

Wiley Helps Persuade Supreme Court to Award Reservists Differential Pay Promised by Congress

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Washington, DC – Wiley helped persuade the U.S. Supreme Court to award differential pay to a Reservist in *Feliciano v. Department of Transportation*. In a high-stakes ruling with significant implications for federal civilian-employee military Reservists, the Court adopted an expansive reading of a federal Reservist benefits statute, as urged by Wiley in an *amicus* brief in which it represented the Reserve Organization of America (ROA).

Feliciano involved a federal statute that requires the U.S. government to pay federal civilian-employee Reservists differential pay – i.e., the “difference” between their civilian pay and their Reservist pay – when they are mobilized by the military.

The case ultimately turned on what Congress meant when it authorized differential pay under “any ... provision of law ... *during* a national emergency declared by the President or Congress.” Feliciano, the Reservist seeking benefits, argued that “during” commands only a temporal – not a substantive – connection. In other words, when a national emergency has been declared, a Reservist called up to serve is entitled to differential pay “during” that emergency, regardless of whether his service has any relationship to the declared emergency. The government and the Federal Circuit, by contrast, maintained that “during” requires both a temporal *and* a substantive connection. In their view, a Reservist could not receive differential pay unless their service was in some way related to the declared emergency.

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In the ROA *amicus* brief, Wiley urged the Court to adopt Feliciano's reading of the statute. It explained that Feliciano's temporal understanding of "during" was correct. Wiley also argued that the Federal Circuit's contrary interpretation was at odds with Congress' pro-servicemember intent and that it interfered with the military's operational readiness.

The Supreme Court, in an April 30 opinion, found in favor of Feliciano and reversed the Federal Circuit's narrower reading of the differential-pay statute. The Court ultimately found that the plain meaning of "during" imposed only a temporal connection. The Court also rejected the government's contextual and policy arguments. It found, consistent with Wiley's advocacy, that it was not "anomalous" for Congress to provide differential pay even for service unconnected to a national emergency – such as training – given the need for "well-trained reservists" who "can [be] call[ed] on at a moment's notice."

"We applaud the Supreme Court's decision, which gives Reservists the benefits Congress promised them and which will promote recruitment and retention of the citizen-soldiers who help form the backbone of the modern military," said Wiley partner and retired Army Reservist Scott A. Felder, who serves as lead counsel for ROA in this matter.

[Read the full decision here.](#)

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