



 **NFIB**
SMALL BUSINESS
LEGAL CENTER

THE SMALL BUSINESS DOCKET

Issue 35

November 2023

This Month's Resources

Webinars:

- 🌐 [Americans with Disability Act Updates: Hot ADA Title III Topics and Lawsuit Trends](#)

Blog Articles:

- 🌐 [NLRB Releases New Joint Employer Rule – What It Means For Small Businesses](#)
- 🌐 [Is Your Website ADA Compliant?](#)
- 🌐 [New FinCEN Beneficial Ownership Reporting Rule Effective January 1, 2024](#)



Cases

Devillier v. Texas – Protecting Private Property Rights

- Where → U.S. Supreme Court
- Issue → Does the Legislature need to create a cause of action for people to enforce their Fifth Amendment right to receive just compensation when the government takes property?
- NFIB Position → No. Our amicus [brief](#) argued that the Fifth Amendment right to just compensation when the government takes property is “self-executing.” This means that the text of the Constitution itself provides the cause of action and remedy, requiring nothing more from legislatures.

Restaurant Law Center v. Department of Labor (DOL) – Fighting Burdensome “Tip Credit” Rule

- Where → U.S. Court of Appeals for the Fifth Circuit
- Issue → Does DOL’s final rule regulating tipped employees exceed its rulemaking authority?
- NFIB Position → Yes. Our amicus [brief](#) pushed back on DOL’s final rule, which restricts the use of the tip credit for the hospitality industry. Our coalition brief argued that (1) the Fair Labor Standards Act (FLSA) ensures that employees receive minimum wage, (2) tipped employees already receive more than minimum wage, and (3) compliance with the final rule is impossible due to its insufficient guidance, recordkeeping obligations, and compliance costs.







REMINDER

Beneficial Ownership Information

Reporting Starts January 1, 2024

The beneficial ownership information reporting requirements mandated by the Corporate Transparency Act and enforced by the Financial Crimes Enforcement Network (FinCen) take effect on January 1, 2024. Small businesses will have new obligations under the rule. For more information, review the resources below or contact us at info@nfib.org.

Resources:

-  [NFIB Fact Sheet](#)
-  [FinCen FAQ](#)
-  [FinCen Small Entity Compliance Guide](#)
-  [NFIB Beneficial Ownership Notice](#)
-  [NFIB Testimony Against Beneficial Ownership Reporting Requirement](#)
-  [NFIB Comment Letter Opposing Beneficial Ownership Rule](#)

Cases, Continued




***Camp v. Home Depot USA, Inc.* – Protecting the Ability of California Employers to Use Neutral Time-Rounding Policies**

- Where → California Supreme Court
- Issue → Does California law permit employers to use neutral time-rounding policies?
- NFIB Position → Yes. Our amicus [brief](#) argued that both federal and California law permit neutral time-rounding policies, and the court of appeals' decision below calling these policies into question was wrong. Additionally, eliminating these policies would impose substantial costs on businesses without any benefit to employees.

***Ghost Golf v. Newsom* – Upholding the California Separation of Powers**

- Where → California Court of Appeal Fifth Appellate District
- Issue → Did California's COVID-19 regime—the Blueprint for a Safer Economy (Blueprint)—violate the state constitution?
- NFIB Position → Yes. Our amicus [brief](#) argued that the Blueprint violated the California Constitution's separation of powers because Governor Newsom and unelected bureaucrats infringed on the Legislature's power. We also maintained that the Blueprint significantly harmed the finances of small businesses and continues to do so.

REGULATORY COMMENTS

-  [NFIB Letter Opposing Department of Labor Proposed Rule on FLSA Exemption Salary Test](#)
-  [NFIB Letter Opposing Department of Labor Proposed Rule on OSHA Worker Walkaround](#)
-  [NFIB Letter to Office of Management and Budget on Artificial Intelligence Memorandum](#)



NFIB
SMALL BUSINESS
LEGAL CENTER

NFIB Small Business Legal Center

555 12th Street, NW, Suite 1001

Washington, D.C. 20004

legalcenter@nfib.org

 **1-800-552-NFIB**

 [NFIB.com/foundations/legal-center/](https://www.nfib.com/foundations/legal-center/)

- **Beth Milito** – Executive Director
(202) 406-4443 | Elizabeth.Milito@nfib.org
—
- **Patrick Moran** – Senior Attorney
(202) 314-2019 | Patrick.Moran@nfib.org
—
- **Rob Smith** – Staff Attorney
(202) 314-2027 | Rob.Smith@nfib.org
—
- **William Klepp** – Member Outreach Coordinator
(202) 314-2070 | William.Klepp@nfib.org

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.

To help us continue our fight for small business owners across the country, you can make a tax-deductible donation by going to www.nfib.com/sblcgive.