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PRESS RELEASE

Wiley Rein Files *Amicus* Brief in Supreme Court Case Regarding State and Local Governments' Obligation to Ensure that Private Persons Comply with ADA

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Washington, DC—Wiley Rein LLP filed an *amicus* brief on August 31 with the Supreme Court of the United States in *Ivy, et al. v. Mike Morath* on behalf of the National Association of Counties, the Council of State Governments, the National League of Cities, the United States Conference of Mayors, the International City/County Management Association, and the International Municipal Lawyers Association.

The case stems from a 2011 lawsuit brought by five deaf residents of Texas who allege that the state violated the Americans with Disabilities Act (ADA) by failing to provide them with equal access to driver education classes. The classes are taught by private schools licensed and regulated closely by the state. In order to obtain a driver's license, certain citizens under the age of 25 must obtain a certificate from one of the private schools certifying completion of the driver education program. The plaintiffs in the case allege that the private schools did not accommodate their hearing disabilities.

The U.S. Court of Appeals for the Fifth Circuit held that the Texas Education Agency, which licenses the driver education schools, "does not provide the program, service, or activity of driver education," and

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is therefore not required to ensure that the driver education schools comply with the ADA. The Supreme Court agreed in June 2016 to hear the case.

The *amicus* brief, which supports neither party, urges the Supreme Court to reverse the Court of Appeals decision, but to do so in a very narrow opinion. In particular, the brief argues that the Court should hold that "state and local governments and other public entities must ensure that private persons comply with the ADA only where those private persons may fairly be said to be implementing the government's own services, programs or activities." The brief asserts that on the unusual, if not unique, facts of this case, the private schools may fairly be said to be implementing a program of the state because a certificate from one of the private schools is required to obtain a driver's license, and because issuing licenses to drive on public roads is inherently a governmental function.

The *amicus* brief also asserts that the result would be different if Texas regulated private driver education schools exactly as it does now, but did not require a certificate from one of the schools to obtain a driver's license. In that regard, the brief argues that "this Court should make clear that a state or local government or other public entity has no duty to ensure compliance with the ADA by private persons when it is licensing or otherwise regulating private conduct."

The brief further asserts: "No amount of regulation of private conduct, by licensing or otherwise, should be sufficient to impose on a public entity a duty to enforce compliance with the ADA by private persons. This approach is consistent with the language and intent of the ADA, and also respects important practical and federalism concerns." *Amici* also explain that this does not mean that private persons need not comply with the ADA, but rather that state and local governments do not become responsible for enforcing that federal statute merely because they regulate private conduct.

The brief was authored by Richard A. Simpson, a partner in Wiley Rein's Appellate, Litigation, and Insurance practices; Government Contracts associate Tara L. Ward; and Insurance associate Emily S. Hart, along with Lisa E. Soronen, Executive Director of the State and Local Legal Center.

To read the brief, please click here.