

# NFIB Sues to Stop Maryland Gas Ban

Across the country, local governments have attempted to enact bans on natural gas appliances. This is a troubling trend for small business owners who need affordable and reliable energy sources, especially as other costs continue to increase. Among them is Montgomery County Maryland, which passed a natural gas ban that takes effect in 2026 and prohibits the installation and use of natural gas appliances in new construction. Realizing that the ban would cause great harm to small businesses, NFIB decided to step in.

NFIB joined a coalition of organizations in filing a legal challenge to Montgomery County's ban on natural gas. We argue that the local law can't stand because there is already a conflicting federal law on the books, the Energy Policy and Conservation Act (EPCA). The EPCA already regulates covered gas appliances, setting consistent energy use and efficiency standards for the whole nation. One local government can't decide to set its standards—including full bans—without undermining the EPCA's entire purpose.

NFIB's lawsuit is in good company. There have been lawsuits challenging similar gas bans enacted by local governments, including in Berkeley, California. A federal court, relying on the same argument used in NFIB's case, overturned Berkeley's natural gas ban, and the Ninth Circuit Court of Appeals affirmed the decision. In other words, not only is the EPCA on our side, but other federal courts have agreed with us that local natural gas bans are unlawful.

Our goal is to strike down Montgomery County's gas ban and ensure that small businesses in Maryland can continue to have access to energy that fits their budget. Further, we believe a win in this case will discourage other local governments from passing their own natural gas bans. Thanks to the generosity of our donors, NFIB will continue to be a bulwark against government overreach, whether state, federal, or even local.

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Media  
Mentions

August 19, 2024

### Bloomberg Law

Bloomberg Law interviewed Small Business Legal Center Executive Director Beth Milito concerning the decision in *Loper Bright Enterprises v. Raimondo*, which overturned the *Chevron* doctrine. Milito predicted the decision "will give new energy to challenges" and "slow down the regulatory machine."

October 9, 2024

### The Center Square

The Center Square highlights the burdensome Beneficial Ownership Information (BOI) Reporting requirements, and NFIB's involvement in the lawsuit *Texas Top Cop Shop, Inc., v. Garland*, which challenges the rule. Milito said, "We are relieved to see the court holding this hearing [considering the burden placed on Main Street businesses]."

October 24, 2024

### Stacker

Stacker outlines the new Biden Administration's overtime rule and its far-reaching impact on small businesses. Milito is quoted in the article describing the rule as "bureaucratic government overreach" and references NFIB's lawsuit challenging the rule.

October 25, 2024

### Small Business Trends

Small Business Trends discusses NFIB's joining in the lawsuit opposing gas bans in Maryland. This lawsuit challenges Montgomery County's ban on natural gas in new construction after 2026. Milito is quoted saying, "Small businesses depend on affordable, reliable energy sources to provide for their customers and serve their communities."



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The NFIB Small Business Legal Center, a 501(c)(3) public interest law firm, protects the rights of America's small business owners by serving as the voice of small business in the courts and the legal resource for small business owners nationwide. It is not a legal defense fund for small business, but a legal tool to affect precedent-setting legal decisions that will influence small business' bottom line.

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# The Brief

WINTER 2024

## Federal Court Strikes Down Overtime Pay Expansion in a Win for Small Business

In a victory for employers nationwide, NFIB was able to stop a U.S. Department of Labor (DOL) Rule that was set to dramatically increase the number of workers eligible for overtime pay by increasing the salary threshold for the so-called "white collar" overtime exemptions. The judge's ruling came less than two months before January 1, 2025, when employees making less than \$58,656 would have been eligible for overtime.

In the lawsuit filed by NFIB, Texas, and other business groups, a federal judge ruled on November 15, 2024, that the DOL exceeded its authority by raising the salary threshold too high in two phases and setting automatic increases

every three years.

In his ruling, Judge Jordan stated that while the DOL has the authority to define and delimit the terms of the overtime exemption, "that authority 'is not unbounded.'" He explained, "The minimum salary level imposed by the 2024 Rule 'effectively eliminates' consideration of whether an employee performs 'bona fide executive, administrative, or professional capacity (EAP)' duties in favor of what amounts to a salary-only test." He also said that the DOL's automatic updates to the minimum salary threshold every three years "violates the notice-and-comment rulemaking requirements of the Administrative Procedure Act (APA)."

"On behalf of the thousands of small businesses who have been adversely impacted by the 2024 overtime rule, NFIB is grateful to the Court for putting an end to this onerous regulation," said Beth Milito, Executive Director of NFIB's Small Business Legal Center. "This rule overcomplicated the process for determining EAP exemptions, and

exponentially increased labor costs for thousands of small businesses. Judge Jordan's decision will provide substantial relief for Main Street firms."

The DOL's overtime rule would have applied to millions of employees. In announcing the rule, the DOL estimated it would extend overtime coverage to about 4 million additional workers. Had the rule taken effect, many employees would have lost the status of a managerial position, valuable educational and training experiences, the capability to travel on the employer's behalf, and/or flexibility as to when, how, and where they work. NFIB opposed the overtime rule from the outset.

Because of this decision, the minimum salary threshold is once again set to \$35,568, and the threshold for highly compensated employees is set to \$107,432.

DOL may appeal the decision to the 5th Circuit but under the new administration will almost assuredly abandon its defense of the rule.

The Legal Center is grateful for the generous support of our 2024 donors who enabled NFIB to launch this important legal challenge.

Keep up with our work at: [NFIB.com/legal](https://NFIB.com/legal)  
Don't forget to check out our Facebook page.

[Facebook.com/NFIB.legal](https://Facebook.com/NFIB.legal)

## NFIB STANDS UP FOR SMALL BUSINESS IN LEGAL CHALLENGES ACROSS THE COUNTRY



As the year draws to a close, I am very grateful for the generous support of the Small Business Legal Center's donors that allowed us to bring the voice of small business to courts around the country and be a nationally recognized legal resource. Thank you for being a champion of our work and amplifying our mission.

Here are a few of our achievements over the last year:

The **NFIB Legal Center filed seven lawsuits in 2024** - a record number! We sued three federal agencies: the U.S. Department of Labor (DOL) (times three), the Federal Trade Commission (FTC), and the U.S. Treasury Department. We also sued Minnesota and Montgomery County in Maryland. Meanwhile, our amicus program covered a wide swath of the country, with **40 filings in federal and state courts**.

Challenges to new DOL rules kept us very busy. A few weeks ago, a **Texas federal judge struck down DOL's overtime rule** that would have significantly expanded overtime to four million employees. The decision was the death knell for one of the Biden administration's most substantial labor policies. We also launched lawsuits against DOL's independent contractor rule and against DOL's Occupational Safety and Health Administration's (OSHA) new rule that allows union organizers to accompany OSHA inspectors during workplace inspections.

In addition to DOL, the Legal Center **targeted several of the Federal Trade Commission's (FTC) illegal power grabs**, such as its noncompete rule. Most recently, we filed a lawsuit challenging the FTC rule targeting businesses that use autorenewals. This rule applies to a wide range of industries from gyms to pest control services that rely on autorenewals or annual subscriptions. You can read more about our fights against the FTC on page 3.

The Legal Center also achieved a decisive victory in our lawsuit against the Corporate Transparency Act (CTA). A federal court issued a nationwide injunction, preventing the law from being enforced. The law required over 32 million small businesses to report beneficial ownership information (BOI) to a new federal database or be subject to civil and criminal penalties.

In addition to our work in the courts, the NFIB Legal Center spreads vital information far and wide through our Support Line, which responds to weekly inquiries through our webinar series and our legal alerts. Our compliance work touched **an estimated 10,000 small businesses nationwide**.

We hope you plan to continue your generous support in 2025 as we look to expand our small business outreach and continue to fight for free enterprise in courts across the country. Please use the enclosed envelope or donate online at [www.nfib.com/legal-contributions/](http://www.nfib.com/legal-contributions/).

On behalf of America's small businesses, thank you for making a difference.

*Beth*

By **Beth Milito**, Executive Director,  
NFIB Small Business Legal Center

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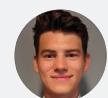
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## NFIB TRADES BLOWS WITH THE FTC IN MULTIPLE CASES

This year, the Federal Trade Commission (FTC) has been on NFIB's naughty list. We filed suit against the agency in October after it announced a new rule that severely restricts how businesses handle subscription renewals and other recurring charges. The rule targets automatic renewals, requiring businesses to redesign their websites to build specific cancellation features. In addition to the technical changes required by the rule, businesses will need to change their policies and redraft their contracts. The paperwork burden is expected to increase.

As if these requirements weren't enough of a burden, the rule will also require disclosures, control what businesses can say to consumers, and go after businesses for anything perceived as a "misrepresentation"— even if it has nothing to do with the auto-renewal feature. Anything likely to affect a customer's choice of goods or services is subject to increased scrutiny and potential legal liability. In other words, the rule puts business owners under a microscope and then punishes them for daring to use auto-renewal in the first place.

This isn't the first time NFIB has stood up for small businesses in court against the FTC's actions.

Earlier this year, the NFIB Small Business Legal Center filed an amicus brief supporting a challenge to the FTC's use of Administrative Law Judges (ALJs) in *Intuit v. FTC*. The case challenged FTC's use of multi-layer tenure protections for ALJs, which prevented them from being removed in accordance with the Constitution. Giving agency officials who are insulated from removal the authority to issue fines and penalties is immensely harmful to small businesses, and we asked the Fifth Circuit to stop the agency from continuing this practice.

The NFIB Legal Center also filed two amicus briefs supporting challenges to the FTC's ban on noncompete agreements – one in *Ryan, LLC v. FTC* and another in *ATS Tree Services, LLC v. FTC*. The agency attempted to ban non-compete for almost all workers, arguing that the FTC Act, which allows the agency to create rules to prevent "unfair methods of competition," included the authority to ban non-competes. NFIB argued the opposite, explaining that the FTC Act does not explicitly grant the agency the power to implement substantive rules, such as the non-compete ban. A federal district court in the *Ryan* case agreed with NFIB and struck down the rule.

Thanks to your generous support, the NFIB Legal Center has been able to fight these and other federal agency actions, making it easier for small businesses to own, operate, and grow their businesses.

## NFIB LEGAL CENTER ROLLS OUT NEW INDEPENDENT CONTRACTOR GUIDE



The legal landscape of worker classification can be daunting. Fortunately, the NFIB Legal Center has developed a guide to help you distinguish employees from independent contractors and, hopefully, avoid misclassification fines and penalties.

One of the most critical tasks for an employer is properly classifying individuals who work for them. Distinguishing between an employee and an independent contractor is a vital piece of running your business, which if done incorrectly, can have severe implications for the employee and employer.

Proper classification ensures:

- Compliance with regulations and labor laws;
- Workers understand the extent of their benefits and entitlements;
- Clarity in the employment relationship; and
- A clear-cut understanding for the worker of their role and responsibilities within the company.

Check out our Independent Contractor Guide today to ensure you classify your workers correctly. The guide and all the Legal Center's handbooks can be found at [www.nfib.com/legal](http://www.nfib.com/legal).