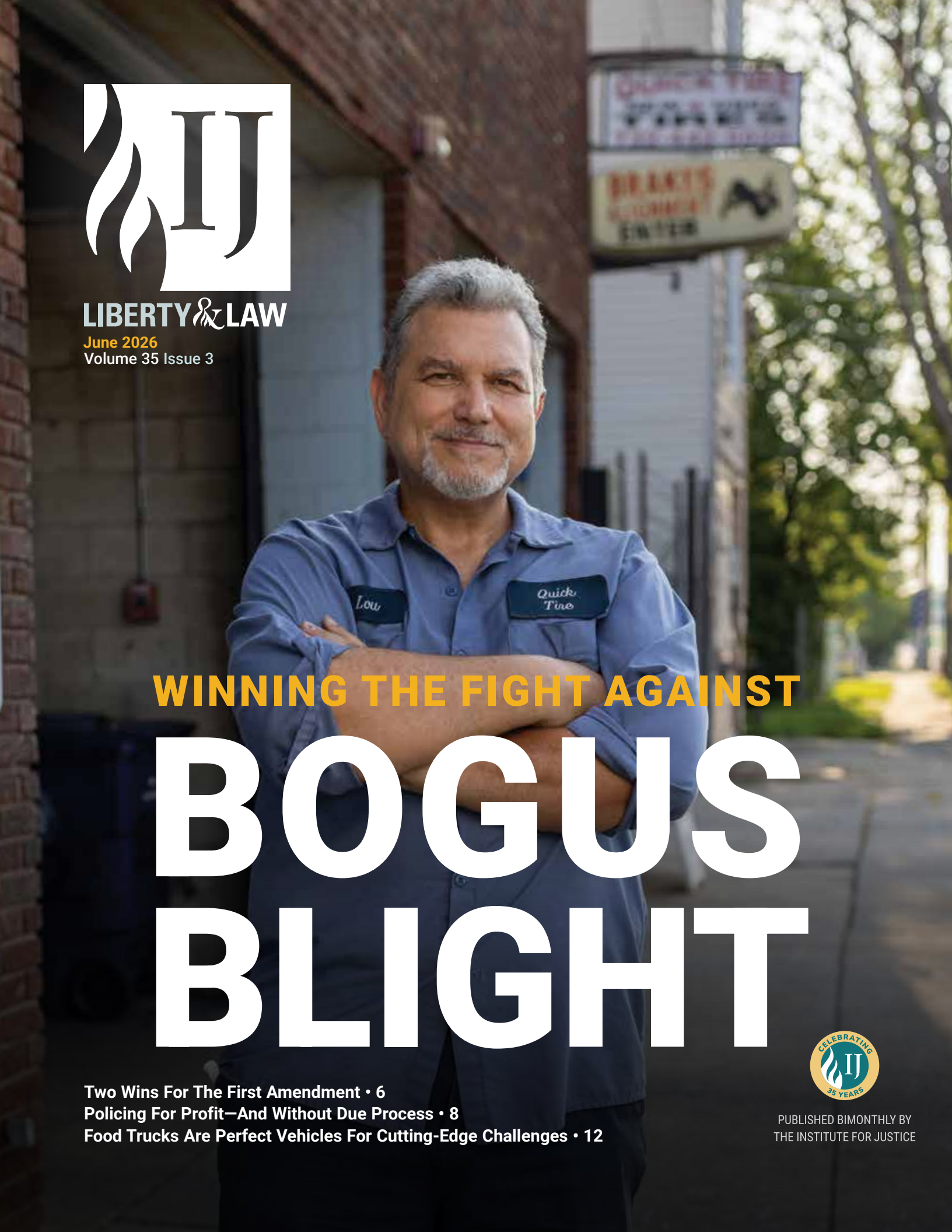


LIBERTY & LAW
June 2026
Volume 35 Issue 3

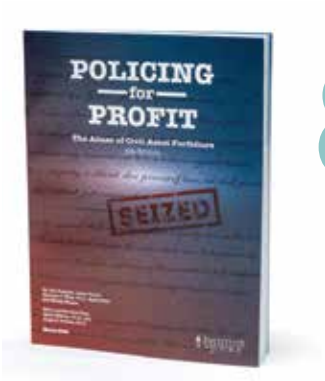
WINNING THE FIGHT AGAINST

BOGUS BLIGHT

CELEBRATING IJ 35 YEARS

PUBLISHED BIMONTHLY BY
THE INSTITUTE FOR JUSTICE

contents



LIBERTY & LAW

June 2026 • Volume 35 Issue 3

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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WINNING THE FIGHT AGAINST BOGUS BLIGHT

BY BOBBI TAYLOR

SINCE THE CITY HAS DECIDED NOT TO APPEAL, HONEY AND LUIS CAN REST EASY KNOWING THEIR LITTLE PIECES OF THE AMERICAN DREAM ARE SAFE.

IJ client **Luis Romero** can keep his successful auto business after a court ruled that Perth Amboy, New Jersey, had no basis to declare it blighted—which would have enabled the town to take Luis' property through eminent domain.

Honey Meerzon (left) and her mother, **Dina Finkelstein**, own an apartment building that houses four families. Their tenants' homes are safe after IJ scored a big win against eminent domain abuse.

IJ just scored a major victory for two property owners in New Jersey. A trial court struck down Perth Amboy's attempt to seize two thriving properties through eminent domain, ruling that the city's evidence of "blight" was little more than smoke and mirrors. The decision is a relief for IJ clients Honey Meerzon and Luis Romero—and a warning to local governments in New Jersey that may try to abuse their power to take private property.

Honey bought her four-unit apartment building on Smith Street nearly a decade ago after leaving an abusive relationship. The building is home to families, some with small children, who depend on its affordable rent and convenient location. Luis operates Quick Tire & Auto next door, a successful business that has been in his family for decades. Both are children of immigrants whose families fled oppressive governments. Both thought that, here in America, their property rights would be respected. For Honey and Luis, these properties are more than just a source of income; they are their American Dream.

But Perth Amboy had other plans. The city designated Honey's and Luis' properties as "blighted" under New Jersey's Local Redevelopment and Housing Law. As in many states, a blight designation in New Jersey unlocks the power of eminent domain and allows governments to condemn properties for private development. But these properties were not blighted at all. The city simply wanted them for inclusion in an adjacent redevelopment project and sought to use a blight designation to get them.

To make its case, the city pointed to a few pieces of litter, some stray cats, and conditions common to many properties in Perth Amboy (not to mention the state of New Jersey and the entire country), like narrow driveways or inadequate setbacks. As the city saw it, the mere existence of these conditions was enough to justify taking the properties for private development. But the government can't take your property because of a narrow driveway or a stray cat. Truly blighted properties are those that are unsafe, falling into disrepair, and causing harm to the community.

The trial court agreed. In its decision, the court found the city's blight designation was unsupported by any evidence and based solely on "generalized concerns" and "hypothetical risks." The city's case, the court held, fell far short of what New Jersey law requires.

This ruling means Perth Amboy cannot use the blight designation as justification to seize Honey's and Luis' properties. And since the city has decided not to appeal, Honey and Luis can rest easy knowing their little pieces of the American Dream are safe.

This case illustrates a troubling pattern across the country: local governments stretching the definition of "blight" beyond recognition to justify taking well-maintained properties for private developers. Under this approach, virtually any property could be taken. IJ is currently fighting other bogus blight determinations on behalf of small-business owners in Missouri and homeowners in Mississippi.

Yet New Jersey municipalities are particularly rapacious. The Garden State is home to our very first eminent domain case (on behalf of Vera Coking in Atlantic City). Over the past three decades, we've secured precedent improving protections for private property in the state. We still closely monitor for attempts like Perth Amboy's to make end-runs around our reforms.

This ruling should signal to New Jersey towns—and to courts in other states—that when local governments try to manufacture blight where none exists, IJ will be there.◆

Bobbi Taylor is an IJ attorney.

TWO WINS
FOR THE FIRST AMENDMENT

BY TATE COOPER AND JAMES T. KNIGHT II

At the core of the First Amendment is the freedom to criticize the government without fear of censorship or retaliation. Citizens have the right to speak their mind without being silenced and the right not to be punished for that speech. So when local officials in Newton, Iowa, and Atmore, Alabama, abused their power to muzzle and arrest their critics, IJ sprang into action to hold them accountable. Now, thanks to two recent federal court victories, these bedrock free speech rights have been vindicated.

In Iowa, Noah Petersen criticized the local police during the public comment period of a city council meeting. They didn't even let him finish; the mayor claimed that Noah's criticism violated a city rule against "derogatory comments," and Noah was arrested by the police chief for disorderly conduct. But Noah knew his rights, so he attended another meeting a few weeks later and used his public comment time to criticize the mayor and police chief for their actions suppressing speech. Again, they arrested him for his criticism.

IJ sued. And earlier this year, a federal court in Iowa agreed with IJ that the mayor and police chief violated Noah's rights. Critiquing public officials is speech protected by the First Amendment, and even qualified immunity doesn't shield officials from liability. The court embraced the constitutional principles at the heart of the case and admonished the officials. The court emphasized that the retaliatory arrests violated "clearly established rights" and that citizens like Noah can enforce those rights in court.

Yet as established as those First Amendment rights are, local officials keep violating them.

Free speech lies at the heart of self-governance and the American experiment. But speech is only free when the government can't punish you for what you say.

IJ vindicated the free speech rights of **Noah Petersen** (left), who was arrested twice for criticizing officials at city council meetings in Newton, Iowa. In Alabama, IJ clients **Don Fletcher**, **Ashley Fore**, **Sherry Digmon**, and **Cindy Jackson** are on track for a similar win after they were arrested and harassed for opposing a favored local official.

In Alabama, local officials retaliated against IJ clients Sherry Digmon, Cindy Jackson, Ashley Fore, and Don Fletcher. The "Atmore Four" were arrested, charged with felonies, and had their cell phones seized after their political opposition to the school superintendent drew the ire of the local district attorney and sheriff.

Atmore's retaliation is on track to face the same reckoning as Newton's. In March, a federal court ruled that the Atmore Four's case against the sheriff and his deputies can move forward. The district attorney hasn't escaped either: Though he claimed absolute "prosecutorial immunity," the court recognized that doctrine doesn't apply to seizing Sherry's, Cindy's, and Don's phones or to conspiring with the sheriff to violate their rights.

These wins build on IJ's past victories. The Iowa court cited IJ's U.S. Supreme Court win in *Gonzalez v. Trevino* to conclude that Noah was treated differently from other speakers at city council meetings. And the Iowa and Alabama decisions are only the latest examples of courts denying immunity to officials who violate people's rights.

Noah's and the Atmore Four's cases also build on our victory in Marion, Kansas, where the court held that qualified immunity didn't shield officials who raided Ruth Herbel's home. That's important—all government officials should know that they are subject to the First Amendment and that courts will meaningfully enforce the Constitution when government officials violate it.

Free speech lies at the heart of self-governance and the American experiment. But speech is only free when the government can't punish you for what you say. IJ will ensure that free speech is taken seriously by government officials and by judges so ordinary Americans can fully exercise their fundamental rights without fear of retribution.◆

Tate Cooper and James T. Knight II are IJ attorneys.

Policing For Profit—
And Without Due Process

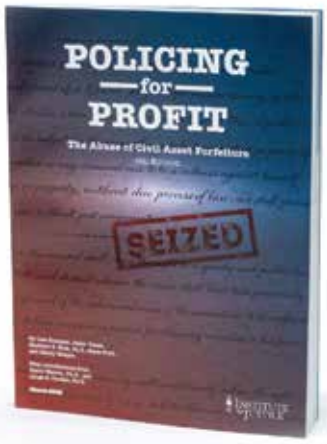
BY MINDY MENJOU

Through civil forfeiture, law enforcement can take and keep your cash, car, or even home without so much as charging you with a crime. Since the launch of our forfeiture project in 2010, IJ has been fighting back. We've successfully litigated 29 cases in state and federal courts. We've returned $21.8 million in seized assets to the rightful owners. And dozens of states have adopted reforms increasing transparency, tightening rules for civil forfeiture, or both.

But there's still a lot of work to do. Just two years ago, the U.S. Supreme Court ruled that due process does not require a prompt post-seizure hearing because, as the Court understands it, the forfeiture process itself includes a timely hearing. Though the Court signaled keen interest in reviewing other aspects of civil forfeiture, it lacked a full picture of how forfeiture works in practice.

Enter the fourth edition of IJ's landmark forfeiture report: *Policing for Profit*.

For the first time, this edition documents the civil forfeiture procedures leading up to a hearing. It finds that in most cases, owners never get a hearing at all, let alone a timely one.



Read the report:
ij.org/report/policing-for-profit-4

In fact, most owners lose by default—between 62% and 76% in three states with data. This means no real hearing before a judge, no arguments from both sides, and no neutral examination of the forfeiture's legal justification before property is lost forever.

And the likely reason for many, if not most, defaults is that getting to court is hard. Owners face confusing notices, tight deadlines, and complex filing requirements. And they face them alone if they can't afford a lawyer or it doesn't make economic sense to hire one—which is likely to be the case with many forfeitures. The typical cash forfeiture across 24 states is just $1,678, about half the estimated $3,300 it costs in attorney fees alone to contest a simple state-court forfeiture case.

The few owners who do reach a hearing often wait months. Totaling just the *known* statutory deadlines, the average civil forfeiture process takes over six months to reach a courtroom.

During this time, owners are often without their property, which can create hardship and intense pressure to settle, even if they did nothing wrong. Only about half of civil forfeiture

laws specify a procedure for seeking a quicker pretrial hearing, and these are often limited.

The absence of judicial oversight compounds the problems detailed in earlier editions of *Policing for Profit*, including the ones captured by our law grades: the often low evidentiary standards for connecting property to crime when—if—a civil forfeiture case gets to court; the often poor protections for innocent owners at risk of losing property because someone else committed a crime; and the often large shares of proceeds flowing back to law enforcement.

Even though there was significant progress in reforming forfeiture law over the last 15 years, this edition demonstrates that trend has cooled. Thirty-five states and the federal government still earn a D+ or worse for laws that make civil forfeiture easy and lucrative for law enforcement. Only Maine has enacted wholesale reform, abolishing civil forfeiture. It and New Mexico earn the nation's only As.

By the numbers, civil forfeiture remains a massive problem. Annually since 2014, the federal government has consistently forfeited between $2 billion and $3 billion, while 34 states have consistently forfeited between $300 million and $350 million.

Though legislatures have been hesitant to address the fundamental problems with forfeiture, we're not going to stop trying to persuade them to end civil forfeiture and the financial incentive that fuels it. And like the three editions before it, the fourth edition of *Policing for Profit* has an important role to play. We are working diligently to get it into the hands of lawmakers.

But our real target now is the courts and the legal community. Courts, especially the U.S. Supreme Court, are increasingly recognizing that civil forfeiture is at odds with due process and property rights and holding the government to account. *Policing for Profit* makes a compelling case that this trend should continue—and accelerate.◆

Courts, especially the Supreme Court, are increasingly recognizing that civil forfeiture is at odds with constitutional principles.

Mindy Menjou is IJ's assistant director of strategic research.

250 Years

Of Declaring—And Enforcing—Our Rights

BY ANTHONY SANDERS

It seems like everyone is doing something for "America's Big 250." For good reason, of course! But at IJ we wanted to do something a little bit different when reflecting on 250 years of independence. Instead of focusing on the Declaration of Independence, we decided to shine a spotlight on *other* declarations from 1776: the declarations of rights that many states adopted in that fateful year.

Most IJ cases rely on the Bill of Rights in the U.S. Constitution or a similar "bill" or "declaration" (they essentially mean the same thing) in a state constitution. All of these documents go back to constitutional declarations of rights from 1776. The first was the Virginia Declaration of Rights, drafted by George Mason. It inspired similar declarations in Pennsylvania, Maryland, Delaware, and North Carolina later that year. Eventually, all state constitutions had a declaration or bill of rights.

Only a few years after 1776—even before the U.S. Bill of Rights—people were using these declarations in court to prevent legislatures from violating rights. Not too different from what we now do at IJ.

To explore the birth of this "constitutional rights technology," on April 10, we joined our friends at the Liberty & Law Center at Antonin Scalia Law

School to host a conference, "The *Other* Declarations of 1776." As a bonus, Scalia Law is part of George Mason University, so the founding father of constitutional rights was part of the conference (at least in spirit).

We brought together scholars and lawyers for an exploration of how these declarations came to be and what their legacies are today. Scholars—including IJ Senior Attorney Josh Windham—presented articles about the "other" declarations, which will be published in the *Georgetown Journal of Law and Public Policy*. Sessions also included commentary from senior law professors and historians.

For our keynote address, we heard from one of the top experts on the history of state constitutions, Nicholas Cole of Oxford University—who, ironically, is British. He got things off to a good start for a talk about 1776 by repeatedly stating, "You were right, we're sorry."

Of course, at IJ we're most interested in how to enforce rights in court. So we capped the day off with a mock argument of a famous case from 1795: *Vanhorne's Lessee v. Dorrance*. It considered whether a Pennsylvania land redistribution statute violated the state's constitution. Retired Justice Barry Anderson of the Minnesota Supreme Court presided over the three-judge "court" and grilled IJ Senior Attorneys Diana Simpson and Sam Gedge. The judges ruled the law was unconstitutional, despite Sam's best efforts—he was a good sport and argued the "judicial abdication" side.

We often take our system of written constitutionalism for granted. It's worth remembering, however, that courts couldn't declare laws "unconstitutional" before 1776 because written constitutions didn't exist. George Mason and others changed all that. Whenever we argue a case at IJ, we stand on their 250-year-old shoulders.◆

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

IJ attorneys **Keith Neely** (top), **Josh Windham,** and others joined an IJ co-led conference shining a spotlight on 250 years of state declarations of rights.

The event included a mock argument presided over by **Professor Cate Stetson** (left), retired **Justice Barry Anderson** of the Minnesota Supreme Court, and **Professor Laurent Sacharoff**. IJ's **Diana Simpson** (right) won.

Food Trucks Are Perfect Vehicles For Cutting-Edge Challenges

In Jacksonville, North Carolina, IJ defeated burdensome restrictions on entrepreneurs like **Nicole Gonzalez** (top left), who wants to host food trucks on her property, and food truck owners **Tony Proctor** (top right) and **Octavius "Ray" Raymond** (middle right). In Parksley, Virginia, food truck owners **Theslet Benoir** and **Clemene Bastien** (bottom, left to right) overcame qualified immunity in their fight for accountability after city officials harassed them.

BY JUSTIN PEARSON

Food trucks are amazing. They allow entrepreneurs of limited means to pursue their dreams. They provide delicious options to consumers. They boost nearby businesses—including restaurants—by attracting more customers to the area. And they are the perfect vehicles for a variety of constitutional claims.

When IJ first started representing food trucks over a decade and a half ago, the cases focused on economic liberty. Local officials would ban this new competition, so we would represent food truck owners who just wanted to offer consumers more choices. We often won.

Continued success following our tried-and-true approach might have been enough for many law firms. But not IJ. We pride ourselves on bringing cutting-edge constitutional cases, and it turns out that food trucks can serve up a variety of challenges. Two recent victories illustrate the point.

In Jacksonville, North Carolina, Nicole Gonzalez wanted to invite food trucks onto her private property to attract more customers to her store. The only problem? Her property was too close to restaurants to comply with Jacksonville's ban on competition.

IJ brings cutting-edge constitutional cases, and it turns out that food trucks can tee up a wide range of challenges.

So we brought a property rights case on Nicole's behalf. And since the city's efforts to hamstring food trucks also included sign restrictions and exorbitant fees, we challenged those, too. We even included an economic liberty claim, relying on unique provisions in the North Carolina Constitution.

We won every claim. The government initially attempted to have our case dismissed, but we appealed and created terrific precedent at the state appellate court saying that our legal arguments were correct.

Then, after returning to the trial court to prove our claims, the other side tried to stop us from obtaining a binding judgment by repealing the provisions. That way, they could bring back the provisions later.

Again, the city was wrong. Since we had sought nominal damages for past rights violations, the city's capitulation could not stop us from obtaining a final judgment on those harms. At the hearing, the court ruled that our evidence proved that the city had violated every single constitutional provision we claimed. This judgment means that the unconstitutional ordinances will not return.

Another example was in Parksley, Virginia. We initially expected a typical protectionist food truck ban. The situation turned out to be anything but typical. Outraged that our clients would dare to park their own food truck on their own property next to their own store and compete with restaurants owned by local officials' friends, one official physically cut a water line connected to the food truck. Then, when the truck's owners spoke to the media, city officials became even angrier and revoked their food truck permit.

These complications might have dissuaded some attorneys, but for IJ, they made the case more attractive. We brought claims about whether cutting a water line constituted a Fourth Amendment seizure. And whether the out-of-control official was protected by qualified immunity. And whether the city was also liable for his actions even though he was out of control. And whether the city was allowed to revoke a permit just because officials were angry about media attention.

So far, we have mostly won. The federal district court agreed with us that the official violated the Fourth Amendment when he cut the line. And that qualified immunity did not protect the official from liability. And that the city is liable, too.

The only place where the court disagreed was when it held that even though the city retaliated against the food truck owners by revoking their permit, another part of the code might still have prevented food trucks. This led the court to mistakenly think that the retaliation did not cause any extra harm. So we will appeal that issue to the federal appellate court. Additionally, the city will appeal all the claims we won; we will now get to create federal appellate precedent on those as well.

As food trucks have become too popular to completely ban, city officials have devised new and creative ways to limit them. Rather than dissuade us, this only makes the cases more attractive as IJ continues to create new (and delicious) precedent.◆

Justin Pearson is an IJ managing attorney.

REINING IN THE REGULATORS

BY PRASHANTA AUGUSTINE

Teaching is speech, and speech is protected by the First Amendment. As longtime readers will know, that's a principle that IJ has fought to vindicate across the country. We vindicated that principle in California when we took on a law that would have prevented a horseshoeing school from teaching to willing students. And we recently vindicated it again in Minnesota, where we took on the Minnesota Office of Higher Education on behalf of our client Leda Mox, who teaches classes on horse massage.

In April, we opened the next chapter—this time in Wisconsin. We launched a lawsuit in federal court to challenge the state's "Educational Approval Program" on First Amendment grounds.

Jim Masterson has developed a signature method of animal care. Jim has been working with horses for decades, and he refined his method in the results-driven world of equestrian competition. Jim's method has caught on in the horse world: He's accompanied the endurance athletes of the U.S. Equestrian team to multiple international competitions. He's published books explaining his method—which he is often asked to autograph at horse expos—and his work is the subject of an award-winning documentary.

Jim has been teaching his method since the mid-2000s. In that time, thousands of students across the country—and indeed, across the world—have taken courses on the "Masterson Method."

As the years have gone by and Jim's school has expanded, Jim has selected instructors to help teach his method. One of those instructors is Becky Tenges, whom Jim hand-picked for her aptitude in his signature method. Becky has been around horses since she was a kid. After a high-powered

IJ client **Jim Masterson** developed a signature method of animal care. Wisconsin says he cannot teach his method unless he undergoes the state's burdensome and expensive "Educational Approval Program."

Thousands of students across the country and the world have taken courses on the "Masterson Method" of animal care.

The Educational Approval Program is burdensome beyond belief—and all under threat of steep financial penalties or even imprisonment.

career in business, she returned to the animals that she has always loved.

Becky taught the Masterson Method in Wisconsin for years. Things changed in 2023.

That's when the regulators came knocking. They demanded that there be no teaching—or even advertising—of courses offered by Jim's school unless the school went through Wisconsin's Educational Approval Program.

The Educational Approval Program is burdensome beyond belief. There are pure financial costs, like the hefty fees that Jim would have to pay. But it goes much further than that. Jim would have to overhaul the policies and contracts that he uses. He'd have to engage in bureaucratic strategic planning exercises—five-year visions and "strengths, weaknesses, opportunities, threats" analyses. The qualifications of his instructors, and even the very content of his courses, would be subject to the upvote or downvote of bureaucrats in Madison. And even if Jim's school got initial approval, it only lasts for one year. There are ongoing requirements. All under threat of steep financial penalties or even imprisonment.

Becky Tenges has taught Jim's method of animal care for years, but Wisconsin is interfering with her First Amendment right to teach.

This is all incredibly burdensome. And it's incredibly unnecessary. That's a fatal combination of unconstitutionality. So we're suing on behalf of Jim and Becky to rein in the regulators. Wisconsin will learn the lesson we taught California and Minnesota: Teaching is speech, and speech is protected by the First Amendment.◆

Prashanta Augustine is an IJ attorney.

CHALLENGING THE PLATE-READER PANOPTICON FROM COAST TO COAST

Norfolk, Virginia, resident and IJ client **Lee Schmidt** will appeal after a court said the city's 175 AI-powered surveillance cameras weren't extensive enough to run afoul of the Fourth Amendment.

BY MICHAEL SOYFER

Automated license plate reader (ALPR) cameras are fast becoming the most common form of police surveillance Americans encounter in their daily lives.

These high-tech devices capture images of passing cars and use AI to convert them into easily searchable data. The data then get stored in massive databases, often shared among hundreds or thousands of law enforcement agencies. The leading ALPR manufacturer boasts that its national network now averages over 20 billion license plate reads per month—that's more than 83 datapoints per licensed driver per month, on average. All this happens without a warrant, probable cause, or any reason to believe that the vast majority of people caught in this dragnet have done anything wrong.

IJ believes people should not have to live in a fishbowl where the government monitors and records their movements to potentially use against them later. The U.S. Supreme Court has explained that a key purpose of the Fourth Amendment is to guard against that type of permeating government surveillance. IJ's goal is to reinforce those protections. That's why we are litigating two cases challenging unrestrained license plate reader surveillance.

In Norfolk, Virginia, the police department blanketed the city with ALPRs. According to the police chief, that made it "difficult to drive anywhere of any distance without running into a camera somewhere."

Unfortunately, though the court denied a motion to dismiss our case at the outset, it granted summary judgment in Norfolk's favor after discovery had ended. Focusing solely

on the number of cameras and datapoints they collected about IJ's clients, the court held that the surveillance did not come close enough to capturing the "whole" of people's movements. But that myopic focus on *quantity* ignores binding case law that requires courts to measure surveillance against traditional expectations of privacy dating back to the Founding. That means we have strong arguments to pursue on appeal.

And there is one silver lining: The court acknowledged that an even more extensive surveillance system could run afoul of the Fourth Amendment.

That led to our latest challenge to ALPR surveillance in San Jose, California. The city operates a vast network of nearly 500 ALPRs. Many of these cameras surround blocks with sensitive locations, like hospice care facilities, religious organizations, and immigration lawyers' offices. These are not standard traffic cameras. Every time a car passes, they snap and upload a picture. Then AI reads the license plate and identifies other key vehicle features, like the make, color, and even bumper stickers.

Our three clients are ordinary San Jose residents who find this level of surveillance creepy and overbearing. One of them, Tony Tan, encounters a camera within seconds of leaving his home and must pass others throughout the city to get just about anywhere. Together with Scott West and Colin Wolfson, Tony is part of an IJ class action challenging the city's use of ALPR cameras. In fact, Tony left China to build a life in America in part because of China's sweeping use of surveillance to monitor its citizens. He doesn't want to see this country turn into the type of place he fled.

Police can—and do—get warrants to keep tabs on people legitimately suspected of crimes. But the Fourth Amendment doesn't allow cities to create a dragnet to spy on innocent people without proper checks and balances. That's the message we hope to send in Norfolk and San Jose as we defend the Fourth Amendment right to be secure against the rapid encroachment of surveillance technology.◆

Michael Soyfer is an IJ attorney.

The Fourth Amendment doesn't allow cities to create a dragnet to spy on innocent people.

IJ client **Tony Tan** left China to build a life in America in part because of China's sweeping use of surveillance to monitor its citizens. He doesn't want to see this country turn into the type of place he fled.

In 2015, IJ launched a federal class action lawsuit on behalf of Pagedale, Missouri, residents **Vincent Blount**, **Valarie Whitner**, and **Mildred Bryant** (left to right). Their case forced sweeping reforms and ended the city's abuse of fines and fees.

Justice Delivered

Federal Court Closes The Book On Pagedale's Policing-For-Profit Scheme

BY BILL MAURER

For years, Pagedale, Missouri, used its municipal code enforcement process to generate revenue instead of promoting public safety. City officials ticketed residents for minor property-code violations, then piled on escalating fines and fees, even issuing warrants for arrest when people could not pay.

That era has now ended. A federal judge has terminated the consent decree that forced Pagedale to change its laws and court practices—closing one of the nation's most closely watched municipal fines-and-fees reform cases.

In 2015, IJ filed a federal lawsuit against the city on behalf of Valarie Whitner, Vincent Blount, Mildred Bryant, and a class of thousands of other residents. The suit argued that Pagedale's enforcement scheme violated due process and the Constitution's ban on excessive fines by turning ordinary code enforcement into a revenue tool.

Pagedale's ordinances gave officials wide latitude to punish harmless conditions and everyday activities. The city cited residents for things like mismatched blinds, basketball hoops in the driveway, and satellite dishes on the front of the house, along with violations of dozens of other intrusive rules. When someone missed a court date or fell behind on payments, the city added penalties that could compound and lead to arrest warrants—often without any meaningful inquiry into a person's ability to pay.

In 2018, after years of litigation, a federal court in Missouri approved a sweeping consent decree that required Pagedale to unwind those practices and prove

Pagedale's enforcement scheme violated due process and the Constitution's ban on excessive fines by turning ordinary code enforcement into a revenue tool.

compliance over time. Among other reforms, the decree mandated that the city:

- Dismiss thousands of outstanding fines, fees, and warrants—including "failure to appear" charges—and notify residents when the city cleared eligible debts.
- Repeal unconstitutional ordinances, including restrictions on basketball hoops and satellite dishes. The city was also barred from reenacting them.
- Overhaul municipal court practices by improving scheduling and access (including daytime and evening sessions), limiting how many trials can be set per session, and providing a clear, written notice of rights.
- Require ability-to-pay determinations before punishing nonpayment and ensure appointed counsel in any case where jail is a possible outcome.

The court also retained jurisdiction for years to enforce compliance, including financial oversight and regular reporting about court revenues and collections. That transparency tracked a measurable shift away from relying on court fines as a funding stream: Pagedale's actual municipal court fine revenue fell from $214,717 in 2018 to $56,666 in 2024—a nearly 75% drop.

After the city completed the decree's requirements, the court terminated the case in the spring of 2026. The city repealed the challenged ordinances, dismantled the most abusive collection practices, and better protected residents from being punished simply because they are poor.

The Pagedale case stands as a warning about what happens when local governments treat their residents as ATMs—and as proof that meaningful reform can be achieved through IJ's sustained, strategic litigation.

And we're gearing up for similar monitoring in Brookside, Alabama, as described in the April 2026 issue of *Liberty & Law*. Following this success in Pagedale, we're optimistic that we will again see the lasting results of a landmark IJ victory.◆

Bill Maurer is an IJ managing attorney and leader of IJ's fines and fees initiative.

IJ TO PUT AGENCY JUDGES ON TRIAL
AT THE U.S. SUPREME COURT

BY ROB JOHNSON

When the federal government wants to take your property, do you get a hearing in a real court with a real judge and jury? Or can an agency force you to defend yourself in an in-house agency "court" where the only judge is an agency bureaucrat?

Last year, the 3rd Circuit answered that question in a case that IJ filed on behalf of Sun Valley Orchards, a multigeneration family farm in New Jersey facing over half a million dollars in fines and other liability imposed by a U.S. Department of Labor "judge." The 3rd Circuit invalidated the agency judge's decision, holding that the case should have been tried in a real court.

The DOL, however, has continued to force employers to defend themselves in its unlawful agency courts even after the 3rd Circuit's decision. It also appealed to the U.S. Supreme Court.

The high court limited agencies' use of in-house courts in 2024, in *SEC v. Jarkesy*, but DOL is just one of many federal agencies that has ignored the decision. Every agency has some explanation as to why *Jarkesy*'s ruling does not apply to it.

The Court agreed to take Sun Valley's case, and at the same time, it rephrased the government's proposed "question presented" (i.e., its statement of the issues to be considered on appeal) in a way that is favorable for Sun Valley.

Joe Marino, who ran Sun Valley along with his brother, will tell you he's excited about this opportunity. He was thrilled to win the case at the 3rd Circuit, and the decision striking the agency's half-million-dollar penalty removed a huge weight from his shoulders. But he knows this is a chance to set an even bigger precedent.

The 3rd Circuit's decision was binding on the agency only in the states within that circuit—Delaware, New Jersey, and Pennsylvania—leaving other businesses to fight the same issue in other states. But a decision from the Supreme Court will be binding nationwide, and it will settle this issue for everyone.

A decision from the Supreme Court will also set a precedent that will impact the full alphabet soup of agencies that continue to use agency courts to impose penalties, including the EPA, OSHA, NLRB, FTC, and more. A ruling in Sun Valley's favor will affirm that the Court meant what it said in *Jarkesy*.

The question remains the same, and the answer is just as clear as ever. Agencies that want to impose fines and other liability should have to go to a real court and convince a real judge and jury—not their own employee. ◆

Rob Johnson is an IJ senior attorney.

IJ is heading to the U.S. Supreme Court to defend an appeals court victory that struck down a federal agency's half-million-dollar fine against the family farm of **Joe Marino** and his brother.

Closing The Open Fields Loophole In Idaho

BY ALASDAIR WHITNEY

In Idaho, more than 14 million acres of land are privately owned. Yet for years, at least 97% of that land—over 13.6 million acres, more than twice the size of New Hampshire—sat open to effectively limitless government searches. No warrant? It did not matter. Government agents of any stripe could freely enter, roam, and search these vast swaths of land that most Idahoans assumed were constitutionally protected. The remaining 3% of private land, or 407,000 acres, enjoyed meaningful constitutional safeguards.

This imbalance is no accident. It is the product of the "open fields" doctrine, a Prohibition-era, judge-made loophole in the Fourth Amendment that allows government agents to treat most private land in the country as if it were public. Under this rule, only the area immediately surrounding a home, called the "curtilage," receives constitutional protection.

For years, this doctrine has defined the legal landscape for landowners and left them exposed to warrantless government intrusions—oftentimes with little more than official curiosity as justification.

This year, however, one state has redrawn these boundaries. Idaho became the eighth state in the country to close its open fields loophole and the first to do so through legislation.

The new law, which draws on model legislation crafted by IJ, makes clear that private land means just that: private. It requires government agents to obtain consent, get a warrant, or find that an emergency exception applies before entering private land and restores the basic principle that protections do not stop at the edge of Idahoans' front porches.

This reform reflects years of coordinated work both within and beyond the courtroom. Across the country, IJ has partnered with property owners and allied organizations to challenge the open fields doctrine through litigation while also pressing for legislative reforms. The Gem State's success shows how these efforts work in tandem to achieve the goal of ridding the country of the open fields doctrine state by state.

Idaho has shown what's possible. IJ is committed to helping other states follow Idaho's lead to restore meaningful constitutionally grounded protections to Americans nationwide.◆

Alasdair Whitney is an attorney on IJ's legislative team.

The new law, which draws on model legislation crafted by IJ, makes clear that private land means just that: private.

IJ Updates
Spring 2026

Recent months saw big updates in the cases of engineer **Greg Mills**, home-based entrepreneurs **Pat Raynor** and **Lij Shaw**, and landlord **Steve Camburn**.

Historic Trip To The Arizona Supreme Court

In March, IJ argued at the Arizona Supreme Court that engineer Greg Mills has a right to call himself what he is. Greg has 30 years of experience in engineering, but under the state's regulatory scheme, he can't call himself an engineer unless he works for a manufacturer. But the Arizona Constitution protects free speech and economic liberty even more vigorously than the federal Constitution does—and the court seemed receptive to that argument. One judge even noted that previous iterations of the court had strayed from the state's history, signaling interest in reinvigorating Arizona's strong constitutional protections. We are optimistic for a favorable decision vindicating Greg and setting important precedent for all Arizonans.

A Final Victory For Nashville Home-Based Businesses

IJ's appellate victory last August held a Nashville regulation limiting how many customers certain types of home-based businesses could serve violated entrepreneurs' right to equal protection. Following the city's choice not to appeal the decision, a lower court issued a final ruling in March that struck down the restriction once and for all. Now all home-based businesses in the city are subject to the same standards. That means hairstylist Pat Raynor and recording studio owner Lij Shaw can go back to serving their clients without the cost and inconvenience of renting commercial space—and without fear of harsh penalties.

Pottstown, Pennsylvania, Attempts To Undermine Property Rights Victory

In a recent IJ victory, an appellate court affirmed a ruling that declared unconstitutional a local ordinance that allowed government officials to enter rental homes without a judicial warrant. While we wait to see if the Pennsylvania Supreme Court will review the case, Pottstown unveiled a proposed amendment to the ordinance that would force landlords whose tenants refuse consent to a home inspection to retain a third-party inspector to conduct the inspection on the government's behalf. IJ sent a letter urging borough officials to abandon this blatant attempt to circumvent the courts' decisions.

New *Amicus* Brief Against SEC Gag Orders

The First Amendment establishes that no law can inhibit the right to free speech. But apparently the SEC didn't get the memo. Since 1972, the agency has refused to settle any civil enforcement action unless the defendant agrees not to publicly deny the allegations. IJ's 2019 attempt to challenge the policy on behalf of the Cato Institute was unfortunately dismissed, so we jumped at the recent opportunity to submit an *amicus* brief urging the U.S. Supreme Court to take up a similar case and ensure federal agencies can't ignore the First Amendment.◆

Scan the QR code or visit **iam.ij.org/june-2026-headlines** to read the articles.

nj.com

N.J. Neighbors Win Desperate Fight To Save Home, Shop From City's Eminent Domain Grab

By Karin Price Mueller | March 3, 2026

The owners of two properties are declaring victory after a judge squashed a city's efforts to take their properties by eminent domain.

Perth Amboy "failed to provide substantial, credible evidence" that the properties — a tire shop and a four-family home — should be deemed "areas in need of redevelopment," Middlesex County Superior Court Judge Benjamin Bucca Jr. said in his Monday decision.

He reversed and declared void the town's designation of the properties as blighted.

"We won! We won! We won!" said Honey Meerzon, who owns the home with her mother, Dina Finkelstein.

"I got goosebumps when they told me," said Luis Romero, the owner of the tire shop.

AL.com

Alabama Prosecutor Loses Key Immunity Claim In Journalist's Arrest Lawsuit

March 26, 2026

The Daily News

Food Truck Owners Win Damages In City Case

March 27, 2026

The Virginian-Pilot

Judge Finds Eastern Shore Town, Ex-Elected Official Violated Rights Of Food Truck Operators

March 31, 2026

AXIOS

Pennsylvania Lags On Forfeiture Reforms As Philadelphia Improves

April 1, 2026

The Washington Post

A Casket Cartel Tries To Bury The Competition

April 8, 2026

NBC NEWS

Drivers Sue San Jose Over Nearly 500 Police Cameras Used To Track Drivers Across The State

April 15, 2026

reason
FREE MINDS AND FREE MARKETS

San Jose's 'Creepy' And 'Deeply Intrusive' ALPR Camera System Is Unconstitutional, A New Lawsuit Says

April 16, 2026

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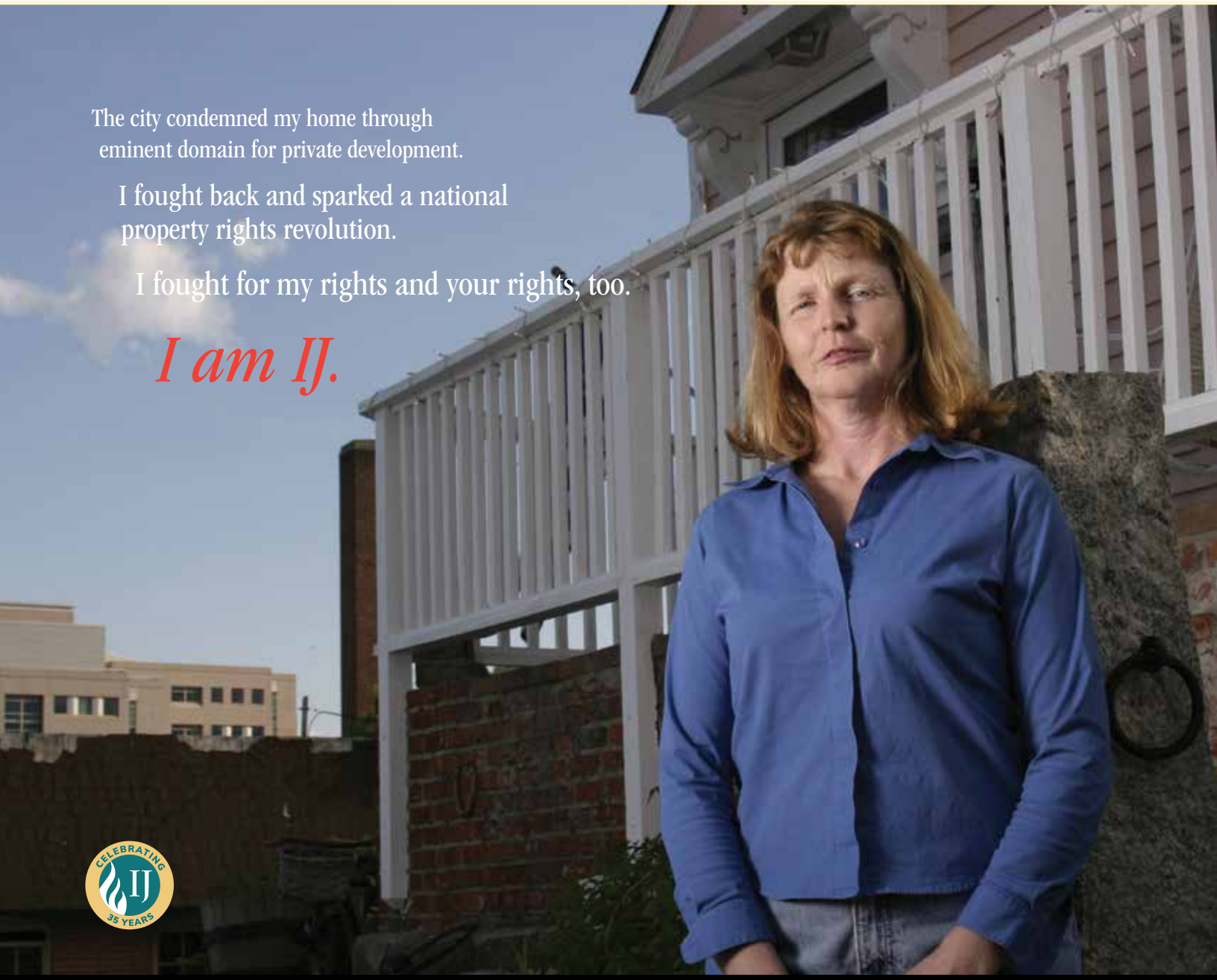

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