

STATE OF MINNESOTA

OFFICE OF  
APPELLATE COURTS

SPECIAL REDISTRICTING PANEL

MAY 11 2012

A11-152

FILED

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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 Hiivala, Wright County Auditor, individually and on behalf of all Minnesota county chief election officers,

Defendants.

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**HIPPERT PLAINTIFFS'  
MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR  
ATTORNEYS' FEES**

## INTRODUCTION

Plaintiffs Sara Hippert *et al.* (the “Plaintiffs”) bring this motion pursuant to 42 U.S.C. § 1988(b). Plaintiffs are entitled to an award of reasonable attorneys’ fees and costs because they were prevailing plaintiffs in this litigation. They request the Panel to award them \$225,000 for fees, an amount that, when adjusted for increases in hourly billing rates for lawyers over the past decade, is comparable to or less than the fees requested in the most recent prior redistricting litigation. They also request that the Panel award them \$20,985.66 for costs and expenses actually incurred.

## FACTUAL BACKGROUND

Plaintiffs filed this action on January 21, 2011 pursuant to 42 U.S.C. §§ 1983 and 1988 to redress violations of the United States Constitution and to obtain declaratory relief pursuant to Minn. Stat. §§ 555.01 *et seq.* *See generally* Complaint (Jan. 21, 2011). Plaintiffs alleged that the congressional and legislative districts in Minnesota were unequally apportioned based on the 2010 United States Census and violated the rights of Plaintiffs and other similarly situated individuals under the Fifth and Fourteenth Amendments of the United States Constitution and Article 1, Section 2 of the Minnesota Constitution. *Id.*

Plaintiffs petitioned the Minnesota Supreme Court to appoint a Special Redistricting Panel to enact new congressional and legislative redistricting plans in advance of the 2012 elections in the event that the Minnesota Legislature and Governor failed to do so. *See* Petition for Appointment of Special Redistricting Panel (Jan. 25, 2011). The Minnesota Supreme Court granted Plaintiffs’ petition and appointed the

Special Redistricting Panel. *See* Supreme Court Order (Feb. 14, 2011); *see also* Supreme Court Order Appointing a Special Redistricting Panel (Jun. 1, 2011).

The Special Redistricting Panel accepted briefs and argument from the Plaintiffs and Intervenors concerning the adoption of redistricting principles to guide the development of new plans. *See* Order Stating Redistricting Principles and Requirements for Plan Submissions (Nov. 4, 2011). The Special Redistricting Panel also accepted proposed redistricting plans as well as supporting briefs and argument from the parties regarding the proposals. *See e.g.*, Hippert Legislative Brief (Nov. 18, 2011); Hippert Congressional Brief (Nov. 18, 2011); Order on Scope of January 4, 2012 Oral Argument (Dec. 23, 2011).

The Minnesota Legislature and Governor did not enact redistricting plans, and, the Special Redistricting Panel issued final orders adopting new congressional and legislative plans for Minnesota on February 21, 2012. *See* Final Order Adopting a Congressional Redistricting Plan (Feb. 21, 2012); Final Order Adopting a Legislative Redistricting Plan (Feb. 21, 2012). The Panel held that “the population of the State of Minnesota is unconstitutionally malapportioned among the state’s current congressional districts established following the 2000 census . . .” and that “the population of the State of Minnesota is unconstitutionally malapportioned among the state’s current legislative districts established following the 2000 census . . .” *See* Final Order Adopting a Congressional Redistricting Plan, at 4 (Feb. 21, 2012); Final Order Adopting a Legislative Redistricting Plan, at 5 (Feb. 21, 2012).

Because the previously established districts were unconstitutional, the Panel enjoined Defendants from using those districts in the 2012 primary and general elections, and the Panel adopted its own congressional and legislative redistricting plans. *See* Final Order Adopting a Congressional Redistricting Plan, at 22 (Feb. 21, 2012); Final Order Adopting a Legislative Redistricting Plan, at 22 (Feb. 21, 2012). While the Panel did not adopt in its entirety any redistricting plan proposed by a party, the Panel held that “certain elements from each proposed redistricting plan are reflected” in both the congressional plan and the legislative plan that the Panel adopted. *See* Final Order Adopting a Congressional Redistricting Plan, at 7 (Feb. 21, 2012); Final Order Adopting a Legislative Redistricting Plan, at 8 (Feb. 21, 2012). No party has taken an appeal or otherwise challenged those final decisions.

## **ARGUMENT**

### **I. PLAINTIFFS ARE PREVAILING PARTIES UNDER 42 U.S.C. § 1983.**

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. Section 1988(b) allows a prevailing party in a civil rights action to recover reasonable attorneys’ fees as part of its costs. 42 U.S.C. § 1988(b); *see also Shepard v. City of St. Paul*, 380 N.W.2d 140, 143 (Minn. Ct. App. 1985) (“Attorneys for successful civil rights plaintiffs should recover a fully compensatory fee.”) (citing *Hensley v. Eckerhart*, 103 S.Ct. 1933, 1940 (1983)).

“[T]he 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 (1968)). Because the congressional intent of authorizing fee awards is to encourage enforcement of civil rights laws, courts must liberally construe section 1988(b) to achieve that end. See *Reome v. Gottlieb*, 361 N.W.2d 75, 77 (Minn. Ct. 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 the suit.” *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 791–92 (1989) (quotation omitted). For a party to prevail in an action, there must be only some resolution of the action that changes the nature of the relationship of the parties. *Id.*

Here, Plaintiffs succeeded on significant issues in the litigation and achieved the benefits they sought in bringing the action. Plaintiffs asked the Special Redistricting Panel to declare unconstitutional the congressional and legislative redistricting plans established after the 2000 Census. The Panel granted that relief, enjoined use of the previous districts, and adopted new redistricting plans that reflect elements of the plans proposed by Plaintiffs.

The Panel’s final orders altered the relationship between the Plaintiffs and the Defendants by preventing the Defendants – certain state and county officials – from conducting elections using the previous districts. Accordingly, Plaintiffs are prevailing parties within the meaning of 42 U.S.C. § 1988(b) and are entitled to reasonable attorneys’ fees. See *Zachman et al. v. Kiffmeyer et al.*, No. C0-01-160, Order Awarding

Attorney Fees, at 2–5 (Minn. Special Redistricting Panel, Oct. 16, 2002); *Crain v. City of Mountain Home, Ark.*, 611 F.2d 726, 730 (8th Cir. 1979) (awarding attorneys’ fees after city attorney election ordinances were declared unconstitutional); *see also In re Kan. Cong. Dist. Reapportionment Cases*, 745 F.2d 610, 611 (10th Cir. 1984) (holding that “the existing congressional districts were unconstitutional” and that “[t]he plaintiffs’ constitutional rights therefore were threatened, and they did not need to rely on [the secretary of state’s] assertion that he would not enforce the existing districts.”); *Daggett v. Kimmelman*, 617 F. Supp. 1269, 1274 (D. N.J. 1985), *aff’d and remanded*, 811 F.2d 793 (3d Cir. 1987) (“[S]tate legislative-apportionment cases secure rights for which section 1983 provides a remedy . . .”).

## **II. PLAINTIFFS SHOULD BE AWARDED REASONABLE ATTORNEYS’ FEES AND COSTS.**

The amount of a fee award under section 1983 depends upon a number of factors, including “the plaintiff’s overall success; the necessity and usefulness of the plaintiff’s activity in the particular matter for which fees are requested; and the efficiency with which the plaintiff’s attorneys conducted that activity.” *Jenkins v. Missouri*, 127 F.3d 709, 718 (8th Cir. 1997); *see also State v. Humphrey v. Alpine Air Prods.*, 490 N.W.2d 888, 896 (Minn. Ct. App. 1992), *aff’d*, 500 N.W.2d 788 (Minn. 1993) (affirming an award of attorney fees where the court considered, *inter alia*, fees customarily charged for similar legal services).

In prior redistricting litigation, the successful parties sought and were awarded fees that partially compensated them for the cost of the litigation. In *Zachman*, the

Zachman parties requested \$114,230.43 in fees. *See* Affidavit of Timothy D. Kelly in Support of Zachman Plaintiffs' Motion for Attorneys' Fees, Costs and Disbursements (June 26, 2002). The Cotlow parties requested \$139,895. *See* Bill and Memorandum of Costs and Disbursements and Affidavit of Alan W. Weinblatt (May 16, 2002). The Moe parties requested \$132,636.25. *See* Affidavit of Brian Melendez (May 29, 2002). Ventura requested \$54,192.75. *See* Memorandum in Support of Plaintiff-Intervenor Jesse Ventura's Motion for Attorneys' Fees, at 11 (May 20, 2002).

Notably, the request by the Zachman parties did not include all the fees incurred, but was limited to an amount that they deemed reasonable to request from the panel. *See* Affidavit of Timothy D. Kelly in Support of Zachman Plaintiffs' Motion for Attorneys' Fees, Costs and Disbursements (June 26, 2002) ("Kelly & Berens, P.A. declines to seek attorney fees or expenses in this proceeding."). The *Zachman* panel awarded each of the principal parties in the litigation \$100,000 in attorneys' fees. *See Zachman*, Order Awarding Attorneys' Fees (Oct. 22, 2002). The *Zachman* panel awarded \$51,057.75 in attorneys' fees to Ventura, and also awarded each party up to \$4,500 in costs. *Id.*

This litigation was as complex, hard-fought, and time-intensive as the *Zachman* litigation. It concerned a topic of critical importance. Plaintiffs sought to vindicate the constitutional rights of all Minnesota voters, and not just their own constitutional rights. Effective representation of Plaintiffs required analyzing a large amount of data and synthesizing that data into persuasive arguments. All of the parties involved were represented by competent counsel who presented effective arguments on behalf of their clients. Plaintiffs' counsel prepared detailed submissions for the Panel in support of

Plaintiffs' proposed redistricting plans and in opposition to the redistricting plans proposed by the other parties, which were helpful to the Panel in developing their final redistricting plans.

The total fees incurred by Plaintiffs were greater than the amount sought in this fee application. *See* Affidavit of Eric J. Magnuson, at ¶ 14; *see also* Affidavit of Tony P. Trimble, at ¶ 10. However, balancing all of the factors that are involved in a fee award, the Hippert plaintiffs respectfully request an award of \$225,000 in fees, plus \$20,985.66 in costs. When adjusted for increases in attorney billing rates over the last decade, the amount of fees requested by Plaintiffs is comparable to, and in fact lower than, the average amount requested by the principal parties in the most recent prior redistricting litigation. *See* Affidavit of Eric J. Magnuson, at ¶ 13. The costs requested were actually incurred and were necessary for effective representation of the Plaintiffs.

### **CONCLUSION**

This litigation was necessary because the Governor and the Legislature failed to adopt new congressional and legislative districts after the 2010 Census. By initiating and participating in this litigation, Plaintiffs served a critical role in protecting the constitutional rights of the citizens of Minnesota. Under 42 U.S.C. § 1988(b), Plaintiffs are entitled to an award of attorneys' fees and costs.

Plaintiffs respectfully request that the Panel grant this motion for attorneys' fees and costs.

**BRIGGS AND MORGAN, P.A.**

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