SUPREME COURT OF THE UNITED STATES

No. 91–990

DALE FARRAR AND PAT SMITH, CO-ADMINISTRATORS OF ESTATE OF JOSEPH D. FARRAR, DECEASED, PETITIONERS *v.* WILLIAM P. HOBBY, JR.

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

[December 14, 1992]

JUSTICE O'CONNOR, concurring.

If ever there was a plaintiff who deserved no attorney's fees at all, that plaintiff is Joseph Farrar. He filed a lawsuit demanding 17 million dollars from six defendants. After 10 years of litigation and two trips to the Court of Appeals, he got one dollar from one defendant. As the Court holds today, that is simply not the type of victory that merits an award of attorney's fees. Accordingly, I join the Court's opinion and concur in its judgment. I write separately only to explain more fully why, in my view, it is appropriate to deny fees in this case.

Congress has authorized the federal courts to award "a reasonable attorney's fee" in certain civil rights cases, but only to "the prevailing party." 42 U. S. C. §1988; *Texas State Teachers Assn.* v. *Garland Independent School Dist.*, 489 U. S. 782, 789 (1989). To become a prevailing party, a plaintiff must obtain, at an absolute minimum, "actual relief on the merits of [the] claim," *ante*, at 8, which "affects the behavior of the defendant towards the plaintiff," *Hewitt* v. *Helms*, 482 U. S. 755, 761 (1987) (emphasis omitted); accord, *ante*, at 8 (relief obtained must "alte[r] the legal relationship between the parties" and "modif[y] the defendant's behavior in a way that directly benefits the plaintiff"). Joseph Farrar met that minimum condition for prevailing party status. Through this lawsuit, he obtained an enforceable

judgment for one dollar in nominal damages. One dollar is not exactly a bonanza, but it constitutes relief on the merits. And it affects the defendant's behavior toward the plaintiff, if only by forcing him to pay one dollar—something he would not otherwise have done. *Ante*, at 9.

Nonetheless, *Garland* explicitly states that an enforceable judgment alone is not always enough: "Beyond th[e] absolute limitation [of some relief on the merits], a technical victory may be so insignificant . . . as to be insufficient" to support an award of attorney's fees. 489 U. S., at 792. While *Garland* may be read as indicating that this *de minimis* or technical victory exclusion is a second barrier to prevailing party status, the Court makes clear today that, in fact, it is part of the determination of what constitutes a reasonable fee. Compare *ibid.* (purely technical or *de minimis* victories are "insufficient to support prevailing party status") with *ante*, at 10 (the "technical" nature of the victory "does not affect the prevailing party inquiry" but instead "bear[s] on the propriety of fees awarded under §1988"). And even if the exclusion's location is debatable, its effect is not: When the plaintiff's success is purely technical or *de minimis*, no fees can be awarded. Such a plaintiff either has failed to achieve victory at all, or has obtained only a pyrrhic victory for which the reasonable fee is zero. The Court's opinion today and its unanimous opinion in *Garland* are thus in accord. See *ante*, at 11 (merely "forma[l]" victory can yield "no attorney's fees at all"); *Garland*, *supra*, at 792 ("Where the plaintiff's success on a legal claim can be characterized as purely technical or *de minimis*, a district court would be justified in concluding that" denial of attorney's fees is appropriate).

Consequently, the Court properly holds that, when a plaintiff's victory is purely technical or *de minimis*, a district court need not go through the usual complexities involved in calculating attorney's fees. *Ante*, at 11 (court need not calculate presumptive fee by determining the number of hours reasonably expended and multiplying it by the reasonable hourly rate; nor must it apply the 12 factors bearing on reasonableness). As a matter of common sense and

sound judicial administration, it would be wasteful indeed to require that courts laboriously and mechanically go through those steps when the *de minimis* nature of the victory makes the proper fee immediately obvious. Instead, it is enough for a court to explain why the victory is *de minimis* and announce a sensible decision to "award low fees or no fees" at all. *Ibid*.

Precedent confirms what common sense suggests. It goes without saying that, if the *de minimis* exclusion were to prevent the plaintiff from obtaining prevailing party status, fees would have to be denied. *Supra*, at 1. And if the *de minimis* victory exclusion is in fact part of the reasonableness inquiry, see *ante*, at 10, summary denial of fees is still appropriate. We have explained that even the prevailing plaintiff may be denied fees if "`special circumstances would render [the] award unjust.'" *Hensley* v. *Eckerhart*, 461 U. S. 424, 429 (1983) (citations omitted). While that exception to fee awards has often been articulated separately from the reasonableness inquiry, sometimes it is bound up with reasonableness: It serves as a short-hand way of saying that, even before calculating a lodestar or wading through all the reasonableness factors, it is clear that the reasonable fee is no fee at all. After all, where *the only* reasonable fee is no fee, an award of fees would be unjust; conversely, where a fee award would be unjust, the reasonable fee is no fee at all.

Of course, no matter how much sense this approach makes, it would be wholly inappropriate to adopt it if Congress had declared a contrary intent. When construing a statute, this Court is bound by the choices Congress has made, not the choices we might wish it had made. Felicitously, here they are one and the same. Section 1988 was enacted for a specific purpose: to restore the former equitable practice of awarding attorney's fees to the prevailing party in certain civil rights cases, a practice this Court

had disapproved in *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240 (1975). *Hensley*, *supra*, at 429; see S. Rep. No. 94–1011, p. 6 (1976) ("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 [*Alyeska*] decision"). That practice included the denial of fees to plaintiffs who, although technically prevailing parties, had achieved only *de minimis* success. See, *e.g.*, *Tatum* v. *Morton*, 386 F. Supp. 1308, 1317–1319 (DC 1974) (fees denied where plaintiffs recovered $100 each); see also *Mills* v. *Electric Auto-Lite Co.*, 396 U. S. 375, 392, 396 (1970) (under judge-made fee-shifting rule for shareholder actions that benefit the corporation, no fees are available if the only benefit achieved is merely "`technical in its consequence'" (quoting *Bosch* v. *Meeker Cooperative Light & Power Assn.*, 257 Minn. 362, 366, 367, 101 N. W. 2d 423, 426, 427 (1960))); cf. *Ruckelshaus* v. *Sierra Club*, 463 U. S. 680, 688, n. 9 (1983) ("[W]e do not mean to suggest that trival success on the merits, or purely procedural victories, would justify an award of fees under statutes setting out the `when appropriate' standard"). And although Congress did not intend to restore every detail of pre-*Alyeska* practice, see *West Virginia Univ. Hospitals, Inc.* v. *Casey*, 499 U. S. ___, ___ (1991), the practice of denying fees to pyrrhic victors is one it clearly intended to preserve. Section 1988 expressly grants district courts discretion to withhold attorney's fees from prevailing parties in appropriate circumstances: It states that a court "may" award fees "in its discretion." 42 U. S. C. §1988. As under pre-*Alyeska* practice, the occurrence of a purely technical or *de minimis* victory is such a circumstance. Chimerical accomplishments are simply not the kind of legal change that Congress sought to promote in the fee

statute.

Indeed, §1988 contemplates the denial of fees to *de minimis* victors through yet another mechanism. The statute only authorizes courts to award fees "as part of the costs." 42 U. S. C. §1988. As a result, when a court denies costs, it must deny fees as well; if there are no costs, there is nothing for the fees to be awarded "as part of." And when Congress enacted §1988, the courts would deny even a prevailing party costs under Federal Rule of Civil Procedure 54(d) where the victory was purely technical. *Lewis* v. *Pennington*, 400 F. 2d 806, 819 (CA6) ("`prevailing party is prima facie entitled to costs'" unless "`the judgment recovered was insignificant in comparison to the amount actually sought and actually amounted to a victory for the defendant'" (quoting *Lichter Foundation, Inc.* v. *Welch*, 269 F. 2d 142, 146 (CA6 1959))), cert. denied, 393 U. S. 983 (1968); *Esso Standard (Libya), Inc.* v. *SS Wisconsin*, 54 F. R. D. 26, 27 (SD Tex. 1971) ("Circumstances justifying denial of costs to the prevailing party [exist] where the judgment recovered was insignificant in comparison to the amount actually sought"); see also *Brown* v. *GSA*, 425 U. S. 820, 828 (1976) (inquiry is Congress' understanding of the law, correct or not). Just as a pyrrhic victor would be denied costs under Rule 54(d), so too should it be denied fees under §1988.

In the context of this litigation, the technical or *de minimis* nature of Joseph Farrar's victory is readily apparent: He asked for a bundle and got a pittance. While we hold today that this pittance is enough to render him a prevailing party, *ante*, at 9–10, it does not by itself prevent his victory from being purely technical. It is true that Joseph Farrar recovered something. But holding that any award of nominal damages renders the victory material would "render the concept of de minimis relief meaningless. *Every*

nominal damage award has as its basis a finding of liability, but obviously many such victories are [p]yrrhic ones." *Lawrence* v. *Hinton*, 20 Fed. R. Serv. 3d 934, 937 (CA4 1991); accord, *Commissioners Court of Medina County* v. *United States*, 221 U. S. App. D. C. 116, 123–124, 683 F. 2d 435, 442–443 (1982) (where "the net result achieved is so far from the position originally propounded . . . it would be stretching the imagination to consider the result a `victory' in the sense of vindicating the rights of the fee claimants"). That is not to say that *all* nominal damages awards are *de minimis*. Nominal relief does not necessarily a nominal victory make. See *ante*, at 11. But, as in pre-*Alyeska* and Rule 54(d) practice, see *supra*, at 5–6, a substantial difference between the judgment recovered and the recovery sought suggests that the victory is in fact purely technical. See *ante*, at 11 ("A plaintiff who seeks compensatory damages but receives no more than nominal damages" may "formally `prevai[l]' under §1988" but will "often" receive no fees at all). Here that suggestion is quite strong. Joseph Farrar asked for 17 million dollars; he got one. It is hard to envision a more dramatic difference.

The difference between the amount recovered and the damages sought is not the only consideration, however. *Carey* v. *Piphus*, 435 U. S. 247, 254 (1978), makes clear that an award of nominal damages can represent a victory in the sense of vindicating rights even though no actual damages are proved. *Ante*, at 8. Accordingly, the courts also must look to other factors. One is the significance of the legal issue on which the plaintiff claims to have prevailed. *Garland*, 489 U. S., at 792. Petitioners correctly point out that Joseph Farrar in a sense succeeded on a significant issue—liability. But even on that issue he cannot be said to have achieved a true victory. Respondent was just one of six defendants and the only one not found to have engaged in a conspiracy. If recovering one

dollar from the least culpable defendant and nothing from the rest legitimately can be labeled a victory—and I doubt that it can—surely it is a hollow one. Joseph Farrar may have won a point, but the game, set, and match all went to the defendants.

Given that Joseph Farrar got *some* of what he wanted—one seventeen millionth, to be precise—his success might be considered material if it also accomplished some public goal other than occupying the time and energy of counsel, court, and client. Section 1988 is not “a relief Act for lawyers.” *Riverside* v. *Rivera*, 477 U. S. 561, 588 (1986) (REHNQUIST, J., dissenting). Instead, it is a tool that ensures the vindication of important rights, even when large sums of money are not at stake, by making attorney's fees available under a private attorney general theory. Yet one searches these facts in vain for the public purpose this litigation might have served. The District Court speculated that the judgment, if accompanied by a large fee award, might deter future lawless conduct, see App. to Pet. for Cert. A23–A24, but did not identify the kind of lawless conduct that might be prevented. Nor is the conduct to be deterred apparent from the verdict, which even petitioners acknowledge is “regrettably obtuse.” Tr. of Oral Arg. 16. Such a judgment cannot deter misconduct any more than a bolt of lightning can; its results might be devastating, but it teaches no valuable lesson because it carries no discernable meaning. Cf. *Chicano Police Officer's Assn.* v. *Stover*, 624 F. 2d 127, 131 (CA10 1980) (nuisance settlement that does not promote any public purpose cannot support award of attorney's fees), cited and quoted in *Garland*, *supra*, at 792.

In this case, the relevant indicia of success—the extent of relief, the significance of the legal issue on which the plaintiff prevailed, and the public purpose served—all point to a single conclusion: Joseph Farrar

achieved only a *de minimis* victory. As the Court correctly holds today, the appropriate fee in such a case is no fee at all. Because the Court of Appeals gave Joseph Farrar everything he deserved—nothing—I join the Court's opinion affirming the judgment below.