IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PUBLIC INTEREST LEGAL FOUNDATION, INC.,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. 4:18-CV-0981
ANN HARRIS BENNETT, *in her official capacity as voter registrar for Harris County, Texas,*	§	
Defendant.	§	

ORDER

Pending before the Court is the request for attorney's fees and expenses pursuant to the National Voter Registration Act's fee shifting provisions, 52 U.S.C. § 20510, by Plaintiff, Public Interest Legal Foundation, Inc. ("PILF"). (Doc. Nos. 79, 90, 95, and 96). Defendant, Ann Harris Bennett ("Bennett"), in her official capacity as the voter registrar for Harris County, Texas, opposed and has performed discovery to combat the request for attorney's fees. (Doc. No. 82). Bennett requests first that this Court revisit its ruling that PILF was the prevailing party (*see* Doc. No. 84), but alternatively argues that this Court should analyze and reduce the amount of fees and expenses requested by PILF. Various supplements have been provided by both sides.

I.

The Court has previously held that PILF is a prevailing party as that term applies to the recovery for attorney's fees. (Doc. No. 84). The Court considered and rejected the argument made by Bennett then and does so here. Bennett could have easily complied with the requirements of the National Voter Registration Act prior to the beginning of this litigation. Those prelitigation efforts proved fruitless and PILF was required to pursue its litigation over many procedural hurdles

that could have easily been dispensed with had the Defendant agreed early on to just comply with the requirements of the Act. The fact that PILF may have initially requested as part of their Complaint more relief than to which they were arguably entitled does not alleviate Harris County of the need to comply with the law. If it had done so initially, this entire lawsuit would have been unnecessary. The Court hereby reaffirms its ruling that PILF is the prevailing party.

II.

If it is determined that a party is a prevailing party that is entitled to attorney's fees, courts must then apply a two-step method for determining a reasonable attorney's fee award. *Combs v. City of Huntington*, 829 F.3d 388, 391 (5th Cir. 2016) (citation omitted). First, the court must calculate the "lodestar"—the number of hours reasonably spent multiplied by the appropriate hourly rate that is reasonable in the community for similar work. *Id.* at 392 (internal citation and quotation omitted); *see also Miraglia v. Bd. of Supervisors of the La. State Museum*, 901 F.3d 565, 577 (5th Cir. 2018). The second step the court must take is to determine whether to enhance or reduce the lodestar based on the circumstances of the particular case based on the twelve factors set out in *Johnson v. Ga. Highway Exp., Inc.*, 488 F.2d 714 (5th Cir. 1974). *Miraglia*, 901 F.3d at 577 (citing *Combs*, 829 F.3d at 393–94).

"The fee applicant bears the burden of proving that the number of hours and the hourly rate for which compensation is requested is reasonable." *Riley v. City of Jackson*, 99 F.3d 757, 760 (5th Cir. 1996). "A district court must 'explain with a reasonable degree of specificity the findings and reasons upon which the award is based.'" *Id.* (quoting *Von Clark v. Butler*, 916 F.2d 255, 258 (5th Cir. 1990)).

III.

With regard to the actual request for attorney's fees, the Court finds the requested hourly fee of $350 to be reasonable under the evidence and circumstances of this case. Bennett does not seriously challenge that hourly rate but does challenge certain expenditures. The Court finds, while some fees were spent on individual motions that PILF lost, these were part and parcel of a larger issue on which PILF clearly prevailed. The Court overrules these objections. That being said, there are, however, some entries billed at $550. That rate is unreasonable and not supported by the evidence. Those fees represented by those entries are hereby reduced to $350 per hour. Further, the Court approves the travel time rate of $175 but finds instead of the 26 hours of travel noted in the time records, there should be 30 hours of travel. It therefore adds 4 hours at the $175 travel time rate and deducts those 4 hours from being compensated at the legal services rate.

For the most part, the hours expended and the tasks performed are hereby found to be both necessary and reasonable. The Court, however, has found certain reimbursement requests to be unreasonable and has deducted them from the overall request. The Court will describe those by category. First, the Court recognizes that some give and take between lawyers on a trial team are necessary; however, it found the number of conferences to be excessive and has reduced the fee request accordingly. Second, it finds that time expended on drafting press releases and other so-called media strategy sessions to fall outside the category of reasonable attorney's fees. These hours are hereby deducted. Finally, review of non-legal internet articles and other press-related releases is also outside the scope of what may be considered under the umbrella of reasonable attorney's fees. These are also deducted.

In conclusion, the Court finds the original billing statement, as presented to the Court, does not necessarily support the fees requested. First, as noted above, the Court finds the travel time to

be 30 hours—not the 26 hours recorded. Therefore, 30 hours of travel time are hereby compensated at $175 per hour, which totals $5,250. The remaining time after the travel time is subtracted totals 500.88 hours, which, after the Court deducts for the factors mentioned above, totals 482.38. When compensated at $350 per hour, the total is $168,833.00, and when travel time is added, that raises the complete total for the first time summary to $174,083.00. With respect to the first supplemental fee request/billing statement (found at Doc. No. 83-2), the Court finds the billing rate of $350 to be reasonable and it finds the work done to be necessary. It therefore awards fees in the amount of $3,920.00 for the work described therein. The Court finds the rates requested on the second supplemental fee request to be reasonable and appropriate. When reduced by the time deducted for the deductions described above, the approved time is 13.8 hours. At $350 per hour, the approved supplemental fees are $4,830.00.

The Court has one more billing request—these fees were incurred because the Court gave the Defendant the right to conduct discovery. The Defendant did engage in discovery, which required the attorneys for the Plaintiff to do more work as reflected in the fee statement found at Doc. No. 96-3. The Court hereby reduces that request by ½ hour for the attorneys conferring with each other. The Court also deducts the hour that Mr. Adams spent on deposition preparation, as he was the witness, not the attorney. His colleague, Kaylan Phillips, attended the deposition as an attorney and her time will be compensated. Therefore, 1 ½ hours will be deducted from the total. Finally, Mr. Adams billed two hours at $550 per hour and this entry will be reduced to $350 per hour. This results in a fee amount of $8,085.00.

Therefore, the Court finds the total fees due to be $190,918.00. This is compliant with the lodestar analysis.

IV.

This Court agrees, however, with Bennett's complaint about some of the costs and expenses for which PILF seeks reimbursement.

With regard to expenses, PILF has requested $32,941.87. The record does not justify this amount. The largest portion of this amount ($25,000) is attributable to a one-time payment to attorney Andy Taylor—PILF's local counsel. While this Court is familiar with and does not question Mr. Taylor's considerable abilities as a trial lawyer, the statute that is the basis for the award of attorney's fees states that the Court should only approve reimbursement for "reasonable attorney fees, including litigation expenses, and costs." 52 U.S.C. § 20510(c).

While listed as an "expense," this amount is clearly being sought as reimbursement for attorney's fees. The fee arrangement was discussed and explained in the filings and while this Court has no reason to doubt the validity of the explanation provided or the accuracy of PILF's evidence, it still has no evidence to show that this amount is reasonable or what work Mr. Taylor even performed. One cannot avoid the statutory requirements by categorizing a fee reimbursement request as an expense. Moreover, the language of the statute requires that litigation expenses and costs also be reasonable. Consequently, even categorizing a legal fee as a cost or expense would not get one around the need to show that they are reasonable. As it is, there is clearly insufficient evidence to support this request.

Finally, PILF includes expenses of $394.00 and $512.80 on August 30, 2019. The description for both is a single word: "Harris." The time records provided did not show attorney time being expended on this day. While this Court can imagine any number of recoverable expenses that could be alluded to by this reference, it can also imagine many that are not. It is not

this Court's duty to substitute its best guess for actual evidence. Consequently, it will not include reimbursement for either of these August 30, 2019 amounts.

Therefore, the Court finds and hereby orders Bennett to reimburse PILF for expenses in the amount of $7,084.47.

V.

The lodestar amount is presumed reasonable. *Combs*, 829 F.3d at 392 (citing *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 553–54 (2010)). Nevertheless, the court may enhance or decrease the lodestar amount based on the twelve factors set out in *Johnson*. These factors are used to determine if the lodestar rate should be increased or decreased or fixed as is, and they include:

> (1) the time and labor required to represent the client or clients; (2) the novelty and difficulty of the issues in the case; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney; (5) the customary fee charged for those services in the relevant community; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Johnson, 488 F.2d at 717–19. To the extent these factors are duplicative of the lodestar factors, they are not counted twice. *See, e.g.*, *Perdue*, 559 U.S. at 554; *Ramirez v. Lewis Energy Grp., L.P.*, 197 F. Supp. 3d 952, 956 (S.D. Tex. 2016).

Enhancements to the lodestar amount must be rare because "instead of merely guaranteeing adequate representation, they can result in a windfall to attorneys." *Combs*, 829 F.3d at 393 (citing *Perdue*, 559 U.S. at 559 & n.8). The circumstances in which an enhancement is necessary are "indeed rare and exceptional, and require specific evidence that the lodestar fee would not have been adequate to attract competent counsel." *Perdue*, 559 U.S. at 554 (internal citation and quotation omitted). In other words, "excellent results should usually result only in 'a fully

compensatory fee'—the lodestar." *Combs*, 829 F.3d at 393 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983)).

The Court finds here that the lodestar amount is reasonable compensation. It finds no fee enhancements to be appropriate and it has already deducted those fees and expenses that it found problematic. Therefore, no adjustment is necessary.

VI.

The Court denies Defendant's motion to set aside its previous order finding Plaintiff to be the prevailing party. Plaintiff is awarded $190,918.00 in attorney's fees and $7,084.47 in costs and expenses, for a total award of $198,002.47.

SIGNED at Houston, Texas this 30th day of June, 2021.

Andrew S. Hanen
United States District Judge