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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANTELOPE VALLEY GROUNDWATER CASES	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4408
This Pleading Relates to Included Action: REBECCA LEE WILLIS, on behalf of herself and all others similarly situated,	CASE NO. BC 364553
Plaintiff,	**APPENDIX OF NON-CALIFORNIA CASES IN SUPPORT OF PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES IN RESPONSE TO THE OPPOSITION FILED BY LOS ANGELES COUNTY WATERWORKS DISTRICT NUMBER 40**
vs.	
LOS ANGELES COUNTY WATERWORKS DISTRICT NO. 40; CITY OF LANCASTER; CITY OF LOS ANGELES; CITY OF PALMDALE; PALMDALE WATER DISTRICT; LITTLEROCK CREEK IRRIGATION DISTRICT; PALM RANCH IRRIGATION DISTRICT; QUARTZ HILL WATER DISTRICT; ANTELOPE VALLEY WATER CO.; ROSAMOND COMMUNITY SERVICE DISTRICT; MOJAVE PUBLIC UTILITY DISTRICT; and DOES 1 through 1,000;	Date: March 22, 2011 Time: 9:00 a.m. Dept: 15 (CCW) Judge: Hon. Jack Komar Coordination Trial Judge
Defendants.	

Plaintiff Willis hereby submits this appendix of Non-California authorities in Support of Plaintiff's Reply Memorandum in Support of Application for Attorneys' Fees in Response to the Opposition Filed by Los Angeles County Waterworks District Number 40:

Non-California Cases

Democratic Party of Washington v. Reed
(2004) 388 F.3d 1281 .... -1-

Fair Housing of Marin v. Combs
(2002)(9th Cir 2002) 285 F3d 899 .... -2-

Hensley v. Eckerhart
(1983) 461 US 424 .... -3-

Moreno v. City of Sacramento
(2008)(9th Cir. 2008) 534 F3d 1106 .... -4-

Page v. Something Weird Video
(1996)(C.D.Cal.1996) 960 F.Supp. 1438 .... -5-

U.S. v. City & County of San Francisco
(1990)(ND Cal 1990) 748 F Supp 1416 .... -6-

United Steelworkers v. Retirement Income Plan
(2008)(9th Cir 2008) 512 F.3d 555 .... -7-

Dated: March 15, 2011

KRAUSE KALFAYAN BENINK
& SLAVENS LLP

/s/Ralph B. Kalfayan
Ralph B. Kalfayan, Esq.
David B. Zlotnick, Esq.
Attorneys for Plaintiff and the Class

1

United States Court of Appeals,
Ninth Circuit.
DEMOCRATIC PARTY OF WASHINGTON STATE; Paul Berendt; James Apa; Helen Carlstrom; Vivian Caver; Charlotte Coker; Edward Cote; Ted Highley; Sally Kapphahn; Karen Marchioro; David McDonald; Joseph Nilsson; David Peterson; Margarita Prentice; Karen Price; Marilyn Sayan; John Thompson; Ya-Yue Van, Plaintiffs-Appellants,
Washington State Grange; Terry Hunt; Jane Hodde, Intervenors-Appellees,
and
Republican State Committee of Washington, Jeff Kent; Lindsey Echelbarger; Libertarian Party of Washington; Washington State Grange; Terry Hunt; Jane Hodde; Christopher Vance; Dione Ludlow; John Mills; Freedom Socialist Party; Green Party of Washington; Chris Caputo; Donald Crawford; Erne Lewis, Intervenors,
v.
Sam REED, Secretary of State of the State of Washington, Defendant-Appellee.
Democratic Party of Washington State; Paul Berendt; James Apa; Helen Carlstrom; Vivian Caver; Charlotte Coker; Edward Cote; Ted Highley; Sally Kapphahn; Karen Marchioro; David McDonald; Joseph Nilsson; David Peterson; Margarita Prentice; Karen Price; Marilyn Sayan; John Thompson; Ya-Yue Van, Plaintiffs,
Jeff Kent, Libertarian Party of Washington; Washington State Grange; Terry Hunt; Jane Hodde; Dione Ludlow; John Mills; Freedom Socialist Party; Green Party of Washington; Chris Caputo; Donald Crawford; Erne Lewis, Intervenors,
and
Republican State Committee of Washington, Jeff Kent; Lindsey Echelbarger; Libertarian Party of Washington; Washington State Grange; Terry Hunt; Jane Hodde; Christopher Vance; Dione Ludlow; John Mills; Freedom Socialist Party; Green Party of Washington; Chris Caputo; Donald Crawford; Erne Lewis; Christopher Vance; Lindsey Echelbarger; Diane Tebelius, Intervenors-Appellants,
Washington State Grange; Terry Hunt; Jane Hodde, Intervenors-Appellees,
v.
Sam Reed, Secretary of State of the State of Washington, Defendant-Appellee.
Democratic Party of Washington State; Paul Berendt; James Apa; Helen Carlstrom; Vivian Caver; Charlotte Coker; Edward Cote; Ted Highley; Sally Kapphahn; Karen Marchioro; David McDonald; Joseph Nilsson; David Peterson; Margarita Prentice; Karen Price; Marilyn Sayan; John Thompson; Ya-Yue Van, Plaintiffs,
Christopher Vance; Republican State Committee of Washington, Jeff Kent; Lindsey Echelbarger; Dione Ludlow; Freedom Socialist Party; Green Party of Washington; Diane Tebelius, Intervenors,
and
Libertarian Party of Washington State; John Mills; Chris Caputo; Donald Crawford; Erne Lewis, Intervenors-Appellants,
Washington State Grange; Terry Hunt; Jane Hodde, Intervenors-Appellees,
v.
Sam Reed, Secretary of State of the State of Washington, Defendant-Appellee.

Nos. 02-35422, 02-35424, 02-35428.
Nov. 17, 2004.

Background: Political parties moved for award of attorney fees for prevailing on appeal, 343 F.3d 1198, in their suit challenging constitutionality of Washington's

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blanket primary system.

Holdings: The Court of Appeals, Kleinfeld, Circuit Judge, held that:
(1) special circumstances did not exist that precluded award of civil rights attorney fees, and
(2) fees requested were not excessive.

Motions granted.

West Headnotes

[1] Civil Rights 78 ⟹1482

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1482 k. Results of litigation; prevailing parties. Most Cited Cases

Prevailing party in § 1983 action should ordinarily recover attorney fees unless special circumstances could render such an award unjust. 42 U.S.C.A. § 1988.

[2] Civil Rights 78 ⟹1482

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1482 k. Results of litigation; prevailing parties. Most Cited Cases

In determining whether special circumstances exist that weigh against awarding attorney fees to prevailing party in § 1983 action, court considers (1) whether allowing fees would further the purposes of § 1988, and (2) whether the balance of the equities favors or disfavors the denial of fees. 42 U.S.C.A. §§ 1983, 1988.

[3] Civil Rights 78 ⟹1492

78 Civil Rights
78III Federal Remedies in General
78k1492 k. Costs and fees on appeal. Most Cited Cases

Political parties' ability to pay their own attorney fees, their status as atypical civil rights plaintiffs, and one party's decision to redact portion of descriptive passages on time records in order to protect "work product" from disclosure were not special circumstances that would justify denying political parties an award under § 1988 for attorney fees incurred on appeal. 42 U.S.C.A. § 1988.

[4] Civil Rights 78 ⟹1492

78 Civil Rights
78III Federal Remedies in General
78k1492 k. Costs and fees on appeal. Most Cited Cases

Time billed for legal research was not excessive for purposes of civil rights attorney fee award for services rendered on appeal if research was devoted to preparation of briefs, rather than general background. 42 U.S.C.A. § 1988.

[5] Civil Rights 78 ⟹1488

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1488 k. Time expended; hourly rates. Most Cited Cases

In determining amount of civil rights attorney fees awarded prevailing party, courts ought to examine with skepticism claims that several lawyers were needed to perform a task, and should deny compensation for such needless duplication as when three lawyers appear for a hearing when one would do. 42 U.S.C.A. § 1988.

[6] Civil Rights 78 ⟹1492

78 Civil Rights
78III Federal Remedies in General
78k1492 k. Costs and fees on appeal. Most Cited Cases

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Requesting award of civil rights attorney fees for time spent conducting moot court to prepare for appellate argument was not unreasonable expenditure in important civil rights case involving constitutionality of state's blanket primary system, for purposes of determining whether requested fees were excessive. 42 U.S.C.A. § 1988.

[7] Civil Rights 78 ⚷1492

78 Civil Rights
78III Federal Remedies in General
78k1492 k. Costs and fees on appeal. Most Cited Cases

Fees billed for attendance of attorneys who did not conduct appellate oral argument were excessive, for purposes of fee award under § 1988, if attorneys were there only to learn, but not if their assistance might be needed during argument or during subsequent steps of litigation. 42 U.S.C.A. § 1988.

[8] Civil Rights 78 ⚷1492

78 Civil Rights
78III Federal Remedies in General
78k1492 k. Costs and fees on appeal. Most Cited Cases

Use by one plaintiff of one senior attorney and two junior attorneys in important civil rights case challenging state's blanket primary system was not per se duplicative for purposes of determining reasonableness of requested prevailing party attorney fees incurred on appeal. 42 U.S.C.A. § 1988.

[9] Civil Rights 78 ⚷1492

78 Civil Rights
78III Federal Remedies in General
78k1492 k. Costs and fees on appeal. Most Cited Cases

Billing of attorney fees for services rendered between oral appellate argument and decision was not per se unreasonable, for purposes of determining reasonableness of requested award of civil rights attorney fees for services rendered on appeal. 42 U.S.C.A. § 1988.

[10] Civil Rights 78 ⚷1488

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1488 k. Time expended; hourly rates. Most Cited Cases

Comparison of hours spent in particular tasks by attorney for party seeking fees in civil rights case and by attorney for opposing party is useful guide in evaluating appropriateness of time claimed, notwithstanding that other factors may cause prevailing party to spend more time than losing party. 42 U.S.C.A. § 1988.

[11] Civil Rights 78 ⚷1492

78 Civil Rights
78III Federal Remedies in General
78k1492 k. Costs and fees on appeal. Most Cited Cases

Because prevailing political parties had conflicting interests despite their unity in seeking determination that state's blanket primary system was unconstitutional, fact that their attorneys spent 1041.8 hours on appeal, as compared to state's 383.3 hours, did not per se show that requested hours were duplicative and excessive for purposes of civil rights attorney fees award. 42 U.S.C.A. § 1988.

[12] Civil Rights 78 ⚷1480

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1480 k. Parties entitled or liable; immunity. Most Cited Cases

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In civil rights suit in which three political parties attacked state's blanket primary system as unconstitutional, state grange organization, which intervened on losing side as defendant, would not be liable for any portion of prevailing party attorney fees awarded against state, since organization, unlike state, could neither have granted requested relief nor denied it. 42 U.S.C.A. § 1988.

[13] Civil Rights 78 ⚷1480

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1480 k. Parties entitled or liable; immunity. Most Cited Cases

Civil Rights 78 ⚷1483

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1483 k. Good or bad faith; misconduct. Most Cited Cases

Attorney fees awards should be made under § 1988 against losing intervenors, only where the intervenors' action was frivolous, unreasonable, or without foundation. 42 U.S.C.A. § 1988.

[14] Civil Rights 78 ⚷1492

78 Civil Rights
78III Federal Remedies in General
78k1492 k. Costs and fees on appeal. Most Cited Cases

Three political parties were entitled to award of civil rights attorneys fees for services rendered in prevailing on appeal in suit challenging state's blanket primary system in respective amounts of 132,313.00, $66,777.50, and $36,579.00 against secretary of state in his or her official capacity. 42 U.S.C.A. § 1988.

***1284** David T. McDonald, Preston, Gates & Ellis, LLP, Seattle, WA, for appellants Democratic Party of Washington State, et al.

John J. White, Livengood, Carter, Tjossem, Fitzgerald & Alskog, Kirkland, WA, for appellants Republican State Committee of Washington, et al.

Richard Shepard, Shepard Law Office, Tacoma, WA, for appellants Libertarian Party of Washington State, et al.

James K. Pharris (argued and briefed), Senior Assistant Attorney General, Olympia, WA, and Jeffrey T. Even (briefed), Assistant Attorney General, Olympia, WA, for appellee Sam Reed.

James M. Johnson, Olympia, WA, for appellees Washington State Grange, et al.

Before: KLEINFELD, and McKEOWN, Circuit Judges, and BREYER,[FN*] District Judge.

FN* The Honorable Charles R. Breyer, District Judge for the Northern District of California, sitting by designation.

KLEINFELD, Circuit Judge.

The Democratic, Republican, and Libertarian Parties prevailed against the Secretary of State of the State of Washington in this civil-rights case. They sued to eliminate Washington's "blanket primary." Each political party objected to the Washington system whereby its own adherents could not choose its nominees, and prevailed on its claim that the Washington system was unconstitutional. The lawsuit was brought under 42 U.S.C. § 1983 and

other laws by the Democratic Party, and the other two parties intervened as plaintiffs. This order grants the plaintiffs' motions for attorneys' fees on appeal. It does not involve attorneys' fees for litigation in district court.

***1285** 1. Entitlement to fees.

[1] Under our construction of 42 U.S.C. § 1988, a prevailing party in a § 1983 action "should ordinarily recover an attorney's fee unless special circumstances could render such an award unjust." FN1 The State of Washington argues that this case falls within the "special circumstances" exception.

FN1. *Bauer v. Sampson,* 261 F.3d 775, 785 (9th Cir.2001) (quoting *Newman v. Piggie Park Enters., Inc.,* 390 U.S. 400, 402, 88 S.Ct. 964, 19 L.Ed.2d 1263 (1968)) (internal quotations omitted).

[2] We have articulated what purports to be a "two-pronged test" for determining when special circumstances exist: (1) whether allowing attorneys' fees would further the purposes of § 1988; and (2) whether the balance of the equities favors or disfavors the denial of fees.FN2 This test, like most multi-pronged tests, is highly indeterminate, but there can be no question that the State fails it.

FN2. *Id.* at 785-86.

[3] The State argues that special circumstances exist because this is not a typical civil-rights case, citing a district court decision, *Thorsted v. Gregoire,*FN3 in support of the proposition that § 1988 fees should not be awarded in an atypical case. In *Thorsted,* the district court denied a § 1988 award on account of "special circumstances," and we affirmed under an abuse of discretion standard, but noted that "several of the circumstances identified by the district court would be insufficient, standing alone, to warrant a denial of fees." FN4 The case at bar is our own fees decision, not a deferential review of a district court decision, and the many factors cited by the district court in *Thorsted* are largely unique to that case and inapplicable to this one, as well as being, in part, inadequate grounds for the denial of fees.

FN3. *Thorsted v. Gregoire,* 841 F.Supp. 1068 (W.D.Wash.1994), *aff'd subnom. Thorsted v. Munro,* 75 F.3d 454 (9th Cir.1996).

FN4. *Thorsted,* 75 F.3d at 456.

The State is doubtless correct that the case at bar is atypical. Most § 1983 cases are probably prisoners' and arrestees' claims for damages. But this atypicality does not make this case less suitable for an award of attorneys' fees. Section 1988 does not favor people who have been arrested or imprisoned over people who have been denied the political rights they are entitled to under our Constitution. The State also suggests that the political parties probably have more money than typical § 1983 plaintiffs, but there is nothing in the record to show that this is true, nor would it matter if it were. People and entities whose civil rights have been unconstitutionally abridged are generally entitled to attorneys' fees under § 1988 regardless of their ability to pay their attorneys.FN5

FN5. *Sable Comm. of Cal. Inc. v. Pac. Tel. & Tel. Co.,* 890 F.2d 184, 193 (9th Cir.1989).

The State also argues that § 1983 is barely mentioned in the appellants' briefs and was "pled only as a vehicle for this at-

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torney fees request." We cannot make sense of this argument. The way a plaintiff ordinarily makes a claim for relief on account of abridgement of his civil rights in federal court is under the statute that furnishes the cause of action, 42 U.S.C. § 1983. And there is nothing wrong with asserting a civil rights claim under that statute, with the purpose of obtaining attorneys' fees if the claim succeeds.

Next, the State argues that the Democratic Party's fee application should be denied because it does not demonstrate that the work done was necessary and has extensive redactions. This argument might appear to have merit had we not ***1286** looked at the application ourselves, but we have, and it does not. The Democratic Party was an appellant, so its lawyers had to review the record, research the law, draft a brief, read other parties' briefs, consult on how to proceed, and draft a reply brief. Even though its lawyers did not waste our time with a tutorial on what must be done to appeal a case, we know that appellants have to do those things.

As for the redactions, they are of this sort: "Counsel call to discuss [REDACTED]" and "Research Supreme Court case law involving [REDACTED]." If the Democratic Party were not furnishing enough information for a court to form a judgment on whether its fees were legitimate, then a court might be obligated to deny them. But these redactions do not impair the ability of the court to judge whether the work was an appropriate basis for fees. The Democratic Party, like any other litigant, is entitled for good reason to considerable secrecy about what went on between client and counsel, and among counsel. For example, the redactions quoted preserve secrecy about something the Democratic Party's lawyers talked about, and some issue of Supreme Court law they researched. One often researches issues that may raise problems for one's claim, or problems affecting the relief one will obtain in district court after prevailing on the argument, and the Democratic Party is entitled to keep this "work product" secret. A lot of necessary research time is spent chasing after ghosts that may lurk in the forests of the U.S. Reports and the Federal Reporters. Any judge who practiced law can tell when the ghost busting is out of hand.

2. Excessiveness.

[4] The State claims that the fees sought are excessive. Its first argument is that the time spent on research should be allocated to firm overhead because it would ordinarily not be billed to a client. They cite for this surprising proposition a Tenth Circuit case that discusses "reading background cases, civil rights reporters, and other materials designed to familiarize the attorney with this area of law." FN6 That is quite a different thing. When lawyers research the law needed to write a brief, they ordinarily bill their clients for the time. There is nothing to suggest that the time billed in this case was for general background rather than preparation of briefs.

FN6. *Ramos v. Lamm,* 713 F.2d 546, 554 (10th Cir.1983).

[5][6][7] Next, the State argues that the three plaintiffs' lawyers billed for duplicated services produced by overstaffing, preparing for oral argument by conducting moot courts, having associates attend argument who did not argue, and charging time subsequent to oral argument. The State correctly points out that courts ought to examine with skepticism claims that several

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lawyers were needed to perform a task,[FN7] and should deny compensation for such needless duplication as when three lawyers appear for a hearing when one would do.[FN8] We have made this skeptical examination, but are unpersuaded that there was needless duplication. A moot court to prepare for argument in a case as important as this one is not unreasonable. Participation of more than one attorney does not necessarily amount to unnecessary duplication of effort. Courts must exercise judgment and discretion, considering the circumstances of the individual ***1287** case, to decide whether there was unnecessary duplication. For example, if lawyers merely watch so that they can learn and use their knowledge in subsequent cases, their time should not be billed. But if, for example, they are there because their assistance is or may be needed by the lawyer arguing the case, as when a judge asks "where is that in the record," and one lawyer must frantically flip through pages and find the reference to hand to the lawyer arguing, then the assistance is most definitely necessary. Also, for example, a lawyer who has worked on the case and will be working on it subsequently may need to observe argument to judge how to proceed later.

FN7. *See Pearson v. Fair,* 980 F.2d 37, 47 (1st Cir.1992).

FN8. *See Ramos,* 713 F.2d at 554.

[8][9] The Democratic Party, which provided lead counsel, says it used one senior attorney supported by two junior attorneys. Considering the complexity of this case, and its tremendous importance, that seems reasonable. Most devastating to the State's cavil, the State of Washington assigned three senior attorneys to work on the appeal. Either they were wasting the taxpayers' money, which neither they nor we suggest, or the Democratic Party lawyers were not wasting the Party's money. The Republican Party used two lawyers, the Libertarian Party one. We do not see evidence in this case of needless duplication, particularly in light of the comparisons of hours, discussed below. As for the State's objection to any post-argument time, a case does not necessarily stop dead between argument and decision. Lawyers may need to consider subsequent authorities for possible 28(j) letters,[FN9] respond to inquiries from their clients, prepare for what they will need to do after decision, and so forth.

FN9. Fed. R.App. P. 28(j).

[10] Finally, the State argues that the hours claimed by all three parties are excessive. The Democrats claim 501.1 hours, the Republicans 330.7, and the Libertarians 210. These claims do indeed seem high, based on our own experience in practice doing appeals. But there is one particularly good indicator of how much time is necessary, one which the State tries to use, and that is how much time the other side's lawyers spent. While "[c]omparison of the hours spent in particular tasks by the attorney for the party seeking fees and by the attorney for the opposing party ... does not necessarily indicate whether the hours expended by the party seeking fees were excessive" because numerous factors can cause the prevailing party to have spent more time than the losing party,[FN10] such a comparison is a useful guide in evaluating the appropriateness of time claimed. If the time claimed by the prevailing party is of a substantially greater magnitude than what the other side spent, that often indicates that too much time is claimed. Litigation has something of the tennis game, something of war, to it; if one side hits the

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ball, or shoots heavy artillery, the other side necessarily spends time hitting the ball or shooting heavy artillery back.

FN10. *Ferland v. Conrad Credit Corp.,* 244 F.3d 1145, 1151 (9th Cir.2001) (per curiam).

[11] The State filed an affidavit that its three lawyers devoted 383.3 hours to losing the case. The Democrats spent more, and the Republicans and Libertarians less, winning the case. That suggests that the correct order of magnitude for time spent by their adversaries would be in the low to middle hundreds of hours. Thus, the time spent by the State's lawyers supports rather than undermines the claims by the State's adversaries.

The State suggests that we ought to compare the total hours for their adversaries, 1041.8 hours, to their 383.3. Were ***1288** that the correct comparison, it would indeed suggest excessiveness or needless duplication. But it is not. Though allied in this phase of the litigation, the three parties are more generally engaged in serious conflict in the zero-sum game of attaining political power. There is no reason that one party should simply trust the others to take care of its interests. Even the particular way that this appeal was won might have adversely affected the other parties. Once remedies are worked out, each party will be assiduous in advancing its electoral chances and harming the interests of its adversaries, so they all need to take care of themselves. The Democrats, Republicans, and Libertarians got in bed together in this appeal, partly, as they explain, to avoid the public hostility if only one of them were seen reducing voters' rights to vote for any candidates they liked. But they are not usually amicable bedfellows.

3. The intervening defendant.

[12] The Washington State Grange argues that, whatever fees may be awarded to the prevailing parties, the Grange should not be liable for any of them. This argument is correct. Though the Grange's arguments doubtless required the plaintiffs' lawyers to spend additional time, that is not enough to allow an award against the Grange. The relief sought by the plaintiffs was abolition of the Washington "blanket primary." The Grange, an intervening defendant, could neither have granted that relief nor denied it.

[13] In a Title VII case, *Independent Federation of Flight Attendants v. Zipes,* the Supreme Court held that attorneys' fees should be awarded against losing intervenors "only where the intervenors' action was frivolous, unreasonable, or without foundation." FN11 No reason has been suggested why that holding should not be extended to § 1988 fees. We conclude that § 1988 fee awards should be made against losing intervenors, "only where the intervenors' action was frivolous, unreasonable, or without foundation." Indeed, the Court explicitly noted the similarity to § 1988. Though we rejected its position, the Grange's position was not "frivolous, unreasonable, or without foundation."

FN11. *Indep. Fed. of Flight Attendants v. Zipes,* 491 U.S. 754, 761, 109 S.Ct. 2732, 105 L.Ed.2d 639 (1989).

Conclusion

[14] We grant judgment in favor of the Democratic Party for $132,313.00, the Republican Party for $66,777.50, and the Libertarian Party for $36,579.00, as attorneys' fees on appeal pursuant to 42 U.S.C. § 1988, against the defendant Secretary of State in his or her official capacity. We do

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not grant a judgment of fees against the Grange.

C.A.9,2004.
Democratic Party of Washington State v. Reed
388 F.3d 1281, 04 Cal. Daily Op. Serv. 10,202, 2004 Daily Journal D.A.R. 13,908

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United States Court of Appeals,
Ninth Circuit.
FAIR HOUSING OF MARIN, a California non-profit corporation, Plaintiff-Appellee,
v.
Jack COMBS, d.b.a. Waters Edge Apartments, Defendant-Appellant.

Nos. 00-15925, 00-17040.
Argued and Submitted Oct. 19, 2001.
Filed April 9, 2002.

Nonprofit organization sued apartment complex owner for illegal housing discrimination based on race, alleging that owner violated Fair Housing Act, Civil Rights Act, California Fair Employment and Housing Act, and California Unfair Business Practices Act. After finding that organization had standing to sue and striking owner's answer as sanction for discovery abuses, the United States District Court for the Northern District of California, Martin J. Jenkins, J., 2000 WL 365029, entered default judgment against owner, assessing compensatory damages of $24,377 and punitive damages of $74,400, and awarded attorney fees to organization in amount of $508,606.78. Owner appealed. The Court of Appeals, Roney, Circuit Judge, held that: (1) as a question of first impression, organization had direct standing to sue owner; (2) entering default against owner as sanction for discovery violations was not abuse of discretion or clear error of judgment; (3) the record supported compensatory damages award; (4) evidence supported punitive damages award; and (5) attorney fee award was not abuse of discretion or clear error.

Affirmed.

West Headnotes

[1] Federal Courts 170B ⚷776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial de novo. Most Cited Cases

Court of Appeals reviews district court's decision regarding standing de novo.

[2] Associations 41 ⚷20(1)

41 Associations
41k20 Actions by or Against Associations
41k20(1) k. In general. Most Cited Cases

Civil Rights 78 ⚷1331(3)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1331 Persons Aggrieved, and Standing in General
78k1331(3) k. Property and housing. Most Cited Cases

Nonprofit fair housing organization had direct standing to sue apartment complex owner for alleged illegal housing discrimination based on race, given showing that organization suffered drain on its resources, above and beyond costs of litigation, and frustration of its mission when it diverted resources from its efforts to provide outreach and educational services to investigating and counteracting owner's alleged discrimination.

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United States Court of Appeals,
Ninth Circuit.
FAIR HOUSING OF MARIN, a California non-profit corporation, Plaintiff-Appellee,
v.
Jack COMBS, d.b.a. Waters Edge Apartments, Defendant-Appellant.

Nos. 00-15925, 00-17040.
Argued and Submitted Oct. 19, 2001.
Filed April 9, 2002.

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Affirmed.

West Headnotes

[1] Federal Courts 170B ⚷776

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)1 In General
170Bk776 k. Trial de novo. Most Cited Cases

Court of Appeals reviews district court's decision regarding standing de novo.

[2] Associations 41 ⚷20(1)

41 Associations
41k20 Actions by or Against Associations
41k20(1) k. In general. Most Cited Cases

Civil Rights 78 ⚷1331(3)

78 Civil Rights
78III Federal Remedies in General
78k1328 Persons Protected and Entitled to Sue
78k1331 Persons Aggrieved, and Standing in General
78k1331(3) k. Property and housing. Most Cited Cases

Nonprofit fair housing organization had direct standing to sue apartment complex owner for alleged illegal housing discrimination based on race, given showing that organization suffered drain on its resources, above and beyond costs of litigation, and frustration of its mission when it diverted resources from its efforts to provide outreach and educational services to investigating and counteracting owner's alleged discrimination.

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[3] Federal Courts 170B ⚷820

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk820 k. Depositions and discovery. Most Cited Cases

The trial court's decision to strike defendant's answer and enter default judgment based on discovery violations is reviewed for abuse of discretion.

[4] Federal Civil Procedure 170A ⚷ 1278

170A Federal Civil Procedure
170AX Depositions and Discovery
170AX(A) In General
170Ak1278 k. Failure to respond; sanctions. Most Cited Cases

Discovery sanctions are appropriate only in extreme circumstances and when the violation is due to willfulness, bad faith, or fault of the party, and disobedient conduct not shown to be outside the litigant's control meets this standard. Fed.Rules Civ.Proc.Rule 37(b)(2)(C), 28 U.S.C.A.

[5] Federal Civil Procedure 170A ⚷ 1636.1

170A Federal Civil Procedure
170AX Depositions and Discovery
170AX(E) Discovery and Production of Documents and Other Tangible Things
170AX(E)5 Compliance; Failure to Comply
170Ak1636 Failure to Comply; Sanctions
170Ak1636.1 k. In general. Most Cited Cases

District court did not abuse its discretion or make clear error of judgment when it entered default against defendant as sanction for discovery violations, given that defendant repeatedly flouted even his basic discovery obligations, often violating court orders, and misrepresented to both counsel and court that documents he was ordered to produce did not exist, even though documents were in his one-bedroom apartment, and given that district court considered lesser or alternative sanctions and found them inappropriate because defendant continued to violate court orders despite multiple warnings and a finding that monetary sanctions were warranted. Fed.Rules Civ.Proc.Rule 37(b)(2)(C), 28 U.S.C.A.

[6] Federal Civil Procedure 170A ⚷ 1636.1

170A Federal Civil Procedure
170AX Depositions and Discovery
170AX(E) Discovery and Production of Documents and Other Tangible Things
170AX(E)5 Compliance; Failure to Comply
170Ak1636 Failure to Comply; Sanctions
170Ak1636.1 k. In general. Most Cited Cases

Defendant's eventual production of documents, pursuant to discovery order, did not preclude imposition of sanctions against him for discovery violations.

[7] Federal Civil Procedure 170A ⚷ 2418.1

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(B) By Default
170AXVII(B)1 In General
170Ak2418 Proceedings for Judgment
170Ak2418.1 k. In general. Most Cited Cases

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General rule is that, upon default, well-pled allegations in the complaint regarding liability are deemed true.

[8] Federal Civil Procedure 170A ⚷ 2423

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(B) By Default
170AXVII(B)1 In General
170Ak2423 k. Final judgment. Most Cited Cases

In entering default judgment against party, district court is not required to make detailed findings of fact.

[9] Civil Rights 78 ⚷1464

78 Civil Rights
78III Federal Remedies in General
78k1458 Monetary Relief in General
78k1464 k. Measure and amount. Most Cited Cases
(Formerly 78k274)

Nonprofit fair housing organization was entitled to award of $14,217 in compensatory damages for diversion of its resources resulting from organization's efforts to investigate and counteract race discrimination by apartment complex owner, and of $10,160 in damages for frustration of organization's mission, based primarily on design, printing, and dissemination of literature aimed at redressing impact of discrimination on local area's housing market.

[10] Federal Courts 170B ⚷813

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk813 k. Allowance of remedy and matters of procedure in general. Most Cited Cases

An award of punitive damages is subject to an abuse of discretion standard of review.

[11] Federal Courts 170B ⚷871

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)5 Questions of Fact, Verdicts and Findings
170Bk870 Particular Issues and Questions
170Bk871 k. Damages and extent of relief. Most Cited Cases

Challenge to the sufficiency of the evidence to support a punitive damages award must be rejected if the award is supported by substantial evidence, with "substantial evidence" being such relevant evidence as reasonable minds might accept as adequate to support a conclusion, even if it is possible to draw two inconsistent conclusions from the evidence.

[12] Civil Rights 78 ⚷1465(1)

78 Civil Rights
78III Federal Remedies in General
78k1458 Monetary Relief in General
78k1465 Exemplary or Punitive Damages
78k1465(1) k. In general. Most Cited Cases
(Formerly 78k275(1))

Evidence that apartment complex owner knew that it was illegal to discriminate on basis of race, treated nonprofit organization's black "test" rental applicants less favorably than its white testers, told tester and tenants that he wanted all-white building, used offensive and racially derogatory language when telling tenants that he did

not want to rent to blacks, and told one tenant that he could use pretext of bad credit to refuse to rent to blacks established that owner's conduct was at least reckless or callously indifferent to federally protected rights of others, supporting punitive damages award of $74,400.

[13] Federal Civil Procedure 170A ⚷ 2742.5

170A Federal Civil Procedure
170AXIX Fees and Costs
170Ak2742 Taxation
170Ak2742.5 k. Attorney fees. Most Cited Cases

Federal Courts 170B ⚷830

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(K) Scope, Standards, and Extent
170BVIII(K)4 Discretion of Lower Court
170Bk830 k. Costs, attorney fees and other allowances. Most Cited
Court of Appeals must give deference to district court's determination of reasonable attorney fees, but the district court has to provide some indication or explanation as to how it arrived at the amount of fees awarded.

[14] Federal Courts 170B ⚷634

170B Federal Courts
170BVIII Courts of Appeals
170BVIII(D) Presentation and Reservation in Lower Court of Grounds of Review
170BVIII(D)2 Objections and Exceptions
170Bk634 k. Amount or extent of relief; costs; judgment. Most Cited Cases
Contention that award of attorney fees was unwarranted because prevailing party achieved only limited success in its litigation against defendant was waived when defendant failed to raise argument in district court.

[15] Civil Rights 78 ⚷1487

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1487 k. Amount and computation. Most Cited Cases
(Formerly 78k302)
Award of $508,606.78 in attorney fees to nonprofit organization in housing discrimination action against apartment complex owner was not abuse of discretion or clear error, even though award was more than five times the amount of compensatory and punitive damages combined.

***901** Michael K. Johnson, Lewis, D'Amato, Brisbois & Bisgaard LLP, San Francisco, CA, for defendant-appellant.

Thomas V. Loran III, Kim Zeldin, Pillsbury Winthrop, LLP, San Francisco, CA; D. Scott Chang, Belmont, CA, for plaintiff-appellee.

Appeal from the United States District Court for the Northern District of California; Martin J. Jenkins, District Judge, Presiding. D.C. No. CV-97-1247-MJI.

Before: RONEY FN*, HUG and THOMAS, Circuit Judges.

FN* The Honorable Paul H. Roney, Senior Circuit Judge for the Eleventh Circuit, sitting by designation.

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***902** RONEY, Circuit Judge.

Plaintiff Fair Housing of Marin ("Fair Housing") brought action for illegal housing discrimination on the basis of race against Jack Combs, owner of the Waters Edge apartment complex in San Rafael, California. Fair Housing alleged that Combs violated the Fair Housing Act of 1968 (42 U.S.C. § 3604), the Civil Rights Act of 1866 (42 U.S.C. § 1982), the California Fair Employment and Housing Act (CAL. GOV'T CODE § 12955), and the California Unfair Business Practices Act (CAL. BUS. & PROF. CODE § 17200, et seq.). In his answer Combs claimed, inter alia, that Fair Housing lacked standing to sue. The district court (N.D.Cal., Jenkins, J.) found that Fair Housing had standing and later sanctioned Combs for discovery abuses by striking his answer and entering default judgment against him prior to trial. The district court awarded the plaintiff compensatory damages of $24,377 and punitive damages of $74,400, and adopted the magistrate judge's recommendation, made after a full hearing, of attorney's fees and costs in the amount of $508,606.78.

Combs appeals, claiming that the district court erred in the following ways: 1) finding that Fair Housing had standing to sue; 2) imposing sanction against Combs with default judgment and damages; and 3) awarding attorney's fees of $508,606.78. We affirm.

Fair Housing of Marin is a non-profit community organization in San Rafael, California. Among its many activities to further its mission of promoting equal housing opportunities, Fair Housing investigates allegations of discrimination, conducts tests of housing facilities to determine whether equal opportunity in housing is provided, takes such steps as it deems necessary to assure equal opportunity in housing and to counteract and eliminate unlawful discriminatory housing practices, and provides outreach and education to the community regarding fair housing.

Jack Combs owned and managed the Waters Edge apartment complex which had eighteen (18) rental units. Fair Housing received complaints that Combs was racially discriminating against black tenants and black potential tenants. In response, Fair Housing conducted two sets of controlled tests where a black tester was shown a unit at Waters Edge followed by a white tester. The tests indicated that Combs discriminated against black applicants.

I. Whether Fair Housing Has Standing.

[1] We review the district court's decision regarding standing de novo. *Harris v. Itzhaki,* 183 F.3d 1043, 1049 (9th Cir.1999) (citing *San Pedro Hotel Co., Inc. v. City of L.A.,* 159 F.3d 470, 474-75 (9th Cir.1998); and *Johns v. County of San Diego,* 114 F.3d 874, 876 (9th Cir.1997)). Whether a community fair housing organization has standing to sue a private party for violations of the Fair Housing Act is a question of first impression for this circuit.

Fair Housing claims first-party standing as an organization on the grounds of diversion of resources and frustration of mission.

The Supreme Court set out the standard for organizational first-party standing in *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982), holding that Congress intended standing under the Fair Housing Act to extend to the full limits of Article III. In Havens, a fair housing organization called Housing Opportunities Made Equal (HOME) and two of its employed testers

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brought an action against Havens Realty, the owner of an apartment complex. The plaintiffs alleged that Havens Realty engaged in racial steering in violation of § 3604(d) of the ***903** Fair Housing Act. Racial steering is the "practice by which real estate brokers and agents preserve and encourage patterns of racial segregation in available housing by steering members of racial and ethnic groups to buildings occupied primarily by members of such racial and ethnic groups and away from buildings and neighborhoods inhabited primarily by members of other races or groups." *Havens,* 455 U.S. at 367 n. 1, 102 S.Ct. 1114. (citation omitted).

The Court found that HOME suffered an injury sufficient to confer standing. *Id.* at 379, 102 S.Ct. 1114. HOME devoted significant resources to identifying and counteracting Havens Realty's discriminatory steering practices, and this diversion of resources frustrated the organization's counseling and referral services. The Court concluded that "[s]uch concrete and demonstrable injury to the organization's activities-with the consequent drain on the organization's resources-constitutes far more than simply a setback to the organization's abstract social interests." *Id.* at 379, 102 S.Ct. 1114 (citing *Sierra Club v. Morton,* 405 U.S. 727, 739, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972)).

Combs cites three cases to support his claim that Fair Housing lacks standing, but these cases are distinguished from the one at bar, and the law of those circuits is not different from the law we apply here.

(1) *Fair Hous. Council of Suburban Phila. v. Montgomery Newspapers,* 141 F.3d 71 (3d Cir.1998), an action against a newspaper alleging that the newspaper had published discriminatory advertisements, simply held that plaintiff Fair Housing Council failed to meet its burden of proving a causal link between the alleged wrongdoing and the injury and failed to substantiate any perceptible impairment to its mission. *Montgomery Newspapers,* 141 F.3d at 76-77. In a later case, the Third Circuit in *Alexander v. Riga,* 208 F.3d 419 (3d Cir.2000), held that plaintiff Fair Housing of Pittsburgh, a fair housing organization, had standing because it "diverted resources to investigate and to counter [the defendants' discriminatory] conduct." *Alexander,* 208 F.3d at 427 n. 4.

(2) In *Fair Employment Council of Greater Wash., Inc. v. BMC Mktg. Corp.,* 28 F.3d 1268 (D.C.Cir.1994), a fair employment case, the D.C. Circuit rejected the argument that the "mere expense of testing" constitutes injury in fact fairly traceable to the discriminatory conduct. *BMC Marketing,* 28 F.3d at 1276. The fair housing law for the D.C. Circuit concerning standing had been established by *Spann v. Colonial Vill., Inc.,* 899 F.2d 24 (D.C.Cir.1990), where then-Circuit Judge Ruth Bader Ginsburg held that

> [a]n organization cannot, of course, manufacture the injury necessary to maintain a suit from its expenditure of resources on that very suit .... Havens makes clear, however, that an organization establishes Article III injury if it alleges that purportedly illegal action increases the resources the group must devote to programs independent of its suit challenging the action. See *Havens,* 455 U.S. at 379, 102 S.Ct. 1114 .... Plaintiffs crucially alleged that these [discriminatory] advertising practices "interfered with plaintiff [Fair Housing Council] and [Metropolitan Washington Planning & Housing Association's] efforts and pro-

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grams intended to bring about equality of opportunity for minorities and others in housing" and required plaintiffs "to devote scarce resources to identify and counteract defendants' advertising practices" (citations omitted).... The organizations instead allege concrete drains on their time and resources. Expenditures to reach out to potential home buyers or ***904** renters who are steered away from housing opportunities by discriminatory advertising, or to monitor and to counteract on an ongoing basis public impressions created by defendants' use of print media, are sufficiently tangible to satisfy Article III's injury-in-fact requirement.

Id. at 27-29 (citations omitted).

(3) In *Ass'n for Retarded Citizens of Dallas v. Dallas County Mental Health & Mental Health Retardation Ctr. Bd. of Trs.*, 19 F.3d 241 (5th Cir.1994), the Fifth Circuit held that

[t]he mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization. [Plaintiff's] argument implies that any sincere plaintiff could bootstrap standing by expending its resources in response to actions of another.

Ass'n for Retarded Citizens, 19 F.3d at 244. Since that case was decided, the Fifth Circuit has held that "an organization could have standing if it had proven a drain on its resources resulting from counteracting the effects of the defendant's actions." *La. ACORN Fair Hous. v. LeBlanc,* 211 F.3d 298, 305 (5th Cir.2000).

Five other circuits which have addressed the question of organizational first-party standing in a fair housing context have held that the type of injuries alleged by Fair Housing satisfy standing requirements. See *Ragin v. Harry Macklowe Real Estate Co.,* 6 F.3d 898 (2d Cir.1993) (fair housing organization had standing to sue real estate company for placing newspaper advertisements depicting white people only because the fair housing organization was forced to devote significant resources to identify and counteract the defendants' advertising practices and did so to the detriment of their efforts to obtain equal access to housing through counseling and other services); *Hooker v. Weathers,* 990 F.2d 913 (6th Cir.1993) (fair housing organization established standing by devoting resources to investigating and confirming defendant's discriminatory practices); *Vill. of Bellwood v. Dwivedi,* 895 F.2d 1521 (7th Cir.1990) (holding that fair housing organization had standing to sue real estate brokerage for violations of Fair Housing Act. "[T]he only injury which need be shown to confer standing on a fair-housing agency is deflection of the agency's time and money from counseling to legal efforts directed against discrimination."); *Ark. ACORN Fair Hous., Inc. v. Greystone Dev., Ltd. Co.,* 160 F.3d 433 (8th Cir.1998) (acknowledging that "the deflection of an organization's monetary and human resources from counseling or educational programs to legal efforts aimed at combating discrimination, such as monitoring and investigation, is itself sufficient to constitute an actual injury [where] traceable to some act of the defendant" (citations omitted) but finding that plaintiff did not show specific facts establishing distinct and palpable injuries fairly traceable to defendant's advertisements); and *Cent. Ala. Fair Hous. Ctr., Inc. v. Lowder Realty Co., Inc.,* 236 F.3d 629 (11th Cir.2000) (fair housing organization has standing to recover in its

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own right for the diversion of its resources to combat the defendant's discrimination).

In this Circuit, an analogous case is *El Rescate Legal Servs., Inc. v. Executive Office of Immigration Review,* 959 F.2d 742 (9th Cir.1991). In *El Rescate*, individuals and a legal services organization, El Rescate, brought a class action against the Executive Office of Immigration Review, challenging its policy for failure to provide full translation of deportation and exclusion hearings. This Court, applying *Havens,* ***905** held that "[t]he allegation that the EOIR's policy frustrates these goals [of helping refugees obtain asylum and withhold deportation] and requires the organizations to expend resources in representing clients they otherwise would spend in other ways is enough to establish standing." *Id.* at 748 (citing *Havens,* 455 U.S. at 379, 102 S.Ct. 1114).

[2] Following the lead of the other circuits which have upheld organizational standing for fair housing groups, it is not necessary here to conflict with those cases which suggest that litigation expenses alone do not establish standing.

Plaintiff Fair Housing of Marin responded to citizen complaints against Combs, and alleged injury beyond litigation expenses. The district court stated that

> one of [Fair Housing's] activities in combating illegal housing discrimination is to provide "outreach and education to the community regarding fair housing." Complaint, ¶ 5. [Fair Housing] alleges that, as a result of defendant's discriminatory practices, it has "suffered injury to its ability to carry out its purposes ... [and] economic losses in staff pay, in funds expended in support of volunteer services, and in the inability to undertake other efforts to end unlawful housing practices." *Id.* Thus, fairly construed, [Fair Housing] complains that defendant's discrimination against African Americans has caused it to suffer injury to its ability to provide outreach and education (i.e., counseling).

The record supports the district court's finding that Fair Housing's resources were diverted to investigating and other efforts to counteract Combs' discrimination above and beyond litigation. Fair Housing itemized its claim of $16,317 for diversion of resources, and the district court granted $14,217. With respect to frustration of mission, the district court found that Fair Housing suffered $10,160 in frustration of mission damages, namely for design, printing, and dissemination of literature aimed at redressing the impact Combs' discrimination had on the Marin housing market.

We hold that Fair Housing of Marin has direct standing to sue because it showed a drain on its resources from both a diversion of its resources and frustration of its mission.

II. Whether the District Court Properly Imposed Sanctions and Entered a Default Judgment Against Combs.

[3] The trial court's decision to strike Combs' answer and enter a default judgment based on discovery violations is reviewed for abuse of discretion. *Stars' Desert Inn Hotel & Country Club, Inc. v. Hwang,* 105 F.3d 521, 524 (9th Cir.1997) (citing *Dahl v. City of Huntington Beach,* 84 F.3d 363, 367 (9th Cir.1996)).

[4][5] Pursuant to Federal Rule of Civil Procedure 37(b)(2)(C), a district court has the option of, inter alia, "rendering a judgment by default against the disobedient party." F ED. R. CIV. P. 37(b)(2)(C). In

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the Ninth Circuit, sanctions are appropriate only in "extreme circumstances" and where the violation is "due to willfulness, bad faith, or fault of the party." *United States v. Kahaluu Constr. Co., Inc.,* 857 F.2d 600, 603 (9th Cir.1988) (citations omitted). Disobedient conduct not shown to be outside the litigant's control meets this standard. *Hyde & Drath v. Baker,* 24 F.3d 1162, 1167 (9th Cir.1994).

The record is clear and undisputed that Combs repeatedly flouted even his basic discovery obligations, often violating court orders. For example, Combs not only failed to produce documents as ordered, but also misrepresented to both counsel and to the district court that the documents did not exist. The documents were ***906** in Combs' one-bedroom apartment. The district court found that Combs' actions prejudiced Fair Housing by depriving it of any meaningful opportunity to follow up on the time-sensitive information or to incorporate it into litigation strategy. The district court considered lesser or alternative sanctions and found them inappropriate because Combs continued to violate court orders despite multiple warnings and a finding that monetary sanctions should be imposed.

[6] Combs argues that the sanctions were inappropriately entered against him because he eventually produced the documents. The district court properly considered and rejected this argument, citing this Court's holding in *North Am. Watch Corp. v. Princess Ermine Jewels,* 786 F.2d 1447, 1451 (9th Cir.1986), where we held that "[b]elated compliance with discovery orders does not preclude the imposition of sanctions. *Nat'l Hockey League v. Metro. Hockey Club, Inc.,* 427 U.S. 639, 643, 96 S.Ct. 2778, 49 L.Ed.2d 747 (1976) (per curiam); *G-K Props. v. Redevelopment Agency of the City of San Jose,* 577 F.2d 645, 647-48 (9th Cir.1978). Last-minute tender of documents does not cure the prejudice to opponents nor does it restore to other litigants on a crowded docket the opportunity to use the courts. *G-K Properties,* 577 F.2d at 647-48."

The district court's determination to sanction Combs by default was not an abuse of discretion or clear error of judgment.

[7][8] With respect to the determination of liability and the default judgment itself, the general rule is that well-pled allegations in the complaint regarding liability are deemed true. *Geddes v. United Fin. Group,* 559 F.2d 557, 560 (9th Cir.1977) (citing *Pope v. United States,* 323 U.S. 1, 65 S.Ct. 16, 89 L.Ed. 3 (1944)). The district court is not required to make detailed findings of fact. *Adriana Int'l Corp. v. Thoeren,* 913 F.2d 1406, 1414 (9th Cir.1990).

There is ample evidence in the record that Combs violated the Fair Housing Act of 1968, the Civil Rights Act of 1866, the California Fair Employment and Housing Act, and the California Unfair Business Practices Act.

[9] With respect to the amount of the judgment for damages, the district court did not commit clear error because it made several specific findings of fact with respect to Fair Housing's actual damages. *Simeonoff v. Hiner,* 249 F.3d 883, 892-93 (9th Cir.2001). The record fully supports the award of $14,217 in compensatory damages for diversion of resources and a total of $10,160 for frustration of mission damages. Fair Housing had requested $16,317 and $34,500, respectively.

III. Whether the District Court Properly

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Awarded Punitive Damages.

[10] An award of punitive damages is subject to an abuse of discretion standard of review. *Pavon v. Swift Transp. Co.,* 192 F.3d 902, 909 (9th Cir.1999). See also *EEOC v. Farmer Bros. Co.,* 31 F.3d 891, 903 (9th Cir.1994).

The Supreme Court has held that punitive damages may be assessed under 42 U.S.C. § 1983 when a defendant's conduct is shown to be motivated by evil motive or intent, or if it involves reckless or callous indifference to the federally protected rights of others. *Smith v. Wade,* 461 U.S. 30, 56, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983).

Fair Housing requested $200,000 in punitive damages, which it calculated to be one full year of gross revenues from Combs' Waters Edge property. The district court found that Combs acted with at ***907** least a reckless disregard for the federally protected rights of blacks who were either tenants or potential tenants and awarded punitive damages of $74,400. It arrived at that figure by relying on the stipulated facts in the record and focusing on Combs' behavior against two black tenants who were replaced by white tenants.

The court found that Combs generated ninety-three (93) months of "all-white" revenue from the two apartment units. The record reflects that Combs offered vacant apartments for $800-$825 per month during the time of his discrimination. The district court took the lower number ($800) and multiplied that by 93 months of Combs' "all-white" revenue for those two apartment units for a punitive damage award of $74,400. The district court made specific calculations when awarding punitive damages and carefully limited them to the present case, specifically noting that although it was "aware that other African-American tenants had previously been tenants at Waters Edge ... the circumstances of their departures are not part of this record" and that "the punitive damages sum derived from the above calculation is sufficient and reasonable under the circumstances."

[11][12] Combs does not challenge the methodology of the district court's punitive damages calculation. Rather, he challenges the sufficiency of the evidence. In this Circuit, a challenge to the sufficiency of the evidence to support a punitive damage award must be rejected if the award is supported by substantial evidence. *Lambert v. Ackerley,* 180 F.3d 997, 1012 (9th Cir.1999) (en banc). We define substantial evidence as "such relevant evidence as reasonable minds might accept as adequate to support a conclusion even if it is possible to draw two inconsistent conclusions from the evidence." *Landes Const. Co., Inc. v. Royal Bank of Can.,* 833 F.2d 1365, 1371 (9th Cir.1987) (citing *St. Elizabeth Community Hosp. v. Heckler,* 745 F.2d 587, 592 (9th Cir.1984)).

Here, the district court did look to the full record before it and found that "the record on liability is damning, and Combs' conduct is punishable on its own merits" while making sure that the court did not "make [Combs] a vehicle for redressing similar injuries he did not cause."

The full record indicates, among other things, that Combs 1) knew that it was illegal to discriminate on the basis of race; 2) treated Fair Housing's African-American testers less favorably than its white testers; 3) told a tester and other tenants that Combs wanted an all-white building; 4) used offensive and racially derogatory language when telling several tenants that he

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did not want to rent to African-Americans; 5) and told one tenant that he could use the pretext of bad credit to refuse to rent to African-Americans.

The full record shows that Combs' conduct met at least the reckless or callous indifference standard for punitive damages and is sufficient to satisfy and uphold the district court's punitive damages award.

IV. Whether the District Court Properly Awarded Attorney's Fees and Costs in the Amount of $508,606.78.

[13] This Court must give deference to a district court's determination of reasonable attorney's fees, but the district court has to provide some indication or explanation as to how it arrived at the amount of fees awarded. *Chalmers v. City of L.A.,* 796 F.2d 1205, 1211 (9th Cir.1986), amended by 808 F.2d 1373 (9th Cir.1987).

[14] Combs argues on appeal that the district court erroneously awarded attorney's fees to Fair Housing because Fair Housing achieved only limited success in its litigation against him. Without regard ***908** to the merits of this argument, however, Combs did not make this argument in the district court and it is therefore waived. *Natural Res. Def. Council v. Houston,* 146 F.3d 1118, 1130-31 (9th Cir.1998) (citing *Parks Sch. of Bus., Inc. v. Symington,* 51 F.3d 1480, 1487 n. 4 (9th Cir.1995) (holding that failure to raise issue before the district court constitutes a waiver of that issue)).

[15] At first glance the amount of the attorney's fees awarded seems very high. It is more than five times the amount of the compensatory and punitive damage awards combined.

The Supreme Court, however, has rejected the notion that attorney's fees in civil rights cases should be proportionate to the amount of damages a plaintiff recovers. *City of Riverside v. Rivera,* 477 U.S. 561, 106 S.Ct. 2686, 91 L.Ed.2d 466 (1986) (upholding attorney's fees award of $245,456.25 where compensatory and punitive damages were $13,300 from federal claims and $20,050 from state-law claims). See also *Missouri v. Jenkins,* 491 U.S. 274, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989) (upholding attorney's fees of $4 million in school desegregation case); *Quesada v. Thomason,* 850 F.2d 537 (9th Cir.1988) ("[t]he district court should not have reduced the attorney's fees simply because the damage award was small"); *Morales v. City of San Rafael,* 96 F.3d 359 (9th Cir.1996) (vacating district court's award of attorney's fees because it was calculated improperly and too low; district court awarded only $20,000 in attorney's fees even though civil rights plaintiff had won compensatory damages of $17,500 and included "extensive and detailed explanations as to why the lodestar figure of $134,759.75 was a reasonable fee in this case").

The magistrate judge held a hearing with respect to attorney's fees and made careful findings and calculations in making the recommendation, which the district court adopted in its entirety. With respect to the hourly billing rates, the magistrate judge found "ample evidence," including declarations by expert witnesses, that the hourly billing rates plaintiff's counsel requested were reasonable. The magistrate judge further noted that "[d]efendant's challenge ... lacks substantial evidentiary support."

With respect to the actual number of hours spent, the magistrate judge began his

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analysis by noting that the documents submitted by plaintiff's counsel were "detailed, thorough, and apparently reliable." The magistrate judge also stated that plaintiff's counsel "exercised considerable billing judgment .... [T]hey reduced the number of hours by a substantial margin in order to adjust for any excessive, redundant, or unnecessary hours." The magistrate judge found that the number of hours plaintiff's counsel claimed were not excessive, given the "consistently high quality" of the plaintiff counsel's work and the circumstances involved. The magistrate judge stated that he

> identified no claims for discrete pretrial events or submissions with respect to which we are confident that the time devoted by counsel for plaintiff was obviously more than could reasonably be justified ... [w]hen we began our consideration of[attorney's fees] we felt some concern about the number of hours claimed ... [b]ut those concerns have evaporated as we have more closely examined the papers-and focused on their quality, the research that they evidence, and the detailed and fact specific work that was required to prepare them. While the hours claimed for this work are substantial, we cannot say, when we take all pertinent considerations into account, that the hours are excessive.

***909** Because of this thorough analysis, reviewed under the standard of review required in such cases, Combs has not convinced this Court that the district court abused its discretion or committed clear error by adopting the magistrate judge's recommendations as to attorney's fees and costs.

AFFIRMED.

C.A.9 (Cal.),2002.

Fair Housing of Marin v. Combs
285 F.3d 899, 52 Fed.R.Serv.3d 76, 02 Cal. Daily Op. Serv. 3050, 2002 Daily Journal D.A.R. 3719

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Supreme Court of the United States
C. Duane HENSLEY et al., Petitioners
v.
Thomas ECKERHART et al.

No. 81-1244.
Argued Nov. 3, 1982.
Decided May 16, 1983.

Plaintiffs brought action on behalf of all persons involuntarily confined at forensic unit of state hospital, challenging the constitutionality of treatment and conditions at the hospital. The United States District Court found constitutional violations, and awarded plaintiffs attorney fees, and appeal was taken. The Court of Appeals, 664 F.2d 294, affirmed, and certiorari was granted. The Supreme Court, Justice Powell, held that District Court failed to properly consider the relationship between the extent of success and the amount of attorney fee award, and cause would be remanded to permit District Court to determine the proper amount of fee award in light of Supreme Court's determination that the extent of a plaintiff's success is a crucial factor in determining the proper amount of award of attorney fees.

Vacated and remanded.

Chief Justice Burger filed a concurring opinion.

Justice Brennan filed an opinion concurring in part and dissenting in part, in which Justices Marshall, Blackmun and Stevens joined.

West Headnotes

[1] Civil Rights 78 ⇨1482

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1482 k. Results of Litigation; Prevailing Parties. Most Cited Cases
(Formerly 78k296, 78k13.17(13), 78k13.17)

The purpose of the Civil Rights Attorney's Fees Awards Act is to ensure effective access to the judicial process for persons with civil rights grievances, and accordingly, a prevailing plaintiff should ordinarily recover an attorney fee unless special circumstances would render such an award unjust. 42 U.S.C.A. § 1988.

[2] Civil Rights 78 ⇨1484

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1484 k. Awards to Defendants; Frivolous, Vexatious, or Meritless Claims. Most Cited Cases
(Formerly 78k299, 78k13.17(16), 78k13.17)

Under the Civil Rights Attorney's Fees Awards Act, a prevailing defendant may recover attorney fees only when the suit is vexatious, frivolous, or brought to harass or embarrass defendant. 42 U.S.C.A. § 1988.

[3] Civil Rights 78 ⇨1487

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1487 k. Amount and Computation. Most Cited Cases
(Formerly 78k302, 78k13.17(19), 78k13.17)

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The amount of fee to be awarded under the Civil Rights Attorney's Fees Awards Act must be determined on the facts of each case. 42 U.S.C.A. § 1988.

[4] Civil Rights 78 ⚷1488

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1488 k. Time Expended; Hourly Rates. Most Cited Cases
(Formerly 78k303, 78k13.17(20), 78k13.17)

The most useful starting point for determining the amount of a reasonable fee under the Civil Rights Attorney's Fees Awards Act is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate; party seeking an award of fees should submit evidence supporting the hours worked and rates claimed, and when the documentation of hours is inadequate, district court may reduce the award accordingly. 42 U.S.C.A. § 1988.

[5] Civil Rights 78 ⚷1482

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1482 k. Results of Litigation; Prevailing Parties. Most Cited Cases
(Formerly 78k296, 78k13.17(13), 78k13.17)

Under the Civil Rights Attorney's Fees Awards Act, the factor of “results obtained” is particularly crucial when plaintiff is deemed “prevailing” even though he succeeded on only some of his claims for relief; in that situation, two questions must be addressed: whether plaintiff failed to prevail on claims that were unrelated to the claims on which he succeeded, and whether plaintiff achieved a level of success that made the hours reasonably expended a satisfactory basis for making a fee award. 42 U.S.C.A. § 1988.

[6] Civil Rights 78 ⚷1486

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1486 k. Services or Activities for Which Fees May Be Awarded. Most Cited Cases
(Formerly 78k301, 78k13.17(18), 78k13.17)

In civil rights suit in which plaintiff presents distinctly different claims for relief that are based on different facts and legal theories, counsel's work on one claim will be unrelated to his work on another claim, and work on the unsuccessful claim cannot be deemed to have been expended in pursuit of the ultimate result achieved, for purposes of Civil Rights Attorney's Fees Awards Act. 42 U.S.C.A. § 1988.

[7] Civil Rights 78 ⚷1487

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1487 k. Amount and Computation. Most Cited Cases
(Formerly 78k302, 78k13.17(19), 78k13.17)

When civil rights plaintiff obtains excellent results, his attorney should recover a fully compensatory fee, and normally that will encompass all hours reasonably expended on the litigation, and in some cases of exceptional success, an enhanced award may be justified; in those circumstances, the fee award should not be reduced simply because plaintiff failed to prevail on every contention raised in the lawsuit. 42 U.S.C.A. § 1988.

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[8] Civil Rights 78 ⚷1487

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1487 k. Amount and Computation. Most Cited Cases
(Formerly 78k302, 78k13.17(19), 78k13.17)

If civil rights plaintiff achieves only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount under the Civil Rights Attorney's Fees Awards Act. 42 U.S.C.A. § 1988.

[9] Civil Rights 78 ⚷1488

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1488 k. Time Expended; Hourly Rates. Most Cited Cases
(Formerly 78k303, 78k13.17(20), 78k13.17)

Under the Civil Rights Attorney's Fees Awards Act, the fee applicant bears burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rate; applicant should exercise billing judgment with respect to hours worked, and should maintain billing time records in a manner that will enable reviewing court to identify distinct claims. 42 U.S.C.A. § 1988.

[10] Civil Rights 78 ⚷1490

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1490 k. Taxation. Most Cited Cases
(Formerly 78k305, 78k13.17(22), 78k13.17)

Under the Civil Rights Attorney's Fees Awards Act, it is important for district court to provide concise but clear explanation of its reasons for the fee award, and when an adjustment is requested on the basis of either the exceptional or limited nature of the relief obtained by plaintiff, district court should make clear that it has considered the relationship between the amount of the fee awarded and the results obtained. 42 U.S.C.A. § 1988.

[11] Civil Rights 78 ⚷1486

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1486 k. Services or Activities for Which Fees May Be Awarded. Most Cited Cases
(Formerly 78k301, 78k13.17(18), 78k13.17)

Federal Courts 170B ⚷462

170B Federal Courts
170BVII Supreme Court
170BVII(B) Review of Decisions of Courts of Appeals
170Bk462 k. Determination and Disposition of Cause. Most Cited Cases

In civil rights suit challenging the conditions of confinement in forensic unit of state hospital, in which district court found constitutional violations in five of the six general areas of treatment, district court failed to properly consider the relationship between the extent of success and the amount of attorney fee award, and cause would be remanded to permit district court to determine the proper amount of the fee award in light of Supreme Court's determination that the extent of a plaintiff's success is a crucial factor in determining the proper amount of award of attorney fees. 42 U.S.C.A. § 1988.

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[12] Civil Rights 78 ⚿1487

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1487 k. Amount and Computation. Most Cited Cases
(Formerly 78k302, 78k13.17(19), 78k13.17)

The extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney fees under the Civil Rights Attorney's Fees Awards Act. 42 U.S.C.A. § 1988.

***424 **1935** *Syllabus* FN*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Respondents, on behalf of all persons involuntarily confined in the forensic unit of a Missouri state hospital, brought suit in Federal District Court against petitioner hospital officials, challenging the constitutionality of treatment and conditions at the hospital. The District Court, after a trial, found constitutional violations in five of the six general areas of treatment. Subsequently, respondents filed a request for attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988, which provides that in federal civil rights actions "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." After determining that respondents were prevailing parties under § 1988 even though they had not succeeded on every claim, the District Court refused to eliminate from the attorney's fees award the hours spent by respondents' attorneys on the unsuccessful claims, finding that the significant extent of the relief clearly justified the award of a reasonable attorney's fee. The Court of Appeals affirmed.

Held: The District Court did not properly consider the relationship between the extent of success and the amount of the attorney's fee award. The extent of a plaintiff's success is a crucial factor in determining the proper amount of an attorney's fee award under § 1988. Where the plaintiff failed to prevail on a claim unrelated to the successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the court should award only that amount of fees that is reasonable in relation to the results obtained. Pp. 1937-1942.

664 F.2d 294 (8th Cir., 1981), vacated and remanded.

***425** *Michael L. Boicourt,* Assistant Attorney General of Missouri, argued the cause for petitioners. With him on the brief was *John Ashcroft,* Attorney General.

Stanley J. Eichner argued the cause and filed a brief for respondents.*

* *Robert E. Williams, Douglas S. McDowell,* and *Lorence L. Kessler* filed a brief for the Equal Employment Advisory Council as *amicus curiae* urging reversal.

Jack Greenberg, James M. Nabrit III,

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Charles Stephen Ralston, Steven L. Winter, Norman J. Chachkin, and *E. Richard Larson* filed a brief for the NAACP Legal Defense and Educational Fund, Inc., et al. as *amici curiae* urging affirmance.

Briefs of *amici curiae* were filed for the State of Pennsylvania et al. by *LeRoy S. Zimmerman,* Attorney General of Pennsylvania, and *Andrew S. Gordon* and *Allen C. Warshaw,* Deputy Attorneys General, *Charles A. Graddick,* Attorney General of Alabama, *Wilson L. Condon,* Attorney General of Alaska, *Robert K. Corbin,* Attorney General of Arizona, and *Anthony B. Ching,* Solicitor General, *John Steven Clark,* Attorney General of Arkansas, *George Deukmejian,* Attorney General of California, *J.D. MacFarlane,* Attorney General of Colorado, *Richard S. Gebelein,* Attorney General of Delaware, *Jim Smith,* Attorney General of Florida, *Michael J. Bowers,* Attorney General of Georgia, *Tany S. Hong,* Attorney General of Hawaii, *David H. Leroy,* Attorney General of Idaho, *Tyrone C. Fahner,* Attorney General of Illinois, *Linley E. Pearson,* Attorney General of Indiana, *Thomas J. Miller,* Attorney General of Iowa, *Robert T. Stephan,* Attorney General of Kansas, *Steven L. Beshear,* Attorney General of Kentucky, *James E. Tierney,* Attorney General of Maine, *Stephen H. Sachs,* Attorney General of Maryland, *Francis X. Bellotti,* Attorney General of Massachusetts, *Frank J. Kelley,* Attorney General of Michigan, *Warren R. Spannaus,* Attorney General of Minnesota, *William A. Allain,* Attorney General of Mississippi, *Paul L. Douglas,* Attorney General of Nebraska, *Richard H. Bryan,* Attorney General of Nevada, *Gregory H. Smith,* Attorney General of New Hampshire, *Irwin I. Kimmelman,* Attorney General of New Jersey, *Jeff Bingaman,* Attorney General of New Mexico, *Rufus L. Edmisten,* Attorney General of North Carolina, *Robert O. Wefald,* Attorney General of North Dakota, *William J. Brown,* Attorney General of Ohio, *Jan Eric Cartwright,* Attorney General of Oklahoma, *Hector Reichard,* Attorney General of Puerto Rico, *Daniel R. McLeod,* Attorney General of South Carolina, *Mark D. Meierhenry,* Attorney General of South Dakota, *William M. Leech, Jr.,* Attorney General of Tennessee, *Mark White,* Attorney General of Texas, *David L. Wilkinson,* Attorney General of Utah, *John J. Easton,* Attorney General of Vermont, *Gerald L. Baliles,* Attorney General of Virginia, *Kenneth O. Eikenberry,* Attorney General of Washington, *Chauncey H. Browning,* Attorney General of West Virginia, *Bronson C. La Follette,* Attorney General of Wisconsin, and *Steven F. Freudenthal,* Attorney General of Wyoming; and for the American Bar Association by *David R. Brink* and *M.D. Taracido.*

***426** Justice POWELL delivered the opinion of the Court.

Title 42 U.S.C. § 1988 provides that in federal civil rights actions "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." The issue in this case is whether a partially ****1936** prevailing plaintiff may recover an attorney's fee for legal services on unsuccessful claims.

I

A

Respondents brought this lawsuit on behalf of all persons involuntarily confined at the Forensic Unit of the Fulton State Hospital in Fulton, Missouri. The Forensic Unit consists of two residential buildings for housing patients who are dangerous to themselves or others. Maximum-security

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patients are housed in the Marion O. Biggs Building for the Criminally Insane. The rest of the patients reside in the less restrictive Rehabilitation Unit.

In 1972 respondents filed a three-count complaint in the District Court for the Western District of Missouri against petitioners, who are officials at the Forensic Unit and members of the Missouri Mental Health Commission. Count I challenged the constitutionality of treatment and conditions at the Forensic Unit. Count II challenged the placement of patients in the Biggs Building without procedural due process. Count III sought compensation for patients who performed institution-maintaining labor.

Count II was resolved by a consent decree in December 1973. Count III largely was mooted in August 1974 when ***427** petitioners began compensating patients for labor pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* In April 1975 respondents voluntarily dismissed the lawsuit and filed a new two-count complaint. Count I again related to the constitutionality of treatment and conditions at the Forensic Unit. Count II sought damages, based on the Thirteenth Amendment, for the value of past patient labor. In July 1976 respondents voluntarily dismissed this back-pay count. Finally, in August 1977 respondents filed an amended one-count complaint specifying the conditions that allegedly violated their constitutional right to treatment.

In August 1979, following a three-week trial, the District Court held that an involuntarily committed patient has a constitutional right to minimally adequate treatment. 475 F.Supp. 908, 915 (WD Mo.1979). The court then found constitutional violations in five of six general areas: physical environment; individual treatment plans; least restrictive environment; visitation, telephone, and mail privileges; and seclusion and restraint. [FN1] With respect to staffing, the sixth general area, ***428** the District Court found that the Forensic Unit's staffing levels, which had increased during the litigation, were minimally adequate. 475 F.Supp., at 919-920. Petitioners did not appeal the District Court's decision on the merits.

FN1. Under "physical environment" the court found that certain physical aspects of the Biggs Building were not minimally adequate. 475 F.Supp., at 916-919.

Under "individual treatment plans" the court found that the existing plans were adequate, but that the long delay in preparation of initial plans after patients were admitted and the lack of regular review of the plans operated to deny patients minimally adequate plans. *Id.,* at 921-922.

Under "least restrictive environment" the court found unconstitutional the delay in transfer of patients from the Biggs Building to the Rehabilitation Unit following a determination that they no longer needed maximum-security confinement. *Id.,* at 922-923.

Under "visitation, telephone and mail" the court found that the visitation and telephone policies at the Biggs Building were so restrictive that they constituted punishment and therefore violated patients' due-process rights. *Id.,* at 923-925.

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> Under "seclusion and restraint" the court rejected respondents' claim that patients were given excessive medication as a form of behavior control. The court then found that petitioners' practices regarding seclusion and physical restraint were not minimally adequate. *Id.,* at 925-928.

B

In February 1980 respondents filed a request for attorney's fees for the period from January 1975 through the end of the litigation. Their four attorneys claimed 2,985 hours worked and sought payment at rates varying from $40 to $65 per hour. This amounted to approximately $150,000. ****1937** Respondents also requested that the fee be enhanced by thirty to fifty percent, for a total award of somewhere between $195,000 and $225,000. Petitioners opposed the request on numerous grounds, including inclusion of hours spent in pursuit of unsuccessful claims.

The District Court first determined that respondents were prevailing parties under 42 U.S.C. § 1988 even though they had not succeeded on every claim. It then refused to eliminate from the award hours spent on unsuccessful claims:

"[Petitioners'] suggested method of calculating fees is based strictly on a mathematical approach comparing the total number of issues in the case with those actually prevailed upon. Under this method no consideration is given for the relative importance of various issues, the interrelation of the issues, the difficulty in identifying issues, or the extent to which a party may prevail on various issues." No. 75-CV-87-C, at 7 (WD Mo., Jan. 23, 1981), Record 220.

Finding that respondents "have obtained relief of significant import," Record 231, the District Court awarded a fee of $133,332.25. This award differed from the fee request in two respects. First, the court reduced the number of hours claimed by one attorney by thirty percent to account for his inexperience***429** and failure to keep contemporaneous records. Second, the court declined to adopt an enhancement factor to increase the award.

The Court of Appeals for the Eighth Circuit affirmed on the basis of the District Court's memorandum opinion and order. 664 F.2d 294 (1981). We granted certiorari, 455 U.S. 988, 102 S.Ct. 1610, 71 L.Ed.2d 847 (1982), and now vacate and remand for further proceedings.

II

[1][2] In *Alyeska Pipeline Service Co. v. Wilderness Society,* 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975), this Court reaffirmed the "American Rule" that each party in a lawsuit ordinarily shall bear its own attorney's fees unless there is express statutory authorization to the contrary. In response Congress enacted the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988, authorizing the district courts to award a reasonable attorney's fee to prevailing parties in civil rights litigation. The purpose of § 1988 is to ensure "effective access to the judicial process" for persons with civil rights grievances. H.R.Rep. No. 94-1558, p. 1 (1976). Accordingly, a prevailing plaintiff " 'should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust.' " S.Rep. No. 94-1011, p. 4 (1976), U.S.Code Cong. & Admin.News 1976, p. 5912 (quoting *Newman v. Piggie Park Enterprises,* 390 U.S. 400, 402, 88 S.Ct. 964, 966, 19 L.Ed.2d

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1263 (1968)).FN2

FN2. A prevailing defendant may recover an attorney's fee only where the suit was vexatious, frivolous, or brought to harass or embarrass the defendant. See H.R.Rep. No. 94-1558, p. 7 (1976); *Christiansburg Garment Co. v. EEOC,* 434 U.S. 412, 421, 98 S.Ct. 694, 700, 54 L.Ed.2d 648 (1978) ("[A] district court may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in subjective bad faith.").

[3] The amount of the fee, of course, must be determined on the facts of each case. On this issue the House Report simply refers to twelve factors set forth in *430*Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714 (CA5 1974).FN3 The Senate Report cites to *Johnson* as well and also ****1938** refers to three district court decisions that "correctly applied" the twelve factors.FN4 One of the factors in *Johnson,* "the amount involved and the results obtained," indicates that the level of a plaintiff's success is relevant to the amount of fees to be awarded. The importance of this relationship is confirmed in varying degrees by the other cases cited approvingly in the Senate Report.

FN3. The twelve factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. 488 F.2d, at 717-719. These factors derive directly from the American Bar Association Code of Professional Responsibility, Disciplinary Rule 2-106.

FN4. "It is intended that the amount of fees awarded ... be governed by the same standards which prevail in other types of equally complex Federal litigation, such as antitrust cases[,] and not be reduced because the rights involved may be nonpecuniary in nature. The appropriate standards, see *Johnson v. Georgia Highway Express,* 488 F.2d 714 (5th Cir.1974), are correctly applied in such cases as *Stanford Daily v. Zurcher,* 64 F.R.D. 680 (ND Cal.1974); *Davis v. County of Los Angeles,* 8 E.P.D. ¶ 9444 (CD Cal.1974); and *Swann v. Charlotte-Mecklenburg Board of Education,* 66 F.R.D. 483 (WDNC 1975). These cases have resulted in fees which are adequate to attract competent counsel, but which do not produce windfalls to attorneys. In computing the fee, counsel for a prevailing party should be paid, as is traditional with attorneys compensated by a fee-paying client, 'for all time reasonably expended on a matter.' *Davis, supra; Stanford Daily, supra* at 684." S.Rep. No. 94-1011, p. 6 (1976), U.S.Code

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Cong. & Admin.News 1976, pp. 5908, 5913.

In *Stanford Daily v. Zurcher,* 64 F.R.D. 680 (ND Cal.1974), aff'd, 550 F.2d 464 (CA9 1977), rev'd on other grounds, 436 U.S. 547, 98 S.Ct. 1970, 56 L.Ed.2d 525 (1978), the plaintiffs obtained a declaratory judgment, then moved for a preliminary injunction. After the defendants promised not to violate the judgment, ***431** the motion was denied. The District Court awarded attorney's fees for time spent pursuing this motion because the plaintiffs "substantially advanced their clients' interests" by obtaining "a significant concession from defendants as a result of their motion." 64 F.R.D., at 684.

In *Davis v. County of Los Angeles,* 8 E.P.D. ¶ 9444 (CD Cal.1974), the plaintiffs won an important judgment requiring the Los Angeles County Fire Department to undertake an affirmative action program for hiring minorities. In awarding attorney's fees the District Court stated:

"It also is not legally relevant that plaintiffs' counsel expended a certain limited amount of time pursuing certain issues of fact and law that ultimately did not become litigated issues in the case or upon which plaintiffs ultimately did not prevail. Since plaintiffs prevailed on the merits and achieved excellent results for the represented class, plaintiffs' counsel are entitled to an award of fees for all time reasonably expended in pursuit of the ultimate result achieved in the same manner that an attorney traditionally is compensated by a fee-paying client for all time reasonably expended on a matter." 8 E.P.D. ¶ 9444, at 5049.

Similarly, the District Court in *Swann v. Charlotte-Mecklenburg Board of Education,* 66 F.R.D. 483, 484 (WDNC 1975), based its fee award in part on a finding that "[t]he results obtained were excellent and constituted the total accomplishment of the aims of the suit," despite the plaintiffs' losses on "certain minor contentions."

In each of these three cases the plaintiffs obtained essentially complete relief. The legislative history, therefore, does not provide a definitive answer as to the proper standard for setting a fee award where the plaintiff has achieved only limited success. Consistent with the legislative history, courts of appeals generally have recognized the relevance of the results obtained to the amount of a fee award. They ***432** have adopted varying standards, however, for applying this principle in cases where the plaintiff did not succeed on all claims asserted.[FN5]

FN5. Some courts of appeals have stated flatly that plaintiffs should not recover fees for any work on unsuccessful claims. See, *e.g., Bartholomew v. Watson,* 665 F.2d 910, 914 (CA9 1982); *Muscare v. Quinn,* 614 F.2d 577, 579-581 (CA7 1980); *Hughes v. Repko,* 578 F.2d 483, 486-487 (CA3 1978). Others have suggested that prevailing plaintiffs generally should receive a fee based on hours spent on all nonfrivolous claims. See, *e.g., Sherkow v. Wisconsin,* 630 F.2d 498, 504-505 (CA7 1980); *Northcross v. Board of Educ. of Memphis City Schools,* 611 F.2d 624, 636 (CA6 1979), cert. denied, 447 U.S. 911, 100 S.Ct. 2999, 64 L.Ed.2d 862 (1980); *Brown v. Bathke,* 588 F.2d 634, 636-637 (CA8 1978). Still other courts of appeals have held that recovery of a fee for hours spent on unsuccessful claims depends upon

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the relationship of those hours expended to the success achieved. See, *e.g., Copeland v. Marshall,* 205 U.S.App.D.C. 390, 401-402, n. 18, 641 F.2d 880, 891-892, n. 18 (1980) (en banc); *Jones v. Diamond,* 636 F.2d 1364, 1382 (CA5 1981) (en banc), cert. dism'd, 453 U.S. 950, 102 S.Ct. 27, 69 L.Ed.2d 1033 (1981); *Gurule v. Wilson,* 635 F.2d 782, 794 (CA10 1980) (opinion on rehearing); *Lamphere v. Brown Univ.,* 610 F.2d 46, 47 (CA1 1979).

****1939** In this case petitioners contend that "an award of attorney's fees must be proportioned to be consistent with the extent to which a plaintiff has prevailed, and only time reasonably expended in support of successful claims should be compensated." Brief for Petitioners at 24. Respondents agree that a plaintiff's success is relevant, but propose a less stringent standard focusing on "whether the time spent prosecuting [an unsuccessful] claim in any way contributed to the results achieved." Brief for Respondents at 46. Both parties acknowledge the discretion of the district court in this area. We take this opportunity to clarify the proper relationship of the results obtained to an award of attorney's fees. [FN6]

FN6. The parties disagree as to the results obtained in this case. Petitioners believe that respondents "prevailed only to an extremely limited degree." Brief for Petitioners at 22. Respondents contend that they "prevailed on practically every claim advanced." Brief for Respondents at 23. As discussed in Part IV, *infra,* we leave this dispute for the District Court on remand.

***433** III

A

A plaintiff must be a "prevailing party" to recover an attorney's fee under § 1988. [FN7] The standard for making this threshold determination has been framed in various ways. A typical formulation is that "plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Nadeau v. Helgemoe,* 581 F.2d 275, 278-279 (CA1 1978). [FN8] This is a generous formulation that brings the plaintiff only across the statutory threshold. It remains for the district court to determine what fee is "reasonable."

FN7. As we noted in *Hanrahan v. Hampton,* 446 U.S. 754, 758 n. 4, 100 S.Ct. 1987, 1989 n. 4, 64 L.Ed.2d 670 (1980) (*per curiam*), "[t]he provision for counsel fees in § 1988 was patterned upon the attorney's fees provisions contained in Title II and VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000a-3(b) and 2000e-5(k), and § 402 of the Voting Rights Act Amendments of 1975, 42 U.S.C. § 1973*l*(e)." The legislative history of § 1988 indicates that Congress intended that "the standards for awarding fees be generally the same as under the fee provisions of the 1964 Civil Rights Act." S.Rep. No. 94-1011, p. 4 (1976), U.S.Code Cong. & Admin.News 1976, p. 5912. The standards set forth in this opinion are generally applicable in all cases in which Congress has authorized an award of fees to a "prevailing party."

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FN8. See also *Busche v. Burkee,* 649 F.2d 509, 521 (CA7 1981), cert. denied, 454 U.S. 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (1982); *Sethy v. Alameda County Water Dist.,* 602 F.2d 894, 897-898 (CA9 1979) (*per curiam*). Cf. *Taylor v. Sterrett,* 640 F.2d 663, 669 (CA5 1981) ("[T]he proper focus is whether the plaintiff has been successful on the central issue as exhibited by the fact that he has acquired the primary relief sought").

[4] The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services. The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed. Where the documentation of hours is inadequate, the district court may reduce the award accordingly.

***434** The district court also should exclude from this initial fee calculation hours that were not "reasonably expended." S.Rep. No. 94-1011, p. 6 (1976). Cases may be overstaffed, and the skill and experience of lawyers vary widely. Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise ****1940** unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fee submission. "In the private sector, 'billing judgment' is an important component in fee setting. It is no less important here. Hours that are not properly billed to one's *client* also are not properly billed to one's *adversary* pursuant to statutory authority." *Copeland v. Marshall,* 205 U.S.App.D.C. 390, 401, 641 F.2d 880, 891 (1980) (en banc) (emphasis in original).

B

[5] The product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the "results obtained." FN9 This factor is particularly crucial where a plaintiff is deemed "prevailing" even though he succeeded on only some of his claims for relief. In this situation two questions must be addressed. First, did the plaintiff fail to prevail on claims that were unrelated to the claims on which he succeeded? Second, did the plaintiff achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?

FN9. The district court also may consider other factors identified in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714, 717-719 (CA5 1974), though it should note that many of these factors usually are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate. See *Copeland v. Marshall,* 205 U.S.App.D.C. 390, 400, 641 F.2d 880, 890 (1980) (en banc).

[6] In some cases a plaintiff may present in one lawsuit distinctly different claims for relief that are based on different facts and legal theories. In such a suit, even where the ***435** claims are brought against the same defendants-often an institution and its officers, as in this case-counsel's work on one claim will be unrelated to his work on another claim. Accordingly, work

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on an unsuccessful claim cannot be deemed to have been "expended in pursuit of the ultimate result achieved." *Davis v. County of Los Angeles,* 8 E.P.D. ¶ 9444, at 5049 (CD Cal.1974). The congressional intent to limit awards to prevailing parties requires that these unrelated claims be treated as if they had been raised in separate lawsuits, and therefore no fee may be awarded for services on the unsuccessful claim.[FN10]

FN10. If the unsuccessful claim is frivolous, the defendant may recover attorney's fees incurred in responding to it. See n. 2, *supra.*

It may well be that cases involving such unrelated claims are unlikely to arise with great frequency. Many civil rights cases will present only a single claim. In other cases the plaintiff's claims for relief will involve a common core of facts or will be based on related legal theories. Much of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis. Such a lawsuit cannot be viewed as a series of discrete claims. Instead 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.

[7] Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. See *Davis v. County of Los Angeles,* 8 E.P.D. ¶ 9444, at 5049 (CD Cal.1974). Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters.[FN11]

FN11. We agree with the District Court's rejection of "a mathematical approach comparing the total number of issues in the case with those actually prevailed upon." Record 220. Such a ratio provides little aid in determining what is a reasonable fee in light of all the relevant factors. Nor is it necessarily significant that a prevailing plaintiff did not receive all the relief requested. For example, a plaintiff who failed to recover damages but obtained injunctive relief, or vice versa, may recover a fee award based on all hours reasonably expended if the relief obtained justified that expenditure of attorney time.

****1941** [8] ***436** If, on the other hand, a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount. This will be true even where the plaintiff's claims were interrelated, nonfrivolous, and raised in good faith. Congress has not authorized an award of fees whenever it was reasonable for a plaintiff to bring a lawsuit or whenever conscientious counsel tried the case with devotion and skill. Again, the most critical factor is the degree of success obtained.

Application of this principle is particularly important in complex civil rights litigation involving numerous challenges to institutional practices or conditions. This type of litigation is lengthy and demands many hours of lawyers' services. Although

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the plaintiff often may succeed in identifying some unlawful practices or conditions, the range of possible success is vast. That the plaintiff is a "prevailing party" therefore may say little about whether the expenditure of counsel's time was reasonable in relation to the success achieved. In this case, for example, the District Court's award of fees based on 2,557 hours worked may have been reasonable in light of the substantial relief obtained. But had respondents prevailed on only one of their six general claims, for example the claim that petitioners' visitation, mail, and telephone policies were overly restrictive, see n. 1, *supra,* a fee award based on the claimed hours clearly would have been excessive.

There is no precise rule or formula for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce ***437** the award to account for the limited success. The court necessarily has discretion in making this equitable judgment. This discretion, however, must be exercised in light of the considerations we have identified.

C

[9] A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee. Where settlement is not possible, the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. The applicant should exercise "billing judgment" with respect to hours worked, see *supra,* at 1939-1940, and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims.[FN12]

FN12. We recognize that there is no certain method of determining when claims are "related" or "unrelated." Plaintiff's counsel, of course, is not required to record in great detail how each minute of his time was expended. But at least counsel should identify the general subject matter of his time expenditures. See *Nadeau v. Helgemoe,* 581 F.2d 275, 279 (CA1 1978) ("As for the future, we would not view with sympathy any claim that a district court abused its discretion in awarding unreasonably low attorney's fees in a suit in which plaintiffs were only partially successful if counsel's records do not provide a proper basis for determining how much time was spent on particular claims.").

[10] We reemphasize that the district court has discretion in determining the amount of a fee award. This is appropriate in view of the district court's superior understanding of the litigation and the desirability of avoiding frequent appellate review of what essentially are factual matters. It remains important, however, for the district court to provide a concise but clear explanation of its reasons for the fee award. When an adjustment is requested on the basis of either the exceptional or limited nature of the relief obtained by the plaintiff, the district court should make clear that it has considered the relationship between the amount of the fee awarded and the results obtained.

***438 **1942** IV

[11] In this case the District Court began by finding that "[t]he relief [respondents] obtained at trial was substantial and certainly entitles them to be considered prevailing ...., without the need of examining those issues disposed of prior to

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trial in order to determine which went in [respondents'] favor." Record 219. It then declined to divide the hours worked between winning and losing claims, stating that this fails to consider "the relative importance of various issues, the interrelation of the issues, the difficulty in identifying issues, or the extent to which a party prevails on various issues." Record 220. Finally, the court assessed the "amount involved/results obtained" and declared: "Not only should [respondents] be considered prevailing parties, they are parties who have obtained relief of significant import. [Respondents'] relief affects not only them, but also numerous other institutionalized patients similarly situated. The extent of this relief clearly justifies the award of a reasonable attorney's fee." Record 231.

These findings represent a commendable effort to explain the fee award. Given the interrelated nature of the facts and legal theories in this case, the District Court did not err in refusing to apportion the fee award mechanically on the basis of respondents' success or failure on particular issues. [FN13] And given the findings with respect to the level of respondents' success, the District Court's award may be consistent with our holding today.

FN13. In addition, the District Court properly considered the reasonableness of the hours expended, and reduced the hours of one attorney by thirty percent to account for his inexperience and failure to keep contemporaneous time records.

We are unable to affirm the decisions below, however, because the District Court's opinion did not properly consider the relationship between the extent of success and the amount of the fee award.[FN14] The court's finding that "the [significant] ***439** extent of the relief clearly justifies the award of a reasonable attorney's fee" does not answer the question of what is "reasonable" in light of that level of success.[FN15] ****1943** We ***440** emphasize that the inquiry does not end with a finding that the plaintiff obtained significant relief. A reduced fee award is appropriate if the relief, however significant, is limited in comparison to the scope of the litigation as a whole.

FN14. The District Court expressly relied on *Brown v. Bathke,* 588 F.2d 634 (CA8 1978), a case we believe understates the significance of the results obtained. In that case a fired school teacher had sought reinstatement, lost wages, $25,000 in damages, and expungement of derogatory material from her employment record. She obtained lost wages and the requested expungement, but not reinstatement or damages. The District Court awarded attorney's fees for the hours that it estimated the plaintiff's attorney had spent on the particular legal issue on which relief had been granted. The Eighth Circuit reversed. It stated that the results obtained may be considered, but that this factor should not "be given such weight that it reduces the fee awarded to a prevailing party below the 'reasonable attorney's fee' authorized by the Act." 588 F.2d, at 637. The court determined that the unsuccessful issues that had been raised by the plaintiff were not frivolous, and then remanded the case to the District Court. *Id.,* at 638.

Our holding today differs at least in emphasis from that of the

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Eighth Circuit in *Brown.* We hold that the extent of a plaintiff's success is a crucial factor that the district courts should consider carefully in determining the amount of fees to be awarded. In *Brown* the plaintiff had lost on the major issue of reinstatement. The District Court found that she had " 'obtained only a minor part of the relief she sought.' " *Id.,* at 636. In remanding the Eighth Circuit implied that the District Court should not withhold fees for work on unsuccessful claims unless those claims were frivolous. Today we hold otherwise. It certainly was well within the *Brown* District Court's discretion to make a limited fee award in light of the "minor" relief obtained.

FN15. The dissent errs in suggesting that the District Court's opinion would have been acceptable if merely a single word had been changed. See *post,* at 1949. We note, for example, that the District Court did not determine whether petitioners' unilateral increase in staff levels was a result of the litigation. Petitioners asserted that 70%-80% of the attorney time in the case was spent on the question of staffing levels at the Forensic Unit. Memorandum in Opposition to Plaintiffs' Request for an Award of Attorneys' Fees, Expenses and Costs 30. If this is true, and if respondents' lawsuit was not a catalyst for the staffing increases, then respondents' failure to prevail on their challenge to the staffing levels would be material in determining whether an award based on over 2500 hours expended was justifiable in light of respondents' actual success. The District Court's failure to consider this issue would not have been obviated by a mere conclusory statement that this fee was reasonable in light of the success obtained.

V

[12] We hold that the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U.S.C. § 1988. Where the plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised. But where the plaintiff achieved only limited success, the district court should award only that amount of fees that is reasonable in relation to the results obtained. On remand the District Court should determine the proper amount of the attorney's fee award in light of these standards.

The judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Chief Justice BURGER, concurring.

I read the Court's opinion as requiring that when a lawyer seeks to have his adversary pay the fees of the prevailing party, the lawyer must provide detailed records of the time and services for which fees are sought. It would be inconceivable that the prevailing party should not be required to

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establish at least as much to support a claim under 42 U.S.C. § 1988 as a lawyer would be required to show if his own client challenged the fees. A District Judge may not, in my view, authorize the payment of attorney's fees unless the ***441** attorney involved has established by clear and convincing evidence the time and effort claimed and shown that the time expended was necessary to achieve the results obtained.

A claim for legal services presented by the prevailing party to the losing party pursuant to § 1988 presents quite a different situation from a bill that a lawyer presents to his own client. In the latter case, the attorney and client have presumably built up a relationship of mutual trust and respect; the client has confidence that his lawyer has exercised the appropriate "billing judgment," *ante,* at 1940, and unless challenged by the client, the billing does not need the kind of extensive documentation necessary for a payment under § 1988. That statute requires the losing party in a civil rights action to bear the cost of his adversary's attorney and there is, of course, no relationship of trust and confidence between the adverse parties. As a result, the party who seeks payment must keep records in sufficient detail that a neutral judge can make a fair evaluation of the time expended, the nature and need for the service, and the reasonable fees to be allowed.

Justice BRENNAN, with whom Justice MARSHALL, Justice BLACKMUN, and Justice STEVENS join, concurring in part and dissenting in part.

The Court today holds that "the extent of a plaintiff's success is a crucial factor in determining the proper amount of an award of attorney's fees under 42 U.S.C. § 1988." *Ante,* at 1943. I agree with the Court's carefully worded statement because it is fully consistent with the purpose of § 1988 as well as the interpretation of that statute reached by the courts of appeals. I also agree that plaintiffs may receive attorney's fees for cases in which " 'they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit,' " *id.,* at 1939, citing ****1944***Nadeau v. Helgemoe,* 581 F.2d 275, 278-279 (CA1 1978), and that plaintiffs may receive fees for all hours reasonably spent litigating ***442** a case even if they do not prevail on every claim or legal theory, see *ante,* at 1940.

Regretfully, however, I do not join the Court's opinion. In restating general principles of the law of attorney's fees, the Court omits a number of elements crucial to the calculation of attorney's fees under § 1988. A court that did not take account of those additional elements in evaluating a claim for attorney's fees would entirely fail to perform the task Congress has entrusted to it, a task that Congress-I think rightly-has deemed crucial to the vindication of individuals' rights in a society where access to justice so often requires the services of a lawyer.

Furthermore, whether one considers all the relevant factors or merely the relationship of fees to results obtained, the District Court in this case awarded a fee that was well within the court's zone of discretion under § 1988, and it explained the amount of the fee meticulously. The Court admits as much. See *ante,* at 1942. Vacating a fee award such as this and remanding for further explanation can serve only as an invitation to losing defendants to engage in what must be one of the least socially productive types of litigation imaginable: appeals from awards of attorney's fees, after the merits of a case have been concluded,

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when the appeals are not likely to affect the amount of the final fee. Such appeals, which greatly increase the costs to plaintiffs of vindicating their rights, frustrate the purposes of § 1988. Where, as here, a district court has awarded a fee that comes within the range of possible fees that the facts, history, and results of the case permit, the appellate court has a duty to affirm the award promptly.

I

In *Alyeska Pipeline Co. v. Wilderness Society,* 421 U.S. 240, 269, 95 S.Ct. 1612, 1627, 44 L.Ed.2d 141 (1975), this Court held that it was beyond the competence of judges to "pick and choose among plaintiffs and the statutes under which they sue and to award fees in some cases but not in others." Congress, however, has full authority to make such decisions, and it responded to the challenge***443** of *Alyeska* by doing the "picking and choosing" itself. Its legislative solution legitimates the federal common law of attorneys fees that had developed in the years before *Alyeska* [FN1] by specifying when and to whom fees are to be available.[FN2] Section 1988 manifests ****1945** a finely balanced congressional ***444** purpose to provide plaintiffs asserting specified federal rights with "fees which are adequate to attract competent counsel, but which do not produce windfalls to attorneys." S.Rep. No. 94-1011, 94th Cong., 2d Sess. 6 (1976) (hereinafter Senate Report); cf. H.R.Rep. No. 94-1558, 94th Cong., 2d Sess. 9 (1976) (hereinafter House Report), U.S.Code Cong. & Admin.News 1976, p. 5913. [FN3] The Court today emphasizes those aspects of judicial discretion necessary to prevent "windfalls," but lower courts must not forget the need to ensure that civil rights plaintiffs with bona fide claims are able to find lawyers to represent them.

FN1. See cases cited at 421 U.S., at 284-285, 95 S.Ct., at 1634-1635 (MARSHALL, J., dissenting). See also S.Rep. No. 94-1011, 94th Cong., 2d Sess. 6, U.S.Code Cong. & Admin.News 1976, p. 5913 ("This bill creates no startling new remedy-it only meets the technical requirements that the Supreme Court has laid down if the Federal courts are to continue the practice of awarding attorneys' fees which had been going on for years prior to the Court's ... decision.").

FN2. Because of this selectivity, statutory attorney's fee remedies such as those created by § 1988 and its analogues bear little resemblance to either common-law attorney's fee rule: the "American Rule," under which the parties bear their own attorney's fees no matter what the outcome of a case, or the "English Rule," under which the losing party, whether plaintiff or defendant, pays the winner's fees. They are far more like new causes of action tied to specific rights than like background procedural rules governing any and all litigation. This fundamental distinction has often been ignored. See *ante,* at 1937; *Alyeska Pipeline Co. v. Wilderness Society,* 421 U.S., at 247, 95 S.Ct., at 1616.

For certain rights selected by Congress, § 1988 facilitates litigation by plaintiffs and encourages them to reject half-measure compromises, see *New York Gaslight Club v. Carey,* 447 U.S. 54, 63, 100 S.Ct. 2024, 2030, 64 L.Ed.2d 723 (1980); *Newman v. Piggie Park Enterprises, Inc.,* 390 U.S.

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400, 402, 88 S.Ct. 964, 966, 19 L.Ed.2d 1263 (1968) (per curiam), while at the same time it gives defendants strong incentives to avoid arguable civil rights violations in the first place and to make concessions in hope of an early settlement, see *Copeland v. Marshall,* 205 U.S.App.D.C. 390, 407, 641 F.2d 880, 897 (1980) (en banc); *Dennis v. Chang,* 611 F.2d 1302, 1307 (CA9 1980). Civil rights plaintiffs with meritorious claims "appear before the court cloaked in a mantle of public interest." H.R.Rep. 94-1558, 94th Cong., 2d Sess. 6 (1976) (citing *United States Steel Corp. v. United States,* 519 F.2d 359, 364 (CA3 1975)). Congress has granted them a statutory right to attorney's fees in addition to any rights they have under fees rule of general applicability. *Newman v. Piggie Park Enterprises, supra,* 390 U.S. at 402, n. 4, 88 S.Ct., at 966 n. 4; see *Christianburg Garment Co. v. EEOC,* 434 U.S. 412, 416-417, 98 S.Ct. 694, 697-698, 54 L.Ed.2d 648 (1978). Both of the traditional rules reflect the assumption that plaintiff and defendant approach litigation on a more-or-less equal basis. They leave the parties to private, essentially symmetrical calculations as to whether litigation-including the attorney's fees it entails-represents a better investment than compromise and settlement or simply acceding to the opposing party's demands. Of course, the parties approach those calculations with different risk preferences and financial positions, and the principal difference between the two rules is that the English Rule, by enhancing the cost of losing after litigation, gives the party with superior ability to undertake risk more of a tactical advantage than does the American Rule. But-in theory, at least-neither common-law rule systematically favors plaintiffs over defendants, or vice versa.

FN3. The portion of § 1988 at issue in this case states:

> "In any action or proceeding to enforce a provision of sections 1981, 1982, 1982, 1985, and 1986 of [Title 42], title IX of Public Law 92-318 ... or title VI of the Civil Rights Act of 1964, 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." Civil Rights Attorney's Fees Awards Act of 1976, 90 Stat. 2641.

> Section 1988 was drafted based on Congress's experience with over 50 fee-shifting provisions in other statutes, dating back to Reconstruction-era civil rights statutes, see Senate Report 3-4; *Alyeska Pipeline Co. v. Wilderness Society,* 421 U.S. 240, 260, n. 33, 95 S.Ct. 1612, 1623, n. 33, 44 L.Ed.2d 141 (1975).

In enacting § 1988, Congress rejected the traditional assumption that private choices whether to litigate, compromise, or forgo a potential claim will yield a socially desirable level of enforcement as far as the enumerated civil rights statutes are concerned.[FN4]

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FN4. For most private-law claims, the public interest lies primarily in providing a neutral, easily available forum for resolving the dispute, and a plaintiff's choice to compromise a claim or to forgo it altogether, based on his private calculation that what he stands to gain does not justify the cost of pursuing his claim, is of little public concern. But, in enacting § 1988, Congress determined that the public as a whole has an interest in the vindication of the rights conferred by the statutes enumerated in § 1988, over and above the value of a civil rights remedy to a particular plaintiff. Simply put, Congress decided that it would be better to have more vigorous enforcement of civil rights laws than would result if plaintiffs were left to finance their own cases.

***445** "All of these civil rights laws depend heavily upon private enforcement, and fee awards have proved an essential remedy if private citizens are to have a meaningful opportunity to vindicate the important Congressional policies which these laws contain.

"In many cases arising under our civil rights laws, the citizen who must sue to enforce the law has little or no money with which to hire a lawyer. If private citizens are to be able to assert their civil rights, and if those who violate the Nation's fundamental laws are not to proceed with impunity, then citizens must recover what it costs them to vindicate these rights in court." Senate Report 2; see House Report 1-3, U.S.Code Cong. & Admin.News 1976, p. 5910.[FN5]

FN5. Congress had other reasons as well to believe that civil rights plaintiffs would often be unable to pay for the desirable level of law enforcement themselves. Civil rights remedies often benefit a large number of persons, many of them not involved in the litigation, making it difficult both to evaluate what a particular lawsuit is really worth to those who stand to gain from it and to spread the costs of obtaining relief among them. Cf. *Hall v. Cole,* 412 U.S. 1, 5-7, 93 S.Ct. 1943, 1946-1947, 36 L.Ed.2d 702 (1973); *Mills v. Electric Auto-Lite Co.,* 396 U.S. 375, 396, 90 S.Ct. 616, 627-628, 24 L.Ed.2d 593 (1970) (finding nonstatutory awards under traditional "common fund" exception to the American Rule appropriate for this reason). This problem is compounded by the facts that monetary damages are often not an important part of the recovery sought under the statutes enumerated in § 1988, cf. *Newman v. Piggie Park Enterprises, Inc.,* 390 U.S., at 402, 88 S.Ct., at 966, and that doctrines of official immunity often limit the availability of damages against governmental defendants, see House Report 9, and n. 17.

Congress ****1946** could, of course, have provided public funds or government attorneys for litigating private civil rights claims, but it chose to "limi[t] the growth of the enforcement bureaucracy," Senate Report 4, U.S.Code Cong. & Admin.News 1976, p. 5911, by continuing***446** to rely on the private bar [FN6] and by making defendants bear the full burden of paying for enforcement of their civil rights obligations.[FN7]

FN6. This case reflects the fact that Congress has provided public funding to some limited extent through a number of programs such as the Legal Services Corporation: respondents' attorneys are associated with Legal Services of Eastern Missouri, Inc. They may not, however, use the money they receive from the Federal Government for cases in which fees are available. See 42 U.S.C. § 2996f(b)(1). For purposes of § 1988, such attorneys should be paid as if they were in private practice, in order both to avoid windfalls to defendants and to free public resources for other types of law enforcement. See *New York Gaslight Club, Inc. v. Carey,* 447 U.S., at 70, n. 9; *Copeland v. Marshall,* 205 U.S.App.D.C., at 409-410, 641 F.2d, at 899-900; *Rodriguez v. Taylor,* 569 F.2d 1231, 1248 (CA3 1977).

FN7. Congress's imposition of liability for attorney's fees under § 1988 also represents a decision to abrogate the sovereign immunity of the States in order to accomplish the purposes of the Fourteenth Amendment. See Senate Report 5; *Fitzpatrick v. Bitzer,* 427 U.S. 445, 96 S.Ct. 2666, 49 L.Ed.2d 614 (1976); *Maher v. Gagne,* 448 U.S. 122, 128-129, 100 S.Ct. 2570, 2574-2575, 65 L.Ed.2d 653 (1980).

Yet Congress also took steps to ensure that § 1988 did not become a "relief fund for lawyers." 122 Cong.Rec. 33,314 (remarks of Sen. Kennedy). First, it limited fee awards to "prevailing" plaintiffs, rather than allowing fees for anyone who litigated a bona fide claim in good faith, see House Report 6-8, and it expressly reaffirmed the common-law doctrine that attorney's fees could be awarded *against* plaintiffs who litigated frivolous or vexatious claims, see *id.,* at 1938-1939; *Christianburg Garment Co. v. EEOC,* 434 U.S. 412, 416-417, 98 S.Ct. 694, 697-698, 54 L.Ed.2d 648 (1978). It also left district courts with discretion to set the precise award in individual cases and to deny fees entirely in "special circumstances" when an award would be "unjust," even if the plaintiff prevailed, see Senate Report 4; House Report 6; *Newman v. Piggie Park Enterprises, Inc.,* 390 U.S. 400, 402, 88 S.Ct. 964, 966, 19 L.Ed.2d 1263 (1968) (per curiam).

"[A] key feature of the bill is its mandate that fees are to be allowed in the discretion of the court. Congress has passed many statutes *requiring* that fees be awarded to a prevailing party. Again, the Committee ***447** adopted a more moderate approach here by leaving the matter to the discretion of the judge, guided of course by the case law interpreting similar attorney's fee provisions." House Report 8 (footnote omitted).

At a number of points, the legislative history of § 1988 reveals Congress's basic goal that attorneys should view civil rights cases as essentially equivalent to other types of work they could do, even though the monetary recoveries in civil rights cases (and hence the funds out of which their clients would pay legal fees) would seldom be equivalent to recoveries in most private-law litigation. Thus, the Senate Report specifies that fee awards under § 1988 should be equivalent to fees "in other types of equally complex Federal litigation, such as antitrust cases, and not be reduced because the rights involved may be nonpecuniary in nature." Senate Report 6,

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U.S.Code Cong. & Admin.News 1976, p. 5913. Furthermore, "counsel for prevailing parties should be paid, as is traditional with attorneys compensated by fee-paying clients, for all time reasonably expended on a matter." *Ibid.*

As nearly as possible, market standards should prevail, for that is the best way of ****1947** ensuring that competent counsel will be available to all persons with bona fide civil rights claims. This means that judges awarding fees must make certain that attorneys are paid the full value that their efforts would receive on the open market in non-civil-rights cases, see generally *Copeland v. Marshall,* 205 U.S.App.D.C. 390, 400-410, 641 F.2d 880, 890-900 (1980) (en banc), both by awarding them market-rate fees, *id.,* at 899, and by awarding fees only for time *reasonably* expended, *id.,* at 881. If attorneys representing civil rights plaintiffs do not expect to receive full compensation for their efforts when they are successful, or if they feel they can "lard" winning cases with additional work solely to augment their fees, the balance struck by § 1988 goes awry.

The Court accepts these principles today. As in litigation for fee-paying clients, a certain amount of "billing judgment" ***448** is appropriate, taking into account the fact that Congress did not intend fees in civil rights cases, unlike most private-law litigation, to depend on obtaining relief with substantial monetary value. Where plaintiffs prevail on some claims and lose on others, the Court is correct in holding that the extent of their success is an important factor for calculating fee awards. Any system for awarding attorney's fees that did not take account of the relationship between results and fees would fail to accomplish Congress's goal of checking insubstantial litigation.

At the same time, however, courts should recognize that reasonable counsel in a civil rights case, as in much litigation, must often advance a number of related legal claims in order to give plaintiffs the best possible chance of obtaining significant relief. As the Court admits, "Such a lawsuit cannot be viewed as a series of discrete claims." *Ante,* at 1940. And even where two claims apparently share no "common core of facts" or related legal concepts, see *ibid,* the actual work performed by lawyers to develop the facts of both claims may be closely intertwined. For instance, in taking a deposition of a state official, plaintiffs' counsel may find it necessary to cover a range of territory that includes both the successful and the unsuccessful claims. It is sometimes virtually impossible to determine how much time was devoted to one category or the other, and the incremental time required to pursue both claims rather than just one is likely to be small.

Furthermore, on many occasions awarding counsel fees that reflect the full market value of their time will require paying more than their customary hourly rates. Most attorneys paid an hourly rate expect to be paid promptly and without regard to success or failure. Customary rates reflect those expectations. Attorneys who take cases on contingency, thus deferring payment of their fees until the case has ended and taking upon themselves the risk that they will receive no payment at all, generally receive far more in winning cases than they would if they charged an hourly rate. The difference, however, reflects the time-value of money and the ***449** risk of nonrecovery usually borne by clients in cases where lawyers are paid an hourly rate.

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Courts applying § 1988 must also take account of the time-value of money and the fact that attorneys can never be 100% certain they will win even the best case.

Therefore, district courts should not end their fee inquiries when they have multiplied a customary hourly rate times the reasonable number of hours expended, and then checked the product against the results obtained. They should also consider both delays in payment and the pre-litigation likelihood that the claims which did in fact prevail would prevail.FN8 **1948*Copeland v. Marshall,* 205 U.S.App.D.C., at 402-403, 641 F.2d, at 892-893; *Northcross v. Board of Education,* 611 F.2d 624, 638 (CA6 1979); *Lindy Bros. Builders v. American Radiator & Standard Sanitation Corp.,* 540 F.2d 102, 117 (CA3 1976). These factors are potentially relevant in every case. Even if the results obtained do not justify awarding fees for all the hours spent on a particular case, no fee is reasonable unless it would be adequate to induce other attorneys to represent similarly situated clients seeking relief comparable to that obtained in the case at hand.

FN8. Thus, the Court's opinion should not be read to imply that "exceptional success" provides the only basis for awarding a fee higher than the reasonable rate times the reasonable number of hours. See *ante,* at 1940. To the contrary, the Court expressly approves consideration of the full range of *Johnson v. Georgia Highway Express* factors. See *infra,* at 1940. If the rate used in calculating the fee does not already include some factor for risk or the time value of money, it ought to be enhanced by some percentage figure. By the same token, attorneys need not obtain "excellent" results to merit a fully compensatory fee, see *ante,* at 1940; merely prevailing to some significant extent entitles them for full compensation for the work reasonably required to obtain relief. See *infra,* at 1941, and n. 9.

II

Setting to one side theoretical issues about how district courts should approach attorney's fees questions under *450 § 1988, I fear the Court makes a serious error in vacating the judgment in this case and remanding for further proceedings. There is simply no reason for another round of litigation between these parties, and the lower courts are in no need of guidance from us.

A

The Court admits that the District Court made a "commendable effort" to explain the fee award and that the award "may be consistent" with today's opinion. *Ante,* at 1942. It professes to be "unable to affirm" solely because the District Court's finding that "[t]he extent of this relief clearly justifies the award of a reasonable attorney's fee," App. to Pet. for Cert. A-16, is not accompanied by a further finding as to "what is 'reasonable' in light of that level of success." *Ante,* at 1942-1943.

Even if the District Court had been silent on the reasonableness of the amount of its fee award, it would be difficult to imagine why this Court would presume, as it apparently does, that a federal judge had awarded an *unreasonable* fee without explaining how such a result was compelled. In any event, the District Court stated expressly that:

"The Court concludes that, in this case, the entire award made to plaintiffs consti-

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tutes a reasonable attorney's fee. No portion of it can be characterized as a penalty or damage award against the state of Missouri." App. to Pet. for Cert. A-11.

The District Court also addressed each of the factors mentioned in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (CA5 1974), discussed by the Court *ante*, at 1937, under the general rubric "Reasonableness of the Fee." App. to Pet. for Cert. A-11-A-18. It explained why it was not enhancing respondents' fee to account for the uncertainty factor, *id.*, at A-15-A-16, and it discounted one attorney's hours by 30% to yield "a reasonable claim of time," *id.*, at ***451** A-13. The District Court had this to say under the subheading "Amount Involved/Results Obtained":

"The significance of this case cannot be measured in terms of dollars and cents. It involves the constitutional and civil rights of the plaintiff class and resulted in a number of changes regarding their conditions and treatment at the state hospital. Not only should plaintiffs be considered prevailing parties, they are parties who have obtained relief of significant import. Plaintiffs' relief affects not only them, but also numerous other institutionalized patients similarly situated. The extent of this relief clearly justifies the award of a reasonable fee." *Id.*, at A-16.

It is clear from the context that the District Court regarded the fee it was awarding as reasonable compensation for the results obtained. Simply changing the word "a" to "this," in the last sentence quoted, would provide the additional finding the Court demands.

****1949** B

No more significant legal error requires today's judgment. The Court notes that the District Court relied on *Brown v. Bathke*, 588 F.2d 634 (CA8 1978), an opinion the "emphasis" of which the Court regards as misplaced. See *ante*, at 1942, n. 14. What the Court finds suspicious in *Brown* is the implication that a district court must award attorney's fees for all work "reasonably calculated to advance a client's interest," *i.e.*, all nonfrivolous claims, whenever the client satisfies the "prevailing party" test. See 588 F.2d, at 637-638. The District Court did not, however, refer to the language criticized by the Court. Rather, it cited a footnote in *Brown* for the proposition that "mechanical division of claimed hours ... ignores the interrelated nature of many prevailing and non-prevailing claims." App. to Pet. for Cert. A-7, citing 588 F.2d, at 637, n. 5. The remainder of the *Brown* footnote ***452** makes clear that the court was concerned with related legal theories, only one of which ultimately becomes the basis for relief. To that extent, *Brown* is perfectly consistent with today's opinion. See *ante*, at 1940-1941, and n. 11. The Court of Appeals for the Eighth Circuit, in its brief, unpublished memorandum affirming the District Court, did not cite *Brown* at all. App. to Pet. for Cert. A-1-A-2.

Perhaps if the questionable language in *Brown* were being misapplied in other cases from the Eighth Circuit, or if courts in some other circuit were misinterpreting § 1988 in light of precedents with similar implications, today's result would have some instructive value. But such is not the case. The Court of Appeals for the Eighth Circuit has never applied *Brown* in the manner the Court fears. Rather, its published opinions following *Brown* have made clear that, although it is an abuse of discretion to deny fees entirely to any plaintiff who has crossed the "prevailing party" threshold, district courts should consider the degree of plaintiffs' success in set-

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ting a fee award. See, *e.g., Williams v. Trans World Airlines, Inc.,* 660 F.2d 1267, 1274 (CA8 1981); *United Handicapped Federation v. Andre,* 622 F.2d 342 (CA8 1980) (rejecting claim for over $200,000 in fees and setting $10,000 limit on award because of limited success in case); *Oldham v. Ehrlich,* 617 F.2d 163, 168, n. 9 (CA8 1980); *Cleverly v. Western Electric Co.,* 594 F.2d 638, 642 (CA8 1979).

The law in other circuits is substantially identical. Federal courts of appeals have adopted a two-stage analysis, whereby plaintiffs who obtain any significant relief are considered "prevailing parties," and district courts are directed to take into consideration the overall degree of a plaintiff's success, and the extent to which work on claims on which no relief was obtained contributed to that success, in setting the exact amount of the award due. The mere fact that plaintiffs do not prevail on every claim does not preclude an award of fees for all work reasonably performed,[FN9] but it is rarely an ***453** abuse of discretion to refuse to ****1950** award fees for work done on non-prevailing claims that are not closely related to the relief obtained. See, *e.g., Syvock v. Milwaukee Boiler Mfg. Co.,* 665 F.2d 149, 163-165 (CA7 1981); *Jones v. Diamond,* 636 F.2d 1364, 1382 (CA5 1981) (en banc); *Lamphere v. Brown University,* 610 F.2d 46, 47 (CA1 1979); *Equal Employment Opportunity v. Safeway Stores,* 597 F.2d 251 (CA10 1979); cf. *Copeland v. Marshall,* 205 U.S.App.D.C., at 401-402, 641 F.2d, at 891-892, and n. 18. Many of the same courts, however, have also stressed Congress's clearly expressed intent that the apparent *monetary* value of the relief obtained should not be the measure of success in a civil rights case, and they have recognized that in many cases various claims are essentially part and parcel of a single attempt to establish and vindicate the plaintiffs' rights. See, *e.g., Copeland v. Marshall, supra; Gurule v. Wilson,* 635 F.2d 782, 794 (CA10 1981) (as modified en banc); *Nadeau v. Helgemoe,* 581 F.2d 275 (CA1 1978).

FN9. Both the Senate and House reports make clear Congress's conclusion that success on every claim is not necessary. See *ante,* at 1937-1938, and n. 4. In addition, in its discussion of awards before final judgment, the Senate Report states:

"In appropriate circumstances, counsel fees under [§ 1988] may be awarded pendente lite. See *Bradley v. School Board of the City of Richmond,* 416 U.S. 696, 94 S.Ct. 2006, 40 L.Ed.2d 476 (1974). Such awards are especially appropriate where a party has prevailed on an important matter in the course of litigation, *even when he ultimately does not prevail on all issues.* " Senate Report 5 (emphasis added).

See also *Mills v. Electric Auto-Lite Co.,* 396 U.S. 375, 392, 90 S.Ct. 616, 625-626, 24 L.Ed.2d 593 (1970) (allowing fees pendente lite in suit which "has not yet produced, and may never produce, a monetary recovery," an issue still to be tried).

The House Report notes that "courts have awarded counsel fees to a plaintiff who successfully concludes a class action suit even though that individual was not granted any relief." House Report 8 (citing *Parham v. Southwestern Bell Telephone Co.,* 433 F.2d 421

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(CA8 1970), and *Reed v. Arlington Hotel Co.,* 476 F.2d 721 (CA8 1973)). Note that in *Reed* the Court of Appeals awarded "reasonable attorney's fees, including services for this appeal," although the appellant obtained no significant relief at all on a major issue, either before the trial court or on appeal. See 476 F.2d, at 726 .

Evaluation of the interrelatedness of several claims within a single lawsuit, and of the legal work done on those claims, is ***454** most appropriately a task for the district court that heard and decided the case, subject to appellate review for abuse of discretion. As the Court implicitly recognizes, the case before us manifests no clear abuse of discretion. Although plaintiffs obtained only part of the specific injunctive relief they requested, the District Court's opinion on the merits both confirmed the existence of the constitutional right to minimally adequate treatment they claimed, App. 173-179, and established strict standards for staffing, treatment plans, and environment, against which the future conduct of defendants and other state mental health authorities will be measured, *id.,* at 188-195. To a large extent, the District Court's opinion fixed plaintiffs' entitlement to improvements instituted by defendants during the course of litigation. See *id.,* at 192-193 (treatment plans), 190-191 (staff); compare Deposition of H. Bratkowski 12-13, 39, with App. 106-114, 120-121 (increase in staff during litigation). It is thus entirely understandable that the District Court considered respondents to have prevailed to an extent justifying fees for all hours reasonably spent, subject to one substantial reduction of over 300 hours for wasteful litigation practices, see *ante,* at 14, n. 13.

C

To remain faithful to the legislative objectives of § 1988, appellate courts, including this Court, should hesitate to prolong litigation over attorney's fees after the merits of a case have been concluded. Congress enacted § 1988 solely to make certain that attorneys representing plaintiffs whose rights had been violated could expect to be paid, not to spawn litigation, however interesting, over which claims are "related" or what constitutes optimal documentation for a fees request. Paragraph-by-paragraph scrutiny of the explanations for specific exercises of the district courts' broad discretion under § 1988 serves no productive purpose, vindicates no ***455** one's civil rights, and exacerbates the myriad problems of crowded appellate dockets.[FN10]

FN10. Cf. Note, Promoting the Vindication of Civil Rights Through the Attorney's Fees Awards Act, 80 Colum.L.Rev. 346, 352 (1980).

If a district court has articulated a fair explanation for its fee award in a given case, the court of appeals should not reverse or remand the judgment unless the award is so low as to provide clearly inadequate compensation to the attorneys on the case or so high as to constitute an unmistakable windfall. See, *e.g., Gurule v. Wilson,* 635 F.2d 782, 792 (CA10 1981); *Furtado v. Bishop,* 635 F.2d 915, 923, n. 16 (CA1 1980). Any award that falls between those rough poles substantially accomplishes Congress's objectives.[FN11] More exacting review, for which ****1951** there is no clear mandate in the statute or its legislative history, frustrates rather than advances the policies of § 1988.

FN11. Congress having delegated

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responsibility for setting a "reasonable" attorney's fee to the court that tried the case, reviewing courts, as a matter of good judicial policy, should not disturb the trial court's solution to the problem of balancing the many factors involved unless the end product falls outside of a rough "zone of reasonableness," or unless the explanation articulated is patently inadequate. Cf. *Permian Basin Area Rate Cases,* 390 U.S. 747, 767, 88 S.Ct. 1344, 1360, 20 L.Ed.2d 312 (1968).

In systemic terms, attorney's fee appeals take up lawyers' and judges' time that could more profitably be devoted to other cases, including the substantive civil rights claims that § 1988 was meant to facilitate. Regular appellate scrutiny of issues like those in this case also generates a steady stream of opinions, each requiring yet another to harmonize it with the one before or the one after. Ultimately, § 1988's straightforward command is replaced by a vast body of artificial, judge-made doctrine, with its own arcane procedures, which like a Frankenstein's monster meanders its well-intentioned way through the legal landscape leaving waste and confusion (not to mention circuit-splits) in its wake. Within the confines of ***456** individual cases, from prevailing plaintiffs' point of view, appellate litigation of attorney's fee issues increases the delay, uncertainty, and expense of bringing a civil rights case, even after the plaintiffs have won all the relief they deserve. Defendants-who generally have deeper pockets than plaintiffs or their lawyers, and whose own lawyers may well be salaried and thus have lower opportunity costs than plaintiffs' counsel-have much to gain simply by dragging out litigation. The longer litigation proceeds, with no prospect of improved results, the more pressure plaintiffs and their attorneys may feel to compromise their claims or simply to give up.

This case itself provides a perfect example. Petitioners, who have little prospect of substantially reducing the amount of fees they will ultimately have to pay, have managed to delay paying respondents what they owe for over two years, after all other litigation between them had ended, with further delay to come. Respondents' attorneys can hardly be certain that they will ever be compensated for their efforts here in defending a judgment that five Justices find deficient only in minor respects. Apart from the result in this case, the prospect of protracted appellate litigation regarding attorney's fee awards to prevailing parties is likely to discourage litigation by victims of other civil rights violations in Missouri and elsewhere. The more obstacles that are placed in the path of parties who have won significant relief and then seek reasonable attorney's fees, the less likely lawyers will be to undertake the risk of representing civil rights plaintiffs seeking equivalent relief in other cases. It may well become difficult for civil rights plaintiffs with less-than-certain prospects for success to obtain attorneys. That would be an anomalous result for judicial construction of a statute enacted "to attract competent counsel in cases involving civil and constitutional rights," House Report 9; cf. *Copeland v. Marshall,* 205 U.S.App.D.C., at 400, 641 F.2d, at 890 (fee awards intended to provide "an incentive to competent lawyers to undertake Title VII work).

***457** D

Few, if any, differences about the basic framework of attorney's fees law under § 1988 divide the Court today. Apart from

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matters of nuance and tone, largely tangential to the case at hand, I object to only two aspects of today's judgment. First, I see no reason for us to have devoted our scarce time to hearing this case, and I fear that the sudden appearance of a new Supreme Court precedent in this area will unjustifiably provoke new litigation and prolong old litigation over attorney's fees. More fundamentally, the principles that the Court and I share should have led us, once we had granted a writ of *certiorari,* to affirm the judgment below. To that extent, I dissent.

U.S.S.C., 1983.
Hensley v. Eckerhart
461 U.S. 424, 103 S.Ct. 1933, 31 Fair Empl.Prac.Cas. (BNA) 1169, 32 Empl. Prac. Dec. P 33,618, 76 L.Ed.2d 40

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