



ANNUAL REPORT

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Executive Director's Message



Last year marked the 20th anniversary of the NFIB Small Business Legal Center. As you will see in this report, 2020 was likely our busiest year yet, as we helped tens of thousands of small business owners navigate the pandemic while continuing to be your voice in state and federal courts and the U.S. Supreme Court.

Founded in 2000, the Legal Center's mission was — and remains — serving you, America's small business owner. You are our *only* client. Using NFIB's top-shelf research, the NFIB member ballot, and information from the thousands of small business calls we answer each year, we file and engage the lawsuits that will protect your freedoms and positively impact your bottom line.

And our educational work often serves as the first-stop resource for small business owners with legal questions and challenges. You do not have time to research your state's wage and hour laws or federal safety regulations ... but we do! And we are happy to do it for you. Although we do not provide legal advice, we are a critical first step for small business owners across the country trying to get a quick answer or assess whether or not they need a lawyer to help them with an issue they are facing. The best news, of course, is we do the legwork for you at no cost.

Of course, we could not have made it through our first 20 years without the generous support of thousands of small business owners across the country. Your contributions — whatever the size — have allowed us to grow the support and legal advocacy we do on your behalf every day.

The NFIB Small Business Legal Center has enjoyed tremendous success in fighting well-intentioned, but often ill-designed — or worse — unnecessary, federal and state regulations. And thanks to our Supreme Court work and engagement in federal and state courts, your property rights are stronger now than they were two decades ago, and the trial bar has fewer levers to pull when trying to bring a frivolous lawsuit against your business.

But with each new President, Governor, Congress, or State Assembly, a crop of new policy leaders emerges that too often are tempted to reinvigorate the bad policies and laws of the past. Throughout this pandemic we have seen, once again, that our elected officials do not have all the answers – far from it. And your rights to run your business, on your terms, without the threat of government interference – much less government shutdown — have taken many steps back.

Looking forward, protecting — and, in many cases, restoring — your rights will be a top priority for the NFIB Small Business Legal Center. We know we have a steep mountain to climb on your behalf. But, as the last 20 years have demonstrated, we are up for the challenge.

Thank you again for being our partner in fighting for and defending the rights of all small business owners in our nation's courts. With your continued support, we look forward to continuing to represent you for decades to come.

Thank you for your generosity.

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Karen Harned

Executive Director

About the NFIB Small Business Legal Center

NFIB's Small Business Legal Center works for your small business, supporting you in the nation's courts and serving as a legal resource for small businesses.

What is the NFIB Small Business Legal Center?

The NFIB Small Business Legal Center is the voice for small business in the nation's courts and the legal resource for small business owners nationwide. Simply, we educate and litigate for small business. The Legal Center is not a legal defense fund.

NFIB Small
Business Legal
Center as
Litigator

The Legal Center is the advocate for small business in the courts. Our advocacy in the courts takes the form of briefs and participating in oral arguments. We inform judges how the decision they make, in a specific case, will impact small businesses nationwide. Importantly, we only initiate lawsuits and file amicus ("friend-of-the-court") briefs in cases that impact many small business owners.

NFIB Small
Business Legal
Center as
Educator

Estimates show that the thousands of pages of federal regulations alone cost Americans more than \$1 trillion. With the vast array of rules and regulations, it is no surprise that America's small business owners struggle to keep up. The Legal Center reviews these regulations and prepares guidance to help small businesses nationwide understand the most vital issues affecting their business.

Check out the NFIB SBLC Legal Guide Series

Every small business faces a dizzying number of laws and regulations. It can be difficult for busy small business owners to understand all of their compliance obligations. The Small Business Legal Center is here to help. We have published several guides covering key legal topics that every business owner needs to know. Best of all, these guides are completely free and available on our website.

Our Federal Employment Law Handbook is probably the best place to start, as we cover the major laws small employers need to be aware of, including the Fair Labor Standards Act, Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Occupational Safety and Health Act. The series also includes guides on specific topics, including union organizing, document retention, and handling OSHA inspections. One of our most popular resources is a model employee handbook that you can use for your own business.

Tax Guide Updated for 2020

One issue continuously affecting small businesses is taxes. Because of the importance of this issue, we recently revised the NFIB Guide to Taxes. The tax guide has been updated to include revisions made by the 2017 Tax Cuts and Jobs Act. Business owners will want to know about the new 20% small business income deduction. The guide reviews other deductions that business owners should take advantage of and changes made to popular deductions like meal and entertainment expenses.

If you have yet to take advantage of our free compliance resources, now is the time!

Our legal guide series is available at:

Download Guides at NFIB.com/guideseries









Educational Highlights

Due to the COVID-19 pandemic, in 2020 the Legal Center increased its educational programming significantly. While we continued to advocate in the courts by getting involved in specific cases, we understood that our small business owners were particularly focused on surviving and navigating their responsibilities throughout the pandemic. Because of this, we shifted our focus toward providing educational and operational assistance. Last year, the Legal Center provided support to tens of thousands of small business owners across the country in the following ways:

Email Inquiries

Since the COVID-19 pandemic broke out in March 2020, the Legal Center has responded to an average of 300 email inquiries a week. These inquiries have spanned a multitude of topics, including but not limited to, Payment Protection Program loans and forgiveness, Emergency Injury Disaster Loans, Families First Coronavirus Response Act responsibilities, Employee Retention Tax Credit assistance, Americans with Disabilities Act website compliance, workplace safety, normal business operations, zoning and permit requirements, local government disputes, and Occupational Safety and Health Administration inspection issues.

Please remember the NFIB Small Business Legal Center is always available via email for small business owners with questions. For help and guidance, email us at **info@ nfib.org** and a member of our staff will be in touch. We generally respond within 24 hours of receiving your question.

Webinars



In 2020 the Legal Center also began putting out weekly webinars to help small businesses navigate the pandemic. In the summer of 2020, we switched to bi-weekly webinars. From mid-March to the end of the calendar year, we conducted 30 COVID-19 webinars.

Webinars averaged about 3,000 participants and 4,500 registrants with the ondemand versions available for viewing at any time at **NFIB.com/webinars**. These webinars have assisted about 20,000 small business owners in their applications for PPP loans, resulting in nearly \$2 billion in approved loans as well as assisting in the filings for loan forgiveness.

In each of our webinars related to COVID-19, SBLC attorney Beth Milito answered questions in real-time. Combined, our total email responses and real-time webinar responses have numbered in the thousands since the beginning of the pandemic.

Tip Sheets

In addition to our email responses and webinars, the Legal Center's 2020 educational programming included numerous tip sheets to serve as quick reference guides for small businesses. Our tip sheets summarized legal responsibilities and legislation applicable to small businesses. Some of our tip sheet topics included:

- PPP Loan Forgiveness
- Obtaining a PPP Loan for Self-Employed Small Business Owners
- Obtaining an EIDL loan
- FFCRA Paid Leave Requirements
- FFCRA Family Leave Requirements
- FFCRA Tax Credits
- ADA Website Compliance

In addition to these tip sheets, we also educated small business owners by writing short and concise blog articles. Some of our most prevalent articles discussed common PPP & EIDL questions, the streamlined PPP forgiveness procedure for smaller loans, and a 2020-21 Supreme Court term preview. These and future blog articles can be found on our main page at **NFIB.com/legal-center**.

The Legal Center continues to provide updated COVID-19 information on **NFIB.com** related to workplace safety, employee leave, and liability.

NFIB Small Business Legal Center 2020 Highlights in the Courts

The pandemic did not slow down the Small Business Legal Center. Even with our focused efforts to help small businesses navigate the pandemic through educational assistance and responding to questions, the Small Business Legal Center's advocacy produced impressive wins in federal and state courts across the country. Below are a few examples of your donations at work. To keep up with all our legal work, visit NFIB.com/legal-center.

1. Tennessee Supreme Court agrees with NFIB, upholds cap on noneconomic damages.

The Legal Center started the year off with a big win at the Tennessee Supreme Court. In *McClay v. Airport Management Services*, the state's highest court held that noneconomic damages are limited in all but the most egregious circumstances – a significant victory, considering one lawsuit can be enough to put a small business out of business.

2. Successfully blocked attempt by the AFL-CIO to force the hand of the Occupational Safety and Health Administration.

A brief filed by the Legal Center and other business groups successfully stopped an AFL-CIO petition for OSHA to issue an emergency temporary standard governing COVID-19 workplace risks.

3. U.S. Supreme Court ruled the structure of the Consumer Financial Protection Bureau (CFPB) unconstitutional.

In a win for government accountability, the U.S. Supreme Court in *Seila Law LLC v. Consumer Financial Protection Bureau* agreed with NFIB's argument and found unconstitutional the CFPB's structure with an unchecked, single unaccountable director who even the President of the United States could not remove from office. The decision will help to ensure that federal agencies are structured in a way that is accountable to the people.

Even with all the uncertainty and change that happened in 2020, your donations were instrumental in helping the Small Business Legal Center make meaningful and positive impacts to assist and advocate in the courts for small businesses.

We are more grateful than ever for your support.

4. U.S. Court of Appeals for the Sixth Circuit agrees with NFIB, protects the electoral process.

NFIB secured an important victory in Ohio when the U.S. Court of Appeals for the Sixth Circuit ruled in favor of upholding the state constitution's in-person procedural protections for ballot initiatives. The Legal Center argued that the protections are not burdensome and protect against fraud in the election process, a critical issue in an election year.

Case Involvement

State Court Filings · 23

California	
Colorado	
Georgia	
lowa	
Kentucky	
North Carolina	_
New Jersey	
Nevada	
New York	
Pennsylvania	:
South Carolina	
Tennessee	
Texas	
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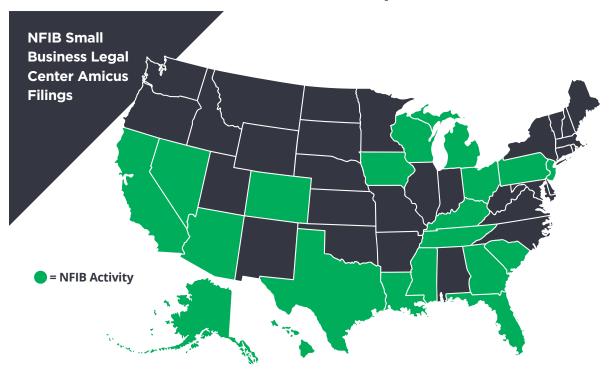
Federal Court Filings · 17

Federal Courts of Appeal Filings · 7

DC Circuit	3
Fifth Circuit	1
Sixth Circuit	1
Ninth Circuit	2

National Labor Relations Board · 2

U.S. Supreme Court · 8



NFIB Small Business Legal Center's Amicus Program

Thanks to our generous donors, the NFIB Small Business Legal Center brought the voice of small business to federal and state courts across the country with 40 amicus filings across the country in 2020. As always, we strive to use donor money wisely so that we can have the greatest impact on the legal system. In our first 20 years, we have filed over 700 amicus briefs in cases affecting the rights of entrepreneurs to own, grow, and successfully manage their business. Here are some of the most notable cases from the last year:

Wisconsin Manufacturers & Commerce v. Evers

The Legal Center filed an amicus brief challenging the Wisconsin Governor's decision to bypass privacy laws and publish the names of businesses with COVID-19 cases. The NFIB SBLC argued that that Governor's order will not halt the spread of COVID-19, but instead will harm businesses in Wisconsin by instilling fear in consumers.

Mortimer v. McCool

We filed an amicus brief in the Supreme Court of Pennsylvania arguing against a new theory of law expanding personal liability for LLC owners. Normally, plaintiffs may "pierce the corporate veil" and personally sue an owner only in limited circumstances. The new theory of veil piercing would erode the liability shield of LLCs, discouraging the formation of businesses in the Commonwealth.



Kentucky Unemployment Insurance Commission v. Nichols

The Legal Center filed an amicus brief in the Kentucky Supreme Court asking that court to reverse a court of appeals ruling that employers must be represented by counsel at an unemployment insurance hearing. NFIB argued requiring counsel at these hearings would burden

small businesses and would run counter to the goal of the state's unemployment insurance system to provide efficient and quick resources to unemployed workers.

NFIB Small Business Legal Center's Amicus Program CONTINUED

William Huntress and Acquest Development, LLC v. United States of America – The NFIB Legal Center supported the plaintiff who argued that EPA officials maliciously prosecuted him despite having a dubious legal basis for doing so. The Small Business Legal Center joined as amicus asking the U.S. Supreme Court to take this important case.

Violet Dock v. Drew Heaphy et. Al. - The NFIB Small Business Legal Center continued to defend property rights with an amicus brief in the U.S. Court of Appeals for the Fifth Circuit. In this case, a small business sought just compensation in federal court after a Louisiana public authority took private facilities and reneged on paying a monetary judgment awarded by a Louisiana court.

Atlanta Women's Specialists LLC v. Keith Trabue - In our fight for a fairer judicial system, the NFIB Small Business Legal Center asked the Georgia Supreme Court to uphold a state law outlining how blame – and damages – must be assigned in civil cases. This case concerned an appeal of a \$45.8 million medical malpractice verdict because the jury found two doctors violated the standard of care but failed to apportion fault between the two. Georgia law says defendants can be held liable to a plaintiff only for damages attributable to them. By declining to apportion fault between the doctors, the lower court's opinion "ignores the clear mandate" of the Georgia statute, the Legal Center wrote in its amicus brief.

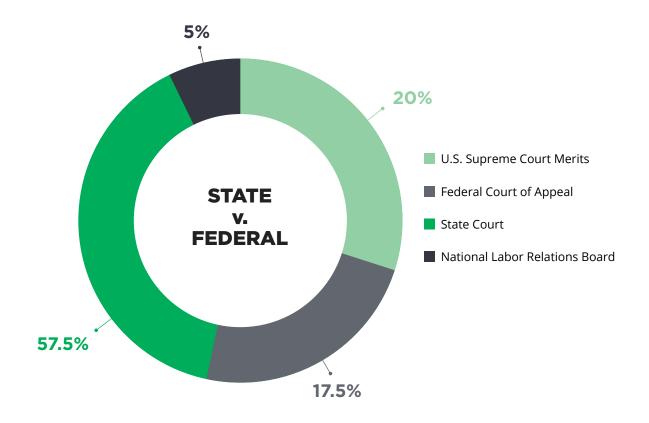
Commonwealth v. Chesapeake Energy Corp. - We joined other business groups to argue against increased liability for businesses under Pennsylvania's Unfair Trade Practices and Consumer Protection Law. A broader reading, like the one endorsed by the Pennsylvania Attorney General, exposed the business community to new threats of lawsuits brought by the Attorney General and private individuals to challenge any commercial transactions as a violation of the statute.

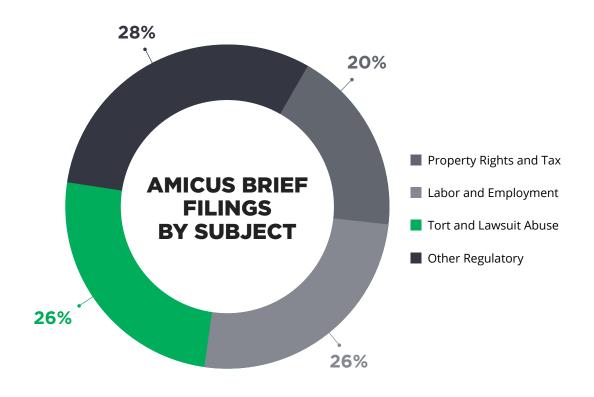
To keep up with all the Small Business Legal Center's court activity visit **NFIB.com/legal-center**.

NFIB Small Business Legal Center Filings

BY YEAR







In the News

2020 Media Highlights

Karen Harned discussed with Washington Examiner the impact on some small businesses of unemployment benefits.

May 11, 2020

Washington Examiner reported the \$600 unemployment benefit disincentivizes some employees from returning to work, "We have a number of members call us or email us and say they have offered their employees to come back, and they said, 'No, I want to keep my unemployment.' ... We are definitely hearing stories that this is real," said Karen Harned, NFIB Small Business Legal Center Executive Director.

READ MORE https://www.washingtonexaminer.com/news/lawmakers-eye-reforms-to-600-unemployment-benefit-in-bid-to-save-jobs

Karen Harned discussed with the Washington Post the possibility of easing some COVID-19 paid leave requirements.

June 26, 2021

The Washington Post reported White House officials have discussed easing enforcement of some paid leave reporting requirements. "As employees are trying to get back to work, this is not the time to be bringing down the hammer on someone who forgot to dot an 'i,' " Harned said. "We have been hoping they can really use their enforcement discretion."

READ MORE https://www.washingtonpost.com/climate-environment/citing-an-economic-emergency-trump-directs-agencies-across-government-to-waive-federal-regulations/2020/06/05/6a23546c-a0fc-11ea-b5c9-570a91917d8d_story.html

Karen Harned discussed with Bloomberg Law a federal court decision relating to COVID-19 paid leave requirements.

August 3, 2020

Bloomberg Law discussed a New York federal court decision holding the Department of Labor's attempt to make new COVID-19 related paid leave requirements more flexible were illegal. "DOL was trying to give employers needed flexibility with these

Continued on next page

requirements," Harned said. "This is how you disincentivize[sic] people from bringing people back to work, because it's just so hard right now as it is."

READ MORE https://news.bloomberglaw.com/daily-labor-report/in-dol-loss-judge-expands-virus-paid-leave-rule-to-more-workers

Karen Harned discussed the importance of COVID-19-related liability protections for small businesses to Newsweek.

August 3, 2020

Newsweek reported on how liability protection for businesses is a major sticking point as Congress considers another stimulus package. NFIB's Karen Harned supported liability protections for businesses. "We've invested trillions of federal dollars in getting businesses back open, so now we can't let them fail because of frivolous lawsuits," Harned said. "Everybody is worried about this because they just don't need another shoe to drop."

READ MORE https://www.newsweek.com/two-powerful-lobbying-groups-are-opposite-sides-stimulus-deal-deadlock-1522448

Karen Harned offered expert commentary to Bloomberg Law on the positive impact the new composition of the Supreme Court will have on small businesses.

September 22, 2020

Bloomberg Law reported on how the U.S. Supreme Court's new 6-3 conservative majority will likely produce favorable rulings for business interests. NFIB's Karen Harned said that the new Court composition should keep agencies in check by "mak[ing] sure that the agencies are staying in their lane and if they start rewriting laws, that the court will say, no, that's not appropriate."

READ MORE https://news.bloomberglaw.com/us-law-week/high-court-poised-to-aim-at-regulatory-power-with-new-trump-pick

Elizabeth Milito is recognized by WJCT in Jacksonville for her work providing guidance to the small business community on handling COVID-19 in the workplace.

October 1, 2020

WJCT (Jacksonville, FL) mentioned NFIB's Elizabeth Milito in an article on the difficulty that businesses face in navigating the COVID-19 landscape. The article highlighted Milito's work providing guidance to the small business community on how to handle COVID-19 in the workplace.

READ MORE https://news.wjct.org/post/businesses-balance-survival-safety-while-operating-during-pandemic



Outreach, Events, & Testimonies

February

Karen Harned presented to NFIB members at Maryland Small Business Day and participated in a Federalist Society Teleforum on Commenting to Regulatory Agencies.

March

Beth Milito testified before the U.S. House of Representatives, Committee on Education & Labor, in a hearing entitled "The Healthy Families Act (H.R. 1784): Examining a Plan to Secure Paid Sick Leave for U.S. Workers."

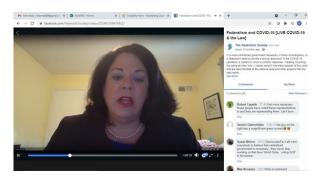
May

Karen Harned provided small business perspective on a Common Good panel regarding COVID-19 Liability. Beth Milito presented the small business perspective in a panel discussion hosted by the New York Academy of Sciences entitled, "Guiding the Reopening of American Business."



June

Karen Harned presented the small business perspective on a federalism panel during Federalist Society COVID-19 and the Law Conference.



July

Beth Milito participated in a panel discussion hosted by George Mason University's Mercatus Center entitled "How to Achieve Small Business Recovery During COVID-19."

August

Beth Milito presented a special feature NFIB COVID-19 webinar at the NFIB 2020 Small Business Virtual Fly-In. Milito also taped a special podcast for Open We Stand FFCRA: What Small Businesses Need to Know.



September

Karen Harned presented the small business perspective on an Alliance for Justice program regarding COVID-19 liability.

December

Karen Harned provided an update regarding healthcare at the U.S. Supreme Court to Illinois NFIB members.

What Can You Do To Help?

To make a donation, please send checks, payable to NFIB Small Business Legal Center at the following address:

NFIB Small Business Legal Center 555 12th Street NW, Suite 1001 Washington, DC 20004

If you have a question, a story of government abuse of a small business, or a precedent-setting case, please call or email us.

1-800-552-NFIB | info@NFIB.org

SMALL BUSINESS LEGAL CENTER

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