No. 25-96

IN THE

Supreme Court of the United States

MARYVILLE BAPTIST CHURCH; DR. JACK ROBERTS,
Petitioners,

v.

ANDY BESHEAR, in his official capacity as Governor of the Commonwealth of Kentucky,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

The Governor contends that this Court should deny certiorari because this Court did not announce any new rule in *Lackey* v. *Stinnie*, 145 S. Ct. 659 (2025), but rather only "clarified" existing precedent in a manner that deprived Petitioners of nothing. Br. in Opp. 8. And the Governor contends that there are no due process implications under the very issue of the case at bar. Br. in Opp. 13. Neither of these contentions is correct, and precedent dictates a contrary finding.

This Court should grant the Petition because *Lackey* plainly and unequivocally stated that it was announcing a new rule, that the new rule prohibited plaintiffs obtaining only preliminary injunctive relief from being declared prevailing parties under 42 U.S.C. §1988(b), and that such a rule was not dictated by the Court's prior precedent. The Court announced a new rule for which retroactive application could, under the Court's own precedent, deprive a party of a substantive right that had vested under the Court's prior decisions. This is exactly what happened to Petitioners here, and the Court should grant the Petition to resolve the conflicts and answer the question of fundamental federal importance that has not been but should be answered by the Court.

REASONS FOR GRANTING THE PETITION

I. The Court's decision in *Lackey* announced a new rule, rather than merely clarifying its prior precedents.

A. As Justice Gorsuch recently opined, the Court's decisions create "a rule for the ages."

The Governor contends that this Court did not create any "new rule" when it handed down its decision in *Lackey* v. *Stinnie,* 145 S. Ct. 659 (2025). Br. in Opp. 10. This is incorrect. As the Court has made plain, "a case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government." *Teague* v. *Lane*, 489 U.S. 288, 301 (1989). While "[t]he explicit overruling of an earlier holding no doubt creates a new rule," *Saffle* v. *Parks*, 494 U.S. 484, 488 (1990), that is not the only scenario under which the Court creates a new rule. "[A] case announces a new rule if the result was not *dictated* by precedent existing at the time." *Teague*, 489 U.S. at 301 (emphasis original). See also *Saffle*, 494 U.S. at 488 (same). This is true of the Court's decision in *Lackey*. There, the Court explicitly stated that the rule it was adopting—that preliminary injunctions do not qualify a plaintiff as a prevailing party under Section 1988—was *not dictated* by the Court's prior decisions. See *Lackey*, 145 S. Ct. at 669 ("We recognize that neither opinion resolves this case . . . ."). Indeed, as the Court stated, its prior decisions "left open the question presented in this case." *Id.* at 668. In other words, there was

nothing about *Lackey* that was dictated by the Court's prior decisions. Rather, the Court was "breaking new ground" on the interpretation and application of Section 1988.

That conclusion is likewise compelled by the precedential nature of the Court's decisions on future cases. As Justice Gorsuch recently opined, when this Court issues a decision, it is "writing a rule for the ages." Tr. at 141, *Trump* v. *United States*, 603 U.S. 593 (2024) (No. 23-939). That is precisely what this Court did in *Lackey*. It announced a new rule for the ages concerning Section 1988. And that rule deprived Petitioners of a substantive right that had vested 880 days prior to the Court's announcement of the new *Lackey* rule. See Pet. 3, 24.

B. The Court explicitly noted in *Lackey* that it was establishing a new rule for prevailing parties under Section 1988.

Not only is the Governor's contention (Br. in Opp. 10) that *Lackey* did not create a new rule inconsistent with the Court's precedent, it is also contradicted by *Lackey* itself. The Governor contends that *Lackey* "does not change this Court's precedents to create a new rule," but "simply clarifies the Court's interpretation of prevailing parties under §1988." Br. in Opp. 10.) That is *not* what this Court said.

Specifically, in *Lackey*, the Court noted numerous times that it was announcing a new rule. As an introductory matter, the Fourth Circuit's en banc decision noted that its own panel's rule in *Smyth* v.

Rivero, 282 F.3d 268 (4th Cir. 2002) has become an "outlier," 145 S. Ct. at 665, and that every other circuit to address the issue had concluded the preliminary injunctions could—in certain circumstances—qualify a plaintiff as prevailing for purposes of Section 1988. *Id.* See also *id.* at 671 (Jackson, J., dissenting) (noting that "eleven Courts of Appeals have previously considered this issue [and] all of them agree[d] that at least *some* preliminary injunctions trigger fee eligibility under §1988(b)").

Thus, the Court was reversing universally understood precedent in *Lackey* and creating a new rule concerning prevailing parties under Section 1988(b). Lest there be some doubt, the Court explicitly clarified it was creating a "new rule." See 145 S. Ct. at 669 ("Today, we establish that the enduring nature of that change must itself be judicially sanctioned."); *id.* ("*The rule we establish today* . . . ." (emphasis added)); *id.* ("A straightforward bright-line rule . . ."); *id.* at 670 ("If Congress determines that *the rule we adopt today* is unwise, it may amend the statutory language . . ." (emphasis added)); *id.* at 671 ("The availability of fees following the entry of a court-ordered consent decree is fully consistent with *the rule we announce today*." (emphasis added)). See also *id.* at 677 (Jackson, J., dissenting) ("Neither case mandates the majority's categorical rule."); *id.* at 678 ("The majority thus overreads our precedents to support its blanket rule that preliminary injunctions can never support fee awards."); *id.* at 680 (noting the majority's new "categorical rule")).

In short, contrary to the Governor's contentions (Br. in Opp. 10), there is no question *Lackey* created a new rule for the ages. The Court explicitly said it was doing precisely that.

C. The Sixth Circuit's decision below expressly noted that it was applying the "new rule" established in *Lackey*.

In addition to the Court's own language in *Lackey*, the subsequent decisions of the lower courts—including the Sixth Circuit below—have noted that *Lackey* handed down a new rule. In its decision below, the Sixth Circuit noted this Court, in *Lackey*, "recently decided that the 'ordinary' rule is the only rule." Pet. App. 5a. The Sixth Circuit also noted that *Lackey*'s new rule could not be reconciled with its prior precedent. Pet. App. 6a ("Our line of cases that permitted attorney's fees in the context of a narrow set of preliminary injunctions cannot be reconciled with *Lackey*'s bright-line rule that the statute never authorizes them in that setting."). In other words, the Sixth Circuit's prior understanding of the rule—which was universally agreed upon by the circuit courts until *Lackey*, see 145 S. Ct. at 681 (Jackson, J., dissenting)—that some preliminary injunctions qualified a plaintiff for prevailing party status could not coexist with this Court's new rule. "It goes without saying, but we will say it anyway, that in a hierarchical system of precedent, our decisions must yield to the Court's contrary decisions," announcing a new rule. Pet. App. 6a (cleaned up).

The upshot of all this? The Governor's contention that *Lackey* merely interpreted existing precedent rather than announced a new rule is incorrect.

II. Despite Respondent's suggestion of a "bright line rule," retroactive application of a judicial decision can—as here—violate due process for vested rights.

Perhaps sensing a weakness in his erroneous conclusion that *Lackey* created no new rule, the Governor retreats to the position that, even if *Lackey* did create a new rule, the "bright line rule" for retroactivity applies. Br. in Opp. 11. And the Governor contends that retroactive application is necessary here because judicial decisions are purportedly always given retroactive effect to "all cases still open on direct review." Br. in Opp. 11. The rule is not so clear, and the Governor ignores that retroactive application of even judicial decisions can violate due process where—as here—it intrudes upon vested, substantive rights.

As the Court has previously noted, due process violations can occur from retroactive application of judicial interpretations of a statute. *Rogers* v. *Tennessee*, 532 U.S. 451, 457 (2001). Indeed, "retroactive application is not compelled, constitutionally or otherwise." *Solem* v. *Stumes*, 465 U.S. 638, 642 (1984). And, because it is not compelled, the Court has plainly articulated instances where a decision should not be applied retroactively to deprive an individual of a substantive right that vested prior to the new construction of a statute. Simply put, there

are "due process limitations on the retroactive application of judicial decisions." *Metrish* v. *Lancaster*, 569 U.S. 351, 360 (2013). As discussed in the Petition (at 35-37), applying the new rule handed down by *Lackey* to deprive Petitioners of a substantive right that had vested 880 days prior to the new rule would work a manifest injustice and violate due process. That is particularly true where *Lackey*'s new rule "overturned a longstanding practice approved by near-unanimous lower-court authority, the reliance and effect factors in themselves have virtually compelled a finding of nonretroactivity." *Solem*, 465 U.S. at 646.

III. That Petitioners were not declared prevailing parties as a result of retroactive application of a judicial decision *is* the due process violation at issue.

The last contention the Governor makes is that Petitioners improperly "comingle" this case and the *Roberts* decision from the Sixth Circuit below to suggest they prevailed prior to the Court's decision in *Lackey*. Br. in Opp. 13. The Governor's entire contention begs the seminal question at issue in this Petition and cannot serve as a basis to deny the Petition. The Governor's suggestion that there is a vast difference between Petitioners here and the congregants of Maryville Baptist Church in *Roberts*, who prevailed and were awarded fees is factually incorrect and plainly erroneous. Petitioners' substantive right to prevailing party status vested long before the Court's new rule in *Lackey*.

A. Respondent's suggestion that there is a vast difference between *Roberts* and the instant matter is plainly erroneous.

The Governor suggests that Petitioners "conflate" this case and *Roberts*, and that the facts and circumstances of each case warrant different conclusions. Br. in Opp. 13. This is plainly incorrect. It is the same error the district court committed below and that the Sixth Circuit stated was plainly incorrect in its first decision on the appeals below. The district court sought to avoid the unquestionable impact of the Sixth Circuit's binding decision *in this case*, *Maryville Baptist Church* v. *Beshear*, No. 22-5952, 2023 WL 3815099 (6th Cir. June 5, 2023), and its decision in the related appeal of *Roberts* v. *Neace*, 65 F.4th 280 (6th Cir. 2023), by suggesting that the two cases are easily "distinguishable." R. 1202.

That decision has worked a manifest injustice and a deprivation of Petitioners' due process rights. As the Sixth Circuit stated plainly in the first appeal concerning the denial of Petitioners' attorney's fees and costs, "*Roberts* addressed Beshear's COVID-19 restrictions, preliminary injunctions, mootness, and *attendance at Maryville Baptist Church*—all features of *this case*." 2023 WL 3815099, *1 (emphasis added). The facts, the Church, the Pastor, and the people were all the same. The Governor's unconstitutional orders were all the same. The preliminary injunctions enjoining those unconstitutional orders were all the same.

In its original *Roberts* decision issuing a preliminary injunction, the Sixth Circuit noted that

the plaintiffs there attended "Maryville Baptist Church . . . *the same church at issue in our case*." *Roberts* v. *Neace*, 958 F.3d 409, 412 (6th Cir. 2020) (emphasis added). The Sixth Circuit, *in Petitioners' case*, likewise recognized that the plaintiffs and their claims in both cases arose from the same worship services held at the same church—Maryville Baptist Church—under the same pastor—Plaintiff Dr. Jack Roberts. See *Maryville Baptist Church, Inc.* v. *Beshear*, 977 F.3d 561, 563 (6th Cir. 2020) (noting that "*Maryville Baptist Church's lawsuit*" was filed by "[t]he church and pastor challeng[ing] the Governor's executive orders," and "*[t]he congregants' lawsuit*" was filed by "Theodore Roberts, Randall Daniel, and Sally O'Boyle, *each an attendee at Maryville's Easter service*" (emphasis added)). The district court's conclusion was thus that while those "congregants who went into the church" may be prevailing parties for purposes of Section 1988, *Roberts*, 958 F.3d at 412, the pastor, Dr. Jack Roberts—to whom those congregants listened—and the Church, Maryville Baptist Church—in whose pews those congregants assembled—were not prevailing parties despite receiving identical injunctions against identically unconstitutional orders.

The Sixth Circuit rejected that contention when raised below, and this Court should likewise reject the Governor's identical contentions here. Petitioners received a vested, substantive right to prevailing party status upon the entry of their eternally significant preliminary injunctions, which—at the time—would have entitled them to prevailing party

status absent the district court and Sixth Circuit's error.

B. Petitioners' substantive right to prevailing party status vested long before the Court's *Lackey* decision.

The Governor contends that Petitioners never obtained any enduring relief that would have otherwise qualified their victory as a vested, substantive right. Br. in Opp. 14-15. This is false.

Petitioners' preliminary injunctions from the Sixth Circuit and the district court permitted them to exercise their constitutional rights despite the Governor's unconstitutional restrictions. From May 2, 2020, when the Sixth Circuit granted Petitioners their first preliminary injunction against the Governor's Order until February 2, 2021, when the enactments restricting the Governor's authority took effect, Petitioners assembled for religious worship each Sunday. The preliminary injunctions Petitioners obtained thus permitted them (and the congregant plaintiffs in *Roberts*) the ability to exercise their constitutionally protected right to free exercise of religion and religious assembly *for 40 consecutive Sundays* without fear of reprisal and criminal punishment from the Governor's unconstitutional orders. That relief was eternally significant and vested a right that could never be taken away from Petitioners.

"[T]he private right of parties which have been vested by the judgment of a court cannot be taken

away." *Hodges* v. *Snyder*, 261 U.S. 600, 603 (1923). Here, by virtue of the district court's refusal to apply the law in effect at the time of Petitioners' judgments (plural), Petitioners have been deprived of their unquestionably vested right to attorney's fees and costs under 42 U.S.C. §1988 by a decision (*Lackey*) announcing a new rule that came *880 days after* their right to prevailing party fees had already vested by final and unreviewable judgment and long before the new rule became the operative interpretation of Section 1988.

As the Sixth Circuit previously held in this case, "[g]auged by these principles, [Petitioners] prevailed." *Roberts* v. *Neace*, 65 F.4th 280, 284 (6th Cir. 2023). "These principles" were the standards applicable *at the time of Petitioners' judgments*. Petitioners secured two final orders and judgments in this case, one from the district court, R.917, and a judgment from the Sixth Circuit. 2023 WL 3815099. There is a fundamental difference between what the law *was* at the time of Petitioners' final judgments, and what the Court subsequently held the law is with its new rule in *Lackey*. See *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 216 (1995).

Indeed, "judgments of Article III courts are final and conclusive upon the rights of the parties." *Id.* at 226. As the Court held over 150 years ago, "[t]here is no higher evidence that rights have vested than a final judgment solemnly confirming them." *Freeborn* v. *Smith*, 69 U.S. 160, 163 (1864). Retroactive application is only permissible for those cases whose final judgment is still on "*direct* review." *Bradley* v.

Sch. Bd. of Richmond Cnty., 416 U.S. 696, 710 (1974) (emphasis added). That limitation is subject only to cases where the *final judgment* itself is subject to *direct* review, not collateral issues that are not relevant to the final judgment. And direct review requires an appellate court to be considering "the main subject, line of action, issue, [or] purpose," and not "review that is lying aside from the main review." *Wall* v. *Kholi*, 562 U.S. 545, 552 (2011). Attorney's fees under Section 1988 are entirely ancillary to the original proceeding, so the Sixth Circuit's review below had nothing to do with the vested rights Petitioners gained under the final judgments.

This Court has made clear that Section 1988 does not even become relevant until a party has already prevailed on the merits with a final, unreviewable judgment. *White* v. *New Hampshire Dep't of Empl. Sec.*, 455 U.S. 445, 454 (1982) ("Regardless of when attorney's fees are requested, the court's decision of entitlement to fees will therefore require an inquiry *separate from the decision on the merits—an inquiry that cannot even commence until one party has prevailed*.") Thus, the rights Petitioners gained by prevailing under the law in existence at the time of their final judgments (880 days prior to *Lackey*'s new rule) controlled, and they were entitled to the rights that vested at that time.

CONCLUSION

Because this Court's new rule in *Lackey* deprived Petitioners of a substantive right that had vested long before the new rule was announced, retroactive application of that decision violates due process and works a manifest injustice in a manner directly contrary to the Court's precedents. The Petition should be granted.

Respectfully submitted,

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