

IJ Celebrates
10th Anniversary
1991-2001

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In Sight of the Summit



and Ready to Climb

By Clint Bolick

The law sometimes moves like a glacier. It took 58 years of concerted effort to overturn the infamous *Plessy v. Ferguson* and the dreaded separate-but-equal doctrine in the 1954 *Brown v. Board of Education* decision.

It has taken another 47 years to arrive at the threshold of finally vindicating the great promise of equal educational opportunities.

Compared to that, the 11 years my colleagues and I have spent defending school choice programs seems like a heartbeat. We've litigated 16 lawsuits in ten states and Puerto Rico, and we'll surely litigate many more before the fight is fully won.



But the big one is right now.

On September 25, 2001, the U.S. Supreme Court granted review in *Zelman v. Simmons-Harris*, a lawsuit challenging the Cleveland school choice program. The Court appears poised to resolve, once and for all, the constitutionality of school choice.

IJ is now deploying the Supreme Court strategy it first developed at the "Shadow of the

Beast" conference in 1997 (held at the Jefferson Hotel across from the National Education Association headquarters), which brought together the movement's top legal minds.

Here is a primer for the battle as it unfolds.

School Choice continued on page 4

Attorney Scott Bullock Looks Back on 10 Years of Fighting for Liberty

By Scott Bullock

Working at a place like the Institute for Justice is the very reason why I went to law school. Of course, IJ did not exist at that time, but I was determined to make a career out of defending individual rights. I worked at the Cato Institute the summer after my first year of law school and then with Clint at another law firm he headed before co-founding IJ.

I was hooked.

IJ opened its doors the year I graduated from law school, and they haven't been able to get rid of me since.

It's been a wonderful, rewarding experience watching IJ grow from essentially Chip, Clint, myself, a few support staff and a couple of cases to the size and influence of the organization we now have in place.

“IJ lawyers are not only given significant responsibilities for their own cases, but they are also actively encouraged to seek out case opportunities.”

Although IJ is located *in* Washington, we are not really *of* Washington. Our focus is primarily on vindicating the rights of ordinary citizens throughout the country. Defending property owners faced with abusive eminent domain actions has taken me from the Mississippi Delta to coastal Connecticut and back home to Pittsburgh. I've gone to such completely out-of-the-way places as

Lebanon, Tennessee, to defend the economic liberties of a barber and back to Washington to challenge the federal government's attempt to regulate the Internet and computer software.

All readers of *Liberty & Law* know about the Institute's defense of entrepreneurs, but probably few know about the spirit of entrepreneurship IJ encourages in its own lawyers and staff. Early on, IJ lawyers are not only given significant

responsibilities for their own cases, but they are also actively encouraged to seek out case opportunities. For example, I thought we

should get involved in fighting civil forfeiture laws from a property rights perspective and immediately had the support of the rest of the staff. I think everyone at IJ has had a similar experience.

IJ has also been particularly effective in spreading the word about the importance of individual liberty. And in this area, we started off small as well. Chip and Clint love to tease me about



my first-ever quote, which appeared in *Beef Magazine*. (The reverse side of the article featured an advertisement for a de-worming pill for cattle.) Now we have national recognition as a leading voice defending constitutional rights against out-of-control governments.

The Institute is populated by individualists, but that does not stop us from having a great sense of team spirit and loyalty to one another and to the cause of freedom. We not only tolerate, but (for the most part) revel in each other's differences and outright quirks. (And if anyone wants to hear my pretty dead-on accurate impressions of Chip and Clint, along with such libertarian luminaries as David Boaz, Roger Pilon and Richard Epstein, just ask!)

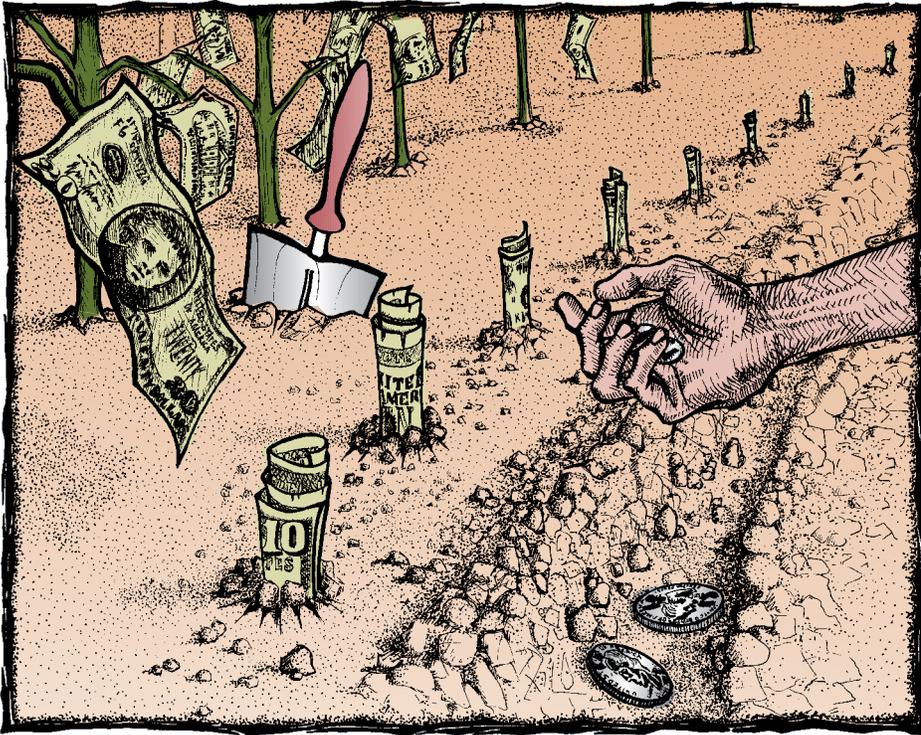
There is nothing else in the law I would rather do than what we do here. So for the next decade, I'm either going to be continuing to fight the good fight at IJ or do something completely outside of the law. But my saxophone playing must get much, much better before I venture down that path. ♦

Scott Bullock is an Institute for Justice senior attorney.



INTERACTIVE 
This story is part of our website collection of tenth anniversary celebration stories.

Planting Resources for Freedom's Future



By Beth Stevens

As 2001 winds down, it's time to consider end-of-the-year tax planning. For those who value freedom, incorporating gifts to IJ in your financial planning helps defend liberty on several fronts.

First, it gives IJ more resources to wage our battles for economic liberty, school choice, property rights and free speech. Savvy charitable giving also can reduce your taxes, leaving you with more of your hard-earned money to spend as you—not the government—see fit. Finally, because you're paying less in taxes, pesky bureaucrats have fewer resources with which to squelch our freedoms.

When you meet with your attorney, accountant or financial planner, consider how you can help defend freedom in the following ways:

- **Donate long-term appreciated assets** such as securities. Not only will you receive an income-tax deduction equal to the fair market value of the portfolio (no matter how little you paid for it), but you also avoid paying capital gains taxes on the appreciation. IJ can use the full fair market value to defend liberty.
- **Name IJ as a beneficiary of your IRA, 401(k), or other retirement account.** Retirement plan assets can be subject to a plethora of heavy-handed taxes after the beneficiary dies, including federal and state death taxes (which can reach 55 percent), income taxes and excise taxes. This means the bulk of your hard-earned savings goes to the government. Giving to IJ can change that. Naming IJ the beneficiary allows the full value of the account to work entirely for liberty and not to fund even bigger government.

- **Naming IJ as a beneficiary of your life insurance policy** is another alternative. Proceeds from insurance policies can be subject to federal and state death taxes. Naming IJ as the beneficiary allows all the proceeds to help defend freedom.

- **Create a charitable lead trust ("CLT") or charitable remainder trust ("CRT") for IJ.** In a CLT, you create a trust that lasts for your lifetime or a set number of years. IJ receives the income from the trust during that time to continue our fight for liberty. When the trust ends, the assets can be given to your loved ones at a reduced gift-tax cost. A CLT is a great way to benefit IJ immediately while keeping assets in your family.

A CRT is the mirror image. You or a loved one receives the income during the trust period and when the trust ends, IJ receives the property. CRTs provide great vehicles for diversifying appreciated portfolios.

- **Name IJ as a beneficiary in your will or revocable living trust.** You can leave IJ a specific asset, a set dollar amount or a set fraction of your estate. You could also leave IJ everything that is left over after planning for your family. Including IJ in your will or trust will help IJ continue its fight to limit government and expand liberty in the years ahead.

These suggestions are for information only and are not intended to be legal, tax or accounting advice, or a substitute for such advice. Please contact a qualified advisor such as your attorney, accountant or financial planner if you're considering incorporating a gift to IJ into your tax planning.

Thanks so much, as always, for your support. It's only through your continued generosity that we're able to stand toe-to-toe against *and beat* far-larger adversaries. ♦

Beth Stevens is IJ's development director.



Supreme Challenge: School Choice Faces Its Biggest Test



IJ President **Chip Mellor** welcomes school choice parents and children the Institute represents in cases across the nation.

School Choice continued from **page 4**

The Program

The Cleveland Scholarship and Tuitioning Program was enacted in 1995 and signed into law by then-Gov. George Voinovich. It responded to a severe crisis in the Cleveland public school system, in which only one in every 14 students graduates on time with senior-level proficiency—and one in every 14 students is a victim of crime inside the schools.

The crisis was so severe that for the first time in U.S. history a federal court transferred control of a school system to the state due to administrative malfeasance. The crisis motivated Cleveland Councilwoman Fannie Lewis to bring busloads of parents to the state Capitol to lobby for school choice.

Four thousand children are enrolled in the program. Studies show significant academic gains. Meanwhile, in 1998-99, the Cleveland public schools flunked every one of the state's 27 performance standards. Last year it improved to passing three of 27.

The program provides scholarships of up to \$2,250 for low-income students to attend private schools, which must accept the scholarships as 90 percent of tuition. Suburban public school districts were invited to participate at a much higher reimbursement rate, but all declined. Fifty-six private schools, mostly Catholic, agreed to provide an education life preserver to Cleveland schoolchildren.

The Lawsuits

The Empire quickly fought back. The NEA and American Federation of Teachers, along with the American Civil Liberties Union, People for the American Way, Americans United for Separation of Church and State, and others filed a state court lawsuit challenging the program on state and federal constitutional grounds.

IJ immediately intervened on behalf of school choice families.

The trial court upheld the program, and it commenced in fall 1996.

In 1999, the Ohio Supreme Court ruled 4-0 that the program does not violate the First Amendment, but invalidated the program because it was adopted as part of the state budget in violation of the state constitution. The legislature promptly re-enacted the program as a separate bill.

The plaintiffs then filed a new lawsuit in federal court, solely on First Amendment grounds. Hours before the 1999-2000 school year was to begin, U.S. District Court Judge Solomon Oliver enjoined the program, jeopardizing its 4,000 participants. After a huge public outcry, Judge Oliver reversed most of his own injunction. In November 1999, the Supreme Court vacated the injunction in its entirety by a 5-4 vote. Nonetheless, Judge Oliver went on to invalidate the program. The U.S. Court of Appeals for the Sixth Circuit affirmed that ruling by a 2-1 vote earlier this year.

Despite the legal tumult, the program is

now in its sixth year of helping low-income kids get a good education.

The federal courts ruled that the Cleveland program is an "establishment of religion" because most of the children are enrolled in religious schools.

But in a series of six rulings between 1983 and 2000, the U.S. Supreme Court has upheld the use of public funds in religious schools or activities if (1) the aid is "neutral," with no preference for religious programs, and (2) the funds are used in religious schools only as a result of "true private choice."

We worked closely with Gov. Voinovich and state legislators to make sure the program met these criteria—and it still does today.

IJ's Strategy

Despite our optimism, we are leaving no stone unturned. Our strategy is multifaceted:

IJ's brief—Our brief not only makes basic constitutional arguments, but also places the program in its real-world context. We demonstrate that the program's "primary effect" is not to establish religion, but to expand educational opportunities. (Check out IJ's brief at www.ij.org.)

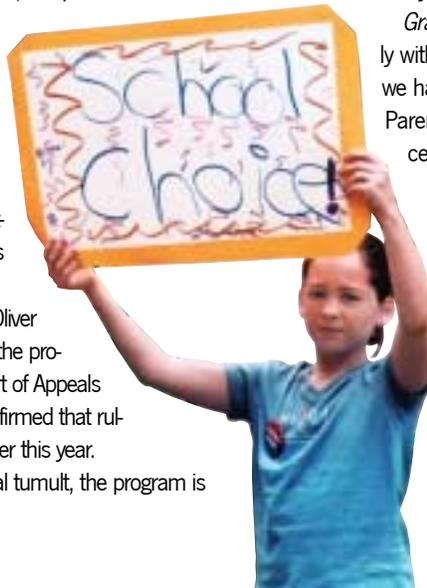
Amicus coordination—We have helped coordinate the preparation of more than two dozen friend-of-the-court briefs, including a brief by two big-city mayors (Milwaukee's John Norquist and New York's Rudy Giuliani); and one representing dozens of law professors from all parts of the philosophical spectrum, authored by former Berkeley law dean Jesse Choper.

Berkeley law dean Jesse Choper.

Grassroots organization—Working closely with Cleveland Councilwoman Lewis, we have helped develop Cleveland Parents for School Choice to tell the success story of the scholarship program.

Court of public opinion—IJ's Vice President for Communications John Kramer is directing a coordinated campaign among many organizations to ensure that the Cleveland story is accurately and positively portrayed in the media.

Careful coordination with our legal allies—Because the State of



Ohio is the main defendant, IJ may not get to present argument in the Supreme Court. But we are working closely with the state's lawyers and U.S. Solicitor General Ted Olson to prepare a top-notch oral argument.

We could not be where we are without the passionate support of dozens of pro-school choice groups, foundations and activists. We continue constant communication and coordination on all fronts.

Time Frame

IJ filed its opening brief on November 9. We expect argument in February or March, and a decision by the end of June.

What's at Stake

- The essential principle that parents, not the government, should decide where their children attend school.
- The educational fate of 4,000 economically disadvantaged schoolchildren in Cleveland—and countless thousands more around the nation.
- The teacher unions' monopoly stranglehold over public education.

IJ's Perspective

When IJ opened its doors 10 years ago, we vowed we would defend every school choice program until the constitutional cloud was removed, once and for all. The resources and tenacity of those defending the status quo seemed unmatchable. Families needed a defender. Our resources pale in comparison to our opponents, but our passion and commitment never wane.

For me, the odyssey has been even longer. As a college senior (many years ago!), I decided against a career as a classroom teacher after witnessing abysmal conditions in public schools. Having taken a course in constitutional law and read Milton Friedman's persuasive argument for school vouchers, I decided I could do more for education in the courtroom than the classroom.

I didn't realize then how rare it is for a lawyer to have the chance to pursue such lofty dreams. Fortunately, IJ and its supporters have made that work possible.

The rewards are amazing. Feeling the joy among parents who thought they had no choices—seeing the beaming pride on the little children's faces—is phenomenal.

It's worth fighting for. And we plan to win.
Stay tuned.◆

Clint Bolick is IJ's vice president and director of state chapter development.



The School Choice Team

By Maureen Blum

Sometimes we only hear about the quarterback, but it is important to recognize the whole team that runs the plays—both offense and defense—down the field in this long season, securing school choice for more than 4,000 children in Cleveland.

Hooray! Let's hear it for the school choice team!

The game clock has been ticking for 10 long years and we are now at 4th and goal.

It has always been about the kids—not the lawyer, not the litigation, not the teacher's union, not even the people *claiming* to be for the American way. It is about parents'—not the government's or a union's—freedom to choose the best available education for their kids. There has been a team in place—often behind the scenes from national headlines—supporting and fighting for the kids and for school choice.

In the huddle, we begin with the phenomenal Cleveland City Councilwoman Fannie Lewis, whose determination began the drive for a better education for her inner-city constituency living in the Hough neighborhood and expanded to a citywide effort on behalf of Cleveland children. It was the vision and fighting spirit of Councilwoman Lewis and her constituents that sparked the Ohio legislature to pass the Cleveland scholarship program and prompt former Governor George Voinovich to sign it into law. With that as the opening kickoff, the usual suspects were forced to try to stop the cohesive offensive front line of parents and local activists who were reinforced by school choice organizations nationwide.

IJ client Chris Suma has been a key player on the team. She has served as motivator to the team at large by rallying and organizing parents, and by speaking at community forums and rallies. She has become a national advocate for school choice and has broadcast her personal cause through the media. She has traveled to Columbus, Cincinnati, Florida and Washington, D.C., promoting the program and supporting the lawsuit.

Rosa-Linda Demore-Brown, executive

director for Cleveland Parents for School Choice (CPFSC), has initiated a community communication liaison project within the Hough neighborhood and is expanding the network to keep parents up-to-date as the litigation proceeds. Working out of the Hough Community Council building, Rosa-Linda has expanded the team neighborhood outreach by organizing parent meetings, orchestrating a back-to-school pep rally, and maintaining a CPFSC booth at local events. Working together, Chris and Rosa-Linda have developed a communications tree outside of the Hough neighborhood to include both West Side and East Side Cleveland families.

Most recently Citizens for Educational Freedom (CEF), the oldest parent school choice organization in the country, rejuvenated the Cleveland team. Based in St. Louis, CEF organized a rally in Cleveland in support of the parents on the eve of the U.S. Supreme Court's pending *cert* announcement. It served as a great motivator to launch the final drive to the High Court. CEF's rally sparked a union counter-rally that was poorly attended and only fueled the excitement and determination of program supporters. Sister Renee Oliver, serving as CEF's national secretary, is based in Cleveland. She has joined the team full-time with Rosa-Linda and Chris, and works primarily as a liaison for the Cleveland diocesan outreach.

After playing both offense and defense for so long, all of these players are part of our special teams working together to advance choice in Cleveland and nationwide, offering relief and moral support. Each organization and activist has added value to this combined effort bringing their unique resources and expertise to the game.

The final plays are now being called as we march to the end zone: the U.S. Supreme Court.◆

Maureen Blum is IJ's director of outreach programs.



10th Anniversary

November



IJ celebrated 10 years of unique public interest litigation, media relations, training and outreach by gathering benefactors, clients and staff on Florida's Amelia Island November 1-4. The joyous occasion offered all who attended a chance to reflect on IJ's decade of accomplishments and exciting plans for the future. In the aftermath of September 11, the gathering demonstrated an undaunted resolve against the forces of fear and a resounding affirmation of the principles of freedom.

constitutional issues; and donors experienced the full scope of their investments in the Institute. Of course, we found time for some skeet shooting, sailing, golf and tennis.

With the Institute we have built and the benefactors and clients that we have attracted, it's no wonder we're excited and confident about making the most of the opportunities and challenges that lie ahead.

Throughout the weekend, clients shared their stories of heroism; staff provided thought-provoking commentary on



ary Celebration

1-4, 2001



Litigation Update

Mississippi Supreme Court Halts Condemnations

The Supreme Court of Mississippi has guaranteed that nothing will happen to property owners fighting the State of Mississippi's attempt to take their property until it has had a chance to review the constitutionality of the State's actions. On September 28, 2001, the Court issued a stay of any further proceedings in the trial court. The Archie family may now live in their homes and on their land until the case is resolved.

The State of Mississippi is abusing its eminent domain authority by taking the land of three rural property owners, not for a public use, but to give to Nissan to build a truck manufacturing facility. The State wants to throw these people, who have owned their property for generations, out of their homes and off their land. The property owners, with the help of the Institute for Justice and the Southern Christian Leadership Conference, are fighting back.

The State arrogantly refused to halt its eminent domain actions while the case was pending, so the Institute filed stay motions, first with the trial court, which rejected our request, and then directly with the Supreme Court, which issued the stay the day after we filed our motion. The property owners can now rest easy in their homes while the Institute brings these vital constitutional issues before the Mississippi Supreme Court.

Fight Continues Over New York Eminent Domain Abuse

On September 19, 2001, Judge Harold Baer of the U.S. District Court for the Southern District of New York dismissed the lawsuit of William Brody and William and Bill Minnich challenging New York's Eminent Domain Procedure Law.

The Judge's decision was based entirely on procedural grounds. He held that the Minnichs did not have "standing." The Minnichs had consulted a lawyer (not the Institute for Justice) before the government designated their property for condemnation. The law assumes clients automatically know everything their lawyers know, and thus the Minnichs could not claim they did not understand New York's procedures.

Bill Brody's challenge was rejected on "res judicata," a doctrine that holds that a person may not bring a lawsuit if he could have raised the same issues in an earlier proceeding. The court held that Brody could have raised the unconstitutionality of the Eminent Domain Procedure Law as a defense in state court when the Village of Port Chester began condemnation proceedings against his property.

The Judge concluded by noting that the lawsuit addressed a "very serious underlying issue." IJ has filed a notice of appeal in the case and will also begin looking for other New Yorkers who have been affected by the same law but who do not have the same procedural complications.



The IJ Clinic Helps an Entrepreneur's Vision Take to the Street

By John Stinneford

Shawna Spencer is realizing her dream. For years, she has wanted to translate her love of fashion into a viable business opportunity. But as a single mother of two working a full-time job, the dream always remained just a dream—until now. With the help of the Institute for Justice Clinic on Entrepreneurship, she has opened her own shoe store in the Lakeview neighborhood of Chicago and is working to transform her vision into a sustainable business.

For years, Shawna has been interested in fashion. She met people in the industry, kept up with trade magazines and dreamed of opening her own store. Back in 1994, she almost did, even going so far as to register a business name and work on a business plan, but legal and financial obstacles always held her back.

Finally, two years ago, she decided to change things for herself. She heard about a shoe trade show in Las Vegas and decided to go there to investigate the market. Getting into the show itself was quite an obstacle, since the trade association required each attendee to show that they were already connected to the industry. But Shawna found a way. She borrowed credentials from a friend who was a buyer for a major department store, and she was off.

At the show, Shawna met with shoe vendors from all over the world. Many were discouraging, telling her that she could “never afford” to buy from them, but she persisted, asking questions and observing how things worked. She even met with the president of the association, who told her she needed to work in a department store’s shoe department to learn the ins and outs of the trade before she could open her own store.

And so she did. While keeping her full-time job and raising two children, Shawna took a part-time job at Marshall Field’s shoe department, where she stayed until she learned every-

thing they had to offer.

Finally, Shawna was ready. With help from a local micro-enterprise organization, she put together a business plan and approached the IJ Clinic on Entrepreneurship for help with her legal needs. We incorporated her, helped her find lenders, and helped her with her lease, licensing and other legal matters. Clinic students Santiago Alvarez and Michael Mullican from the University of Chicago Law School spent many hours putting her legal affairs in order and enabling her to open her store. And in September of this year, she opened Alise’s shoe store and foot spa. This store, named after Shawna’s daughter, is the culmination of years of dreaming, planning and working.

The events of September 11 have offered a new challenge to Shawna. Just as she was opening her store, consumer demand softened considerably, cutting deeply into her cash flow. But Shawna’s determination is as strong as ever—and so is ours. In a new initiative, the IJ Clinic on Entrepreneurship has paired Shawna with students from the



IJ Clinic client **Shawna Spencer** is joined by John Stinneford, the Clinic’s assistant director, in front of her new store.

University of Chicago’s Graduate School of Business to help her with a marketing plan and to think of ways to strengthen her cash flow.

Shawna Spencer is just one of the many examples of courage and determination the clients of the IJ Clinic on Entrepreneurship have shown again and again. We hope and expect that she will soon join our growing list of success stories.

John Stinneford is the assistant director of the Institute for Justice Clinic on Entrepreneurship at the University of Chicago.



You Can Help IJ Train The Best and Brightest



By Kate McFarland

Even though it may seem eons away, the Institute for Justice is already preparing for an exciting and productive summer in 2002. A big part of summer at IJ is our law student program. We are now seeking talented law students to clerk at IJ and participate in our law student conference.

Clerks will have the opportunity to research and help create potential cases, draft pleadings and contribute to legal briefs. In addition to the legal work, IJ provides its clerks with a full calendar of educational and social activities. We host lunches with prominent lawyers, professors, IJ clients and judges giving them an opportunity to share their experience with the clerks. IJ clerks have the opportunity to attend forums at the nation's top libertarian and conservative policy organizations, socialize with like-minded interns and play for IJ's championship softball team!

During the second weekend in August, IJ invites 40 law students from

across the nation to attend a three-day conference on public interest law. Our law student conference is held each year at Georgetown University and features lectures and workshops with some of the nation's leading legal scholars. From cutting-edge constitutional theories to public interest litigation tactics to arguing in the court of public opinion, our students are exposed to ideas and skills that go beyond what is typically taught in law school.

Applications are currently being accepted for both clerkship positions and our law student conference. For more information on clerkships, please review our web page at www.ij.org. Also available online are applications for our law student conference. Please pass this information along to anyone who might be interested in spending an exciting and rewarding summer in Washington, D.C. or Arizona while doing their part to safeguard individual liberties. ♦

Kate McFarland is IJ's HAN and outreach coordinator.



IJ Thanks Its Cornerstone Supporters: Charles & David Koch

IJ presented its Cornerstone Award to Charles and David Koch for their uniquely important role in funding the Institute. Charles Koch provided the initial seed funding that made it possible to launch the Institute in 1991. David Koch has been a generous benefactor each year of IJ's first decade. We are deeply grateful for their support and the commitment to liberty it represents.

Thank you, Charles and David!

Volume 10 Issue 6

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 own destinies as free and responsible members of society. It 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, it trains law students, lawyers and policy activists in the tactics of public interest litigation to advance individual rights.

Through these activities, it 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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Quotable Quotes

WEAR-TV Channel 3 News, Pensacola Florida



“If we can show the judge that [the primary effect of the voucher program is to educate disadvantaged children] then there won't be a constitutional problem”

National Review

“The folks at Institute for Justice must be humming the ZZ Top song ‘I’m Bad, I’m Nationwide’ this week—they’ve just announced a plan to open state chapters that promises to make one of the country’s most important public-interest law firms even more valuable to the cause of liberty.”

Wall Street Journal Online

“The Institute for Justice is demonstrating that while media attention is lavished on actions of allegedly anticompetitive firms such as Microsoft, almost every city in this country has quietly passed laws enshrining monopoly practices. They restrict job opportunities for working people, hike the prices charged to consumers and don’t improve safety.”

The Arizona Republic

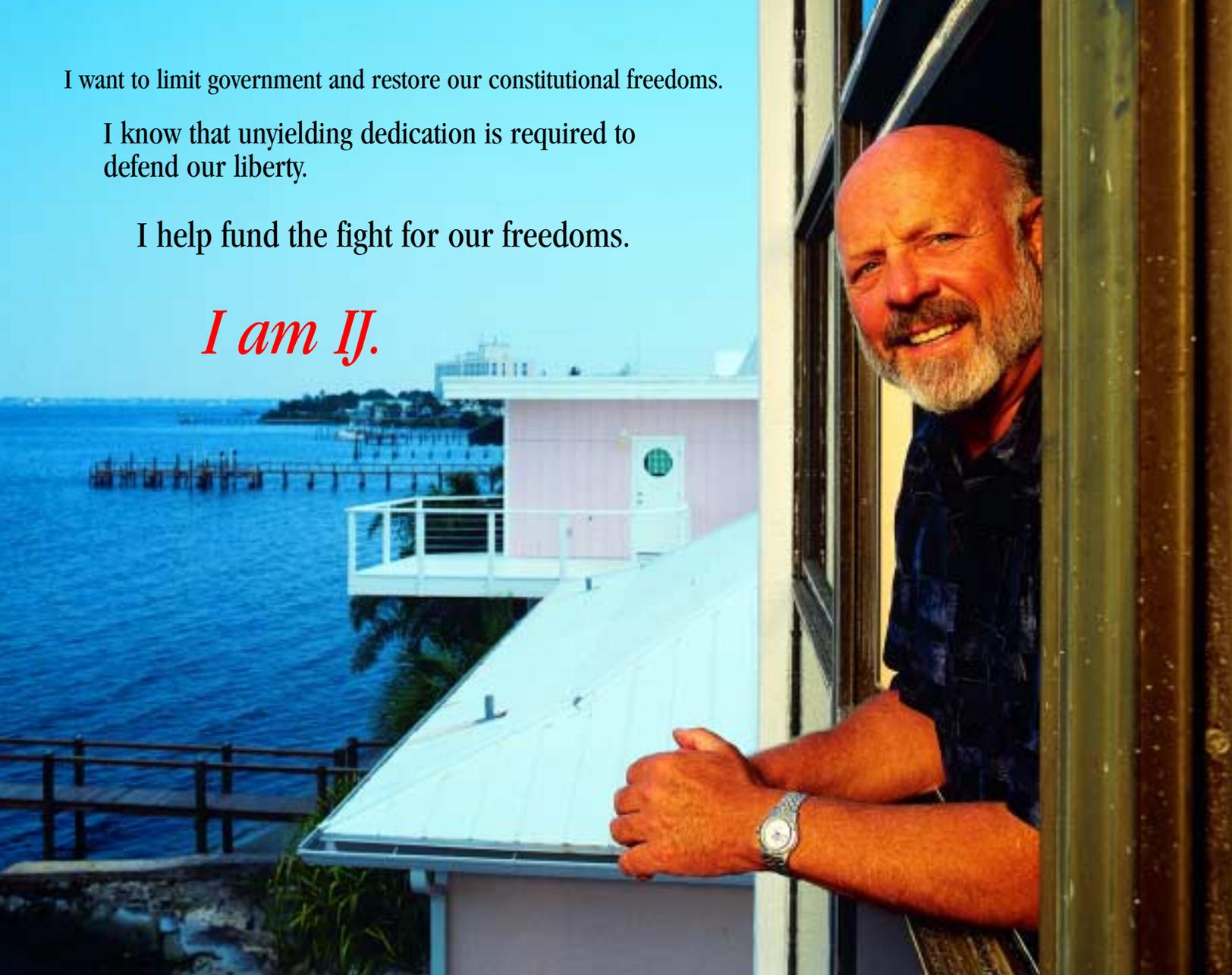
“IJ seeks to do for the political right what the American Civil Liberties Union does for the political left: take aggressive stands in defense of its core values. For the institute, those values center on defending individual business people and property owners against what members believe is burdensome government regulation, and asserting parents’ rights to use vouchers to send their children to private schools.”

I want to limit government and restore our constitutional freedoms.

I know that unyielding dedication is required to defend our liberty.

I help fund the fight for our freedoms.

I am IJ.



*Bill Dunn
IJ Donor*

www.IJ.org

Institute for Justice

“The abuse of eminent domain has become a national plague, and the Institute for Justice is fighting to end it.”

—The Boston Globe



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