

Case Nos. 11-3035/11-3036/11-3037

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

NE OH Coalition for the Homeless, et al.  
*Plaintiff-Appellant/Cross-Appellant*

v.

State of Ohio  
*Intervenor-Appellant/Cross-Appellee*

and

Secretary of State  
*Defendant-Appellee*

On Appeal from the  
U.S. District Court for the  
Southern District of Ohio  
Eastern Division at Columbus  
Case No. 06-cv-00896

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**BRIEF OF APPELLANT/CROSS-APPELLEE STATE OF OHIO  
AND APPELLANT AND CROSS-APPELLEE  
OHIO SECRETARY OF STATE**

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**STATEMENT REGARDING ORAL ARGUMENT**

Appellant State of Ohio and Cross-Appellee Ohio Secretary of State Jon Husted request oral argument because they believe it will aid this Court's consideration of the complex legal issues in this case.

## **JURISDICTIONAL STATEMENT**

The district court exercised jurisdiction under 28 U.S.C. § 1331, as this was a civil action purportedly arising under the laws of the United States. On November 30, 2010, the court granted in part and denied in part Appellees' third motion for attorneys' fees and costs. Appellant State of Ohio filed a timely notice of appeal on December 29, 2010. Plaintiffs-Appellees Northeast Ohio Coalition for the Homeless and Service Employees International Union filed a cross-appeal on January 11, 2011. Cross-Appellee Ohio Secretary of State Jon Husted filed a cross-appeal on January 11, 2011.

**STATEMENT OF THE ISSUE PRESENTED**

Whether the Consent Decree constituted a settlement in full of all of Plaintiffs' claims, thereby waiving Plaintiffs' subsequent claim for attorneys' fees for work performed before entry of the Consent Decree.

## INTRODUCTION

The issue before this Court is whether the Consent Decree entered in this case disposed of all claims or left some claims, such as Plaintiffs' claim for additional attorneys' fees, unresolved. This litigation began in 2006, and is now on its third appeal to this Court. During the second appeal, the parties participated in the Sixth Circuit's mediation program. Over a six month period, the parties exchanged and edited drafts of a proposed Consent Decree, initially drafted by Plaintiffs, that would put an end to this four-year litigation. Finally, after extensive negotiations, the parties came to an agreement, and on April 19, 2010, the district court entered the Consent Decree, which was "final and binding . . . as to the issues raised in the Plaintiffs' Complaint and Supplemental Complaint, and the matters resolved in this Decree." R. 210, p. 2.

The comprehensive Consent Decree not only addressed the Plaintiffs' concerns about Ohio's voter identification and provisional balloting statutes – which was the basis of their original challenge – but also awarded Plaintiffs \$504,414 in attorneys' fees and costs. Thus, Defendant Ohio Secretary of State and Intervenor State of Ohio were shocked when, six weeks after entry of the Consent Decree, Plaintiffs submitted a third motion for attorneys fees, requesting \$90,841 for the time spent litigating their previous two fee motions and for working with the Sixth Circuit's mediation office to negotiate the Consent Decree.

When Plaintiffs agreed to the final and comprehensive Consent Decree, Plaintiffs waived the opportunity to request additional attorneys' fees. In this Circuit, a plaintiff waives a claim for subsequent attorneys' fees, after entry of a settlement or consent decree, if the settlement was intended to be a final disposition of all claims. Initially, Plaintiffs and their counsel agreed that the Consent Decree "terminated this litigation." R. 212, pp. 1, 5, 11; R. 213, ¶¶ 6, 15. However, in order to receive additional fees, Plaintiffs now claim that the Consent Decree was not final. The district court misapplied Sixth Circuit precedent and agreed with Plaintiffs' interpretation that the Consent Decree is not final.

The question before this Court is whether the Consent Decree was meant to resolve all issues in this litigation. The answer is yes. The language of the Consent Decree, application of Ohio's contract construction principles, and the only evidence in the record all demonstrate that the parties intended the Consent Decree to resolve all claims in this litigation. Accordingly, Plaintiffs waived their opportunity to request subsequent fees.

For the reasons explained more fully herein, the district court's judgment awarding additional fees beyond those expressly awarded in the Consent Decree should be reversed.

## STATEMENT OF THE FACTS AND THE CASE

Despite the length of this litigation, the issue on appeal relates only to the district court's interpretation of the Consent Decree. Nonetheless, a brief procedural history is necessary to understand the background – and consequent finality – of the Consent Decree.

### **A. Plaintiffs file their 2006 lawsuit and their first motion for attorneys' fees.**

On October 24, 2006, immediately before the 2006 general election, plaintiffs Northeast Ohio Coalition for the Homeless (“NEOCH”) and Service Employees International Union (“SEIU”) (collectively, the “Plaintiffs”) filed a thirteen count, 52-page complaint against former Ohio Secretary of State J. Kenneth Blackwell challenging the constitutionality of Ohio's voter identification and provisional balloting statutes. R. 2. On October 26, 2006, the district court granted a temporary restraining order enjoining portions of Ohio's law. R. 17, p. 3. Specifically, the district court determined that the Plaintiffs demonstrated a likelihood of success that some of the voter identification provisions were “unconstitutionally vague” and being applied unequally by county boards of elections. *Id.* at 3. On October 27, 2006, Appellant State of Ohio intervened to defend the constitutionality of the state statutes. R. 22.

On October 29, 2006, this Court stayed the district court's order. *Northeast Ohio Coalition For The Homeless v. Blackwell*, 467 F.3d 999 (6<sup>th</sup> Cir. 2006). Because Plaintiffs failed to allege that their individual members suffered an actual injury, this Court first held that Plaintiffs had not shown a likelihood of success in establishing constitutional standing. *Id.* at 1010. In addition, because Secretary Blackwell subsequently issued Secretary of State Directive 2006-78, which defined the terms that the district court found "vague," Secretary Blackwell "largely obviate[d]" Plaintiffs' vagueness concerns. *Id.* at 1011; *see also* R. 99-1, Directive 2006-78.

Nonetheless, in order to avoid confusion on election day, on November 1, 2006, Secretary Blackwell and the Plaintiffs agreed to a "Consent Order" clarifying the voter identification requirements for the impending 2006 general election. R. 51. The Consent Order re-cited the Secretary's clarifying Directive. *Cf.* R. 51 *with* R. 99-1. After the election, on November 15, 2006, the parties agreed to a second "Agreed Enforcement Order" relating to the tabulation of provisional ballots cast in the 2006 election because some county boards of elections had inadvertently failed to follow the initial Consent Order. R. 57.

On January 4, 2008, Plaintiffs filed their first motion for attorneys' fees and costs for "procurement and enforcement of the November 1, 2006 Consent Order and the November 15, 2006 Agreed Enforcement Order." R. 96, p. 1. Plaintiffs

requested over \$347,272 in fees and costs relating to entry of these two agreed orders. The State of Ohio and the Secretary of State (collectively, “State Defendants”) opposed the motion for the following reasons:

- Plaintiffs’ lacked of standing, as indicated by this Court in its previous decision (R. 99, pp. 6-8);
- The Consent Order and the Agreed Enforcement Order did not “materially alter” the relationship between the parties – mostly because the Consent Order mirrored the language in the law and the Secretary’s clarifying Directive (*id.* at 9-16);
- Even if Plaintiffs were marginally prevailing parties simply because of entry of the agreed orders, they were entitled to only the attorneys’ fees commensurate with their narrow “victory” (*id.* at 17-18); and
- Plaintiffs’ attorneys overbilled and overstaffed the lawsuit, and their requested hourly rates were unreasonable (*id.* at 18-19).

On September 30, 2008, the district court held that Plaintiffs were prevailing parties and entitled to a reasonable fee award. R. 108. However, the district court also agreed with State Defendants that Plaintiffs’ success was “not as broad as they have characterized it” because the Consent Order “had already been defined, nearly identically” in the Secretary’s clarifying Directive. *Id.* at 19. Thus, the court

ordered supplemental briefing and a hearing to determine the reasonableness of the requested fees. *Id.* at 20.

**B. Plaintiffs file a 2008 Supplemental Complaint, intervene in the *Skaggs v. Brunner* litigation, and file a second motion for attorneys' fees.**

Before the hearing on their first motion for attorneys' fees, Plaintiffs filed a Supplemental Complaint on October 14, 2008, alleging non-uniform application of Ohio's provisional balloting laws. R. 110-2. Former Ohio Secretary Jennifer Brunner subsequently issued Directive 2008-101, which listed guidelines for provisional voting. R. 142. The Directive apparently satisfied the Plaintiffs, and pursuant to agreement of the parties, the district court adopted Directive 2008-101 as order of the court. *Id.* On October 27, 2008, the court issued a second agreed order drafted by the parties relating to the effect of poll worker error on provisional voters and the validity of addresses for persons without permanent residences, for purposes of the impending 2008 general election. R. 143.

The 2008 general election resulted in three very close races in Franklin County. On November 13, 2008, two individual voters filed a lawsuit in the Ohio Supreme Court, captioned *State ex rel. Skaggs v. Brunner*, Case No. 08-2206, disputing Secretary Brunner's instructions to county boards of elections on how to count provisional ballots and alleging that she improperly changed her instructions after the election. Secretary Brunner removed that case to federal court, and

Plaintiff NEOCH intervened as a co-defendant supporting Secretary Brunner's position and her interpretation of Ohio's provisional balloting statutes. *State of Ohio ex rel. Dana Skaggs v. Brunner*, Case No. 2:08-cv-1077. The parties in the federal *Skaggs* litigation, including NEOCH, filed cross motions for summary judgment; NEOCH's motion adopted Secretary Brunner's interpretation of the applicable law.

The district court granted Secretary Brunner's motion for summary judgment, holding that her interpretation of Ohio's provisional balloting statute was consistent with Ohio and federal law. *State ex rel. Skaggs v. Brunner*, 588 F. Supp. 2d 828 (S.D. Ohio 2008). On November 25, 2008, this Court vacated that decision and remanded the case to the Ohio Supreme Court to resolve the claimants' state-law causes of action. *State of Ohio ex rel. Skaggs v. Brunner*, 549 F.3d 468 (6th Cir. 2008). On remand, the Ohio Supreme Court granted the *Skaggs* plaintiffs' requested writ of mandamus, holding that Secretary Brunner's instructions on provisional ballots were contrary to Ohio law. *State ex rel. Skaggs v. Brunner*, 900 N.E.2d 982 (Ohio 2008).

On January 20, 2009, along with Plaintiffs' supplemental briefing on the reasonableness of their first fee motion (R. 176), Plaintiffs also filed a second motion for attorneys' fees and costs, totaling \$296,115, for the work performed relating to the 2008 agreed orders and the *Skaggs* litigation. R. 179. The State

Defendants had strong defenses to Plaintiffs' supplemental motion and second motion for fees and costs. With respect to the supplemental motion, State Defendants argued that fees should be minimal because Plaintiffs acquired only nominal or *de minimis* victory by entry of the duplicitous 2006 consent orders. R. 191. With respect to Plaintiffs' second motion for fees, State Defendants argued that Plaintiffs did not obtain any of the relief they sought relating to the 2008 election, and they lost on the merits on the most fundamental claims in their complaint. Moreover, their fees relating to the *Skaggs* case had no legal basis because the Secretary did not initiate that litigation and, therefore, had no obligation to pay Plaintiffs' fees. Furthermore, the legal position of Plaintiffs in the *Skaggs* case was rejected by the Ohio Supreme Court. R. 192.

**C. The district court grants Plaintiffs' first and second fee motions, and the State of Ohio appeals.**

On July 28, 2009, the district court granted Plaintiffs' first and second fee motions. R. 203. However, as the court recognized in its initial fee decision, Plaintiffs' success was not as broad as they described. If Plaintiffs had achieved all they had set out to do, the court acknowledged, Ohio's voter identification and provisional balloting statutes would have been declared unconstitutional. *Id.* at 21. In fact, the court admitted that "[n]one of the Court's rulings or consent orders to

date ha[d] declared any portion of the Voter ID Law unconstitutional nor has the Court enjoined the enforcement of the Law.” *Id.*

In spite of that, the district court only reduced the amount of Plaintiffs’ requested fees by 20%. *Id.* at 22. In total, the district court awarded \$474,418.50 in fees and \$29, 995.61 in costs, or \$504,414. *Id.* On August 28, 2009, the State of Ohio timely appealed the court’s order granting fees. R. 207.

**D. The parties enter into the “final and binding” Consent Decree.**

During the pendency of the appeal, the parties began negotiations, with assistance from the Sixth Circuit’s mediation office, to globally settle this litigation. R. 219-1 at ¶¶ 3, 5; R. 219-2 at ¶¶ 3, 5, 8. The six-month mediation process resulted in a final Consent Decree, which was entered by the district court on April 19, 2010. R. 210. Essentially, the State Defendants agreed to drop their Sixth Circuit appeal and to pay a fixed amount of attorneys’ fees in exchange for a final resolution of this four-year litigation. R. 219-2 at ¶ 7.

The plain language of the Consent Decree reflects the parties’ intent to globally settle this litigation. The Preamble states that the parties entered into negotiations “desiring that this action be settled . . . without the burden of protracted litigation.” R. 210, p. 2. Further, the Consent Decree is “final and binding” as to the “issues raised in the Plaintiffs’ Complaint and Supplemental Complaint,” which includes Plaintiffs’ request for attorneys’ fees. *Id.*; *cf.* R. 2, at

Prayer for Relief *and* R. 120 at Prayer for Relief. Finally, the substantive terms of the Consent Decree are set forth with the following introduction: “*In resolution of this action*, the parties hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following . . . .” R. 210, p. 2 (emphasis added). One of the terms *expressly* negotiated in the final Consent Decree is the amount of attorneys’ fees that State Defendants must pay. Section VI provides:

Within sixty (60) days after entry of this Decree, Defendant Secretary of State shall pay to counsel for Plaintiffs the attorneys’ fees that were previously awarded by this Court, as follows: \$321,942.15.51 (sic) to Porter Wright Morris & Arthur LLP, \$99,722.58 to Carlile Patchen & Murphy LLP, and \$82,749.38 to The Chandra Law Firm, LLC.

*Id.* at 6.

In addition, the Consent Decree resolved Plaintiffs’ outstanding claims against Ohio’s voter identification and provisional balloting statutes. For example, the Consent Decree incorporates Secretary of State Directive 2008-80 on voter identification as “order of the court.” R. 210, p. 3. The Consent Decree also provides “rules regarding the casting and counting of provisional ballots” and lists circumstances in which Ohio’s boards of elections may not reject a provisional ballot. *Id.* at 3-5. A cursory review of the Consent Decree demonstrates that it was intended to resolve this litigation. In fact, Plaintiffs counsel admitted in her third motion for fees and corresponding fee affidavit that the Consent Decree “terminated this litigation.” R. 212, p. 1; R. 213 at ¶ 15.

**E. Plaintiffs file a third motion for attorneys' fees for the work performed litigating its previous fee motions and mediating the State of Ohio's appeal.**

Over six weeks after the district court signed and entered the final and comprehensive Consent Decree, Plaintiffs filed a third motion for attorneys' fees and costs, purportedly for fees litigating its first and second fee motions and for negotiating the Consent Decree. R. 212. Plaintiffs requested additional fees and costs totaling more than \$90,841. *Id.*

In response, client representatives from the Secretary of State and the State of Ohio submitted affidavits stating that they were in "total shock" that Plaintiffs filed a third fee motion. R. 219; R. 219-1 at ¶ 9; R. 219-2 at ¶ 12. State Defendants entered into settlement negotiations to "globally" settle this litigation. R. 219-1 at ¶¶ 3, 5; R. 219-2 at ¶¶ 5, 8. Because State Defendants viewed the Consent Decree as requiring them to do no more than what Ohio election law already requires or allows, State Defendants viewed the issue of attorneys' fees as the single most significant liability in this case. R. 219-1 at ¶ 6; R. 219-2 at ¶ 9. Accordingly, inclusion of a "final and certain" amount of attorneys' fees was a material term of the complete settlement, and State Defendants would not have agreed to settle this case if the parties had intended to leave the issue of *additional* attorneys' fees open or unsettled. R. 219-1 at ¶¶ 7-8; R. 219-2 at ¶¶ 10-11. To the extent that Plaintiffs' counsel harbored an intention to seek additional fees – after

the parties endured six months of negotiations and mediation, after the State Defendants agreed to withdraw their Sixth Circuit appeal, and after the Consent Decree had been entered – this intention was concealed from the State Defendants. R. 219-1 at ¶ 10; R. 219-3 at ¶ 9; R. 219-2 at ¶ 13.

Accordingly, State Defendants opposed Plaintiffs’ third fee motion, arguing, *inter alia*, that under controlling Sixth Circuit precedent, because the Consent Decree resolved all the claims in Plaintiffs’ complaints, Plaintiffs waived any request for additional fees. R. 219, pp. 4-10 (citing to *Jennings v. Metropolitan Gov. of Nashville*, 715 F.2d 1111 (6th Cir. 1983), and *McCuiston v. Hoffa*, 202 Fed. Appx. 858 (6<sup>th</sup> Cir. 2006)).

**F. The district court determines that the Consent Decree was not meant to be a final resolution of this case.**

On November 30, 2010, the district court granted in part and denied in part Plaintiffs’ third motion for fees. R. 234. The court first concluded that the agreement was “silent” on attorneys’ fees because it did not expressly address any fees for litigating the first and second fee motions or for negotiating the Consent Decree. R. 234, p. 7. Then, the court construed the language in the Consent Decree to hold that “the parties to the present action did not intend the Decree to be final.” *Id.* at 8. Therefore, Plaintiffs did not waive the opportunity to request additional fees. However, the court ultimately capped the Plaintiffs’ third fee

request at three percent of the original award by operation of the Sixth Circuit's three-percent rule for "fees for fees" litigation. *Id.* at 13-15. Thus, Plaintiffs' award was capped at \$18,942 for fees and costs.

Notwithstanding the partial victory, the State of Ohio timely appealed. R. 236. The district court's interpretation of the Consent Decree is incorrect and sets a dangerous precedent for any government defendant desiring to enter into a consent decree that addresses attorneys' fees and attempts to resolve all issues raised in the litigation. Because the Consent Decree here is a comprehensive resolution of all of Plaintiffs' claims, Plaintiffs are not entitled to any additional fees relating to their third fee motion.

### **STANDARD OF REVIEW**

Generally, this Court reviews a district court's attorneys' fees award for abuse of discretion. *Riley v. Kurtz*, 361 F.3d 906, 910 (6th Cir. 2004). However, a district court's interpretation of a consent decree is a matter of law subject to *de novo* review. *Nat'l Ecological Found. v. Alexander*, 496 F.3d 466, 476 (6th Cir. 2007). In this case, the district court's award of attorneys' fees was based solely on its legal interpretation of the Consent Decree. Accordingly, the district court's decision is reviewed *de novo*.

## SUMMARY OF THE ARGUMENT

The Consent Decree was dispositive of all claims relating to this lawsuit. Accordingly, Plaintiffs waived the opportunity to request additional attorneys' fees for any work performed prior to entry of the Consent Decree.

In this Circuit, to determine whether a party waives the right to a future claim for attorneys' fees after entry of a settlement or consent decree, courts must examine "whether the parties intended the settlement to be a final disposition of all claims." *Jennings v. Metropolitan Gov. of Nashville*, 715 F.2d 1111, 1114 (6th Cir. 1983). Thus, a claim for statutory attorneys' fees is treated like any other claim raised in a plaintiff's complaint, and "it is not necessary for the parties to have reached a separate agreement on each aspect of the claim in order to have reached a settlement in full." *Id.* at 1114. *See also McCuiston v. Hoffa*, 202 Fed. Appx. 858, 863 (6th Cir. 2006).

The Plaintiffs here waived any request for additional attorneys' fees. First, the plain language of the Consent Decree demonstrates the parties' intent to resolve all claims and to reach a comprehensive settlement. The Consent Decree is "final and binding . . . as to the issues raised in the Plaintiff's Complaint and Supplemental Complaint," which included Plaintiffs' claims for attorneys' fees. R. 210, p. 2; R. 2, p. 51; R. 210-2, p. 20. Second, Ohio's principles of contract interpretation – such as presuming parties' intent resides in the words used,

*expressio unius est exclusio alterius*, and construing an agreement against the party who drafted it – dictate the conclusion that the Consent Decree was a settlement in full. Third, even if the Court resorts to surrounding circumstances to determine intent of the parties, the *only* relevant evidence in the record demonstrates that the Consent Decree was a settlement in full. Client representatives from the State Defendants submitted affidavits explaining that the parties intended the Consent Decree to “globally” settle this lawsuit and to be a “final resolution of this four year litigation.” R. 219-2 at ¶ 5, 7; R. 219-1 at ¶ 3. Plaintiffs did not submit any relevant evidence to rebut this expressed intent of the parties.

Accordingly, the district court erred in holding that “the parties to the present action did not intend the Decree to be final.” R. 234, p. 8. The district court made irrelevant distinctions between the language of the Consent Decree here and the consent judgment in *McCuiston*. For example, simply because the Consent Decree here allows a party to move the court to modify it – and the consent judgment in *McCuiston* did not include such modification language – does not mean that the Consent Decree did not fully resolve all of the claims in this litigation. *See, e.g., Jennings*, 715 F.2d at 1112 (giving party the right to “reopen the action” did not prohibit this Court from determining that agreement was a “settlement in full”). In addition, the district court erred by concluding that the Consent Decree is “silent” on fees, thereby failing to give proper weight to the fact

that the Decree explicitly references attorneys' fees. *See* R. 234, p. 7. Finally, the district court's interpretation leads to an absurd result.

The Court should reverse the district court's awarding of any additional attorneys' fees and costs beyond those awarded in the final Consent Decree.

## ARGUMENT

The Consent Decree was dispositive of all claims relating to this lawsuit. Accordingly, Plaintiffs waived the right to request additional attorneys' fees for any work performed prior to entry of the Decree. The district court misconstrued the Consent Decree and erred in awarding Plaintiffs additional fees beyond those expressly awarded to settle this litigation.

### **I. The Dispositive Issue Is Whether The Parties Intended The Consent Decree To Be A Final Disposition Of All Claims.**

The U.S. Supreme Court has long-recognized that parties in civil rights actions may waive statutory attorneys' fees in a settlement or consent decree. *Evans v. Jeff*, 475 U.S. 717, 732 (1986) (fee awards are simply one negotiation tool in the "arsenal of remedies available to combat violations of civil rights"). Where a settlement or consent decree does not expressly address the award of attorneys' fees under 42 U.S.C. § 1988, the federal circuit courts of appeal have taken three different approaches to determine whether the settlement waives any subsequent claim for fees.

The Ninth and Tenth Circuits place the burden on defendants opposing a fee request to prove that the parties intended to waive fees. Thus, these defendants must negotiate express waivers of the right to seek attorneys' fees in any settlement agreement. *See, e.g., Ellis v. Univ. of Kansas Med. Ctr.*, 163 F.3d 1186, 1200-01

(10<sup>th</sup> Cir. 1998); *Muckleshoot Tribe v. Puget Sound Power & Light Co.*, 875 F.2d 695, 698 (9<sup>th</sup> Cir. 1989). The D.C. and Eighth Circuits, however, have taken the contrary position, requiring that the plaintiff reserve the right in the settlement agreement to seek a subsequent award of fees. As Justice Ginsburg explained, then writing for the D.C. Circuit:

We find nothing in [§ 1988] that would warrant indulging the plaintiffs' claim for fees once the parties negotiated a lump sum settlement that released defendants broadly from all further claims and costs. . . . Under the circumstances presented here, the burden of preserving the complaint's demand for fees from preclusion by the release is properly assigned to the party whose compensation is at stake.

*Elmore v. Shuler*, 787 F.2d 601, 603 (D.C. Cir. 1986); *see also Wray v. Clarke*, 151 F.3d 807, 809 (8<sup>th</sup> Cir. 1998); *Young v. Powell*, 729 F.2d 563 567 n.3 (8<sup>th</sup> Cir. 1984).

The Sixth Circuit has not adopted either approach. Instead of placing the burden on a certain party to demonstrate waiver, this Court requires an examination of “whether the parties intended the settlement to be a final disposition of all claims.” *Jennings v. Metropolitan Gov. of Nashville*, 715 F.2d 1111, 1114 (6<sup>th</sup> Cir. 1983). Thus, a claim for statutory attorneys' fees is treated like any other claim raised in a plaintiff's complaint, and “it is not necessary for the parties to have reached a separate agreement on each aspect of the claim in order to have reached a settlement in full.” *Id.* at 1114. The “dispositive issue” is

whether “the parties intended the settlement to be a final disposition of all claims.” *McCuiston v. Hoffa*, 202 Fed. Appx. 858, 863 (6th Cir. Oct. 12, 2006).

The recent decision in *McCuiston v. Hoffa* best illustrates the Sixth Circuit’s approach. In that case, the parties agreed to a stipulated consent judgment, providing: “This is a final order of the court, disposing of all remaining claims in this action.” *Id.* at 861. The issue of attorneys’ fees was neither discussed in settlement conference nor mentioned in the final stipulated consent judgment; in fact, plaintiffs’ attorney had intentionally refrained from mentioning the issue. *Id.* (internal quotations omitted). Two weeks after the parties stipulated to the entry, the plaintiffs sought fees totaling nearly \$160,000. The district court denied the fee request, holding that the “comprehensive language in the stipulated consent judgment demonstrates that the parties intended to reach a settlement in full.” *Id.* at 865.

This Court affirmed, explaining that the “question is simply whether the parties intended their settlement, however formalized, to leave the claim for attorneys fees unresolved or to constitute settlement in full.” *Id.* at 863. The consent judgment was “comprehensive” because it: (1) disposed of “all remaining claims”; (2) client representatives with settlement authority participated in the negotiations; and (3) the plaintiffs failed to point to anything in the record – other than the “purposeful silence” of their counsel – to demonstrate that the attorneys’

fees issue was left unresolved. *Id.* at 865. Under these circumstances, this Court determined that the consent judgment waived any subsequent request for attorneys' fees because it was a "settlement in full." *Id.*

## **II. The Consent Decree Is A Settlement In Full Of All The Claims Raised In Plaintiffs' Complaint And Supplemental Complaint.**

Under this Circuit's approach, Plaintiffs waived any request for additional attorneys' fees. For the following reasons, the Consent Decree was a comprehensive settlement in full that disposed of all remaining claims.

### **A. The plain language of the Consent Decree demonstrates the parties' intent.**

The plain language of the Consent Decree demonstrates the parties' intent to resolve all claims and to reach a comprehensive settlement. The Consent Decree is "final and binding . . . as to the issues raised in the Plaintiff's Complaint and Supplemental Complaint," which included Plaintiffs' claims for attorneys' fees. R. 210, p. 2; R. 2, p. 51; R. 210-2, p. 20. The parties entered the Decree "desiring that this action be settled . . . without the burden of protracted litigation," and the parties agreed to its terms in "resolution of this action." R. 210, p. 2. Most important, the Consent Decree *expressly* awards Plaintiffs' attorneys' fees as part of the "final and binding" entry, with no mention of any possibility for additional fees – especially attorney hours spent *before* entry of the Consent Decree. *Id.* at 2, 6. Under the standard set in *McCuiston* and *Jennings*, the Consent Decree is clear

and unambiguous and leads to only one conclusion: the parties intended the agreement to constitute a settlement in full of all the claims raised in Plaintiffs' complaints.<sup>1</sup>

**B. Principles of contract construction support the State Defendants' interpretation of the Consent Decree.**

Ohio's principles of contract interpretation dictate the conclusion that the Consent Decree was a settlement in full. The interpretation of a consent decree is a question of state law contractual interpretation. *Sault Ste. Marie Tribe of Chippewa Indians v. Engler*, 146 F.3d 367, 372 (6<sup>th</sup> Cir. 1998). Under Ohio law, "the primary and paramount objective" in construing any written instrument is to ascertain and give effect to the intent of the parties. *Aultman Hosp. Ass'n v. Community Mut. Ins., Co.*, 544 N.E. 2d 920, 923 (Ohio 1989). When the terms are clear and unambiguous, "[t]he Court presumes that the parties' intent resides in the words utilized in the agreement." *Gencorp, Inc. v. American Int'l Underwriters*, 178 F.3d 804, 817-181 (6<sup>th</sup> Cir. 1999).

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<sup>1</sup> See also *In re: Leonard Lybarger*, 793 F.2d 136, 138 (6th Cir. 1986) (holding that language such as "the parties, being desirous of settling these matters without further litigation" expresses a "clear intent to end all litigation" and a waiver of the plaintiff's right to appeal any decision regarding attorney's fees); *Fulford v. Forest Hills Eagle Supermarket*, No. 86-3407, 1987 U.S. App. LEXIS 9516, at \*1-2 (6th Cir. 1987) (plaintiffs not entitled to attorneys' fees where settlement agreement, which settled "all claims . . . of whatever kind," was "complete and plenary").

Here, the Consent Decree is “final and binding” on all claims raised in the Complaint, and nothing in the Consent Decree leaves open the possibility of additional claims for attorneys’ fees. In fact, Plaintiffs and their counsel initially acknowledged that the Consent Decree resolved all claims in this litigation; their third motion for attorneys’ fees provides, on three separate pages, that the Consent Decree “*terminated this litigation.*” R. 212, pp. 5, 11, 1 (emphasis added); *see also* R. 213 (Gentry Aff.) at ¶¶ 6; 15 (averring that counsel is submitting fees related to “negotiation of this Court’s April 19, 2010 Consent Decree *terminating this litigation*”) (emphasis added). Thus, the language of the Consent Decree demonstrates the parties’ objective to fully terminate this litigation.

Similarly, the principle *expressio unius est exclusio alterius* means that the expression in a contract of one or more things of a class implies the exclusion of all others not expressed. *State ex rel. Paluf v. Feneli*, 630 N.E. 2d 708, 712 (Ohio 1994). Applying the principle here, the express inclusion of an attorneys’ fees award in the Consent Decree implies the exclusion of any other fee award. Finally, another applicable principle is that a contract must be construed against the party who drafted it or selected its language. *Savedoff v. Access Group, Inc.*, 524 F.3d 754, 764 (6th Cir. 2008). Here, it is undisputed that Plaintiffs crafted the initial version of the Consent Decree, including the preamble and the attorneys’ fee

section. R. 219-3 at ¶ 7. The Court, therefore, should construe the Consent Decree against Plaintiffs' interpretation that it is not a settlement in full of this litigation.

**C. The surrounding factual circumstances of the Consent Decree demonstrate that the parties intended a settlement in full.**

Even if the Court resorts to surrounding circumstances to determine intent of the parties, the *only* relevant evidence in the record demonstrates that the Consent Decree was a settlement in full. Client representatives from the State Defendants submitted affidavits explaining that the parties intended the Consent Decree to “globally” settle this lawsuit and to be a “final resolution of this four year litigation.” R. 219-2 at ¶ 5, 7; R. 219-1 at ¶ 3. Further, inclusion of a “final and certain” amount of attorneys’ fees was a material term of the “complete settlement.” R. 219-1 at ¶ 7; R. 212-2 at ¶ 10. Most important, neither of the State Defendants would have agreed to settle if the parties had intended to leave the issue of attorneys’ fees “open or unsettled.” R. 219-1 at ¶ 8; R. 219-2 at ¶ 11.

In addition, the surrounding circumstances that were relevant to this Court in *McCuiston* are present here. For example, State Defendant client representatives with settlement authority were actively involved throughout the Sixth Circuit mediation process. *See, e.g.*, R. 219-2 at ¶¶ 5-7; R. 219-1 at ¶¶ 4-6; *cf. McCuiston*, 202 Fed. Appx. at 865. Plaintiffs’ claims for attorneys’ fees were presented in their complaints, and the Consent Decree plainly resolved all issues raised in the

complaints. R. 210, p.2; *cf. McCuiston*, 202 Fed. Appx. at 865. Finally, at the settlement negotiations, the terms of the settlement were discussed without any mention of Plaintiffs’ intent to request more than \$90,000 in additional attorneys’ fees and costs. R. 219-1 at ¶ 10; R. 219-2 at ¶ 13; *cf. McCuiston*, 202 Fed. Appx. at 865.

There is no evidence in the record to the contrary. To rebut the State Defendants’ evidence that the Consent Decree was a “global” and “complete” settlement, Plaintiffs submitted three affidavits *from their counsel* – not from the actual Plaintiffs – indicating that *Plaintiffs’ counsel* would not have agreed to the Consent Decree if they were supposed to “forfeit” their fees.<sup>2</sup> Plaintiffs’ affidavits are not evidence of intent for several reasons. First, and most important, it is completely irrelevant whether Plaintiffs’ counsel intended to include fees in the Consent Decree. Supreme Court precedent is clear that “Section 1988 makes the *prevailing party* eligible for a discretionary award of attorneys’ fees.” *Venegas v. Mitchell*, 495 U.S. 82, 87 (1990) (emphasis added). Because “it is the party, rather than the lawyer, who is eligible . . . it is the party’s right to waive, settle, or

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<sup>2</sup> *See, e.g.* R. 223 (Gentry Supp. Decl.) at ¶¶ 19-20 (“I did not intend, as part of the negotiation of the Consent Decree, to give up the ability to seek fees for all work performed . . . I would not have agreed to forfeit the ability to seek fees incurred on and after January 21, 2009 merely to settle the appeal . . .”); R. 215 (Chandra Supp. Decl.) at ¶¶ 19-20 (same).

negotiate that eligibility.” *Id.* at 88-89. Thus, Plaintiffs counsels’ opinion on the scope or intent of the Consent Decree is irrelevant and cannot be given any weight.

Even if Plaintiffs counsels’ affidavits were relevant, however, they fail to set forth any evidence demonstrating that the Consent Decree was *not* intended to “globally” settle this litigation. No where in Plaintiffs counsels’ affidavits do they aver that their clients thought that the Consent Decree was *not* a comprehensive settlement of this litigation. Instead, the affidavits only address whether they – Plaintiffs’ counsel – thought that the parties reached a separate agreement on future requests for attorneys’ fees, which this Court has expressly rejected as the test for waiver. *Cf. Jennings*, 715 F.2d at 1114 (“The question more properly before the District Court was whether the parties intended the settlement to be a final disposition of all claims, *rather than whether the parties intended to include attorneys’ fees in the settlement.*”) (emphasis added).

Similarly, Plaintiffs counsels’ main argument to demonstrate the “intent” of the parties is the fact that the previous consent orders in 2006 and 2008 did not include attorneys’ fees; therefore, Plaintiffs argue, the State Defendants should have expected Plaintiffs to seek additional fees after the 2010 Consent Decree as well. R. 223 at ¶¶ 2-9; R. 224 at ¶¶ 2-9; R. 225 at ¶¶ 2-9. This logic represents Plaintiffs’ misunderstanding of the Sixth Circuit’s approach as set forth in *Jennings* and *McCuiston*. The 2006 and 2008 consent orders were not meant to resolve all

issues relating to Plaintiffs' complaint because, by their terms, they were limited to the impending election. *See, e.g.*, R. 51, p. 2 (“[T]he parties enter into the following Consent Order, which shall apply only to the November 2006 General Election.”) The 2010 Consent Decree, however, was meant to resolve this entire litigation.

Thus, if the Court determines that evidence of intent is necessary to decide the waiver issue, the only evidence in the record indicates that the Consent Decree was meant to be a comprehensive settlement to “globally” settle all claims relating to Plaintiffs' complaints.

### **III. The District Court's Interpretation Of The Consent Decree Is Unsound.**

The district court held that the language in the Consent Decree does not lead to an “inference of finality.” R. 234, p. 8. In reaching this conclusion, the court relied only on its interpretation of the Consent Decree's language. Thus, this Court reviews the district court's legal interpretation of the Consent Decree *de novo*. *Nat'l Ecological Found. v. Alexander*, 496 F.3d 466, 476 (6th Cir. 2007).

#### **A. The district court misapplied this Court's decision in *McCuiston*.**

In holding that the Consent Decree was not meant to be a final document, the district court erred by making irrelevant distinctions between the language of the Consent Decree and the language of the consent judgment in *McCuiston*. For example, the district court reasoned that because the Consent Decree here resolved

all “issues raised in Plaintiffs’ Complaint,” the Decree’s language is not as “expansive” as that in *McCuiston*, which disposed of “all remaining claims in this action.” *Cf.* R. 234, p. 8 with 202 Fed Appx. at 861. Whether a consent decree disposes of all issues “raised in the Plaintiffs’ Complaint” or all claims “in this action” is a hyper-technical distinction without any meaning. Certainly, this minor word-choice cannot demonstrate that the Consent Decree here is a temporary order leaving unresolved issues for future determination, while the *McCuiston* consent judgment is a settlement in full.

Similarly, the district court held that because the parties agreed to “allow for modification and extension of the agreement” – and the consent judgment in *McCuiston* did not allow for such modification – the Consent Decree is not a settlement in full. R. 234, p. 8. However, a consent decree, by design, is a “settlement agreement subject to continued judicial policing.” *Nat’l Ecological*, 496 F.3d at 477 (citing *Williams v. Vukovich*, 720 F.2d 909, 920 (6<sup>th</sup> Cir. 1983)). Consent decrees routinely include enforcement clauses or termination dates. In fact, even if a consent decree does not expressly grant the authority to modify it, the law in this Circuit is “well-settled that courts retain the inherent power to enforce agreements entered into in settlement of litigation pending before them.” *The Vanguard of Cleveland v. City of Cleveland*, 23 F.3d 1013, 1018 (6<sup>th</sup> Cir.

1994) (citing *Sarabia v. Toledo Police Patrolman's Ass'n*, 601 F.2d 914, 917 (6<sup>th</sup> Cir. 1979)).

Thus, if the district court is correct – that the ability to modify a consent decree negates any finding of a settlement in full – then a consent decree, by its very nature, could *never* dispose of all claims in a litigation. Neither *McCuiston* nor *Jennings*, however, require this result. The test under those cases is whether the Consent Decree was intended to be a final disposition of all claims. The fact that the parties here may move the Court to modify the Consent Decree until 2013 does not indicate that the parties also intended the Decree to leave issues raised in Plaintiffs' complaints unresolved.

In fact, in *Jennings*, the settlement agreements stated that the plaintiff had the right “to reopen the action if settlement is not consummated” within sixty days, and that “the action may be reopened at any time between the date of this Order and December 21, 1980 for purposes of enforcing the settlement agreed to herein.” *Jennings*, 715 F.2d at 1112. Despite this language, this Court held that the agreements were settlements in full – without analyzing the language permitting a party to “reopen” the action. *Id.* at 1114.

The district court's misplaced emphasis on the Consent Decree's modification clause is in stark contrast to another recent district court decision that correctly applied *McCuiston*. In *Mantano-Perez v. Durrett Cheese Sales*, 2001

U.S. Dist. LEXIS 3945 (M.D. Tenn. Jan. 14, 2001), the district court interpreted *McCuiston* to deny a request for attorneys' fees – despite the fact that the settlement expressly gave the plaintiff the “right to monitor” the defendant's practices for five years. *Id.* at \*7. After examining the agreement to determine whether it was meant to be a final disposition of all claims, the court concluded:

It is clear to the court that the August 26, 2010 Agreement operated as a global settlement that precludes recovery for the plaintiffs here. While there is no dispute that the statutes under which the plaintiffs sued . . . permit the recovery of attorney's fees for prevailing plaintiffs, such recovery is not permitted where the parties have fully settled their dispute.

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Simply, under the circumstances of the negotiation, the language of the Agreement, and [defendant's] clear financial condition, it makes no sense that, following the Agreement, broad, prevailing party attorney's fees would still be available to the plaintiffs. . . . And, if the parties had so intended, the Agreement certainly would have said so. There is every indication from the record that the terms of August 26, 2010 Agreement were a “settlement in full.”

*Id.* at \*25. This is the proper application of *McCuiston* and *Jennings*. The fact that the settlement authorized the plaintiff a “right to monitor” for five years was irrelevant in the court's analysis. The district court below should have reached the same result here.

**B. The Consent Decree is not “silent” on attorneys' fees.**

The district court also erred by concluding that the Consent Decree is “silent” on fees, thereby failing to give proper weight to the fact that the Decree

explicitly references attorneys' fees. *See* R. 234, p. 7. Even the Ninth Circuit – which follows the strict approach requiring express waiver of attorneys' fees – has indicated that waiver may be established “[i]f the decree contains an explicit reference” to attorneys' fees. *Muckleshoot*, 875 F.2d at 698 (emphasis added).

Instead, the lower court apparently accepted Plaintiffs' interpretation of the attorneys' fees paragraph and limited it to only the fees awarded for Plaintiffs first and second fee motions. R. 210, p. 6; *cf.* R. 222. The scope of a consent decree, however, must be “discerned within its four corners and not by reference to what might satisfy the purposes of one of the parties to it.” *Vanguard*, 23 F.3d at 1017. Simply because the Consent Decree awarded attorneys fees at the amount “previously awarded” does not automatically mean that the Decree is “silent” on any request for additional fees.

The better reading of the attorneys' fees paragraph in the Consent Decree is that attorneys' fees and costs were ***capped at the amount*** “previously awarded.” A consent decree must be “construed to preserve the position for which the parties bargained.” *Vanguard*, 23 F.3d at 1018. If the Consent Decree were intended to only address fees for the work performed from 2006 to 2008 relating to the first and second fee motions, it would have included such a time limitation. Instead, the Consent Decree awards fees in the amount “previously awarded,” without authorizing any additional fees for work performed prior to entry of the Consent

Decree. To be sure, the Decree is not “silent” on fees. They were discussed and negotiated and, in State Defendants’ opinion, capped at \$504,414 in order to resolve this litigation. Because Plaintiffs drafted the attorneys’ fees paragraph, it should be construed against them.

**C. The district court’s decision leads to an absurd result.**

Finally, the district court’s interpretation leads to an absurd result, which further demonstrates that the parties could not have intended the Consent Decree to award additional fees. Under the district court’s analysis, State Defendants agreed to a settlement requiring the State of Ohio to abandon its appeal of the previous attorneys’ fees awards in exchange for the State Defendants to pay every cent of the previous awards, \$504,414, *plus* an uncertain amount of “additional” fees – despite the fact that the State is in a well-documented budget crisis. It simply defies logic that State Defendants would strongly oppose any fee award in this case and appeal the Court’s order awarding fees to the Sixth Circuit, but then shortly thereafter withdraw that appeal and agree to be liable for an unknown – but certainly substantial – amount of additional attorneys’ fees.

In sum, all factors indicate that the Consent Decree resolved all claims in this lawsuit. On this record, Plaintiffs were not entitled to any fees relating to their third motion for attorneys’ fees and costs.

## CONCLUSION

For these reasons, the Court should reverse the district court's judgment awarding attorneys' fees and costs relating to Plaintiffs' third motion for fees.

Respectfully submitted,

**MICHAEL DEWINE**  
**Ohio Attorney General**

*/s/ Erick D. Gale*

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## CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because it contains 7,499 words, as determined by the word processing program used to generate this document, excluding the part of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface (Times New Roman 14-point type) using Microsoft Word 2003.

*/s/ Richard N. Coglianesse*

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Richard N. Coglianesse  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that on March 30, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record.

*/s/ Richard N. Coglianese*

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Richard N. Coglianese  
Assistant Attorney General

Case No. 11-3035/11-3036

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

NE OH Coalition for the Homeless, et al.  
*Plaintiff-Appellant/Cross-Appellant*

v.

State of Ohio  
*Intervenor-Appellant/Cross-Appellee*

and

Secretary of State  
*Defendant-Appellee*

On Appeal from the  
U.S. District Court for the  
Southern District of Ohio  
Eastern Division at Columbus  
Case No. 06-cv-00896

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**APPELLANT'S DESIGNATION OF APPENDIX CONTENTS  
[OR ADDENDUM]**

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Intervenor-Appellant/Cross-Appellee, pursuant to Sixth Circuit Rule 11(b), hereby designates the following filings in the district court record as items to be included in the Joint Appendix:

<b>Date</b>	<b>Record Entry No.</b>	<b>Description Of Entry</b>
10/24/06	2	COMPLAINT filed by Plaintiffs The Northeast Ohio Coalition for the Homeless, Service Employees International Union, Local 1199 against J. Kenneth Blackwell.
10/26/06	17	ORDER granting Motion for TRO and setting the Preliminary Injunction Hearing for 11/1/2006 at 9:00 a.m. in Courtroom 1, before Judge Marbley. Signed by Judge Algenon L. Marbley

<b>Record</b>		
<b>Date</b>	<b>Entry No.</b>	<b>Description Of Entry</b>
10/27/06	22	MOTION to Intervene of State of Ohio. (Attachments: # 1 Exhibits to Motion to Intervene# 2 Proposed Notice of Defenses)
11/1/06	51	CONSENT ORDER. The Court shall retain jurisdiction to enforce this Consent Order. This Consent Order shall remain in effect until further order of this Court or until dismissal of this action. Signed by Judge Algenon L. Marbley
11/14/06	57	AGREED ENFORCEMENT ORDER Defendant Secretary of State, J Kenneth Blackwell, shall forthwith issue a directive to the County Boards of Elections attaching this Agreed Enforcement Order and directing it to be followed by the 88 Ohio County Boards of Elections. Signed by Judge Algenon L. Marbley.
1/4/08	96	MOTION for Attorney Fees by Plaintiffs The Northeast Ohio Coalition for the Homeless, Service Employees International Union, Local 1199. (Attachments: # 1 Exhibit Declaration of Caroline Gentry; #2 Exhibit Declaration of Subodh Chandra; #3 Exhibit Declaration of H. Ritchey Hollenbaugh)
2/27/08	99	MOTION to Dismiss for Lack of Jurisdiction and Memorandum in Opposition to Motion for Attorney Fees by Defendant Jennifer Brunner, Intervenor State Of Ohio.
2/27/08	99-1	Directive 2006-078,; Exhibit 1 to MOTION to Dismiss for Lack of Jurisdiction and Memorandum in Opposition to Motion for Attorney Fees by Defendant Jennifer Brunner, Intervenor State Of Ohio.
9/30/08	108	ORDER granting 96 Motion for Attorney Fees and Costs with a reasonable fee award to be determined at hearing to be scheduled by the Court; granting in part and denying in part 99 Motion to Dismiss for Lack of Jurisdiction. Signed by Algenon L. Marbley

<b>Record</b>		
<b>Date</b>	<b>Entry No.</b>	<b>Description Of Entry</b>
10/14/08	110-2	Proposed Supplemental Complaint; Exh. 2 to MOTION for Leave to File Instantly a Supplemental Complaint by Plaintiffs The Northeast Ohio Coalition for the Homeless, Service Employees International Union, Local 1199. (Attachments: # 1 Exhibit A, # 2 Exhibit B)
10/17/08	120	MOTION for Leave to File Instantly a Supplemental Complaint by Plaintiffs The Northeast Ohio Coalition for the Homeless, Service Employees International Union, Local 1199. (Attachments: # 1 Exhibit A, # 2 Exhibit B)
10/24/08	142	ORDER adopting and annexing Ohio Secretary of State Directive 2008-101. Signed by Edmund A Sargus
10/27/08	143	ORDER granting in part by agreement 111 Plaintiffs' Motion for Preliminary Injunction. Signed by Edmund A. Sargus
1/20/09	176	Supplemental BRIEF on What Constitutes a Reasonable Fee and Costs Award by Plaintiffs The Northeast Ohio Coalition for the Homeless & Service Employees International Union, Local 1199.
1/20/09	179	Second MOTION for Attorneys' Fees and Costs by Plaintiffs The Northeast Ohio Coalition for the Homeless & Service Employees International Union, Local 1199. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)
2/27/09	191	Memorandum Opposing re 176 Supplemental Brief for Attorneys Fees filed by Defendant Jennifer Brunner.
2/27/09	192	RESPONSE in Opposition re 179 MOTION for Attorney Fees filed by Defendant Jennifer Brunner.
7/28/09	203	OPINION AND ORDER DENYING Defendants' Motion for Reconsideration and Plaintiffs' Motion for Reconsideration. The Court GRANTS Plaintiffs' First and Second Motions for Attorneys Fees and Costs and AWARDS \$401,905.50 in attorneys' fees and

<b>Record</b>		
<b>Date</b>	<b>Entry No.</b>	<b>Description Of Entry</b>
		\$29,468.55 in costs and expenses, for a total of \$431,374.05. Signed by Judge Algenon L. Marbley.
8/28/09	207	NOTICE OF APPEAL as to 205 Order on Motion for Reconsideration by Intervenor State Of Ohio. Filing fee \$ 455.
4/19/10	210	CONSENT DECREE. Signed by Judge Algenon L. Marbley on 04/19/2010. (Attachments: # 1 Attachment)
6/3/10	212	Third MOTION for Attorney Fees and Costs by Plaintiffs Columbus Coalition for the Homeless, Service Employees International Union, Local 1199, The Northeast Ohio Coalition for the Homeless & Kyle Wangler.
6/3/10	213	AFFIDAVIT of Caroline H. Gentry re 212 Third MOTION for Attorney Fees and Costs by Plaintiffs Columbus Coalition for the Homeless, Service Employees International Union, Local 1199, The Northeast Ohio Coalition for the Homeless & Kyle Wangler. (Attachments: # 1 Exhibit A)
8/9/10	219	RESPONSE in Opposition re 212 Third MOTION for Attorney Fees and Costs filed by Defendant Jennifer Brunner & Intervenor State Of Ohio. (Attachments: # 1 Exhibit 1, Affidavit of Brian Shinn, # 2 Exhibit 2, Affidavit of Susan Ashbrook, # 3 Exhibit 3, Affidavit of Richard Coglianese)
8/9/10	219-1	Affidavit of Brian Shinn, Exh 1 to RESPONSE in Opposition re 212 Third MOTION for Attorney Fees and Costs filed by Defendant Jennifer Brunner & Intervenor State Of Ohio
8/9/10	219-2	Affidavit of Susan Ashbrook, Exh. 2 to RESPONSE in Opposition re 212 Third MOTION for Attorney Fees and Costs filed by Defendant Jennifer Brunner & Intervenor State Of Ohio
8/9/10	219-3	Affidavit of Richard Coglianese, Exh. 3 to RESPONSE in Opposition re 212 Third MOTION for Attorney Fees

Date	Record Entry No.	Description Of Entry
		and Costs filed by Defendant Jennifer Brunner & Intervenor State Of Ohio
9/9/10	222	REPLY to Response to 212 Third MOTION for Attorney Fees and Costs filed by Plaintiffs Service Employees International Union, Local 1199, The Northeast Ohio Coalition for the Homeless & Kyle Wangler. (Attachments: # 1 Exhibit 1)
9/9/10	223	AFFIDAVIT: Supplemental Declaration of Caroline H. Gentry re 222 Reply to Response to Motion by Plaintiffs Service Employees International Union, Local 1199, The Northeast Ohio Coalition for the Homeless & Kyle Wangler.
9/9/10	224	AFFIDAVIT: Supplemental Declaration of Subodh Chandra re 222 Reply to Response to Motion by Plaintiffs Service Employees International Union, Local 1199, The Northeast Ohio Coalition for the Homeless & Kyle Wangler.
9/9/10	225	AFFIDAVIT: Supplemental Declaration of H. Ritchey Hollenbaugh re 222 Reply to Response to Motion by Plaintiffs Service Employees International Union, Local 1199, The Northeast Ohio Coalition for the Homeless & Kyle Wangler.
11/30/10	234	OPINION AND ORDER granting in part and denying in part 212 Motion for Attorney Fees. Signed by Judge Algenon L. Marbley on 11/30/2010.
12/29/10	236	NOTICE OF APPEAL as to 234 Opinion and Order on Motion for Attorney Fees by Intervenor State Of Ohio.

*/s/Erick D. Gale*

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Erick D. Gale

Assistant Attorney General