

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 93-5459

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THE NATIONALIST MOVEMENT and ROBERT A. HORTON,  
Plaintiffs-Appellants,

versus

CITY OF VIDOR, TEXAS,  
Defendant-Appellee.

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Appeal from the United States District Court  
For the Eastern District of Texas  
(1:93-CV-503)

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(April 11, 1995)

Before SMITH, EMILIO M. GARZA, Circuit Judges, and STAGG, District  
Judge.\*

PER CURIAM:\*\*

Although the district court found that "[t]his matter presents  
'exceptional circumstances' warranting the issuance of an  
injunction 'in order to afford adequate protection of  
constitutional rights[,]' " it denied the Nationalist Movement's  
application for attorneys' fees under Title 42, Section 1988,

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\* District Judge for the Western District of Louisiana, sitting by  
designation.

\*\* Local Rule 47.5.1 provides: "The publication of opinions that have  
no precedential value and merely decide particular cases on the basis of well-  
settled principles of law imposes needless expense on the public and burdens on  
the legal profession." Pursuant to that Rule, the Court has determined that this  
opinion should not be published.

giving two grounds for its ruling.<sup>1</sup> We disagree with both rationales as contrary to precedent generally awarding attorneys' fees to prevailing parties in civil rights cases. See *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S. Ct. 1933, 1939, 76 L. Ed 2d 40 (1983) ("A plaintiff must be a 'prevailing party' to recover an attorney's fee under § 1988.").

First, as the district court correctly pointed out "[s]peech takes much of its meaning from its temporal context. A message delayed is a message which has irreparably lost part of its content. *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). There is no adequate remedy at law to mend such a loss."<sup>2</sup> The Nationalist Movement has "been subjected to a deprivation of their constitutional liberties" and, therefore, has proven the statutory prerequisite to an award of attorneys' fees. See *Hensley, supra*. Second, we have not found, nor have the parties submitted, any authority to support a finding that the circumstances listed by the

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<sup>1</sup> The district court reasoned:

First, the Nationalists have not yet been subjected to a deprivation of their constitutional liberties, and no listed statutory prerequisite to the attorneys' fees provision of § 1988 has been proven. Second, special circumstances would render such an award unjust in any event. See *Kentucky v. Graham*, 473 U.S. 159, 164 (1985) ("[F]ees should be awarded 'unless special circumstances would render such an award unjust'". Vidor's fears of civil unrest were not unreasonable. Circumstances have placed Vidor within a whirlwind of conflicting political forces. Vidor's inaction and subsequent declaratory judgment suit is the product of uncertainty in resolving possibly conflicting obligations arising from both internal and external sources. It is not the product of harassment or bad faith.

Appellee's Record Excerpts at Tab 4 ("Memorandum Opinion and Order Granting Declaratory and Injunctive Relief").

<sup>2</sup> Appellee's Record Excerpts at Tab 4.

district court, see *supra* note 1, are "special circumstances [which] would render such an award unjust." See *Graham*, 473 U.S. at 164, 105 S. Ct. at 3104 (quoting S. Rep. No. 1011, 94th Cong., 2d Sess. 4 (1976), reprinted in 1976 U.S.C.C.A.N. 5908, 5911). To the contrary, these circumstances usually accompany many highly publicized First Amendment cases. See, e.g., *Forsyth County, Ga. v. Nationalist Movement*, \_\_\_ U.S. \_\_\_, 112 S. Ct. 2395, 120 L. Ed. 2d 101 (1992) (describing unrest occurring at civil rights demonstration); *Boos v. Barry*, 485 U.S. 312, 108 S. Ct. 1157, 99 L. Ed. 2d 333 (1988) (concerning protests outside foreign embassies); *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 104 S. Ct. 3065, 82 L. Ed. 2d 221 (1984) (regarding demonstrations in support of plight of homeless).

Accordingly, we reverse the denial of attorneys' fees, and remand for the district court to consider the Nationalist Movement's application under *Hensley, supra*, and *Johnson v. Georgia Highway Express, Inc.*, 488 F2d. 714 (5th Cir. 1974), and their progeny. The district court has full discretion on remand to make any award of reasonable fees consistent with such authority and the facts of this case.