

Bank Directors Turn to Wiley for *Amicus* Brief Urging Supreme Court Review of Banking Regulation Case

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Washington, DC – Wiley Rein LLP filed an *amicus* brief in the U.S. Supreme Court on behalf of the American Association of Bank Directors in a case involving important questions of administrative law and agency overreach. The brief supports the petition for certiorari filed in *Calcutt v. FDIC*, Case No. 22-714, urging the Supreme Court to review a June 2022 decision from the U.S. Court of Appeals for the Sixth Circuit.

The decision sustained sanctions– a lifetime ban from the banking industry and \$125,000 in civil money penalties – imposed by the Federal Deposit Insurance Corporation (FDIC) against the petitioner, who was a director of a community bank in Michigan. The FDIC questioned certain business decisions the executive made while navigating his bank through the Great Recession. But as a dissent to the Sixth Circuit ruling pointed out, the FDIC’s process was “riddled with ... error.”

The Sixth Circuit majority recognized many of these errors as well, but instead of remanding to the FDIC to determine whether its sanctions were warranted under a correct view of the law, the court “attempted to rescue the agency’s flawed reasoning by supplying its own rationales for the agency’s result,” Wiley attorneys explained in the *amicus* brief. They said the Sixth Circuit’s decision “flagrantly” violates the Supreme Court’s *Chenery* doctrine, which requires courts to judge the propriety of agency action solely by the grounds invoked by the agency.

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Issues and Appeals

Wiley's recent *amicus* brief argues that the Sixth Circuit ruling will have "severe adverse consequences" if left undisturbed. The decision, the brief explains, "will send bank directors a clear message: do not risk the government's wrath with decisions that are designed to maximize shareholder value but could be second guessed years later if the future holds bad luck."

Wiley cited a "morass of errors" in the agency process and Sixth Circuit decision that harms "all bank directors by chilling and deterring their exercise of reasonable business judgment."

The *amicus* brief was authored by Wiley partner Thomas M. Johnson, Jr., co-chair of the firm's Issues and Appeals Practice; special counsel Michael J. Showalter; and associate William Turner. Johnson serves as Counsel of Record for the American Association of Bank Directors as *amicus* in this case.

To read the brief, [click here](#).