

THE SMALL BUSINESS DOCKET

Issue 18 | June 2022

VICTORIES FOR SMALL BUSINESS!

West Virginia v. Environmental Protection Agency (EPA)

The Supreme Court's opinion in this case is a huge sigh of relief for small businesses. The Court held that the Clean Air Act did not give the EPA authority to impose greenhouse gas emission standards transforming the nation's electric grid. This decision prevents an increase in energy costs for small businesses, which would have occurred under the EPA's plan.



NAMED-PLAINTIFF CASES

Northwest Natural Gas v. Environmental Quality Commission

- Where → Oregon Court of Appeals
- Issue → Is the Climate Protection Plan (CPP), which requires a progressive reduction in greenhouse gas emissions, lawful?
- NFIB Position → No. We argue that the Oregon Department of Environmental Quality acted outside its authority in enacting the CPP, because statewide rules of this magnitude require legislative approval. We also note how drastically the CPP will increase energy costs.

AMICUS (FRIEND OF THE COURT) CASES

Viking River Cruises, Inc. v. Moriana

- Where → United States Supreme Court
- Issue → Whether the Federal Arbitration Act (FAA) requires enforcement of bilateral arbitration agreements and prevents an employee from suing an employer in court as a representative of other employees under the California's Private Attorneys General Act (PAGA)?
- NFIB Position → The FAA preempts an employee from going to court and bringing a PAGA claim on behalf of other employees when the employee agreed to resolve employment disputes through arbitration.
- Outcome → The Supreme Court held that the FAA preempts California law and prevents employees who have agreed to arbitrate employment disputes from going to court on behalf of other employees under PAGA.

“Business is all about relationships, how well you build them determines how well they build your business.” – Brad Sugars

Viking River Cruises, Inc. v. Moriana

In a good win for small businesses, the Supreme Court held that employees who agree to arbitrate disputes with employers cannot also go to court bringing claims on behalf of other employees under California's Private Attorneys General Act (PAGA). This decision will go a long way in protecting small businesses from an onslaught of PAGA litigation, including many frivolous lawsuits.

Chan v. HEI

General partners had a good June at the Colorado Supreme Court. The state's highest court held that these individuals do not necessarily need specific industry knowledge to participate in operation of the business, and may, in some situations, rely on their general business experience.



West Virginia v. EPA

- Where → United States Supreme Court
- Issue → Whether Congress constitutionally authorized, in the Clean Air Act, the EPA to issue significant rules such as those capable of reshaping the nation's electricity grids and unilaterally decarbonizing sectors of the economy?
- NFIB Position → No. NFIB's amicus argues that the EPA needed clear authorization from Congress before imposing costly and significant regulations on the energy industry, which is not present in the Clean Air Act. Our amicus also argues that upholding the EPA rules will drastically raise energy prices on small businesses.
- Outcome → The Supreme Court agreed with our amicus. The Court held that the relevant provision of the Clean Air Act—Section 111—did not give the EPA authority to devise emission standards transforming the nation away from coal. Any “decision of such magnitude and consequence” must come from Congress itself or an agency with a clear delegation from Congress.

National Pork Producers Council v. Ross

- Where → United States Supreme Court
- Issue → Does California's Prop 12, which regulates the conduct of pork farmers, processors, and retailers, not just in California but nationwide violates the Constitution?
- NFIB Position → Yes. NFIB's amicus argues that Prop 12's imposition of onerous regulations on pork producers nationwide violates the Constitution's Commerce Clause. Our brief also argues that, if upheld, Proposition 12 will make it easier for other states to impose their policy preferences on nationwide industries.

Glacier NW v. Int'l Brotherhood of Teamsters Local 74

- Where → United States Supreme Court Cert Petition
- Issue → Does the National Labor Relations Act (NLRA) shield unions from state tort liability for intentionally destroying employers' property during a strike?
- NFIB Position → No. The NLRA should not be read to protect unions from state tort liability when they intentionally damage employers' property during a strike. Our brief argues that if the Supreme Court does not reverse the Washington Supreme Court's decision protecting unions from tort liability, it will leave employers without a remedy for the intentional destruction of their property and encourage unions to continue such activity.

Restaurant Law Center v. City of New York

- Where → United States Court of Appeals for the Second Circuit
- Issue → Are New York City's "Just Cause Laws," which limit when an employer can reduce employee hours, terminate employees, or discipline employees, lawful?
- NFIB Position → No. Our amicus brief argues these laws are preempted by the National Labor Relations Act, and in the alternative, violate the Commerce Clause of the Constitution by discriminating against out-of-state businesses.

Chan v. Heartland Energy Development Corporation (HEI)

- Where → Colorado Supreme Court
- Issue → Whether the Colorado Securities Act permits general partners, who lack industry-specific experience, to actively participate in businesses using their general partner business experience?
- NFIB Position → The Colorado Securities Act must be construed by its terms and consistently with federal law, allowing general partners to participate in business operation without industry-specific experience, but instead based on their general business experience.
- Outcome → The court agreed, holding that industry-specific knowledge is not required and general partners can participate in the business based on general business experience.

WMC v. Evers

- Where → Wisconsin Supreme Court
- Issue → Did the court of appeals err in concluding Plaintiffs lacked standing to challenge Governor Evers's policy of naming businesses with COVID-19-positive employees?
- NFIB Position → Yes. Plaintiffs had both taxpayer standing and standing based on harm to their reputation and financial interests. NFIB's brief also argues the policy will exacerbate problems for small businesses.
- Outcome → In an unfortunate outcome for small businesses, the Wisconsin Supreme Court held that WMC's challenge was barred by Wisconsin law, clearing the way for Governor Evers to release the names of businesses having two or more employees who test positive for COVID-19.

Bowfin Keycon Holdings, LLC v. Pennsylvania Department of Environmental Protection

- Where → Commonwealth Court of Pennsylvania
- Issue → Is Regulation 7-559, which enters Pennsylvania into the Regional Greenhouse Gas Initiative (RGGI)—a New England and Mid-Atlantic multi-state compact to reduce greenhouse gas emissions—permitted under state law?
- NFIB Position → No. NFIB's amicus argues that the RGGI regulation imposes an unlawful tax because it usurps the legislative power of the Legislature granted by the Pennsylvania Constitution. Additionally, our brief argues that the RGGI will increase electricity and energy costs on small businesses and consumers.

THIS MONTH'S HELPFUL RESOURCES



Webinars:

- [Hiring & Retaining the Best Talent in a Tight Labor Market *HR Basics for Small Business* – 6/1/2022](#)

NFIB Comments/Miscellaneous:

- [NFIB Letter to the Director of FinCEN Supporting Establishment of a No-Action Letter Process – 06/22/2022](#)
- [NFIB Letter to the Secretary of Labor Regarding the Department of Labor's Proposed Rulemaking on Improving Tracking of Workplace Injuries and Illnesses – 05/27/2022](#)

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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.

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