



NATIONAL FEDERATION OF THE BLIND

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BLIND ENTREPRENEURS INITIATIVE

THE BLITZ Winter, 2017

It has been awhile since we got out The Blitz. The one we did in January was actually the NFBEI annual report for 2016. If you missed it, you can read it on our website at <http://blindmerchants.org/wp-content/uploads/2017/02/NFBEI-Annual-Report16-1.pdf> . There is a lot to report in terms of happenings with the National Federation of the Blind and National Association of Blind Merchants over the last few months so let's get to it.

Register Now for the Music City BLAST – Registration is now open for our 2017 BLAST (Business Leadership and Superior Training) Conference. It will be a Music City BLAST September 12-15 at the Nashville Airport Marriott Hotel. We will be returning to the site of the 2011 BLAST. In announcing the Nashville event, NABM President Nicky Gacos said, “For the last 5 plus years, we’ve been asked many times when are we going back to Nashville? We can now say it will be in 2017.” Remarkably, that’s just 5 months away and will be here before you know it so register now. Nashville is a fun city and we plan on making it a fun and informative experience for everyone who attends. And who knows? You may even get to hear a little country music. We are returning to our traditional format with a full-day of BEP staff training on Tuesday, September 12th and pre-conference seminars starting that same day. Staff will want to plan on arriving on Monday and we’d suggest many of the others do the same. We are also bringing back our Randolph-Sheppard Women’s breakfast on Thursday, September 14th and it will feature Pam Allen, Director of the Louisiana Center for the Blind and 1st Vice President of the National Federation of the Blind. Register now by going to our website at <http://blindmerchants.org/blast-only-2017-registration/> . Whether you are an attendee, an exhibitor, or a sponsor, you can get it done on the website.

Rest Areas Take Center Stage – Over the last several months, issues related to

interstate vending have taken center stage and are receiving a great deal of attention from NABM and the NFBEI. Commercialization has raised its ugly head again. Here is a brief synopsis of some of the issues we are following:

- *Indiana Congressman Wants to Commercialize Rest Areas* – Here we go again. A freshman Congressman, Jim Banks, of Indiana is asking fellow members of Congress to sign on to a bill he plans to introduce that would allow commercialization of rest areas. He sees it as a way to generate revenue for the states to help keep the rest areas open and to fund other programs in the states. As The Blitz goes to press, the bill hasn't been introduced but is expected to drop very soon. The good news is he is a freshman and isn't on any of the relevant committees. The bad news is it could get support from some key members and pick up momentum quickly. We don't want to over react but we don't want to take it lightly either. We need all blind entrepreneurs to call their member of Congress and ask them NOT to sign on to the bill and to oppose it. We have already mobilized our Indiana entrepreneurs and are already working against the bill. We also hope to leverage contacts the NFB has made with members of the Transportation Committee while working on the driverless car issues.
- *FHWA Seeks Comments on Commercialization* – The Federal Highway Administration sought comments in regards to vending and the possibility of expanded commercialization. We oppose any expanded commercialization because it could be devastating to businesses owned by blind entrepreneurs and who service vending machines at interstate rest areas. Almost 20% of the nation's Randolph-Sheppard vending facilities are located at interstate rest areas. Many states rely on income from third party vending at these sites to fund their programs. However, there is a lot of interest in seeing changes and we need to protect against that. NABM President Nicky Gacos submitted comments on behalf of our organization and we rallied several other rest area vendors to submit comments. In total, 195 comments were submitted and the vast majority were in opposition to expanded commercialization. 85 of these were submitted by blind entrepreneurs and 17 by SLA's. To view NABM's comments, go to <http://blindmerchants.org/nabm-comments-rest-area-commercialization/> .
- *New York Pushing the Envelope* – The New York State Department of Transportation decided to ignore the law and put in an over-the-counter operation selling Made in New York products at two rest areas. The law clearly only allows retail sales through vending machines but this didn't stop the NYSDOT. To its credit, the FHWA directed the NYSDOT to cease the over-the-counter sales but did grant temporary permission for them to switch to a self-checkout system until such time as the FHWA can issue

guidance on what is permissible under vending. We had several questions. First, by what authority did the FHWA allow the NYSDOT to use a self-checkout system when the law clearly only allows sales by vending machines? Did NYSDOT first offer the opportunity to the New York BEP as required by the Kennelly Amendments? Is the FHWA foreshadowing the guidance it plans to issue? The NFBEI was concerned and NABM President Nicky Gacos wrote to the FHWA to express our concerns. We are awaiting a response and hopefully an opportunity to have some dialogue on the issue.

- *Connecticut Closing Rest Areas* – As part of a budget reduction measure, the Governor in Connecticut has proposed closing several interstate rest areas. This move will cost the BEP approximately \$137,000 which it uses to support the program. NABM and NAMA have joined forces to fight the closures. It is an uphill battle but the blind entrepreneurs and the NAMA lobbyist are doing their best to salvage the rest areas.
- *To Toll or Not to Toll* – The idea of converting the interstate highways to toll roads is gaining momentum. Current law allows 4 states to do pilot projects and Indiana is the closest of the 4 to actually do it. NABM opposes tolling and has joined forces with the National Association of Truck Stop Operators (NATSO) and others to fight tolling. Our fear is that tolls will result in less traffic on the interstates which means fewer visitors to the rest areas which means fewer patrons for the vending machines which means less money in the pockets of blind guys. It is in our best interest to join forces with others to fight these tolls.

DoD – The Senseless Battles Rage On – We could do a special issue of The Blitz on just DoD and Randolph-Sheppard. We will keep it short and just hit the highlights.

- *DoD Rulemaking* – Who knows what the heck is going on with the proposed rules? DoD isn't saying. What we do know is we expected final rules to be published as early as September. The more than 5,000 comments that we generated slowed that process down. President Trump's moratorium on new rules delayed them further. DoD insiders are saying the rules will be published in April but we don't have much confidence in that information. However, it does appear DoD intends to move forward if possible. We continue to use political pressure and back channels to try to prevent the rules from ever seeing the light of day. It remains to be seen what will happen but our biggest fear is our friends at AbilityOne will get stronger language put in the NDAA which is what we have to guard against. See the notes below on NABM's plans for a fly-in.
- *Fort Bliss* – At Fort Bliss, the Army is attempting to split the contract and

take part of the contract away from the blind entrepreneur and award the dining facility attendant services to another company. An arbitration panel ruled the Army's action did not violate the Randolph-Sheppard Act. The State of Texas has appealed the ruling to federal court. The SLA is optimistic with its chances to get the panel's decision overturned. Getting federal courts to weigh in on our side is critical.

- *Fort Campbell* – The federal judge has finally lifted the stay on the arbitration panel ruling that stated the Kentucky SLA was entitled to a priority to operate the DFA contract at Fort Campbell. This clears the way for Kentucky to assume that contract. The battle is probably not over but the judge's ruling is a positive development.
- *Eglin Air Force Base* – This case centered around the Air Force's failure to not set a competitive range when bidding out the dining contract at Eglin Air Force Base in Florida. It claimed the SLA's bid was not reasonable and it awarded the contract to the lowest bid. In a rather odd decision, the arbitration panel ruled that the SLA had slept on its rights to appeal because it knew a competitive range wasn't going to be set and that it should have filed for arbitration at that point rather than waiting until it did not get the contract.
- *Fort Sam Houston* - In February, an arbitration panel found that the Air Force's decision to exclude Texas from the competitive range violated the Randolph-Sheppard Act because the Contracting Officer failed to properly apply the criteria set forth in the solicitation. Critically important to this finding was the panel's determination that the panel owed no deference to the Contracting Officer's decision. It had to be supported by the evidence. The Air Force was directed to include Texas in the competitive range and commence negotiations with it. In a parallel case at the Court of Claims, an attorney for the Air Force informed the Court that the Air Force would "generally" not comply with the dictates of the arbitration decision. After some hard questioning by the court, the Assistant Attorney General disavowed those statement and agreed that the selection process would be reopened, Texas would be included in the competitive range and the Air Force would follow the RSA. The parallel action in the Court of Claims was then dismissed without prejudice.
- *Fort Sill and Fort Riley Pending* – We are waiting on decisions in the two most recent arbitration cases. The issue at Fort Sill is similar to Fort Bliss in that the Army is splitting out some of the DFA services. At Fort Riley, the Army is claiming the contract is for DFA services and not subject to the Randolph-Sheppard priority. Terry Smith with the NFBEI provided expert testimony in both cases. One very interesting development in the Fort Riley case was that the Army admitted it changed the scope of work simply to avoid the Randolph-Sheppard priority. That says volumes about

DoD's attitude toward Randolph-Sheppard.

It's not all bad news.

- *RFP's for Marine Contracts Coming Soon* – Despite all of the battles with the Army and to a lesser extent the Air Force, we are encouraged by the chances of Randolph-Sheppard getting one of the two multi-state Marine contracts. The Marines are expected to issue RFP's later this year for the West Coast and East Coast Marine bases. California and Arizona are working together to submit a proposal for the West Coast contract. They have selected their blind entrepreneurs who subsequently selected the teaming partner. On the East Coast, South Carolina is taking the lead and is working with North Carolina to submit a bid. The NFBEI has been facilitating those discussions. If we get either one of these contracts, they will be the largest Randolph-Sheppard contracts ever. Let's make this happen.
- *Pensacola Navy Hospital* – There is some good news. The Florida SLA was recently awarded the contract for the dining at this facility. Dave Warmuth is the licensed blind vendor and Blackstone Consulting is the teaming partner. Congratulations to all.
- *South Carolina Wins Arbitration for Multi-State Nutrition Care Contract* – South Carolina won its arbitration against the Army regarding the contract for dining services at 8 Army hospitals in 8 states. The 8 states agreed to allow South Carolina to bid using the Randolph-Sheppard priority. The Army argued that the priority does not apply to these contracts since the contractor must have a dietician and the contract requires some in-room service. The panel rejected this argument. Despite the victory, there is no movement to immediately award the contract to the SLA. Stay tuned on this one.

Help Us Make a Difference: We Need You at the NABM Fly-In - The Randolph-Sheppard Program is facing many threats and it is time you let your voices be heard by members of Congress. In January, the National Federation of the Blind held its annual Washington Seminar with hundreds of members converging on The Hill. But NFB President Riccobono believes a special fly-in focused exclusively on Randolph-Sheppard is warranted. The NFBEI and NABM will be holding its special fly-in in the next month or two. As The Blitz goes to press, we are still working on a hotel but watch for an announcement soon. It may be short notice but we need you there if possible. We plan on focusing on Congressional committees that have jurisdiction over the Department of Defense, the Veterans Administration, and the interstate rest areas. Any blind

entrepreneur is welcome to attend but we especially want entrepreneurs with member on the key committees. Watch in the coming days for more information.

Calorie Disclosure Is Here and Why We Want it to Stay – When President Trump was elected and had campaigned to abolish Obamacare, many blind entrepreneurs were excited at the prospects of rolling back the calorie disclosure requirement. After all, it was Obamacare that gave us the calorie disclosure. Congress failed to abolish President Obama’s landmark health care program and it looks like it will be the law of the land for the foreseeable future. However, even if there is a future attempt to repeal the law, we do not want Congress to repeal the calorie disclosure requirement. Why not? The requirements that went into effect December 1, 2016, were not all that burdensome on vending companies. In fact, the law doesn’t even apply to many of our Randolph-Sheppard entrepreneurs who operate fewer than 20 vending machines. The FDA had worked with the vending industry to ensure the law was implemented in a way that was fair to vending operators. Under current law, states cannot impose stricter requirements on the vending industry. However, if the law is repealed, many states will rush in with state laws. We could end up with 50 different sets of labeling requirements. That would be chaotic. December 1 came and went and I think we found out it wasn’t as bad as feared. So, we are better to stick with the devil we know rather than the one we don’t. A final word on calorie disclosure. Any entrepreneur who has 20 or more vending machines needs to comply with the law. We have observed some Randolph-Sheppard entrepreneurs who are out of compliance. Remember, if you are relying on front-of-pack labeling, all products must comply with the requirement. If you are still confused about the labeling requirements, we have linked the NAMA guidance on our website at <http://blindmerchants.org/vending-machine-labeling-guidance/>.

Two Courts Say Yes to Damages – Two federal courts recently took the position that state licensing agencies can be required to pay damages to blind entrepreneurs. In Oklahoma, a federal judge upheld the award of damages granted by an arbitration panel. That award could be in the millions of dollars. The State of Oklahoma is appealing to the Federal Court of Appeals. In Oregon, a federal magistrate judge reversed an arbitration panel’s decision and awarded damages to the blind entrepreneur. A federal judge must certify that decision before it becomes binding on the parties. It is unclear whether the SLA will appeal that decision if in fact it is certified. There are conflicting rulings in other districts where judges have ruled states are protected by their sovereign immunity. Who knows? The Supreme Court may ultimately have to resolve this issue. The fallout of a Supreme Court ruling could be enormous. None of this will happen anytime soon. The wheels of justice turn slowly.

Changing the State Law: 2 States Going in Different Directions – BEP legislation is before 2 state legislatures and the situations are entirely different. In Oregon, the blind entrepreneurs are leading an effort to strengthen the state’s Little Randolph-Sheppard Act. They are early on in the process but the bill has

the support of some members of the Legislature. The vendors' right to subcontract is a key component of that bill. The bill may ultimately be delayed until next year as the deadline for hearing new bills is fast approaching and there are still details and compromises to be worked out. In Oklahoma, the BEP is fighting to hold onto its priority to operate inmate commissaries in county jails. The BEP only operates one such commissary at the Tulsa County Jail. That sheriff wants to be exempted from the blind vendor priority. The bill has passed the House so the vendors are focused on fighting the effort in the Senate. The bill did pass the Senate Committee but as The Blitz goes to press, there has been no vote scheduled on the Senate floor.

Rulemaking – Several states have begun the process of rewriting their BEP rules and regulations. A couple have taken advantage of the technical assistance to which they are entitled as part of the NFBEI to have Terry Smith assist with that process. Last year, he assisted New Jersey. The rules were written, approved by RSA, and implemented in record time. In February, he was in South Carolina helping them. As states need to modernize their rules, the NFBEI may be called on more often to assist.

Merchants Meet at Washington Seminar – As noted earlier, the National Federation of the Blind held its annual Washington Seminar in January. Although none of the issues directly related to Randolph-Sheppard, blind entrepreneurs attended the Merchants meeting. It was a very productive gathering with an impressive agenda that was put together by President Gacos. \

Merchants to Meet at National Federation of the Blind National Convention – The NFB will be holding its annual convention in Orlando July 10-15. The Merchants will be meeting on the afternoon of July 12th. Last year, NABM set a record for number of attendees and a large number is expected again this year. Come join us for some fun in the sun. To register for the convention, you can go to <https://convention.nfb.org/> .

NAMA Fly In – Earlier we mentioned the NABM fly-in. Many blind entrepreneurs, including NABM's leadership, will be participating in the National Automatic Merchandising Associations Day on the Hill July 25th. It is understood that Randolph-Sheppard entrepreneurs cannot be at every event but we do hope to have a Randolph-Sheppard presence. The issues that affect the vending industry as a whole affect our membership.

Goodbye Otis – Otis Stevenson who most recently served as the BEP Director in South Carolina, has retired. Otis was well-respected by his peers and a huge supporter of the NFBEI. Prior to moving to South Carolina, Otis was the BEP Director in Arizona. It is our hope that he will stick around in some capacity to help the state through the process of submitting its bid for the Marine contract we mentioned earlier. Either way, he will be missed and we wish him well. We are happy too that Marcellous Primus who is on staff there will serve as the interim

director until they can fill the position permanently.

Welcome to the New Guys – We have several new BEP Directors to welcome aboard. We are happy to announce the following additions to the BEP Director fraternity and welcome them into the Randolph-Sheppard family. They are:

Arizona – Nathan Pullen
North Carolina – William Webb
New York – Nat Beyer
Kansas – Joel Morrison
Iowa – Al Bickell
Idaho – Corey Bresina

Welcome aboard guys and let us know how the NFBEI can help you.

Tom Spiliotis Recognized – Nicky Gacos and Terry Smith recently traveled to Florida to present NABM's Lifetime Achievement Award to Tom Spiliotis posthumously. Tom served the Randolph-Sheppard community for decades and made a difference both in Florida and across the nation. The award was presented to Tom's widow. It was a very moving memorial service. Tom is missed by all of us.

NCSAB News – There have been some changes at NCSAB. Our friend Dan Frye was elected President-Elect. Congrats to Dan. But that meant they had to find a new Chair of the Randolph-Sheppard Committee. Curtis Glisson of Alabama has assumed that role. We wish Curtis well. We understand that John Gordon of Illinois will be assisting Curtis. At its fall meeting in San Diego, NCSAB did a full-day of training on Randolph-Sheppard. Both Nicky Gacos and Terry Smith presented at that training. At its spring meeting in April, they will do another training and Terry again will participate. In addition, Terry will present at the attorney training being sponsored by CSAVR in Bethesda prior to the start of the NCSAB meeting.

Dates to Remember

- April 5-7, 2017 – National Council of State Agencies for the Blind Spring Conference, Bethesda, MD
- April 18 – Randolph-Sheppard Training in Conjunction with NAMA One Show, Las Vegas, Nevada
- April 19-21, 2017 – NAMA One Show, Las Vegas, Nevada
- May 15-17 - NATSO D.C. Fly-In
- July 10-15 – National Federation of the Blind National Convention (Blind Merchants meet on July 12th)
- July 24-25, 2017 – NAMA Fly-In, Washington, D.C.
- September 12-15, 2017 – BLAST, Nashville, Tennessee
- November 15-17, 2017 – National Council of State Agencies for the Blind

Fall Conference – Greenville, South Carolina

Happy Birthday Governor – NABM President Nicky Gacos was invited in December to attend New York Governor Cuomo's birthday celebration. It was a great opportunity to network and make some important contacts. As an added bonus, Nicky got to meet Oscar Award winning actor Robert Deniro. To see a picture of Nicky with the Governor and Deniro, go to www.blindmerchants.org.

On the Road Again – In the last quarter of 2016, both Nicky and Terry were in multiple states including Nebraska, Texas, Idaho, Oregon, Kentucky, South Carolina, Georgia, and Florida. The first quarter of 2017 was fairly light. Nicky attended the bi-annual meeting of the Arizona blind entrepreneurs. Terry presented at the South Carolina meeting. Terry was also in Georgia where he has been assisting a blind entrepreneur with an evidentiary hearing. Nicky's responsibilities as a NAMA board member have also had him traveling. The next quarter is going to be very busy.

Need Assistance with Social Security? – Many Randolph-Sheppard entrepreneurs experience problems with Social Security when it comes to their SSDI benefits. NABM and NFBEI are trying to find ways to assist our members. Stay tuned for an announcement in the next 30 days on a new service we will be offering to our members.

You Can Still Help – Do you like what NABM/NFBEI are doing to advocate for the program on a national level and to assist individual state programs and blind entrepreneurs? Do you enjoy reading The Blitz and being kept informed about what is going on in the Randolph-Sheppard community? If so, we can use your financial support. Over half of our support comes from the NFBEI subscriptions but we count on donations to make up the rest. If you would like to contribute to the cause, we would welcome your donation. You can donate by sending a check to:

National Association of Blind Merchants
7450 Chapman Highway, #319
Knoxville, TN 37920

Make the check payable to NABM and write "NFBEI" in the memo portion of the check. Your support is greatly appreciated.

You can also donate by going to our website at www.blindmerchants.org and we have a new way you can contribute. We can do bank drafts if you want to sign up for monthly giving. Contact Terry Smith if you are interested in setting up bank draft donations

If your state is one of the 14 that doesn't subscribe to the services of the NFBEI, we'd welcome your involvement. Terry Smith would be happy to discuss the services with you.

Share Your News with Everyone- Help us keep everyone informed about what is happening around the country. Let us hear from you. Tell us what is going on in your state. What is happening in one state affects what is going on in another, and the NFBEI is the vehicle to keep everyone updated on what is going on out there.

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**PLEASE FEEL FREE TO SHARE THE BLITZ WITH
OTHERS AND DISTRIBUTE ON YOUR LISTSERVS. WE
WANT ALL BLIND ENTREPRENEURS, BEP
ADMINISTRATORS, and OTHER STAKEHOLDERS TO
KNOW WHAT THE NFBEI IS DOING**

The National Federation of the Blind knows that blindness is not the characteristic that defines you or your future. Every day we raise the expectations of blind people, because low expectations create obstacles between blind people and our dreams. You can live the life you want; blindness is not what holds you back.