

## **MVP: Gibson Dunn's Jason Schwartz**

By **Beverly Banks**

*Law360 (November 14, 2024, 1:21 PM EST)* -- Jason C. Schwartz, a partner at Gibson Dunn & Crutcher LLP, secured rulings from the bench in a case about his client Fearless Foundation's awarding of grants to Black female entrepreneurs and in another dispute representing DraftKings as the company sought to stop a former executive from soliciting customers ahead of the Super Bowl, earning him a spot as one of the 2024 Law360 Employment MVPs.

### **His biggest challenge:**

The "headwinds around" diversity, equity and inclusion as well as defending the Fearless Fund and the Fearless Foundation against an injunction request from the American Alliance for Equal Rights have been the biggest challenges in the past year, Schwartz told Law360.

Schwartz counseled the Fearless Foundation as the nonprofit faced a challenge to its awarding of grants to Black female entrepreneurs. AAER, a conservative nonprofit fighting programs and policies that factor in race, sought a preliminary injunction to stop the Fearless Foundation from awarding the grants solely to Black women who own businesses. AAER claimed Fearless Foundation's grant program violated Section 1981 of the Civil Rights Act of 1866.

The case "had high highs and low lows," Schwartz said, recalling the excitement of winning an order in September 2023 from U.S. District Court Judge Thomas W. Thrash Jr. that denied AAER's injunction bid.

But an Eleventh Circuit panel issued a split ruling over the summer, reversing the lower court's injunction denial. Losing at the Eleventh Circuit after oral argument was "very discouraging," Schwartz said.

With legal issues concerning corporate DEI programs, Schwartz said, "the law is still very much in flux, and so I think there's lots of opportunities still to try to steer that in a thoughtful way."



"There are many cases that are percolating, and so I think there's lots of opportunity there. ... One case is not gonna make or break the direction of all of those things," Schwartz said.

**His proudest moment:**

Schwartz described Judge Thrash's denial of AAER's preliminary injunction request from the bench in a packed courtroom as his proudest moment over the last year.

The win for the Fearless Fund and the Fearless Foundation also included a "once in a lifetime" encounter with civil rights activist the Rev. Al Sharpton, Schwartz said.

"I had never before and probably never since will meet Rev. Sharpton, much less have him tell me that I did a good job," Schwartz said.

Schwartz highlighted another proud moment this past year when he represented DraftKings as the sports betting company, which is based in Massachusetts, sought a temporary restraining order to prevent former executive Michael Hermalyn from using company information after he went to work for competitor Fanatics.

Before Super Bowl Sunday this February, U.S. District Judge Julia E. Kobick granted the TRO from the bench, blocking Hermalyn "from soliciting customers and using the confidential information he had from DraftKings," Schwartz said.

Judge Kobick agreed with DraftKings that Hermalyn could not evade enforcement of his contract by saying he moved to California, Schwartz said.

Rulings from the bench are rare, Schwartz said, explaining that he typically receives an email about the outcome of cases.

But when that message comes through his inbox, his "heart skips a beat," he said.

"You read it immediately, and then if it's a win ... you're punching the air," Schwartz said.

**His biggest accomplishment:**

Aside from the district court win in the Fearless Foundation proceeding, Schwartz pointed to rulings in separate cases for Enterprise Rent-A-Car and Lowe's as some of his other biggest accomplishments in the last year.

Schwartz represented Enterprise against a nationwide collective action of assistant branch managers seeking overtime wages under the Fair Labor Standards Act.

In October 2023, U.S. District Judge Mark L. Wolf decertified the collective and denied equitable tolling after giving workers an opportunity to explain why they didn't bring their claims before the statute of limitations lapsed, Schwartz said.

"What we ended up getting back were copy-and-pasted form declarations that basically just said, 'I didn't know about this until I got the notice,' which is not enough," Schwartz said.

Schwartz said one of his favorite declarations was from an opt-in who pinned their delay on having their

Enterprise records in the attic and taking them "a while to get up there."

When the Enterprise case went before the First Circuit, Schwartz said, he argued that permitting equitable tolling "for anybody who can't be bothered to get up to the attic" would make a "mockery of this, that in every single case you're going to grant equitable tolling, and that's the exact opposite of what Congress intended."

Schwartz also represented Lowe's involving an individual claim against the company under California's Private Attorneys General Act.

A Ninth Circuit panel weighed in on the dispute in February, affirming a lower court's order to make the worker arbitrate her individual PAGA claim.

### **Why he is an employment attorney:**

Being an employment attorney is a "ton of fun," Schwartz said, adding that he loves helping clients work out "difficult people problems."

Schwartz said he wants to assist his clients in resolving challenges in a "thoughtful, compassionate, human way."

Employment law can also provide some humorous moments, Schwartz said.

"I laugh a lot in this job, even in stuff that's difficult, and, you know, there's a lot of tough emotion, but there's also a lot of humor to be had," he said.

### **His advice for junior attorneys:**

"Follow your passion," Schwartz said he would tell junior attorneys.

"Get out of law school. Find something you're really interested in doing. Find people you like working with."

Another nugget of wisdom that Schwartz would pass along to junior attorneys is to provide excellent customer service to your clients.

Schwartz learned about making the customer happy from his parents, who worked in the retail industry, he said.

"Especially as a lawyer in private practice, you're basically working at Nordstrom, meaning like, this is a customer service business," Schwartz said.

*--As told to Beverly Banks. Editing by Vaqas Asghar.*

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