

Summary of SC93047, *Robert Brian Bone v. Director of Revenue*

Appeal from the Jefferson County Circuit Court; Judge Robert G. Wilkins

Argued and submitted May 1, 2013; opinion issued July 16, 2013

Attorneys: The director was represented by Solicitor General James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321, and Bone was represented by Robert S. Adler, a solo practitioner in St. Louis, (314) 725-2400.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The director of revenue appeals a judgment in favor of a man who challenged the constitutional validity of sections 302.700 and 302.755, RSMo, which disqualify drivers who are convicted of an alcohol-related traffic offense from driving a commercial vehicle for at least one year. In a unanimous decision written by Chief Justice Mary R. Russell, the Supreme Court of Missouri reverses the circuit court's decision.

Facts: Driver Robert Bone was pulled over for weaving in his lane, subsequently failed two field sobriety tests and tested above the legal limit on a breath test. He was arrested and, following an administrative hearing, his license was suspended in accordance with section 302.505, RSMo, for an alcohol-related traffic offense. He also was disqualified from driving a commercial motor vehicle in accordance with section 302.755 because his suspension was an alcohol-related enforcement contact. Bone sought review in the circuit court, challenging the constitutional validity of multiple statutes. The circuit court ruled sections 302.500, RSMo, and 302.700 violated the United States Constitution in light of the recent decision in *National Federation of Independent Business v. Sebelius*, 132 S.Ct. 2566 (2012), reinstated Bone's driving and commercial driving privileges, and did not rule on the remaining constitutional arguments. The director of revenue appeals.

REVERSED.

Court en banc holds: Bone timely raised his constitutional argument supported by *National Federation*. The director's failure to object at trial to the evidence beyond the scope of the pleadings amounted to implied consent for determination of the issue raised. The United States Supreme Court found in *National Federation* that Congress' conditioning the use of federal funds can be viewed as coercive under the spending clause of the United States Constitution. Bone has misapplied his reliance on that case, however, because the decision does not hold that a state law can be found to be in violation of the spending clause. The judgment finding section 302.700 violates the constitution is reversed. Bone's remaining arguments that several statutes violate his due process and equal protection rights are without merit and are denied.