

## Hedrick v. Holiday Island Backgrounder

### Executive Summary

Steven Hedrick is one of the countless entrepreneurs across the United States who has poured his heart and soul—and his time and money—into his small-business dream. He represents some of the finest qualities of the American dream: the willingness to work hard to provide for himself and his family while also serving a need in his community. But bureaucrats in the nearby city of Holiday Island, Arkansas, have other plans. They’ve decided to give a special monopoly privilege to another business—and to outlaw competition from people like Steven Hedrick.

Months ago, the city passed an ordinance that essentially outlaws Steven’s trash-hauling business—not because he’s dishonest or bad at his job, but simply to ensure that a government-run trash-hauler, called the Carroll County Waste Management District, won’t have to compete fairly. Even more bizarrely, Steven’s company doesn’t do weekly trash-hauling, which is what the District does. That makes no sense—and it violates the Arkansas Constitution, which prohibits the government from creating monopolies. Now, the Goldwater Institute has taken up Steven’s case, to defend his right to earn an honest living.

### Steven’s Small Business Dream

Steven Hedrick started his company, X-Dumpsters, in 2020, as a retirement job after he had spent most of his life working in the construction industry. X-Dumpsters doesn’t do weekly trash pick-up; instead, Steven delivers portable dumpsters to job sites where work crews might have big trash hauls that need to be carried away, and then he picks up the dumpsters and takes them to the landfill.

It should be as easy as that, in the United States: small-business entrepreneurship has long been considered a central part of the American Dream. Most small-business owners, like Steven, don’t go into business expecting to get rich; instead, they’re hoping for economic independence and the opportunity to “be your own boss.”<sup>1</sup>

“The city has prohibited me from doing business,” Steven says. “I’ve got to send my business to my competitor that’s actually got their boot on my neck - and that is the most frustrating part of it.”

Unfortunately for Steven—and for his customers—city officials in Holiday Island, Arkansas, had other plans. In 2022, they adopted an ordinance that forces all business owners to contract with the Carroll County Waste Management District (the District) for their weekly trash hauling needs—and also forbids any entity other than the District from hauling any solid waste in Holiday Island to the local dump. That ban applies *even if* the company is permitted by *the District* to haul trash in Carroll County and to dispose of it in the County dump. In other words, Holiday Island has given the District an *exclusive* monopoly on all solid waste disposal in the area. As a result, Steven

has been forced to turn down multiple jobs a week and is struggling to stay afloat due to this ordinance.

But the Arkansas Constitution doesn't allow that. In fact, it explicitly prohibits the government from creating monopolies—which it declares “contrary to the genius of a republic.”<sup>2</sup>

It makes no sense to outlaw Steven's business. There's no reason why the District can't handle weekly trash-hauling, while X-Dumpsters provides for the special needs of job crews. Yet the city has decided to ban his competition simply to increase the revenue of its government-run company. That violates Steven's constitutional right to earn a living, a right the Arkansas Constitution deems “inherent and inalienable.”<sup>3</sup>

### **The Right to Earn a Living**

The freedom to make one's own economic choices is a fundamental liberty at the heart of the American experiment. The right to earn a living without unreasonable government interference is deeply rooted in the Anglo-American common law and in America's tradition of rugged individualism.<sup>4</sup> In fact, this legal principle finds its roots in the “law of the land” clause of Magna Carta—a clause which the Arkansas Constitution contains in addition to a separate due process clause.<sup>5</sup> As far back as the seventeenth century, that “Law of the Land” phrase was interpreted as protecting the right to put one's skills to work to provide for oneself and one's family.<sup>6</sup>

The author of many of these decisions—and the leading authority on the meaning of the Law of the Land Clause in the seventeenth century—was Sir Edward Coke, who authored several important legal textbooks, including the *Institutes of the Laws of England*, which served as the main textbook for law students in colonial America. Thomas Jefferson, John Marshall, James Madison, John Adams, and other founders learned law from Coke's *Institutes*—in which Coke argued that monopolies violate the basic human right to earn a living at a gainful occupation.<sup>7</sup>

And, indeed, the founding fathers viewed monopolies as unjust because they prohibited people from putting their knowledge and skills to work in providing for themselves—simply to enrich those businesses who had enough political influence to get the government to block fair economic competition. James Madison, for example, wrote that a government “where arbitrary restrictions, exemptions, and monopolies deny to ... its citizens [the] free use of their faculties, and free choice of their occupations,” is “not a just government.”<sup>8</sup>

The authors of the Arkansas Constitution, no less than America's founding fathers, respected the right to earn an honest living. The Constitution they wrote explicitly declares: “Perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed.” As the Arkansas Supreme Court has explained, when interpreting this prohibition:

The monopolies which in England became so odious as to excite general opposition, and infuse a detestation which has been transmitted to the free States of America, were in the nature of exclusive privileges of trade, granted to favorites or

purchasers from the crown, for the enrichment of individuals, at the cost of the public. They were supported by no considerations of public good. They enabled a few to oppress the community by undue charges for goods or services. The memory, and historical traditions, of abuses resulting from this practice, has left the impression that they are dangerous to Liberty, and it is this kind of monopoly, against which the constitutional provision is directed.<sup>9</sup>

Based on that principle, Arkansas courts have repeatedly struck down laws that prohibit free economic competition. In 1944, for example, the state supreme court declared that a state law that blocked a new taxicab company from operating in Little Rock. The Constitutional ban on monopolies, the court said, “is too clear to need elucidation.”<sup>10</sup> More than six decades later, an Arkansas trial found that the same city had violated the anti-monopoly clause by again prohibiting free competition in the taxi business.<sup>11</sup>

But, ignoring these rulings, Holiday Island officials are violating Steven’s right to earn a living by granting an exclusive monopoly on the collection and disposal of solid waste in Holiday Island to a single, government-run entity. Although some courts have allowed exclusive business arrangements where doing so is necessary to protect the public health or safety, there’s no such justification here—Steven already holds a permit issued by the District—the same entity that is now the exclusive provider of solid waste disposal services in Holiday Island—to pick up and dispose of solid waste in Carroll County. He’s also allowed to rent out his dumpsters and dispose of solid waste in other areas of Carroll County—just not Holiday Island. So there’s no reason to think that preventing him from working in the city will protect the health or safety of the residents.

Instead, the Holiday Island trash monopoly is a simple case of government trying to pick winners and losers in business. That’s not just a bad idea—it’s also unconstitutional. That’s why the Goldwater Institute has filed a lawsuit on Steven’s behalf in Arkansas state court to protect Steven’s right to economic liberty.

### **Case Logistics**

The Goldwater Institute is representing Steven Hedrick, an Arkansas business owner in his suit challenging the constitutionality of Ordinance 2022-004.

This case was filed in the Circuit Court of Carroll County of Arkansas Civil Division on August 22, 2023.

### **The Legal Team**

**Adam Shelton** is a Staff Attorney at the Goldwater Institute’s Scharf-Norton Center for Constitutional Litigation, where he litigates in the areas of education, parental rights, economic liberty, and free speech.

**Jon Riches** is the Vice President for Litigation for the Goldwater Institute’s Scharf-Norton Center for Constitutional Litigation and General Counsel for the Institute. He litigates in federal and state trial and appellate courts in the areas of economic liberty, regulatory reform, free speech, taxpayer

protections, public labor issues, government transparency, and school choice, among others. Jon has litigated cases in multiple state and federal trial and appellate courts.

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<sup>1</sup> Shayna Waltower, “The Top Reason Most Entrepreneurs Start Businesses,” *Business News Daily*, Apr. 28, 2023, <https://www.businessnewsdaily.com/4652-entrepreneur-motivation-benefits.html>.

<sup>2</sup> Ark. Const. Art. 2, Sec. 19

<sup>3</sup> Ark. Const. art. II § 2.

<sup>4</sup> Timothy Sandefur, *State “Competitor’s Veto” Laws and the Right to Earn A Living: Some Paths to Federal Reform*, 38 *Harv. J.L. & Pub. Pol’y* 1009, 1012 (2015).

<sup>5</sup> Ark. Const. art. II § 21.

<sup>6</sup>

Steven G. Calabresi & Larissa C. Leibowitz, *Monopolies and the Constitution: A History of Crony Capitalism*, 36 *Harv. J.L. & Pub. Pol’y* 983 (2013).

<sup>7</sup> 2 Edward Coke, *Institutes of the Laws of England* (1809) \*47 (“if a grant be made to any man, to have ... the sole dealing with any ... trade, that grant is against the liberty and freedom of the subject, that before did, or lawfully might have used that trade, and consequently against this great charter. Generally all monopolies are against this great charter, because they are against the liberty and freedom of the subject, and against the law of the land.”) (spelling modernized)

<sup>8</sup> Property, reprinted in *Madison: Writings* 516 (Jack Rakove ed., 1999).

<sup>9</sup> *Ex parte Levy*, 43 Ark. 42, 51 (1884)

<sup>10</sup> *N. Little Rock Transp. Co. v. City of N. Little Rock*, 207 Ark. 976, 981 (1944).

<sup>11</sup> *Ken’s Cab LLC v. City of Little Rock*, 60CV-15-1620.