

170 F.3d 846
United States Court of Appeals,
Eighth Circuit.

Chinyere JENKINS, by her next friend, Joi JENKINS; Nicholas Paul Winchester–Rabelier, by his next friend, Paula Winchester; Margo Vaughn–Bey, by her next friend, Franklin Vaughn–Bey; Nicholas C. Light, by his next friend, Marian Light; Stephon D. Jackson, by his next friend, B.J. Jones; Travis N. Peter, by his next friend, Debora Chadd–Peter; Leland Guess, by his next friend, Sharon Guess; Plaintiffs–Appellants,
American Federation of Teachers, Local 691, Intervenor–Appellee,

v.

State of MISSOURI; Mel Carnahan, Governor of the State of Missouri; Bob Holden, Treasurer of the State of Missouri; Missouri State Board of Education; Peter Herschend, Member of the Missouri State Board of Education; Thomas R. Davis, Member of the Missouri State Board of Education; Robert E. Bartman, Commissioner of Education of the State of Missouri; Gary D. Cunningham, Member of the Missouri State Board of Education; Terry M. Riley, Member of the Board of Directors; Sharon M. Williams, Member of the Missouri State Board of Education; Lance Loewenstein, Member of the Board of Directors; Betty Preston, Member of the Missouri State Board of Education; Russell Thompson, Member of the Missouri State Board of Education; Jacquelline Wellington, Member of the Missouri State Board of Education; Marilyn Simmons, Member of the Board of Directors; Sandy Aguire Mayer, Member of the Board of Directors; School District of Kansas City; Dr. Henry D. Williams, Superintendent thereof; John A. Rios, Member of the Board of Directors; Darwin Curls, Member of the Board of Directors; Patricia Kurtz, Member of the Board of Directors; Edward J. Newsome, Member of the Board of Directors; John W. Still, Member of the Board of Directors, Defendants–Appellees.
Chinyere Jenkins, by her next friend, Joi Jenkins; Nicholas Paul Winchester–Rabelier, by his next friend, Paula Winchester; Margo Vaughn–Bey, by her next friend, Franklin Vaughn–Bey; Nicholas C. Light, by his next friend, Marian Light; Stephon D. Jackson, by his next friend, B.J. Jones; Travis N. Peter, by his next friend, Debora Chadd–Peter; Leland Guess, by his next friend, Sharon Guess, Plaintiffs–Appellees,
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School District of Kansas City; Dr. Henry D. Williams, Superintendent thereof; Terry M. Riley, Member of the Board of Directors; Lance Loewenstein, Member of the Board of Directors; Marilyn Simmons, Member of the Board of Directors; Sandy Aguire Mayer, Member of the Board of Directors; John A. Rios, Member of the Board of Directors; Darwin Curls, Member of the Board of Directors; Patricia Kurtz, Member of the Board of Directors; Edward J. Newsome, Member of the Board of Directors; Dr. Julia H. Hill, Member of the Board of Directors; John W. Still, Member of the Board of Directors, Defendants–Appellees.
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Board of Directors; Lance Loewenstein, Member of the Board of Directors; Marilyn Simmons, Member of the Board of Directors; Sandy Aguire Mayer, Member of the Board of Directors; John A. Rios, Member of the Board of Directors; Darwin Curls, Member of the Board of Directors; Patricia Kurtz, Member of the Board of Directors; Edward J. Newsome, Member of the Board of Directors; Dr. Julia H. Hill, Member of the Board of Directors; John W. Still, Member of the Board of Directors, Defendants–Appellees. Chinyere Jenkins, by her next friend, Joi Jenkins; Nicholas Paul Winchester–Rabelier, by his next friend, Paula Winchester; Margo Vaughn–Bey, by her next friend, Franklin Vaughn–Bey; Nicholas C. Light, by his next friend, Marian Light; Stephon D. Jackson, by his next friend, B.J. Jones; Travis N. Peter, by his next friend, Debora Chadd–Peter; Leland Guess, by his next friend, Sharon Guess, Plaintiffs–Appellees, American Federation of Teachers, Local 691, Intervenor below–Appellee,

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Nos. 96–2809, 96–2918, 96–3215, 96–3568 and 96–3870.

Submitted Nov. 6, 1997.

Decided March 15, 1999.

Synopsis

In school desegregation suit, after the United States District Court for the Western District of Missouri, Dean Whipple, J., denied request for attorneys’ fees, but the Court of Appeals, 127 F.3d 709, reversed and awarded fees, plaintiff class sought award of attorneys’ fees and expenses incurred in defending against state’s petitions for rehearing on earlier fee awards. The Court of Appeals, John R. Gibson, Circuit Judge, held that plaintiff class could recover attorneys’ fees for defending against state’s petitions for rehearing of appeals.

Granted.

Attorneys and Law Firms

*849 Arthur A. Benson, II, Jamie Kathryn Lansford, Kansas City, MO, for Appellant.

Jeremiah W. (Jay) Nixon, Attorney General, John R. Munich, Michael J. Fields, Bart A. Matanic, for Appellee.

Before: McMILLIAN, HEANEY, and JOHN R. GIBSON, Circuit Judges.

Opinion

JOHN R. GIBSON, Circuit Judge.

The Jenkins class seeks an award under 42 U.S.C. § 1988 (Supp. II 1996) for attorneys' fees and expenses incurred in defending against the State's petitions for rehearing on earlier fee awards. We grant an award of fees and expenses reduced to account for partial success.

After we awarded fees in *Jenkins v. Missouri*, Nos. 96–2809, 96–2918, 96–3215, and 96–3568 (8th Cir. July 11, 1997) (unpublished), and held that fees should be awarded in *Jenkins v. Missouri*, 115 F.3d 554 (8th Cir.1997), the State petitioned for rehearing on both orders. Rehearing was denied as to No. 96–2809 and consolidated cases, but granted as to No. 96–3870. *Jenkins v. Missouri*, 124 F.3d 1310 (8th Cir.1997). We then entered a revised panel opinion in No. 96–3870 in which we adhered to our original holding that fees should be awarded and in fact awarded fees. However, we only awarded half the amount requested by the class, to reflect the class's limited success in the particular matter for which fees were requested. *Jenkins v. Missouri*, 127 F.3d 709 (8th Cir.1997) (*Jenkins Fees VI*). The Jenkins class then requested an award of fees and expenses for defending against the rehearing petitions. The State and the KCMUSD oppose the request.

The State argues that the Jenkins class is not entitled to fees because it was not successful in resisting the rehearing petition in No. 96–3870. This is a question of whether the glass is half full or half empty, since the Jenkins class retained its award but suffered a reduction from its requested amount. Fortunately, *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983), gives us a framework for handling such cases. As we developed at length in *Jenkins Fees VI*, 127 F.3d at 716, the Jenkins class is the prevailing party in this litigation, and the litigation at issue in No. 96–3870 was integrally related to the underlying case in which the class has been quite successful. 127 F.3d at 719. The fees requested here were incurred in work that was “useful and of a type ordinarily necessary.” *Id.* at 718 (quoting *Pennsylvania v. Delaware Valley Citizens' Council*, 478 U.S. 546, 561, 106 S.Ct. 3088, 92 L.Ed.2d 439 (1986)). Because we held that an award of fees was proper in the two underlying appeals, it follows that defending against an *850 attack on the propriety of those awards is also work that is a proper subject for a fee award.

The KCMUSD argues that fee awards for fee litigation must have an end, and that awarding fees in this case will encourage counsel to file further requests “*in seriatim* and in perpetuity.” The short answer to that argument is that the Jenkins class did not file the rehearing petitions; it is hardly equitable to blame the class for litigation initiated by the State, which the class was required to defend.

We recognized in *Jenkins Fees VI* that success in the particular matter litigated is “relevant but not determinative to the reasonableness of the fee” in that matter. 127 F.3d at 718. We therefore conclude that a reasonable fee for defending against the partially successful rehearing motion in No. 96–3870 is half the amount requested. We thus award the Jenkins class fees of \$11,648.75 and expenses of \$835.78 in No. 96–3870. In No. 96–2809 and consolidated cases, in which the rehearing petition was denied, we award full compensation of \$1,840.35 for fees and expenses. As the fees and expenses were all incurred before November 10, 1997, the State is liable for the award, in accordance with our opinion in *Jenkins v. Missouri*, 158 F.3d 980, 983 (8th Cir.1998) (*Jenkins Fees IX*).

All Citations

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