IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

JAMES FIGGS AND ROBERT JACKSON PLAINTIFFS

V. CIVIL ACTION NO. 4:14-CV-119-MPM-JMV

QUITMAN COUNTY, MISSISSIPPI ET AL. DEFENDANTS

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTIONS FOR ATTORNEYS' FEES AND COSTS

COME NOW Plaintiffs, James Figgs and Robert Jackson, by and through counsel of record, and respectfully submit their Response in Opposition to Defendants' Motions for Attorneys' Fees and Costs.

I.

Plaintiffs initiated the action underlying Defendants' petition for fees to redress violations of Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301. Doc. 1, at 1. In their Complaint, Plaintiffs argued that the Supervisor Districts in Quitman County were drawn in such a manner as to dilute the voting power of African-American voters. Doc. 1, at 2. Defendants filed their answer and both parties engaged in discovery, including the submission of expert testimony. Doc. 14; Doc. 105, at 1.

Plaintiffs submitted expert reports by Dr. Allan Lichtman demonstrating that white bloc voting in District 3 and 5 is usually sufficient to prevent minorities from electing candidates of their choice. Doc. 97-11 and 97-12. Defendants submitted their own expert testimony, which

only analyzed African-American voters' general success rate in Quitman County in elections at all levels of government, including statewide and federal elections. Doc. 88-3. Defendants do not contest that African-American voters in District 3 and 5 must comprise a supermajority to overcome white bloc voting in those districts. Indeed, Defendants' expert report supports this proposition. *Id.* at 4.

Defendants filed a Motion for Summary Judgment and Plaintiffs filed a Response in Opposition. Docs. 88 and 94. Subsequently, Plaintiffs filed a Voluntary Motion to Dismiss. Doc. 101. After the claim was dismissed, Defendants filed the instant motion for Attorneys' Fees and Costs, Doc. 105, baldly asserting that Plaintiffs' claims were frivolous and that by bringing these claims, Plaintiffs' counsel had engaged in unreasonable and vexatious litigation. Defendants also filed a motion for costs as the prevailing party pursuant to the Federal Rules of Civil Procedure. Doc. 107. Both motions should be denied.

II.

At every step, Defendants fail to meet the high standards governing when fee awards may be contemplated under 52 U.S.C § 10310, 42 U.S.C. § 1988 or 28 U.S.C. § 1927. Not only do they fail to meet these standards, they repeatedly misstate controlling Fifth Circuit and Supreme Court precedent.

As a threshold matter, Defendants do not even attempt to establish that they are prevailing parties under the Fifth Circuit standard, a prerequisite to any fee or cost award. *See* 52 U.S.C. § 10310, 42 U.S.C. § 1988, Fed. R. Civ. P. 54(d)(1). Controlling Fifth Circuit precedent, which Defendants ignore, conclusively states that a voluntary dismissal with prejudice is insufficient. *Dean v. Riser*, 240 F.3d 505, 511 (5th Cir. 2001). Thus, Defendants' motion for attorneys' fees, Doc. 105, and their motion for costs, Doc. 107, fail at the first step.

Moreover, Defendants completely fail to meet the high standard under *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978), for showing that a claim was frivolous, a requirement for any fee award against the plaintiffs. First, resting their motion on evidentiary disagreements and a faulty expert report, Defendants clearly fail to show that Plaintiffs' claim lacked a basis in fact.

More fundamentally, the only substantive argument that Defendants advance is that Plaintiffs were unable to establish evidence supporting the third *Gingles* precondition. Doc. 106 at 8-9. But Defendants' misinterpretation of the third *Gingles* precondition is foreclosed by decades of Supreme Court and Fifth Circuit precedent. Defendants' argument rests upon the incorrect proposition that the general success of African-American candidates in Quitman County—across all levels of government including gubernatorial, congressional, and presidential races—defeats Plaintiffs' third *Gingles* precondition analysis. But the Supreme Court and the Fifth Circuit have repeatedly explained that the third *Gingles* prong analysis is district-specific. The question under the third *Gingles* prong is not whether African-American candidates might enjoy some generalized electoral success in the region, but rather whether whites vote sufficiently as a bloc *in the challenged district* to usually defeat the minority preferred candidates in the district. Plaintiffs have satisfied this district-specific analysis.

Finally, Defendants rest their entire argument for sanctions under § 1927 on their claim that Plaintiffs' complaint lacked merit. As discussed above, Defendants fail to make that showing. However, once again, this is not the relevant inquiry under Fifth Circuit precedent. The Fifth Circuit standard for unreasonable and vexatious litigation under § 1927 does not look to the merits of the claim but rather to counsels' conduct in bringing the litigation. Defendants' motion does not conduct this analysis whatsoever.

III.

By filing a motion for fees that is so lacking in legal foundation, Defendants evince a serious disregard for the consequences of pursuing fee awards against civil rights plaintiffs' and their counsel generally, and in voting rights cases in particular. Voting Rights Act claims are especially complex and expensive to litigate. The threat of awarding fees against a losing plaintiff, outside extremely narrow circumstances, would chill private-attorney-general actions in an already difficult arena of civil rights litigation. Similarly, by asking for a fee sanction to be awarded against Plaintiffs' counsel in this action, Defendants risk chilling the legitimate zeal of attorneys who would otherwise step in to represent plaintiffs whose rights are being violated. While Defendants are protected against truly frivolous claims and unreasonable and vexatious litigation, to award fees to Defendants in this case—on the basis of a motion that makes no attempt to seriously address the controlling legal standards—would contravene the clear Congressional purpose behind fee-shifting statutes.

IV.

In addition to this Response, Plaintiffs submit a Memorandum in Support of their Response in Opposition to Defendants' Motions for Attorneys' Fees and Costs.

WHEREFORE PREMISES CONSIDERED, and for the above and foregoing reasons, Plaintiffs pray this Honorable Court deny Defendants' Motion for Attorneys' Fees and Costs, so that justice may be served.

RESPECTFULLY SUBMITTED, this, the 2nd day of March, 2016.

BY:

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CERTIFICATE OF SERVICE

I, ELLIS TURNAGE, Attorney for Plaintiffs, do hereby certify that I have served a true and correct copy of the Plaintiffs' Response in Opposition to Defendants' Motion for Attorneys' Fees and Costs electronically with the Clerk of the Court using the ECF systems, which sent notification of such filing to:

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Hon. Lauren Edman
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THIS, the 2nd of March, 2016.

BY: s/ELLIS TURNAGE____________

ELLIS TURNAGE