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Appeals Court Shuts The Vault Door On FBI Overreach

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contents

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

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

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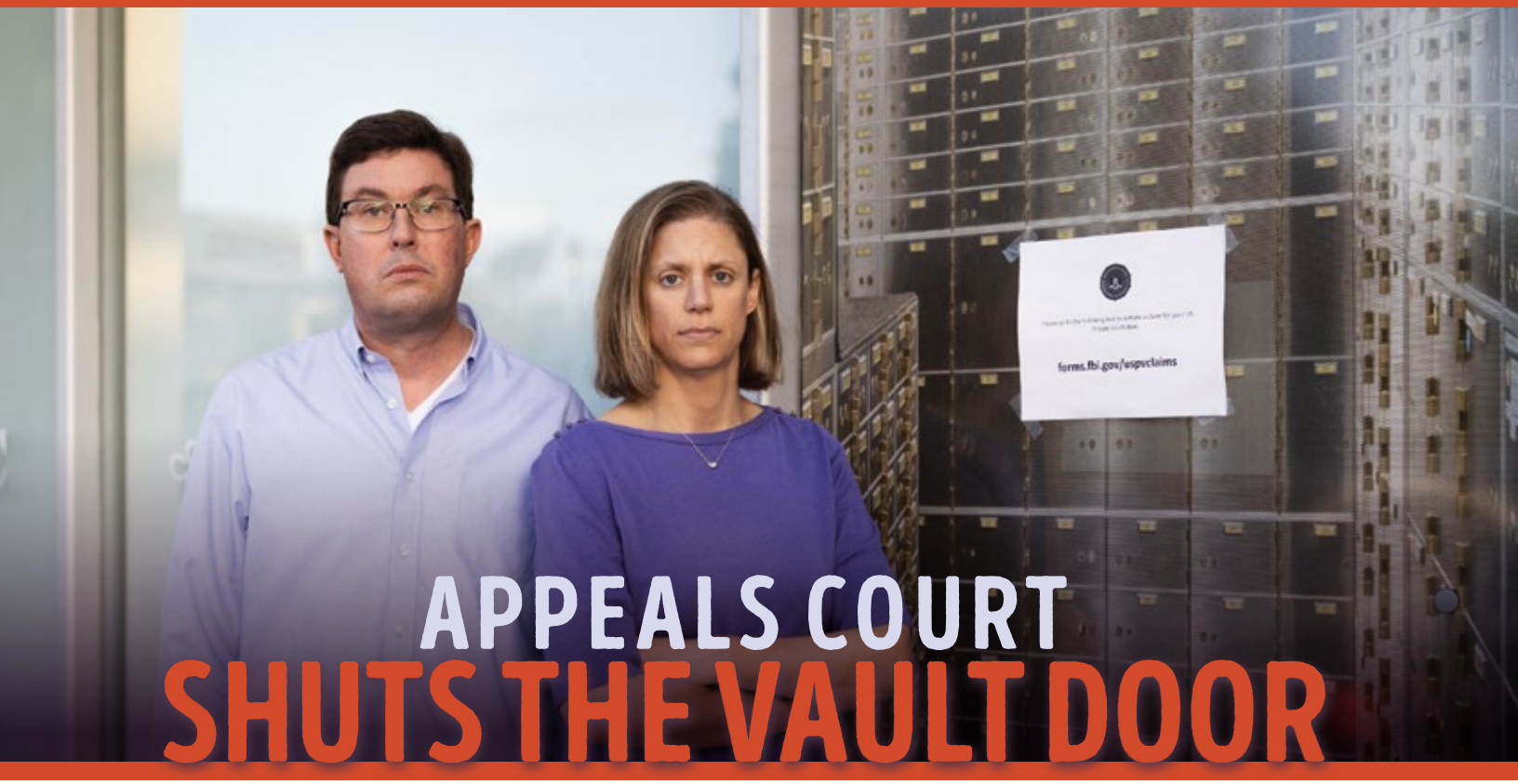


APPEALS COURT SHUTS THE VAULT DOOR ON FBI OVERREACH

BY ROBERT FROMMER

In a huge win for property and privacy rights, the 9th Circuit issued a scathing verdict against the FBI in IJ's class action lawsuit on behalf of safe deposit box renters including Paul and Jennifer Snitko. The ruling shows how the FBI violated the Fourth Amendment rights of hundreds of Americans and underscores the need for Congress to rein in "policing for profit" once and for all.

In March 2021, the FBI raided US Private Vaults, a Los Angeles safe deposit box company. Although the warrant's target was only the business itself, the FBI used the opportunity to search hundreds of customers' boxes and the property inside, even though the warrant expressly said it did not authorize a criminal search or seizure of any boxes.

Why such overreach? Easy: At stake was over $100 million in cash, gold, and jewels. The FBI admitted under oath that, months before the raid, it had already decided to seize and attempt to forfeit everything worth more than $5,000—despite not knowing whom that property belonged to or what, if anything, its owners had done wrong.

The FBI admitted under oath that, months before the raid, it had already decided to seize and attempt to forfeit everything from every box worth more than $5,000—despite not knowing whom that property belonged to or what, if anything, its owners had done wrong.

The 9th Circuit didn't mince words, likening the FBI's actions to the British colonial government's abuses that prompted the drafting of the Fourth Amendment. It held that the FBI violated the Fourth Amendment by drafting up special, one-time-only instructions for agents conducting the raid. Moreover, the FBI violated

Paul and Jennifer Snitko (left) thought their most precious possessions would be safe in a private security box company, until the FBI raided the company and seized innocent box renters' property. But in January 2024, the Snitkos and other victims of the raid, including **Jeni Pearsons** (center) and **Joseph Ruiz** (right), scored a big win at the 9th Circuit.

the warrant by committing the very sort of criminal search the warrant forbade.

US Private Vaults was a test run; if the FBI got away with this fishing expedition, other agencies would soon be launching copycat raids. And that's why the court's ruling (or "spanking," as *The Wall Street Journal* phrased it) not only vindicates our clients' rights but is a clear warning to other government agencies to never do what the FBI did here.

This victory is a testament to our clients, particularly Paul Snitko. Going up against the FBI can be terrifying. Most box holders just wanted to hide, to file "John Doe" complaints that would serve only their own ends. But not Paul and his wife Jennifer. They wanted to help everyone trapped in this nightmare. And to do that, they bravely stood up in front of dozens of cameras, said their names, and called the FBI to account.

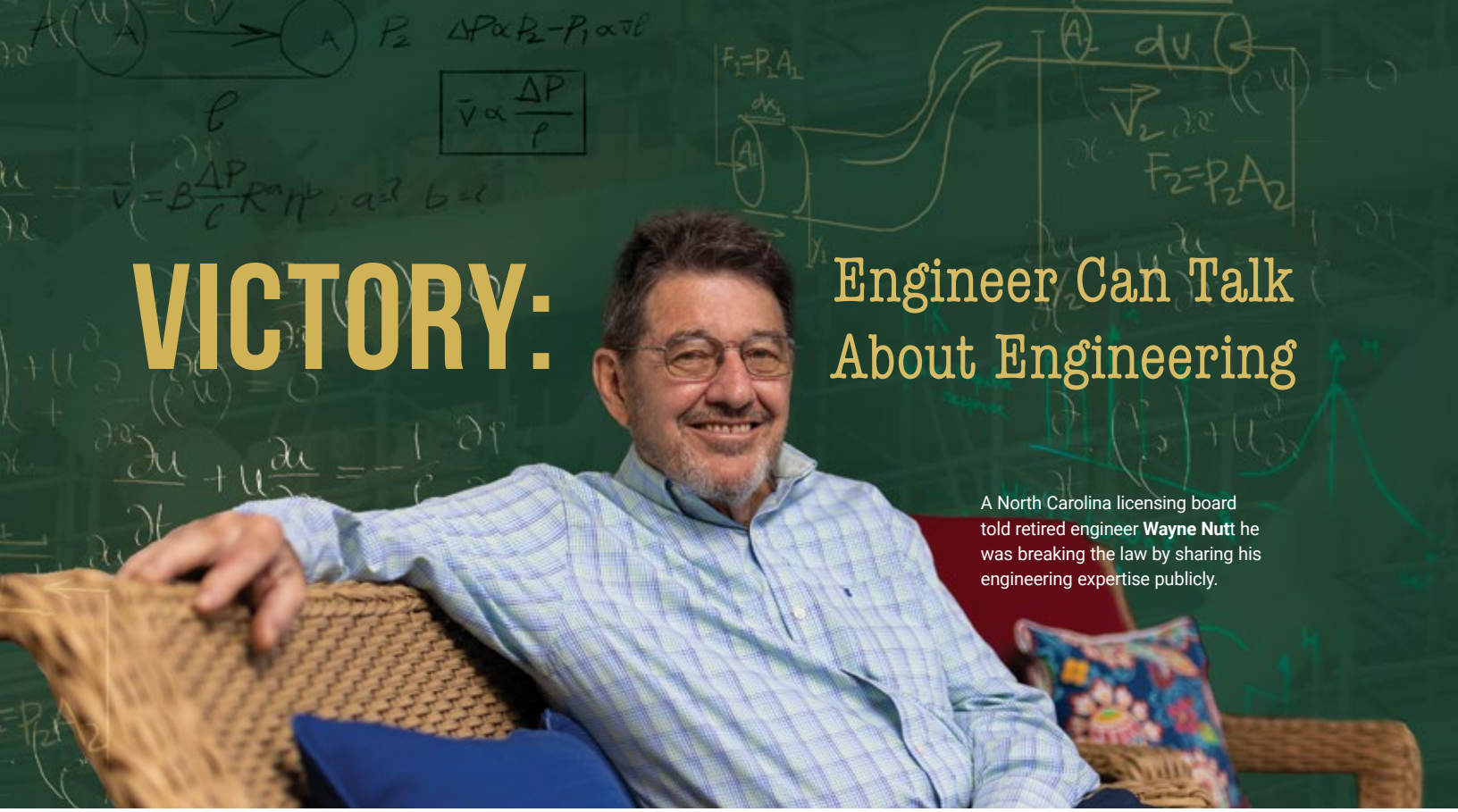
Sadly, Paul Snitko passed away after battling with cancer just before publication of this issue of *Liberty & Law*. But Paul's legacy will endure. Behind his smiling face and kind demeanor lay the heart of a lion. His bravery empowered IJ to file this case, and his determination buoyed us after we lost in district court. The world is a far freer place today because Paul acted as a champion for liberty.

> The perverse financial incentives underlying civil forfeiture led the FBI into committing the biggest robbery in U.S. history.

Congress can honor Paul's valiance by passing the Fifth Amendment Integrity Restoration (FAIR) Act, H.R. 1525. The Act would end "policing for profit" by directing all forfeiture funds to the U.S. Treasury instead of the agencies doing the seizing and forfeiting. It would give property owners access to real courts by eliminating administrative forfeiture, where agencies decide for themselves if they can keep seized funds. And it would stop state and local law enforcement from using federal civil forfeiture to evade state reforms (as in Nevada; see page 16).

The US Private Vaults case should be a wake-up call to Congress. The perverse financial incentives underlying civil forfeiture led the FBI into committing the biggest robbery in U.S. history. And if not for the courage of Paul, Jennifer, and IJ's other clients, they may well have gotten away with it. By passing the FAIR Act, Congress can reaffirm its commitment to the principles upon which our nation was founded. ◆

Robert Frommer is an IJ senior attorney.



VICTORY: Engineer Can Talk About Engineering

A North Carolina licensing board told retired engineer **Wayne Nutt** he was breaking the law by sharing his engineering expertise publicly.

BY ROBERT MCNAMARA

Longtime *Liberty & Law* readers will remember the story of Wayne Nutt—the North Carolina engineer who was told by state officials that he had committed a crime by claiming he had "engineering expertise." Wayne, of course, has plenty of engineering expertise: He worked as an engineer for over 40 years, mostly in North Carolina, designing things like fluid-carrying pipes. That work had all been fine. Before retiring, Wayne worked for large companies and so had been exempt from the state's engineer-licensing law; he could design pipes and supervise the construction of those pipes without any problems.

But he got into trouble when he agreed to testify for free in a trial about a drainpipe that had allegedly caused a major flood. Wayne's testimony was straightforward: He knows how to calculate how much liquid will flow through a pipe, and so he can tell you what the effect will be of blocking off some of that pipe. He crunched the numbers, and, to this day, nobody has ever claimed he did the math wrong. The only problem was that he wasn't a licensed engineer, and so doing the math,

Engineering is often about criticism and collaboration. The best way to figure out what will work is to get widespread feedback, not to shut people up.

Wayne—just like the rest of us—has every right to be "critical of the design of the system." And in December, a federal judge agreed.

said the state, was a crime. He hadn't needed a license to design things, or even to actually build those things, but he needed a license to say things.

That struck Wayne as wrong. In his experience, engineering is often about criticism and collaboration. The best way to figure out what will work is to get widespread feedback, not to shut people up. He wanted to fight back.

Thanks to an IJ court win, **Wayne** is free to talk about engineering.

That, of course, is where IJ came in. We sued, as we do, and we brought the glare of public attention onto the situation. And the public, as you might imagine, did not look kindly on state officials who told a 77-year-old engineer he was breaking the law by doing math.

In a more sensible world, that might have ended things. But the state seemed immune to shame. It doubled down, retaining an expert witness who solemnly told us that it was important to forbid unlicensed engineers from talking because, otherwise, someone might believe what they said. At a hearing in the case last year, the state's lawyer even breathlessly told the judge that the problem wasn't just that Wayne talked about how the drainage pipe worked—it was that he was "critical of the design of the system."

But that's the thing: Wayne—just like the rest of us—has every right to be "critical of the design of the system." And in December, a federal judge agreed, issuing a permanent injunction that forbids the state from requiring Wayne (or anyone else) to hold an engineering license just to express his opinions. Our victory was cemented earlier this year when the state declined to appeal.

That means the next time Wayne notices a flaw in a design or a math mistake in a public report, he'll be free to point it out. And Wayne is guaranteed to notice a flaw in a design or a math mistake in a report. He can't help it. He's an engineer.

And now he's free to tell you that. ◆

Robert McNamara is IJ's deputy litigation director.

RENTERS SCORE PARTIAL WIN IN PRIVACY SHOWDOWN

BY ROB PECCOLA

Timing is everything.

I remember a cold March morning waiting in a Pottstown, Pennsylvania, courthouse parking lot for the time to arrive: The judge would park, walk in, and sign a warrant allowing the government to enter Dottie Rivera's home and search it wall to wall—without her permission and without any probable cause that something was wrong inside. The ink had barely dried on this so-called administrative warrant when we bolted into the courthouse and attempted to quash it. The Pennsylvania Constitution—which guards property and privacy against government intrusion to a much greater degree than does the Fourth Amendment—should not, we argued, allow rubber-stamp home searches.

Now, nearly seven years later, a Pennsylvania state trial judge has ruled that warrant process unconstitutional.

After a seven-year fight on behalf of IJ clients **Dottie Rivera** (top) and her landlord **Steve Camburn** (bottom), Pottstown, Pennsylvania, will have to issue advance notice before conducting intrusive rental inspections against the wishes of tenants and landlords alike.

Rental inspectors admitted to viewing everything in homes, from medical devices to prayer rugs to embarrassing sexual information. Our clients gave heart-wrenching testimony about how violated they felt.

Why seven years? That fateful March morning sparked an inferno of trial court litigation. We quickly realized that the problem in Pottstown was bigger than anyone knew. The borough also tried to search the home of Rose and Kathleen O'Connor, sisters who lived in a house owned by their late father. Naturally, our discovery requests focused on what happens during these inspections, but the borough fought against any discovery with scorched-earth intensity.

IJ was ready. Readers may recall that we already won an interim appellate court victory in this case, overturning orders denying us discovery. Pottstown officials then refused to comply with fresh court orders compelling them to turn over documents. At this point, we were already three years into litigation. But the borough continued its obstructions, behaving so egregiously that we obtained a rare order sanctioning the government for litigation misconduct. The court even allowed IJ to hire a computer forensics firm to mirror image government files for use in litigation.

The files we finally obtained—and the attendant depositions of inspectors and police officers that we took—were shocking, even to hard-boiled litigators. Rental inspectors admitted to viewing everything in homes, from medical devices to prayer rugs to embarrassing sexual information. Our clients gave heart-wrenching testimony about how violated they felt. In an email, the police chief instructed inspectors to call his department when they saw small amounts of personal-use marijuana. Police also had complete access to the inspection database. With a quiver so full of constitutional violations, the trial court had many arrows with which to strike down the law.

The court chose middle ground: Before issuing a search warrant, Pottstown will now have to provide notice and a hearing to tenants who don't want an inspection. That's a victory for our clients, but it isn't enough to protect Pottstown residents. We will appeal our win to the Commonwealth Court of Pennsylvania to ask for a rule that forbids officials from searching private homes without probable cause to think something is wrong. We have the benefit of an outstanding trial court record to present to higher courts and ultimately help more people.

Pennsylvania's founding generation fought against the Crown's indifference to people being secure in their homes. We owe it to them to keep up this fight—even if it takes a decade. ◆

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

When **Peter and Annica Quakenbush** bought land to start an environmentally friendly green burial ground, the town banned all cemeteries.

TOWN GIVES *Red Light* TO *Green Burials*

BY KATRIN MARQUEZ

End-of-life decisions, such as where to be buried, are some of the most personal choices Americans make. When one Michigan town used zoning prohibitions to ban all cemeteries, two local conservationists joined with IJ to fight back.

For Peter and Annica Quakenbush, green burial is part of their philosophy of closeness to nature. It's a way of caring for the dead where remains are buried directly in the earth with organic materials. This ancient practice has been regaining popularity among Americans who want a simple, more affordable, and environmentally friendly burial.

Peter is earning his Ph.D. in biology. Learning to care for forests is his life's work. He and Annica have long dreamt of opening a conservation burial ground—a special type of green cemetery where an easement ensures the land remains protected in its natural state forever. Last year, they finally found and purchased the perfect property in Brooks Township: a white oak and white pine forest containing the types of vegetation and animals native to Western Michigan before it was extensively logged in the 19th century. With their dream that much closer, they took all the necessary steps to open the cemetery, following the instructions of the local zoning administrator and getting approval from the health department.

WHEN ONE MICHIGAN TOWN USED ZONING PROHIBITIONS TO BAN ALL CEMETERIES, TWO LOCAL CONSERVATIONISTS JOINED WITH IJ TO FIGHT BACK.

Despite support from a large portion of the community, a small but influential group of activists opposed the couple's plan, inaccurately claiming that the site was too close to a well or that it would require city

Watch the case video!

iam.ij.org/MI-green-burial

THE GOVERNMENT CAN'T USE ZONING TO PROHIBIT ENTREPRENEURS FROM USING THEIR PROPERTY TO EARN A LIVING IN A SAFE AND PRODUCTIVE WAY.

maintenance. Since Peter and Annica had done everything by the book, the Brooks Township Board took a drastic measure: It passed an ordinance that bans all cemeteries in the township. The ordinance was enacted specifically to stop the couple, even pulling language from their website to define "cemetery."

But this use of zoning violates the Michigan Constitution, which protects Peter and Annica's rights to use their property as they see fit and to pursue their chosen occupation free from arbitrary government interference. So IJ helped them sue in state court.

The lawsuit is already making waves. Within weeks, the township sought to amend its zoning ordinance in a misguided attempt to skirt our lawsuit (while still keeping the ban in place). But when IJ showed up at a public hearing in full force alongside Peter, Annica, and their community of supporters, we made clear we aren't backing down from the fight.

That's because we are committed to ending the unconstitutional use of targeted and unreasonable zoning to exclude otherwise perfectly legal businesses. We've seen this all-too-common problem in places like North Carolina, where IJ is defending a family's right to operate a nonprofit animal sanctuary on their property. And we've seen it in Georgia, where IJ is defending a nonprofit that plans to build a community of tiny homes to expand affordable housing.

The government can't use zoning to prohibit entrepreneurs from using their property to earn a living in a safe and productive way. Peter and Annica won't let their dream die—and neither will IJ. ◆

Katrin Marquez is an IJ attorney.

Make a Difference Every Month

If you're looking for a rewarding way to help IJ represent everyday Americans—free of charge—as they dare to stand up to government abuse, consider becoming a member of our Merry Band of Monthly Donors.

IJ's 1,700 monthly donors are just like our clients: regular citizens who are tired of government attempts to chip away at our core freedoms. And they stand shoulder to shoulder every month of the year to safeguard our constitutional rights. Here's why members say they joined:

> "I was sick of being power played by people in power and unable to defend myself."
>
> –Wolfgang Wilz

> "I give a little because I just don't want IJ to ever go away. I hope they are always here to help protect individual liberty. And if my little joins with others' little, maybe we can make a difference."
>
> –Anna Flatt

If you want to shield the defenseless from government bullies and create a better future for generations to come, giving to IJ every month will make a big difference. Monthly donations are convenient and cost efficient, meaning more of your gift goes directly to our fight for freedom and justice.

To join Wolfgang, Anna, and hundreds of others in supporting IJ now and for years to come, use the insert in the magazine or scan the QR code below to become a monthly donor today. ◆

The Merry Band of IJ Monthly Donors

IJ CALLS BS OVER SMALL DAIRY WASTE RULES

BY BOBBI TAYLOR

Every morning, Sarah King wakes before sunrise to milk her cows, affectionately named after Disney princesses. Sarah sells sustainably sourced fresh milk through her farm, Godspeed Hollow. Her operation is small but thriving. And judging by the waiting list, her product is in high demand. But the Oregon Department of Agriculture now wants to regulate Sarah's small backyard farm as if it has 3,000 cows, not three. So Sarah and several other small-scale farmers are fighting back to protect their businesses.

Like many states, Oregon regulates "confined animal feeding operations" (CAFOs). These are typically commercial farms that house hundreds or thousands of animals indoors for long periods and produce tons of animal waste, causing problems for the environment if not handled properly. So state law requires CAFOs to be permitted and outfitted with elaborate drainage and holding tanks to manage the large amounts of waste produced.

While this might make sense for larger dairies, small farms like Sarah's manage waste through a regenerative farming process that helps—rather than pollutes—the environment. Her cows spend most of their time at pasture getting nourishment from the grass. Their waste, in turn, nourishes the soil and helps the

Small farms like Sarah's manage waste through a regenerative farming process that helps—rather than pollutes—the environment.

Sarah King's small dairy farm practices regenerative farming, where her cows spend their time at pasture and their waste nourishes the grass.

grass grow. The cycle repeats as these cows rotate around the farm. Sarah's cows spend only a short time each day indoors for milking; waste generated in the barn is composted and used for the farm's vegetable garden.

Oregon previously allowed smaller dairies, including Sarah's, to operate without the expensive waste management infrastructure required of large CAFOs. But last year, the department announced it had received "concerns" from large dairies that small dairies were enjoying a "competitive advantage" by escaping the CAFO permit requirement. Suddenly, it announced that any dairy farmer who brings animals inside for milking, however briefly, is now subject to the regulation. While the department claims environmental concerns were behind this change, it is not applying the regulation to non-dairy farms. Yet these farms often produce just as much, if not more, waste. This underscores the department's true motive: to protect big dairies at the expense of small ones.

This is devastating for small farmers like Sarah. The state-mandated infrastructure will cost tens of thousands of dollars to install. Maintaining a CAFO permit will require annual fees, periodic inspections, daily reporting, and hours of extra work—all to dispose of a small amount of animal waste that small farmers already manage safely. And ultimately, Sarah sees this change as an affront to her business. She doesn't want to be a large commercial dairy; her hands-on and sustainable approach is what makes her farm special.

Christine Anderson (right) has joined with IJ and other small dairy producers to challenge these regulations pushed by Big Dairy.

The state cannot saddle small dairies with needless regulation simply to please big dairies. So IJ helped Sarah—together with fellow dairy farmer Christine Anderson and two small goat's milk producers—to bring a constitutional challenge to Oregon's CAFO regulations. And shortly after we filed suit, the department agreed not to enforce against our clients or other small farmers while litigation continues. We'll continue the fight until we secure lasting relief that makes Oregon's non-enforcement permanent—and defend a rural tradition that has been part of this country since the Founding. ◆

Bobbi Taylor is an IJ attorney.

Watch the case video!

iam.ij.org/OR-small-dairies

Litigator's Notebook:

When The Government Gives Up

BY JEFF ROWES

IJ clients **Erica Brewer** and **Zach Mallory** (above) and **Altimont Mark Wilks** (below) scored big wins after their lawsuits brought defendants to the negotiating table.

The quintessential IJ victory involves a spectacular courtroom win that protects our clients and sets broad precedent. But that triumph always needs a bad guy willing to fight. What do we do when the government backs down, either right away or after a shellacking in the trial court? How do we use that leverage to make sure the beaten bully leaves our clients alone—and to protect everyone else on the playground, too?

A key strategy is twisting the government's arm to secure relief that is even broader than our legal claims in court. And, because such agreements often include amending laws or agreeing to read broad laws more narrowly, these outcomes can provide excellent protections for liberty.

Take the case of Erica Brewer and Zach Mallory from the small town of Eagle, Wisconsin. After they spoke out on behalf of a neighbor they believed was unfairly targeted by code enforcement, the town retaliated by hitting Erica and Zach with more than $20,000 in fines for their minor code violations. Eagle's message to political critics was clear: Shut up or cough up. So the couple joined IJ in a free speech challenge. In January, right before the federal jury trial started, the town caved. We forced it not only to erase our clients' fines but also to reform its property code to make it fairer for everyone.

Or consider IJ client Altimont Mark Wilks. After a stint in prison for drug-related crimes, Altimont turned his life around, helping other people with criminal records reintegrate into society. He also opened a corner store in a low-income Maryland neighborhood. One in five people in the neighborhood rely on the USDA's Supplemental

What do we do when the government backs down, either right away or after a shellacking in the trial court? How do we use that leverage to make sure the beaten bully leaves our clients alone—and to protect everyone else on the playground, too?

Sometimes the government knows it's beaten and won't get up off the mat. When that happens, we use our momentum to secure a strategic victory via agreement.

Nutrition Assistance Program (SNAP), commonly known as food stamps. But Altimont was permanently banned from accepting SNAP because of his past offenses, hurting both his business and his customers. Four months after IJ sued on Altimont's behalf, the USDA agreed not only to let Altimont reapply, but to no longer ban other retailers with old and unrelated drug convictions from processing SNAP benefits.

Our case challenging licensing for home funeral guides in California completes the trifecta. State regulators wanted Akhila Murphy and Donna Peizer's tiny nonprofit (mostly volunteer senior citizens) to get funeral director licenses and build a funeral home—all just to talk to people about planning for their final days. After an IJ victory last year, the regulators threw in the towel rather than go to trial in defense of the only claim we hadn't won on yet. We made them agree, in an enforceable court order, that our clients can do their important work and that California's funeral licensing laws simply do not apply to home funeral guides, thus protecting everyone in that occupation throughout the state.

Beyond these broad agreements, IJ has also adjusted the way we design cases by filing some as class actions to make it even harder for the government to escape scrutiny in court. This is particularly useful in forfeiture cases, where a class action wards off government attempts to moot our challenge by simply returning our client's money. When we represent a full class of individuals harmed by a forfeiture scheme, the government often has no choice but to answer for forfeiture's systemic abuses in court. This strategy can potentially benefit thousands of class members, as in our 2018 victory in Philadelphia.

We're fighters. IJ litigators—and IJ supporters—want to be in the ring. We want that appellate or Supreme Court precedent. But sometimes the government knows it's beaten and won't get up off the mat. When that happens, we use our momentum to secure a strategic victory via agreement. These wins are never disappointments, and they never occur because we at IJ (or our clients) want to give up. They are, instead, an important tool we use when the time is right to best protect our cherished liberties and free up IJers for their next big match. ◆

Akhila Murphy and **Donna Peizer**'s work helping people plan their funerals can continue thanks to an IJ win secured both in and out of the courtroom.

Jeff Rowes is an IJ senior attorney.

COURT DECISION GIVES GAS TO HIGHWAY FORFEITURE CASE

BY BEN FIELD

Stephen Lara's life savings were seized from him in February 2021. Nearly three years later, a Nevada court has ruled that he can seek justice for what happened.

Stephen is a Marine veteran who was traveling from Texas to California to spend time with his daughters when he was pulled over outside Reno, Nevada, on a bogus traffic stop. The Nevada Highway Patrol officer asked intrusive questions unrelated to traffic safety, and Stephen honestly told the officer he was traveling with his life savings in cash. The officer didn't care that Stephen had copious documentation that his money came from his legitimate paychecks and veteran's benefits. By seizing the money and handing it to the U.S. Drug Enforcement Administration to forfeit—circumventing Nevada's legal protections for property owners—the highway patrol stood to get up to or as much as 80% of the proceeds.

Stephen got his money back seven months later, after IJ helped him file a federal lawsuit. But Stephen wanted to make sure this didn't happen to other people. So he and IJ also sued the Nevada Highway Patrol in state court.

Yet again, Stephen had to wait. This time, the government pressed pause while an unrelated case made its way to the Nevada Supreme Court to decide whether citizens can sue directly under the Nevada Constitution. IJ represented Stephen as a "friend of the court" in that case, which resulted in a landmark ruling that the Nevada Constitution allows people to sue the government for damages and that those claims are not subject to qualified immunity.

In January 2024, two-and-a-half years after Stephen's lawsuit began, a judge rejected the highway patrol's motion to dismiss the lawsuit. All of Stephen's constitutional claims can now move forward against the government's financially driven forfeitures and its failure to provide prompt hearings to contest seizures. The case also challenges the government's ability to take property without probable cause, and its use of the federal forfeiture machinery to circumvent Nevada's property protections.

Though justice has been delayed for Stephen, he is adamant that—with IJ's help—it will not be denied. ◆

Ben Field is an IJ attorney.

Stephen Lara lost his life savings after the Nevada Highway Patrol pulled him over for a bogus traffic stop. Now his case against the state's profit-motivated civil forfeitures can continue.

SWAT Destruction Case Breaks Down First Barrier

BY JEFFREY REDFERN

Recent issues of *Liberty & Law* have featured several IJ cases on behalf of innocent homeowners whose houses were destroyed by SWAT teams. (Usually, the police were after totally unrelated criminal suspects.) Many cities simply refuse to compensate innocent homeowners in these situations, and insurance typically excludes damage caused by the government.

Until a few years ago, the idea that the homeowner could sue a city for compensation seemed fanciful to most lawyers. But the tide is slowly turning. A federal judge in California recently rejected the city of Los Angeles' attempt to have one of our SWAT cases thrown out.

IJ client Carlos Pena owned a print shop in North Hollywood. That is, until a fugitive barricaded himself inside and a Los Angeles SWAT team assaulted the shop, destroying all of Carlos' expensive printing equipment.

Carlos isn't challenging the police's attempts to catch the fugitive. But the Fifth Amendment to the U.S. Constitution requires the government to compensate people when it destroys their property for the public goal of law enforcement.

This ruling is significant because it comes on the heels of a setback in our SWAT project. A federal court of appeals recently ruled that this kind of destruction by the police is exempt from the just compensation requirement of the Constitution. (IJ will ask the Supreme Court to review that decision.) Los Angeles asked the trial court to follow that other court's misguided ruling, but the judge declined, saying it wasn't binding.

Getting a win like this in Los Angeles, right after a disappointing decision in another jurisdiction, drives home that strategic litigation is a long-term project. Some setbacks are inevitable, and setting new constitutional precedent takes persistence and resilience. Fortunately, both are in IJ's DNA. ◆

Jeffrey Redfern is an IJ attorney.

"This is all I've done in my life. This is my passion. I'm not young anymore, so I don't see myself doing something else."

–Carlos Pena

IJ clients **Vicki Baker** (left) and **Amy Hadley** also suffered crippling losses to SWAT raids targeting other people—and now they're fighting for compensation.

"Death doula" **Lauren Richwine** counsels people at the end of life. When the funeral industry tried to shut her down, IJ stepped in.

Free TO DISCUSS DEATH Differently

BY CHRISTIAN LANSINGER

For decades, IJ has pioneered a bold but simple legal theory: People who speak for a living have the same free speech rights as anyone else. Most recently, a federal judge in Indiana confirmed that this is exactly how the Constitution works. When someone speaks on the job, even about difficult subjects like death, "ordinary First Amendment principles apply."

Lauren Richwine, a "death doula" and founder of Death Done Differently, is just such a person. For years, she has counseled her clients through the uncomfortable decisions surrounding death. Unlike funeral directors, who provide services like embalming and burying remains, all Lauren does is speak. She listens to her clients' wishes and advises them about their options. She helps people develop an end-of-life plan, directing them to others—including funeral directors—as needed. In short, Lauren serves as an emotionally supportive and financially disinterested advocate for families navigating the funeral industry.

But the funeral industry wanted these conversations silenced. When the Indiana State Board of Funeral and Cemetery Services received an anonymous complaint alleging that Lauren was engaging in the unlicensed practice of funeral services, it ordered Lauren to stop talking about death. She was silenced, and her business was shuttered.

IJ stepped in, and in testament to our occupational speech work over the years, a federal judge issued a preliminary injunction ruling that Indiana cannot muzzle Lauren with arbitrary licensing requirements. In its opinion, the court applied the First Amendment with full force, allowing Lauren to reopen her business while the case proceeds. The court further recognized that "the public does not have an interest in giving funeral directors a monopoly over end-of-life discussions." For the moment, Lauren is free to discuss death differently again.

Once thought radical, IJ's theory has been accepted and adopted in courts from coast to coast. And we're poised to bring one more into the fold: The state has appealed to the 7th Circuit—a federal court that has not yet weighed in on this type of speech. Lauren's case now has the potential to protect more people than ever before and secure the right to speak for a living. ◆

Christian Lansinger is an IJ attorney.

IJ MAKES HEADLINES

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

Read the articles at iam.ij.org/april-2024-headlines

The Washington Post

Texas Makes A Most Unconservative Supreme Court Argument
January 10, 2024

Los Angeles Times

Appeals Court Finds FBI Did Violate Rights Of Some Beverly Hills Safe-Deposit Box Holders
January 23, 2024

statesman journal

Small Dairies Sue Oregon Over New Rules They Say Could Put Them Out Of Business
January 29, 2024

Clarion Ledger

Mississippi Has A Real Problem With Fake Blight. What To Know
January 30, 2024

courier journal

You Have The Right To Criticize Your Government. Kentucky Lawsuit Must Uphold Free Speech.
January 31, 2024

ABAJOURNAL

Qualified Immunity Shield May Depend On Size And Publication Rate Of Federal Appeals Court, New Report Says
February 7, 2024

THE WALL STREET JOURNAL.

A Spanking For The FBI: The Ninth Circuit Rebukes The Bureau For A Lawless Search And Seizure.
February 7, 2024

AP ASSOCIATED PRESS

They Opened A Haitian Food Truck. Then They Were Told, 'Go Back To Your Own Country,' Lawsuit Says
February 9, 2024

REUTERS

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