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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

BOBBY SINGLETON, et al.,
Plaintiffs,

v.

WES ALLEN, et al.,
Defendants.

No. 2:21-cv-1291-AMM
Three-Judge Court

SINGLETON PLAINTIFFS' MOTION FOR AN ORDER REGARDING PREVAILING PARTY STATUS

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Hours after the State of Alabama enacted a new congressional districting plan in 2021, the *Singleton* Plaintiffs challenged the first challenge to that plan, correctly asserting that the Legislature "refus[ed] to adopt plans that replaced the racially gerrymandered majority-black District 7 with two reliable crossover districts drawn with race-neutral traditional districting principles." ECF No. 15, ¶ 6.[1] The *Singleton* Plaintiffs have been the only Plaintiffs to advocate a remedial plan that created two such crossover districts without the use of racial quotas. After almost two years of litigation, the Special Master recommended such a plan, the *Singleton* Plaintiffs supported his recommendation, and the Defendants opposed it. The *Singleton* Plaintiffs prevailed; this Court adopted the Special Master's plan. When the Defendants petitioned this Court and the Supreme Court to stay this Court's decision, the *Singleton* Plaintiffs opposed the petition and prevailed again; the stay was denied. Therefore, the *Singleton* Plaintiffs are prevailing parties; they have obtained the relief they sought and the Defendants sought to avoid.

BACKGROUND

The *Singleton* Plaintiffs' first complaint, filed more than two years ago, staked out a position that ultimately guided the remedy in this case: the Voting Rights Act cannot justify the intentional creation of a single majority-Black congressional district in Alabama when two opportunity districts can be drawn using traditional

[1] Unless otherwise noted, "ECF No." refers to filings on the *Singleton* docket.

redistricting principles instead of sorting voters by race. *Singleton*, ECF No. 1, ¶¶ 1, 3, 13–14, 23–24, 48–54. That complaint was the first to challenge Alabama's congressional districts after the release of the 2020 Census, and it was the occasion for the appointment of this three-judge Court. When Alabama enacted a congressional plan that largely followed its previous plan, the *Singleton* Plaintiffs amended their complaint, challenging the Legislature's "refusal to adopt plans that replaced the racially gerrymandered majority-black District 7 with two reliable crossover districts drawn with race-neutral traditional districting principles." ECF No. 15, ¶ 6. The Voting Rights Act, they alleged, "No longer requires maintenance of a majority-black Congressional District in Alabama." *Id.* ¶ 3.

In the discovery that followed, the *Singleton* Plaintiffs collected evidence in support of their claim that in Alabama, there is sufficient crossover voting to permit the creation of two opportunity districts drawn without respect to race, and the *Singleton* Plaintiffs sought a preliminary injunction against the State's 2021 plan on that basis. ECF No. 42 at 1, 17–19. They retained an expert witness, Dr. Natalie Davis, who offered opinions supporting their theory and testified at the preliminary injunction hearing. ECF No. 56-1; ECF No. 84 at 19. Plaintiff Bobby Singleton also testified that the *Singleton* Plaintiffs' Whole-County Plan, which was drawn without using race, would include two opportunity districts. ECF No. 84 at 19.

This Court held that Alabama's 2021 plan violated the Voting Rights Act and enjoined its future use. ECF No. 88. But it made clear that the constitutional concerns motivating the *Singleton* Plaintiffs would be considered in relief proceedings: "[B]ecause Alabama's upcoming congressional elections will not occur on the basis of the map that is allegedly unconstitutional, we decline to decide the constitutional claims asserted by the Singleton and Milligan plaintiffs at this time." *Id.* at 216. On appeal to the Supreme Court, the *Singleton* Plaintiffs filed an amicus brief that pointed out that the State had repeatedly asserted that the 2021 plan was race-neutral when it was anything but, and that the *Singleton* Plaintiffs had shown that it is possible to create two race-neutral opportunity districts. Brief of *Singleton* Plaintiffs as *Amici Curiae* in Support of Neither Party, *Allen v. Milligan*, No. 21-1086 (S. Ct.), 2022 WL 1441971 (May 2, 2022). The Supreme Court ultimately affirmed this Court's decision.

After the Supreme Court issued its decision, and the State then enacted the 2023 plan, this Court held a hearing on the *Singleton* Plaintiffs' opposition to that plan. When the Court determined that the 2023 plan did not remedy the State's violation of the Voting Rights Act, it afforded the *Singleton* Plaintiffs "the opportunity to submit remedial maps for the Special Master to consider and to otherwise participate in proceedings before the Special Master to the same degree as the *Milligan* and *Caster* Plaintiffs." ECF No. 154 at 5. And when the Defendants

moved for a stay pending appeal, this Court asked the *Singleton* Plaintiffs to respond. ECF. No. 193.

The *Singleton* Plaintiffs participated fully in the proceedings before the Special Master. They proposed a race-neutral plan with two opportunity districts, and they emphasized the Special Master's duty under controlling Supreme Court precedent to "conduct a careful analysis of whether plans can be drawn that provide two opportunity districts without drawing race-based lines." *In re Redistricting 2023*, No. 2:23-mc-1811-AMM (N.D. Ala.), ECF No. 5 at 2. The *Caster* and *Milligan* Plaintiffs proposed plans designed to hit specific racial targets, which the *Singleton* Plaintiffs opposed because, in the *Singleton* Plaintiffs' view, such a plan is unconstitutional and would be vulnerable to reversal by the Supreme Court. *In re Redistricting 2023*, ECF No. 24 at 1–12. The Special Master proposed three plans, all of which were drawn without using race. ECF No. 201 at 33. The *Singleton* Plaintiffs supported Plan 3 as the "clear winner" among those three plans, ECF No. 205 at 2, and this Court adopted Plan 3, ECF No. 210.

The *Singleton* Plaintiffs also participated fully in the Plaintiffs' opposition to a stay, both in this Court and the Supreme Court. In this Court, the Plaintiffs opposed a stay based on their main theory of the case. Secretary Allen claimed that under a court-ordered plan, Alabamians would be "segregated into different districts based on race." *Milligan v. Allen*, No. 2:21-cv-1530-AMM (N.D. Ala.), ECF No. 276 at 4.

But, as the *Singleton* Plaintiffs pointed out, this was backward; the State was the one who separated Alabamians by race, while a remedial plan could not constitutionally do so. *Milligan*, ECF No. 285 at 1. This Court granted the relief the *Singleton* Plaintiffs requested—denial of the stay—and the Secretary petitioned the Supreme Court for a stay as well. The Supreme Court asked the *Singleton* Plaintiffs to respond as parties. *See* S. Ct. R. 18(2) ("All parties to the proceeding in the district court are deemed parties entitled to file documents in this Court …."). The *Singleton* Plaintiffs responded as parties, and the Supreme Court accepted their response as a party's filing. Again, the *Singleton* Plaintiffs pointed out that the State incorrectly accused this Court of requiring two majority-Black districts, and noted that "[t]he 2023 plan, which Alabama's Solicitor General helped craft, retains one racially targeted, majority-Black district." *Singleton* Respondents' Opposition to Emergency Application for Stay Pending Appeal to the Supreme Court of the United States, *Allen v. Milligan*, No. 23A231 (S. Ct.), 2023 WL 6151471, at *1, 6 (Sept. 19, 2023). As in the District Court, the *Singleton* Plaintiffs, along with the *Caster* and *Milligan* Plaintiffs, prevailed. The stay was denied.

The *Singleton* Plaintiffs intend to seek attorneys' fees, but the Defendants have taken the position that the *Singleton* Plaintiffs are not "prevailing parties." This brief addresses that specific issue.

ARGUMENT

In litigation about voting rights, a federal court may award attorneys' fees to a "prevailing party." 42 U.S.C. § 1988(b); 52 U.S.C. § 10310(e).[2] The purpose "is the familiar one of encouraging private litigants to act as 'private attorneys general' in seeking to vindicate the civil rights laws. As the Senate Report on section [10310(e)] stated, 'Congress depends heavily upon private citizens to enforce the fundamental rights involved. The awards are a necessary means of enabling private citizens to vindicate these Federal rights.'" *Donnell v. United States*, 682 F.2d 240, 245 (D.C. Cir. 1982) (quoting S. Rep. No. 295, 94th Cong., 1st Sess. 40 (1975)).

Consistent with this purpose—encouraging private citizens to hire competent counsel to vindicate their right to vote—the Supreme Court has "employed a pragmatic test over a technical one in construing the attorney's fees statute." *Brooks v. Ga. State Bd. of Elections*, 997 F.2d 857, 863 (11th Cir. 1993). In *Hensley v. Eckerhart*, the Supreme Court set a "generous formulation" for prevailing parties in civil rights litigation:

> A plaintiff must be a "prevailing party" to recover an attorney's fee under § 1988. The standard for making this threshold determination has been framed in various ways. A typical formulation is that plaintiffs may be considered "prevailing parties" for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some

[2] Section 1988 applies to civil rights cases generally, and Section 10310 applies to "any action or proceeding to enforce the voting guarantees of the fourteenth or fifteenth amendment." The standard for determining whether a plaintiff is a "prevailing party" is the same under both statutes. *Brooks v. Ga. State Bd. of Elections*, 997 F.2d 857, 860–61 (11th Cir. 1993). Section 10310 was previously codified at 42 U.S.C. § 1973*l*.

> of the benefit the parties sought in bringing suit. Thus, the touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute.

461 U.S. 424, 432 (1983) (cleaned up). The Court relied on this standard when it unanimously reversed an opinion of the Fifth Circuit holding that a "prevailing party" must prevail on the "central issue" in the litigation; instead, the Court held, success on "any significant issue" is enough. *Tex. State Teachers Ass'n v. Garland Indep. School Dist.*, 489 U.S. 782, 791–92 (1989). A finding of liability on the plaintiff's causes of action is not required. For example, relief awarded through a consent decree, without a finding of liability, suffices because it "is a court-ordered change in the legal relationship between the plaintiff and the defendant." *Buckhannon Board & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 604 (2001) (cleaned up) (citing *Garland*). In short, a "plaintiff has 'prevailed' in his suit" when "he has obtained the substance of what he sought." *Hewitt v. Helms*, 482 U.S. 775, 761 (1987).

In fact, the Supreme Court has warned against placing too much emphasis on the judgment itself and not enough on the relief obtained: "In all civil litigation, the judicial decree is not the end but the means. At the end of the rainbow lies not a judgment, but some action (or cessation of action) by the defendant that the judgment produces—the payment of damages, or some specific performance, or the termination of some conduct. Redress is sought *through* the court, but *from* the

defendant." *Hewitt*, 482 U.S. at 761. The Court later summarized its holdings in *Hewitt* and *Garland* as follows: "In short, a plaintiff 'prevails' when actual relief on the merits of his claim materially alters 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, 111–12 (1992).

Following the Supreme Court's lead, lower courts have also taken a pragmatic approach to determining who is a prevailing party in redistricting litigation. In doing so, they have focused on the nature of the relief awarded, not whether the plaintiff obtained a finding of liability. In *Hastert v. Illinois State Board of Election Commissioners*, a case involving congressional districts, one set of plaintiffs intervened "just over a week before trial, for the limited purpose of addressing the configuration of a relatively small geographic area in the vicinity of East St. Louis, Illinois." 794 F. Supp. 254, 259 (N.D. Ill. 1992). These plaintiffs "reached an accommodation" with the other plaintiffs, and dropped out of the case. *Id.* The district court held that despite obtaining relief, these plaintiffs were not prevailing parties in light of their "fleeting presence to address their concerns regarding a tiny fraction of the state, their neutral stance regarding the merits of the principal issue to be litigated and their absence from the trial proceedings." *Id.* Citing the Supreme Court's opinion in *Garland*, the Seventh Circuit reversed:

> We find that the configuration of any of Illinois' 20 congressional districts was a significant issue in the litigation, and, after *Garland*,

> success on any such issue is enough to trigger an award of fees. Under this standard, the Scott plaintiffs undoubtedly prevailed. They urged that the congressional districts encompassing East St. Louis be configured in a particular way. They convinced the Hastert group to incorporate their proposed configuration into the Hastert master plan. When the district court adopted the Hastert plan, the Scott group accomplished everything it set out to achieve. Thus, they too prevailed.

28 F.3d 1430, 1441 (7th Cir. 1993) (footnote omitted). "[I]n the redistricting context," the Court stated, "the touchstone for whether a party 'prevails' is simply whether that party's map (or the map the party ultimately embraces) is ultimately adopted." *Id.* at 1443.

Closer to home, a district court in Alabama has separated the issues of liability and remedy in a districting case, awarding fees to two of the undersigned counsel. *Dillard v. City of Greensboro* involved a challenge to Greensboro's at-large system for electing city councilmembers. 213 F.3d 1347, 1350 (11th Cir. 2000). Plaintiffs' counsel obtained a consent decree that established liability and provided for five districts instead, and they were paid their fees and expenses. *Id.* at 1350–51. Working out the borders of those districts, however, took years more; ultimately, a special master drew new districts, which the district court adopted. *Id.* at 1352. The plaintiffs did not get the districts they would have preferred, but they did not object to the special master's districts. *Id.* The district court held that the plaintiffs were prevailing parties, separate and apart from their victory on the issue of liability, and the Eleventh Circuit affirmed: "Of course they prevailed early on when they exacted

from Greensboro an admission of liability; they have already been compensated for that. But they prevailed to some extent as well in this marathon remedy phase: the district court concluded, and no one here disputes, that the special master's plan effects a complete remedy for the city's acknowledged § 2 violation." *Id.* at 1354.

Under these standards, the *Singleton* Plaintiffs are prevailing parties. They sought a congressional map with two opportunity districts drawn without regard to race, and they received two opportunity districts drawn without regard to race. In fact, until the Special Master submitted his recommendations, they were the *only* parties who sought such a remedy. The Defendants objected to any remedy at all, and the *Milligan* and *Caster* Plaintiffs proposed a congressional plan with racial targets for both opportunity districts.[3] The Special Master did not use race to draw his proposed districts, and he cited the *Singleton* Plaintiffs' briefing on this issue. ECF No. 201 at 33. This Court then adopted the Special Master's proposed districts in an order entered on the *Singleton* docket. The *Singleton* Plaintiffs obtained from the Court "the substance of what [they] sought." *Hewitt*, 482 U.S. at 761.[4]

Although the Special Master did not adopt the specific plan the *Singleton* Plaintiffs proposed to him, that is not the test for whether the *Singleton* Plaintiffs are

[3] Of course, this does not imply that the *Milligan* and *Caster* Plaintiffs are not prevailing parties; they plainly are. They obtained injunctive relief on their Voting Rights Act claims, and they ultimately supported the plan this Court adopted.

[4] The *Singleton* Plaintiffs are not relying on a "catalyst" theory, which applies when the plaintiff obtains voluntary relief from the defendant but not judicial relief. The State did not voluntarily implement the Special Master's plan; it did so under an injunction.

prevailing parties. The Special Master's plan adhered to the *Singleton* Plaintiffs' most important principles, and the *Singleton* Plaintiffs embraced it. "[T]he touchstone for whether a party 'prevails' is simply whether that party's map (or the map the party ultimately embraces) is ultimately adopted." *Hastert*, 28 F.3d at 1443. A party's ideal plan need not be the one adopted, as long as that party supported the adopted plan. *Dillard*, 213 F.3d at 1352.[5]

Above and beyond receiving the remedy they wanted, the *Singleton* Plaintiffs prevailed in this Court and the Supreme Court, where Secretary Allen petitioned for a stay of this Court's order enjoining the 2023 plan. A stay would have allowed the State to use its unlawful 2023 congressional plan in the 2024 election. Here too, the *Singleton* Plaintiffs prevailed. The denials of a stay resolved a significant issue in the *Singleton* Plaintiffs' favor, fulfilling the *Singleton* Plaintiffs' objective of obtaining relief for the 2024 election. Even if (for the sake of argument) the *Singleton* Plaintiffs had never participated in the remedial process, this victory alone would make them a prevailing party.

[5] To the extent the Defendants might argue that the *Singleton* Plaintiffs did not succeed on all issues, such arguments would go only to "the size of a reasonable fee, not to eligibility for a fee award at all." *Garland*, 489 U.S. at 790. Eligibility for a fee award at all is the only issue presented here.

CONCLUSION

The *Singleton* Plaintiffs obtained the relief they wanted through the judicial process. Under controlling precedent, that makes them "prevailing parties" eligible for attorneys' fees.

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Respectfully submitted,

/s/ Henry C. Quillen
(admitted *pro hac vice)*
WHATLEY KALLAS, LLP
159 Middle Street, Suite 2C
Portsmouth, NH 03801
Tel: (603) 294-1591
Fax: (800) 922-4851
Email: hquillen@whatleykallas.com

/s/ James Uriah Blacksher
(with permission)
James Uriah Blacksher
825 Linwood Road
Birmingham, AL 35222
Tel: (205) 612-3752
Fax: (866) 845-4395
Email: jublacksher@gmail.com

Joe R. Whatley, Jr.
W. Tucker Brown
WHATLEY KALLAS, LLP
2001 Park Place North
1000 Park Place Tower
Birmingham, AL 35203
Tel: (205) 488-1200
Fax: (800) 922-4851
Email: jwhatley@whatleykallas.com
tbrown@whatleykallas.com

Myron Cordell Penn

PENN & SEABORN, LLC
1971 Berry Chase Place
Montgomery, AL 36117
Tel: (334) 219-9771
Email: myronpenn28@hotmail.com

Diandra “Fu” Debrosse Zimmermann
Eli Hare
DICELLO LEVITT LLP
505 20th Street North, Suite 1500
Birmingham, AL 35203
Tel.: (205) 855.5700
Email: fu@dicellolevitt.com
ehare@dicellolevitt.com

U.W. Clemon
U.W. CLEMON, LLC
Renasant Bank Building
2001 Park Place North, Tenth Floor
Birmingham, AL 35203
Tel.: (205) 506-4524
Fax: (205) 538-5500
Email: uwclemon1@gmail.com

Edward Still
2501 Cobblestone Way
Birmingham, AL 35226
Tel: (205) 335-9652
Fax: (205) 320-2882
Email: edwardstill@gmail.com
Counsel for Singleton Plaintiffs