IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE NORTHEAST OHIO COALITION
FOR THE HOMELESS, et al.,

Plaintiffs

vs.

JON HUSTED, in his official capacity as
Secretary of State of Ohio,

Defendant

and

STATE OF OHIO,

Intervenor-Defendant.

Case No. 2:12-CV-562

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1, et al.,

Plaintiffs

vs.

JON HUSTED, et al.,

Defendants.

Case No. 2:06-CV-896

Judge Algenon Marbley

Magistrate Judge Terence P. Kemp

Judge Algenon Marbley

Magistrate Judge Terence P. Kemp
SUPPLEMENTAL DECLARATION OF DANIEL R. MORDARSKI IN SUPPORT OF PLAINTIFFS’ MOTION FOR ATTORNEYS’ FEES

I, Daniel Robert Mordarski, hereby declare and state the following:

1. I am an attorney and principal of the Law Offices of Daniel R. Mordarski, LLC. I have previously filed a declaration in this case. I have personal knowledge of the facts stated herein.

2. In my previous declaration, I stated that I am generally familiar with rates charged by other attorneys who practice law in Ohio. That familiarity is based upon several factors and various data sources. One source of that knowledge is my own experience practicing civil litigation since 1994, including as an associate and then partner at a commercial litigation firm as well as the principal of my current law firm since 2006. In the last 19 years of practicing law, I have been involved with and directly negotiated billing rates with clients. As part of those negotiations, I often learned the billing rates that other firms were charging for the same litigation services. I have represented commercial clients for complex litigation matters where I was required to negotiate the rate for other lawyers who worked with me on the same matter for the client. Also, I have worked with different clients where I have obtained attorney billing statements from other law firms. For some clients, I have been ask to advise the client regarding the reasonableness of the attorney billing statement or to analyze whether the client was paying too much for the legal services or whether there was a way to reduce the client’s litigation costs.

3. I also have become familiar with the rates charged by other lawyers because I assisted, counseled and consulted with other litigation lawyers who have left large firms to start their own litigation firms. I worked for 12 years with the litigation boutique firm originally known as Zeiger & Carpenter. The firm was started in 1994 by Jones Day litigators John Zeiger
and Michael Carpenter. Both of these lawyers are well known in the Central Ohio litigation community. Since resigning as a partner in 2006 and starting my own litigation firm, I have been contacted by several litigation lawyers in Central Ohio for advice and counsel about their own career move to leave their current law firm and start a law firm. In nearly every situation, I learned the billing rate used by the lawyer at the prior firm and what the lawyer intends to charge as his new firm.

4. Since starting my own law firm, I have had many lawyers as clients in a variety of different matters. Part of my practice has involved legal malpractice claims on both the plaintiff and the defense side. Often in legal malpractice claims, I learn the billing rates of other lawyers. I also have represented lawyers involved in a law firm separation. In that type of litigation, I have become familiar with the billing rates of other lawyers in the course of separating the financial aspects of a law firm and its lawyers.

5. As part of my practice, I have taken over commercial litigation matters from other law firms where the client originally hired the other firm, but because of a conflict or some other reason, the prior firm could not continue the representation. In those situations, I have become familiar with the attorney billing rates charged by other law firms. Similarly, I have worked on matters where I was hired to represent a party affiliated with a party represented by another firm. For example, I have represented an officer of a company that is in litigation when that officer needs counsel separate from the counsel representing the company. I have been asked to represent a subsidiary or affiliated entity when the main entity has been sued. In those situations, I often learn what other law firms are billing the client.

6. I also have become familiar with the hourly billing rates for other lawyers as a result of submitting my own fee applications and serving as an expert for other law firms that
have submitted fee applications. I generally conduct research to determine the prevailing rate of litigation lawyers before submitting my own application or serving as an expert in other litigation. The research often includes interviewing other litigators, conducting research from other cases and analyzing other data sources to determine what other lawyers are charging, including bankruptcy filings and other litigation where attorney billing statements are publically available.

7. When I formulated my opinions in this case, there was not a single data point upon which my opinion was developed. Instead, my opinion was based upon all of the data I compiled. No single data source is determinative of a reasonable attorney billing rate. The education, training and experience of the lawyers involved must be analyzed. The type of litigation, including the complexity and sophistication, also must be analyzed. The billing rates of other lawyers are considered, along with the type of litigation they perform and their education, training, experience and reputation.

8. I reviewed the opposition filed by the Ohio Attorney General in this matter. One of the arguments made is that the attorneys in this case should be compensated based upon billing rates approved in other “election law” cases and that this Court should not compare the Altshuler Berzon rates with those charged by large firms such as Jones Day. The Attorney General appears to suggest the lawyers in this case should be paid rates approved in other “election law” cases or “civil rights” cases. I disagree with this argument because it places form over substance. Classifying this case as a simple “civil rights” case or an “election law” case ignores the practical reality of the complexity involved in this litigation. This was not a single issue civil rights case involved excessive force, nor was it a single issue election law case involving a discrete issue. My review of the pleadings and orders in the case reveal that it was
procedurally and substantively complex, it presented novel statutory and constitutional issues, the evidentiary record was substantial, and it was litigated in a manner befitting extraordinarily qualified counsel. In my opinion, very few civil rights lawyers would have been able to handle this litigation on their own without a larger firm having the resources and expertise that Altshuler Berzon brought to this case. Moreover, not only were the issues complex, but the case was litigated in the shadow of an upcoming national election in a battleground state. In litigation, lawyers refer to some cases as “bet the company” cases in which the stakes are high and the parties and their lawyers will do whatever it takes to prevail. If there could ever be a “bet the company” case in a civil rights cases, this was it. This case could be called a “bet the country” case. The complexity of the litigation and the qualifications of the Altshuler Berzon attorneys merit comparison to both major, complex, commercial litigation and to the qualifications of attorneys practicing at the largest law firms practicing in Ohio.

9. In my opinion as a lawyer who has practiced litigation in Central Ohio for almost 20 years, including litigating civil rights cases and other fee shifting cases, the market rates that lawyers actually charge to clients with the ability to pay must be considered when determining a reasonable rate for these types of cases. If a lawyer with a particular expertise in a certain area of law has a higher rate because of that expertise, the lawyer should be compensated at that rate when the expertise is defending the Constitution no less than other areas of complex litigation. Otherwise, there will a disincentive for the best of the best lawyers to defend the Constitution. If this Court awards the billing rates proposed by the Attorney General (approximately $250/hour), this Court would provide a disincentive for top quality lawyers to litigate these types of cases. That will leave only the bottom tier litigators who practice at an hourly rate of $250 per hour or lower to take on future cases like this. The next time a state actor violates the
Constitution, including in an effort to stay in power, the best lawyers may decide to not step up and defend the Constitution because of the financial disincentive of handling a “bet the country” case that involves the commitment of major resources on difficult factual and legal issues under tight deadlines.

10. This case resulted in major federal district court and Sixth Circuit decisions about constitutional issues that are critically important to the vitality of our democratic electoral system. It is common for parties to engage highly qualified and experienced counsel in constitutional cases of similar complexity or with similar constitutional high stakes. Whether cases are litigated on behalf of corporations or high wealth individuals, or on behalf of disenfranchised voters who often have little in the way of resources sheds no light on the appropriateness of highly qualified counsel and fees commensurate with those qualifications.

11. The Attorney General’s response suggests my opinions cannot be trusted because I billed only four hours to review the file. I spent far more than four hours reviewing this matter but agreed, up front, to a billing cap for this matter. I did not need to read every matter in this case to understand the complexity of issues in the case or to determine the quality of work performed. Given the importance of this case, the novelty and complexity of the issues, the size of the evidentiary record, the pace of the litigation, and the excellent research and writing displayed by this case, the total fee request is reasonable.

12. I understand that the defendants in this case have also argued plaintiffs’ counsel held too many strategy conferences and exchanged too many electronic mail messages, with too many attorneys involved, and so their fees request should be reduced based on “inefficiency.” In my experience as an attorney, communication among the lawyers who are litigating a case is essential to efficient and effective litigation strategy. In my opinion, it is unreasonable for the
Attorney General to suggest, without any evidence or expert testimony, these lawyers engaged in too much communication. In my experience, more communication among the lawyers on a complex litigation matter makes the lawyer more efficient. Contrary to the unsupported suggestion from the Attorney General, more communication among lawyers is evidence of more efficiency, not less efficiency. I found no evidence of inefficient work in connection with emails, meetings or other communication. It is my opinion that the lawyers who worked on this massive litigation would have been less efficient and billed more time if they communicated less in this case.

13. I have reviewed the billing records of Altshuler Berzon LLP and do not believe that the time spent on conferences, electronic mail, and similar communications is at all excessive. In cases of comparable complexity that I have litigated or analyzed in connection with expert analysis of fees requests, I have seen far more time billed to such activities. In my opinion, this case was litigated very efficiently, particularly when the urgent pace of the litigation is considered. Cases that are litigated over short time periods require involvement by a greater number of attorneys because it is necessary to spread out the work in order to accomplish all necessary tasks. This is especially true in situations where the opposing party engages in conduct that suggests they will attempt to find new and different ways to engage in the same conduct if they do not succeed using the original theory. In this type of litigation, litigators must anticipate, research and prepare for many types of different scenarios rather than simply responding to the issue before them. Because the stakes were so high and sometimes the deadlines so short, the litigators were required to prepare several steps in advance and be ready for multiple different arguments or positions taken by the defendant state actors. In my opinion, the work and strategy performed in this case was appropriate and necessary.
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 6th day of March at Columbus, Ohio.

Daniel R. Mordarski
CERTIFICATE OF SERVICE

I certify that on March 10, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the counsel of record in this case.

/s/ Stephen P. Berzon
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