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THE SMALL BUSINESS DOCKET

Issue 43 July 2024

COURT VICTORIES: THE EFFECT ON SMALL BUSINESS

Loper Bright

Judges cannot tip the scales of justice in favor of administrative agencies.

Corner Post

New businesses can challenge old & harmful regulations in court.

Jarkesy

Defendants in SEC proceedings for civil penalties have the right to defend themselves in court.



SUPREME COURT DECISIONS

Loper Bright Enterprises v. Raimondo – Overturning Chevron Eliminates Agency Deference


- Where → U.S. Supreme Court
- Issue → Should the Court overrule *Chevron v. Natural Resources Defense Council*?
- NFIB Position → Yes. Our [brief](#) argued that judicial deference to administrative agencies (*Chevron* deference) hurts small businesses, the separation of powers, and due process.
- Outcome → The Supreme Court agreed, overturned *Chevron*, and eliminated judicial deference to administrative agencies on legal questions.

Corner Post, Inc. v. Board of Governors of the Federal Reserve – Arguing for Small Business’ Ability to Challenge Agency Regulations


- Where → U.S. Supreme Court
- Issue → Does the 6-year statute of limitations to challenge agency rules start when an agency publishes the rule or when a party is first harmed by the rule?
- NFIB Position → Our [amicus](#) said that the statute of limitations starts when a party is first harmed by the rule, lower courts are preventing small businesses from challenging harmful agency rules, and that debit-card interchange fees hurt small businesses.
- Outcome → The Supreme Court agreed, holding that the 6-year period begins when a party is first injured by a rule, not when the agency publishes the rule.


THIS MONTH'S RESOURCES

Webinars

 [Small Business Mid-Year Checkup – Trends and Tips for 2024](#)

Blog Articles

 [Small Business Interests Prevail in Major Cases of U.S. Supreme Court's 2023-2024 Term](#)

 [Drug Testing in the Workplace](#)

Updates

[Department of Labor \(DOL\) Overtime Rule](#)

On July 1st, the first phase of changes to the salaried “white collar” exemption (executive, administrative, or professional employees) took effect.

The minimum salary for an employee to be exempt under this exemption is now \$43,888 per year/\$844 per week.

SUPREME COURT DECISIONS, CONT.

Securities & Exchange Commission (SEC) v. Jarkesy – Admonishing Unconstitutional Agency Practices

- Where → U.S. Supreme Court
- Issue → Do SEC in-house adjudicative proceedings for civil penalties violate the right to a jury trial under the Constitution’s Seventh Amendment?
- NFIB Position → Yes. Our [brief](#) asserted that the SEC in-house enforcement proceedings violate the Seventh Amendment based on its history and public meaning.
- Outcome → Agreeing, the Supreme Court held that the Constitution’s Seventh Amendment requires a jury trial for SEC enforcement proceedings and that the SEC’s in-house process impermissibly allowed the roles of prosecutor, judge, and jury to be in the hands of one agency.

NEW CASE BRIEFS FILED

Baker v. City of McKinney – Protecting Private Property

- Where → U.S. Supreme Court
- Issue → Should the Court determine whether local governments must pay for property damage intentionally caused by law enforcement?
- NFIB Position → Yes. We argue that the Fifth Amendment requires governments to compensate landowners for property damage intentionally caused by law enforcement.

Frisard's Transportation, L.L.C. v. Department of Labor (DOL) – Defending Independent Contractors

- Where → U.S. Court of Appeals for the Fifth Circuit
- Issue → Is DOL’s 2024 Independent Contractor rule valid?
- NFIB Position → No. We [claim](#) that rescission of the 2021 rule was arbitrary, and the new restrictive 2024 rule violates the law and is based on a flawed cost-benefit analysis.

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The NFIB Small Business Legal Center is a 501(c)(3) public interest law firm, which serves as the voice for small businesses in the nation's courts and a legal resource for small business owners nationwide. As a nonprofit, our work depends on the generosity of our donors.

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