



INSTITUTE FOR JUSTICE

September 27, 2012

Subject: Civil Asset Forfeiture

Mr. John R. Venrick
41250 250th Avenue Southeast
Enumclaw, WA 98022-8630

Dear Mr. Venrick:

America is drowning in a sea of government. At virtually every turn, individuals are beset by a mind-boggling array of laws and regulations that compel obedience, discourage innovation, and trample the basic attributes of the American Dream.

The U.S. Constitution was meant to serve as what James Madison called an “impenetrable bulwark” against illegitimate government power. But politicians routinely ignore those limits, and judges all too often permit them to expand government power at the expense of individual liberty. The result has been an explosion in the size, cost, and intrusiveness of government.

The problem lies not in the Constitution, but with courts’ failure to properly enforce it. From the abandonment of federalism to open disregard for property rights and economic freedom, the U.S. Supreme Court consistently protects government prerogatives at the expense of individual liberty. The source of this error lies in the mistaken belief on both the left and the right that the chief constitutional value is majority rule and the principal judicial virtue is reflexive deference to other branches of government. This belief has led to judicial abdication, removing courts from their essential role in the system of checks and balances so carefully crafted by our Founders.

Against this backdrop, the Institute for Justice’s role as the nation’s leading legal advocate for constitutionally limited government takes on even greater importance. With more than 20 years of experience pioneering a new approach to public interest law, IJ is perfectly positioned at a crucial time to become an ever more effective advocate for liberty and to reinvigorate constitutional protections that guarantee all individuals the freedom to pursue their American Dream. I write today to ask for your renewed support of our work to defend this freedom with a \$60, \$75, or \$90 donation.

We are transforming the legal landscape with our time-tested brand of strategic public interest litigation, urging judges at the local, state, and federal levels to engage with the cases before them and resist ruling reflexively in favor of government. Our efforts are bearing fruit.

Through our **Campaign for Economic Liberty**, IJ fights every day on behalf of entrepreneurs who are burdened by unconstitutional restraints on the right to earn an honest living. Government needlessly and increasingly burdens free enterprise and places a variety of arbitrary and outrageous hurdles in the way of entrepreneurs, often for no other reason than to protect politically favored businesses and industries. These barriers take on many different forms, but their effect is to prevent entrepreneurs from using hard work and ingenuity to take advantage of opportunities for themselves, their families, and their communities.

Regardless of the occupation, the rule of law we seek to restore is the same for all entrepreneurs, and each case we pursue is strategically designed to vindicate clear principles, improving the circumstances of our clients and hundreds or thousands of others similarly situated.

For instance, last month in Utah, we secured a victory for our client Jestina Clayton. Jestina has been braiding hair for most of her life, but the government irrationally claims that she can't be paid to braid unless she passes a state-approved cosmetology test, not one hour of which teaches how to braid hair. In its decision striking down the regulations, the court ruled that *"the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that the Constitution was designed to protect"* and that *"Utah's cosmetology/barbering licensing scheme...is wholly irrational and a violation of [Jestina's] constitutionally protected rights."*

This ruling is a major win for entrepreneurs everywhere who simply want to earn an honest living free from unreasonable government interference, and it demonstrates how IJ's strategy of winning incremental victories is fostering fundamental changes in the law that transcend any particular occupation.

Moreover, individual cases like Jestina's play an integral role in IJ's broader strategic approach to reestablishing enduring legal protections for entrepreneurs and casting a bright light on government attempts to protect industry insiders. For an example of this strategy in action, consider our effort on behalf of the Benedictine monks of Saint Joseph Abbey. The monks wanted to sell handmade wooden caskets to help pay for their modest needs, but were prevented from doing so because they were not licensed as funeral directors under Louisiana law. The trial court struck down the state's irrational casket regulations last year, ruling that they served no other purpose than to protect the funeral cartel from upstart competition.

The state appealed, and in June we appeared before the Fifth U.S. Circuit Court of Appeals in New Orleans to defend the monks' earlier victory and ask the court to confront head-on whether protecting cartels from competition at the expense of economic liberty is a constitutional use of government power. As a result of IJ's previous litigation, federal appellate courts are split on the answer to this question, making it a live legal dispute that will ultimately need to be settled by the U.S. Supreme Court. Whether it is this case or one of the dozens of other economic liberty cases we are currently developing or litigating, we won't rest until we fully vindicate the right to earn an honest living. If we are to restore America to its rightful place as the land of opportunity, it is critical that entrepreneurship be unshackled from the chains of arbitrary government regulation.

In the same way that IJ led the charge against eminent domain abuse and helped strengthen **property rights** protections across the country, we are now leading the fight against civil asset forfeiture. Under current civil forfeiture laws, police and prosecutors can seize property based on the mere suspicion that it has been involved in a crime, no arrest or conviction necessary. If the owner doesn't have the resources to fight the taking, the government keeps everything. This is one of the most serious threats to property rights today and turns on its head one of the fundamental principles of our legal system—under civil forfeiture, property owners are effectively guilty until proven innocent.

The most troubling aspect of civil asset forfeiture is the profit incentive at its core. In most states and under federal law, law enforcement can keep some or all of the proceeds from forfeitures, perversely incentivizing them to police for profit rather than justice. We go to trial this fall in Massachusetts on behalf of Russ and Pat Caswell, an elderly couple who could lose the motel their family has owned and operated for two generations. The local police department wants to seize the Caswells' \$1 million property through civil forfeiture on the grounds that a handful of their guests during the past 20 years have engaged in illegal activity while staying at the motel.

Our clients are scrupulously law-abiding and have gone to great lengths to make their property safe—they are simply two of the countless innocent owners across the country swept up by flagrant forfeiture abuse. We are committed to ending this injustice and protecting property rights for all Americans.

America's future is tied to the education of its youth. Sadly, many children suffer in inadequate public schools. That's why we are the lawyers for the **school choice** movement and stand up in court for parents and children—the real parties of interest in school choice cases. Nowhere is the need for parental options greater than in Louisiana. IJ intervened to defend Louisiana's new school choice program, which will offer thousands of kids a chance at a decent education by providing them with scholarships to attend the private school that best meets their needs. The Louisiana Department of Education has received more than 10,000 applications for scholarships and extended

scholarship offers to more than 5,500 students, demonstrating the eagerness of parents and children for educational alternatives.

Our work in Louisiana brings to four the number of school choice programs we are currently defending, including ongoing litigation in Colorado, Arizona, and Indiana. The program in Indiana could grow to be the largest in the country, benefiting more than 60 percent of the families in the state. Furthermore, we expect more activity in the school choice realm in the coming months, with possible lawsuits over new programs in New Hampshire and elsewhere.

These programs promise an opportunity to transform American education by offering ever more parents a choice in the school their children attend. Introducing choice into the equation restores a fundamentally American value to the education system and empowers individuals to pursue the best option for their families, giving the next generation a chance to prosper and succeed.

Finally, thanks to a proliferation of campaign finance regulations, ordinary people increasingly find that they need an accountant and a lawyer to engage in activity that should be routine under the **First Amendment**. In the coming election season and beyond it is going to be enormously important for Americans to gather together and speak out about the direction our country is going, but campaign finance laws all too often stifle basic grassroots political participation.

In one of our recent cases, in Arizona, our client Dina Galassini was contacted by a town clerk for violating campaign finance laws after merely sending an email to a few friends asking them to join her in a rally to oppose a local bond election. Under Arizona's law, any time two or more people get together to oppose or support a ballot initiative, the government forces them to comply with a staggering number of regulations before they can do something as fundamentally American as hold a sign on a street corner, which is all our client originally wanted to do. The First Amendment is one of America's greatest protections against government tyranny, and IJ will fight tirelessly to make sure citizens' ability to freely express their opinions and hold their elected officials accountable is not at the mercy of government.

As our clients demonstrate, the American spirit is alive and well. But in order for that spirit to flourish, government needs to get out of the way and for that to happen we need courts to defend the essential freedoms enshrined in the Constitution. With each case we file, the Institute for Justice engages judges and encourages fidelity to the Founders' vision of a Constitution that protects the ability of all individuals to live as free and responsible members of society.

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Your support has been vital to our work and your donation of \$60, \$75, or \$90 now will help us restore government to its proper role in our lives. Thank you very much and I hope to hear from you soon.

Sincerely,

A handwritten signature in cursive script that reads "Chip".

William H. Mellor

President and General Counsel