

Megan Brown Discusses D.C. Circuit's Rejection of SEC Rule on First Amendment Grounds

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Megan L. Brown, a partner in Wiley Rein's Telecom, Media & Technology and Appellate practices, was quoted by *Forbes* and *Law360* in coverage of the D.C. Circuit's August 18 decision to strike down a U.S. Securities and Exchange Commission (SEC) rule on the grounds that it violates the First Amendment. Under the conflict minerals disclosure requirement, the SEC has compelled companies to declare on their websites and in agency reports whether their products are "conflict-free."

The case raises a "fundamentally important question about who bears the burden, and does the government have to satisfy meaningful hurdles before it can force private companies to start talking about something," Ms. Brown told *Law360*. She added that issues in dispute are likely to end up before the Supreme Court of the United States. "Some justices have lamented the lack of clarity about the standards applicable to compelled disclosures in business settings, and this may be the right time to address them," she said.

The D.C. Circuit's ruling is important because it provides strong First Amendment protection against compelled corporate speech, Ms. Brown said in the *Forbes* article. The panel decision chafes at a recent en banc decision in another case, in which the D.C. Circuit expanded the circumstances in which the government faces a reduced burden in defending compelled disclosure mandates. Further appellate review is expected in this case.

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"The real fight is, is the First Amendment in a business setting a restraint on government," under which the government must show its regulations achieve some public goal, she said. Or "is it almost a grant of power to the government," as some courts have found, under which companies can be forced to disseminate information in the interest of broader speech?

To read the *Forbes* article, [click here](#). To read the *Law360* article, [click here](#).