

The U.S. Supreme Court Will Hear an Important Energy Case This Term

As the Supreme Court’s Fall term is about to start, NFIB has already submitted an amicus brief in an important case for small business interests. The Court will decide *Enbridge Energy LP v. Nessel*, which involves Michigan state officials attempting to block an international pipeline. The state’s actions threaten a treaty with Canada and, most importantly for our members, will result in higher energy costs for small business owners in the Midwest. Although the stakes are high, the legal issue before the Court is narrower: whether the defendant can transfer the case to federal court.

It matters whether a case proceeds in state or federal court. Federal courts are considered subject matter experts when it comes to federal claims, and studies show that defendants, including small businesses sued by the government, prevail more often when a case is removed to federal court. Since Michigan’s actions implicate federal law—not only the Canadian treaty, but also the federal Pipeline Safety Act, which preempts state regulation of pipeline safety standards—it should be in federal court.

Our brief argues that a 30-day deadline for moving the case to federal court can be waived, as the district court judge did here before the Sixth Circuit reversed. This is an important issue for the Supreme Court to get right, as several circuits are split on the issue. If the Court allows the case to be decided in federal court, not only will businesses be able to bring cases to federal court when important federal questions hang in the balance, but also, a win in the case will be more likely, ensuring that small businesses will continue to benefit from affordable energy.

SBLC Media Mentions

July 1, 2025

**Cascade Business News**  
Cascade Business News references the NFIB Legal Center’s amicus brief in the case *Ana Mirkovic v. TenAsys Corporation* at the Court of Appeals of the State of Oregon. The case questions whether wage transparency legislation can be used to shield employees from termination when they are negotiating a promotion or raise.

July 10, 2025

**Small Business Trends**  
Small Business Trends reported on *Federal Communications Commission v. Consumers’ Research*, quoting Vice President and Executive Director Beth Milito: “This case illustrates the importance of separation of powers and the danger of excessive conferrals of legislative authority.”

July 13, 2025

**Forbes**  
Forbes reported on the decision to vacate the FTC’s Negative Option Rule, quoting Beth Milito: “The FTC went far beyond their authority in enacting this rule. The NFIB is pleased that the Court recognized the procedural failures

that took place in the rulemaking process and prevented this burdensome regulation from inflicting further damage on small businesses.”

July 23, 2025

**Federal Newswire**  
Federal Newswire also reported on NFIB’s amicus brief in *Jose Madrigal v. Ferguson Enterprises, LLC*, quoting Beth Milito: “Small businesses nationwide rely on consistent and efficient supply chains in order to provide goods to their customers, and distributors are an integral part of that supply chain.”

August 14, 2025

**Small Business Trends**  
Small Business Trends quoted Beth Milito regarding the case against the Federal Reserve’s swipe fees: “NFIB has been very vocal about the disproportionately high cost of swipe fees for small, independently owned businesses,” she stated. “With cash payments becoming increasingly less common, these skyrocketing fees place an immense burden on small retailers, who already operate on narrow profit margins.”

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NFIB SMALL BUSINESS LEGAL CENTER

The Brief FALL 2025

NFIB at the Supreme Court: The Good, the Bad, and the Neutral

The Supreme Court’s 2024-2025 term was uneven for small business owners. The Legal Center took part in seven cases, representing over 10% of the Court’s total cases. We achieved three wins, three losses, and one neutral decision.

Although there were some disappointing results, the Court’s decisions limiting administrative agencies, safeguarding access to courts for indirectly regulated parties, and refusing to impose a stricter evidentiary burden on employers for Fair Labor Standards Act (FLSA) exemptions were important victories for small businesses.

**The Good**  
The Court unanimously agreed with our brief in *E.M.D. Sales, Inc. v. Carrera*, ruling that employee exemptions from the FLSA’s minimum wage and overtime rules are based on a standard of evidence. The Court also supported our brief in *City & County of San Francisco v. Environmental Protection Agency (EPA)*, deciding that the EPA could not include general restrictions in pollutant discharge permits that targeted the

“end-result” waters. We also succeeded in *Diamond Alternative Energy v. EPA*, where the Court agreed with our argument that indirectly regulated parties harmed by government regulations can challenge those regulations in court.

**The Bad**  
In *Commissioner of Internal Revenue v. Zuch*, we argued that the IRS cannot confiscate a taxpayer’s returns to pay off a disputed tax liability and then dispose of the case. The Court disagreed. As Justice Gorsuch stated in his dissent, “the Court’s decision hands the IRS a powerful new tool to avoid accountability for its mistakes.” The Court also ruled unfavorably in *Federal Communications Commission (FCC) v. Consumers’ Research*, allowing the FCC to delegate authority to a private entity, which our brief argued was unconstitutional. In *Trump v. CASA, Inc.*, the Court disagreed with our argument that federal district courts have the authority to block the government from enforcing a law or

policy nationwide. Instead, the Court held that district courts can only grant relief to the parties before them or in class action lawsuits

**The Neutral**  
In *Laboratory Corporation of America Holdings v. Davis*, we argued that class action lawsuits cannot include uninjured individuals. However, the Court completely avoided the issue and dismissed the case. We agree with Justice Kavanaugh’s dissent, which stated that “a federal court may not certify a damages class that includes both injured and uninjured members.” He pointed out that classes “overinflated with uninjured members” can “coerce businesses into costly settlements,” which “substantially raise the costs of doing business.”

The NFIB Legal Center will continue to advocate for small businesses at the Supreme Court when its 2025-2026 term begins this fall.

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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## Working Together to Support the Deregulatory Efforts

As business owners, you're aware that regulations increase compliance and labor costs, acting like a "hidden tax" that unfairly affects small businesses. By reducing those regulatory burdens, companies can allocate more resources to productive activities, promoting economic growth, higher employee wages, and increased investment in the community.

For some context, the National Federation of Independent Business (NFIB) has nearly 300,000 members nationwide. NFIB includes members from every state, representing a wide range of small businesses. We generally align with census data on small businesses. The typical NFIB member employs five to seven people, and 80 percent of NFIB members have fewer than 10 employees. As I've testified before Congress, small businesses differ from large ones, and the regulatory costs for NFIB members are significantly higher than for other businesses, amounting to around \$7,000 per employee annually, according to the U.S. Small Business Administration's (SBA) Office of Advocacy.

Fortunately, reducing the regulatory burden has been a top priority of the Trump Administration's agenda. In an announcement on June 19, 2025, President Trump stated that: "Excess regulation harms economic activity by increasing compliance costs and misallocating resources away from more profitable activities, thus discouraging innovation, investment, and economic growth." In less than a year, the administration has taken significant steps to decrease regulatory burdens affecting small businesses. Upon returning to office in January, President Trump immediately froze all regulatory proposals still in the approval process, which, if they had gone into effect, could have cost Americans over \$180 billion or \$2,100 per family. Besides these cost savings, President Trump launched a widespread, multi-agency initiative aimed at rescinding federal regulations that contribute to higher living costs.

NFIB and the NFIB Small Business Legal Center have been proud to partner with the administration on its deregulatory initiative. We've met with White House and federal agency officials and filed formal comment letters with agencies, including the Treasury, Labor, Justice, Agriculture, Commerce, and Interior departments, specifying which regulations the government should repeal.

In July, I had the pleasure of meeting with Dr. Casey Mulligan, the newly Senate-confirmed Chief Counsel for SBA's Office of Advocacy. The Office of Advocacy acts as an independent watchdog for small businesses. Dr. Mulligan asked me which federal regulation is most problematic for NFIB members. I told him there is not just one. NFIB members face regulatory challenges from all directions. Every day, the Small Business Legal Center's Support Line hears from small business owners facing new issues, often caused by federal regulations. Just last week, we had members calling about IRS penalties, OSHA fines, and difficulties filling out the economic census forms.

Removing regulatory barriers has been a long-standing goal for NFIB and the Legal Center. Now, we have an ally in the White House. Focusing solely on Washington, D.C., is not enough, however. As part of its mission to eliminate excess, unnecessary, and unconstitutional regulations on small businesses, the Small Business Legal Center has launched a nationwide initiative to promote regulatory reform and deregulatory efforts at the state level. Along those lines, I want to thank all the Legal Center donors for their generous support. We invite you to share with us any state regulations you believe should be targeted for deregulation. You've provided us with an abundance of material for federal deregulatory initiatives, and now we are eager to reduce state-level red tape.

By **Beth Milito**,  
Vice President & Executive Director,  
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## NEW TAX PROVISION: NO TAX ON TIPS AND OVERTIME

On July 4, 2025, two new tax policies—"no tax on tips" and "no tax on overtime"—became law, taking effect for the 2025 tax year and expiring after the 2028 tax year. Here's a breakdown of what these new provisions mean for your business.

### No Tax on Tips

First, "no tax on tips" allows employees who regularly and typically receive tips to deduct up to \$25,000 in tips from their taxable income, if they include their Social Security number on their tax return.

Eligible employees are those in the service industry who already receive tips. This limitation exists to prevent employees in industries where tips are uncommon from trying to take advantage of this deduction. If they do, they will likely be disappointed when they file their taxes. As an employer, it's wise to set realistic expectations for your employees and only encourage them to claim the deduction if they genuinely receive tips.

The deduction also does not apply to mandatory service charges. If a business automatically includes a tip on the bill, it cannot be deducted for taxes. The customer must have the option to choose the amount (if any) they wish to leave as a tip.

### No Tax on Overtime

"No tax on overtime" allows for a maximum \$12,500 (or \$25,000 for joint filers) tax deduction on overtime pay. As with the "no tax on tips" provision, employees will have to include their social security number when they file.

The overtime deduction only applies to overtime that is required under federal law, meaning the Fair Labor Standards Act (FLSA). Overtime pay that is required by state law or contract, such as a collective bargaining agreement, does not qualify for the deduction. It also only applies to the amount "in excess of the regular rate"—in other words, if an employer pays an employee \$15 an hour regularly, and \$22.50 (time and a half) for overtime, the additional \$7.50 is eligible for the deduction.

### How to Comply

Although both provisions will lower the tax burden on employees, they do not alter the paperwork an employer must submit. Business owners still need to record and report tips earned and overtime paid on an employee's W-2 or a contractor's 1099.

A small business owner should make clear to employees that tips are not going "under the table." It is more accurate to describe "no tax on tips" as a tax deduction rather than an exemption. This is important to ensure that employees and contractors accurately disclose their tips and avoid a paperwork nightmare during tax season.

In addition, business owners should make clear to employees that their entire overtime check is not eligible for the "no tax on overtime" deduction, but rather, only the difference between regular and overtime pay. This will help to meet an employee's expectations.

Also, the law prohibits double-dipping: employees cannot deduct tips they make while working overtime as overtime pay, though they can still deduct those tips under the "no tax on tips" deduction. Please advise your employees that they should not try to cash in twice on one payment—it will not work, and they may be setting themselves up for an audit.

Businesses should keep accurate records and await further guidance from the government, which should arrive in October or sooner. NFIB's November webinar will provide members with additional information. In the meantime, if you have any questions about the new law's impact on tips and overtime pay, NFIB's Legal Center is here to help. Please reach out to us at [info@nfib.org](mailto:info@nfib.org).

## Check out the Legal Center's On-Demand Webinar Series

The Legal Center has continued its popular webinar series, featuring guest speakers to discuss important topics for small business owners and to answer NFIB member questions. Below are some highlights from the summer webinars.

In July, our webinar was hosted by Beth Milito, Vice President and Executive Director of NFIB's Legal Center. Beth discussed the five most common HR mistakes and how to avoid them. These mistakes include not properly verifying employees' work eligibility, lacking standardized policies and procedures, payroll errors and misclassification of independent contractors, and insufficient performance management.

August's webinar featured special guest Felicia Watson, Senior Counsel at Littler Mendelson, a seasoned OSHA attorney, discussing OSHA basics for small businesses. The webinar covered the fundamentals of OSHA inspections, reasons and triggers for inspections, and employer defenses to citations and penalties. It also included a Q&A session where NFIB members received answers to their OSHA-related questions.

All our Legal Center webinars, including these, are free and available on-demand at [NFIB.com/legalcenter](https://NFIB.com/legalcenter).

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**Beth Milito**

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