

THE SMALL BUSINESS DOCKET

Issue 20 | August 2022

AMICUS (FRIEND OF THE COURT) CASES

VICTORY FOR SMALL BUSINESS!

Shaw v. Nashville

In a victory for small businesses, the Tennessee Supreme Court vacated the lower court judgments unfavorable to Nashville home-based businesses and permitted them to proceed with a challenge to Nashville's restriction.

Wilkins v. United States – Defending Property Rights

- Where → U.S. Supreme Court
- Issue → Whether a property law known as the Quiet Title Act offers property owners any exceptions to a 12-year statute of limitations?
- NFIB Position → Yes. Our brief argues that the statute of limitations in the QTA is a claim-processing rule, meaning its filing deadlines are not strict and are subject to extension. We argue that in property disputes between the government and private parties (in this case the U.S. Forest Service opened Mr. Wilkins' private road to the public), courts should render close calls in favor of the private party to affirm the importance of property rights.

Bittner v. United States – Challenging Excessive Penalties

- Where → U.S. Supreme Court
- Issue → Whether a "violation" under the Bank Secrecy Act means the failure to report foreign accounts, or a "violation" exists for each foreign account not reported?
- NFIB Position → Our brief argues that courts should strictly read statutes with civil penalty provisions, which in this case would avoid calculations that lead to an absurd number of violations. Our brief also highlights how the Occupational Safety and Health Administration has artificially manipulated the wording in regulations to increase penalties.



"You can't be successful in business without taking risks. It's really that simple." – Adena Friedman, President and CEO of NASDAQ

***Schaad v. Alder* – Advocating for Fair Municipal Taxing Schemes**

- Where → Ohio Supreme Court
- Issue → Does a COVID-19 tax law, adopted by the Ohio Legislature in the midst of the pandemic to relieve businesses of separate municipal tax burdens when employees worked from home, also speak to whether that income was taxable in the municipality?
- NFIB Position → No. The purpose of Section 29 was to protect employers from withholding taxes in every municipality where an employee worked from home. The provision does not speak to where an employee's wages are taxable.

***Betts v. North Carolina Department of Health* – Defending Workers' Compensation Reform**

- Where → North Carolina Court of Appeals
- Issue → For a 2011 reform that imposed a 500-week cap on temporary total disability payments does "total loss of wage-earning capacity" mean "complete destruction of the ability to earn wages?"
- NFIB Position → Yes. Our brief argues that the statute requires a showing of "total loss of wage-earning capacity" to receive benefits beyond 500 weeks. The commission was right to define this as a "complete destruction of the ability to earn wages." Anything short of this would contravene the statute and subject businesses to further liability.

***Shaw v. Nashville* – Fighting Arbitrary Business Zoning**

- Where → Tennessee Supreme Court
- Issue → Did a Nashville ordinance, preventing service of clients from home-based businesses, infringe on homeowners' constitutional rights?
- NFIB Position → Yes. NFIB's brief argued that the court should adopt a stricter standard of review when dealing with homeowners' property rights and must consider an individual's right to earn a living.
- Outcome → The Tennessee Supreme Court vacated lower court judgments unfavorable to home-based businesses and sent the case back for further proceedings. This means the businesses can proceed with their challenge to Nashville's restrictive ordinance in the trial court.



THIS MONTH'S HELPFUL RESOURCES



Webinars:

- [Competitive Employee Benefits for a Tight Labor Market: How Your Small Business Can Use Employee Benefits to Hire and Retain Talent](#) - 8/3/2022

Blog Articles:

- [EEOC Issues New Guidance on Workplace COVID Testing](#) - 7/29/2022
- [U.S. Census Bureau's Annual Small Business Survey: What Small Businesses Need to Know](#) - 8/29/2022

NFIB Comments/Miscellaneous:

- [NFIB Petition to the Consumer Financial Protection Bureau \(CFPB\) to Adopt a Rule Prohibiting Discrimination Against Medical Debt](#) - 7/1/2022

Small Business Support Line:

- This summer, our Small Business Support Line has received and answered well over 100 inquiries from small businesses across America.
- In August, the most frequently inquired about topics were:
 1. Employee Retention Tax Credit
 2. Employee-Related COVID-19 Issues (leave, vaccine, etc.)
 3. Business-to-Business Disputes & Credit Card Issues (tie)
- Reach out to the SBLC @ info@nfib.org or better yet give us a call (800) 552-NFIB.

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The NFIB Small Business Legal Center is a 501(c)(3) public interest law firm, which serves as the voice for small businesses in the nation's courts and a legal resource for small business owners nationwide. As a nonprofit, our work depends on the generosity of our donors.

To help us continue our fight for small business owners across the country, you can make a tax-deductible donation by going to www.nfib.com/sblcgive/.