

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,)

v.)

No. C-03-491-JD

KELLY AYOTTE, Attorney General of)
New Hampshire, in her official capacity,)

Defendant.)

PLAINTIFFS' RESPONSE TO
DEFENDANT'S MOTION TO DISMISS AS MOOT

Plaintiffs concur with Defendant that, following the repeal by the New Hampshire legislature of the statute at issue in this litigation, this case is moot as to any determination on the merits and ought to be dismissed.

The case however, must remain open for the purpose of allowing Plaintiffs to file and this court to determine the amount of attorneys' fees, if any, to which they are entitled. According to this court's order of April 6, 2006, Plaintiffs have until sixty days after the conclusion of all proceedings in this court to submit a Bill of Costs and application for attorneys' fees and expenses pursuant to 42 U.S.C. §1988 and Fed.R.Civ. P. 54(d)(2). *See Pls. Mot. for Extension of Time for Submission of Pls.' Bill of Costs and Application for Attorneys' Fees* (March 15, 2006) (attached hereto) (endorsed by Order dated Apr. 6, 2006) (attached hereto). Further, Plaintiffs intend to move the Court of

Appeals to remand consideration of the application for attorneys' fees and expenses in the Court of Appeals and the Supreme Court to this Court.

MEMORANDUM STATEMENT (LR 7.1(a)(2))

The grounds for this motion are stated herein, so no separate memorandum of law is being submitted.

Dated: July 5, 2007

Respectfully submitted,

/s/ Martin P. Honigberg

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Wayne Goldner, M.D.

Certificate of Service

I hereby certify that on this 5th day of July, 2007, the foregoing was served by the ECF system on Senior Assistant Attorney General Maureen Smith, counsel for Defendant, and to all counsel of record.

/s/ Martin P. Honigberg
Martin P. Honigberg

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,)

v.)

CIVIL ACTION NO: C-03-491-JD

KELLY AYOTTE, Attorney General of)
New Hampshire, in her official capacity,)

Defendant.)

MOTION FOR EXTENSION OF TIME FOR SUBMISSION OF PLAINTIFFS' BILL OF COSTS AND APPLICATION FOR ATTORNEYS' FEES AND EXPENSES

The Plaintiffs, through their undersigned counsel, respectfully request the Court to extend the time within which the Plaintiffs shall be required to submit their Bill of Costs pursuant to 28 U.S.C. § 1920, Fed. R. Civ. P. 54(d)(1), and LR 54.1(a); and their application for attorneys' fees and expenses pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d)(2), until sixty days after the conclusion of all proceedings in this action. For the purposes of this motion, the proceedings shall be considered to be concluded at the latest of the following events:

(a) the conclusion of all proceedings in the district court in this action and the expiration of time established by Fed. R. App. P. 4 for the filing of a Notice of Appeal to the United States Court of Appeals for the First Circuit (Court of Appeals), if such notice is not filed;

(b) the conclusion of all proceedings in the Court of Appeals in this action and the expiration of the time established by Rule 13 of the Supreme Court Rules for the filing of a petition for writ of certiorari with the Supreme Court if such petition is not filed;

(c) the conclusion of any further proceedings before the Supreme Court by denial of petition for writ of certiorari, affirmance, reversal, or otherwise.

As grounds for this motion, the parties state as follows:

1. This Court entered final judgment in this matter on December 29, 2003.
2. On January 4, 2004, this Court granted the parties' joint motion to extend the deadline for submitting a Bill of Costs and attorneys' fees until 60 days after the latest of: the expiration of the deadline for filing a notice of appeal to the Court of Appeals; the conclusion of all proceedings before the Court of Appeals; the conclusion of all proceedings before the Supreme Court of the United States.
3. On January 18, 2006, the Supreme Court ordered the case remanded for further proceedings. The case is now pending before the Court of Appeals on remand and it is unlikely that proceedings on remand will be concluded within 60 days of the Supreme Court's order. Moreover, proceedings on remand will require the expenditure of further attorney time that may be included in Plaintiffs' final fee petition.
4. Therefore, in the interests of judicial economy and the parties' resources, the parties request that the adjudication of Plaintiffs' entitlement to costs and attorneys' fees be postponed until sixty days after the conclusion of this case.

WHEREFORE, the Plaintiffs respectfully request that the Court grant this motion and extend the deadline for filing the application for costs and attorneys' fees and expenses as set forth above.

MEMORANDUM STATEMENT – LR 7.1(a)(2)

The grounds for this motion are stated herein and no separate memorandum is being submitted.

CONCURRENCE STATEMENT – LR 7.1(c)

Counsel for the Defendant does not concur in the relief requested.

Dated: March 15, 2006

Respectfully submitted,

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Health Center, Feminist Health Center of
Portsmouth, and Wayne Goldner, M.D.*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2006, the foregoing motion was served by the ECF system on Associate Attorney General Daniel J. Mullen, counsel for the defendant.

/s/ Martin P. Honigberg
Martin P. Honigberg

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From: ecf_bounce@nhd.uscourts.gov
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U.S. District Court

District of New Hampshire

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Case Name: Planned Parenthood of Northern New England et al v. Attorney General of New Hampshire

Case Number: 1:03-cv-491

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WARNING: CASE CLOSED on 12/29/2003

Document

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Docket Text:

ENDORSED ORDER granting [25] Motion to Extend Time to Submit Bill of Costs and Application for Attorney Fees and Expenses. *Text of Order: Granted, no objection having been filed. So Ordered by Judge Joseph A. DiClerico Jr. (dae,)*

1:03-cv-491 Notice will be electronically mailed to:

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1:03-cv-491 Notice will be delivered by other means to:

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7/5/2007

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The following document(s) are associated with this transaction: