

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

CARROLL BOSTON CORRELL, JR., on behalf of  
himself and others similarly situated,

Plaintiff,

v.

MARK R. HERRING, in his official capacity as  
Attorney General of the Commonwealth of  
Virginia, et al.,

Defendants.

Civil No. 3:16-cv-00467-REP

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF CARROLL BOSTON CORRELL, JR.'S  
MOTION FOR ATTORNEY'S FEES AND COSTS UNDER 42 U.S.C. § 1988**

This was a whirlwind of a litigation. In just over two weeks, the parties and the Court litigated an intensive and comprehensive challenge to Virginia Code § 24.2-545(D), which would have criminalized the decision of delegates to Republican National Conventions to follow the Republican Party rules in selecting the party's nominee for President of the United States. In this time, Mr. Correll's attorneys filed multiple pleadings, engaged in extensive motions practice, established the factual record, identified and prepared an expert witness, and participated in a full day trial. Ultimately, Mr. Correll prevailed and the Court's decision vindicated his First Amendment rights and granted him the entire relief he sought: a permanent injunction of Section 545(D) as being facially unconstitutional. Having secured this hard-fought victory, Mr. Correll now moves, pursuant to 42 U.S.C. § 1988, for an award of \$240,831.25 in attorney's fees and \$6,740.26 in costs that were incurred to achieve it.<sup>1</sup>

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<sup>1</sup> The attorney's fees and costs requested in this motion are limited to those billed on and before July 12, 2016. Mr. Correll will supplement this motion for work performed and costs incurred in preparing this motion.

## BACKGROUND

On Friday, June 24, Mr. Correll filed his complaint under 42 U.S.C. § 1983, challenging the constitutionality of Virginia Code § 24.2-545(D). Mr. Correll argued that Section 545(D), which requires under penalty of prison all Virginia delegates to the Republican National Convention to vote for the winner of the primary vote, violated his First Amendment rights to freedom of speech and freedom of association. With the opening of the Republican National Convention quickly approaching, Mr. Correll's attorneys worked diligently to assure that Mr. Correll's rights would be vindicated before it came time for him to vote in Cleveland. In less than three weeks, Mr. Correll's attorneys fully brief the case, established the factual record, identified and prepared an expert witness, and participated in a full day trial. Doing so required a considerable commitment of resources as well as the near-complete attention of the five-member team. In the end, Mr. Correll's attorneys fully vindicated his rights: the Court entered a judgment for Mr. Correll on Counts I and II, and permanently enjoined the Commonwealth from enforcing Section 545(D).

All parties made the case a high priority, which is reflected in how they staffed the case. Defendants committed four experienced attorneys from the Office of the Attorney General to the matter: Assistant Attorney General Anna T. Birkenheier, Assistant Attorney General Joshua D. Heslinga, Senior Assistant Attorney General Heather Hays Lockerman, and Deputy Attorney General John W. Daniel, II. *See* Transcript of June 28, 2016 Conference Call at 3 (ECF No. 16). These four attorneys attended the bench trial and telephonic conferences. *See, e.g., id.*; Transcript of June 30, 2016 Conference Call (ECF No. 28); Transcript of July 1, 2016 Conference Call (ECF No. 32). In addition, Attorney General Mark R. Herring participated in executive decision making in the case, and Chief Deputy Attorney General Cynthia E. Hudson submitted an

affidavit to the Court. Decl. of Cynthia E. Hudson, Chief Deputy Attorney General of Virginia (ECF No. 38). For their part, Defendant-Intervenors committed two attorneys from LeClair Ryan, PC to the case: David A Warrington and Paris R. Sorrell. And Baker Hostetler committed five attorneys to the case: David B. Rivkin, Jr., Mark W. DeLaquil, Andrew M. Grossman, Richard B. Raile, and Joseph T. Nawrocki.

At the Court's invitation, Transcript of June 28, 2016 Conference Call at 20–23 (ECF No. 16), Mr. Correll made every reasonable effort to settle this action and spare the Court and the parties the intensive litigation that this suit entailed. Notably, Mr. Correll offered to forego entirely his right to attorney's fees and costs under 42 U.S.C. § 1988 in exchange for Defendants stipulating that Section 545(D) is unconstitutional and unenforceable. Despite their refusal to settle, Defendants took great efforts to avoid defending the actual constitutionality of Section 545(D), instead making prudential arguments about their purported lack of interest in enforcing it and jurisdictional arguments challenging the fitness of this case for judicial resolution. *See* Defendants' Memorandum in Opposition at 26–28 (ECF No. 25) (only spending the last two-and-a-half pages of their 29 page brief addressing the constitutionality of Section 545(D)); Decl. of Marc Abrams, Commonwealth Attorney (ECF No. 25-1); Decl. of Cynthia E. Hudson, Chief Deputy Attorney General of Virginia (ECF No. 38). The Court's decision ultimately granted Mr. Correll the very relief he sought in settlement negotiations.

## **ARGUMENT**

### **I. Legal Standard for Award of Attorney's Fees and Costs**

Under 42 U.S.C. § 1988, a "prevailing party" may recover "'a reasonable attorney's fee'...in certain civil rights actions, including suits brought under [42 U.S.C. §] 1983." *Lefemine v. Wideman*, 758 F.3d 551, 555 (4th Cir. 2014) (quoting 42 U.S.C. § 1988(b)). "To be considered

a prevailing party, a party must succeed on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.” *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 349 (4th Cir. 2001) (quotation marks omitted). A plaintiff achieves the benefit sought in the litigation when he “obtain[s] an enforceable judgment against the defendant from whom fees are sought,” *Farrar v. Hobby*, 506 U.S. 103, 111 (1992), or comparable relief through a consent decree or settlement.

There can be no doubt that Mr. Correll is a “prevailing party” eligible for an award of attorney’s fees under § 1988. This Court found in Mr. Correll’s favor that Virginia Code § 24.2-545(D) violates Mr. Correll’s First Amendment right to free political speech and his right to free association, and permanently enjoined the Defendants from enforcing Virginia Code 24.2-545(D). Mr. Correll has clearly succeeded on the merits of these claims, and the Court’s injunction “modifies the defendant[s]’ behavior in a way that directly benefits [Mr. Correll].” *Mercer v. Duke Univ.*, 401 F.3d 199, 203 (4th Cir. 2005).

Under Section 1988 “a prevailing plaintiff should ordinarily recover an attorney’s fee unless special circumstances would render such an award unjust.” *Lefemine*, 758 F.3d at 555 (quotation marks omitted). The exception for “special circumstances,” however, “is very narrowly limited,” and “only on rare occasions does a case present such circumstances.” *Id.* (quotation marks and alterations omitted). Examples of special circumstances justifying the denial of attorney’s fees include “a pro se plaintiff who was an attorney” and a “plaintiffs’ suit [that] did not vindicate civil rights.” *Id.* at 555–56. None of these circumstances apply here.

“[I]n calculating an attorneys’ fee award, a district court must first determine the lodestar amount (reasonable hourly rate multiplied by hours reasonably expended), applying the

*Johnson/Barber* factors when making its lodestar determination.” *Grissom v. Mills Corp.*, 549

F.3d 313, 320–21 (4th Cir. 2008) (quotation marks omitted). The *Johnson/Barber* factors are:

1. the time and labor expended;
2. the novelty and difficulty of the questions raised;
3. the skill required to properly perform the legal services rendered;
4. the attorney’s opportunity costs in pressing the instant litigation;
5. the customary fee for like work;
6. the attorney’s expectations at the outset of the litigation;
7. the time limitations imposed by the client or circumstances;
8. the amount in controversy and the results obtained;
9. the experience, reputation, and ability of the attorney;
10. the undesirability of the case within the legal community in which the suit arose;
11. the nature and length of the professional relationship between attorney and client; and
12. attorney’s fees awards in similar cases.

*Id.* (citing *Barber v. Kimbrell’s, Inc.*, 577 F.2d 216, 226 n.28 (4th Cir. 1978)).

Additionally, in the Fourth Circuit, a thirteenth factor—the opposing party’s ability to pay—may be considered by the Court. *See Porter v. Elk Remodeling, Inc.*, No. 1:09-cv-446, 2010 U.S. Dist. LEXIS 89037, at \*9 n.4 (E.D. Va. Aug. 27, 2010) (citing *Chaplin v. DuPont Advance Fiber Sys.*, 303 F. Supp. 2d 766, 775–76 (E.D. Va. 2004)).

## **II. The *Johnson/Barber* Factors Support an Award of All of Mr. Correll’s Attorney’s Fees**

### **1. The time and labor expended (*Johnson/Barber* Factor No. 1)**

The first *Johnson/Barber* factor is the time and labor required to litigate the suit. As explained in the accompanying affidavit of Mr. DeLaquil, Baker Hostetler expended 548.25 hours litigating this case, but seeks reimbursement for only 491.25 hours expended—a reduction of over 10 percent. DeLaquil Decl. ¶ 7. Plaintiff’s litigation efforts were substantial. Even though the case proceeded on a highly expedited schedule, Plaintiff’s counsel participated in nearly a half dozen telephonic conferences with the Court, submitted significant briefing on a number of jurisdictional and substantive legal issues, developed an extensive factual record, identified and prepared an expert witness, and represented the Plaintiff at a full day bench trial.

Moreover, Mr. Correll's counsel had to develop a fluency with complex factual issues in order to vindicate Mr. Correll's rights. These issues included the operation and history of the Republican National Convention Rules, the operation of the Rules of the Republican Party of Virginia, and Virginia Republican delegate nominating procedures.

Plaintiff has produced detailed records of the hours counsel expended on this litigation. See Exhibit B to DeLaquil Decl. To establish the number of hours reasonably expended on the case, the fee applicant should exercise "billing judgment" in its request. *Rum Creek Coal Sales, Inc v. Caperton*, 31 F.3d 169, 175 (4th Cir. 1994). Mr. Correll's counsel has closely examined the number of hours spent on specific tasks, and reduced this fee request by eliminating from this request hours that are not properly the subject of a fee award under Section 1988. Counsel concludes that 57 hours spent working on the case were not appropriately the subject of a fee award under Section 1988, and has eliminated these hours from the fees request. Plaintiff is entitled to reimbursement for the remaining fees.

Moreover, Plaintiff's counsel did everything in his power to settle this matter to avoid incurring litigation expenses. When assessing whether time billed is reasonable, a court should consider whether the plaintiff "engag[ed] in a lengthy and good faith effort to settle the case." *Doe v. Rector*, 2016 WL 3480947, at \*4 (E.D. Va. June 21, 2016). As the billing records show, Plaintiff made significant efforts to settle this matter, arriving at a reasonable settlement position that would have waived Plaintiff's entitlement to attorney's fees in exchange for the substantive relief he ultimately obtained—an injunction barring Defendants from enforcing Virginia Code § 24.2-545(D). Defendants rejected that offer.

**2. Novelty and difficulty of the questions raised (*Johnson/Barber* Factor No. 2)**

This case raised a number of novel questions of statutory and constitutional law. At bottom, this was a case about whether the Defendants had a compelling interest in burdening Mr. Correll's First Amendment rights to freedom of association and freedom of speech. But to avoid adjudication on the merits of this question, which strongly favored Mr. Correll's position, Defendants raised a host of complicated jurisdictional defenses. For instance, Defendants argued that Mr. Correll did not have standing to bring the action, that Mr. Correll did not face a credible threat of injury, alternatively that Mr. Correll was so late in seeking relief for his threat of injury that his action was barred by laches, and that Mr. Correll's injury was not redressable by the Court. In addition, the early litigation involved complex issues of class action law. A significant investment of legal resources was required to skillfully address these legal issues.

The difficulty and novelty of the questions and issues presented favor an award of fees in the amount requested by Mr. Correll.

**3. Skill required to properly perform the legal services rendered (*Johnson/Barber* Factor No. 3)**

Mr. Correll was represented by a team of preeminent attorneys with extensive experience in civil rights and constitutional litigation. The members of Mr. Correll's team brought substantial individual experience in First Amendment and Section 1983 litigation.<sup>2</sup> The following is a summary of the experience Mr. Correll's team brought to the litigation.

*Mr. Rivkin*

Mr. Rivkin, the lead attorney in this case, graduated from the Columbia University School of Law in 1985 and has 31 years of legal experience in constitutional law and litigation, including in the White House Counsel's Office and the Department of Justice. He has served as

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<sup>2</sup> Combined, Mr. Correll's team has filed over 20 briefs in the Supreme Court on constitutional and related matters.

lead counsel in significant constitutional litigation matters before, such as *Lebron v. Rumsfeld*, 670 F.3d 540 (4th Cir. 2012), and *Florida ex rel. Bondi v. United States Department of Health and Human Services*, 780 F. Supp. 2d 1256 (N.D. Fla. 2011). He was also awarded a Burton Award for Legal Achievement by the Burton Foundation and the Law Library of Congress in 2011.

Mr. Rivkin also has significant experience with civil rights litigation. For example, he has been lead counsel in multiple Section 1983 Civil Rights Actions. He has been lead counsel in other actions challenging campaign finance and election law issues in Wisconsin and Texas. And Mr. Rivkin has significant experience defending government officials in *Bivens* actions, including serving as lead counsel for former Secretary of Defense Donald Rumsfeld.

Mr. Rivkin is authorized to practice law in the United States District Courts for the Eastern District of Wisconsin, the Northern District of Florida, the District of South Carolina, the U.S. Courts of Appeals for the Second, Fourth, Fifth, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits, and the Supreme Court of the United States. Mr. Rivkin has been recognized as a Washington, D.C. “Super Lawyer” in 2007, 2008, 2014, 2015, and 2016.

*Mr. DeLaquil*

Mr. DeLaquil graduated *cum laude* from Harvard Law School in 2004 and has 12 years of constitutional litigation experience, including litigation involving the Section 1983 Civil Rights Action and the First Amendment. He is rated AV Preeminent by Martindale-Hubbell and was recognized as a Washington, D.C. “Super Lawyer Rising Star” in 2014. Mr. DeLaquil has represented clients in many campaign finance matters and has obtained preliminary injunctions enjoining the enforcement of a state law requiring certain social welfare organizations to register as political committees and the enforcement of a state law barring coordination between

candidates and unaffiliated organizations concerning issues advocacy. He has also represented parties in appeals throughout the United States and *amici curiae* in proceedings before the U.S. Supreme Court and nearly all of the United States Courts of Appeals. Mr. Delaquil has been licensed to practice law in Virginia for 12 years and has been admitted to the bar of this Court for 10 years. He is also authorized to practice law in the U.S. District Court for the Eastern District of Wisconsin, and the U.S. Courts of Appeals for the Second, Fourth, Fifth, Seventh, Eighth, Ninth, and D.C. Circuits.

*Mr. Grossman*

Mr. Grossman graduated *magna cum laude* from George Mason University School of Law in 2007 and clerked for Chief Judge Edith H. Jones of the United States Court of Appeals for the Fifth Circuit. He has nine years of experience in constitutional litigation, including numerous cases involving the First Amendment and the Section 1983 Civil Rights Action. He has also represented Senators John McCain, Lindsey Graham, and Kelly Ayotte in Second Circuit litigation challenging the constitutionality of the military detention-related provisions contained in the National Defense Authorization Act. He was awarded a Burton Award for Legal Achievement by the Burton Foundation and the Law Library of Congress in 2007. Mr. Grossman is licensed to practice law in the District of Columbia and in the U.S. Courts of Appeals for the Second, Fourth, Fifth, Seventh, Ninth, Eleventh, and D.C. Circuits, the U.S. Tax Court, and the U.S. Supreme Court. Mr. Grossman has been recognized as a Washington, D.C. “Super Lawyer Rising Star” in 2014, 2015, and 2016.

*Mr. Raile and Mr. Nawrocki*

Mr. Raile and Mr. Nawrocki, associates who also have experience litigating election law and constitutional cases and Section 1983 claims, assisted in the case. The assistance that Messrs. Raile and Nawrocki provided is set forth in Mr. DeLaquil's Declaration.

The firm website bios for the attorneys participating in the case are attached to Mr. DeLaquil's Declaration. *See* Exhibit A to DeLaquil Decl.

**4. The attorney's opportunity costs in pressing the instant litigation (Johnson/Barber Factor No. 4)**

This was a full-blown case compressed into a few short weeks. The pace of the proceedings required the litigation team to devote nearly all of its attention to the case for those weeks. The 491.25 hours expended in representing Mr. Correll impacted the ability of the litigation team to perform legal work for other clients and to seek out and take on work from other clients. Thus, this factor too supports an award of attorney's fees.

**5. The customary fee for like work (Johnson/Barber Factor No. 5)**

Another factor contributing to the analysis is the reasonableness of the rates employed. Mr. Charles J. Cooper, a founding member and chairman of Cooper & Kirk, PLLC and an experienced constitutional litigator, reviewed the rates requested by Mr. Correll for this litigation and compared them to rates charged for similar litigation in the relevant market. Mr. Cooper concluded that all of the rates are "well within the range of reasonable rates charged by attorneys with similar education, background, and experience...in the Richmond area in civil rights and constitutional litigation." Cooper Decl. ¶¶ 8–19.

In light of the rates requested and the declaration of Mr. Cooper, the hourly rates Mr. Correll seeks for his attorneys are reasonable.

**6. The attorneys' expectations at the outset of litigation (*Johnson/Barber* Factor No. 6)**

Under the “attorney’s expectations” factor, courts focus on whether the fee arrangement in a case is fixed or contingent. *See Johnson v. Georgia Highway Exp., Inc.*, 488 F.2d 714, 718 (5th Cir. 1974) (listing the sixth *Johnson/Barber* factor as, “[w]hether the fee is fixed or contingent”), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87 (1989). In this case, the fee arrangement was neither fixed nor contingent, but was billed by hours worked. This factor therefore does not play a role in the analysis of the instant fee petition.

**7. The time limitations imposed by the client or circumstances (*Johnson/Barber* Factor No. 7)**

Time limitations also contributed to the fees incurred in this case. As noted above, Mr. Correll filed his complaint on June 24, 2016, and a full day bench trial was held a mere thirteen days later on July 7, 2016. In those thirteen days, Mr. Correll’s attorneys developed the factual record, fully briefed the case, and prepared for trial. This expedited schedule required an all-hands-on-deck approach, and justified the involvement of five attorneys. Notably, the Defendants regularly had four attorneys engaged in this matter. *See, e.g.*, Transcript of June 28, 2016 Conference Call at 3 (ECF No. 16) (listing Assistant Attorney General Anna T. Birkenheier, Assistant Attorney General Joshua D. Heslinga, Deputy Attorney General John W. Daniel, II, Senior Assistant Attorney General Heather Hays Lockerman, and Intern Estelle Mitchell as present for Defendants). Plaintiff’s counsel also needed to contend with the Defendant-Intervenors, which added an additional two attorneys to the overall Defendants’ team.

**8. The amount in controversy and the results obtained (*Johnson/Barber* Factor No. 8)**

Mr. Correll obtained the full relief he requested: a vindication of his First Amendment rights to freedom of speech and freedom of association, and a permanent injunction enjoining the

Defendants from enforcing Virginia Code 24.2-545(D). Mr. Correll's complete vindication and the importance of the rights he vindicated justify the full award of the attorney's fees requested.

The Supreme Court has long emphasized the importance of awarding attorney's fees under Section 1988 when a plaintiff succeeds in vindicating constitutional rights. In enacting Section 1988, the Court observed, "Congress expressly recognized that a plaintiff who obtains relief in a civil rights lawsuit 'does so not only for himself alone but also as a private attorney general, vindicating a policy that Congress considered of the highest importance.'" *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986) (citing H.R. Rep. No. 94-1558, p. 2 (1976)). As such, a "rule that limits attorney's fees in civil rights cases to a proportion of the damages awarded would seriously undermine Congress' purpose in enacting § 1988." *Id.* at 576. This is especially so where a plaintiff "seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms." *Id.* at 574.

Mr. Correll certainly vindicated important constitutional rights. As the Supreme Court has said, First Amendment rights are of such paramount importance that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Having done so as a private attorney general, Mr. Correll is now entitled to full reimbursement for attorney's fees.

**9. The experience, reputation, and ability of the attorneys (*Johnson/Barber* Factor No. 9)**

The ninth *Johnson/Barber* factor is the experience, reputation, and ability of the attorneys. As discussed above, the attorneys who represented Mr. Correll are leading litigators with vast experience in constitutional and civil rights litigation, including First Amendment and Section 1983 litigation. The ninth factor, too, supports an award of the full fees requested by Mr. Correll.

**10. The undesirability of the case within the legal community in which the suit arose (*Johnson/Barber* Factor No. 10)**

Mr. Correll brought his suit because he believes that Donald Trump is unfit to serve as President of the United States. Am. Compl. ¶ 21 (ECF No. 20). Mr. Trump, who was later nominated as the Republican Party's candidate for President of the United States, personally disparaged the suit. *See* Donald J. Trump Press Release, Federal Court Sides with Grass Roots Activists: RNC Delegates Are Bound to Follow Election Results (July 11, 2016), available at <https://www.donaldjtrump.com/press-releases/federal-court-sides-with-grassroots-activists-rnc-delegates-are-bound-to-fo>. Moreover, because Mr. Correll's engagement in this suit meant taking a position adverse to the Attorney General of Virginia and the State of Virginia, Baker Hostetler's engagement in this cause should be supported by a full award of attorney's fees.

**11. The nature and length of the professional relationship between the attorney and client (*Johnson/Barber* Factor No. 11)**

Mr. Correll and Baker Hostetler did not have a relationship prior to this litigation. *Johnson/Barber* Factor 11—the nature and length of the professional relationship—therefore does not apply to the instant fee petition.

**12. Attorney's fee awards in similar cases (*Johnson/Barber* Factor No. 12)**

The Twelfth *Johnson/Barber* factor is the attorney's fees awards in similar cases. In recent years, the Eastern District of Virginia has in Section 1983 litigation awarded attorney's fees of \$750,000, *Saleh v. Moore*, 95 F. Supp. 2d 555, 578 (E.D. Va. 2000), *aff'd sub nom. Saleh v. Upadhyay*, 11 F. App'x 241 (4th Cir. 2001), and \$277,864.45, *Doe v. Rector*, 2016 WL 3480947, at \*6 (E.D. Va. June 21, 2016). These awards support Mr. Correll's request for \$240,831.25 in attorney's fees.

**13. Ability of opposing party to pay (Supplemental Fourth Circuit Factor)**

Finally, courts in the Fourth Circuit often consider a thirteenth factor when determining whether the lodestar amount requested by a prevailing party is reasonable: the opposing party's ability to pay. *See Porter*, 2010 U.S. Dist. LEXIS 89037, at \*9 n.4. In this case, the Virginia Attorney General's Office and the Virginia Department of Elections have ample resources to pay a fee award. This factor thus weighs in favor of awarding the fees sought by Mr. Correll. *See Arnold v. Burger King Corp.*, 719 F.2d 63, 67 (4th Cir. 1983) (holding that, in addition to the *Johnson/Barber* factors, "the district court should give weight to the relative financial positions of the litigants").

**III. Mr. Correll Is Entitled to Recover the Reasonable Expenses Incurred in This Litigation**

Mr. Correll is also entitled to recover \$6,740.26 in reasonable expenses. As part of the attorney's fee award pursuant to Section 1988, a prevailing plaintiff is also entitled to recover those "reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee paying client, in the course of providing legal services." *Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988), quoting *Northcross v. Memphis Bd. of Educ.*, 611 F.2d 624, 639 (6th Cir. 1979). Under Fourth Circuit precedent, the prevailing party in a Section 1988 action can recover paralegal time, secretarial costs, copying, telephone costs, and necessary travel. *See Doe v. Rector*, 2016 WL 3480947, at \*4 (E.D. Va. June 21, 2016); *Daly v. Hill*, 790 F.2d 1071, 1082 (4th Cir. 1986). This list is illustrative, not exhaustive. The important inquiry in determining if a cost incurred should be recovered by the prevailing party is whether it is a cost that is (1) reasonable, (2) normally charged to a fee paying client, and (3) incurred in the course of providing legal services. *Spell*, 862 F.2d at 771.

The costs incurred in this case are set forth in detail. *See* Exhibit C to DeLaquil Decl. The requested expenses include, *inter alia*, filing fees, court transcript costs, legal research costs, attorney and paralegal travel and lodging costs, and professional services costs for process service, copies and binding, all of which were incurred in the course of litigation and were necessary to the successful resolution of the case. Care was taken to perform tasks efficiently and to limit costs to what was reasonably necessary for representation. *See* DeLaquil Decl. ¶ 18 (attesting to the reasonableness of the costs and expenses sought here, in principle and amount). All expenses detailed are normally charged by Baker Hostetler to fee paying clients and were accrued in the course of providing legal services on behalf of Mr. Correll.

#### **IV. “Fee on Fee” Award**

The instant fee petition covers only fees incurred through July 12, 2016—the day after this Court handed down its decision. However, “[i]t is well settled that the time spent defending entitlement to attorney’s fees is properly compensable under § 1988.” *Prison Legal News v. Stolle*, 129 F. Supp. 3d 390, 404 (E.D. Va. 2015) (citing *Trimper v. City of Norfolk*, 58 F.3d 68, 77 (4th Cir. 1995)). Accordingly, Mr. Correll is also entitled to an award of fees incurred since that date in post-trial matters. Mr. Correll will supplement the instant petition with a fee-on-fee petition at the appropriate time.

#### **CONCLUSION**

For the foregoing reasons, this Court should award Mr. Correll \$240,831.25 in attorney’s fees and \$6,740.26 in costs under 42 U.S.C. § 1988.

Dated: July 25, 2016

Respectfully submitted,

/s/ Mark W. DeLaquil

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