

Supreme Court Issues Historic Rulings in Two Cases Argued by Wiley Rein

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The Supreme Court of the United States issued historic rulings this week in two high-profile cases in which Wiley Rein represented the prevailing party. Founding partner Bert W. Rein argued both *Shelby County, Ala. v. Holder* and *Fisher v. University of Texas*, and was assisted in both cases by Wiley Rein partners William S. Consovoy and Thomas R. McCarthy. Wiley Rein partner Claire J. Evans and associate Brendan J. Morrissey assisted on *Fisher* and *Shelby County*, respectively. Both cases have received significant national coverage and are considered to be among the most important of the Term. The rulings earned Mr. Rein a spot on *Law360's* June 27 list of "Legal Lions."

In *Shelby County*, the Supreme Court found Section 4(b) of the Voting Rights Act unconstitutional, ruling in favor of Wiley Rein's client, Shelby County, Alabama. In its 5-4 ruling, the Court concluded that the law's decades-old formula can no longer be used as a basis for determining which states must obtain "preclearance" from the U.S. Justice Department before making changes to their election rules. The formula in Section 4(b) identified nine states, and parts of seven others, as "covered jurisdictions" based on voting data from more than 40 years ago. The Supreme Court explained that "Congress must ensure that the legislation it passes to remedy" voting problems "speaks to current conditions."

In *Fisher v. University of Texas*, a major appeal of the university's use of race in undergraduate admissions, the Justices ruled by a 7-1 margin that race may not be considered in college admissions unless the program can withstand strict legal scrutiny. The case did not challenge the Court's previous determination that there is a compelling government interest in diversity. The Court agreed with

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Wiley Rein's client, Abigail Fisher, that "if a nonracial approach ... could promote the substantial interest about as well and at tolerable administrative expense," then the university may not consider race. The decision explained that "strict scrutiny imposes on the university the ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice." The case was remanded to the United States Court of Appeals for the Fifth Circuit for consideration of whether the university's program can meet strict scrutiny.

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