



INSTITUTE FOR JUSTICE

November 21, 2012

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

Dear Mr. Venrick:

We face such vastly expanded government at all levels that only constitutional limits on its power offer the prospect of enduring freedom. Each of us has a role to play. No one individual or organization has the ability to do it all, but the Institute for Justice is uniquely positioned to make a powerful impact at an extraordinary time. The Constitution is where our most important protections lie and IJ has the experience and tools to defend the Constitution and expand liberty in a way that no other organization can. That is what your support of IJ makes possible and why I ask today that you renew your support with a donation of \$60, \$80, or \$100.

It is tragically clear that the law is not what it should be. Indeed, for decades, the courts have abdicated their responsibility in enforcing the Constitution. The time for them to engage and fulfill their role as bulwarks of liberty is now, but they can't do this on their own or through ad hoc rulings. They must have the right cases presented in the right way at the right time.

Nothing less than the most sophisticated and effective public interest advocacy will suffice to secure constitutional protection for our most precious liberties. Such cutting-edge constitutional litigation is IJ's hallmark: challenging the status quo and creating and seizing new opportunities. The best opportunities come from the convergence of topic and timing—when we raise the issues we litigate to the national stage, leading new and revived audiences to embrace the rights we seek to vindicate. Litigation alone is not enough to make this happen. We strategically and consistently incorporate award-winning communications, unimpeachable social science research, and grassroots outreach and activism to make an impact that, as nationally syndicated columnist George Will put it, makes the Institute for Justice “*the biggest force multiplier in Washington.*”

One area where our approach is fundamentally transforming the law is our **Campaign for Economic Liberty**. We are bringing to bear all of the components of our unique approach to public interest law. Here's how.

You may recall our economic liberty case on behalf of the Benedictine monks of Saint Joseph Abbey, who wanted to sell handmade wooden caskets to help pay for their modest needs. But the Louisiana funeral board threatened them with fines and jail time for selling caskets without becoming licensed funeral directors. Last month, we won a major victory at the Fifth U.S. Circuit Court of Appeals, vindicating our arguments for economic liberty and reflecting the kind of judicial engagement we aim to elicit in each case we file. The court examined the facts of the monks' case closely and rejected all of the funeral board's justifications for the law, stating that "*the great deference due state economic regulation does not demand judicial blindness to the history of a challenged rule...nor does it require courts to accept nonsensical explanations for naked transfers of wealth.*"

This is IJ's third federal appellate victory for economic liberty, and it establishes a roadmap for how other courts and other entrepreneurs can defend their economic liberty from government regulations. The ruling culminates more than two years in court on behalf of the monks. It is also the result of more than a decade of legal groundwork challenging casket monopolies and more than 20 years of litigating economic liberty cases nationwide. At the same time, we propelled the issue onto the national agenda with high-profile media coverage. This year alone we brought the case for economic liberty to major news outlets like *The Wall Street Journal*, *The Washington Post*, NBC's "Rock Center with Brian Williams," and the BBC World News, as well as countless blogs and other new media sources.

We are currently litigating and developing dozens of similar cases defending economic liberty and challenging occupational licensing laws at the local and state levels, as well as in federal court with a lawsuit against the IRS. We also deployed our strategic research team to examine occupational licensure restrictions for 102 low-income occupations in all 50 states and the District of Columbia and to document just how prevalent restrictions on economic liberty have become. The resulting report, *License to Work*, casts doubt on the need for widespread occupational licensure and dramatically illustrates how arbitrary and irrational these laws often are, and how they are used more to protect entrenched interests than to protect consumers.

License to Work earned more than 60 media placements, including high-profile outlets like *The New York Times Magazine*, the Associated Press, and National Public Radio. Legislators and government officials also took notice, and we are aware of the report being used to guide licensure reform efforts in states like Florida, Texas, and Wisconsin.

We are thus generating new momentum for economic liberty and demonstrating to judges, politicians, and the media that this is an issue of vital public importance. This work also has important implications for **free speech**. More and more individuals—from bloggers to interior designers—earn a living by speaking, and technology has made it easier than ever for potential customers to seek out their services. However, as occupational licensing laws proliferate across the country, increasing numbers of people are seeing their ability to communicate with their clients and customers arbitrarily

limited. This raises one of the most important unanswered questions in First Amendment law: When does the government's power to license occupations trump free speech? IJ is developing and filing cases designed to ensure that this question is resolved in a way that expands individual liberty.

Our guides present a compelling example of how the Institute for Justice percolates a larger issue in the context of multiple smaller cases. We have previously gone to court in Philadelphia and Washington, D.C., to defend these entrepreneurs and develop this area of the law. We built on those cases when we filed our most recent tour guide licensing case in New Orleans, where the city regulates tour guides in a way that it would never consider regulating an author, singer, or anyone else who's paid to speak. New Orleans requires every tour guide to pass a city-approved exam and undergo an FBI background check every two years to get the government's permission to point out historical landmarks. But the First Amendment prohibits New Orleans from irrationally limiting harmless occupational speech like that of tour guides. In the coming year we will carry our occupational speech litigation forward with ongoing cases in North Carolina and Nevada and a new case in Texas next month, while we continue investigating similar cases in other states.

Our vindication of **property rights** is focused on civil asset forfeiture, one of the most serious threats to property rights today. As we did with eminent domain abuse, we are using the platform our unique brand of public interest law provides to raise a previously little-known and unappreciated issue to national prominence. As you may know, civil forfeiture laws allow police and prosecutors to seize property based on the mere allegation that it has been involved in a crime, no arrest or conviction necessary. In most states and under federal law, law enforcement agencies get to keep some or all of the proceeds from forfeitures. Sadly, this incentive can encourage them to "police for profit" and pursue innocent owners at the expense of other policing priorities. What's more, in most states forfeiture is easy for the government to pursue and hard for property owners to challenge.

Countless property owners across the country are put through the ringers of civil forfeiture proceedings under the assumption that they won't be able to fight back. We again used our strategic research to demonstrate the magnitude of the problem when we released *Policing for Profit*, a report chronicling how state and federal laws leave innocent property owners vulnerable to abuse and encourage law enforcement to take property to boost their budgets. The problem has grown. The federal forfeiture fund alone has piled up more than \$1 billion in assets seized from property owners.

We filed lawsuits challenging egregious abuse in Texas and Massachusetts. Our Massachusetts case went to trial earlier this month and the ruling we secure will set the precedent for property owners nationwide. Our clients, Russ and Pat Caswell, own and operate the Motel Caswell in Tewksbury, which has been in their family for two generations. They take great care to keep their motel safe and haven't been accused of a single crime, but the local police department has partnered with the federal government to seize the Caswells' \$1 million property through civil forfeiture on the grounds that a

handful of their guests during the past 20 years engaged in illegal activity while staying at the motel. This fact doesn't distinguish the Caswells' motel from any other motel or hotel in the country, but as a mom-and-pop outfit, they are an easy target for avaricious law enforcement officials. Unless they can live up to the almost impossible standard of proving they did everything conceivably possible to prevent crime, they stand to lose their entire life's work.

Since we took on the issue and began promoting it, the Caswells' story and the problem of civil forfeiture generally have been featured in a growing number of national and local news outlets, always generating outrage with the government's actions. We are building on this momentum and will soon file new cases in states like Tennessee that are notorious for their forfeiture laws.

November marks a milestone for IJ's **school choice** work as we appear in court to defend programs in three states, at all levels of the judicial system, within a matter of two weeks. As the lawyers for the school choice movement we are critical to securing parental choice when the teachers' unions sue to strike down new programs and to helping ensure that greater numbers of children nationwide have the opportunity to obtain the quality education they deserve. The depth of experience and expertise we bring to our school choice litigation means that we are well positioned to put forth a powerful defense of three very different programs at the same time.

In Louisiana, we go to trial to defend the choice program state officials created earlier this year to turn around a failing public school system. The state is offering thousands of kids a chance at a decent education by providing them with scholarships to attend the private school that best meets their needs. Unlike most of our school choice cases, the teachers' unions aren't contesting the program on religious grounds. They are instead challenging the funding mechanism the legislature chose. As a result, this case presents a new challenge for IJ, but our more than two decades of litigating on behalf of the interests of parents and children means that we are more than up to the task.

We're also using the court of public opinion to demonstrate how Louisiana's program is benefiting children. Our activism team worked with local school choice allies to bring students and families to Baton Rouge for a rally on the courthouse steps when we intervened in the case. The rally highlighted just how important this program is to those participating and how eager Louisiana families are for educational alternatives to the status quo—in fact, more than 10,000 applied for scholarships in the program's first year.

Elsewhere, in Indiana, we go before the state Supreme Court to defend a program that could grow to be the largest in the country, benefiting more than 60 percent of the families in the state. We're also appearing in the Colorado Court of Appeals to stand up for parents and children participating in an innovative local reform initiated by the Douglas County Board of Education.

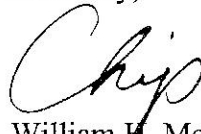
And our work isn't over when the arguments finish. We continue to provide support for states and legislatures considering new programs. In fact, in the last year

alone we've advised lawmakers in 15 states. These programs promise an opportunity to transform American education by offering ever more parents a choice in the school their children attend, and IJ will be there to defend their interests.

The sophistication the Institute for Justice brings to the fight to defend constitutional principles is unmatched. The stakes for liberty are high. We must, and will, bring our best and most creative efforts to bear in every task. We have the talent, experience, and organizational culture that enable us to function seamlessly as the national law firm for liberty.

You are an integral part of the success we achieve. Your support has been vital to our work and your donation of \$60, \$80, or \$100 now will enable us to play an ever greater role in securing liberty for future generations. Thank you very much. I hope to hear from you soon.

Sincerely,

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

William H. Mellor

President and General Counsel