

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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KANSAS *v.* COLORADO

ON EXCEPTION TO REPORT OF SPECIAL MASTER

No. 105, Orig. Argued December 1, 2008—Decided March 9, 2009

Kansas has filed an exception to the Special Master’s Fifth and Final Report in this action concerning the Arkansas River, contending that the Special Master erred in concluding that 28 U. S. C. §1821(b), which sets the witness attendance fee for a proceeding in “any court of the United States” at \$40 per day, applies to cases within this Court’s original jurisdiction. This determination led to an award considerably lower than the amount that Kansas, as the prevailing party, would have received under its alternative calculation.

Held: Expert witness attendance fees that are available in cases brought under this Court’s original jurisdiction shall be the same as the expert witness attendance fees that would be available in a district court under §1821(b). Kansas contends that Congress has never attempted to regulate a prevailing party’s recovery of expert witness fees in a case brought under this Court’s original jurisdiction, that Article III of the Constitution would not permit Congress to impose such a restriction, and thus, that the holding in *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U. S. 437, 444—that district courts must adhere to §1821(b)’s witness attendance fee limitations—is not relevant here. Assuming that Kansas’ interpretation is correct and that this Court has discretion to determine the fees that are recoverable in original actions, it is nevertheless appropriate to follow §1821(b). Congress’ decision not to permit a prevailing party in the lower courts to recover its actual witness fee expenses departs only slightly from the “American Rule,” under which parties generally bear their own expenses. There is no good reason why the rule for recovering expert witness fees should differ markedly depending on whether a case is originally brought in district court or this Court. District-court cases may be no less complex than those brought originally in this Court. And while the parties in original cases may incur sub-

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stantial expert costs, as happened here, the same is frequently true in lower court litigation. Thus, assuming that the matter is left entirely to this Court's discretion, the best approach is to have a uniform rule that applies in all federal cases. Pp. 3–5.

Exception overruled.

ALITO, J., delivered the opinion for a unanimous Court. ROBERTS, C. J., filed a concurring opinion, in which SOUTER, J., joined.