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Does the Fourth Amendment Protect Your DNA?

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contents

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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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Does the Fourth Amendment Protect Your DNA?

BY BRIAN MORRIS

IJ's Project on the Fourth Amendment strives to safeguard one of America's core founding principles: the right to be secure in our persons and property. That means two basic things. First, if the government wants to search or seize your property, it generally has to get a warrant or your consent. And second, once the government is done with your seized property, it must give it back.

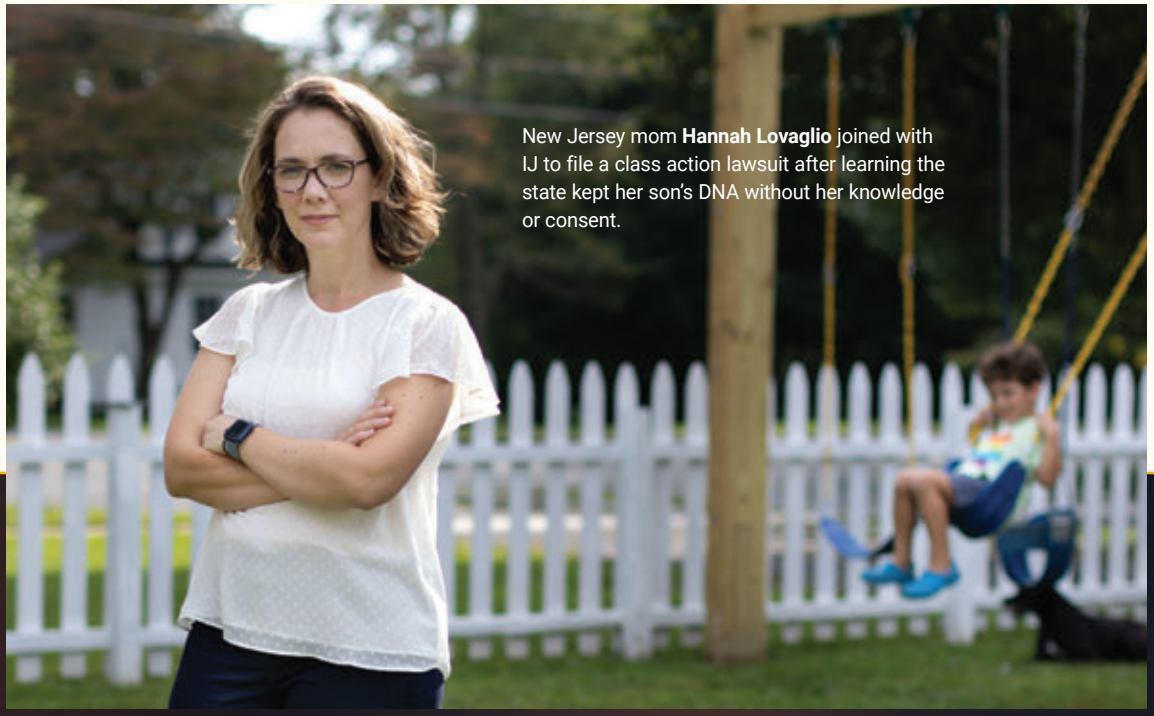
Hannah Lovaglio and Erica Jedynak, two New Jersey moms with young boys, just discovered that New Jersey is violating these safeguards. So they partnered with IJ to file a federal class action lawsuit to protect all New Jersey families.

Shortly after a baby is born, the hospital performs a routine heel prick. The blood is then sent to the state Department of Health to test for rare diseases. Every state does this testing, and each follows its own processes. New Jersey doesn't ask parents for consent; instead, parents receive a handout explaining that state law mandates the testing.

But Hannah and Erica were appalled to learn what their state *doesn't* tell parents.

Rather than destroy or return a baby's blood after testing is completed (as most states do), New Jersey secretly keeps it for 23 years. If this seems like an arbitrary timeframe, that's because it is—it's the result of a quirk in bureaucratic categorizations for record-keeping. What's worse, New Jersey believes that it can use that blood however it wants—such as selling it to third parties, giving it to prosecutors or police, or even turning it over to the Pentagon to create a national database. All of this is done without parental consent or a warrant.

As our client Hannah so eloquently put it: "It's not right that the state can enter an incredibly intimate moment, the tender days



New Jersey mom **Hannah Lovaglio** joined with IJ to file a class action lawsuit after learning the state kept her son's DNA without her knowledge or consent.

Rather than destroy or return a baby's blood after testing is completed (as most states do), New Jersey secretly keeps it for 23 years.

of childbirth, and take something from our children. ... As a mother, I deserve the right to decide whether or not the government takes blood from my son and holds onto it for decades."

Hannah is right. If the state wants to keep children's blood and use it for purposes other than screening for diseases, it must first obtain informed consent from parents. That's what IJ's lawsuit is striving to establish: Once the newborn testing is finished, New Jersey must either obtain informed consent from parents to keep their children's blood—or return or destroy it.

A win in this case won't just protect parents in New Jersey. It will also strengthen a core principle under the Fourth Amendment that IJ can apply elsewhere. If the government's reason for taking your property is over, then it must return it; it doesn't get to keep your property forever. That applies equally to your cash, vehicle, cellphone, business inventory, and yes, even your DNA and genetic information. The U.S. Supreme Court has endorsed this rule, but lower courts are divided about whether it applies to all personal property. We say that it does, and victory here can persuade more courts to agree. ◆

Brian Morris is an IJ attorney.

Right after **Erica Jedynak**'s son was born, the hospital tested his blood for diseases. What it didn't tell her was that the New Jersey government would store that blood sample for 23 years.

Appeals Court Brings Down Gavel on Wayward Judge

BY PATRICK JAICOMO

Perhaps no immunity doctrine is more ironclad than judicial immunity. After all, the same people who created and apply judicial immunity—judges—benefit from it. IJ's Project on Immunity and Accountability nevertheless racked up a rare victory against the doctrine in the 4th Circuit this fall, stripping immunity from a judge who personally led a search party through a private home.

In 2020, now-former West Virginia family court judge Louise Goldston was presiding over a property dispute between Matt Gibson and his ex-wife. Rather than deciding the issues in her courtroom, Goldston halted proceedings and ordered the parties to reconvene at Matt's home in Raleigh County, West Virginia. There, Matt refused entry, but Goldston forced her way in under threat of arrest. Goldston then led a search

IJ scored a rare victory over judicial immunity after a West Virginia judge personally led a search party through IJ client **Matt Gibson**'s home.

IJ's victory over judicial immunity in Matt's case marks just the fifth time in 50 years that a federal appeals court has denied a judge immunity for exercising executive power.

party comprising Matt's ex, the ex's lawyer, and a bailiff, looking for small items like pictures and DVDs. While sitting shoeless in Matt's armchair, Goldston instructed the party on how to search for various items and approved their seizure, including those belonging to Matt's children and girlfriend.

Although Goldston forbade Matt from recording the incident, the bailiff took video of the search without her knowledge. When she found out, she chastised him. And when the public found out, it chastised Goldston. As the result of several ethics complaints, Goldston was eventually censured and fined by the West Virginia Supreme Court of Appeals. (Goldston later retired amid a push in the West Virginia Legislature to impeach her.) But for Matt, the harm had been done.

So Matt sued Goldston to hold her accountable for violating his Fourth Amendment rights—and she claimed judicial immunity. Under that court-created doctrine, judges are *absolutely* immune from liability for all actions taken within their "judicial capacity." Courts define that capacity broadly, covering even corrupt, illegal, and intentional acts. Compared to qualified immunity, judicial immunity is a harder nut—but with the right tools, it can be cracked.

In the 4th Circuit, IJ argued that Goldston was not entitled to judicial immunity because she was not acting as a judge when she searched Matt's home. While judges can *order* the search of a home, *executing* a search is a power reserved for the executive branch of government. Thus, when Goldston shed her judicial robe (and shoes) to search, she shed her judicial immunity as well. The 4th Circuit agreed in a unanimous decision, finding that Goldston stepped outside her judicial role when she personally participated in the search of Matt's home. "And while a greater merger of judicial and executive functions might be more efficient," the appeals court explained, "that very efficiency would facilitate abuses of power."

As fundamental as the court's holding—that judges are not immune from suit when acting in an executive rather than judicial role—may seem, it is just as rare. Indeed, IJ's victory over judicial immunity in Matt's case marks just the fifth time in 50 years that a federal appeals court has denied a judge immunity for exercising executive power. We will keep up this momentum as we fight for government accountability in nearly 20 other cases nationwide. ◆

Patrick Jaicomo is an IJ senior attorney and co-leader of IJ's Project on Immunity and Accountability.

LOSS AND WIN COMBINE FOR PERFECT FORFEITURE APPEAL IN TEXAS

BY WESLEY HOTTOT

Good things come to those who wait.

That principle proved true once again in November, when IJ's ambitious challenge to civil forfeiture in Texas made its way back to the appellate courts after a decade-long effort.

In 2014, IJ's lawsuit aimed at Harris County's forfeiture program came just one vote shy of obtaining review at the Texas Supreme Court. In a rare move, six of the nine justices wrote separately to outline the type of forfeiture challenge they would like to see in the future.

We now have that case.

Jordan Davis and **Ameal Woods** joined with IJ to get back their $40,000 savings seized by Harris County, Texas police. Their case is now teed up perfectly for an appeal that could bring big changes to Texas' civil forfeiture practices.

Losing at trial stings, but we're focused on a bigger prize, and the trial only laid bare the grave injustices built into Texas' forfeiture process.

The current case involves two parts. We are defending Ameal Woods and Jordan Davis against Harris County's effort to forfeit their life savings—just over $40,000—which police illegally seized from them based on a suspected connection to drugs. We also brought a major class action seeking to invalidate the county's abusive seizure practices and strike down Texas' unconstitutional laws that allow the county to profit from forfeitures and place the burden of proof on property owners to prove their own innocence.

Ameal and Jordan's forfeiture case went to trial over the summer, when a jury handed down a disappointing verdict. Losing at trial stings, but we're focused on a bigger prize, and the trial only laid bare the grave injustices built into Texas' forfeiture process.

After the trial, our team worked behind the scenes to ensure that the other case—our class action—wouldn't be left behind. Because our legal strategy is aimed at the state high court, we have always wanted the two cases to go up on appeal together. This gives the justices the full picture of the profound constitutional problems that arise when the government takes property for profit and makes people fight for it in civil court. Using this approach, not only do we stand to get Ameal and Jordan's money back, but together we have a shot at taking down the state's entire forfeiture machine.

Happily, we scored a major victory in November, when the trial court rejected the state's effort to dismiss our class action. As a result, both cases began the appeals process simultaneously, and we now have everything we need to make generational change to Texas' draconian forfeiture scheme.

It took a decade, but we've got them right where we want them. ◆

Wesley Hottot is an IJ senior attorney and co-director of IJ's National Initiative to End Civil Forfeiture.

PODCAST TELLS HISTORY OF COURTS

BULLDOZING PROPERTY RIGHTS

IJ's *Bound By Oath* podcast brings legal history to life with scholars, litigators, and, when possible, the actual litigants behind some of the Supreme Court's weightiest constitutional rulings. Many of our listeners are lawyers and law students, but the show is produced primarily by a non-lawyer with non-lawyers firmly in mind—and is meant to provide a deep history of the doctrines behind today's constitutional battles while also making our case for judicial engagement.

Released in December, Season 3 focuses on property rights. Though private property enjoys an exalted status in our constitutional tradition, at critical junctures the Court has cleared the way for government officials to invade private land, to restrict peaceful and productive uses of property, to seize property, and much more. And we're all less free and less prosperous as a result.

In Episode 1, we head out into the woods in central Maine, where officers ignored No Trespassing signs and ventured far onto private land without a warrant in search of a tiny patch of marijuana. In Episode 2, we go to coal country—where entire cities were said to be literally collapsing into the pits—to unearth the origins of modern regulatory takings doctrine. Plus, there's an unsolved murder … although we promise we're not shifting into a true crime podcast! After that, there will be bulldozers and SWAT raids and even a few wins for the little guy. So please join us for Season 3 of *Bound By Oath*. We have some stories to tell. ◆

Listen Now: ij.org/podcasts/bound-by-oath
Available wherever you download podcasts.

IJ DISPENSES FREE SPEECH IN MISSISSIPPI

BY ARI BARGIL

When Mississippi joined the wave of states legalizing medical marijuana in 2022, Clarence Cocroft seized the opportunity. After a long career writing science textbooks for large publishers, Clarence decided to launch Tru Source Medical Cannabis to blend his love of science with his lifelong desire to be his own boss.

He quickly obtained the necessary paperwork and submitted it to the state. After months of setbacks, which included agreeing to open his dispensary in an obscure industrial park, Clarence finally secured his license—proudly becoming the proprietor of Mississippi's first black-owned medical marijuana dispensary.

Clarence Cocroft II is the proprietor of Mississippi's first black-owned medical marijuana dispensary, but the state's advertising ban threatens to nip his young business in the bud.

Like any local entrepreneur, Clarence wants to advertise his business. In fact, for his business to survive at its hard-to-find location, he *needs* to. But Mississippi regulators insist that they can completely censor him from promoting his business and his products. This means Clarence cannot take out ads telling patients where he is, what he sells, or what his products cost. Even more nonsensically, Clarence can't advertise Tru Source on his own billboards, even though the same billboards could legally be used to promote alcohol, casinos, and gentlemen's clubs.

In short, Clarence's business is legal in Mississippi—but it is illegal for him to tell anyone about it.

So IJ and Clarence sued the state to vindicate his right to free speech. The U.S. Supreme Court has been clear: If something is legal to sell, it is legal to talk about. That includes so-called commercial speech—that is, speech that proposes a commercial transaction. And marijuana's illegality under *federal* law doesn't mean Mississippi can regulate Clarence out of existence. The federal government itself has announced that it is not interested in—and thus will spend no money on—enforcing federal drug laws against medical marijuana businesses in states where they are legal.

The First Amendment protects the right of all Americans to engage in truthful speech about legal products.

The First Amendment protects the right of all Americans to engage in truthful speech about legal products. Those protections are not malleable—they cannot be narrowed by crafty jurisdictional arguments or sidestepped to accommodate the state's paternalistic desires. This case is the first in the nation to squarely present these issues, in this context, in federal court.

But cutting-edge constitutional questions like these are where IJ thrives, and along with Clarence and Tru Source, we intend to secure meaningful protections for entrepreneurs nationwide. ◆

Ari Bargil is an IJ senior attorney.

Clarence's business and products are legal under state law, so the state can't stop him from engaging in truthful speech about them.

When It Comes to Free Speech, IJ Isn't Horsing Around

BY BOBBI TAYLOR

Leda Mox has a passion for horses. She's been riding and caring for horses since she was a child, and even skipped her high school graduation to earn a certification in horse massage. Combining her love of horses and her entrepreneurial spirit, Leda started a now-thriving small business, Armstrong Equine Massage, on her farm in Becker, Minnesota. But now Minnesota bureaucrats are threatening to shut her down unless she complies with a burdensome regulatory scheme.

Horse massage may sound like an unusual concept. But horses are athletes—and, just like human athletes, they benefit from massage therapy. Leda has been massaging horses for almost 30 years and has seen firsthand how massage therapy helps horses recover from injury and maintain flexibility. Ten years ago, Leda saw an opportunity when fellow horse owners and trainers started

Leda has been massaging horses for almost 30 years and has seen firsthand how massage therapy helps horses recover from injury and maintain flexibility.

Leda Mox, a Minnesota resident and lover of all things equestrian, owns a thriving small business providing massage therapy to horses and teaching others her craft.

When the state learned Leda was teaching her classes to aspiring professionals, it suddenly claimed she needed their permission to continue.

asking about her massage therapy techniques. Realizing others could benefit from learning these skills, she started offering horse massage classes. Leda even checked first with the state to ensure she could teach her classes legally. Minnesota had no concerns. And why would it? Horse massage is not regulated by any government agency in the state. All certifications are done through private instruction.

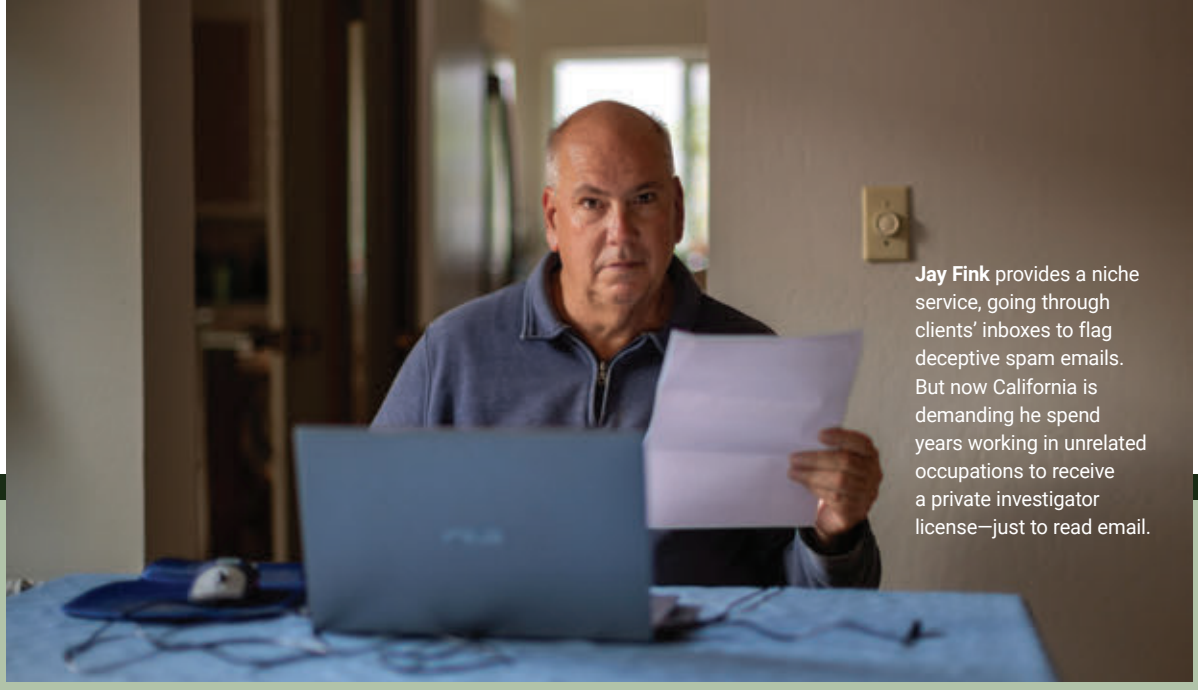
Since then, Leda has taught horse massage to over 400 students. Each student practices on 10 horses to pass the class, meaning thousands of horses are benefiting from her work. Some of her students have even gone on to start horse massage businesses themselves. But when the state learned Leda was teaching her classes to aspiring professionals, it suddenly claimed she needed their permission to continue. Under Minnesota law, her operation is now a "private career school." That label means thousands of dollars in application fees, an annual licensing fee, a burdensome application process, and an annual audit. Further, Leda's curriculum is now subject to approval by state officials before she can teach it. But no one in that office is more qualified to develop and teach a horse massage curriculum than Leda.

The law at issue classifies "avocational" speech differently than "vocational" speech, meaning that if what you're teaching is how to make a living, you're subject to regulation. Otherwise, you're fine. But teaching is just speech—protected by the First Amendment—so the government needs a compelling justification to regulate it. There's no good reason to make Leda seek approval to do something she's been doing for a decade without incident. And there's certainly no compelling reason Leda can teach horse massage to someone who wants to use the skill recreationally but not to someone who wants to use it to make a living.

This case adds to IJ's increasingly successful occupational speech practice. California ponied up when it repealed a law blocking access to trade schools following an IJ victory for horseshoeing instructor Bob Smith in the 9th Circuit. Now IJ and Leda are carrying that momentum forward in another jurisdiction to defend the rights of all Minnesotans to teach valuable skills—without government interference—to people who want to learn. ◆

Bobbi Taylor is an IJ attorney.

Leda has taught hundreds of students over the years, but Minnesota now says she must pay thousands of dollars in application and licensing fees, endure a burdensome application process and annual audit, and let the state approve her curriculum.



Jay Fink provides a niche service, going through clients' inboxes to flag deceptive spam emails. But now California is demanding he spend years working in unrelated occupations to receive a private investigator license—just to read email.

California's License to Read Belongs in the Junk Folder

BY DYLAN MOORE

Like most Americans, Jay Fink hates spam email. That's why, about a decade ago, Jay started a business to help his fellow Californians stand up to malicious and deceptive spammers. Jay has something else in common with *Liberty & Law* readers, too: He'll stand up to overbearing bureaucracy. That's why, last November, he teamed up with IJ to challenge the unconstitutional California law that shut his business down.

Jay offers his clients a niche litigation support service. Californians who receive too much spam hire him to look through their junk folders and flag the emails that could violate the state's anti-spam law. Armed with the reports Jay creates, his clients can sue their spammers in state court. Thanks to Jay's work—reading emails and creating reports—hundreds of people in the Golden State have gotten some recompense for gummed-up inboxes.

Even though Jay's business makes the world a less annoying place, California has branded him a criminal. That's because, according to the California Bureau of Security and Investigative Services, Jay is acting as an unlicensed private investigator. This is, of course, absurd—Jay doesn't conduct armed stakeouts in the dead of night to catch crooks. He reads emails to catch spam. California nevertheless told Jay that if he wants to "review [a] client's email," he needs a PI license. To qualify for one, Jay would have to spend *6,000 hours* of his life working in a field like insurance adjustment, law enforcement, or arson investigation.

Jay knows it doesn't take three years of experience in a completely unrelated line of work to read his clients' emails. So he's fighting back—and the Constitution supports him. The First Amendment squarely protects all Americans' right to share their thoughts about the things they read, including thoughts they get paid for.

IJ has led the fight against outrageous occupational licensing schemes like California's for more than 25 years. We're not done yet. As long as unconstitutional laws prohibit ordinary people from exercising their right to speak for a living, IJ will be there to challenge them. ◆

Dylan Moore is an IJ attorney.

Turning a Landmark State Supreme Court Decision Into Legislative Reform

BY MEAGAN FORBES

At IJ, we are not content with victory or defeat. On the legislative front, we are always looking for new opportunities to build on our litigation to expand individual liberty—and that's exactly what we're doing right now in Georgia.

Last May, IJ secured a groundbreaking victory for economic liberty before the Georgia Supreme Court on behalf of lactation consultant Mary Jackson. IJ argued that a new law creating a burdensome license for lactation consultants unreasonably restricted Mary's right to earn a living. The Georgia Supreme Court agreed and ruled that if the government wants to license an occupation, it must have a good reason for doing so. In other words, licensing laws must have a legitimate health or safety objective.

What happened next exemplifies our multipronged approach to public interest law, not just in Georgia but nationwide: State lawmakers took notice, and we are doing everything we can to build on this precedent to repeal other unnecessary licensing laws.

Last summer and fall, the Georgia Senate Study Committee on Occupational Licensing met several times to discuss ways to reduce licensing burdens and invited IJ to testify. At one hearing, we talked about what the state high court's decision means for lawmakers: Because Georgia's constitution firmly protects the right to earn a living, the General Assembly can't take away a person's economic liberty without a legitimate reason for doing so. We also shared IJ's pathbreaking study *License to Work*, which documents how burdensome and harmful occupational licensing laws can be. The committee's work culminated in a report that referenced our court victory and research and recommended sunsetting unnecessary licensing requirements.

This is an important step forward and shows how our litigation can lead to even greater change. And it's only the beginning. When the Legislature returned in January, IJ was already there working closely with lawmakers to help them carry out the report's recommendations—just as we are in other statehouses and city halls from coast to coast. We are committed to making sure courts and policymakers take seriously, and abide by, the legal precedents we set. ◆

Meagan Forbes is IJ's director of legislation and senior legislative counsel.

After IJ secured a major court win for economic liberty on behalf of lactation consultant **Mary Jackson**, Georgia lawmakers invited IJ to discuss reforming the state's occupational licensing laws.

IJ Blazes New Trails for West Coast Cooks

Sparkling beaches, evergreen forests, and even a slower pace of life might come to mind when thinking of the West Coast. One thing that typically doesn't: a friendly regulatory environment for small businesses. That part of the country is often synonymous with overly burdensome regulations, making it incredibly difficult and expensive for budding entrepreneurs to succeed.

But here at IJ, we don't shy away from big challenges—which is why, when the call for expanded freedoms for homemade food entrepreneurs came from California and Oregon last year, IJ answered.

Our grassroots activists successfully advocated for an expansion to Oregon's law that allows the sale of homemade, shelf-stable foods (also known as "cottage foods"). Effective January 1, Oregon passed a bill that, among other things, more than doubles the state's cap on gross annual cottage food sales for individual producers.

We also beat long odds to expand California's Microenterprise Home Kitchen Operations program—a trailblazing program that allows people to run tiny restaurants from their own homes. As in Oregon, we worked with a diverse coalition on a bill to drastically increase allowable sales. That bill passed unanimously in the Legislature and went into effect immediately upon the governor's signature in July, allowing hardworking families to begin earning more money on the spot.

Of course, our work is never done—neither state should limit entrepreneurs' earnings at all. But these two key victories in states not usually thought of as supportive of small businesses demonstrate IJ's ability to overcome seemingly insurmountable odds and our unwavering commitment to fight the good fight on behalf of entrepreneurs everywhere—especially where others might be afraid to bite off more than they can chew. ◆

The Evolution of **IJ's Fight Against Eminent Domain Abuse**

BY DANA BERLINER

For almost 10 years, IJ received phone calls and letters every week asking for help with local and state governments trying to take people's homes or small businesses for other private parties. And we successfully defeated several of these attempts in state and federal courts, as well as through activism.

Then came the notorious 5-4 U.S. Supreme Court decision in *Kelo v. New London* in 2005, where the Court held that "economic development"—the hope of more taxes or jobs—was a constitutionally sufficient reason for government to take property. IJ refused to take this loss as the final word on the matter, so we took eminent domain to state courts, state legislatures, and state ballot boxes. Using all three of these, we were able to get the law changed for the better in 47 states and vastly changed how eminent domain is used.

We still want to get *Kelo* reversed (and we will!), but it is now much harder to find cases where local government takes property for admittedly private development.

We still want to get *Kelo* reversed (and we will!), but it is now much harder to find cases where local government takes property for admittedly private development. The situations now usually have a veneer of public-sounding uses, and the constitutional violations are less obvious. Yet there is often the specter of private benefit lurking in the background.

Take for example a case involving a railroad in Sparta, Georgia. Eminent domain was used

Our case on behalf of **Susette Kelo** (left) led to a widely reviled high court decision in 2005, which IJ harnessed to reform eminent domain laws across America. In our newer eminent domain cases, like those on behalf of **Diane** and **Blaine Smith** (center) of Sparta, Georgia, and **Cynthia Fisher** and her daughter **Francelia Claiborne** (right) of Ocean Springs, Mississippi, takings now often hide behind a veneer of legitimacy.

As our work here has evolved, some things remain constant: The property owners we're defending could never afford to fight back on their own, and we will remain forever vigilant in our fight against eminent domain abuse in all its guises.

extensively for railroads during the heyday of rail transportation. People often think of railroads as a public utility, transporting people and goods all over the country. Most railroads are tightly regulated and part of semi-public entities like Amtrak. So eminent domain for a railroad *sounds* like a public use. But railroads can be private uses, too. IJ just finished a four-day trial before the Georgia Public Service Commission challenging the taking of land by a single private railroad to build a track to serve a private quarry.

Sparta is part of a new phase of IJ's eminent domain work. In Freeport, Texas, a private port took the homes of dozens of families. IJ is arguing that those takings were unlawful because the port authority had no plan for the properties other than giving the land to private parties for economic development.

Another theme of our recent eminent domain work is challenging "slum" or "blight" designations. By giving areas these labels as part of an urban renewal process, municipalities may be able to circumvent the strong post-*Kelo* changes at the state level that prevent taking property for private development. In Ocean Springs, Mississippi, the city designated more than 100 homes and businesses, as well as a church parking lot, as "slum and blighted" areas without notifying any of the owners or giving them a chance to challenge the label. Brentwood, Missouri, has also designated dozens of properties—including several small, family-owned businesses—as blighted, allowing the city to take them for private development. IJ is challenging the blight designation, which does not even meet state requirements.

These takings are in older but healthy and stable neighborhoods. There's a reason for that. Private developers don't want to take over an area that's in terrible shape. They want an area that's up-and-coming, that's ready for a huge increase in development and value. As IJ's strategic research has found, those areas tend to have higher percentages of minority residents—a pattern that is borne out in many of these recent cases.

But even as our work here has evolved, some things remain constant: The property owners we're defending could never afford to fight back on their own, and we will remain forever vigilant in our fight against eminent domain abuse in all its guises. ◆

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

SEEKING JUST COMPENSATION

FOR AN INDIANA MOM

BY MARIE MILLER

One Friday afternoon in June 2022, Amy Hadley was away from her South Bend, Indiana home with her daughter, Kayla, when she received a phone call from a neighbor: Amy's house was surrounded by police. Amy and Kayla rushed home but couldn't get close. Nearly the entire block was cordoned off by crime scene tape and police officers in SWAT gear. There was no sign of Noah, Amy's 15-year-old son, who had stayed home with the family kitten to play video games.

Amy was flabbergasted. "What's going on?" she asked an officer. He replied that they were looking for a dangerous suspect and believed he was inside her house. Amy asked who it was and explained that only Noah had been home. The police knew that Amy's son was inside when they arrived; they also knew that he wasn't any longer. When they surrounded the house and ordered anyone inside to evacuate, the teen came out with his hands up high. Although the police didn't suspect him of any crime, they handcuffed him and took him to the station.

Amy again asked the officer whom they were looking for. He showed a photo of a man known as "J.B." or "JayBee." Amy and Kayla said they didn't know him and had never seen him before—and, thanks to their security cameras, they would have known if a stranger were inside the house.

The police didn't believe them, just as they hadn't believed Noah earlier when he tried to explain the same thing. Instead, officers launched dozens of tear gas and flash-bang grenades into the house, shattering windows, blasting holes in walls, flipping furniture, and ransacking the whole house, from attic to basement.

As the Hadleys had insisted, the house was empty; the police had made a big mistake. But no one apologized to Amy or mentioned who would pay for the damage. She retrieved Noah from the police station, and the family was left to clean up the mess alone, sleeping in the driveway until the fumes from the tear gas dissipated. When Amy reached out to both the city and the county asking for compensation, she got a clear "no."

That response was wrong and unconstitutional. When the government takes private property for a public purpose—law enforcement included—both the U.S. and Indiana Constitutions require that the government give the owner "just compensation." Amy's local governments failed her. They left her with thousands of dollars' worth of damage to shoulder herself and left her house uninhabitable for days.

No innocent person should have to alone pay for services that benefit the public as a whole—especially when the cost is one's own home.

That's why we've teamed up with Amy. Courts have repeatedly carved exceptions into constitutional protections against government takings, and this is the latest in a series of IJ cases—including one we argued at the U.S. Supreme Court just last month—designed to ensure that "you break it, you buy it" applies to law enforcement just as it does to any of us.

No innocent person should have to alone pay for services that benefit the public as a whole—especially when the cost is one's own home. ◆

Watch the case video!

iam.ij.org/SouthBend

Marie Miller is an IJ attorney.

Amy Hadley watched a SWAT team ransack her home in pursuit of a suspect who was never there and who had nothing to do with her family. She and IJ are now fighting for the just compensation the Constitution requires.

The paralegals of the North Carolina **Justice for All Project** want to provide both free and paid legal advice to people filling out court-created forms. Yet even though the paralegals are qualified, North Carolina allows only lawyers to provide even the most basic legal advice, on pain of up to 120 days in jail.

IJ TAKES ON THE *Legal Monopoly* IN NORTH CAROLINA

BY PAUL SHERMAN

America has a serious access-to-justice problem. For many Americans facing routine legal issues, hiring a lawyer to navigate these problems is simply unaffordable. And this problem isn't limited to the poor. It is also a problem for the "missing middle"—those who earn too much to qualify for free legal assistance from groups like Legal Aid, but not enough to afford a lawyer. The inevitable result is that many Americans must navigate the legal system on their own.

Responding to these concerns, many courts have created standardized forms with instruction packets for routine legal issues. But for laypeople inexperienced with the law, these forms can still be intimidating and confusing. What many of these people could use is some simple advice.

Enter the North Carolina Justice for All Project (JFAP). Founded in 2020 by North Carolina paralegals S.M. Kernodle-Hodges and Alicia Mitchell-Mercer, JFAP wants to help bridge the justice gap by hosting clinics at which one or more of JFAP's members can offer free advice and assistance filling out court-created forms.

For many Americans facing routine legal issues, hiring a lawyer to navigate these problems is simply unaffordable.

But the group is also adamant that free advice can address only a fraction of North Carolinians' unmet legal needs. That's where trained paralegals like JFAP members Morag Black Polaski and Shawana Almendarez come in. Both are North Carolina Certified Paralegals with extensive experience with the court-created forms for basic legal

Paralegals **Morag Black Polaski** (left) and **Shawana Almendarez** (right) have teamed up with IJ to fight for their free speech rights and expand access to justice in the Tar Heel State.

Legal advice is speech protected by the First Amendment, which is why JFAP, Morag, and Shawana have joined with IJ to file a federal lawsuit to vindicate their right to give basic legal advice about court-created forms.

problems in North Carolina. And both could help North Carolinians fill out these forms for a fraction of what a lawyer would charge.

Unfortunately, North Carolina's broad prohibition on the unauthorized practice of law gives licensed lawyers a monopoly on providing even the most basic legal advice, whether paid or unpaid. Violations of the law are Class 1 misdemeanors punishable by up to 120 days in jail.

But legal advice is speech protected by the First Amendment, which is why JFAP, Morag, and Shawana have joined with IJ to file a federal lawsuit to vindicate their right to give basic legal advice about court-created forms.

JFAP's case is not IJ's first to raise these issues. IJ is currently challenging New York's similar prohibition on behalf of the New York nonprofit Upsolve, which wants to assist low-income New Yorkers in responding to bogus debt-collection lawsuits. And our arguments are having an impact: A federal judge in that case recently held that "concluding that … legal advice is … speech is not only in line with modern First Amendment authority; it is also the intuitive result." After all, "if speaking to clients is not speech, the world is truly upside down."

Although Upsolve's case involves only unpaid legal advice, the U.S. Supreme Court has been clear that the First Amendment applies equally to both paid and unpaid speech. And allowing non-lawyers to provide basic legal advice for pay is far less radical than it may sound. In fact, it is the way things work in England, where anyone is allowed to provide legal advice, with or without a license, as long as they don't falsely hold themselves out as a barrister or solicitor.

The same principles should apply here. JFAP, Morag, and Shawana don't pretend to be lawyers, but they have valuable advice for vulnerable North Carolinians. Under the First Amendment, the state should get out of their way and let them give it. ◆

Paul Sherman is an IJ senior attorney.

IJ Knocks Down Challenge
to New Hampshire Choice Program

BY DAVID HODGES

As 2023 drew to a close, IJ's educational choice team received welcome news: A lawsuit challenging New Hampshire's Education Freedom Accounts (EFA) program would be coming to an end.

The EFA program has its origins in 2021, when IJ attorneys worked with state legislators to enact a broad, constitutionally sound educational choice program. Because IJ had ensured that the program was bulletproof, its challenger—the head of the state teachers' union—had to concoct a truly unique legal theory.

Essentially, the union argued that because the New Hampshire Constitution requires that lottery funds go only to public schools, when those same funds were placed in a bigger pool of money, the bigger pool became subject to the same restriction. It did not matter, say, that the lottery funds totaled $100 million, and it was indisputable that $100 million went to public schools (in fact, more than $1 billion went to public schools). To opponents of choice, what mattered was that this money, unlike any other kind of money, had some sort of magical property that not only made it nonfungible but also gave it the power to transform other money that it touched.

Amy Shaw and her family can continue using New Hampshire's Education Freedom Accounts program to send their children to the school that's right for them after a court rejected a challenge to the program.

Fortunately, the trial court roundly rejected this convoluted theory—and the union declined to appeal. The result? Thousands of New Hampshire parents can continue to provide an individualized education to their children. Or as IJ client Amy Shaw put it: "The EFA Program has been a help to my daughters, giving them the opportunity to attend a school that provides for their unique needs. I'm so happy that this [lawsuit] has finally come to an end and the program will be allowed to continue to support educational options that work for my kids and for so many other families across the state."

IJ's victory in New Hampshire came as we marked a turning point. Readers will recall from our previous issue that IJ will eventually transition from defending educational choice programs against narrow state constitutional and statutory attacks to dismantling government regulations that stifle educational freedom. While programs like the one in New Hampshire will be ably defended, we are excited to bring new cases that further expand educational opportunity in the years to come. We can't wait to share them with you! ◆

David Hodges 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.

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the American Surveyor

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