

The Brief

20th Anniversary Edition

20 Years Successfully Fighting for Small Business in the Nation's Courts

For over 20 years the NFIB Small Business Legal Center has been representing you, the small business owner, in federal and state courts across the country, as well as the U.S. Supreme Court. We represented NFIB as a plaintiff in 22 cases and served as a “friend of the court” in over 500 more through our robust amicus brief program.

Thanks to the support of our generous donors, the NFIB Small Business Legal Center has made significant and positive changes in the law for small business.

Our first legal challenge as a plaintiff was also our first victory. In 2005, the U.S. Court of Appeals for the DC Circuit ruled that the U.S. Army Corps of Engineers failed to comply with the Regulatory Flexibility Act when it instituted a new permitting scheme under the Clean Water Act. Our victory put agencies on notice that they could not skirt their legal obligations to consider the small business impact of a regulation, as the RFA requires.

Over the next decade the Legal Center would go on to prevent:

- the Department of Labor from requiring the public reporting of all union-related communications small businesses had with their attorneys, including how much they paid them;
- DOL from more than doubling the salaries small business owners are required to pay managers and other employees exempt from overtime pay;
- the Corps from dramatically expanding the definition of “waters of the U.S.” and thereby requiring small business owners to secure federal, as well as state permits before building or using property containing a wetland;
- the Environmental Protection Agency from mandating the use of renewable fuels in electricity production, which would have significantly increased the electricity rates for small businesses and all Americans; and
- the Occupational Safety and Health Administration from informally adopting a rule to require employers to allow union representatives to enter a business and accompany OSHA officials during an inspection.

Although we did not overturn the Affordable Care Act, our historic constitutional challenge of the law in *NFIB v. Sebelius* significantly limited Congress’ authority to mandate small business owners and all Americans buy a product or service or coerce state governments to carry out its regulatory agenda.

Finally, through our amicus work we were able to significantly strengthen your rights to do what you want with one of your biggest assets – your property. And we made important strides in reining in trial lawyers so that they are less likely to file a frivolous lawsuit against you.

The NFIB Small Business Legal Center is honored to represent you, and we look forward to building on our rich history of success in the courts to seize the opportunities and overcome the challenges you and other small business owners face in the decades to come.



20 Years Representing Our Only Client — The Small Business Owner

By Karen R. Harned, Executive Director

For decades, numerous public interest law firms worked around the clock to protect the rights of small business owners and all Americans. But there was no organization dedicated to the small business agenda when it came to legal advocacy. Enter the NFIB Small Business Legal Center.

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 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. 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 shut down — 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 representing you for decades to come.

Karen R. Harned

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Small Business Legal Center . . . we're here to help.

Whether you are trying to appeal a zoning dispute, counter a negative online review, or develop a dress policy, the NFIB Small Business Legal Center can help you. Twenty years ago, the Legal Center started its compliance program with a handout on calculating overtime and a pamphlet on how to hire a lawyer. A lot has changed since then.

Now the Small Business Legal Center has a dedicated helpline, hosts monthly webinars for thousands of small businesses and offers a comprehensive legal guide series of useful tips and model policies on tax, employment, and labor issues that small businesses face every day. We alert and update small business owners across the country on legal changes and key issues you face so that you can stay focused on running your business. We also respond to thousands of individual emails and phone calls every year to help small business owners navigate the daily challenges of running a business.

While we cannot offer legal advice, the Legal Center can be a legal resource and help point you in the right direction to get the legal help you need. We are just a phone call or email away. Our email is info@NFIB.org and our number is 1-800-552-NFIB. Do not hesitate to reach out to us for assistance.

All the Small Business Legal Center's legal guides are available for free. You can download copies today by visiting The Legal Guide Series page on NFIB.com.

- Model Employee Handbook for Small Business
- Federal Employment Law Handbook
- Small Business Guide to Document Retention
- Small Business Guide to Handling OSHA Inspections
- Small Business Guide to Handling Unionization Efforts
- NFIB Guide to Taxes

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NFIB.com/legal-center

Have COVID-19 questions? We've got answers. We're here to help your business navigate the coronavirus crisis.

Since March 2020, the NFIB Small Business Legal Center has been dedicated to supporting small businesses through the COVID-19 crisis. We are committed to providing critical information and free resources that will help you find financial assistance, handle liability concerns, or navigate employee health situations.

Our support includes:

- Webinar series - started on March 13, 2020, the webinars will continue through this year and focus on the SBA loan and grant programs, including Paycheck Protection Program applications and forgiveness, Economic Injury Disaster Loans, and the Employee Retention Tax Credit. All webinars are free, and recordings are available on the NFIB website at NFIB.com/webinars.
- FAQs - workplace safety, SBA loan and grant questions, vaccine updates, and more are covered in the small business resources related to COVID-19, which the Small Business Legal Center is continually updating on a special website NFIB has created to house this information at NFIB.com/coronavirus.
- Helpline - call or email with your individual questions on employee leave and COVID-19 exposure, PPP, EIDL, and ERTC. Over the past 10 months the Legal Center has responded to thousands of questions from small business owners across the country regarding the pandemic. You can submit your questions to info@nfib.org.

As you continue to navigate these difficult times, please know you have a partner in the NFIB Small Business Legal Center.

Media Mentions

NFIB Small Business Legal Center

December 15, 2020

Karen joins NPR- Here & Now to discuss the impact of a minimum wage hike on small business, "Especially for the small business owners I represent, any minimum wage hike is problematic even in the best of times," she says. "But right now we are far from the best of times."

🔗 <https://www.wbur.org/hereandnow/2020/12/15/minimum-wage-coronavirus>

January 7, 2021

Cape Fear Business quotes Karen on the importance of Supreme Court case *Cedar Point Nursery v. Hassid*: "Owners are given no authority under current law to be able to say no to union visits and receive no compensation for the intrusion on their property. It is a disrupter to daily business..."

🔗 <https://capefearbusiness.com/2021/01/nfib-files-amicus-brief-supporting-small-businesses-dominion-over-their-property-and-the-right-to-exclude-union-organizers/>

January 7, 2021

Op-ed ("Challenging California's pandemic mandates on businesses") co-authored by Karen on NFIB's Legal Challenge to California OSHA's Emergency Temporary Standards appeared in Los Angeles Daily News, as well as numerous publications across California.

🔗 <https://www.wbur.org/hereandnow/2020/12/15/minimum-wage-coronavirus>

February 2, 2021

Karen joins Jim Blasingame, "The Small Business Advocate," pushing back against governors exceeding their power with pandemic restrictions on small business.

🔗 <https://www.smallbusinessadvocate.com/small-business-interviews/karen-harned-36173>

February 16, 2021

Beth Milito, senior executive counsel, discusses with BizTech the PPP loan program saying, "The great thing about PPP is if you spend the money right — 60 percent on payroll and 40 percent on these other qualifying nonpayroll costs — the loan turns into a grant, and it's 100 percent forgiven."

🔗 <https://biztechmagazine.com/article/2021/02/how-small-businesses-can-buy-technology-government-help>

Case Updates

National Retail Federation, et al. v. CA Div. of Occupational Safety and Health

We joined the National Retail Federation in suing California's Division of Occupational Safety and Health (Cal DOSH) over the legality of its Emergency Temporary Standard (ETS). This ETS requires all California businesses — no matter the size — to pay for employee COVID-19 testing and provide paid sick leave when employees are out, simply due to possible COVID-19 exposure.

In our lawsuit we argue Cal DOSH violated: 1) the California Administrative Procedure Act by issuing the ETS without substantial evidence of an emergency; 2) the California Occupational Safety & Health Act by exceeding its jurisdiction; 3) the 14th Amendment by arbitrarily depriving businesses of their monetary property; and 4) the California Constitution by depriving businesses of their monetary property.

On February 25th a California district court upheld the ETS.

Americans for Prosperity Foundation v. Becerra

In this case before the Supreme Court, the plaintiffs are challenging the California Attorney General's requirement that 501(c)(3) organizations disclose major donors and the amount of their contributions.

Among other things, NFIB argues that California's disclosure requirement violates the First Amendment-protected freedom of speech and association rights of donors to 501(c)(3) organizations.

Trans Union LLC v. Ramirez

In another Supreme Court case, NFIB filed a brief concerning when individuals can bring a class action lawsuit against businesses.

A district court used the injury of one plaintiff — Mr. Ramirez — to certify a class of many plaintiffs who had experienced no injury at all. Our amicus argues that judges cannot certify class action lawsuits containing members who have not suffered an injury.