

The Brief

WINTER 2020-2021

The Pandemic Did Not Slow Down the Small Business Legal Center

As we approach the end of this unprecedented COVID-19 year, it is clear that even with our focused efforts to help small businesses navigate the pandemic with weekly webinars and one-on-one assistance, the Small Business Legal Center still left its mark in courts throughout the country. Below are a few examples of your donations at work.

Educational Highlights

Have COVID-19 questions? We have answers. Since March, the NFIB Small Business Legal Center has been helping small businesses navigate the COVID-19 pandemic. On March 13, 2020, we launched what would become a weekly webinar series that, at the height of the crisis, averaged over 6,000 participants for each Wednesday webinar. In addition, the SBLC set up a dedicated email address (info@nfib.org) so that staff could rapidly respond to inquiries related to the Small Business Administration's COVID-19 loan programs, state and local relief programs, and employee and customer workplace safety issues. All told, the SBLC produced 30 webinars and responded to over 10,000 email inquiries since March. As we head into 2021, the SBLC remains

dedicated to supporting you and your business throughout the COVID-19 crisis and the reopening of the economy. You can read more about our specific COVID-19 educational resources on page 3.

Legal Advocacy

The Legal Center started the year off with a big win in the Tennessee Supreme Court, where that court upheld Tennessee's statutory cap on noneconomic damages. In *McClay v. Airport Management Services*, the state's highest court held that noneconomic damages are limited in all but the most egregious circumstances -- a big win considering that one lawsuit can be enough to put a small business out of business.

The Legal Center joined with other business groups in a brief that successfully stopped a petition by the AFL-CIO to force the Occupational Safety and Health Administration to issue an emergency temporary standard governing COVID-19 workplace risks.

In a win for government accountability, the U.S. Supreme Court in *Seila Law LLC, v. Consumer*

Financial Protection Bureau agreed with NFIB's argument and found unconstitutional the Consumer Financial Protection Bureau's structure with an unchecked, single director who even the President of the United States could not remove from office. The decision will help to ensure that federal agencies are structured in a way that is accountable to the people.

The Legal Center also secured an important victory in Ohio when the U.S. Court of Appeals for the Sixth Circuit ruled in favor of upholding the state constitution's in-person, procedural rules for ballot initiatives. The Legal Center argued that the rules are not burdensome and protect against fraud in the election process, a critical issue in an election year.

Even with all the uncertainty and change that happened this year, the Small Business Legal Center was able to make meaningful and positive impacts using your donations to assist and advocate in the courts for small businesses. We are more grateful than ever for your support.



A New Year Brings Great Promise and New Challenges for Small Business

By Karen R. Harned, Executive Director

By all accounts 2020 has been a very challenging year for all of us. You have worked 24/7 to keep the business afloat and provide for your family. But you also have agonized over ensuring your employees and their families are able to make it through this crisis.

The great news is a vaccine appears to be imminent, which will go a long way in getting America back in business.

But that good news is tempered with the reality of new leadership in Washington, D.C. Regardless of who ultimately controls the Senate next year, one thing is certain – the era of deregulation is over. Numerous press reports indicate that the Biden Administration will look to undo much of Trump's deregulatory agenda. Eliminating the requirement that all agencies revoke two regulations for every new regulation promulgated, imposing new workplace safety standards on businesses of all sizes, and empowering the unions to have a bigger voice in the workplace, are policies we are likely to see in the first 100 days of his presidency.

Meanwhile, in the states, many governors have not let this crisis go to waste. Several governors continue to use their "emergency powers" to address the pandemic, impose new mandates on small businesses, and even require others to close once again.

These threats to your small business will not go unchallenged. For example, we recently filed a brief in Wisconsin state court fighting Governor Evers' actions to release the names of small businesses with employees testing positive for COVID-19. In our brief we argue that the governor's action is illegal and will take a monumental toll on the financial health of small businesses in Wisconsin. The court agreed with us and stopped the rule from taking effect. At time of publication, the state had not appealed. But we will continue our fight if they do.

Please know that the NFIB Small Business Legal Center will continue to be your voice on the front lines fighting new regulatory mandates that threaten to make you take valuable time away from your business just as you are trying to get your sales and operations back to

pre-pandemic levels. We will be carefully tracking the work of the Department of Labor, the Environmental Protection Agency and other agencies that impact your business. Rest assured that we will use every legal argument we have to fight back when they try to impose new mandates on small business.

And we will continue to be your partner as you navigate any new rules or legal challenges that confront your business. This year we have ramped up our legal programming and, as a result, have helped tens of thousands of small business owners across the country as they navigated the Paycheck Protection Program loan and forgiveness process, worked to ensure their place of business was safe for employees and customers, and sought to understand rules regarding employee leave.

Next year will be one that offers us all great promise in moving past the pandemic. But with the good, the bad of a new era of regulatory growth is all but certain. Because of your support, the NFIB Small Business Legal Center is able and ready to fight any new mandates that threaten your business.

Karen R. Harned

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NFIB Small Business Legal Center Helps Businesses Navigate the Pandemic With Quality Programming and Resources

Due to the COVID-19 pandemic, the Legal Center has increased its educational programming significantly. While we continue to advocate in the courts by getting involved in specific cases, we understand that our small business owners are primarily concerned with surviving and navigating their responsibilities in this tumultuous time. Because of this, we have shifted our focus more toward providing educational and operational assistance. The Legal Center has provided support to thousands of small business owners across the country in the following ways:

Email Inquiries: Since the COVID-19 pandemic broke out in March, the Legal Center has responded to an average of 300 email inquiries a week. These inquiries have spanned a multitude of topics, including, but not limited to, Payment Protection Program loans and forgiveness, Economic Injury Disaster Loans, Families First Coronavirus Response Act responsibilities, Americans with Disabilities Act website compliance, workplace safety, normal business operations, zoning and permit requirements, local government disputes, and Occupational Safety and Health Administration inspection issues.

Webinars: Earlier this year, the Legal Center began putting out weekly webinars to help small businesses navigate the pandemic. In the summer, we switched to bi-weekly webinars and will continue this practice for the foreseeable future. Since March 13, we have conducted 30 webinars. Webinars average about 3,000 participants and 4,500 registrants with the on-demand versions available for viewing any time at [NFIB.com/webinars](https://www.nfib.com/webinars). These webinars have assisted about 20,000 small business owners in their applications for PPP loans, resulting in nearly \$2 billion in approved loans as well as assisting in the filings for loan forgiveness.

In each of our webinars related to COVID-19, our PPP experts, including Beth Milito of the Legal Center, have

answered questions in real-time. Combined, our total email responses and real-time webinar responses have numbered in the thousands since the beginning of the pandemic.

Tip Sheets: In addition to our email responses and webinars, the Legal Center's 2020 educational programming has included numerous tip sheets to serve as quick reference guides for small businesses in need of help. Our tip sheets seek to summarize legal responsibilities and legislation applicable to small businesses. Some of our tip sheet topics include:

- PPP Loan Forgiveness
- Obtaining a PPP Loan for Self-Employed Small Business Owners
- Obtaining an EIDL
- FFCRA Paid Leave Requirements
- FFCRA Family Leave Requirements
- FFCRA Tax Credits
- ADA Website Compliance

In addition to these tip sheets, we also have continued to educate small business owners by writing short and concise blog articles. Recent articles discuss the most common PPP & EIDL questions, the streamlined PPP forgiveness procedure for loans under \$50,000, and a 2020-21 Supreme Court term preview. These and future blog articles can be found on our main page at [NFIB.com/foundations/legal-center](https://www.nfib.com/foundations/legal-center).

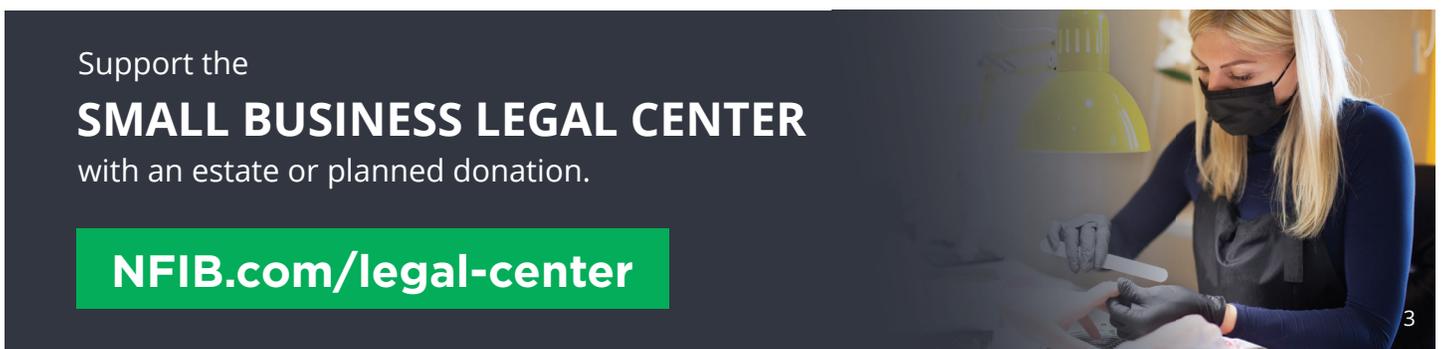
The Legal Center continues to provide updated COVID-19 information on [NFIB.com](https://www.nfib.com) related to workplace safety, employee leave, and liability. In addition, we are always available via email for small business owners with questions. For help and guidance, email us at info@nfib.org and a member of our staff will be in touch. We generally respond within 24 hours of receiving your question.

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SMALL BUSINESS LEGAL CENTER

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



Amicus Round-up

Wisconsin Manufacturers & Commerce v. Evers –

The Legal Center filed an amicus brief challenging the Wisconsin Governor's decision to bypass privacy laws and publish the names of businesses with COVID-19 cases. NFIB SBLC argues that that Governor's order will not halt the spread of COVID-19, but instead it will harm businesses in Wisconsin by instilling fear in consumers. The court agreed with our position and blocked the order from taking effect.

Mortimer v. McCool – We also filed an amicus brief in the Supreme Court of Pennsylvania arguing against a new theory of law that would allow LLC owners to more easily be sued personally. Normally, plaintiffs may “pierce the corporate veil” and personally sue an owner only in limited circumstances. The new theory of veil piercing would erode the liability shield of LLCs, discouraging the formation of businesses in the Commonwealth.

Kentucky Unemployment Insurance Commission v. Nichols – The Legal Center filed an amicus brief in the Kentucky Supreme Court asking that court to reverse a Court of Appeals' ruling that employers must be represented by counsel at an unemployment insurance hearing. NFIB believes requiring counsel at these hearings would burden small businesses and would run counter to the state's unemployment insurance system's goal of providing efficient and quick resources to unemployed workers.

William Huntress and Acquest Development, LLC v. United States of America – This case seeks an answer to whether government agency officials may be sued personally for abusing their discretion under the Federal Tort Claims Act. The plaintiff claims that EPA officials maliciously persecuted him despite having a dubious legal basis for doing so. The Small Business Legal Center joined as amicus asking the U.S. Supreme Court to take this important case.

Media Mentions

NFIB Small Business Legal Center

August 3, 2020

Newsweek reported on how liability protection for businesses is a major sticking point as Congress considers another stimulus package. NFIB's Karen Harned supported liability protections for businesses. "We've invested trillions of federal dollars in getting businesses back open, so now we can't let them fail because of frivolous lawsuits," Harned said. "Everybody is worried about this because they just don't need another shoe to drop."

<https://www.newsweek.com/two-powerful-lobbying-groups-are-opposite-sides-stimulus-deal-deadlock-1522448>

September 22, 2020

Bloomberg Law reported on how the U.S. Supreme Court's new 6-3 conservative majority will likely produce favorable rulings for business interests. NFIB's Karen Harned said that the new Court composition should keep agencies in check by “mak[ing] sure that the agencies are staying in their lane and if they start rewriting laws, that the court will say, no, that's not appropriate.”

<https://news.bloomberglaw.com/us-law-week/high-court-poi-sed-to-aim-at-regulatory-power-with-new-trump-pick>

October 1, 2020

WJCT (Jacksonville, FL) mentioned NFIB's Elizabeth Milito in an article on the difficulty that businesses face in navigating the COVID-19 landscape. The article highlighted Milito's work providing guidance to the small business community on how to handle COVID-19 in the workplace.

<https://news.wjct.org/post/businesses-balance-survival-safety-while-operating-during-pandemic>