

# Wiley Rein's Megan Brown Comments on Supreme Court FISA Challenge

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Wiley Rein partner Megan Brown spoke with *Law360* about a U.S. Supreme Court case involving a challenge to a provision of the Foreign Intelligence Surveillance Act (FISA). Six former Attorneys General, along with the Washington Legal Foundation, have filed an *amicus* brief urging the Court to overturn the Second Circuit's ruling that private citizens have standing to challenge 2008 amendments to FISA, which updated and modernized certain aspects of the FISA as it pertains to overseas targets. Plaintiffs allege that even though U.S. persons cannot be targets, and although the statute requires that surveillance procedures be consistent with the Fourth Amendment, their communications with overseas individuals and groups may be subject to possible incidental surveillance without a warrant. They claim that their subjective but reasonable fear of surveillance chills their speech and causes them to incur expenses to avoid possible FISA surveillance. The United States, supported by the former Attorneys General, argues that the plaintiffs do not have standing to bring their claim because their allegations are speculative and their harms self-inflicted.

Asked about the importance of this case, Ms. Brown, an attorney for the *amici curiae*, said that "anytime courts make it easier to bring a suit, as the Second Circuit did, that increases the likelihood or risk that a government official in their personal or official capacity can be sued and have a hard time killing the suit." She added that "additionally, I don't think people appreciate the chilling effect that litigation or the threat of litigation can have on companies."

## Related Professionals

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## Practice Areas

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