



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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ORDER

MONA FIELD et al VS. DEBRA BOWEN et al

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San Francisco County Superior Court

AUG 01 2012

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

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MONA FIELD, ET AL.,

PLAINTIFFS,

VS.

DEBRA BROWN, ET AL.,

DEFENDANTS.

CASE NO: CGC- 10-502018

ORDER DENYING PLAINTIFFS' MOTION
FOR ATTORNEYS FEES
AND
GRANTING INTERVENERS' MOTION
FOR ATTORNEYS FEES

Argument on the captioned motions came on for a hearing this date, and the parties appeared by counsel.

Judge Woolard of this Court denied plaintiffs' motion for preliminary injunction. The Court of Appeal affirmed and held that plaintiffs were unlikely to prevail on the merits as a matter of law. *Field v. Bowen*, 199 Cal.App.4th 346 (2011). This Court subsequently granted judgment in defendants' favor. Thereafter, the Legislature enacted AB 1413.

Now two groups of parties seek attorneys' fees: the plaintiffs, and interveners.

Plaintiffs' Motion

Citing CCP § 1021.5, plaintiffs seek nearly \$2 million in attorney's fees claiming that they were the catalyst for AB 1413. *Graham v. DaimlerChrysler*, 34 Cal.4th 553 (2004).

Plaintiffs claim they prompted the Secretary of State and Legislature to stop disenfranchising voters who cast write in votes.

Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation...In order to be eligible for attorney fees under section 1021.5, a plaintiff must not only be a catalyst to defendant's changed behavior, ***but the lawsuit must have some merit...***

Graham, 34 Cal.4th at 560-561 (emphasis added).

Here, the lawsuit had no merit. Plaintiffs are not a “successful party” under CCP § 1021.5. AB 1413 did not provide Plaintiffs with any relief: it was, in terms of the relief sought in this case, unnecessary in light of the Court of Appeal’s holding that Election Code § 8606 barred the casting of a write-in vote. AB 1413 merely substituted clearer statutory language to achieve the same result. Further, the enactment of AB 1413 was not the primary relief sought. *Compare, Schmier v. Supreme Court*, 96 Cal.App.4th 873, 878 (2002), quoting *Maria P. v. Riles*, 43 Cal.3d 1281, 1291-92 (1987).

Interveners’ Motion

Interveners seek \$243,279.50 in fees (including \$43,000 for work on the fees motions) against Plaintiffs under CCP § 1021.5. Plaintiffs’ Opposition takes no issue with the amount (or calculation of) of fees claimed.

Prevailing defendants may recover fees under § 1021.5. *DiPirro v. Bondo Corp.*, 153 Cal.App.4th 150, 199 (2007) (“An award of attorney fees pursuant to section 1021.5 is available if a party defends an action “ ‘primarily to advance’ ” a public interest ““rather than personal interests.””)

Three basic criteria are required to support an award of attorneys' fees under section 1021.5: (1) the action resulted in the enforcement of an important right affecting the public interest; (2) a significant benefit was conferred on the general public or a large class of persons; and (3) the necessity and financial burden of private enforcement were such as to make the award appropriate.

Abouab v. City and County of San Francisco 141 Cal.App.4th 643, 663 (2006).

For reasons stated above I reject Plaintiffs' suggestion that they, and not interveners, are prevailing. I reject as inapposite the analogies made to Title VII and FEHA cases. See Plaintiffs' Opposition to Interveners' Motion For Attorney Fees, filed July 13, 2012 at pp. 10 *et seq.*

Plaintiffs make no opposition to fees motion, or otherwise suggest that Interveners have not met the *Abouab* criteria, except for one argument: that they were not litigating for the public interest, but rather for their own private interest. Thus I must decide the extent to which plaintiffs were simply pursuing private rights (with perhaps an incidental public interest). *Adoption of Joshua S.*, 42 Cal.4th 945 (2008), for example, held that a § 1021.5 fee award may not be imposed on a litigant who did nothing to adversely affect the public interest, but simply lost an important appellate case in the course of pursuing his or her private rights. See also, *Wilson v. San Luis Obispo Democratic Central Comte.*, 192 Cal.App.4th 918, 925 (2011); *Serrano v. Stefan Merli Plastering Co., Inc.*, 52 Cal.4th 1018 (2011).

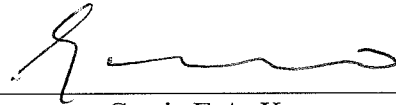
One need read no more than Plaintiffs' own "Motion For (1) Declaration That Plaintiffs Are The Successful Party And (2) Attorneys Fees," filed April 10, 2012. Starting on page 6 (the first page of text), citing CCP § 1021.5, virtually every sentence for next few pages confirms Plaintiffs' own views that this was a case of, in the first place, public interest. See also, Plaintiffs' Reply Brief filed July 25, 2012, *passim* and

especially at 10 *et seq.* (citing § 1021.5). Plaintiffs may have had personal reasons for the suit, but the very first sentence of the first amended complaint gives it all away:

“Plaintiffs bring this action in the public interest.....” First Amended Complaint filed August 16, 2011 ¶1. The interests of the named plaintiffs (*id.* ¶¶54 *et seq.*) are indistinguishable from those of any other California resident.

Accordingly the motion is granted, and the fees in the amount of \$243,279.50 are awarded to Interveners to be paid by Plaintiffs.

Dated: August 1, 2012

A handwritten signature in black ink, appearing to read 'C. Karnow', is written over a horizontal line.

Curtis E.A. Karnow
Judge of the Superior Court

Superior Court of California
County of San Francisco
Dept. 302

MONA FIELD, ET. AL.,,

Plaintiff(s)

vs.

DEBRA BROWN, ET. AL.,

Defendant(s)

Case Number: CGC-10-502018

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Michael Yuen, Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On August 1, 2012, I served the attached ORDER DENYING PLAINTIFFS' MOTION FOR ATTY'S FEES AND ORDER GRANTING MOTION FOR ATTY'S FEES by placing a copy thereof in a sealed envelope, addressed as follows:

ATTY. GAUTAM DUTTA
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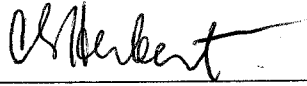
ATTY. CHRISTOPHER E. SKINNELL
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SAN RAFAEL, CA 94901

ATTY. MARK R. BECKINGTON
DEPARTMENT OF JUSTICE
300 SOUTH SPRING ST, STE. 1702
LOS ANGELES, CA 90013-1230

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: August 1, 2012

Michael Yuen, Clerk

By: 

Cynthia Herbert
Deputy Clerk