No.: 24-_____

IN THE

Supreme Court of the United States

RYAN HAYGOOD;
HAYGOOD DENTAL CARE, L.L.C.,
Petitioners,

—v.—

CAMP MORRISON; C. BARRY OGDEN; KAREN MOORHEAD; DANA GLORIOSO,
Respondents

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

After the state appellate court vacated the dental board's decision to revoke his dental license on due process grounds, Petitioner filed a federal suit against Respondents. The District Court dismissed Petitioner's 42 U.S.C. § 1983 claim as time barred, with prejudice, and awarded prevailing defendant attorney's fees.

The Fifth Circuit agreed Petitioner's due process rights were likely violated, but held malicious prosecution *cannot be* the analogous tort because the favorable termination occurred while the federal suit was pending and, without considering any other frivolity factors, held the time bar outweighed the merits of the claim. The Fifth Circuit also held that the § 1983 and state tort claims were "so closely interwoven," that the reasonableness of the fee award turned entirely on whether it was correctly calculated under 42 U.S.C. § 1988.

The questions presented are:

1. Is it proper to deem an otherwise meritorious § 1983 claim "so clearly time-barred" that it is frivolous under § 1988 based solely on an uncertain analogous tort, or did the lower courts error by deeming the civil rights claim meritless and awarding prevailing defendant attorney's fees?

2. Was the lower court's award of defendants' attorney's fees properly calculated?

PARTIES TO THE PROCEEDING

Dr. Ryan Haygood and Haygood Dental Care, LLC, petitioners on review, were the plaintiffs-appellants below.

Camp Morrison, C. Barry Ogden. Karen Moorhead and Dana Glorioso, respondent on review, were the defendants-appellees below.

Brian Begue, Ross H. Dies, DDS, Ross H. Dies, DDS, J. Cody Cowen, DDS and Benjamin A. Beach, DDS, a Professional Dental Limited Liability Company, Dr. Robert K. Hill, Hill DDS, Inc., Robert DDS, Inc., Camp Morrison Investigations, LLC, H.O. Blackwood, DDS, Dean Manning, D.D.S., Aubrey Baudean, Jr. D.D.S., Patricia Cassidy, RDH, Wilton Guillory, Jr., D.D.S., Romell Madison, D.D.S., Frank Martello, D.D.S., Russell Mayer, D.D.S., Conrad P. McVea, III, D.D.S., David L. Melancon, D.D.S., James Moreau, D.D.S., Lynn Philippe, D.D.S., John Taylor, D.D.S. and Samuel Trinca, D.D.S., were defendants below but were not parties to the appeal below and are not parties to this petition.

RULE 29.6 STATEMENT

Haygood Dental Care LLC is a Louisiana limited liability company whose only member is Dr. Ryan Haygood and no publicly held corporation holds more than 10% of its stock.

LIST OF ALL PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

Haygood v. Morrison, No. 23-30194 (5th Cir.), judgment entered on September 17, 2024;

Haygood et at. v. Begue, et al., No.13-CV-0335, (W.D. La.):

- Memoranda Rulings and Orders granting motion to dismiss, entered March 31, 2014;
- Memorandum Rulings and Order awarding attorney's fees to defendants, entered on March 14, 2019;
- Memorandum Order denying Plaintiffs' *Motion for Reconsideration of and/or to Alter or Amend the Memorandum Ruling and Order Granting Attorney's Fees to Defendants Barry Ogden, Camp Morrison, Dana Glorioso, and Karen Moorhead*, entered February 7, 2020;
- Memorandum Order and Order awarding attorney's fees and costs in the amount of $110,993.62 to Respondents, entered August 17, 2021;
- Memorandum Order denying in part and granting in part *Motions to Reconsider and/or to Alter or Amend the Memorandum Rulings and Orders Awarding Attorney's Fees to Defendants*, entered January 28, 2022; and,
- Memorandum Order vacating stay of orders awarding attorney fees, entered on March 29, 2023.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Court of Appeals is reported as *Haygood v. Morrison*, 116 F.4th 439 (5th Cir. 2024), and reprinted at App. 3-17a. The District Court's opinions are not reported and are reprinted at App. 33-34a, 37-51a, 57-83a. The order of the Court of Appeals denying rehearing is reprinted at App. 1-2a.

JURISDICTION

The judgment sought to be reviewed was entered by the Court of Appeals on August 15, 2024, withdrawn and substituted September 17, 2024. The decision of the Court of Appeals denying rehearing *en banc* was entered on September 17, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988, provides as follows:

> In any action or proceeding to enforce a provision of , , , , , and of this title, title IX of , the Religious Freedom Restoration Act of 1993, the Religious Land Use and Institutionalized Persons Act of 2000, title VI of the Civil Rights Act of 1964, or , the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or

> omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

STATEMENT OF THE CASE

I. INTRODUCTION

Nearly twenty years ago, Petitioner, Dr. Ryan Haygood ("Haygood") made the mistake of opening a profitable dental practice in his hometown of Shreveport, Louisiana— and he has been paying for it ever since. The trouble began for Haygood when his advertising campaign successfully recruited patients from other established dentists. Upset, those established dentists used their influence with, and positions on, the Louisiana State Board of Dentistry ("the Board") to remove him as competition. Between 2006-2010, the Board aggressively investigated Haygood, going so far as to send their dental assistants to his office complaining of fake symptoms so they could charge him with misdiagnosing patients.

After an unabashedly unconstitutional administrative hearing, during which the false evidence was introduced by the Board's general counsel (who also served as the Board's independent counsel, prosecutor and factfinder during the proceedings), the Board decided to permanently revoke Haygood's dental license, "assessed the maximum monetary fine allowed by law $40,000, [and awarded] all costs at $133,074.02," to reimburse the Board for their sham investigation and unfair hearing. App. 89-106a. Haygood successfully appealed to the Louisiana Fourth Circuit, which vacated the

Board's decision on September 26, 2012, and remanded.

To be clear—the fact that the Board and its agents violated Haygood's right to due process, and arbitrarily and capriciously deprived him of his dental license, is not in dispute. The Louisiana Fourth Circuit held Haygood's due process rights were violated by the Board, and the U.S. Fifth Circuit agreed that "Haygood's due process rights were likely violated by at least some of the named defendants during the pendency of the Board's investigation." App. 10a & 104-105a. And yet, Haygood is liable to Respondents for nearly $100,000 in attorney's fees for a § 1983 claim that was dismissed at the initial pleadings stage on a procedural affirmative defense.

Which brings us to the "sprawling legal quagmire" no one could have anticipated when Haygood opened the doors to his Shreveport dental office, though it will certainly make future dentists think twice before setting-up shop in the Shreveport/Bossier area. Shortly after the Board revoked his license, and exactly one year before the Board's decision was reversed, Haygood filed suit in Louisiana state court against the individuals involved in the conspiracy – including Respondents: Barry Ogden, the President of the Board, Camp Morrison, the Board's lead investigator, and Dana Glorioso and Karen Moorhead, dental assistants employed by Haygood's competitors who acted as unlicensed investigators and manufactured evidence at the Board's behest (collectively referred to as "Ogden"). Ogden excepted to the state court suit as premature pending resolution of Haygood's appeal of the Board's

decision and they were dismissed from the state court suit in early 2012.

In February 2013, two months after the Louisiana Supreme Court denied writs on the reversal of the Board's decision, Haygood sued Ogden, and others, in the United States District Court for the Western District of Louisiana. App. V. Ogden countered with a Rule 12(b)(6) motion to dismiss. Unlike in the state suit where they asserted prematurity, in response to the federal suit Ogden argued that the statute of limitations for Haygood's § 1983 claim expired in 2011. The District Court agreed, and dismissed Haygood's civil rights claim with prejudice as "clearly" time barred. App. 72-73a.

Four years after the dismissal, in March 2018, Ogden filed a motion for attorney fees under 42 U.S.C. § 1988, a fee shifting statute which permits an award of reasonable attorney's fees to prevailing parties in civil rights litigation, which this Court has recognized may not be awarded to a prevailing defendant except where the plaintiff's action was frivolous, unreasonable, or without foundation. The Ogden defendants also sought fees under La. R.S. 51:1409(A), the fee shifting provision of the *Louisiana Unfair Trade Practices Act*, ("LUTPA"), which permits defendant's attorney's fees for a frivolous claim brought in bad faith. Notably, the motion did not provide any evidence of frivolity under § 1988, which was defendants' burden to prove, nor could they point to anything in the record to support such a finding. There was no evidence of bad faith, whatsoever.

Nevertheless, without considering any frivolity factors or elements of bad faith, the court granted Ogden's fee motion, finding that, because Haygood's

civil rights claim was time-barred, it was necessarily, sufficiently frivolous to merit the penal award to the defendants under § 1988, and, because the complaint failed to state a claim for relief under LUTPA, it was therefore meritless and brought in bad faith. App. 64-65 & N. Ogden submitted their time reports in May 2019.

In August 2021, *over two years later*, the District Court ordered Haygood pay Ogden[1] $110,993.62 in attorney's fees and denied Haygood's motion to reconsider despite this Court's intervening opinion in *McDonough v. Smith*, 588 U.S. 109 (2019). App. L, H-I.

Haygood appealed, but the Fifth Circuit affirmed; holding that, even though his civil rights were "likely violated," malicious prosecution cannot be the analogous tort because the favorable termination it identified (a 2016 consent decree) occurred during the pendency of the suit and, therefore, the time bar outweighed the merits such that the award of the prevailing defendants' attorney's fees was proper. The Fifth Circuit further held that, because the state tort claim and federal civil rights claim were "so closely interwoven," the reasonableness of the defendants' fee award turned entirely on whether the District Court

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[1] Notably, the Ogden defendants were not responsible for the cost of their defense. As shown on their invoices, the State of Louisiana covered their attorney's fees, even though the Ogden defendants were denied coverage by the Office of the Attorney General pursuant to La. R. S. 13:5108.1. Haygood was not permitted an opportunity to brief this issue in the District Court before it set the fee award, and the District Court denied reconsideration.

correctly calculated the award under § 1988. App. 10-15a.

The Fifth Circuit's ruling contravenes decades of authority from this Court, sharply diverged from its own precedent, and deeply conflicts with the well-settled jurisprudence of all other circuits courts. Accordingly, Haygood now seeks this Court's intervention to prevent inconsistency and confusion in the application of § 1988, and in the interests of justice.

II. PRECEDENTIAL BACKDROP

A. Attorney's Fees Under § 1988

In *Christiansburg Garment Company v. EEOC,* this Court first considered when attorney's fees should be awarded to prevailing defendants in civil rights actions, and identified two equitable considerations that support a higher standard for prevailing defendants:

> First, as emphasized so forcefully in *Piggie Park,* the plaintiff is the chosen instrument of Congress to vindicate "a policy that Congress considered of the highest priority." Second, when a district court awards counsel fees to a prevailing plaintiff, it is awarding them against a violator of federal law.

434 U.S. 412, 418 (1978) (quoting *Newman v. Piggie Park Enters.,* 390 U.S. 400, 402 (1968)). In light of these considerations, the Court held that a district court may only award attorney's fees to a prevailing defendant "upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation,

even though not brought in subjective bad faith." *Id.* at 421.

This Court cautioned in *Christiansburg* that in applying these criteria, courts should resist the temptation to engage in *post hoc* reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation. *Id.* at 421-22. To this end, the Court noted that "the course of litigation is rarely predictable," and "[d]ecisive facts may not emerge until discovery or trial." *Id.* at 422. Thus, "[e]ven when the law or the facts appear questionable or unfavorable at the outset, a party may have an entirely reasonable ground for bringing suit." *Id.*

In *Hughes v. Rowe,* this Court held that the same demanding standard applied in *Christiansburg* applies under § 1988. 449 U.S. 5 (1980). The Court reasoned, "[t[he plaintiff's action must be meritless in the sense that it is groundless or without foundation. The fact that a plaintiff may ultimately lose his case is not in itself a sufficient justification for the assessment of fees." *Id.* at 14. Emphasizing the rigor of the *Christiansburg* standard, the Court noted that "[a]llegations that, upon careful examination, prove legally insufficient to require a trial are not, for that reason alone, 'groundless' or 'without foundation' as required by *Christiansburg*." *Id.* at 15-16.

B. Frivolity Under § 1988

Under §1988, "attorney's fees for prevailing defendants are disfavored, strictly construed, and presumptively unavailable, but may still be awarded upon a finding that "the plaintiff's action was frivolous, unreasonable, or without foundation." *Christiansburg, supra.* The "plaintiff's ultimate

failure to prevail does not automatically establish that 'the action must have been unreasonable or without foundation' thereby warranting an award of attorney's fees." *Dean v. Riser,* 240 F. 3d 505, 508 (5th Cir, 2001) citing C*hristiansburg, supra*, at 421).

The burden is on the defendant to demonstrate that the plaintiff's claim lacked an arguable basis in fact or law and is therefore sufficiently frivolous to justify the award of the defendant's attorney fees. Importantly, as the award is penal in nature, it is not appropriate to award defendant attorney fees when a plaintiff's claim is "colorable and of arguable merit." As this Court held in *Hughes,* allegations that, upon careful consideration, prove legally insufficient to require a trial, are not, for that reason alone, groundless or without foundation for the purpose of awarding prevailing defendant attorney's fees. Moreover, an action is not frivolous where the record contained some plausible evidence supporting plaintiff's claims. *Stover v. Hattiesburg Pub. Sch. Dist.*, 549 F.3d 985 (5th Cir. 2008).

Last year, in *Vaughan v. Lewisville Indep. Sch. Dist.,* 62 F.4th 199 (5th Cir. 2023), the Fifth Circuit provided guidance on the meaning of "frivolous" under *Christiansburg,* outlining a range of factors a district court may consider in its evaluation of the plaintiff's claim, such as:

> [W]hether the plaintiff established a *prima facie* case; whether 'squarely controlling precedent' foreclosed the plaintiff's legal argument, whether the plaintiff's evidence was so lacking that 'there is no basis from which to say the[ ] claims were not frivolous,' whether the defendant offered to settle, and

> whether the plaintiff's claim was so obviously meritless that it was dismissed prior to trial. When evaluating sanctions against a party, we have also found pertinent whether parties advancing "controversial" theories make good-faith attempts to "extend the law."

Id. at 205. In *Vaughan*, plaintiff argued that a recent Supreme Court case supported his claim. The Fifth Circuit vacated the award of defendant's attorney fees under § 1988, reasoning that the plaintiff's "argument is not sanctionable simply because the district court concluded it was wrong, particularly given ongoing evolution in courts' views on standing in redistricting cases" and holding that "sanctions against [the plaintiff] were unwarranted because precedent in this circuit did not squarely foreclose his legal argument and because he sought to extend existing law." *Id.* at 206.

C. § 1983 Accrual Analysis

Courts look to state law for the length of the limitations period, but the time at which a § 1983 claim accrues "is a question of federal law," "conforming in general to common-law tort principles." *McDonough*, 588 U.S. at 115 (2019) (citing *Wallace v. Kato*, 549 U.S. 384, 388 (2007)). "That time is presumptively 'when the plaintiff has 'a complete and present cause of action,' though the answer is not always so simple." *Id.* (citing *Dodd v. United States*, 545 U.S. 353, 360 (2005)) (internal citation omitted). A claim may accrue at a later date if it "may not realistically be brought while a violation is ongoing." *Id.* (citing *Wallace*, 549 U.S. at 389).

An accrual analysis begins with identifying "the specific constitutional right" alleged to have been infringed. *Manuel v. Joliet*, 580 U.S. 357, 369 (2017). Courts often decide accrual questions by referring to the common-law principles governing analogous torts. *See Wallace*, 549 U.S. at 388; *Heck v. Humphrey*, 512 U.S. 477, 483 (1994). These "principles are meant to guide rather than to control the definition of § 1983 claims," such that the common law serves " 'more as a source of inspired examples than of prefabricated components.' " *Manuel*, 580 U. S., at 370.

In *McDonough,* this Court held that fabricated evidence claims under § 1983 cannot be brought before a favorable termination of the prosecution. As *Heck* explains, malicious prosecution's favorable-termination requirement is rooted in pragmatic concerns with avoiding parallel criminal and civil litigation over the same subject matter and the related possibility of conflicting civil and criminal judgments. *See Heck, 512 U.S.* at 484–485.

Importantly, "a *Heck* dismissal is a dismissal without prejudice," and a plaintiff is permitted to reassert their § 1983 claim after it accrues upon a favorable termination. *Wilson v. Midland Cnty., Texas,* 116 F.4th 384, 398 (5th Cir. 2024) (*citing Cook v. City of Tyler*, 974 F.3d 537, 539 (5th Cir. 2020)).

D. § 1988 Award Calculations

Regarding the amount awarded under § 1988, in *Hensley v. Eckerhart,* the Court held that in actions in which claims for relief are based on different and unrelated facts and legal theories, "no fee may be awarded for services on the unsuccessful claim." 461 U.S. 424, 434-35 (1983). Conversely, where the prevailing plaintiff's claims "involve a common core of

facts or will be based on related legal theories, . . . the district court should focus on the significance of the overall relief obtained by the plaintiff in relation to the hours reasonably expended on the litigation." *Id.* However, the Court cautioned, "Congress has not authorized an award of fees whenever it was reasonable for a plaintiff to bring a lawsuit." *Id.* at 436.

To assist calculating a fee award applicants must "maintain billing time records in a manner that will enable a reviewing court to identify distinct claims." *Id.* at 437. Furthermore, the Court emphasized the importance of the court "provid[ing] a concise but clear explanation of its reasons for the fee award." *Id.* However, the determination of fees "should not result in a second major litigation." *Id.*

"[T]he fee applicant (whether a plaintiff or a defendant) must, of course, submit appropriate documentation to meet 'the burden of establishing entitlement to an award.' And appellate courts must give substantial deference to these determinations." *Fox v. Vice*, 563 U.S. 826, 838–39 (2011). However, "the trial court must apply the correct standard, and the appeals court must make sure that has occurred." *Id*. (citing *Perdue v. Kenny A.,* 559 U.S. 542, 548 (2010) ("Determining a 'reasonable attorney's fee' is a matter that is committed to the sound discretion of a trial judge, ... but the judge's discretion is not unlimited").

In *Fox*, *supra*, this Court held that "a defendant may recover the reasonable attorney's fees he expended solely because of the frivolous allegations. And that is all. Consistent with the policy underlying § 1988, the defendant may not receive compensation

for any fees that he would have paid in the absence of the frivolous claims." *Fox* at 840–41. Accordingly, "the trial court must determine whether the fees requested would not have accrued *but for* the frivolous claim. And the appeals court must determine whether the trial court asked and answered that question, rather than some other. A trial court has wide discretion when, *but only when*, it calls the game by the right rules." *Id*. (emphasis added).

III. FACTUAL BACKGROUND

Haygood opened a dental practice in Shreveport/Bossier City, Louisiana, and successfully recruited patients from other established dentists though an aggressive advertising campaign. Those dentists then conspired to drive Haygood from the market by using their influence with, and positions on, the state dental board to have Haygood's dental license revoked.

Beginning in late 2006, the Board launched an investigation into Haygood spearheaded by Barry Ogden and Camp Morrison, the Board's President and lead investigator, respectively. During the investigation, Barry Ogden and Camp Morrison enlisted two dental assistants employed by Haygood's competitors (and Board members) to act as unlicensed investigators, Dana Glorioso and Karen Moorhead (collectively, "Ogden"), who then presented at Haygood's office with intentionally inaccurate symptoms and medical histories to manufacture evidence the Board could use to remove him as competition in the Shreveport dental market.

In 2007, the Board initiated disciplinary proceedings against Haygood which, in 2010, culminated in an administrative hearing during

which the Board's general counsel acted as "prosecutor, general counsel, panel member, and adjudicator." App. 104-105a. The Board then permanently stripped Haygood of his license, found him in violation of all charges (even ones that were previously withdrawn) and, in addition to the maximum penalty permitted ($40,000), assessed $133,074.02 for the Board's costs.

Haygood successfully appealed to the Louisiana Fourth Circuit Court of Appeals. In its 2012 opinion, the appellate court held the Board had impermissibly combined the prosecutorial and judicial functions to deny Haygood his right to a neutral adjudicator and a fair hearing, and its decision to strip Haygood of his license was arbitrary and capricious. *Id*.

In 2011, while the appeal was pending, Haygood filed a civil action in state court against the individuals involved in, and affiliated with, the investigation, including Ogden. The state suit alleged violations of Haygood's due process rights and averred that the competing dentists, the Board members, and Board employees had engaged in unfair competition by using the Board's investigative powers to drive him from the marketplace. In response, Ogden moved to dismiss the claims as premature due to the pending state appeal. The state court judge agreed and dismissed Ogden from the suit. Haygood appealed to the Louisiana Second Circuit Court of Appeals.

In 2016, four years after the state appellate court vacated, reversed, and remanded the Board's decision, Haygood entered a consent decree with the Board that allowed him to keep his dental license.

IV. PROCEDURAL HISTORY

In February 2013, two months after the Louisiana Supreme Court denied writs on the reversal of the Board's decision, and while the appeal of Ogden's dismissal from the state suit was pending, Haygood sued Ogden (and others) in federal court under, *inter alia*, § 1983 and LUTPA.

In the Complaint, Haygood asserted claims based on the deprivation of his right to a fair and impartial hearing; presentation of knowingly false and exaggerated claims; presentation of unlawfully obtained evidence; and "other actions" which were described in detail and expressly alleged under § 1983. *See e.g.,* App. V at ¶¶ 14-45, 77-92, 96-101.

Though they had successfully argued in state court that Haygood's claims were premature, in response the federal complaint, Ogden filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss asserting that Haygood's § 1983 claims were time-barred on statute of limitations grounds.[2] In March 2014, the District Court ruled that Haygood's § 1983 claim was time-barred, granted Ogden's motion, and dismissed Haygood's claims, *with prejudice*, and without leave to amend. App. 82a. Haygood appealed to the Fifth Circuit.

In March 2018, four years after Haygood's federal claims against them were dismissed, Ogden filed a Motion for Attorney's Fees, which was granted, and Ogden submitted their time reports. App. O & M.

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[2] The Louisiana Second Circuit reversed the state court dismissal on May 15, 2013, twelve days after Ogden filed the motion to dismiss in the federal suit. *Haygood v. Dies*, 47,765 (La. App. 2 Cir. 5/15/13), 114 So. 3d 1206, 1211.

In 2020 and 2022, the District Court refused to reconsider the award in light of *McDonough*. App. L & G. Haygood appealed to the Fifth Circuit.

In 2020, the Fifth Circuit dismissed Haygood's appeal of the award as premature because the amount was undetermined. App. J & K. The District Court never issued a briefing schedule but, in August 2021, it awarded Ogden $110,261.16 in attorney's fees and $732.46 in costs. App. H & I. The court again refused to reconsider the award, and would not allow Haygood to submit briefs on the amount, but it stayed its order until the Fifth Circuit ruled on the appeal of Ogden's dismissal. App G.

In 2023, the Fifth Circuit dismissed Haygood's appeal of Ogden's dismissal for lack of jurisdiction. App. F. The District Court lifted the stay and ordered Haygood to pay Ogden $110,261.16 in attorney fees and $732.46 in costs. App. E. Haygood then appealed the propriety of the fee award (and the court's refusal to reconsider it), to the Fifth Circuit, which brings us to the matter now before this Court. App. T.

The Fifth Circuit heard oral arguments on July 8, 2024. On August 15, 2024, the panel issued its opinion, affirming the propriety of the award, but remitting fees awarded to the Office of the Attorney General, holding that "the district court did not err in awarding fees for a frivolous § 1983 claim, but it made a mistaken calculation of the amount." App. 17a, 34a & C.[3] Haygood timely filed a petition for rehearing *en*

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[3] The Fifth Circuit held that the District Court's erred in its calculation by awarding $11,594.66 for time billed by the Louisiana Attorney General's office for which there was little or no documentation. App. 17a.

banc. On September 17, 2024, the petition for rehearing *en banc* was denied, and the panel denied rehearing. App. A. However, the panel withdrew its original opinion and substituted a revised opinion amending their reasons for affirming the fee award (the original opinion relied on a partial quote from an unpublished case involving an inapplicable *in forma pauperis* statute as authority that all time-barred complaints may be properly deemed frivolous). App. 27a. Haygood now timely petitions this Court for review.

REASONS FOR GRANTING THE PETITION

There are two overarching issues before the Court. First, was Haygood's § 1983 claim properly dismissed and deemed frivolous? According to the District Court, it was frivolous because it was "clearly time barred." According to the Fifth Circuit, Haygood's "due process rights were likely violated by at least some of the named defendants during the pendency of the Board's investigation," but even if the claim had merit, because the favorable termination occurred after the suit was filed (but before any attorney's fees were awarded), malicious prosecution *cannot* be the analogous tort and, therefore, Haygood's claim was so clearly time-barred that it was properly deemed frivolous. Yet, even the most cursory review of the record belies the lower courts' conclusions; a "clearly" time-barred claim would not deserve the reasoned consideration seen in the lower courts and, considering this Court's intervening precedent in *McDonough,* Haygood's § 1983 claims should never have been dismissed as time-barred in the first place.

Moreover, the Fifth Circuit's *post hoc* reasoning that, because the favorable termination occurred during the pendency of the proceedings, the analogous tort *cannot be* malicious prosecution, is simply wrong— if a malicious prosecution claim is brought before a favorable termination it is premature and should be dismissed *without* prejudice so that the plaintiff can reassert it once the favorable termination occurs. Notably, if the civil rights claim had been dismissed *without* prejudice as premature, Ogden would not be considered a prevailing defendant under § 1988.

To make matters worse, neither Ogden, the District Court, nor the Fifth Circuit, ever identified which analogous tort applies. Sufficed to say, if the learned judges in the Fifth Circuit are having difficulty pinning down the analogous tort and date of accrual, Haygood's civil rights claim cannot be "so clearly time-barred" that it is sufficiently frivolous to justify the presumptively unavailable award of attorney's fees to the defendants who "likely violated" his civil rights.

The second overarching issue would be moot if the award is reversed entirely, but it still merits consideration in light of this Court's precedent: Were the Ogden defendants entitled to the amount of attorney fees they were awarded? In *Fox*, this Court held that, in a suit involving both frivolous and non-frivolous claims, "a defendant may recover the reasonable attorney's fees he expended solely because of the frivolous allegations. And that is all. Consistent with the policy underlying § 1988, the defendant may not receive compensation for any fees that he would

have paid in the absence of the frivolous claims." *Fox,* 563 U.S. at 840–41 (2011).

Here, the Fifth Circuit affirmed the District Court's LUTPA fee award in a footnote, stating that, "the LUTPA claim was "so closely interwoven" with the § 1983 claim that the district court did not err in using the federal standard exclusively and in failing to differentiate between the time billed on the LUTPA claim and the time billed on the § 1983 claim." App. 14-15a. They then held the District Court correctly calculated the fee award as to Ogden's private attorneys because it noticed they miscalculated their demand based on the amounts invoiced. Simple addition, however, is not the "obvious care and attention" required for the penal award, nor is there any mention of the lower court's efforts to segregate fees not related to frivolous claims as required by this Court.

Thus, not only did the Fifth Circuit impermissibly lower the standard for awarding attorney's fees to a defendant under § 1988, but it also undermined this Court's holding in *Fox* by permitting an award of attorney fees to a defendant under § 1988 on any claim so long as the lower court correctly adds the total amount of the defendants' invoices, regardless of whether that work would have been done *but for* the § 1983 claim. For these reasons, and for the reasons more fully set forth below, this Court should grant *certiorari* and reverse.

I. THE DECISION BELOW CREATES A CIRCUIT SPLIT

This Court's intervention is necessary to correct the conflict created by the Fifth Circuit's adoption of a diminished "frivolity" standard for time-barred civil

rights claims which, when satisfied, negates consideration of all other "frivolity factors."

Unless reversed by this Court, the law of the Fifth Circuit – and only the Fifth Circuit – will be that, depending on the analogous tort identified by the court, civil rights plaintiffs whose "civil rights were likely violated" and "established a *prima facie* case" could be liable for defendant's attorney's fees if their § 1983 claim is dismissed as time-barred at the initial pleadings stage. Practically applied, this novel, impermissibly low threshold permits the extraordinary, penal award of a defendant's fees under § 1988 for *any* time-barred claim (regardless of whether the plaintiff's claims had legal or factual merit) as "the propriety of the § 1988 fee award turns on whether the district court properly found the federal complaint time-barred and whether the time bar outweighed the underlying merits." App. 10a. This is not, nor should it be, the current standard under § 1988 and, if adopted, the chilling effect it would have on civil rights enforcement in the Fifth Circuit would completely undermine the spirit and intent of § 1983 and § 1988.

A. The Fifth Circuit's New Rule Substitutes the Frivolity Considerations with the Analogous Tort Accrual Analysis.

The mechanics of § 1983 claims are complex, confusing, and frequently require this Court's attention. As set forth above, to determine the proper accrual date, courts must first identify "the specific constitutional right alleged to have been infringed." *McDonough* at 115. Where the constitutional violation is tethered to a court proceeding, the related §1983

claim accrues at the conclusion of the proceeding. *See McDonough.* 588 U.S. at 122.

When he filed suit, Haygood reasonably believed his § 1983 claims (for which the "underlying analogous common law" tort he identified sounded in malicious prosecution, though that had not been settled at the time) accrued after the Board's decision was reversed on due process grounds. In their motion, Ogden argued that Haygood's 1983 claims accrued on the date of the Board's revocation Haygood's license, November 8, 2010. However, Ogden's position creates a paradox where Haygood's § 1983 cause of action was premature until it prescribed, as the state appellate court did not reverse that decision until September 26, 2012 (App. D), and the Louisiana Supreme Court did not deny writs until December 14, 2012. App. R. Haygood filed his Complaint on February 13, 2013, and he believed his right to pursue a § 1983 cause of action was timely and ripe. App. V. The Fifth Circuit, however, held that "the one-year limitations began to run on September 26, 2011," the day Haygood filed his state court suit. App. 14a. Accordingly, Haygood had until September 26, 2012, to file suit before the statute of limitations expired (which, coincidentally, was the same day the state appellate court vacated the Board's decision). Therefore, because it determined Haygood's federal suit was filed 4.5 months too late, the Fifth Circuit held that "the district court did not err in finding that the February 13, 2013, federal complaint was so clearly time-barred that it lacked arguable merit." App. 14a.

The Fifth Circuit did not provide any guidance on how to determine whether a time bar outweighs the underlying merits, but in so holding, the Fifth Circuit

not only ignored this Court's holding in *McDonough*, but it ran afoul of its own precedent. For example, in *Fusilier v. Zaunbrecher*, 806 Fed. Appx. 280 (5th Cir. 2020), the Fifth Circuit reversed the district court's dismissal of plaintiff's claim based on a finding that the case was time-barred, finding that the district court improperly analogized the constitutional claim to common law false arrest instead of malicious prosecution and therefore applied the wrong accrual date. *Id*., at 282-83. Accordingly, the Fifth Circuit concluded that where the "analogous common law tort" is malicious prosecution, plaintiff's claim accrued upon acquittal. *Id*.; s*ee also McDonough, supra*.

Yet, without citing any authority, providing any reasoning, or considering any other frivolity factors, the Fifth Circuit sharply diverged from its own precedent and held that, because the favorable termination it identified (the 2016 consent decree) occurred after the suit was filed, "malicious prosecution and/or fabrication of evidence *cannot be* the analogous tort [. . .] and the district court did not err in finding that the February 13, 2013, federal complaint was so clearly time-barred that it lacked arguable merit," and "did not err in awarding fees under § 1988." App. 12-15a (emphasis added). The logically inconsistent rule adopted by the Fifth Circuit has never been applied by this Court, nor in any other circuit, and this Court must intervene before another meritorious, but potentially premature, malicious prosecution claim is dismissed – with prejudice – and deemed frivolous under § 1988.

i. Only in the Fifth Circuit does the frivolity of a civil rights claim turn entirely on the court's analogous tort analysis.

The Fifth Circuit's decision contradicts decades of authoritative, controlling jurisprudence, and this Court's established precedent, that prevailing defendant's attorney fees are "presumptively unavailable" under § 1988 and should not be awarded when a claim has some arguable merit, such as here.

Though the Fifth Circuit acknowledged that defendant fee awards are "proper only upon a finding that the plaintiffs' suit is frivolous, unreasonable, or groundless," its decision cannot be reconciled with the well-settled, controlling precedent that such awards are inappropriate where the plaintiff raised "colorable" claims of "some arguable merit." *Vaughan,* 62 F.4th at 205; *see also, Jones v. Tex. Tech Univ.*, 656 F.2d 1137, 1145 (5th Cir. 1981)(reversing defendant attorney fee award as trial court did not adequately apply the *Christiansburg* standard to the facts of the case). Nevertheless, in its reasons for affirming, the lower court seemingly ignored the well-settled jurisprudence and intent of Congress to hold that "the frivolity of [Haygood's] § 1983 claim, and the propriety of the § 1988 fee award, turns on whether the district court properly found the federal complaint time barred." If adopted, this diminished standard would have a devastating effect on civil rights enforcement and completely undermine the spirit and intent of § 1983 and § 1988.

"Moreover, asserting a time-barred claim alone does not justify an award of attorney's fees. The statute of limitations is an affirmative defense the defendant must raise," and Haygood did not have to

anticipate Ogden would raise it. *Hoover v. Armco, Inc.*, 915 F.2d 355, 357 (8th Cir. 1990). The Fifth Circuit's rule that an otherwise meritorious § 1983 claim may be deemed frivolous on statute of limitations grounds alone starkly conflicts with the precedent of this Court, and all other circuit courts of appeal, and demands a swift and decisive response.

It bears repeating that the Fifth Circuit agreed Haygood's due process rights were likely violated, but the fact that his claim had merit was accorded no weight. Instead, the Fifth Circuit relied heavily on the District Court's holding that, because the claim was time-barred, it was frivolous; willfully ignoring the unsettled nature of the law at the time Haygood filed suit, this Court's intervening precedent, and without viewing any facts in a light favorable to Haygood. In the Eleventh Circuit, "when determining whether a claim was or became frivolous, [it views] the evidence in the light most favorable to the non-prevailing plaintiff." *Beach Blitz Co. v. City of Miami Beach, Fla.*, 13 F.4th 1289, 1297 (11th Cir. 2021)(*citing E.E.O.C. v. Pet Inc., Funsten Nut Div.*, 719 F.2d 383, 384 (11th Cir. 1983) ("this Court feels it must view the available evidence and the applicable law in a manner most favorable to Plaintiff. Such an approach appears to inhere in the Supreme Court's caveat concerning *post hoc* reasoning. Furthermore, as required by the Supreme Court standard, this Court must view the available evidence and applicable law as it existed at the time of the institution of the suit and as it developed as the case proceeded."). Had it applied the same standard as its sister circuit, the Fifth Circuit would have reached a different conclusion.

Nevertheless, because it identified the 2016 consent decree as the favorable termination, the Fifth Circuit held malicious prosecution *cannot* be the analogous tort. Neither the lower courts, nor the Respondents, ever identified the most analogous tort, but they all agreed that whatever analogous tort did apply would be time-barred and, therefore, Haygood's civil rights claim was "so clearly" time-barred that it outweighed the merits of the claim. However, the lower courts' opinion that Haygood's § 1983 claims were "clearly time-barred," is irreconcilable with the long-held opinion of this Court that the accrual analysis for § 1983 claims is not simple, easy, nor clear. *See, e.g.*, *McDonough, supra,* at 115. The Fifth Circuit also ignored the fact that, when the District Court dismissed Haygood's § 1983 claim on statute of limitations grounds, with prejudice, and deemed it frivolous, the accrual period for § 1983 malicious prosecution/fabrication of evidence claims was unsettled; and, after it was resolved by this Court in *McDonough*, the correct application of the rule would have precluded an award of defendant's attorney's fees entirely.

To be deemed "frivolous" plaintiff's claims must be "so lacking in merit" that they "lack an arguable basis in law or fact." *See United States v. Mississippi*, 921 F.2d 604, 609 (5th Cir. 1991). Here, Ogden did not, and could not, make such a showing given the evolving nature of the applicable accrual analysis and this Court's rulings in *McDonough* and *Manuel*. In light of these decisions, and the complexities involved in the accrual analysis pertaining to § 1983 malicious prosecution and fabrication of evidence claims, awarding attorney's fees to the Respondents was an abuse of discretion, and the Fifth Circuit's ruling not

only sharply diverged from its own precedent, but it deeply conflicts with the precedent of this Court and all other circuit courts. Accordingly, this Court's intervention is required to prevent the lower courts' error from becoming entrenched, to maintain jurisprudential consistency, and to avoid the broader consequences the Fifth Circuit's rule will have on the public's ability to enforce and prosecute civil rights claims under § 1983.

ii. Only in the Fifth Circuit is a § 1983 malicious prosecution claim, "clearly time-barred" and "frivolous" under § 1988 if filed before a favorable termination.

When determining the limitations period for a § 1983 claim "the answer is not always so simple." *McDonough, supra,* at 115.

Haygood filed suit well within one year of the state appellate court's reversal of the Board decision on due process grounds. In the lower courts, Haygood argued that his § 1983 claims were not clearly time-barred because, among other reasons, malicious prosecution/fabrication of evidence was the analogous tort; therefore, the tolling period commenced after the state appellate court reversed in late 2012. The Fifth Circuit disagreed, finding that the state appellate court's ruling "was not a favorable termination" because the court remanded for a new hearing, though a 2016 consent decree—signed two years after Haygood's § 1983 claim was dismissed with prejudice, and four years after the Board's decision was vacated—"likely represented the favorable termination of the Board's proceedings." App. 13a. According to the Fifth Circuit, "this means malicious prosecution and/or fabrication of evidence *cannot be*

the analogous tort" and the "federal complaint was so clearly time-barred that it lacked arguable merit" (emphasis added). App. 14a.

In all other circuits, a malicious prosecution claim brought before a favorable termination would be dismissed as premature, without prejudice, and the plaintiff would be free to reassert it upon favorable termination. The Fifth Circuit is the only circuit in which, as a matter of law, malicious prosecution *cannot* be the analogous tort for statute of limitations purposes if brought prior to a favorable termination. Only in the Fifth Circuit can a premature claim be dismissed, with prejudice, on statute of limitations grounds and deemed "so clearly time-barred" that it justifies an award of the defendant's attorney's fees under § 1988.

In all other circuits (and, before *Haygood*, in the Fifth Circuit), the dismissal of a premature § 1983 claim is *without* prejudice and does not convey prevailing party status on the defendants, thereby foreclosing the possibility of an award of attorney's fees under § 1988. *See Wilson v. Midland Cnty., Texas,* 116 F.4th 384, 398 (5th Cir. 2024) ("a *Heck* dismissal is a dismissal without prejudice," *citing Cook v. City of Tyler*, 974 F.3d 537, 539 (5th Cir. 2020)); *see, e.g., Citizens for a Better Env't v. Steel* Co., 230 F.3d 923, 929-930 (7th Cir. 2000)(holding a defendant cannot qualify as a prevailing party dismissed because "the plaintiff has sued too soon"); *Elwood v. Drescher*, 456 F.3d 943, 948 (9th Cir. 2006), *abrogated on other grounds* ("Where a claim is dismissed for lack of subject matter jurisdiction, the defendant is not a prevailing party within the meaning of § 1988, and the

district court accordingly lacks jurisdiction to award attorneys' fees").

However, because of the Fifth Circuit's ruling in this case, a malicious prosecution claim brought before a favorable termination *cannot* be a malicious prosecution claim and, if the plaintiff waited to bring suit until the occurrence of what they believed to be a favorable termination, their otherwise meritorious civil rights claim may be deemed frivolous and they could be required to pay the attorney's fees of the individuals who violated their constitutional rights. Such a result is clearly contrary to the precedent of this Court, all circuit courts, and Congress' intent in enacting § 1988, and this Court must intervene to correct the circuit split the Fifth Circuit created before it can chill legitimate civil rights enforcement throughout its jurisdiction.

Simply put, the Fifth Circuit set aside the frivolity factors and adopted what is essentially a strict liability standard for awarding defendant attorney's fees for time-barred 1983 claims, in direct contravention of the controlling precedent of this Court, and in sharp conflict with all other circuit courts, and this Court's review is required to prevent jurisprudential inconsistency and the chilling effect it will have on the private enforcement of civil rights.

II. THE DECISION BELOW WAS INCORRECT

The lower courts abused their discretion by awarding Ogden's attorney fees. Finding that they were time-barred, the District Court dismissed Haygood's § 1983 claim *with prejudice* under Rule 12(b)(6) and held that it was "so clearly time-barred" that it lacked any merit and was necessarily frivolous. However, this *post hoc*, reductive reasoning does not

support an award of attorney's fees to a prevailing defendant under § 1988, and the lower courts committed clear error by adopting this faulty rationale to justify a penal award of attorney's fees against a civil rights plaintiff.

Further, the key issue before the Fifth Circuit was whether the District Court failed to consider the necessary criteria for an award of attorney fees to a defendant in a § 1983 suit. Yet, those criteria, the "frivolity factors," were wholly ignored by the panel, and their decision to affirm the award was contrary to the well-settled law and record in this case.

A. Haygood's § 1983 Claim was Not Frivolous.

Haygood had a reasonable, good faith belief that his claims were timely and, based on the record of this case, there is no dispute they were otherwise meritorious. Nevertheless, Haygood's § 1983 claims were dismissed as time-barred on a Rule 12(b)(6) motion to dismiss. Importantly, when ruling on a motion to dismiss at the initial pleading stage, all well pleaded allegations are taken as true and read in the light most favorable to the plaintiff. The District Court did not apply this standard, and dismissed Haygood's claims *with prejudice.* On the motion for attorney's fees, the District Court again viewed the facts and law and the light *least* favorable to Haygood, deemed his claims frivolous and in bad faith, and awarded defendant's attorney's fees. The Fifth Circuit then gave extraordinary deference to the District Court, created a new rule, and affirmed the award.

The lower courts awarded attorney's fees to the defendants too easily and without regard to the overall merit of Haygood's action. In doing so, it

misapplied this Court's precedent as set forth in both *Hensley* and *Christiansburg*. Under § 1988, frivolity is determined on a case-by-case basis by deciding whether the case was so lacking in merit that it was groundless, rather than whether the claim was ultimately successful. As set forth above, there is a wealth of jurisprudence detailing the various factors a court must consider before deeming a § 1983 claim frivolous. The lower courts should have considered the factual merits of Haygood's claim, the that the law of § 1983 accruals is complicated and was not well-settled, and that Haygood had a good faith basis for bringing suit. The lower courts set all that aside and held, incorrectly, that a meritorious claim dismissed as time-barred may, for that reason alone, be properly deemed frivolous and justify the penal award of a prevailing defendant's attorney fees under § 1988.

Moreover, Haygood's § 1983 claim was dismissed on a Rule 12(b)(6) motion raising the *procedural affirmative defense* that the claim was time-barred, and the panel found that Haygood's "due process rights were likely violated by at least some of the named defendants" (App. 10a). *See Neitzke v. Williams*, 490 U.S. 319, 328 (1989) (holding that when a complaint raises an arguable question of law which the district court ultimately finds is correctly resolved against the plaintiff, dismissal on Rule 12(b)(6) grounds is appropriate, but dismissal on the basis of frivolousness is not); *see also, Hoover,* 915 F.2d at 357 ("[A]sserting a time-barred claim alone does not justify an award of attorney's fees. The statute of limitations is an affirmative defense the defendant must raise"). Therefore, under *Christiansburg,* Haygood's claims could not possibly be frivolous in the

sense required to award defendant attorney fees under § 1988.

Yet, without any consideration of the frivolity factors that have been used for decades by this Court and all circuit courts (including the Fifth Circuit), the panel incorrectly held that, because Haygood's § 1983 claim was filed *too early* (i.e., before the 2016 consent decree), malicious prosecution *cannot be* the analogous tort for limitations purposes and, because Haygood's civil rights claim was filed over a year after the state court suit (from which Ogden had been dismissed on an exception of prematurity), the § 1983 claim was "so clearly time-barred that it lacked arguable merit." App. 13-14a. The Fifth Circuit then created a new rule that "the propriety of the § 1988 fee award turns on whether the district court properly found the federal complaint time-barred and whether the time bar outweighed the underlying merits" and held the award of defendant attorney fees under § 1988 was proper. App. 10a. The Fifth Circuit was wrong.

It must be noted that Haygood is not taking the position that a time-barred complaint may *never* be properly deemed frivolous. However, even when a complaint is obviously time-barred on its face (which was not the case here), consideration of the frivolity factors is still required. *See, e.g., Jones,* 656 F. 2d at 1146 ("Because the court's findings appear to be no more than reiteration of its ultimate conclusions on the merits of Jones' claim and because the record does not indicate that the court conducted the inquiry mandated by *Christiansburg* and *Hughes*, the court's findings of fact fall short of supporting its legal conclusion that Jones' lawsuit was frivolous").

However, while a time-barred complaint may be sufficiently meritless to be deemed frivolous, the Fifth Circuit created a *rule* that a time-barred claim, in and of itself, may be sufficient to deem an otherwise meritorious claim frivolous under § 1988. As applied, the Fifth Circuit's rule ignores the complexities of the § 1983 accrual analysis (not to mention the intervening precedent of this Court in *McDonough*) and permits a court to dispense entirely with the need to consider any "frivolity factors," so long as the § 1983 claim is dismissed as time barred. Not only was the Fifth Circuit wrong, but the rule it adopted is patently unjust and defies the clear intent of Congress and decades of this Court's jurisprudence.

As this Court is aware, under § 1983 and § 1988, "[c]laims do not need to be "airtight" to avoid being frivolous, and courts must be careful not to use the benefit of perfect hindsight in assessing frivolousness." *Provensal v. Gaspard*, 524 F. App'x 974, 976 (5th Cir. 2013) (*citing, Christiansburg,* 434 U.S. at 421-22). "The fact that the Court dismissed plaintiffs' suit is not in itself a sufficient justification for the fee award." *Hughes,* 449 U.S. at 15–16. Several factors are considered when determining whether a claim is sufficiently "frivolous" to support an award of attorney's fees to a prevailing defendant, including, "whether the plaintiff established a *prima facie* case, whether the defendant offered to settle, and whether the court held a full trial." *Provensal*, 524 F. App'x at 976.

Here, neither the law, nor the record in this case, support a finding that Haygood's claims were so frivolous so as to merit the penal award of defendants' attorney's fees, nor would it be good public policy to

adopt what is, essentially, a strict liability standard for an award of attorney's fees to a prevailing defendant on a time-barred § 1983 claims, as it would render the jurisprudential limitation on attorney's fee such awards meaningless, create a chilling effect on the enforcement of civil rights, and undermine the intent of § 1988. *Id*. (*citing Christiansburg, supra,* at 419; *Hughes, supra,* at 14).

B. The Amount Awarded was Unreasonable.

Finally, even if the District Court properly awarded attorney fees to Ogden, which it did not, the amount of attorney's fees awarded is excessive, unreasonable, and contrary to this Court's holding in *Fox v. Vice.* When calculating an attorney's fee award, each entry must be closely scrutinized and any excessive, unnecessary, or duplicative charges should be disputed. Here, nothing in the District Court's ruling indicated that it took these matters into consideration when calculating the fee award.

In *Fox*, this Court held that, in a suit involving both frivolous and non-frivolous claims, "a defendant may recover the reasonable attorney's fees he expended solely because of the frivolous allegations. And that is all. Consistent with the policy underlying § 1988, the defendant may not receive compensation for any fees that he would have paid in the absence of the frivolous claims." *Fox*, 563 U.S. at 840–41.

Here, the Fifth Circuit affirmed the District Court's LUTPA fee award in a footnote, finding, "[t]he LUTPA claim was "so closely interwoven" with the § 1983 claim that the district court did not err in using the federal standard exclusively and in failing to differentiate between the time billed on the LUTPA

claim and the time billed on the § 1983 claim." App. 14-15a at ftn. 10. The Fifth Circuit then held that the District Court correctly calculated the fee award as to the defendants' private attorneys because it determined that they had miscalculated their demand based on the amounts invoiced. Simple addition, however, is not the "obvious care and attention" required, nor is there any mention of the lower courts' efforts to segregate fees not related to frivolous claims as required by *Fox*. As such, not only did the Fifth Circuit impermissibly lower the standard for awarding attorney's fees to a defendant under § 1988, but it also undermined this Court's holding in *Fox* by permitting an award of attorney fees to a defendant under § 1988 on any claim so long as the lower court correctly calculates the total amount billed to the defendants, even if that work had no relation whatsoever to the § 1983 claim.

Even the most cursory review of Ogden's time reports reveals dozens of entries entirely unrelated to their defense of the §1983 claims. *See e.g.,* 5th Cir. Record at 3832-3857. Other than adding the total amount invoiced, the court made no effort whatsoever to parse out any of the time spent solely on issues in the pending state court case, work done on behalf of other defendants and/or clients, the intervention of the defendant's insurers, on discovery disputes, research lacking any connexity to federal suit, or any other fees which would have been incurred by Ogden regardless of the "frivolous" claims. *See e.g.,* 5th Cir. Record at 3847-49, 3854-56.

Moreover, Ogden made no effort to remove these entries from their time report and, without setting the matter briefing or providing notice of

submission, the court awarded them over $110,000 in attorney fees– a significant portion of which bear no relation to their defense of the §1983 or LUTPA claims, and the majority of which were incurred *after* those claims were dismissed in March 2014. Therefore, even if the District Court was correct in awarding attorney's fees, which it was not, the amount awarded was incorrect and merits reversal, and the Fifth Circuit's ruling was clearly wrong.

III. THE QUESTIONS PRESENTED ARE EXCEPTIONALLY IMPORTANT

The appropriate application of § 1988 is fundamental "to ensure 'effective access to the judicial process' for persons with civil rights grievances." *Hensley,* 461 U.S. at 429 (quoting H.R. REP. No. 94-1558, at 1 (1976)). The attorney's fees language at issue is essential to promoting Congress's plan for the protection of civil rights, workplace and gender nondiscrimination, and religious freedoms. *See* § 1988(b).

Uniform rules governing attorney's fees, which impact the incentives and likelihood that plaintiffs will bring suit, are of critical national importance given that these plaintiffs are Congress's chosen enforcers of civil rights and nondiscrimination laws. As this Court has noted, "Congress enacted § 1988 specifically because it found that the private market for legal services failed to provide many victims of civil rights violations with effective access to the judicial process." *City of Riverside v. Rivera*, 477 U.S. 561, 576 (1986). Many civil rights statutes were designed with the understanding "that enforcement would prove difficult and that the Nation would have to rely in part upon private litigation as a means of securing broad

compliance with the law." *Piggy Park,* 390 U.S. at 401. Fee awards aid this goal by facilitating the filing of civil rights lawsuits. *See Riverside, supra,* at 574-75.

Haygood's civil rights were violated, but the District Court dismissed his complaint on procedural grounds which —prior to the Fifth Circuit's decision in this case—would have been insufficient to award defendant fees under § 1988. The chilling-effect the lower court's ruling will have on future plaintiffs cannot be underestimated, especially considering the infamously complex and confusing inquiry required to identify the applicable limitations period under § 1983. Therefore, because the Fifth Circuit's decision undermines the "highest priority" of Congress, and the primary purpose for enacting § 1988, *certiorari* should be granted to ensure that § 1988 is applied consistent with congressional design and in the interests of justice.

CONCLUSION

Certiorari should be granted.

Respectfully Submitted,

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