

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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FOX *v.* VICE, AS EXECUTRIX OF THE ESTATE OF VICE,
ET AL.

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

No. 10–114. Argued March 22, 2011—Decided June 6, 2011

Claiming that he was subjected to dirty tricks during his successful campaign to become the police chief of Vinton, La., petitioner Fox filed a state-court suit against Vice, the incumbent chief, and the town (Vice, for short). Fox's suit asserted both state-law claims, including defamation, and federal civil rights claims under 42 U. S. C. §1983, including interference with Fox's right to seek public office. Vice removed the case to federal court based on the §1983 claims. After discovery, he sought summary judgment on the federal claims, which Fox conceded were not valid. The District Court accordingly dismissed them with prejudice and remanded the remaining claims to state court, noting that Vice's attorneys' work could be useful in the state-court proceedings. Vice then asked the federal court for attorney's fees under §1988, submitting attorney billing records estimating the time spent on the entire suit, without differentiating between time spent on the now-dismissed federal claims and on the remaining state claims. The court granted the motion on the ground that Fox's federal claims were frivolous, awarding Fox fees for all work his attorneys had performed in the suit. Although the state-law allegations had not been found frivolous, the court did not require Vice to separate out the work the attorneys had done on the two sets of claims. It also declined to reduce the fee award to reflect the surviving state-law claims, noting that both sides had focused on the frivolous §1983 claims. The Fifth Circuit affirmed, rejecting Fox's argument that every claim in a suit must be frivolous for the defendant to recover any fees, and agreeing with the District Court that the litigation had focused on the frivolous federal claims.

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Held:

1. When a plaintiff's suit involves both frivolous and non-frivolous claims, a court may grant reasonable fees to the defendant, but only for costs that the defendant would not have incurred but for the frivolous claims. Pp. 5–11.

(a) Section 1988 allows the award of “a reasonable attorney’s fee” to “the prevailing party” in certain civil rights cases, including §1983 suits. While most of this Court’s §1988 decisions have concerned fees to prevailing plaintiffs, §1988 also authorizes a fee award to a prevailing defendant “upon a finding that the plaintiff’s action was frivolous, unreasonable, or without foundation.” *Christiansburg Garment Co. v. EEOC*, 434 U. S. 412, 421. Just as plaintiffs may receive fees under §1988 even if they are not victorious on every claim, *Hensley v. Eckerhart*, 461 U. S. 424, 435, so too may a defendant be reimbursed for costs under §1988 even if the plaintiff’s suit is not wholly frivolous, *ibid.*, n. 10. The defendant is not entitled to fees arising from these non-frivolous charges, see *Christiansburg*, 434 U. S., at 420–421, but the presence of reasonable allegations does not immunize the plaintiff against paying for the fees that his frivolous claims imposed. Pp. 5–7.

(b) The question then becomes how to allocate fees in a lawsuit having both frivolous and non-frivolous claims. Congress’s purpose in enacting §1988—to relieve defendants of the burdens associated with fending off frivolous litigation—points to the proper standard: Section 1988 allows a defendant to recover reasonable attorney’s fees incurred because of, but only because of, a frivolous claim; *i.e.*, §1988 permits the defendant to receive only the portion of his fees that he would not have paid but for the frivolous claim. A standard allowing more expansive fee-shifting would furnish windfalls to some defendants, who would be relieved of normal litigation costs merely because the plaintiff’s suit also included frivolous claims. This “but-for” standard may, in some instances, allow compensation to a defendant for attorney work relating to both frivolous and non-frivolous claims, for instance, if the frivolous claim requires a lawyer to do more work because of the defendant’s greater financial exposure on that claim. The dispositive question is not whether attorney costs at all relate to a non-frivolous claim, but whether the costs would have been incurred in the absence of the frivolous allegation. The answers to those inquiries will usually track each other, but when they diverge, it is the second one that matters. The determination of fees “should not result in a second major litigation.” *Hensley*, 461 U. S., at 437. The essential goal in shifting fees is to do rough justice, not to achieve auditing perfection. The trial court has wide discretion, but must apply the correct but-for standard. And the appeals court must

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determine whether the trial court asked and answered this but-for question, rather than some other. Pp. 7–11.

2. The lower courts used an incorrect standard in awarding fees to Vice. The District Court’s analysis suggests that Vice’s attorneys would have done much the same work even if Fox had not brought his frivolous claims. The charges arose out of Vice’s conduct in the campaign, and with respect both to the frivolous federal claims and to the non-frivolous state-law claims, his “defense entailed proof or denial of essentially the same facts.” It thus seems likely that Vice’s attorneys would have, *e.g.*, taken many of the same depositions. Although the District Court noted the usefulness of the attorneys’ work in defending against the state-law claims, it failed to take proper account of the overlap between the frivolous and non-frivolous claims. Its reasoning—that the close relationship between the federal and state-law claims supported the award—cannot be squared with the congressional policy of sparing defendants from the costs only of frivolous litigation. Nor did the Fifth Circuit uphold the award on the proper ground. It seemed to think Vice could receive fees for any work useful to defending against a frivolous claim, even if his lawyers would have done that work regardless. On this record, the case must be returned to the lower courts. Pp. 12–13.

594 F. 3d 423, vacated and remanded.

KAGAN, J., delivered the opinion for a unanimous Court.