



LIBERTY & LAW

April 2023

Volume 32 Issue 2

NEW HAMPSHIRE TOWN MAKES MUCH ADO ABOUT MUFFIN MURAL

Published Bimonthly by
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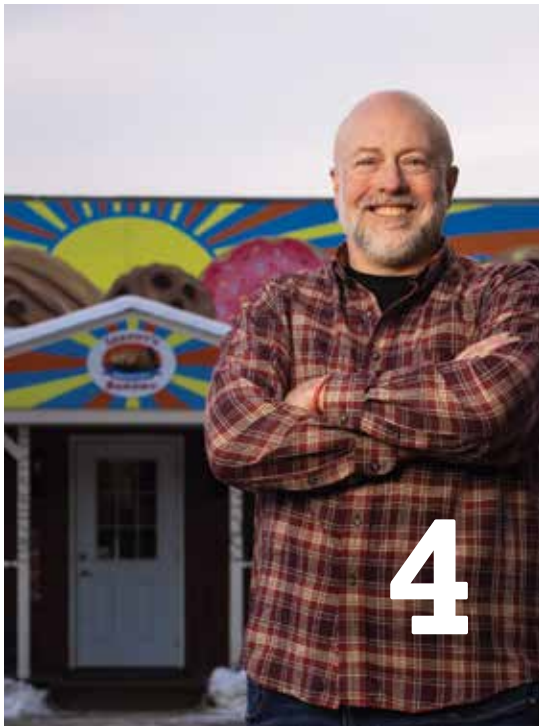
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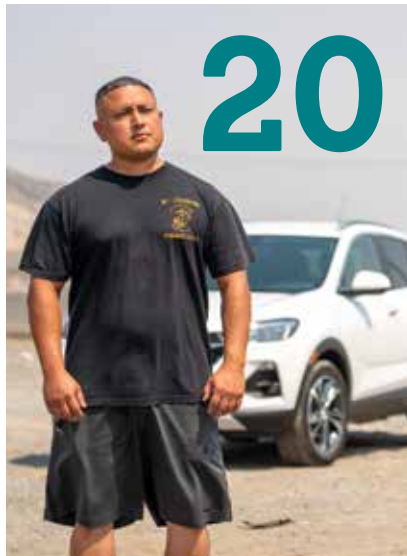
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Liberty & Law is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication, activism, and research, advances a rule of law under which individuals can control their destinies as free and responsible 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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New Hampshire Town Makes MUCH ADO ABOUT MUFFIN MURAL

BY BETSY SANZ

Leavitt's Country Bakery has been a staple of Conway, New Hampshire, for over 45 years. When its founders recently decided to retire, longtime customer Sean Young scraped together enough money to buy Leavitt's so it could continue as a bakery. Thanks to Sean, Leavitt's still serves up award-winning pastries and donuts to both locals and the visitors who flock to the region for its beautiful mountain peaks. But now the bakery is embroiled in a First Amendment fight, forced to choose between self-censorship or ruinous fines.

It began last year with a simple effort to brighten up the drab blank façade above Leavitt's front door. A friend introduced

Sean to the local high school's art teacher with the idea that the façade would be a perfect canvas for a mural by the school's art students. Sean and the teacher heartily agreed, and the students designed and painted something delightful and fitting: a

New England mountain landscape, where the mountains are made of donuts, muffins, and pastries. Sean loves it, the kids are proud of it, and locals enjoy it. Who wouldn't?

Apparently, government officials in Conway. Just a few days after the painting was unveiled, the local code enforcer showed up to tell Sean the painting was not a mural but an illegal sign. Why? Because the painting features baked goods, which Leavitt's sells. If



Sean Young, owner of Leavitt's Country Bakery in Conway, New Hampshire, let high school students paint a mural on his storefront. Now town officials are calling it an illegal sign and trying to tear it down.



The mural at Leavitt's may be whimsical, but the legal stakes are serious. How businesses present themselves to their communities is an important aspect of economic liberty.

it instead featured real mountains—or if the same painting were on a business other than a bakery—Conway officials would call it a mural and let it stay up.

This supposed distinction between murals and signs shouldn't matter. After all, nothing in the First Amendment distinguishes between art and commercial signs—or commercial speech of any kind. That is why IJ has spent decades fighting to ensure that commercial speech in all its forms receives the full protection of the First Amendment. But although the Constitution doesn't distinguish between murals and signs, Conway's sign code does. And Sean risks \$275 in fines every single day his "sign" remains up. He even faces potential criminal charges.

This isn't the first time IJ has dealt with a local government favoring its narrow view of art over an expansive view of commercial signage. It's common enough that we address it in our model sign code. We tried explaining to Conway that its actions were on shaky constitutional ground and even offered to

help the town revise its law using our model code, but the town's position was firmer than a 3-day-old cruller. Left with no choice but to act, IJ filed a First Amendment lawsuit against Conway on behalf of Leavitt's, and town officials—faced with a motion for a preliminary injunction—quickly agreed to leave the mural alone while the lawsuit moves forward.

The mural at Leavitt's may be whimsical, but the legal stakes are serious. How businesses present themselves to their communities is an important aspect of economic liberty. And although municipalities have some authority to regulate the size and placement of signs, they cannot pick and choose

whom these rules apply to based on the message being conveyed. That's just censorship—and at IJ we donut stand for it! ♦



Betsy Sanz is an IJ attorney.



A woman with short brown hair, wearing a dark blue blazer over a light blue button-down shirt and dark pants, stands on a sidewalk in front of a brick house with large windows. The house has a white gutter and a dark door. A large, dark green bush is behind her.

IJ Puts an End to Warrantless Inspections AND Crushing Fines in Zion, Illinois

Josefina Lozano faced massive fines if she didn't force her tenants to accept a new warrantless rental inspection regime imposed by Zion, Illinois. But Josefina and her tenants value privacy, so they challenged the law with IJ.

BY ROB PECCOLA

A stranger asks: "Did you make your bed this morning?" "None of your business!" you bristle in response. After all, this most private of spaces—your bedroom—presents a narrative about you and your life protected by the Fourth Amendment. An unmade bed tells tales beyond tidiness. It is the bed you may share with a spouse or romantic partner. There may be medications on the nightstand, a book opened to a poignant page, contraception, jewelry, cash, undergarments—you get the picture.

So did renters in Zion, Illinois, where the city deployed a former law enforcement officer to

conduct warrantless wall-to-wall home inspections of all rental properties—including family bedrooms. How would you feel if this person showed up at your door and demanded to come in?

IJ clients Robert and Dorice Pierce—longtime Zion renters subjected to this abusive program—felt outrage. When their landlord, Josefina Lozano, told them their home of years would be subject to such an invasive search, they were disgusted. They knew their home should be treated with the same privacy

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Longtime Zion renters **Dorice and Robert Pierce** joined with their landlord and IJ to force the city to recognize that renters have the same Fourth Amendment protections for their homes as homeowners do—and won.

After more than three years of litigation, Robert, Dorice, Josefina, and every other renter or property owner in the city can breathe a sigh of relief. The age of warrantless inspections in Zion is over.

and security accorded to any owner-occupant. Their response to the city: “Come back with a warrant.”

But Zion did not come back with a warrant. Instead, it went to Josefina and threatened her with daily fines until her tenants capitulated. Josefina was terrified because a friend and fellow Zion landlord had just received an astonishing six-figure fine when his tenants had the temerity to demand that the city respect their Fourth Amendment rights.

This story may sound familiar to longtime IJ supporters. This is the second time IJ came to the rescue when a Chicagoland city conducted inspections against the will of tenants—and in violation of the Fourth

Amendment. Park Forest, Illinois, created a punitive rental inspection regime that IJ challenged, and defeated, in the late 1990s—in a case litigated by none other than IJ President and Chief Counsel Scott Bullock.

Armed with confidence from our first victory, and inspired by our clients’ bravery, IJ sprang into action with characteristic speed. We nimbly responded to the exigency of Josefina’s plight, torn

Zion continued on page 22

IJ Win Puts Two More Nails in the Coffin of *California's Funeral Monopoly*

BY JEFF ROWES

IJ just put up two big wins for free speech and economic liberty—victories for both our clients and the U.S. Constitution.

The case involves a group of kindly ladies from Northern California and their nonprofit, Full Circle of Living and Dying. Full Circle helps the dying and their loved ones through their final days. It also helps families plan home funerals without a licensed funeral director, just as people the world over have traditionally done for centuries.



Akhila Murphy (left) and **Donna Peizer** (right) of Full Circle of Living and Dying help the dying and their loved ones with moral and logistical support, including home funerals. After the California funeral board ordered them to shut down for not having a traditional—and completely unnecessary—funeral parlor, they went to court and won.

That, as you've likely already guessed, was a major no-no according to the state funeral board. Even though home funerals are legal in all 50 states

and Full Circle's services were limited to providing moral support, advice, and occasional assistance in conducting home funerals, the board argued Full Circle was an unlicensed "funeral establishment" and in late 2019 ordered the women who operate Full Circle to shut down.

IJ filed suit to challenge that order, and earlier this year we scored two major first-round victories.

Our clients help families plan home funerals without a licensed funeral director, just as people the world over have traditionally done for centuries.

That, as you've likely already guessed, was a major no-no according to the state funeral board.

Proving a law is so completely irrational as to be unconstitutional can be very difficult, yet IJ has done it repeatedly.

The court ruled both that the First Amendment forbids California from silencing Full Circle's guides and that California could not require Full Circle, a nonprofit with an annual budget of \$20,000, to build a traditional full-service funeral home to help people who have no interest in traditional funerals. And though Full Circle's case isn't over yet—the court will hold a trial later this year on whether California can require Full Circle's guides to obtain funeral director licenses—the importance of these rulings cannot be overstated.

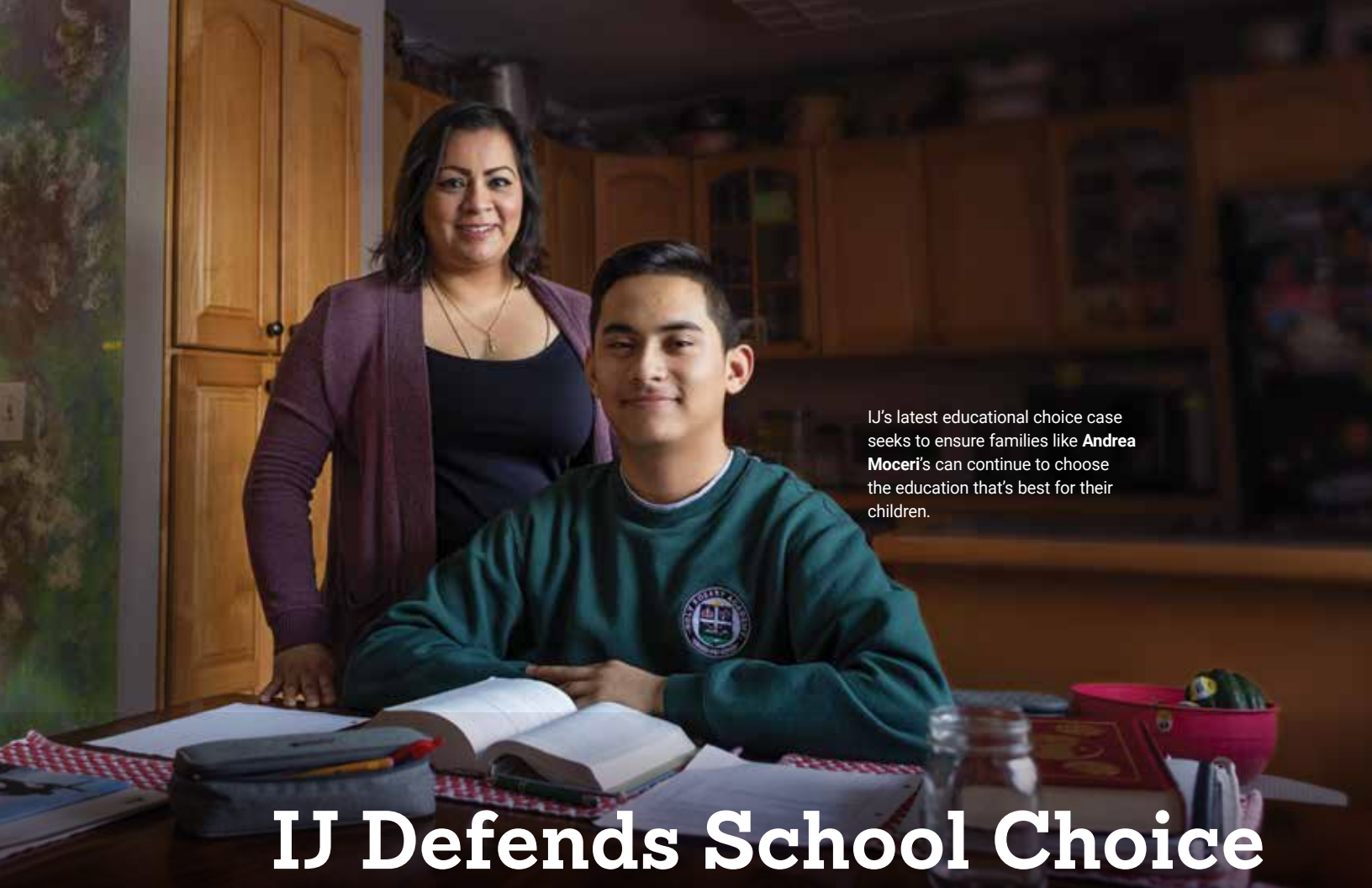
First, by affirming Full Circle's right to provide advice to grieving families, the court further vindicated IJ's work defending "occupational speech" from government licensure. Though many courts have treated speech subject to occupational licensing as unprotected "professional conduct" rather than as protected speech, the court's opinion—adopting arguments IJ pioneered—correctly broke with this censorious approach. That ruling sets up a potential showdown at the 9th U.S. Circuit Court of Appeals, which sets constitutional precedent for fully 20 percent of Americans.

Second, by striking down the requirement that Full Circle build a funeral home, the court also recognized that the Constitution provides meaningful protection for economic liberty. That is a rare thing because the U.S. Supreme Court has told judges to uphold economic regulations, no matter how onerous, if there is any conceivable "rational" justification for them. Proving a law is so completely irrational as to be unconstitutional can be very difficult, yet IJ has done it repeatedly—with every one of those victories providing future courts with additional proof and precedent that plaintiffs can and do win economic liberty cases.

The mountain climber in me likens winning cases such as Full Circle's to a winter ascent of Mount Everest. You go into it knowing that it will be grueling and that the odds are stacked heavily against you. But when victory comes, the view is spectacular and leaves an indelible impression on the IJ team, our clients, and the law. ♦

Jeff Rows is an IJ senior attorney.





IJ's latest educational choice case seeks to ensure families like **Andrea Moceris** can continue to choose the education that's best for their children.

IJ Defends School Choice on the Last Frontier

BY KIRBY THOMAS WEST

Unique among the 50 states for many reasons, Alaska is also home to one of the nation's most innovative educational choice programs. To educate students spread across the state's far-reaching rural school districts, Alaska developed a popular correspondence school program. Public correspondence schools send lessons and assignments to students by mail—or even, in some instances, floatplane. Families then send completed assignments back to the schools' teachers for grading.

Over time, the program has evolved to allow Alaska families freedom to creatively design their children's educational experience. Starting in 1997, the Alaska Legislature amended its correspondence school program to authorize school districts to reimburse parents for a variety of education-related expenses. Then, in 2014, the Legislature expanded the array of providers for which families could receive this reimbursement, called an "allotment." Among other things, the law clarified that private schools were eligible to provide services through the program.

The correspondence school program is invaluable to parents like IJ client Andrea Mocer, who uses the allotment she receives through the program to help send her son to Holy Rosary Academy, a private school in Anchorage. Without the program, Andrea couldn't afford to keep her son enrolled in the school's correspondence program, in which he is thriving.

But now that program is under attack. Which is why Andrea, along with a group of other families, is teaming up with IJ to defend the program against a lawsuit filed in January.

Before IJ's victories at the U.S. Supreme Court in *Espinoza v. Montana Department of Revenue* and *Carson v. Makin* established that states cannot exclude religious private schools from educational choice programs, most challenges to these programs arose out of "Blaine Amendments"—state constitutional provisions that required exclusion of religious schools. But Alaska, like a few other states, has a constitutional provision that prohibits the state from using public funds to "directly benefit" not only religious institutions, but any private educational institutions. Those challenging Alaska's correspondence school program argue the program violates this provision because some families choose to use their allotments to purchase services from private schools.

But these allotments go to *families*—not private schools. And it is those families, working with the public school teachers in the program, who choose from an array of services that best suit their children's educational needs. These can range from purchasing online courses through large universities to fulfilling a physical education requirement through private lessons in cross-country skiing (a useful skill for residents of Valdez, Alaska, which receives more than 300 inches of snow annually). In no instance does the state "directly benefit" private educational institutions or otherwise prioritize them over the other educational options available to Alaska families. Instead, any money that flows to private schools does so only because of the free and independent choices of Alaska families.

The attack on Alaska's correspondence school program strains the Alaska Constitution to undo those choices. But nobody has a stronger interest in ensuring a child's education than that child's parents, and their choices deserve respect. IJ is standing with parents like Andrea to ensure that they get it—and to ensure that the Last Frontier continues to be a place of promise and opportunity for their children and for generations to come. ♦

Kirby Thomas West is an IJ attorney.



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IJ DEFENDS FREE SPEECH AGAINST ONE OF THE MOST POWERFUL LICENSING REGIMES IN THE COUNTRY—OUR OWN!

BY BRIAN MORRIS

“Lawyers are licensed, aren’t they?”

We routinely get that question from opponents of our occupational licensing work, generally accompanied by a knowing sneer. The implication, of course, is that we are hypocrites for trying to remove licensing barriers from other fields while ignoring our own. Our answer has always been the same: “We’ll get to that, too.”

Because our opponents are not entirely wrong about lawyers. Lawyers, like people in any other field, sometimes use government power to protect themselves from competition. And to make matters worse, a lot of the “practice of law” in

modern America is just talking—providing the kind of ordinary advice that IJ has long fought to protect from censorious licensing boards. The result of unchecked licensing of speech about the law is predictable: For ordinary people, basic advice about how to access their legal rights is often simply unaffordable.

That is why IJ has teamed up with Upsolve, an innovative nonprofit devoted to helping Americans access their legal rights for free. Upsolve rose to fame with a free bankruptcy app that walks people through Chapter 7 bankruptcies (and has helped relieve hundreds of millions of dollars in debt). But bankruptcy was

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IJ has joined forces with Bronx pastor **Rev. John Udo-Okon** (left) and Upsolve Chair **Rohan Pavuluri** (opposite page) to defend their right to give free legal advice to those facing debt lawsuits.

TALKING TO SOMEONE ABOUT HOW TO RESPOND TO A LAWSUIT IS THE UNLICENSED PRACTICE OF LAW, AND IT'S A FELONY.

just the beginning. Upsolve's next project, the American Justice Movement, aims to help people respond to consumer debt lawsuits.

Consumer debt lawsuits are big business—in New York, roughly a quarter of all lawsuits are an attempt to collect on a debt. And many of these suits are, at best, questionable, brought by third parties who buy up old debts on the secondary market and file suits to collect, even if the defendant doesn't owe the amount claimed or, sometimes, anything at all.

But the dubious nature of some of these suits does not mean they fail. Indeed, many succeed without a fight. As often as 90 percent of the time the defendants in consumer debt suits in New York fail to respond at all, leaving the

Upsolve continued on page 22



JOIN US FOR THE 2023

IJ PARTNERS RETREAT

SEPTEMBER 29 – OCTOBER 1

This fall, IJ is hosting our next Partners Retreat—an event that comes around only once every few years and is open to members of IJ's Partners Club, Guardians Circle, and Four Pillars Society. With a focus on IJ's current and future work, the title of this Retreat is "The Shape of Justice to Come."

Combining immersive panel discussions with camaraderie and relaxation amid the stunning scenery of the Pacific Coast, this year's Retreat will take you to the front lines of IJ's fight for freedom.

You'll hear from IJ's dedicated attorneys, courageous clients who directly benefit from your support, and other fascinating speakers. And you'll get to know other IJ supporters who, like you, believe in expanding freedom and dismantling barriers to opportunity.

If you're not yet a member of one of these giving clubs, there has never been a better time to increase your commitment to IJ and receive an invitation to the Partners Retreat!

For more information, contact:

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Hope to see you at the Retreat! ♦

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PARTNERS RETREAT
2023

PROPERTY RIGHTS VICTORY FOR SOUTH CAROLINA ENTREPRENEURS!

BY SETH YOUNG

In a swift victory for property rights, IJ client Jeremy Sark will be able to keep his U-Haul business open now that the city of Mauldin, South Carolina, has amended its zoning code in response to IJ's lawsuit on Jeremy's behalf.

As *Liberty & Law* readers may remember from the December issue, the Mauldin City Council passed an ordinance in early 2021 forcing all truck- and trailer-rental businesses outside a specific zone to close by the end of 2022, simply because a private developer who city officials were trying to attract said U-Haul businesses made the town look "old." Had the ordinance gone into effect, Jeremy and his business partner, Marie Dougherty, would have had to close the U-Haul portion of their business, Sark's Automotive.

That would have cost the pair over \$50,000 a year in lost U-Haul revenue and other car repair revenue that U-Haul rentals brought in, forcing them to lay off up to two full-time employees.

The city argued it could do this, without any compensation, through "amortization," an increasingly common practice in which local governments force safe preexisting uses of property to cease

after a period of time, reasoning that simply giving property owners advance notice and a chance to continue earning money in the meantime satisfies the constitutional requirement of just compensation. But as IJ's lawsuit explained, when Mauldin rezoned, both the South Carolina Constitution and South Carolina Supreme Court precedent required the city to grandfather in all safe preexisting uses of property

that became nonconforming.

Realizing that Jeremy and Marie were now backed by IJ's 30 years of experience winning property rights cases, the city of Mauldin entered into talks with IJ attorneys on how to fix the unconstitutional ordinance. The result is an amended ordinance that allows truck and trailer rentals to continue in the zone where Sark's Automotive is located with only minor aesthetic

restrictions. Which means that—thanks to IJ's lawsuit—Jeremy and Marie can continue running their almost decade-old U-Haul business without fear of losing revenue or having to lay off any of their valuable employees. ♦



IJ clients **Marie Dougherty** and **Jeremy Sark** teamed up with IJ after the city of Mauldin, South Carolina, amended its zoning code to force out their U-Haul business at the behest of a developer who didn't like how it looked. Now Marie and Jeremy are free to run their business.

Seth Young is an IJ attorney.



VICTORY:

IJ SERVES WISCONSIN A SECOND HELPING OF

Cottage Foods

BY SURANJAN SEN

Victory is sweet, perhaps even sweeter than homemade fudge—which, thanks to a recent IJ win, is now lawful to sell in Wisconsin (as are any other shelf-stable foods). And though the government has now sought a second bite at the candied apple with an appeal to Wisconsin's intermediate appellate court, IJ stands ready to defend our victory there and beyond.

Wisconsin's laws governing sales of homemade "cottage food" have been among the most restrictive in the country. Even after IJ secured a court victory in 2017 allowing sales of homemade baked goods, the state continued banning sales of virtually all non-baked homemade

foods—including low-risk, shelf-stable ones like fudge, candies, dried goods, or roasted coffee beans. So IJ stepped back into action, representing thousands of Wisconsinites in a lawsuit seeking to have Wisconsin's ban declared unconstitutional as applied to consumer sales of these foods. And last December, a state trial court declared just that.

As our readers know, constitutional challenges seeking to vindicate economic liberty are difficult to win. Unlike in cases involving, say, the right to free speech, in which courts require the government to justify its restrictions, there is usually no thumb on the scale for the right to perform an occupation or to use property—even a home—as one likes. To win, IJ had to show that the

WI Cottage Foods continued on page 22

Home cooks in Wisconsin have again vindicated their right to sell safe homemade foods thanks to IJ's second court victory for cottage foods in the Badger State.



IJ Goes to Trial to Defeat Nebraska's CON Job

BY WILL ARONIN

One of the first things we at IJ tell our clients is that nobody can tell their story better than they can. And it is a special thing to see how powerful those stories can be when shared directly with a judge or jury. That's one reason IJ doesn't shy away from taking cases to trial, even though they are a lot more work than simply submitting cases on written briefs. Indeed, we just completed our third trial in 12 months.

This latest trial involved our client Marc N'Da, who runs several home health agencies caring for the elderly and disabled in Nebraska. Marc already drives his clients on daily errands but is legally barred from taking them to their doctors' appointments or to pick up a

prescription as both are considered "non-emergency medical transportation" or NEMT. Having seen what a horrible job existing NEMT companies were doing for his clients, Marc decided to start his own and fix the problem.

Unfortunately, in Nebraska, starting a NEMT company requires a "certificate of public convenience and necessity," often called simply a "certificate of

need" or CON. It's a rigged process that allows incumbents to shut out new competition, as happened to Marc when existing companies blocked his application, claiming new competition was not needed and would financially "harm" them.

But that sort of naked economic protectionism is unconstitutional. So



IJ client **Marc N'Da** wants to add non-emergency medical transportation to his home health care business, but Nebraska won't let him due to opposition from his would-be competition. In January, Marc told his story in front of a judge in IJ's third trial in 12 months.



Behind the scenes in Nebraska. Left: The trial team and Marc enjoy a few minutes of down time. Center: Marc poses with IJ paralegals Claire Purple (left) and Kyndra Griffin (right). Right: Marc's legal team stands outside the courthouse.

IJ sued and, in late January, took Nebraska to trial. It went beautifully.

First, Marc shared his remarkable story. How he fled Togo after his work fighting child sex-trafficking prompted retaliation by government officials involved in the trafficking. How he arrived here with only \$60, put himself through school, and founded several successful small companies that provide quality care to those who need it most. Most compellingly, Marc testified about how he witnessed existing NEMT companies constantly leaving his clients stranded, with no way to get to needed medical appointments.

Following Marc, the government's witnesses didn't stand a chance. Once pressed, they admitted not only that the process of reviewing CON applications had been all but outsourced to the few existing large transportation providers but also that those same companies were often late, sometimes even canceling rides at the last minute, and leaving patients with no other options.

Whatever the CON was supposed to do, all it actually did was protect larger incumbents at the expense of everyone else.

Finally, a former commissioner with the agency that administers the CON actually testified on Marc's behalf. Commissioner Crystal Rhoades explained that the few existing NEMT companies—the "usual suspects" in her words—were hurting patients by using the CON to shut out people like Marc. She testified that she had received countless complaints

from disabled and elderly people who repeatedly missed dialysis, and some who were even hospitalized as a result, because they could not get a ride to their medical appointments. Ultimately, she concluded that, whatever the CON was *supposed* to do, all it actually did was protect larger

incumbents at the expense of everyone else. With that, we rested our case.

As with all trials in front of a judge rather than a jury, we didn't receive an immediate decision. But given the unmatched power of Marc's story, we're optimistic that we won our third-straight trial in the past year.

Stay tuned. ♦

Will Aronin is an IJ attorney.



IJ's Constant Vigilance in Defense of Property Rights

BY ROBERT MCNAMARA

For more than 25 years, IJ has led the national fight against eminent domain abuse. Sometimes that fight takes the form of IJ's own high-profile lawsuits on behalf of iconic eminent domain clients like Susette Kelo or Atlantic City piano tuner Charlie Birnbaum. Indeed, the backlash we stoked against the U.S. Supreme Court's *Kelo* decision was so successful that governments now find it much more difficult to take land for private development. But that doesn't mean those exercising eminent domain power have given up on abusing it. So we are constantly vigilant, regularly scouring the country for additional opportunities to bring our

We are constantly vigilant, regularly scouring the country for additional opportunities to bring our decades of experience to bear against the abuse of eminent domain.

decades of experience to bear against the abuse of eminent domain.

Take, for example, our recent amicus brief in *Ohio Power Company v. Burns*, an Ohio Supreme Court case about condemnations for power lines. Power lines are a traditional public use, like a road or a school, which might seem like a difficult arena for IJ to fight in. But Ohio power companies claimed the mere fact that power lines are a public use meant

they could take whatever land they wanted—on whatever terms they wanted—without having to prove the taking was actually necessary. IJ's brief, drawing on history and our own successful eminent-domain litigation in Ohio, argued this was



Ensuring that none of these cases slip through the cracks isn't easy, but it is vital to defending property rights. The precedent these cases set can affect millions of Americans, including IJ's own clients.

wrong: The baseline presumption is that property owners control their land unless power companies prove taking it is necessary. And we

won—late last year the Ohio Supreme Court affirmed that these condemnations need to be backed by real evidence, not just a power company's say-so.

Just a couple months later, in February, we took that Ohio victory across the border to Kentucky with a brief in that state's high court. There, energy companies empowered with eminent domain similarly claim this gives them the power to do anything—from destroying vegetation to ordering property owners to take down signs—without ever proving their demands necessary. By looking for opportunities to challenge these arguments in strategically selected cases, IJ aims to stop these abuses in Kentucky and nationwide.

Sometimes that even means taking over cases originally filed by other attorneys, as in the case of the Devillier family of Texas. When road construction flooded their family farm (and a number of neighboring properties), the Devilliers sued, arguing this flooding was a taking. Their claim was far from novel—over the past 150 years, the U.S.

Supreme Court has repeatedly held that government-created flooding can constitute a taking under the Fifth Amendment. But

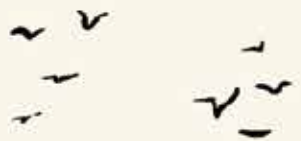
the state of Texas argued that it could not be sued under the Takings Clause unless Congress or the state Legislature first passed a law ordering it to pay just compensation to aggrieved property owners. Shockingly, in a single sentence, the Fifth Circuit agreed, depriving property owners like the Devilliers of any remedy for violations of their Fifth Amendment rights. IJ swooped in immediately and filed a petition for certiorari in March asking the U.S. Supreme Court to set things right.

Ensuring that none of these cases slip through the cracks isn't easy, but it is vital to defending property rights. The precedent these cases set can affect millions of Americans, including IJ's own clients. And so we remain ever vigilant, so that the courts deciding these cases have access to the very best legal arguments—the arguments IJ has honed for decades. ♦

Robert McNamara is IJ's deputy litigation director.



After a Texas government construction project flooded the family farm of **Richie Devillier**, an appeals court shockingly held that the state couldn't be sued under the U.S. Constitution for depriving the Devilliers of their property. IJ has joined with the Devilliers to ask the U.S. Supreme Court to overturn this incorrect ruling.



BIG WIN FOR ACCOUNTABILITY AT NEVADA SUPREME COURT

BY BEN FIELD

IJ prides itself on being nimble and taking advantage of unexpected opportunities. This is just such a story.

In August 2021, we filed a lawsuit on behalf of Marine veteran Stephen Lara, whose life savings were seized in a bogus roadside stop by the Nevada Highway Patrol, which then handed the money over to the federal government in an illegal end-run around Nevada's

forfeiture laws. Rather than answer the lawsuit, the government successfully asked the court to stay the case while the Nevada Supreme Court considered a different case that asked whether people could sue for damages directly under the Nevada Constitution when their rights are violated.

That case, *Mack v. Williams*, had flown under the radar and came to the Nevada Supreme Court through a circuitous route. Rather than bemoan the

IJ client **Stephen Lara** sued to hold Nevada accountable after the state's highway patrol seized his life savings. The government got a court to put his case on hold pending the outcome of a different challenge to government abuse. So IJ got involved in that case and helped secure a major victory for accountability.



unnecessary delay in our Nevada civil forfeiture case, the team recognized that the speed bump provided a golden opportunity both to defend our client's interest and to advance principles at the heart of IJ's Project on Immunity and Accountability.

As the federal courts have been retreating from providing remedies against violations of the U.S. Constitution by federal officials, IJ has been fighting for states to move in the opposite direction and give robust constitutional remedies to their citizens. But Nevada's high court had not yet decided whether the state's constitution guaranteed citizens the right to seek damages against state government officials who violate their rights. Now, the government was asking the Nevada Supreme Court to hold the state constitution did not and that victims of constitutional violations would instead have to hope that the Nevada Legislature would create such a right.

The Nevada civil forfeiture team sprang into action and promptly filed an amicus brief asking the court to hold both that the Nevada Constitution guaranteed a right to seek damages for constitutional violations and that defenses like qualified immunity did not apply to those suits. When the court heard the case in May 2022, the IJ team participated directly, providing

the bulk of the oral argument on behalf of IJ itself and our client Stephen.

The Nevada Supreme Court issued its opinion in late December, completely vindicating IJ's position. The court held that when Nevada government officials violate the rights against unreasonable search and seizure guaranteed by the state constitution, the victims can sue for damages. The court's logic should readily extend to Nevada's entire declaration of rights. And, to boot, the court rejected qualified immunity for these claims.

The court's ruling paves the way to vindicate constitutional rights both in Nevada and nationwide. In Nevada, the ruling ensures that our client Stephen's case can go forward and that all Nevadans will have a remedy when the government violates the state constitution. The victory also provides an important precedent for IJ to cite in other states that have not yet ruled on whether their constitutions provide similar protections and remedies. And you can count on us doing exactly that—across all our litigation pillars—to ensure that whenever the government violates a state constitutional right, there will be a meaningful state constitutional remedy. ♦

Ben Field is an IJ attorney.





Thanks to IJ's victory, **Josefina's** tenants and every other renter in Zion can enjoy their privacy and their Fourth Amendment rights.

Zion continued from page 7

as she was between the threat of financial ruin and the injustice of coercing her tenants into surrendering their rights. Within a week of Zion threatening Josefina, we were in federal court arguing for a temporary restraining order to halt the program, which the court granted.

With enforcement successfully stalled, IJ next turned to convincing a federal judge that Josefina and the Pierces had a legitimate Fourth Amendment claim. Once again, the court agreed.

Buoyed by these early victories, our clients stood tall when the case went to mediation—they would settle for nothing less than the city's complete capitulation. And that is what they got: a court-signed consent decree, prohibiting Zion from conducting warrantless inspections or fining landlords or residents in response to warrant requests.

After more than three years of litigation, Robert, Dorice, Josefina, and every other renter or property owner in the city can breathe a sigh of relief. The age of warrantless inspections in Zion is over. And with IJ's ongoing challenges to rental inspection schemes in Orange City, Iowa, and Pottstown, Pennsylvania, we're ready to continue to fight until all Americans know that same relief. ♦

Rob Peccola is an IJ attorney.



Upsolve continued from page 13

plaintiffs with a default judgment. If a defendant shows up, the collectors often just give up rather than try to prove their case.

If showing up is half the battle—or more—this seems like an area where a little helpful advice could go a long way. That is what Upsolve wants to provide. By training community members to give basic advice on how to respond to lawsuits, Upsolve hopes to arm countless New Yorkers with the knowledge they need to defend themselves.

The problem, of course, is that this is a crime. Talking to someone about how to respond to a lawsuit is the unlicensed practice of law, and it's a felony. But the First Amendment protects the right to give advice—including advice about the law. To protect that vital legal principle, IJ has joined forces with Upsolve and Rev. John Udo-Onkon, a Bronx pastor and the American Justice Movement's first trainee, in a challenge to New York's prohibition on the unauthorized practice of law.

In America, we rely on people to decide whom they want to listen to, rather than relying on the government to decide who is allowed to speak. IJ stands ready to defend that principle against heavy-handed licensing boards nationwide—even when the license we're challenging happens to be our own. ♦

Brian Morris is an IJ attorney.



WI Cottage Foods continued from page 15

state's ban on sales of shelf-stable homemade foods was utterly unrelated to any legitimate public purpose, such as food safety.

That's a hard hill to climb, even in a case like this one, where both sides' scientific experts agreed that shelf-stable foods—homemade or otherwise—are extraordinarily safe. But we climbed it, and a Wisconsin trial court ruled for our clients. As a result, Wisconsinites can now freely support their families using their home kitchens.

The government, meanwhile, recently announced that it will appeal the trial court's ruling. And though we are disappointed that Wisconsin continues to defend its irrational regulations, IJ is ready to continue the fight until we have permanently secured the delicious taste of freedom for all Wisconsin cottage food entrepreneurs. ♦

Suranjan Sen 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/
april-2023-headlines](https://iam.ij.org/april-2023-headlines)



milwaukee journal sentinel

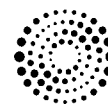
**Wisconsin Home Bakers Win Big
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Homemade Goods**

January 5, 2023

Newsday

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January 8, 2023



REUTERS

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Excessive**

January 23, 2023

ABAJOURNAL

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RealClear Policy

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February 14, 2023

The Washington Post

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Bakery. The Town Wants It Removed.**

February 22, 2023

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

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

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

And we won.

We are IJ.

