

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

July 20, 2011

No. 08-31135

Lyle W. Cayce
Clerk

RICKY D FOX,

Plaintiff - Appellant

v.

BILLY RAY VICE, Chief of Police for the Town of Vinton;
TOWN OF VINTON,

Defendants - Appellees

Appeal from the United States District Court
for the Western District of Louisiana

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before REAVLEY, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:

This court's judgment at 594 F.3d 423, holding that attorney's fees for defense of Fox's frivolous claim were recoverable because they could not be separated from fees for defense of the continuing state claim, has been vacated by the Supreme Court, holding that the defendant may receive only the fees that would not have been paid but for the frivolous claim. Those fees that the defendant would have incurred to defend against the continuing state claim may

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not be recovered under 42 U.S.C. § 1988. *Fox v. Vice*, ___ U.S. ___, ___ S.Ct. ___
June 6, 2011.

Consequently, the district court's judgment is reversed and the case is
remanded to the district court for reconsideration.

REVERSED AND REMANDED