

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

IDAHO REPUBLICAN PARTY, and
NORM SEMANKO, Chairman,

Plaintiff,

v.

BEN YSURSA, In his Official Capacity
as Secretary of State of the State of
Idaho,

Defendant.

Case No. 1:08-CV-165-BLW

ORDER

The Court has before it Idaho Republican Party's Motion for Attorney Fees and Costs (Dkt. 99), and Stipulation Re: Attorney Fees and Costs (Dkt. 103). In its motion, Idaho Republican Party asks the Court to order the Idaho Secretary of State to pay Idaho Republican Party \$143,879.78 in fees and costs. The Secretary of State did not oppose the motion. Instead, the parties filed a joint stipulation explaining that the Secretary of State agrees to pay the Idaho Republican Party \$100,000.00 to resolve the motion.

There is no dispute that the Idaho Republican Party was the prevailing party in its Section 1983 claim against the Secretary of State. Section 1988(b) of Title 42 of the United States Code states that in any proceeding to enforce a provision under Section 1983, the court may allow the prevailing party a reasonable attorney's fee as part of the costs. Although the statute suggests that the District Court has discretion in awarding such fees, the Ninth Circuit has made

it clear that a prevailing plaintiff should ordinarily recover fees unless special circumstances would render the award unjust. *Thomas v. City of Tacoma*, 410 F.3d 644, 647 (9th Cir. 2005). Consistent with that direction, the Ninth Circuit has upheld an award of fees for the Democratic, Republican, and Libertarian Parties when they prevailed against the Secretary of State of the State of Washington on a Section 1983 claim to eliminate Washington's blanket primary. *Democratic Party of Washington State v. Reed*, 388 F.3d 1281 (9th Cir. 2004). The Ninth Circuit determined that the "special circumstances" exception did not apply under such circumstances. The same is true here. Accordingly, the Court will grant the parties' stipulation.

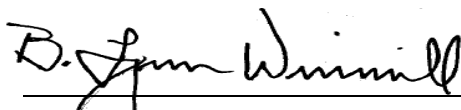
ORDER

IT IS ORDERED:

1. Idaho Republican Party's Motion for Attorney Fees and Costs (Dkt. 99) is **GRANTED**, but limited to the amounts agreed upon as set forth in the parties' stipulation.
2. The Parties' Stipulation Re: Attorney Fees and Costs (Dkt. 103) is **ACCEPTED**.
3. Attorney fees and costs are awarded to Plaintiffs against the Defendant in an aggregate amount of \$100,000.00.



DATED: April 5, 2011


Honorable B. Lynn Winmill
Chief U. S. District Judge