

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

NATIONAL RIGHT TO LIFE)
POLITICAL ACTION COMMITTEE)
STATE FUND)
)
PLAINTIFF)
)
v.)
)
PETER B. WEBSTER et al.)
)
DEFENDANTS)

Civil No. 96-359-P-H
(Consolidated with 97-56-B-H)

Order and Memorandum of Decision on
Motion and Renewed Motion for Attorney’s Fees

On December 11, 1996, National Right to Life brought suit under 42 U.S.C.A. § 1983, challenging four provisions of Maine’s election laws. By my Order of October 22, 1997, I dismissed Counts I and IV for lack of ripeness. I entered judgment for National Right to Life on Counts II and III, the defendants having conceded that the provisions of § 1056(1) under attack were unconstitutional. National Right to Life now seeks recovery of a total of \$47,327.68 in attorney’s fees and costs under section 1988.¹

¹ In its original petition for attorney’s fees, National Right to Life sought to recover a total of \$50,369.52 in fees and costs (\$50,001.49 for Bopp, Coleson & Bostrom; \$368.03 in costs for Pierce Atwood). In response to the defendants’ Opposition, however, the plaintiff decided to defer seeking compensation for tasks related solely to Counts I and IV and thus subtracted

DISCUSSION.

Section 1988 provides that a “prevailing party” may recover reasonable costs and attorney’s fees incurred in an action to enforce 42 U.S.C.A. § 1983.² Determining a party’s entitlement to section 1988 attorney’s fees is basically a two step process. First, I must conclude that the party seeking fees is a “prevailing party” within the meaning of the statute. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983). Second, I must come up with a figure that represents the reasonable costs and attorney’s fee for the case. The “reasonable fee” analysis in turn involves two steps. First, I must calculate the “lodestar”-- “the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” Id. Second, I must decide, in light of the “results obtained” and other factors, whether to “adjust the fee upward or downward.” Id. at 434.

1. *Prevailing Party.*

A plaintiff is a prevailing party under the statute if it “succeed[s] on any significant issue in litigation which achieves some of the benefit the part[y] sought in bringing suit.” Hensley, 461 U.S. at 433 (citation omitted). The relief obtained must “materially alter[] the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” Farrar v. Hobby, 506 U.S. 103, 111 (1992). I hold, and the defendants do not contest, that the plaintiff, National Right to Life, qualifies as a prevailing party for attorney’s fee purposes. On account of the

\$8,818.75 from the Bopp firm’s request, leaving a total request of \$41,182.74. The plaintiff then submitted a supplemental petition for fees in the amount of \$5,776.91, bringing the grand total for attorney’s fees and costs sought by the plaintiff to \$47,327.68 (\$46,959.65 for the Bopp firm; \$368.03 for Pierce Atwood).

² Specifically, section 1988 provides that “[i]n any action or proceeding to enforce a provision of section[] 1983 . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs.” 42 U.S.C.A. § 1988.

relief obtained through this litigation, the plaintiff may now expend amounts greater than \$5,000 and make PAC-to-PAC transfers without fear of enforcement of the prohibitions of 21-A M.R.S.A. § 1056(1). On the other hand, these claims were clearly distinct from Counts I and IV, on which the plaintiff should have known it would face a substantial ripeness challenge.

2. *Reasonable attorney's fee.*

a. **The Lodestar.**

The “lodestar” calculation represents the “number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” Hensley, 461 U.S. at 433. A court calculates the lodestar by (1) considering the amount of time counsel actually spent on the case, Lipsett v. Blanco, 975 F.2d 934, 937 (1st Cir. 1992); (2) subtracting hours that are “duplicative, unproductive, excessive, or otherwise unnecessary,” id.; and then (3) multiplying that figure by the “prevailing rates in the community for comparably qualified attorneys.” Id. “Once established, the lodestar represents a presumptively reasonable fee.” Id.

b. **Adjustments to the Lodestar.**

Determining the reasonable hours spent on the litigation “does not end the inquiry.” Hensley, 461 U.S. at 434. I must also consider the degree of the plaintiff’s success in the lawsuit and decide whether to adjust the figure up or down. This inquiry requires me to address two questions:

First, did the plaintiff [National Right to Life] fail to prevail on claims that were unrelated to the claims on which [it] succeeded? Second, did the plaintiff [National Right to Life] achieve a level of success that makes the hours reasonably expended a satisfactory basis for making a fee award?

Id. Regarding the first question, I find that National Right to Life is not entitled to recover fees

expended in connection with Counts I and IV, the two counts dismissed for lack of ripeness. Although the challenged provisions are all part of the Maine Clean Election Act, 21-A M.R.S.A. § 1001 *et seq.*, Counts I and IV involve provisions enacted as part of a citizen initiative known as “An Act to Reform Campaign Finance,” that passed on November 5, 1996. The provisions of the Act will not take effect until 2000. In contrast, Counts II and III involve provisions that were not affected by the Act. Where a party “present[s] in one lawsuit distinctly different claims for relief that are based on different facts and legal theories . . . work on an unsuccessful claim cannot be deemed to have been ‘expended in pursuit of the ultimate result achieved.’” Hensley, 461 U.S. at 434-35. Distinct claims must “be treated as if they had been raised in separate lawsuits, and therefore no fee may be awarded for services on the unsuccessful claim.” Id.

Regarding the second question, I find that neither an upward nor downward adjustment is merited in this case. National Right to Life is entitled to recover its fees for the full number of hours reasonably expended in litigating Counts II and III at the hourly rates of \$175 per partner hour and \$125 per associate hour.

c. Reasonable Hourly Rates.

In New Hampshire Right to Life Political Action Committee v. Gardner, No. 96-1744, slip op. at 2 (1st Cir. Feb. 28, 1997), a case involving the same attorneys representing the plaintiff in this case, the First Circuit set the reimbursement rate for partners at \$175 per hour and for associates at \$125 per hour. Given that the inflation rate during the intervening time period was extremely low, I apply the same hourly rates to the current fee award. The plaintiff may recover \$175.00 per partner hour and \$125.00 per associate hour.

3. *Specific findings.*

National Right to Life seeks recovery of an amount close to \$50,000. The defendants seek to have this court reduce that claimed amount to less than \$10,000. Having closely reviewed the plaintiff's invoices, and taking into consideration the principles discussed above, I make the following rulings:

Exclusions:

1. Research/Activities Specifically Related to Dismissed Counts I & IV. As discussed above, dismissed Counts I and IV presented distinctly different claims for relief and the plaintiff cannot recover fees incurred in connection with those claims. Accordingly, I exclude a total of 61.75 hours from the plaintiff's petition for fees.
2. Opposition to Motion to Intervene. Hours incurred opposing various motions by third parties to intervene in this suit are unrelated to the plaintiff's successful claims. I therefore exclude a total of 74.0 hours from the plaintiff's petition for fees.
3. Opposition to Motion to Consolidate. Hours spent opposing the motion to consolidate are unrelated to the plaintiff's successful claims. I therefore exclude a total of 6.0 hours from the plaintiff's petition for fees.

Reductions:

1. Preparation of the Complaint and Amended Complaint. Since I have held that the unsuccessful claims were distinct from the successful claims, the

plaintiff cannot recover fees for time spent on the dismissed claims. Two of the four claims were dismissed and the successful claims were relatively simple. Accordingly I award the plaintiff one-third of the 36.75 hours incurred in preparing the Complaint and the Amended Complaint.

Award: 12.25 hours for a total of \$1593.75.

2. Motion for Summary Judgment. For the same reasons discussed directly above, the plaintiff is entitled to recover fees for one-third of the 83.5 hours incurred in preparing the Motion for Summary Judgment.

Award: 27.83 hours for a total of \$3504.17.

3. Opposition to Motion to Dismiss. The defendants moved for dismissal of Counts I, III and IV of National Right to Life's Complaint. Since National Right to Life cannot recover fees connected with Counts I and IV, the plaintiff is entitled to recover fees for one-third of the 24.75 hours incurred in opposing the defendants' Motion to Dismiss the suit.

Award: 8.25 hours for a total of \$1056.25.

4. Motion to Amend Judgment. All hours are recoverable.

Award: 17.75 hours for a total of \$2231.25.

5. Conferring with Local Counsel. The defendants argue that any and all time expended by the Bopp firm in conferring and corresponding with local counsel or familiarizing themselves with local rules is excludable because "defendant should not be penalized for plaintiff's decision to employ out-of-state attorneys as lead counsel." New Hampshire Right to Life Political

Action Com. v. Gardner, No. 96-212-JD, slip op. at 3 (D.N.H. April 4, 1997).

The First Circuit allows recovery, however, if a plaintiff has “some articulable reason for imposing on a local opponent the extra expenses associated with retaining foreign counsel.” Ackerley Communications v. City of Somerville, 901 F.2d 170, 171 n.3 (1st Cir. 1990). The Bopp firm has special expertise and experience in the area of election law, and the plaintiff’s decision to retain the Bopp firm is not without reason. I therefore find that the plaintiff may recover fees for time spent conferring with local counsel and familiarizing themselves with the local rules. Award: 3.5 hours for a total of \$450.00. (Time spent conferring with local counsel has, for the most part, been assigned according to the specific task. The 3.5 hours accounted for here are hours that could not otherwise be assigned.)

6. General litigation matters. In addition to the specifically designated matters discussed above, the plaintiff’s lawyers expended 51.5 hours on general matters in connection with the suit. I find that amount of time to be excessive and reduce it by one-third.

Award: 34.33 hours for a total of \$4516.25.

7. Petition for fees and Supplemental petition for fees. The plaintiff's counsel spent 15.25 hours preparing the original petition for attorney's fees and an additional 37 hours preparing the response to the defendant's opposition to the original petition for attorney's fees and the supplemental petition for attorney's fees. A reduction is warranted because the plaintiff's original petition sought fees in connection with the unsuccessful claims; moreover, I find 52.25 hours exceeds what is reasonable. I therefore reduce the award by one-third.

Award: 34.84 hours for a total of \$4430.00.

4. *Total Amounts Awarded*

TOTAL:	\$ 17781.67
COSTS:	\$744.03 (Bopp firm)
<u>COSTS</u>	<u>\$368.03 (Pierce Atwood)</u>
TOTAL § 1988 AWARD:	\$18,893.73

SO ORDERED.

DATED THIS 22ND DAY OF MAY, 1998.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE