

MAY 11 2012

FILED

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,

and

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,

Intervenors,

and

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

Intervenors,

vs.

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

Defendants.

**MEMORANDUM IN SUPPORT OF
MARTIN INTERVENORS'
MOTION FOR ATTORNEYS'
FEES, COSTS, AND
DISBURSEMENTS**

In this action, the Martin Intervenors successfully argued that the state legislative districts and congressional districts as established by *Zachman v. Kiffmeyer*¹ were unequally apportioned in violation of the United States and Minnesota constitutions. The Martin Intervenors successfully obtained relief in the form of new legislative and congressional redistricting plans. As a prevailing party in a civil rights action brought under 42 U.S.C. § 1983, the Martin Intervenors are thus entitled to reasonable attorneys' fees, costs and disbursements under 42 U.S.C. § 1988. The Martin Intervenors therefore move this Court for an award of attorneys' fees, costs and disbursements in the amount of \$292,130.85.

ARGUMENT

The Civil Rights Attorneys' Fees Award Act of 1976 provides that “[i]n any action or proceeding to enforce a provision of [42 U.S.C. § 1983], the court, in its discretion, may allow the prevailing party...a reasonable attorney’s fee as part of the costs....”² Attorneys for successful civil rights plaintiffs “should recover a fully compensatory fee.”³ Although an award of attorneys’ fees rests within the discretion of the Court, courts must grant an award of attorneys’ fees to a prevailing party “unless special circumstances would render an award unjust.”⁴ “Congress’ purpose in authorizing fee awards was to encourage compliance with and enforcement of the civil

¹ No. C0-01-0160 (Order dated March 19, 2002) (hereinafter *Zachman*).

² 42 U.S.C. § 1988(b).

³ *Shepard v. St. Paul*, 380 N.W.2d 140, 143 (Minn. Ct. App. 1985) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

⁴ *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968). *See also Welsh v. Orono*, 355 N.W.2d 117, 124 (Minn. 1984) (attorneys’ fees awards required in cases raising “a fundamental civil rights issue such as voting rights...or the like.”).

rights laws, and the Act must be liberally construed to achieve these ends.”⁵ An award of attorneys’ fees to the prevailing parties is appropriate in redistricting litigation “whenever the political branches of government fail to vindicate important rights and the affected parties must seek a judicial hearing.” *Hastert v. Illinois State Bd. of Election Com’rs*, 28 F.3d 1430, 1444 (7th Cir. 1994) (awarding attorneys’ fees to four prevailing parties in Illinois redistricting litigation).

I. THIS ACTION ENFORCED THE PROVISIONS OF 42 U.S.C. § 1983.

The Civil Rights Act enforcement provision found at 42 U.S.C. § 1983 secures a private right of action for any “deprivation of any rights, privileges, or immunities secured by the Constitution and laws” of the United States.

The Martin Intervenors originally brought their Complaint in Intervention in Wright County District Court. That Complaint averred “jurisdiction under 42 U.S.C. §§ 1983, 1988 to redress the claims of Plaintiffs in Intervention of violations of the United States Constitution.”⁶ The Martin Intervenors alleged that both the state legislative districts and the congressional districts established by *Zachman* were unequally apportioned, in violation of the United States and Minnesota constitutions.⁷ The Martin Intervenors requested that the Court declare the state legislative districts and congressional districts unconstitutional, adopt constitutionally valid plans of

⁵ *Reome v. Gottlieb*, 361 N.W.2d 75, 77 (Minn. Ct. App. 1985) (internal quotations omitted).

⁶ Complaint in Intervention, ¶ 8.

⁷ *Id.*, ¶¶ 21-23, 38-40.

congressional redistricting and legislative reapportionment, and grant attorneys' fees and costs pursuant to 42 U.S.C. § 1988.⁸

The Orders in this case granted the relief requested by the Martin Intervenors. The Panel held “that the population of the State of Minnesota is unconstitutionally malapportioned among the state’s current legislative districts”⁹ and “among the state’s current congressional districts.”¹⁰ The Panel adopted new plans of congressional redistricting and legislative reapportionment and enjoined the use of the districts drawn by *Zachman* in future elections.¹¹ Those Orders granted the relief the Martin Intervenors sought in order to correct constitutional deficiencies in the state’s legislative and congressional districts. The Martin Intervenors, by prosecuting their claims in this action, have thus enforced the provisions of 42 U.S.C. § 1983.

II. THE MARTIN INTERVENORS ARE A “PREVAILING PARTY.”

A prevailing party under § 1988 is “a party who prevails on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.”¹² “[T]o be a prevailing party entitled to an award of attorney fees, [a party] need[s] only to have succeeded on any significant claim affording it some of the relief sought.”¹³ A plaintiff “prevails” when actual relief on the merits of the claim materially alters the legal

⁸ *Id.*, Prayer for Relief ¶¶ 1, 3-4.

⁹ Final Order Adopting a Legislative Redistricting Plan (“Legislative Plan Order”), p. 5.

¹⁰ Final Order Adopting a Congressional Redistricting Plan (“Congressional Plan Order”), p. 4.

¹¹ Legislative Plan Order, p. 22; Congressional Plan Order, p. 22.

¹² *Reome*, 361 N.W.2d at 77 (quoting *Hensley v. Eckerhart*, 461 U.S. at 433).

¹³ *American Dog Owners Ass’n v. Minneapolis*, 453 N.W.2d 69, 72 (Minn. Ct. App. 1990).

relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.¹⁴

A. The Martin Intervenors prevailed on significant issues throughout this litigation.

The Martin Intervenors were successful in obtaining a judicial determination that the legislative and congressional districts drawn in *Zachman* were unconstitutionally malapportioned. The Martin Intervenors obtained relief in that the Panel enjoined the use of the prior districts in future elections and adopted a new redistricting plan.¹⁵ As this was the entire basis of the suit and the only relief requested by the Martin Intervenors, the Martin Intervenors are a prevailing party.

In addition, although the Panel did not adopt any party's proposed redistricting plan in its entirety, the Martin Intervenors prevailed on a number of significant issues throughout this litigation, several of which are listed here:

Redistricting Criteria:

- The Panel adopted the Martin Intervenors' request that the criteria reflect that language minorities are protected by the Voting Rights Act of 1965.¹⁶
- The Panel recognized the importance of preserving communities of interest along neighborhoods and communities sharing similar

¹⁴ *Farrar v. Hobby*, 506 U.S. 103, 111-12 (1992).

¹⁵ Legislative Plan Order; Congressional Plan Order.

¹⁶ Martin Intervenors' Motion to Adopt Redistricting Criteria ("Martin Criteria Motion"), p. 6; Order Stating Redistricting Principles and Requirements for Plan Submissions ("Order Stating Criteria"), p. 5.

social, geographical, political, cultural, ethnic, economic, and other interests.¹⁷

- The Panel adopted criteria relating to compactness and unfair results for incumbents or challenges, as argued by the Martin Intervenors.¹⁸

Congressional Plan:

- As urged by the Martin Intervenors, the Panel relied heavily on the “[r]obust and diverse public input” through live hearings and written submissions.¹⁹
- The Panel declined to adopt several large, east-to-west congressional districts in Greater Minnesota as advocated by legislative majorities and the Hippert plaintiffs.²⁰ Instead, the Panel proceeded as the Martin Intervenors proposed: maintaining the character of the 8th Congressional District as a northeastern Minnesota district centered on the Iron Range, the 7th Congressional District as a western Minnesota District²¹, and a 1st Congressional District serving the small cities of southern Minnesota.²²

¹⁷ Martin Criteria Motion, pp. 6-11; Order Stating Criteria, pp. 5-6.

¹⁸ Martin Intervenors’ Response to Motions to Adopt Redistricting Criteria, pp. 12-13; Order Adopting Criteria pp. 6-9.

¹⁹ Congressional Plan Order, pp. 8-9.

²⁰ See Hippert Congressional District Plan: Statewide Map.

²¹ Martin Intervenors’ Memorandum Regarding Congressional Plan, pp. 18-24.

²² *Id.*, pp. 24-27.

- The Panel agreed with the thrust of Martin Intervenors' proposed expansion of the 4th Congressional District into Washington County, adjusting the boundaries of the 6th Congressional District accordingly.²³
- The Panel agreed with the Martin Intervenors that the 3rd Congressional District should remain focused on the Twin Cities suburbs, rather than extending out to McLeod County as proposed by legislative majorities and the Hippert plaintiffs.²⁴

Legislative Plan:

- As with the Congressional Plan, the Panel agreed with the Martin Intervenors that particular weight should be placed on the testimony received through live hearings and written submissions.²⁵
- In significant part, the Panel agreed with the Martin Intervenors' approach to cities in Greater Minnesota, taking care to preserve both urban and rural voices.²⁶
- The Panel preserved the White Earth and Red Lake reservations in a single Senate District (SD 2), as the Martin Intervenors urged.²⁷

²³ *Id.*, pp. 31-32.

²⁴ *Id.*, pp. 33-34; Hippert Congressional District Plan: Statewide Map.

²⁵ Legislative Plan Order, pp. 9-10.

²⁶ *Id.*, pp. 10-11, Martin Intervenors' Memorandum Regarding Legislative Plan, p. 19.

²⁷ Martin Intervenors' Memorandum Regarding Legislative Plan, p. 22.

- The Panel expanded the northeastern-most Senate District into Koochiching County (SD 3).²⁸
- The Panel preserved the Mississippi River community of interest in Goodhue and Wabasha Counties (SD 21).²⁹
- The Panel placed Albert Lea and Austin in a single Senate District (SD 27).³⁰
- The Panel placed Brooklyn Park and Brooklyn Center within a single Senate District, as the Martin Intervenors requested (SD 40).³¹
- The Panel preserved historic neighborhood and communities of interest throughout Minneapolis and St. Paul, with a particular focus on communities of interest, as the Martin Intervenors argued.³²

Clearly, the Martin Intervenors succeeded in obtaining the relief sought on their significant claims, and are therefore a “prevailing party” under § 1988.

B. The Martin Intervenors’ status as intervenors does not affect their status as a “Prevailing Party.”

It is well-established that plaintiff-intervenors, as well as plaintiffs, may be entitled to attorneys’ fees under § 1988.³³ The legislative history of the Civil Rights

²⁸ *Id.*, p. 24.

²⁹ *Id.*, p. 34.

³⁰ *Id.*, p. 32-33.

³¹ *Id.*, p. 40.

³² *Id.*, pp. 42-43.

³³ *Shaw v. Hunt*, 154 F.3d 161, 164-65 (4th Cir. 1998) (collecting cases); *Hastert v. Ill. Bd. of Election Comm’rs*, 28 F.3d 1430, 1441 (7th Cir. 1993); *Wilder v. Bernstein*, 965 F.2d 1165, 1204 (2d Cir. 1992).

Attorneys' Fees Act of 1976 specifically includes intervenors among the parties who are eligible for attorney's fees as a result of their efforts to vindicate civil rights: "in the large majority of cases the party or parties seeking to enforce [civil] rights will be plaintiffs and/or plaintiff-intervenors."³⁴ Courts have accordingly awarded fees to plaintiff-intervenors, provided they have "played a significant role in the litigation."³⁵ Intervenors are entitled to fees where they "have contributed importantly to the creation of remedies."³⁶

The Martin Intervenors unquestionably played a significant role in this litigation. The Martin Intervenors are members of the Democratic-Farmer-Labor Party of Minnesota, and represented the interests of this political party throughout this case, while the Hippert Plaintiffs represented the legislative majorities and the Republican Party of Minnesota. The Martin Intervenors fully participated in the argument regarding redistricting criteria. The Martin Intervenors submitted a full redistricting plan accompanied by maps, reports, and detailed argument in both written and oral form. As set forth in detail above, the Martin Intervenors played an active and important role in contributing to the Panel's deliberations. As such, the Martin Intervenors are a prevailing party under § 1988.

³⁴ *Shaw*, 154 F.3d at 164 (citing S. Rep. No. 94-1011, at 4 n.4 (1976)).

³⁵ *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1535 (9th Cir. 1985).

³⁶ *Wilder*, 965 F.2d at 1204.

III. THE MARTIN INTERVENORS' ATTORNEYS' FEES ARE REASONABLE.

Courts recognize that attorneys for successful civil rights plaintiffs should recover a fully compensatory fee.³⁷ The methodology by which a reasonable fee is calculated is to multiply the reasonable hourly rate by the hours reasonably expended.³⁸ The product of this calculation is termed the “lodestar” figure.³⁹

A. Reasonable Hourly Rate.

Reasonable fees under § 1988 are to be calculated according to the prevailing market rates in the relevant community.⁴⁰ Fees are based on market standards so that “attorneys are paid the full value that their efforts would receive on the open market in non-civil-rights cases,” not less because of the interests they represent.⁴¹ The lodestar award is presumptively a reasonable fee.⁴² The requested rates should be in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.⁴³ Courts should give proper consideration to all circumstances in determining a reasonable hourly rate.⁴⁴

³⁷ *Shepard*, 380 N.W.2d at 143 (citing *Hensley*, 461 U.S. at 435).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* (citing *Blum v. Stenson*, 465 U.S. 886 (1984)).

⁴¹ *Hensley*, 461 U.S. at 447.

⁴² *Hendrickson v. Branstad*, 934 F.2d 158, 162 (8th Cir. 1991).

⁴³ *McDonald v. Armontrout*, 860 F.2d 1456, 1458-59 (8th Cir. 1988).

⁴⁴ In particular, the Eighth Circuit considers twelve factors: (1) the time and labor required; (2) the novelty and difficulty of the question; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the

“Another consideration in determining the reasonableness of the fee is the relevant market involved.”⁴⁵ Courts recognize that in certain cases, a “national market or a market for a particular legal specialization may provide the appropriate market.”⁴⁶

The hourly rates requested by the Martin Intervenors are reasonable. The fees requested are appropriate given the complexity of this litigation, the experience of the attorneys involved, and the prevailing rates in the market. The rates charged by counsel in this case were at or below the customary fees charged by each attorney. Each of the attorneys involved has significant experience in political and elections law matters in Minnesota. The hourly rates requested are set forth in detail in the accompanying Affidavits of Marc E. Elias and David L. Lillehaug.

Lead counsel in this case was Marc Elias. Mr. Elias is the Chair of the Political Law Practice of Perkins Coie, LLP and is recognized as a national expert in political and elections law. He serves as general counsel to the National Democratic Redistricting Trust and has been involved in redistricting litigation in more than a half-dozen states regarding the 2010 Census. Mr. Elias’ typical hourly rate is reasonable in this case given his specialized knowledge and experience in redistricting matters throughout the country.

Mr. Elias was assisted by Kevin Hamilton, another partner at Perkins Coie with significant election law experience, having represented numerous clients in statewide

amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *McDonald*, 860 F.2d at 1459, n.4.

⁴⁵ *Casey v. City of Cabool*, 12 F.3d 799, 805 (8th Cir. 1993).

⁴⁶ *Id.*

recounts, election contests, campaign finance issues, and the administration of elections. Mr. Elias was also assisted by experienced associate William Stafford, who has significant experience in election law matters in Minnesota and nationally, and other associate attorneys and paralegals. These additional timekeepers also adjusted their usual rates downward, as set forth in the accompanying Affidavit of Marc Elias.

Lead Minnesota counsel in this case was David Lillehaug, former U.S. Attorney for the District of Minnesota. Mr. Lillehaug has significant experience in complex public litigation, and has represented the University of Minnesota, tribal governments, the Minnesota House of Representatives, three U.S. Senators, and the present Governor. He was assisted by associate attorney Christopher Stafford, who has experience in Minnesota election law matters.

Both Perkins Coie and Fredrikson & Byron gave their clients a 10% discount in this case, and include the same discount in this motion.

B. Reasonable Hours Expended.

The Court has discretion to award attorneys' fees for all hours reasonably expended upon finding that "plaintiff attained the principal of his objectives sufficiently" to justify the time spent by counsel on all claims.⁴⁷ "Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised."⁴⁸

⁴⁷ *Reome*, 361 N.W.2d at 79.

⁴⁸ *Id.* at 78 (quoting *Hensley*, 461 U.S. at 440).

The Martin Intervenors seek a total of 728.5 hours in legal fees.⁴⁹ This figure is reasonable in light of the complexity and importance of this case. Redistricting cases are unusually fact-intensive. An extensive record was compiled at public hearings before the legislature, the public hearings held by the Court, and the hundreds of pages of written submissions received by the Panel, all of which counsel reviewed thoroughly and relied upon throughout the extensive briefing and argument required in this case. (One associate attorney attended the first public hearing; thereafter, the Martin Intervenors relied on transcripts.) Counsel was also required to develop granular knowledge of the intricate and detailed redistricting plans submitted by multiple parties, and master the minute, yet significant, differences between and among them, in order to effectively advocate the Martin Intervenors' position in this complex case.

The Martin Intervenors obtain the relief they requested—a declaration that the *Zachman* districts were unconstitutionally malapportioned and an injunction precluding further elections using the *Zachman* districts. Moreover, although no party had its plan adopted in total, as discussed above, the plans adopted by the Panel followed the proposed Martin plans in many of their most significant respects. The Martin Intervenors thus were successful in winning “substantial relief” on their claims, and the hours submitted by counsel for the Martin Intervenors are reasonable.

⁴⁹ The number of hours expended does not include any time spent preparing this motion for attorneys' fees, and the Martin Intervenors are not seeking compensation for fees incurred in connection with this motion.

C. Calculation of Fees Requested

<u>Attorney/Timekeeper</u>	<u>Rate Charged</u>	<u>Hours Expended</u>	<u>Fees Requested</u>
Marc Elias	\$650	103.5	\$67,275.00
Kevin Hamilton	\$535	47.2	\$25,252.00
William Stafford	\$330	231.8	\$76,494.00
Lori Dirks	\$140	1.0	\$140.00
Abha Khanna	\$330	0.3	\$99.00
Courtney Randall	\$140	4.9	\$686.00
Martha Vallely	\$165	1.2	\$198.00
(Downward Adjustment)			-\$17,014.40
Subtotal			\$153,129.60
Costs and Disbursements			\$4,605.16
Total – Perkins Coie, LLP			\$157,734.76

<u>Attorney/Timekeeper</u>	<u>Rate Charged</u>	<u>Hours Expended</u>	<u>Fees Requested</u>
David Lillehaug	\$495 (2011)	173.0 (2011)	\$105,102.00
	\$515 (2012)	37.8 (2012)	
Christopher Stafford	\$275 (2011)	109.1 (2011)	\$35,430.50
	\$295 (2012)	18.4 (2012)	
(10% Downward Adjustment)			-\$14,053.25
Subtotal			\$126,479.25
Costs and Disbursements			\$7,916.84
Total – Fredrikson & Byron, P.A.			\$134,396.09
<u>TOTAL</u>			\$292,130.85

CONCLUSION

For the reasons set forth above, the Martin Intervenors respectfully request that the Panel grant their Motion for Attorneys' Fees, Costs, and Disbursements and require Defendants to pay such fees, costs, and disbursements in the amount of \$292,130.85.

Dated May 11, 2012.

Respectfully submitted,

PERKINS COIE LLP

FREDRIKSON & BYRON, P.A.

By: 

By: 

Marc E. Elias (DC Bar #442007)
Kevin J. Hamilton (Wash. Bar
#15648)
700 Thirteenth Street, N.W., Suite
600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200

David L. Lillehaug (#63186)
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402
Telephone: (612) 492-7000

Admitted Pro Hac Vice

Attorneys for Martin Intervenors

5099584_1.DOC