



**LIBERTY & LAW**

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# **IJ Secures Landmark Victory for Economic Liberty in the Georgia Supreme Court**

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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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# IJ SECURES LANDMARK VICTORY FOR ECONOMIC LIBERTY in the Georgia Supreme Court

BY RENÉE FLAHERTY

Mary Jackson spent five years fighting for her right to earn a living.

In May, her battle ended in a resounding victory. The Supreme Court of Georgia unanimously affirmed Mary's win in the trial court with a tour-de-force decision.

Mary now joins Ash Patel in Texas and Sally Ladd in Pennsylvania as IJ clients who have set groundbreaking economic liberty precedent under state constitutions.

*Liberty & Law* readers will recall that Mary is an experienced

lactation consultant.

She helps women breastfeed their babies and co-founded a nonprofit, Reaching Our Sisters Everywhere (ROSE). In 2018, Mary and ROSE teamed up with IJ to challenge Georgia's first-of-its-kind licensing law for lactation consultants. The law would have required Mary and others like her to take the equivalent of two years of college courses, obtain at least 300

## Mary Jackson

(center) and ROSE, a nonprofit she co-founded to teach mothers of color about breastfeeding, joined with IJ to challenge a protectionist law that would have put them out of business—and won a sweeping victory for economic liberty at the Georgia Supreme Court.



## The Georgia Supreme Court agreed with IJ: If the government wants to license an occupation, it can only do so if licensing is necessary to protect public health and safety.

hours of supervised experience, and pass an expensive exam. This would have put hundreds of skilled lactation consultants like Mary out of work. But women have been teaching one another how to breastfeed safely for millennia—and a state review commission even agreed that licensing lactation consultants was a bad idea.

Mary's case changed Georgia's legal landscape—not just for lactation consultants, but for all aspiring entrepreneurs—through two important victories. In 2020, the Supreme Court of Georgia reversed the trial court's initial dismissal of the case and affirmed that Georgia's high court has "long interpreted the Georgia Constitution as protecting a right to work in one's chosen profession free from unreasonable government interference." This year, the Court finished what it started and ruled that if the government is going to interfere with the right to earn a living, it had better have a good reason.

The Court agreed with IJ that there is no good reason to license lactation consultants. Licensing laws like Georgia's serve only to keep one privileged group from having to compete with others, and the Court emphasized that such protectionism is "decidedly not sufficient to justify a burden on the ability to practice a lawful profession." If the government wants to license an occupation, it can do so only if licensing is necessary to protect public health and safety.



After the ruling, Georgia's Secretary of State—the defendant in this lawsuit—issued a press release praising the Court's decision.

Mary's persistence is the essence of what it means to be an IJ client. She and ROSE CEO Dr. Kimarie Bugg endured a long wait, but it was worth it. Beyond the countless moms and babies they support, everyone in Georgia will benefit from their good work.

The decision will keep government accountable in the Peach State. Other states will look to Georgia when considering whether to license ordinary and safe occupations like lactation consulting. When lawmakers create unconstitutional licenses (or fail to repeal existing ones), IJ will continue to bring cases under state constitutions, now armed with this monumental new precedent. IJ won't stop until everyone in America enjoys the same freedom to earn a living. ♦

Renée Flaherty is an IJ senior attorney.



Lactation consultants like ROSE CEO Dr. **Kimarie Bugg** have safely helped new mothers with breastfeeding for years. Now they and all Georgians can work in their chosen profession "free from unreasonable government interference."



# Georgia Families Refuse to be Railroaded Off Their Land

BY BILL MAURER

Sparta, Georgia, holds deep roots for the families who call the small town “home.” Don and Sally Garrett live on land that has been in Don’s family since the 1800s. The nearby Smith property was once part of the Dixon cotton plantation, where Helen Smith’s mother was born a slave. Helen and her husband, James, bought the property in the 1920s and passed it down to members of their family, including Blaine and Diane Smith and Marvin and Pat Smith. The Garrett and Smith properties offer tranquility, opportunities for hunting and fishing, and a source of revenue in the pine trees that grow there.

But now all of this is at risk. A private railroad, the Sandersville Railroad Company, wants to use eminent domain to condemn portions of up to 18 properties in

**A private railroad wants to use eminent domain to condemn portions of up to 18 properties in Sparta to build a spur linking a private quarry to a railroad line outside of town.**

Sparta—including the Garretts’, the Smiths’, and others—to build a spur linking a private quarry to a railroad line outside of town. The spur will bisect the properties, effectively marooning portions of the land. The track will destroy the families’ peace and ruin their dream of passing the properties down to the next generation.

Unlike governmental entities, Sandersville Railroad cannot simply condemn the Garrett and Smith properties—it must first get the permission of the Georgia Public Service

Commission. But families who have lived in Sparta for generations don’t want to stake their legacies on the whims of bureaucrats. Represented by IJ, the Garretts, the Smiths, and their neighbors are now fighting back.

The Garretts, the Smiths, and the other property owners have a right to keep their land, use it as they want,



The **Smith** family, including couples **Pat and Marvin** (left photo) and **Diane and Blaine** (right photo), has owned land in the small town of Sparta, Georgia, for 100 years. One of their ancestors was born into slavery on that land. Now a private railroad company serving a private business is trying to use eminent domain to carve up the Smiths’ land.

## Under Georgia law, helping private companies make more money is not a public use.



Watch the case video!

[iam.ij.org/Sparta](http://iam.ij.org/Sparta)

and leave it to their children. Georgia delegates the power of eminent domain to private railroad companies only when they act as public utilities—meaning only when they provide service to all members of the public. They cannot take land just because they are railroads. In Sparta, a private railroad and a private quarry would be the primary (if not the only) users of the new track—and under Georgia law, helping private companies make more money is not a public use.

We know because IJ helped enact that law. After the U.S. Supreme Court's infamous decision in *Kelo v. City of New London*, IJ led efforts to tighten protections against eminent domain abuse. Those efforts resulted in substantive reforms in 47 states, including Georgia. While those reforms have significantly restrained the use of eminent domain to benefit private entities, the practice has not stopped altogether.

Would-be-condemnors now try to cloak private takings in the garb of legitimate condemnations when the real purpose is simply to benefit a private business.

That is what is happening here. But private takings masquerading as the legitimate use of eminent domain are just as wrong, illegal, and unconstitutional as any other eminent domain abuse. That is why the Garretts, the Smiths, and other Sparta property owners have teamed up with IJ to tell the Georgia Public Service Commission that their land belongs to them, not Sandersville Railroad. ♦

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



Sally and Don Garrett have joined with IJ, the Smiths, and other neighbors to challenge the proposed private railroad spur and keep their land whole.

# GOVERNMENT SNOOPS

## Sneak Through Fourth Amendment Loophole

BY JOE GAY

Josh Highlander bought 30 acres of land in Virginia at the end of a quiet residential street lined with single-family homes. He built a home there surrounded by woods. And he posted “no trespassing” signs around the perimeter of the property. Surely that was enough to secure his family’s right to privacy and seclusion on their own land, right?

Wrong, at least according to game wardens in Virginia and around the country. Ironically, they see the very

things that most people think of as sources of privacy—like living on a large piece of property surrounded by nature—as an invitation to snoop on private land without a warrant. The U.S. Supreme Court greenlit these intrusions almost 100 years ago during Prohibition, when it held that

the Fourth Amendment does not protect “open fields.” Under this misguided theory, the woods and fields around your home are not sources of seclusion but opportunities for government surveillance.

Josh found this out the hard way. His wife and young



**Josh Highlander** learned that government agents were surveilling his property without a warrant after his wife spotted a stranger in camouflage lurking in the woods by their home. That stranger turned out to be a Virginia game warden looking for hunting violations.



son were playing basketball in the yard when the ball rolled toward the woods. As Josh's wife went to retrieve it, she noticed among the trees a stranger dressed in full camouflage. Alarmed, she rushed inside to alert Josh. By the time he got outside, the intruder was gone, but the violation of his family's privacy remained. For weeks afterward, his son was afraid the stranger might be lurking in the woods again and wouldn't go outside alone.

Josh soon discovered who the camouflaged prowler was. Game wardens from the Virginia Department of Wildlife Resources had sneaked onto his land to search for evidence of hunting violations. Earlier that day, game wardens had accused Josh's brother of hunting over bait (an accusation he denies) miles away in a different county. Josh has never been cited for violating hunting regulations, but that day his family ties apparently cast suspicion on him, too.

What happened to Josh and his family is no aberration. Around the country, game wardens and other law enforcement routinely trespass on private land without a warrant to hunt for evidence. A key goal of IJ's Project on the Fourth Amendment is to put an end to these warrantless intrusions onto private land. Our suit protecting Josh's privacy under the Virginia Constitution joins IJ's growing body of work fighting similar warrantless searches of open fields under the Pennsylvania and Tennessee constitutions.

As more state courts reject the misguided open fields doctrine, we hope to eventually persuade the U.S. Supreme Court to abandon the doctrine, too. But whether in federal court or state by state, we'll continue this fight until all Americans regain their right to be secure against warrantless searches of their private land. ♦

Joe Gay is an IJ attorney.



Virginia officials invaded **Josh's** property without a warrant. So Josh has teamed up with IJ to defend his Fourth Amendment rights.



## IJ Will Defend the Fourth Amendment at the Michigan Supreme Court

Virginia is far from the only place IJ's Project on the Fourth Amendment is fighting for the right to be secure in our property against creepy government surveillance. In February's issue, we reported on our appeal asking the Michigan Supreme Court to hear Todd and Heather Maxon's case. To gather evidence of an alleged zoning violation for the way the Maxons stored vehicles, the Maxons' local government flew a drone all over their rural 5-acre property, capturing intrusive high-resolution photos and videos in the process. It did so three times over several months; it never sought a warrant.

According to Michigan's Court of Appeals, all of that is fine. Even if the warrantless drone surveillance violated the Fourth Amendment (the court didn't reach that question), the Maxons had no remedy. The government can use unconstitutionally obtained evidence in its zoning-enforcement case against them because (the court held) the usual remedy—exclusion of an illegal search's fruits—applies only to criminal cases. That holding removes a major incentive for officials of all stripes to respect Michiganders' Fourth Amendment rights.

Thankfully, Michigan's Supreme Court has agreed to step in. It will review whether the drone surveillance violated the Fourth Amendment and, if it did, whether the Maxons have a remedy for it.

Getting a state supreme court to hear a case is no easy feat. In most instances—including here—these courts enjoy total discretion over their dockets. Having persuaded the court to review these cutting-edge issues, we look forward to oral argument and a decision enshrining soaring protections for all Michiganders' property rights. ♦

# Legislative Review:

## Freeing the Markets for Education and Health Care

BY JAIMIE CAVANAUGH

At IJ, we can't accomplish every goal through litigation. So we press forward on many fronts, including legislation. This past year, IJ's legislative team supported more than 160 bills in 48 jurisdictions, culminating in 37 enactments. Here are some standouts.

First, this session was a watershed year for educational choice. Ten states created or expanded choice programs. Even better, the programs in Arkansas, Iowa, Florida, and Utah are universal, meaning any K-12 student in the state is eligible.

Second, we saw growth in our efforts to protect property rights. We enacted civil forfeiture reporting bills in Colorado and Nevada. These reforms require law enforcement to gather and publicize forfeiture data. And our work on fines and fees expanded with five enactments. Among those was a bill in Vermont to end the destructive practice of suspending driver's licenses for failure to pay traffic citations.

Finally, as the national leader in economic liberty legislation, IJ introduced nearly 70 bills in 34 states. The team worked to reduce cosmetology licensing

**At IJ, we can't accomplish every goal through litigation. So we press forward on many fronts, including legislation.**



**In South Carolina,  
patients and  
providers—not  
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needed.**

barriers, to make it easier for ex-offenders to get occupational licenses, and to expand cottage food laws.

Perhaps the most pivotal victory this session, however, came out of South Carolina. There, IJ recorded its first major legislative victory repealing a certificate of need (CON) program in health care. Even three years ago, this seemed all but impossible, yet the House voted (and the Senate concurred) unanimously on nearly full repeal of the state's robust CON program.

A CON is a government permission slip to compete in the health care market. Before a medical provider can open or expand a health care facility or add services, it must prove to the government that a "need" exists. Worse, direct competitors (often large hospitals) can intervene during the application process and argue that a new competitor would hurt their bottom lines. The government often sides with incumbents and denies applications.

One purported justification for CON laws goes as follows: If too many facilities—say, imaging centers—open, none will have enough patients to be profitable and doctors might start ordering unnecessary tests to turn a profit.

Naturally, this has been disproven. States with CON laws have fewer health care facilities,

and research shows health care is more expensive in these states. Individual procedures are more expensive, per

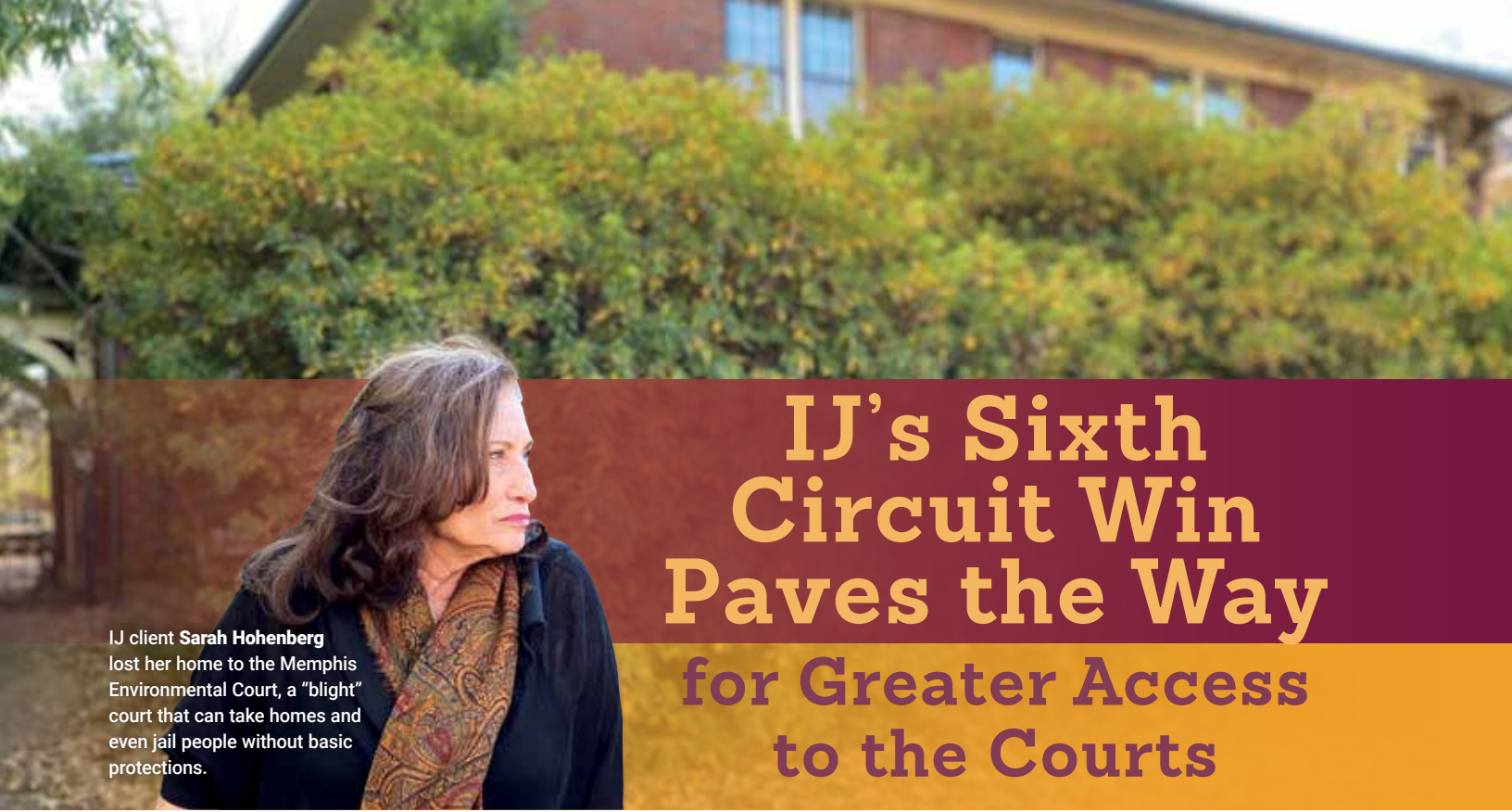
capita expenditures are higher, and government payors pay higher costs in states with CON laws. By any measure, CON laws have utterly failed to control costs.

Previously, South Carolina required a CON for many usual categories like rehab facilities, psychiatric hospitals, ambulatory surgical centers, and radiology facilities. But South Carolina also required a CON for niche services that are nearly impossible to "over-prescribe," like neonatal intensive care services and open-heart surgery. There is no justification for limiting access to needed services.

Equipped with South Carolina's strong example, we will continue to advocate nationwide to inject some much-needed free market forces into health care and ensure that patients and providers—not bureaucrats—will decide when care is needed. ♦

Jaimie Cavanaugh is an IJ attorney.





IJ client **Sarah Hohenberg** lost her home to the Memphis Environmental Court, a “blight” court that can take homes and even jail people without basic protections.

# IJ’s Sixth Circuit Win Paves the Way for Greater Access to the Courts

**BY ROB PECCOLA**

When IJ sued Shelby County for creating an Environmental Court that stripped people of their Memphis homes without due process, it was a courageous uphill battle from day one.

For IJ clients Sarah Hohenberg and Joseph Hanson, the Environmental Court was a nightmare. Like the protagonist in Kafka’s famous novel, *The Trial*, Sarah and Joseph found themselves in front of a shadowy tribunal with none of the safeguards or processes of a real court. The tribunal has no legitimate evidence, and its subjects cannot obtain even basic information about their own case. Yet it has the power to ruin

lives, and left both Sarah and Joseph homeless and jailed Joseph over bogus housing code violations. Our case on their behalf presents a question Kafka might also have asked: “What good are our constitutional rights if we cannot enforce them?”

**IJ is challenging not the rulings of the Environmental Court but rather the very existence of the court itself—a much more fundamental and serious charge.**

Federal courts are often squeamish about touching constitutional issues to begin with. And faced with scrutinizing other courts and other judges, they often reach deep into their bag of

procedural tricks looking for a way to dismiss the case. So it was no surprise when the federal court in Memphis threw its weight behind a pernicious doctrine called Rooker-Feldman, a

A lock on Sarah's gate: Sarah's case against the Environmental Court can go forward, thanks to an IJ victory at the Sixth Circuit.



**We do not have secret courts in the United States, and the decision makers in Shelby County must also be held to account.**

doctrine meant to prevent relitigation of state court cases in federal court—but used in practice to throw out legitimate due process claims, including those at the heart of our case.

Undeterred, IJ challenged that decision. And we won! In a recent ruling, the 6th U.S. Circuit Court of Appeals recognized that this esoteric doctrine is completely inappropriate when IJ is challenging not the *rulings* of the Environmental Court but rather the very existence of the court itself—a much more fundamental and serious charge. As a result, IJ's lawsuit can move forward.

This is a victory worth savoring. It takes nerve to sue courts and judges. When IJ successfully sued the judicial administration of the 1st Judicial District behind Philadelphia's forfeiture machine, it was astonishing. Judges and court administrators facing constitutional scrutiny, not to mention depositions, must have been stunned. But they should not have been. We

do not have secret courts in the United States, and the decision makers in Shelby County must also be held to account. After three years of fighting for our clients, we can finally shed light on the Environmental Court's machinations through the discovery process, which now begins in earnest.

IJ's persistence in Memphis breathes life into constitutional rights that are too easily thrown out by judges who are reluctant to take those rights seriously. There is simply too much at stake not to give people like Sarah and Joseph their day in court. When I called Sarah to share the news that our case was back in action, I was humbled and inspired by her response. She said that this win gives her the courage to keep fighting—and together we will. ♦

Rob Peccola is IJ's special counsel for litigation and development.



# Litigator's Notebook: Paralegals Without Parallel

BY DANA BERLINER

IJ's paralegals are the unsung heroes of our cases. They don't get the recognition of standing up in court. Their names don't appear in the newspaper. But they contribute so much to our litigation, from beginning to end.

Paralegals know—and sometimes help find—our clients. They comb through local court records to find someone who meets the criteria of a particular legal challenge. They come to hearings and trials and talk to the clients about what to expect.

And of course, they are intensely involved in the legal work. IJ practices throughout the country, and each court has a different set of rules. Most paralegals merely need to know how to do something in one or two courts. IJ's paralegals know the ins and outs of dozens of different court systems. When we have to serve legal papers on slippery government actors, IJ's paralegals make sure it happens. When we have a motion for summary judgment with 60 or 100 exhibits (each of which requires a separate docket entry), IJ's paralegals file everything without a hitch. Some courts accept only electronic filings. Some accept only in-person filings with ink signatures. IJ's paralegals talk to court clerks to make sure we do it correctly in every court.

We have seen that IJ's paralegals frequently know the rules better than either our local counsel or the lawyers on the other side. When another lawyer accused us of filing something at the wrong time, the IJ paralegal pointed to the

*IJ's paralegals don't get the recognition of standing up in court. Their names don't appear in the newspaper. But they contribute so much to our litigation, from beginning to end.*

From top: Director of Paralegal Services and Senior Paralegal **Gretchen Embrey**, Senior Paralegal and Florida Office Manager **Rebekah Ramirez**, and Senior Paralegal **Kyndra Griffin**.

*It's a joke around the office that when you ask the case paralegal to do something, she's usually already done it.*

rule (which the other lawyer missed) saying we had done it correctly. Recently, a judge asked if we had remembered to send out this one notice—in a case we filed two years ago. It was a technicality, but the case could have been dismissed without it. And of course, it had been sent out. One state has a completely counterintuitive rule that, when suing government actors for their official actions, we have to sue them in their personal—and not official—capacity. A paralegal noticed this quirk and passed it on to the attorneys.

IJ's paralegals don't just do procedural work. They understand our cases and claims. We've had IJ paralegals prepare exhibits for use at a trial. Even the other side couldn't find fault with them. They find difficult-to-locate historical documents. They notice patterns in evidence or lines in a deposition that turn out to be important. They participate in moot courts and ask insightful questions.

They know what we are trying to do, and so they can anticipate what we will need next. It's a joke around the office that when you ask the case paralegal to do something, she's usually already done it.

In preparation for writing this article, I asked the lawyers for some examples of especially helpful things that our paralegals had done recently. Within minutes, I had received 23 responses. That's how much we love the paralegals who make all of our groundbreaking legal work possible. ♦

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



IJ's paralegals like **Claire Purple** and **Kendall Morton** (above) are instrumental to every case, searching records, filing documents, strategizing with attorneys, and getting to know clients.



# Texas Driver Sues to Put the Brakes On Unreasonable Searches and Seizures

BY CHRISTIE HEBERT

Alek Schott, a Houston resident and married father of two young kids, was driving home from a run-of-the-mill work trip when he was pulled over by a Bexar County, Texas, sheriff's deputy. The officer claimed he pulled Alek over for drifting over the fog line, but footage from Alek's personal dashcam shows that never happened.

And the deputy didn't behave like someone interested in enforcing traffic laws. Instead, it quickly became clear that the deputy had pulled Alek over to fish for evidence of a potential crime. The deputy held Alek on the side of the highway for over an hour. He grilled Alek about

his trip, his work, his family, and whether he had anything illegal—or a large amount of cash—in his possession.

It was then that the deputy admitted that he wasn't on patrol to write traffic tickets; he was looking for "big sh#t" (major crimes and cash). Based on that goal, he treated Alek's calm, benign answers as suspicious and radioed for a drug dog after Alek refused a search.

Alek had no drugs in his truck, but an alert triggered by the dog's handler was all the deputy



[iam.ij.org/TX-traffic-stop](http://iam.ij.org/TX-traffic-stop)

As Alek Schott drove back from a work trip, Bexar County, Texas, deputies used a phony traffic violation and bogus dog alert as an excuse to pull Alek over, interrogate him, and search his truck in a fishing expedition for evidence of a crime.



needed to ransack the vehicle. Together with two other officers, he emptied every bag and pulled at every part of the truck. They found food wrappers, a hard hat, two kids' car seats, and some work equipment, but they didn't find what they were looking for—no drugs, no evidence of a crime, and no cash.

Unfortunately, Alek's situation is all too common—as the deputy himself admitted when he finally let Alek go, because “9 times out of 10, this is what happens”—they search cars and find nothing. Beyond Bexar County, law enforcement nationwide regularly uses falsified stops to initiate searches, even without probable cause.

But the Constitution forbids the kind of stop-first, justify-later policing that Alek—and countless others—experienced. Although the U.S. Supreme Court has held that police can stop a driver for a traffic violation to investigate a different offense, an officer must have a basis to believe a traffic violation was committed in



Officials can't make up reasons to search your property without a warrant, so Alek and IJ are challenging Bexar County's baseless traffic stops.

**The Fourth Amendment bars police from stopping whomever they want, whenever they want. Police know these rules, but far too often they only pay them lip service.**

the first place. The Fourth Amendment bars police from stopping whomever they want, whenever they want.

Police know these rules, but far too often they only pay them lip service. Any behavior—talking too much, talking too little, acting too nervous, acting too calm, making too much eye contact, making too little eye contact—can be used to justify a fishing expedition. So IJ sued Bexar County and its deputies to remind law enforcement that there are limits on their roadside authority and that property rights protections guaranteed

by the Fourth Amendment also apply to vehicles.

As part of IJ's Project on the Fourth Amendment, our lawsuit on Alek's behalf will enforce an important principle: You cannot interrogate drivers and search their cars without any justification and get away with it. ♦

Christie Hebert is an IJ attorney.





Participants at the 2023 Law Student Conference pose with IJ attorneys and staff.

## Law Students Get Crash Course in Litigating for Liberty

IJ is delighted to reflect on the success of another year of our acclaimed Law Student Conference. For three decades, this annual tradition has attracted law students from across the country.

Guided by our dedicated team of IJ attorneys, 36 law students engaged in informative and interactive sessions over the course of two days. Topics covered included public interest law versus private practice; effective litigation strategies; and the step-by-step case development process, even up to the U.S. Supreme Court.

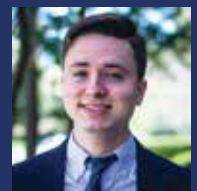
This year, we were excited to add a new session to our programming: mock discovery and depositions. This session built on the mock litigation case discussion we debuted a few years ago. These impactful sessions provided a unique experiential learning opportunity, enabling participants to apply their knowledge actively. Through real-time case crafting and strategy development, attendees deepened their understanding of public interest law and litigation techniques while simulating the experience of being an IJ attorney.

As we reflect on the success of the Law Student Conference, we are proud to have empowered the next generation of legal advocates for freedom. By bridging the gap between theory and practice, attendees gained invaluable skills and knowledge to advance important ideas and effect change.

Looking ahead, we invite aspiring legal advocates to join us in future conferences as we continue to inspire, educate, and shape the future of public interest law. ♦

“It is no understatement to say that the summer at IJ really changed so much about my law school experience (and certainly for the better). The professional development and relationship-building helped give me clarity into what legal career I want to pursue, and how to get there. . . . IJ brought together an incredible group of students. I am sure IJ did so again this summer.”

-Ted Steinmeyer, Harvard Law School Class of 2024, 2022 IJ Dave Kennedy Fellow



# From Law Students to Legal Stars:

## The Extraordinary Success of IJ's Law Student Programs

BY MELISSA LOPRESTI

Last month at our annual Law Student Conference, IJ President and Chief Counsel Scott Bullock told a room full of excited law students that their weekend with us was merely the beginning of what we hope will be a lifelong relationship with IJ.

That has certainly been the case for the current IJ lawyers—more than half—who attended an IJ student event while they were in law school. And the relationships that begin in IJ's student programs extend even further: 1,200 student program graduates have carried what they learned into careers at other likeminded public interest or policy organizations, top-ranked private firms, and academia. Forty-one can claim U.S. Supreme Court clerkships, and nearly 300 others have clerked for state supreme courts, federal appellate courts, or trial courts around the country.

This elite group of former law students trained by IJ is known affectionately as our Human Action Network. HAN members partner with us to advance our shared goals by serving as local counsel, writing amicus briefs, and even litigating full cases pro bono when we find clients whose issues aren't quite right for high-impact public interest litigation.

**1,200 student program graduates have carried what they learned into careers at other likeminded public interest or policy organizations, top-ranked private firms, and academia.**

In just the past few months, a 1995 summer law clerk appeared on our Short Circuit podcast, and a 2012 conference attendee wrote an amicus brief in support of a First Amendment case IJ is litigating at the 9th U.S. Circuit Court of Appeals. Next month, three more student program graduates (a 2018 summer clerk, a 2020 summer clerk, and a 2022 conference attendee) will join our ranks as IJ attorneys.

And recently, another HAN member—a 2007 summer clerk in our Arizona office—became the newest member of IJ's board of directors. Andrew Prins, while pursuing an impressive legal career in his own right, has also represented IJ in a number of FOIA cases, including a big victory against the IRS at the U.S. Court of

Appeals for the District of Columbia Circuit. We are thrilled to welcome him onto our board and grateful for his continued thoughtful guidance.

Each of these contributors, and so many more like them, started out in one of those rooms full of excited law students. They are critical to our success, and we look forward to many years of fulfilling work to advance freedom together. ♦

Melissa LoPresti is IJ's director of litigation operations.



**Chuck Saine**, owner of a small landscaping business, faced \$55,000 in fines levied by a government agency—and could only challenge those fines before “judges” employed by the same agency. Now Chuck and IJ want to make sure those facing ruinous fines get their day in court.



## IJ Sues Department of Labor in Latest Attack on “Courts” That Aren’t Really Courts

**BY BOB BELDEN**

If the government fined you thousands of dollars for allegedly violating a regulation, you’d probably expect to go through a basic legal process. You’d want an opportunity to defend yourself. You’d imagine making your case in a real court, overseen by a real judge, in front of a jury of your peers. You’d want the government to be required to bring real evidence to prove your guilt.

But that’s not what would happen if you were targeted by a federal agency. Instead, the agency itself would serve as investigator, witness, prosecutor, judge, and jury, and you would have almost no legal recourse. IJ client Chuck Saine experienced this

administrative black box firsthand.

Chuck founded a small landscaping business in Maryland while he was still in college. Landscaping work depends on seasonal migrant labor, and C.S. Lawn & Landscape is no exception. For decades, C.S. Lawn participated in the federal government’s H-2B visa program, which allows employers to bring workers into the country legally to fill jobs that cannot be filled from the domestic labor market. Chuck paid workers well above minimum wage, and many workers returned year after year to work for him. After 40 years of running the small but

successful company, Chuck was looking forward to retirement.

That plan was uprooted in April 2022. Following a seven-year



investigation—without any legislative permission or judicial oversight—the U.S. Department of Labor (DOL) fined Chuck’s small landscaping business more than \$50,000 for regulatory violations (such as minor paperwork errors), including \$43,500 for a harmless county zoning code violation.

That extreme penalty, and the way it was imposed, violates the U.S. Constitution. Under Article III and the Seventh Amendment, federal cases involving alleged violations like Chuck’s must be adjudicated by an independent judge (one with lifetime tenure and salary protections) and with a jury available. But there is no independent judge or jury in DOL’s proceedings.

So IJ and Chuck are fighting back. His case joins a string of IJ cases challenging the use of administrative courts by DOL and other agencies. This work isn’t just timely—it’s important. Neutral decision makers and juries make a difference. For example, data show agencies are overwhelmingly more likely to win—and Americans like Chuck to lose—in agency courts compared to real courts. Chuck’s harmless county zoning code violation bears that out. DOL ordered him to pay \$43,500 for renting an apartment to workers in a neighborhood not zoned residential, even though none were harmed and several lived there multiple years in a row without incident. An independent judge and jury may have rejected the federal agency’s attempt to enforce local codes and likely would have imposed a lower fine because there was no harm.

Along with our case to dismantle the Memphis Environmental Court (see page 12), Chuck’s case shows the real damage caused by the government making itself judge, jury, and prosecutor in sham “courts.” IJ will keep fighting until they’re a thing of the past and constitutional rights to due process are restored. ♦

**Neutral decision makers and juries make a difference. For example, data show agencies are overwhelmingly more likely to win—and Americans like Chuck Saine to lose—in agency courts compared to real courts.**



Bob Belden is an IJ attorney.



IJ has represented many clients facing significant hardships from courts without independent judges and procedural protections. Top to bottom: **Joe Marino, Sarah Hohenberg, Vincent Blount and Valarie Whitner, and Hilda Brucker.**

After Brian Moore Jr. challenged the forfeiture of his money in court, the government returned the money and dismissed the case. But despite this decisive win, a judge said Brian isn't entitled to the legal fees that the law requires. So, Brian has now joined with IJ to ensure forfeiture victims can be made whole.

## IJ Fights Back After Court Defangs Forfeiture Reform

BY DAN ALBAN

Imagine winning your forfeiture case against the federal government, only to lose a third of your money to attorneys' fees. It wouldn't be fair, which is why Congress in 2000 enacted the Civil Asset Forfeiture Reform Act (CAFRA) to require that government pay the fees of property owners who "substantially prevail" in their forfeiture case against the feds. Now IJ is fighting to ensure that government officials can't evade CAFRA's vital protections.

We're doing that through a case on behalf of Brian Moore Jr. In March 2021, Brian was waiting to board his flight from Atlanta to Los Angeles when Drug Enforcement Agency (DEA) agents seized \$8,500

from his luggage—money he planned to use to shoot a music video for his budding music career.

Brian could prove the cash was from the sale of a car his grandfather had left him in his will, and he found attorneys (not IJ) to represent him. They filed a motion to suppress DEA's warrantless search of Brian's carry-on bag and followed that up with a motion to secure the return of Brian's cash. Just days before the hearings on those motions, the government threw in the towel and agreed to dismiss the case *with prejudice*—meaning the government could not refile the forfeiture case against Brian's money.

Incredibly, the judge ruled that Brian had not "substantially prevailed" and was therefore not eligible for CAFRA's fees provision. The judge reasoned that,

because the government had quit, there was no ruling "on the merits" of Brian's case. But there's no way a property owner can prevail more than getting their case dismissed with prejudice and their money returned!

Thanks to the generosity of our supporters, IJ represents all of our clients free of charge. But most attorneys litigate cases like Brian's on a "contingency fee" basis, where the client pays a portion of the

judgment to their attorneys if they prevail. So even though Brian won everything he could have won, he still had to pay a third of his recovered money to his attorneys.

When the government loses a case, the government should have to pay. It's only fair, and it's exactly what

CAFRA demands to ensure that property owners are made "whole" after a wrongful seizure. But if the district court's decision stands, that statute will be rendered toothless.

IJ is taking over Brian's case on appeal to make sure CAFRA has some bite. We're asking a federal appeals court to enforce this important protection for Brian and to establish appellate precedent that ensures innocent property owners like him aren't further victimized by having to bear the cost of their legal fees when the government loses its case. ♦

**Imagine winning your forfeiture case against the federal government, only to lose a third of your money to attorneys' fees.**

Dan Alban is an IJ senior attorney and co-director of IJ's National Initiative to End Forfeiture Abuse.



# IJ MAKES HEADLINES

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

Read the articles at  
[iam.ij.org/  
august-2023-headlines](http://iam.ij.org/august-2023-headlines)



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May 9, 2023

**NEW YORK POST**

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Doughnut Mural**

May 11, 2023

**AP** Associated Press

**Georgia's Highest Court Rules  
State Lactation Consultant Law Is  
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May 31, 2023

**Newsweek**

**Neil Gorsuch Breaks With Supreme  
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**npr**

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Impartial. Now Police Bodycams Hold  
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June 8, 2023

**The Washington Post**

**Top Workplaces 2023**

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**FOX  
NEWS**

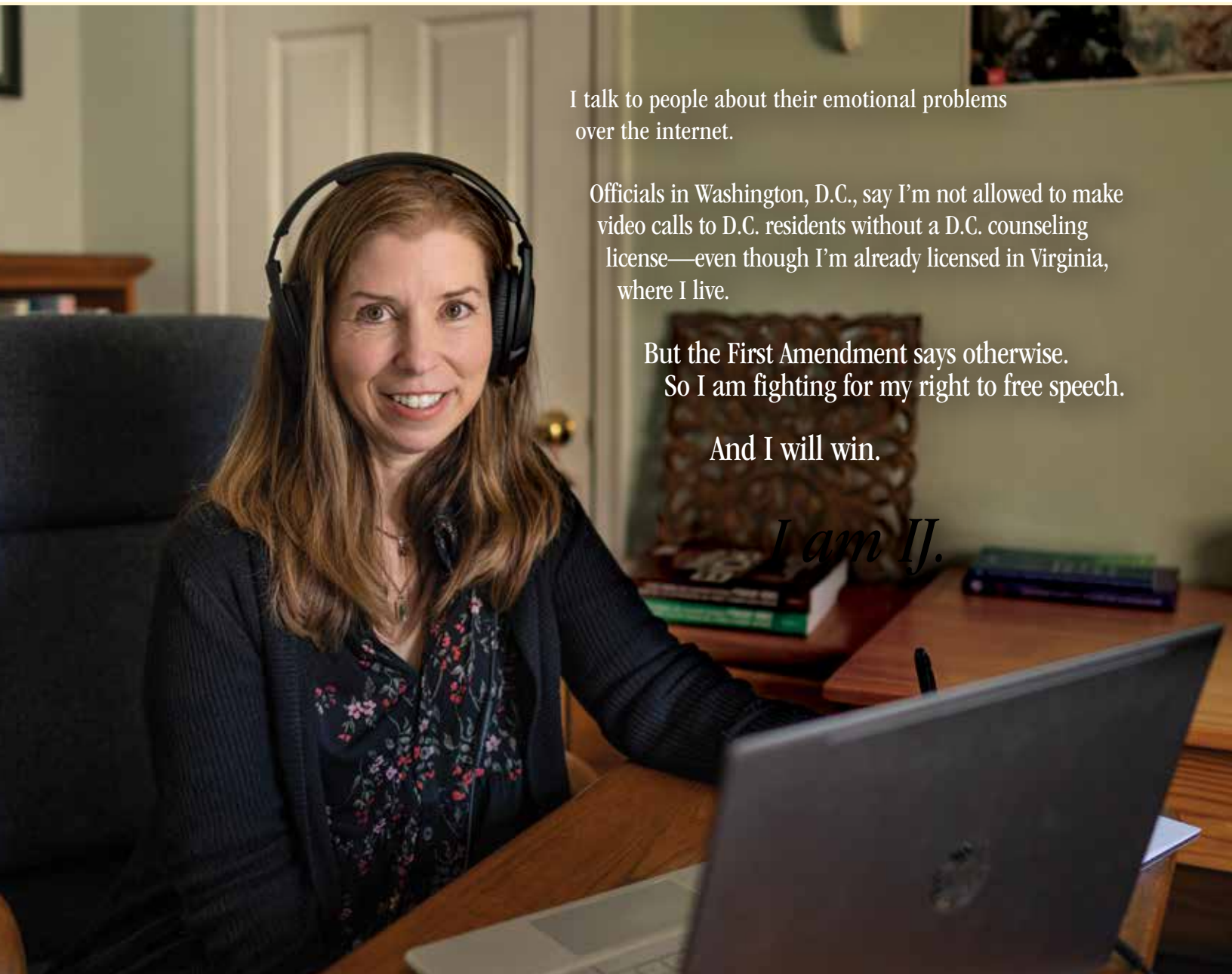
**Virginia Wildlife Officials Trespassed  
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**CBS NEWS**

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June 20, 2023



I talk to people about their emotional problems  
over the internet.

Officials in Washington, D.C., say I'm not allowed to make  
video calls to D.C. residents without a D.C. counseling  
license—even though I'm already licensed in Virginia,  
where I live.

But the First Amendment says otherwise.  
So I am fighting for my right to free speech.

And I will win.

*I am IJ.*