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June 5, 2012

OFFICE OF
APPELLATE COURTS

JUN 05 2012

FILED

Via Messenger and E-Mail

Minnesota Special Redistricting Panel
c/o The Honorable Wilhelmina M. Wright, Presiding Judge
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King, Jr. Boulevard
St. Paul, MN 55155

Re: *Hippert, et al. and Martin, et al. and Britton, et al. v. Ritchie, et al.*
Court File Number A11-152

Presiding Judge Wright and Members of the Panel:

The Britton, et al. Plaintiff-Intervenors respectfully request leave to submit this responsive letter brief in reply to the Memorandum submitted on behalf of the Secretary of State.

Every argument made by Defendant Ritchie in opposition to the instant Motion has been answered by the Panel in the *Zachman* case in its Order dated October 16, 2002 (C0-01-160), awarding attorneys' fees. That Order is almost exactly the same as the Order allowing fees that was entered in *Beens v. Erdahl*, 349 F. Supp. 97 (D. Minn. June 2, 1972), and in *Cotlow v. Growe*, No. C8-91-985 (1992). In the alternative, this motion is also made under Minn. Stat. §15.472. . *See e.g. Campaign Finance and Public Disclosure Board v. Minnesota Democratic Farmer Labor Party*, 671 N.W.2d 894, 900 (Minn. App. 2003).

Plaintiffs ARE Prevailing Parties

First, this Court did conclude and Order that the *Zachman* districts could not be used for any purpose. *See* Feb. 21, 2012 Order at p. 5. That result was half of the Britton Plaintiffs' purpose in bringing the case.

Second, the "least change" strategy adopted by the Panel in both its the legislative and congressional plans (*see e.g.* Feb. 21 Order at p. 10), was precisely the relief requested by the Britton Intervenors. This was Plaintiff Intervenors' second major purpose and contrary to the plans proposed by the state legislature.

Thirdly, the Panel did adopt certain elements from Plaintiffs-Intervenors' proposed plan. That was their third primary purpose. There is no requirement that any proposed plan be adopted in its entirety in order to qualify a party as a "prevailing party." *See Zachman* Order.

As in *Zachman*:

> "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 plaintiff 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."

The Britton Plaintiffs' Complaint in Intervention sought the relief stated therein. Defendant Ritchie denied each and every allegation in the Britton Complaint or alleged that he had no information. He did not admit any single allegation. Plaintiffs-Intervenors sufficiently proved their case as to result in the Order of Feb. 21, 2012. Therefore, they are a prevailing party.

Specific Objections to State's Response

1. **Time spent by consultant**. This was not an expert nor was his time billed as an expert. His work involved helping legal counsel prepare for presentation of legislative and congressional plans to the Court and related data management issues. Labeling that work as "expert fees" without even inquiring as to the nature of the work (which larger law firms would call "paralegal work") and without reviewing the attached chart of his hours is disingenuous at best.

2. **Complaint drafting time**. The Secretary of State argues that the time spent on drafting the complaint was "over-lawyering" and "unnecessary." It is difficult to believe that a lawyer is faulted for researching and updating the changes in the law over the past decade. The hours spent on drafting and revising the complaint, were actually spent and were required as a matter of professional competence and duty owed to the clients.

Respectfully Submitted,

Alan W. Weinblatt

ALAN W. WEINBLATT
FOR
WEINBLATT & GAYLORD, PLC

AWW:kq
Encl.
cc: Counsel of Record
Britton Plaintiffs

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL
A11-152

OFFICE OF
APPELLATE COURTS
JUN 5 2012
FILED

Sara Hippert, et al.,
Plaintiffs,

Kenneth Martin, et al.,

Plaintiff-Intervenors,

Audrey Britton, et al.,

Plaintiff-Intervenors,

vs.

Mark Ritchie, et al.,
Defendants.

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Kris Quicksell, being first duly sworn, deposes and says that on the 5th day of June, 2012, she served true and correct copies of the attached letter to the Special Redistricting Panel upon the following parties by electronic mail and by United States Mail, at their respective addresses shown below:

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Kris Quicksell

Subscribed and sworn to before me,
this 5th day of June, 2012.

Notary Public

ALAN W. WEINBLATT
Notary Public
MINNESOTA
My Commission Expires January 31, 2015