

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

November 27, 2023

Washington, DC – On November 20, Wiley Rein LLP filed an *amicus* brief on behalf of the Cato Institute in support of the petitioner in *Corner Post Inc. v. Board of Governors of the Federal Reserve System*, a case being argued this term at the U.S. Supreme Court. The brief argues that the statute of limitations applicable in cases brought under the Administrative Procedure Act begins to run when the plaintiff is injured and not necessarily when the government promulgates a rule. The Supreme Court’s decision will determine whether new businesses must accept unlawful federal regulations that are older than the company or may challenge such regulations in federal court.

The November 20 merits *amicus* brief follows Wiley’s earlier *amicus* brief on behalf of Cato supporting the petition for certiorari that the Supreme Court granted in September.

The *amicus* brief argues that the Eighth Circuit misinterpreted the federal statute setting the limitations period by elevating the court’s policy judgments over the pertinent text. The result, the brief explains, is to transform the statute of limitations adopted by Congress into a statute of repose created by the court, thereby depriving “persons newly injured by old agency action of access to the federal courts in clear contravention of the pertinent statutory text” and allowing “unlawful agency action to evade judicial correction.”

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

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