STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
A11-152

Sara Hippert, Dave Greer, Linda Markowitz, Dee Dee Larson, Ben Maas, Gregg Peppin, Randy Penrod and Charles Roulet, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Plaintiffs,

Kenneth Martin, Lynn Wilson, Timothy O'Brien, Irene Peralez, Josie Johnson, Jane Krentz, Mark Altenburg, and Debra Hasskamp, individually and on behalf of all citizens of Minnesota similarly situated,

Plaintiff-Intervenors,

Audrey Britton, David Bly, Cary Coop, and John McIntosh, individually and on behalf of all citizens of Minnesota similarly situated,

Plaintiff-Intervenors,

vs.

Mark Ritchie, Secretary of State of Minnesota; and Robert Hiivala, Wright County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants.

PLAINTIFF-INTERVENORS BRITTON, ET AL MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEYS' FEES

Plaintiffs Audrey Britton, et al, through their undersigned counsel of record, have petitioned the Court for an allowance of attorneys' fees pursuant to 42 U.S.C. § 1988. That statute provides, in pertinent part:

> In any action or proceeding to enforce a provision of Section 1983, the Court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs. 42 U.S.C. § 1988.

These Plaintiffs seek an Order of the Panel directing the Defendant Secretary of State to pay their reasonable attorneys' fees and costs as set forth herein.

I. PLAINTIFFS BRITTON, ET AL ARE A PREVAILING PARTY

The within action was brought pursuant to 42 U.S.C. §1983 alleging deprivation of the Plaintiffs' civil rights by virtue of the failure of the State of Minnesota to reapportion its legislative districts and to redistrict its congressional districts in a timely fashion.

A. Entitlement

Under the above quoted statute the Britton Plaintiffs are entitled to secure their reasonable attorneys' fees against the Defendant Secretary of State if they are a "prevailing party." For the following reasons the Britton Plaintiffs are a "prevailing party."

1. The previous districts were found unconstitutional.

The Britton Plaintiffs sought a judicial determination that the legislative and congressional districts embodied in the final Order of the Special Redistricting Panel dated March 19, 2002 in the case of *Zachman, et al. v. Kiffmeyer*, et al. No. CO-01-160, were now unconstitutional under the one person – one vote rule of *Baker v. Carr,* 369 U.S. 186 (1962); *Reynolds v. Sims, 377* U.S. 533 (1964) and their progeny. The Court granted this relief in its February 21, 2012 Order, thus making applicants a prevailing party on the merits.

2. New legislative and congressional districts were drawn.

Second, the Britton Plaintiffs sought a Judgment of the Court establishing new legislative and congressional districts consistent with both the constitutional one person – one vote rule and Minnesota policies regarding districting. This, too, the Court granted in its February 21, 2012 judgment, completing the relief sought. Again, the Britton Plaintiffs were a prevailing party.

The fact that the particular plans adopted by the Court in its final judgment were not precisely the same as the districts sought by these Plaintiffs (or any other Plaintiff) does not disentitle them from consideration as a prevailing party. The Court adopted its own congressional and legislative plans, but used aspects and concepts of plans submitted by the Britton Plaintiffs (e.g. opposition to drawing east-west Seventh and Eighth Congressional Districts across the north half of the state; maintaining an east-west congressional district in Southern Minnesota). See February 21, 2012 Order.

Under United States Supreme Court precedent, a party "prevails" under 42 U.S. C. §1988 when it succeeds on "any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Texas State Teachers Assn. v. Garland Indep. School Dist.*, 489 U.S. 782, 791-92, 109 S.Ct. 1486, 1493 (1989). The Britton Plaintiffs' purposes in intervening in this action were to (1) secure for all citizens new legislative and congressional districts that meet the one person – one vote standard; and (2) districts that were in the best interests of citizens and voters aligned with the progressive interests (as opposed to the Hippert-Republican incumbent interests or the Martin-DFL incumbent interests). Both of those purposes have been achieved, thus making these Plaintiffs a

prevailing party. Equally important, the relationship between the state and these intervenors in terms of legislative and congressional districts and in terms of equalization of those districts has been altered.

The relief sought by the Plaintiffs has been, in all things, granted by the Final Order and judgment of this Panel.

B. Status as Intervenors

Petitioners' role as intervening Plaintiffs, and not as original Plaintiffs is not determinative to a decision on this application for fees.

First, intervening parties also may qualify for awards of attorneys' fees when they are prevailing parties within the meaning of 42 U.S.C. §1988. See *Wilder v. Bernstein*, 965 F.2d 1196 (2d Cir. 1992); *United States v. City of Buffalo*, 770 F. Supp. 108, 110-11 (W.D. N.Y. 1991); *Douhn v. White*, 549 F. Supp. 152, 156-59 (E.D. Ark. 1982); *Morgan v. McDonough,* 511 F.Supp. 408 (D. Mass. 1981). *See e.g. Zachman, et al. v. Kiffmeyer, et al.*

The Britton Plaintiffs intervened at the earliest stage of this litigation after the parallel federal action was stayed. Thereafter, these Plaintiffs had two equally reasonable choices. They could have moved to intervene, as they did, or they could have started a new separate suit in a Minnesota judicial district of their choice. If they had done the latter, they would not be intervenors, but rather original Plaintiffs. No doubt, their new, separate case would have been consolidated with this one for all purposes. The Britton Plaintiffs should not be prejudiced in seeking their attorneys' fees because they chose, as a matter of judicial economy, not to start a separate case. The decision to intervene rather

than commence a separate case does not disqualify these Plaintiffs from consideration for fees.

Allowance of these Plaintiffs' intervention was based in part upon the obvious conclusion that the Hippert Plaintiffs alone, on behalf of Republican voters and office holders, did not adequately represent the interests of all Minnesotans, i.e., that the Hippert Plaintiffs did not represent the interests of the Britton Plaintiffs. The allowance of intervention by the Court was also a determination that the Britton, et al. Plaintiffs had an interest in the litigation that was judicially cognizable.

The Britton Plaintiffs' interests were often adverse to those of the Hippert and Martin Plaintiffs. Furthermore, the interests of non-incumbent citizens were not represented by any other party.

The Britton Plaintiffs were the only party that did not represent incumbent office holders. The Hippert Plaintiffs represented the incumbent Republican office holders and their proposed plan; and the Martin Plaintiffs represented incumbent Democratic-Farmer-Labor office holders. While each of those groups had a legal right to participate in the litigation, the Britton Plaintiffs, as non-incumbent citizens and voters, brought a perspective to the case not otherwise represented.

Second, Plaintiffs Britton, et al. are "prevailing parties." There is no doubt that applicants are a "party." No other party objected to their intervention. A party is considered a "prevailing party" if it succeeds on "any significant issue in litigation which addresses some of the benefits the parties sought in bringing the suit." *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933, 1939 (1983) (quoting *Nadeau v. Helgemo*, 581

F. 2d 275, 278-79 (1st Cir. 1978). As the Minnesota Supreme Court stated in *Welch v. City of Orono*:

> Although section 1988 leaves an award of attorneys fees to the discretion of the court, the United States Supreme Court required an award of attorney fees unless – special circumstances would render an award unjust. 355 N.W. 2d 117, 124 (Minn. 1984).

The Britton Plaintiffs succeeded on several significant issues in the litigation and are thus prevailing parties.

First, they sought a determination that the legislative and congressional districts embodied in the *Zachman, et al. v. Kiffmeyer, et al*, Final Order (March 19, 2002) were unconstitutional and could not be used in the 2012 primary and general elections. That relief was granted. Order dated February 21, 2012.

Second, they sought adoption by the court of new legislative and congressional districts based upon the one person - one vote rule. By the adoption of this Court's February 21, 2012, plan of redistricting that relief was granted.

Third, they contributed to and participated in all hearings on the subjects of time frame and criteria for adoption of new plans of legislative and congressional redistricting, presented proposed congressional and legislative plans and argued the merits of the various proffered plans.

Fourth, they took significant initiatives among the parties to insure the timely processing of the case.

Fifth, their proposed "relief" in the form of a plan for congressional and legislative districts bears significant similarity to the plan adopted by this Court.

The principal congressional purpose behind the adoption of 42 U.S.C. §1988 was to address the problem arising from the fact that in many cases arising under the civil rights laws the citizens who sue to enforce the law and their rights have little or no money with which to hire a lawyer. Senate Report 1011, 1976 U.S.C.C.A.N. at p. 5910. Thus, the primary purpose in providing attorney fees in civil rights litigation was to eliminate a financial barrier to litigants seeking protection against violations of constitutional rights and thereby encourage voluntary compliance with the law.

In this case, if the Britton Plaintiffs had not intervened, they and the citizens of Minnesota would have had to rely on the Republican controlled legislative majority (Hippert, et al), and the DFL legislative minority (Martin, et al) – the very institutions that could and should have resolved (but didn't) all redistricting issues without resort to the judiciary. Thus, it is the Britton Plaintiffs who were drawn from the ranks of the politically disadvantaged citizenry that Congress had in mind when enacting 42 U.S.C. §1988.

In applying 42 U.S.C. §1988 in conjunction with the Supreme Court's standards, courts have not limited fee awards solely to the party instituting the action. *See e.g., Wilder,* 965 F.2d at 1196; *United States v. Board of Ed. of Waterbury, Conn.,* 605 F.2d 573, 576 (2nd Cir. 1979); *Zachman, et al. v. Kiffmeyer, et al,* CO-01-160 (Oct. 16, 2002)(copy attached). The Britton Plaintiffs, at a minimum have made important contributions to the remedy granted – a "just and workable remedy" and have generally played a significant role in the litigation. See e.g. *Morgan,* 511 F.Supp. at 413-16; *Gautreauz v. Chicago Hous. Auth.*, 610 F. Supp. 29, 30-31 (N.D. Ill. 1985); *Douhn,* 549

F.Supp. at 156-59. As stated by the United States District Court in *LaComb v. Growe*, 4-81 Civ. 152 (D. Minn. Aug. 16, 1982):

> The governing law as to determination of the "prevailing party," however, is that a plaintiff who substantially prevails may recover for all time reasonable expended on the matter. *See Robinson v. Kimbrough*, 620 F.2d 468, 475 (5th Cir. 1980) (plaintiffs were "prevailing" even though no judicial relief was afforded, where plaintiffs were "significant catalyst" in achieving their primary objective). . . (Emphasis added)

While the determination of "prevailing party" does not turn on the magnitude of the relief obtained, the relief obtained by the Britton Plaintiff intervenors was significant. Under the circumstances of this case, the rule of *Hensley*, 461 U.S. at 429, that a "prevailing party" should ordinarily recover an attorneys' fee unless special circumstances would render such an award "unjust" applies. *Cf. In re Kansas Congressional Districts Reapportionment Cases*, 745 F.2d 610, 612 (10th Cir. 1984).

As stated by the Minnesota Special Redistricting Panel in *Zachman, et al. v. Kiffmeyer, et al.* (CO-01-160) (Oct. 16, 2002):

> A party is deemed to be a prevailing party in an action brought under section 1983 if that party "has succeeded on any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing suit." *Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92, 109 S.Ct. 1486, 1493 (1989) (quotation omitted). For a party to prevail in an action, therefore, there must be only some resolution of the action that changes the nature of the relationship between the parties. *Id.*
>
> Here, each plaintiff asked the panel to declare the existing legislative and congressional districts unconstitutional. The panel declared the existing districts unconstitutional and subsequently enjoined the use of those districts. The plaintiffs and plaintiffs-intervenors thus succeeded on a significant issue in litigation and achieved some of the benefit they sought in bringing this action. And this panel's decision altered the relationship between plaintiffs and defendants by preventing defendants – state and county officials – from conducting elections under the existing districts. Plaintiffs are, therefore, prevailing parties within the meaning of

42 U.S.C. § 1988(b) and are entitled to reasonable attorney fees. *See Crain v. City of Mountain Home, Ark.*, 611 F.2d 726, 730 (8th Cir. 1979) (attorney fees reasonable where city attorney election ordinances declared unconstitutional).

All plaintiffs provided similar significant contributions to the panel's deliberations and decision. And although this panel did not adopt in its entirety the redistricting plan submitted by any plaintiff, we adopted some aspect of each plan and fully considered the criteria that each plaintiff proposed.

II. AMOUNT OF REASONABLE ATTORNEYS' FEES

Plaintiffs have attached a Bill and Memorandum of Costs and Disbursements, including a statement of legal services rendered and a statement of costs and disbursements.

Under applicable law, the attorneys' fees to be allowed to a prevailing party in civil rights actions is based upon the "lodestar" concept, as the same may be adjusted to reflect a reasonable attorneys' fee. The Court should determine; (a) an appropriate hourly rate to be paid to attorneys with the skill and experience of Plaintiffs' counsel; and (b) the number of hours which are reasonably necessary to conduct the case. *Hensley*, 461 U.S. at 424; *Blum v. Stenson*, 465 U.S. 886, 104 S.Ct. 1541 (1984); *Brown v. Bathke*, 588 F.2d 634 (8th Cir. 1978). The purpose of these two initial steps in calculating an award of attorneys' fees is to determine the basic value of the attorneys' services. *Reome v. Gottlief*, 361 N.W. 2d 75 (Minn. App. 1985); *Hughes v. Defender Ass'n of Philadelphia*, 509 F. Supp. 140 (D. Pa. 1981).

In this case, Plaintiffs respectfully submit that a reasonable lodestar hourly rate for their principal attorney, Alan W. Weinblatt is $300.00. Has been admitted to practice before the Courts of the State of Minnesota since 1968. He has substantial experience in

the area of legislative reapportionment and congressional redistricting, having represented the Plaintiffs in *Beens, et al. v. Erdahl, et al.*, 4-71 Civ. 151, which was the 1971 legislative reapportionment case, in *LaComb, et al. v. Growe, et al.*, 4-81 Civ. 152 and 4-81 Civ. 414, which were the 1981 legislative and congressional redistricting cases, in *Cotlow, et al. v. Growe*, the 1991 legislative and congressional case which sustained this Court's co-equal jurisdiction, and in the 2001 legislative and congressional redistricting case, *Zachman, et al. v. Kiffmeyer*, C0-01-160. He has appeared in various types of civil and criminal litigation in the state and federal courts since 1971 and his usual and customary rate for litigation is $300.00 per hour. The 510.25 hours shown on the attached Statement of Legal Services Rendered were all actually and necessarily spent in the preparation for and prosecution of the redistricting litigation.

While the hourly rates allowed in older civil rights cases are not determinative, it is noted that rates approximating that requested in the instant case have been allowed by other courts. *See Westendorp v. Independent School District No. 273 (Edina, MN)*, 131 F.Supp.2d 1121, 1126 (D. Minn. 2000) (stating that a billing rate of $250 - $300 is "commensurate with the rates charged by 'highly skilled attorneys in [the] Minneapolis-St. Paul market dealing with complex and specialized matters drawing on an attorney's areas of special expertise.'" (quoting Affidavit of Roger Magnuson)); *Storlie v. Rainbow Foods Group, Inc.*, 2002 WL 47000 (D. Minn. 2002) (awarding attorney's fees at hourly rates of $225 and $350). *See also Zoll v. Eastern Allamakee Community School District*, 588 F.2d 246, 252 (8th Cir. 1978) (setting out standard for determination of amount of attorney's fees).

In *Zoll, supra*, the Court of Appeals for the Eighth Circuit reaffirmed its previous decision in *Allen v. Amalgamated Transit Union Local 788*, 554 F.2d 876, 884 (8th Cir.) cert. denied, 434 U.S. 891 (1977), which adopted the views of the Fifth Circuit as set forth in *Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 717-719 (5th Cir. 1974). In *Johnson*, the Fifth Circuit held that the minimum award should generally be not less than the number of hours claimed multiplied by the attorneys' regular hourly rate. In *Zoll,* the Court of Appeals vacated an award of attorneys' fees which was below that lodestar amount and directed that the District Court enter an appropriate fee award described in *Johnson.*

In considering the factors described in *Johnson, supra,* it is respectfully submitted that the undersigned's normal, usual, and customary $300.00 hourly rate for litigation work is reasonable.

In assessing the total attorneys' fees sought, the Court should consider twelve factors: (1) the time and labor required, (2) the novelty and difficulty of the question, (3) the skill requisite to perform the legal services properly, (4) the preclusion of other employment due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client and (12) awards in similar cases.

1. Time and Labor Required. The 510.25 hours expended in this case involved services rendered in connection with both the congressional

redistricting and legislative reapportionment cases is a reasonable amount of time. It is noted that this court several times gave the Minnesota state legislature the opportunity to do its duty. If it had done so, the time expended in completing the litigation could have been far less.

2. Novelty and difficulty of issues. In addition to the usual questions of liability and relief raised in redistricting cases, unique questions were raised in this case. First, the timeliness of a court ordered plan; second, the criteria to be used in the absence of any current controlling legislative policy; and third, opposition to the contention that the historic congressional north south districts should be combined in a single congressional district (District 7 and District 8).

3. Skill required. The previous experience of the undersigned with similar cases demonstrated a higher degree of skill in this case than is required for general litigation. Knowledge of legal precedents, by itself, was not sufficient.

4. Preclusion of other employment. While Plaintiffs' counsel was not totally precluded from other employment, the demands of this case severely restricted the ability of the undersigned to take on additional matters during the six months from July 2011 through January 5, 2012.

5. Customary fee. The usual and customary fee of the undersigned for general litigation matters is $300.00 per hour. That rate is either at or below the

general market rate for attorneys with comparable experience (forty years) and skill in the Minneapolis-St. Paul area.

6. Contingent nature of the fee. The fee in this case was totally contingent and totally subject to the discretion of this Court. The action has been brought by citizens of underrepresented districts individually on behalf of all voters similarly situated. They possess no greater economic interest in the matter than the citizenry as a whole. If legal fees of ordinary citizens are not paid by the Defendant, such citizens will be discouraged from seeking judicial redress of constitutional violations.

7. Time Limitations. The legal services provided in this case were accomplished on a much shorter time schedule than is customary in general litigation in order to insure the adoption of valid plans of reapportionment and redistricting in time for the 2012 elections.

8. Result obtained. The entire population of the State of Minnesota is the beneficiary of the results obtained in the within case because all persons in the State of Minnesota now live within congressional and legislative districts that meet the one person – one vote requirement of the United States Constitution. The state judiciary has also benefited by the confirmation that it is fully able to cure constitutional violations in the context of the redistricting process.

9. Experience, reputation, and ability of attorneys. Plaintiffs submit that it would not be appropriate for the undersigned to comment on his own behalf

with respect to his experience, reputation and ability, but would rather leave that factor to the Court's own knowledge and experience.

10. Undesirability of the case. Since no money is at issue in a legislative reapportionment case or a congressional redistricting case and no fund is created by the successful prosecution of such a case, Plaintiffs submit that this case, more so than any other kind of civil rights case, is not one that competent members of the bar would ordinarily take on for a Plaintiff without compensation. The attorneys representing the Defendant have been compensated during the course of the case. These Plaintiffs have not compensated their counsel at all.

11. Nature and length of the professional relationship with the client. The undersigned had no previous professional relationship with Intervenors Britton, Coop or McIntosh. He has previously represented Intervenor David Bly in two administrative recounts, but not in any other matters.

12. Awards in similar cases. Congressional redistricting and legislative reapportionment cases appear but once every decade. Hourly rates from 1971, 1981, 1991 and 2001 cases provide little guidance. Unless attorneys' fees are awarded pursuant to 42 U.S.C. §1988, which accurately reflect a reasonable amount for the efforts expended, at current rates, the citizens of the State of Minnesota are far less likely to have a judicial remedy available to them in those instances where the legislature does not perform its constitutional duties.

Based upon all of the foregoing factors, it is respectfully submitted that a lodestar award in the amount of $153,075 as shown on the attached Bill of Costs should be granted to the Britton Plaintiffs lead counsel.

Plaintiffs' lead counsel was assisted by two other attorneys in his firm. Jane Prince, a new attorney, is nevertheless an experienced election law practitioner and has several years experience in municipal affairs. Her assistance was extremely helpful in focusing on the issues to be presented. She provided needed backup on legal and factual research and in updating of case law.

Support in preparing the initial design, layout and presentation of a plan, and the required supporting data and maps and charts was the responsibility of Drew Henry. He worked many, many more hours than the 234 shown on the attached Bill of Costs and Disbursements.

In addition to the lodestar amount, the Court is authorized to make adjustments to reflect not only the foregoing factors but also such other factors as may be appropriate under the circumstances. This additional amount is at the total, but reasonable discretion of the Court.

In requesting that the Court consider an upward adjustment of the lodestar award for their lead counsel, Plaintiffs urge the Court to consider the following factors:

1. The State of Minnesota, through its legislature and governor, failed and neglected to perform its duties even after the lawsuits were commenced. The legislature and the governor could not and would not agree on a final plan for either congressional or legislative redistricting.

2. Plaintiffs were successful in seeking relief for the benefit of the citizens of the State of Minnesota and in altering the relationship between them and the state.

3. The issues presented were far beyond ordinary legal issues in redistricting cases and presented several issues of first impression.

Based upon the foregoing, Plaintiffs request that the Court consider a reasonable upward adjustment of the lodestar amount.

Costs and Expenses

In addition to the fees discussed above, Plaintiffs also request an Order taxing as costs against Defendant Ritchie the sum of $6,838.98 as and for their out-of-pocket costs and disbursements. An itemized statement of Costs and Disbursements appears as Appendix B to the instant motion. Each of the items listed on the Statement of Costs and Disbursements was necessarily incurred in the processing of this litigation.

Conclusion

The Britton Plaintiffs request the Court to enter an Order requiring the Defendant Secretary of State to pay to Plaintiffs' counsel the following amount:

Lodestar Fees:	$173,925.00
Out-of-Pocket Costs and Disbursements:	$ 6,838.98
Total:	$180,763.98

Respectfully Submitted,

Dated: April 13, 2012

Alan W. Weinblatt (#115332)
WEINBLATT & GAYLORD, PLC
111 East Kellogg Boulevard, Suite 300
St. Paul, MN 55101
651-292-8770 (Phone)
651-223-8282 (fax)
alan@weglaw.com

Attorneys for Plaintiff-Intervenors Britton, et al.

STATE OF MINNESOTA

SPECIAL REDISTRICTING PANEL

C0-01-160

Susan M. Zachman, Maryland Lucky R. Rosenbloom, Victor L.M. Gomez, Gregory G. Edeen, Jeffrey E. Karlson, Diana V. Bratlie, Brian J. LeClair and Gregory J. Ravenhorst, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Plaintiffs,

and

Patricia Cotlow, Thomas L. Weisbecker, Theresa Silka, Geri Boice, William English, Benjamin Gross, Thomas R. Dietz and John Raplinger, individually and on behalf of all citizens and voting residents of Minnesota similarly situated,

Plaintiffs-Intervenors,

and

Jesse Ventura,

Plaintiff-Intervenor,

and

Roger D. Moe, Thomas W. Pugh, Betty McCollum, Martin Olav Sabo, Bill Luther, Collin C. Peterson and James L. Oberstar,

Plaintiffs-Intervenors,

vs.

Mary Kiffmeyer, Secretary of State of Minnesota, and Doug Gruber, Wright County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants.

ORDER AWARDING ATTORNEY FEES

ORDER

In January 2001, Susan M. Zachman et al. brought an action under 42 U.S.C. § 1983 (Supp. V 1999), challenging the constitutionality of the state's then-existing legislative and congressional districts. Shortly thereafter, Patricia Cotlow et al., Governor Jesse Ventura, and Roger D. Moe et al. filed complaints in intervention stating claims for legislative and congressional redistricting. The Zachman plaintiffs then petitioned Chief Judge Kathleen Blatz of the Minnesota Supreme Court to appoint a special redistricting panel to oversee the redistricting litigation. In July 2001, Chief Justice Blatz appointed this panel and directed it to adopt congressional and legislative redistricting plans in the event the legislature failed to do so in a timely manner.

The legislature failed to enact a redistricting plan. Accordingly, by order dated March 19, 2002, this panel declared the challenged legislative and congressional districts unconstitutional and drew new boundaries. Plaintiffs and plaintiffs-intervenors have now applied for attorney fees under 42 U.S.C. § 1988(b) (2000), claiming that because this panel adopted parts of their proposed plans in its redistricting plan, they are "prevailing parties" within the meaning of section 1988(b). Defendants Mary Kiffmeyer et al. do not dispute that plaintiffs and plaintiffs-intervenors are "prevailing parties," but they argue that because no plaintiff was entirely successful in achieving its goals, fees should be awarded in amounts less than plaintiffs have requested.

Section 1983 provides that citizens may seek relief from persons who, under color of any statute, deprive any citizen of constitutional rights. 42 U.S.C. § 1983 (2000).

Section 1988(b) allows the prevailing party in a civil rights action to recover reasonable attorney fees as part of its costs:

> In any action or proceeding to enforce a provision of section[ ] * * * 1983 * * *, the court, in its discretion, may allow the prevailing party * * * a reasonable attorney's fee as part of the costs * * * .

42 U.S.C. 1988(b) (2000); *see also Shepard v. City of St. Paul*, 380 N.W.2d 140, 143 (Minn. App. 1985) ("Attorneys for successful civil rights plaintiffs should recover a fully compensatory fee.") (citing *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1933, 1940 (1983)). Although section 1988(b) indicates that the award of attorney fees is discretionary, "the United States Supreme Court requires an award of attorney fees to a prevailing party unless special circumstances would render an award unjust." *Welsh v. City of Orono*, 355 N.W.2d 117, 124 (Minn. 1984) (citing *Newman v. Piggie Park Enters.*, 390 U.S. 400, 402, 88 S. Ct. 964, 966 (1968)). Because congressional intent in authorizing fee awards was to encourage compliance with, and enforcement of, civil rights laws, courts must liberally construe section 1988(b) to achieve Congress's ends. *See Reome v. Gottlieb*, 361 N.W.2d 75, 77 (Minn. App. 1985).

A party is deemed to be a prevailing party in an action brought under section 1983 if that party "has succeeded on any significant issue in litigation which achieve[d] some of the benefit the parties sought in bringing suit." *Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791-92, 109 S. Ct. 1486, 1493 (1989) (quotation omitted). For a party to prevail in an action, therefore, there must be only some resolution of the action that changes the nature of the relationship between the parties. *Id.*

Here, each plaintiff asked the panel to declare the existing legislative and congressional districts unconstitutional. The panel declared the existing districts unconstitutional and subsequently enjoined the use of those districts. The plaintiffs and plaintiffs-intervenors thus succeeded on a significant issue in litigation and achieved some of the benefit they sought in bringing this action. And this panel's decision altered the relationship between plaintiffs and defendants by preventing defendants—state and county officials—from conducting elections under the existing districts. Plaintiffs are, therefore, prevailing parties within the meaning of 42 U.S.C. § 1988(b) and are entitled to reasonable attorney fees. *See Crain v. City of Mountain Home, Ark.*, 611 F.2d 726, 730 (8th Cir. 1979) (attorney fees reasonable where city attorney election ordinances declared unconstitutional).

All plaintiffs provided similar significant contributions to the panel's deliberations and decision. And although this panel did not adopt in its entirety the redistricting plan submitted by any plaintiff, we adopted some aspect of each plan and fully considered the criteria that each plaintiff proposed. Thus, we have determined that all plaintiffs are entitled to their requested attorney fees up to a limit of $100,000 and their requested costs up to a limit of $4,500.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. That Plaintiffs Susan M. Zachman et al. are awarded $100,000 as a partial award of attorney fees incurred, plus requested costs of $4,010.43, to be paid by defendants.

2. That Plaintiffs-Intervenors Patricia Cotlow et al. are awarded $100,000 as a partial award of attorney fees incurred, plus $4,500 as a partial award of costs, to be paid by defendants.

3. That Plaintiff-Intervenor Jesse Ventura is awarded $51,057.75, the full amount of attorney fees requested, plus requested costs of $4,362.50, to be paid by defendants.

4. That Plaintiffs-Intervenors Roger D. Moe et al. are awarded $100,000 as a partial award of attorney fees incurred, plus $4,500 as a partial award of costs, to be paid by defendants.

Dated: October 16, 2002

BY THE PANEL:

Edward Toussaint

Edward Toussaint, Jr.
Presiding Judge