



**NFIB**  
SMALL BUSINESS  
LEGAL CENTER

# THE SMALL BUSINESS DOCKET

Issue 25 / January 2023



**NFIB**

# Amicus (Friend of the Court) Cases

## VICTORIES FOR SMALL BUSINESS!

### West Virginia v. Treasury

This month the Eleventh Circuit provided a great win for small businesses. The court held that the Tax Mandate provision of ARPA was unconstitutional as it did not provide clear notice to the States on what the condition for the use of funds was. This outcome further deepens a divide among the federal appeals courts on this issue, increasing the likelihood that the Supreme Court will weigh in.



## *West Virginia v. Treasury* - Supporting States' Fight to Lower Taxes

- Where → US Court of Appeals for the Eleventh Circuit
- Issue → Is American Rescue Plan Act's (a Covid-relief bill) Tax Mandate provision unconstitutional?
- NFIB Position → Yes. NFIB's amicus argues that the district court properly enjoined enforcement of the Tax Mandate. The Mandate is a federal intrusion in the states' sovereign realm of tax policy and is an unduly coercive condition on federal funds. It prohibits states from lowering taxes due to acceptance of federal Covid relief funds.
- Outcome → The Eleventh Circuit agreed with our amicus. The panel affirmed the district court, holding that ARPA's condition on the use of funds did not provide clear notice and was therefore unconstitutional

“

*I start early and I stay late, day after day, year after year, it took me 17 years and 114 days to become an overnight success”*

*-Lionel Messi*

”



## IMPORTANT UPDATES

### EPA/Army Corps WOTUS Rule –

On December 30th, the Environmental Protection Agency and Army Corps of Engineers dropped their long-awaited final rule reinterpreting and broadening the definition of “waters of the United States” under the Clean Water Act.

The final rule can be located [here](#). It is set to go into effect on March 20th.

NFIB urged the agency to wait in issuing the rule until *Sackett v. EPA*—a pending Supreme Court case which NFIB is involved in—is decided because the decision could significantly impact the determination of what waters are “waters of the United States.”

Because the agency ignored our calls, small businesses with waters on their property are left with further complications and uncertainty.



# THIS MONTH'S HELPFUL **RESOURCES**



## **Blog Articles:**

- Federal Trade Commission Moves to Ban Noncompete Agreements – 1/19/2023
- New Federal Laws Bring Expanded Protection for Pregnant and Nursing Moms – 1/12/2023
- New WOTUS Rule Creates More Uncertainty for Small Business – 1/05/2023
- IRS Announces Delay of \$600 Threshold Reporting Requirement – 12/30/2022
- NFIB Submits Letter Opposing the Department of Labor's Independent Contractor Rule – 12/16/2022

## **Webinars:**

- Seven Essential New Year's Resolutions for Small Business – 1/04/2023

## **NFIB Comments/Miscellaneous:**

- <https://assets.nfib.com/nfibcom/NFIBcommentltrtoFLRAonMiscandGenReqtsDocket0-MC-33Jan9of2023.pdf> – 1/09/2023
- <https://assets.nfib.com/nfibcom/NFIBcommentltrtoHHSCMSonRFIEssentialHealthBenefitsCMS-9898-NCDecember21of2022.pdf> – 12/21/2022

## Small Business Support Line:

**In January, the most frequently inquired about topics have been:**

1. Employee Retention Tax Credit (ERTC)
2. Employee-Related Issues
3. Credit Card Issues

Reach out to the SBLC at  
**info@nfib.org or better yet,  
give us a call at (800) 552-NFIB.**

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