

# Supreme Court to Hear Challenge to “Preclearance” Provision of Voting Rights Act

November 13, 2012

On Friday, November 9, 2012, the United States Supreme Court agreed to hear *Shelby Co., Ala. v. Holder*, a case that challenges the constitutionality of the 2006 Congressional reauthorization of Sections 4(b) and 5 of the Voting Rights Act.

Section 4(b) of the Voting Rights Act sets out a historically-based formula that identifies certain states and political subdivisions as subject to Section 5 of the Voting Rights Act—that is making them “covered” jurisdictions because of alleged past discriminatory voting practices at one time—and requires them to “preclear” all voting changes with the United States Department of Justice. Nine states and parts of seven others are subject to these provisions.

Wiley Rein LLP represents Shelby County, Ala.—one of the “covered” jurisdictions—in the case, along with Edward Blum, the head of the Project on Fair Representation. Wiley Rein name partner Bert W. Rein will argue the case before the Court, and the firm’s key appellate lawyers on the team include partners William S. Consovoy and Thomas R. McCarthy, and associate Brendan J. Morrissey.

Shelby County brought the challenge on April 27, 2010, arguing that Congress exceeded its enforcement authority under the 14th and 15th amendments when it reauthorized the so-called “preclearance” provision and thus violated the Tenth Amendment and Article IV of the Constitution. The lawsuit claims that Sections 4(b) and 5 were reauthorized by Congress in 2006 for another 25 years without sufficient evidence of whether intentional racial discrimination in voting by “covered” jurisdictions was still occurring at that time.

## Related Professionals

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## Practice Areas

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In the case of *Shelby*, the lawsuit points out that coverage arises from voting practices and data from 1964. Furthermore, it notes that the reauthorized statute did not take into account either substantial improvements that have occurred in these "covered" jurisdictions during the last four decades, or how voting practices in these jurisdictions now compare to those in "non-covered" jurisdictions that should be addressed.

Wiley Rein's Appellate Practice stands apart for its ability to counsel and advocate on behalf of major corporations and entire industries as they confront complex statutory and constitutional issues, whether arising on appeal or at any stage of litigation. Leveraging the knowledge of attorneys from two dozen practice areas, the firm also is well-known for handling difficult and sensitive regulatory and compliance matters that often lead to litigation or direct appellate review. Last month, Mr. Rein argued before the Court on behalf of Abigail Fisher in *Fisher v. University of Texas*, and a decision is pending. With the Court having granted cert for *Shelby County, Ala. v. Holder*, Wiley Rein will be counsel of record in two marquee cases before the Court this Term.