UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

WILLIAM DESENA and SANDRA W. DUNHAM,	)	
Plaintiffs,	)	Docket No. 1:11-cv-117-GZS-DBH-BMS
v.	)	
STATE OF MAINE, et al.,	)	
Defendants.	)	

STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS

State Defendants, by and through the undersigned counsel, hereby oppose, in part, Plaintiffs' motion for award of attorneys' fees and costs. In support of this opposition, State Defendants state as follows:

BACKGROUND

Plaintiffs's summary of the history of this litigation *Motion* 1-3 (Docket # 49) is generally accurate, but it omits a significant point. The State Defendants *agreed with* Plaintiffs that Maine's congressional redistricting scheme was unconstitutional as applied given the results of the 2010 federal census. *State Defendants' Opening Brief* (Docket # 17) at 9, 17-19. It must be emphasized that the State Defendants took this extraordinarily rare position (*i.e.*, not defending a

state statute) because the law in this area is so abundantly clear, as one could discern by reading a handful of cases. *Id*. at 10-13.

Plaintiffs seek $142,797.97 in fees and costs. *Motion at* 11 (Docket # 49). Only one attorney made an appearance in this matter on behalf of Plaintiffs – Timothy C. Woodcock, Esq., of Bangor, Maine – and State Defendants have few objections to the requested fees for his work on this matter, which amount to $37,201.64, including fees for his paralegal Laurie Wilbur. *Motion Exhibit A* at 41 (Docket # 49-1). In addition, "Litigation Support-Legal Assistance" in the amount of $6,225 is billed for an out-of-state lawyer-consultant, Clark Bensen, who "conducted various analyses of census data." It is unclear why any such analysis was necessary. *Motion* at 10; *Motion Exhibit 2-B* at 58 (Docket # 49-1). Finally, an out-of-state firm billed for the time of four attorneys, none of whom entered an appearance in this matter, for a total of $98,546. The hourly rates for all four attorneys exceed Mr. Woodcock's rate even though at least three of them possess much less experience. *Motion Exhibit B* at 2-4, 6 (Docket # 49-2). In other words, Plaintiffs seek fees for six attorneys and one paralegal even though only one of the lawyers appeared in this litigation.

ARGUMENT

I. Principles Governing Consideration of Requests for Attorney's Fees under 42 U.S.C. § 1988. There should not be much dispute regarding the

governing principles, though the parties may disagree as to their application to the pending request for fees.

Pursuant to 42 U.S.C. § 1988, the court "in its discretion, may allow the prevailing party . . . a reasonable attorney's fee." Section 1988 requires a two-part inquiry: (1) whether the plaintiff is a prevailing party, and (2) if the plaintiff is a prevailing party, what constitutes a reasonable fee award. *See, e.g., Farrar v. Hobby*, 506 U.S. 103, 114 (1992). Where "'special circumstances would render such an award unjust,'" the court may properly deny reasonable attorneys' fees even to prevailing parties. *Torres-Rivera v. O'Neill-Cancel*, 524 F.3d 331, 336 (1st Cir. 2008) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)).

The trial court generally employs the lodestar method to calculate fees:

> Under this method, a court usually should begin with the attorneys' contemporaneous billing records. The court should then subtract hours that are duplicative, unproductive or excessive and multiply the reasonable hours billed by the prevailing attorney rate in the community. The resulting amount constitutes the lodestar.

Bogan v. City of Boston, 489 F.3d 417, 426 (1st Cir. 2007) (citations omitted).

The party requesting fees has the burden of establishing the reasonableness of the rates and hours submitted in its fee petition. *Torres-Rivera*, 524 F.3d at 340. In determining the lodestar, the court should "eliminate time that was unreasonably, unnecessarily or inefficiently devoted to the case." *Id.* at 336; *see also Currier v. United Technologies Corp.*, 2005 WL 1217278 at *1 (D.Me. 2005)

("Typically, a court proceeds to compute the lodestar amount by ascertaining the time counsel actually spent on the case and then subtracting from that figure hours which were duplicative, unproductive, excessive, or otherwise unnecessary.") In determining the lodestar, the court also "may discount or disallow [hours] claimed if it determines that the time is insufficiently documented" or if the prevailing party fails to provide sufficiently specific records to make a determination as to excessiveness or redundancy. *Torres-Rivera*, 524 F.3d at 336.

"[T]he trial court retains the authority to adjust the lodestar after initially computing it but it must do so in accordance with accepted principles." *Coutin v. Young & Rubicam Puerto Rico, Inc.*, 124 F.3d 331, 337 (1st Cir. 1997) (citation omitted). In particular, after calculating the initial amount of the award, attorney's fees may be "reduced because of (1) the overstaffing of a case, (2) the excessiveness of the hours expended on the legal research or the discovery proceedings, (3) the redundancy of the work exercised, or (4) the time spent on needless or unessential matters." *Ramos v. Davis & Geck, Inc.*, 968 F.Supp. 765, 775 (D.P.R.1997) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 432–35, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)).

The court enjoys "broad discretion" in fashioning a fee award. *Burke v. McDonald*, 572 F.3d 51, 64 (1st Cir. 2009). The purpose of Section 1988 would not be furthered by awarding all of the attorneys' fees requested here, particularly

where the fees will be paid by State taxpayers. *See Perdue v. Kenny A.*, 130 S. Ct. 1662, 1677 (2009).

II. Special Circumstances Warrant a Reduction in Fees. The request for fees in this case is colored by special circumstances – in particular, the State Defendants *agreed with* Plaintiffs that the provisions of Maine's statutes calling for congressional redistricting to occur after the 2012 election were unconstitutional as applied given the 2010 census data. As the Court is aware, it is extraordinarily unusual for Maine to concede in litigation that one of its statutes is unconstitutional. The State did so here because the law in this area is so abundantly clear. Although it might be tempting for State Defendants to argue that all fees should be denied for this reason, we are not so bold. We ask, however, that the Court, in exercising its discretion, take this "special circumstance" into consideration when considering the other arguments presented.

III. Fees Should be Reduced Due to Overstaffing. State Defendants' major objection to the fee request is overstaffing – the involvement of six attorneys and a paralegal in a fairly simple, straight forward, one-claim case cannot be justified.

> Fee-shifting statutes are designed to "ensure effective access to the judicial process for persons with civil rights grievances," not to serve as full employment or continuing education programs for lawyers and paralegals. A trial court should ordinarily greet a claim that several lawyers were required to perform a single set of tasks with healthy skepticism.

Lipsett v. Blanco, 975 F.2d 934, 938-39 (1st Cir. 1992) (citations omitted). The prevailing party "must affirmatively prove that a plural number of attorneys was *required* to handle the case." *Velazquez Hernandez v. Morales*, 810 F.Supp. 25, 28 (D. P.R. 1992) (emphasis added). The "level of scrutiny should increase in direct proportion to the number of lawyers employed." *Gay Officers Action League v. Puerto Rico*, 247 F.3d 288, 297-98 (1st Cir. 2001) (Selya, J.) "[A] court should not hesitate to discount hours if it sees signs that a prevailing party has overstaffed a case." *Id*. at 297 (citation omitted). However, "the mere fact that more than one lawyer toils on the same general task does not necessarily constitute excessive staffing. Effective preparation and presentation of a case often involve the kind of collaboration that only occurs when several attorneys are working on a single issue." *Id*. (citation omitted). "Even so, [the courts] remain skeptical about the use of four attorneys to litigate a single claim-particularly a claim that did not necessitate a trial." *Id*. at 298; *see also Diffenderfer v. Gomez-Colon*, 606 F.Supp.2d 222, 228-29 (D. P.R. 2009) (four attorneys preparing for and attending hearings is overstaffing; only approved payment for two). The present case was a single-issue case that did not necessitate discovery, contested motions, or a trial.

This is not a case which the State defended with ferocity. *Gay Officers Action League*, 247 F.3d at 297. The law in this area is straightforward and clear, which is why the State Defendants agreed with Plaintiffs. *Compare City of*

Riverside v. Rivera, 477 U.S. 561, 591 (1986) ("The government cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response." (citation and internal quotation marks omitted)). As the memoranda of law reveal, the relevant facts of the case -- that there was a 8,669 person deviation between the two Maine Congressional districts shown by the 2010 Census -- were undisputed, and the law in this area is quite clear that under such circumstances redistricting must occur before the next congressional election. *State Defendants' Memo* at 12-16 (Docket # 17); *Plaintiffs' Memo* at 5 (Docket # 18).

State Defendants staffed this matter with two experienced attorneys, although neither had direct experience in this sort of constitutional redistricting litigation. The Court should find that Plaintiffs may obtain attorneys' fees for only two attorneys: local counsel, Mr. Woodcock (and his paralegal), and one of the Baker & Hostetler attorneys.[1]

[1] Additionally, each of the attorneys at Baker & Hostetler professes to have substantial experience and expertise in this area of the law. *Motion Exhibit B* at 2-4 (Docket # 49-2). With such expertise, it would seem unnecessary to have so many lawyers working on and billing for this matter. An attorney with claimed expertise on the matter being litigated, as is the case here with Mr. Braden, for example (Docket # 49-2, at 2-3), should not need the assistance of several more attorneys. *Pearson v. Fair*, 980 F.2d 37, 47 (1st Cir. 1992); *Velazquez Hernandez v. Morales*, 810 F.Supp. 25, 28 (D.P.R. 1992).

IV. Fees Should Be Reduced to Eliminate Redundancy. Closely related to the overstaffing objection is the problem of redundancy. Billing records indicate that five attorneys were regularly communicating with each other about every aspect of the case. These communications consumed many hours that appear to have resulted simply from the number of attorneys involved and could not have been necessary to obtaining a successful result. In addition, it appears that all five of the lawyers who billed the largest amounts (Woodcock, Braden, Hangewatte, Walrath and Bensen) reviewed and revised every document. For a case involving a single issue that was resolved without trial, contested motions or discovery, Plaintiffs are seeking fees for 378.44 hours of work – or over 47 work days. State Defendants should not be required to pay for this redundancy.

As the Court can see from the attached Exhibits, the State Defendants have made a substantial, good faith effort to cull what we can from the billing records regarding our objections in order to assist the Court. The task is made difficult, however, because the billing records combine several different activities in single entries. The State Defendants object to fees for some, but not all, of the activities in these combined billing entries. From such combined entries, it is impossible to determine how much time was spent on the particular activities that State Defendants contend should be excluded. In those situations, the State Defendants contend that at least a portion of the billing time should be deducted.

V. All fees for and related to Mr. Bensen should be denied. State Defendants object to Mr. Bensen's fees in their entirety, first, because we cannot tell what he did and, second, because it is difficult to determine why his expertise in census data was needed in this case. The entries on his bill consist entirely of "review" or "conf. call." Simply put, that is not enough detail to determine what he did. *Torres-Rivera*, 524 F.3d at 336 (court may disallow hours claimed if the time is insufficiently documented to determine excessiveness or redundancy).

Mr. Bensen did not submit a supporting affidavit. The only information provided is contained in Mr. Woodcock's affidavit in which it is stated that Mr. Bensen has particular expertise in "Census counts," "conducted various analyses of census data," and assisted in preparing legal arguments. *Motion* at 10 (Docket # 49); *Motion Exhibit 2-A* at 3 (Docket # 49-1). Regarding the census numbers, it is unclear what, if any, expertise was needed to conclude that the 8,669 person deviation in Maine fails the "one person-one vote" constitutional mandate. If anything, Mr. Bensen's work was duplicative of what the other attorneys were doing. In particular, the expertise in redistricting matters of Messrs. Bensen and Braden is very similar. *Compare Motion Exhibit 2-A* at 42-57 (Docket # 49-1), *with Motion Exhibit B* at 2-3 (Docket # 49-2).

The fees sought by other attorneys for time spent communicating with Mr. Bensen also should be rejected**.** Just as State Defendants should not pay for his

work, neither should they pay for the work of others communicating with Mr. Bensen. For Mr. Woodcock, this amounts to all of 0.8 hours as well as at least a portion of 3.3 hours. *Exhibit A*, hereto.[2] For the Baker & Hostetler attorneys, there are at least a portion of 21.5 hours. *Id*.

VI. Hourly rates are excessive for attorneys Braden, Walrath, Hangawatte and Smith. To the extent Plaintiffs are awarded any fees for attorney Braden, the hourly rate should be no more than $295, and for attorneys Walrath, Hangawatte and Smith no more than $175. "Reasonable fees under § 1988 are to be calculated according to the prevailing market rates in the relevant community, that is those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Grendel's Den, Inc. v. Larkin*, 749 F.2d 945, 955-56 (1st Cir. 1984) (internal quotations and citations omitted). The hourly rate sought for Mr. Woodcock ($295) is reasonable. *Motion Exhibit A* at 2 ¶ 9 (Docket # 49-1) (noting that the Court in *Sullivan v. City of Augusta*, 625 F.Supp. 2d 28 (D. Me. 2009) approved an hourly rate of $300 for attorney fees). Mr. Woodcock has over 30 years of experience, and possesses a sterling professional reputation.

[2] In preparing Exhibit A from Plaintiffs' attorneys' billing records, we were careful *not to exclude* time for each attorney who was on a conference call with Mr. Bensen with multiple attorneys, or for sending email to Mr. Bensen and several other attorneys. The time State Defendants contend must be excluded from any fee includes only those entries where it appears that each of Plaintiffs' other attorneys was dealing solely with Mr. Bensen in some way.

A table setting forth the respective attorneys' experience is revealing:

Attorney	Experience(Years)	Hourly Rate
Woodcock	30+	$295
Bensen	30+	$300
Braden	30+	$595
Walrath	4	$420
Hangawatte	3	$360
Smith	4	$350

Motion Exhibit A, 2, 42-58 (Docket #49-1); *Motion Exhibit B*, 2-4 (Docket # 49-2).

Mr. Bensen appears to possess similar experience in terms of subject matter and time as Mr. Braden, but the latter's hourly rate is twice as high. *Compare Motion Exhibit A* at 42-58 (Docket # 49-1), *with Motion Exhibit B* at 2-3 (Docket # 49-2). To the extent Plaintiffs are awarded any fees for attorney Braden, therefore, those fees should be calculated at the rate of no more than $295, which is comparable to the rates of Messrs. Woodcock and Bensen.

Seeking such high hourly rates for attorneys Walrath, Hangawatte and Smith, who have much less experience than Messrs. Woodcock and Bensen, flies in the face of common sense. In *Sullivan,* the court approved hourly rates of up to $200 for a 2002 law school graduate, who had worked in a Boston law firm, clerked for the Maine Supreme Judicial Court, and been an attorney with MCLU since 2004. 625 F.Supp. 2d at 43-44. Declaration of Zachary Heiden, Docket Item 85 in *Sullivan*. *See also Nkihtaqmikon v. Bureau of Indian Affairs*, 723 F. Supp. 2d 272 (D. Me. 2010) (Woodcock, J.) (court approved $225 per hour for

lawyer with 10 years of experience and $175 per hour for lawyer with 4 years of experience). An hourly rate of $175 for attorneys Walrath, Hangawatte and Smith for litigation work is more than generous in view of their graduations from law school in 2007, 2008 and 2007, respectively.[3]

Therefore, to the extent Plaintiffs are awarded any fees for attorney Braden, Walrath, Hangawatte and Smith, Plaintiffs should be required to recalculate them at these lower rates.[4]

VII. Fees should not be awarded for work on other matters. Obviously, bills for work not performed on this litigation should be denied. Baker & Hostetler appears to have mistakenly billed 0.75 hours for such other work:

> 4/19/11 – Hangawatte: "Attention to emails from Mr. Braden and Mr. Marston regarding *Virginia* redistricting. 0.25 [hours]."
>
> 4/21/11 – Walrath: "Telephone conference with Mr. Bensen and staff of Republican members of the *Ohio* House and Senate regarding data being provided by Cleveland State University, selection of redistricting software, and the map drawing process. 0.50 [hours]."

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[3] Information regarding these attorneys' graduation dates can be found on the Baker & Hostetler Washington DC website: http://www.bakerlaw.com/washingtondc/.

[4] If the Baker & Hostetler attorneys billed at these lower rates for all of the time each of them billed, the following decreases would occur:

Braden (41.25 hours):	$24,543.75 (@ $595/hr)	to $12,168.75 (@ $295/hr)
Walrath (94.25 hours):	$39,585 (@ $420/hr)	to $16,493.75 (@ $175/hr)
Hangawatte (87.5 hours):	$31,500 (@ $360/hr)	to $15,312.50 (@ $175/hr)
Smith (3 hrs):	$1050 (@ $350/hr)	to $525 (@ $175/hr)
TOTAL: Decrease from	$96,678.75	to $44,500

Motion Exhibit B at 10 (Docket # 49-2) (emphasis added).

In addition, counsel have billed for a separate suit brought by a *pro se* plaintiff challenging the redistricting process – *Turcotte v. Lepage*, Docket No. 11-312-DBH. These attorneys made no appearance in that independent matter, and therefore their time spent on it should not be paid for by State Defendants. The time billed is 0.2 hours for Mr. Woodcock (8/17/11) (Docket # 49-1 at 32), and a portion of 1 hour for Ms. Walrath and of 0.5 hours for Ms. Hangawatte (8/17/11) (Docket # 49-2 at 18).[5]

VIII. Fees should not be awarded for time spent with regard to the media. "[R]eported federal cases are unanimous in denying awards of attorneys' fees for media-related time to individual civil rights plaintiffs…." *Parker v. Town of Swansea*, 310 F. Supp.2d 376, 393 (D. Mass. 2004) (internal citation omitted). State Defendants, therefore, should not be required to pay for 3.3 hours for Mr. Woodcock, or 0.75 hours for Mr. Braden. *Exhibit B*, hereto, at 1. Nor should State Defendants be ordered to pay at least a portion of 3.8 hours for Mr. Woodcock or 0.5 hours for Ms. Hangawatte.[6] *Id*. at 2.

IX. State Defendants should not pay for conferences with unidentified people. Plaintiffs' billing records contain numerous conferences or

[5] We are unable to provide the exact amount of time for Walrath and Hangawatte because the *Turcotte* work is combined with other tasks in these entries.
[6] We are unable to provide an exact amount of time for Woodcock and Hangawatte because the media work is combined with other tasks in these entries.

communications involving individuals who are not identified and for whom no explanation is given regarding their roles in this litigation: Johnston, Tettlebaum, Marston, Wilbert, Stein, Morgan, Healey, Witherby, Ferdinand, Maxsimic, Sanguillo, Mitchell and Lamoreau. *Exhibit C* hereto. The number of hours is as high as 35.75.[7] *Id*. State Defendants should not be required to pay for interactions with these individuals. *Torres-Rivera*, 524 F.3d at 336 (court may disallow hours claimed if the time is insufficiently documented).

X. State Defendants should not be required to pay for fees related to the Intervenor. State Defendants did not encourage and had no control over Intervenor Maine Democratic Party.[8] The prevailing precedent is that a defendant is not required to pay fees regarding plaintiff's effort against an intervenor. *Mannings v. School Bd. of Hillsborough County, Florida*, 1994 WL 151045 at *3 (M.D. Fla. 1994); *U.S. v. City and County of San Francisco*, 748 F.Supp. 1416, 1437 (N.D. Cal. 1990). This is particularly so where the plaintiff and the defendant took the same position vis-à-vis the intervenor. *Bigby v. City of*

[7] Several of the billing entries combine a number of tasks, making it impossible for us to suggest the exact amount of time that should be excluded.

[8] Generally, at least in Title VII cases, attorneys' fees against a losing intervenor are awarded only if "the intervenors' action was frivolous, unreasonable, or without foundation." *Independent Federation of Flight Attendants v. Zipes*, 491 U.S. 754, 761 (1989). Plaintiffs do not appear to making such a claim for fees against the Intervenor in the present case.

Chicago, 927 F.2d 1426, 1429 (7th Cir. 1991); *Action on Smoking and Health v. Civil Aeronautics Bd.*, 724 F.2d 211, 216 (D.C.Cir.1984) (plaintiff not considered a prevailing party on an issue upon which it took the same position as the defendant); *see also Reeves v. Harrell*, 791 F.2d 1481, 1483–84 (11th Cir.1986) (plaintiff not considered a prevailing party even as against defendant that remained neutral as to issues raised by intervenor's complaint).

In the present case, Plaintiffs and State Defendants agreed that the state statute was unconstitutional as applied, while the Intervenor argued otherwise. *Intervenor Memo* (Docket # 16). State Defendants, certainly, should not be required to pay attorneys' fees related to the Intervenor.[9] The number of hours is as high as 58.15. *Exhibit D* hereto.

In calculating the time related to the Intervenor, we did not count billing entries where it appears that Plaintiffs would have performed the described tasks even if Intervenor was not involved. We did include entries involving multiple tasks where one of the tasks was related solely to the Intervenor.[10] We also included in Intervenor-related tasks time related to the Reply Memo because, quite

[9] It is not possible to determine the amount of time Mr. Bensen spent on Intervenor issues, in view of the lack of any real description of what he did. State Defendants have argued that no fees are due for Mr. Bensen in any event. *See* Part V, *supra*.

[10] As with other types of entries, if Plaintiffs continue to seek fees for non-excluded tasks, each attorney should be required to parse out this work, assuming he or she is entitled to any fees.

simply, Plaintiffs and State Defendants agreed on the primary issue and thus a reply brief would have been unnecessary but for the arguments of Intervenor. The overwhelming majority of the Intervenor-related time dealt with the reply brief.

XI. Fees and Costs Related to Attendance at Reapportionment Commission Meetings Should be Excluded.

On June 22, 2011, the panel issued its order, requiring the State to draw the new line dividing Maine's two congressional districts before January 1, 2012. The State Defendants were directed to file status reports with the court every 20 days so that the court and the parties could monitor the state's progress. (Docket # 34). Other than reviewing those status reports, which were prepared exclusively by State Defendants' counsel, there was nothing further for Plaintiffs' attorneys to do to accomplish the objective of the lawsuit. It was up to the State Defendants, and the Maine Legislature as a body, to implement the court's order.

Plaintiffs' Maine attorney, however, chose to travel from Bangor to Augusta twice to attend meetings of the Reapportionment Commission. There was nothing for him to do at the meetings. The time involved (11.5 hours) plus out-of-pocket travel costs (Docket # 49-1 at 32-33) cannot be viewed as being reasonably related to the litigation.

XII. There should be a reduction of rate for time spent on "non-core" tasks. The Fee Motion does not appear to reduce the rate for time spent on "non-

core" work. "Core" work includes legal research, writing legal documents, court appearances, and negotiations with opposing counsel. *Brewster v. Dukakis*, 3 F.3d 488, 492 (1st Cir. 2001). The rate for non-core work, which consists of less demanding tasks, such as letter writing and phone calls, should be reduced by 1/3. *Id*. In Exhibit E, hereto, we have endeavored to carve out the non-core activities for Mr. Woodcock. The descriptions of tasks on the billing records make it a challenge. By resolving every ambiguity in favor of treating the entry as a core task, we tallied 13 hours of non-core work. Plaintiffs still should be ordered to segregate the core from the non-core work for Mr. Woodcock.

XII. Fees for Preparation of the Attorney's Fee Motion should be reduced. Because it is not particularly difficult to put together a typical fee petition, compensation for time spent on fee petitions should be "at lower rates than those deemed reasonable for the main litigation." *Torres-Rivera,* 524 F.3d at 340; *see also Brewster*, 3 F.3d at 494 (Court directed that time spent preparing fee petition be compensated at non-core rate, *i.e*., 2/3 of regular rate); *Sullivan*, 62 F. Supp. 2d at 49 ("$150 per hour is a reasonable rate for work on a fee request of this kind"). The court should thus allow no more than $150 per hour for reasonable time spent preparing the Fee Motion. Plaintiffs seek fees for 30 hours relating to the fee motion, including 16 hours for research. *Exhibit F*, hereto.

Summary. While State Defendants acknowledge that Plaintiffs are entitled to fees as successful litigants, we disagree regarding the amount. We do not disagree with the fees sought for Mr. Woodcock's paralegal ($779 (Docket # 49-1 at 10, 16, 36)), or for out-of-pocket costs, with the exception of the trips to Augusta addressed in part XI above ($2,574.90) (*id*. at 16, 27, 33; Docket # 49-2 at 6). The arguments set forth above call for:

Requiring payment of fees for only two of Plaintiffs' attorneys;

Denying any fees for or related to Mr. Bensen;

Denying any fees relating to matters unrelated to this lawsuit;

Denying any fees relating to the media;

Denying fees relating to unidentified and unexplained individuals;

Denying fees relating to the Intervenor;

Reducing the hourly rates for Baker & Hostetler attorneys to $295 for Mr. Braden and $175 for attorneys Walrath, Hangawatte or Smith;

Reducing the hourly rate for preparation of the fee motion to $150;

Requiring Plaintiffs to resubmit their bill designating which two attorneys to bill for, segregating the tasks in the entries for which they are seeking fees, and separating core from non-core tasks; and

Reducing the hourly rate for non-core tasks by 1/3.

As an alternative approach, we suggest that the Court, in its discretion, could assess fees as follows:

$35,577[11]	Use the fees submitted by Mr. Woodcock as the starting point. It makes sense to use Mr. Woodcock as the base because his fees include conferencing with other attorneys but not the extensive internal conferencing at Baker & Hostetler.
$35,518	Deduct $59 for Mr. Woodcock's time spent dealing with the unrelated *Turcotte* matter (0.2 hours at $295 per hour (Docket # 49-1 at 32)).
$34,170.50	Deduct $1,347.50 for Mr. Woodcock's dealing with the media. This figure is arrived at by multiplying 3.3 exclusive hours by $295 ($973.50), and adding 1/3 of the 3.8 hours for entries where dealing with the media was one of several tasks, multiplied by $295 ($374). (*Exhibit B*, hereto). Under the circumstances, 1/3 is reasonable because Plaintiffs did not segregate tasks in these entries.
$30,335.50	Deduct $3,835 for Mr. Woodcock's dealing with unidentified persons (13 hours at $295 per hour (*Exhibit C*, hereto)).[12]
$24,907.50	Deduct $5,428 for Mr. Woodcock's dealing with the Intervenor (18.4 hours at $295 per hour (*Exhibit D*, hereto));[13]
$21,515	Deduct $3,392.50 for Mr. Woodcock's travel and attendance at the Reapportionment Commission's proceedings (11.5 hours at $295 per hour (Docket # 49-1 at 32)).

[11] This figure is arrived at by taking the total amount billed by Mr. Woodcock ($37,201.64) and deducting his paralegal costs ($779) and out-of-pocket costs ($845.64) to be dealt with separately. (Docket # 49-1 at 10, 16, 27, 33, 36, 41.)

[12] A total of 35.75 hours were taken up by Plaintiffs' counsel dealing with the unidentified persons; Mr. Woodcock's 13 hours represent approximately 37% of that time. *Exhibit C*, hereto.

[13] A total of 58.15 hours were taken up by Plaintiffs' counsel dealing with the Intervenor; Mr. Woodcock's 18.4 hours represent approximately 31% of that time. *Exhibit D*, hereto.

$20,954.50	Deduct $560.50 for Mr. Woodcock's dealing with Mr. Bensen (.8 exclusive hours, plus 1/3 of 3.3 hours for entries where dealing with Mr. Bensen was combined with other tasks, multiplied by $295 (*Exhibit A*, hereto)).[14]
$19,676.16	Deduct $1,278.34 for Mr. Woodcock's non-core work, representing 1/3 of his normal fee for 13 hours of work (*Exhibit E*, hereto).
$39,352.32	Multiply times two because fees for two attorneys are reasonable. By doing so, Plaintiffs would be paid for both attorneys at Mr. Woodcock's hourly rate of $295.
$43,852.32	Add $4,500 for cost of filing the application fee motion – 30 hours at $150 per hour (*Exhibit F*, hereto).
$47,206.22	Add paralegal costs ($779) and the out-of pocket expenses ($2, 574.90, representing the total expenses of 2,713.22 minus $138.32 for travel costs to attend the Reapportionment Commission's proceedings (Docket # 49-1 at 33)).

This amount is more than reasonable under the circumstances of this litigation. As discussed above, this is a one-issue case where State Defendants agreed with Plaintiffs on the merits – there was no discovery, no contested motions and no trial. In these circumstances, $47,206.22 is eminently reasonable.

CONCLUSION

WHEREFORE, defendants ask that Plaintiffs' Motion for Attorneys' Fees and Expenses be reduced as set forth above.

[14] Using 1/3 of the time reflected in billing entries where working with Mr. Bensen was one of two or more tasks is reasonable, particularly when compared to the time spent by the Baker & Hostetler attorneys (21.50 hours) working at least in part with Mr. Bensen. *Exhibit A*, hereto.

DATED: January 23, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this, the 23rd of January, 2012, I electronically filed the above document with the Clerk of Court using the CM/ECF system, which will send a copy of such to the following registered participants:

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