No.: 24-703

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

REPLY BRIEF FOR PETITIONERS

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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.

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INTRODUCTION

Respondents' brief in opposition only confirms that this Court should intervene now to resolve the split created by the Fifth Circuit's divergent ruling from becoming entrenched; to prevent the Fifth Circuit's novel and impermissibly low § 1988 frivolity standard from causing a chilling effect on civil rights enforcement and undermining Congress' intent in enacting § 1988; and, to correct the manifest injustice of holding Haygood liable for nearly $100,000 in presumptively unavailable attorney's fees to the individuals who indisputably violated his civil rights. The Fifth Circuit abused its discretion when it affirmed the District Court's ruling that Haygood's § 1983 claim was "so clearly time-barred" that was sufficiently frivolous to justify this penal award, and the devastating and far-reaching ramifications of the Fifth Circuit's error warrant this Court's consideration and call for the immediate intervention of this Court to restore the delicate balance Congress struck in enacting § 1988 and realign the Fifth Circuit with this Court's firmly established precedents.

ARGUMENT

I. THE FIFTH CIRCUIT'S OPINION CONTRADICTS DECADES OF WELL-SETTLED JURISPRUDENCE AND IS CLEARLY WRONG

A. This is Not an *In Forma Pauperis* Case and Haygood's § 1983 Claim was Not "Dismissed" as Frivolous.

Respondents' first argument in opposition is that "numerous appellate courts have found a clearly time barred case frivolous," and, therefore, the Fifth

Circuit's Opinion did not diverge from controlling precedent or create a circuit split. Opp. at p. 12-15. Respondents are wrong.

Respondents did not cite a single case holding that a time-barred 42 U.S.C. § 1983 claim is properly *deemed* frivolous under 42 U.S.C. § 1988. Instead, every single case cited in Respondents' "sampling of federal appellate courts" involved a frivolity determination under 28 U.S.C. § 1915, which governs *in forma pauperis* proceedings and provides for the ***dismissal*** of a frivolous *in forma pauperis* suit. **Not a single case cited by Respondents considered the award of attorney fees to a defendant under § 1988.** To be clear, Haygood did *not* file an *in forma pauperis* complaint and his complaint was *not dismissed* as frivolous under § 1915. Rather, it was improperly *deemed* frivolous because it was dismissed as time barred. Moreover, Respondents are fully cognizant of the difference between *dismissing* a frivolous claim under § 1915 and awarding prevailing defendant's attorney fees for claim *deemed* frivolous under § 1988 because the distinction between the two statutes was the basis for Haygood's Petition for Reconsideration that, while denied, resulted in the Fifth Circuit withdrawing their original opinion and substituting the amended Opinion now before this Court.

Presumably, if there were precedent from this Court, the Fifth Circuit, or any other appellate court, holding that a time barred § 1983 claim is sufficiently frivolous under § 1988, Respondents would have brought it to the Court's attention. *c.f.*, *Hoover v. Armco, Inc.*, 915 F.2d 355, 357 (8th Cir. 1990)("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"). Respondents have not, nor did they cite any such cases in the lower courts. Instead, Respondents knowing rely on the inapplicable, and significantly reduced, standard for dismissing an *in forma pauperis* complaint under § 1915. In so relying, Respondents lay bare just how grossly the Fifth Circuit's Opinion diverged from both the controlling precedent this Court and the intent of Congress in enacting § 1988. Accordingly, this Court must intervene now to prevent the Fifth Circuit's inconsistent and erroneous ruling from becoming further entrenched and the inevitable chilling-effect it will have on the private enforcement of civil rights.

B. Respondents' *McDonough* Argument is a Red Herring.

This Court has not been asked to decide whether a malicious prosecution and/or fabrication of evidence § 1983 claim *requires* an underlying criminal proceeding. However, the careful consideration given to whether *McDonough v. Smith*, 588 U.S. 109 (2019) applies to the facts of this case is yet another reason why the § 1983 claim should never have been deemed sufficiently frivolous to permit an award of defendant's attorney fees under § 1988. *Vaughan v. Lewisville Indep. Sch. Dist.,* 62 F.4th 199, 205 (5th Cir. 2023); *Hughes v. Rowe*, 449 U.S. 5, 15-16 (1980).

Nevertheless, Fifth Circuit declined to adopt Respondents' argument that malicious prosecution and/or fabrication of evidence could not be the analogous common law tort because there was no underlying criminal proceeding. Instead, the Fifth

Circuit held that malicious prosecution/fabrication of evidence could not be the analogous common law tort for statute of limitations purposes because the favorable termination occurred after Haygood brought his § 1983 claim. Yet, regardless of the rationale, the fact that, "upon careful consideration," Haygood's claim was dismissed as time barred, means that it was "not, for that reason alone, groundless or without foundation for the purpose of awarding prevailing defendant attorney fees," and therefore could not be frivolous in the *Christiansburg* sense. *Hughes v. Rowe*, 449 U.S. 5 (1980); *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421-22 (1978).

C. Respondents' Inapposite Appellate Opinions.

The cases cited by Respondents in Section I(C) of their Opposition do not involve similar facts, similar claims, nor similar outcomes. In fact, not a single case cited in Section I considered an award of attorney fees to a prevailing defendant under § 1988 whatsoever, let alone affirmed it under analogous circumstances. Instead of "debunking" Haygood's argument, Respondents have again bolstered it by proving that there is no squarely controlling precedent foreclosing Haygood's claim, and that the Fifth Circuit's ruling cannot be reconciled with the well-settled jurisprudence of this Court.

II. THE UNREASONABLE FEE AWARD

A. The Federal Suit was Filed After Respondents' Dismissal from the State Court Suit on Prematurity Grounds.

Respondents argue that Haygood's § 1983 claim was time barred because it was filed more than a year after Haygood's state court suit asserting similar claims, but Respondents conveniently omit the fact that, at the time the § 1983 claim was filed in federal court, the state suit had been dismissed against the Respondents on prematurity grounds. Under normal circumstances, the fact that Respondents excepted to Haygood's state court suit as premature should have estopped them from arguing the federal suit was time barred. *See, e.g., New Hampshire v. Maine*, 532 U.S. 742, 749, 121 S. Ct. 1808, 1814, 149 L. Ed. 2d 968 (2001). Yet, the District Court allowed it, and Respondents doubled down; arguing Haygood's § 1983 claim was *so clearly* time barred as to merit the penal award of prevailing defendant attorney fees under § 1988.

Respondents' inconsistent litigation positions alone should have precluded the § 1988 frivolity determination under this Court's precedent, and it was an obvious abuse of discretion for the lower courts to hold otherwise, and this Court's intervention is now required to correct the lower courts' error and prevent Respondents' disingenuous and inherently inconsistent arguments from becoming the foundation of a new, impermissibly low, frivolity standard that effectively permits an award of defendant's attorney fees for *any* arguably time barred civil rights claim under § 1988.

B. The Favorable Termination and Accrual Question.

Haygood identified the Louisiana Supreme Court's 2012 ruling as the favorable termination and accrual date. Respondents argue a favorable termination never even occurred and that Haygood's claim accrued on or before September 26, 2011. The Fifth Circuit identified the 2016 Consent Decree as the favorable termination date and September 26, 2011, as the date "the one-year limitations began to run," making September 26, 2012 the accrual date (*i.e.* less than five (5) months before Haygood filed the federal suit).

Again, the lack of a consistency on this fundamental point belies Respondents' contention that Haygood's claim was "so clearly time barred" that it was "appropriately characterized by the lower courts as 'meritless', 'frivolous,' and lacking 'arguable merit,'" and it was an abuse of discretion for the lower courts to hold otherwise in light of the well-settled § 1988 jurisprudence that attorney fee awards to prevailing civil rights defendants are presumptively unavailable.

C. Respondents Bear the Burden of Proving the Award was Reasonable, and the District Court's Calculations were Not Entitled to Wide Deference.

Respondents incorrectly place the burden of proving the reasonableness of the fee award on Haygood, and the Fifth Circuit abused its discretion when it gave great deference to the District Court's award calculations for the private attorney fees while also finding that the District Court committed an

error of law by not using the lodestar method to calculate the state attorney's fees.

When calculating an award of attorney fees under § 1988, "the 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).

Here, the Fifth Circuit held that the District Court committed an error of law by failing to apply the lodestar method to the state attorney's fees and remitted those fees from the award. However, once the

Fifth Circuit determined that the District Court failed to apply "the right rules," the District Court's calculations were no longer entitled to "wide deference," and it was an abuse of discretion for the Fifth Circuit to uphold the remainder of the fee award without considering, or even addressing, whether those fees "would not have accrued *but for* the frivolous claim." *Id.* Accordingly, this Court should grant certiorari to correct the lower court's error and prevent the manifest injustice of holding Haygood liable to the individuals who violated his civil rights for nearly $100,000 in their attorney's fees – much of which had no connexity to their defense of the § 1983 claim and all of which should have never been awarded in the first place.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully Submitted,

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