

Wiley Helps Convince Supreme Court to Hear Important Case for Military Reservists

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On June 24, 2024, the U.S. Supreme Court granted certiorari in an important case for military Reservists: *Feliciano v. Department of Transportation*. At the urging of an *amicus* brief filed by Wiley on behalf of the Reserve Organization of America (ROA), the Court will now decide whether federal civilian-employee Reservists receive differential pay when they are called to serve their nation during a national emergency.

Feliciano involves a federal statute that requires the government to pay federal civilian-employee Reservists differential pay when they are mobilized by the military. When mobilized, federal-civilian employees are often paid a smaller wage by the military than they would have been paid in their civilian role. The statute makes up the difference – paying the employees the delta between their mobilized Reserve wage and the wage they would have received in their civilian role. The policy, among other things, helps to alleviate the burdens faced by Reservists in their dual role as citizens and soldiers.

The dispute centers on when that federal statute applies. The statute says that a civilian employee is entitled to differential pay when called up under a cross-referenced provision. That cross-referenced provision applies to orders calling up reservists under an enumerated set of statutes “or any other provision of law during ... a national emergency declared by the President.” Because the United States is currently in a national emergency declared by the President, Reservists have argued that they are entitled to differential pay when they are called up under “any ... provision of law.” But in a line of cases culminating in *Feliciano*, the Federal Circuit has held the opposite – that Reservists may receive differential pay only where there is “a connection between” the Reservist’s “voluntary military

Related Professionals

Scott A. Felder
Partner
202.719.7029
sfelder@wiley.law

Boyd Garriott
Associate
202.719.4487
bgarriott@wiley.law

Kahlil H. Epps
Associate
202.719.4661
kepps@wiley.law

Wesley E. Weeks
Partner
202.719.7569
wweeks@wiley.law

Lukman Azeez
Partner
202.719.3551
lazeez@wiley.law

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service and the declared national emergency.”

As the Wiley-authored ROA *amicus* brief argued, the Federal Circuit’s decision worked “to disadvantage Reservists over other federal civilian employees, to deter military service, and to undermine the readiness and effectiveness of the Armed Forces.” The brief also challenged the “Federal Circuit’s distinction between voluntary and involuntary mobilizations,” pointing out that during a national emergency, “the military needs to tap every available member of its operational forces, including those possessing the most relevant and unique expertise.” And, the brief argued, the Federal Circuit’s contrary result violated the statute’s “plain meaning” because the statutory text “contains no additional caveats about the nature of a Reservist’s service—including whether it is voluntary or involuntary or the type of mission the Reservist undertakes while mobilized.”

The Supreme Court agreed that the issue was important and granted Feliciano’s Petition for Certiorari. The Court will now decide whether the Federal Circuit’s interpretation of the differential-pay statute is correct.

“This decision will have major ramifications for the many federal civilian employees who serve their country as citizen-soldiers, and it will have a significant impact on the military’s ability to recruit, retain, and utilize Reservists with specialized expertise, unavailable within the active component, that they developed in their civilian careers,” said Wiley partner and retired Army Reservist Scott A. Felder, who serves as lead counsel for ROA in this matter.

The Wiley team representing ROA on a pro bono basis also includes Boyd Garriott, Kahlil H. Epps, Wesley E. Weeks, and Lukman Azeez.