

On Behalf of Small Businesses and Consumers, Wiley Rein Helps Persuade D.C. Circuit to Overturn FCC's 'Solicited Fax Rule'

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Washington, DC —Today the U.S. Court of Appeals for the District of Columbia Circuit issued a decision in *Bais Yaakov of Spring Valley, et al. v. Federal Communications Commission, et al.*, No. 14-1234, vacating the Federal Communications Commission's (FCC) rule regarding opt-out notices for solicited fax advertisements.

In November 2015, Wiley Rein partners Megan L. Brown and Brett A. Shumate had filed an *amicus* brief with the D.C. Circuit on behalf of the National Federation of Independent Business (NFIB) Small Business Legal Center and Consumers' Research, in support of the class action defendant petitioners who challenged the FCC's Solicited Fax Rule. Wiley Rein argued in the brief that the FCC rule violates the First Amendment in requiring businesses and individuals to include detailed, scripted opt-out notices on fax advertisements that consumers have expressly consented to receive. The Solicited Fax Rule had spawned class action lawsuits against NFIB members across the country, exposing them to potentially crippling damages.

In a 2-1 opinion, the appellate panel ruled that the Commission lacks authority under the Telephone Consumer Protection Act (TCPA) to regulate faxes that were sent with the recipients' prior express invitation or permission. Circuit Judge Brett M. Kavanaugh, who wrote the majority opinion, was joined by Senior Circuit Judge A. Raymond

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The D.C. Circuit decision can be found [here](#).

Wiley Rein's *amicus* brief can be found [here](#).