

# Ninth Circuit Court of Appeals Upholds FCC's Sole Regulatory Oversight over Wireless Communication Devices, Adopting Position Urged By Wiley On Behalf of the U.S. Chamber Litigation Center

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August 30, 2022

**Washington, D.C.** - August 29, 2022 – The U.S. Ninth Circuit Court of Appeals last week affirmed a lower court decision that held that radiofrequency (RF) emissions limits set by the Federal Communications Commission (FCC) preempt state laws that seek to impose different standards. Wiley, a preeminent Washington, D.C. law firm, submitted an *amicus brief* that argued in favor of preemption on behalf of the U.S. Chamber Litigation Center. The decision is of key importance to the wireless industry because it reaffirms the FCC's broad regulatory authority over wireless devices and turns back state challenges based on supposed "health effects" allegedly caused by FCC-compliant equipment.

The *amicus* brief emphasized that the plaintiff's suit, if allowed to proceed, would undermine the FCC's role as a national regulator and obstruct the FCC's ability to certify cell phones as safe for consumer use. Further, it argued that if individual states and localities had the authority to regulate radiofrequency emissions alongside the FCC, technology companies would face significant hurdles in delivering innovative products to consumers.

"[The] Plaintiffs' approach to preemption is fundamentally incompatible with the American system of federalism," the *amicus* brief states, "If states were given the freedom to impose their own radiofrequency emissions limits, as they do with things like water flow

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## Practice Areas

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Telecom, Media & Technology  
Wireless

from shower heads, Apple could be forced to design and sell different iPhones for California, Illinois, and Mississippi.”

The Wiley team representing the U.S. Chamber Litigation Center included partner **Joshua Turner**, partner **Megan Brown**, and associate **William Lane**.