

SMALL BUSINESS LEGAL CENTER SUPPORT LINE

In 2024, the Small Business Legal Center continued providing person-to-person support to small business owners with our Small Business Support Line. The Support Line responds to your legal questions, providing helpful information and resources for small business owners. In 2024, we responded to over 1,000 small business inquiries, averaging over 83 per month.

Our most asked-about topic was the Beneficial Ownership Information (BOI) reporting requirements. With all the confusion surrounding BOI reporting, the Support Line was often the first line of defense for small business owners, providing clear guidance on what the current state of the law was, and if BOI reports needed to be submitted.

While the Small Business Legal Center cannot act as legal counsel or provide legal representation, we can provide general information on important issues affecting your business. Some examples of questions that we can help with include:

- Human resources issues;
- Tax problems;
- Credit card payment processing;
- Resources on complying with new laws;
- And much more!

If you have a question, please give us a call at 1-800-552-NFIB or send us an email at info@nfib.org.

SBLC MEDIA MENTIONS

December 31, 2024

The Hill

The Hill reported on NFIB's lawsuit challenging the Corporate Transparency Act (CTA), discussing the Fifth Circuit's upholding of the injunction in the case.

January 2, 2025

Forbes, Inc. Magazine, and National Law Review

Forbes, Inc. Magazine, and National Law Review reported on NFIB's lawsuit challenging the CTA, discussing the injunction granted by the Eastern District of Texas. According to Forbes, "Because NFIB and its nearly 300,000 members were a party to this case, the judge blocked enforcement of the BOI reporting requirements nationwide."

January 6, 2025

Inc. Magazine

Inc. Magazine interviewed Vice President and Executive Director Beth Milito to discuss the Supreme Court cases that could impact small businesses in 2025, highlighting NFIB's amicus briefs in the cases *EMD Sales v. Carrera* and *San Francisco v. EPA*.

January 23, 2025

The Glenn Beck Program:

NFIB's lawsuit challenging the CTA was highlighted on The Glenn Beck Program: "There are many lawsuits in place, but the one we're focused on is the one from the NFIB...and that one got a nationwide injunction put in place saying that the Treasury could not enforce this or enforce penalties."

January 23, 2025

Reuters, The New York Times, Law.com, and CBIA

Reuters, The New York Times, Law.com, and CBIA reported on the U.S. Supreme Court's decision to overturn the preliminary injunction in NFIB's lawsuit challenging the CTA.

February 4, 2025

Small Business Trends

Small Business Trends reported on NFIB's lawsuit challenging the CTA, quoting Vice President and Executive Director Beth Milito: "The Corporate Transparency Act does not regulate activity, let alone economic activity, while also imposing burdensome reporting requirements on small businesses and raising numerous privacy concerns. NFIB will continue to advocate for the small business community by contesting this harmful law."

March 3, 2025

AP News

AP News highlighted NFIB's lawsuit challenging the CTA in its article on the U.S. Treasury Department's announcement that it will not enforce the CTA.



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The Brief

SPRING 2025

A Happy Ending on BOI Reporting

On March 21, 2025, the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) issued a new rule exempting all U.S. small businesses and all U.S. persons from the requirement to file Beneficial Ownership Information (BOI) reports, ending a saga of back-and-forth that has frustrated and confused small business owners.

Since NFIB first filed its lawsuit challenging BOI reporting last May, the requirements have been paused, unpaused, paused, unpaused again, and finally, will go unenforced. With the ups and downs of litigation, not to mention the complexities of what each court decision means, it has not been easy for small businesses to keep up. Here is the full story.

First, on December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide injunction

which indefinitely stopped FinCEN from enforcing the BOI reporting requirements. This meant that small businesses no longer had any obligation to file a BOI report.

On December 23, 2024, little more than a week before the BOI reporting deadline, a panel of the Fifth Circuit reversed course and lifted the injunction, which meant that BOI reporting was back on the table. Then, just three days later, a different Fifth Circuit panel reinstated the injunction—meaning that BOI was once again out. Shortly thereafter, in January, the Eastern District of Texas bolstered the Fifth Circuit injunction by issuing yet another preliminary injunction against BOI reporting in the case *Smith v. U.S. Department of the Treasury*.

Then came some bad news: in January, the Supreme Court lifted the injunction in NFIB's case, and in February, the *Smith* injunction

was lifted. This put BOI reporting back into effect, though FinCEN pushed the deadline back to March.

On February 27, 2025, FinCEN changed its tune and announced that it would no longer issue fines or penalties or take enforcement actions against companies that do not file or update BOI reports.

Finally, the March 21st rule stating that FinCEN will not enforce BOI reporting came as a significant victory for small businesses.

The NFIB Legal Center has updated our members throughout every twist and turn, issuing press releases, sending out email alerts, and most importantly, answering member questions about BOI. We will continue to push for Congress to permanently repeal the Corporate Transparency Act—the law that created the BOI requirements in the first place—and will also urge FinCEN to immediately destroy all BOI data already submitted by America's small businesses. You can view NFIB's BOI resources at [NFIB.com/protectprivacy](https://nfib.com/protectprivacy), and reach out to the NFIB Legal Center with any additional questions at info@nfib.org.

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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NFIB Urges Supreme Court to Uphold Separation of Powers

Recently, the Small Business Legal Center filed an amicus brief in the U.S. Supreme Court case *Federal Communications Commission v. Consumers' Research*. The challenge concerns the separation of powers and the unconstitutional delegation of legislative power. These principles underpin the Legal Center's work, and we hope the Court will take this opportunity to rein in a federal agency's abdication - to a private entity - of its responsibility to make policy and tax decisions.

The brief we filed urges the Supreme Court to revitalize the long-dormant nondelegation doctrine, a theory of law that limits the ability of Congress to delegate its legislative powers to federal agencies or private companies. A finding that the federal government violated the doctrine would be in line with the Court's recent trend of restraining agency power, as seen in *Loper Bright Enterprises v. Raimondo*, *Corner Post v. Board of Governors of the Federal Reserve System*, *SEC v. Jarkesy*, and *West Virginia v. EPA*, all cases in which NFIB participated.

The FCC case stems from the Telecommunications Act of 1996, in which Congress instructed the FCC to create a system to subsidize telecommunications services for rural areas of the country. Congress, unfortunately, left it up to the FCC to figure out how to pay for these subsidies. The FCC decided to collect a percentage of phone companies' revenue and distribute funds to telecom companies that service rural areas, but the FCC doesn't do the work. Instead, the agency delegates this collection and disbursement to a nonprofit organization called the Universal Service Administrative Company (USAC). Over the years, USAC's exactions from phone companies have gone from \$753 million in 1996 to \$8.4 billion in 2023.

USAC's actions pose a major problem for separation of powers, and it is why the nondelegation doctrine exists. Last year, the U.S. Court of Appeals for the Fifth Circuit agreed and concluded that the USAC fee imposed on telecom providers violates the Constitution.

Small business owners wear many hats and understand that delegating tasks is an essential part of leadership. However, the FCC's unconstrained delegation of legislative power to an unaccountable private entity is not only unconstitutional, but it also threatens the separation of powers upon which our government was built. Small businesses should not be subjected to regulation from a non-elected, unaccountable private entity.

Thanks to the support of the Legal Center's donors, NFIB contributed to this important case. Our brief argues the FCC's delegation of power to USAC is unconstitutional and subjects small businesses nationwide to regulation by an unaccountable private entity.

We are hopeful that a revival of the nondelegation doctrine could provide momentum to bring new challenges on behalf of small businesses in other industries including environmental, financial services, and healthcare. A decision in the case is expected this spring.

By **Beth Milito**, Vice President & Executive Director, NFIB Small Business Legal Center

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Regulatory Litigation Update: GOOD THINGS ON THE HORIZON IN NFIB'S DOL CASES

The Trump administration has inherited no small share of litigation from NFIB in response to the Department of Labor's (DOL) new rules that concern small businesses. Thankfully, the new administration is very likely to rethink the previous administration's strategy and arguments in those cases, which would be a welcome development for NFIB members affected by DOL rule changes.

First, the new administration appears to be considering a different approach to challenges against DOL's independent contractor rule. The rule, promulgated under the Biden administration, complicated the worker classification process for small businesses, making it confusing and difficult to determine whether a worker is an employee or an independent contractor. Instead of a simple two-factor test, the new rule introduced a complex six-factor test, in which no factor is determinative. Small business owners preferred Trump's 2021 rule, which offered a straightforward method for determining who is and is not an independent contractor.

There have been several challenges to DOL's new rule, including NFIB's own lawsuit in the case *Coalition for Workforce Innovation, et al. v. Julie Su*, filed in the U.S. District Court for the Eastern District of Texas, and a case in which the NFIB Legal Center has filed an amicus brief, *Frisard's Transportation, LLC v. DOL*, filed at the Fifth Circuit Court of Appeals.

In *Frisard's*, DOL has recently filed a motion asking the court for not only a delay of oral arguments, but also to put the case in abeyance—meaning, to suspend the proceedings while DOL evaluates its positions. Though by itself, such a delay says little, when paired with the fact that the Trump administration had its own opposing stance on the independent contractor rule just three years ago,

it's likely that DOL could stop defending the Biden-era rule and work to bring back the 2021 rule.

Second, there is good reason to hope that the Trump administration will abandon its defense of DOL's overtime rule. The new overtime rule would have made it harder for employers to exempt executive, administrative, and professional (EAP) employees from overtime pay requirements. Though the Fair Labor Standards Act (FLSA) requires DOL to look to an employee's job duties when deciding if an overtime exemption applies, DOL ignored this requirement and instead determined exempt status entirely based on salary. The new rule also increased the minimum salary threshold for exempt employees from \$35,568 to \$43,888, with an eventual increase to \$58,656, and built automatic updates into the rule, a controversial and, as we successfully argued, unlawful provision.

NFIB challenged the overtime rule in *Plano Chamber of Commerce v. Su*, and won at the Eastern District of Texas, stopping the rule in its tracks. We have also filed amicus briefs in both *State of Texas v. DOL* and *Mayfield v. DOL* likewise opposing the rule. Thanks to NFIB's lawsuit, the Biden rule has been stopped and the minimum salary threshold for EAP overtime pay exemptions has been restored to \$35,568, the level set by the Trump administration in 2019.

Thanks to the generous support of our donors, the NFIB Legal Center has been able to mount and support aggressive challenges to the DOL rules, laying the groundwork for the new administration to reverse course and abandon these unlawful, overreaching rules. For more information about our lawsuits and legal victories, please visit the Legal Center's website at www.nfib.com/legal.

NFIB LEGAL CENTER'S ANNUAL REPORT AVAILABLE ONLINE



The NFIB Legal Center recently published its annual report, detailing our case involvement and legal victories from 2024, which was a record-setting year for the Legal Center. Here are some highlights from the report:

- We participated in nearly 40 cases as an amicus and filed a record number of lawsuits.
- Our amicus cases included *Loper Bright Enterprises, Inc. v. Raimondo*, where, in a major victory for small businesses, the U.S. Supreme Court overruled *Chevron v. Natural Resources Defense Council*, a 40-year-old precedent that allowed administrative agencies to expand their authority.
- We sued three federal agencies, the state of Minnesota, and Montgomery County, Maryland.
- We answered over 1,000 inquiries from NFIB members on issues including Beneficial Ownership Information, employee relations, and business grants/loans.
- We continued our monthly webinar series, covering topics ranging from tax planning and small business data security to compliance with government-imposed mandates.

Our annual report can be found [here](https://www.nfib.com/legal). Be sure to keep up with the Legal Center's litigation, amicus briefs, webinars, and more at www.nfib.com/legal.