

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

PROJECT VOTE, ASSOCIATION OF  
COMMUNITY ORGANIZATIONS FOR  
REFORM NOW, COMMON CAUSE OHIO,  
PEOPLE FOR THE AMERICAN WAY  
FOUNDATION, COMMUNITY OF FAITH  
ASSEMBLIES CHURCH, AMERICAN  
ASSOCIATION OF PEOPLE WITH  
DISABILITIES, MARY KEITH, JOHN R. T.  
MAY, and LINDA SCAMMICCA,

*Plaintiffs,*

v.

JENNIFER BRUNNER,

*Defendant.*

CIVIL ACTION NO. 1:06-CV-01628

Judge Kathleen M. O'Malley

Magistrate Judge Perelman

**PLAINTIFFS' MOTION FOR COSTS AND ATTORNEYS' FEES**

Plaintiffs Project Vote *et al.* filed this action on July 6, 2006 to prevent defendant and others from enforcing new provisions of Ohio's election code that unlawfully restricted the right of plaintiffs to conduct private voter registration drives. Plaintiffs fully achieved their goals through a preliminary and permanent injunction against the challenged provisions of Ohio law as well as through a declaration that the challenged provisions of Ohio law violated the Constitution of the United States and that certain of them violated the National Voter Registration Act of 1993

(“NVRA”). Accordingly, plaintiffs are the prevailing parties for the purposes of 42 U.S.C. §§ 1988(b) and 1973l(e) and are entitled to their reasonable attorneys’ fees and costs.

Based on plaintiffs’ reasonable time and monetary expenditures detailed in the declarations submitted with this motion, plaintiffs seek an order awarding them \$450,002.00 in fees and \$10,803.59 in expenses. These declarations demonstrate that the attorneys’ fees plaintiffs seek are reasonable because the time spent litigation this matter was reasonable and the rates sought are consistent with (and arguably lower than) the prevailing market rate for attorneys of their skill and experience. Plaintiffs have also exercised reasonable billing judgment and kept contemporaneous time records to support this application.

### **Background**

On July 6, 2006, plaintiffs Project Vote *et al.* filed a Complaint for Declaratory and Injunctive Relief (ECF DKT #1) and a Motion for Preliminary Injunction (ECF DKT #3), seeking declaratory and injunctive relief against portions of Ohio Rev. Code §§ 3503.14, 3503.19, 3503.28, 3503.29, and 3599.11, as amended in 2006 by Ohio House Bill 3. Plaintiffs alleged that the challenged provisions imposed onerous burdens on voter registration drives. In particular, the provisions, as interpreted by then-Secretary of State Blackwell, required: (1) any individual compensated by a voter registration drive to preregister with the state and complete an online-only training before engaging in voter registration activities, and submit a signed affirmation every time they return forms to the state (“pre-registration, training, and affirmation requirements”); (2) each individual who registered another person to vote to personally submit to elections officials each voter registration card given to them (“direct return requirement”); and (3) any individual compensated by a voter registration drive to write their own name and address and the name of the organization compensating them on each voter registration form they collect

(“compelled disclosure requirement”). Plaintiffs claimed that these provisions of Ohio law regarding voter registration activities imposed an undue burden, in violation of the First and Fourteenth Amendments, on their fundamental rights to political speech and association; imposed an undue burden, in violation of the First and Fourteenth Amendments, on the rights of speech and association and the right to vote of Ohio citizens who register to vote through voter registration drives; resulted in the denial or abridgement of the right to vote of Ohio citizens on account of race or color, in violation of Section 2 of the Voting Rights Act; required the inclusion on the Ohio voter registration form of information not “necessary to enable the appropriate State election official to assess the eligibility of the applicant,” in violation of the National Voter Registration Act (“NVRA”), 42 U.S.C. § 1973-gg7(b)(1); and impeded voter registration drives, in conflict with the purpose of the NVRA . Plaintiffs sought a preliminary and permanent injunction enjoining the enforcement of the challenged provisions of Ohio Rev. Code §§ 3503.14, 3503.19, 3503.28, 3503.29, and 3599.11, as well as a declaration that those provisions violate federal law.

Plaintiffs filed their complaint only after making substantial efforts to achieve an administrative resolution that would protect their First and Fourteenth Amendment rights and avoid litigation. On April 28, 2006, seeking a definitive interpretation of certain of the statutes at issue, plaintiff ACORN wrote to Defendant Blackwell seeking an interpretation of several of the challenged provisions in order to ensure that those provisions would not interpreted consistent with federal law. Through counsel, ACORN also contacted legal counsel to the Office of the Secretary of State to request an interpretation that would avoid the constitutional infirmities ultimately identified by this Court. Instead of fulfilling plaintiffs’ request, the Office of the Secretary of State later posted materials on its web site that mandated the onerous burdens this

Court later declared unconstitutional. During the following two weeks plaintiffs, through counsel, repeatedly contacted defendant's legal counsel and requested a revision of the website materials in order to fulfill the requirements of federal law and avoid litigation. Defendant's counsel responded that the Secretary of State would not take a position on the law's interpretation, despite the fact that the materials published on the website appeared to do so. Plaintiffs again wrote to the Secretary of State, as well as to the State Attorney General, seeking a non-judicial resolution of this issue and assurances that the statute would not be interpreted in violation of plaintiffs' constitutional rights. Both the Secretary of the State and the Attorney General refused to offer a clarification of the law and its potential effect on plaintiffs' voter registration activities. The Secretary of State also refused to adequately respond to the questions raised by plaintiffs' letter. This inaction compelled plaintiffs to seek judicial intervention to protect their rights.

Following an oral hearing on September 1, 2006, this Court held that the challenged portions of Ohio Rev. Code §§ 3503.14, 3503.19, 3503.28, 3503.29, and 3599.11 and the Secretary of State's interpretation of those provisions were likely unconstitutional and that certain of those provisions likely violated the NVRA and orally granted a preliminary injunction blocking their enforcement. (September 1, 2006 Minutes of proceedings, ECF DKT #44.) On September 8, 2006, this Court entered a written order granting plaintiffs' application for a preliminary injunction. (September 8, 2006, ECF DKT #45.) On July 13, 2007, plaintiffs moved for partial summary judgment. (July 13, 2007, ECF DKT #57.) This Court granted that motion on February 11, 2008, providing plaintiffs all the relief they sought in this litigation. (February 11, 2008, ECF DKT #60.) As prevailing parties, plaintiffs are entitled to reasonable

attorneys' fees and costs under federal civil rights fee shifting statutes. *See* 42 U.S.C. §§ 1973l(e), 1988(b).

**I. PLAINTIFFS ARE PREVAILING PARTIES ENTITLED TO AN AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS**

The federal civil rights fee shifting statutes provide for awards of attorneys' fees and costs to plaintiffs who prevail in civil rights suits, including suits to enforce First Amendment and voting rights. *See* 42 U.S.C. § 1973l(e) (providing for fees and litigation expenses in actions “to enforce the voting guarantees of the fourteenth or fifteenth amendment”); 42 U.S.C. § 1988(b) (providing for “reasonable attorney’s fee” for prevailing parties in suits brought under 42 U.S.C. § 1983).<sup>1</sup> Because plaintiffs have prevailed in their claims and achieved all the relief they sought, and as there is no special circumstance which would render an award unjust in this case, plaintiffs are entitled to an award of reasonable attorneys' fees and costs.

**A. Plaintiffs Are Prevailing Parties**

Plaintiffs are prevailing parties within the meaning of the fee statutes, 42 U.S.C. §§ 1988 and 1973l(e), “if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (quoting *Nadeau v. Helgemoe*, 581 F.2d 275, 278-79 (1st Cir. 1978)); *see also DiLaura v. Twp. of Ann Arbor*, 471 F.3d 666, 670 (6th Cir. 2006) (same). The *Hensley* formulation is “generous” to plaintiffs, *id.* at 433, because it is designed to effectuate Congress’s intent “to ensure ‘effective access to the judicial process’ for persons with civil rights grievances.” *Id.* at 429 (quoting H.R.

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<sup>1</sup> Because 42 U.S.C. §§ 1973l(e) and 1988 contain nearly identical language and serve the same congressional purposes, courts construe the sections similarly. *Hensley v. Eckerhart*, 461 U.S. 424, 433 n.7 (1983). Fees are appropriate here under both sections. Attorneys' fees are also appropriate under 42 U.S.C. § 1973gg-9(c), which provides for fees for a prevailing party who brings suit under the National Voter Registration Act. The same standards apply to fees recovered under all three sections. *See, e.g., Nat'l Coal. for Students with Disabilities v. Bush*, 173 F. Supp. 2d 1272, 1276 (D. Fla. 2001)

Rep. No. 94-1558, at 1 (1976)); *see also* *Dubay v. Wells*, 506 F.3d 422, 433 (6th Cir. 2007) (purpose of § 1988 “is to ensure that civil rights plaintiffs will not be financially deterred from vindicating their rights by the prospect of attorney costs which greatly exceed their potential recovery.”); *Louisville Black Police Officers Org. v. Louisville*, 700 F.2d 268, 278 (6th Cir. 1983) (purpose of fee statute is “to make an award of fees which is ‘adequate to attract competent counsel’” (*quoting* S. Rep. No. 94-1011, *reprinted in* 1976 U.S.C.C.A.N. 5908)); *Doe v. Busbee*, 684 F.2d 1375, 1379 (11th Cir. 1982) (“The congressional purpose in authorizing awards of attorney’s fees to plaintiffs as prevailing parties was to assist private attorneys general in vindicating civil rights.”).

In *Texas State Teachers Ass’n v. Garland Independent School District*, 489 U.S. 782 (1989), the Supreme Court reaffirmed the *Hensley* standard and further explained that “to be considered a prevailing party within the meaning of § 1988, the 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; *see also* *Buckhannon Bd. & Care Home v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 604 (2001) (“enforceable judgments on the merits and court-ordered consent decrees create the ‘material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees (*quoting* *Tex. State Teachers Ass’n*, 489 U.S. at 792-93)); *Farrar v. Hobby*, 506 U.S. 103, 111 (1992) (“to qualify as a prevailing party [entitled to fees], a civil rights plaintiff must obtain at least some relief on the merits . . . [and] obtain an enforceable judgment against the defendant from whom fees are sought”).

There can be no reasonable dispute that the above-captioned lawsuit has been resolved in favor of plaintiffs in such a way as to change the legal relationship between the parties. As a result of this Court’s orders, defendants are no longer entitled to enforce the challenged

provisions of Ohio Rev. Code §§ 3503.14, 3503.19, 3503.28, 3503.29, and 3599.11, as well as all administrative regulations and practices enforcing or interpreting these provisions, against plaintiffs, their members, or other Ohio registration groups or voters. Indeed, plaintiffs have achieved all of the benefits they sought by bringing this lawsuit; the offending provisions of Ohio Rev. Code §§ 3503.14, 3503.19, 3503.28, 3503.29, and 3599.11 have been declared unconstitutional and their enforcement has been permanently enjoined. Under these circumstances, plaintiffs are prevailing parties for the purposes of §§1988 and 1973l entitled to a fee award. *See DiLaura*, 471 F.3d at 671 (“[I]f the party points to success on a significant issue leading to a material legal alteration between the parties, then that party has crossed the ‘statutory threshold’ into prevailing party status.”).

**B. No Special Circumstances Here Render an Award of Fees and Costs Unjust**

Where a party prevails in a civil rights suit, the District Court’s discretion in determining whether to award fees is narrowly limited. *See Kissinger v. Bd. of Trs. of Ohio State Univ.*, 5 F.3d 177, 179 (6th Cir. 1993) (“Although the statute states that the award of attorneys’ fees is discretionary, they should normally be granted if a plaintiff prevails.”). As the Supreme Court held in *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 (1968), a prevailing party “should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.” *Accord Hensley*, 461 U.S. at 429; *N.Y. Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 68 (1980). The “special circumstances” exception is narrowly construed so as not to interfere with the purposes of the fee statutes to encourage civil rights enforcement, penalize obstructive litigation by civil rights defendants, and deter civil rights violations. *See Pruett v. Harris County Bail Bond Bd.*, 499 F.3d 403, 417 (5th Cir. 2007); *Hatfield v. Hayes*, 877 F.2d 717, 720 (8th Cir. 1989). As courts have repeatedly recognized, “Awards of attorney fees are an integral part of the

remedies necessary to obtain compliance with the civil rights laws.” *Price v. Pelka*, 690 F.2d 98, 101-02 (6th Cir. 1982); *see also Alexander S. v. Boyd*, 929 F. Supp. 925, 932 (D.S.C. 1995) (award of attorneys’ fees “should comport with the underlying purpose of” fee statute, “which is to provide civil rights litigants effective access to the federal courts”); *Bagby v. Beal*, 606 F.2d 411, 416 (3d Cir. 1979) (“The court also should evaluate the fee to be awarded in light of the substantive purposes of the civil rights statute relied upon by the plaintiff.”).

The burden is on those opposing fees to establish the existence of special circumstances that would render an award unjust. In the Sixth Circuit, the defendant bears the burden of making a “strong showing” of special circumstances sufficient to warrant denying fees. *Deja Vu of Nashville, Inc. v. Metro. Gov’t*, 421 F.3d 417, 422 (6th Cir. 2005); *see also Morscott, Inc. v. Cleveland*, 936 F.2d 271, 272-273 (6th Cir. 1991).<sup>2</sup> No special circumstances exist in this case that would render an award unjust.

## **II. PLAINTIFFS HAVE PROPERLY COMPUTED THE FEE AWARD TO WHICH THEY ARE ENTITLED**

Attorneys’ fees are properly determined through the lodestar method of multiplying the number of hours the attorneys for the prevailing party “reasonably expended on the litigation” by “a reasonable hourly rate.” *Hensley*, 461 U.S. at 433; *Geier v. Sundquist*, 372 F.3d 784, 791 (6th Cir. 2004); *Wayne v. Village of Sebring*, 36 F.3d 517, 531 (6th Cir. 1994). This amount, or

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<sup>2</sup> In applying the “strong showing” standard, courts have rejected defenses of special circumstances based on the fact that an award would “fall on the taxpayers,” *Johnson v. Mississippi*, 606 F.2d 635, 637 (5th Cir. 1979), that defendants “were merely performing their duty by enforcing the statute,” *id.*; that the law was uncertain, *Gomez-Arauz v. McNary*, 779 F. Supp. 1308, 1312 (D. Okla. 1991), or that a defendant acted in “good faith,” *Morscott, Inc. v. Cleveland*, 936 F.2d 271, 273 (6th Cir. 1991). Courts have also rejected special circumstances defenses based on a plaintiff’s ability to bring suit without a fee award, *Ellwest Stereo Theater, Inc. v. Jackson*, 653 F.2d 954, 956 (5th Cir. 1981), and the mere existence of a contingent fee contract between the plaintiffs and their attorney, *Hamner v. Rios*, 769 F.2d 1404, 1407 (9th Cir. 1985).

“lodestar,” *id.*, is “presumed to be the reasonable fee.” *Blum v. Stenson*, 465 U.S. 886, 897 (1984); *see also Imwalle v. Reliance Med. Prods., Inc.*, No. 06-4619, 2008 WL 340450, at \*16 (6th Cir. Feb. 8, 2008) (“Where the party seeking the attorney fees has established that the number of hours and the rate claimed are reasonable, the lodestar is presumed to be the reasonable fee to which counsel is entitled.”); *Building Serv. Local 47 Cleaning Contractors Pension Plan v. Grandview Raceway*, 46 F.3d 1392, 1401 (6th Cir. 1995) (“There is a strong presumption that this lodestar figure represents a reasonable fee” (internal quotation marks omitted)).

As discussed further below, the declarations and exhibits submitted with this motion demonstrate that the number of hours for which plaintiffs seek an award is reasonable. They also show that plaintiffs’ attorneys are requesting a reasonable hourly rate. Accordingly, plaintiffs have calculated a figure that is presumed to be reasonable. A computation of the fee award to which plaintiffs are entitled is attached as Exhibit A.

In assessing the reasonableness of a fee award, courts also look to the factors identified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974).<sup>3</sup> *See Hensley*, 461 U.S. at 429-30; *Isabel v. City of Memphis*, 404 F.3d 404, 415 (6th Cir. 2005). In *Johnson*, the plaintiff challenged as inadequate the district court’s award of attorneys’ fees in his successful employment discrimination case. The Fifth Circuit, in reviewing the fee award, was troubled by the judgment’s failure to “elucidate the factors which contributed to the decision and upon which it was based.” *Johnson*, 488 F.2d at 717. The *Johnson* court articulated twelve

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<sup>3</sup> “Although the relied-upon *Johnson* case has been abrogated, its twelve-factor test remains good law.” *Sniffen v. Spectrum Indus. Servs.*, No. 2:06-cv-622, 2007 U.S. Dist. LEXIS 55013, at \*3 n.1 (S.D. Ohio Jul. 30, 2007). The *Johnson* factors are specifically referenced in the House and Senate reports accompanying the original enactment of 42 U.S.C. § 1988. *See Hensley*, 461 U.S. at 429-30 & n.4.

guidelines for the district court to consider upon remand. *Id.* at 717-19. The *Johnson* factors are: (1) time and labor expended; (2) novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorneys' opportunity costs in pressing the litigation; (5) the customary fee for similar work; (6) the attorneys' expectations at the outset of litigation; (7) time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) experience, reputation and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the attorney-client relationship; and (12) fee awards in similar cases.

Overall, "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." *Hensley*, 461 U.S. at 435. In this case, plaintiffs obtained complete success and thus are entitled to a fully compensatory fee.

**A. Plaintiffs' Counsel Spent a Reasonable Number of Hours and Exercised Appropriate Billing Judgment**

Plaintiffs seek compensation for time reasonably expended in prosecuting this lawsuit—a total of \_\_ attorney hours. Counsel have submitted detailed declarations setting forth with particularity the tasks they performed and the time devoted to each task, based on contemporaneous time records. (James Decl.; McTigue Decl.; Mellor Decl.; Nayak Decl.; Paradis Decl.; Sandstrom Decl.; Weiser Decl.)

All the hours claimed were spent developing the factual background, the legal theories, the legal strategies, the papers, and the oral argument in the case, as well as communicating with plaintiffs, defendants, and the Court, and should be fully compensable.<sup>4</sup> In addition, each

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<sup>4</sup> Plaintiffs are also seeking compensation for the time spent preparing this application for fees. It is well-established law in the Sixth Circuit that plaintiff is entitled to an award of fees for time reasonably spent in litigating the attorney's fees application if plaintiff does receive a fee award. *See Weisenberger v. Huecker*, 593 F.2d 49, 53-54 (6th Cir. 1979).

attorney has exercised billing discretion and has voluntarily reduced the hours claimed. Counsel have also excluded the time of several attorneys, paralegals, and legal assistants.

Although plaintiffs were represented by several attorneys, it is not unreasonable for more than one lawyer to appear in a case, and fees may not be denied or discounted merely on that basis. *Avalon Cinema Corp. v. Thompson*, 689 F.2d 137, 139 (8th Cir. 1982); *see also Norman v. Hous. Auth.*, 836 F.2d 1292, 1302 (11th Cir. 1988) (“There is nothing inherently unreasonable about a client having multiple attorneys, and they may all be compensated if they are not unreasonably doing the same work and are being compensated for the distinct contribution of each lawyer.”). Indeed, a complex case will often require multiple attorneys. *Kim v. Fukikawa*, 871 F.2d 1427, 1435 n.9 (9th Cir. 1989). A party may recover fees for multiple attorneys so long as the work is not unreasonably duplicative, as where more than one attorney does the same work. *Johnson v. Univ. College*, 706 F.2d 1205, 1208 (11th Cir. 1983) (“An award for time spent by two or more attorneys is proper as long as it reflects the distinct contribution of each lawyer to the case and the customary practice of multiple-lawyer litigation.”). The time records submitted by plaintiffs’ counsel in this case show that there was no unreasonable duplication, as plaintiffs’ lawyers each performed different tasks.<sup>5</sup> Moreover, plaintiffs’ lawyers brought a diverse range of relevant experience and expertise: a national public interest law firm known for its expertise on voting rights and First Amendment issues, including in the voter registration context, and which was litigating a similar case in another state; a national law firm with extensive expertise in campaign and election matters; a well known Ohio-based law practice

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<sup>5</sup> While it is true that several of plaintiffs’ attorneys billed for the same telephone conference in which more than one attorney participated, it is customary, reasonable, and appropriate to bill for necessary consultation and strategizing among co-counsel. *See, e.g., Nat’l Ass’n of Concerned Veterans v. Sec’y of Defense*, 675 F.2d 1319, 1337 (D.C. Cir. 1982); *Emmenegger v. Bull Moose Tube Co.*, 33 F. Supp. 2d 1127, 1139 (E.D. Mo. 1998).

with extensive expertise in Ohio election law; and in-house attorneys for the lead plaintiff who have extensive expertise on voter registration. The complexity, novelty, and expedited nature of the litigation, as well as the large number of plaintiffs involved, clearly warranted the use of multiple attorneys.

Plaintiffs' counsel also properly submits records for time spent seeking an administrative resolution to the issues in this case. Plaintiffs' counsel attempted to obtain from the defendant Secretary of State a definitive interpretation of the statutory language at issue that would avoid a reading in violation of federal law. When the Secretary of State's office ultimately published its interpretation, plaintiffs' counsel repeatedly sought clarification regarding its application to the plaintiffs. It would be proper for this Court to award attorneys' fees for plaintiffs' counsel's attempts to obtain an administrative resolution and thereby avoid litigation. *See Chandler v. Vill. of Chagrin Falls*, No. 1:03CV2057, 2007 WL 43642, at \*2-5 (N.D. Ohio Jan. 5, 2007) (awarding attorney fees for counsel's time prior to litigation "at administrative hearings and meetings at the village level").

In considering whether the amount of time spent by plaintiffs attorneys' was reasonable, counsel's sworn testimony that they actually expended the time for which compensation is sought is given considerable weight. *Perkins v. Mobile Hous. Bd.*, 847 F.2d 735, 738 (11th Cir. 1988) ("Sworn testimony that, in fact, it took the time claimed is evidence of considerable weight on the issue of the time required in the usual case. . . ."). To deny compensation, "it must appear that the time claimed is obviously and convincingly excessive under the circumstances." *Id.* Moreover, the standard for determining whether attorney time is time "reasonably" spent is not a rule of perfect hindsight, but "whether a reasonable attorney would have believed the work to be reasonably expended in pursuit of success at the point in time when the work was

performed.” *Wooldridge v. Marlene Indus. Corp.*, 898 F.2d 1169, 1177 (6th Cir. 1990), *abrogated in nonrelevant part by Buckhannon*, 532 U.S. at 598.

The number of hours for which plaintiffs seek compensation is reasonable for counsel’s efforts in this matter, especially in light of the *Johnson* factors—including the labor required, the complexity and novelty of the legal issues, the time limitations under which counsel worked, the experience, reputation, and abilities of the nationally known attorneys in the case, and the excellent results obtained. *See infra*, part C.

#### **B. The Hourly Rate Sought for Each Attorney Is Reasonable**

The appropriate hourly rate is the “prevailing market rate[] in the relevant community, regardless of whether plaintiff is represented by private or non-profit counsel.” *Blum*, 465 U.S. at 895. It is irrelevant whether plaintiffs’ lawyers are private practitioners or work for public interest organizations and do not charge a fee; fees are calculated for both in the same manner. *Blanchard v. Bergeron*, 489 U.S. 87, 95 (1989); *Blum*, 465 U.S. at 895; *Bills v. Hodges*, 628 F.2d at 847; *see also Johnson v. City of Clarksville*, 2007 U.S. App. LEXIS 28820, at \*4 (6th Cir. Dec. 7, 2007). In addition, Congress intended the amount of fees under the fee-shifting statutes to be “governed by the same standards which prevail in other types of equally complex federal litigation, such as antitrust cases.” *Blum*, 465 U.S. at 893 (*quoting* S. Rep. No. 94-1011, *reprinted in* 1976 U.S.C.C.A.N. 5908). Thus, the hourly rate is determined by examining the rate that lawyers of similar skill, reputation, and experience would charge fee-paying clients in similarly complex litigation in the relevant geographic area. *Id.* at 895-96 & n.11; *see also Missouri v. Jenkins*, 491 U.S. 274, 286 (1989); *Geier*, 372 F.3d at 791; *Fuhr v. Sch. Dist. of Hazel Park*, 364 F.3d 753, 762 (6th Cir. 2004).

As a general rule, the relevant community for determining appropriate fee levels is “the jurisdiction where the case was tried.” *Horace v. City of Pontiac*, 624 F.2d 765, 770 (6th Cir. 1980). However, as the Sixth Circuit has made clear, “District courts are free to look to a national market, an area of specialization market or any other market they believe appropriate to fairly compensate particular attorneys in individual cases.” *Louisville Black Police Officers Org.*, 700 F.2d at 278. “Focusing on the fair market value of the attorney's services will best achieve” the statutory goal of attracting competent counsel. *Id.* Other circuits have also affirmed the use of rates outside the forum when necessary to attract attorneys with the “degree of experience, expertise, or specialization” demanded by a particular case. *Gates v. Deukmejian*, 987 F.2d 1392, 1405 (9th Cir. 1992); *see also McDonald v. Armontrout*, 860 F.2d 1456, 1459-61 (8th Cir. 1988); *Maceira v. Pagan*, 698 F.2d 38, 40 (1st Cir. 1983); *Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 768-69 (7th Cir. 1982).

The rates requested in this case are: \$500.00 for Robert F. Bauer and Karl J. Sandstrom; \$450.00 for Donald J. McTigue; \$375.00 for Marc E. Elias; \$350.00 for Wendy Weiser; \$300.00 for Brian Mellor; \$250.00 for Mark A. McGinnis; \$250.00 for Scott H. Gingold; \$240.00 for Ezra W. Reese; \$235.00 for Renee Paradis and Raj Nayak; \$200.00 for Teresa James; \$175.00 for Patricia A. Alexander, Susan L. Cochard, and Lauren J. Lowe; \$155.00 for Kerri-Ann N. Anderson and Christopher R. Johnson; \$140.00 for Margaret Chen, Heather McGhee, and John Infranca, and \$110.00 for Ellen Hepner. These rates are consistent with the rates charged by attorneys with comparable litigation experience in Ohio. (*See* Hollenbaugh Decl. ¶ 6.) In addition, many of the attorneys are nationally known experts in voting rights; constitutional law, particularly First and Fourteenth Amendment speech and association rights doctrine in the political context; and election law, and hence could command even higher rates.

**C. Plaintiffs' Request Is Especially Reasonable In Light of the *Johnson* Factors.**

The *Johnson* factors weigh in favor of a high fee award for plaintiffs in this case. For example, the second and third *Johnson* factors, which consider the novelty and complexity of the issues and the skill required to properly perform the legal services rendered, strongly support plaintiffs' request. The issues in this case were complex, requiring knowledge of constitutional and statutory jurisprudence in the areas of First and Fourteenth Amendment political speech and association rights and voting rights, as well as an understanding of election administration. These multiple areas of law were applied in a novel setting, to challenge an unprecedented law regulating voter registration drives. The case required a high degree of skill in order for counsel to prosecute it on an expedited basis, in the limited time period between the date of Secretary of State Blackwell's interpretation of the challenged laws and the 2006 voter registration season.

The other *Johnson* factors also weigh heavily in favor of a substantial award. Plaintiffs undeniably achieved excellent results in this litigation—a complete victory—as contemplated in the eighth *Johnson* factor. Although the case may not have been inherently undesirable, the short time frame in which it had to be prosecuted suggests that the tenth *Johnson* factor also weighs in favor of a substantial award. Finally, the ninth *Johnson* factor, which considers the “experience, reputation and ability” of the attorneys, also strongly supports a substantial award. The plaintiffs' attorneys include a number of nationally known litigators in the area of election law, voting rights and constitutional rights, particularly the application of First and Fourteenth Amendment speech and association rights to the election context. (Sandstrom Decl. ¶ 3; Weiser Decl. ¶¶4-5.) They also include individuals with extensive experience litigating election law cases, and other cases, in Ohio generally and in the Northern District of Ohio in particular.

(Weiser Decl. ¶¶ 4-5.) The trial counsel is the former Chief Elections Counsel to the Ohio Secretary of State and former Counsel to the Ohio Elections Commission.

### **III. PLAINTIFFS ARE ENTITLED TO RECOVER THE EXPENSES THEY REASONABLY INCURRED IN PROSECUTING THIS LAWSUIT**

Plaintiffs seek to recover statutory costs under 28 U.S.C. §§ 1821 and 1920 and the fee statutes in the total amount of \$452,705.59.

The “court’s authority to award reasonable attorney’s fees includes the authority to award those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services.” *Citizens Against Pollution v. Ohio Power Co.*, 484 F. Supp. 2d 800, 815 (S.D. Ohio 2007) (internal quotation marks omitted); *Brooks v. Ga. State Bd. of Elections*, 997 F.2d 857, 861 n.3 (11th Cir. 1993) (“[t]he fee statutes provide for the reimbursement of reasonable costs incurred as well as the award of attorney’s fees”); *Dowdell v. Apopka*, 698 F.2d 1181, 1190 (11th Cir. 1983) (“Reasonable attorneys’ fees under the Act must include reasonable expenses because attorneys’ fees and expenses are inseparably intertwined as equally vital components of the costs of litigation”); *Ramos v. Lamm*, 713 F.2d 546, 559 (10th Cir. 1983) (“Items that are normally itemized and billed in addition to the hourly rate should be included in fee allowances in civil rights cases if reasonable in amount.”); *Pinkham v. Camex, Inc.*, 84 F.3d 292, 294-95 (8th Cir. 1996) (“reasonable out-of-pocket expenses of the kind normally charged to clients by attorneys [] should have been included as part of the reasonable attorney’s fees awarded”).

Items such as photocopying charges, fees of process servers, fax and telephone costs, travel, telephone, postage, and paralegal, secretarial, and law clerk costs have been expressly held to be compensable under the fee shifting statutes. *Jenkins*, 491 U.S. at 289; *Sussman v. Patterson*, 108 F.3d 1206, 1213 (10th Cir. 1997) (allowing recovery of the costs of “items such

as photocopying, mileage, meals, and postage”); *Trimper v. City of Norfolk*, 58 F.3d 68, 75 (4th Cir. 1995) (compensable litigation expenses include “secretarial costs, copying, telephone costs and necessary travel”); *Dowdell*, 698 F.2d at 1192 (“[t]ravel, telephone, and postage expenses . . . have been awarded in the decisions of the courts of this circuit”).

In this case, plaintiffs seek to recover their attorneys’ travel costs and secretarial and law clerk costs—all of which have been held to be recoverable. The costs incurred are documented in the attorneys’ declarations and in the supporting documents.

### **Conclusion**

Plaintiffs are entitled to recover their costs and to be fully compensated for the time spent in this litigation. Accordingly, plaintiffs respectfully request that this Court award them attorneys’ fees in the amount of \$450,002.00 and costs in the amount of \$10,803.59.

Respectfully submitted,

/s/ Donald J. McTigue

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**Certificate of Service**

This is to certify that a copy of the foregoing was served upon all counsel of record via electronic filing on March 24, 2008.

/s/ Donald J. McTigue

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