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Libertarian Views of Attorney's Fees in Civil Rights Cases

Orin Kerr • February 17, 2010 7:33 pm

If a libertarian group successfully sues the government and becomes legally entitled to attorney's fees, is it consistent with libertarian philosophy to seek those fees from the government — essentially getting the taxpayer to fund your litigation campaign? That question arises in this post that in turn focuses on this amicus brief signed by the Liberty Legal Institute, the Cato Institute, the Institute for Justice, and others.

I have no views on the legal question, but it's an interesting question from the standpoint of libertarian philosophy. Is seeking attorney's fees from the United States Treasury consistent with "free market principles [that] encourage private attorneys to undertake the massive effort of private attorneys general," as the brief claims, or is it just feeding from the public trough? Or is the proper libertarian view that if recovery of attorney's fees then encourages and funds additional successful libertarian litigation, then the ends justifies the means?

Categories: Uncategorized

86 Comments

1. **Mike McDougal says:**

I think your conception of fee awards might be too narrow. If one conceives of attorney's fees as essentially a type of damage (a cost of enforcing violated rights), I don't see any tension at all.

Quote

