



Updates on Legal & Regulatory Affairs

NFIB Small Business Legal Center
Beth Milito, Executive Director



Who We Are

- Established in 2000, the NFIB Small Business Legal Center (“Legal Center”) is the voice for small business in the nation’s courts and the legal resource for small business owners nationwide.
- We do what lobbyists do, but instead of lobbying legislators, we advocate in the courts through briefs and oral arguments.
- The Legal Center is a 501(c)(3) public interest law firm dedicated to representing small businesses nationwide.

Simply put, we educate and litigate for small business!



NFIB Legal Center

General Activity Overview

We Advocate

Three Main Areas of Activity:

Advocacy – Plaintiff Litigation, Amicus Briefs

We Educate

Education – Webinars, Legal Guides, Podcasts,
Blog Posts, Tip Sheets

We Assist

Assistance – Emails, Phone Calls

NFIB Legal Center

Guiding Principles

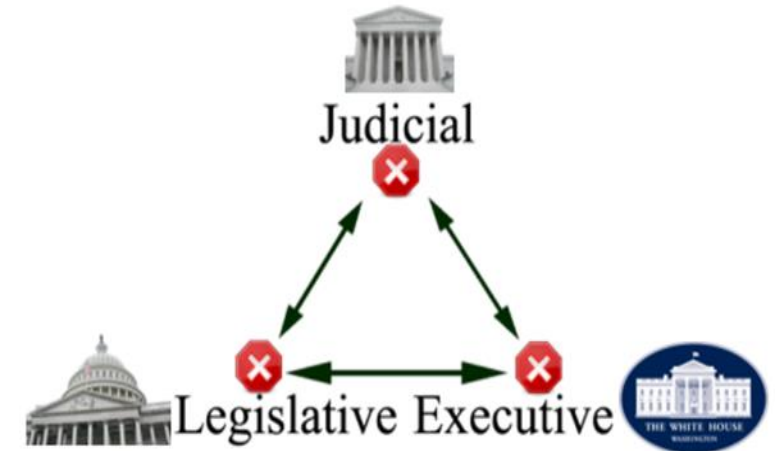
1. The Rule of Law



2. The Separation of Powers



3. Checks & Balances



NFIB Legal Center Court Activity

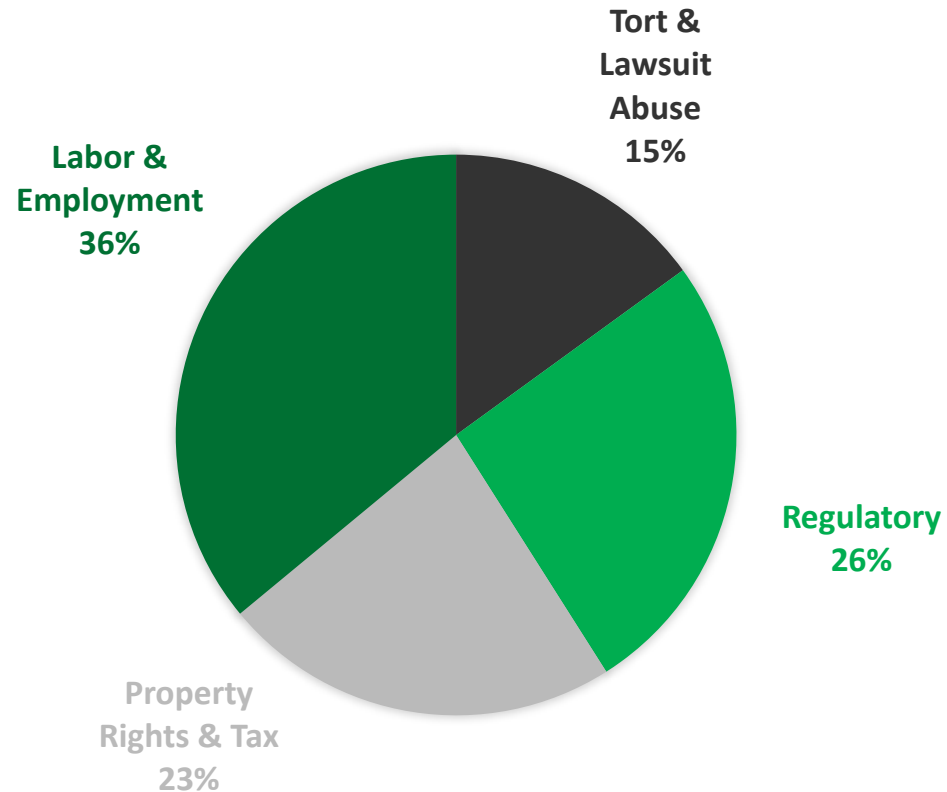
Overview

Every year, the Legal Center is involved in over 40 cases nationwide on behalf of small businesses.



What We Advocate On

Amicus Involvement

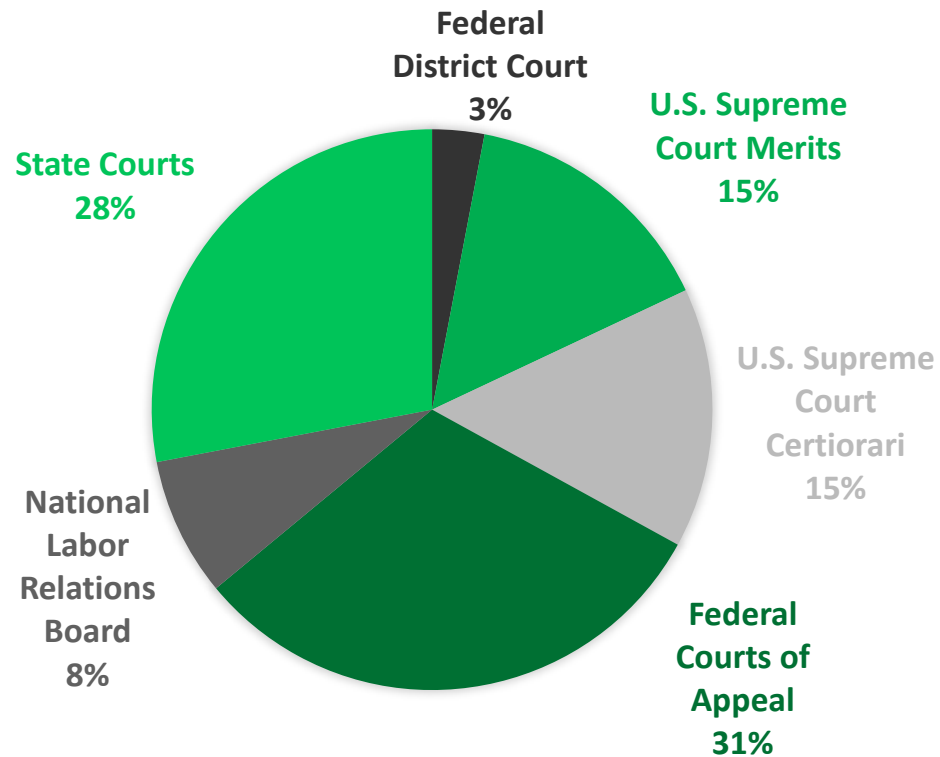


Topics

- Labor & Employment
- Regulatory
- Property Rights & Tax
- Tort & Lawsuit Abuse

Where We Advocate

Amicus Involvement

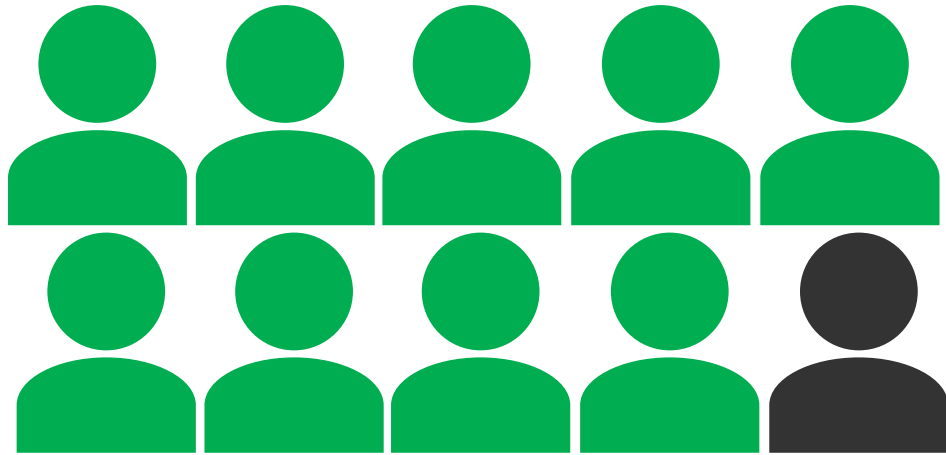


Different Venues

- Federal Courts of Appeal
- U.S. Supreme Court
- State Courts
- National Labor Relations Board
- Federal District Courts

Our Record

Supreme Court Advocacy



90% WIN RATE

Supreme Court Merits Briefs

- Over the past two years, the NFIB Legal Center had a 90% win rate in the cases we participated in on behalf of small business.
- 2020-2021: We won 80% of the cases we participated in at the Supreme Court.
- 2021-2022: Improving on our previous success, the Legal Center prevailed in 100% of cases we advocated in.
- 2022-2023: We prevailed in 90% of the cases we advocated in.

NFIB v. OSHA

Vaccine Mandate Case

Background

- OSHA waited almost a year-and-a-half after the pandemic began, and then rushed through an emergency temporary standard (ETS).
- The ETS was a “mandatory COVID-19 vaccination policy” for employers, “requiring employees to either get vaccinated or elect to undergo regular COVID-19 testing and wear a face covering at work[.]”
- NFIB led a business coalition suing OSHA to block the mandate.
- The 6th Circuit Court of Appeals sided with the government and refused to protect employers from this regulatory overreach.
- NFIB appealed to the Supreme Court.
- On January 13, 2022, the Supreme Court granted a stay of the ETS. The Court stated that the OSHA mandate exceeded the authority that it was given by Congress.

NFIB’s Arguments

- 1) OSHA was required to use regular notice-and-comment rulemaking procedures.
- 2) Congress did not authorize OSHA to commandeer businesses into implementing a vaccine mandate
- 3) The vaccine rule would impose unrecoverable compliance costs on businesses, in addition to a reduction in staff, sales, profits, and a harm to a business’s reputation.

West Virginia v. EPA

Challenging EPA's Claimed Authority to Ban Coal Plants

Background

- In 2015, the Obama EPA promulgated the Clean Power Plan (CPP) rule, which sought to severely restrict greenhouse gas emissions from coal- and natural-gas-fired power plants.
- The Trump Administration repealed the CPP rule, finding the Environmental Protection Agency didn't have power to issue such a sweeping rule.
- The D.C. Circuit ruled against the Trump Administration and reinstated Obama's CPP. The Supreme Court agreed to review the D.C. Circuit's decision.
- In a 6-3 ruling issued on June 30, 2022, the Court ruled that the regulation of existing power plants in Section 7411(d) fell under the major questions doctrine, and that Congress did not grant the EPA authority to regulate emissions from existing plants based on generation shifting mechanisms, which would have invalidated the Clean Power Plan.

NFIB's Involvement

- NFIB filed a brief arguing for repeal of Obama's CPP.
- Our amicus brief argued:
 - Congress did not clearly give the EPA authority in the Clean Air Act to transform the nation's entire energy industry by enacting carbon emission standards.
 - The lower court's decision would increase energy costs on small businesses.

Sackett v. EPA

Restricting EPA Jurisdiction Over Waters of the United States (WOTUS)

Background

- The Clean Water Act (CWA) gives EPA jurisdiction over “navigable waters,” defined as “waters of the United States” (WOTUS).
- For years, the definition of WOTUS has been unclear, flip-flopping by presidential administration.
- The EPA has long-claimed jurisdiction over the Sacketts’ land. Even though the land contains no surface water connection to a nearby creek or lake, EPA claims the land includes “navigable waters.”
- The Ninth Circuit ruled in favor of the EPA, adopting a test friendly to broad federal jurisdiction. The case was appealed to the Supreme Court.
- On May 25, 2023, the Court ruled that EPA had exceeded its authority and that waters are not protected by the Clean Water Act unless they have a “continuous surface connection” to key lakes and rivers that affect interstate commerce.

NFIB’s Involvement

- NFIB filed an amicus brief arguing that courts should not defer to the EPA in defining WOTUS.
- The decision required the Biden Administration to significantly alter its broad and radical WOTUS rule.

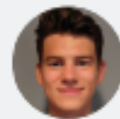
Federal Regulations

- Environmental Protection Agency – WOTUS FINAL Rule
 - Released on December 30, 2022. **Took effect on March 20, 2023. LAWSUIT FILED!**
- Department of Labor – Overtime Exemption Rule
- Department of Labor – Independent Contractor
- National Labor Relations Board – Joint Employer
- Securities & Exchange Commission – ESG

Legal Center Resources

Legal Center Support Line/Member Outreach Coordinator role

- The Legal Center responds to email inquiries and phone calls from all small business owners
- Inquiries pertain to an endless number of topics from Employee Retention Tax Credit assistance, employee leave/illness, general HR questions, ADA guidance, zoning, loans and much more.
- info@nfib.org or **800-NFIB-NOW**



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SBLC Member Outreach Coordinator

Legal Center Resources

Webinars

- The Legal Center hosts webinars on the first Wednesday of each month.
- Past NFIB webinars can be found at [NFIB.com/webinar-archive/](https://www.nfib.com/webinar-archive/).

Compliance Guides

- The Legal Center guide series includes the new *Debt Collection Guide* and *Guide to Wage & Hour Laws*.
- All of our guides can be found at [NFIB.com/legal-guide-series/](https://www.nfib.com/legal-guide-series/).

Blog Articles

- We publish blog articles that alert small businesses to important topics.
- Our blog is available at [NFIB.com/sblc-blog/](https://www.nfib.com/sblc-blog/).

White Papers

- Our White Papers provide in-depth legal analyses on small business concerns.
- Our library includes the *Small Business Website Compliance with the Americans with Disabilities Act*, as well as *Out-of-State Sales Tax Compliance*.

Newsletter

- Monthly E-news (*The Docket*) and quarterly print (*The Brief*).

Contact Us

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