

# Wiley Secures Major First Amendment Victory for Retail Energy Suppliers

May 15, 2026

Wiley obtained a major win for the Retail Energy Advancement League (REAL) and Green Mountain Energy Co., persuading the U.S. Court of Appeals for the Fourth Circuit to preliminarily enjoin a Maryland statute that prohibited retail energy suppliers from truthfully marketing their renewable energy products as environmentally friendly.

In a May 15 decision, the Fourth Circuit held that the law's restriction on marketing speech was likely unconstitutional. This high-stakes ruling has significant implications for First Amendment law, commercial speech, and interstate commerce.

Wiley challenged the statute, known as Maryland SB1, on First Amendment grounds, arguing that it was an unconstitutional restriction on free speech. The statute prohibited retail energy suppliers from using the words "green," "clean," "100% renewable," or similar in their marketing materials unless the renewable energy credits (RECs) backing those claims were sourced from the geographic region preferred by the state of Maryland. Although Maryland claimed that its speech restrictions would alleviate consumer confusion about RECs, the Fourth Circuit explained that "all the restrictive provisions do is place a geographic restriction on which RECs may be marketed as 'green.'" Therefore, the Fourth Circuit held, the energy suppliers were likely to "prevail in showing S.B. 1's speech restriction fails" under the First Amendment.

"Today's decision is a victory for consumer choice and free speech in Maryland," said Thomas M. Johnson, Jr., co-chair of Wiley's Issues and Appeals Practice, who argued the case for the Appellants. "Maryland SB1 prevented retail energy providers from truthfully telling

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## Practice Areas

First Amendment/Commercial Speech  
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consumers about the environmental benefits of their products unless the energy came from the government's preferred sources. The court correctly concluded that when it comes to important and hotly contested public debates about clean energy, the people, not the government, get to decide."

The Wiley team also included Litigation and Issues and Appeals partners Stephen J. Obermeier, Jeremy J. Broggi, and Krystal B. Swendsboe, and associates Boyd Garriott and Joel S. Nolette.