

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.

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

Defendant-Appellant.

Civil No. 03-491-JD

ANSWER TO SUPPLEMENTAL COMPLAINT

NOW COMES the Defendant, by and through counsel, the Office of the Attorney General, and files the following Answer to the Plaintiffs’ Supplemental Complaint.

PRELIMINARY STATEMENT

1. This paragraph contains general introductory remarks regarding the nature of Plaintiffs’ claims, and does not contain any factual allegations for which an answer is required.
2. This paragraph contains legal conclusions that require no response. By way of further answer, the allegations of this paragraph relate to the Plaintiffs’ claim that application of New Hampshire’s Parental Notification Prior to Abortion Act, RSA 132:24-28 (the “Act”) in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte v.

Planned Parenthood of Northern New England, 126 S.Ct. 961 (2006). That decision speaks for itself.

3. This paragraph contains legal conclusions that require no response. By way of further answer, the allegations of this paragraph relate to the Plaintiffs' claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.
4. This paragraph contains legal conclusions that require no response. The Act speaks for itself. By way of further answer, the Defendant denies that the Act fails to ensure the confidentiality of minors who seek a judicial waiver of the Act's notice requirements.
5. The Defendant admits that the forms attached to the Plaintiffs' Supplemental Complaint are accompanied by a Memorandum from Donald D. Goodnow, Esq. to Katherine Hanna, dated November 18, 2005, which states, "[t]hese forms were developed by representatives of the three established trial courts. The Administrative Council recommended these materials and the Supreme Court approved them." These forms speak for themselves. By way of further answer, upon information and belief, these forms have never been adopted as official court rules; therefore, they do not have the force and effect of law and can be edited by the New Hampshire Supreme Court at any time. These forms are intended to implement the judicial bypass provisions of the Act, and therefore must be read in conjunction with the Act. Should the forms conflict with the Act in any way, the

provisions of the Act control. The Defendant denies that the Act or the forms breach minors' confidentiality in any way.

6. This paragraph contains legal conclusions that require no response. By way of further answer, the Defendant denies that a minor is required to elect between maturity and best interests as a grounds for seeking a waiver. The form must be read in conjunction with the Act, which speaks for itself. If use of the word "or" instead of "and/or" in the court's form Petition is found to be confusing, the form can be edited by the supreme court at any time.

JURISDICTION AND VENUE

7. The allegations of this paragraph are jurisdictional, legal conclusions or argument that require no response.
8. The allegations of this paragraph are jurisdictional, legal conclusions or argument that require no response.
9. The allegations of this paragraph are jurisdictional, legal conclusions or argument that require no response.

PARTIES

Plaintiffs

10. The Defendant lacks sufficient knowledge to determine the truth of the allegations of this paragraph, but does not dispute the allegations.
11. The Defendant lacks sufficient knowledge to determine the truth of the allegations of this paragraph, but does not dispute the allegations.
12. The Defendant lacks sufficient knowledge to determine the truth of the allegations of this paragraph, but does not dispute the allegations.

13. The Defendant lacks sufficient knowledge to determine the truth of the allegations of this paragraph, but does not dispute the allegations.

Defendant

14. Admitted.

STATUTORY FRAMEWORK

15. This paragraph contains statements of law that require no response. The Act speaks for itself.
16. This paragraph contains statements of law that require no response. The Act speaks for itself.
17. This paragraph contains statements of law that require no response. The Act speaks for itself.
18. The Defendant admits that the forms attached to the Plaintiffs' Supplemental Complaint are accompanied by a Memorandum from Donald D. Goodnow, Esq. to Katherine Hanna, dated November 18, 2005, which states, "[t]hese forms were developed by representatives of the three established trial courts. The Administrative Council recommended these materials and the Supreme Court approved them." These forms speak for themselves. By way of further answer, upon information and belief, these forms have never been adopted as official court rules; therefore, they do not have the force and effect of law and can be edited by the New Hampshire Supreme Court at any time. These forms are intended to implement the judicial bypass provisions of the Act, and therefore must be read in conjunction with the Act.

19. This paragraph contains legal conclusions that require no response. The form speaks for itself. By way of further answer, the Defendant denies that a minor is required to elect between maturity and best interests as a grounds for seeking a waiver. The form must be read in conjunction with the Act, which speaks for itself. If use of the word “or” instead of “and/or” in the court’s form Petition is found to be confusing, the form can be edited by the supreme court at any time. Should the form conflict with the Act in any way, the provisions of the Act control.
20. This paragraph contains legal conclusions that require no response. The Act speaks for itself.
21. This paragraph contains legal conclusions that require no response. By way of further answer, the Defendant denies that the Act fails to ensure the confidentiality of minors who seek a judicial waiver of the Act’s notice requirements, or that the court forms attached to the Plaintiffs’ Supplemental Complaint breach minors’ confidentiality in any way. Those forms must be read in conjunction with the Act they implement. Both the Act and the forms speak for themselves.
22. This paragraph contains statements of law that require no response. The Act speaks for itself.
23. This paragraph contains statements of law that require no response. The Act speaks for itself. By way of further answer, the allegations of this paragraph relate to the Plaintiffs’ claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.

24. This paragraph contains statements of law that require no response. The Act speaks for itself. By way of further answer, the allegations of this paragraph relate to the Plaintiffs' claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.

FACTUAL ALLEGATIONS

25. The Defendant lacks sufficient knowledge to determine the truth of the allegations of this paragraph.
26. The Defendant lacks sufficient knowledge to determine the truth of the allegations of this paragraph.
27. The Defendant lacks sufficient knowledge to determine the truth of the allegations of this paragraph. By way of further answer, the concerns raised in this paragraph occur in only a very small percentage of cases. The United States Supreme Court has recognized "the quite reasonable assumption that minors will benefit from consultation with their parents and that children will often not realize that their parents have their best interests at heart." Planned Parenthood of S. Pa. v. Casey, 505 U.S. 833, 895 (1992). Notification "serves a significant state interest by providing an opportunity for parents to supply essential medical and other information to the physician." H. L. v. Matheson, 450 U.S. 398, 411 (1981).
28. This paragraph contains legal conclusions that require no response. By way of further answer, the Defendant denies that the judicial waiver process fails to protect minors' confidentiality. The Defendant denies that minors will be deterred

- from seeking judicial waivers. The Act and the court forms attached to the Plaintiffs' Supplemental Complaint speak for themselves.
29. This paragraph contains legal conclusions that require no response. The Act speaks for itself. By way of further answer, the allegations of this paragraph relate to the Plaintiffs' claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.
30. The Defendant admits that “[i]n some very small percentage of cases, pregnant minors, like adult women, need immediate abortions to avert serious and often irreversible damage to their health.” Ayotte, 126 S.Ct. 967. To the extent the allegations in this paragraph can be read to suggest that medical health emergencies requiring immediate abortions occur “often,” the Defendant denies that allegation. By way of further answer, the allegations of this paragraph relate to the Plaintiffs' claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.
31. This paragraph contains legal conclusions that require no response. By way of further answer, the allegations of this paragraph relate to the Plaintiffs' claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.
32. This paragraph contains legal conclusions that require no response. By way of further answer, the allegations of this paragraph relate to the Plaintiffs' claim that

application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.

33. This paragraph contains legal conclusions that require no response. By way of further answer, the allegations of this paragraph relate to the Plaintiffs' claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.

34. This paragraph contains legal conclusions that require no response. By way of further answer, the allegations of this paragraph relate to the Plaintiffs' claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.

35. This paragraph contains statements of law and legal conclusions that require no response. The Act speaks for itself. By way of further answer, the allegations of this paragraph relate to the Plaintiffs' claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court and/or was waived by the Plaintiffs' on appeal to that Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

36. This paragraph contains legal conclusions that require no response. By way of further answer, claims (a), (b) and (e) of this paragraph relate to the Plaintiffs'

claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.

SECOND CAUSE OF ACTION

37. This paragraph contains legal conclusions that require no response. By way of further answer, the claims of this paragraph relate to the Plaintiffs' claim that application of the Act in medical emergencies is unconstitutional, a claim which has already been decided by the United States Supreme Court. See Ayotte, 126 S.Ct. 961. That decision speaks for itself.
38. The remaining paragraphs are prayers for relief that require no response.

AFFIRMATIVE DEFENSES

By way of further answer, the Defendant submits the following affirmative defenses:

1. The Supplemental Complaint fails to state a claim upon which relief may be granted.
2. The Plaintiffs' challenge to the Act's confidentiality provisions is not ripe for adjudication.
3. Even if the Plaintiffs' challenge to the Act's confidentiality provisions is ripe for adjudication, the Plaintiffs' fail to meet their burden of proving that those provisions are facially unconstitutional.
4. The Plaintiffs' challenges to the Act's lack of a general health exception, lack of an emergency health exception, and the sufficiency of its death exception, are barred by the doctrines of *res judicata*, collateral estoppel, and the law of the case.

5. The Defendant reserves the right to amend this answer and to assert additional defenses during the course of discovery and/or trial in this matter.

WHEREFORE, the Defendant respectfully requests that the honorable court:

- A. Deny the Plaintiffs' request for a declaratory judgment and injunction invalidating the Act in its entirety;
- B. Issue an injunction prohibiting the application of the Act in any circumstance where a doctor, in good faith, believes that there is a medical health emergency that requires an immediate abortion;
- C. Grant such other and further relief as is just and necessary.

Respectfully submitted,

KELLY A. AYOTTE
Attorney General, State of New
Hampshire

By and through her counsel,

\s\ Laura E. B. Lombardi
Laura E. B. Lombardi (# 12821)
Assistant Attorney General
N.H. Department of Justice
Civil Bureau
33 Capitol Street
Concord, NH 03301
603-271-3650

Certificate of Service

July 28th, 2006

I hereby certify that a copy of the served this date, via the ECF system on Dara Klassel, Esq., counsel for Planned Parenthood Federation of America; Martin P. Honigberg, Esq., counsel for Planned Parenthood of Northern New England; Lawrence A. Vogelmann,

counsel for Concord Feminist Health Center, Feminist Health Center of Portsmouth, and Wayne Goldner, M.D.

\s\ Laura E. B. Lombardi
Laura E. B. Lombardi (# 12821)