



LIBERTY & LAW

December 2023
Volume 32 Issue 6



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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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FROM A **TEXAS RANCH** TO THE **U.S. SUPREME COURT**

BY ROBERT MCNAMARA

Early next year, in what could prove to be a landmark takings case, *IJ* will bring a simple message to the U.S. Supreme Court: You break it, you buy it.

It is, famously, the “Pottery Barn rule.” But it’s also a basic rule of fairness and accountability: If you wreck someone else’s property, you should pay for what you’ve done.

After Texas renovated a nearby highway, **Richie DeVillier**’s ranch experienced catastrophic flooding that destroyed his crops and killed his cattle.



It's also a rule that's written into the Constitution. The Takings Clause of the Fifth Amendment makes clear that if the government takes private property for a public use, it must pay for that property.

Or, at least, that's what Richie DeVillier thought. Richie is a rancher outside Houston, Texas, where he works land that his grandfather homesteaded back in the 1920s. He bought the land from his father, who was born on that land. His house is on DeVillier Road. It's that kind of place. And for all that time, it hasn't flooded. It rains—it's just east of Houston, and storms hit pretty often—but the water traditionally drained into the Gulf of Mexico.

That all changed when the Texas Department of Transportation reworked Highway 10 just south of Richie's ranch. The state raised the road and added a 3-foot-high watertight concrete wall along the middle—basically a dam. A few years later, when Hurricane Harvey hit, Richie's ranch flooded for the first time. And not just for a little while. The water stayed for days. Water that would have drained south stopped dead at what is effectively now a dam. Richie's cows stood, for days, chest deep in water. And so they died. As did other animals, crops, and trees.

After that, Richie and his family begged the state to take the dam down. The state said no. As one state engineer explained to Richie, Texas needed the dam to

make sure the south side of Highway 10 stayed dry so emergency vehicles could get through in heavy rain. Fair enough, thought Richie, but the price of keeping the south side dry was making the north side very wet.

So Richie sued. His lawsuit alleges that if Texas needed to turn his ranch into a lake, Texas has to pay for what it's done.

That is what the Fifth Amendment says—but does the state have to follow the Fifth Amendment?

Shockingly, the 5th Circuit said no. According to the federal court of appeals, Congress has never passed a statute saying that Texas has to obey the Fifth Amendment, so Texas can do as it pleases.

It's true that Congress hasn't passed

a law ordering Texas to obey the Constitution. But the Constitution orders Texas to obey the Constitution. That means paying for the property it takes.

In September, the Supreme Court announced it would hear Richie's case. Our message is simple, and we're confident the Justices will agree: The Constitution means what it says, and that means the government has to respect our rights—whether it wants to or not. ♦

Robert McNamara is IJ's deputy litigation director.



Richie and IJ are headed to the U.S. Supreme Court to argue that Texas must obey the Constitution and pay for property it damages.

When Hurricane Harvey hit, **Richie's** ranch turned into a lake for days.



IJ Heads to the U.S. SUPREME COURT to Take On Backdoor Censorship

BY ANYA BIDWELL

Every state has laws against jaywalking. In some states, it is technically punishable by a prison term—though, as a matter of course, no one in America goes to prison for jaywalking.

Now imagine you were arrested for jaywalking after publishing an article on the corrupt practices of your local officials. What do you think is more likely: that you were arrested because of your pedestrian violation or because you criticized the government?

According to the 5th Circuit, that doesn't matter. As long as there is probable cause to show that you jaywalked, you cannot sue the government for punishing your speech.

IJ now has an opportunity to persuade the U.S. Supreme Court to overturn this absurd rule.

We represent Sylvia Gonzalez, the first Hispanic woman to win a council seat in her hometown of Castle

Hills, Texas. As her first act in office, Sylvia organized a petition to remove a city manager who disappointed Sylvia's constituents by failing to maintain public infrastructure.

This upset the mayor and the police chief, who ran the town as their fiefdom. To punish Sylvia for daring to challenge their political ally, they seized on a broad and never-enforced record-tampering statute to orchestrate Sylvia's arrest. Absurdly, they claimed she had attempted to steal her own petition by placing papers in a binder during a council meeting. Astonishingly, the warrant application even admitted that Sylvia's petition to remove the city manager—her exercise of a right explicitly enshrined in the First Amendment—was the reason for her arrest.

The following day, Sylvia, a grandmother with not so much as a traffic ticket to her name, was handcuffed and had her mugshot splashed across local media. Forced into an



A victory in this case would mean that government officials would no longer be able to launder First Amendment violations through probable cause.

orange shirt, she spent a day in jail, sitting on a metal bench and avoiding the restroom (which had no doors for privacy). A Bexar County prosecutor promptly dismissed the charges against Sylvia, but the damage was already done. Sylvia, horrified by what happened to her, stepped down from the council and removed herself from public life. The message had been received: Shut up, or else.

So IJ helped Sylvia file a lawsuit to vindicate her First Amendment rights. A lower court denied the city officials qualified immunity. But the Fifth Circuit held on appeal that because there was probable cause for Sylvia's arrest, the officials couldn't be sued—no matter how obviously retaliatory their actions.

Sylvia's experience is disturbingly common, and we petitioned the Supreme Court to make sure it doesn't happen again. This fall, the Justices announced they will hear our case. A high court victory would mean that government officials would no longer be able to launder First Amendment violations through probable cause and then claim immunity for their retaliatory actions. If we win, free speech will be vindicated and immunity will be curtailed—and Sylvia will finally have her day in court. With IJ by her side, no petty local tyrant is going to shut her up. ♦

Anya Bidwell is an IJ attorney and one of the leaders of IJ's Project on Immunity and Accountability.



City officials in Castle Hills, Texas, conspired to jail **Sylvia Gonzalez** after she criticized them. An appeals court said that was legal, and now the U.S. Supreme Court will hear Sylvia's case.

IJ's Newest First Amendment Retaliation Case

Sylvia Gonzalez is not alone.

Noah Petersen lives in Newton, Iowa. Noah, just like Sylvia, became concerned with an issue affecting his community. After the local police mistreated a resident, Noah wanted to voice those concerns. So he went to his city council. In small towns and big cities alike, city council meetings are the primary place where citizens can speak their minds to elected officials.

He spoke during the meeting's public comment period, calmly reading from a prepared statement that criticized the mayor and the police chief. But rather than listen, the mayor interrupted him—and the police chief arrested and handcuffed Noah and took him to jail.

The city then charged Noah for allegedly "disrupting a lawful assembly." But respectfully voicing concerns in the appropriate forum isn't "disruptive." Everyone knows the real reason he was charged: Like Sylvia, he was being punished for daring to speak out against those in power. IJ and Noah have now filed a lawsuit to hold the mayor and police chief responsible for their retaliation.

The day after we sued, the U.S. Supreme Court agreed to hear Sylvia's case. That plays into IJ's strategy perfectly: We file a series of lawsuits designed to pull out government abuse from its roots. If we win Sylvia's case at the Supreme Court, Noah's will be the first on-the-ground case to implement the new rule—the next step in eradicating this type of First Amendment retaliation nationwide. If we lose, it'll be another chance to change the Court's mind. ♦

Watch the case video!



iam.ij.org/IowaRetaliation



Freeing Speech

AT ALL STAGES OF LIFE

Lauren Richwine helps people navigate the end of life. An Indiana licensing board is demanding she become a licensed funeral director, which requires going to mortuary school and building a full-service funeral home.

BY JEFF ROWES AND BEN FIELD

As with so many great entrepreneurs, Lauren Richwine of Fort Wayne, Indiana, started with a need. She saw something missing—something valuable that others couldn't see. For her, that missing puzzle piece involved how we plan for our final days and what our loved ones should do after we pass away.

As a hospice volunteer for many years, Lauren knew that people had medical staff attending to them in the last stage of life and funeral directors for when they were gone. But she also noticed that these medical and funeral professionals operate at arm's length. She saw

Lauren could help families understand end-of-life and funeral options without selling any of them herself.

a need for a new kind of care—someone who could connect emotionally with the dying and their families, help them design a personalized plan for the end of life, and be there with the dying as their advocate and supporter. In short, she could help families understand end-of-life and funeral options without selling any of them herself.

Styling herself a “community death care advocate,” Lauren launched her business, Death Done Differently, in 2019. It was a quick and growing success, with many families turning to Lauren to help them make informed choices. They liked her unique combination of empathy



Lauren simply talks to her clients, and the First Amendment protects her speech.

The worst aspect of the Board's order is that it restricts pure speech. All Lauren does is talk with her clients. She doesn't do anything but speak.

and frankness when discussing the taboo subject of death. They also liked the connections Lauren had built in her community with nursing homes, hospitals, and funeral directors.

Liberty & Law readers can probably guess what happened next. The Indiana Funeral and Cemetery Board received an anonymous complaint (almost certainly from a funeral director) alleging that Lauren was acting as a funeral director without a license. There is no allegation that Lauren harmed anyone, and she hasn't. But the purpose of these kinds of complaints isn't to protect the public. It's to protect industry insiders from innovators.

The burdens of getting licensed are enormous. Lauren would have to go to mortuary school, embalm dozens of bodies, intern for a year, and build a full-service funeral home. But she doesn't need any of that education or a funeral home because she is not a funeral director and does not want to be one. The Board ultimately ordered Lauren to shut down until she gets licensed.

The worst aspect of the Board's order is that it restricts pure speech. All Lauren does is talk with her clients. She doesn't do anything but speak. Indeed, the Board explicitly targeted her speech, forbidding "discussion of funeral options," "verbal guidance," "consultation," and "providing advice."

But the First Amendment does not allow Indiana to use licensing laws to restrict Lauren's speech. Lauren's case is part of IJ's larger strategic effort in federal courts across the country to establish that occupational speech is free speech. This is one of the most active areas of constitutional law, and Lauren's case will be within a federal circuit (the 7th) that hasn't yet weighed in on the debate. So this, or any one of IJ's many cases in this area, could be the vehicle for a landmark U.S. Supreme Court decision. ♦

Jeff Rowes is an IJ senior attorney, and Ben Field is an IJ attorney.





Three Weeks, Three Wins for Second Chances

BY ANDREW WARD

One of IJ's core beliefs is that the government can't rely on irrational concerns to stop people from working—and irrational concerns include irrelevant criminal records. So, since 2018, IJ has been leading a campaign to ensure that people who have served their time can get back on their feet. Late this summer, our successes continued at a record clip. In less than three weeks, our "Fresh Start" practice scored three wins.

The first victory was for Ifrah Yassin, a young woman aspiring to work at a group home for people with disabilities. Under Minnesota law, people with certain criminal records are banned from providing this kind of care. The thing is, Ifrah *doesn't have* one of those records. She was arrested for robbery in 2013, but she hadn't done anything wrong and was promptly released. She wasn't even charged, let alone convicted.

Even so, nearly a decade after the incident, the state decided that Ifrah *had* committed a robbery. This decision—made entirely outside the criminal justice system and based on evidence the state didn't share—was all it took to earn a lifetime ban. Fortunately, IJ stepped in with a strongly worded letter (what we like to call a "nastygram"). The state quickly rescinded the lifelong ban it had so casually issued, and Ifrah is now free to get to work.

Minnesota permanently banned Ifrah Yassin from working in a group home after she was wrongly arrested for robbery years before. A stern letter from IJ got the ban lifted.



Thanks to IJ's work fighting for fresh starts, **Rudy Carey** (left) resumed his job as a substance abuse counselor, and **Joe Armstrong's** (right) radio station—once owned by James Brown—can stay on the air.

A week and a half later, we scored a win for Rudy Carey. Decades ago, Rudy was a drug addict convicted of hitting a police officer. Then he got clean, turned his life around, and became a substance abuse counselor, working to help others overcome the demons he'd conquered himself. He even won an award for counselor of the year.

But when Virginia found out what Rudy was doing, it told him to leave his job and never come back. That's because Virginia has a law banning people with any of nearly 200 different convictions from ever working in substance abuse counseling—even though the same government admits this blocks people with "invaluable" experience. IJ's lawsuit is almost certainly what prompted Virginia's governor to pardon Rudy. With his record wiped clean, Rudy has now returned to the work he loves.

A week after that, IJ saved a historic radio station. Founded by James Brown himself, WJBE is Knoxville's only station focused on the black community. Despite the station's many awards,

One of IJ's core beliefs is that the government can't rely on irrational concerns to stop people from working—and irrational concerns include irrelevant criminal records.

the FCC tried to shut it down. Not because of anything related to the airwaves, but because its owner had made a false statement on his *personal* taxes in 2009.

After a grueling battle, that effort ended when the FCC's in-house judge agreed with IJ that her own colleagues had gotten it wrong. That means a Knoxville fixture can broadcast for years to come.

This hat trick, however, isn't the endgame. Thousands of these laws are still on the books. IJ will keep fighting for everyone trying to earn an honest living—including Altimont Wilks, who is banned from ever accepting food stamps from customers at his two Maryland convenience stores.

Because of IJ's generous supporters, these victories won't be the last. Or, as WJBE might put it: Stay tuned for more hits! ♦

Andrew Ward is an IJ attorney.



IJ Keeps Beginning the WORLD OVER AGAIN

BY SCOTT BULLOCK

In September, we convened more than 250 of IJ's most dedicated supporters, clients, and staff at our latest Partners Retreat. This one was appropriately called "The Shape of Justice to Come." It was our first major event since IJ's 25th anniversary in 2016—and our first ever on the West Coast. While the 2016 Retreat rightly focused on IJ's accomplishments to that point, this one was geared toward where IJ is now and where we are headed.

This issue of *Liberty & Law* likewise captures much of what we featured during the Retreat: reports on what's happening with some more mature IJ campaigns, such as our fights against civil forfeiture, abusive fines and fees schemes, and protectionist occupational licensing laws. It details early waves of success in IJ's newest projects challenging immunity doctrines and restoring protections for Fourth Amendment rights. And it announces the next chapter in our work defending educational freedom while also showcasing what IJ has accomplished in the past three decades systematically establishing the constitutionality of educational choice—a crescendo that could not be more timely after the pandemic exposed entirely the failings of the traditional government school model.

IJ takes on big fights with big opponents where the stakes are hugely consequential for our clients and for thousands of others like them. We are proud to represent people who would otherwise have no chance without IJ.

Moreover, our dual cover stories in this issue demonstrate IJ's ability to bring important issues—like government retaliation and the right to just compensation when government destroys private property—to the nation's highest court, where victory will shape the law in favor of freedom and justice for decades to come.

As you know, IJ takes on big fights with big opponents where the stakes are hugely consequential for our clients and for thousands of others like them. We are proud to represent people who would otherwise have no chance without IJ. Our clients fight for free trade, personal autonomy, and open inquiry. They seek legal rulings that protect the rights of everyone, where they and others can have the same opportunity to pursue their vision of the good life.

Their cases are the embodiment of the principles we embrace, when many strains of the current political spectrum have frankly turned away from the values of a free society. Through our clients, IJ changes the law and the climate of public opinion in a profound and permanent way.

As we highlighted during the Retreat, IJ has gone through a period of explosive growth since 2016, increasing our staff by nearly two-thirds and almost doubling our caseload, with nearly 100 cases on our active docket. We grew

INSTITUTE FOR JUSTICE PARTNERS RETREAT 2023

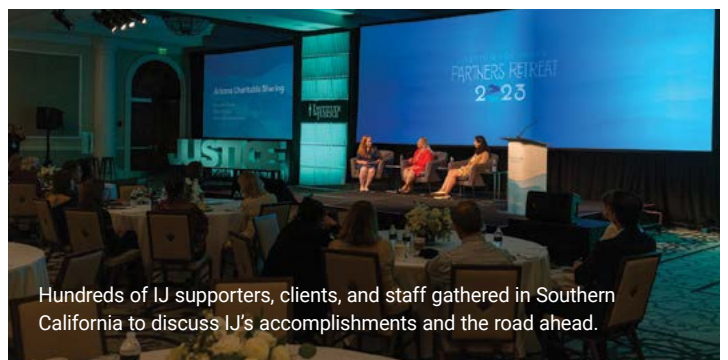
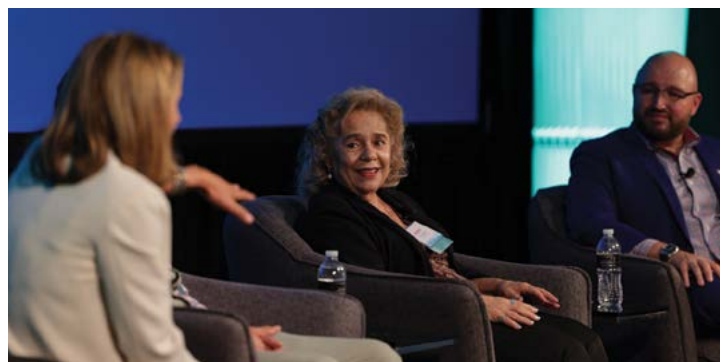
because we saw the pressing need to do more to protect the constitutional rights at the heart of our mission. All of this is made possible by more than 10,000 generous supporters who share our commitment to making principles manifest through real-world results.

Thomas Paine wrote about the drafting of our Constitution, “We have every opportunity and every encouragement before us to form the noblest, purest constitution on the face of the earth. We have it in our power to begin the world over again.”

That’s a power at IJ’s—and your—disposal.

As this issue shows, through carefully considered yet bold public interest programs, we’ve begun the world over again on cause after cause. But much work remains. Together, we will challenge abuses of power and dismantle barriers to opportunity so the people featured in this magazine—and all Americans—can pursue their dreams as they see fit. ♦

Scott Bullock is IJ’s president and chief counsel.



Hundreds of IJ supporters, clients, and staff gathered in Southern California to discuss IJ's accomplishments and the road ahead.

The Next Chapter of IJ's Educational Choice Work



BY SCOTT BULLOCK AND MICHAEL BINDAS

When IJ opened our doors in 1991, we set an ambitious goal: to resolve the two major constitutional questions concerning educational choice. The first was whether choice programs are permissible under the federal Constitution. The second was whether anti-religious Blaine Amendments, found in a majority of state constitutions, can be used to deny choice to families.

Over the past 32 years, IJ has secured a body of U.S. Supreme Court precedent that resolves both questions decidedly in favor of choice, as well as a body of state supreme court precedent rejecting the common state constitutional challenges to choice programs. In short, we've accomplished what we set out to do.

Notwithstanding these accomplishments, attacks on educational choice programs will continue; those who cling to the public school monopoly will stop at nothing to preserve it. But the nature of the fight for choice is changing. As we've seen in recent years, the legal battleground has increasingly moved from federal to state courts, and the lawsuits have increasingly focused on more narrow state constitutional and statutory claims that are often unique to the particular state in question. IJ has traditionally focused on constitutional questions with broad, national application, and we remain committed to that focus.

To that end, IJ is partnering with EdChoice—the foundation established by Nobel laureate Milton Friedman and his wife, Rose—to, in time, take over the responsibility of ensuring choice programs receive a robust legal defense. EdChoice is a longtime, trusted ally

in the educational choice movement. IJ will continue to work alongside EdChoice as it gradually takes on this important role over a several-year transition period.

Even after this transition unfolds, educational freedom will remain a key part of IJ's work. Largely as a result of the proliferation of educational choice programs—as well as parental frustration with the failures of the public school system during the pandemic—a revolution in education has been playing out over the past few years. Parents are demanding more freedom over their children's education. Entrepreneurs, meanwhile, are developing new and exciting models for delivering education—models that don't fit the traditional paradigm. In response, the government has been doing what the government does: enforcing old regulations that don't account or allow for this freedom and innovation, or imposing new regulations that stifle it. These parents and entrepreneurs need a champion, and IJ plans to be that champion.

Like IJ, EdChoice has always been committed to educational freedom and to a vision in which every child can access the education that will best meet their needs. This transition will help bring us closer to realizing that vision. Here's to a fruitful partnership and a bright future in which every child has the opportunity they deserve! ♦

Scott Bullock is IJ's president and chief counsel, and Michael Bindas is an IJ senior attorney and leader of IJ's educational choice work.



Over the course of 32 years, IJ's educational choice work has expanded educational opportunity for families across America.



VICTORY!

The Government Knocks, and an Iowa Court Slams the Door

BY JOHN WRENCH

When Orange City, Iowa, tried to force code inspectors into Bryan Singer and Erika Nordyke's home, against their will and without probable cause, the couple fought back. Now, after two years in the litigation trenches, they've won! An Iowa court struck down Orange City's mandatory rental inspection program as violating the state constitution's prohibition against unreasonable searches.

Iowa, like many states, protects property and privacy rights more expansively through its constitution than does the federal Constitution with the Fourth Amendment. A coalition of landlords and renters, including Bryan and Erika, teamed up with IJ to enforce those rights. Like many of us, they are deeply private and do not allow strangers into their homes. In February 2021, however, that privacy was threatened when Orange City enacted an inspection program authorizing it to forcefully search rented homes—without any evidence of a code violation.

Before our victory, the city could obtain entry with so-called administrative warrants, issued without individualized probable cause. But a state court held that Orange City cannot get a warrant to search renters' homes without "some plausible basis for believing that a violation is likely to be found."

When Orange City tried to force code inspectors into Bryan and Erika's home, against their will and without probable cause, the couple fought back. Now, after two years in the litigation trenches, they've won!

This is important given how invasive the inspectors were. In discovery, IJ learned that the city's inspections were unlimited in scope. Inspectors could search any room—including bedrooms, bathrooms, living rooms, and basements—dig through closets, and open any interior doors. Inspectors informed the city attorney about suspected law breaking, and nothing in the ordinance prevented law enforcement from accompanying inspectors to searches—or using the inspection as a pretext for a later arrest.

Shocked by the program's sweeping permissiveness, the court held that renters must be notified of the city's application for a warrant and given the opportunity to advocate for restrictions on the search. But our fight isn't over. The city appealed to the Iowa Supreme Court, where an IJ victory would have even broader impact.

Meanwhile, IJ is fighting against a similarly abusive inspection program in Pottstown, Pennsylvania, to enforce protections for private property guaranteed by that state's constitution. Both of these cases seek to ensure that government officials cannot deprive citizens of their privacy and property rights simply because they rent—rather than own—their homes. ♦

John Wrench is an IJ attorney.



After an IJ win against mandatory suspicionless rental inspections, Orange City, Iowa, renters like IJ clients **Bryan Singer** and **Erika Nordyke** can enjoy their right to be free from unreasonable searches.

Small Publisher Prints Major Win for Property Rights

BY JEFFREY REDFERN

A little-known provision of the Copyright Act says that if you publish a book in the United States, regardless of whether you ever bother to register a copyright, you are required to hand over two free copies of your book to the Library of Congress for the government's own use.

Seriously. The Library wants your books, but it would prefer not to pay for them. Seems like a pretty obvious taking of private property without just compensation—just what the Constitution forbids, right? Amazingly, it took five years of litigation and a trip to a federal court of appeals to get that provision struck down.

Valancourt Books is a small publisher that operates out of James Jenkins' home in Richmond, Virginia. James is a former lawyer who found his calling reviving and popularizing rare and out-of-print literature, particularly

The Library of Congress wants your books, but it would prefer not to pay for them. Seems like a pretty obvious taking of private property without just compensation—just what the Constitution forbids, right?

18th-century gothic novels and early LGBT fiction. Although Valancourt has won acclaim for its work restoring lost literature, its titles are not exactly *New York Times* bestsellers. A Valancourt title may sell only 100 copies, so the business prints all books on demand, and it ships directly from printer to customer.

On June 11, 2018, James received a strange letter from the Copyright Office (a part of the Library of Congress). The letter demanded that Valancourt provide two free copies of every book in

James Jenkins (at right with his husband, **Ryan**) started Valancourt Books to revitalize rare books. As a small print-on-demand publisher, Valancourt can't afford to give the government two free copies of every book in its catalog.



Instead of handing over private property to the government for free, Jenkins got in touch with IJ. Together, we sued the Copyright Office in federal court, arguing that under the Fifth Amendment, the government cannot take private property without just compensation.

its catalog, 341 in total, or face potential six-figure fines. The basis for this letter was a provision of the Copyright Act called “mandatory deposit.”

Under the original Copyright Act, passed by the First Congress, you were required to hand over copies of your book as a condition of receiving copyright protection. In the 20th century, however, the United States adopted its current copyright regime. Now, everything you write is protected by copyright the moment you put pen to paper. Registration is necessary only if you want to sue about your copyright. (Small publishers like Valancourt rarely register their copyrights because they have no interest in litigation.) When Congress changed the law, however, the Library didn’t want to lose all the free books it was accustomed to receiving. So it insisted that the deposit requirement remain unchanged, even for unregistered works.

Instead of handing over private property to the government for free, James got in touch with IJ. Together, we sued the Copyright Office in federal court, arguing that under the Fifth Amendment, the government cannot take private property without just compensation. The trial court initially ruled against Valancourt, holding that mandatory deposit was actually an exchange: You give your books, you get copyright protection. Never mind that the Copyright Act explicitly says that deposit “is not a condition of copyright protection.”

The D.C. Circuit, however, wasn’t fooled. In August, it struck down the mandatory deposit provision of the Copyright Act. If the government wants Valancourt’s books (and it should; they’re fantastic), it can buy them like everyone else. ♦

Jeffrey Redfern is an IJ attorney.



Thanks to an IJ appellate court win, **Valancourt** can continue publishing early novels without fear of six-figure fines from the Copyright Office.





6th Circuit Unanimously Rules Against Detroit Forfeiture Program



BY WESLEY HOTTOT

The big battles are the ones worth fighting.

That principle proved true again recently when the 6th Circuit ruled unanimously that Wayne County, Michigan, violated the rights of Detroiters by failing to offer court hearings within two weeks of their vehicles being seized for forfeiture.

It was a tremendous and timely victory in IJ's sprawling litigation aimed at reining in one of the most abusive civil forfeiture programs in the country.

The case began in February 2020, with the filing of a class action lawsuit in federal court. The county responded to our lawsuit in the worst way imaginable: It targeted our clients, aggressively seeking the forfeiture of Melisa Ingram's and Stephanie Wilson's cars in state court and baselessly charging Robert Reeves with a crime—all in a cynical effort to defeat federal court jurisdiction.

Never one to back down, IJ took these unexpected challenges head on. We guided Melisa through the process of releasing her car to a creditor whose interest in contesting forfeiture the government would take more seriously. We persuaded the state trial court to order the immediate return of Stephanie's car—and when the county appealed, we took her case to the Michigan Supreme Court, which will hear argument sometime next year. We also twice defeated criminal charges against Robert, with judges agreeing the charges were baseless. And we have since filed a First Amendment lawsuit against the

In a big blow to Detroit's car forfeiture scheme, a federal appellate court ruled owners are entitled to a court hearing within two weeks of their car being seized. That's good news for victims of the scheme, including **Robert Reeves** (top), **Melisa Ingram** (middle), and **Stephanie Wilson** (bottom).

Important litigation takes time. But with patience and persistence, IJ and its clients consistently find themselves at the center of the most important battles.

Stephanie tried for two years to get a court hearing to contest her car's seizure. With IJ's help, she eventually got her car back. We will soon defend that victory at the Michigan Supreme Court.



prosecutors who retaliated against him.

Most significantly, IJ prevailed against the county's last-ditch attempt to have our case thrown out of federal court. Wayne County asked the 6th Circuit to use an extraordinary process known as interlocutory appeal to weigh in on one of our arguments—that Detroiters have a procedural due process right to a hearing before a neutral judge soon after a car seizure. The 6th Circuit instead ruled for IJ, holding that the county's routine delays of six months or more violate the Constitution.

The three-judge panel unanimously held that "Wayne County was required to provide an interim hearing within two weeks to test the probable validity of the deprivation," and it criticized the county for seizing our clients' cars not for any health or safety purpose but "in order to obtain proceeds from fees."

"Does this sound like a legitimate way of cleaning up Wayne County?" wrote Judge Amul Thapar in a concurring opinion. "Or does it sound like a

money-making scheme that preys on those least able to fight it? To ask the question is to answer it."

Thapar's concurrence is aimed at the Justices of the U.S. Supreme Court, who are currently considering the identical question of when car owners are entitled to a hearing in *Culley v. Marshall*. The 6th Circuit's ruling—and IJ's amicus brief in *Culley*—stand to influence the national debate surrounding civil forfeiture schemes.

Meanwhile, we are pressing forward in a dozen other forfeiture cases—including our latest challenge against the FBI, detailed on page 22—with the potential to restore vital constitutional protections for property owners.

Important litigation takes time. But with patience and persistence, IJ and our clients consistently find ourselves at the center of the most important battles. ♦

Wesley Hottot is an IJ senior attorney.





R City Kitchen, a shared commercial kitchen, took home multiple prizes at the 10th annual South Side Pitch, a small business competition hosted by the IJ Clinic on Entrepreneurship.



SHARED KITCHEN COOKS UP BIG WIN AT IJ'S SOUTH SIDE PITCH

BY BETH KREGOR

This spring, we met Rodney Trussell through IJ's Clinic on Entrepreneurship at the University of Chicago. Rodney owns R City Kitchen, a brand-new shared commercial kitchen where small entrepreneurs can rent space by the hour in a struggling neighborhood at the heart of Chicago's South Side.

Fast forward to October 19, and Rodney is at the center of a cheering crowd, tearfully overwhelmed by winning all three top prizes at the 10th annual South Side Pitch—a *Shark Tank*-style event where local entrepreneurs can showcase their plans to grow their businesses. Rodney wowed the audience and the panel of judges with his passion, showmanship, and dedication.

Close behind him were other impressive finalists: an experienced defense attorney who designed an educational board game about police encounters, a tech entrepreneur with a mobile app for consumers of beauty products for women of color, a team that makes self-care products, and the owner of a clothing line.

Together, the finalists won \$31,000 in prizes. But they gained much more than prize money. These budding

business owners received input from experienced coaches. They spent time honing their messages about what makes their businesses unique, drawing from their origin stories and visions for the future. These experiences will pay interest forever.

And the audience is forever changed, too, by the energy and inspiration it witnessed. We were all left with a deep faith that an individual can channel experiences and expertise and even hardship into a beautiful small-business building block for the community.

The next day, I received an email from Rodney that echoed many messages from victorious IJ clients: "Thank you for believing in me, my dream, my

community. Words cannot express ... I'm forever grateful!"

We send Rodney our thanks right back for giving us so much to believe in! ♦



Other finalists included **JustUs Junkie**, an educational board game about police encounters; **BeautySKU**, a mobile app to help women of color find beauty products; **Stoviink Creatives**, a team making self-care products; and clothing line **Englewood Branded**.

Beth Kregor is the director of IJ's Clinic on Entrepreneurship.



TULSA SMALL BUSINESS Paves Road to Justice

BY BOB BELDEN

Danny Barbee is a fourth-generation bricklayer. Together with his wife, Diana, he runs ProCraft Masonry, LLC—a small masonry company with fewer than a dozen employees. Now, two federal administrative giants are taking apart everything they've built.

In 2020, the Department of Homeland Security (DHS) and the Department of Justice (DOJ) suspected the family business of harmless errors on employment forms. This kicked off a three-year investigation that led to more than \$31,000 in fines. Agonizing delays and steep penalties are sledgehammers federal agencies use to force small businesses like ProCraft to settle: Pay up now or spend even more time (and even more money) contesting the fines.

What's worse, you don't get to make your case before a real court. Instead, a DOJ employee called an "administrative law judge" decides your case and determines the penalty. The only review of that decision is by another executive branch bureaucrat or the Attorney General. That means ProCraft would never get a jury, and it would be years before it even saw a real federal court on appeal.

It's easy to see why average people facing potentially ruinous fines might give in, even when they've

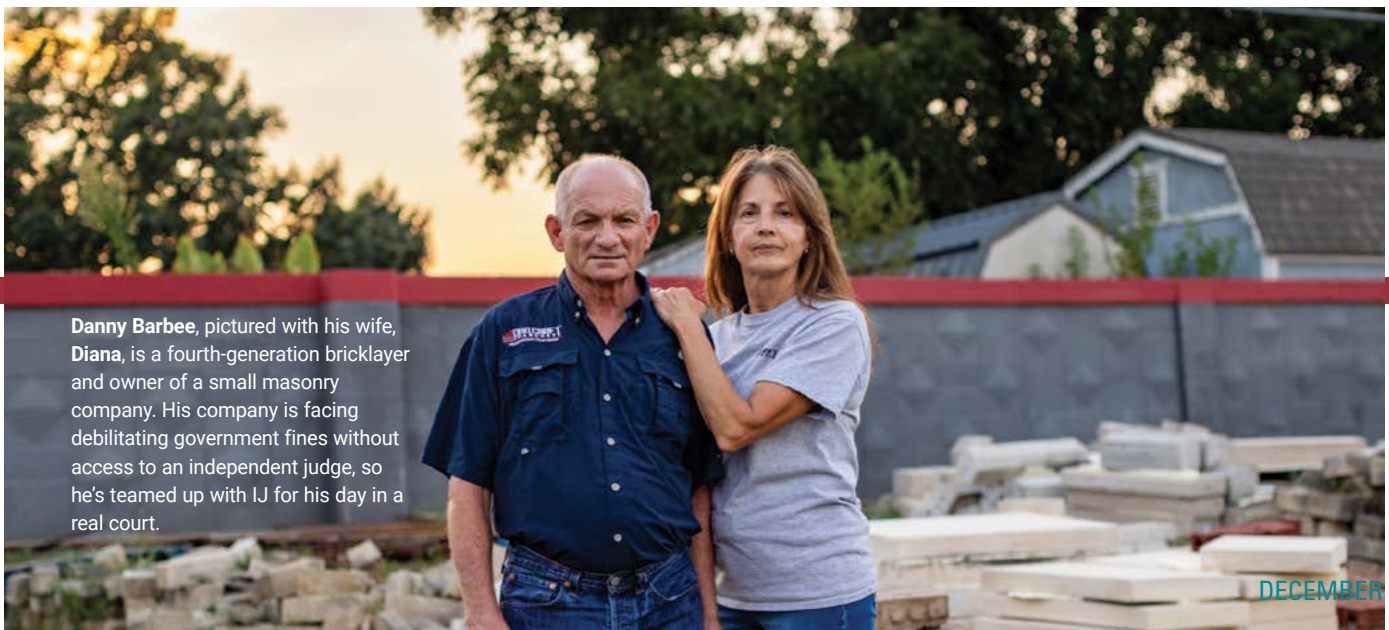
done nothing wrong. So ProCraft teamed up with IJ to fight back against this unfair system.

The Founders articulated distinct roles for each branch of government; separate functions exist to set the rules, enforce them, and adjudicate disputes. Even so, the executive branch has always been able to adjudicate its own cases when they involve "public rights," most often benefits created and provided by the government (the quintessential example being Social Security benefits). But by imposing monetary fines, as in ProCraft's case, agency judges infringe on private rights—such as the right to be free from excessive fines—that exist independent of government.

The agency "court" system—and its overreach—isn't unique to the DHS and DOJ; agencies that use administrative judges to impose monetary penalties include the DOL, EPA, FTC, and SEC. And unsurprisingly, the agencies almost always rule for themselves. This is IJ's third case seeking to put an end to these schemes.

ProCraft deserves a fair chance in a real court with a real judge and jury—and the Constitution demands it. ♦

Bob Belden is an IJ attorney.



Danny Barbee, pictured with his wife, **Diana**, is a fourth-generation bricklayer and owner of a small masonry company. His company is facing debilitating government fines without access to an independent judge, so he's teamed up with IJ for his day in a real court.

AFTER GOLD COINS GO MISSING, IJ GOES LOOKING FOR FBI ACCOUNTABILITY

BY JOE GAY

Retired civil servant Don Mellein was worried about the future. So he stashed his retirement savings—including cash and 110 gold coins—in a safe place: a private safe deposit box at U.S. Private Vaults (USPV) in Southern California.

But keeping your stuff safe from criminals doesn't mean it's safe from the government. The FBI raided USPV and broke into hundreds of boxes belonging to innocent people. IJ has already sued the FBI over this abusive dragnet search and the FBI's "forfeit first, ask questions later" approach to the valuables it pilfered, and those cases are ongoing.

But Don and other USPV renters also experienced another all-too-common abuse.

When the government finally returned his property, Don's gold coins had disappeared. Eventually, the FBI mysteriously "found" 47 of the coins, but Don is still short 63 coins—worth over \$100,000. The FBI has never explained what happened.

Ordinarily, if you snatch someone's property and then lose it, you're on the hook. But the government is different. It shields its agents with qualified (or absolute) immunity—and shields itself with sovereign immunity. That makes

fighting back all but impossible for ordinary people. Don, for instance, spent \$40,000 just to get part of his property back; fighting for his remaining coins could easily exhaust his retirement funds. And when smaller amounts disappear, most people just give up.

The results are predictable. The perverse incentives of civil forfeiture drive law enforcement to seize as much property as possible.

But there's no incentive to safeguard property in case it needs to be returned, since no one is ever accountable for losing it. The result is that even people who successfully navigate the complex civil forfeiture process might not get their property back.

That's why Don has teamed up with IJ to hold the FBI accountable for losing his property. By fighting against the government's patchwork of immunities and defenses, Don hopes not only to get his property back but also to make it easier for other civil forfeiture victims to get justice in the future. ♦



IJ client **Don Mellein** is suing the FBI after the agency lost more than \$100,000 in gold coins it seized from him.

Joe Gay 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/
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Block Club Chicago

**R City Kitchen Sweeps South Side
Pitch Competition**

October 20, 2023

Bureaucrats secretly declared our historic community
a slum so they can “redevelop” our homes.

Our community is fighting back.

We shall not be moved.

We are IJ

