Nos. 14-2174(L) & 14-2181

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

PHILLIP BACA, *et al.*,

Plaintiffs/Cross-Appellees,

v.

RICHARD J. BERRY,

in his official capacity as Mayor of Albuquerque,

Defendant-Appellee/Cross-Appellant,

LUIS ROBERTO VERA, *et al.*,

Attorneys-Appellants/Cross-Appellees.

On Appeal From The United States District Court
For The District of New Mexico
Honorable William P. Johnson, No. CV 13-76 WJ/WPL

PLAINTIFFS'/CROSS-APPELLEES' MOTION FOR SANCTIONS

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INTRODUCTION

Plaintiffs/Cross-Appellees Phillip Patrick Baca, Mary Molina Mescall, Bernadette Miera and Ron Romero (collectively the "Plaintiffs") hereby move for sanctions pursuant to Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1927 in the amount of $66,980.65[1] against both the City of Albuquerque[2] and its attorneys, Luis G. Stelzner, Jamie L. Dawes, Sara N. Sanchez[3] and Patrick J. Rogers. The city and its attorneys filed and pursued a frivolous cross-appeal in bad faith, forcing Plaintiffs to endure months of financial uncertainty and angst, Plaintiffs' pro bono counsel to expend significant unnecessary time and money, and this Court to waste valuable judicial resources. Pursuant to Tenth Circuit

[1] This amount includes only attorneys' fees and litigation expenses incurred defending against the city's cross-appeal. *See supra* 14–17 (addressing the reasonableness of the amount requested). Timesheets, receipts for expenses and other supporting documents are attached as Appendices A, B and C. Because Plaintiffs' counsel handled this appeal entirely pro bono, the city should be ordered to pay this amount directly to Plaintiffs' counsel. *Cf. Blum v. Stenson*, 465 U.S. 886, 895 (1984) (observing that pro bono counsel in civil rights cases should typically be allowed to recover the same attorneys' fees they would have recovered had they charged their clients for legal services).

[2] Because Mayor Richard Berry, the named defendant, was sued in his official capacity, the real party-in-interest is the City of Albuquerque. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991). Sanctioning Mayor Berry in his official capacity would therefore be tantamount to sanctioning the city.

[3] Although Ms. Sanchez was not listed on the city's briefs, she has filed a notice of appearance in the cross-appeal on behalf of the city. If the city indicates that Ms. Sanchez was not actually involved in filing or pursuing the cross-appeal, then Plaintiffs are willing to take the city at its word and drop their motion for sanctions against her.

Local Rule 27.3(c), counsel for Plaintiffs contacted the city's attorneys, who unsurprisingly have not consented to this motion.

BACKGROUND[4]

The Court held oral argument in this case on May 6, 2015. During argument, counsel for the city finally acknowledged what Plaintiffs had been insisting from the outset: because the city could not show that the district court had abused its discretion by refusing to order the individual Plaintiffs to pay the city's attorneys' fees, the city could not prevail in its cross-appeal. Oral Arg. Rec. 15:30–17:00.

This concession came at the last possible moment, after Plaintiffs' counsel had paid to fly to Denver and had incurred additional travel costs (hotel, meals, taxi), after Plaintiffs' counsel had spent four minutes of Appellants-Cross Appellees' fifteen-minute oral argument allotment discussing the cross-appeal, and after this Court had expended judicial resources reviewing the cross appeal. *See* 10th Cir. R. 34 (requiring counsel for "each party" to "be present for oral argument unless excused by the court").

The city's delay in withdrawing its cross appeal is bad enough. But the city's course of conduct throughout the appeals process makes its belated

[4] The facts of this case are thoroughly laid out in the briefs filed by Plaintiffs and Attorneys-Appellants. Those facts are incorporated by reference. Additional facts set forth herein are relevant to this sanctions motion.

concession all the more egregious. When Attorneys-Appellants filed their notice of appeal of the § 1927 sanctions order in this case, they were represented by David Urias of the Friedman, Boyd law firm in Albuquerque. *See* App'x D, E (Urias & Vera declarations). After the city filed its cross-appeal, Mr. Urias agreed to represent the individual Plaintiffs as well as Attorneys-Appellants. *See* App'x D, E, F, G (Urias, Vera, Baca & Molina Mescall declarations). Shortly thereafter, counsel for the city called Mr. Urias to inform him that, unless the sanctioned attorneys agreed to dismiss their appeal, the city would file a motion to disqualify him as counsel on the ground that the cross-appeal created a potential conflict of interest between Plaintiffs and Attorneys-Appellants. *See* App'x D (Urias declaration). Although Mr. Urias did not anticipate any such conflict, he understandably declined representation of the Plaintiffs in the cross-appeal. *See id.* Mr. Urias also understandably desired not to participate in the case at all in light of the city's aggressive posture toward him. *See id*. Because the individual Plaintiffs could not afford to hire any attorney, let alone an experienced civil rights attorney, *see* App'x F, G, H (Plaintiff declarations), the city's threat left them without appellate counsel.

Next, knowing the success of this threat, the city's counsel suggested to Attorneys-Appellants that if they dropped their appeal of the district court's § 1927 sanctions order, the city would drop its cross-appeal. *See* App'x E, F, G (Vera,

Baca & Molina Mescall declarations). This "offer" forced Attorneys-Appellants to choose between (1) their due process right to appeal a district court order that had imposed a severe financial and professionally-damaging sanction against them and (2) saving their former clients—the Plaintiffs—from having to face steep potential financial harm without adequate legal representation.

Even though Attorneys-Appellants firmly and justifiably believed that they would suffer significant injury if the sanctions order remained in effect, they would have taken the city's proposed deal had Plaintiffs remained unrepresented. *See* App'x E (Vera declaration). Fortunately—and unbeknownst to the city at the time—one Attorney-Appellant, Luis Vera, had contacted J. Gerald Hebert, Executive Director of the Campaign Legal Center, with whom Mr. Vera had served as co-counsel in prior litigation. *Id.* On November 3, only three days before attorneys for Plaintiffs were required to file an already-deficient notice of appearance, Mr. Hebert agreed that the Campaign Legal Center would represent Plaintiffs pro bono and leaned on his own professional connections to find adequate replacement counsel for Attorneys-Appellants. *See id*.

While the main appeal thus moved forward, the cross-appeal moved forward only in the most technical sense of that term. Even before conceding the cross-appeal at oral argument, the city devoted few briefing pages to the cross appeal, almost entirely ignored the relevant abuse of discretion standard of review, never

explained why it was pursuing fees against the individual Plaintiffs as well as their former lawyers, misrepresented legal rules and presented contradictory arguments.

Although the city has now abandoned its concededly meritless cross-appeal, significant damage has already been done, as the Plaintiff declarations explain in more detail. *See* App'x F, G, H (Plaintiff declarations).

ARGUMENT

The city's bad faith pursuit of a frivolous cross-appeal easily satisfies the standards for sanctions under both Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1927. "These provisions . . . focus upon conduct in specific litigation that imposes unreasonable and unwarranted burdens on the court and opposing parties." *Braley v. Campbell*, 832 F.2d 1504, 1507-16 (10th Cir. 1987).[5] While courts can sanction only counsel under § 1927, courts can order sanctions against counsel or client under Rule 38. *See id.* at 1511.

Under Rule 38, if this Court "determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Fed. R. App. P. 38. "An appeal is frivolous when the result is obvious, or the appellant's

[5] Particularly given the bad faith conduct of the city and its attorneys, this Court could also order sanctions under its "inherent right to manage [its] own proceedings." *Braley*, 832 F.2d at 1510; *see also Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 767 (1980) (allowing Courts to use their inherent authority to sanction parties and attorneys whose conduct "constitute[s] or [is] tantamount to bad faith").

arguments of error are wholly without merit." *Braley*, 832 F.2d at 1510 (internal quotation marks omitted). This Court has observed that "[w]ith courts struggling to remain afloat in a constantly rising sea of litigation, a frivolous appeal can itself be a form of obscenity. Rule 38 should doubtless be more often enforced than ignored in the face of a frivolous appeal." *Id.* at 1511 (internal quotation marks omitted).

Under § 1927, this Court may require "[a]ny attorney . . . [who] multiplies the proceedings in any case unreasonably and vexatiously . . . to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. An attorney becomes subject to § 1927 sanctions "'by acting recklessly or with indifference to the law, as well as by acting in the teeth of what he knows to be the law'" and "may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." *Braley*, 832 F.2d at 1511 (quoting *In re TCI Ltd.*, 769 F.2d 441, 445 (7th Cir.1985)).

I. THE CROSS APPEAL AGAINST THE INDIVIDUAL PLAINTIFFS WAS ENTIRELY FRIVOLOUS, UNREASONABLY AND VEXATIOUSLY MULTIPLYING THE PROCEEDINGS

Although Rule 38 and § 1927 focus on slightly different forms of sanctionable conduct, attorneys unreasonably and vexatiously multiply proceedings when they pursue frivolous appeals. *See Dominion Video Satellite,*

Inc. v. Echostar Satellite L.L.C., 430 F.3d 1269, 1278 (10th Cir. 2005) (observing that § 1927 sanctions are appropriate when attorneys "intentionally act[] without a plausible basis; [or] when the entire course of the proceedings was unwarranted"); *see also Reliance Insurance Co. v. Sweeney Corp., Maryland*, 792 F.2d 1137, 1138 (D.C. Cir. 1986) ("Section 1927 . . . has been applied to attorneys who, without legal justification, seek appellate review.").

That is exactly what happened here. To prevail on its §§ 1988 and 1973*l* claims, the city, a prevailing civil rights defendant, had to show two things: (1) that Plaintiffs' claims were or at some point became "frivolous, unreasonable, or without foundation," *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421–22 (1978), *and* (2) that the district court abused its discretion by refusing to award fees against the individual Plaintiffs, *see* 42 U.S.C. §§ 1988, 1973*l*; *Prochaska v. Marcoux*, 632 F.2d 848, 853 (10th Cir. 1980). Likewise, to prevail on its discovery abuse claims, the city had to show not just that Plaintiffs' conduct could have justified discovery abuse sanctions—*i.e.*, that the district court would have acted within its discretion had it sanctioned the Plaintiffs for discovery abuse—but also that the district court abused its "broad discretion" when it decided *not* to impose such sanctions. *United States v. Brown*, 592 F.3d 1088, 1090 (10th Cir. 2009); *see also Olcott v. Delaware Flood Co.*, 76 F.3d 1538, 1557 (10th Cir. 1996)

("The intent is to impose the [discovery abuse] sanction where the fault lies, i.e., with counsel or client.").

The city never came close to showing any abuse of discretion in the district court's decision not to award fees or sanctions against the individual Plaintiffs. In its first brief on cross-appeal, the city devoted a scant two paragraphs to whether the district court abused its discretion. In those two paragraphs, the city made three arguments: one clearly incorrect as a matter of law,[6] one entirely conclusory and speculative,[7] and one that would render the district court's discretion a nullity.[8] After Plaintiffs' brief pointed out these and other deficiencies, suggested that the city's cross-appeal might qualify as "truly frivolous," and even encouraged this Court to order the city and its attorneys to show cause why they should not be sanctioned, Response/Reply at 36, the city doubled down, filing a full reply brief

[6] The city argued that fees should be automatic every time plaintiffs' claims are found to be frivolous, unreasonable, or lacking in foundation under *Christiansburg*. City's Opening Br. at 51. But *Christiansburg* itself holds that "a district court *may, in its discretion*" award fees to a prevailing civil rights defendant only when the plaintiff's claims are frivolousness, unreasonable or lacking in foundation. *Christiansburg*, 434 U.S. at 421 (emphasis added).

[7] The city argued with no support or justification that courts should not allow civil rights plaintiffs to "*hide behind* the advice of counsel," City's Opening Br. at 52 (emphasis added), even though the district court had found in this case that the Plaintiffs had *reasonably relied* on advice of counsel. Moreover, as Plaintiffs argued in their brief, civil rights plaintiffs—especially voting rights plaintiffs—frequently *must* rely on advice of counsel to evaluate the merits of their claims.

[8] The city argued that "Plaintiffs presumably were involved in initiating the action, and certainly could have ceased pursuit of their claims." City's Opening Br. at 51. Of course, *every* plaintiff is presumably involved in initiating actions and can always cease pursuit.

on the cross-appeal and insisting that "Mayor Berry reasonably challenged the Court's decision by initiating this cross appeal," Reply at 28. Tellingly, the city devoted only one page of its 28-page reply brief to whether the district court abused its discretion by refusing to order fees against the individual Plaintiffs. In that one page, rather than bothering to address any of Plaintiffs' arguments, the city repeated the same legally incorrect, speculative and conclusory arguments it had made in its opening brief. To say that the city's ultimate concession came at the Eleventh Hour would thus be an understatement.[9]

By filing and pursuing clearly deficient claims against the individual Plaintiffs, the city forced parties whose involvement in the case would otherwise have been at an end to remain active participants in litigation.[10] Had the city never filed its frivolous cross appeal—or, even, had the city dropped the cross-appeal prior to oral argument—Plaintiffs, their pro bono counsel and this Court would have saved time and energy (and Plaintiffs' pro bono counsel would have saved a

[9] While not part of the city's cross-appeal against the individual Plaintiffs, the city's third claim on cross-appeal—that Plaintiffs' former lawyers should have to pay all of the city's attorney's fees because they waived any argument that only some fees should be awarded—is also patently frivolous.

[10] This is thus not a case where a party made a few frivolous arguments alongside non-frivolous ones. *See White v. Gen. Motors Corp., Inc.*, 908 F.2d 669, 674-75 (10th Cir. 1990) ("Perhaps we ought to sanction lawyers, and if appropriate their clients, for pressing arguments on appeal that obviously have no merit. But for now we choose to pass our judgment on the appeal as a whole."). The city advanced only frivolous claims on appeal against the individual Plaintiffs, who had not appealed the dismissal of their claims with prejudice.

significant amount of money). *See Steinert v. Winn Group, Inc.*, 440 F.3d 1214, 1224 (10th Cir. 2006) (explaining that § 1927 is an "incentive for attorneys to regularly re-evaluate the merits of their claims and to avoid prolonging meritless claims"); *Gallegos v. Jicarilla Apache Nation*, 97 Fed. App'x. 806, 813 (10th Cir. 2003) (finding Rule 38 sanctions appropriate where counsel "ma[de] no attempt to address elements requisite to obtaining reversal [and] fail[ed] to explain how the lower tribunal erred or to present clear and cogent arguments for overturning the decision below"); *see also Braley*, 832 F.2d at 1513 ("[T]he decision to appeal should be a considered one, taking into account what the district judge has said, not a knee-jerk-reaction to every unfavorable ruling." (internal quotation marks omitted)).[11]

[11] It is also worth pointing out that, in addition to lacking adequate legal argument, the city's briefs on cross appeal were poorly drafted and internally contradictory and misrepresented key facts and legal principles. *See Gallegos*, 97 Fed. App'x. at 813 ("A party may argue an appeal frivolously, for example, by submitting rambling briefs . . . or misrepresenting facts or law to the court." (internal quotation marks omitted)). The quality of the city's drafting on cross-appeal speaks for itself. To take one example of the city's misrepresentations, after conceding before the district court that Plaintiffs had not filed their claims in bad faith—and after the district court had expressly relied on that concession in its fees opinion—the city in its opening brief on cross-appeal made vague and entirely unsubstantiated insinuations that Plaintiffs had in fact filed the case in bad faith. City's Opening Br. at 50. Once Plaintiffs pointed out in their brief that the city had conceded the issue and that the city's insinuations of bad faith were groundless in any event, Response/Reply at 22 n.10, the city in its reply brief attempted to downplay the concession, City's Reply Br. at 9 (terming the explicit concession a "reluctance to conclude that this matter was initiated in bad faith"). To take one example of the city's internal contradictions, the city argued throughout its briefs

II. THE CROSS APPEAL AGAINST THE INDIVIDUAL PLAINTIFFS WAS LIKELY PURSUED IN BAD FAITH

Even more troubling, the city likely filed and pursued its frivolous cross-appeal in bad faith. We make this charge only after carefully scrutinizing the record and actions at issue. Although conduct need only be "objectively unreasonable" to justify sanctions under Rule 38 and § 1927, subjective bad faith certainly amplifies the case for sanctions. *Braley*, 832 F.2d at 1512; *see also Dreiling v. Peugeot Motors of Am., Inc.*, 768 F.2d 1159, 1165 (10th Cir. 1985) ("An attorney's actions are considered vexatious and unreasonable under § 1927 if the attorney acted in bad faith.").

The city and its attorneys had little to gain from pursuing a cross-appeal against the individual Plaintiffs. The same question of frivolousness underlies the city's entitlement to fees under § 1927 and under §§ 1988 and 1973*l*. Given this, and given the district court's discretionary decision to award fees only under § 1927, it is almost inconceivable that the city would have prevailed on its cross-appeal under §§ 1988 and 1973*l* while simultaneously losing the main appeal under § 1927. Similarly, it is almost inconceivable that this Court would have found discovery abuse sanctions appropriate against the Plaintiffs but inappropriate

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that the motions to dismiss in no way excused Plaintiffs' failure to meet discovery deadlines, but the city then relied on that same excuse when Plaintiffs pointed out that the city's motion for discovery abuse sanctions was untimely. Reply Br. at 22 ("[B]y the time the parties filed their competing motions to dismiss, it was clear that the case would not continue to be litigated on the merits.").

against Attorneys-Appellants, who actually managed the discovery process. Thus, the city's cross-appeal against the individual Plaintiffs was highly unlikely to add to the city's coffers—in fact, because the city cannot recover attorneys' fees and expenses it incurred filing and pursuing its frivolous cross-appeal, the cross-appeal likely wasted taxpayer money.[12]

Although Plaintiffs pointed much of this out in their merits brief, Response/Reply at 36–37, the city has never explained what benefit (other than hollow assertions of saving taxpayer money) it hoped to derive from the cross-appeal against the individual Plaintiffs. Plaintiffs suspect that two bad faith considerations actually motivated the city and its attorneys to file this cross-appeal: discouraging potential future civil rights plaintiffs from bringing claims against the city and undermining Attorneys-Appellants' appeal.

First, the city's cross-appeal has all the hallmarks of a strategic lawsuit against public participation—a lawsuit filed by those in power not to receive particular relief, but to discourage individual citizens from holding public officials accountable. The motion for fees against the individual Plaintiffs caused them significant financial uncertainty and worry, and the city's cross-appeal, even though frivolous, greatly exacerbated their pain and suffering, especially during the

[12] Of course, none of this is news to the city or its lawyers, who presumably would have invested more effort in briefing the issues on cross-appeal had they genuinely believed that the city could derive some valuable benefit from a favorable decision against the individual Plaintiffs.

period when (as a result of the city's threat) they found themselves without adequate legal representation. *See* App'x F, G, H (Plaintiff declarations). The city's failure to provide any advance notice that it was conceding its cross-appeal at oral argument underscores its consistent lack of concern for the harm suffered by Plaintiffs or their attorneys. Unfortunately, the city's abusive conduct has already made it less likely that potential future plaintiffs will be willing to stand up to the city and protect their civil rights. *See id.*; *see also Christiansburg*, 434 U.S. at 416 (noting that under the civil rights statutes a plaintiff is often placed "in the role of a private attorney general, vindicating a policy that Congress considered of the highest priority" (internal quotation marks omitted)).[13]

Second, the city likely pursued its cross-appeal against the individual Plaintiffs as a key part of an ultimately unsuccessful scheme to coerce Attorneys-Appellants into dropping their appeal. *See supra* at 2–4 (outlining the scheme). Even after this scheme was scuttled, the city continued to use the cross-appeal to undermine the ability of Attorneys-Appellants to win their appeal. For instance, by

[13] The city council made this point compellingly in its resolution condemning the city's effort to punish its own citizens. A-292–94; *see also* Isaac Benton, et al., "Suits Part of Political Process," *Albuquerque Journal*, Jan. 19, 2014, available at: http://www.abqjournal.com/339207/opinion/suits-part-of-political-process.html (editorial by three city councilors calling the city's pursuit of fees in this case "reminiscent of the 'SLAPP suit'" and arguing that " the city should not proceed with the zeal and heavy-handedness that has been portrayed in recent media coverage" because of the impact on "the willingness and ability for citizens to exercise their constitutional rights to challenge the actions of their government").

waiting to announce its concession until after Appellants had presented oral argument, the city and its attorneys induced Plaintiffs and Attorneys-Appellants into wasting four minutes of valuable argument time discussing the cross appeal.[14]

Accordingly, because of bad faith conduct by the city and its attorneys, sanctions are particularly appropriate in this case.

III. THIS COURT SHOULD SANCTION THE CITY AS WELL AS ITS COUNSEL UNDER RULE 38

Although Rule 38 allows this Court to sanction both counsel and client, this Court must place the "impact of the action" for sanctions where the "fault lies." *Braley*, 832 F.2d at 1511. The fault in this case lies with the city as well as its attorneys. Unlike many private parties, the city has access to competent internal legal advice through the city attorney's office, so the city should have known (and likely knew) that the cross-appeal was frivolous. Moreover, the city was a main beneficiary of the bad faith considerations that likely motivated the cross-appeal.

IV. REQUESTED FEES AND EXPENSES ARE REASONABLE

Because the city's bad-faith cross-appeal was vexatious and frivolous from the outset, this Court should require the city and its attorneys to pay all attorneys' fees and expenses that resulted from it. *See* Fed R. App. P. 38 (requiring appellant who pursued frivolous appeal to pay "just damages" to the appellee); 28 U.S.C. §

[14] Thankfully, the Court allowed Attorneys-Appellants to recover two of those four lost minutes by adding rebuttal time.

1927 (requiring attorney to "satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred" because of the unreasonable and vexatious multiplication of proceedings).

Attorney J. Gerald Hebert spent 28.6 hours on this matter, and attorney Joshua J. Bone spent 202.2 hours on this matter. App'x A. *Id.* Although Plaintiffs' counsel believe that they could seek fees for all of these hours, they have exercised reasonable billing judgment and have excluded 10.6 of Mr. Hebert's hours and 36.6 of Mr. Bone's hours from this fee request. Thus, Plaintiffs' counsel seek fees only for 18 of Mr. Hebert's hours and 165.6 of Mr. Bone's hours.

"[T]ypically the fee rates of the local area should be applied even when the lawyers seeking fees are from another area," *Ramos v. Lamm*, 713 F.2d 546, 555 (10th Cir. 1983), "[u]nless the subject of the litigation is so unusual or requires such special skills that only an out-of-state lawyer possesses," *Jane L. v. Bangerter*, 61 F.3d 1505, 1510 (10th Cir. 1995) (internal quotation marks omitted). Because the alleged frivolousness of the underlying voting rights claims was a key component the city's cross-appeal against the individual Plaintiffs, the individual Plaintiffs needed to retain counsel with voting rights expertise. *See* App'x E, F, G (Vera, Baca & Molina Mescall declarations). Voting rights cases are factually and legally technical and complicated, requiring special skills and knowledge that most civil rights lawyers do not possess. As explained *supra*, the city employed

aggressive tactics that prevented Plaintiffs from retaining affordable local counsel with the requisite experience. Because the city forced Plaintiffs to retain out-of-state counsel, Plaintiffs' out-of-state counsel should be paid at their standard out-of-state (Washington, DC) rate. *See McClain v. Lufkin Industries, Inc*., 649 F.3d 374, 383 (5th Cir. 2011) (noting the "common view of circuit courts that in the unusual cases where out-of-district counsel are proven to be necessary to secure adequate representation," counsels' out-of-state rates should be the "starting point for the lodestar calculation").

The usual hourly rate for Mr. Hebert, a forty-year veteran of civil rights litigation and former Acting Chief of the Voting Section of the Civil Rights Division at the United States Department of Justice, is $650. The usual hourly rate for Mr. Bone, a graduate of Yale College and Yale Law School, former D.C. Circuit clerk and second-year attorney with significant voting-rights experience, is $328. *Id.* Both rates are standard for similarly experienced attorneys in Washington, DC. *See* App'x B (Laffey Matrix). In fact, many Washington, DC attorneys with Mr. Hebert's and Mr. Bone's specific qualifications and specialized expertise charge their clients hundreds of dollars more per hour. Multiplying Mr. Hebert's and Mr. Bone's respective billable hours by their respective hourly rates results in a total request for $66,016.80 in attorneys' fees.

Additionally, Mr. Hebert and Mr. Bone seek reimbursement for $963.85 in litigation expenses (out of the $1,510.58 that they incurred in total). App'x C. Note that all expenses resulted from their required trip to Denver for oral argument, *see* 10th Cir. R. 34, just to watch counsel for the city—with no warning—concede the cross-appeal. Note also that Mr. Hebert and Mr. Bone sought to minimize expenses by booking an early-morning departure on an "ultra-low-cost" airline, using Priceline's Express Deals service to book their hotel rooms, carpooling to Denver International Airport after oral argument rather than incurring additional taxi charges, exercising reasonable billing judgment to exclude the cost of several restaurant meals and declining to seek reimbursement for the cost of return flights from Denver because an unrelated commitment required travel to Chicago that day anyway. *See* App'x C; *see also Smith v. Freeman*, 921 F.2d 1120, 1122 (10th Cir. 1990) (allowing reimbursement of reasonable travel expenses and for reasonable travel time). Adding $963.85 in litigation expenses to $66,016.80 in attorneys' fees results in the full requested amount of $66,980.65.

CONCLUSION

For the foregoing reasons, pursuant to Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1927, this Court should order the city and its attorneys to pay Plaintiffs' counsel a total of $66,980.65 as a sanction for filing and pursuing a frivolous cross-appeal in bad faith.

Dated: June 5, 2015

Respectfully submitted,

/s/ J. Gerald Hebert

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ECF CERTIFICATION

Pursuant to Section II(I) of the Court's CM/ECF User's Manual, the undersigned certifies:

1. All required privacy redactions have been made;
2. Any paper copies of the foregoing motion required to be submitted to the Clerk's office will be exact copies of the version submitted electronically; and
3. The motion filed via ECF was scanned for viruses using the most recent version of McAfee Security Scan Plus and is free of viruses.

Dated: June 5, 2015

/s/ J. Gerald Hebert

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CERTIFICATE OF SERVICE

I, J. Gerald Hebert, hereby certify that a copy of the foregoing Motion for Sanctions was furnished through the Court's electronic filing service (ECF) to the following on this 5th day of June, 2015:

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