

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Planned Parenthood of
Northern New England, et al.

v.

Civil No. 03-cv-491-JD

Kelly Ayotte, Attorney General
of New Hampshire

O R D E R

The Attorney General moves to dismiss this case as moot following repeal of the Parental Notification Prior to Abortion Act by the New Hampshire legislature. In response, the plaintiffs do not dispute that the statutory issue in this case is moot but ask that the case remain open to consider their request for an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and Federal Rule of Civil Procedure 54(d)(2). The plaintiffs also request an extension of time to file a motion with the Court of Appeals to request that the issue of an award of fees and costs incurred in litigating before the Court of Appeals and the Supreme Court be remanded to this court for consideration.

The Attorney General does not object to keeping the case open for the purpose of resolving the issue of an award of fees. She states, however, that she intends to object to such an award on the ground that the plaintiffs are not prevailing parties.

She also reserves the right to contest the amounts claimed by the plaintiffs.

Conclusion

The Attorney General's motion to dismiss (document no. 60) is granted to the extent that the court declares that the issues in this case, other than the issue of attorneys' fees and costs, are moot. The case will remain open to consider the plaintiffs' request for an award of fees and costs. The plaintiffs' request for an extension of time to allow them to file a motion in the Court of Appeals is granted.

The plaintiffs shall promptly file their request with the Court of Appeals to remand the issue of fees and costs and shall notify this court when that determination has been made. If the issue is remanded to this court, the court will then set a briefing schedule on the issue of fees and costs.

SO ORDERED.

/s/ Joseph A. DiClerico, Jr.
Joseph A. DiClerico, Jr.
United States District Judge

July 10, 2007

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