

The Brief

NEWS FROM THE SMALL BUSINESS LEGAL CENTER

NFIB Strikes another Blow to the NLRB ***– D.C. Court of Appeals Rejects Poster Rule***

In April, the NFIB Small Business Legal Center scored a major victory against the National Labor Relations Board (NLRB) when the U.S. Court of Appeals in Washington, D.C. ruled in favor of NFIB in its lawsuit challenging the NLRB poster rule.

In 2011, the Legal Center sued to stop the NLRB's Notice Posting Rule, which would have required over six million business owners to prominently display posters giving employees "notice" of their rights to form a union. But, NFIB obtained an injunction to prevent NLRB from enforcing the rule, and continued to fight to strike down the rule completely.

In the lawsuit, NFIB challenged both NLRB's authority to issue the rule and the means by which NLRB intended to enforce it. Reversing a lower court decision that upheld the rule, the appellate court agreed with NFIB that the NLRB does not have authority to require that the posters be displayed in places of business.

"The decision is a monumental victory for small business owners across this country who have been subject to the illegal actions of a labor board that has consistently failed to act as a neutral arbiter, as



the law contemplates," said Karen Harned, executive director of NFIB's Small Business Legal Center. "The court acknowledged that 'the choice to speak includes within it the choice of what not to say,' and that the NLRB overstepped its authority by compelling small business owners to post a pro-union notice. The court's ruling protects small business owners from frivolous union lawsuits and reaffirms that the authority of the NLRB is narrow and limited as defined by Congress in the National Labor Relations Act."

The poster decision was the second major defeat for the Obama Administration's push to support Big Labor. In January, the same federal court of appeal that struck down the poster rule held that President Obama violated the Constitution when he made appointments to the NLRB without consulting Congress as required by the Constitution.

The courts have sent the President

and his agencies a clear message: You, Mr. President, are not above the law. In the Poster Rule case the NLRB was acting without statutory authorization from Congress, and in express violation of federal statutes. And in the NLRB recess appointment cases, the President was acting beyond the powers authorized to him in the Constitution. The bottom line is that the government cannot suspend or ignore constitutional rules—or lawfully enacted statutes—for expedient or pragmatic reasons. But, now President Obama and his NLRB advisors are learning this lesson the hard way. Of course, that's what happens when you ignore the Constitution.

Thanks to your generous support, the NFIB Small Business Legal Center will continue to fight back against unconstitutional power grabs, the government, and work to ensure that small businesses are not forced to act as union organizers.



By Karen R. Harned, Executive Director

Friends in High Places: NFIB Small Business Legal Center Gains Historic Supreme Court Ranking

Thirteen years ago, NFIB established a new foundation, built to fight for small business in the nation's courts. For over 55 years NFIB lobbyists in the state capitols and U.S. Congress had fought tirelessly for reforms that would help small business. But small business owners watched as decisions made in state and federal courts increasingly impacted your business's bottom line. Small business needed a voice in the nation's courts and the NFIB Legal Foundation (now the NFIB Small Business Legal Center) stepped up to be your advocate. Our mission was and is to serve you, the small business owner. Small business is our only client. What you care about, we care about and fight for in state and federal courts, and the U.S Supreme Court.

The cost of health insurance has been the biggest issue you have faced for over two decades. So, the NFIB Small Business Legal Center took the issue head-on as we challenged Obamacare and fought against its restrictions on the liberties of small business and all Americans. Unfortunately, we lost *NFIB v. Sebelius*. But our impact in the courts, including the U.S Supreme Court, cannot be denied.

As a matter of fact, we've been taking the small business fight to the highest court so much that the popular online legal report "SCOTUSblog" (Supreme Court of the United States Blog), recently ranked NFIB as the nation's ninth most active legal champion – solidly within the coveted ranks of what SCOTUSblog calls the "Sweet Sixteen" of organizations found regularly making a strong case for justice.

While it's great to be recognized as a fierce contender in the most important legal ring in America, it's a title we wish we didn't have to earn. But this administration has been particularly relentless in its re-interpretation of the Constitution

to the detriment of your business, making the Legal Center busier than ever.

We're going toe-to-toe with big government, filing briefs to support your concerns over every challenge from frivolous lawsuits to pro-union workplace posters, from preventing arbitrary taking of private property to making it harder for your employees to raise unsubstantiated claims against your business.

There is no doubt that you – America's job creators – are in the crosshairs of politicians that don't appreciate the "rule of law". Rest assured that the NFIB Small Business Legal Center remains at your side, always striving to argue powerfully for you, in the courts.

Sincerely,

Karen R. Harned
Executive Director

**Have a case of government
abuse against small business?**

Call or e-mail the
NFIB Small Business Legal Center
at
1-800-552 NFIB (6342) or
legalcenter@nfib.org.

Defending the Right to Work, One State At a Time

The National Federation of Independent Business (NFIB) has supported “right to work” initiatives throughout the country. These “right to work” statutes guarantee individuals the right to accept employment without being compelled to join a union. But, of course, this is a controversial issue in many states.

Over the past few years, NFIB has seen major successes, especially in the Great Lakes region. In states that were once considered strongholds for industrial unions, NFIB has succeeded in pushing for the enactment of “right to work” laws. Yet the union bosses are predictably fighting back.

On the political front, the unions managed to corral Ohio voters into repealing a “right to work” statute in 2011. They have since pushed for similar repeals in Indiana, Michigan and Wisconsin, in order to force employees to join unions against their will. The unions are obviously threatened by the idea that workers—in these states—now have the right to choose.

But, as those legislative efforts have failed or stalled, the unions are now turning to the courts. They have launched a full-out assault, filing half-a-dozen lawsuits to block, or strike down, “right to work” laws in Indiana, Michigan and Wisconsin. Meanwhile the NFIB Small Business Legal Center is working to defend the “right to work” throughout America—one state at a time.

The NFIB Legal Center will be joining with the National Right to Work in the coming months to defend Indiana’s statute, which is currently under assault in both state and federal court.

We know that this is an important issue both for small business employers and for their employees. Just as NFIB members are fiercely independent, so too are many of their employees who object to joining a union. Every employee may have different reasons for wanting to join or wanting to reject membership. Some may object to union lobbying efforts; others may see the unions as corrupt. Whatever their reasons may be, we are telling the courts that employees should have the right to choose for themselves whether or not to associate with a union.

The good news is that a federal judge has already dismissed one of these lawsuits. In light of this development, we are cautiously optimistic that we will ultimately prevail. Yet of course, the unions will not accept defeat easily. It is, therefore, incumbent upon us to defend “right to work” laws wherever they come under attack.

Summer Help – Rules for Students

Schools are out, and a lot of high-school students will try to get a summer job. But there are some important things employers should know about student’s job opportunities:

- 1.** The rules apply to them. Minors are entitled to the same minimum wage, overtime, and safety and health protections as adults. When it comes to work, the federal wage and hour law, or the Fair Labor Standards Act (FLSA) applies to everyone, regardless of age. Other federal and state workplace laws apply to them too.
- 2.** Students 13 and younger have limited options when it comes to summer jobs. Federal law says they’re too young for most non-farming jobs, such as working in a store or restaurant, but there are still jobs they can do. They’re allowed to babysit and perform minor chores around a private home, and if you own a business, they’re allowed to work for you.
- 3.** If they’re 14 or 15, their prospects are better. Students in this age bracket are allowed to perform jobs such as bagging groceries, waiting tables, and working in an office, but they can’t use power-driven machinery, such as lawn mowers, lawn trimmers, and weed cutters. They also aren’t allowed to work more than 40 hours a week.
- 4.** If they’re 16 or 17, they’re allowed to work more often and in more jobs. There’s no limit to the number of hours 16 and 17-year-olds can work, and they’re allowed to work basically any job that isn’t declared hazardous, provided all other FLSA requirements are met.
- 5.** If they’re 18 or older, legally, they’re adults. It doesn’t matter that they’re still in school. In the eyes of the law, they’re grown up, and that means they can do pretty much any job for which they’re qualified.

Finally, remember that state laws may offer teens additional protections, so it’s important to check with your state department of labor for guidance on state restrictions.

Small Business at the Supreme Court

While 2013 did not provide a marquee event like last year's disappointing decision in the Obamacare lawsuit, this term the Supreme Court has still considered a number of significant cases that will impact the business community. And thanks to your support, the NFIB Small Business Legal Center has participated in over a dozen cases that will have far-reaching implications for small business. Here are highlights from four of the cases the Legal Center took on:

Arkansas Fish & Game Commission v. United States – VICTORY!

A unanimous decision, the Court agreed with the Legal Center, that landowners should be compensated for land destroyed or damaged by government projects. In this case property owners endured years of planned flooding by the U.S. Army Corps of Engineers. Lower courts had ruled that property owners could not receive compensation for devastation caused by the flooding.

Christopher v. SmithKline Beecham – VICTORY!

The Legal Center's influence at the Supreme Court was on display during an argument in this precedent-setting wage and hour case. Multiple justices grilled the attorneys about issues the Legal Center raised in its amicus brief. And the Court's final written opinion quoted from our amicus brief. The Court's ultimate decision, which struck down a ruling by the Department of Labor, was a clear victory for small business owners.

Horne v. U.S. Department of Agriculture

In an important property rights case, the Legal Center is supporting California raisin farmers challenging a USDA enforcement action brought against the farmers for failing to transfer 47 percent of their raisins to the federal government without compensation. Our brief argued that property owners should not be forced to surrender their property to the federal government unless just compensation is given.

Vance v. Ball State

In a workplace discrimination case, the Legal Center argued against expansion of employment discrimination liability. We argued in our brief that the increased possibility of frivolous litigation from disgruntled employees and prosecutorial abuse from administrative agencies like the Department of Labor and Equal Employment Opportunity Commission can be especially burdensome and costly to defend for small businesses.

Decisions are expected by the end of June 2013, in all cases in which NFIB has participated. And thanks to your continuing support, the Legal Center will continue to bring the voice of small business to our country's highest court.

MEDIA MENTIONS

NFIB Small Business Legal Center

Karen Harned, Executive Director of the Small Business Legal Center, argued against President Obama's recess appointments to the NLRB stating, "Small business owners throughout the country have suffered under the unabashedly pro-union decisions handed down by the NLRB. They deserve to be protected from unconstitutional acts that exacerbate the NLRB's devolution from a neutral arbiter between labor and employers to a pro-union government agency." [Learn more: http://goo.gl/XMdr6](http://goo.gl/XMdr6)
Also another Noel Canning brief filed: <http://goo.gl/bk1mi>

NFIB Small Business Legal Center celebrates a Victory in a Federal Court of Appeals in its challenge to the National Labor Relations Board's (NLRB) "Notice Posting Rule." Reversing the decision of the district court, the circuit court found that the Board does not possess the authority to require that the posters be displayed in places of business. Further, it affirmed the district court's determination that the Board lacks the legal authority to enforce the poster rule as an unfair labor practice. [Learn more: http://goo.gl/cEJu8](http://goo.gl/cEJu8)

The Legal Center filed an amicus brief defending the right of small businesses to meet consumer demands by joining with other industry groups in challenging New York City's proposed ban on large sugary drinks. [Learn more: http://goo.gl/O60Ls](http://goo.gl/O60Ls)

Karen Harned's opinion editorial highlighting the recent decision to allow Federal agencies to regulate themselves. [Learn more: http://goo.gl/tOBXa](http://goo.gl/tOBXa)

Beth Milito, senior executive counsel at the NFIB Small Business Legal Center testified before the House Judiciary Committee on frivolous lawsuits against small businesses. [Learn more: http://goo.gl/MXAOZ](http://goo.gl/MXAOZ)



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