



LIBERTY & LAW

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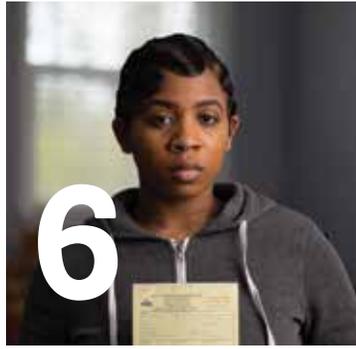
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About the publication:

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

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

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Trucker Gets Savings Back After Long-Haul Litigation

BY DAN ALBAN

IJ's fight to end civil forfeiture is multipronged: Simultaneously, we fight in court to establish legal precedent that protects property rights, publicize outrageous abuses, and advocate for legislative reforms to curtail the practice. This three-part strategy requires long-term strategic thinking and staying committed for the long haul.

Few cases exemplify that better than our recent victory on behalf of Jerry Johnson, which resulted not only in the return of his money—with 9% interest—but also in a published appellate opinion prohibiting Arizona courts from requiring property owners to prove their innocence to contest a forfeiture. Jerry's

case was also a catalyst for Arizona's 2021 forfeiture reforms, which imposed a criminal conviction prerequisite for civil forfeiture.

How did a North Carolina trucker end up doing so much good in Arizona? In August 2020, Jerry was flying to a Phoenix auction house to buy a third semi-truck for his small trucking business. Cash is king in the market for used trucks, so Jerry brought \$39,500 he had saved and borrowed from relatives.

But Jerry was stopped at baggage claim by Phoenix detectives who searched his luggage and found the cash, interrogated him, and seized his money. Yet Jerry wasn't arrested or charged with any crime.



Airport law enforcement baselessly seized \$39,500 that small-business owner Jerry Johnson had saved to buy a semi-truck. Thanks to two IJ court wins, he's now getting his money back with 9% interest.

Thanks to Jerry's commitment to litigating for the long haul, we were able to extend property rights protections in Arizona through both the courts and the Legislature. Using this same approach, IJ remains committed to ending civil forfeiture across the nation.

Unlike most forfeiture victims, Jerry managed to hire an attorney to contest the forfeiture. Unfortunately, after his first hearing, the judge ruled Jerry could not contest the forfeiture of cash taken directly from his luggage because Jerry could not prove he was an innocent owner of the money. Jerry's money was ordered forfeited to the state.

But that ruling got the law backward, and IJ recognized it immediately. We leapt to Jerry's aid, filing an appeal pointing out that requiring property owners to prove their innocence would circumvent the government's burden under Arizona law to prove by clear and convincing evidence that the property is connected to a crime.

At the same time, we publicized Jerry's case, which alerted the Arizona Legislature that reforms were needed to protect innocent property owners from civil forfeiture. With strong advocacy from IJ, those bipartisan reforms passed in 2021.

Meanwhile, Jerry's appeal continued. At oral argument, the three-judge panel subjected the state's attorney to a withering barrage of questions. The presiding judge even exclaimed, "I'm sorry if it seems harsh that the state should actually have to come

forward with evidence before it takes people's money away at the airport!"

Six months later, the court of appeals ruled unanimously in Jerry's favor, but in an unpublished opinion that would not have precedential value. So IJ filed a motion to publish the opinion, and Jerry continued patiently waiting for his money, because he didn't want what happened to him to happen to anyone else. After another six months passed, Jerry's opinion was published, and our precedent was locked in.

Having lost twice on appeal, Arizona finally threw in the towel. Two and a half years after the seizure, the state returned Jerry's money and was

also ordered to pay him 9% interest.

Thanks to Jerry's commitment to litigating for the long haul, we were able to extend property rights protections in Arizona through both the courts and the Legislature. Using this same approach, IJ remains committed to ending civil forfeiture across the nation. ♦



Jerry's case helped catalyze reforms to Arizona's civil forfeiture law and produced a court opinion strengthening protections for property owners in the state.

Dan Alban is an IJ senior attorney.



IJ Deals Another Blow to Policing for Profit

BY JABA TSITSUASHVILI

Last year, journalists exposed a system of towing cars and issuing traffic citations not for public safety, but for the financial gain of government in Brookside, Alabama. They found that over the course of two years, the town's fines and forfeitures revenue skyrocketed by more than 600% and that almost all the money went right back to town police—who spent it on expensive unmarked SUVs, a K-9 they named “Cash,” and other goodies.

Brookside made national headlines, becoming the posterchild for policing for profit. Unfortunately,

Last year, journalists exposed a system of towing cars and issuing traffic citations not for public safety, but for the financial gain of government in Brookside, Alabama.

that sunlight was inadequate disinfectant: Town leaders openly bragged about their 600% increase in revenue, made clear that they want “even more growth in revenue,” and made sure to explain that there has been no “change in town policy.” In short, Brookside embraced and defended its unconstitutional and perverse financial incentive scheme.

That's where IJ comes in. We filed an ambitious class action, seeking injunctions against Brookside's systems of policing and prosecution, as well as the return of all the money collected by the town and its towing company partner from car tows since



Police in the tiny town of Brookside, Alabama, created a towing and ticketing scheme so abusive that revenue from fines and forfeitures went up 600%. IJ filed a class action to stop this abuse and make whole its victims, including **Brittany Coleman** (left) and **Brandon Jones** (right), who both had their cars towed for bogus reasons.



Town leaders openly bragged about their 600% increase in revenue, made clear that they want “even more growth in revenue,” and made sure to explain that there has been no “change in town policy.”

2018. As the U.S. Department of Justice put it in a Statement of Interest supporting our case, the lawsuit “depicts . . . a system” in which “funding for prosecutors or police officers depend[s] substantially on unnecessarily aggressive law enforcement aimed at generating income through fines and fees” in ways that “punish the poor for their poverty and put law enforcement at odds with the communities they are meant to serve.”

In March, a federal district court judge agreed, denying motions to dismiss the case. The court recounted the experiences of our clients—Brittany Coleman, Brandon Jones, Chekeithia Grant, and Alexis Thomas—recognizing them as emblematic of the town’s policy of needlessly towing cars for

financial gain, and stated bluntly what’s at stake: “Plaintiffs are seeking to dismantle the financial incentive system for law enforcement that the town allegedly erected beginning in March 2018.” Quoting from IJ’s brief, the court recognized that Brookside’s “police department operated on ‘a direct eat-what-you-kill . . . system.’”

With that crucial first-round victory in hand, we will continue fighting to end Brookside’s unconstitutional practices and get back for every affected individual the money that Brookside unjustly extracted under its towing-for-profit system.

This case is part of IJ’s ongoing national leadership in battling abusive fines, fees, and forfeitures. And our leadership is showing results:

Brookside continued on page 22



In March, a federal judge ruled that the case could proceed—good news for clients like **Chekeithia Grant** (left) and her daughter **Alexis Thomas** (right), who were abused by Brookside police during a traffic stop.

Motor City Madness:

County's Illegal Campaign to Silence an IJ Client

Robert's innocence did not matter—Wayne County declared his property guilty and demanded a \$900 ransom payment to get it back.



After **Robert Reeves** teamed up with IJ to challenge Wayne County's civil forfeiture of his car, prosecutors retaliated against him by charging him with two felonies. After getting the charges dismissed, IJ and Robert are fighting back with a new lawsuit.

BY CHRISTIAN LANSINGER

IJ has long represented clients across the country speaking out against their local governments. And we have also represented property owners challenging unconstitutional civil forfeiture schemes. In all these cases, we never experienced a government threatening to throw one of our clients in jail because they dared partner with us in a constitutional challenge.

Until now.

Robert Reeves—an auto mechanic, construction worker, and lifelong Detroit—er—is all too familiar with Wayne County's abusive legal tactics. In July 2019, the county impounded his 1991 Chevrolet Camaro after police witnessed him drive to a job site where there was allegedly stolen construction equipment. They never accused Robert of stealing the equipment, and he assured the police he had no knowledge of any theft. Yet Robert's innocence did not matter—Wayne County declared his property guilty and demanded a \$900 ransom payment to get it back.

As regular *Liberty & Law* readers know, we brought a class action against the county's seizure-and-ransom policy seven months later, with Robert as the lead client. In this ongoing case, we argue that the county cannot take someone's car without evidence that they committed a crime.

Within two weeks of IJ filing this lawsuit, Wayne County struck back and charged Robert with two bogus felonies for receiving and concealing stolen property. Then, the county ran to court, arguing that Robert could not challenge its rapacious forfeiture

Robert will not be silenced,
and Wayne County–like
other governments that seize
people’s cars without evidence–
will be held accountable.

program so long as he was accused of felonies. With IJ’s help, Robert fought back, and a judge dismissed the charges for lack of evidence.

But the county was not finished. Two weeks later, it refiled the charges again. And again, it ran to court to suspend Robert’s case against its illegal forfeiture scheme. None of these legal tactics were based on evidence—they were roadblocks designed to intimidate Robert into giving up his case. Thankfully, Robert would not be intimidated, and the same judge dismissed the felony charges once more.

Now, nearly four years since the county first took his car, Robert is teaming up with IJ a second time. At risk of future prosecution, he is suing the county and its attorneys for violating his constitutional right to challenge the government without fear of retaliation. In doing so, he joins a growing number of IJ clients who are standing up for their First Amendment rights after government bullies fined, punished, or arrested them for daring to speak out.

Robert will not be silenced, and Wayne County–like other governments that seize people’s cars without evidence–will be held accountable. ♦

Christian Lansinger is
an IJ attorney.



FIGHTING BACK AGAINST GOVERNMENT RETALIATION

It is no secret that thin-skinned government officials don’t like the glare of public scrutiny. That’s why, too often, they weaponize federal, state, and local laws to selectively target those who criticize them. No surprise then that IJ’s legal team, in the course of defending our clients’ constitutional rights and exposing government misdeeds, has also become a national expert at fighting back against this unconstitutional retaliation.

Now we’re launching a dedicated page on the IJ website to collect all our cases and resources on retaliation in one place and to give retaliation victims a portal to reach out to us for help.

These cases are core to our First Amendment work because retaliation operates as a form of backdoor censorship that can suppress speech just as much as laws openly restricting expression. Clients we’re currently representing include a Cleveland man whose truck was towed and a Texas grandmother who was jailed after they dared to criticize their local governments. The message from government officials is clear: Keep your mouth shut or else.

But retaliation can also occur in non-First Amendment IJ cases, when officials punish our clients for exercising their right to file a lawsuit. Thus, we’re fighting back with a retaliation lawsuit on behalf of our client who is suing to end Detroit’s forfeiture policies and who has since faced bogus charges to scare him off (see opposite article).

Retaliation cases also advance IJ’s Project on Immunity and Accountability. That is because the victims who sue to hold officials accountable must often overcome barriers like qualified immunity or municipal immunity. As a result, each victory we secure serves as vital precedent keeping the courthouse doors open for future victims of these unlawful practices.

With our new webpage, we look forward to informing the public about this scourge of backdoor censorship and identifying more victims whose rights we can defend. ♦

Learn more at
iam.ij.org/1A-retaliation

NATIONWIDE CLASS ACTION TAKES AIM AT FBI'S “TAKE NOW, EXPLAIN NEVER” FORFEITURES

IJ'S NEWEST
NATIONWIDE
CLASS ACTION
TAKES AIM AT THE
UNCONSTITUTIONAL
BOILERPLATE NOTICES
AGENCIES USE TO
TRICK PROPERTY
OWNERS INTO
SURRENDERING THEIR
RIGHTS.

BY BOB BELDEN

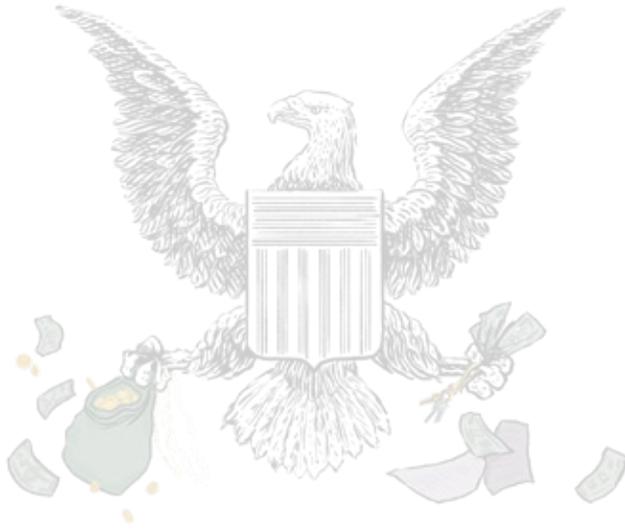
Liberty & Law readers are well familiar with civil forfeiture, in which the government files lawsuits against property in order to keep it without ever charging its owner with a crime. But did you know there are civil forfeitures executed entirely by the same federal agencies that financially benefit from the forfeitures, with no judicial oversight?

They're called administrative forfeitures, and IJ's newest nationwide class action takes aim at the unconstitutional boilerplate notices agencies use to trick property owners into surrendering their rights.

IJ client Linda Martin has been stuck in FBI administrative forfeiture for two years. She inadvertently got caught up in the FBI's raid on U.S. Private Vaults in March 2021, when—in direct violation of a warrant—the agency seized more than \$85 million



The FBI seized \$40,200 from **Linda Martin** and her husband **Reggie** as part of a raid against a safe deposit box company, despite having no reason to think they had done anything wrong.



from customers' safe deposit boxes. One of the boxes at U.S. Private Vaults contained the \$40,200 Linda and her husband had saved for a down payment on a family home. IJ challenged those seizures as a violation of the Fourth Amendment in a class action that is ongoing.

Linda's story took a different turn when, two months after the raid, she received an FBI forfeiture notice. When Linda read the notice, she was mystified. It did not accuse Linda or anyone else of a specific crime the FBI thought justified forfeiting her savings. And the notice left Linda in the dark about how to protect her property. It contained confusing, legalese-heavy instructions about how to respond to the notice—and two assurances that Linda did not need an attorney to help her.

So Linda tried her best. Following the instructions in the notice, she filed a "petition for remission," which the notice said was the option for seeking the return of property. But the notice didn't say that by filing a petition Linda automatically conceded the FBI could forfeit her property. Nor did the notice disclose that the only way Linda would get her property back was if the FBI decided to give it back as an act of administrative grace. As this article goes to print, the FBI still has her cash, and Linda still doesn't know why.

Linda is not alone. The FBI sends substantially identical notices to everyone whose property it wants to forfeit. And these

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IJ Joins with Scholars to Expose How Police Are "Shielded" from Accountability

IJ's Project on Immunity and Accountability began in a conference room across the street from our headquarters. It was a crisp, sunny morning in October 2018, and the brightest minds in the qualified immunity space gathered there to discuss with our world-class litigators how IJ could take on immunity doctrines that have no constitutional grounding.

Among those brightest minds was UCLA's Joanna Schwartz. Professor Schwartz's work was unique, as she was the only scholar who did field research by calling up police departments and private practitioners and asking them about the effects that qualified immunity had on their operations.

Recently, IJ got together with Professor Schwartz again, this time in Georgetown, to discuss the findings of her latest scholarship, our mission's progress, and legal setbacks.

Professor Schwartz's scholarship started by taking the U.S. Supreme Court at its word: It created qualified immunity because it was worried about government officials going bankrupt and the overall cost of litigation. Her research—published in a new book, *Shielded: How the Police Became Untouchable*—found that neither one was an issue. Government officials are invariably indemnified. And qualified immunity increases the costs of litigation by creating extra levels of appellate review.

It was an all-day affair, with a Short Circuit recording featuring Professor Schwartz and other renowned qualified immunity scholars, a panel of frontline civil rights attorneys, and a panel of people affected by qualified immunity, including IJ clients.

The main takeaway was optimism. Even if the U.S. Supreme Court is turning away cases on this issue, we've made great progress in state supreme courts and federal courts of appeals. As in every area where we seek to change the world, we have our work cut out for us. But if it weren't difficult, there would be no reason for IJ to be involved. ♦

Houston Stevens (center), a plaintiff in a 1961 landmark civil rights case *Monroe v. Pape*, speaks on a panel on government immunity at Georgetown University Law Center.



FAIRYTALE FARM ANIMAL SANCTUARY FIGHTS FOR HAPPILY EVER AFTER

BY ANNA GOODMAN

When Kimberly Dunckel and her family bought their 3.3-acre property in a semirural neighborhood in Winston-Salem, North Carolina, they wanted it to be not only their home but a place that bettered their community. When community members began asking them to care for animals in need, their vision came into focus: Create a place where both people *and* animals could thrive. Fairytale Farm Animal Sanctuary was born, and over the past year and a half, that is what it has become.

Kimberly Dunckel and her family turned their rural property into a sanctuary for neglected and disabled animals, like **Archie the goat**. But now the city of Winston-Salem, North Carolina, is threatening the viability of Fairytale Farm.



Today, the sanctuary is home to donkeys, goats, ducks, rabbits, and more. Many of these animals have special needs—like little Archie, a goat born with his back legs fused. At Fairytale Farm, Archie gets special care and a set of wheels so he can happily scoot around.

True to the Duncckels' vision, the sanctuary has also become an important community fixture. Their neighbors embraced the sanctuary from the beginning. Girl Scouts and homeschoolers visited to learn about the animals. Volunteers ensured the dozens of animals living at the sanctuary received love and care. The unique physical challenges facing many of the animals Fairytale Farm cares for provided a special opportunity to connect with sanctuary visitors who have struggled with their own disabilities. And community events helped raise the money needed to continue the good work.

But now, thanks to Winston-Salem, the sanctuary faces an impossible—and unconstitutional—choice: stop all events and limit volunteers or shut down entirely.

Why? Because under the city's zoning code, any use of property not expressly permitted is forbidden. And even though no one has complained about its volunteers or events, the code does not permit Fairytale Farm.

But ownership of property becomes little more than a name on a deed if you cannot use that property to improve your life and your community. Which is why Kimberly has joined with IJ to defend Fairytale Farm.

The North Carolina Constitution protects the right to use one's property without arbitrary government interference or unequal treatment. It also protects the right of individuals to pursue their chosen occupation, including nonprofit enterprises like the sanctuary,



Ownership of property becomes little more than a name on a deed if you cannot use that property to improve your life and your community. Which is why Kimberly has joined with IJ to defend Fairytale Farm.



Fairytale Farm relies on volunteers and donations from visitors to keep its doors open. But the writers of Winston-Salem's zoning code never imagined such a creative use for a property, so the city is demanding the sanctuary stop all events and limit volunteers.

Ownership of property becomes little more than a name on a deed if you cannot use it to improve your life and your community.

free from arbitrary interference. That is exactly what is happening here: The city's zoning code permits many home businesses, as well as golf courses, schools, churches, recreation centers, and other uses involving clients and visitors. There is no good reason why Fairytale Farm should be excluded.

This isn't the first time IJ has taken on a North Carolina city going after people just trying to do some good. In 2020, North Wilkesboro tried to stop the Catherine H. Barber Memorial Shelter from moving into a new building donated to it. Though the town acknowledged the shelter satisfied the zoning code's objective requirements, it decided a shelter wasn't "harmonious" with its neighbors. Following an IJ lawsuit, a federal court sided with the shelter, finding the town abused its power in trying to shut it down.

North Carolina's courts should do the same for Kimberly. By using her property to build community and help animals, Kimberly is not hurting anyone; she's only helping. And as IJ is going to help her show, she's got every right to do so. ♦

Anna Goodman is an IJ attorney.



The North Carolina Constitution protects the right to use one's property without arbitrary government interference, so **Kimberly Dunckel** and IJ are challenging the city's restrictions on the animal sanctuary.



BABY NINTH AMENDMENTS: How Americans Embraced Unenumerated Rights and Why It Matters

BY ANTHONY SANDERS

IJ's Center for Judicial Engagement exists to educate the public and policymakers about the proper role of courts in enforcing constitutional limits on the size and scope of government. That is why IJ is excited to announce the release of a new book that explores how Americans protect rights beyond those enumerated in our constitutions. Published by the University of Michigan Press, it's called *Baby Ninth Amendments: How Americans Embraced Unenumerated Rights and Why It Matters*.

Many *Liberty & Law* readers have heard of the Ninth Amendment, which protects rights "retained by the people." What you likely haven't heard, though, is that two-thirds of all states have language like the Ninth's in their own constitutions. This book tells the story of how these provisions came to be, what they're designed to do, and what they mean for unenumerated rights more broadly, including for the U.S. Constitution itself—and ties them into IJ's own litigation.

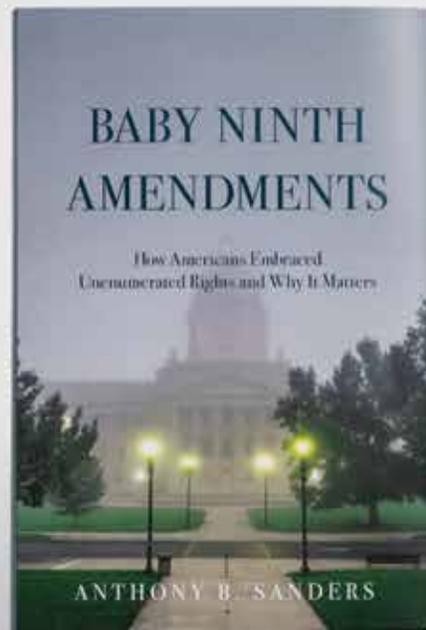
The first of these provisions was enacted in 1819, 30 years after the Ninth Amendment was drafted. By the Civil War, a dozen states had them. Then they grew and grew, with Illinois adopting the latest in 1970.

Why do so many states have them? Because unenumerated rights are popular! Americans like protecting rights, so they use broad language at the end of their bills of rights intended to make clear that our rights are not limited to those written down.

Indeed, judicial protection for unenumerated rights is a vital part of the American tradition, a point made clear at our recent conference on the 100th anniversary of *Meyer v. Nebraska*, in which the U.S. Supreme Court struck down laws forbidding private schools from teaching foreign languages and spelled out many unenumerated liberties that the Constitution protects, including the right to earn a living. IJ was proud to preview this book at the conference among the many scholars who came together to celebrate this landmark decision in the fight for liberty and

discuss how it continues to be relevant to IJ's work today.

The best news? Although the paperback and hardback versions are available from booksellers for a decent price, the electronic copy is available for an even better one—free! There's also an audio version. Go to ij.org/b9 to find out more. ♦



Anthony Sanders is director of IJ's Center for Judicial Engagement.



Learn more at
ij.org/b9

Promoting Beauty, Not Barriers

BY CHRISTINA WALSH

IJ's very first lawsuit was on behalf of African hair braiders in Washington, D.C., who challenged laws that required them to become fully licensed cosmetologists

simply to offer limited traditional braiding services, which don't involve chemicals, cutting, or heat.

Since then, IJ has worked with braiders in dozens of states across the country to exempt braiding from full-service cosmetology licensure

and expanded our work with beauty artists to take on unreasonable regulations of other safe practices, like eyebrow threading and makeup application.

One thing we have learned through decades of research, advocacy, and litigation is that licensing requirements do not just harm those who offer niche services, such as African braiders. They harm many types of beauty professionals—especially those on the first rung of the economic ladder—who deserve much better than the current system of cosmetology licensing.

It is a system in which costs, debt, a lack of accountability, and free labor are baked in by the main profiteers: cosmetology schools. In response to

One thing we have learned through decades of research, advocacy, and litigation is that licensing requirements do not just harm those who offer niche services, such as African braiders. They harm many types of beauty professionals, who deserve much better than the current system of cosmetology licensing.

lobbying by cosmetology schools, states require up to 2,100 hours in full-service programs, regardless of the services an aspiring beauty professional wants to provide, their existing skill sets, or alternative ways

to learn. On average, school costs more than \$16,000, and students borrow over \$7,300.

That cost of entry is too steep for far too many, forcing those who can't afford to comply into debt, into the shadows, or out of the industry entirely.

Beauty professionals

typically only learn how bad the system is by going through it, and then they have every incentive to protect their licenses.

That's why we launched "Beauty, Not Barriers," a multifaceted initiative dedicated to engaging the cosmetology industry about alternatives to costly, overbroad, and unfair licensing requirements. By exempting niche services from full-service requirements



and shifting regulations to mirror the restaurant industry—where the facility is licensed instead of the individual—states can unleash enormous opportunities for future beauty professionals, those seeking to expand services, and salons trying to hire.

Our website, www.beautynotbarriers.com, has an in-depth survey, through which we are soliciting feedback from aspiring and current professionals about their experiences and needs. We have canvassed nationwide—at salons, makeup counters, beauty supply stores, and events. We are working with key organizations and educators who care about these issues. And we are having a lot of important conversations.

We have talked to frustrated graduates who were forced to spend scarce money to be taught skills they already knew, or learn outdated techniques, or stand around on a school's salon floor for hundreds of hours, waiting for customers. We've heard frustration about providing free labor to schools that pocket the customers' payments. And we've talked to talented beauty artists who can't afford school and so must provide limited, safe services in the shadows.

Thankfully, some beauty pioneers are recognizing that they can help future generations. We are finding them and helping to elevate their voices while also educating the next generation that not only do they deserve better—they should demand it.

We remain committed to unclenching the hold that traditional cosmetology schools have on this industry and freeing future generations of artists to design their own careers—because beauty professionals are worthy of that freedom, and they deserve better than barriers. ♦

Christina Walsh is IJ's senior director of activism and coalitions.



Learn more at
www.beautynotbarriers.com

The **BEST** Way to **Cut Red Tape** in D.C.

Washington, D.C., doesn't have a great reputation when it comes to regulatory red tape. But thanks to IJ's efforts, it's finally getting cheaper, faster, and simpler to start a business there.

Back in 2016, IJ's activism team started knocking on the doors of small business owners to find out what regulatory reforms would make the business startup process less of a hassle, and our work since then through our District Works project scored a major victory this March when the Business and Entrepreneurship Support to Thrive (BEST) Amendment Act of 2022 passed the D.C. Council and went into effect.

The law slashes licensing fees for new businesses, simplifies the start-up process by cutting more than 100 license categories down to 11, and eliminates new license fees entirely for businesses making under \$10,000. That means more entrepreneurs testing more ideas, employing more people, and making it easier to earn an honest living in the nation's capital.

While our work in D.C. isn't done, this new legislation is a breath of fresh air for local entrepreneurs.

Success in D.C. also positions IJ to enact similar reforms elsewhere. Using the findings from *Barriers to Business* (our landmark case study of the business licensing and startup process in 20 U.S. cities), our District Works initiative has blossomed into a nationwide Cities Work project that has IJers working with city leaders across the country, from Boston, Massachusetts, to Fort Worth, Texas, helping more entrepreneurs pursue their dreams with fewer hurdles imposed by their local governments. ♦

Learn more at ij.org/citieswork

IJ Clients Remain Resilient on the Long Road to Government Accountability

Fighting for government accountability requires special resolve on the part of IJ clients. Just ask Sylvia Gonzalez and James King, whose cases are pending before the U.S. Supreme Court.



BY PATRICK JAICOMO

They say the wheels of justice grind slowly. Nowhere is this more true than in the upside-down world of court-created immunities. That's why fighting for government accountability requires special resolve on the part of IJ clients. Just ask Sylvia Gonzalez and James King, whose cases are pending before the U.S. Supreme Court.

Sylvia's case began in 2019, when a politically connected cadre of officials in the hamlet of Castle Hills, Texas, conspired to arrest the 72-year-old for challenging their grip on power. In retaliation for Sylvia's work on a petition urging the replacement of the city manager, the manager's friends—the mayor, police chief, and a local lawyer dubbed a “special detective”—spent months manufacturing a pretext to arrest and jail Sylvia.

When Sylvia sued the conspirators for violating the First Amendment, they claimed qualified immunity. A federal trial court in Texas rejected the claim, but government officials who have been denied immunity can immediately appeal. So the conspirators took their case to the Fifth Circuit, which reversed and granted them immunity. IJ and Sylvia are now asking the Supreme Court to hear the case.

IJ client James King also knows all too well about immunity delays. In 2014, police working on a state-federal task force misidentified James as a petty criminal and unconstitutionally searched, seized, and beat him; onlookers called 911, worried James was being mugged. For the past nine years, James has been fighting through a thicket of immunities.

After officials in a small Texas town arrested **Sylvia Gonzalez** on bogus charges, she joined with IJ to fight back. A lower court denied the officials immunity, but the appeals court reversed that victory. IJ and Sylvia are now asking the U.S. Supreme Court to hear the case.

James' and Sylvia's cases highlight the unfairness that immunity doctrines introduce into the legal system.

Like Sylvia, James first met with claims of qualified immunity. He lost his battle against the doctrine in the federal trial court, but the Sixth Circuit restored his case on appeal. Before James could go before a jury, however, the government asked the appeals court to apply a different immunity. When it declined, the Supreme Court heard James' case in 2020, only to return it to the Sixth Circuit on the immunity issue. Recently, that court granted the government the alternative immunity it requested. So IJ and James are now asking the Supreme Court to hear the case again.

James' and Sylvia's cases highlight the unfairness that immunity doctrines introduce into the legal system. On top of the substantive problems immunities create, the process of litigating them adds literal years to lawsuits.

The delay is even worse when you realize that all immunity plaintiffs are fighting for is a day in court—a chance to argue in front of a jury. So even if they convince the Supreme Court they should win their yearslong immunity battles, the wars are only beginning for James, Sylvia, and IJ. There are still years left to fight.

Yet Sylvia and James aren't giving up, and neither are we. Thankfully, IJ has the means and ability to find dedicated plaintiffs and fight for them year after year. And by staying in the fight, we will help make it easier for more and more people to join us in demanding constitutional accountability. ♦

Patrick Jaicomo is an IJ senior attorney.



IJ client **James King** was brutally beaten by police in a case of mistaken identity.

His case went all the way to the U.S. Supreme Court and back down again to an appeals court, which granted the government a new immunity. Now IJ is asking the high court to hear the case again.



Ketan Vakil started a business, Gourmend Foods, to produce and sell food for people with digestive problems. But the USDA and the FDA forbid him from truthfully labeling his food as “easy to digest.”



IJ Sues USDA and FDA to Challenge Food Label Censorship

BY BETSY SANZ

The government should not get to determine what facts consumers are allowed to know about the products they buy. That may sound like common sense, but it's a fact that evidently escapes the U.S. Department of Agriculture and the Food and Drug Administration, both of which prohibit food manufacturers from disclosing indisputably true and useful information about their products to consumers. But now a Nevada consumer and a New York food entrepreneur have teamed up with IJ to fight back against this unconstitutional censorship.

Michelle Przybocki of Las Vegas suffers from severe irritable bowel syndrome (IBS). IBS is a common condition that affects tens of millions of Americans. Michelle's case almost killed her. And very often when she ate, it hurt—badly. Her doctor told her that if she wanted

The government should not get to determine what facts consumers are allowed to know about the products they buy.

to avoid pain, she would have to follow a diet that is low in certain sugars that are hard to digest, called a low-FODMAP diet. FODMAPs are found in common foods like onions and garlic, and Michelle quickly discovered that it was nearly impossible to locate low-FODMAP packaged foods.

That's where Ketan Vakil comes in. Ketan, who lives in New York City, also suffers from digestive issues and follows a low-FODMAP diet. He too struggled to find low-FODMAP foods. But like so many IJ clients, Ketan is an entrepreneurial guy. He saw an opportunity and formed his business, Gourmend

Foods, to bring delicious low-FODMAP foods to people who need them.

By summer 2022, Ketan was producing and selling spice blends and chicken broth. All the labels included the same truthful information: The products are “low-FODMAP,” “digestible,”

As IJ has shown time and again in our litigation, the First Amendment protects the right of entrepreneurs like Ketan to make truthful claims about their products and the right of consumers like Michelle to receive that information.

and certified as such. Then Ketan decided to sell beef broth, too—and that’s when he learned that the scarcity he thought to be a market failure was in fact caused by government censorship.

For a host of bureaucratic reasons, the FDA regulates Ketan’s spice blends and chicken broth, but the USDA regulates beef broth. But unlike the FDA, the USDA requires food makers to submit their labels for preapproval before using them. Ketan therefore submitted his beef broth label featuring the indisputably true information that the broth is low-FODMAP to the USDA.

The USDA rejected it. Why? Because low-FODMAP information is not on the government’s outdated list of preapproved “nutrient content claims.” Any nutrient content claims not on the list are banned, even if they are verifiably true and no matter how helpful the information would be to consumers. And the only way to get a

new term on the list is to go through the yearslong process of federal administrative rulemaking.

But as IJ has shown time and again in our litigation, the First Amendment protects the right of entrepreneurs like Ketan to make truthful claims about their products and the right of consumers like Michelle to receive that information. That is why Ketan and Michelle have joined with IJ to sue the USDA and the FDA for violating their First Amendment rights. Together, we will put an end to the headaches—and stomachaches—caused by these agencies’ censorship of truthful product labels. ♦

Betsy Sanz is an IJ attorney.



People who need foods low in certain hard-to-digest sugars, like IJ client **Michelle Przybocki**, struggle to find packaged foods labeled as such. That’s why Ketan sells products helpfully labeled as low-FODMAP, like his packaged chicken broth.



Brookside continued from page 7
When the Department of Justice issued a “Dear Colleague” letter in April, reminding state and local governments of the perniciousness and unconstitutionality of financially interested law enforcement and excessive fines, it cited IJ’s work in Brookside, Georgia, Indiana, and New Mexico.

To keep that drumbeat going, we’ll keep doing everything we can to keep policymakers, police, and prosecutors from treating citizens like walking ATMs. ♦

Jaba Tsitsuashvili
is an IJ attorney.



USPV II continued from page 11
forfeitures are big business for the FBI: Using basically the same confusing and uninformative notice it sent Linda, the FBI administratively forfeited more than \$1.19 billion of property from 2017 through 2021.

That is why Linda has joined with IJ to file a class action challenging the FBI’s unconstitutional forfeiture notices. The Constitution requires the government to tell people the specific legal and factual reasons why it is taking their property so that people can defend their rights. And it requires that procedures be clear so that people like Linda aren’t tricked into surrendering their rights. With this latest lawsuit, we intend to put a stop to the FBI’s “take now, explain never” forfeitures once and for all. ♦

Bob Belden 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/
june-2023-headlines](http://iam.ij.org/june-2023-headlines)



THE WALL STREET JOURNAL.

**How The FBI Took An Innocent
Woman's Savings**

March 7, 2023

reason

FREE MINDS AND FREE MARKETS

**Law Enforcement Beat This Innocent
Man To A Pulp. Will The Supreme
Court Allow Him To Seek Recourse?**

March 23, 2023

THE U.S. Sun

**'JUST WRONG' I Face Being Homeless
After Being Forced To Move Out Of My
Tiny Home Only One Day In Or Face
Paying A \$1K Fine A Day**

April 4, 2023

BUSINESS INSIDER

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Police At Phoenix Airport And Had To
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April 7, 2023

Idaho Statesman

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AP Associated Press

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May Force The City To Pay**

April 18, 2023

AXIOS

**Dems Mostly Side With Hobbs To
Block Override Of "Tamale Bill" Veto**

April 25, 2023

When my boys were 12 and 14 years old, a police officer held them at gunpoint.

I asked him what was going on, and he pointed a taser in my face.

I'm fighting to hold him accountable.

I am IJ.

