

Wiley Rein *Amicus* Brief Challenges FCC's 'Solicited Fax Rule' on First Amendment Grounds

November 17, 2015

Wiley Rein has filed an *amicus* brief in support of the petitioners in a federal appeals court challenge to the Federal Communications Commission's (FCC) 2014 "Solicited Fax Rule." The brief was the subject of an article today in *Law360*.

While courts have upheld the regulation of unsolicited fax advertisements under the Telephone Consumer Protection Act (TCPA), the FCC's regulation of solicited fax advertisements is "constitutionally infirm," according to the brief authored on behalf of the National Federation of Independent Business (NFIB) Small Business Legal Center and Consumers' Research.

Wiley Rein partners Megan L. Brown and Brett A. Shumate filed the *amicus* brief with the U.S. Court of Appeals for the District of Columbia Circuit on November 16, in *Bais Yaakov of Spring Valley et al. v. Federal Communications Commission et al.*

The 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, according to the *amicus* brief. "The Solicited Fax Rule reaches beyond the 'junk faxes' that Congress targeted" under the TCPA, the brief noted. "It unnecessarily imposes an onerous burden on senders of solicited fax advertisements, impeding their First Amendment right to communicate with consumers and changing the content of that communication."

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The Solicited Fax Rule has spawned class action lawsuits against NFIB members across the country, exposing them to potentially crippling damages. "Because small businesses must navigate through perpetually evolving multifarious regulatory requirements—and usually without resources to hire in-house compliance officers—small business owners are especially vulnerable to opportunistic civil lawsuits predicated upon alleged violations of obscure federal regulations," Wiley Rein said in the brief.

The *amicus* brief can be found [here](#). NFIB's news release on the court challenge can be found [here](#). The *Law360* article can be found [here](#).