

Bring Your Legal Questions to the Legal Center's Monthly Webinar

The Legal Center has continued its popular webinar series, bringing on special guests every month to speak about important topics for small business owners.

In May, we hosted a webinar featuring attorney Laura Reiff, focusing on how small businesses can ensure compliance with immigration enforcement. Other webinars from earlier this year included a discussion with a small business attorney about ways to make and save money; an overview of intellectual property (IP) for small businesses; and a tax Q&A with a certified public accountant (CPA). These and all of our Legal Center webinars are available on-demand at NFIB.com/webinars.

FREE WEBINAR

Tariffs 101 and the Latest Updates
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Speaker



Beth Milito

VP and Executive Director,
NFIB Small Business Legal Center

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SBLC MEDIA MENTIONS

March 3, 2025

The Wall Street Journal

The Wall Street Journal highlighted NFIB's lawsuit challenging the Corporate Transparency Act (CTA) in light of the Trump administration's announcement that it would not enforce the CTA's Beneficial Ownership Information (BOI) reporting requirements.

March 4, 2025

Washington Examiner

The Washington Examiner reported on the Supreme Court's decision in *City and County of San Francisco, California v. Environmental Protection Agency (EPA)*, quoting Vice President and Executive Director of NFIB Small Business Legal Center Beth Milito: "Today's ruling is good news for small business owners who rely on clear and consistent water quality standards."

March 18, 2025

Bloomberg Tax

Bloomberg Tax highlighted NFIB's CTA litigation, including the preliminary injunction issued in *Texas Top Cop Shop v. Garland*.

March 22, 2025

AP News

AP News quoted Beth Milito regarding the increase in paid medical leave legislation throughout the country: "Small businesses often don't have a separate human resources department to track compliance with mandated

leave policies . . . [t]he paperwork is time, and time is money to a small business owner[.]"

April 21, 2025

Bloomberg Law

Bloomberg Law highlighted NFIB's amicus brief in the case *Commissioner of Internal Revenue v. Zuch*, quoting Beth Milito: "Congress ensured that taxpayers have a fair chance to challenge a levy or lien before the IRS collects. This is not only to protect taxpayers' rights and property, but to ensure that the IRS does not abuse its authority."

April 28, 2025

Financial Regulation News

Financial Regulation News reported on NFIB's comment letter to the EPA, quoting NFIB Senior Attorney Rob Smith: "Small-business landowners, and all property owners, deserve straightforward, invariable guidelines from their regulating bodies."



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The Brief

SUMMER 2025

Major Supreme Court Decisions Expected this Summer

Summer is quickly approaching, and that means that the United States Supreme Court will soon issue decisions in its most important cases. The NFIB Legal Center has filed briefs in four cases that have been argued before the Supreme Court and will likely be decided before the end of June.

In an amicus brief filed in the case *Federal Communications Commission (FCC) v. Consumers' Research*, we argued that FCC's delegation of power to the Universal Service Administrative Company (USAC) is unconstitutional. The nondelegation doctrine—a constitutional principle that prevents the branches of government from giving away their power to others—does not allow the FCC to give its authority to an unaccountable private entity.

paid itself with her tax refund to make both the debt and the case go away. NFIB's brief argued that taxpayers have the right to challenge tax debts in court without fear that the IRS will confiscate their tax refunds.

Our brief in *Diamond Alternative Energy, LLC v. Environmental Protection Agency (EPA)* seeks to end EPA's special treatment of California for purposes of vehicle emissions standards. Though the Clean Air Act sets vehicle emissions standards on the federal level, the EPA has granted California a waiver, allowing it to set its own highly restrictive vehicle emissions standards. NFIB's brief argues that this is unlawful and also seeks to correct the standard under which agency actions can be reviewed in court.

The Legal Center also filed an amicus brief in *Commissioner of Internal Revenue v. Jennifer Zuch*. In that case, a woman challenged her tax debt in court, but the IRS

Lastly, the Legal Center filed a brief in *LabCorp v. Luke Davis*. The case concerns whether class action lawsuits in federal courts can include individuals that have suffered no legal injury. Our brief argued—consistent with longstanding tort law principles—that someone must have suffered a legal injury in order to be a plaintiff. Otherwise, small businesses, who do not have in-house legal teams at their disposal, nor the resources to afford costly attorney fees, will suffer from frivolous lawsuits.

NFIB has already helped secure a major win for small businesses earlier this term with our brief in *City and County of San Francisco, California v. Environmental Protection Agency (EPA)*. We argued that EPA could not use generic prohibitions to hold permit holders accountable for the end quality of water. The Court ultimately sided with NFIB's main argument in the brief. The Legal Center is optimistic that this victory will set the stage for a successful term for small businesses at the Supreme Court.

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.

555 12th Street, NW, Suite 1001
Washington, D.C. 20004
(800) 552-NFIB
Email: info@NFIB.org

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WOTUS: The Gift that Keeps on Taking

Overreaching environmental regulations pose a unique danger to small business owners' property rights. In the states, these regulations come in the form of wetlands mandates, and on the federal level, waters of the United States (WOTUS) regulations. The Legal Center has been hard at work on both fronts to stop burdensome regulations and ensure that property rights are respected.

NFIB recently joined a coalition of business organizations in filing a lawsuit in New York challenging the New York Department of Environmental Conservation's (DEC) new freshwater wetlands regulations, which drastically increase the number of regulated wetlands in the state and make it difficult—in some cases, impossible—for property owners, developers, and small businesses throughout New York to build on their property. The regulations essentially double the acreage of regulated wetlands in the state, allow the agency to define the boundaries of a wetland, and leave small business owners uncertain about whether their property will be affected, while imposing criminal penalties for violations.

New York's new wetlands regulations are not just bad policy—they are also illegal. The state violated the State Administrative Procedure Act (SAPA) by failing to properly consider the effects of the regulations on businesses. The rule is also vague, and it is unconstitutional for a vague rule to impose criminal penalties.

NFIB has been working to limit wetlands regulations on the federal level as well. We sent a comment letter in response to the Environmental Protection Agency (EPA) and Department of the Army's recent request for information for how future regulations can best comply with the U.S. Supreme Court's decision in *Sackett v. EPA*. *Sackett* severely limited EPA's ability to regulate wetlands.

NFIB's comment letter provided a variety of recommendations that the federal government should

adopt, including a clear standard for when wetlands can be considered waters; common sense definitions of the terms "navigable waters" and "relatively permanent"; an opportunity for small business owners to correct violations; and exclusion of ditches from WOTUS regulations.

In May, I presented at the EPA's WOTUS stakeholder meeting, emphasizing the importance of clear, reasonable WOTUS regulations. NFIB Senior Attorney Rob Smith also provided comments at a Small Business Administration listening session, encouraging the government to respect property rights as it regulates WOTUS.

We are hopeful that the federal government will incorporate our suggestions in its future WOTUS rules, and that New York will learn its lesson from our lawsuit. In the meantime, we will continue to advocate for the property rights of small business owners and will step in whenever government bureaucrats take wetlands regulations too far.

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

CONTACT US



Beth Milito

(202) 406-4443 | elizabeth.milito@nfib.org
Executive Director



Patrick Moran

(202) 314-2019 | patrick.moran@nfib.org
Senior Attorney



Rob Smith

(202) 314-2027 | rob.smith@nfib.org
Senior Attorney

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Regulatory Litigation Update:

NFIB LEGAL CENTER WINS AGAINST PRO-UNION EXECUTIVE ORDER IN OREGON

In March, NFIB was granted a preliminary injunction in our lawsuit against a discriminatory pro-union executive order issued by the Oregon governor. The decision came as a quick and decisive victory for small business owners who want to bid on state construction contracts without needing to first sign an agreement with a union.

We filed our lawsuit shortly after Governor Tina Kotek illegally bypassed state rulemaking requirements by issuing Executive Order 24-31, which mandated union-only project labor agreements for state construction projects. Though the governor framed the order as an attempt to improve efficiency, what it actually did was force small business owners into an ultimatum: either work with a union, or lose out on bidding for state construction projects.

We argued in our complaint that the project labor agreement requirement exceeded the governor's authority. The state legislature, not the governor, has the prerogative to set requirements for state construction contracts; and, failing that, the executive branch must go through the rulemaking process when it attempts to regulate businesses. This is essential to a proper understanding of separation of powers under Oregon's constitution. The governor cannot single-handedly force non-union businesses out of the running for state construction projects with the stroke of a pen.

Further, the executive order violated state laws that demand fair competition in state construction contracts. A "union-only" bidding process excludes small business owners, many of whom are not unionized and do not want to be. This runs counter to Oregon's contracting law, which prevents the government from picking favorites or unfairly preventing certain businesses from being considered. Not only is the order unlawful and discriminatory against non-unionized small businesses, but it also costs taxpayers: one study found that

mandatory project labor agreements drive up construction costs by **13 to 20 percent** with no wage or benefit increase for employees.

This means that the state would pay more for the same work, leaving taxpayers—including the small business owners who are unable to bid for the project—to pick up the bill. This was proven to be true in Oregon just a few years ago. In 2022, the last time Oregon imposed a project labor agreement requirement for a state project, only one bidder submitted a bid, and it cost 22% more than the State was willing to pay. Excluding small business owners whose employees aren't unionized is both unfair and expensive, cheating contractors out of a job and the taxpayer out of a better deal.

Just three months after the executive order was issued, and a month after NFIB filed its lawsuit, Marion County circuit court Judge Thomas M. Hart issued a preliminary injunction, stopping the executive order in its tracks. The injunction will prevent the executive order from being implemented while the merits of the case are determined in court. Though the case is still pending, a preliminary injunction is issued by a court when it finds that a party has already proven, by clear and convincing evidence, that it is likely to succeed on the merits of its claims. Thus, the Oregon governor's executive order on project labor agreements is unlikely to go any further than her desk.

Thanks to NFIB's lawsuit, contractors in Oregon will be able to bid for state contracts without having to first bring in a union. This win could not have come without the support of NFIB's members and our donors. The NFIB Legal Center will continue to fight against pro-union mandates in the states, ensuring that small business owners are free to own, operate, and grow their businesses without worrying about unconstitutional bureaucratic overreach.