



# Freedom and Property

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"Freedom and property rights are inseparable. You cannot have one without the other."-George Washington

October 2003

## A BABYLON KANGAROO IN ALBANY

**BABYLON  
COMMUNITY  
COURT  
PLAN IN NY  
STATE  
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Illustrated by John Falco

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## No Friend in Top Court

By Uzo Akujuo

When I heard of a case before the U.S. Supreme Court regarding two men arrested from a private residence for engaging in homosexual activity, I was sure that the law would be overturned by a 9-0 vote. I knew I could depend on the left wing of the court to vote to overturn the law since the only rights leftists recognize are the right to have sex and other related rights.

And since "conservatives" are supposed to believe in small government, I knew they would also vote to overturn the law.

However, the vote was not unanimous. It was a 6-3 decision.

To my dismay, Chief Justice William Rhenquist and two men that I had considered my judicial heroes, Justice Clarence Thomas and Justice Antonin Scalia, were the culprits.

Scalia acknowledges in his dissent that the men were exercising their liberty. "The court...describes petitioners' conduct as 'an exercise of their liberty' - which it undoubtedly is," he writes.

However, according to Scalia, "There is no right to 'liberty' under the Due Process Clause...The Fourteenth Amendment expressly allows States to deprive their citizens of 'liberty,' so long as 'due process of law' is provided: 'No state shall...deprive any person of life, liberty, or property, without due process of law,'" according to the Fourteenth Amendment, Scalia writes.

I'm moving to China. I like Chinese food; you have to figure there is a lot of Chinese food in China. Sure, the people aren't free, but, according to Scalia, neither are we in America.

"[The] Fourteenth Amendment protects 'those privileges long recognized at common law as essential to the orderly pursuit of

happiness by free men,'" he continues, quoting a 1923 case, *Meyer v. Nebraska*. "All other liberty interests may be abridged or abrogated pursuant to a validly enacted state law if that law is rationally related to a legitimate state interest."

I'm confused. Firstly, Scalia says that there is no right to liberty. Then, he says that there are two classes of liberty interests and that each class may be abridged by government subsequent to different standards of state interest.

I'm sorry, but either the right to liberty exists or it does not. If there is no right to liberty, then, the only standard a legislature has to meet for abridgement of any liberty interest is the felt-like-it standard "pursuant to a validly enacted state law" or "due process of law." There is no mention of separate categories of

**"Sure the [Chinese] aren't free, but, according to Scalia, neither are we."**

liberty anywhere in the Constitution.

The question, then, is whether or not there is a right to liberty.

As is notable from Scalia's quote of the 14th Amendment, "liberty" is not mentioned by itself. It is part of a list that includes "life" and "property." If you follow Scalia's assessment that the phrase, "without due process of law," permits abridgement "pursuant to a validly enacted state law," that would mean that the government may take a person's life as long as there is a validly enacted state law permitting it or a validly enacted federal law, for that matter, since the due process clause in the 14th Amendment is

a carbon copy of the one contained in the Fifth Amendment, which applies to the federal government.

This would mean that after writing in the Declaration of Independence that among man's unalienable rights are the right to life and liberty and after fighting a bloody war against the great British military in furtherance of that principle, the Founding Fathers proceeded to alienate the rights to life and liberty.

Additionally, since property is also on the list, there is no right to property. This begs the question, why does the Fifth Amendment say, "nor shall private property be taken for public use, without just compensation?" What is just compensation for something you have no right to in the first place.

The Eighth Amendment says, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Following Scalia's logic, then, the Fifth, Eighth, and Fourteenth Amendments together state that if a person commits a crime, there is a limit to how much of his property may be taken ("nor excessive fines imposed") and a limit to how much of his liberty may be taken or whether his life may be taken ("nor cruel and unusual punishments inflicted"), even pursuant to a validly enacted law, but if *no* crime has been committed, a person's life or any amount of his liberty or property may be taken as long as there is a validly enacted statute.

That seems ridiculous to me. Obviously, what is meant by "due process of law" is due criminal procedural law: warrants, juries, confrontation of witnesses, etc., as outlined in the Fifth and Sixth Amendments.

This idea is better expressed in the 13th Amendment, which outlaws slavery and involuntary servitude "except as a punishment for crime whereof the party

shall have been **duly** convicted."

"Due process of law" means "**duly** convicted." Government may not take our life, liberty, or property unless we are being punished having been duly convicted of violating a law that does not itself violate the Constitution. To read the Due Process Clause any other way would be to read into the mindset of the Founding Fathers something that is contrary to what every piece of evidence shows that they were about.

For example, Thomas Jefferson said, "Laws provide against injury from others; but not from ourselves."

The dissent's belief that homosexuals should wait for the majority's permission before their liberty interests may be exercised is contrary to the views of James Madison, father of the Constitution and author of the Bill of Rights. "The prescriptions in favor of liberty, ought to be levelled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power: ...the body of the people, operating by the majority against the minority," he said.

This issue is as much about homosexuality as the smoking ban is about smoking. The issue is freedom and property rights.

People engaging in homosexual activity in the private confines of their own property is not a threat to me personally. The government is.

Since the liberal majority's decision only protects "adult persons in deciding how to conduct their private lives in matters pertaining to sex," property rights are left without a friend in the Supreme Court.

The sooner we all, heterosexual and homosexual, smoker and non-smoker, rich and poor, black and white, learn to come together and stand up against our true enemy, big government, the sooner we will all be free.

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# CORRESPONDENCE

Dear Editor:  
Like the snail, [the communists] have moved gradually, relentlessly, meticulously into every aspect of our culture, and like the snail, they leave a trail of thick slime that is immersing us in its mucus that reeks from the disintegration of human respect, courtesy, morality, and economic stability. The slime, once established, is extremely difficult to remove, but it can be done.

The strong current of psychological conditioning is nowhere more apparent than in the manipulation of the voting process by the conspiring political hyaenas. The purpose of the vote is to give every person the opportunity to express approval or disapproval. Organizations, unions, clubs and the congress

vote on issues and candidates for office by "yeas" and "nays," but that is not the option given to the citizen voter in state and national elections. Citizens are only given the "privilege" to express approval (or yea). If they disapprove of any or all of the candidates, they have only one recourse - don't vote. The people on the ballot love this arrangement. The election is decided only by those who approve of them. In most cases, that is a small minority since the majority who disapprove of them cannot express it. There must be a "nay" box after each candidate if all the people are to determine who the representatives are.

The people of this country, by being disorganized and brow-beaten, have allowed the

political mongrels to enact laws to cover themselves from being overthrown.

A "No" vote on the ballot is a major means for the people to take back their individual participation in the decisions of government. As the founding fathers wrote in the Declaration of Independence, "Whenever any form of government becomes destructive to [freedom], it is the right of the people to alter or abolish it."

And this grand philosophy existed until there were no heroes in sequence, the insects of humanity began to gather, swarm about, and feast on the magnificent creation; biting, destroying and infecting it with their foul saliva of greed and inhumanity. They burrowed in,

laying their eggs that would hatch into maggots offspring and henchmen who would feed on the grand design of the founders. The elegant animal, now constitutionally leaderless, can only switch its tail in a weak attempt to fend off flies that are infesting government and society. As the infection spreads, it is only a matter of time, as the people refuse to use the antibiotic of rebellion, until the animal collapses and dies. It is already on its knees, but a "No" vote on the ballot is a major means to help it back up on shaky legs and for the people to take back their individual participation in government "by the people" and "for the people."

-Steve Moore  
Patchogue, NY



## **You can't win!**

The Coalition of Landlords, Homeowners, & Merchants, Inc. is a legal not-for-profit organization dedicated to maintaining and advancing the principles of a free and democratic society. Our concerns extend to constitutional government, personal liberties, private property, and individual responsibility. We sincerely believe that, in the words of John Philpot Curran, ***"The price of liberty is eternal vigilance,"*** and we have committed ourselves to being ever vigilant and watchful.

The mission of The Coalition is first and foremost to **educate people about their constitutional rights**, so that our free way of life can be preserved.

**If people do not know what their rights are or maintain their rights, then they have no rights at all!**

Coalition members are encouraged to respect the law and the courts, for it is through the courts and the law that we have the power to right wrongs and seek redress for injustices. The courts and the law are a powerful tool. By their interaction with the legal system, Coalition members gain an understanding and an appreciation of the law, and through lawsuits, appeals, and other legal actions, the Coalition makes the system work for its members.

"The sacred rights of property are to be guarded at every point. I call them sacred, because, if they are unprotected, all other rights become worthless..."  
- Judge Joseph Story, 1852

**If you don't fight, you can't win!  
Let us help you win!**

# FEATURE

## Vote for Your Property Rights

By Uzo Akujuo

Because an informed electorate is the best kind of electorate, "Freedom and Property" has taken on the responsibility of informing its Long Island, New York readers about this year's town office elections.

As a property rights advocacy paper, we have taken it upon ourselves to inform our readers about the attitudes the candidates have toward property rights, something no other paper with a Long Island concentration is interested in.

To help us accomplish this goal, we contacted the Nassau and Suffolk board of elections to acquire a list of offices up for election and the candidates running for those positions. However, neither board of elections would release the information until about a month prior to the election because they had not certified the results of the primaries until that late date.

Hamstrung by the boards of election, we have been left with only about a month to gather up information and get the paper out to our readers, so they will be armed with information when they go to the polls. Still we hope you will be better informed by us when you go to the polls on November 4.

Due to spatial limits, we cannot include in-depth information about all the candidates. We are, therefore, only highlighting the races that we feel the majority of our readers are likely to find most relevant, based on history, but we are listing the candidates for every local race on Long Island since they are all of immense importance.

### Family Court Judge:

#### Steve Hackeling v. John Kelly

Countywide, running for a ten year term as Suffolk County Family Court Judge is current Suffolk County District Court Judge Steve Hackeling.

Hackeling may believe that he is

case, a bargain that would have had Vengroff paying a fine.

There were three cases that were to be settled by the town and the defendants, but Hackeling refused the settlements and put them on for trial," Vengroff said.

For Vengroff, that means that on October 22, he has to return to New York from Florida, where he lives, instead of getting on with his life. "He's now costing

the necessary temperament for dealing with such a delicate issue as families.

Neither Hackeling nor his opponent, John Kelly, could be reached for an interview.

### Babylon Town Supervisor:

#### Steven Bellone v. Lindsay Henry

The incumbent candidate for Town of Babylon Supervisor is Steven Bellone.

They also broke my septic tank," he said.

As if proud of himself for his orchestrated raid on a 78-year-old war hero, Bellone made sure he was there to watch the whole thing unfold.

As part of his aggression, Bellone has created a "Quality of Life Task Force," headed by Special Prosecutor Paul Margiotta.

It is Bellone's hope that Margiotta will have what he called a "community court," before which he may drag the "wanted" "serial code offenders" to answer for their sins. He has asked the New York State Legislature to grant him the community court, for which he and the rest of the town board will pick the judges and set qualifications for them.

DePresco does not believe it would be a good thing for Bellone to achieve this court. "It would be an open and shut case," he said of any case the town would bring to the proposed court.

Bellone has not been returning "Freedom and Property's" calls since our criticism of the community court plan in an earlier issue.

Upon attending Babylon Town Council hearings, one fact is hard to miss: almost without exception, there is only one member of the council who ever votes against any proposal - Bellone's opponent in the race for Babylon Supervisor, Councilman Lindsay Henry.

Henry, an independent, is the lone non-Democrat on the town council, and he said that his opposition voice is not greeted gracefully by Bellone.

"I've been a councilman for two years. Every effort I try to put forward is stepped on by Bellone. I'm working hard to represent the people of Babylon, and I said to myself that I can either sit back for another two years and watch all of my efforts trampled on or I can run for Supervisor so I can get things done," he said.

Henry believes that under Bellone, the town has been abusing the property rights



Long Island's political candidates are using billboards to vie for votes in the Tuesday, November 4 elections.

me money by making me come back to Long Island," he said.

"He wanted to put me in jail," Vengroff continued. To avoid sitting in jail over an illegal conversion charge that he says is wrongful because he had sold the house before the alleged conversion, Vengroff had to come up with \$5,000 in bail money.

Hackeling is the same judge who, earlier this year, threw a 70-year-old

Bellone has been aggressive in going after what he calls "serial code offenders."

These "serial code offenders," ten of whom he has listed on the town's "Ten Most Wanted List" even though they are not on the lam, like people are before they are declared "Wanted" in every other part of the country, include an injured decorated ex-cost guard, accused of littering his yard and building without a permit; a 68-year-old woman, whose



Incumbent Babylon Town Supervisor Candidate Steve Bellone,



Decades after winning a Purple Heart and other military honors for battling Adolf Hitler, Dominick DePresco now has to battle Babylon Town Supervisor Incumbent Candidate Steve Bellone against Bellone's invasion of his private property.



Babylon Town Supervisor Candidate Lindsay Henry

suitable to make decisions about the future of Suffolk's families and that Suffolk residents should feel confident in handing their families over to him for ten years, but many Huntington property owners who have been before him in District Court believe that he lacks a sense of justice and propriety that will make it a disaster for him to sit on the Family Court bench.

"That would be terrible!" Harvey Vengroff said after Hackeling refused to allow a plea bargain that he and the Huntington prosecution had entered into in settlement of an illegal conversion

Korean War veteran in jail for alleged litter and overgrown grass on his yard.

Because of Hackeling's attitude, Vengroff's attorney, Fred Bennett, requested that Hackeling recuse himself from the case since he was serving as prosecutor, seeking to punish his client even tougher than the actual prosecutor wanted.

Vengroff would like to see Hackeling permanently recused from all cases forever as well as punished, rather than sit on the family court bench from where he could destroy families because he lacks

home the town demolished; and a 78-year-old World War II Purple Heart honoree, whose belongings were seized from his property.

The homeowner, Dominick DePresco, recalled the incident. "I had three flowers that I was going to put on my wife's grave; they took them. They took five bikes; one of them was brand new," among other things, DePresco said.

DePresco added that the workers also did some damage to his property. "I was redoing the front of the house. I had put a new wall in. The town knocked it down.

of its constituents. "I see abuses everywhere, including property rights abuses. This Quality of Life Task Force is going around abusing people's rights. I get phone calls from people telling me about different abuses," he said.

Henry is upset that Babylon's residents are not getting due process of law. "If I were elected supervisor, I certainly would keep from abusing people's rights. They are infringing on people's rights. They knocked an older lady's house down. It is not necessary to knock someone's house

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# Coalition Prez Wins Right to Counsel of Choice

# Vote Property

(continued from page 4)

By Uzo Akujuo

Paul Palmieri, president of The Coalition of Landlords, Homeowners, and Merchants, Inc., a Long Island property rights group, is accusing a federal court judge of trying to violate his constitutional rights.

According to Palmieri, Senior U.S. District Court Judge Leonard Wexler, tried to deprive him of his right to pick his counsel in his false arrest lawsuit against Suffolk County and three of its police officers.

"He refused to allow me to have the counsel of my choice in my case, which I felt was a total violation of my rights. He had animosity toward the attorney I wanted to be the lead attorney in the case. I felt that was a violation of my right to use the attorney of my choice," Palmieri said.

The subject of Wexler's ire, Arthur Grasseck, said the story goes back about ten years. "Years ago, I had a case before him. I found out that he was having coffee in the jury room while the jury was deliberating. I appealed to the Second Circuit [Court of Appeals]. The Second Circuit criticized him for it. He resented the fact that we reported him," he said.

According to Palmieri, Wexler's problems with Grasseck have nothing to do with his constitutional right to not have the court interfere with his contract to be represented by an attorney. "He shouldn't be using his animosity against an attorney against the person who wants to be represented by the attorney," Palmieri said.

Therefore, Palmieri refused to stand by and watch what he saw as a deprivation of

his rights. "I wrote to [Eastern District] Chief Justice [Edward] Korman," he said. As a result, Wexler eventually recused himself from the case, rather than refuse Grasseck.

Palmieri is not bemoaning the fact that Wexler will no longer preside over his case. He said his interactions with other attorneys who have been before Wexler informed him that a fair disposition of justice is not Wexler's *modus operandi*, adding that he is also familiar with some of Wexler's past decisions.

"He's biased. I told him he was biased,"



Paul Palmieri

Palmieri said. "He tries to give the facade that he's fair, but once you get into his courtroom, you're done. Everything changes."

"In my opinion, things are better for me now because [the defendants] don't have their boy, anymore. They admitted to me and my lawyer that they lost their boy," he said.

"It's known that Wexler is involved with the police and the detectives' union. He is pro-police. In my opinion, you're not going to get Wexler to go against the

police," Palmieri said.

This, Palmieri said, affected his approach to the suit. "When I knew that Wexler was on the case, I told Suffolk that I would settle for a thousand dollars. After Wexler recused himself, I told them that the deal was off the table," he said.

Grasseck shares Palmieri's view of Wexler's attitude. "I think he lacks discretion. He came up as a police lawyer. He was a Republican lawyer. He simply still has the same allegiances. Whatever he came up with, he is still practically for those people," he said.

Palmieri laments the way things sometimes are in the judicial system, which he said does not provide the proper foundation for justice. "It is very unfortunate that you have to go through this in federal court. You expect something like this in state court because the judges are politically tainted, but most federal judges don't show a political taint, yet the county admitted to me that Wexler is their judge," he said.

Palmieri said that the usual difference between federal and state judges is politics. "State judges are elected; they have to be involved in politics. Federal court judges are there for life. They don't have to worry about losing their jobs tomorrow. State court judges have to stay involved in politics because that's how they got there," Palmieri added.

Palmieri has an idea to help improve the situation. "There should be a school for judges," he said. "We shouldn't have judges just put robes on and do whatever they want to do. They should be educated on how to meet out fair justice whether they are state or federal judges."

Wexler refused to return phone calls.

down without proper notice. I don't think the lady was given proper notice," he said.

"They removed [DePresco's] property under the guise of quality of life. There has got to be due process, especially when taking away people's property. There was no trial [of DePresco]. We just had a Town Hall hearing," according to Henry.

Henry believes Bellone's proposed community court would serve to further violate the due process rights of the people of Babylon.

"It is a bad idea," he said. "We have the district courts to try the cases in. We don't need this court. There would be no separation of powers if this plan becomes reality. It would be a dictatorship. I don't want to see Bellone choosing judges."

According to Henry, Bellone's assertion that the "community court" is needed because "at present, town code cases are heard in District Court. The Court, which is the busiest in New York State, is overburdened with cases," perpetrates a falsehood.

"The town recently withdrew the charges on 1,500 cases because they couldn't handle it. It is the town that is overburdened, not the court," Henry said.

Roger Huguenin, chief clerk of the 2nd District Court, which hears Babylon's cases, agrees with Henry and, interestingly, said that Bellone's administration also agrees with Henry.

"That's not true," he said of Bellone's assertion. "If the Town of Babylon brings a case, I will assign a judge to the case."

Huguenin said that upon hearing that

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# Babylon Community Court Goes to Albany

By Uzo Akujuo

Despite seeming attempts by the town to work under the radar, "Freedom and Property" has discovered that the Town of Babylon, New York, has taken its plans for what some see as a kangaroo court one step further; a bill proposing its creation has been introduced in the New York State Legislature.

Seeking to track Babylon's play for a "community court," "Freedom and Property" made repeated calls to the office of State Senator Owen Johnson, Babylon's representative in the State Senate and the senatorial champion of the



State Senator Owen Johnson

proposed court.

Each time a call was made, "Freedom and Property" was informed that someone would look into the matter and return our call. Each time, however, no such return call came. On one occasion, when we called the senator's Albany office, we were told that the person with the information was at the senator's Babylon office. Upon calling the Babylon office, we were told that the person was at the Albany office.

Frustrated by this song and dance and



Paul Palmieri

suspicious of the motive behind it, "Freedom and Property" decided to seek an alternate route to the information and contacted the State Assembly's press office. Laurie Brisley, of the press office, promised to do some research and get back to us. Within the course of about an hour, Brisley kept her promise, calling us back with information about the fact that identical bills had been introduced into both houses of the State Legislature.

Paul Palmieri, president of the Coalition of Landlords, Homeowners, and Merchants, Inc., a Long Island, New York, property rights organization, has

read the proposed legislation for the Community Court (called "a law, code, and ordinance violations bureau" in the bill) and he is very unhappy with it.

Section 161 of the bill says, "The town board of the town of Babylon shall appoint administrative law judges who shall be attorneys admitted to practice in this state for not less than three years and shall have such other qualifications as may be prescribed by such town board."

Palmieri's first problem with this is that the town board will be picking the judges of the court. "The board will be picking attorneys that they know will decide their way," he said. "Now, if they agree to have Coalition attorneys..." he added with a look on his face that suggested that he did not expect that to happen.

Town Councilman Lindsay Henry, who is running for Town Supervisor against current Supervisor Steve Bellone in Bellone's reelection bid and who opposes



Babylon Town Councilman Lindsay Henry

the proposed court, agrees. "I don't want to see Bellone choosing judges," he said.

Palmieri's second concern is that the town board will get to set other qualifications for the judges. "Maybe the judges will have to be ex-town board members. Maybe the town board will say they have to be ex-building inspectors. Who knows what requirement they will set?" he said.

For Palmieri, as problematic as what is included in the bill is what is missing from it. There is nothing stating the tenure of the court's judges. "I guess the town board will decide," Palmieri said. "It could become a problem. Let's say they get somebody who is fair. The town has the authority to say, 'Let's can him and get somebody else.'"

"That's the reason why federal court judges are there for life, so they don't have to be afraid of losing their jobs if they do don't decide a certain way. You have a better chance of getting justice in that situation," Palmieri continued.

Palmieri is also unhappy about the proposed summons rules for the court. Section 164 of the bill says, "The summons or copy thereof, when filled in and served, shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be *prima facie* evidence of the facts contained therein. The summons, when sworn to or affirmed, shall constitute the testimony of the signator and, when filed with the Babylon local law, code and ordinance violations bureau, shall be admitted into evidence as such testimony at any hearing on the violation charged."

Palmieri believes that the intent of this provision is to make it easier for the town to bully its citizenry. "The burden is much less than in criminal court. They are trying to lower the burden on the town and give people less. We beat their

summons on technicalities. They are saying the summonses will be good if they contain the affirmed statements of a town official alone. It makes things very different. The burden is much less than in criminal court. They are trying to lower the burden of the town and give the people of Babylon less protections," he said.

"They are trying to cut out all the ways we can get these tickets thrown out on technicalities. These protections exist so the government doesn't become a monster," according to Palmieri.

For example, according to West Publishing's New York Pretrial Criminal Procedure, "A defendant may not be prosecuted and tried on a misdemeanor complaint; unless the defendant waives this right, the prosecution must convert a misdemeanor complaint to, or replace it with, an information prior to commencement of trial...The primary distinction



Incumbent Babylon Town Supervisor Candidate Steve Bellone,

between a misdemeanor complaint and an information is that the latter contains *non-hearsay* factual allegations establishing (if true) every element of the offense charged."

The summons provision in the "community court" bill, on the other hand, allows defendants to be prosecuted with a hearsay instrument.

Palmieri said that the right to appeal from the rulings of the "community court" is not enough cause for calm.

"You have to have money to appeal, and what do you appeal from when you don't have the safeguards that you have in District Court? There is less to appeal from because the town will make less mistakes in its overzealous prosecution of property owners," he said.

Another matter bothering Palmieri is the compensation of the "community court's" judges. There is no mention anywhere in the bill of what source of revenue the judges' salaries will come from. The only mention Johnson makes of a revenue source is in the "Fiscal Implications" section, which is does not become part of the law. "The town would have to pay the cost of operating the bureau," the section says, as if the source of funding is an irrelevant issue.

But is it? Palmieri does not believe so. "If a judge is getting a pay check from a party to a case, can he be neutral?" he asked.

Also, the petition distributed by the town for the promotion of the court says, "The Town of Babylon Community Court will be self-funded through fines collected."

Palmieri is very troubled by this. "The judges are going to have a motive to make sure that the town collects fines," he said.

Henry shares Palmieri's suspicion that there is an ulterior motive behind the

proposed community court. "We have the District Court to try the cases in. We don't need this court. There would be no separation of powers if this plan becomes reality. It would be a dictatorship," he said.

According to Henry, the statement on the town's website asserting that the court is needed because "The [Second District] Court, which is the busiest in New York State, is overburdened with cases," is false.

"The town recently withdrew the charges on 1,500 cases because they couldn't handle it. It is the town that is overburdened, not the court," Henry said.

Roger Huguenin, chief clerk of the Second District Court, agrees with Henry and, interestingly, said that Bellone's administration has acknowledged to him that any impression that a new court is needed because the District Court is overburdened is false.

"That's not true," he said. "If the Town of Babylon brings a case, I will assign a judge to the case."

According to Huguenin, upon hearing about the town's claims, he confronted the administration and there was an about-face. "When I met with them, they told me that's not the case," he said.

In light of the aforementioned problems and in light of the fact that the town is not providing dissenters with any viable means of expressing their disapproval, "Freedom and Property" has been collecting its own petition against the kangaroo court to counter the town's one-sided petition.

We will present these petitions, a copy of which is on the next page, to the necessary parties. Any Babylon resident who has not already done so is urged to fill one out and return it to our office, the address of which is on the petition.

Residents of Babylon are also urged to take an active role in protecting their right to due process of the law by spreading the word about this dangerous proposed court and asking others to fill out our petition.

Babylon residents are also urged to contact Johnson, their state senator and their State Assemblyman Robert Sweeney and ask them to stop supporting this



Assemblyman Robert Sweeney

major threat to the constitutional rights of the citizens of Babylon.

All others are also urged to contact their state representatives as they will be voting on whether or not to allow this monster kangaroo court to become a reality. It may look like Babylon residents' problem, now, but like the smoking bans, these things never stay in one place.

To find out who your state senator is, call 518-455-2800 or check the Senate's website, senate.state.ny.us. To find out who your state assemblyman is, call 518-455-4100 or log on to assembly.state.ny.us.

# Petition Against a Community Court in the Town of Babylon!

Town of Babylon residents, please fill out the petition below, detach at the dotted line, and return to:  
Community Court Petitions  
*Freedom and Property*  
28 East Main Street  
Babylon, NY 11702

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In contravention of the Town of Babylon's use of taxpayer funds to organize a one-sided Community Court petition to the legislature of the State of New York, I petition you to deny the town's request.

No! I do not support the formation of a Town of Babylon Community Court. In fact, I am adamantly against it. Babylon Town officials have been abusive and disrespectful of the constitutional rights of its residents and property owners. To grant them a court that its special prosecutor himself admits is "not a real court" would be to sanction the abuse of constitutional freedoms.

We urge the esteemed members of the New York State legislature to reject this proposal to put the adjudication of cases between the Town of Babylon and its citizens totally in the control of the Town Board. The separation of powers is an intricate part of the mechanism for the protection our rights. We urge you, as our representatives, to represent our freedom and stand up for it by refusing to make the Babylon supervisor and the Town Council judge, jury, and executioner.

Name (required): \_\_\_\_\_

Address (required): \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Thank you for your attention to my concerns.

## Vote Property Rights

(continued from page 5)

the Bellone administration was claiming that the District Court was overburdened, he confronted the administration on its claims and there was an about-face. "When I met with them, they told me that's not the case," he said.

### **Brookhaven Town Council District 1: John Wastiewiz v. Steve Fiore-Rosenfeld**

To acquire the endorsement of the Long Island Environmental Voters Forum, Brookhaven Town Council candidate for the First District, Steve Fiore-Rosenfeld, filled out the organization's questionnaire.

Question Four asks, "What would you do about the glut of Planned Retirement Communities?"

Fiore-Rosenfeld's answer: "I support a PRC moratorium - without any major exemptions - until proper planning, based upon real community input is shown at each proposed site. Make developer-applicants also show demographic need, availability, and affordability in the town, especially for seniors who are already residents of the town."

Question 12 asks prospective endorsees what they would do to preserve open space.

According to Fiore-Rosenfeld, if he is elected councilman, he will make it more expensive for Brookhaven residents to exercise their property rights. To facilitate Brookhaven's acquisition of land, in addition to "much larger bond initiatives," Fiore-Rosenfeld would institute "real estate transfer taxes and user and environmental impact fees."

"I have been working on legislation for Assemblyman Englebright, which will allow the Town of Brookhaven to have a Brookhaven Community Fund similar to the five east end towns in Suffolk, which is funded primarily through a real estate transfer tax," Fiore-Rosenfeld boasts.

Question 14 of the questionnaire asks, "What will you do to prevent over-development?"

According to Fiore-Rosenfeld, he would "reorganize areas to discourage or prohibit building of large commercial projects outside of commercial clusters/mixed use residential [areas]."

Fiore-Rosenfeld would also "change town code[s] to require joint resolutions with towns which have boundaries on abutting parcels for change of zone or major variances which affect the environment."

Also, according to Fiore-Rosenfeld, he would "require, through [the] town code or local law, that all new large developments fully explain (in a [New York State Environmental Quality Review Act] like manner) their incorporation of the regional planning recommendations and town master plan into their designs and request for building permits."

Fiore-Rosenfeld's opponent, John Wastiewiz did not return our calls requesting his views.

### **District 2:**

**Kevin McCarrick v. Lori Baldassare**  
Second District candidate, Lori Baldassare, also filled out the group's endorsement questionnaire.

To the Planned Retirement Community question, she answered that she supports a

moratorium that "should allow for a complete inventory of this zoning category. Any consideration for increases in density for this zoning category should require minimum affordability requirements, including locating these developments near centers or retail facilities."

However, Baldassare told "Freedom and Property" that the town cannot institute these "minimum affordability requirements" directly, so she would use tools at the town's disposal to force the hands of property owners.

"Through cite plan design, the town can regulate the prices by regulating the number of bedrooms, which will help govern price ranges. The town can require a certain percentage to be for affordable housing," which is a pricing range that fluctuates from hamlet to hamlet," she said.

Baldassare does not see squeezing landlords into agreeing to certain price ranges as a violation of property rights. "When it comes to Planned Retirement Communities, a majority of the times, they are getting a change in zoning," she said.

"They do have rights if they are building according to what the area is zoned for, but if they are going to receive approvals for additional density, the town should be able to ask them to make part of the development affordable housing," she continued.

To prevent overdevelopment, Baldassare says she would "rezone areas where density is not appropriate."

Her opponent, Kevin McCarrick did not return our calls.

### **District 4:**

#### **James Tullo v. Delano DeMarino**

In District 4, in incumbent candidate, James Tullo's answer to the prevention of overdevelopment question, he expresses his pride in the Town Council's institution of moratoriums on development.

"It is important to make sure that development is done properly," he said to "Freedom and Property." "The moratorium gives us the opportunity to have our Planning staff work on determining the type of development we should have."

Tullo believes that, in certain circumstances, property owners should seek the approval of civic organizations before they build on their own property. "If you want to build something, it is okay as long as it meets the zoning standard." Otherwise, "You have to work with the Planning Board and the civic associations to make sure it is the proper development for the area," he said.

We were not able to contact Tullo's opponent, Delano DeMarino.

### **District 6:**

#### **Edward Hennessey v. Douglas Dittko**

District 6 candidate, Douglas Dittko, thinks that Brookhaven is not being restrictive enough on the development of homes for the elderly. "I am already active regarding [Planned Retirement Communities]," he boasts. "Haphazard downzoning for PRCs should be stopped. Our environment is being negatively affected by the increased traffic," he writes.

To prevent "overdevelopment," Dittko

(continued on page 13)

# Supreme Court, Remember the Constitution?

By Uzo Akujuo

In June, the United States Supreme Court decided a very important case, *Lawrence v. Texas*, which answered the question, "Does a person have a constitutional right to engage in homosexual activity, at least in the confines of his home?" The answer was a split decision, with six of the justices saying that the right exists and three saying that it does not. Looking at this decision from the vantage point of one uninterested in the particular issue of homosexual rights, one may be led to wonder whether or not either of the justices' views was actually based on the Constitution.

Justice Anthony Kennedy, who wrote the winning opinion, says that the decision is based on the Fourteenth Amendment to the Constitution. "We conclude the case should be resolved by determining whether the petitioners were free as adults to engage in the private conduct in the exercise of their liberty under the Due Process Clause of the Fourteenth Amendment to the Constitution," he says in the decision.

But is the case actually resolved by the Fourteenth Amendment or anything else in the Constitution given the fact that there is hardly any mention of the Amendment or the rest of the Constitution in the decision? Instead, Kennedy quotes other court decisions, like *Griswold v.*

quent courts for the purpose of maintaining consistency of the court, but adherence to this doctrine is brought into question by *Lawrence v. Texas*.

Texas' court of appeals upheld the conviction of the defendants, John Lawrence and Tyron Garner, in keeping with a 1986 Supreme Court decision, *Bowers v. Hardwick*, in which it was decided that states had the right to ban

held that the laws proscribing the conduct were invalid under the European Convention on Human Rights," the decision continues.

Therefore, not only are statements of the American Law Institute, an extra-constitutional body, controlling as regards our constitutional rights and grounds for overruling a Supreme Court decision, laws by the European Convention on

"I do not myself believe in rigid adherence to *stare decisis* in constitutional cases; but I do believe that we should be consistent rather than manipulative in invoking the doctrine," Scalia continues.

The majority in *Planned Parenthood v. Casey*, which included three members of the current majority, said, "Where, in the performance of its judicial duties, the Court decides a case in such a way as to resolve the sort of intensely divisive controversy reflected in *Roe v. Wade*,...its decision has a dimension that the resolution of the normal case does not carry...To overrule under fire in the absence of the most compelling reason...would subvert the Court's legitimacy beyond any serious question." Today, however, the widespread opposition to *Bowers*, a decision resolving an issue as 'intensely divisive' as the issue in *Roe*, is offered as a reason in favor of *overruling* it. Gone, too, is any 'enquiry' (of the sort conducted in *Casey*) into whether the decision sought to be overruled has been 'proved unworkable,' according to Scalia.

Scalia himself, however, engages in his own questionable use of legal precedence. "Our opinions applying the doctrine known as 'substantive due process' hold that the Due Process Clause prohibits States from infringing fundamental liberty interests, unless the infringement is narrowly tailored to serve a compelling state interest...We have held repeatedly, in



The United States Supreme Court

homosexual sodomy.

Instead of accepting that *Bowers v. Hardwick* means that the Texas statute banning homosexual sodomy was valid, the Court says, "In academic writings...there are fundamental criticisms of the historical premises relied upon by the majority and concurring opinions in *Bowers*." The court is using writings by "scholars" to invalidate a Supreme Court decision.

The court also uses the subsequent actions by some states to invalidate the decision. "Post-*Bowers* even some...states did not adhere to the policy of suppressing homosexual conduct. Over the course of the last decades, states with same-sex prohibitions have moved toward abolishing them," the decision says. Does this mean that every time a state abolishes one of its laws, it invalidates that law in every other state?

Other proofs of the right to homosexual activity, in spite of *Bowers v. Hardwick*, are offered by Kennedy. "In 1955 the American Law Institute promulgated the Model Penal Code and made clear that it did not recommend or provide for

Human rights also control even though this is not a European country.

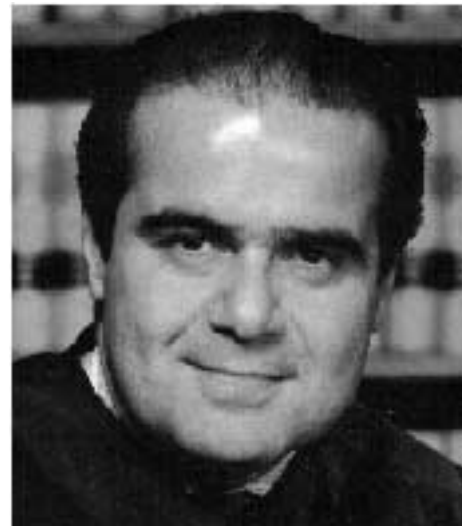
Subsequent decisions are also used by the court to overrule *Bowers v. Hardwick*. "Two principal cases decided after *Bowers* cast its holding into even more doubt," the court says. The two cases are *Planned Parenthood v. Casey* and *Romer v. Evans*.

The argument here seems to be that *Bowers v. Hardwick*, which came first, is not controlling on the subsequent cases, but the subsequent cases are controlling on it. Does this not turn *stare decisis* on its head?

Do the other statements of the court not further invalidate the doctrine? Why have the doctrine in the first place? Should the integrity of the Constitution not be the only concern of the Supreme Court when deciding a case?

In his dissenting opinion, Justice Antonin Scalia masterfully criticizes the majority's approach to *stare decisis*.

"Liberty finds no refuge in a jurisprudence of doubt,' [according to *Planned Parenthood v. Casey*]. That was the Court's sententious response, barely more



Supreme Court Justice Antonin Scalia

cases the Court today does not overrule, that *only* fundamental rights qualify for this so-called 'heightened scrutiny' protection - that is, rights which are 'deeply rooted in this Nation's history and tradition.'"

This statement is replete with terms not contained anywhere in the Constitution. The word, "fundamental," for example, does not exist in the Constitution, yet, these are the only interests that states may not infringe, according to Scalia. Why? Because the courts have repeatedly held so.

Seemingly, all sides of the court share the view that only fundamental liberty interests should be protected despite the term's inexistence in the Constitution. The majority says that the right to privacy protects against government infringement onto "matters so fundamentally affecting a person as the decision whether to bear or beget a child." This type of right it calls "fundamental human rights." Somehow, however, this extra-constitutional term leads the justices in different directions.

Scalia's definition of fundamental rights is rights "deeply rooted in the Nation's history and tradition," a phrase also nonexistent in the Constitution though the court has "repeatedly held" that way.

Thus, we are left with two very different definitions of fundamental rights, each "repeatedly held" to be the correct defini-



Sitting, l to r: Justices Antonin Scalia, John Paul Stevens, Chief Justice William Rehnquist and Justices Sandra Day O'Connor and Anthony Kennedy  
Standing, l to r: Justices Ruth Bader Ginsburg, David Souter, Clarence Thomas, and Stephen Breyer

'criminal penalties for consensual sexual relations conducted in private,' according to the decision.

"Almost five years before *Bowers* was decided the European Court of Human Rights considered a case with parallels to *Bowers* and to today's case...The court

than a decade ago, to those seeking to overrule *Roe v. Wade*. The courts response today, to those who have engaged in a 17-year crusade to overrule *Bowers v. Hardwick*, is very different. The need for stability and certainty presents no barrier," Scalia says.



Supreme Court Justice Anthony Kennedy

Connecticut, decided in 1965.

"In *Griswold* the Court invalidated a state law prohibiting the use of drugs or devices of contraception and counseling or aiding and abetting the use of contraceptives. The Court described the protected interest as a right to privacy and placed emphasis on the marriage relation and the protected space of the marital bedroom," Kennedy quotes from *Griswold*.

The problem is that the phrase, "right to privacy," exists in the *Griswold* decision. It does not exist in the Constitution. Not even the word, "privacy" exists in the Constitution.

The Fourth Amendment to the Constitution says that the people have a right to be "secure...against unreasonable searches and seizures" and that no warrant to search and seize shall be granted "but upon probable cause, supported by Oath or affirmation," but this cannot be what the *Griswold* decision is referring to since the the decision invalidated a law because it entered "the protected space of the marital bedroom," and the Fourth Amendment expressly allows searches and seizures pursuant to a valid warrant. It is, therefore, still to be explained where the "right to privacy" comes from.

This preceding case may have been quoted in keeping with the doctrine of *stare decisis*, which says that previous decisions should be respected by subse-

(continued on page 18)

# Zoning Hurts Affordable Housing, New Study Says

By Uzo Akujuo

A recent economics report argues that any affordable housing discussion is incomplete if it does not include the biggest cause of high housing costs, the government.

In a Federal Reserve Bank of New York Policy Review report, Harvard University Professor Edward Glaeser and University of Pennsylvania Professor Joseph Gyourko argue that there is a misconception about the state of the nation's housing market.

"A chorus of voices appears to proclaim unanimously that America is in the midst of an affordable housing crisis. Housing and Urban Development Secretary Andrew Cuomo asserted the existence of such a crisis in his introduction to a March 2000 report that documents a continuing and growing housing affordability crisis throughout the nation. Indeed, Secretary Cuomo regularly justified aggressive requests for funding by pointing to this crisis," the report states.

"Advocacy groups for the poor, such as the Housing Assistance Council, pepper their documents with assertions that 'the federal government should commit to a comprehensive strategy for combating the housing affordability crisis in rural America,'" the report continues.

Glaeser and Gyourko argue that this view is misguided. "As a whole, our paper concludes that America does not uniformly face a housing affordability crisis. In the majority of places, land costs are low (or at least reasonable)," they say in the report.

"In general, housing advocates have confused the role of housing prices with the role of poverty. Both housing costs and poverty matter for the well-being of American citizens, but only one of these factors is a housing issue per se...If housing is not unusually expensive, [antipoverty] policies should not be put forward as a response to a housing crisis. To us, a housing affordability crisis means that housing is expensive relative to its fundamental costs of production - not that people are poor," Glaeser and Gyourko argue.

"A second key concept in thinking about a housing affordability crisis," they continue, "is the relevant benchmark for housing costs. Affordability advocates often argue for the ability to pay (for example, some percentage of income) as a relevant benchmark, but this again confuses poverty with housing prices. We believe that a more sensible benchmark is the physical construction costs of housing. If we believe that there is a housing crisis, then, presumably, the correct housing response would be to build more housing. Yet, the social cost of that new housing can never be lower than the cost of construction. For there to be a 'social' gain from new construction, housing must be priced appreciably above the cost of new construction."

"If housing does not cost appreciably more than new construction, then, it is hard to understand why policies oriented toward housing supply would be the right response to this problem. Hence, we focus on the gap between housing costs and construction costs," Glaeser and Gyourko explain.

Using this method, the authors found that national housing costs are not excessive. "The American Housing Survey reports that the median size of a

detached owned home is 1,704 square feet. The construction costs of an average home imply that this home should cost about \$127,500 to build," according to the report.

However, instead of being above construction costs, the average home costs \$7,000 less, the report says.

Given this fact, there is no national housing crisis, according to Glaeser and Gyourko. What exists instead is overpriced housing in a minority of places. The authors suggest that affordable

housing advocates look into solving the cause of high housing prices in the places where they do exist.

What is the reason for this disparity?

"We offer two basic views. First, there is the [traditional] approach, which argues that houses are expensive because land is expensive.

According to this view, there is a great deal of demand for certain areas, and land, by its nature, is limited in supply. As such, the price of housing must rise. Traditional models, such as the classic Alos-Muth-Mills framework, take this view," according to the report.

Glaeser and Gyourko disagree. "Our alternative view is that homes are expensive in high-cost areas primarily because of government regulation, that is zoning and other restrictions on building. According to this view, housing is

expensive because of artificial limits on construction created by the regulation of new housing. It argues that there is plenty of land in high-cost areas, and in principle, new construction might be able to push the cost of houses down to physical construction costs," Glaeser and Gyourko offer.

"This is not to imply that high prices exist in areas with weak demand fundamentals. A strong demand, because of attractive amenities or a thriving labor market, is essential. However, this hypothesis implies that land prices are high, not due to some intrinsic scarcity, but because of man-made regulations," the report explains.

"Housing prices are determined by both demand and supply concerns," the report

continues. "High housing prices must reflect high consumer demand for a particular area. However, they must also reflect some sort of restriction on supply. Data...suggest that physical houses can be supplied almost perfectly elastically. As such, the limits on housing supply must come from the land component of housing."

"The usual urban economics view of housing markets suggests that the restriction on housing supply is the availability of land. Because land is ultimately inelastic

ly supplied, this naturally creates a limit on the supply of new housing at construction costs," the report continues.

"An alternative view is that land itself is fairly abundant, but zoning authorities make new construction extremely costly. These costs can take the form of classic impact fees

or Byzantine approval processes that slow or put up costly hurdles to construction," the report continues.

According to the report, Glaeser and Gyourko's theory is backed up by the data. Glaeser and Gyourko separated the price of land before governmental restrictions, called the intensive price; from the price of land after governmental restrictions, called the extensive price.

"In many cases, our estimate of [the extrinsic price] is ten times larger than

[the intrinsic price]," according to the report. "This is our first piece of evidence on the relative importance of classic land prices and zoning. In areas where the ratio is 10:1, the findings suggest that for an average lot, only 10 percent of the value of the land comes from an intrinsically

high land price."

The data also shows, according to the report, that population density, which would indicate the demand for housing, does not explain differences in housing costs. There is an "extraordinary amount of heterogeneity in the relationship between density and the distribution of house prices. For example, Detroit, Seattle, and Los Angeles have similar land densities per household, but radically

different fractions of units sitting on expensive land. Analogously, New York City and San Diego have similarly high fractions of expensive land, but very different residential densities," according to the report.

As evidence of this, even though New York City has a much higher population density than its suburbs, 56 percent of New York City houses are priced at 140 percent or more of their construction costs compared with 78 percent of New York suburban homes that are priced at 140 percent or more of their construction costs, the report shows.

Glaeser and Gyourko also figured out the estimated time for acquiring permits in different areas and their impact on housing prices. "The correlation of the permit length variable with the fraction of housing stock priced more than 40 percent above the cost of new construction is fairly high. The mean fraction of high-cost housing among the cities with permit waiting times of at least six months...is [75 percent]. Difficult zoning seems to be ubiquitous in high-cost areas," according to the report.

The logical conclusion, according to Glaeser and Gyourko is, "America is not facing a nationwide affordable housing crisis. In most of the country, home prices appear to be fairly close to the physical costs of construction. In some of the country, home prices are even far below the physical costs of construction. Only in particular areas do housing prices diverge substantially from the costs of new construction."

"In the areas where houses are expensive, the classic urban model fares relatively poorly. These areas are not generally characterized by substantially higher marginal costs of land," Glaeser and Gyourko's conclusion continues.

"In addition, these high prices are not associated with extremely high densities. For example, there is as much land per household in San Diego (a high-price area) as there is in Cleveland (a low-price area)," Glaeser and Gyourko add.

"The bulk of the evidence marshaled in this paper suggests that zoning, and other land-use controls, are more responsible for high prices where we see them," according to Glaeser and Gyourko.

"Measures of zoning strictness are highly correlated with high prices. Although all of our evidence is suggestive, not definitive, it seems to suggest that this form of government regulation is responsible for high housing costs where they exist," the report concludes.

Glaeser and Gyourko have a message for housing advocates. "If policy advocates are interested in reducing housing costs, they would do well to start with zoning reform. Building small numbers of subsidized housing units is likely to have a trivial impact on average housing prices even if well targeted toward deserving poor households. However, reducing the implied zoning tax on new construction could well have a massive impact on housing prices."

The Federal Reserve Bank of New York is one of 12 regional Reserve Banks which, together with the Board of Governors in Washington, D.C., make up the Federal Reserve System, an independent governmental entity created by Congress in 1913 to serve as the nation's central bank.

Among other duties, the Federal Reserve Bank has a role in promoting community development and reinvestment.



Professor Edward Glaeser

Photo provided by Edward Glaeser



Professor Joseph Gyourko

Photo provided by University of Pennsylvania

# **ATTENTION PROPERTY OWNERS!!!**

**IS OWNING A HOME TURNING OUT TO NOT BE AS MUCH FUN  
AS YOU THOUGHT IT WOULD BE?**

**DOES IT SEEM LIKE THE GOVERNMENT IS THE REAL OWNER  
OF YOUR PROPERTY WHILE YOU JUST PAY THE BILLS?**

**DID YOU THINK THAT IN A FREE COUNTRY LIKE AMERICA,  
YOU WOULD BE THE MASTER OF YOUR OWN PROPERTY?**

**GUESS WHAT, YOU WERE RIGHT!**

**AND THERE IS AN ORGANIZATION OF PEOPLE WHO REALIZE  
THE MEANING OF FREEDOM AND ARE DETERMINED TO  
FIGHT FOR IT.**

**YOU DO NOT HAVE TO TAKE THINGS LYING DOWN,  
NOR DO YOU HAVE TO FIGHT ALONE.**

**THE COALITION OF  
LANDLORDS,  
HOMEOWNERS, AND  
MERCHANTS, INC.  
INVITES YOU TO  
FIGHT WITH US!**

# IF YOU DON'T FIGHT, YOU CAN'T WIN!

The Coalition has fought many battles and has a lot of wins to show for it.

- When one homeowner believed that his village had trespassed on his property in its attempt to cite him for housing code violations, he joined the Coalition, and a claim was filed against the village. Subsequently, the case was settled following a hearing and **the homeowner received \$1,400 from the village**, which now respects him and his right to privacy. The Coalition member, who grew up in Germany under Nazi rule, feels that more important than the money he received is the fact that he received justice.
- As a result of an Article 78 proceeding by Coalition attorneys, another landlord attained victory over the Village of Patchogue. The village had attempted to convert his two-and-one-half-family property to a one-family property, but after he joined the Coalition, an Article 78 proceeding helped to force a stipulation to restore it to two-family status.
- Another landlord was given **89 summonses** for housing code violations, each carrying a fine of \$1,000. Facing **\$89,000 in fines**, he joined the Coalition, and, through the efforts of Coalition associated attorneys, **all 89 summonses were dismissed**.
- A Brookhaven property owner faced **\$10,000 in fines** for renting out his property without a rental permit, the acquisition of which required an inspection of his property by the town. Coalition attorneys challenged the constitutionality of the inspection requirement asserting that it violates on the right against unreasonable searches guaranteed by the Fourth Amendment. New York State Supreme Court Justice Howard Berler found that the code "insofar as it requires a rental occupancy permit, which can only be obtained after an inspection by the Code Enforcement Officer of the Town of Brookhaven, is unconstitutional."

**This is just a tiny fraction of the victories achieved by Coalition members. Make yours our next proud victory.**

As Thomas Jefferson said, *"The natural progress of things is for liberty to yield and government to gain ground."* Therefore, we must follow the advice of Samuel Adams: *"Let us contemplate our forefathers and posterity; and resolve to maintain the rights bequeathed to us from the former, for the sake of the latter, instead of sitting down satisfied with the efforts we have already made, which is the wish of our enemies. The necessity of the times, more than ever, calls for our utmost circumspection, deliberation, fortitude, and perseverance."*

# FIGHT! FIGHT!! FIGHT!!! THE COALITION OF LANDLORDS, HOMEOWNERS, AND MERCHANTS, INC.

## CLHM.ORG

### (631)376-2110 (631)661-7015



We invite you to become a "supporter" of The Coalition and help us to continue to be the voice "of the people" speaking out "for the people." Enclose a check or money order for \$45.00 now, and you will receive our newspaper and other information keeping you informed of such issues as fair housing, rental registration, personal liberties, private property, constitutional rights, and ongoing litigation. More importantly, you will have the satisfaction of knowing that you took a stand to protect the rights for which the founding fathers fought and died. Through taxes, permits, and fees, we all support "the system." Now, it is time to support the good people fighting to make the system work for us. Together we can make a change for the better! Please, join us TODAY. Get educated, and get involved. When you help us, you are helping yourself, your children, and all future generations. For those desiring all of the benefits of Coalition membership, including exceptionally low legal rates, full membership is available. Call for details. Associate membership is also available for \$150.00. Please, call for details.

Return to: The Coalition of Landlords, Homeowners, & Merchants, Inc.  
PMB 188, 656C N. Wellwood Ave.  
Lindenhurst, New York 11757-1672

----- (tear here) -----

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

**\$45.00 One-year "Supporter" Membership.** I want to help the Coalition protect my rights. Please keep my name on your mailing list and send me your newsletters. (Enclose check or money order.)

**\$150.00 One-year "Associate" Membership.** Please, call for details.

Enclosed, please find my contribution of \$\_\_\_\_\_ to continue the fight to protect my rights.

# PROPERTY RIGHTS WARRIOR

## A Warrior in Search of an Army

By Uzo Akujuo

Upstate New York investment property owner, Bob Zimmer, has been in contact with this newspaper's publisher, The Coalition of Landlords, Homeowners, and Merchants, Inc., since before the paper's inception, last year. He has been doing on site research to help him with his plans to grow a similar organization upstate. Unfortunately, he is finding his efforts frustrated by a lack of personnel and finance.

"Quite frankly, I wish I could report positively," he said when *Freedom and Property* contacted him recently. "I am very frustrated in that I have not been able to find the necessary time, money, and knowledge."

The knowledge that he has found, he said, is that the life of an investment property owner is not easy in upstate New York.

"We live almost in a police state. Government is basically telling us what to do in almost every situation," he said.

"Investment property owners are treated like 14th class citizens," he continued. "They will do anything they can to control us."

Zimmer recalled a story told to him by another investment property owner who went in to see the mayor of Schenectady. The guy said to him, "saying to him, 'I have a lot of properties.' The mayor said, 'We don't like people like you.' Those were his words," Zimmer said.

"If you go out on a limb with these people, they'll go at you with the law. They'll go to my property, and they'll find every violation they can," according

to Zimmer.

"One guy had a property manager who made a complaint against the government. They had code enforcement officers at all 22 of his properties, and they found problems with all of them," Zimmer said. "To me, it's scary."

Zimmer believes that investment property owners are at a disadvantage because only residents get to vote. "We're not in there voting for these people. In the narrow little minds of the politicians, they don't have to care about us because we can't reelect them," he said.

**"Investment property owners are treated like 14th class citizens." - Bob Zimmer**

Zimmer wants to create an organization, tagged the Property Rights Alliance, that would fight on behalf of the investment property owner. "I want to do something very similar to what Paul [Palmieri, president of The Coalition of Landlords, Homeowners, and Merchants, Inc.] has done in Long Island. There is nothing like The Coalition that I have seen anywhere else," he said.

Zimmer wants to create an organization that would not only defend investment property owners when charges are brought up against them for violation of unconstitutional laws. He wants the

organization to be more aggressive than that in fighting back against the government.

"I want the Property Rights Alliance to eventually hire attorneys that will go on the offensive, not just defend lawsuits. I don't see a lot of mileage in that. I see that it would be fun to go on the offensive," he said.

Unfortunately, Zimmer needs help bringing his dream of fighting back to fruition, and he is having a very difficult time getting that help.

"I know what needs to be done, and I have a very strong idea of what it takes to get it done," but it is not forthcoming, he said.

"Many of the people up here are not people who would take on the government. They like to talk about the concept, but they are not willing to act," he said.

He recalled his efforts to get the members of a Schenectady property owner's group to join his fight against the government. "It was a unanimous, 'No,'" he said. "They are afraid of the government. 90 to 95 percent of the investment property owners in Schenectady want to go down to the town council and try to talk to them. I don't see the type of people that I would like to have."

"It's all on me. The way I see it is that I would have to lead the thing. It's just me. Everything I do, I personally support. I don't receive money from anyone. I never have," he continued.

"I need a lot of time. I need about \$100,000," he said.

But Zimmer is unsure of how he will find the time and money he needs. "Unless you are an investment property owner, you have no idea of the level of

personal involvement that is involved. Your life is just not your own," Zimmer said.

For a long time, Zimmer has had plans to relieve himself of some of the burden of his investment property, thereby freeing up some time and acquiring some money for his fight. However, "I have not sold the building I hoped to sell. Where I own all of my buildings, conditions are such that I have not been able to sell. I need to sell property. If I could extricate myself from my current situation as the owner of a lot of buildings, I would be in a better position to fight," he said.

The fact that Zimmer's plans of carrying out what he sees as a very important fight are moving at such a slow pace is starting to get to him. "I've actually been demoralized. I can't do this by myself without serious money. My situation is somewhat pathetic," he said.

However, despite his disappointing situation, Zimmer has not given up. "I don't mean to say that it will not happen. The idea remains strong," he said. "I am willing to go on."

Despite being low on cash and time, Zimmer has been working on gaining the knowledge necessary to achieving his goals. "I've grown substantially in the area of contacts. I've been going to different property rights events trying to gain an understanding of the different situations, that kind of information. It's not that I'm not gaining ground; it's that my rate of gaining is not what I had hoped it would be," he said.

Zimmer would like anyone interested in joining his cause to contact him by phone at 518-877-0124 or by mail at P.O. Box 1616, Clifton Park, NY 12065.

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# Vote Property Rights

(continued from page 7)

would "make certain that any down-zoning, unless in downtown main street areas, be discouraged."

"Land that's already zoned one way is getting downsized," Dittko complained to "Freedom and Property." "The town is overdeveloped. It is not necessary."

According to Dittko, this "overdevelopment" is taking place because developers are buying town officials. "They are financing the campaigns of the people in power," he said.

Dittko, a former member of The Coalition of Landlords, Homeowners, and Merchants, Inc., which publishes "Freedom and Property," quickly grew testy because of the paper's views.

"I know what your philosophy is. I joined the Coalition years ago because I needed help. There was land near my house that was supposed to be preserved that the town wanted to build some municipal project on. I happen to think that the Coalition does provide a lot of protection for people, but even though I agree that property owners have rights, when you buy land in an area that is zoned for one use, is it fair to have it used another way?" he asked.

"Do you think they should build the Empire State Building in a residential neighborhood? People in this area say this is what we want. The Constitution does not say that anybody can build anything anywhere. I don't care what you say. You can talk to me all day, but I'm not going to change my mind," Dittko exclaimed.

Dittko's opponent, incumbent Edward Hennessey, did not return our calls.

## Islip Town Supervisor:

### Pete McGowan v. Ginny Fields

In the race for Islip Town Supervisor, Ginny Fields acquired the Environmental Voters Forum's support by pledging her support for preserving the 80-acre Heartland property adjacent to the Oak Brush Plains Preserve by using the government's assumed power over

private property to put the squeeze-play on the property's developer, Jerry Wolkoff.

"I would negotiate with the developer, who will need certain permits and cooperation from the town and the county. Until he agrees to preserve the parcel, I would not give him the permits," she says.

Fields also pledged to preserve open space in the town. To achieve this goal, she will "consider taxing sales of very high end home in the town for utilization in open space," she said.

We could not reach Fields for comment. Attempts to reach incumbent Islip Supervisor Pete McGowan also failed.

## Riverhead Town Supervisor:

### Robert Kozakiewicz v.

### Philip Cardinale

In his answer to the Environmental Forum's questions, candidate for Riverhead Town Supervisor, Philip Cardinale, said that he supports two-acre zoning because it is "essential to reduce anticipated density within the Main Road - Sound Avenue Farm Belt."

"The town's density is growing," he said when "Freedom and Property" questioned him about his plans.

Cardinale said that it is okay to institute such zoning restrictions because property owners have to be responsive to the wishes of their community. "People in the town determine what the ultimate population should be. There are 28,000 people living in the town, right now. People in Riverhead don't want 70,000 or 80,000 people living here," he said.

Asked if the practice of towns determining how many people live within their limits violates the privileges and immunities of United States citizens as contained in the 14th Amendment, Cardinale said that he was satisfied that it did not. "Every town sets its zoning to determine its population. The Supreme Court of the United States has spoken to that issue," he said.

To preserve open space, Cardinale told the Environmental Forum that he would "consider utilization of condemnation for the public good where permissible and appropriate."

Cardinale also communicated a very hostile attitude toward property owners who develop. To "half over-development," Cardinale told the Forum that he would "make clear that...constant zone changes and use variance applications must cease and people seeking 'Special Access' need no longer haunt Riverhead Town Hall."

Incumbent Riverhead Supervisor candidate, Robert Kozakiewicz, could not be reached for comment.

## Riverhead Town Council:

### Voters Pick Two out of:

### Edward Densieski, Judith Pitsiokis, George Bartunek, Arthur Binder, Robert Woodson, and Sean Walter.

Candidate George Bartunek told the Long Island Environmental Voters Forum, "I support two-acre zoning as a partial solution to the problem of population density."

Another Riverhead Town Council candidate, Arthur Binder, also told the forum that he supports two-acre zoning. "Two acre zoning is but one tool available that does have the ability to limit the ultimate density within Riverhead Township," he said.

The other candidates, incumbent Edward Densieski, Judith Pitsiokis, Robert Woodson, and Sean Walter, could not be reached.

## Nassau County Court Judge:

### Voters Pick Two out of:

### Michael Alonge, David Ayres, and Steven Jaeger

Candidate for Nassau County Court Judge, David Ayres, was at the Sea Cliff Street Fair to promote his candidacy. According to him, those seeking judicial office are not allowed to discuss their

views.

Asked, then, what he is telling people is the reason they should vote for him, he answered, "I am a former prosecutor. It is a question of the proper temperament. If you ask anybody who works in the county court [where he currently serves as chief counsel to County Court Judge Richard LaPera], he will tell you that I have the



Nassau County Court Candidate David Ayres

right temperament to get cases settled." "I am endorsed by all the main law enforcement groups," he added.

In campaign flyers, Ayres boasts of "providing advice and legal counsel to the court on all felony criminal matters," so anyone who is familiar with the rulings of LaPera may decide to use that information as advice on what type of county court judge Ayres would be.

Ayres opponents, Michael Alonge, Steven Jaeger, and Joseph Calabrese could not be contacted.

## Nassau County Family Court Judge: Kenneth Diamond v. Angela Iannacci

Also advertising her candidacy at the

(continued on page 15)

# CODIFIED STUPIDITY

## Only Short Trees, Please!

By Uzo Akujuo

As I walk through the Village of Babylon, from where this newspaper is published, I am repeatedly hit with disgust and dismay at the colossal degree to which the law is flouted here.

Article IX, Section 150-45E of the Babylon Village Code says, "Grass, weeds, or other vegetation shall be cut periodically to restrict growth in excess of four inches."

As defined by Webster's Dictionary and as everyone knows, "vegetation" is plant life - all plant life. Why, then, is it that all over the village, property owners have allowed their vegetation to grow over the maximum height?

All over the village, there are wanton violations of this code. You step outside the "Freedom and Property" office, and you are immediately assaulted by the sight of two-foot-high shrubbery. As much of a violation as this is, it is a far less deviation from the rules than some of the other shrubs on the same grounds.

In fact, from yard to yard, property owners have sadly chosen to use shrubs as tools of disorder, lining their yards with

shrubs two feet, three feet, even eight feet high. Yes, these shrubs are very well manicured, but I am reminded of the 2001 movie, "Bandits," in which polite bank robbers, played by Bruce Willis and Billy Bob Thornton, are scolded by a bank worker: "Good manners are no excuse for

criminal behavior," she explains.

Likewise, a good manicure is no excuse for criminal behavior. The same goes for all the flowers that I see around the village growing to dangerous heights, sometimes as high as two feet. Sure, they make the village beautiful, but beauty is

no more of an excuse for criminal behavior than good manicuring.

But the worst violations of this citizenry-protecting statute are Babylon's harbingers of trees. Unbelievable! Yard after yard, I see trees grown high and wild in a tree-like fashion, some probably 30 FEET HIGH if you can believe it.

One building, right across from the Village Hall - the audacity - has ivy growing the entire height of one of the approximately 20-foot high walls.

Sure, the Village Hall, itself, has a crawly plant up the entire height of the front wall; sure, the government has planted beautiful flowers and trees of over four inches in the Village Hall's front yard, and, yes, the government has lined the village sidewalks with flowers hanging way above four inches to begin with and continuing for more than four inches after that, but it is their law; they can break it if they want to.

I don't know if the people of Babylon figure the village must not have meant the law the way it reads because that would be incredibly stupid, that the village just wants to position itself to go after particular people whose taste the officials don't share, but that is not the Babylon I know.



Illustrated by Linda DiDonna

# **Upset by the Smoking Ban?**

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## Freedom and Homosexuality

By Uzo Akujuo

*In advance of the landmark United States Supreme Court decision on homosexual rights, Lawrence v. Texas, Bill Murray, Media Coordinator of the prominent family values advocacy group, Family Research Council, wrote an article, "How Lawrence v. Texas Will Impact Marriage Law," for the organization's website.*

*Murray argued that even though polls show that Americans are becoming increasingly accepting of homosexuality and disapproving of laws proscribing homosexual behavior, polls also show that the vast majority of Americans are against the idea of gay marriage. "What these Americans may not realize, however, is that the forthcoming decision in Lawrence could do to the sanctity of marriage what Roe v. Wade did to the sanctity of life," he wrote.*

*After the Supreme Court came out with its decision, which said that the petitioners have a right to engage in homosexual behavior in their home, I contacted Murray to find out what he thought about the ruling. The following is a transcript of our discussion, excerpted for space.*

**Akujuo:** What's your reaction to the decision?

**Murray:** We thought that the Supreme Court really overstepped its bounds. Historically, the states should have the right to regulate the public health and the public morality.

**Akujuo:** Do you believe the state should be able to come into my fridge and tell me that I cannot eat something because it is unhealthy?

**Murray:** The homosexual community is going to use this case to say that there is a right to gay marriage.

**Akujuo:** Doesn't the case say that this issue is separate from the right to a gay marriage?

**Murray:** It says that, but the case will

be used to say that if the equal protection clause protects the right to homosexuality, it also protects the right to gay marriage. People say that we are always talking about a slippery slope, but in this case, there is a slippery slope. It is already being used to say that there is a right to a gay marriage. Why should the government be made to endorse the gay lifestyle? Homosexuals are by far the most promiscuous people. Studies have been done that show that homosexuals have a lot more sexual partners than heterosexuals. Studies have also shown that children growing up in homosexual families have a lot more problems.

**Akujuo:** What about the argument that if homosexuals were allowed to get married, they would be more likely to be committed?

**Murray:** The courts in Canada said that there was a right to a gay marriage, and they have not taken advantage of it there, so why would it change anything here?

**Akujuo:** Do you not believe that people have a right to liberty?

**Murray:** Liberals and libertarians believe that this is about the right to privacy, which is the same thing that was used to defend abortion and child pornography, but historically, states have had the right to regulate the public health and the public morality. I agree with Justice [Clarence] Thomas. He said that if he were in the Texas legislature, he would vote to overturn the law. I would vote to overturn the law, but the state legislature has the right to legislate the public health and the public morality. If you say there is the right to homosexuality, then there is a right to prostitution and bigamy. People are already using the right to privacy in Roe v. Wade to defend child pornography.

**Akujuo:** Doesn't the opinion say that this is different from a situation in which it is not between two consenting adults?

**Murray:** It says that, but it will be used that way.

**Akujuo:** But I don't believe you have

answered my question of whether you think the government should be able to say that I cannot eat something, maybe red meat, because it is unhealthy.

**Murray:** Also, the public morality.

**Akujuo:** So it must be both. Let me read something from the Constitution to you, and you can tell me what that means to you, okay?

**Murray:** Okay.

**Akujuo:** It's from the Fourteenth Amendment. "Nor shall any state deprive any person of life, liberty, or property, without due process of law," what does that mean to you?

**Murray:** Historically, the states have had the right to legislate the public morality. The states have always legislated against sodomy, so I don't think you can say that they meant homosexuality. If you say you can't legislate morality, that will make prostitution legal.

**Akujuo:** Why should prostitution not be legal?

**Murray:** You think prostitution should be legal? You think that's what the founding fathers intended?

**Akujuo:** When James Madison...

**Murray:** He was for the legalization of prostitution?

**Akujuo:** Let me finish, please. When James Madison was proposing the Bill of Rights to the first session of Congress, he said that the right to property included the right to earn a living, which means the right to work.

**Murray:** I don't think that you will find support for legalized prostitution in the Constitution or with the public. I just don't think that you will find support for that with the majority of the public.

**Akujuo:** But isn't the point of the Constitution to protect the minority from the majority?

**Murray:** We don't think that this issue is like discriminating against black people.

**Akujuo:** No, that's not what I meant. I don't mean racial minorities. I mean

minority in number.

**Murray:** But that's an argument that has been made, that this issue is like discrimination against black people, but it's not the same thing. Black people were heavily disadvantaged, and that's what the Fourteenth Amendment was for. It was to correct the wrongs of the past. The homosexual situation is very different. The homosexual movement is one of the best funded movements around, and, think about it, how much are these laws enforced?

**Akujuo:** Think about these people that it was enforced against.

**Murray:** That's because the officers were set up. The gay movement needs its test cases.

**Akujuo:** Are you saying that the neighbor was lying?

**Murray:** I'm just saying that it's interesting that there was a call that there was a burglary when there wasn't one, and they continued the act after the police came, and your point about prostitution, I just don't think you will find support for that with the public or with the founding fathers. That's not what they meant, at all, and I have to go.

**Akujuo:** I'm sorry; may I read just one last thing to you?

**Murray:** Yes.

**Akujuo:** "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people. That's from the Ninth Amendment. It's saying that the fact that certain things are listed in the Bill of Rights does not mean that there are not other rights that exist, so does it matter what the details are that they were thinking about at that time? Isn't what's important "liberty" as a general term?"

**Murray:** I just don't think that you will find support for that with the people, but I've got to go.

**Akujuo:** Okay. Thanks a lot for taking the time to talk to me today.

**Murray:** Okay, bye.

## Vote Your Property Rights

(continued from page 13)

Sea Cliff fair was candidate for Family Court Judge, Angela Iannacci.

"I believe I have the right judicial temperament for the Family Court. Family Court is like an emergency room. People come there in crisis situations, needing immediate help. I have been found highly qualified by the Nassau County Bar Association," she said.

### Nassau County Legislature:

This year, Nassau County was a hot battle ground in the war between property rights advocates and anti-smoking fanatics.

On a strict party line and in the face of protests from bar and restaurant owners and property rights advocates, the Nassau Legislature passed a ban on smoking in bars and restaurants, by a one-vote margin.

### District 1:

**Ricardo LaRosa v. Kevan Abrahams**

The incumbent candidate for District 1 of the Nassau Legislature, Kevan Abrahams, voted for the smoking ban. He did not return our call for comment.

LaRosa is being challenged for the seat

by Ricardo LaRosa. He could not be reached for comment.

### District 2:

**Wanda Arroyo v. Roger Corbin**

Nassau County Legislature District 2 incumbent candidate, Roger Corbin, voted for the smoking ban. He did not return our call for comment.

Corbin is being challenged by Wanda Arroyo, who we were not able to reach.

### District 3:

**John Ciotti v. Lawrence DeAngelis**

When the Nassau Legislature was considering the bill to ban smoking in private bars and restaurants, Legislator John Ciotti, who is running for reelection, voted in favor of respecting the right of the property owner to decide whether or not people are allowed to smoke on his property.

Ciotti is being challenged by Lawrence DeAngelis, who could not be reached for comment.

### District 4:

**Denise Ford v. Michael Zapson**

Legislator Michael Zapson joined the

vote to decide, on behalf of bar and restaurant owners, whether or not smoking would take place on their property, and now he wants the residents of Nassau County to reelect him.

Zapson did not return our call for comment.

Zapson is being challenged by Denise Ford, who could not be reached for comment.

### District 5:

**Kevin Kamen, Joseph Scannell, Susan Wilmer**

If Joseph Scannell were not in the Nassau County Legislature when the Legislature was considering whether or not to substitute its wishes for those of bar and restaurant owners regarding whether or not to allow smoking, the ban may never have seen the light of day as the law passed by a one-vote margin, Scannell's vote being one of those in favor of the ban.

Scannell is being challenged by two opponents, Kevin Kamen and Susan Wilmer, both of whom could not be reached for comment.

### District 6:

**Francis Becker, Jr. v. Richard Glassberg**

Francis Becker was one of the minority voices in the Nassau Legislature voting against the smoking ban when the Legislature was considering taking away the right of bar and restaurant owners to decide whether or not smoking takes place on their property, and he is asking the voters in Nassau's Fifth Legislative District to give him another term as their representative in the Legislature.

Becker is being challenged by Richard Glassberg.

### District 7:

**Jeffrey Toback v. Jacobowitz**

Jeffrey Toback was one of the legislators who voted to have the Nassau County Legislature deprive bar and restaurant owners of the right to decide whether or not smoking takes on their property, and he is asking the residents of the Seventh Legislative District to extend his term as legislator.

Mara Jacobowitz has other plans,

(continued on page 16)

# Vote Property Rights

(continued from page 15)

seeking to replace Toback as Nassau County legislator for the Seventh District.

## District 8:

### Vincent Muscarella v. Joseph DeFelice

Vincent Muscarella, incumbent candidate for the Eighth District legislative seat, was with the minority of Nassau County legislators who voted against superceding the wishes of the county's bar and restaurant owners with those of the Legislature by voting against the smoking ban.

Muscarella is being challenged for the Eighth District seat by Joseph DeFelice.

## District 9:

### Richard Nicoletto v. Matthew Temares

Richard Nicoletto voted with the minority when the Nassau County Legislature was voting to supercede the wishes of restaurant and bar owners, regarding whether or not smoking should take place on their property, and he is asking the residents to extend his term as legislator for another two years.

Nicoletto is being challenged by Matthew Temares.

## District 10:

### Robert Frucht v. Lisanne Altmann

10th District Nassau County Legislator Lisanne Altman was one of the 10 legislators who voted in favor of banning smoking in bars and restaurants.

Altman later broke ranks with her counterparts by stating that she would vote for an amendment, urged by Nassau's bar and restaurant owners, that would have postponed the ban for up to three years.

The bar owners and restaurateurs wanted the extension because they feared their customers would bail to Suffolk, where a similar ban was not to take effect for another three years.

If the Legislature's Presiding Officer Judith Jacobs had allowed the amendment to go to the floor for a vote, it would likely have passed by one vote.

Altmann is now seeking reelection. She is being opposed by John Rennhack.

## District 11:

### Mitchell Winn v. Craig Johnson

Nassau County Legislative incumbent, Craig Johnson, of the 11th District, is seeking reelection after voting to make the Legislature, and not the property owners, decide whether or not smoking takes place in bars and restaurants.

Johnson is being challenged for the seat by Mitchell Winn.

## District 12:

### Peter Schmitt v. John Rennhack

As minority leader of the Nassau County Legislature, Peter Schmitt led the fight against the smoking ban, going as



**Nassau Minority Leader Peter Schmitt joins protest of smoking ban.**

far as joining defiant protesters at a smoke-in at Mr. Beery's in Bethpage, where he challenged the Legislature's Presiding Officer Judith Jacobs to allow

an amending bill that would have postponed the ban for years, a bill that seemed likely to pass as Legislator Lisanne Altmann, who had voted with the majority to allow the ban, said that she intended to vote in favor of the postponement.

Schmitt now seeks reelection to the 12th District seat and is being challenged by John Rennhack.

## District 13: Norma Gonsalves v. Hope Zimmerman

Norma Gonsalves, who is seeking reelection to the 13th District seat in the Nassau County Legislature, was among the losing votes to oppose the ban of smoking in Nassau restaurants.

Gonsalves is being opposed by Hope Zimmerman.

## District 15:

### Dennis Dunne, Sr. v. John Clark

Nassau County Legislator Dennis Dunne opposed the Nassau smoking ban. He is being challenged in his reelection bid by John Clark.

## District 16:

### Patricia Doyle v. Judith Jacobs

Nassau County Legislature Presiding Officer Judith Jacobs was the leader of the pack that voted to deprive Nassau's bar and restaurant owners of the right to decide what happens on their property when the Legislature voted-in a smoking ban.

As if that was not enough, she denied Nassau's legislators the right to vote on whether or not to postpone the ban for three years, the vote seeming likely to pass since the ban was passed by a one-vote margin and one of its supporters expressed an intention to vote for the postponement.

In a further show of her strong hand, on June 2, Jacobs refused to allow Talk Show Host Mike Siegel the right to broadcast a legislative hearing to his listeners even though Siegel had obtained permission for this broadcast from the Legislature's Minority Leader Peter Schmitt.

Earlier Siegel had heavily criticized Jacobs for her stand on the smoking ban.

Jacobs reelection bid is being challenged by Patricia Doyle.

## District 17: Edward Mangano v. Linda Burns-Gleason

(Continued on page 18)

Incumbent Nassau County Legislator Edward Mangano joined the minority in voting against the counties smoking ban.

Mangano's reelection bid is being challenged by Linda Burns-Gleason.

## District 18:

### Paul Annunziato v. Diane Yatauro

Nassau County's 18th District Legislative seat is being vacated by Brian Muellers. Vying to replace him are Paul Annunziato and Diane Yatauro, both of whom appeared at the Sea Cliff street fair to promote their candidacies.

Annunziato spoke about his view of the smoking ban. "The government overstepped its bound's," he said. "Capitalism, supply and demand should determine what happens. A special restaurant that does not allow smoking would flourish if that's what people want."

Echoing the complaints of many restaurant owners, Annunziato added, "You have businesses that paid thousands of dollars to comply with the health code [which required new ventilation systems to filter out the smoke], now their money is wasted."

"The country was built on free markets. What's going to happen when you have a

five-year-old with two parents that smoke. Personal responsibility has to take control," he continued.

Annunziato expressed his disapproval of the way the Legislature's Presiding Officer Judith Jacobs handled the issue. "If we had a representative government,



**Nassau County 18th Legislative District Candidate Paul Annunziato.**

the amendment to postpone the ban would have passed because you had enough people ready to vote for it," he said.

Annunziato lamented the fact that Jacobs would not allow the amendment to be voted on. "It is not a representative government legislators cannot vote on a bill, in my opinion," he said.

Even though Yatauro was at the fair to get people to vote for her, she refused to speak with "Freedom and Property" about why she is the right person to fill the 18th



**Nassau County 18th Legislative District Candidate Diane Yatauro.**

District seat, saying that her campaign manager, Christina Griffin, had to approve any interview, an approval that Griffin refused to approve.

Griffin later agreed to an appointed interview, but later reneged on the appointment.

## District 19:

### Michael Mirotznik, David Denenberg, Robert Bruno

David Denenberg was with the majority in the Nassau County Legislature when it voted to deprive bar and restaurant owners of their property right to decide whether or not to allow smoking in their businesses, yet he expects residents of the 19th District to send him back to the Legislature for another two years.

## The Other Candidates

The other candidates vying for election are:

- Justice of the Supreme Court, 10th Judicial District (Covering Nassau and Suffolk): Pick four from Arthur Diamond, Thomas Feinman, Vincent Martorana, Joseph Spinola, Michael Ciaffa, John Kase, Susan Kleuwer, William Robolini, and Patrick McCarthy.

- Suffolk County Executive: Pick one from Edward Romaine and Steve Levy.

## Suffolk County Legislator

- First District: Pick one from Michael Caracciolo and Vincent Villella.

- Second District: Pick one from Jay Schneiderman and George Guldi.

- Third District: Pick one from Peter O'Leary, Caarl Bissonette, and Altgracia Ioannidis.

- Fourth District: Joseph Caracappa is running unopposed.

- Fifth District: Pick one from Joseph Latini and Vivian Vilorina-Fisher.

- Sixth District: Pick one from Daniel Losquadro and Andrew Tarantino, Jr.

- Seventh District: Pick one from Sylvester Daily, Jr. v. Brian Foley.

- Eighth District: Pick one from Alfred Graf and William Lindsay.

- 9th District: Pick one from William Menendez and Ricardo Montano.

- 10th District: Pick one from Cameron Alden and Rodney Rodriguez.

- 11th District: Pick one from Angie Carpenter and Donna Morreale.

- 12th District: Pick one from Andrew Crecca and Steven Wunderlich.

- 13th District: Pick one from Lynne Nowick and Patricia Biancaniello.

- 14th District: Pick one from John Iliou and David Bishop.

- 15th District: Pick one from Maxine Postal and Louis Molinaro.

- 16th District: Pick one from Allan Binder and Eric Sachs.

- 17th District: Pick one from Paul Tonna, David Needham, and John Condon.

- 18th District: Pick one from Ellen Martin and Jon Cooper

- District Court Judge, First District: Madeleine Fitzgibbon is running unopposed.

## Town of Babylon

- Town Clerk: Pick one from Toniann Notarfrancesco and Janice Tinsley-Colbert.

- Receiver of Taxes: Corinne DiSomma is running unopposed.

- Town Councilman: Pick two from Jo-Ann Daum, James McDonough, Wayne Horsley, and Ellen McVeety.

## Town of Brookhaven

- Sixth District Court Judge: Pick two from James Flanagan, Glenn Murphy, Sonia Veras, and Martha Luft.

- Supervisor: Pick one from John LaValle and Thomas Oberle.

- Receiver of Taxes: Pick one from George Davis and Joseph Wold, Jr.

- Superintendent of Highways: Pick one from Patricia Strebel, John Rouse, and Bob Chartuk.

- Town Council, 3rd District: Pick one from Geraldine Esposito and Neil Rodgers.

(continued on page 17)

# ON WHOSE SHOULDERS

## A Founding Mother of Women's Property Rights

By C. C. Falco

The act of marriage is almost every little girls dream. The long, white dress, the flowing veil, blooming flowers and walking down the aisle to meet your life's partner at the end of it.

Now imagine that after pledging your vows, you have, right there and then, lost all right to control all property that was rightfully yours. You are now unable to make contracts, control or keep earned wages, collect rent on property that you own, sell property or even start a lawsuit, all for having completed a dream. You can, though, have dinner ready and the house clean.

This was the reality of every woman's life in the 19th century. So, too, was the reality of every woman's life even before marriage. If an estate was inherited by a woman at a young age, it was immediately in the control of her father. Upon marriage, that estate was offered as her dowry, which in turn, became her husband's property.

A few laws had been passed in fosterage of married women's property rights, but none as detailed as the Married Women's Property Act of 1848. The woman most responsible: Ernestine Rose.

Rose never settled for what was in front of her, even at a young age. She described herself as a "rebel at the age of five." Her father was a wealthy rabbi in Poland, where Rose was born, Ernestine Louise Potowski, on January 13, 1810. Her mother died when she was a child, leaving her father as her primary care taker and educator.

As a result, her education consisted primarily of the Hebrew language and of the Old Testament. In her father's practice of frequent fasting to please his God, Rose found her Jewish faith to be too harsh and demanding. She questioned every action and every belief that she was taught from the Bible. Her father once responded, "A young girl does not want to understand the object of her creed, but to accept and believe it."

Ironically, that statement became the antitheses of her life's proceedings; she was not going to accept it; she was never going to just settle.

Her open rejection of their faith resulted in friction between her and her father. As if in spite, when Rose was sixteen, her father betrothed her to a Jewish friend of his. Appalled, she confronted the man and begged him to reject the offer. He laughed in her face. Refusing the marriage would mean forfeiting almost all her property,

which she inherited from her mother, to this man whom she did not know.

An issue like this, in the Jewish faith, would be brought before the rabbi; unfortunately, that would be her father. She wasn't going to take, "No" for an answer. She went above their faith and took the case to the Polish courts. With ambition, she began a long journey through wind and snow on a sled to the Tribune of Kalish. She represented herself, pled her own cause, won, and returned triumphantly to her home to declare her victory. She handed her inheritance to her father; her victory was gratifying enough.

At the age of 17, she relocated to Berlin. She was an entrepreneur by the time she was in her early twenties, creating and selling her own perfumes. She later moved to England, where she helped found the Association of All Classes of All Nations, which fought for human rights for all people, regardless of sex, class, color or national origin.

She later married William Ella Rose, and together, in 1836, they moved to the United States. Out of their home in New York City, Rose continued to sell her perfumes while her husband repaired jewelry and watches.

The rights of women in America were not much improved from how they were in Poland; the only difference was that there were more women doing something about it. Radical feminism had become a way of life for some, like Elizabeth Stanton, Paulina Davis, Frances Wright and Susan B. Anthony.

Rose joined the movement, speaking publicly, in her spare time, on issues such as race and faith.

In the winter of 1836, Judge Thomas Hertell, submitted a bill for the Married Women's Property Act to the legislature of the State of New York to investigate ways of improving the civil and property rights of married women and to permit them to hold real estate in their own name. Rose immediately drew up the first petition ever sent to the state legislature by a woman.

Within a five month period, she was only able to collect five names. But Rose wouldn't give up, she was determined to fight for all the woman who never thought they were even able to fight for their

rights. She persisted in soliciting names during the next twelve years, until finally, the rights were won in 1848.

The act provided that "the real property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues, and profits thereof, shall not be subject to the sole disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property, as if she were a single female."

It further provided that "the real and personal property, and the rents, issues, and profits thereof, of any female now married, shall not be subject to the disposal of her husband; but shall be her sole and separate property, as if she were a single female."

The act also provided for the protection of the rights of married women to an inheritance. "Any married female may take by inheritance, or by gift, grant, devise, or bequest, from any person other than her husband, and hold to her sole and separate use, and convey and devise real and personal property, and any interest or estate therein, and the rents, issues, and profits thereof, in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts," according to the new law.

Despite this victory, Rose was still dissatisfied with the fact that any personal property the couple attained during their marriage belonged to the husband. "[The Married Women's Property Act] is some provision for the favored few; but for the laboring many, there is none," she complained.

"The mass of the people commence life with no other capital than the union of heads, hearts and hands. To the benefit of this best of capital, the wife has no right. If they are unsuccessful in married life, who suffers more the bitter consequences of poverty than the wife? But if successful, she cannot call a dollar her own. The husband may will away every dollar of the personal property, and leave her destitute and penniless, and she has no redress by law. And even where real estate is left, she receives but a life-interest in a third part of it, and at her

death, she cannot leave it to any one belonging to her, it falls back even to the remotest of his relatives," Rose continued.

Such was Rose's indefatigability. In 1837, she took part in a thirteen week debate which included topics such as the abolition of slavery.

Rose's popularity grew with time as she took her lectures on the road, traveling as far as Kentucky and South Carolina. She worked closely with William Lloyd Garrison and Frederick Douglass.

Rose became know for starting the fire of the women's suffrage debate in Michigan in 1846 and was nicknamed the "queen of the speakers' platforms." In October of 1853, she was elected president of the National Woman's Rights Convention at Philadelphia.

In 1856, Rose and her husband set sail for England. There, she attempted to revisit Poland but was denied entry. Six months later, they returned to the United States. She began to stay away from the platform to avoid controversy after receiving death threats while visiting the Town of Charleston in West Virginia and due to her failing health.

But her passion wouldn't let her stay away. In her succeeding years, she teamed up with Stanton, Anthony, and Lucy Stone to form the National Woman's Suffrage Association, fighting for both male and female suffrage.

In 1860 New York State passed the Act Concerning the Rights and Liabilities of Husband and Wife, expanding the Married Women's Property Act by giving women the right to sign contracts, bring lawsuits, and make investments.

In the early 1870s, she returned to England and continued to fight for women's suffrage there until her husband passed away in 1882.

After his death, she led the life of a recluse and took a back seat to the struggle. She later passed on August 4, 1892, at age eighty-two and was buried beside her husband in London, England.

Rose's painstaking life's work for suffrage, whether for women or men, has been so inspirational and important to so many that a society in her name has been created by Brandeis University Professor Dr. Paula B. Doress-Worters because although women take the very basics of their freedoms for granted on a daily bases, without Rose the word "mine" might not be in their vocabulary, at all.

Information used for this article was provided by American Atheists, Women's History with Jone Johnson Lewis, and American Memory.



Ernestine Rose

## Vote for Property Rights

(continued from page 16)

• Town Council, 5th District: Pick one from Timothy Mazzei and Terry Karl.

### East Hampton

• Supervisor: Pick one from Leonard Bernard, Jr. and William McGintee.

• Superintendent of Highways: Christopher Russo is running unopposed.

• Town Justice: Pick one from Lisa Rana and Stephen Grossman.

• Town Council: Pick two from Bill Gardiner, Diana Weir, Debra Foster, and Peter Hammerle.

• Assessor: Pick two from Gabrielle Brady, Jill Massa, Judith Michell, and Jeanne Nielsen.

• Trustee: Pick nine from Timothy Bock, Edward Collins, Daniel King, Thomas Knobel, Timothy Kromer, James McCaffrey, Kiane McNally, William Mott, William Vorpahl, Jr., Harold Bennett, Brian Byrnes, Mary Gardiner, John Gosman, Jr. Stephen Lester, Joe Peel, William Taylor, Robert Tulp, and Richard Wolf.

### Huntington

• Town Clerk: Jo-Ann Raia is running unopposed.

• Receiver of Taxes: Ester Bivona is running unopposed.

• Councilman: Pick two from Tracey Edwards, Richard McGrath, Susan Berland, Marlene Budd, Thomas Teresky, and Howard Zeis, III.

### Islip

• 5th District Court Judge: Pick two from Stephen Behar, Patricia Filiberto, Steven Lotto, William Condon, Michael Kennedy, and George Nolan.

• Town Clerk: Pick one from Joan Johnson and Mohsen Elsayed.

• Receiver of Taxes: Pick one from Virginia Allen and Rosemary Marchlowska

• Town Council: Pick two from Pamela Greene, William Rowley, Jr., William Ford, and Kenneth Mangan.

### Riverhead

• Town Clerk: Pick one from Barbara Grattan and Katherine Casa.

• Receiver of Taxes: Pick one from Maryann Helbrunn and Iris Weinstein-Smrek.

(continued on page 18)

# Vote Property Rights

(Continued from page 17)

• Superintendent of Highways: Pick one from Mark Kwasna and Robert Moss.

• Town Justice: Pick one from Richard Ehlers and Lois Phillips.

• Assessor: Pick two from Paul Leszczynski, Madelyn Sendlewski, Joan Griffin, and Louise Wilkinson.

## Shelter Island

• Supervisor: Pick one from Arthur Williams and Gerard Siller.

• Receiver of Taxes: : Nancy Kotula is running unopposed.

• Superintendent of Highways: Pick one from Mark Ketcham and Hans Schmid.

• Town Justice: Edward Hannabury is running unopposed.

• Town Council: Pick two from Paul Mobius, Jr., Peter Reich, Arthur Fox, and James Messer.

• Assessor: John Cronin, Jr. and Albert Hammond are running opposed for two slots.

## Smithtown

• Receiver of Taxes: Pick one from Deanna Varicchio and Robert Palermo.

• Councilman: Pick two from Joanne Gray, Edward Wehrheim, Bradley Harris, Daniel Ryan, and Danny Hickey.

## Southampton

• Supervisor: Pick one from Patrick Heaney and Henry DeCillia

• Receiver of Taxes: Pick one from Vincent Gaudiello and Melissa Bishop.

• Councilman: Pick two from Nancy Graboski, Bruce Tria, Steven Kenny, and Frederick Stelle.

• Trustee: Pick five from Frederick Havemeyer, Jon Semlear, Eric Shultz, Scott Strough, Edward Warner, Hermann Beck, Alexander Gregor, Harriett Sanchez, Margery Schab, and Rebecca Wiseman

## Southold

• Supervisor: Pick one from John Romanelli and Joshua Horton.

• Receiver of Taxes: George Sullivan is running unopposed.

• Town Justice: Rudolph Bruer is running unopposed.

• Councilman: Pick two from Joseph Lizewski, Craig Richter, William Edwards, and Daniel Ross.

• Assessor: Darline Duffy is running unopposed.

• Trustee: James King and Albert Krupski, Jr. are running unopposed for two seats.

## Nassau County Chairman, Board of Assessors

• Pick one from Charles O'Shea and Harvey Levinson.

• Third District Court Judge: Pick one from Neal Spector and Sondra Pardez.

• Fourth District Court Judge: Pick one from Anna Anzalone and Joel Sunshine.

## Hempstead

• Supervisor: Pick one from Kate Murray and Dorothy Goosby.

## Councilman

• Second District: Pick one from Edward Ambrosino and George Bassias.

• Third District: Pick one from James Darcy and Vincent Grasso

• Fifth District: Pick one from Angelina Cullin and Jeffrey Gold.

• Town Clerk: Pick one from Mark Bonilla and Kevin Gorman.

• Receiver of Taxes: Pick one from Donald Clavin, Jr. and Gerald Lamonica.

## North Hempstead

### Town Council

• District 1: Pick one from Timothy O'Connell and Robert Troiano, Jr.

• District 2: Pick one from Jerome Galluscio and Thomas Dwyer.

• District 3: Pick one from Angelo Ferrara and Dennis Mortensen.

• District 4: Pick one from Edward Kitt and Wayne Wink, Jr.

• District 5: Pick one from Steven Shulman and Anthony D'Urso.

• District 6: Pick one from Carlo Manganillo and Fred Pollack.

• Supervisor: Pick one from Francis

Moroney and Jonathan Kaiman.

• Town Clerk: Pick one from Rhoda Becker and Michelle Schimel.

• Receiver of Taxes: Pick one from Patricia Harrington and Rocco Iannarelli.

## Oyster Bay

• Supervisor: Pick one from John Venditto and Alexander Sklavos.

• Councilman: Pick three from Joseph Muscarella, Bonnie Eisler, Anthony Macagnone, Gary Burke, Rose Walker, and Lawrence Weiss.

• Town Clerk: Pick one from Steven Labriola, Martha Offerman, and Kevin Rantz.

• Receiver of Taxes: Pick one from John Canning and James Stefanich.

## Glen Cove

• Mayor: Pick one from Jed Morey and Mary Holzkamp.

• Council Member: Pick six from Reno DiScala, Joseph Gioino, Jeffrey Peress, Grady Farnan, Charles Lavine, Thomas Manzione, Anthony Jimenez, Michael McGuire, Joan Meehan, Ellen Savino, Michael Norman, James Toner, and Albert Granger.

## Long Beach

• Council Member: Pick three from Thomas Sofield, Jr., Joel Crystal, Mona Goodman, Scott Nigro, James Hennessy, and Gina Guma.

• City Judge, 10-Year Term: Maria Pirrone and Roy Tepper are running unopposed for two seats.

• City Judge, 6-Year Term: Michael Zummo and Stanley Smolkin are running unopposed for two seats.

• County Legislature: 14th District: Pick one from Gregory Carman, Jr. and David Mejias.

# Top Court and Constitution

(continued from page 8)

tion.

Other interesting moments are provided by Lawrence v. Texas. In his tit-for-tat explanation of how the principles of Roe v. Wade has been as eroded as the Bowers v. Hardwick principles, Scalia wrote, "We have since rejected *Roe's* holding that regulations of abortion must be narrowly tailored to serve a compelling state interest."

How was this rejection made? Through the joint opinion of Justices Sandra Day O'Connor, Kennedy, and David Souter, in Planned Parenthood v. Casey, "not once describing abortion as a 'fundamental right' or a 'fundamental liberty interest.'" This is quite confusing. How does the fact that abortion is not described as a fundamental right mean a rejection of the notion?

Also curious is the idea that the opinion of three out of nine judges can overturn a precedent.

In his dissenting opinion in Lawrence v. Texas, Justice Clarence Thomas feels compelled to include dicta, giving his personal opinion of the Texas law. "Punishing someone for expressing his sexual preference through **noncommercial** consensual conduct with another adult does not appear to be a worthy way to expend valuable law enforcement resources," he writes.

The caveat, "noncommercial," is one that all the justices seem to agree on. They seem of the impression that whatever "fundamental rights" are, they do not include the right to commercial sexual activity.

According to the court's opinion, the act in question is constitutionally protected because, among other things, "It does not involve...prostitution." Prostitution, apparently, does not come within what Kennedy calls the "realm of personal liberty which the government may not enter."

Scalia scolds, "The Court makes no effort to cabin the scope of its decision to

exclude [bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity] from its holding." He is wrong in the case of prostitution. The court cabins it; it just points to nothing permitting it to do that.

Nevertheless, the majority does seem to share Scalia and Thomas' view of prostitution as constitutionally unprotected.

When *Freedom and Property* spoke to Town of Babylon, New York, special prosecutor Paul Margiotta about the



Justice Clarence Thomas

Constitutionality of the town's zoning laws, he replied that the laws had been found to be constitutional by the Supreme Court and "The Supreme court cannot be wrong about the Constitution."

Such is deference paid by many to the opinion of the Supreme Court regarding the Constitution. But how can the Supreme Court be infallible regarding the Constitution if its decisions are not based on the Constitution?

## Join the team fighting to protect property rights

The Coalition of Landlords, Homeowners, and merchants, inc. is looking for aggressive, conservative attorneys with state and federal court experience to work as its staff counsel.

the coalition also seeks a paralegal with 2 years experience to assist its attorneys.

the coalition's Newspaper, Freedom and Property, is seeking volunteer reporters to join the team exposing the government's abuse of property and other constitutional rights. paid positions are also available.

interested parties, please fax your resume to (631)422-2452.

To Advertise in *Freedom and Property* or to get our rates, contact us at 631-376-2110 or editor@colham.com.

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### Miscellaneous

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Do not be afraid of your town even when officials threaten you!  
You are not alone!

The Town wants to control you, but officials are elected for the people, not the other way around!

Huntington, we want our issues resolved! Don't drag us to court to milk money out of us hard working citizens!

We need our Town back! We need our rights back!

The Town is balancing its budget through excessive fines!

If you can't pay the town's fines, it's okay; they will put it on your taxes!

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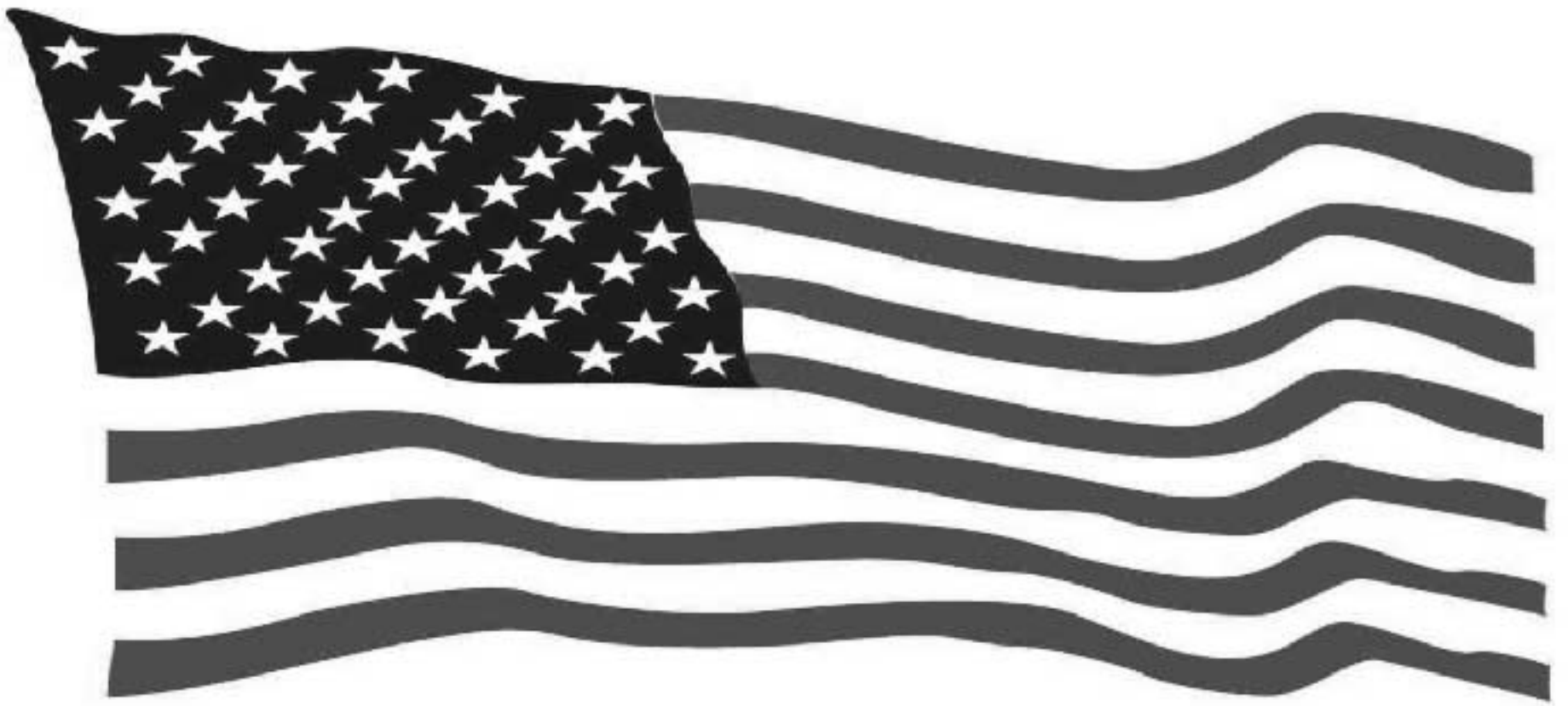
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