

Welcome to What Happens Next – 12.6.2020  
COVID, BREXIT, Litigating for Liberty, Gangs and Incarceration  
Scott Bullock

Larry Bernstein:

Okay, let's go ahead to our third speaker. That's Scott Bullock. Scott is the president and general counsel for the Institute for Justice. He will be discussing litigation against burdensome regulations and zoning requirements, as well as defending property rights. Go ahead, Scott.

Scott Bullock:

Thanks so much, Larry. It's great to join you for the call. The Institute for Justice is a non-profit law firm that litigates for Liberty. And we are in court every day, defending the rights of ordinary Americans who would otherwise really not have a chance fighting against abuses of their constitutional rights. We're involved in a number of different areas and I'm going to talk about two of them today. And they're interesting issues because they're ones that are a bit underappreciated, but they're also issues where there's widespread consensus, that reform of these laws is desperately needed. So the first one I'm going to talk about is the right to earn a living, what we call economic Liberty and how this is probably most profoundly impacted by modern day occupational licensing laws.

Scott Bullock:

And in the 1950s, about one in 20 people needed a license in order to practice their profession. Today, that number is about one in four. And the numbers are huge. The amount of people that this impacts, it's more workers than union members and minimum wage workers combined. So, this really does have a direct impact upon people's ability to earn a living. And what we're not talking about here, or kind of legitimate licensing attempts, licensing laws that go toward protecting public health and safety. But for far too many professions, licensing laws are really about economic protectionism.

Scott Bullock:

And so, we've done a whole series of cases trying to break down these barriers to the right to earn a living. So we've represented everybody from African hair braiders to taxi cab drivers. Before the revolution in ride sharing services as many of your listeners probably know, it was extremely difficult to get a license, to drive a cab within many cities. The medallions in New York were worth over a million dollars. This was not about protecting public health and safety. This was about restricting competition and driving up prices. We've defended street vendors and a number of other especially entry level positions.

Scott Bullock:

One of my favorite cases that I did when I was litigating for IJ was a case where we represented the Monks of Saint Joseph Abbey. And the monks had made handmade wooden caskets for over a century for their brethren. And monks, even though they don't need a lot of resources have always been great entrepreneurs. They brewed beer, they baked bread, they've been farmers. And so they saw an opportunity to sell these caskets to parishioners as a way of supporting the Abbey.

And parishioners like the fact that they were made by the monks and the monks prayed while they were making them.

Scott Bullock:

There was one problem. As soon as they started offering these caskets for sale, they were sent a cease and desist letter by the Louisiana board of funeral directors and embalmers, a nine member board, eight of which is members are licensed funeral directors themselves. And so, it really demonstrated the fact that so many of these licensing boards are made up of people that are in the protected industries. So we filed a lawsuit on behalf of the monks and won an important decision by the fifth circuit court of appeals that said economic protectionism, simply protecting certain industries from competition and having an impact upon people's ability to work is not a legitimate government interest. That was a great decision that we've now been building upon.

Scott Bullock:

And as I mentioned, this is an issue that really cuts across the ideological spectrum, probably president Obama's council on economic advisors and Donald Trump's labor department don't agree on very much, but both of them agreed on the need to reform occupational licensing laws in the country. So let me turn to the second thing I'm going to talk about today, and that is civil forfeiture. And this is really an issue that probably many of your listeners might be familiar with. If they're not, it's a power that many people can't believe exists in a country that is supposed to respect private property rights and rights to due process. Civil forfeiture is the ability of government to take your property without convicting or even charging you with a crime. And that means the government can take your home, your business, your cash, or your car. And this is very distinct from criminal forfeiture. Criminal forfeiture is tied to the conviction of a property owner for wrongdoing. Civil forfeiture actions are actions against the property themselves.

Scott Bullock:

So there have very bizarre case names, like a case that we litigated in Texas called State of Texas vs one, 2004 Chevrolet Silverado. And because this is a civil action, the burdens are much lighter upon government. And you don't even have such things as a right to an attorney if you can't afford one, like you do in a criminal trial. We have a report coming out this month that shows how incredibly lucrative this is for law enforcement. We documented using the numbers that were available that over 20 year period, federal state and local governments have forfeited \$68.3 billion with a B, dollars from property owners. So this is something that is an enormous nationwide problem. It's also one that disproportionately impacts people of modest means. Civil forfeiture is not oftentimes used against the kingpins as our study also shows. That the typical forfeiture is just \$1,300 in cash or the value of property.

Scott Bullock:

Well, why is this happening? As so many people listening in on the call know, is every economist will tell you, incentives matter. And the law was changed in the 1980s to give law enforcement agencies a direct financial incentive to forfeit as much property as possible. Before that, forfeiture revenue went to the general revenue accrued to the state. Now at the federal level and in most States law enforcement agencies are entitled to keep everything that they forfeit for themselves. Thereby giving them this direct financial incentive to take as much property as

possible. And many property owners throughout the country have paid the price for that. Like the issue of occupational licensing and an economic Liberty, there is broad consensus that this is wrong, that something has to be done about it. We are hopeful that the new Congress and the new administration will look at federal forfeiture laws anew and try to reform this. But like with economic Liberty and with civil forfeiture, there are powerful interest groups on the other side that are determined to keep the status quo as it is.

Scott Bullock:

So that is why it's important for us to be in court, fighting against these laws of occupational licensing laws and civil forfeiture laws, and many others to give ordinary Americans some hope against these egregious abuses of power. Thanks.