

**FILED**

May 17, 2022

**OFFICE OF  
APPELLATE COURTS**

STATE OF MINNESOTA  
SPECIAL REDISTRICTING PANEL

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,

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

and

**ANDERSON PLAINTIFFS'  
MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR  
ATTORNEYS' FEES AND  
COSTS**

Dr. Bruce Corrie, Shelly Diaz, Alberder Gillespie,  
Xiongpao 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**

Plaintiff-Intervenors Paul Anderson *et al.* (“Anderson Plaintiffs”) bring this motion pursuant to 42 U.S.C. § 1988(b). The Anderson Plaintiffs are entitled to an award of reasonable attorneys’ fees and costs because they are prevailing plaintiffs in this litigation. They seek from the Panel an award in the amount of \$344,961 for reasonable attorneys’ fees incurred between October 1, 2021 and January 5, 2022, the time period during which the Anderson Plaintiffs and their attorneys were attending public hearings, preparing and submitting proposed redistricting principles, and preparing and submitting redistricting plans intended to cure the unconstitutional malapportionment of Minnesota’s congressional and legislative districts following the 2020 Census. The fees requested are reasonable and reflect the skill, experience, and reputation of the attorneys involved in the litigation. The Anderson Plaintiffs also request \$58.97 for costs and expenses actually incurred.

## **FACTUAL BACKGROUND**

On March 15, 2021, the Anderson Plaintiffs filed a Complaint In Intervention (“Complaint”) in Carver County District Court 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 In Intervention, *Wattson, et al. v. Simon*, No. 10-CV-21-127 (Mar. 15, 2021). The Complaint alleged that the congressional and legislative districts in Minnesota were unequally apportioned based on the 2020 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.* Among other relief, the Complaint requested that the court declare the present congressional and legislative district boundaries unconstitutional and adopt a plan for congressional and legislative apportionment upon failure of the Minnesota Legislature and Governor to do so. *Id.*

On June 30, 2021, the Minnesota Supreme Court appointed a Special Redistricting Panel (“Panel”) to enact new congressional and legislative redistricting plans in advance of the 2022 elections in the event that the Minnesota Legislature and Governor failed to do so by the February 15, 2022 statutory deadline. *See* Supreme Court Order Appointing a Special Redistricting Panel (June 30, 2021). On August 23, 2021, the Panel granted the Anderson Plaintiffs’ Motion to Intervene.

Following briefing and argument from the Anderson Plaintiffs and other parties regarding proposed redistricting principles to guide the development of new plans, the Panel issued its Order Stating Preliminary Conclusions, Redistricting Principles, and Requirements for Plan Submissions (Nov. 18, 2021), and set a schedule for the parties’ submissions of proposed redistricting plans, supporting briefs, and argument thereon. The parties proceeded to submit proposed redistricting plans, briefing, and argument in accordance with the Panel’s Order.

The Minnesota Legislature and Governor did not enact redistricting plans by the statutory deadline of February 15, 2022. Accordingly, the Panel issued final orders adopting new congressional and legislative plans for Minnesota. *See* Final Order Adopting a Congressional Redistricting Plan (Feb. 15, 2022) (“Congressional Order”); Final Order

Adopting a Legislative Redistricting Plan (Feb. 15, 2022) (“Legislative Order”). The Panel held that “the population of Minnesota is unconstitutionally malapportioned among the state’s current congressional districts established following the 2010 census . . .” and that “the population of Minnesota is unconstitutionally malapportioned among the state’s current legislative districts established following the 2010 census . . . .” *See* Congressional Order at 5; Legislative Order at 5. The Panel enjoined Defendants from using the previously established, but now unconstitutional, congressional and legislative districts in the 2022 primary and general elections, and adopted its own congressional and legislative redistricting plans. *See* Congressional Order at 19; Legislative Order at 19. While the Panel did not adopt in its entirety any redistricting plan proposed by a party, the Panel held that “some proposed elements are reflected” in both the congressional plan and the legislative plan that the Panel adopted. *See* Congressional Order at 8; Legislative Order at 8. The Panel also stated that the “information [it] received from all sources was important to [its] work” and that each of the plaintiffs “provided valuable insight into how [the Panel] should apply the redistricting principles.” Congressional Order at 8; Legislative Order at 8. No party has taken an appeal or otherwise challenged those final decisions.

## **ARGUMENT**

### **I. The Anderson 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*, 461 U.S. 424, 433 (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 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.* As both the *Hippert* and *Zachman* Special Redistricting Panels held, “plaintiffs and plaintiff[]-intervenor[s] who obtain a declaration that existing congressional and legislative districts are unconstitutional and an injunction against their continued use, and who make significant contributions to the deliberations and decisions of a redistricting panel, are ‘prevailing parties within the meaning of 42 U.S.C. § 1988(b) and are entitled to reasonable attorney fees.’” Order Awarding Attorney Fees and Costs, *Hippert v. Ritchie*, A11-152 (Aug. 16, 2012) (quoting Order Awarding Attorney Fees, *Zachman v. Kiffmeyer*, C0-01-160 (Oct. 16, 2002)).

The Anderson Plaintiffs both prevailed on significant issues in the litigation and achieved the benefits they sought in bringing the action. The Anderson Plaintiffs asked the Panel to declare unconstitutional the congressional and legislative redistricting plans established after the 2010 Census. The Panel granted that relief. The Anderson Plaintiffs further proposed and advocated for redistricting principles to guide the Panel’s adoption of new redistricting plans, and proposed and advocated for new redistricting plans that complied with both constitutional requirements and the redistricting principles adopted by the Panel. The Panel adopted redistricting principles, including in part principles proposed by the Anderson Plaintiffs, and adopted new redistricting plans that reflect elements of the plans proposed by the Anderson Plaintiffs.<sup>1</sup>

The Panel’s final orders further altered the relationship between the Anderson Plaintiffs and Defendants by preventing Defendants from conducting elections using the previous congressional and legislative districts. Accordingly, the Anderson Plaintiffs are prevailing parties within the meaning of 42 U.S.C. § 1988(b) and are entitled to reasonable attorneys’ fees and costs.

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<sup>1</sup> The Anderson Plaintiffs’ status as Plaintiff-Intervenors does not affect their status as a prevailing party. Courts have awarded fees to plaintiff-intervenors, provided that they have “played a significant role in the litigation” – which the Anderson Plaintiffs’ undoubtedly have. *Grove v. Mead Sch. Dist. No. 354*, 7532 F.2d 1528, 1535 (8th Cir. 1985); *see* Order Awarding Attorney Fees and Costs, *Hippert v. Ritchie*, A11-152 (Aug. 16, 2012) (awarding fees and costs to plaintiff-intervenors); Order Awarding Attorney Fees, *Zachman v. Kiffmeyer*, C0-01-160 (Oct. 16, 2002) (same).

## II. The Anderson Plaintiffs Should Be Awarded Reasonable Attorneys' Fees and Costs

“[R]easonable fees under § 1988 are to be calculated according to the prevailing market rates in the relevant community . . . .” *Blum v. Stenson*, 465 U.S. 886, 898 (1984). The prevailing market rate is the rate charged for “similar services by lawyers of reasonably comparable skill, experience, and reputation.” *McDonald v. Armontrout*, 860 F.2d 1456, 1459 (8th Cir. 1988) (internal quotation marks and citations omitted); *see also State by Humphrey v. Alpine Air Prods., Inc.*, 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, among other things, fees customarily charged for similar legal services). Courts also consider a number of other 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).

The hourly rates requested by the Anderson Plaintiffs are reasonable and reflect the skill, experience, and reputation of the attorneys involved in the litigation. (Brama Aff. ¶¶ 5-7; Exs. A & B.) The requested rates reflect the extensive experience the attorneys involved in the matter have in complex civil litigation. (*Id.* ¶ 6.) Indeed, although attorney rates in the Twin Cities have generally increased since *Hippert v. Ritchie* in 2011, the hourly rates requested by the Anderson Plaintiffs are at or below many of the rates charged in *Hippert*. (*Id.* ¶ 8; Exs. A & C.)

This litigation was complex, hard-fought, labor-intensive, and concerned a topic of critical importance to Minnesota’s voters. Effective representation of the Anderson Plaintiffs and similarly situated Minnesotans required thoughtful analysis of complex data and synthesis of that data into persuasive and sound legal argument that would be helpful to the Panel. Moreover, all of the parties involved were represented by competent counsel who presented effective arguments on behalf of their clients. The Anderson Plaintiffs’ counsel prepared detailed submissions for the Panel in support of their proposed redistricting principles and redistricting plans and in opposition to the redistricting principles and redistricting plans proposed by the other parties. (*Id.* ¶ 9.) And, as the Panel recognized, this complex, labor-intensive process required “diligently navigating a compressed redistricting timeline.” Congressional Order at 10; Legislative Order at 10.

The Anderson Plaintiffs request fees and costs lower than the fees and costs the Anderson Plaintiffs actually incurred. Although the Anderson Plaintiffs provided value to Minnesota’s voters throughout the litigation, they believe that they provided the greatest benefit to Minnesota’s voters in preparing and submitting their proposed redistricting principles and their congressional and legislative redistricting plans, and in providing their input to the Panel on the proposed redistricting principles and plans submitted by the other parties to this action. (*Brama Aff.* ¶ 9.) Thus, the Anderson Plaintiffs only seek to recover the fees and costs they incurred from October 1, 2021 to January 5, 2022, which encompasses the “compressed redistricting timeline” within which this work was completed. (Congressional Order at 10; Legislative Order at 10; *Brama Aff.* ¶ 4.) The fees and costs requested were actually incurred and were necessary for effective representation

of the Anderson Plaintiffs. (Brama Aff. ¶ 10.) Balancing all of the factors that are involved in a fee award, the Anderson Plaintiffs respectfully request an award of \$344,961 in fees, plus \$58.97 in costs, which were actually incurred and necessary for effective representation of the Anderson Plaintiffs. (*Id.* ¶ 12.)

### **CONCLUSION**

This litigation was necessary because Minnesota's congressional and legislative districts were unconstitutionally malapportioned following the 2020 Census and the Legislature and Governor failed to adopt new congressional and legislative districts by the February 15, 2022 statutory deadline. By actively and substantively participating in this litigation, the Anderson Plaintiffs served a critical role in protecting the constitutional rights of the citizens of Minnesota. Under 42 U.S.C. § 1988(b), the Anderson Plaintiffs are entitled to an award of attorneys' fees and costs. Accordingly, the Anderson Plaintiffs respectfully request that the Panel grant their motion for attorneys' fees and costs.

Dated: May 17, 2022

Respectfully submitted,

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