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Winning the Battle is Not Winning the War: Obtaining a Preliminary Injunction Does Not Confer "Prevailing Party" Status for Recovery of Attorney's Fees

Lackey v. Stinnie, 145 S. Ct. 659 (Feb. 25, 2025)

In *Lackey v. Stinnie*, the U.S. Supreme Court ruled that a plaintiff who gained only preliminary injunctive relief before her case became moot had not obtained prevailing-party status—which would allow her to recover attorney's fees under 42 U.S.C. § 1988(b)—because she had not obtained a judicially sanctioned, enduring change that altered the legal relationship of the parties.

Under 42 U.S.C. § 1988(b), the federal civil rights statute, a "prevailing party" can, in a district court's discretion, be awarded attorney's fees as part of costs in an action. Under prior precedent, the Supreme Court refined the requirements concerning "prevailing party" status. In *Buckhannon Board & Home Health Care, Inc. v. West Virginia Dept. of Health & Human Resources*, 532 U.S. 598, 606 (2001), the Supreme Court held that a voluntary change in a defendant's conduct (a "catalyst" theory) did not qualify plaintiffs as prevailing parties if the change in conduct was not "judicially sanctioned."

In *Sole v. Wyner*, 551 U.S. 74 (2007), the Supreme Court added a further refinement to the "judicially sanctioned" requirement, also requiring the change to be "enduring." In *Sole,* a plaintiff was granted a preliminary injunction, but the district judge reversed that interlocutory decision by rejecting the plaintiff's claims on the merits at the permanent injunctive stage. The Supreme Court held that, since the plaintiff's preliminary win was "ephemeral," the result was not "enduring" because the plaintiff "ha[d] won a battle but lost the war."

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Lackey presented the Supreme Court with the opportunity to confront the issue left unresolved in *Sole*: whether—in the absence of a final decision on the merits of a claim for permanent injunctive relief (the exact situation in *Sole*)—success in gaining a preliminary injunction may sometimes warrant an award of attorney's fees under the federal civil rights statute.

Plaintiff Stinnie was one of the lead plaintiffs in a class action commenced against the commissioner of the Virginia Department of Motor Vehicles, alleging that Virginia violated the federal civil rights statute by suspending driver's licenses without sufficient notice of a hearing, under a controversial state statute where a license was suspended until past court fines and costs were paid. The district judge granted the plaintiff a preliminary injunction, providing temporary relief through a prohibition of enforcement against the plaintiff or future class members. Subsequently, the Virginia General Assembly repealed the controversial statute and required the permanent reinstatement of driver's licenses suspended under that repealed statute. Based on the legislative action, the parties agreed that the case had become moot and stipulated to its dismissal.

The plaintiff then moved for attorney's fees under Section 1988(b), a request denied by the district judge and initially affirmed by the Fourth Circuit Court of Appeals. Later, after an *en banc* rehearing, the Fourth Circuit reversed its earlier decision, articulating a new standard: when a preliminary judgment provides relief on the merits and becomes moot before final judgment is entered, the subsequent mootness of the case does not preclude an attorney's fees award.

The Supreme Court granted certiorari to resolve "whether the term 'prevailing party' in Section 1988(b) encompasses a party who is awarded a preliminary injunction, if the case becomes moot before the court reaches a final judgment." In a 7-2 opinion authored by Chief Justice Roberts, the Supreme Court held that plaintiff was not a "prevailing party" under Section 1988(b) because the preliminary injunction victory alone did not provide an "enduring" and "judicially sanctioned" change in the legal relationship of the parties.

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The Supreme Court further held that subsequent, external events rendering a dispute moot did not convert the temporary order into a conclusive adjudication because a preliminary injunction is not a dispositive ruling, and district judges sometimes arrive at a different result after deciding a case on the full merits with more proof, arguments, and hearings.

There is, however, an interesting (asterisked) footnote with important clarifying language at the end of the *Lackey* majority opinion, reminding readers that a separate body of caselaw addresses when a defendant is a prevailing party. This footnote observes that the interpretation as to who is a prevailing party is different for *defendants* versus *plaintiffs* because both sides come to court with different objectives.

Finally, in her dissent, Justice Jackson suggested that research showed that the Supreme Court's earlier rejection of the "catalyst" theory in *Buckhannon* had discouraged public-interest organizations and private attorneys from taking on civil rights action. She expressed the opinion that "the net result of [*Lackey*] will be less civil rights enforcement in the long run."

Key Takeaways

- The *Lackey* opinion has broader implications for fee-shifting statutes beyond just Section 1988(b). As the Fourth Circuit observed in its opinion (later reversed by the Supreme Court), the "prevailing party" phrase "is a legal term of art that [federal courts] interpret consistently across all federal fee-shifting statutes." Since most federal statutes do not define "prevailing party," *Lackey* will likely have an impact on construing the breadth of this phrase for other fee-shifting statutes.
- *Lackey*'s implications will also have consequences in state court cases. State courts have concurrent jurisdiction over federal civil right claims arising under 42 U.S.C. § 1983. Besides that, many state fee-shifting statutes have "prevailing party" terminology, not defined in the statute, with interpretive case law being persuasive on which side achieves its litigation

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objectives for purposes of awarding attorney's fees.

- *Lackey*'s asterisked footnote is an important qualifier when determining whether plaintiffs or defendants are "prevailing parties," given the Supreme Court's recognitions that the defense has different objectives in litigation—oftentimes nothing more than seeing that it is dismissed (whether voluntarily or involuntarily). The Supreme Court majority in *Lackey* was careful to indicate its reasoning should not be read to affect the Supreme Court's previous holding that a defendant need not obtain a favorable judgment on the merits to prevail, nor to address the open issue of whether a defendant must obtain a preclusive judgment to prevail.
- The mootness reasoning in *Lackey* has since supported the Ninth Circuit's denial of a civil rights appellate fee request to the plaintiff, in *Teter v. Lopez,* 135 F.4th 1176 (9th Cir. 2025).

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