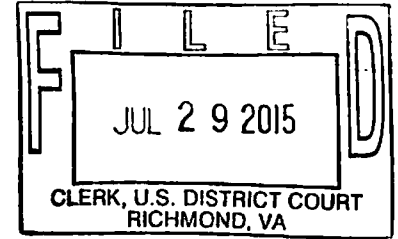


THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



DAWN CURRY PAGE, *et al.*,)
)
) *Plaintiffs,*)
)
) v.)
)
 VIRGINIA STATE BOARD OF)
 ELECTIONS, *et al.*,)
)
) *Defendants.*)

Civil Action No. 3:13-cv-678

ORDER

This matter comes before the Court on Plaintiffs' Third Supplemental Motion for Attorneys' Fees. (Dkt. No. 175). Defendants and Intervenor-Defendants have filed their responses in opposition, to which Plaintiffs have replied. (Dkt. Nos. 182–84). Defendants have also filed a motion for leave to file a surreply. (Dkt. No. 195). In their fee petition, Plaintiffs seek reinstatement of the Court's prior fee and cost award¹ (Dkt. No. 139) as well as a supplemental award for the work their counsel performed on remand. In contrast with their prior fee petition, Plaintiffs also request that this supplemental award be granted against both Defendants *and* Intervenor-Defendants.

The instant motion presents the Court with the following new issues: (1) whether the amount of time expended on remand was reasonable; (2) whether Defendants are liable to pay the fee award for work performed on remand, given that they did not appeal the judgment; (3) whether Intervenor-Defendants are jointly and severally liable to pay the fee award in light of their leading role in the case and the appeal; and (4) whether the Court should exercise its

¹ Neither Defendants nor Intervenor-Defendants challenge the reinstatement of the prior award.

discretion to defer ruling on the motion, considering that one of two scenarios will occur: either Plaintiffs will move again for more fees upon affirmance of the judgment in their favor by the Supreme Court, or the fee opinions will be vacated if Intervenor-Defendants prevail.

As to the threshold issue of whether it is indeed the prudent course to defer ruling on the fee petition until after resolution of the appeal, the Court believes that it is. This is because one of the main reasons cited by Plaintiffs for prompt resolution of fee petitions—to allow “appellate review of a dispute over fees to proceed at the same time as review on the merits of the case”—does not apply. Pls.’ Reply Br. 4 n.1 (quoting FED. R. CIV. P. 54 advisory committee’s note). Due to the unique procedural nature of this case, in which a three-judge district court has been convened pursuant to 52 U.S.C. § 10304(a), an appeal of the opinion awarding fees in this matter will not be heard by the Supreme Court along with our opinion on the merits. *See Shaw v. Hunt*, 154 F.3d 161, 162 (4th Cir. 1998). Rather, it will proceed to the Fourth Circuit by separate pleadings following a decision by the Supreme Court. *See id.* Another reason cited by Plaintiffs for deciding a motion for fees before resolution of the appeal is that doing so “affords an opportunity for the court to resolve fee disputes shortly after trial, while the services performed are freshly in mind.” Pls.’ Reply Br. 4 n.1 (quoting FED. R. CIV. P. 54 advisory committee’s note). Given that we have already issued an opinion granting fees for work performed leading up to, during, and post-trial, this justification is similarly unpersuasive.

For these reasons, it is indeed prudent to defer ruling further on attorneys’ fees until the merits of the case have been decided by the Supreme Court. This way, the Court can resolve all remaining fee issues in one opinion, instead of deciding them piecemeal after each phase of the litigation. Accordingly, it is hereby


ORDERED that Plaintiffs’ Third Supplemental Motion for Attorneys’ Fees (Dkt. No. 175) is DENIED WITHOUT PREJUDICE. It is also

ORDERED that, if the judgment of the Court is affirmed, Plaintiffs shall file a renewed motion for attorneys' fees within thirty days of the affirmance. It is further

ORDERED that Defendants' Motion to File a Surreply (Dkt. No. 195) is DENIED WITHOUT PREJUDICE as moot.

July 29, 2015

Alexandria, Virginia



Liam O'Grady
United States District Judge