

In California, parties to litigation usually are responsible for payment of their own attorney fees. There are, however, several exceptions to this rule. One of these exceptions is found in Code of Civil Procedure section 1021.5, sometimes known as the “private attorney general” statute. The purpose of the statute is to afford an extra incentive to bring public interest litigation. Under section 1021.5, a successful litigant may have his or her attorneys fees paid by the opposing party if the litigation confers significant benefits on the public and if “the necessity and financial burden of private enforcement are such as to make the award appropriate.” Fees have been awarded under the statute, for example, to organizations that pursue successful litigation to protect the environment or to enforce the rights of the poor and disadvantaged.

This case concerns the meaning of the “the necessity and financial burden of private enforcement” clause of the statute. Courts have interpreted this clause to mean, among other things, that if a litigant expects financial gain from the litigation greater than the cost of bringing the litigation, then he or she is not entitled to attorney fees under the statute. More recently, some courts have ruled that in some cases, the circumstance that the litigation results in any sort of tangible gain to the litigant, even *nonfinancial* gain, may disqualify this litigant from obtaining attorney fees under the statute. The question whether certain types of nonfinancial gain can make someone ineligible for attorney fees under section 1021.5 is what is at issue in this case.

The facts of the case are as follows: Virginia Maldonado is conservator to her brother Roy Whitley, who is severely mentally retarded and has other disabilities. She is in charge of making important decisions for Whitley that adults usually make for themselves. Maldonado for various reasons opposed an attempt by the government agency that oversaw Whitley’s care to move him from the regional center where he had lived for 40 years to a smaller community facility. In the process, she obtained a legal ruling that allows people in her position to have a fair hearing. That legal ruling went beyond the individual case and arguably benefited a substantial segment of the public.

After winning the first round of litigation, Maldonado petitioned for attorney fees under section 1021.5. The Court of Appeal ultimately ruled against her, concluding that even if the litigation had created a public benefit, Maldonado was pursuing her own interests, namely trying to prevent her brother’s relocation. The Court of Appeal reasoned that because of this personal interest, she was not the kind of person who needed the extra incentive provided by section 1021.5 to bring suit. Maldonado contests this ruling, claiming that under section 1021.5 someone who brings a lawsuit benefiting the public should be disqualified from obtaining attorney fees only if he or she does so for *financial* gain, and there was no financial gain in this case. The Supreme Court will consider the language, history and purpose of the statute to decide which position is correct.