

Megan Brown and Scott Delacourt Featured in Federalist Society Podcast on FTC Cybersecurity Oversight

The Federalist Society

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Wiley Rein partners Megan L. Brown and Scott D. Delacourt were featured in a podcast hosted yesterday by The Federalist Society for Law and Public Policy Studies about the Federal Trade Commission's (FTC) authority to regulate cybersecurity. Ms. Brown, a member of the firm's Communications, Litigation, and Appellate Practices, was a panelist, while Mr. Delacourt, a member of the Communications and Privacy Practices, served as moderator. They were joined by Karen Harned, of the National Federation of Independent Business, which participated as an *amicus* in the case.

The April 7 ruling in *FTC v. Wyndham Worldwide Corp.* will allow the FTC to pursue claims that Wyndham Hotels failed to maintain "reasonable" data security procedures. The case—which stemmed from a data breach that enabled hackers to steal customers' credit card data—"has attracted considerable attention as a test of FTC authority over data security," Mr. Delacourt said.

A federal judge in New Jersey rejected Wyndham's motion to dismiss, ruling that Section 5 of the FTC Act allows the agency to bring an enforcement action for allegedly poor data security standards. The merits of the FTC's authority to regulate cybersecurity will likely be addressed as the lawsuit moves forward.

"The judge said she wasn't giving the FTC a blank check, but the decision clearly provides a vindication of the FTC's Section 5 authority as being a broad tool to use," Ms. Brown said. "I think we will continue to see more data security cases brought under that

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Listen to the entire podcast here.

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