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**Media
Mentions**

NFIB Lawsuit Fights for Lower Taxes in Michigan

In August, NFIB filed a lawsuit arguing that an income tax break for Michigan residents should be permanent. The suit challenges the state Attorney General's interpretation of a 2015 tax provision in the Michigan Income Tax Act that lowers the state income tax rate when the state's revenue outpaces inflation by a set amount.

The Attorney General issued an opinion in March indicating that the income tax reduction will only apply this year. NFIB's lawsuit argues that the legislature intended for the tax cut to be permanent based on the 2015 bill analysis that said reductions would "continue indefinitely on an annual basis."

"The tax cut was a welcome relief to Michigan's small businesses," NFIB Michigan state director Amanda Fisher said. "As small employers plan their expenses, it is important that they have certainty in what tax provisions are offered. If the attorney general's interpretation is upheld, it will cause significant tax burdens on small businesses at an already fragile time in the economy."

Michigan families and small businesses will pay the price for the Attorney General's incorrect interpretation. The tax cut saves the average family \$130 annually. Approximately 58% of small businesses in Michigan are pass-through entities, meaning they pay their business taxes through the individual income tax. These savings go a long way for businesses that are still recovering from pandemic shutdowns while facing rapid inflation and ongoing supply-chain issues. With a permanent tax cut, small businesses can reinvest the savings in their workers and operations, as they're already doing this year. That will stop if Michigan's courts uphold the Attorney General's interpretation.

We have urged the Michigan courts to expedite this case for decision prior to December. For the latest on our legal work, please visit www.nfib.com/legal.

6/1/2023

[Bloomberg Law - "Justices Allow Company to Sue Union for Strike Destruction"](#)

Bloomberg Law mentions Glacier Northwest's Supreme Court win over the International Brotherhood of Teamsters after the union was accused of property destruction at a job site. NFIB filed a brief and Bloomberg quoted Legal Center Executive Director Beth Milito, who said that the justices "reaffirmed the established balance of power between labor unions and employers."

6/23/2023

[Small Business Trends - "SCOTUS to Determine the Future of ADA Website Compliance"](#)

Small Business Trends mentions NFIB's brief that urged the U.S. Supreme Court to provide clear guidelines on Americans with Disabilities Act (ADA) compliance in the case *Acheson Hotels, LLC v. Laufer*. Milito observed, "This case highlights the uncertainty for small businesses when complying with the ADA and the applicability of websites."

7/24/2023

[The Center Square - "Small businesses call for limit to federal regulatory power"](#)

The Center Square referenced NFIB's amicus brief filed in *Loper Bright Enterprises v. Gina Raimondo*. Milito was quoted: "This case presents an opportunity for the Court to relieve some of that regulatory hardship on small businesses by overturning Chevron. We urge the Supreme Court to abandon the Chevron doctrine and reverse the lower court's decision."

9/5/2023

[America's Small Business Network - "New Biden proposal could bring overtime pay to more than 3.6 million"](#)

America's Small Business Network discussed the Biden Administration's proposed overtime rule, potentially expanding overtime eligibility to 3.6 million workers. In an interview, Milito said, "Small businesses often struggle with the ever-changing nature of federal regulations."



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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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The Brief

FALL 2023



Supreme Court Preview: Small Business Well Represented by NFIB Legal Center in Court's 2023 Term

The U.S. Supreme Court's 2023-2024 term is set to be an active one for the NFIB Legal Center. As always, our advocacy is focused on protecting the rights and interests of small businesses. Found below is a summary of cases that NFIB joined as of October 2023. Thanks to the generosity of our donors, the Legal Center will look to join other cases as the Court's term unfolds in the coming year.

Loper Bright Enterprises v. Gina Raimondo - Fighting to Overturn Chevron Deference

NFIB filed an [amicus brief](#) and asked the Court to eliminate judicial deference to federal agencies' interpretations of statutes. Judicial deference, often referred to as *Chevron* deference, means that federal courts, in interpreting ambiguous statutes or regulations, must defer to federal agencies. NFIB's brief argues that the burden of unchecked and unexamined power of federal bureaucrats crushes small businesses.

Consumer Financial Protection Bureau (CFPB) v. Community Financial Services Association of America - Defending Separation of Powers

NFIB joined an [amicus brief](#) in a case concerning whether CFPB's funding structure violates the Constitution. We argue that it is unconstitutional to fund the CFPB without sufficient Congressional oversight.

Culley v. Steven Marshall, Attorney General of Alabama - Ensuring Justice for Forfeiture Victims

NFIB filed an [amicus brief](#) in a case involving civil asset forfeiture and whether the Constitution's due process clause requires a prompt post-seizure court hearing. Our brief emphasizes that civil asset forfeiture exposes people who drive vehicles, many of them small business owners, to roadside seizures, and punishes business owners for the conduct of employees, even when the employee acts outside of the scope of employment.

Acheson Hotels, LLC v. Laufer - Stopping Frivolous ADA Lawsuits

NFIB joined a coalition of business groups in an [amicus brief](#), which asks whether under the Americans with Disabilities Act (ADA), a plaintiff can sue a business over its website accessibility even if the plaintiff has no intention of physically visiting the business. Our brief argues that distant parties should not be able to weaponize the ADA to destroy small businesses.

Moore v. United States - Safeguarding Tax Fairness

NFIB filed an [amicus brief](#) in a case concerning the limits of Congress' authority to tax unrealized gains. Our brief argues that reinvestment into a small business should not be considered "income," and that it is unconstitutional for Congress to directly tax property interests in this manner.

To keep up with the Legal Center's work in the Supreme Court, visit NFIB.com/legal.

Keep up with our work at: NFIB.com/legal
Don't forget to check out our Facebook page.

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The Small Business Legal Center's

2023 Year in Review

By Elizabeth Milito, Executive Director,
NFIB Small Business Legal Center

The NFIB Small Business Legal Center had a remarkable year with the filing of new lawsuits, a full amicus ("friend-of-the-court") docket, monthly webinars, and

hundreds of member inquiries answered. With the Biden administration staffed up, the Legal Center was particularly busy blocking unfair and abusive executive overreach. The Legal Center also ensured that the voice of small business extended to the states and worked to block administrative overreach by state governments.

All in all, 2023 marked numerous threats to small business owners' ability to own, operate, and grow their businesses. But thanks to your generous support, we were able to meet these threats head-on in federal and state courts around the country.

In August, we filed a lawsuit in Michigan defending a significant income tax cut that is being threatened by the state attorney general. (You can read more about our Michigan lawsuit on page 4.) Earlier this year, NFIB joined a lawsuit in federal court that challenges Connecticut's law passed in 2022 banning "captive audience" meetings between employers and employees. Our lawsuit alleges that Connecticut's captive audience law is unconstitutional and at odds with well-established First Amendment and national labor law precedents regarding the free speech rights of employers. The decision to file this lawsuit was not taken lightly. At the Legal Center, we understand that we must protect the constitutional rights of employers, particularly small businesses, to manage their workplaces free from government overreach.

In addition to our labor law and tax lawsuits, this year the Small Business Legal Center will have filed over 35 amicus briefs covering a wide range of issues in courts all over the country, including:

- *Kentucky v. EPA* – filed in the U.S. Court of Appeals to challenge the Biden Administration's illegal Waters of the United States Rule.
- *Santiago v. Sky Zone, LLC* – filed in the Pennsylvania Supreme Court to enforce arbitration agreements and defend against unnecessary and expensive litigation in the courts.
- *Clark v. A&L Homecare* – filed in the U.S. Court of Appeals to fight against expanded wage and hour class action lawsuits.
- *Nebraska v. Walsh* – filed in the U.S. Court of Appeals to challenge the U.S. Department of Labor's illegal \$15 minimum wage increase for federal contractors.
- *Halstead Bead v. Richards* – filed in U.S. Court of Appeals in support of small business Halstead Bead's

attempt to overturn Louisiana's complicated sales tax regime.

- *Adolph v. Uber Technologies* – filed in the California Supreme Court in support of arbitration in lieu of expensive and time-consuming Private Attorney Generals Act lawsuits.

As the year closes, we would like to thank you, our donors, for your continued and generous support. We understand that the current economic climate has been difficult for nearly every small business in America. Without you, we would not be able to get involved in so many precedent-setting cases that affect small business owners like you. We are thankful that you understand the important work we're doing every day and are proud to reward your contribution with an impressive array of legal work.

As you begin your end of the year financial planning, please consider an additional gift to the NFIB Small Business Legal Center. Your contributions are critical to providing the resources we need to fight important battles against anti-employer mandates, like the "captive audience" laws enacted in union-friendly states that threaten the free speech of America's small business owners. With your support, the Legal Center will continue to fight against government overreach.

Elizabeth Milito

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REGULATORY ALERT

Are You Ready for FinCen's NEW Beneficial Ownership Information Reporting Rule on January 1, 2024?

Starting on January 1, 2024, hundreds of thousands of small business owners will need to comply with new reporting rules under the Corporate Transparency Act (CTA). The CTA, enforced by the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN), applies to both U.S. companies and foreign companies doing business in the United States.

Pursuant to CTA, FinCEN issued a rule that requires beneficial ownership information (BOI) to be reported by nearly all LLCs, corporations, and entities formed under state or tribal laws with 20 or fewer employees and \$5 million or less in gross annual receipts.

The types of businesses required to report include corporations, LLCs, or other similar entities that are created by filing with the secretary of state, or other similar agency, with 20 employees or fewer and \$5 million or less in gross receipts or sales as reflected in the previous year's federal tax returns.

What to Report

Any business that falls under this rule will need to provide details about itself, including: the full legal name of the company, any trade name or other name used for the business, current address (typically a main office or main U.S. location where it conducts business), the state or tribal jurisdiction where the company is registered, the company's Taxpayer ID number, and an Employer Identification Number or Social Security Number.

Some business owners must also include details about the beneficial owners who have significant control over the company (or who own 25% or more of the company.) This information will only be required for businesses formed after January 1, 2024, and includes items such as full legal name; date of birth; current residential address; any unique identifying numbers from a passport, driver's license, or any other identifying documents.



When to Report

The timeline for reporting will vary depending on when the company was formed. Companies in existence before the effective date of the rule, January 1, 2024, will have a different timeline than those formed after the effective date. Companies formed before January 1, 2024, will have one year to file their initial reports (December 31, 2024), and newly formed companies registered after January 1, 2024, will have 30 days after receiving notice of acceptance from the secretary of state to file their initial BOI reports. Companies with a change in any beneficial ownership information will have 30 days after receiving notice to file updated reports.

If an error is recorded in the initial filing, companies must correct these errors within 30 days of the date it knew, or should have known, that the information was inaccurate. A failure to provide completed and updated reports could result in criminal penalties of up to 2 years in prison and civil penalties of \$500 per day, up to \$10,000.

How to Report

Businesses required to report BOI information to FinCEN will do so electronically through a secure filing system that will be available on FinCEN's website. This system is currently being developed, and you can find more information on FinCEN's website [here](#).

NFIB will continue to monitor these developments, and we encourage business owners to look out for future alerts as we provide further updates. You can find all of this information in NFIB's [Fact Sheet](#) on BOI reporting.

The material contained in this column is provided solely for informational purposes. This column should not be relied upon or construed as legal or tax advice. You should contact your attorney or tax professional to obtain advice with respect to any legal or tax issue.