IN THE SUPREME COURT OF THE UNITED STATES

No. 23-621

GERALD F. LACKEY, IN HIS OFFICIAL CAPACITY
AS THE COMMISSIONER OF THE VIRGINIA
DEPARTMENT OF MOTOR VEHICLES, PETITIONER

v.

DAMIAN STINNIE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION OF THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER FOR LEAVE TO PARTICIPATE IN AND FOR DIVIDED ORAL ARGUMENT

Pursuant to Rules 21, 28.4, and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States as amicus curiae supporting petitioner, respectfully moves that the United States be granted leave to participate in the oral argument in this case, and that the time be allotted as follows: 20 minutes for petitioner, 10 minutes for the United States, and 30 minutes for respondents. Petitioner consents to this motion.

The questions presented in this case concern whether plaintiffs who initially obtained a preliminary injunction but whose claims for relief were ultimately dismissed as moot qualify as "prevailing parties" eligible for attorney's fees under 42 U.S.C. 1988(b). This Court has "long held that the term 'prevailing party' in fee statutes is a 'term of art.'" Astrue v. Ratliff, 560 U.S. 586, 591 (2010). That term of art appears in numerous fee-shifting statutes, including statutes under which the United States may be ordered to pay attorney's fees. See, e.g., 28 U.S.C. 2412(b) and (d)(1)(A) (Equal Access to Justice Act); 42 U.S.C. 2000e-5(k), 2000e-16(d) (Title VII). In addition, Section 1988(b) authorizes attorney's-fee awards in private civil rights suits that complement the government's own enforcement efforts. The United States therefore has a substantial interest in the Court's resolution of this case.

The United States has previously participated in oral argument in attorney's-fee disputes concerning the meaning of "prevailing party" both as amicus curiae, see, e.g., Sole v. Wyner, 551 U.S. 74 (2007) (Section 1988); Buckhannon Bd. & Care Home, Inc. v. West Va. Dep't of Health & Hum. Res., 532 U.S. 598 (2001); Hewitt v. Helms, 482 U.S. 755 (1987) (Section 1988), and as a litigant in cases in which federal agencies were parties, see, e.g., CRST Van Expedited, Inc. v. EEOC, 578 U.S. 419 (2016); Astrue v. Ratliff, supra; Sullivan v. Hudson, 490 U.S. 877 (1989). More

generally, the federal government has participated at oral argument as amicus curiae[1] and as a party[2] in numerous cases concerning "prevailing party" attorney's-fee provisions. Oral presentation of the views of the United States is therefore likely to be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

JULY 2024

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[1] See, e.g., Kirtsaeng v. John Wiley & Sons, Inc., 579 U.S. 197 (2016) (Copyright Act); Highmark Inc. v. Allcare Health Mgmt. Sys., Inc., 572 U.S. 559 (2014) (Patent Act); Highmark Inc. v. Allcare Health Mgmt. Sys., Inc., 572 U.S. 559 (2014) (same); City of Burlington v. Dague, 505 U.S. 557 (1992) (Solid Waste Disposal and Clean Air Acts); Kay v. Ehrler, 499 U.S. 432 (1991) (Section 1988); Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 483 U.S. 711 (1987) (Clean Air Act); North Carolina Dep't of Transp. v. Crest St. Cmty. Council, Inc., 479 U.S. 6 (1986) (Section 1988).

[2] Richlin Sec. Serv. Co. v. Chertoff, 553 U.S. 571 (2008) (Equal Access to Justice Act); Scarborough v. Principi, 541 U.S. 401 (2004) (same); Melkonyan v. Sullivan, 501 U.S. 89 (1991) (same); Commissioner, INS v. Jean, 496 U.S. 154 (1990) (same); Pierce v. Underwood, 487 U.S. 552 (1988) (same); Library of Congress v. Shaw, 478 U.S. 310 (1986) (Title VII).