

FILED

STATE OF MINNESOTA
SPECIAL REDISTRICTING PANEL

April 29, 2022

OFFICE OF
APPELLATE COURTS

A21-0243
A21-0546

Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood, Mary E. Kupper, Douglas W. Backstrom and James E. Hougas III, individually and on behalf of all citizens and voting residents of Minnesota similarly situated, and League of Women Voters Minnesota,

Plaintiffs,

and

Paul Anderson, Ida Lano, Chuck Brusven, Karen Lane, Joel Hineman, Carol Wegner, and Daniel Schonhardt,

Plaintiff-Intervenors

**WATTSON PLAINTIFFS’
MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
ATTORNEYS’ FEES, COSTS, AND
DISBURSEMENTS**

vs.

Steve Simon, Secretary of State of Minnesota; and Kendra Olson, Carver County Elections and Licensing Manager, individually and on behalf of all Minnesota county chief election officers,

Defendants,

and

Frank Sachs, Dagny Heimisdottir, Michael Arulfo, Tanwi Prigge, Jennifer Guertin, Garrison O’Keith McMurtrey, Mara Lee Glubka, Jeffrey Strand, Danielle Main, and Wayne Grimmer,

Plaintiffs,

ORAL ARGUMENT REQUESTED

and

Dr. Bruce Corrie, Shelly Diaz, Alberder
Gillespie, Xiongpaoo Lee, Abdirazak
Mahboub, Aida Simon, Beatriz Winters,
Common Cause, OneMinnesota.org, and
Voices for Racial Justice,

Plaintiff-Intervenors,

vs.

Steve Simon, Secretary of State of
Minnesota,

Defendant.

INTRODUCTION

In the recent redistricting cycle, the Minnesota legislature failed to fulfill its constitutional and statutory duty to redraw the legislative and congressional boundaries to reflect the shift in Minnesota's population as reflected in the 2020 Census for the 2022 elections. This failure to accomplish legislative and congressional redistricting has been the Minnesota legislature's standard practice for the past fifty years, thus requiring the judiciary to develop valid redistricting plans. Accordingly, to avoid a delay in the electoral process, Plaintiffs Peter S. Wattson, Joseph Mansky, Nancy B. Greenwood, Mary E. Kupper, Douglas W. Backstrom and James E. Hougas III, individually and on behalf of all citizens and voting residents of Minnesota similarly situated, and League of Women Voters Minnesota (the "Wattson Plaintiffs") and their private law firm initiated this judicial redistricting action under Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983. As a

result, on February 15, 2022, the Special Redistricting Panel developed constitutionally valid plans and ordered their adoption in future elections.

As prevailing parties in this litigation, the Wattson Plaintiffs now bring this motion for an award of reasonable attorney fees and costs pursuant to 42 U.S.C § 1988(b). They request that the Panel order that the Defendant Secretary of State Mark Ritchie and Defendant Carver County Elections and Licensing Manager Kendra Olson (the “Defendants”) pay their fully compensatory fee of \$305,360.12 for reasonable attorneys’ fees, costs, and disbursements that are directly related to this judicial redistricting litigation.

With this Motion, the Wattson Plaintiffs have included the Affidavits of James H. Gilbert and Adam L. Sienkowski. In his affidavit, Mr. Gilbert testifies as to reasonable hourly rates for attorneys in the Twin Cities based on his extensive experience as a managing partner, Supreme Court Justice, law firm owner, and mediator and arbitrator of hundreds of disputes. The Affidavit of Adam L. Sienkowski includes extensive detail of the work that was performed by the James. H. Gilbert Law Group throughout this litigation. The time records submitted as Exhibit A to Mr. Sienkowski’s Affidavit are not redacted and, along with Mr. Sienkowski’s Affidavit, provide a full accounting of the work for which the Wattson Plaintiffs are seeking recovery of their attorneys’ fees. Affidavit of Adam L. Sienkowski (“Sienkowski Affidavit”), Exhibit A.

BACKGROUND

On February 19, 2021, the Wattson Plaintiffs initiated this judicial redistricting action in Carver County District Court alleging that the congressional and legislative

election districts established by the Special Redistricting Panel in *Hippert v. Ritchie* were unconstitutionally malapportioned in light of the 2020 Census. *Wattson v. Simon*, No. 10-CV-21-127 (Carver Cnty Dist. Ct.). The Wattson Plaintiffs requested relief in the form of a declaration that the congressional and legislative districts ordered in *Hippert* were unconstitutional, an injunction restraining the Defendants' use of the unconstitutional districts in future elections, relief in the form of a judicial determination of valid plans for new Minnesota congressional and legislative districts, and an order that the Defendants pay the Wattson Plaintiffs' reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988.

The Wattson Plaintiffs then petitioned the Minnesota Supreme Court on February 22, 2021 to assume jurisdiction over the Carver County action and any other redistricting actions subsequently filed and to appoint the Special Redistricting Panel to enact new congressional and legislative redistricting plans in advance of the 2020 elections if the Minnesota Legislature failed to do so. Petition to Minnesota Supreme Court for Appointment of Special Redistricting Panel (February 22, 2021). The Minnesota Supreme Court granted the Wattson Plaintiffs' petition and appointed the Special Redistricting Panel. *See* Supreme Court Order (March 22, 2021); Supreme Court Order Appointing Special Redistricting Panel (June 30, 2021).

The Plaintiffs and Plaintiff-Intervenors in this matter submitted a stipulation, briefs and argument to the Special Redistricting Panel concerning proposed redistricting principles to guide the development of new districts. Following the Special Redistricting Panel's Order setting forth the redistricting principles, the Plaintiffs and Plaintiff-Intervenors submitted their proposed congressional and legislative redistricting plans as

well as supporting briefs and arguments. The parties further submitted responses in opposition to the redistricting plans proposed by the other parties.

When the legislature failed to take any action by the statutory deadline, the relief sought by the Wattson Plaintiffs was granted on February 15, 2022 when the appointed Special Redistricting Panel found the previous districts unconstitutional, enjoined their use by Defendants in future elections, and drew new constitutionally valid legislative and congressional districts. These new districts incorporated significant aspects and concepts of the plans submitted by the Wattson Plaintiffs.

ARGUMENT

I. THE STATE LEGISLATURE FAILED TO FULFILL ITS CONSTITUTIONAL DUTY, THUS REQUIRING THE WATTSON PLAINTIFFS AND THEIR PRIVATE LAW FIRM TO COMMENCE, LITIGATE, AND FINANCE THIS COMPLEX JUDICIAL REDISTRICTING ACTION.

The state legislature has the constitutional responsibility for reapportioning Minnesota's Congressional districts, as well as Minnesota Senate and House districts. The statutory deadline for completing congressional and legislative redistricting is "25 weeks before the state primary election in the year ending in two." Minn. Stat. § 204B.14, subd. 1a. (2020). Accordingly, the legislature was required to enact congressional and legislative plans by February 15, 2022. The legislature, however, failed to take action, failing to even make the time or effort to vote in either chamber on any proposed redistricting plans or engage in meaningful negotiations. Over the past five decades (this being the sixth),

redistricting has become the role of the judiciary due to the inability of the legislature to complete this task.

Given the historical failure of the legislature to act, the Wattson Plaintiffs and their private law firm, the James H. Gilbert Law Group, PLLC, commenced this judicial redistricting action to avoid any delay to the electoral process and to protect the constitutional rights of all voters in Minnesota. In a recent Star Tribune Opinion Exchange article detailing the redistricting litigation, Lori Sturdivant recognized political issues that result because of the legislature's failure to act and lamented the legislature "ducking their constitutional duty and defaulting to the courts decade after decade." *Democracy Dangers Include Redistricting*, Star Tribune (January 16, 2022). Ms. Sturdivant praised Peter Wattson as not only one of the lead plaintiffs in the 2021-22 redistricting effort, but also as an advocate for the creation of a nonpartisan redistricting commission to take charge of future redistricting work. Vast amounts of time and effort were expended by the Wattson Plaintiffs and their private law firm in this complex litigation, all because the legislature failed to act.

Lead Plaintiff Peter Wattson, a former attorney for the Minnesota Senate as a nonpartisan counsel for over 40 years, is one of the recognized national experts in redistricting practice, procedure, software, and law. *See* Affidavit of Peter Wattson dated October 12, 2021. He personally prepared the Wattson Plaintiffs' Congressional Plan, Senate Plan and House Plan that were submitted to the Special Redistricting Panel for consideration with input from the members of the Wattson Plaintiffs' group. Mr. Wattson is in his sixth decade of redistricting litigation in Minnesota courts and in that time he has

assisted with drawing, attacking, and defending redistricting plans. Mr. Wattson served as Staff Chair of the National Conference of State Legislatures' (NCSL) Reapportionment Task Force in 1989, its Redistricting Task Force in 1999, and its Committee on Redistricting and Elections in 2009. Mr. Wattson has written, and regularly updated over the decades, several papers on redistricting law. *See* Affidavit of Peter S. Wattson dated October 12, 2021, ¶ 5. He was assistant editor of NCSL's publication *Redistricting Law 1990* and general editor of *Redistricting Law 2000* and *Redistricting Law 2010*. *Id.*, ¶ 6. *Redistricting Law 2020*, to which Mr. Wattson was a substantial contributor, is dedicated to him. Mr. Wattson has been a key creator of and contributor to Maptitude for Redistricting over the years.

Peter Wattson was ably assisted by Joseph Mansky, who was a member of the Election Division staff in the Office of the Secretary of State for 15 years, the manager of Governor Ventura's Citizen Advisory Commission on Redistricting from 2000 to 2002, and the Ramsey County elections manager for 17 years. Affidavit of Joseph Mansky dated December 6, 2021. He was also assisted by Nick Harper, the former Civil Engagement Director for the League of Women Voters Minnesota. Affidavit of Nick Harper dated December 3, 2021. All these individuals are experts in elections and redistricting and added valuable information and data to the record that the Special Redistricting Panel took into consideration.

The James H. Gilbert Law Group, PLLC devoted significant lawyer and administrative time to prepare and present the Wattson Plaintiffs' Congressional Plan, Senate Plan and House Plan to the Special Redistricting Panel. This redistricting work was

not only constitutionally required but also necessary for effective representation of the Wattson Plaintiffs. The Wattson Plaintiffs utilized a fact-intensive and data-driven approach to promote the transparency of any proposed plan's partisan effects. The Wattson Plaintiffs were not parties to this lawsuit on behalf of the Republicans, Democrats or any other political party.

The James H. Gilbert Law Group, PLLC privately financed this labor-intensive judicial redistricting litigation for over a year. The risk of financing this judicial redistricting action was substantial, given that the legislature had the opportunity to enact its own congressional and legislative plans until the February 15, 2022 deadline, which would have precluded the recovery of any attorney fees under 42 U.S.C. § 1988(b).

Any delay to the electoral process because of the legislature's failure to act was avoided because of the Wattson Plaintiffs' timely commencement of this action and the diligent work of the Special Redistricting Panel. As a result, the state saved substantial amounts of money it otherwise would have spent within the legislature to do its job on the required redistricting - with this savings occurring at a time when the state has a 2022 projected surplus of \$9 billion.

II. THE JUDICIAL REDISTRICTING ACTION ENFORCED THE PROVISIONS OF 42 U.S.C. § 1983, THEREFORE THE WATTSON PLAINTIFFS ARE ENTITLED TO REASONABLE ATTORNEY'S FEES AND COSTS UNDER 42 U.S.C. § 1988 AS PREVAILING PARTIES.

The Wattson Plaintiffs commenced this action pursuant to 42 U.S.C. § 1983, which provides that citizens may seek relief from persons who, under color of any statute, deprive

any citizens of constitutional rights. Section 1988(b) provides that the prevailing party in a civil rights action may recover reasonable attorney fees as part of the 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...

“Congress’ purpose in authorizing fee awards was to encourage compliance with and enforcement of the civil rights laws, and the Act ‘must be liberally construed to achieve these ends.’” *Reome v. Gottlieb*, 361 N.W.2d 75, 77 (Minn. App. 1985). The United States Supreme Court sets forth a “generous formulation” when determining whether a plaintiff is a Section 1988 prevailing party. *Farrar v. Hobby*, 506 U.S. 103, 109, 113 S.Ct. 566, 572 (1992). “[P]laintiffs may be considered ‘prevailing parties’ for attorney’s fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit” and a plaintiff “‘prevails’ when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” *Id.* at 109, 111.

In the past judicial redistricting actions, the Special Redistricting Panels determined that the plaintiffs were prevailing parties within the meaning of 42 U.S.C. § 1988(b) when the Section 1983 judicial redistricting litigation resulted in the correction of population disparities among legislative and congressional districts. *See*, Special Redistricting Panel Order Awarding Attorney Fees (Oct. 16, 2002); Special Redistricting Panel Awarding Attorney Fees (Aug. 16, 2012). Specifically, the Panels have concluded that plaintiffs and plaintiffs-intervenors who have obtained a declaration that existing congressional and legislative districts are unconstitutional and an injunction against their use, and have made

significant contributions to the deliberations and decisions of the Special Redistricting Panel are prevailing parties. *Id.*

Accordingly, in this action, the Wattson Plaintiffs are entitled to attorneys' fees under Section 1988(b) as they greatly succeeded on significant issues in this civil rights litigation that corrected the population disparities among legislative and congressional districts. On February 15, 2022, the Panel granted the Wattson Plaintiffs' requested relief that (1) the *Hippert* congressional and legislative election districts be declared unconstitutionally malapportioned in light of the 2020 Census, (2) the Defendants be enjoined from using the *Hippert* districts in future elections and (3) new redistricting plans be adopted.

The new redistricting plans set forth by the Panel incorporated significant elements of the plans proposed by the Wattson Plaintiffs. At oral argument, counsel for the Wattson Plaintiffs stated that the two most important issues for the Wattson Plaintiffs in their congressional plan was to keep all the northern Minnesota Indian reservations into one congressional district and to not divide St. Cloud among districts. The Panel did just this, moving the western boundary of CD 8 further west to pick up additional reservations as proposed by the Wattson Plaintiffs. The Panel also kept all of St. Cloud in one congressional district, CD 6. The Panel also used a "constrained" approach in creating congressional districts which was advocated for by the Wattson Plaintiffs. This resulted in districts that resembled the *Hippert* districts (and Wattson plan), with CD 1 continuing to follow the I-90 corridor all the way across the state and CD 7 continuing to represent the rural farm communities in the western part of the state.

It is important to note that the Wattson Plaintiffs did not propose congressional plans to further partisan objectives or ask the Panel to make wholesale changes to the *Hippert* plans. Presenting plans with wholesale changes would have been of little use to the Panel given “courts lack the ‘political authoritativeness’ of the legislature and must perform redistricting in a restrained manner.” Final Order Adopting a Congressional Redistricting Plan, p. 6.

With respect to the legislative plan, the Panel appeared to have followed the Wattson Plaintiffs’ approach of keeping the first, second and third tier suburbs of the Twin Cities together in the creation of Senate and House districts. This included senate districts, as proposed by the Wattson Plaintiffs, that paired Brooklyn Park with Brooklyn Center; New Hope, Crystal, Robbinsdale and Golden Valley; the Lake Minnetonka communities with the cities of Minnetonka and Minnetrista; Richfield with east Bloomington; Fridley with New Brighton; Burnsville with Savage; Shakopee with Prior Lake; Eagan with Mendota Heights; and Woodbury with Maplewood.

In greater Minnesota, similar to the Wattson Plaintiffs’ plans, the Panel created northern and southern Rochester senate districts as proposed by the Wattson Plaintiffs and created two dominant St. Cloud senate districts while pairing Sauk Rapids with Sartell north of St. Cloud. The Panel also included Moorhead and Detroit Lakes in the same senate district and paired Austin and Albert Lea.

In all, the Panel’s legislative map contained many of the concepts presented by the Wattson Plaintiffs and appeared to use the approach proposed by the Wattson Plaintiffs in

the Twin Cities, Rochester, St. Cloud and Moorhead areas. The Wattson Plaintiffs are prevailing parties in this action.

III. THE WATTSON PLAINTIFFS' REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE.

1. Use of Lodestar Calculation to Determine Reasonable Attorney's Fees

The methodology by which reasonable attorney fees are calculated and awarded under 42 U.S.C. § 1988(b) is to multiply the reasonable hourly rate by the hours reasonably expended to determine the "lodestar" figure. *Shepard v. City of St. Paul*, 380 N.W.2d 140, 143 (Minn. App. 1985). "The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 1939 (1983). "There is a strong presumption that the lodestar amount represents a reasonable fee." *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 624 (Minn. 2008).

In determining the reasonableness of the hours and the reasonableness of the hourly rates, the court considers "all relevant circumstances." *State v. Paulson*, 188 N.W.2d 424, 426 (Minn. 1971). Factors considered in determining reasonableness include "the time and labor required; the nature and difficulty of the responsibility assumed; the amount involved and the results obtained; the fees customarily charged for similar legal services; the experience, reputation, and ability of counsel; and the fee arrangement existing between counsel and the client." *Milner*, 748 N.W.2d at 621.

The Wattson Plaintiffs request that they be awarded a fully compensatory lodestar amount of \$305,360.12 and have submitted the Affidavit of Adam L. Sienkowski, with the

supporting documentation of a statement of legal services rendered attached as Exhibit A and an itemization of costs and disbursements. The billing detail of the James H. Gilbert Law Group PLLC shows that the work performed was necessary for the proper representation of the Wattson Plaintiffs before the Special Redistricting Panel. The billing detail further shows that there are no charges for unnecessary or duplicative work. Sienkowski Affidavit, ¶¶ 6, 11, 20, 22, 29, 32, 38, 43, 47, 48.

The requested award further seeks an award of costs and disbursements in the amount of \$1,163.87. The basis of the requested costs is set forth in the Affidavit of Adam L. Sienkowski, which provides adequate explanation of the claimed fees that were directly related to the proceedings before the panel. Although significant copying costs were also incurred as well as parking expenses, these are part of the law firm's services and office overhead factored into the attorneys' hourly rate and are not included in the requested award. Sienkowski Affidavit, ¶ 7. Attorneys for the Wattson Plaintiffs also proposed that the parties serve all plans on each other electronically, saving thousands of dollars of copying costs for the parties.

2. Reasonable Hourly Rates

Awards of attorney fees under 42 U.S.C. § 1988 should be calculated using "market rates," with the requested rates in line "with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation" regardless if a party is represented by a private or nonprofit attorney. *Blum v. Stenson*, 465 U.S. 886, 895-96, 896 n.11 (1984). The hourly rate compensation requested by the Wattson Plaintiffs is based on the James H. Gilbert Law Group PLLC attorneys' usual and customary complex

litigation billing rates as are set forth in the supporting Affidavit of James H. Gilbert and Affidavit of Adam L. Sienkowski.

These customary billing rates accurately reflect the market rates for litigation attorney fees in this Twin Cities jurisdiction. *See* Affidavit of James H. Gilbert. Further, these hourly rates are appropriate given the skill, reputation and experience of the attorneys involved, former Minnesota Supreme Court Justice James H. Gilbert and attorneys, Adam L. Sienkowski and Jody E. Nahlovsky. *Id.* The Affidavit of James H. Gilbert sets forth his extensive experience in the Minnesota legal community, describes his knowledge and familiarity with prevailing hourly rates in the Twin Cities market, and explains the reasonableness of the hourly rates sought in this motion. *Id.*, ¶¶ 2-12. The appropriateness and reasonableness of the fees is further evidenced by the complexity of legal work required in this labor-intensive and data-driven litigation and the responsibility assumed by the attorneys.

3. Reasonable Hours Expended

The legal work required in this complex litigation required analyzing vast amounts of redistricting data to not only effectively present the Wattson Plaintiffs' proposed plans to the Panel and but to also respond to the other parties' proposed plans. The James H. Gilbert Law Group was the sole law firm representing the Wattson Plaintiffs, without the involvement of any out-of-state law firm. The attorney work responsibilities were carefully divided between three attorneys so as to ensure that the hours were reasonably expended and that the hours were not excessive, redundant or unnecessary.

The James H. Gilbert Law Group took a very specific approach to avoid duplication of efforts in this litigation. Mr. Sienkowski acted as lead attorney, completing a vast majority of the research and writing. He was the main point of contact for the Wattson Plaintiffs. He was the only attorney on nearly all phone calls and meetings with clients. He was the point of contact for all opposing counsel, and for nearly every call with opposing counsel, Mr. Sienkowski was the only attorney representing the Wattson Plaintiffs on the call. Mr. Sienkowski did a vast majority of drafting briefs, motions and affidavits and made all arguments to the Panel so that only one attorney would have to prepare for argument. This approach is made apparent in the time records of the James H. Gilbert Law Group which show that Mr. Sienkowski incurred approximately 72% of all time incurred by James H. Gilbert Law Group attorneys. Sienkowski Affidavit, ¶¶ 9, 11.

Jody Nahlovsky assisted in research and drafting throughout this litigation. A vast majority of her time was incurred researching, reviewing, and drafting written submissions to this Panel, including briefs, affidavits, and other documents. Involvement of two attorneys in drafting of submissions in a case of this complexity and importance is reasonable and necessary, especially when there are four parties and voluminous submissions that must be reviewed, analyzed, and responded to within very short timeframes. Sienkowski Affidavit, ¶ 12.

James H. Gilbert used his vast experience as a former justice, advisor, managing partner, mediator, and arbitrator to chart a path forward. He reviewed submissions to offer input and help craft responses and prepare for argument. He assisted with strategy, presentation points, drafting and editing the written submissions, and reviewing recent

redistricting laws. His involvement in this case was invaluable, reasonable, and necessary. Sienkowski Affidavit, ¶ 13.

In addition to the time entries attached as Exhibit A, the Affidavit of Adam L. Sienkowski contains a detailed description of the type of work that was performed by the James H. Gilbert Law Group throughout this litigation. These descriptions include an extensive narrative for each period of time in the litigation and an explanation as to why the work performed was reasonable and necessary. The timeframes outlined in the affidavit are as follows:

- February 7, 2021 through February 22, 2021 (60 hours) included creating objectives and a strategy for litigation, determining our clients' goals, and drafting and filing the Complaint and Petition. *See* Sienkowski Affidavit, ¶¶ 14-17.
- February 23, 2021 through June 6, 2021 (9.8 hours) included miscellaneous case management, contact with opposing counsel, and reviewing pleadings of other parties. *See* Sienkowski Affidavit, ¶ 18.
- June 7, 2021 through June 23, 2021 (24.75 hours) included establishing a plan forward with our existing clients and the League of Women Voters Minnesota and preparing for and filing a motion to join the League of Women Voters Minnesota to this case. *See* Sienkowski Affidavit, ¶¶ 19-20.
- June 24, 2021 through August 13, 2021 (39.65 hours) included reviewing intervention motions, performing extensive review of prior redistricting litigation in Minnesota, and meetings with clients to discuss redistricting principles and a strategy for

the upcoming deadlines. *See* Sienkowski Affidavit, ¶¶ 21-22.

- August 18, 2021 through October 12, 2021 (108.55 hours) included preparing and negotiating stipulations regarding preliminary issues and redistricting principles, meetings with clients, drafting and filing an objection to Data Science Intervenor’s motion for intervention, and researching and drafting the Wattson Plaintiffs’ redistricting principles brief. *See* Sienkowski Affidavit, ¶¶ 23-29.

- October 13, 2021 through November 3, 2021 (99.9 hours) included responding to the redistricting principles and briefs of the other parties and preparing for oral argument. *See* Sienkowski Affidavit, ¶¶ 30-32.

- November 4, 2021 through December 7, 2021 (130 hours) included preparing the Wattson Plaintiffs’ plan submissions, engaging in numerous communications with clients regarding plan submissions, drafting affidavits and briefs, and preparing other supplementary documents for filing. *See* Sienkowski Affidavit, ¶¶ 33-38.

- December 8, 2021 through December 17, 2021 (132.3 hours) included reviewing and responding to redistricting plans of other parties, including drafting briefs, affidavits, and motion documents and creating supplemental maps, reports and other filings. *See* Sienkowski Affidavit, ¶¶ 39-43.

- December 18, 2021 through January 4, 2022 (108.4 hours) included preparing a power point presentation, creating dozens of new maps for presentation to the Panel, and preparing for the presentation to the Panel. *See* Sienkowski Affidavit, ¶¶ 44-47.

- January 5, 2022 through February 24, 2022 (9.95 hours) included

communications with clients and review of the Panel's redistricting plans orders. *See* Sienkowski Affidavit, ¶ 48.

Attorneys at our office spent very little time billing for issues related to press and legislative committee activities. These entries totaled approximately 5.7 hours and were mixed in with other work performed, meaning the actual time spent was substantially less than 5.7 hours. *See* Sienkowski Affidavit, ¶ 49. That said, the press will inevitably call in a case of this nature. It is imperative that attorneys explain to their clients the legal effect that statements to the press can have on their case. Our office did not draft press releases or committee testimony, but during pending litigation we have a legal and ethical obligation to review these documents before they are made public. *Id.*

While our office of attorneys engaged in minimal attorney conferences, these conferences were critical in this case to exchange ideas, refine arguments, and focus on final positions. Sienkowski Affidavit, ¶ 50. Some inter-office attorney conferences with the three attorneys were necessary for coordination and strategic planning in this complex matter, similar to judicial conference committees or a judge conferring with a judicial law clerk counsel when making legal determinations. All time entries of the Wattson Plaintiffs were related directly to this litigation. There were no parallel federal proceedings and time entries began only two weeks before filing the complaint and all pre-filing entries related directly to the developing a case strategy and preparing the pleadings. All motions and objections filed by the Wattson Plaintiffs were ultimately successful. Throughout this entire litigation, Adam L. Sienkowski performed a vast majority of the work (72% of all time incurred) which resulted in no duplication of effort among attorneys. Sienkowski

Affidavit, ¶¶ 11, 13. In short, all time incurred in this litigation by the James H. Gilbert Law Group was reasonable and necessary.¹

4. Relevant Circumstances Support Reasonableness of Lodestar Amount.

The reasonableness of the lodestar amount is supported by the relevant circumstances regarding this judicial redistricting litigation. The fact-intensive litigation spanned over a year and involved significant briefing and multiple oral arguments, in which counsel was required to master detailed knowledge of the various proposed redistricting plans. By taking on this complex litigation, counsel for the Wattson Plaintiffs restricted their ability to take on other legal work and took on significant financial risk, given the uncertainty that the legislature could act by the statutory deadline.

The Wattson Plaintiffs commenced this litigation to protect the constitutional rights of all voters in Minnesota and prevent any electoral delay. Accordingly, the Wattson Plaintiffs achieved great success when, on February 15, 2022, the Special Redistricting Panel declared the *Hippert* districts unconstitutional and adopted valid redistricting plans that incorporated significant aspects of the Wattson Plaintiffs' proposed plans. Accordingly, the Wattson Plaintiffs request to be fully reimbursed under the law for the substantial efforts that their law firm committed to this constitutional process.

IV. THE WATTSON PLAINTIFFS REQUEST THAT THEY RECOVER A FULLY COMPENSATORY FEE AND THAT THEIR ATTORNEY FEE AWARD BE GRANTED ON ITS INDIVIDUAL MERITS.

¹ Although time spent preparing fee applications is generally compensable unless it is excessive, the Wattson Plaintiffs have limited their request to the reasonable hours expended in the redistricting litigation and do not include any time spent on the attorney fees motion in their request. *El-Tabech v. Clarke*, 616 F.3d 834, 843-44 (8th Cir. 2010).

“Attorneys for successful civil rights plaintiffs should recover a fully compensatory fee.” *Shepard v. City of St. Paul*, 380 N.W.2d 140, 143 (Minn. App. 1985). “Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee.” *Hensley*, 461 U.S. at 435; *see Reome v. Gottlieb*, 361 N.W.2d 75, 79 (Minn. App. 1985) (affirming § 1988 attorney fee award for all hours spent on the litigation). However, in the past redistricting actions, the Panels awarded each of the parties an equal amount of attorney fees, despite the varying requests which detailed differing legal services rendered, hours expended, and hourly rates. These prior awards vastly reduced the fees requested by the parties to those actions.

The Wattson Plaintiffs are aware of the deficiencies raised by the *Hippert* Panel with respect to the applications for attorneys’ fees submitted in that case and have not submitted an application with those same deficiencies. The Wattson Plaintiffs had one attorney perform a vast majority of the work, did not submit fees for any parallel action, did not redact their billings, provided substantial detail in the form of a 20-page affidavit of Adam Sienkowski detailing the work that went into this matter, provided justification for the requested hourly rates in the Affidavit of James H. Gilbert, and did not charge for photocopies or parking charges and instead included those in the hourly rates. The Wattson Plaintiffs’ attorney incurred *less* hours than the *Hippert* and *Martin* Plaintiffs did ten years ago, and the Wattson Plaintiffs attorneys’ top hourly rate, \$600 an hour for former Supreme Court Justice James H. Gilbert, is less than the top hourly rate requested by the *Martin* and *Hippert* Plaintiffs ten years ago.

The approach to the attorneys' fees applications by the *Hippert* Panel not only failed to allow the attorneys to recover a fully compensatory fee as provided for by law but also failed to provide the required full explanation of the number of hours and hourly rate permitted. When awarding attorney fees under 42 U.S.C. § 1988, the number of hours reasonably expended and the hourly rate must be determined with specificity with a "full explanation as to the number of hours and hourly rate permitted." *Shepard*, 380 N.W.2d at 145. As the lead plaintiffs who solely commenced this action in district court and petitioned the Supreme Court to appoint the Special Redistricting Panel, the Wattson Plaintiffs request that the Panel award attorney fees in this matter be based on each application's individual merits.

Fee awards based on the general averaging of all applications or that default to the lowest common denominator or bulk general discounting fees for services rendered without detailed analysis not only does a disservice to all those providing high quality needed legal services but are also contrary to the legal precedent. None of the settled legal principles is based on averages of or the quality or quantity of other parties' counsel's work product. Any major discounting of attorney fees sends the wrong message to the legislature and only further rewards and enables the legislature's inability or unwillingness to perform their constitutional and statutory obligations in a timely fashion. Minnesota courts have set a high redistricting standard in comparison to other states, in large part due to the contributions of committed parties and their private attorneys to an open and fair redistricting process. While the parties and attorneys in this case did not engage in any unnecessary adversarial motion practice and did not appeal the decisions of this Panel,

Attorneys for Petitioners Peter S. Wattson,
Joseph Mansky, Nancy B. Greenwood,
Mary E. Kupper, Douglas W. Backstrom,
and James E. Hougas III and League of
Women Voters Minnesota

ACKNOWLEDGEMENT REQUIRED UNDER MINN. STAT. § 549.211, SUBD. 1

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211, if factual contentions and legal arguments contained in this pleading are unwarranted or presented for an improper purpose or are lacking in evidentiary support.

Date: April 29, 2022

/s/ Adam L. Sienkowski
Adam L. Sienkowski (#395659)