# Robert B. Hille Participates in NJSBA Amici Brief Before U.S. Supreme Court

Announcement

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On February 25, 2025, in its decision in *Lackey v. Stinnie*, the United States Supreme Court significantly restricted the right to legal fees in civil rights cases. The Court's ruling in *Lackey* clarifies the definition of "prevailing party" in civil rights cases and therefore has significance for any business entity or individual likely to encounter a civil rights suit as a plaintiff or defendant.

Many organizations and individuals across the country submitted amicus briefs to the Supreme Court in this case. They included the New Jersey State Bar Association (NJSBA), which to advance its position chose a team that included Greenbaum partner **Robert B. Hille**, a member of the state bar's Amicus Committee and a past NJSBA President.

*Lackey* strictly interpreted a Congressional requirement that legal fees could only be awarded to a prevailing party. The Court defined prevailing party as requiring a final judgment. However, before *Lackey*, all federal appeals courts addressing the issue allowed awards at the preliminary injunction stage. The catch was that there had to be a likelihood of success at the end of the case and that the injunction led to enduring relief between the parties that materially altered their legal relationship.

An important part of civil rights cases is that legal fees are often the only monetary relief a plaintiff can obtain. Congress allowed that remedy to encourage claims where there was improper or unconstitutional government action that might not otherwise be challenged.

Post-*Lackey*, civil rights plaintiffs are compelled to seek a final judgment regardless of success at a preliminary stage. Defendants at that stage should gauge their likelihood of success and, if doubtful, reverse course in a way that moots the case and thereby prevents an award of legal fees. Consequently, a defendant can enact laws or take questionable action that tests the bounds of lawfulness without financial consequence so long as the matter is resolved before final judgment is entered.

*Lackey* further evidences and outlines the Supreme Court's shift toward a strict constructionism of Congress' laws. It makes clear that Congress, not the Court, has the burden of clearly stating what it means.

The NJSBA, in its decision to enter an appearance as Amicus, sought to lay to rest the issue of fees at the preliminary stage in a balanced approach, as its members are on both sides of the issue. Another object of participation was to urge the Court to take the more flexible interpretation of "prevailing party" adopted by the federal appeals courts designed to discourage governmental gamesmanship to avoid fees. On this point, a majority of the Court was not persuaded to depart from its strict constructionist approach and rejected the contrary decisions of the federal appeals courts. As the Court only addressed the fee issue, it left undisturbed the successful result obtained by the Respondents who were the plaintiffs in the trial court, as follows.

The District Court granted a preliminary injunction against Virginia's enforcement of the law based determining that the factors for a preliminary injunction were met and that the drivers made a clear showing of the likelihood they would succeed on their due process claim.

Four months before a bench trial, Virginia moved to dismiss as moot or for a stay because the state legislature was in the process of repealing the offending provisions of the law. The District Court granted a stay and one year later, the law was repealed. The parties stipulated to a dismissal as the matter had become moot, but that plaintiffs did not waive their claim for legal fees. Thereafter, the drivers sought legal fees under Section 1988.

The District Court held the drivers were not prevailing parties and the Fourth Circuit affirmed based on its holding in an earlier case that final relief was required to satisfy prevailing party status. However, the entire Fourth Circuit Court later overruled its earlier decision and adopted a view consistent with the other Circuits that the preliminary injunction in this case satisfied the prevailing party requirement for an award of counsel fees. Virginia appealed and the U.S. Supreme Court granted certiorari.

Ultimately, the Supreme Court rejected Respondents' arguments and denied their fee claim as they were not prevailing parties because their claim was mooted and dismissed before a final judgment. The decision's discussion of how to read a federal law and the meaning of "prevailing party" are important because of its applicability beyond these facts and context.

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