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

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.

ORDER

In early 2021, plaintiffs Peter Wattson, et al. and plaintiffs Frank Sachs, et al. filed separate legal actions under 42 U.S.C. § 1983 (2018), alleging that the then-existing congressional and legislative elections districts were unconstitutionally malapportioned in light of the 2020 Census. The Minnesota Supreme Court consolidated their actions and appointed this special redistricting panel to decide redistricting matters in the event the legislature failed to do so in a timely manner. We subsequently granted the motions of Paul Anderson, et al. and Dr. Bruce Corrie, et al. to intervene as plaintiffs. On February 15, 2022, the panel declared the then-existing districts unconstitutional, enjoined their use in the 2022 election cycle, and adopted redistricting plans.

The Wattson plaintiffs, Anderson plaintiffs, and Sachs plaintiffs (applicants) subsequently moved to recover attorney fees and costs.[1] Defendants Secretary of State

[1] The Corrie plaintiffs did not request attorney fees or costs.

Steve Simon and Carver County Elections and Licensing Manager Kendra Olson responded to the motions.

I. Parties who prevail in redistricting litigation are entitled to reasonable attorney fees.

In a civil-rights action under 42 U.S.C. § 1983, a court has discretion to award "the prevailing party . . . a reasonable attorney's fee as part of the costs." 42 U.S.C. § 1988(b) (2018); *see Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (recognizing the purpose of this fee-shifting arrangement is ensuring "effective access to the judicial process for persons with civil rights grievances" (quotation omitted)). A party seeking attorney fees under section 1988 must demonstrate that it prevailed on the merits. *Farrar v. Hobby*, 506 U.S. 103, 109 (1992); *see Hensley*, 461 U.S. at 437 (stating that fee applicant bears burden of demonstrating entitlement to fee award). This is a threshold requirement, but it does not depend on any particular degree of success. *Tex. State Tchrs. Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 789-90 (1989). Rather, the "touchstone of the prevailing party inquiry" is "the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute." *Id.* at 792-93. To be considered a prevailing party, a plaintiff "must be able to point to a resolution of the dispute which changes the legal relationship between itself and the defendant." *Id.* at 792.

Obtaining an injunction or declaratory judgment generally satisfies this test. *Lefemine v. Wideman*, 568 U.S. 1, 4 (2012) (per curiam). In the redistricting context, a party that secures a declaration that election districts are unconstitutional and an injunction against their use will generally be considered a prevailing party, regardless of whether the

court also adopts its proposed redistricting plan. *See Hippert v. Ritchie*, No. A11-0152, at 3-4 (Minn. Special Redistricting Panel Aug. 16, 2012) (Order Awarding Attorney Fees and Costs); *Zachman v. Kiffmeyer*, No. C0-01-160, at 4 (Minn. Special Redistricting Panel Oct. 16, 2002) (Order Awarding Attorney Fees); *see also Perrin v. Kitzhaber*, 83 P.3d 368, 375 (Or. Ct. App. 2004); *In re Kan. Cong. Dists. Reapportionment Cases*, 745 F.2d 610, 612 (10th Cir. 1984); *Ramos v. Koebig*, 638 F.2d 838, 845 (5th Cir. 1981).

A prevailing party must also demonstrate that its requested fees are reasonable. *See* 42 U.S.C. § 1988(b) (providing for "reasonable" attorney fees); *Hensley*, 461 U.S. at 433 (requiring fee applicant to demonstrate reasonableness). A reasonable fee is one that is sufficient to induce a capable attorney to undertake the representation of a meritorious civil-rights case without producing a windfall to attorneys. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). We determine a reasonable fee by multiplying a reasonable hourly rate by the number of hours reasonably expended—the "lodestar" calculation. *Id.* at 551; *Hippert*, No. A11-0152, at 8 (Minn. Special Redistricting Panel Aug. 16, 2012) (Order Awarding Attorney Fees and Costs); *Milner v. Farmers Ins. Exch.*, 748 N.W.2d 608, 620-21 (Minn. 2008). Fees determined through a lodestar calculation are presumptively reasonable. *Perdue*, 559 U.S. at 552. But the "most critical factor" in determining the reasonableness of claimed attorney fess is "the degree of success obtained." *Farrar*, 506 U.S. at 114 (quotations omitted).

II. The applicants are prevailing parties entitled to reasonable fees, not their full requests.

It is undisputed that the applicants are prevailing parties. They secured an injunction against the use of the then-existing congressional and legislative districts and adoption of new, population-balanced districts. Their written and oral submissions also affected the panel's decisions on how to draw new district lines, and the panel's plans reflect elements of the proposals the parties submitted. As such, the applicants are entitled to recover reasonable attorney fees.

In assessing the reasonableness of the fees requested, we note two concerns regarding the reasonableness of the hours expended that are common to all three fee applications. The first pertains to the adequacy of the supporting documentation. A party seeking fees bears the burden of proof, and a court may reduce an award if the documentation of hours is inadequate. *Hensley*, 461 U.S. at 433; *see Hippert*, No. A11-0152, at 17 (Minn. Special Redistricting Panel Aug. 16, 2012) (Order Awarding Attorney Fees and Costs) (reducing fee award because of "lack of detail in submissions to the panel"). All three applicants rely on compound billing entries that indicate a total amount of time spent on multiple activities on a particular day. They also frequently describe their work in vague terms or redact details, which likewise results in vague billing entries. These practices obscure precisely how much time was expended on each activity. We do not categorically exclude time described in this manner because we discern that it was generally devoted to reasonable efforts like legal research and drafting legal

memoranda. But we scrutinize such entries more closely and exclude the associated fees where they appear to contribute to our second concern—overstaffing and excessive billing.

A lodestar calculation should exclude any hours that result from overstaffing or that were excessive, redundant, or otherwise unnecessary. *Hensley*, 461 U.S. at 434. Because civil-rights litigation may be complex and demanding, the involvement of multiple attorneys does not necessarily constitute overstaffing. *See Planned Parenthood of Cent. N.J. v. Att'y Gen. of N.J.*, 297 F.3d 253, 272 (3d Cir. 2002) (approving engagement of "numerous" attorneys because the case involved "multiple, complex legal questions and was an issue of first impression"); *Gay Officers Action League v. Puerto Rico*, 247 F.3d 288, 297 (1st Cir. 2001) (observing that "deployment of multiple attorneys is sometimes an eminently reasonable tactic"). When litigation reasonably calls for a team appraoch, some degree of coordination and collaboration is expected. *Hutchinson ex rel. Julien v. Patrick*, 636 F.3d 1, 14 (1st Cir. 2011). But "staffing patterns" and "overall time spent" must be reasonable in light of the particular litigation. *Id.*

This litigation required, at times, a demanding schedule and concerned issues of tremendous public importance. The applicants emphasize these considerations in arguing that it was reasonable for the three of them to engage a total of 20 attorneys and 3 legal staff, and bill for a total of more than $1 million in fees. In doing so, they overlook that this litigation followed the predictable pattern of prior redistricting cycles and did not involve any novel legal issues. *See Hippert*, No. A11-0152, at 9 (Minn. Special Redistricting Panel Aug. 16, 2012) (Order Awarding Attorney Fees and Costs). These

factors persuade us that the applicants' large legal teams and extensive expenditure of hours were substantially unreasonable.

After careful examination and comparison of the fee applications, we have identified several categories of tasks in which overstaffing and unnecessary work inflated the fee requests. We reduce those hours in the lodestar calculation as follows:

Task	Hours Submitted	Max. Hours Allowed
Drafting a complaint and a petition for appointment of a special redistricting panel	0-60	25
Performing mandatory work on stipulations regarding preliminary issues and redistricting principles, with little result	11-103	15
Preparing and briefing redistricting principles	51-122	70
Preparing and presenting principles oral argument	30-70	20
Preparing and briefing redistricting plans	255-429	250
Preparing and presenting plans oral argument	104-140	80
Reviewing the panel's orders to determine whether to appeal, despite prevailing	0-16	5

But we are not persuaded by Secretary Simon and Manager Olson's contention that time devoted to "intra-plaintiff litigation" is unreasonable for purposes of awarding attorney fees, as the panel solicited and benefited from the plaintiffs' diverse and competing perspectives.

With these parameters in mind, we now apply the lodestar calculation to each of the fee applications.

A. Wattson Plaintiffs

The Wattson plaintiffs seek $304,196.25 in fees for 738.15 hours of work performed by three attorneys and a legal assistant. They indicate hourly rates between $400 and $600

for attorney work and $125 for legal assistant work. Overall, their average hourly rate is $413.68; their average hourly rate for attorney work is $418. This is the lowest rate of the three applicants, and the defendants do not assert that they are unreasonable. Based on their supporting documentation and comparison to the other applicants' rates, we conclude the Wattson plaintiffs' hourly rates are reasonable.

However, we discern excessive or duplicative fees in several aspects of their work. In accordance with the reasonable limits noted above, we reduce their hours expended on early work, stipulations, principles briefing and oral argument, plans briefing and oral argument, and evaluation of appeal prospects. We also reduce to five hours their time spent on their motion to join the League of Women Voters Minnesota; while the motion was successful, the Wattson plaintiffs produced no documentation specifically identifying how the joinder contributed to this litigation. The Wattson plaintiffs also bill for time spent monitoring or influencing the legislative process and interacting with media—matters perhaps of personal interest to the parties but outside the scope of this litigation. *See Hensley*, 461 U.S. at 433-34 (requiring exclusion of hours not reasonably expended); *Hippert*, No. A11-0152, at 11 (Minn. Special Redistricting Panel Aug. 16, 2012) (Order Awarding Attorney Fees and Costs) (denying fees for legislative activities and media contacts).

Similarly, the Wattson plaintiffs' written argument on redistricting proposals included significant discussion of political issues—a topic the panel previously told the parties it would not consider. *Wattson v. Simon*, No. A21-0243, at 8 (Minn. Special Redistricting Panel Nov. 18, 2021) (Order Stating Preliminary Conclusions, Redistricting

Principles, and Requirements for Plan Submissions). Their billing does not expressly account for the work of drafting this discussion, but they acknowledge it was a "great effort." We observe that approximately 28 percent of their briefing pages were devoted to political issues. Accordingly, we reduce their hours expended on preparing and briefing redistricting plans by that same percentage. After these reductions, the Wattson plaintiffs' lodestar figure is $201,828.05.

The Wattson plaintiffs also seek to recover $1,163.87 in costs. We award as reasonable $455.50 in service and filing costs and $579.57 in printing costs for the nine copies of the proposed redistricting maps the panel required. But because we find the expenditure unreasonable, we do not award $128.80 that they elected to spend on additional printed copies of these maps.

B. Anderson Plaintiffs

The Anderson plaintiffs seek $344,961 in attorney fees for 783 hours of work performed by four attorneys and two paralegals. Their hourly attorney rates range from $350 to $593.32 and hourly paralegal rates range from $230 to $325. Their overall average hourly rate was $440.56, while the average rate for attorney work was $442.67. Based on their supporting documentation and comparison to the other applicants' rates, we conclude the Anderson plaintiffs' hourly rates are reasonable.

While the Anderson plaintiffs' billing statements cover a much shorter time frame than those of the Wattson plaintiffs—from October 2021 to January 5, 2022—we discern excessive or duplicative fees in some aspects of their work. They exceeded the reasonable number of hours noted above for principles briefing and oral argument, and substantially

exceeded the limits for plans briefing and oral argument. In particular, we observe that the hours they devoted to briefing proposed redistricting plans surpassed similar efforts from the other two applicants by more than 170 hours. We reduce their hours accordingly. The resulting lodestar figure for the Anderson plaintiffs is $213,753.61.

The Anderson plaintiffs also seek to recover $58.97 in costs. We award as reasonable $43.97 for a courier to deliver paper copies of their proposed redistricting maps to the panel. But we do not award $15 for "Misc., Wisconsin TechSearch, Articles (WI TechSearch)," since they provide no explanation as to why this expense was reasonable for Minnesota redistricting litigation.

C. Sachs Plaintiffs

The Sachs plaintiffs seek $383,305 in fees for 780.6 hours of work performed by 13 attorneys. Four attorneys from Lockridge Grindal Nauen (LGN) performed 469.9 hours of that work, at rates ranging from $300 to $700; their average hourly rate was $514.93. Nine attorneys from the out-of-state Elias Law Group (ELG) performed 310.7 hours of that work at rates ranging from $375 to $750; their average hourly rate was $454.90. Overall, the Sachs plaintiffs' average hourly rate is $491.42—the highest of the three fee applicants.

ELG attests that its billing rates are reduced to match local rates, recognizing that when assessing whether an hourly rate is reasonable, a court should consider "prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895 (1984). But both firms' top billing rates substantially exceed those of the other two firms. Secretary Simon and Manager Olson note this discrepancy and contend rates above $600 are unreasonably high for this community. Based on the parties' submissions, we agree and

reduce the Sachs plaintiffs' top rates accordingly. After this adjustment, the Sachs plaintiffs' fee request totals $372,185, with an average hourly rate of $476.79.

As with the other fee applicants, the Sachs plaintiffs incurred excessive or duplicative fees in several areas of work. To enforce the reasonable limits we noted above, we reduce their hours expended on early work, stipulations, principles oral argument, plans oral argument, and evaluation of appeal prospects. The Sachs plaintiffs also expended significant time on work outside the reasonable scope of their role in this litigation, including monitoring the legislative process, preparing common-interest and nondisclosure agreements, researching the panel members and other parties, and influencing the public-input process. We deduct these hours. But we observe that the Sachs plaintiffs, like the other parties, also put forth significant effort monitoring the panel's hearings, parsing the written input submitted to the panel, and marshaling that evidence for use in preparing and advocating for the redistricting plans they proposed—all reasonable efforts for which they are entitled to recover attorney fees.

Finally, the Sachs plaintiffs' large legal team inflated their hours by necessitating extensive communication and collaboration, including numerous multi-attorney meetings, simply to keep all members updated and on the same course. We reduce their time spent on such coordination efforts to 15 hours, to be commensurate with comparable efforts from the Wattson and Anderson plaintiffs. With these adjustments, the Sachs plaintiffs' lodestar figure is $264,314.21.

D. Partial Success

We next consider the degree of success the fee applicants achieved. As noted above, this is the "most critical factor" in determining the reasonableness of a fee award. *Farrar*, 506 U.S. at 114 (quotation omitted). If the lodestar amount is unreasonably high in light of a plaintiff's degree of success, it may be adjusted accordingly. *Blum*, 465 U.S. at 897. A downward adjustment is appropriate any time a plaintiff achieves "only partial or limited success." *Farrar*, 506 U.S. at 114. To do so, a court "may simply reduce the award to account for the limited success." *Milner*, 748 N.W.2d at 624 (quoting *Hensley*, 461 U.S. at 436-37).

While all applicants were successful, none was wholly successful or materially more successful than the others. The applicants shared the same goals in this litigation: (1) obtaining an order enjoining the use of the then-existing districts and establishing new, population-balanced districts; and (2) persuading the panel to draw the new district lines as they proposed. All were successful in achieving the first goal. This was a vital but relatively unremarkable victory, since Secretary Simon and Manager Olson largely did not contest the issue. Likewise, all applicants were partially successful in achieving the second goal. The panel carefully considered all of their proposals, and our final plans reflect meritorious aspects of each. On balance, we conclude the applicants equally achieved most but not all of their goals, amounting to approximately 70 percent success. We adjust their lodestar figures accordingly.

III. Defendants are equally liable and, therefore, equally responsible for attorney fees and costs.

"[L]iability on the merits and responsibility for fees go hand in hand." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). Consequently, non-prevailing defendants share equal responsibility for fees unless they faced distinct claims or are not equally culpable. *See id.* (holding that defendant dismissed from section 1983 action was not responsible for fees); *see also Hippert*, No. A11-0152, at 6 (Minn. Special Redistricting Panel Aug. 16, 2012) (Order Awarding Attorney Fees and Costs) (recognizing equal responsibility for fees as the "general rule"); *Snider v. City of Cape Girardeau*, 752 F.3d 1149, 1159 (8th Cir. 2014) (same).

Manager Olson urges the panel to assess fees only against Secretary Simon "in the interests of justice and equity." She cites no supporting legal authority and does not contend she is any less liable than the Secretary. While not an active participant, she remained engaged throughout this litigation, including responding to the fee applications. She never sought to be dismissed from the action, never argued that she was not a necessary party, and never disputed that relief could be obtained against her as a county election official. In short, we see no reason to depart from the general rule that both non-prevailing defendants are responsible for fees. And as the last panel observed, because of principles of joint and several liability, if the state pays the entire fee award, no financial liability will fall on Carver County.

We are mindful that the attorney fees awarded here will be "paid in effect by state and local taxpayers." *Perdue*, 559 U.S. at 559. This public expense becomes necessary

when the legislature fails to complete redistricting and citizens must initiate litigation to protect their voting rights—a now familiar pattern in Minnesota. An award of attorney fees must balance these considerations, empowering Minnesotans to vindicate their rights in court, when necessary, while protecting public funds. We have done so by carefully scrutinizing the applications and awarding only demonstrably reasonable attorney fees.

NOW, THEREFORE, IT IS HEREBY ORDERED:

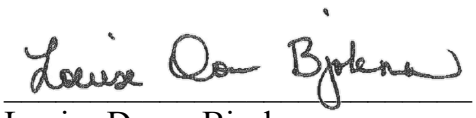
1. Plaintiffs Peter Wattson, et al. are awarded $141,279.64 for attorney fees and $1,035.07 for costs.

2. Plaintiffs Paul Anderson, et al. are awarded $149,627.53 for attorney fees and $43.97 for costs.

3. Plaintiffs Frank Sachs, et al. are awarded $185,019.95 for attorney fees.

Dated: August 31, 2022

BY THE PANEL:



Louise Dovre Bjorkman
Presiding Judge

Judge Diane B. Bratvold
Judge Jay D. Carlson
Judge Juanita C. Freeman
Judge Jodi L. Williamson