

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

TENNESSEANS FOR SENSIBLE)
ELECTION LAWS,)
)
Plaintiff,)
)
vs.) No. 18-821-III
)
TENNESSEE BUREAU OF ETHICS)
AND CAMPAIGN FINANCE,)
REGISTRY OF ELECTION FINANCE,)
and DAVIDSON COUNTY DISTRICT)
ATTORNEY GENERAL,)
)
Defendants.)

**MEMORANDUM AND FINAL ORDER AWARDING PLAINTIFF
RECOVERY OF \$50,218.49 IN ATTORNEY’S FEES, COSTS AND INTEREST**

It is ORDERED that the \$25,543.17 in attorney’s fees and costs awarded October 24, 2018 to the Plaintiffs as the prevailing parties in this case is increased, upon remand from the appellate court, to a recovery of \$50,218.49 which also includes interest.

In addition, it is ORDERED that to protect attorney-client communications and work product, *Collective Exhibit B* attached to the *Plaintiff’s Application For Upward Adjustment Of Attorney’s Fees And Costs* shall be placed under seal.¹ Court costs are taxed to the Defendants.

¹ In the *Plaintiff’s Application For Upward Adjustment Of Attorney’s Fees And Costs*, the Plaintiff stated that because the task descriptions in the *Collective Exhibit B* attached to the *Plaintiff’s Application For Upward Adjustment Of Attorney’s Fees And Costs* “reference privileged communications and work product—the disclosure of which the Plaintiff has authorized for purposes of this motion—the Plaintiff respectfully requests that the attachment disclosing counsel’s task descriptions be redacted or sealed following this Court’s resolution of the instant motion to safeguard the confidentiality of Plaintiff’s representation.” The Defendants did not address this request to seal in their *Response In Opposition To Plaintiff’s Application For Upward Adjustment of Attorneys’ Fees And Costs*. Finding no opposition and

The \$50,218.49 is awarded pursuant to 42 U.S.C. § 1988(b) and in accordance with Tennessee Supreme Court Rule 8, RPC 1.5 as the result of the Plaintiff prevailing on its claims of constitutional violations and success in securing civil rights relief under 42 U.S.C. § 1988(b).

The additional (“New Charges”) of \$24,675.32 (awarded to add to the previous \$25,543.17 award), consist of:

1. \$3,664.82 for additional litigation costs and post judgment interest that has accrued on the judgment issued October 24, 2018, and
2. \$21,010.50 attorney’s fees² incurred in connection with the Plaintiff’s application to the Tennessee Supreme Court to conduct a “reach down proceeding,” Tennessee Code Annotated section 16-3-201(d) as well as fees incurred in recovery fees (“fees on fees”).

In awarding the item 1 New Charges of litigation costs and interest, the Court finds that the 7% interest rate calculated annually is reasonable.

In awarding the item 2 New Charges for the “reach down” application, the Court finds that the hours spent at an hourly rate of \$290 per hour is reasonable under the Tennessee Supreme Court Rule 1.5 factors. In so finding the Court adopts and incorporates herein by reference the facts and analysis provided at pages 6-20 of the June 5, 2020 *Plaintiff’s Application for Upward Adjustment of Attorney’s Fees and Costs*.

that sealing this proprietary/confidential information is warranted in this case, the Court grants the request to place *Collective Exhibit B* under seal.

² The \$21,010.50 in attorneys’ fees consist of the \$18,113.40 in attorney’s fees stated in paragraph 17 of *Collective Exhibit B* to the *Plaintiff’s Application For Upward Adjustment Of Attorney’s Fees And Costs* plus an additional \$2,897.10 in fees for the 11.1 hours the Plaintiff spent in preparing the *Plaintiff’s Reply To Defendants’ Response In Opposition To Plaintiff’s Application For Upward Adjustment Of Attorney’s Fees And Costs*. The additional \$2,897.10 was calculated by multiplying Plaintiff’s hourly rate by 11.1 hours of work and then discounting the total amount by 10% to be consistent with the Plaintiff’s 10% across-the-board reduction of its requested fees.

The Court dismisses the Defendants' objection to the increased hourly rate used by Plaintiff's Counsel from \$260 (when this litigation commenced in 2018) to \$290 now being charged two years later. The increase of \$30 per hour over two years is reasonable, and discounts have been applied by Plaintiff's Counsel which effectively lower the rate.

In addition, that over time the rate of Plaintiff's Counsel has increased is the function of this litigation being protracted. Respectfully, the Court finds that the record shows opposition by the Defendants on every conceivable issue, regardless of merit, and shifting litigation positions that reduced efficiencies in the litigation process. In this regard the Court adopts the quotations and authorities provided by Counsel to the effect that "As the Supreme Court noted in *City of Riverside v. Rivera*, 477 U.S. 561, 106 S. Ct. 2686, 91 L. Ed. 2d 466 (1986), defense counsel 'cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response.'" *Knop v. Johnson*, 712 F. Supp. 571, 578 (W.D. Mich. 1989). *See also Chrapliwy v. Uniroyal Inc.*, 583 F. Supp. 40, 49 (N.D. Ind. 1983) ("It was . . . [defendants'] right to contest every aspect of this claim, but they cannot now disclaim the consequences of their actions"). The Court also adopts the citations and references to the "Stalingrad defense" at pages 18-19 of the Plaintiff's June 22, 2020 *Reply*.

Further, the Plaintiff's work spent on the reach down application yielded success—it resulted in the Defendants changing their litigation position on whether to seek a stay, and that change inured to the Plaintiff's benefit.

The fees in item 2 also include recovery for fees for time spent on the fee application. Recovery of "fees on fees" is authorized by the law to effect Congress' intent

behind the fee shifting statute. *Ne. Ohio Coal. For the Homeless v. Husted*, 831 F.3d 868, 724-25 (6th Cir. 2016).

Additionally the complex, 10-factor method of Tennessee Supreme Court Rule 1.5, that is required under Tennessee law, greatly increases the time and therefore cost both Counsel and the Court must expend to arrive at a fee award. This Court sees that in many proceedings to recover attorney's fees it becomes a "mini-trial" and takes a disproportionate amount of time to analyze and rule on the 10 factors as it does to litigate the case. It takes a long time to go through the 10 factors and apply them to the record. Accordingly, that what seems like a disproportionate amount of time on providing a fee application is not. Such time is routine when addressing the 10-factor test.

For all these reasons, the Plaintiff is awarded a total of \$50,218.49 in attorney's fees, costs and interest as authorized by 42 U.S.C. § 1988(b) and Tennessee Supreme Court Rule 8, RPC 1.5 for the work of its Counsel in prevailing in this case.

s/ Ellen Hobbs Lyle
ELLEN HOBBS LYLE
CHANCELLOR

cc: Due to the pandemic, and as authorized by the *Twentieth Judicial District of the State of Tennessee In Re: COVID-19 Pandemic Revised Comprehensive Plan* as approved on May 22, 2020 by the Tennessee Supreme Court, through June 30, 2020, this Court shall send copies solely by means of email to those whose email addresses are on file with the Court. If you fit into this category but nevertheless require a mailed copy, call 615-862-5719 to request a copy by mail.

For those who do not have an email address on file with the Court, your envelope will be hand-addressed and mailed with the court document enclosed, but if you have an email address it would be very helpful if you would provide that to the Docket Clerk by calling 615-862-5719.

Daniel A. Horwitz
Jamie R. Hollin
Janet M. Kleinfelter
Erin Merrick
Kelley Groover
Matthew Jones

Rule 58 Certification

A copy of this order has been served upon all parties or their Counsel named above.

s/Phyllis D. Hobson

June 29, 2020

Deputy Clerk
Chancery Court