No. 97-1987

In the Supreme Court of the United States

OCTOBER TERM, 1997

MARILYN L. HUDSON, PETITIONER

v.

JANET RENO, ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Civil Rights Act of 1991, 42 U.S.C. 1981a(b)(3), which limits to certain sums the compensatory damages that may be awarded "in an action brought by a complaining party" under Title VII, limits the total of compensatory damages per lawsuit that may be awarded to a plaintiff, or rather operates as a cap on an award on each claim brought by a party in a Title VII suit.

2. Whether petitioner was entitled to front pay as a remedy for the post-November 20, 1991, violations of Title VII found by the jury.

3. Whether the district court abused its discretion in awarding attorney's fees to petitioner at market rates prevailing in Knoxville, Tennessee, where the trial in this case took place, rather than the Washington, D.C., rates charged by petitioner's counsel, or in disallowing certain of petitioner's claims for attorney's fees that were based on duplicative effort and time spent on issues on which petitioner did not prevail.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-34a) is reported at 130 F.3d 1193. The opinion of the district court on the merits of petitioner's claims under Title VII before the statute's amendment on November 21, 1991 (Pet. App. 76a-129a) and its opinion awarding attorney's fees (Pet. App. 35a-75a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on December 4, 1997. A petition for rehearing was denied on March 10, 1998. Pet. App. 136a-137a. The petition for certiorari was filed on June 8, 1998. The

jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner, a former Assistant United States Attorney (AUSA) in Knoxville, Tennessee, brought this action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* Petitioner alleged that the Department of Justice had engaged in sex discrimination and unlawful retaliation against her with respect to her employment. With respect to petitioner's claims based on conduct before the November 21, 1991, amendment of Title VII, the district court found that no unlawful conduct had occurred. Pet. App. 76a-129a. With respect to her claims based on conduct after November 20, 1991, the jury found in petitioner's favor, and awarded her $1.5 million in compensatory damages. *Id.* at 133a-134a. The district court reduced that damages award to $300,000. *Id.* at 128a, 134a. It also awarded petitioner $164,330.96 in back pay, *id.* at 128a-129a, but disallowed any remedy of reinstatement or front pay, *id.* at 111a-115a. The district court then awarded $430,752.28 in costs and attorney's fees, *id.* at 74a, after rejecting certain of petitioner's claims for fees, *id.* at 45a-71a. The court of appeals affirmed. *Id.* at 1a-34a.

1. Petitioner was hired as an AUSA for the Eastern District of Tennessee in 1983 by then-United States Attorney John W. Gill, Jr. At about the same time, Gill also hired as an AUSA James R. Dedrick, who later became First Assistant U.S. Attorney. Petitioner was promoted to a supervisory position in February 1989, and was again promoted in November 1989 to Chief of the Office's Civil Division. Pet. App. 3a. Until April 1990, petitioner's performance was

rated as "outstanding," but during 1990 and 1991, her superiors became dissatisfied with her management performance. *Id.* at 3a-4a. In January 1991, Gill and Dedrick put petitioner on a 90-day performance improvement plan. *Id.* at 4a. In May 1991, after petitioner had failed to improve her management performance, Dedrick and Gill gave petitioner a "minimally satisfactory" performance evaluation as Chief of the Civil Division. *Id.* at 4a, 79a-82a.

On May 31, 1991, petitioner initiated an administrative equal employment opportunity (EEO) complaint within the Department of Justice. Unaware that petitioner had filed an EEO complaint, Gill and Dedrick demoted petitioner from her position as Chief of the Civil Division and transferred her to a non-supervisory position in the Criminal Division (although she was still compensated at her supervisory pay level). Pet. App. 4a. After her demotion, petitioner expressed an intention to "strike back" at the management of the Office, openly and harshly criticized her superiors (referring to them as liars and using expletives to describe them), and lied to the new Chief of the Criminal Division about her leave status. *Id.* at 84a. Based on reports of this conduct, Gill wrote to Laurence S. McWhorter, Director of the Executive Office of United States Attorneys (EOUSA) in Washington, D.C., on November 13, 1991, recommending petitioner's removal from employment and her immediate placement on administrative leave pending a final decision on her employment status. EOUSA concurred in the recommendation, and, on November 20, 1991, petitioner was given a letter from McWhorter placing her on administrative leave, advising her that McWhorter was considering proposing her removal to the Deputy Attorney General

on the grounds suggested by Gill, and affording her an opportunity to respond to the charges against her in advance of McWhorter's recommendation to the Deputy Attorney General. *Id.* at 86a.

In February 1992, after replacing Gill as the U.S. Attorney, Jerry G. Cunningham interceded with EOUSA on petitioner's behalf and ultimately was able to have petitioner returned to duty status. Cunningham also replaced Dedrick with Guy Blackwell as First Assistant U.S. Attorney. Pet. App. 39a-40a. In June 1992, Cunningham sent petitioner a memorandum detailing instances of her misconduct since she had returned to duty, including lack of truthfulness, unauthorized removal of documents, failure to report for work, and unprofessional and divisive conduct. *Id.* at 6a.

In May 1993, Cunningham left office. In August 1993, petitioner learned that Dedrick would be reappointed as First Assistant once Cunningham's replacement, Carl Kirkpatrick, was sworn into office. Pet. App. 7a. Petitioner then resigned, effective September 4, 1993, and immediately went into private practice as a partner in the firm of Ailor, Andrews & Hudson in Knoxville. *Ibid.*

2. On December 11, 1991, petitioner filed a "petition" in district court, which alleged sex discrimination and unlawful retaliation in violation of Title VII, and requested an order barring the U.S. Attorney from suspending her from employment as an AUSA. On December 11, 1991, the court granted a temporary restraining order (TRO) pending a preliminary injunction hearing, which it indefinitely continued. Pet. App. 6a.

On October 27, 1992, petitioner filed another complaint in district court, which again alleged sex dis-

crimination and retaliation, and sought damages under the Civil Rights Act of 1991. By order entered December 21, 1992, the original "petition" and the action for damages were consolidated. Pet. App. 6a-7a. On August 30, 1993, the court of appeals reversed the district court's indefinite continuation of the TRO and remanded for proceedings on petitioner's request for an injunction, but that request became moot when petitioner resigned her position. *Id.* at 6a; *Hudson* v. *Barr*, 3 F.3d 970, 973-976 (6th Cir. 1993). In October 1993, petitioner amended her complaint to include a claim for constructive discharge and front pay. Pet. App. 7a.

3. Following this Court's decision in *Landgraf* v. *USI Film Products*, 511 U.S. 244 (1994), the district court determined that petitioner's claims arising out of events that had occurred before November 21, 1991, the effective date of the Civil Rights Act of 1991, would be tried to the court, and that those claims arising out of events after that date would be tried to a jury. At the close of the trial, the case was submitted to the jury on special interrogatories on a form captioned solely as "No. 3:92-cv-737," the docket number assigned to petitioner's October 27, 1992, complaint. On October 14, 1994, the jury returned a verdict in favor of petitioner. The jury found that the Department of Justice had discriminated against petitioner on the basis of sex during the period after November 20, 1991, that the Department had unlawfully retaliated against her during the same period, and that she had been constructively discharged from her employment because of her sex and/or in retaliation for having made and pursued her claims of employment discrimination. The jury awarded $250,000 in compensatory damages for the sex dis-

crimination, $500,000 in compensatory damages for the retaliation, and $750,000 in compensatory damages for the constructive discharge. Pet. App. 132a-134a. The district court reduced the jury's award to $300,000, based on its construction of the cap on compensatory damages set forth in 42 U.S.C. 1981a(b)(3)(D). Pet. App. 134a.

On August 10, 1995, the court entered an order rejecting all of petitioner's claims based on conduct before November 21, 1991. Pet. App. 76a-129a. The court found that the Department of Justice had neither discriminated against petitioner on the basis of sex nor unlawfully retaliated against her before the effective date of the 1991 Act; it upheld the Department's proffered reasons for its adverse personnel actions against petitioner as legitimate and nondiscriminatory (*id.* at 90a) and rejected petitioner's testimony as not credible (*id.* at 92a).

With respect to petitioner's request for reinstatement or front pay based on the violations found by the jury, the court ruled that reinstatement was not appropriate in light of the hostility between petitioner and her employers, the need to displace an innocent third party to find a position for petitioner, petitioner's success in finding other work, and the Department's "genuine dissatisfaction" with petitioner's job performance. Pet. App. 112a. As for petitioner's request for front pay, the district court awarded petitioner, in its back pay award, $164,330.96 from the date of her resignation to the August 17, 1995 date of judgment—a period of almost two years.[1]

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[1] In her complaint, petitioner requested five years of front pay "for a period of five years beginning September 4, 1993"—the date of her resignation. Second Am. Compl., Prayer for

Id. at 110a-111a. The court delined, however, to award front pay from the date of the judgment forward, ruling that such front pay was not necessary to make petitioner whole. *Id.* at 111a-115a. The court stressed that petitioner had gone into the private practice of law immediately upon leaving the U.S. Attorney's Office, that "other employment opportunities would have been available to plaintiff," that petitioner had "approximately 20 years, or more of earning power left," and that petitioner had "fail[ed] to present proof that she makes any less in private practice than she did as an AUSA." *Id.* at 113a-114a. The court therefore concluded that "[a]n award of front pay would, in essence, give plaintiff a windfall of having two salaries—one from her former position as AUSA and one from her present position as a practicing attorney in a private law firm." *Id.* at 115a. In such circumstances, the court held, "neither reinstatement nor an award of front pay are necessary in order to make plaintiff whole as a consequence of her constructive discharge." *Ibid.*

On January 16, 1996, the district court partially granted and partially denied petitioner's request for an award of costs and attorney's fees. Pet. App. 35a-75a. As is pertinent here, the court rejected petitioner's argument that fees for her Washington, D.C., counsel should be awarded based on prevailing rates in Washington, and instead awarded fees based on the local market rate in Knoxville. *Id.* at 54a. The court also disallowed compensation for some hours of work

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Relief ¶(i). The district court's "back pay" award from the date of her resignation to the August 17, 1995 date of the judgment thus awarded almost two years of the five years' front pay demanded by petitioner.

performed by petitioner's counsel because it related to the preparation of proposed findings of fact and conclusions of law on the non-jury portion of the trial, in which petitioner did not prevail. *Id.* at 59a-61a. Finally, the court found that some representation by one of petitioner's attorneys was duplicative and mostly "behind the scenes," and therefore reduced the amount of compensable time for that attorney's representation by 25%. *Id.* at 67a-68a.

4. The court of appeals affirmed. First, the court held that the cap on damages in Title VII actions imposed by 42 U.S.C. 1981a(b)(3)(D) applies to limit the total amount of damages that may be awarded to a complainant in a lawsuit, regardless of the number of claims presented, rather than (as petitioner argued) the amount of damages that may be awarded on each claim presented by a plaintiff within any Title VII suit. Pet. App. 9a-16a. Noting that "[u]nder the plain language of the statute, the cap on compensatory damages applies to each complaining party in an 'action,'" the court concluded that this language made clear that "the § 1981a caps apply to each party in an action, not to each claim, and there is nothing in the language of the statute to indicate otherwise." *Id.* at 11a-12a In so holding, the court refused to accord weight to the contrary interpretation set forth in an *amicus curiae* brief filed by the Equal Employment Opportunity Commission (EEOC) in an Eleventh Circuit case, stating that "the EEOC's interpretation is entitled to no deference when its position is at odds with the plain language of the statute." *Id.* at 15a.

The court of appeals also affirmed the district court's denial of reinstatement and front pay. Pet. App. 16a-22a. With respect to reinstatement, the court sustained the district court's findings that peti-

tioner had found other work, that the working relationship between her and the Department of Justice had been destroyed, and that the Department was "legitimately dissatisfied" with petitioner. *Id.* at 18a.

As for front pay, the court found petitioner's challenge to its denial to be "moot in light of [its] holding that the cap on compensatory damages set forth in Section 1981a of the 1991 Civil Rights Act applies to lawsuits as a whole and not merely to claims." Pet. App. 18a-19a. The court emphasized that the damages cap in Section 1981a(b)(3)(D) imposed a $300,000 limit (in this case) on any compensatory damages awarded for, among other things, "future pecuniary losses." *Id.* at 19a. Relying on dictionary definitions of the words "future pecuniary losses" (*id.* at 20a), the court concluded that front pay is a type of compensatory damages for future pecuniary losses because "it is a monetary award for the salary that the employee would have received but for the discrimination." *Id.* at 21a.

The court acknowledged that many courts, includeing the Sixth Circuit, had awarded front pay as a remedy for discrimination before the enactment of the Civil Rights Act of 1991. The court also noted that the 1991 Act "excludes from the Act's damages cap 'back pay, interest on back pay, or any other type of relief authorized under section 706(g) of the Civil Rights Act of 1964.'" Pet. App. 20a (emphasis omitted) (quoting 42 U.S.C. 1981a(a)(1)). The court ruled, however, that, in contrast to back pay, front pay "is not specifically 'authorized' by § 706(g)." *Id.* at 21a. It also noted that in the Sixth Circuit, the *amount* of front pay (as opposed to its availability) had been viewed "as a legal, rather than an equitable,

remedy" and thus a question for the jury rather than the court. *Ibid.*

Finally, the court rejected petitioner's challenges to the award of attorney's fees. Pet. App. 30a-34a. It upheld the district court's decision to compensate Washington, D.C., counsel at the market rate in Knoxville, finding that "it is not an abuse of discretion for a [district] court to apply local market rates." *Id.* at 32a. The court also upheld the court's disallowance of fees for post-trial work done on the nonjury portion of the case, since "[i]t is beyond peradventure that a District Court may exclude time for work on a claim on which the plaintiff did not prevail." *Id.* at 33a. And it affirmed as not clearly erroneous the 25% reduction of fees for one attorney as duplicative. *Id.* at 33a-34a.

ARGUMENT

1. Petitioner contends (Pet. 13-19) that the court of appeals erred in concluding that the cap on damages in Title VII actions imposed by 42 U.S.C. 1981a applies to limit the total damages that may be awarded for all of the claims of each complaining party brought in any lawsuit, rather than the damages for each individual claim of each party. The decision of the court of appeals is correct, and it does not conflict with any decision of this Court or any other court of appeals. Further review is therefore not warranted on this contention.

Section 1981a(a)(2) provides: "*In an action* brought by a complaining party under the powers, remedies, and procedures set forth in [42 U.S.C. 2000e-5 and 2000e-16], against a respondent who engaged in unlawful intentional discrimination * * * the complaining party may recover compensatory and punitive dam-

ages as allowed in subsection (b) of this section." (Emphasis added.) Section 1981a(b)(3), in turn, states that "[t]he sum of the amount of compensatory damages awarded under this section * * * and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party," various sums dependent on the size of the defendant (in this case, $300,000). The court of appeals correctly concluded that, under the plain meaning of the statute's reference to "an action," the $300,000 limit applies to limit the total damages for all the claims brought in any lawsuit (or "action") against a defendant. The limit does not, as petitioner contends, merely limit the amount of damages that may be awarded for each claim pled and proven against the defendant in a lawsuit, regardless of the number of such claims.

"In construing a federal statute it is appropriate to assume that the ordinary meaning of the language that Congress employed 'accurately expresses the legislative purpose.'" *Mills Music, Inc.* v, *Snyder*, 469 U.S. 153, 164 (1985). The ordinary meaning of the word "action," in the context of federal civil litigation, is simply a "civil action," *i.e.*, a lawsuit. An "action" is generally defined as "a suit brought in a court." *Black's Law Dictionary* 28 (6th ed. 1991). The Federal Rules of Civil Procedure similarly use the term "action" or "civil action" to describe any lawsuit presenting claims for relief. See Fed. R. Civ. P. 2 ("There shall be one form of action to be known as 'civil action.'"); Fed. R. Civ. P. 3 ("A civil action is commenced by filing a complaint with the court."). Similarly, Title VII provides that "a civil action may be brought against the respondent named in the charge" of unlawful discrimination, 42 U.S.C. 2000e-

5(f)(1), and that a federal employee "may file a civil action as provided in [Section] 2000e-5," 42 U.S.C. 2000e-16(c). Because Congress is presumed to have been aware of this legal background, it should also be presumed to have intended that the word "action" be taken to mean a "lawsuit," and that the caps on damages "[i]n an action" apply to each lawsuit, rather than each claim for relief.[2]

Petitioner argues, however, that the term "action" is ambiguous, and thus resort must be had to the legislative history and "authoritative interpretations" of statute. Pet. 14-15. Even if the statutory cap language were ambiguous, the ambiguity would be resolved in favor of a narrow construction because the provisions for damages in Section 1981a apply to the federal government as well as private parties. The cap on compensatory damages is a limitation on the waiver of the government's sovereign immunity and, as such, must be strictly construed. See *Lane* v. *Peña*, 518 U.S. 189, 192 (1996). In a context similar to this one, this Court rejected a broad construction of a fee provision in the Clean Air Act because the statute "affects fee awards against the United States, as well as against private individuals." *Ruckelshaus* v. *Sierra Club*, 463 U.S. 680, 685 (1983).

The legislative history of the 1991 Act provides little support for petitioner's reading of the statute in any event. As an initial matter, this Court has

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[2] As the court of appeals also observed (Pet. App. 12a n.4), its construction of the damages caps is consistent with case law holding that Section 1981a limits the total of both compensatory and punitive damages under a single cap. See *EEOC* v. *AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1281 (7th Cir. 1995); *Hogan* v. *Bangor & Aroostook R.R.*, 61 F.3d 1034, 1037 (1st Cir. 1995).

cautioned that the legislative history of the 1991 Act is, in many respects, an unreliable guide to interpretation of the Act. See *Landgraf* v. *USI Film Products*, 511 U.S. 244, 263 n.15 (1994). The legislative history cited by petitioner is, moreover, not probative on the question at hand. Petitioner relies, for example, on an "interpretive memorandum" submitted by five sponsors of the bill, which states that the caps also are placed on "the damages available to each individual complaining party for each cause of action brought under section 1981[a]." 137 Cong. Rec. H9527 (daily ed. Nov. 7, 1991); *id.* at S15,484 (daily ed. Oct. 30, 1991). As the court of appeals concluded, however (Pet. App. 14a), that passage in the memorandum was not addressing the question presented here, but was "simply making it clear that the § 1981a caps did not apply to claims [under 42 U.S.C. 1981] so that an award for sex discrimination under § 1981a would not cap an award for race discrimination under § 1981." Petitioner also relies (Pet. 16-17 n.9) on floor remarks made by Representative Edwards after the 1991 Act was passed by the House but before it was signed by the President. The court of appeals correctly rejected reliance on those post-passage "isolated remarks of a single member of Congress." Pet. App. 14a (citing *Landgraf*, 511 U.S. at 263 n.15); see *United States* v. *Texas*, 507 U.S. 529, 535 n.4 (1993) (noting that "subsequent legislative history" is a hazardous basis for inferring congressional intent); *Chrysler Corp* v. *Brown*, 441 U.S. 281, 311 (1979) ("The remarks of a single legislator, even the sponsor, are not controlling in analyzing legislative history.").

Petitioner also relies (Pet. 17) on an *amicus curiae* brief filed in the Eleventh Circuit by the Equal Em-

ployment Opportunity Commission (EEOC) in *Reynolds* v. *CSX Transportation, Inc.*, No. 95-3364 (filed May 23, 1996). The position taken in that brief, however, has been rejected by the Solicitor General, who has exclusive litigation authority to present the position of the United States in this Court, absent express authorization otherwise (which does not exist here). See 28 U.S.C. 518(a); *FEC* v. *NRA Political Victory Fund*, 513 U.S. 88 (1994). The position articulated in this brief is that of the United States. The position previously articulated by the EEOC in *Reynolds*, therefore, is not owed deference by this Court.[3]

2. Petitioner contends (Pet. 9-10) that the court of appeals erred in ruling that an award of front pay is compensation for "future pecuniary losses," and is therefore subject to the damages caps of Section 1981a. Petitioner also argues that this ruling conflicts with the Seventh Circuit's decision in *Williams* v. *Pharmacia, Inc.*, 137 F.3d 944 (1998). The position adopted by the court of appeals on this issue was not advanced by the government below. Nonetheless, this Court's review of this issue would not be appropriate in this case, because the ruling below does not conflict with *Williams* on the precise front pay issue presented here, and because the district court's denial of front pay is independently sustainable on other grounds.

Contrary to petitioner's contention, the Sixth Circuit's ruling that front pay is subject to the damages

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[3] The Eleventh Circuit did not reach the issue of the damages caps in its decision in *Reynolds*. See *Reynolds* v. *CSX Transportation, Inc.*, 115 F.3d 860 (1997), vacated, 118 S. Ct. 2364 (1998).

caps of Title VII does not conflict with anything in the Seventh Circuit's decision in *Williams*, which did not address that issue. In *Williams*, the court ruled that a district court may award front pay in addition to damages awarded by the jury for lost future earnings. The court reasoned that the two forms of compensation redress different injuries; front pay compensates the plaintiff for the immediate effects of the unlawful termination of her past employment, whereas an award for lost future earnings may compensate her for earning capacity lost through damages to her professional standing and reputation. 137 F.3d at 953. And while front pay awards are generally limited in duration to the time in which the plaintiff is unable to secure employment, an award for lost future earnings reflects "[t]he reputational or other injury that * * * can stay with the employee indefinitely." *Id.* at 954.

The *Williams* court did not address the issue decided by the court below, namely, whether front pay is a kind of compensation for "future pecuniary losses" that is subject to the damages cap of Section 1981a(b)(3). It is true that, in *Williams*, the Seventh Circuit affirmed a judgment that included both a damages award capped at $300,000 and an award of front pay. 137 F.3d at 947-948. It appears, however, that the defendant in *Williams* did not argue that the damages cap should cover any award for front pay. Accordingly, the *Williams* decision does not constitute circuit precedent on that question.

In addition, this particular case is ill suited for review of the front pay issue because the district court's decision to deny front pay was clearly not an abuse of discretion under the well settled standards applicable to equitable relief under Title VII. See

Shore v. *Federal Express Corp.*, 777 F.2d 1155, 1159 (6th Cir. 1985) (front pay "does not lend itself to a *per se* rule" but "must be governed by the sound discretion of the trial court and may not be appropriate in all cases").

"Front pay gives the employee the earnings she would have received had she been reinstated to her old job. But since the employee has a duty to mitigate damages, she may have taken another job in the interim, [and] * * * [g]iving the employee the earnings from her old job without taking account of her earnings from her new (or expected) job would result in overcompensation." *Williams*, 137 F.3d at 953-954 (citation omitted). The district court found, and petitioner does not dispute, that petitioner secured other employment immediately upon resigning her job as an Assistant U.S. Attorney, going "into private practice in Knoxville as a partner in the law firm of Ailor, Andrews & Hudson." Pet. App. 88a. The district court also noted that "[t]he record establishes that other employment opportunities would have been available to [petitioner]," *id.* at 113a, that "there has been no proof that [petitioner] needs financial assistance to help her bridge the gap between her former and present jobs," and that petitioner had failed "to present proof that she makes any less in private practice than she did as an AUSA," *id.* at 114a. Thus, "[t]here is no evidence in the record that the termination of [petitioner's] federal employment has caused her any loss of income." *Id.* at 114a-115a. Because the purpose of front pay is to rectify the harm caused by discrimination, *Shore*, 777 F.3d at 1159, such an award was not appropriate in this case.

In addition, front pay is generally viewed as a substitute for reinstatement, where reinstatement is

unavailable for various reasons such as hostility between the parties or the need to protect an innocent third party. See *Shore*, 777 F.3d at 1159. Where reinstatement would be improper because of an employer's legitimate dissatisfaction with the employee, and in particular because of the employee's misconduct, such that the employer would terminate the employee on lawful grounds, a district court could in some circumstances be justified in denying front pay as well as reinstatement. See *McKennon* v. *Nashville Banner Publishing Co.*, 513 U.S. 352, 361-362 (1995) (emphasizing that, "[i]n determining appropriate remedial action, the employee's wrongdoing becomes relevant," and that, "as a general rule in cases [involving employee wrongdoing], neither reinstatement nor front pay is an appropriate remedy"). The district court's findings in this case that petitioner had engaged in misconduct (see Pet. App. 84a-87a, 99a, 104a, 106a) are more than sufficient to justify a denial of front pay.

3. Petitioner seeks review of the court of appeals' decision affirming various rulings by the district court on attorney's fees. None of those rulings, however, implicates any conflict among the circuits or divergence from any decision of this Court. Furthermore, the fee issues are entirely fact-bound and peculiar to this case. District court decisions on attorney's fees are subject to review only for abuse of discretion, see *Pierce* v. *Underwood*, 487 U.S. 552, 557-563 (1988); *Hensley* v. *Eckerhart*, 461 U.S. 424, 437 (1983), and the court of appeals faithfully applied that standard, Pet. App. 32a-34a. Further review is therefore not warranted.

Petitioner first contends that the district court should have awarded fees for her Washington, D.C.,

attorneys at the prevailing market rate in Washington rather than that in Knoxville, where the trial took place. Prevailing parties in Title VII cases are entitled only to "reasonable" attorney's fees, see *Hensley*, 461 U.S. at 435; *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, 478 U.S. 546, 560-561 (1986), and reasonable fees "are to be calculated according to the prevailing market rates in the relevant community." *Blum* v. *Stenson*, 465 U.S. 886, 895 (1984). That is precisely the test applied by the district court. Pet. App. 53a. Title VII does not require that plaintiffs be able to obtain the most expensive counsel available nationwide; a reasonable fee is merely one that is "adequate to attract competent counsel." *Blum*, 465 U.S. at 897. Although there may be circumstances in which additional compensation is warranted for particularly expert counsel, petitioner does not contend that "competent" Title VII counsel was unavailable in the Knoxville, Tennessee area, and the district court found that competent local counsel was available, see Pet. App. 54a. Use of local market rates was therefore not an abuse of discretion.

Petitioner further contends that the district court abused its discretion in reducing the fees of one of petitioner's attorneys by 25% for duplication of effort. The district court's factual determination on this issue is entitled to great weight, however, for the court observed the trial proceedings and was in the best position to assess what was duplicative and what was not. See *Pierce*, 487 U.S. at 560. There is also no merit to petitioner's challenge to the trial court's refusal to award her attorney's fees for post-trial work in the case. The district court emphasized that the only post-trial work for which it refused to award fees was the work that related "to the preparation of

[petitioner's] proposed findings of fact and conclusions of law in the non-jury portion of the trial in which plaintiff did not prevail." Pet. App. 59a. "It is beyond peradventure that a District Court may exclude time for work on a claim on which the plaintiff did not prevail." *Id.* at 33a; see *Hensley*, 461 U.S. at 436-437 ("[t]he district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success"); *Farrar* v. *Hobby*, 506 U.S. 103, 114 (1992) ("We have already observed that if 'a plaintiff has achieved only partial or limited success, the product of hours reasonably expended on the litigation as a whole times a reasonable hourly rate may be an excessive amount.'").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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