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# Executive Director's Message



To Our Donors, Supporters, and Associates,

The NFIB Small Business Legal Center marked its 21st year with significant achievements at the state and federal level.

Throughout the year we filed amicus briefs in 43 cases across the country defending your right to do business your way as well as your property rights. Our work also focused on protecting your precious tax dollars and your constitutional right to due process before state and federal agencies and courts.

In May, we won our lawsuit against the Nevada legislature, which had enacted tax increases on its citizens without the two-thirds majority

vote required by that state's constitution. Not only that, because the legislature so obviously ignored Nevada's constitution, they were forced to pay our attorneys' fees in the case!

In November, we filed our lawsuit against the Department of Labor challenging the Occupational Safety and Health Administration's mandate that any business with 100 or more employees get their workers vaccinated or subject them to weekly testing and masking while at work. As you know, we ultimately won that case in January 2022 and OSHA withdrew the mandate.

But our work went beyond the courtroom as we assisted thousands of small business owners across the country trying to understand the federal and state laws applying to their business. Whether directly through a phone call or email with a business owner, an article or blog post, or during one of our 26 webinars, the NFIB Small Business Legal Center was there to help small businesses better understand their legal obligations.

As we look to the year ahead, we expect to be laser-focused in our litigation and amicus work on beating back the growth of the administrative state. Federal agencies are actively working to finalize new mandates that will impact millions of small businesses. We are doing our research and building a record, so that we can challenge rules where agencies have acted outside of their authority and imposed new requirements on small business that negatively affect their ability to run their business.

None of our work could happen without your support. Just like you, the Legal Center operates on razor thin margins. Every dollar you give us is precious and spent in a way to maximize small business impact in the courts.

Thank you for your generosity. Karen R. Harred

# 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 put, 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. We do what federal and state NFIB lobbyists do, but instead of lobbying legislators we advocate in the courts through briefs and oral arguments. We tell judges how the decision they make, in a given case, will impact small businesses nationwide. Importantly, we only initiate lawsuits and file amicus ("friend-of-the-court") briefs in precedent-setting cases. That means we go to court only in those cases that will impact many small business owners.

NFIB Small
Business Legal
Center as
Educator

Recent estimates show that the thousands of pages of federal regulations alone cost Americans more than \$1 trillion. With so many rules to keep track of, it's not surprising that small business owners don't know or understand the laws that apply to them. That's where the Legal Center comes in. We prepare guidance documents to help small businesses nationwide understand the most vital issues affecting their business.



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



Karen Harned
Executive Director
(202) 314-2061
Karen.Harned@nfib.org



**Beth Milito**Senior Executive Counsel (202) 406-4443
Elizabeth.Milito@nfib.org



Rob Smith
Staff Attorney
(202) 314-2027
Rob.Smith@nfib.org

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

# **EDUCATIONAL** HIGHLIGHTS

## **Webinars**

In 2021 the Legal Center continued its webinar series to help small businesses navigate the pandemic, take advantage of COVID-19 relief, and excel in their day-to-day operations. Early in the year, we switched to bi-weekly webinars. Over the course of 2021, we conducted 26 total webinars. Twenty-three of



them focused entirely, or in part, on COVID-19 financial relief for small businesses. The webinars also discussed important non-COVID-19 topics for small businesses like digital advertising, succession planning, collections, health reimbursement arrangements, and more.

Our 2021 webinars averaged about 2550 registrants and 1164 participants, with the on-demand versions available for viewing at NFIB.com/webinar-archive. These webinars have helped thousands of small business owners stay afloat during the pandemic by educating and assisting them with PPP, EIDL, and ERTC applications.

Each of our webinars featured real-time answers to participant questions in the

chat box. Combined with our email responses, we answered thousands of small business questions in 2021.

If you have an idea for a webinar topic that would be helpful for small businesses, please email us at **info@NFIB.org.** 



# **Email Inquiries**

The Legal Center also continued responding to email inquiries in 2021. These inquiries pertained to an endless number of topics, including but not limited to, Employee Retention Tax Credit assistance, Occupational Safety and Health Administration

vaccine mandate compliance, Paycheck Protection Program loans and forgiveness, Emergency Injury Disaster Loans, Emergency Injury Disaster Grants, Families First Coronavirus Response Act responsibilities and tax credit reimbursement, Americans with Disabilities Act guidance and compliance, workplace safety, zoning requirements, and Occupational Safety and Health Administration inspection issues.

The Legal Center continues to be available 24/7 to small business owners. For help and guidance on a small business issue, email us at info@NFIB.org. We pride ourselves on being responsive and make it a goal to respond within 24 hours of receiving your question.

# **Newly Released SBLC Out-of-State Sales Tax Guide**

We are pleased to announce that the SBLC has just released a comprehensive guide to sales tax rates and thresholds for small businesses that sell to out-of-state customers. The guide can be downloaded at NFIB.com/out-of-state-sales-tax-requirements.

Many small businesses are struggling with remote seller obligations that resulting from the Supreme Court's decision in *South Dakota v. Wayfair*. In *Wayfair*, the Supreme Court held that out-of-state sellers of goods could be required to collect and remit taxes to a state if they had a "substantial nexus with the taxing State." Prior to *Wayfair*, "substantial nexus" meant the business must have a physical presence in the State. In *Wayfair*, the Supreme Court reversed course and permitted a standard where small businesses could be subject to any of the 11,000 taxing jurisdictions in the United States. Studies show that a significant number of businesses are still unaware of *Wayfair* and its impact on sales tax. Small businesses unaware of the new sales tax regime and compliance rules are convenient targets for out-of-state tax assessments. The Legal Center's chart is a significant step for small businesses beginning to navigate their remote seller sales tax obligations. Small businesses can look at NFIB's newly released state sales tax guide, which provides a valuable overview of out-of-state tax rates.

# **Other Educational Assistance**

The Legal Center also educated small businesses in 2021 by writing short blog articles on important topics. The topics included the OSHA Vaccine Mandate, Employee Retention Tax Credit, CDC COVID-19 guidance, COVID-19 relief options, and Supreme Court case reviews. These and future blog articles can be found at NFIB.com/legal-center/sblc-blog.

In July, Legal Center Senior Executive Counsel Beth Milito, along with her colleague Holly Wade, Executive Director of the NFIB Research Center, launched a weekly series, Small Biz Coffee Corner Chat on Facebook Live. The program aired every Thursday over the summer and offered Q&A on pandemic recovery financial assistance programs like PPP, EIDL, ERC, and more.

# NFIB Small Business Legal Center 2021 Highlights in the Courts

COVID-19 did not slow down the legal machinery of the country. Even with all the uncertainty and change that happened this year, the NFIB Small Business Legal Center was able to make meaningful and positive impacts using your donations to assist and advocate for small businesses in the courts. We are more grateful than ever for your support. Below are a few examples of your donations at work. To keep up with all our legal work, visit NFIB.com/LegalCenter.

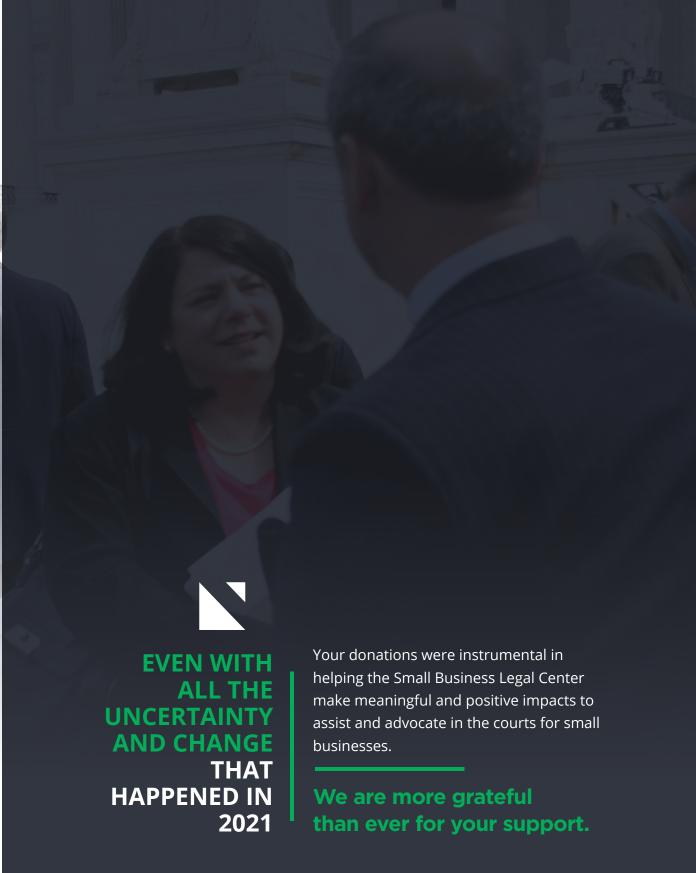
# 1. NFIB v. OSHA - SCOTUS Victory in NFIB Lawsuit Over Unprecedented Vaccine Mandate

In 2021, NFIB filed a precedent-setting lawsuit against the Occupational Safety and Health Administration's unprecedented COVID-19 emergency temporary standard, which would have required employees to get vaccinated or undergo weekly COVID-19 tests. The NFIB Small Business Legal Center, with your support, fought this unlawful rule all the way to the U.S. Supreme Court.

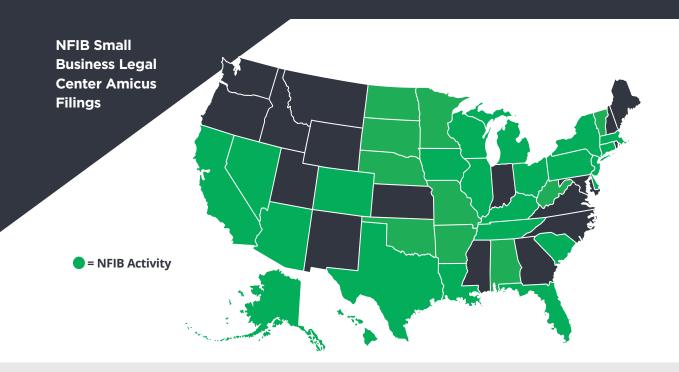
On January 13, 2022, the Supreme Court issued its opinion in *NFIB v. OSHA*. It sided with NFIB and saved America's businesses from the onerous and unlawful Biden vaccine mandate. In a 6-3 decision, the Court blocked OSHA from enforcing the ETS. The Court's opinion said OSHA has authority to "ensure occupational safety" and "set workplace standards," but not to set "broad public health measures" acting as a "blunt instrument" drawing no "distinctions based on industry or risk of exposure to COVID-19 . . . and [p]ermitting OSHA to regulate the hazards of daily life" would expand OSHA's statutory authority without congressional approval. As such, OSHA had no authority to issue this ETS without a clear grant of authority from Congress. Thanks to your generous support, NFIB was able to stop OSHA's unlawful vaccine mandate.

# 2. Legislature of the State of Nevada v. Settelmeyer:

In 2019, NFIB joined a coalition of Nevada legislators, Nevada businesses, and other business groups in a lawsuit challenging Senate Bills 542 and 551 as unconstitutional, maintaining that both bills "create, generate, or increase any public revenue in any form." Article 4, Section 18(2) of the Nevada Constitution requires that any bill doing so be passed with a two-thirds majority in each House, and neither Senate Bill 542 nor 551 received a two-thirds majority in the Senate. The Nevada Supreme Court unanimously agreed with NFIB's position, holding both bills unconstitutional.



# Case Involvement



# **State Court Filings** • 19



# Federal Court Filings 24 Federal District Court 7



# **Federal Courts of Appeal** Filings 6

Second Circuit	1
Third Circuit	1
Sixth Circuit	2
Eighth Circuit	1
Ninth Circuit	1

# **National Labor Relations Board** 1

U.S. Supreme Court 4



Supreme Court Cert Petitions 6



# 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 43 amicus filings in 2021. As always, we strive to use donor money wisely so that we can have the greatest impact on the legal system. Over the past 21 years, we've filed over 600 amicus briefs in cases affecting the rights of entrepreneurs to own, grow, and successfully manage their business.

In 2021, the Small Business Legal Center's amicus work focused on two widespread litigation issues related to COVID-19 relief legislation: the American Rescue Plan's tax mandate and challenges to the termination of supplemental unemployment benefits.

### **American Rescue Plan Tax Mandate**

The American Rescue Plan Act, which became law on March 11, 2021, includes a provision that says ARP funds cannot be used: "[T]o either directly or indirectly offset a reduction in the net tax revenue of such state . . . ."

NFIB joined several States in lawsuits and argued in briefs that this prohibition is an intrusion on the core sovereignty of States to determine their own tax policy, is an impermissibly coercive condition on federal funds, and harms small business by preventing states from reducing their tax burden. NFIB filed amicus briefs in Alabama, Arizona, Kentucky, Missouri, Ohio, Texas, and the U.S. Courts of Appeals for the Sixth, Eighth and Ninth Circuits, supporting the over twenty states pushing back against this provision.

# **Termination of Unemployment Benefits**

The Legal Center filed amicus briefs supporting governors' decisions in Florida, Ohio, Oklahoma, South Carolina, and Tennessee to end participation in temporary federally funded pandemic unemployment insurance programs. Our briefs argued that the governors acted well within their legal authority to end participation in this federally funded program that incentivized unemployment and frustrated states' recovery.

# NFIB Small Business Legal Center's Amicus Program CONTINUED

In addition to amicus work related to COVID-19 benefits, the Legal Center briefs addressed a broad range of issues, including the following U.S. Supreme Court and state cases.

Americans for Prosperity Foundation v. Bonta: This U.S. Supreme Court case concerned whether California could require nonprofit organizations that solicit funds in the State to disclose the names and addresses of all donors who give over a certain dollar amount or percentage of contributions each year. NFIB argued this disclosure requirement would have a chilling effect on protected First Amendment speech. In a victory for small business, the Supreme Court concluded the requirement imposed a burden on donors' associational rights, violating the First Amendment.

**TransUnion LLC v. Ramirez:** This U.S. Supreme Court case concerned whether a class action lawsuit can be brought when most of the class has not been injured. NFIB claimed each plaintiff needs to show concrete injury. Reversing the Ninth Circuit, the Supreme Court agreed with the Legal Center and held that every member of the class must have suffered a "concrete harm" to be able to join a class action lawsuit. A technical/procedural statutory violation, by itself, will generally not suffice to establish this harm.

**West Virginia v. EPA:** The Legal Center filed a brief in this U.S. Supreme Court case that could determine how much authority Congress gave to the Environmental Protection Agency under the Clean Air Act. The Legal Center's brief argued Congress did not clearly give EPA the authority under the Clean Air Act to issue the challenged regulations on the energy industry. Our amicus also argued that upholding the EPA rules would drastically raise energy prices on small businesses.

**Shaw v. Nashville:** In the Tennessee Supreme Court, the SBLC filed a brief in defense of a small business owner against the City of Nashville regarding a Nashville ordinance that prevents home-based businesses from serving clients. The Legal Center brief argued that the ordinance infringes on the fundamental rights of a homeowner to use their property and an individual's right to earn a living.

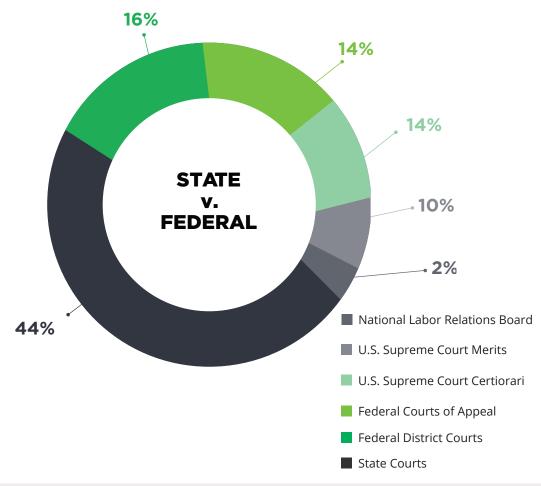
# NFIB Small Business Legal Center's

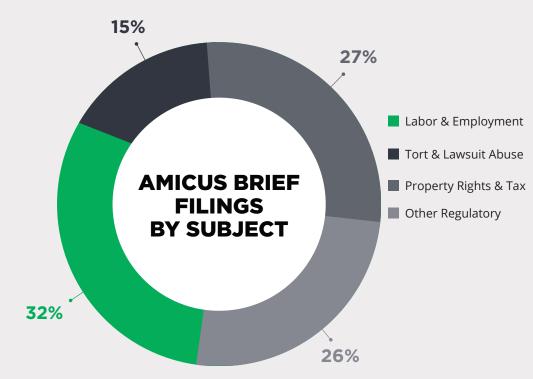
# Amicus Program CONTINUED

**Brandt v. Pompa:** In a case heard by the Ohio Supreme Court, the Legal Center filed a brief arguing that Ohio's statutory limit on non-economic damages is constitutional. When implementing the limit on non-economic damages, as supported by NFIB and its members, the Ohio legislature sought to maintain predictability in the civil justice system and economic stability for all Ohioans by choosing a considerable, but not unlimited, remedy for damages. NFIB's brief argued that damage limits are constitutional and provide economic certainty to small businesses facing a civil lawsuit in Ohio.

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







# In the News 2021 Media Highlights

A key piece of representing small businesses is making sure their story is told. In 2021, the NFIB Small Business Legal Center was mentioned in 432 stories with a total reach of 406.2 million people.

# Los Angeles Daily News and numerous other California outlets

January 7, 2021

Karen co-authors an op-ed on NFIB's legal challenge to California OSHA's Emergency Temporary Standards that appeared in Los Angeles Daily News.

businesses/

READ MORE https://www.dailynews.com/2021/01/27/challenging-californias-pandemic-mandates-on-

### **Small Business Advocate**

February 2, 2021

Karen joins Jim Blasingame to discuss the Legal Center's work pushing back against governors exceeding their power with pandemic restrictions on small business.

harned-36173

READ MORE https://www.smallbusinessadvocate.com/small-business-interviews/karen-

# **Bloomberg Law**

February 18, 2021

Karen explains frivolous lawsuits are a particular threat for small businesses, as "bottom-feeder" plaintiffs' lawyers often sue to force a settlement. "When they're finally making it through this pandemic, the last thing they need is a lawsuit that's going to take them down," Harned said.

READ MORE https://news.bloomberglaw.com/daily-labor-report/virus-liability-shields-can-beredundant-making-exceptions-key

# **Oregon Business Report**

February 26, 2021

Karen warns that the Department of Labor's effort to change joint-employer standard will unnecessarily burden small businesses, saying "Small business owners are the ones who suffer the most when government agencies continue to change the rules ... To change the joint-employer standard again would bring another unnecessary burden to small businesses when the Department issued the final rule fairly and legally."

READ MORE https://oregonbusinessreport.com/2021/02/nfib-defends-joint-employer-rule/

## **NBC Los Angeles**

March 25, 2021

Senior Executive Counsel Beth Milito discusses small business struggles getting government secured loans because banks have not made needed changes.

**READ MORE** https://www.nbclosangeles.com/investigations/randy-responds/some-small-businesses-still-struggling-to-secure-federal-government-money/2559598/

# **Oregon Business Report**

July 9, 2021

A story on the Legal Center's successful Supreme Court term appeared in the Oregon Business Report and other business journals across the country. Quoting Karen, "Small businesses are constantly dealing with ever-changing business laws and regulations, and these decisions will make it a little easier for owners to run their business."

**READ MORE** https://oregonbusinessreport.com/2021/07/4-big-supreme-court-wins-for-business/

# **Cincinnati Enquirer**

August 19, 2021

An article discussing NFIB's opposition to the \$300 bonus unemployment payment and the NFIB Small Business Legal Center's defense in court of Ohio Governor DeWine's decision to end the payments.

https://www.cincinnati.com/story/news/politics/2021/08/17/fight-continues-over-300-perweek-covid-19-unemployment-benefits/5566432001/

# Cincinnati Enquirer

October 20, 2021

Story quotes Karen regarding NFIB's support of state legal challenges to the provision in the American Rescue Plan Act that prevents states from reducing taxes, "ARPA's Tax Mandate prevents states from implementing measures that will foster a healthy business community and promote recovery from COVID-19's economic devastation, which disproportionately harmed certain industries and carried particularly harsh effects for small businesses."

https://www.forbes.com/sites/patrickgleason/2021/10/20/bidens-attempt-to-block-state-tax-relief-has-failed/?sh=7292702648e2



### **CNBC**

November 4, 2021

Story discusses NFIB's opposition to the OSHA vaccine mandate and quotes Karen, "NFIB remains opposed to this rule that restricts the freedom of small business owners to decide how best to operate their own businesses and imposes unwarranted burdens on small businesses that further threaten the small business recovery."

**READ MORE** https://www.cnbc.com/2021/11/04/bidencovid-vaccine-mandate-several-business-groups-criticize-rule.html

### **Numerous National Outlets**

November 10 -14, 2021

Numerous outlets report on NFIB's lawsuit challenging the OSHA vaccine mandate, including the New York Times, New York Post, Bloomberg Law, CNBC, and The Hill.

**READ MORE** https://www.cnbc.com/2021/11/04/bidencovid-vaccine-mandate-several-business-groups-criticize-rule.html

## **READ MORE**

https://nypost.com/2021/11/11/retail-trucking-groups-sue-biden-admin-over-vaccine-mandate/

https://news.bloomberglaw.com/daily-labor-report/trucking-building-retail-groups-add-to-vaccine-rule-challenges

https://www.cnbc.com/2021/11/10/biden-vaccine-mandate-retail-truckers-businesses-sue-to-stop-requirements.html

https://thehill.com/business-a-lobbying/business-a-lobbying/580888-business-groups-sue-to-block-biden-vaccine-or-test



for all COVID-19 resources for small business owners

# Outreach,<br/>Events, &<br/>Testimonies

# **January**

Elizabeth Milito participated in a panel discussion on Paid Family Leave at the Brookings Institute.

# **April**

Karen Harned participated in a Federalist Society panel discussion regarding the U.S. Supreme Court's decision in *Ford Motor Company v. Montana Eighth Judicial District Court.* 

Elizabeth Milito recorded a podcast for GoDaddy on federal COVID-19 relief programs available to small business.

# May

Elizabeth Milito testified in two hearings, before the U.S. House of Representatives and the U.S. Senate, about paid leave mandates.

Karen Harned moderated a Federalist Society discussion regarding the U.S. Supreme Court's decision in *BP P.L.C. v. Mayor and City Council of Baltimore.* 





### MAY CONTINUED

Elizabeth Milito presented to National Grid's small business conference on PPP and EIDL programs and NFIB resources.

### June

Karen Harned participated in a Federalist Society panel entitled, "The Path Forward on Agency Guidance."

## October

Karen Harned testified before the House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties in a hearing entitled "Oversight of the Americans with Disabilities Act of 1990: The Current State of Integration of People with Disabilities."







IF YOU HAVE A QUESTION,

a story of government abuse of a small business, or a precedent-setting case, please give us a call.

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



555 12th Street NW Suite 1001 Washington, D.C. 20004