

FILED

2023 APR -5 PM 4:21S.

ARIZONA SUPERIOR COURT, PIMA COUNTY
FOR THE COUNTY OF COCHISE

HON. CASEY F MCGINLEY

CASE NOS. CV202200552
CV202200553
(CONSOLIDATED)

DATE: April 05, 2023

ARIZONA ALLIANCE OF RETIRED AMERICANS,
INC., ET AL.,
Plaintiffs

VS.

TOM CROSBY, ET AL.,
Defendants

.....
KATIE HOBBS,
Plaintiff,

VS.

TOM CROSBY, ET AL.,
Defendants.

RULING

IN CHAMBERS

Pending before the Court and fully briefed are Plaintiff Secretary of State Adrian Fontes' Application for Attorneys' Fees and Costs, and Plaintiff Arizona Alliance for Retired Americans, Inc.'s Rule 54 Motion for an Award of Attorneys' Fees and Costs. The Court has considered the Motions, the Declarations in support thereof, Defendants' Consolidated Objection, and Plaintiff Secretary of State Fontes' Reply. The Court has also considered the relevant case law and statutes.

Plaintiff Secretary of State Fontes seeks \$16,556 attorneys' fees, as well as an additional \$617.82 in costs associated with bringing this claim. Plaintiff Arizona Alliance for Retired Americans, Inc. seeks \$33,036 in attorneys' fees and \$1,520.32 in costs. While each Plaintiff brought their respective claim under separate cause numbers, the matters were consolidated

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Judicial Administrative Assistant

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shortly after their filing. Defendants object to any award of fees, contending that no enforceable order was entered in favor of Plaintiffs, and that therefore they are not prevailing parties.

Plaintiffs sought writs of mandamus directing the Cochise County Board of Supervisors to meet and canvass the 2022 General Election results. At the conclusion of a hearing on December 1, 2022, this Court granted the requests, found that Defendants had a non-discretionary duty to canvass, and ordered them to meet and canvass the election no later than 5:00 P.M. that same day.

By statute,

[a] court shall award fees and other expenses to any party other than this state or any political subdivision of this state which prevails by an adjudication on the merits in a civil action brought by the party against the state, any political subdivision of this state or an intervenor to compel a state officer or any officer of any political subdivision of this state to perform an act imposed by law as a duty on the officer.

A.R.S. §12-2030(A). The term "fees and other expenses" includes "reasonable and necessary attorney fees." A.R.S. §12-2030(B). A mandamus action meets the criteria of A.R.S. §12-2030, and therefore entitles Arizona Alliance for Retired Americans, Inc. to reasonable attorneys' fees if they are the prevailing party. Additionally,

Notwithstanding section 12-348, in addition to any costs that are awarded by statute, if an agency, department, board or commission of this state, a city, town or county, governmental officer acting in the officer's official capacity or an association whose membership is primarily composed of governmental entities files a lawsuit against this state, or an agency, department, board or commission of this state, a city, town or county, governmental officer acting in the officer's official capacity or an association whose membership is primarily composed of governmental entities, the court shall award reasonable attorney fees to the successful party in the action.

A.R.S. §12-348.01. Both the Secretary of State and the Board of Supervisors (and members thereof) are governmental entities that were parties to this litigation in their official capacities. Thus, if any of them are found to be the prevailing party here, they are entitled to reasonable attorneys' fees by statute.

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Plaintiffs are each the prevailing party in their respective lawsuits. Each sought, and obtained, a writ of mandamus ordering Defendants to meet and canvass the election results. It appears that, in response to that writ, a quorum of the Board met and canvassed the election in accordance with the order. Defendants attempted to remove the matter to federal court, but to the Court's knowledge, no such removal was properly executed before this Court entered its order, and, to the Court's knowledge, no action has been taken which vacates or otherwise invalidates the writ of mandamus issued by this Court. Defendants' other arguments, pertaining to whether election cases should require the payment of attorneys' fees or whether taxpayers might bear the burden of paying for such fees, are unavailing. Here, statutes specifically require the Court to impose reasonable attorneys' fees to the prevailing party.

Nonetheless, in reviewing the Declarations, the Court has found instances where the fees sought either represent duplicated efforts on the part of attorneys in preparing for the hearing in this matter, or other fees which are not otherwise reasonable and necessary. Such examples include charging for multiple attorneys completing the same work, charging each attorney's hourly rate for conferences among counsel, charging fees for attending and reviewing meetings of the Board of Supervisors, and charging fees that appear to be related to activity after the Court concluded the December 1 hearing. After deducting such fees, the Court finds that Secretary of State Fontes' reasonable attorneys' fees are \$12,525.50, and that Arizona Alliance for Retired Americans, Inc.'s reasonable attorneys' fees are \$21,530. Additionally, the Court finds that the request for payment of costs associated with this litigation is well taken without any modifications thereof.

For the reasons set forth above,

IT IS ORDERED that Plaintiffs' Applications are granted.

IT IS FURTHER ORDERED awarding attorneys' fees to Plaintiff Secretary of State Adrian Fontes \$12,525.50.

IT IS FURTHER ORDERED awarding costs to Plaintiff Secretary of State Adrian Fontes in the amount of \$617.82.

IT IS FURTHER ORDERED awarding attorneys' fees to Plaintiff Arizona Alliance for Retired Americans, Inc., in the amount of \$21,530.

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IT IS FURTHER ORDERED awarding taxable costs to Plaintiff Arizona Alliance for Retired Americans, Inc., in the amount of \$1520.32.

IT IS FURTHER ORDERED that such costs and fees are not assessed against Defendant English, as she did not oppose the relief sought by Plaintiffs, and in fact joined in the request that the Court issue the writ of mandamus.


HON. CASEY F MCGINLEY

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