

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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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	
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**DEFENDANT’S REPLY TO PLAINTIFFS’ RESPONSE TO  
MOTION TO DISMISS AS MOOT**

Defendant respectfully files this Reply to inform the Court that Defendant has no objection to this matter remaining open for the limited purpose of determining whether Plaintiffs are entitled to any costs and attorneys’ fees under applicable statutes and rules, consistent with this Court’s April 6, 2006 Order.

However, Defendant also wishes to inform the Court that she intends to object, at the appropriate time, to Plaintiffs’ anticipated request for costs and fees and that she reserves the right to file such objection with this Court. In particular, Defendant reserves the right to dispute the existence of liability for costs and fees on grounds that Plaintiffs are not “prevailing parties,” *inter alia*, under applicable statutes and rules. *See* 42 U.S.C. §1988; F.R.Civ.P. 54(d); LR 54.1. Defendant also reserves the right to dispute any amounts claimed by Plaintiffs to the extent that the Court rules that Defendant is liable.

Therefore, Defendant respectfully requests that the Court anticipate and include in any order issued as a result of the Motion to Dismiss as Moot an opportunity for adversarial proceeding with regard to the existence of liability for costs and fees, including the opportunity for adversarial submissions consistent with Fed.R.Civ.P. 54(d)(2)(C).

A separate memorandum is unnecessary as the basis for Defendant's request is stated herein. LR 7.1(2).

Concurrence has not been sought, as this Reply relates to Defendant's dispositive Motion to Dismiss as Moot. LR 7.1(c). Oral notice of Defendant's intent to file this Reply was provided to the Court and to counsel for the Plaintiffs by telephone on July 9, 2007. LR 7.1(e).

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

By its attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

July 9, 2007

By: /s/ Maureen D. Smith  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Defendant's Reply to Plaintiffs' Response to Motion to Dismiss as Moot* was served on July 9, 2007 upon counsel of record through the Court's ECF system.

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

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