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complete copy (and photo) of TIME, May 26, 1975: p. 42) are filed w. Brungan Brief!

Section I,

blic Interest Lawyers Shocked by Supreme Court's Denial of Attorneys' Fees to the Winners of Lawsuits

/ARREN WEAVER Jr
ial to The New York Times

HINGTON, May 17 — A e Court decision barring rd of attorneys fees to groups that win law- tablishing their rights a shock wave through ession of public interest

; Congress intervenes, ng handed down this reatens to cut off mil- dollars in potential sup- nds for lawyers and iat specialize in con- nvironmental and civil wsuits against govern- d industry.

interest lawyers are iat, as a long-range re- undations that now upport the movement ice their contributions and fewer promising law school graduates will be attracted into this relatively new issue-oriented practice, which is already understaffed.

The Supreme Court decision involved a lawsuit brought by the Wilderness Society and other environmentalists to block construction of the **Alaskan pipeline. They** won their case in the United States Court of Appeals, although Congress later overrode the decision by legislation, and received an unspecified award of attorneys fees that could easily have run more than $100,000.

Dividing 5 to 2, the Supreme Court rejected the broad theory that litigants who win public interest cases are acting as "private attorneys general," and are thus entitled to have the losers pay their legal costs. The majority said this could be done only when Congress has explictly authorized the practice.

This ruling abruptly eliminated as income for public interest law firms a number of awards that were being sought or had been granted in the lower courts. Charles Halpern, staff director of the Council for Public interest Law here, called the result "a disaster."

For example, a coalition of environmentalists and Mexican-Americans won a freeway case in California and was awarded more than $200,000, which may now be eliminated by the Supreme Court decision. The plaintiffs were represented by Public Advocates, a public interest firm in San Francisco.

In the majority opinion, associate Justice Byron R. White noted 13 cases in the last four years in which lower courts had "erroneously" applied the private attorney general rule and granted attorneys fees to the winner. Six of the eleven circuits of The Court of Appeals had adopted the rule.

In the pipeline case, the fee was to have been set by Federal District Court if the Supreme Court had upheld it in principle. The environmentalists' lawyers spent nearly 4,500 hours on the case; at $60 an hour, a relatively modest rate, this would have resulted in a $270,000 fee.

Half of that would have been payable by the coalition of private oil companies building the pipeline.

The decision prompted Senator John V. Tunney, Democrat of California, to renew a pledge of 1973 to introduce legislation establishing the authority of the Federal courts to grant attorneys' fees to winning parties in public interest cases.

This could be done by a single general statute or by a series of amendments to laws that created the legal rights underlying the various types of lawsuits. A number of civil rights laws and some involving water and air pollution do now provide for such awards and were thus not affected by the Supreme Court's decision.

Opinion varies widely as to how responsive Congress might be to such legislation. Liberals, more numerous in the House than in recent years, would probably favor such assistance to the public interest law profession, but some members **would certainly** question the added expense to both government and business in a time of economic recession.

Dissenting in the pipeline case, Associate Justice Thurgood Marshall asserted that the majority, in banning absolutely the private attorney general rule, "takes an extremely narrow view of the independent power of the courts in this area, a view that flies squarely in the face of our prior cases."

Joining Mr. Marshall in the minority was Associate Justice William J. Brennan Jr. Associate Justices William O. Douglas and Lewis F. Powell Jr. did not participate in the decision; as is traditional, they did not give any reason.

At present, Mr. Halpern said, foundations are contributing about $10-million a year to help sustain public interest law firms, but the potential income from attorneys' fees in successful cases has been essential to keep many of them afloat economically.

The NAACP Legal Defense and Educational Fund is reported to have obtained about $500,000 of its annual $3-million litigation budget from awards of attorneys' fees. The Supreme Court decision will probably reduce but not eliminate this income, becausee, many of the cases involve civil rights statutes that authorize recovery of fees.

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