

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’ MOTION FOR A BRIEFING SCHEDULE
ON THE MATTER OF ATTORNEYS’ FEES, EXPENSES, AND COSTS**

Plaintiffs respectfully request that the Court set a briefing schedule on the matter of attorneys’ fees, expenses, and costs. By Order dated July 10, 2007, this Court dismissed as moot the substantive issues in this action, following repeal of the relevant statute, and left the case open to consider Plaintiffs’ application for fees, expenses, and costs. *See* July 10 Order (attached hereto at Exhibit A). The July 10 Order granted Plaintiffs an extension of time to move the Court of Appeals to remand to this Court consideration of Plaintiffs’ request for fees and expenses incurred in the Court of Appeals and Supreme Court. *See id.* The July 10 Order further directed Plaintiffs to inform the Court when the Court of Appeals had ruled. *See id.* On July 20, 2007, the Court of Appeals granted Plaintiffs’ motion. *See Planned Parenthood of N. New England v. Ayotte*, No. 04-1161, Order at 1 (July 20, 2007) (attached hereto at Exhibit B).

Accordingly, Plaintiffs respectfully request that this Court set a briefing schedule providing Plaintiffs sixty days to submit their application for attorneys' fees, expenses, and costs. *See Pls. Mot. for Extension of Time for Submission of Pls.' Bill of Costs and Application for Attorneys' Fees* (March 15, 2006) (attached hereto as Exhibit C) (endorsed by Order dated Apr. 6, 2006) (attached hereto as Exhibit D).

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

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

CONCURRENCE STATEMENT (LR 7.1(C))

Defendant does not assent to this motion. Plaintiffs understand that Defendant intends to file an objection to this motion and to file a separate motion, which Plaintiffs intend to oppose.

Dated: July 27, 2007

Respectfully submitted,

/s/ Martin P. Honigberg
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Counsel for Plaintiffs, Concord Feminist Health
Center, Feminist Health Center of Portsmouth, and
Wayne Goldner, M.D.

Certificate of Service

I hereby certify that on this 27th day of July, 2007, the foregoing motion 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, 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

cc: Erica Bodwell, Esq.
Charu Chandrasekhar, Esq.
Jennifer Dalven, Esq.
Martin Honigberg, Esq.
Dara Klassel, Esq.
Laura E. B. Lombardi, Esq.
Cathleen M. Mahoney, Esq.
Corinne L. Schiff, Esq.
Maureen Smith, Esq.
Lawrence Vogelmann, Esq.

United States Court of Appeals For the First Circuit

No. 04-1161

PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND; CONCORD
FEMINIST HEALTH CENTER; FEMINIST HEALTH CENTER OF
PORTSMOUTH; WAYNE GOLDNER, M.D.

Plaintiffs - Appellees

v.

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

Defendant - Appellant

ROMAN CATHOLIC BISHOP OF MANCHESTER, NEW HAMPSHIRE;
THE SOCIETY FOR ADOLESCENT MEDICINE; THE AMERICAN
PUBLIC HEALTH ASSOCIATION

Amicus Curiae

Before

Boudin, Chief Judge,
Torruella, Circuit Judge
Saris*, District Judge

ORDER OF COURT

Entered: July 20, 2007

Plaintiffs-appellees move for a remand in this retained jurisdiction case so that the district court can consider in the first instance their request for attorneys' fees and expenses for work done in this court and the United States Supreme Court. The Attorney General does not oppose the remand though it does object on the merits to fees. On this understanding, the motion to remand is granted but jurisdiction of the case is otherwise retained

pending an eventual motion to dismiss the appeal as moot.

By the Court:

Richard Cushing Donovan, Clerk.

By: MARGARET CARTER
Chief Deputy Clerk.

[cc: Dara Klassel, Jennifer Dalven, Martin P. Honigbert, Esq., Corinne Schiff, Esq., Lawrence A. Vogelmann, Esq., Diane M. Quinlan, Esq., Kathleen Souza, Barbara J. Hagan, Teresa S. Collett, Esq., Paul E. Nemser, Esq., U. Gwyn Williams, Esq., Daniel J. Mullen, Esq.]

* Of the United States District Court of Massachusetts

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,

/s/ Martin P. Honigberg

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*Counsel for Plaintiffs, Concord Feminist
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

Martin P. Honigberg

From: ecf_bounce@nhd.uscourts.gov
Sent: Friday, April 07, 2006 9:41 AM
To: nef@nhd.uscourts.gov
Subject: Activity in Case 1:03-cv-00491-JD Planned Parenthood of Northern New England et al v. Attorney General of New Hampshire "Order on Motion to Extend Time"

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U.S. District Court

District of New Hampshire

Notice of Electronic Filing

The following transaction was received from dae, entered on 4/7/2006 at 9:40 AM EDT and filed on 4/6/2006

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

Case Number: 1:03-cv-491

Filer:

WARNING: CASE CLOSED on 12/29/2003

Document

Number:

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:

Martin P. Honigberg mhonigberg@suloway.com, kdunnahoe@suloway.com

Daniel J. Mullen dan.mullen@doj.nh.gov, Laura.Maynard@doj.nh.gov;
Doreen Sheppard@doj.nh.gov

Lawrence A. Vogelmann vogelmanlarry@yahoo.com, Kpimental57@yahoo.com.

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

Jennifer Dalven
American Civil Liberties Union Foundation
125 Broad St, 18th Flr
New York, NY 10004

7/5/2007

Dara Klassel
Planned Parenthood Federation of America, Inc.
434 W 33rd St
New York, NY 10001

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