

THE SMALL BUSINESS DOCKET

Issue 8 | August 2021

AMICUS (FRIEND OF THE COURT) CASES

VICTORIES FOR SMALL BUSINESS!

Brannon v. McMaster – South Carolina District Court of Common Pleas issued a ruling that will help ease the labor shortage and get unemployed South Carolinians back to work. The judge dismissed the Plaintiffs' case alleging that the Governor violated state law when he halted supplemental unemployment benefits.



Arizona v. Yellen

- Where → United States Court of Appeals for the 9th Circuit
- Issue → Did the federal district court err in concluding that Arizona lacked standing to challenge the Tax Mandate provision in American Rescue Plan Act and dismissing the case?
- NFIB Position → Yes. The Tax Mandate is a federal intrusion in the states' sovereign realm of tax policy. The provision is also an unduly coercive condition on federal funds and harms small businesses by preventing states from reducing taxes during the pandemic.

See's Candies, Inc. v. Superior Court

- Where → California Court of Appeals 2nd District
- Issue → Did the Superior Court err in allowing Plaintiffs to proceed with their civil suit based on a COVID-19 injury arising from the workplace?
- NFIB Position → Yes. California law makes the workers' compensation system the exclusive remedy for injuries arising out of the workplace and those injuries derivative to initial workplace injuries. The trial court was wrong to deviate from this rule for a COVID-19 illness and fatality. Small businesses are significantly hurt by having to face potential liability on multiple fronts – through workers' compensation and the courts.

To be successful, you have to have your heart in your business, and your business in your heart."

– Thomas Watson Sr.

Cucarro v. DeSantis – Florida Leon County Court 2nd District agreed with NFIB that Governor DeSantis acted within his authority and discretion when he declined to accept the federal supplemental benefits and, as a result, denied the plaintiff's request for a temporary injunction.

Unemployment Supplemental Benefits Cases

- Issue → Can states cut off expanded COVID-19 unemployment benefits early?
- NFIB Position → Yes. NFIB's amicus briefs argue that there is no mandatory duty to accept federal supplemental benefits. Additionally, our briefs assert that the extra unemployment benefits are contributing to the ongoing labor shortage and, in some instances, allowing the unemployed to make more money while not working than they would while working.
- Where →
 - **South Carolina** - *Brannon v. McMaster* - Richland County Court of Common Pleas 5th District
 - Outcome → The court agreed with the State and NFIB, dismissing Plaintiffs' case. Appeal has been filed in South Carolina Supreme Court.
 - **Ohio** - *State ex rel. Candy Bowling v. DeWine* – Franklin County Court of Appeals 10th District
 - Outcome → The court reversed the trial court's decision to deny the injunction and sent the case back for further consideration. This was the opposite result advocated for by NFIB.
 - **Florida** - *Cuccaro v. DeSantis* – Leon County Circuit Court 2nd District
 - Outcome → The court agreed with the State and NFIB, denying plaintiff's motion for a temporary injunction. An appeal is expected.



THIS MONTH'S HELPFUL RESOURCES



Webinars:

- [EIDL Microloans and PPP Direct Forgiveness Portal—Updates with the SBA](#) – 8/11/2021
- [Employee Retention Credit \(ERC\)—Small Business Updates from Treasury](#) – 8/25/2021

Tip Sheets/Blog Articles:

- [NFIB White Paper: ADA Turns 31, Website Compliance Uncertainty Persists](#) – 7/30/2021
- [CDC Issues Revised Guidance on Mask Wearing for Fully Vaccinated People](#) – 7/30/2021
- [IRS Issues New ERC \(Employee Retention Credit\) Guidance: Clarifies Owner/Spouse Restrictions](#) – 8/9/2021

NFIB Comments/Miscellaneous:

- [NFIB Comment to the Secretary of Labor Opposing the Increased Minimum Wage for Federal Contractors](#) – 8/18/2021
- [NFIB Comment to the Secretaries of Health and Human Services, Labor, Treasury, and Acting Director of OIRA Regarding the No Surprises Act and Surprise Billing](#) – 8/20/2021
- [NFIB Comment to the Administrator of the EPA and Secretary of the Army on the Clean Water Act and “Waters of the United States”, and Supporting Retention of the Navigable Waters Protection Rule \(NWPR\)](#) – 8/21/2021
- [NFIB Comment to the Secretary of Commerce Urging the Cancellation of the 2021 Management and Organizational Practices Survey \(MOPS\)](#) – 8/27/2021
- [NFIB Comment to the Secretary of Energy Supporting the Secretary’s Permanent Indemnification Authority Under the Price-Anderson Act](#) – 8/28/2021

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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 <https://www.nfib.com/sblcgive/>.