

No. 1-19-0782

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VICTORIA KIRK, KARISSA)	
ROTHKOPF, and RILEY JOHNSON,)	On Appeal from the Circuit Court of
)	Cook County, Illinois, County
Plaintiffs-Appellants,)	Department, Chancery Division
)	
v.)	
)	No. 2009 CH 03226
DAMON T. ARNOLD, M.D., in his)	
official capacity as State Registrar of)	Hon. Peter Flynn,
Vital Records,)	Judge Presiding
)	
Defendant-Appellee.)	
)	

PLAINTIFFS-APPELLANTS' REPLY BRIEF

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ORAL ARGUMENT REQUESTED

POINTS & AUTHORITIES

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740 ILCS 23/5(c)	1
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REPLY BRIEF

Section 5(c) of the Illinois Civil Rights Act of 2003 requires courts to award prevailing parties their reasonable attorneys' fees for *pro bono* counsel. *See* 740 ILCS 23/5(c). Plaintiffs are prevailing parties under Section 5 because Plaintiffs' "pursuit of a non-frivolous claim was a catalyst for a unilateral change in position" by the Department of Public Health's Division of Vital Records, which terminated the policies challenged by Plaintiffs' action. 740 ILCS 23/5(d). As Plaintiffs explained in their opening brief, the Circuit Court's decision to deny Plaintiffs their attorneys' fees because they are represented *pro bono* is at odds with the plain language of Section 5(c), the legislative history of the Act, and the underlying rationale for fee-shifting in the civil rights context. *See* Pls. Br. 6–14. Defendants took no position on the issue before the Circuit Court and do not dispute the merits of Plaintiffs' arguments on appeal. Resp. Br. 1.

The purpose of the fee-shifting statute in Section 5(c) is to encourage the enforcement of civil rights through the actions of private attorneys general. For the reasons set forth in Plaintiffs' opening brief and the briefs of amici curiae, the availability of court-awarded fees affects the ability of public interest legal organizations to represent civil rights plaintiffs. An award of attorneys' fees does not, as the Circuit Court incorrectly concluded, create a "windfall" to *pro bono* counsel. To the contrary, it encourages *pro bono* legal representation and equal access to justice, consistent with the purpose of Section 5. The Court should construe the Act to require fee awards to prevailing parties regardless of

whether their attorneys represent them *pro bono* and reverse the Circuit Court's decision to deny Plaintiffs their attorneys' fees.

Dated: March 18, 2020

Respectfully submitted,

/s/ Clifford W. Berlow
One of their attorneys

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Illinois Supreme Court Rule 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 288 words.

March 18, 2020

By: /s/ Clifford W. Berlow
Clifford W. Berlow

To: See attached Certificate of Service

Dated: March 18, 2020

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One of their attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on March 18, 2020, he caused the **Notice of Filing** and **Plaintiffs-Appellants' Reply Brief** to be submitted to the Clerk of the Illinois Appellate Court, First Judicial District by using the Odyssey eFileIL system. Pursuant to this Court's March 18, 2020 Press Release, the paper copy requirement is waived.

He further certifies that he caused one copy of the above named filing to be served upon counsel listed below via email and the Court's efilng system:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Clifford W. Berlow

Clifford W. Berlow

