

Wiley *Amicus* Brief Helps Persuade Fourth Circuit to Reject Obsolete Rule on Attorneys Fees

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An *amicus* brief authored by Wiley Pro Bono Partner Theodore A. Howard – on behalf of 13 nonprofit public interest legal services organizations – helped persuade the Fourth Circuit to overturn an obsolete prohibition on certain attorneys fees in civil rights cases.

The court’s August 7 *en banc* ruling, in favor of the appellants in *Stinnie v. Holcomb*, rejected a long-standing precedent under which a civil rights plaintiff who obtained a preliminary injunction was precluded, as a matter of law, from obtaining an award of attorneys’ fees as the “prevailing party” under 42 USC Sec. 1988. The original suit, which was filed by Damian Stinnie and other low-income citizens against Virginia’s Commissioner of Motor Vehicles, aimed to block a Virginia law that automatically suspended people’s drivers licenses for failing to pay court fees, resulting in around 900,000 people having their licenses suspended. The district court granted the plaintiff’s motion for preliminary injunction, holding that the drivers license forfeiture statute likely violated the Due Process Clause, after which the Virginia Legislature repealed the statute, but the court held that it was precluded from awarding the plaintiffs their attorneys fees.

Howard wrote and filed the *amicus* brief in support of the appellants on behalf of the American Civil Liberties Union of Virginia, the Center for Civil Justice, Equal Justice Under the Law, Florida Legal Services, Inc., the Institute for Constitutional Advocacy and Protection at the Georgetown University Law Center, the Mississippi Center for Justice, the National Center for Law and Economic Justice, the Maryland Public Justice Center, The Rutherford Institute, Tzedek DC, The Washington Lawyers’ Committee for Civil Rights and Urban Affairs,

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Howard argued in the *amicus* brief that the “categorical prohibition against according ‘prevailing party’ status to a civil rights plaintiff who successfully pursues a motion for preliminary injunction ... contravenes clearly articulated intervening Supreme Court precedent.” The prohibition also undermines congressional intent and “needlessly diminishes the practical utility of preliminary injunctive relief as a device pursuant to which Section 1983 actions may be resolved more efficiently and expeditiously,” according to the brief.

The Fourth Circuit’s decision endorsed a consensus view among all of the other U.S. Courts of Appeals to address the issue, holding that “[a]lthough many preliminary injunctions represent only ‘a transient victory at the threshold of an action’ ... some provide enduring, merits-based relief that satisfies all of the requisites of the prevailing party standard.” The Fourth Circuit also noted that the plaintiffs, in the underlying case, prevailed “in every sense needed to make them eligible for a fee award.”

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