

Attorney's fees

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article discussing 'Court endorses deals on fees for Rights lawyers'

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## Court Endorses Deals on Fees for Rights Lawyers

Special to The New York Times

WASHINGTON, April 21 — The Supreme Court ruled today that in order to obtain an overall settlement in a civil rights case, the lawyers for the plaintiffs may agree to give up any right to collect fees from the defendants.

Lawyers who represent plaintiffs in civil rights cases had urged the Court to bar enforcement of such fee waivers, on the ground that they should not be placed in the ethical dilemma of choosing between their own fees and the good of their clients.

The 6-to-3 decision upheld an agreement by a lawyer representing mentally and emotionally handicapped children in Idaho in a suit against state officials. The state agreed to improve its education and treatment services, but only on condition that the lawyer and the plaintiffs give up any right to assess the state for the fees. The lawyer later challenged the agreement.

Associate Justice John Paul Stevens wrote for the majority that there was no evidence that Congress, in a 1976 law authorizing judges to order losing parties to pay "a reasonable attorney's fee" to prevailing parties in civil rights cases, "intended to forbid all waivers of attorney's fees."

### Hindrance to Finding Lawyer

The dissenters and civil rights lawyers said the decision would make it harder for civil rights plaintiffs to find lawyers willing to represent them, especially in cases seeking reforms rather than monetary damages out of which fees might be paid.

But the majority said its decision might give defendants a greater incentive to settle out of court by making lawyers' fees a negotiable item. It dismissed as "remote" the possibility that "the pool of lawyers willing to represent plaintiffs in such cases might shrink."

Justice Stevens left open the possibility that courts might reject fee waivers if there was evidence that a state followed "a consistent practice of insisting on a fee waiver as a condition of settlement in civil rights litigation," if the defense was especially weak, or if the waiver was part of a "vindictive effort" to deter lawyers from bringing such cases.

The decision was a victory not only for Idaho but for the Federal Government, 43 states and New York City, which supported its position in friend-of-the-court briefs.

Courts routinely award attorney's fees to prevailing plaintiffs in civil

rights cases, including those who obtain favorable out-of-court settlements, sometimes in amounts far larger than any damages won by their clients. Awards of fees to prevailing defendants are less common.

Justice William J. Brennan Jr., in a dissent joined by Justices Thurgood Marshall and Harry A. Blackmun, denounced the decision as "plainly contrary to Congress's purpose" of making it "easier for victims of civil rights violations to find lawyers willing to take their cases."

He said any agreement by the parties to a civil rights case to limit or eliminate a fee award should be invalidated by the judge in the case unless he found it "reasonable."

But Justice Brennan said he hoped the decision's effect would be blunted

by state and local bar associations. He noted that the New York City Bar Association and some others have "declared it unethical for defense counsel to seek fee waivers."

And, he added, "it may be that civil rights attorneys can obtain agreements from their clients not to waive attorney's fees."

In the Idaho case, *Evans v. Jeff D.* (No. 84-1288), the lawyer, a salaried employee of a Federally financed legal aid group, agreed to the fee waiver but later urged the Federal District Court to invalidate it and make the state pay his fees.

The court upheld the fee waiver, in a decision that was reversed by a Federal appeals court and reinstated by the Supreme Court today, resolving a conflict among Federal appeals courts.