

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Planned Parenthood of Northern New
England, Concord Feminist Health Center,
Feminist Health Center of Portsmouth,
and Wayne Goldner, M.D.

Plaintiffs-Appellees,

v.

Civil No. 03-491-JD

Kelly Ayotte, Attorney General of New
Hampshire, in her official capacity,

Defendant-Appellant.

MOTION TO DISMISS AS MOOT

Defendant, through counsel, the Office of the Attorney General, respectfully moves for dismissal of this action on grounds that the June 29, 2007 repeal of New Hampshire's Parental Notification Law has rendered the entire case moot. In support of this motion, Defendant states as follows:

1. This Court has before it the parties' cross motions for summary judgment on issues remanded by the U.S. Supreme Court in *Ayotte v. Planned Parenthood*, 546 U.S. 320 (2006). However, on February 1, 2007, the Court temporarily stayed the case pending the New Hampshire Legislature's consideration of House Bill 184, which would repeal the Parental Notification Law. *Procedural Order*, No. 2007 DNH 014 (February 1, 2007).

2. On June 29, 2007, House Bill 184 was approved and became immediately effective. See Exhibit 1(certified copy of Chapter 265 of the Laws of 2007).

3. Because the Parental Notification Law at issue in this litigation has been repealed, all claims on the merits must be dismissed as moot. There are no longer any claims for which relief can be granted by this Court, Fed.R.Civ.P. 12(b)(6), and this Court no longer has subject matter jurisdiction to hear plaintiffs' claims, Fed.R.Civ.P. 12(b)(1). In particular, Article III of the United States Constitution limits federal court jurisdiction to "cases and controversies," so that cases no longer touching the legal relations of the parties are moot and must be dismissed. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)(*per curiam*)("federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them")(quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227(1937)); *Davidson v. Stanley*, 2003 WL 21785151 (D.N.H.), 2003 DNH 135 ("Federal courts must dismiss moot cases 'to avoid advisory opinions on abstract propositions of law'.")(quoting *Hall v. Beals*, 396 U.S. 45, 48 (1969)(*per curiam*)).

4. Plaintiffs' assent was not sought due to the dispositive nature of this motion.

WHEREFORE, Defendant respectfully requests that this Court:

- A. Dismiss this action in its entirety, with prejudice; and
- B. Grant such other relief deemed just and appropriate.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
By its attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL

DATE: July 3, 2007

By: /s/ Maureen D. Smith
Maureen D. Smith (#4857)

Senior Assistant Attorney General
33 Capitol Street
Concord, New Hampshire 03301
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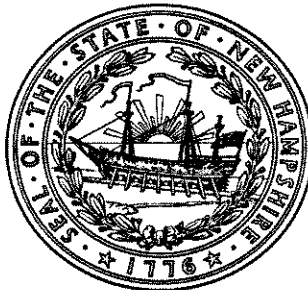
CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Motion to Dismiss as Moot* was served this day upon counsel of record through the Court's ECF system.

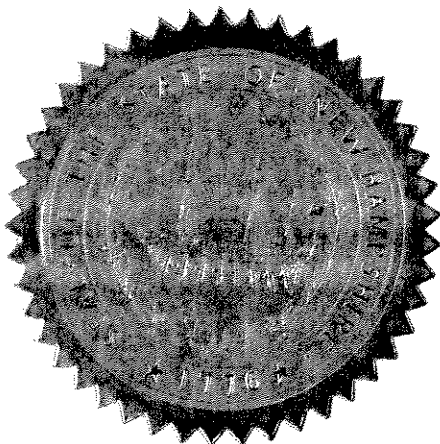
By: /s/ Maureen D. Smith
Maureen D. Smith

State of New Hampshire

Office of Secretary of State



I, David M. Scanlan, Deputy Secretary of State of the State of New Hampshire do hereby certify that the following and hereto attached is a true copy of Chapter 265 of the Laws of 2007 entitled "*repealing the parental notification law*" as recorded in this office and held in the custody of the Secretary of State.



In Testimony Whereof, I hereto set my hand and cause to be affixed the Seal of the State, at Concord, this third day of July 2007.

A handwritten signature in black ink, appearing to read "DM Scanlan".

Deputy Secretary of State



ORIGINAL FILED CONVENTIONALLY WITH THE COURT
CHAPTER 265
HB 184 - FINAL VERSION

07-0268
01/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Seven

AN ACT repealing the parental notification law.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 265:1 Repeal. RSA 132:24 - RSA 132:28, relative to parental notification prior to abortion, is
2 repealed.

3 265:2 Effective Date. This act shall take effect upon its passage.

4 Approved: June 29, 2007

5 Effective: June 29, 2007