

**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

ORDER  
AWARDING ATTORNEY  
FEES

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**

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:

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Edward Toussaint, Jr.  
Presiding Judge