

The Brief

WINTER 2025

Celebrating 25 Years of NFIB Small Business Legal Center Advocacy

This year, the NFIB Small Business Legal Center celebrates 25 years of advocating for small business owners in court and educating them on key legal issues. Each year, the Legal Center is involved in over 40 cases nationwide. Last year was a record year for litigation, with seven new lawsuits filed. Here we share highlights from our most significant fights over the last 25 years.

Between 2010 and 2012, the Legal Center led a lawsuit challenging the individual mandate in President Obama's signature legislation, the *Affordable Care Act*. NFIB's efforts resulted in the case reaching the U.S. Supreme Court and the opinion *NFIB v. Sebelius*. Although the fractured decision upheld the individual mandate as a tax, our efforts boosted NFIB's standing nationwide, and the case is now considered essential reading for law and history students.

In 2022, the Legal Center secured a major legal victory in the U.S. Supreme Court with *NFIB v. OSHA*. We successfully challenged a sweeping Occupational Safety and Health Administration rule that would have required employers to enforce a COVID vaccine mandate.

In just ten years, NFIB reached the Supreme Court twice, resulting in two landmark decisions. And last year, we made it to the Supreme Court again with our challenge to the Beneficial Ownership Information reporting rule in the case of *Texas Top Cop Shop v. Garland*.

In 2024, we also filed a brief in *Loper Bright Enterprises v. Raimondo*, a U.S. Supreme Court case that overturned *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* In a once-in-a-generation decision, the Court abolished "Chevron deference," a legal doctrine that mandated judges to defer to government agencies' interpretations of statutes.

In addition to our advocacy in the courts, we have actively supported small business owners with legal questions. During COVID, the Legal Center hosted a weekly webinar series for 24 months that helped our members navigate the uncertainties and challenges faced by small businesses during that time. Members credit NFIB's assistance with saving their businesses.

The Legal Center also operates the NFIB Support Line, offering legal information and assistance to NFIB members on business operation matters like human resources, taxes, and contract disputes. Each year, the Legal Center's Support Line responds to over 1,000 inquiries.

Thanks to the generosity of our donors, the NFIB Legal Center has achieved these successes for small businesses. On behalf of our team, thank you for your support over the past 25 years. We look forward to another 25 years of successful legal advocacy and support for small business owners.

Keep up with our work at: [NFIB.com/legal](https://www.nfib.com/legal)

Thank You for 25 Years of Support!

The year 2000 was significant in NFIB's history, as it marked the launch of the NFIB Legal Foundation (later renamed the NFIB Small Business Legal Center). Establishment of a separate legal arm ensured that NFIB would have a strong voice for small businesses across all three branches of the federal government.

Within months after its launch, the NFIB Legal Foundation filed its first lawsuit, which challenged the U.S. Army Corps of Engineers' (Corps) decision to eliminate a streamlined, nationwide permit program that many small home builders had relied on under the Clean Water Act to ensure the U.S. Waters of the United States were not wrongfully polluted. In a landmark complaint filed in federal court in Washington, D.C., NFIB alleged that the Corps had violated the Regulatory Flexibility Act (RFA) to the detriment of thousands of small business owners, including NFIB member Wayne Newnam, a small homebuilder from Troy, Ohio, who joined NFIB as a plaintiff in this lawsuit.

The RFA, enacted in 1980 with the endorsement of NFIB and strong bipartisan support, aims to reduce the disproportionate impact of federal regulations on small businesses. NFIB was involved in one of the first lawsuits against the federal government, claiming it failed to comply with the RFA. In a significant legal victory for NFIB and the RFA, the federal court largely sided with NFIB's argument and mandated that the Corps revise its permitting system. This revision required that small business impacts be taken into account in future nationwide permit schemes.

Since 2000, the NFIB Legal Center has remained true to its mission: to advocate for small businesses in the courts and serve as a legal resource for small business owners nationwide. Since we filed our initial lawsuit to enforce the RFA, the Legal Center has fought to ensure that the government considers the impact of regulations on small businesses and that Congress and the White House operate within the bounds of the law. Throughout the legal battles, the Legal Center has worked to inform business owners of new mandates and provide tools for compliance.

Earlier this year, President Trump made it clear to federal agencies that he is committed to reducing the regulatory burden on America's small business owners and the economy. The focus on removing many

mandates issued during the Biden administration will greatly benefit business owners like you, who already face enough regulation. However, our work is not done.

Over the past 25 years, regulation has consistently ranked among the top issues for small businesses, according to the NFIB Research Foundation. With the support of donors like you, the NFIB Small Business Legal Center will continue to hold the President and federal agencies accountable and ensure they keep their promises. We will file the necessary pleadings and briefs to support deregulatory efforts that many career bureaucrats and special-interest groups, such as unions and environmental activists backing big-government policies, have resisted and challenged. Thank you for supporting our fight!

Beth

By **Beth Milito**,
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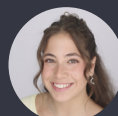
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A BUSY FALL IN THE COURTS

The Legal Center had a busy fall, filing six briefs in state and federal courts on issues of importance for small business owners. Our briefs touched on a wide variety of legal topics, including lawsuit abuse, labor law, agency overreach, and home equity theft.

NFIB was active in state court on the issue of lawsuit abuse, filing a brief in *Bernavage v. Green Ridge Healthcare* before the Pennsylvania Superior Court. Our brief argues that plaintiffs should not be allowed to, at the last possible minute during trial, add a new theory of liability (recklessness) in order to obtain punitive damages. This is unfair to small business defendants and goes against Pennsylvania's Rules of Civil Procedure. Instead, the existing rules must be upheld to ensure that small business defendants are not subject to underhanded tactics.

We next filed amicus briefs in two related cases, *Amazon.com Services LLC v. NY Public Employment Relations Board*, and *NLRB v. State of New York*, both in federal court. These cases aim to stop New York from placing private sector employees under the authority of the State's Public Employment Relations Board. Instead, our briefs argue that the National Labor Relations Act, which sets national labor standards for private sector employees, preempts the New York law. If the courts agree with our argument, businesses will not have to be subject to a harsh and confusing maze of

contradictory labor laws in New York State.

The Legal Center supported a challenge to an intrusive FCC reporting rule by filing a brief in *Ohio Telecom Association v. FCC* at the Sixth Circuit. In that case, Congress struck down an FCC rule through the Congressional Review Act (CRA), only to have the FCC re-issue essentially the same exact rule at a later date. Worse still, a Sixth Circuit panel majority affirmed the FCC's reading of the statute. This decision, we argue, is based on a severe misreading of the CRA. Instead, the burdensome reporting regulation should be struck down because it violates the separation of powers.

We also filed a brief at the U.S. Supreme Court in *McGee v. Alger County Treasurer*, arguing against a Michigan law that would allow counties to keep enormous windfalls when selling foreclosed property so long as they provided a short window to recover the proceeds. This process, known as home equity theft, was struck down by the Supreme Court in *Tyler v. Hennepin County*, in which NFIB filed a brief. To protect the *Tyler* case as a win for small business owners, NFIB filed here, urging the Court to strike down the Michigan law.

The Legal Center will continue filing amicus briefs on issues that affect small businesses. To see which briefs we have filed in previous years, please visit our new [Case Index](#).

Fall Webinar Highlights — Keeping Employees, Evaluating Leases, and “No Tax on Tips” Compliance

The Legal Center has continued our popular monthly webinar series, featuring guest speakers to discuss important topics for small business owners. Below are some highlights from the Fall and a preview of what's coming next.

Our September webinar was hosted by Beth Milito, Vice President and Executive Director of NFIB's Legal Center. Given the tight labor market, Beth discussed best practices for recruiting and motivating workers to boost employee retention. She advised that, with thoughtful hiring, holistic onboarding, and fully engaging and leveraging talent, small businesses can maximize their employees' skillsets, leading to greater satisfaction for both employees and clients.

October's webinar featured special guest Timothy Coons, Esq., founding partner at Counxel, who presented tips for reviewing contracts, updating business structures, and protecting intellectual property. He discussed the basics of different business structures, including LLCs and C-Corps, and provided information about evaluating leases.

The November webinar featured Stephen Kenney, a tax and benefits attorney with Ogletree Deakins, who gave a detailed overview of “no tax on tips” and “no tax on overtime,” and discussed what each means for your business.

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

FREE WEBINAR

Fall Legal Reset from a Small Business Attorney
Now Available On-Demand

Speaker



Beth Milito

VP and Executive Director,
NFIB Small Business Legal Center

[NFIB.com/webinars](https://www.nfib.com/webinars)

NFIB Pushes Back Against State Regulations

The Legal Center continued its work to ensure that state governments adopt more business-friendly regulations that will save NFIB members and small businesses time and money by reducing red tape. Our efforts included filing comment letters in Maryland and Colorado opposing proposed rules that would have increased regulatory burdens on small business.

NFIB submitted a comment letter to the Colorado Department of Labor and Employment challenging a proposed rule on employee reinstatement from paid family and medical leave. The letter urges the Division of Family and Medical Leave Insurance to withdraw the proposed rule to "provide clarity and stability for Colorado's small businesses." It argues that the proposed rule exceeds the Department's authority, conflicts with the statutory language, will confuse small business owners by replacing a three-factor test with a thirteen-factor test, and will create unnecessary and duplicative jobs.

NFIB State Director Michael Smith added, "The Division lacks the statutory authority to promulgate the proposed rule, which is needlessly complicated, vague, confusing, and requires small business owners to undertake burdensome steps to reinstate employees. To prevent this, NFIB recommends withdrawing the proposed rule."

In Maryland, NFIB submitted a comment letter to the Department of the Environment in response to a proposed rule concerning the use of heating fuel that would impose burdensome reporting requirements on small businesses. NFIB argued that the regulation creates significant reporting and financial burdens on Maryland's small businesses.

"[S]mall businesses do not need another superfluous recordkeeping requirement added to their plates," said Mike O'Halloran, NFIB Maryland State Director. "Without dedicated compliance officers on staff, this additional paperwork becomes one more responsibility on the backs of every small business owner whose time would be better spent running their business."

SBLC MEDIA MENTIONS

September 5, 2025

Federal Newswire

Federal Newswire reported on NFIB's amicus brief filed with the U.S. Supreme Court, urging flexible deadlines for defendants when removing a case from state to federal court. The article quotes Beth Milito, Vice President and Executive Director of NFIB's Small Business Legal Center: "Congress has provided small business defendants with the right to remove a case from state to federal court when federal jurisdiction exists. There are circumstances when the normal deadline for removal must be extended to protect the rights of defendants. As this case demonstrates, one of those situations is when plaintiffs use procedural gamesmanship and lawsuit manipulation to avoid federal jurisdiction. NFIB urges the Court to recognize that there are equitable exceptions to the removal time limit so that important federal questions can be considered in federal court."

October 6, 2025

Federal Newswire

Federal Newswire reported on NFIB's challenge to the Federal Communications Commission's (FCC) reissued data privacy rule in

the case *Ohio Telecom Association, et al. v. Federal Communications Commission, et al.* Vice President and Executive Director Beth Milito is quoted: "This is another example of agencies abusing their authority to create burdensome regulations that will impact our nation's small businesses. Modifying the wording of a provision does not suddenly grant the FCC the authority to reissue rules that were already struck down through a legitimate exercise of Congress' legislative power. Allowing the will of Congress to be subverted based on a technicality is a dangerous decision that will diminish the power of the Congressional Review Act and ultimately threaten the separation of powers."

October 27, 2025

SBY Business Journal

SBY Business Journal referenced NFIB in an article regarding the Maryland Department of the Environment's proposed rule that would impose new data reporting requirements on gas utilities and energy marketers. "NFIB is concerned that this new program will add expenses to heating fuel providers and ultimately cost small businesses."

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www.nfib.com/sblcgive



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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