A couple of weeks ago, a federal district judge in Texas awarded over $6 million in attorneys' fees against the Sierra Club. Sierra Club had survived motions to dismiss and for summary judgment, only to lose at trial. The court awarded fees on the ground that the suit was frivolous. The combination of rulings — denying summary judgment but then calling a lawsuit frivolous — is virtually unheard of, at least in the absence of perjury by a witness or document tampering. It's hard to account for this peculiar ruling unless the judge was just cranky due to the summer heat in Waco..

Indeed, there seems to be a logical contradiction here. Denying summary judgment means that the case presents genuine issues. But if so, how can the case be frivolous?

Let me explain. Normally, in the U.S., each side in a lawsuit pays its own lawyer, win or lose. But civil rights laws and environmental laws provide for awards of attorneys fees against the other party. These fee awards are routine when the plaintiff wins. But according to the U.S. Supreme Court's decision in the *Christianburg* case, a losing plaintiff has to pay fees only if the plaintiff's claim were "frivolous, unreasonable, or groundless" either at the beginning of the case or some later stage. That's what the trial court said in this case. Such fee awards against plaintiffs are rare, and it is even rarer for them to be awarded against plaintiffs like the Sierra Club with experienced, able lawyers.

But the trial judge had also denied summary judgment. The standard for summary judgment is whether there is a "genuine dispute about an issue of material fact." To prevent summary judgment, the plaintiff must present some evidence that would allow a reasonable jury to rule in its favor. But if you have enough evidence to create a genuine dispute about the legally relevant facts, by definition the case isn't frivolous.

Sorting out the specific grounds the trial court gave would require a much deeper dive into the trial record, but one of the key grounds seems obviously incorrect. The trial judge was very impressed by the defendants' argument that the state's environmental agency had found no violations of the utility's permit. But the whole reason for allowing private parties like the Sierra Club to sue polluters was Congress's lack of faith in state agencies.

There's another reason to be skeptical of the court's ruling. Ironically, the size of the fee award itself suggests there were real issues in the case. The defendant was obviously taking the lawsuit very seriously indeed. If the lawsuit was completely groundless, why did the defendant find it necessary to bring in expensive outside counsel, and why did that law firm find it necessary to put in thousands of hours of work? You don't bring in the 101st Airborne to deal with a kid carrying a BB gun.

There is a good reason why fee awards against plaintiffs are so rare in public-interest litigation. They have been given the power to sue, not only to defend the interests of their members, but also to protect the public interests in such things as a clean environment and a non-discriminatory workplace. If they get slapped with multimillion dollar attorneys fees, it is not only their own interests that are harmed. It is also the public interest that gets damaged..