

**UNITED STATES DISTRICT COURT  
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,  
SECRETARY OF STATE,**

**Defendant.**

**Case No. 1:06-CV-01628**

**Judge Kathleen M. O'Malley**

**Magistrate Judge Perelman**

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**PLAINTIFFS' REPLY TO DEFENDANT'S MEMORANDUM CONTRA PLAINTIFFS'  
MOTION FOR COSTS AND ATTORNEYS' FEES**

Plaintiffs Project Vote *et al.* respectfully seek an order awarding them costs and attorneys' fees incurred in conjunction with successfully litigating this matter. As amply supported by the declarations submitted with the Plaintiffs' Motion for Costs and Attorneys'

Fees and supplemented by the declaration submitted with this Memorandum, the attorneys' fees and costs sought by Plaintiffs are reasonable. Contemporaneous time records provide detailed information pertaining to the hours spent on research, drafting, and other activities in connection with this litigation; these hours were reasonably expended to litigate this matter effectively. Moreover, as Plaintiffs' documentation shows, the rates sought are consistent with the prevailing market rate for attorneys of comparable skill and experience.

Contrary to Defendant's assertion, the fee request is fully documented and was filed in good faith. Nothing in the record supports the allegation that the request was either "grossly and intolerably exaggerated" or "so exorbitant as to shock the conscience of the court." There is therefore no basis for the imposition of the unusual sanction Defendant seeks: the complete denial of Plaintiffs' fees and costs. Defendant's argument is particularly inappropriate given Defendant's agreement, after reviewing Plaintiffs' Motion for Costs and Attorneys' Fees and accompanying documentation, not to request a hearing or seek discovery. Plaintiffs repeatedly sought to resolve this dispute outside of court, including in Defendant's administrative process; Defendant's rejection of those attempts necessitated the more extensive attorney time required to prepare, file and argue Plaintiffs' case in court.

This Court should reject Defendant's unreasonable demand that Plaintiffs' request be denied in its entirety and grant Plaintiffs the full fees and costs to which they are entitled.

**I. No Circumstances Exist Which Justify the Denial of Plaintiffs' Fee Application**

Plaintiffs' fee request is fully substantiated; there is no evidence supporting Defendant's claim that the request is "grossly and intolerably exaggerated" nor was the request filed in bad faith. Outright denial of a prevailing party's fee request is a "stringent sanction" that must be "reserved for only the most severe situations, and appropriately invoked only in very limited

circumstances.” *Jordan v. U.S. Dept. Of Justice*, 691 F.2d 514, 518 (D.C. Cir. 1982). In the rare case, following *Brown v. Stackler*, 612 F.2d 1057, 1059 (7th Cir. 1980), where such a severe sanction is justified, courts have cited the party’s failure to “proffer any substantiation in the form of affidavits [or] timesheets”, *Jordan*, 691 F.2d at 518, or a request that is “so outrageously excessive it ‘shock[s] the conscience of the court.’” *Fair Housing Council of Greater Washington v. Landow*, 999 F.2d 92, 96 (4th Cir. 1993) (quoting *Sun Publ’g Co., Inc. v. Mecklenburg News, Inc.*, 823 F.2d 818, 819 (4th Cir. 1987)).

This case presents no circumstance warranting denial of Plaintiffs’ fee request. The cases Defendant cites involve circumstances simply not present here. For instance, in *Lewis v. Kendrick*, 944 F.2d 949, 954-56 (1st Cir. 1991), the court relied almost exclusively on the fact that the plaintiff achieved only limited success on her claims. *See also Mendez v. County of San Bernardino*, No. 04-7131, 2007 U.S. Dist. LEXIS 75495 (C.D. Cal. May 21, 2007) (“[T]he fee request is staggering in light of the issues prevailed upon at trial and the actual amount of damages recovered by Plaintiff.”) Here, in contrast, Plaintiffs secured all the relief they sought in their Complaint: a declaratory judgment and an injunction enjoining enforcement of an unconstitutional law that burdened their First Amendment rights and would have prevented many thousands of voters from exercising their fundamental right to vote.

Other cases cited by Defendant are inapposite because they rely on the plaintiff’s failure to “proffer any substantiation in the form of affidavits [or] timesheets,” *Jordan*, 691 F.2d at 518; *see also Fair Housing Council*, 999 F.2d at 97 (referring to plaintiff’s “woefully inadequate time records”); *Keener v. Dept. of the Army*, 136 F.R.D. 140, 149 (M.D. Tenn. 1991) (denial is appropriate only “in very rare situations,” including where it is “wholly undocumented”; describing plaintiff’s counsel’s records as “haphazard”). By way of contrast, Plaintiffs’ attorneys

have submitted multiple affidavits, each of which includes detailed timesheets accounting for each of the hours spent in the matter. To satisfy the substantiation standard, “no more is necessary than ‘fairly definite information as to the hours devoted to various general activities, e.g., pretrial discovery, settlement negotiation, and the hours spent by various classes of attorneys.’” *Jordan*, 691 F.2d at 520 (quoting *Copeland v. Marshall*, 641 F.2d 880, 891 (D.C. Cir. 1980)). Plaintiffs’ time records go well beyond that level of specificity, breaking out hours spent on particular tasks by individual attorneys.

The remaining cases cited by Defendant present novel issues not present here, and are therefore irrelevant. In *Brown* itself, the plaintiffs had filed a six-page complaint “rais[ing] an issue which everyone knew would be controlled by the results of litigation pending in other courts,” and then waited for the Supreme Court to issue a favorable opinion. 612 F.2d at 1058.<sup>1</sup> Their counsel then claimed 800 hours of billable time for the case. *Id.*<sup>2</sup> In *Sun Publishing Co.*, the plaintiff successfully recovered \$279,850.68 on its original fee petition and then an additional \$18,517.94 on a supplemental fee petition for fees incurred preparing the initial petition. The defendant moved for reduction, based on the threat of bankruptcy; after a short hearing, the district court rejected the challenge. The plaintiff then moved for yet another \$41,826.21 in fees incurred in opposing the reduction motion; it was only this final amount that the district court disallowed. 823 F.2d at 819. And in *Scham v. District Courts Trying Criminal Cases*, 148 F.3d 554 (5th Cir. 1998), counsel asked for an hourly rate more than *seven* times greater than the appropriate rate.

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<sup>1</sup> Defendant’s suggestion (Def. Mem. 10) that somehow the *Brown* case and the instant case are comparable because they both involve constitutional challenges is easily dismissed; here, Plaintiffs filed an utterly novel complaint and succeeded through their own efforts.

<sup>2</sup> Similarly, in *Budget Rent-A-Car Sys., Inc. v. Consolidated Equity LLC*, 428 F.3d 717, 718 (7th Cir. 2005), the party moving for fees had only submitted a four-page jurisdictional memo that succeeded in having the appeal dismissed before briefing. The fee motion was based on Fed. R. App. P. 38, rather than 42 U.S.C. § 1988.

## **II. Plaintiffs' Request for Fees and Costs Is Reasonable and Should Be Granted**

### **A. Plaintiffs' Fee Request is Justified By the Extraordinary Results Achieved, the Complexity of the Case, and the Novelty of the Issues Presented**

This case, at the time it was filed, was a matter of first impression in the nation. No court had previously ruled on whether voter registration drives are protected by the First Amendment, or whether restrictions on such drives violate the National Voter Registration Act (“NVRA”). Many of the provisions of Ohio law successfully challenged in this case had no precedent in other states’ laws. Moreover, Plaintiffs were required to work on an expedited schedule in order to secure relief that would enable Plaintiffs to successfully implement their voter registration programs in 2006 – a task made even more challenging by the burdensome interpretation of the challenged “direct return” provision issued by Defendant Blackwell. Fortunately, this Court granted total relief from the offending provisions, thereby allowing plaintiffs to register thousands of new voters in time for the November elections.

The amount of fees requested is consistent with a matter of such legal and factual complexity. The numerous legal and factual issues presented in the case required a detailed understanding of the voter registration system in the state of Ohio and in many Ohio counties, a comprehensive review of comparable systems in other states, and a thorough grasp of several complex areas of federal jurisprudence, including the First Amendment and Equal Protection Clause, the Voting Rights Act, and NVRA. To litigate this matter effectively, Plaintiffs’ attorneys were required to research and develop the numerous ways in which the challenged law interfered with the activities of eight different plaintiffs, to develop persuasive legal arguments to address each injury, to conduct extensive factual and legal research to develop those arguments, to draft a lengthy complaint and motion for preliminary injunction, to compile supporting exhibits, to help prepare and review affidavits from each of the Plaintiffs, and to prepare for and

conduct oral argument. Because there was such limited time to obtain relief, these preparations had to be extremely thorough so as to enable Plaintiffs' counsel to put on their case at a hearing or trial on short notice.

Given the numerous legal and factual issues presented in the case in addition to the varied interests of the separate Plaintiffs, it is to be expected that the case would merit fee requests from multiple attorneys. *See Johnson v. Univ. College*, 706 F.2d 1205, 1208 (11th Cir. 1983). The use of "a team of attorneys who divide up the work is common today for both plaintiff and defense work" and is "not a ground for reducing the hours claimed." *Id.*; *see also Rodriguez-Hernandez v. Miranda-Velez*, 132 F.3d 848, 860 (1st Cir. 1988) ("[c]areful preparation often requires collaboration and rehearsal"). Many of the Plaintiffs had different interests in the litigation and were necessarily represented by different attorneys. While "double compensation" should not be granted for work that is unnecessarily duplicative, a reduction in fees is "warranted only if the attorneys are *unreasonably* doing the *same* work. 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." *Johnson*, 706 F.2d at 1208.

As detailed below, as well as in the declarations submitted with Plaintiffs' motion, each attorney involved in the case provided a distinct contribution. Tasks were divided among attorneys in order to avoid duplication and to maximize efficiency during the relatively short period of time available. *See Planned Parenthood of Cent. N.J. v. Attorney Gen'l of N.J.*, 297 F.3d 253, 272 (3d Cir. 2002) (rejecting allegation of overstaffing where "various attorneys were assigned specific tasks"). The new voter registration restrictions at issue in the case were signed into law by the Ohio Governor on January 31, 2006, and became effective on May 2, 2006. Emergency and draft regulations seeking to implement the restrictions were issued on May 1,

2006. The deadline for voter registration prior to the general election was October 10, 2006. Plaintiffs therefore had only a limited period of time to seek injunctive and declaratory relief before the implementation of the restrictions would significantly impede Plaintiffs' voter registration efforts.

Plaintiffs' attorneys adopted further procedures customary to multiple-lawyer litigation. To conserve time and limit costs, interns and junior attorneys took responsibility for the majority of the legal research, as well as the preliminary drafting of the pleadings. As is customary, senior attorneys reviewed and edited the work product of interns and junior attorneys. It would have been contrary to standards of professional responsibility to fail to provide adequate supervision. Fees incurred for the purpose of such supervision and collaboration among attorneys is properly recoverable. *See, e.g., Nat'l Ass'n of Concerned Veterans v. Sec'y of Defense*, 675 F.2d 1319 (D.C. Cir. 1982) (approving time spent by senior attorneys conferring with subordinates); *Planned Parenthood*, 297 F.3d at 272; *Rodriguez-Hernandez*, 132 F.3d at 860 ("Time spent by two attorneys on the same general task is not ... *per se* duplicative."). Where appropriate in the exercise of ordinary billing judgment, some time was reduced or discounted to avoid duplication. (McTigue Decl. ¶ 6; Sandstrom Decl. ¶ 7; Weiser Decl. ¶ 12.)

Although efforts were made to conserve costs and to provide legal services in a cost-efficient manner, Plaintiffs are not required to select "the nearest and cheapest attorney" available. *Dowdell v. City of Apopka, Florida*, 698 F.2d 1181, 1192 (11th Cir. 1983); *see also Johnson*, 706 F.2d at 1208. The federal civil rights fee shifting statutes deliberately provide for adequate fee awards as "an integral part of the remedies necessary to secure compliance with those laws." *Id.* at 1211. In enacting the fee-shifting statutes, Congress "recognized that effective enforcement of civil rights laws depends on fee awards sufficient to attract competent

counsel without producing a windfall to the attorneys.” *Id.* Accordingly, Plaintiffs should not be penalized for hiring expert, out-of-town counsel, and should not be limited in their selection of attorneys by the cost of services provided.

In sum, Plaintiffs’ fee application satisfies all judicial criteria for granting a request for fees in its entirety. The complexity of the legal issues, the number of plaintiffs, the necessity of intensive factual research, and the short time period in which to seek relief provide ample justification for the fees requested. Furthermore, the detailed affidavits submitted by Plaintiffs’ attorneys fully document the hours spent by attorneys on various tasks. The request is well within the scope of what can be expected in a comparable matter, and there exist no special circumstances to render such an award unjust. *See Newman v. Piggie Park Enters.*, 390 U.S. 400, 402 (1968).

**B. The Particular Billings Challenged by Defendant Are Reasonable**

Defendant claims multiple examples of what it refers to as double billings, inflated hours, and unrelated billings. The allegations are unfounded. Each of the hours included in Plaintiffs’ fee request represents work that is both ““useful and of a type ordinarily necessary”” to secure the result obtained from this litigation. *Planned Parenthood*, 297 F.3d at 266 (quoting *Pennsylvania v. Del. Valley Citizens’ Council*, 478 U.S. 546, 561 (1986)). Plaintiffs respond to each of Defendant’s examples in turn:

**1. Conference Calls**—Defendant’s contention that the time spent by Plaintiffs’ attorneys on conference calls was unreasonable is without merit. Courts routinely recognize that in complex matters involving multiple plaintiffs and multiple attorneys, conference calls are a necessary component of a successful legal strategy. Fee requests that include hours spent by multiple attorneys participating in such calls are routinely approved. *See, e.g., Nat’l Ass’n of*

*Concerned Veterans*, 675 F.2d at 1337 (“[A]ttorneys must spend at least some of their time conferring with colleagues, particularly their subordinates, to ensure that a case is managed in an effective as well as efficient manner.”); *Emmenegger v. Bull Moose Tube Co.*, 33 F.Supp. 2d 1127, 1139 (E.D. Mo. 1998) (“[C]onference call[s] promote[] the exchange of different perspectives on a particular legal strategy and decrease[] the possibility of some misunderstanding arising at a later date. Indeed, where a number of attorneys are working on the same matter, arranging for most or all of them, rather than just one of them, to sit in on a conference may be *more* efficient, as it avoids the one attendee having to repeat what was said to colleagues also working on the case.”). This is particularly true for the May conference calls Defendant notes; in the early planning stages of litigation, it is reasonable for multiple attorneys to confer to develop legal strategy and to report on the status of legal and factual research.

**2. *Drafting the Complaint.***—Defendant’s allegation that attorneys spent an unreasonable number of hours drafting the complaint is similarly without merit. The Complaint itself is over 30 pages long, and is the product of extensive factual research related to voter registration activity in Ohio, a comprehensive study of federal and state voter registration requirements, and a thorough analysis of causes of action relevant to the U.S. Constitution, the Voting Rights Act, and NVRA. The Complaint also laid the necessary groundwork for the Motion for Preliminary Injunction, and was drafted with that purpose in mind.

In addition to extensive legal research, the hours devoted to drafting the Complaint also included time spent conducting factual research and preparing affidavits. Research and drafting responsibilities were divided among different attorneys to maximize efficiency. For example, attorneys at the Brennan Center were primarily responsible for the First Amendment claims. The Complaint was continuously revised as a result of uncertainty created by Defendant Blackwell as

to how the challenged law would be enforced. Far from mere “word-smithing,” the hours spent drafting the Complaint were essential to Plaintiffs’ ultimate success.

**3. *Drafting the Motion for Preliminary Injunction***—Defendant’s allegation that attorneys spent an unreasonable number of hours drafting the Motion for Preliminary Injunction is also without merit. Building on the work done in preparing the Complaint, attorneys drafted almost 30 pages of complex legal arguments related to the constitutionality of Ohio’s voter registration provisions and the permissibility of such provisions under NVRA. The Motion raised three separate constitutional arguments and four separate arguments under NVRA. Because of the short time period in which it was drafted, it required the participation of a number of attorneys to ensure accuracy and completeness.

**4. *Preliminary Injunction Hearing***—Defendant’s contention that it is unreasonable for attorneys who do not attend a hearing to participate in the preparation for such hearing is unfounded. It is common practice, and indeed necessary, for attorneys to prepare for oral argument by analyzing the opponent’s argument and rehearsing responses to anticipated questions. *See, e.g., Maldonado v. Houstoun*, 256 F.3d 181, 187 (3d Cir. 2001) (holding that time spent rehearsing oral argument may be compensated so long as time requested is not excessive); *Planned Parenthood*, 297 F.3d at 269. The hours requested for this purpose are not excessive, and are consistent with the complexity of the range of legal and factual issues presented at the preliminary injunction hearing.

As Ohio counsel, it was necessary for Mr. McTigue to be present at the preliminary injunction hearing and to be fully conversant with the factual and legal issues relevant to the case.<sup>3</sup> Similarly, Ms. Paradis went to the hearing to ensure that, if the case continued, the

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<sup>3</sup> In addition, Mr. McGinnis was responsible for organizing and preparing all of the exhibits, including relevant legislative history, necessary for the hearing.

Brennan Center would thoroughly understand this Court's views of the issues for which they would assume primary responsibility. The time attributed for these purposes is reasonable and should not be discounted. In addition, courts have consistently recognized that reasonable travel time is compensable. *See, e.g., Planned Parenthood*, 297 F.3d at 268.

**5. Drafting Summary Judgment Motion**—Defendant's assertion that attorneys spent an unreasonable amount of time drafting the summary judgment motion is without merit. The time spent by Ms. Paradis drafting the summary judgment motion includes time spent drafting much longer and more detailed motion papers in late October 2006, when the case was still proceeding against Defendant Blackwell. Plaintiffs could not have anticipated that, at a June status conference, Defendant would agree to rely on the parties' earlier briefs. "[A]t the point in time when the work was performed," Plaintiffs' attorneys reasonably "believed the work to be reasonably expended in pursuit of success." *Woolridge v. Marlene Indus. Corp.*, 898 F.2d 1169, 1177 (6th Cir. 1990), *overruled on other grounds by Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598 (2001).

**6. Motion for Attorney Fees**—Defendant's allegation that time spent drafting the motion for attorney fees was unreasonable is also without merit. Throughout the research and drafting process, more senior attorneys were responsible for reviewing the work of more junior attorneys and legal interns. As is often the case when supervising junior attorneys and interns, it was necessary for Ms. Paradis to supplement the work of Mr. Infranca with additional research and drafting; Ms. Weiser, in turn, similarly did additional research and drafting. The procedures followed by Plaintiffs' attorneys in this regard are consistent with common legal practice, and

the fees incurred for this purpose are compensable. The total number of hours spent drafting the motion for attorney fees is reasonable, and should not be discounted.<sup>4</sup>

7. ***Particular Billing Entries.***—The five hours that Ms. Weiser spent preparing “press release, talking points, and press strategy” were included in error, and should be omitted from the total fee request. The three hours that Mr. Bauer spent reviewing “soliciting and fundraising questions” were also included in error, and should be omitted. Accordingly, Plaintiffs reduce the total fee request by \$3,250.

Defendant attacks time spent by Plaintiffs’ counsel in attending administrative hearings regarding the third-party voter registration law. Counsel’s participation in that hearing was an attempt to avoid litigation over the direct-return provision and an appropriate part of a responsible litigation strategy for their clients.<sup>5</sup>

Defendant also attacks other entries for research done by Ms. Paradis. The memorandum Ms. Paradis was drafting between March 28 and April 7 was a lengthy analysis of possible constitutional challenges to H.B. 3 that required first analyzing all of the various overlapping provisions of the law and then determining which of them could be challenged under the First Amendment theories that the Brennan Center was developing. Ms. Paradis’s subsequent research on federal jurisdiction was necessary to determine whether Plaintiffs could challenge Defendant Blackwell’s unreasonable interpretation of state law as contrary to his legislative authority in a federal court.

**C. Plaintiffs’ Counsel Played Distinct Roles in This Litigation**

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<sup>4</sup> Defendant also suggests that the time spent compiling time records is inappropriate; the Brennan Center in fact does not have “computer software programs that automatically track and generate billing records.” Instead, contemporaneous time records were re-checked against emails, documents, and calendars to ensure their accuracy.

<sup>5</sup> As in *Chandler v. Vill. Of Chagrin Falls*, No. 1:03-CV-2057, 2007 WL 43642 (N.D. Ohio Jan. 5, 2007), this participation was adversarial in nature; counsel had already informed Defendant of the legal problems with its interpretation of Ohio’s voter registration law in a way that made it clear that Plaintiffs were prepared to file suit if Defendant persisted in that interpretation.

Plaintiffs' counsel consists of in-house counsel for two Plaintiffs, a nationally known public interest law firm that specializes in voting rights cases, a national law firm with the significant resources necessary to bring affirmative litigation swiftly, and local Ohio counsel with expertise in Ohio election law. In-house counsel focused primarily on factual development for their organizations; Perkins Coie took overall responsibility for management of the case; the Brennan Center took primary responsibility for developing and arguing the constitutional claims; and local counsel took the lead on negotiating with Defendant and communicating with this Court. These distinct roles were necessary to bring this case in an expedited fashion.

**D. Plaintiffs' Proposed Hourly Rates are Reasonable**

The hourly rates proposed in Plaintiffs' motion are reasonable and do not exceed the "market rates necessary to encourage competent lawyers to undertake the representation in questions." *Coulter v. Tennessee*, 805 F.2d 146, 149 (6th Cir. 1986). Courts generally apply rates consistent with "prevailing market rates in the relevant community." *Johnson v. City of Clarksville*, 256 Fed. Appx. 782, 783 (6th Cir. 2007); *see also Tenaflly Eruv Ass'n, Inc. v. Borough of Tenaflly*, 195 Fed. Appx. 93, 97 (3d Cir. 2006) (approving hourly rates up to \$550 per hour as consistent with prevailing market rate in New Jersey in 2002). Although Plaintiffs bear the burden of proving that proposed rates are reasonable, evidence of the prevailing community rate "may take the form of ... affidavits attesting to the prevailing market rate. And while [such affidavits] should recite the factual basis for the affiant's conclusion, that obligation is discharged when the affiant avows that the quoted rate is based upon 'personal knowledge about specific rates charged by other lawyers or rates for similar litigation.'" *Jordan*, 691 F.2d at 521 (quoting *Nat'l Ass'n of Concerned Veterans*, 675 F.2d at 1325).

The declaration of Ohio attorney H. Ritchey Hollenbaugh more than satisfies the Court's requirement in this regard. Mr. Hollenbaugh is an expert in fee matters in both state and federal courts and is familiar with rates charged by lawyers in Ohio as well as those who have a particular expertise in election law. He has reviewed each of the attorney declarations and itemized time records submitted in support of Plaintiffs' motion and attests that the rates set forth in each of the declarations are "reasonable for the nature of the legal action and based on the varying levels of experience of the attorneys involved." Hollenbaugh Decl. at ¶ 6; *see also Johnson*, 706 F.2d at 1210 (approving hourly rate that increased with each year of litigation "to reflect greater experience and increases in customary fees").

The hourly rates Plaintiffs request are also consistent with the reasonable hourly rates for litigators in Cleveland listed in the Declaration of Robert Anderle submitted in support of Plaintiffs' Motion for Costs and Attorneys' Fees in *Boustani v. Blackwell*, 460 F.Supp. 2d 822 (N.D. Ohio 2006). The Anderle Declaration, dated December 15, 2006, states that Cleveland litigators who graduated from law school in 1981 or earlier generally earned hourly rates of \$450 to \$500. Attorneys four years out of law school generally earned \$240 per hour.

Plaintiffs further note that the reduction of Mr. McTigue's hourly rate in *Libertarian Party of Ohio v. Brunner*, No. 2:04-CV-08, 2007 U.S. Dist. Lexis 88623 (N.D. Ohio Nov. 20, 2007), does not reflect a judicial assessment as to the prevailing market rates in Ohio. Rather, the reduction was the outcome of an off-the-record settlement agreement reached in a meeting with the Court. Mr. McTigue agreed to lower his requested rate to \$300 per hour and both parties agreed that there would be no appeal of the Court's order. Accordingly, the negotiated rates agreed upon in the *Libertarian Party* case cannot be relied upon as an accurate assessment

of prevailing market rates in Ohio. Moreover, the comparatively lower rates for Ms. James and Mr. Mellor reflect the fact that they do not customarily practice as litigators.

Ultimately, Defendant's complaints regarding Plaintiffs' fee petition are without merit. Plaintiffs successfully brought novel constitutional and statutory claims, on behalf of multiple plaintiffs, on an expedited schedule, and the fee request reflects that complexity.

### **III. The Expenses Claimed by Plaintiffs Are Reasonable and Necessary**

The expenses Plaintiffs request are reasonable and necessary. *See Hall v. Ohio Educ. Ass'n.*, 984 F. Supp. 1144, 1146 (S.D. Ohio 1997). An itemized statement of costs was inadvertently omitted from the declaration submitted by Mr. Sandstrom with the original motion. With this Memorandum, Mr. Sandstrom submits an additional declaration that includes a detailed statement of costs incurred by Perkins Coie. The majority of those costs are Westlaw charges for legal research. Additional costs were incurred for telephone calls, shipping, and travel to Cleveland, Ohio from Washington, D.C. Such costs are normally billed to the client, and are fully recoverable. *See, e.g., Cleveland Area Bd. of Realtors v. City of Euclid*, 965 F. Supp. 1017, 1023-24 (N.D. Ohio 1997) (approving request for reimbursement of expenses for computerized legal research, postage, travel, communication and photocopies); *Trustees of the Constr. Ind. & Laborers Health & Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258 (9th Cir. 2006) (approving request for fees related to computer-assisted research); *Sussman v. Patterson*, 108 F.3d 1206, 1213 (10th Cir. 1997) (allowing recovery of costs of "items such as photocopying, mileage, meals, and postage"). In addition, as the senior attorney from the Brennan Center, Ms. Weiser reasonably sought admission *pro hac vice* in this case. Mr. Mincberg also reasonably incurred travel expenses to the hearing as the in-house counsel for two

of the plaintiffs; Plaintiffs do not seek to recover for the dozens of hours he spent working on this litigation.

### **Conclusion**

Because they are prevailing parties, 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 \$446,752 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 May 12, 2008.

/s/ Donald J. McTigue

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