



# 2022 ANNUAL REPORT

**EVEN WITH  
ALL THE  
UNCERTAINTY  
AND CHANGE  
THAT  
HAPPENED IN  
2022**

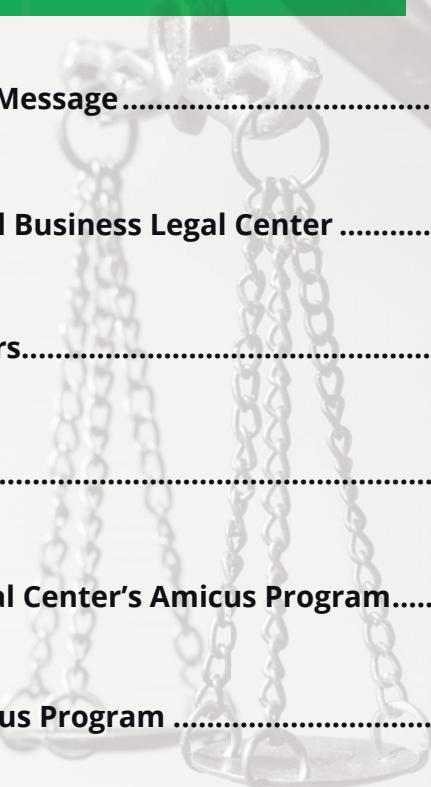
Your donations were instrumental in helping the Small Business Legal Center make meaningful and positive impacts to assist and advocate in the courts for small businesses.

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**We are more grateful  
than ever for your support.**



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# Executive Director's Message



## Fighting for Small Business Every Day

Reflecting on the past year, I am incredibly grateful for the support and generous donations of small business owners around the country who have championed the NFIB Small Business Legal Center's work. This report provides an overview of our work in 2022, which includes several headline cases fighting unconstitutional and burdensome government actions that affect each and every small business.

Our donors are the key to our success. You provide the resources we need to operate. The NFIB Small Business Legal Center leverages every dollar it receives to make sure we are involved in dozens of precedent-setting cases each year that impact small businesses across the country.

In addition to our court work, the Small Business Legal Center in 2022 expanded its direct support to small business owners with the addition of our Small Business Support Line. We are excited to support small business owners in their work to own, operate, and grow their businesses with a Support Line that can assist with general questions on human resources, taxes, and other regulatory issues.

I am very proud of the Small Business Legal Center's fights over the last year in state and federal courts, as well as in the U.S. Supreme Court. The next year will certainly be challenging as we see federal and state regulators set to impose more regulations on small businesses. But we will continue our work to protect your freedom to do business.

On behalf of America's small businesses, thank you for making a difference and supporting the fight.

**Beth Milito**  
*Executive Director*

*Elizabeth Milito*



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



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# 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.

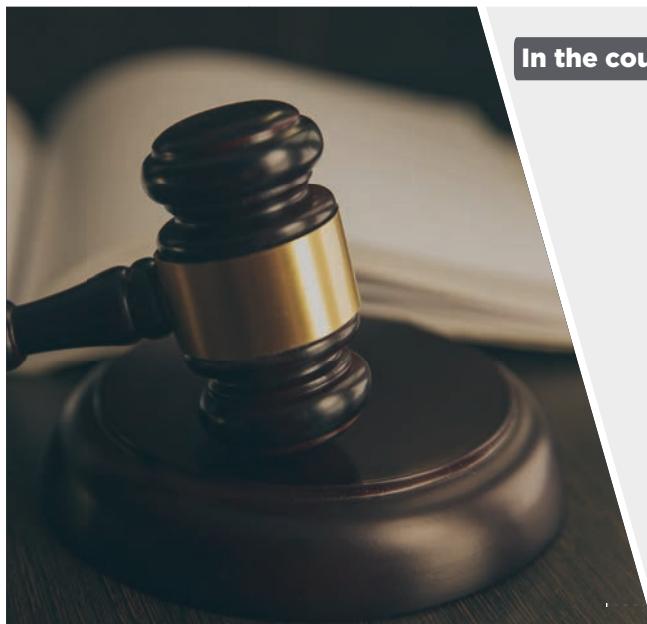
## NFIB Small Business Legal Center as Litigator

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.

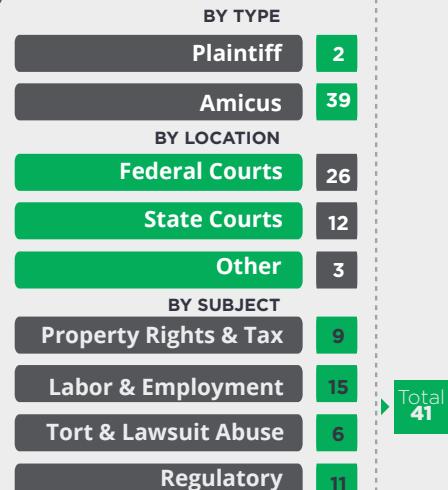
## NFIB Small Business Legal Center as Educator

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.

# 2022 - By the Numbers



## In the courts



## Education



## Outreach

### INQUIRIES



#### MOST FREQUENT TOPICS



# Headline Litigation in 2022

Coming out of the pandemic, government agencies and pro-worker states have reverted to their old ways of crafting policies bad for business. The Legal Center works to fight anti-business policies and to ensure that the voice of small business is heard. Our activity would not be possible without your support and generous donations.

## **1. NFIB v. OSHA - Supreme Court Victory Halts Vaccine Mandate**

On January 13, 2022, the Supreme Court issued its opinion in *NFIB v. Occupational Safety and Health Administration*. It sided with NFIB and saved America's businesses from the onerous and unlawful vaccine mandate. The Court's opinion said OSHA's authority is limited to "ensure occupational safety." As such, OSHA had no authority to issue this overly broad rule without a clear grant of authority from Congress.

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## **2. West Virginia v. EPA - Supreme Court Curtails Agency Overreach**

In this case, the Environmental Protection Agency (EPA) claimed that vague language in the Clean Air Act gave it an unheralded power to reshape the nation's electricity grid and decarbonize whole sectors of the economy. NFIB's amicus argued that EPA needed clear congressional authorization to engage in such consequential activity. On June 30, 2022, the Supreme Court agreed. In a precedent-setting opinion, the Court used the "major questions doctrine" to restrain the agency's power grab. The Court concluded "[a] decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body."

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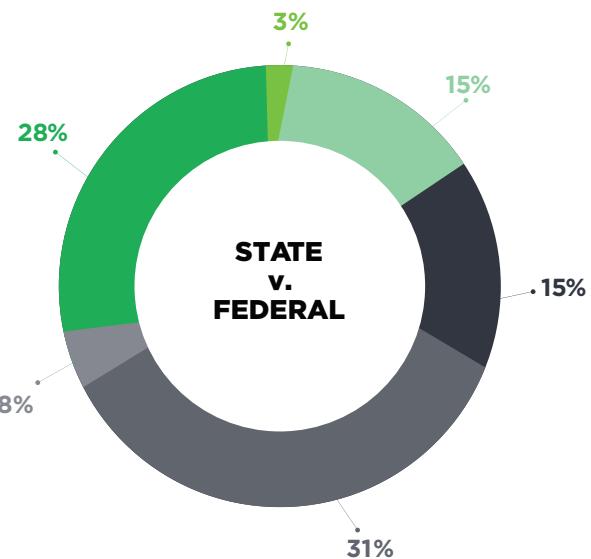
## **3. Chamber of Commerce v. Bartolomeo - NFIB Fights Against Unconstitutional Restraint on Employer Freedom**

A recently enacted Connecticut law bans the longstanding right of employers under federal law to hold meetings with employees about their statutory rights, including the right to refrain from joining unions. On November 1, 2022, NFIB joined with other business groups and sued Connecticut over this egregious law. Our suit argues that the law violates the First Amendment by discriminating against employers' viewpoints on political matters. We also argue that the law violates the federal labor law, the National Labor Relations Act.

To keep up with all Small Business Legal Center legal work,  
**visit [NFIB.com/LegalCenter](https://NFIB.com/LegalCenter).**

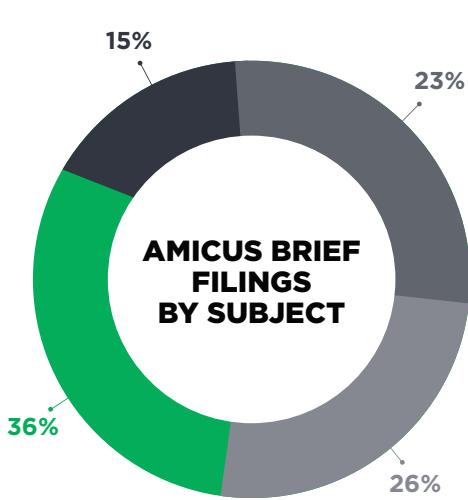
# Overview of the Small Business Legal Center's Amicus Program

An amicus curiae brief assists an appellate court by offering additional information the court may consider before making their ruling. Amicus curiae is Latin for "friend of the court." The Small Business Legal Center files dozens of amicus curiae briefs each year to show courts the impact court decisions will have on small businesses.



## Cases by Courts

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



## Cases by Subject

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



# SUPREME COURT **AMICUS PROGRAM**

## **2021-2022 Term** **(Cases Decided in 2022)**

***Boechler v. IRS*** — Our amicus argued that failure to adhere to the Tax Code's 30-day deadline to appeal an Internal Revenue Service (IRS) tax levy did not strip the U.S. Tax Court of jurisdiction. The Supreme Court unanimously agreed. With this outcome, small businesses will have more leeway to appeal adverse IRS tax determinations.

***Viking River Cruises, Inc. v. Moriana*** — NFIB argued that federal law requires California courts to enforce arbitration agreements waiving Private Attorney Generals Act (PAGA) representative claims. The Supreme Court held that PAGA suits may be separated, and California courts must enforce arbitration agreements of individual claims under PAGA.

***Cummings v. Premier Rehab Keller, PLLC*** — Here the Supreme Court agreed with NFIB's amicus, which argued that federal statutes prohibiting discrimination do not allow for emotional distress damages. This outcome correctly limits future small business liability.

***West Virginia v. EPA*** — In perhaps the most consequential decision of the term, the Supreme Court held that vague language in the Clean Air Act did not give EPA authority to impose nationwide greenhouse gas standards transforming the nation's electricity grid. The Court held that for "major questions" such as this, Congress must either make the decision or provide a "clear delegation" to the agency. This outcome aligned with NFIB's position and will help prevent future agency overreach.

# 2022-2023 Term (Amicus Briefs Filed in 2022)

**Sackett v. EPA** — Once again, the Supreme Court will have an opportunity to decide what “waters of the United States” (WOTUS) means under the Clean Water Act. For years, administrations have flip flopped between regulations with overly broad definitions of WOTUS encompassing almost all wetlands on private property and regulations less encompassing that protect property rights. Our amicus urges the Supreme Court to adopt an interpretation of WOTUS that limits EPA authority to truly “navigable” interstate waters.

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**National Pork Producers Council v. Ross** — The Supreme Court must determine whether California’s Proposition 12, which imposes animal cruelty standards on pork producers, suppliers, and farmers across the country, violates the Constitution’s Commerce Clause. We claim that it does by allowing California to dictate consumer laws nationwide and will disrupt the national supply chain of pork.

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**Wilkins v. United States** — In this case, the Supreme Court must determine whether failure to file a property dispute against the government within the Quiet Title Act’s 12-year statute of limitations strips courts of jurisdiction to hear the claim. Our amicus argues that the 12-year limitation is not jurisdictional and that private property owners must be allowed to bring these claims even after 12 years in order to protect property rights.

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**Bittner v. United States** — It is a violation of the Bank Secrecy Act to not report foreign accounts. The Government interprets a violation to occur for each separate account not reported. Our brief maintains that agencies should not be permitted to stack violations and that there should be a rule of lenity for civil penalty prosecutions.

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**Glacier NW v. International Brotherhood of Teamsters Local 174** — This case asks whether employers can recover for intentional property damage caused by employees during a union strike. Our amicus argues that employers must have a remedy for these damages, federal law requires one, and a lack of remedy will incentivize future bad behavior by employees and unions.

To keep up with all Small Business Legal Center amicus activity,  
**visit [NFIB.com/LegalCenter](https://NFIB.com/LegalCenter).**

# New in 2022

## Small Business Support Line



In 2022, the Small Business Legal Center introduced the Small Business Support Line with the hiring of our new Member Outreach Coordinator, William Klepp. William is the point of contact for NFIB members and small businesses on the day-to-day issues affecting their business. While we have always been happy to answer questions, the addition of William to our staff allows us to have someone exclusively focused on assisting small businesses and doing so fast!

While the Small Business Legal Center cannot act as legal counsel or provide legal representation, we can provide help with inquiries on human resources, tax, payment processing, financial resource questions, and many other topics. Our most frequent topics in 2022 were:

- 1) Employee Retention Tax Credit
- 2) Contract Disputes
- 3) Employee-Related Issues
- 4) Business Grant/Loan Questions

Almost two-thirds of the Small Business Legal Center's inquiries came by email, with the other third being phone calls. Either is a great way to get in touch with the Small Business Legal Center! Contact us at [info@nfib.org](mailto:info@nfib.org) or 800-552-NFIB.

## Webinars



Webinars featured expert speakers on the Employee Retention Tax Credit (ERC), wage and hour laws, marketing, debt collection, and human resources.

Each webinar averaged over 1000 registrants and over 400 participants.

## Compliance Guides



In 2022, the Legal Center published two new compliance guides. These and other SBLC guides can be downloaded for free at [NFIB.com/LegalCenter](https://NFIB.com/LegalCenter).

The new **Debt Collection Guide** helps small businesses navigate collections and avoid nonpayment. It also includes a sample demand for payment letter.

The new **NFIB Guide to Wage & Hour Laws** provides small business compliance information on the Fair Labor Standards Act (FLSA), the federal wage and hour law. The FLSA regulates minimum wages, overtime pay, recordkeeping requirements, and child labor restrictions.

# In the News

## 2022 Media Highlights

In 2022, the Small Business Legal Center was mentioned in 527 stories with a total reach of 454.5 million people. This represented an 18% increase in media mentions and an over 10% increase in total reach.

### Wall Street Journal January 10, 2022

The Journal reported on NFIB's challenge to the Biden Administration's vaccine mandate, and quoted an SBLC attorney, "Every minute of uncertainty is adding to the problems small-business owners are already facing."

**READ MORE** <https://www.wsj.com/articles/bulk-of-biden-administrations-vaccine-mandate-takes-effect-11641847533>

### NBC January 14, 2022

NBC reported on business reaction to Supreme Court striking down the Biden vaccine mandate, quoting SBLC executive director: "[Businesses] sighed a big sigh of relief yesterday."

**READ MORE** <https://www.nbcnews.com/business/economy/mixed-response-businesses-scotus-ruling-vaccine-mandates-rcna12288>

### The Center Square May 19, 2022

The Center Square detailed a small business win, and government loss, in Arizona's challenge to the American Rescue Plan Act Tax Mandate.

**READ MORE** [https://www.thecentersquare.com/national/arizona-gets-a-win-in-court-challenge-to-biden-covid-funds-tax-restriction/article\\_33f771ae-d7b2-11ec-971f-3bc0a9a7fb03.html](https://www.thecentersquare.com/national/arizona-gets-a-win-in-court-challenge-to-biden-covid-funds-tax-restriction/article_33f771ae-d7b2-11ec-971f-3bc0a9a7fb03.html)

### SCOTUSblog July 7, 2022

Summarizing the historic 2021-2022 Supreme Court term, SCOTUSblog listed NFIB's successful challenge to OSHA's vaccine mandate.

**READ MORE** <https://www.scotusblog.com/2022/07/in-a-historic-term-momentum-to-move-the-law-often-came-from-the-five-justices-to-the-chiefs-right/>

### Reuters September 6, 2022

Reuters quoted Elizabeth Milito on National Labor Relation Board's joint employer proposal: "The rule, if enacted, would significantly restrict the freedom of many small business owners."

**READ MORE** <https://www.reuters.com/legal/us-labor-board-expand-companies-joint-employer-liability-2022-09-06/>

### Fox Business October 12, 2022

Fox reported on President Biden's proposed "Gig Rule" and quoted SBLC executive director: "This is a rule that's only going to make it more challenging for small businesses to operate in today's already difficult economy."

**READ MORE** <https://www.foxbusiness.com/politics/bidens-proposed-gig-worker-rule-could-deal-major-blow-small-businesses>

### Bloomberg Law November 21, 2022

Bloomberg Law discussed NFIB's amicus brief in *Allstates Refractory Contractors, LLC v. Martin Walsh, et al.*

**READ MORE** <https://news.bloomberglaw.com/daily-labor-report/punching-in-unions-gear-up-for-georgia-runoff-canvassing-drive-28>

# Legal Center Continues Work to Defend Small Businesses Against ADA Website Accessibility Lawsuits



The NFIB Small Business Legal Center has long sought to protect small businesses from the confusion and lack of clarity surrounding how the Americans with Disabilities Act (ADA) applies to business websites. In 2021, we published the white paper *The ADA and Small Business: Website Compliance Amid a Plthora of Uncertainty* and testified before Congress about the challenges and compliance costs imposed on small businesses by the ADA's lack of certainty regarding business websites.

In December 2022, we took another step in our advocacy for small businesses. We filed an amicus brief in the U.S. Supreme Court case *Acheson Hotels, LLC v. Laufer*.

Laufer is a disabled Florida resident and self-identified ADA "tester." She browses the Internet for hotel websites, usually targeting smaller hotels that provide, in her view, insufficient information on ADA accessibility. After finding such a website, she sues them in court. In recent years, she has filed over 600 lawsuits on this basis. Coast Village Inn and Cottages is a small resort in Maine. Laufer visited Coast Village Inn's reservation website and thought it failed to provide enough information about ADA accessibility. Because she never intended to visit the Inn, she did not bother to call or email about accessibility. Coast Village argues in its defense that Laufer's only reason for visiting the resort's website was to target the hotel in an ADA lawsuit.

The question before the Supreme Court is whether a "tester" who has no intention of visiting the business has suffered a legally recognizable injury from simply visiting the website. Our amicus brief argues that this type of injury is not enough.

For more information on ADA website accessibility, please contact the NFIB Small Business Legal Center at [info@nfib.org](mailto:info@nfib.org)



**Consider helping future generations  
of small business owners with an  
estate or planned donation to the  
NFIB Small Business Legal Center**

**1-800-552-NFIB | [info@NFIB.org](mailto:info@NFIB.org)**



# 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](mailto:info@NFIB.org)**

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