

Wiley Files Supreme Court *Amicus* Brief in Retroactive Restitution Case

July 1, 2025

Wiley filed an *amicus* brief in *Ellingburg v. United States*, No. 24-482, urging the U.S. Supreme Court to vacate an Eighth Circuit ruling that restitution ordered as part of a criminal defendant's sentence, and modified pursuant to the Mandatory Victim Restitution Act of 1996 (MVRA), does not violate the Ex Post Facto Clause of the U.S. Constitution. The case has significant implications for defendants nationwide who face increased long-term debt as a result of retroactive changes pursuant to the MVRA to previously imposed restitution penalties.

The brief was submitted on June 30 on behalf of Professor Wayne A. Logan of Wake Forest University School of Law, a leading Ex Post Facto Clause scholar. The brief argues that the Eighth Circuit's decision upholding retroactive application of the MVRA violates the core principles of the Ex Post Facto Clause, which prohibits burdensome retroactive laws. The brief asserts that the Eighth Circuit erred in holding that such restitution is a civil remedy rather than a criminal sanction, and in failing to recognize that the Clause bars retroactive laws of both a criminal and civil nature.

Krystal B. Swendsboe, of counsel in Wiley's Litigation and Issues and Appeals practices, serves as counsel of record for the brief. The Wiley team representing Professor Logan also includes associates Leah C. Deskins and Grace Moore.

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