FILED
2024 Jan-26 PM 02:43
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

REPLY IN SUPPORT OF *SINGLETON* PLAINTIFFS' MOTION FOR AN ORDER REGARDING PREVAILING PARTY STATUS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

INTRODUCTION

The Defendants' brief posits a bright-line rule: a plaintiff cannot be a "prevailing party" without a finding of liability on its cause of action. Every relevant precedent, including every opinion the Defendants cite, either does not support this rule or contradicts it. The Supreme Court, the Eleventh Circuit, and other courts have held time and again that "prevailing party" status depends not on causes of action, but on whether the plaintiffs "succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (cleaned up). Parsimonious rules like the Defendants' are incompatible with controlling precedent, which "employ[s] 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), and describes the standard as "generous," *Hensley*, 461 U.S. at 433.

Under the correct standard, the *Singleton* Plaintiffs are prevailing parties. As the Defendants themselves have told this Court, their constitutional claim is intertwined with the *Caster* and *Milligan* Plaintiffs' statutory claims, specifically with respect to how district lines can be permissibly drawn. The *Singleton* Plaintiffs were the only plaintiffs to seek a map with race-neutral district lines as a remedy for the State's unlawful map, and that is what they received.

ARGUMENT

I. A "Prevailing Party" Need Only Succeed on Any Significant Issue in Litigation Which Achieves Some of the Benefit the Parties Sought in Bringing Suit.

What did the Supreme Court mean when it held that "Congress intended to permit the ... award of counsel fees only when a party has prevailed on the merits"? *Farrar v. Hobby*, 506 U.S. 103, 109 (1992) (quoting *Hanrahan v. Hampton*, 446 U.S. 754, 758 (1980)). To the Defendants, the answer is so obvious that they do not support it with any authority: absent a consent decree or settlement, a plaintiff must obtain a favorable ruling on their *cause of action*. Defendants' Motion (ECF No. 227) at 10 ("This Court has not ruled on any of the *Singleton* Plaintiffs' claims; thus, they cannot have prevailed on those claims."). But this is not the answer the Supreme Court has given. In the next two sentences of *Farrar*, which the Defendants do not cite, the Supreme Court explained itself clearly: "Under our generous formulation of the term, plaintiffs may be considered 'prevailing parties' for attorney's fees purposes if they succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit." 506 U.S. at 109 (cleaned up). Prevailing party status thus turns on "issues," not causes of action; hundreds of opinions have relied on the "any significant issue" standard in cases involving attorneys' fees under the civil rights laws.

From the beginning of this case, the extent to which race can be used to draw district lines has been a significant issue. The Defendants said so themselves when they opposed the *Singleton* Plaintiffs' motion for a decision on their constitutional claim while *Caster* and *Milligan* were before the Supreme Court:

> Moreover, the questions the Supreme Court is set to resolve in *Milligan* and *Caster* are intertwined with the Equal Protection Clause arguments raised in *Singleton*. Resolution will necessarily require grappling with what the Equal Protection Clause requires and what it forbids with respect to the use of race in drawing district lines—questions at the heart of the *Singleton* Plaintiffs' claims and the Defendants' applications to the Supreme Court.

ECF No. 109 at 3. This Court sided with the Defendants, emphasizing the close relationship between the *Caster* and *Milligan* Plaintiffs' Section 2 claim and the *Singleton* Plaintiffs' constitutional claim. ECF No. 114 at 9–10. Having put the use of race in districting at the "heart of the *Singleton* Plaintiffs' claims," the Defendants cannot now deny that it is a significant issue in this case.[1] *See Pegram v. Herdrich*, 530 U.S. 211, 227 n.8 (2000) ("Judicial estoppel generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase."); *see also Brooks*, 997 F.2d at 867–68

[1] The Defendants briefly describe *Finch v. City of Vernon*, 877 F.2d 1497 (11th Cir. 1989), as "denying fees to plaintiff who prevailed only on his state tort claim but not his § 1983 claim." Defendants' Motion at 9–10. *Finch* is distinguishable for two reasons. First, the plaintiff *lost* on his § 1983 claim; the *Singleton* Plaintiffs have not lost on their constitutional claim. Second, the claim on which the plaintiff in *Finch* prevailed was "not related to the goals of section 1988." 877 F.2d at 1507. The *Singleton* Plaintiffs' constitutional claim is "intertwined" with the Voting Rights Act claims in *Caster* and *Milligan*.

(affirming a district court's award of fees for work on an unadjudicated claim because it was "related to" an adjudicated claim).[2]

Moreover, the standard for a prevailing party focuses on the *relief* in the court's judgment, not the judgment itself: "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 v Helms*, 482 U.S. 755, 761 (1987). In fact, a party who obtains a finding of liability on their cause of action but does not obtain relief is not a "prevailing party." *Rhodes v. Stewart*, 488 U.S. 1, 4 (1988) ("[A declaratory judgment] will constitute relief, for purposes of § 1988, if, and only if, it affects the behavior of the defendant toward the plaintiff."). Though the Defendants mock the *Singleton* Plaintiffs' "legally baseless 'we got what we want' standard," Defendants' Motion at 2, "we got what we want" is an excellent summary of the standard the Supreme Court has set out. *See Hewitt*, 482 U.S. at 761 ("If the defendant, under the pressure of the lawsuit,

[2] Even if the Defendants' liability for gerrymandering could be considered the central issue in *Singleton* (which the *Singleton* Plaintiffs do not concede), relying on the lack of a finding of liability to preclude an award of fees would contravene binding precedent. In *Texas State Teachers Association v. Garland Independent School District*, the Supreme Court unanimously rejected the Eleventh Circuit's requirement that "a party succeed on the 'central issue' in the litigation and achieve the 'primary relief sought' to be eligible for an award of attorney's fees under § 1988." 489 U.S. 782, 784 (1989).

pays over a money claim before the judicial judgment is pronounced, the plaintiff has 'prevailed' in his suit, because he has obtained the substance of what he sought.").

The Defendants cite no opinions in voting-rights litigation to support their version of the "prevailing party" standard, but they attempt without success to distinguish two opinions cited by the *Singleton* Plaintiffs.

First, the Defendants try to distinguish *Hastert v. Illinois State Board of Election Commissioners* on the ground that the defendants did not dispute liability, and therefore "[e]very plaintiff thus had an indisputable claim that the old plan could not constitutionally be used." Defendants' Motion at 10–11. But, as the district court noted, the intervenor plaintiffs joined the case long after liability was conceded, and took no position on "the merits of the principal issue to be litigated." 794 F. Supp. 254, 259 (N.D. Ill. 1992). There is no indication that the district court decided anything of substance during the plaintiffs' "fleeting presence." *See id.* To the extent *Hastert* is distinguishable, the *Singleton* Plaintiffs have a stronger case for "prevailing party" status than the plaintiffs in *Hastert*. The *Singleton* Plaintiffs initiated this litigation and have pursued it diligently for more than two years; the *Hastert* plaintiffs participated for about a week. The *Singleton* Plaintiffs engaged in the remedial process directly with the Special Master and the Court; the *Hastert* plaintiffs obtained relief indirectly through another set of plaintiffs and did not

participate in the trial. And when the Defendants sought a stay of the Court's preliminary injunction in *Singleton*, the *Singleton* Plaintiffs prevailed in this Court and the Supreme Court; the *Hastert* Plaintiffs did nothing comparable.

The Defendants also try to distinguish *Dillard v. City of Greensboro* on the ground that the plaintiffs established liability before they obtained a remedy. Defendants' Motion at 11–12. But the Eleventh Circuit *downplayed* this fact, examining anew whether the plaintiffs were prevailing parties with respect to the remedy they obtained: "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 …." 213 F.3d 1347, 1354 (11th Cir. 2000). Like the *Dillard* plaintiffs, the *Singleton* Plaintiffs obtained a "complete remedy" for the violation they alleged. *Id.*; *see* Part II below.

Finally, the Defendants assert that if the *Singleton* Plaintiffs are prevailing parties with respect to their opposition to a stay of this Court's preliminary injunction, "then *amici* across the country would be due fees." Defendants' Motion at 12. The difference between a party and an *amicus*, however, is easier to discern than the Defendants seem to believe. Here, the preliminary injunction's caption begins, "**BOBBY SINGLETON, et al., Plaintiffs,**" and it was filed in *Singleton*. ECF No. 191. A stay of that injunction would have affected the *Singleton* Plaintiffs not in some generalized sense; it would have effectively denied their constitutional

claim for the 2024 election cycle. And the Defendants do not dispute that the Supreme Court treated the *Singleton* Plaintiffs as "parties to the proceeding in the district court" and parties before the Supreme Court, not *amici*. *See Singleton* Plaintiffs' Motion (ECF No. 223) at 5. Nevertheless, the Defendants warn that a litigant could transform itself from an *amicus* into a party by filing a nonjusticiable or moot claim, Defendants' Motion at 12–13, but this is incorrect. If a claim is truly nonjusticiable or moot, then it can have no bearing on the remedy the court awards, and the plaintiff who brings that claim cannot be a prevailing party. The *Singleton* Plaintiffs' constitutional claim, as explained in Part II below, was closely tied to the ultimate remedy. The merits of that claim were that the Constitution demands race-neutral opportunity districts, the *Singleton* Plaintiffs were the only parties who asked the Special Master to draw race-neutral opportunity districts, and this Court ultimately adopted race-neutral opportunity districts. Designating the *Singleton* Plaintiffs as prevailing parties under these circumstances creates no risk that would-be *amici* will file doomed claims just to obtain attorneys' fees.

II. The *Singleton* Plaintiffs Succeeded on Significant Issues, Achieving the Benefit They Sought.

The Defendants do not dispute (nor could they) that the *Singleton* Plaintiffs' complaints have sought race-neutral opportunity districts since day one. Nor do they dispute that the Special Master recommended, and this Court adopted, race-neutral opportunity districts the *Singleton* Plaintiffs supported. These undisputed facts alone

make the *Singleton* Plaintiffs prevailing parties. *Hastert*, 28 F.3d at 1443 ("[I]n the redistricting context the touchstone for whether a party 'prevails' is simply whether that party's map (or the map the party ultimately embraces) is ultimately adopted."); Defendants' Motion at 14 (citing this portion of *Hastert*).

Instead, the Defendants build a strawman: the *Singleton* Plaintiffs' "theory of racial gerrymandering [is that] any plan that divides Jefferson County in a way that leads to significantly different racial makeups in the two Jefferson County districts is a racial gerrymander." Defendants' Motion at 14–15. This is false. The *Singleton* Plaintiffs have argued that the split of Jefferson County since 1992 has been a racial gerrymander not because it happened to lead to different racial makeups, but because it was specifically designed to separate voters by race. ECF No. 57 at 1, 4–10; ECF No. 147 at 4–9; ECF No. 189 at 5–13. To be sure, the *Singleton* Plaintiffs have advocated that Jefferson County be kept whole, but they have done so out of fidelity to traditional redistricting principles, not because they believe that any split of Jefferson County that leads to disparate racial makeups—even one drawn without respect to race—is automatically unconstitutional.

The plan this Court adopted illustrates the point. The Special Master drew this plan without using race. ECF No. 201 at 33. While the two Jefferson County districts had significantly different racial makeups, the *Singleton* Plaintiffs did not claim that it was a racial gerrymander. Instead, the *Singleton* Plaintiffs *supported* that plan

because it kept counties together better than the alternative plans, and it kept Birmingham together better as well. ECF No. 205 at 3–5. Unlike the plans in effect from 1992 to 2022, which were designed to separate Black and White voters in service of racial quotas, the Special Master's plan was designed to create opportunity, regardless of the race of the voters in each district. The *Singleton* Plaintiffs' support for the Special Master's plan is consistent with their theory of the case from the beginning. The *Singleton* Plaintiffs got a race-neutral plan consistent with the constitutional principles that the Defendants have described as "the heart of the *Singleton* Plaintiffs' claims."

Finally, the Defendants appear not to dispute that if success in defeating their attempts to stay the preliminary injunction can make the *Singleton* Plaintiffs a "prevailing party," the *Singleton* Plaintiffs achieved that success. This is an independent reason to designate the *Singleton* Plaintiffs as prevailing parties.

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. The Defendants have not cited a single authority to the contrary.

Dated: January 26, 2024

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