



the federal and state Constitutions. Accordingly, if the Riley Plaintiffs prevailed in asserting such a right, they are entitled to full reasonable fees for “that portion of the services of claimant’s attorney’s fees and associated costs that were devoted to claims concerning rights under the [federal or state Constitutions] upon which the claimant ultimately prevailed.” AS 09.60.010(d)(1).

*The Riley Plaintiffs prevailed on the main issue.* The Board argues at length that both parties prevailed on different issues and that it was therefore appropriate for this court to require each side to bear its own fees and costs. But the statute appears not to allow for such a result. AS 09.60.010(c)(1) provides that the court “shall award” fees in appropriate cases, and subsection (d)(1) provides for the award of costs and fees as to constitutional issues where a litigant prevailed.<sup>1</sup>

The Board carefully reviews the proceedings in the superior court, including the nature of the claims originally made and how they changed throughout the litigation, to support its theory that the Riley Plaintiffs did not prevail on the main issue. It argues that this case was not about following the *Hickel* process but rather was about certain House Districts challenged on compactness grounds (districts 1, 2, 5, and 6) or socio-economic integration (district 38) or about voter dilution claims centering on Fairbanks. These arguments are irrelevant. The Riley Plaintiffs raised several state constitutional issues, and they eventually prevailed on state constitutional grounds. The net result of this litigation is that the Board has now been ordered, twice, to revise its redistricting plan,

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<sup>1</sup> The Board also argues that it prevailed on several issues at the trial level. Trial proceedings are not relevant to our award of fees, which is to cover services provided at the appellate level.

at least partially as the result of the plaintiffs' work. Plaintiffs prevailed on the main issue.

*The Riley Plaintiffs are entitled to reasonable fees for their work on issues on which they prevailed on both petitions.* The Board interposes three objections to the Riley Plaintiffs' itemization of their fees. We reject each.

1. The Board first notes that 55% of the fees (about \$39,000) are for work "unrelated to the Board's second petition for review." This is apparently a *sub rosa* argument that to the extent that the request for fees covers the first petition for review in this case, it comes too late. We decline to separate the first petition from the second and to consider here only fees generated by the second petition. The two petitions for review in this case are so closely interrelated that we award fees in both. In addition, this court failed to issue an order under Appellate Rule 508 after the conclusion of the first cross-petitions for review and it is appropriate to deal with fees in both sets of petitions now.

The Board cites work on several issues allegedly unrelated to the issue on which the Riley Plaintiffs prevailed and argues that no award should be made for fees generated in connection with these issues:

(A) The Board first cites the work on the Riley Plaintiffs' second petition for review, which was not filed. This work is allowable because it was incorporated into the Riley Plaintiffs' opposition to the Board's petition for review.

(B) The Board next contests the Riley Plaintiffs' work on their unsuccessful objection to the Board's request to implement an interim plan and our order to show cause. Although we allowed attorney's fees (at the trial level) for work

concerning an interim plan in *Hickel v. Southeast Conference*,<sup>2</sup> it is a much closer question whether this work should be compensated under AS 09.60.010(d)(1), which considerably tightened the rules in public interest litigation such as this. Was this work “devoted to claims concerning rights under the [federal or state Constitutions] upon which the claimant ultimately prevailed”? While the Riley Plaintiffs lost on the use of the interim plan, their position was based on a claim concerning a constitutional right upon which they ultimately prevailed. For this reason, we award these fees.

(C) The Board next objects to fees generated in connection with pre-clearance activities. This issue ultimately was mooted by the grant of pre-clearance by the federal Department of Justice. Again, we award these fees. Voting Rights Act issues were closely related to the conduct of this litigation, and pre-clearance was a potentially important round in this dispute.

2. The Board’s second objection pertains to fees generated after our December 28 decision on the second petition. These fees come under the umbrella of the statute and are allowable.

3. The Board’s third objection is that the Riley Plaintiffs seek attorney’s fees for a brief in which they prevailed on only one issue of three. (In our decision, we remanded the case to the Board to comply with the *Hickel* process in carrying out redistricting, ruled that the Board did not need to make specific findings about each individual district relating to constitutional requirements, and ruled that the Board need not submit a plan to the superior court at each stage of drafting.) The statute does not

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<sup>2</sup> 868 P.2d 919, 927 (Alaska 1994).

require the apportionment of fees along the lines suggested by the Board. The Riley Plaintiffs prevailed on the main issue in this case — whether the Board had completed its work in compliance with a process we had required so as to assure fidelity to the Alaska Constitution. The second and third issues were clearly subsidiary and yet related to the main constitutional issue, and we decline to require a deduction of fees incurred for interlocutory motions or petitions that the claimant lost, so long as the interlocutory motion or petition was related to the constitutional claim.

Because the Riley Plaintiffs prevailed on their claim to enforce Article VI, section 6 of the Alaska Constitution and the petition they lost regarding the interim plan was related to their constitutional claim, the statute does not require a deduction for fees they incurred concerning the interim plan.

Accordingly, we grant the motion for reconsideration regarding attorney's fees and award the attorney's fees requested by the Riley Plaintiffs. We direct the clerk of the appellate courts to review the cost bill submitted by the Riley Plaintiffs and make an initial determination regarding that cost bill. Each party may have until 6/28/13 to file any objection to the clerk's determination of allowable costs.

Entered by direction of the court.

Clerk of the Appellate Courts

  
Marilyn May

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