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CHARGING AHEAD



IJ Mobilizes After the Supreme Court's Abandonment of the Constitution

By Scott Bullock

In the few days since the U.S. Supreme Court handed down its dreadful decision in *Kelo v. New London*, the Institute has gone from short-lived dejection to steely determination as we forge ahead despite a setback. In that, we share the determination and emotions of America's Founders on July 4, 1776.

The *Kelo* decision has dire implications for homeowners, small businesses, churches and other property owners across the nation. The Court ruled that the Fifth Amendment to the U.S. Constitution essentially provides *no* limit to the use of eminent domain for private economic development. As

Justice Sandra Day O'Connor wrote in her powerful dissenting opinion, under the Court's decision, "Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

This is not the America the Founders envisioned.

The core team that had been involved in the *Kelo* case from the trial court up to the highest court in the land gathered in my office on the day of the decision. We knew the Court had only two days left to make decisions so it had to be that day or the following Monday. We checked a website that gives

Kelo continued on **page 7**

School Choice Showdown at the Florida Supreme Court

By Lisa Knepper

They came marching up the street toward the Florida Supreme Court, homemade signs in hand, chanting, “What do we want? School choice! When do we want it? Now!” A sea of red shirts with yellow “Warning!” symbols, some 2,000 Florida parents and children gathered to warn that should the Court strike down the nation’s first statewide school choice program, the futures of more than 200,000 students would be in doubt.

That’s how many Florida students participate in scholarship programs that allow the free choice of public or private, religious or non-religious schools. Should the Court rule that school choice violates the state’s Blaine Amendment, programs like McKay Scholarships for Students with Disabilities, Bright Futures Scholarships for college students, and the state’s new pre-K program could be in jeopardy.

Families of all incomes and races who rely on those scholarships rallied on the steps of the Court the morning of June 7, the day the Court finally heard arguments in the teachers’ unions’ legal challenge to Opportunity Scholarships—Florida’s six-year-old school choice program for children in chronically failing public schools.

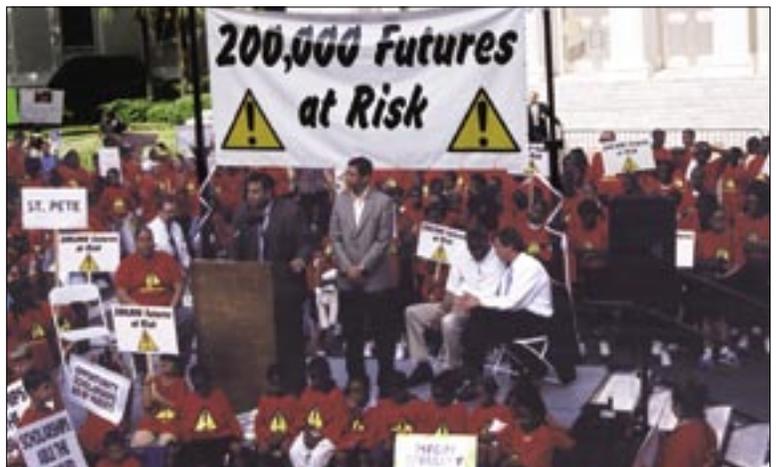
The march was organized by the Black Alliance for Educational Options, Hispanic Council for Reform and Educational Options, Florida State Hispanic Chamber of Commerce, McKay Coalition, Florida African American Education Alliance and the Florida Black Chamber of Commerce.

“We’re here to say that it’s un-American for only those with money to choose their education,” BAEO chairman Howard Fuller told the *Tallahassee Democrat*. Fuller, D.C. Parents for School Choice Executive Director Virginia Walden Ford, Florida State Hispanic Chamber of Commerce President Julio Fuentes, and former state Senator John McKay gave rousing speeches to the chanting crowd, making the event feel like a classic civil rights protest of days gone by.

Indeed, as Institute for Justice Senior Attorney Clark Neily told the *Tallahassee Democrat*, “School choice is the

civil rights issue of the 21st Century. There is no other single issue in the country that truly divides the haves and the have-nots [than] who gets to choose their child’s education and who’s stuck with what they’re given.” The Institute has helped lead the defense of Florida’s choice program since its inception.

The front pages of Florida papers carried that message—and pictures of families who rely on school choice—across the state, while national opinion leaders such as the *New York*



Thousands of Florida parents rallied outside the Florida Supreme Court to demonstrate their support for school choice.

Times' John Tierney, *Newsweek's* George F. Will and *The Wall Street Journal* editorial page carried the message nationwide.

Outside the Court, the terms of the debate were clear: the education establishment is trying to snatch away an educational lifeline from hundreds (and possibly thousands) of poor and minority kids.

Inside the Court, much of the argument focused on the Florida Constitution's "uniformity" provision—requiring the state to provide a "uniform, efficient, safe, secure, and high quality system of free public schools." The unions and their special interest allies allege that by allowing some kids to opt out of failing public schools, the State is failing in its duty to provide a "uniform" education.

"Florida's public schools are anything but 'uniform,' and only a fraction of Florida schoolchildren attend schools that truly are 'efficient, safe, secure and high quality,'" said Neily. "Freeing kids from bad schools doesn't detract from the State's duty, it fulfills it by ensuring that every child has a chance at a quality education and by promoting genuine public school improvement through competition."

School choice opponents have raised similar claims in other states. Not once have they succeeded. In Florida, a unanimous state appellate court rejected the unions' "uniformity" claim in 2000, saying that while the State has a duty to provide public schooling to every child, it can do more—namely, it can provide Opportunity Scholarships to children stuck in bad schools.

"To accept the unions' claim would be a radical departure from precedent and common sense," added Neily.

The Court could rule as early as this summer. Regardless of the decision, the Institute for Justice remains committed to preserving school choice for children in Florida and nationwide, no matter what obstacles opponents of true educational opportunity put in our way. ♦

Lisa Knepper is IJ's Director of Communications.



Parents CAN fight for school choice in Arizona



Kaitlyn Perkins demonstrates her artistic talent for her uncle, Clay Perkins.

On June 14, the Institute for Justice Arizona Chapter (IJ-AZ) invited parents to join Parents CAN (Choice Action Network), and let them know that Parents CAN work together toward more educational opportunities for their children. Our friends at the Alliance for School Choice helped make the event fun for the children by providing a balloon artist, a face painter and lots of pizza.

The first family to arrive drove for three hours from southern Arizona just to attend our party and learn more about their options. They are already sacrificing a great deal to send their three children to a private school, but may not be able to continue doing so.

Cole Perkins brought his two children and shared a story that highlights one of the difficult decisions the lack of school choice forces a parent to make: his daughter has blossomed in a private pre-school program, but now that she is ready for kindergarten and her brother for pre-school, the family cannot afford to send both to that school. Cole's daughter will have to leave the private school.

This event was fun and a great way to begin letting the parents of Arizona know that Parents CAN make a difference in the movement to expand school choice in this state. ♦



Above, **Angel Grijalva** and his sister **Gemma** traveled with their family for three hours to attend the event. IJ-AZ Executive Director **Tim Keller** takes advantage of the opportunity to have his face painted with the IJ logo.

The Perils & Parables of *Permits*

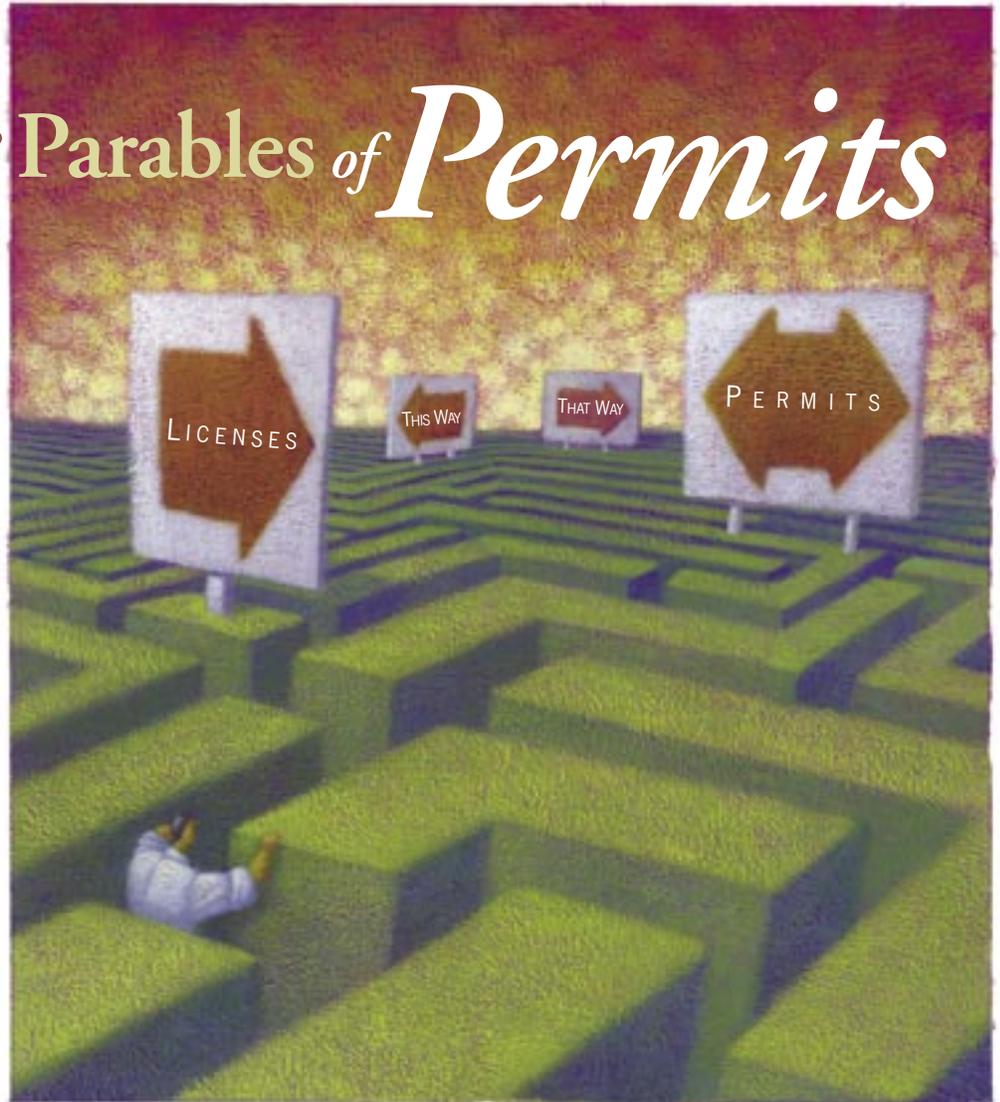
By Beth Milnikel

Permit me to say that permits have lately taken precedence at the Institute for Justice Clinic on Entrepreneurship at the University of Chicago.

Students learn many profound lessons by providing the legal services to our lower-income entrepreneurial clients at the IJ Clinic—including structuring business organizations, drafting contracts and advising on business strategy—but the system of licenses and permits is without a doubt one of our biggest growth areas.

Perhaps our preoccupation with permits stems from our efforts to help a conscientious and experienced client start his own moving company. In Illinois, to be authorized as an in-state mover, our client must prove that it is “convenient and necessary” for him to join the marketplace. He must pay a \$900 fee and assemble a raft of information, including budget projections and a safety plan, in addition to proof of insurance. Most bizarrely, he must find several people to testify under oath to the fact that his moving company will be unique in the marketplace, that they “need” his services, and that they cannot find equivalent services elsewhere. Of course, this is curious testimony, given that our client has not been allowed to prove himself by providing any moving services without the license. It is no wonder that so many unlicensed moving companies operate, and that it can be hard to distinguish the shady dealers from the trustworthy. One student working his way through the licensing quagmire exclaimed, “This is ridiculous! I swear, this Clinic is the best thing the libertarians could have going, because I’m simply fed up.”

Permits also come into play for our clients who are skilled and knowledgeable artisans with a desire to make their own way in the construction business. We represent a trio of friends who hope to kick-start a business by rehabbing



a house one of them owns, but they might have to jettison their business plan after learning how many fees they will have to pay for building permits.

Another client, who is a skilled woodworker, anticipates that he might expand his business into general contracting someday. We recently sat down for a long session and explained the process involved in getting general contractor’s licenses from both the county and the municipality, that the licenses require annual fees, that he might need additional licenses if he works in the suburbs, and that he will still need to keep up his other business licenses. He sighed and said, “There’s just not enough time in the day. When I’m wearing so many hats, there is no time to do this stuff, and it’s important stuff. When the big project comes, I won’t be ready with the paperwork.”

By helping clients identify and obtain the necessary licenses and permits, our law

students are learning to navigate complex regulations and explain them clearly. They are advancing admirably in the fine art of counseling clients about facing uncertainty and risk, while encouraging them to continue pursuing their dreams. These skills are fundamental to what lawyers do all the time. But students in the IJ Clinic are also learning how many snares are set for the enterprising and talented individuals they represent. They see our clients’ faces fall when the fees are calculated, and they learn to explain how the governments are using occupational licensing as a source of revenue. They see that, without legal assistance, clients like ours might not make it. And they resolve to offer that assistance far into the future. ♦

Beth Milnikel is the Institute for Justice Clinic Director.





IJ clients, from left, **Ejgayehu Beyene Asres**, **Lillian Awah Anderson** and **Saleemah Salahud-Din Shabazz**, along with **Veronica Mongeyen**, back center, celebrate their victory knowing that they can earn a living without government interference.

IJ Minnesota Chapter: First Case, First Victory

By Nick Dranias

In a victory for entrepreneurs, the Institute for Justice Minnesota Chapter, IJ's newest state chapter, forced the Minnesota Board of Barber and Cosmetologist Examiners to admit that its licensing scheme was unconstitutional as applied to hairbraiders. As part of a court order, the Board agreed to write new rules that free braiders from the State's occupational licensing regulations requiring 1,550 hours of cosmetology training that can cost up to \$14,500 in tuition.

Under the terms of the order issued by Hennepin County District Court, IJ-MN will postpone its litigation while the Board engages in rulemaking. IJ-MN can re-initiate litigation if the Board fails to enact the agreed-upon exemptions by April 20, 2006, the one-year anniversary of IJ-MN's filing the case.

This was IJ-MN's first case after opening its doors in late April.

"It is great to start with a victory," said Lee McGrath, IJ-MN's executive director. "More importantly, the Board's admission that its occupational licensing scheme is unconstitutional is a victory for those who believe that the Constitution protects a person's right to earn an honest living. With this case, we advanced economic liberty—the idea that every American has a right to earn an honest living free from arbitrary government interference."

"This is welcome news for small business owners," said Lillian Anderson, owner of the braiding shop Extensions Plus and lead plaintiff in the case of *Anderson v. Minnesota Board of Barber and Cosmetologist Examiners*. "All I ever wanted

was a chance to run my business without the threat of the Board closing my shop."

As part of a 32-page order approved by the Court, the Board agreed to adopt administrative rules that exempt braiders from all licensing requirements. The Board was also permanently enjoined from its licensing scheme against hair-braiders.

"The Board's regulations never made sense because they were completely unrelated to braiding," said IJ plaintiff Ejgayehu Beyene Asres, who works at the Braid Factory in South Minneapolis. "I never considered going to cosmetology school because not one minute of the 10 months of classes dealt with braiding."

"I'm thrilled that we can practice our art and culture without the cloud of prosecution hanging over us," said plaintiff Saleemah Salahud-Din Shabazz, a braider who works out of her home in North Minneapolis. "Braiding is more than a job. It is part of who I am. Today I am free to do what I love."

Thanks to IJ's litigation and the advocacy of our clients, Minnesota now joins Arizona, California, Connecticut, Kansas, Maryland, Michigan, Ohio, Washington state and the District of Columbia in freeing braiders from burdensome and unnecessary cosmetology licensing laws. ♦



Nick Dranias is an IJ-MN staff attorney.

HANDS OFF



Americans Say “Hands Off My Home”

By Chip Mellor

When California Governor Arnold Schwarzenegger recently appeared on *The Tonight Show* with Jay Leno, both were incensed over the U.S. Supreme Court decision in *Kelo v. City of New London*, which gave government a green light to take homes and small businesses to benefit private developers. Leno noted an instant poll showing 94 percent of respondents were in favor of the homeowners. Other online polls on national news websites showed 96 percent and higher opposed to eminent domain for private economic development.

Phone calls and emails of support from every corner of the country poured in to Susette Kelo and the other New London homeowners facing eviction (many offering to chain themselves to the houses to prevent demolition). Messages of outrage and dismay were directed at officials in New London and filled newspaper letters-to-the-editor pages nationwide.

Rarely does a Supreme Court decision generate such uniform and widespread outrage. Decisions on passionately held beliefs like religion or politics typically provoke more discord than agreement. Clearly, Americans understand just how threatening the Court's decision is for ordinary home and small business owners everywhere.

It will not take long for tax-hungry governments and land-hungry developers to capitalize on this ruling. Many cities held off on eminent domain actions, waiting for the Supreme Court to decide *Kelo*. Now, with a thumbs-up from the Court, these cities can be expected to move aggressively. Some already have. Within days of the decision, officials in Freeport, Texas; Lake Zurich, Ill.; Arnold, Mo. and many other cities cited *Kelo* in moving forward with condemnations.

In its first-of-its-kind nationwide study of eminent domain abuse, the Institute for Justice was shocked to find more than 10,000 similar instances of actual or threatened condemnations for private development in just a five-year period. There is every reason to expect a breathtaking expansion of that number is right around the corner.

That's why the Institute for Justice and its Castle Coalition announced a \$3 million “Hands Off My Home” campaign, an unprecedented financial commitment to halting eminent domain for private profit. “Hands Off My Home” will focus the universal wave of opposition to the *Kelo* ruling into the only meaningful venue left for home and small business owners in desperate need of protection: state courts and state legislatures.

Hands Off My Home continued on page 8

MY HOME

“[T]he fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process. As for the victims, the government now has license to transfer property from those with fewer resources to those with more.”

—Justice Sandra Day O’Connor

Moving Forward After Kelo

Kelo continued from page 1 almost real-time reports from the Court when decisions are announced. Before announcing *Kelo*, the Court had already handed down five minor decisions, so we thought we would have to wait until the final day of the term.

Then the phone rang.

It was a call from the Supreme Court clerk’s office telling me the Court had decided *Kelo* and that “it was affirmed.” I put the phone down and told the other folks in the office. They, like I, knew what the cold legalese of “affirmed” meant. There was a brief moment of stunned silence. My mind raced from disgust over what the Court had done to a vital part of the Constitution to what this decision meant for the homeowners in New London who had fought so long and hard to stay in their homes. It meant that Susette Kelo could lose her dream home for which she had worked so hard. It meant that 87-year-old Wilhelmina Dery might be evicted from the only home she had ever known.

Despite our despair, we immediately set to work both to comment on the decision and, more importantly, to put together a game plan to fight back.

We were greatly encouraged when paralegal Gretchen Embrey returned from the Court with copies of the opinions and we learned that the decision was by a very narrow 5-4 margin. Moreover, we saw the strength of the dissenting opinions, notably the one written by Justice Sandra Day O’Connor, a justice not known for overstatement. Her opinion was scathing, and you could tell that she, too, was very upset by what the majority had done to the Constitution and to the country.

And then, in the wake of this decision, an amazing thing happened across the nation. As Chip Mellor documents in his article on page 6, Americans are virtually united in their opposition to the *Kelo* case and their desire to do something about it. As Chip further explains, we immediately set to work to take the genuine grassroots anger and energy about the decision and transform it into productive activism to change the law.

As far as the *Kelo* decision goes, we are confident that one day, perhaps in the not-too-distant future, the Supreme Court will overturn this disastrous ruling, consigning it to the same fate as other discredited decisions like *Plessy v. Ferguson* (which

upheld “separate but equal”) and *Korematsu v. U.S.* (which upheld the internment of Japanese-Americans during World War II).

The majority opinion in *Kelo*, authored by Justice John Paul Stevens and joined by four other justices, is not only wrong under a proper reading of the Constitution, it is quite shoddy in its legal reasoning. For instance, Justice Stevens hinted that, perhaps in a future case, if there were overwhelming evidence that a taking was solely to benefit a specific private party (no test or even guidance is established, though, as to how a court would make such a determination), then perhaps it would violate the public use provision. Justice Stevens then goes on to state that such concerns are not relevant in the *Kelo* case because the City did not know who the private beneficiaries would be! The Court thereby gives an open invitation to governments to do speculative takings. As we pointed out in our briefs, the City did not even know what it was going to do with most of the land at issue in this case or to whom it would go. But, according to Justice Stevens, that’s okay. Condemn now, don’t name

Kelo continued on page 10



IJ Senior Attorneys, from left, **Scott Bullock** and **Dana Berliner** and Castle Coalition members **William Giordano**, **Denise Hoagland** and **Lori Vendetti** of Long Branch, N.J., all spoke out on how the Hands Off My Home campaign will advance property rights on the state level.

Join The “Hands Off My Home” Campaign

Hands Off My Home continued from **page 6**

In just the first year of “Hands Off My Home,” we will:

- Ask state courts to enforce the “public use” limitations found in every state constitution. While the federal Constitution sets a floor of rights, state constitutions can amplify and raise those rights above the federal level, giving homeowners greater protection.
- Support citizen activists nationwide who are urging their state and local officials to set stricter standards for the use of eminent domain.
- Establish a Castle Coalition presence in every state so ordinary citizens will be poised to mobilize the minute the power of eminent domain is abused for private ends.
- Draft state and federal model legislation.
- Host a conference in Washington, D.C., to train activists in fighting unjust takings.

You can join the Castle Coalition (www.CastleCoalition.org), urge your governor and legislators to sign the eminent domain pledge, write letters to the editor, inform us of any eminent domain abuse in your area, and make sure IJ has the resources to wage this historic campaign by sending in a contribution *today*.

After all, there is no better way to celebrate the spirit of American independence than by demanding our elected officials follow the spirit and the letter of the U.S. Constitution and thereby preserve the American Dream.◆

Chip Mellor is IJ’s president and general counsel.



The “Hands Off My Home” Pledge Pledge For Governors and State Legislators

I pledge to the citizens of this State
that I will:

Oppose efforts by my state government
or municipalities within my state to
use the government power of eminent
domain for private development.

Support legislation and other efforts to
ensure that the citizens of this State are
safe from eminent domain for private
development.

Find contact information for your elected officials and more at
www.CastleCoalition.org/HandsOffMyHome



Castle Coalition Coordinator **Steven Anderson** discusses how to build a grassroots coalition.



IJ Senior Attorney **Scott Bullock** presents IJ client **Susette Kelo** with the *David Award* in recognition of her fight to stop the government's abuse of eminent domain.

Castle Coalition Holds Fourth Annual Eminent Domain Conference

By **Steven Anderson**

Activists from around the country met in Washington, D.C. during the second weekend in July for the Castle Coalition's 4th Annual Eminent Domain Conference. This year's gathering had particular significance after the U.S. Supreme Court's decision in *Kelo v. City of New London*, which put everyone's property up for grabs, and inspired the Castle Coalition's recently launched Hands Off My Home campaign.

Held this year in the shadow of the Capitol, dozens of activists attended sessions led by Institute for Justice staff on a number of topics, including the history of eminent domain, preparing for litigation, and working with the media. Janice Hundt, an activist from Baltimore County, Md., who fought the abuse of eminent domain in her hometown, delighted the audience with her tale of triumphant grassroots action.

A highlight of the conference was the presentation of our David award to Susette Kelo, for her inspiring fight against twin Goliaths: tax-hungry governments and land-hungry developers.

Attendees were also treated to what has become a staple of the conference each year: a screening of the Australian comedy *The Castle*, which served to lighten the mood after an intensive day of education.

This year's conference was the most successful yet, as we trained another crop of activists in the techniques necessary to end the abuse of eminent domain. Given the amount of abuse, we'll need all the help we can get!♦



Baltimore activist **Janice Hundt** shares tips on grassroots activism with conference participants.



IJ Attorney **Bert Gall** leads a group discussion that helps participants take the fight beyond their own communities.

Steven Anderson is IJ's Castle Coalition Coordinator.



IJ Senior Attorney **Dana Berliner** (above, left) shares tips on preparing for legal action in an eminent domain fight. Activists came together to collaborate at the fourth annual Castle Coalition conference.



Kelo continued from page 7

the private beneficiary, and then cut sweetheart deals with developers later on, after the rightful owners have lost their homes or small businesses and can no longer challenge the takings. How perverse.

The majority opinion and the concurrence by Justice Kennedy offer some narrow room for future legal challenges under the public use provision of the U.S. Constitution. The Court suggested that projects that don't go through a planning process might still be subject to challenge. The problem is that virtually every project in the country that uses eminent domain has a plan and goes through some kind of planning process. If the majority thinks they offered any meaningful protection, they are completely disconnected from reality. There have been some outliers where the local government was too stupid or careless not to make a plan, but they will be increasingly few and far between. Instead, most projects are just like the project in *Kelo*. There was no outright corruption, although the process miraculously resulted in a project that exactly met the desires of a private party—in this case, Pfizer.

The bright spot of the majority opinion is that it recognized that state supreme courts are free to grant greater protections to property owners under their respective state constitutions. Indeed, it almost seemed like the Court was inviting them to do so. As Justice Stevens wrote: “[N]othing in our opinion precludes any state from placing further restrictions on its exercise of the takings power.” And that is where most of our litigation focus will be directed in upcoming eminent domain battles. Thankfully, every state constitution has a provision regarding public use and we will work to vigorously enforce those provisions throughout the country. Several state supreme courts, including those in Illinois and Michigan, have recently handed down good eminent domain decisions under their own state constitutions, and we are confident that trend will continue.

The Institute for Justice will also continue the fight to keep the people in New London in their homes. The day after Independence Day, we held a rally in front



From top, IJ client **Mike Cristofaro** and IJ senior attorney **Scott Bullock**, spoke to the hundreds who came out to rally in support of the Ft. Trumbull property owners.

of City Hall in New London to demand that the City Council let the homeowners stay in Fort Trumbull. Hundreds of people demonstrated from both the local area and as far away as Texas, New Jersey and Kentucky. The City does not need their land to do new development projects, and everyone knows that. Susette Kelo, Byron Athenian, Bill von Winkle, the Derys, Richard Beyer, the Guretskys and the Cristofaros are American heroes who should be honored, not evicted.

Much work must be done and huge challenges lie ahead. But when they announced independence from the British crown almost 230 years ago, the Founders faced even greater challenges than we do today, and we take inspiration from their perseverance and commitment to securing individual liberty. ♦

Scott Bullock is an IJ senior attorney.



In Memory of John Walton

There won't be another man like John Walton. His combination of integrity, humility and courage was evident in everything he did, and most especially in his contributions to the cause of equal educational opportunity. John's soft-spoken manner, so unexpected for a man of his stature, put people at ease and his wise counsel was invaluable in gaining educational opportunities for those who need it most—the socially and economically disenfranchised. His dedication to school choice is a legacy that has already improved the lives of thousands of American schoolchildren—and will ultimately benefit millions more.

Each of us at the Institute for Justice extends our deepest sympathy to John's family and we pledge to do all we can to further his legacy of equal educational opportunities.

Chip Mellor

About the publication

Liberty & Law is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication and outreach, 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, school 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 policy activists in the tactics of public interest litigation.

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

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Bloomberg Money and Politics
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IJ Senior Attorney Steve Simpson: “You will be able to order wine over the Internet and have it shipped to your home. . . . The tide is clearly in favor of free trade and direct shipping, and we think that is the way it will continue.”

Russ Meek Speaks
CAN-TV
(Chicago, IL)

IJ Clinic Director Beth Milnikel: “It is our hope that all of our clients graduate from the Clinic, so, once they are on their feet and solidly established in the community, they can afford counsel of their own. Then we let them go on to greater things.”



KCRA-TV News
WB
(Sacramento, CA)



IJ Client David Lucas: “This [decision] reinforces the Constitution saying that whatever you allow in your state, you have to allow other wineries the same right and privilege.”

The Seattle Times

“The Institute for Justice is a public-interest law firm that aims to expand the constitutional rights of small-business owners and entrepreneurs.”



Just like my forefathers, who helped win the American Revolution,
I fought against tyranny.

I challenged liquor wholesalers who used
government power to protect their monopoly.

I took my fight to the U.S. Supreme Court.

And I won.

I am today's revolutionary.

I am IJ.

*Juanita Swedenburg
Middleburg, Virginia*

www.IJ.org

*Institute for Justice
Economic liberty litigation*

**“The Institute
for Justice [is]
the voucher
movement’s
legal brain
trust.”**

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