06-531

QUESTIONS PRESENTED

Respondents T.A. Wyner and George Simon filed a civil action against the manager of a Florida State Park and the head of the Florida Department of Environmental Protection challenging a regulation imposing minimum clothing requirements in Florida's State Parks, which prevented Respondents from performing annual plays and political performances in the nude at the park. On February 13, 2003, less than twenty four hours later, the district court held an emergency hearing, at which the district court entered a preliminary injunction prohibiting the Petitioners from arresting or interfering with Respondent's performance. Thereafter, after a hearing on the merits, Respondents lost their claim for a permanent injunction and other relief. The district court determined that Respondents were prevailing parties because of the preliminary injunction, and awarded Respondents attorney's fees and costs. Petitioners appealed the finding of prevailing party status and the award of attorney's fees. The Eleventh Circuit Court of Appeals affirmed in *Wyner v. Struhs*, 179 Fed.Appx. 566, 2006 WL 1071850 (C.A.11(Fla.). (App. 1a) The question presented is:

Whether the 11th Circuit decision in *Wyner v. Struhs*, 179 Fed.Appx. 566, 2006 WL 1071850 (C.A.11(Fla.). (App.1a) is correct in holding that a preliminary injunction is relief on the merits, or whether the Fourth Circuit decision in *Smyth v. Rivero*, 282 F.2d 268 (4th Cir. 2002), *certiorari denied by* 537 U.S. 825 (2002), is correct in holding that a preliminary injunction is not a ruling on the merits and thus cannot be the basis for prevailing party status?

Whether the Eleventh Circuit in *Wyner v. Struhs*,

179 Fed.Appx. 566, 2006 WL 1071850 (C.A.11(Fla.). (App. 1a) was incorrect in affirming the district court's order finding that Respondents are prevailing parties where their request for permanent injunctive relief was denied, although at an abbreviated hearing Respondents were awarded interim relief?