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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ralph Nader, et al.,

Plaintiffs,

vs.

Kenneth Bennett, in his official capacity as
Secretary of State,

Defendant.

No. CV-04-1699-PHX-FJM

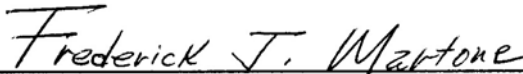
ORDER

Plaintiffs appealed our orders granting their motion for attorney’s fees pursuant to 42 U.S.C. § 1988(b) (docs. 87, 93), raising several claims of error. The Ninth Circuit affirmed the orders on each assignment of error, but remanded the case on the issue of whether plaintiffs were entitled to fees incurred in the unsuccessful appeal of the denial of their motion for preliminary injunction. The court stated that it was not clear whether we awarded fees for all of the hours that contributed to the eventual victory.

Plaintiffs’ motion for preliminary injunction and appeal of the order denying the motion are not fairly characterized as either a “temporary setback” or a “necessary step to [their] ultimate victory.” Cabrales v. County of Los Angeles, 935 F.2d 1050, 1053 (9th Cir. 1991). Quite the contrary, plaintiffs’ dilatory strategy in filing the motion renders the expenditure of those fees unreasonable. See id. We reiterate our conclusion that the time

1 spent on the unsuccessful preliminary injunction appeal did not contribute to the ultimate
2 victory in the lawsuit.

3 DATED this 11th day of February, 2011.

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7 Frederick J. Martone
8 United States District Judge
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