

Wiley Files Supreme Court *Amicus* Brief in Case Involving Statute of Limitations for APA Claims

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Washington, DC – On May 17, Wiley Rein LLP filed an *amicus* brief in the U.S. Supreme Court on behalf of the Cato Institute in support of the petition for certiorari in *Corner Post Inc. v. Board of Governors of the Federal Reserve System*, No. 22-1008.

The brief urges the Supreme Court to review an Eighth Circuit decision that “[i]f left undisturbed ... will deprive many Americans of access to the federal courts in the face of a behemoth and ever-growing administrative state.” The case concerns a convenience store’s Administrative Procedure Act (APA) challenge to a Federal Reserve rule promulgated in 2011. The Eighth Circuit held that 28 U.S.C. § 2401(a)’s six-year statute of limitations for claims against the United States barred the suit (filed in 2021) because the right of action “first accrue[d]” in 2011 even though the petitioner did not then exist. While the court did not deny that rights of action accrue upon injury in all other contexts, the court concluded that an APA right of action accrues upon final agency action even if the plaintiff has not yet been injured.

Wiley’s *amicus* brief argues that the Eighth Circuit decision is “textually indefensible” and “a relic of a time when judges read their own policy judgments into the white spaces of the U.S. Code.” All agree, Wiley’s attorneys explained, that as originally understood a right of action first accrues under Section 2401(a) when the unlawful act injures the plaintiff. The Eighth Circuit decision, therefore, “requires the view that the APA modified Section 2401(a)’s accrual rules implicitly.” And the demanding requisites for an interpretation of implied modification “[are not] remotely present here.” The Eighth

Related Professionals

Jeremy J. Broggi
Partner
202.719.3747
jbroggi@wiley.law

Michael J. Showalter
Special Counsel
202.719.7393
mshowalter@wiley.law

Boyd Garriott
Associate
202.719.4487
bgarriott@wiley.law

Hannah Bingham
Associate
202.719.3455
hbingham@wiley.law

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Circuit decision thus “deprives persons newly injured by old agency action of access to the federal courts in clear contravention of the pertinent statutory text” and “allows the unlawful agency action to evade judicial correction.” That result is especially pernicious in light of the administrative state’s “transform[ation] into leviathan” and the fact that its “rapid expansion has not led agencies to exercise greater care in respecting constitutional boundaries,” according to the *amicus* brief.

The brief was authored by Wiley partner Jeremy J. Broggi, special counsel Michael J. Showalter, and associates Boyd Garriott and Hannah Bingham.