights without these vital safeguards, and no one should have to risk losing their home simply for building a greenhouse. ♦

Jared McClain is an IJ attorney.



**Blu Graham**, who faced \$900,000 in fines after growing peppers in his greenhouse, is part of IJ’s class action lawsuit to stop Humboldt County’s abusive code enforcement.





See how  
your state  
stacks up on  
occupational  
licensing

*License to Work* continued from page 5

Besides providing data that will help secure needed legislative reforms, our findings also show the cost of judicial abdication, which for too long has given legislatures free rein to enact needlessly burdensome licensing laws. *License to Work* therefore stands as a testament to the need for judges to stand up for the constitutionally guaranteed right to earn an honest living, free from unnecessary government interference.

As IJ continues its decadeslong fight for economic liberty, we will be using *License to Work* to persuade legislators to adopt sensible reforms and to persuade judges to do their job—so more Americans can do theirs. ♦

Mindy Menjou is IJ's  
assistant director of strategic  
research.



*Rosales* continued from page 15

policing is all too common. As IJ's work fighting civil forfeiture has shown, police departments have a strong incentive to search for evidence of crimes that will allow them to forfeit a driver's car, cash, or other property—the proceeds of which police departments are often allowed to keep and spend as they wish. No surprise then that police routinely stop drivers for pretextual reasons, even when there is no reasonable suspicion of any crime.

But under the Constitution, nobody should be treated like a criminal without some reasonable basis for believing they've committed a crime. The Fourth Amendment promises freedom from unreasonable seizures, including traffic stops. And although the U.S. Supreme Court has held that police officers can pull motorists over for even trivial traffic offenses, they cannot do so based on fabricated crimes. Even when a driver has committed a traffic violation, any investigation must be limited to crimes the police reasonably suspect the motorist to be guilty of—based not on hunches, but on objective evidence.

That is why, represented by IJ, Mario and Gracie have sued the city of Alexandria, its chief of police, and the two officers who illegally stopped them.

Police officers pull over more than 50,000 drivers on a typical day and more than 20 million each year. It is vital that these stops comply with the Fourth Amendment—otherwise our fundamental freedom to go about our business without government interference will disappear. With Mario and Gracie's case, IJ will make sure that does not happen. ♦

Marie Miller 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/  
february-2023-headlines](https://iam.ij.org/february-2023-headlines)



## THE TENNESSEAN A GANNETT COMPANY

**Tennessee's School Voucher Program  
Wins Court Challenge**  
November 23, 2022

## Town Talk.

**Couple Sue Alexandria Police Over  
Traffic Stop, Interrogation They Claim  
Was Unwarranted**  
November 1, 2022

## Idaho Statesman

**Meridian Told Her She Couldn't Stay In  
Her Tiny Home. She Sued.**  
November 7, 2022

## AP Associated Press

**Judge: People Can Sell Candy, Cakes,  
Cookies Without License**  
December 31, 2022

## The Washington Post

**Sometimes A Gadfly Like This One  
In East Cleveland Is Just What  
Democracy Needs**  
November 18, 2022

## abc NEWS

**Ohio Man, Jailed For Fake Facebook  
Page, Asks SCOTUS To Let Him Sue  
Police**  
January 5, 2023

## The Seattle Times

**Central District Couple Sues Seattle  
Over Affordable Housing Program**  
December 16, 2022

## Bloomberg Law

**State Courts Can Remove These  
Barriers To Work Opportunities**  
December 5, 2022

I worked for years to earn enough money to buy another truck for my trucking business.

When I flew to Phoenix for a truck auction, police seized my money at the airport.  
But traveling with cash is not illegal, and I was never charged with any crime.

When a judge ruled I didn't even own the money in my bags,  
IJ joined my fight to stop the forfeiture of my life savings.

I challenged it, and I won my appeal.

*I am IJ.*

