

FILED

UNITED STATES COURT OF APPEALS

JUN 18 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

THE AMERICAN CIVIL LIBERTIES  
UNION OF NEVADA; DOES 1-8, and  
Does A-S,

Plaintiffs - Appellees,

v.

CATHERINE CORTEZ MASTO, Esquire,  
Attorney General of the State of Nevada;  
GERALD HAFEN, Director of the Nevada  
Department of Public Safety; BERNARD  
W. CURTIS, Chief, Parole and Probation  
Division of the Nevada Department of  
Public Safety; CAPTAIN P.K. O'NEILL,  
Chief, Records and Technology Division  
of the Nevada Department of Public  
Safety,

Defendants - Appellants,

and

MICHAEL HALEY, Sheriff of the  
Washoe County Sheriff's Office;  
MICHAEL POEHLMAN, Chief of the  
Reno Police Department; RICHARD  
GAMMICK, District Attorney of Washoe  
County; DOUGLAS GILLESPIE, Sheriff  
of the Las Vegas Metropolitan Police  
Department; JOSEPH FORTI, Chief of the  
North Las Vegas Police Department;  
DAVID ROGER, District Attorney of  
Clark County; RICHARD PERKINS,

No. 08-17471

D.C. No. 2:08-cv-00822-JCM-PAL  
District of Nevada,  
Las Vegas

ORDER

Chief, Henderson Police Department,  
  
Defendants.

Before: TROTT and BEA, Circuit Judges, and STAFFORD, Senior District Judge.\*

On behalf of two groups of plaintiffs, Does 1-8 and Does A-S, the ACLU sued the State of Nevada and various government officials challenging the constitutionality of two State laws, Assembly Bill 579 and Senate Bill 471.

Pursuant to 42 U.S.C. § 1988, the ACLU now requests attorneys' fees and costs.

Even though the State prevailed with respect to the ACLU's challenge of A.B. 579, we conclude nevertheless that the ACLU qualifies under the fee statute as a "prevailing party" with respect to a significant issue in this lawsuit, i.e., the disposition of its challenge to S.B. 471. The outcome of this litigation has resulted in a "material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute." Texas State Teachers Ass'n v. Garland Indep. Sch. Dist., 489 U.S. 782, 792-93 (1989). "Where such a change has occurred, the degree of the plaintiff's overall success goes to the

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\* The Honorable William H. Stafford, Jr., Senior District Judge for the U.S. District Court for Northern Florida, sitting by designation.

reasonableness of the award . . . , not to the availability of a fee award vel non.” Id. at 793.

Accordingly, the ACLU’s motion for costs and fees is granted. We refer the determination of the appropriate amount of a reasonable fee to Ninth Circuit Appellate Commissioner Peter Shaw. The Commissioner shall take into consideration the ACLU’s receipt in district court of attorneys’ fees on issues with respect to which it has not prevailed. The Commissioner’s determination of a reasonable fee shall be subject to reconsideration by the panel.

So ORDERED.