

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

DAVID B. MEANS, ET AL.,

Plaintiffs,

v.

DESOTO PARISH, ET AL.,

Defendants.

CIVIL ACTION NO. 5:23-cv-00669-
JE-MLH

JUDGE JERRY EDWARDS, JR.

MAGISTRATE JUDGE MARK L.
HORNSBY

**PLAINTIFFS’ REPLY MEMORANDUM IN SUPPORT OF MOTION FOR
ATTORNEYS’ FEES AND EXPENSES**

Defendants’ Opposition does not dispute the dispositive fact: on July 2, 2026, this Court, “with the consent of the parties,” ordered that Defendants are permanently enjoined from using the Enacted Plan in any future election, appointed a Special Master to develop a remedial plan at Defendants’ expense, and retained jurisdiction to enforce its order. ECF 127 ¶¶ 1–4, 8. That is a court-ordered consent decree, and under the relevant Supreme Court authority, it makes Plaintiffs prevailing parties as a matter of law. Defendants’ contrary theory—that the Supreme Court’s decision in *Callais*, not this Court’s decree, “caused” the result—is just the long-rejected catalyst theory run in reverse. The Supreme Court made clear a quarter-century ago that the relevant inquiry is not out-of-court motivations but judicial imprimatur on the change in the parties’ conduct. That is present here. The remainder of the Opposition offers only two things: a demand to deny all fees for purported lack of success, which binding Fifth Circuit precedent forecloses, and, in the alternative, an ill-founded request to trim Plaintiffs’ fees. The Motion should be granted.

ARGUMENT

I. PLAINTIFFS ARE PREVAILING PARTIES.

A. A court-ordered consent decree confers prevailing-party status as a matter of law.

As an initial matter, “settlement agreements enforced through a consent decree may serve as the basis for an award of attorney’s fees.” *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Hum. Res.*, 532 U.S. 598, 604 (2001). “Although a consent decree does not always include an admission of liability by the defendant . . . it nonetheless is a court-ordered change in the legal relationship between the plaintiff and the defendant.” *Id.* (citation modified). Thus, “enforceable judgments on the merits and court-ordered consent decrees create the ‘material alteration of the legal relationship of the parties’ necessary to permit an award of attorney’s fees.” *Id.* (quoting *Tex. State Teachers Ass’n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 792–93 (1989)).

The Supreme Court recently reaffirmed the point:

A consent decree reflects the parties’ own resolution of the merits, but it is approved and given force of law by the court. Violation of a consent decree is enforceable by a citation for contempt. So a consent decree is like a final judgment in the relevant ways: It conclusively resolves the claim, bears a judicial *imprimatur*, and may grant enduring relief that materially alters the legal relationship between the parties.

Lackey v. Stinnie, 604 U.S. 192, 207 (2025); *see also Farrar v. Hobby*, 506 U.S. 103, 113 (1992) (material alteration occurs when plaintiff “becomes entitled to enforce a judgment, consent decree, or settlement against the defendant”); *Bailey v. Mississippi*, 407 F.3d 684, 687 (5th Cir. 2005) (consent decrees “fall on the prevailing-party side of the line”).

So too here. The Consent Order “permanently enjoin[s]” the Enacted Plan, displaces Defendants’ right under *Grove v. Emison*, 507 U.S. 25 (1993), to draw a replacement map, installs a Special Master whose fees Defendants must pay, and retains jurisdiction for enforcement. ECF 127 ¶¶ 1–4, 8. If Defendants try to conduct an election under the Enacted Plan, Plaintiffs need not

file a new suit to stop them—they may seek contempt for violation of a court order. *See Grisham v. City of Fort Worth*, 837 F.3d 564, 570 (5th Cir. 2016). That is enduring, judicially enforceable relief on the very claim pleaded. *See* ECF 101.

Defendants’ insistence that they never admitted liability (ECF 149 at 4–5) is beside the point. *Buckhannon* says so expressly (*see Buckhannon*, 532 U.S. at 604), and the Fifth Circuit rejected the identical argument in *Grisham*, reversing a total denial of fees after a consent decree: the absence of an admission of liability “is not unusual,” because it is “customary” for consent decrees not to adjudicate the claims. *Grisham*, 837 F.3d at 569 (citing *Maher v. Gagne*, 448 U.S. 122, 126 n.8 (1980)). As the Supreme Court has held, “[n]othing in the language of § 1988 conditions the District Court’s power to award fees on full litigation of the issues or on a judicial determination that the plaintiff’s rights have been violated.” *Maher*, 448 U.S. at 129. Congress intended that parties “may be considered to have prevailed when they vindicate rights through a consent judgment.” *Id.* (quoting S. Rep. No. 94-1011, at 5 (1976)).

Nor does the “settlement” label help Defendants. *Buckhannon* distinguishes nonjudicial settlements that do not confer prevailing-party status from settlements given the force of a court order that do. *See Buckhannon*, 532 U.S. at 606. Defendants’ own exhibits place this case squarely in the latter category. They show that Plaintiffs’ counsel insisted “on an injunction issuing or a liability determination,” and stated that Plaintiffs “would prefer to proceed with summary judgment briefing if you are unwilling to agree to an injunction.” ECF 149, Exs. 1–2. Defendants, “settling to avoid additional litigation from your clients,” agreed—and their counsel acknowledged that the draft order “provided the Court with the requisite agreement that the Enacted Plan should not be utilized.” *Id.* An injunction that Plaintiffs demanded as the price of forgoing summary

judgment practice, and the Court entered as its own decree, is not “surplusage” (ECF 149 at 5)—it is the judicial imprimatur *Buckhannon* requires.

B. *Callais* does not defeat prevailing-party status.

Defendants’ principal argument (that *Callais*, not this litigation, produced the result) asks the Court to resurrect a causation inquiry that *Buckhannon* abolished. There, the Supreme Court rejected the catalyst theory because a voluntary change in conduct out of court “lacks the necessary judicial imprimatur.” *Buckhannon*, 532 U.S. at 605. But because a “settlement agreement[] enforced through a consent decree” has precisely that imprimatur, it “may serve as the basis for an award of attorney’s fees,” without inquiry into the defendant’s out-of-court reasons for settling. *Id.* at 604. *Lackey* only underscores the point: a plaintiff who obtains a preliminary injunction is not a prevailing party when the case becomes moot before final judgment, because interim relief does not conclusively resolve the claim. Here, by contrast, the change in Defendants’ conduct came not from transient relief or an outside event, but from “enduring relief” that this Court ordered in a permanent decree. *See Lackey*, 604 U.S. at 198.

Callais indisputably wrought a major change to the redistricting landscape. But it did not itself enjoin the Enacted Plan. Plaintiffs had to ask the Court to apply *Callais* to the facts of this case in a thorough summary judgment motion supported by an expert declaration and deposition testimony. ECF 121. Recognizing that they would lose under the new standard, Defendants chose to consent to an injunction rather than oppose the motion and litigate to judgment. But while Defendants could see the writing on the wall, “a new rule of law” does not “automatically determine the outcome of a case.” *Davis v. Abbott*, 781 F.3d 207, 215 (5th Cir. 2015) (citation omitted). Defendants’ theory, moreover, proves too much. As they see it, one civil-rights plaintiff’s victory at the high court would deprive all other such plaintiffs in similar pending cases of their hard-earned fees. This result would be not only nonsensical but irreconcilable with § 1988’s

purpose. Finally, paragraph 6 of the Consent Order explicitly “reserved” adjudication of Plaintiffs’ fee claims “for future proceedings,” and Plaintiffs cannot be said to have waived those claims. ECF 127 ¶ 6.

C. The *Purcell*-based denial of a preliminary injunction is irrelevant.

Defendants emphasize that Plaintiffs “lost the only hearing.” ECF 149 at 1, 3, 9. But Defendants themselves concede the July 2023 ruling rested on the *Purcell* doctrine, “simply meaning that the Court could not order an amendment to districts too close to an election.” ECF 149 at 3 n.3. It was a ruling on timing, not on the merits. Prevailing-party status turns on the ultimate result rather than interim rulings, and the inquiry “is not one to parse too thinly—whether by individual claim or the number of trials required to reach a result.” *Abner v. Kan. City S. Ry.*, 541 F.3d 372, 382–83 (5th Cir. 2008). Indeed, “a plaintiff who is unsuccessful at a stage of litigation that was a necessary step to her ultimate victory is entitled to attorney’s fees even for the unsuccessful stage.” *Saldivar v. Austin Indep. Sch. Dist.*, No. A-14-CA-00117-SS, 2016 WL 1064654, at *4 (W.D. Tex. Mar. 15, 2016) (citation omitted), *aff’d*, 675 F. App’x 429 (5th Cir. 2017). Nor does the Opposition’s assertion that the case was not “extensive” have any bearing: three years of litigation, a two-day evidentiary hearing, significant expert work and discovery, and in-depth motion practice resulted in a permanent injunction preventing use of the unlawful map.

II. THERE IS NO BASIS TO DENY FEES ALTOGETHER.

A prevailing plaintiff “should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.” *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983) (citations omitted). The Fifth Circuit has stressed that “the discretion afforded district courts to deny attorney’s fees to prevailing plaintiffs under § 1988 is exceedingly narrow.” *Grisham*, 837 F.3d at 567 (quoting *Sanchez v. City of Austin*, 774 F.3d 873, 878 (5th Cir. 2014)). Defendants identify no special circumstance. Their “lack of success” argument fails because *Sanchez* rejected

“degree of success” as “a special circumstance that justifies a complete denial of § 1988 fees.” *Id.* at 568 (quoting *Sanchez*, 774 F.3d at 881). Degree of success goes to how much to award, not whether to do so. *Tex. State Teachers Ass’n*, 489 U.S. at 793. And *Farrar* (a \$17 million damages claim that yielded \$1 in nominal damages) is, as *Grisham* explained, “illustrative of cases where the plaintiff sought only money damages and was essentially unsuccessful.” *Grisham*, 837 F.3d at 569. Defendants’ other authorities likewise go to the reasonableness of the fee amount, not the availability of fees. Here, Plaintiffs sought prospective relief and obtained all of it, namely, a permanent injunction, a court-supervised remedial plan, and a Special Master. ECF 101 at 34; ECF 127. Under *Hensley*, these are “excellent results” that warrant “a fully compensatory fee.” *Hensley*, 461 U.S. at 435.

The taxpayer-burden argument fares no better. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), discussed public fiscs in the context of enhancements above the lodestar, not entitlement to a lodestar. When a local government enacts a racially gerrymandered districting plan, it bears the fee-shifting risk that § 1988 uses to deter constitutional violations.

III. PRE-SUIT WORK IS COMPENSABLE.

Defendants ask the Court to strike all 208.43 hours (\$64,348.80) recorded before the Police Jury adopted the Enacted Plan on April 10, 2023. ECF 149 at 11–12. But the Supreme Court has held that “[o]f course, some of the services performed before a lawsuit is formally commenced by the filing of a complaint are performed ‘on the litigation.’” *Webb v. Bd. of Educ. of Dyer Cnty.*, 471 U.S. 234, 243 (1985). The “[m]ost obvious examples are the drafting of the initial pleadings and the work associated with the development of the theory of the case.” *Id.*; *see also id.* at 250 (Brennan, J., concurring in part and dissenting in part) (“[I]t is settled that a prevailing party may recover fees for time spent before the formal commencement of the litigation on such matters as attorney-client interviews, investigation of the facts of the case, research on the viability of

potential legal claims, drafting of the complaint and accompanying documents, and preparation for dealing with expected preliminary motions and discovery requests.”). Defendants’ own authority agrees: *Watkins v. Fordice*, 7 F.3d 453 (5th Cir. 1993), recognized that “prevailing parties may be compensated for time spent preparing to file suit.” *Id.* at 458. Although the court in *Watkins* upheld certain reductions, including for time spent lobbying the legislature, prelitigation hours found excessive, inadequately documented travel, duplicative or excessive work, and press conferences, each of those reductions rested on the nature or reasonableness of particular entries. None rested on a categorical rule that work done before the complaint was filed is not compensable. *See id.* at 457–59. And, Defendants have not identified any entry that is duplicative, excessive, or otherwise warrants reduction. *Watkins* supports, rather than undermines, the principle that pre-suit time spent developing the claims and preparing the pleadings is recoverable. In short, fee recovery turns on whether the work was “on the litigation,” not simply whether it occurred before the complaint was filed. *Webb*, 471 U.S. at 243.

The challenged entries are litigation work. As early as July 2022, counsel recorded time to “draft and revise verified complaint,” analyze Census data, and research racial-gerrymandering caselaw. ECF 136-2 at 9. By September 2022, they were working with Dr. Joiner on his expert report. ECF 136-2 at 11. That earlier draft plans predated the Enacted Plan does not matter: the same Police Jury used the same race-based districting process to produce the Enacted Plan, and the evidence generated through that process is central to the operative complaint. *See* ECF 101 ¶¶ 34–59. Moreover, a fee claimant may recover all hours reasonably spent on issues that arise from a common core of facts or related legal theories. *See Fessler v. Porcelana Corona de Mex., S.A.*, 23 F.4th 408, 416 (5th Cir. 2022). At most, any reduction should be limited to discrete entries

reflecting purely political advocacy before the Police Jury, not a wholesale exclusion of 208 hours. No such entries exist here.

IV. PLAINTIFFS' DOCUMENTATION, RATES, AND HOURS ARE REASONABLE.

A. Documentation

Plaintiffs submitted detailed, contemporaneous time records prepared in the ordinary course of business. ECF 136-2 (Torchinsky Decl. ¶¶ 10–12). That satisfies the applicant's burden—counsel need not “writ[e] a book” for each entry. *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 327 (5th Cir. 1995). Defendants' demand for invoices and proof of payment misapprehends the standard: § 1988 fees are calculated at prevailing market rates, not what is paid or the cost of the representation. *See Blum v. Stenson*, 465 U.S. 886, 895–97 (1984); *see also Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 718 (5th Cir. 1974). And even where documentation or billing judgment is deficient, which is not the case here, “[t]he proper remedy . . . does not include a denial of fees but, rather, a reduction of the award by a percentage.” *Saizan v. Delta Concrete Prods. Co.*, 448 F.3d 795, 799–800 (5th Cir. 2006) (affirming 10% reduction).

B. Rates

This is specialized constitutional redistricting litigation, and civil-rights specialists may command higher rates. *Johnson*, 488 F.2d at 719 (“[a]n attorney specializing in civil rights cases may enjoy a higher rate for his expertise than others, providing his ability corresponds with his experience.”). A court may not convert a local customary fee into an “inflexible maximum,” *Knighton v. Watkins*, 616 F.2d 795, 800 (5th Cir. 1980), and § 1988 fees are governed by the same standards as equally complex federal litigation such as antitrust cases. *Neely v. City of Grenada*, 624 F.2d 547, 549 (5th Cir. 1980). Few, if any, Western District of Louisiana practitioners regularly litigate Fourteenth Amendment racial-gerrymandering claims, which is why out-of-district counsel were necessary. As to local counsel, Plaintiffs note that Mr. Jones's negotiated rate

was \$295 per hour; the requested \$350 rate reflects the prevailing Shreveport market rate for counsel of comparable experience.

C. Hours

Defendants offer generalized complaints such as how many attorneys attended the preliminary-injunction hearing and the number of timekeepers without identifying specific unreasonable entries. Such a “blunderbuss” attack “is wholly insufficient.” *Riddell v. Nat’l Democratic Party*, 545 F. Supp. 252, 260 (S.D. Miss. 1982). In complex civil-rights litigation, “the mere fact that the litigants did not succeed in obtaining a judgment on all of the claims asserted does not mean that time spent pursuing these claims should automatically be disallowed.” *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981)(en banc). Defendants’ proposed cuts are also stacked: a 25–50% billing-judgment reduction, a further 25% for block billing, and a 50% cut for travel, layered atop the elimination of pre-suit time. *See* ECF 149. These overlapping reductions penalize the same alleged deficiencies multiple times and would leave a fraction of the lodestar for a party that obtained complete relief. If the Court finds any reduction warranted, it should be a single, modest, non-cumulative percentage. *See Saizan*, 448 F.3d at 799.

V. THE REQUESTED ENHANCEMENT IS WARRANTED.

Plaintiffs acknowledge that the lodestar is presumptively reasonable and that enhancements are reserved for unusual circumstances. *See Perdue*, 559 U.S. at 554; *Watkins*, 7 F.3d at 457. Plaintiffs submit that the 20% enhancement applied to Holtzman Vogel’s base lodestar of \$455,719.50 is justified by the significant time and labor required to achieve victory, Holtzman Vogel’s experience and reputation, and the skill and expertise required to prevail in a case in this highly specialized field. *See Combs v. City of Huntington*, 829 F.3d 388, 391 n.1 (5th Cir. 2016) (citing *Johnson*, 488 F.2d at 717–19). In addition, federal courts overseeing similar redistricting/voting rights cases in nearby states have recently entered several much larger

attorneys' fees awards, confirming the reasonableness of Plaintiffs' claimed fees. *See, e.g., Veasey v. Abbott*, No. 2:13-cv-193, 2020 WL 9888360 (S.D. Tex. May 27, 2020), *aff'd*, 13 F.4th 362 (5th Cir. 2021) (\$6.79 million award); *Caster v. Allen*, No. 2:21-cv-1536-AMM, 2024 WL 6874545 (N.D. Ala. July 30, 2024) (\$2.25 million award). Alternatively, and at a minimum, Plaintiffs are entitled to the full unenhanced lodestar plus expenses.

CONCLUSION

Plaintiffs secured a permanent injunction, entered by this Court as a decree, granting them the full relief they sought. The Court should find that Plaintiffs are prevailing parties under 42 U.S.C. § 1988 and 52 U.S.C. § 10310(e), reject Defendants' request to deny fees, and award Plaintiffs \$639,482.28 in attorneys' fees and expenses, or, alternatively, the full unenhanced lodestar and expenses, totaling \$548,338.38.

Dated: October 15, 2026

Respectfully submitted,

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