

U.S. DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States Court of Appeals
For the First Circuit

2006 MAY -3 P.M.

No. 04-1161

PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND, ET AL.,
CONCORD FEMINIST HEALTH CENTER, FEMINIST HEALTH
CENTER OF PORTSMOUTH, AND WAYNE GOLDNER, M.D.,
Plaintiffs, Appellees,

v.

PETER HEED,
ATTORNEY GENERAL OF THE STATE OF NEW HAMPSHIRE,
IN HIS OFFICIAL CAPACITY,
Defendant, Appellant.

Before

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

ORDER OF COURT

Entered: March 22, 2006

In light of the Supreme Court's decision, Ayotte v. Planned Parenthood of Northern New England, No. 04-1144, January 18, 2006, both parties have acquiesced in a remand to the district court for further proceedings. Although the issues involved appear to be legal in nature, it is difficult in the abstract to foreclose the possibility that there is pertinent information bearing on the appropriateness of severability that could be better developed in a district court proceeding. The parties have agreed that the district court's injunction should remain in effect pendente lite.

Accordingly, the case is remanded for proceedings consistent with the Supreme Court's decision, and we leave the district court's injunction undisturbed. On remand, if the statute does survive in part, we expect that the district court will address the

* Of the District of Massachusetts, sitting by designation.

separate objections of appellees to the judicial bypass confidentiality provision.

Appellees have requested that the time for submitting an application for attorneys' fees and expenses as prevailing parties for work done in this court before the Supreme Court be extended until 60 days after the conclusion of all proceedings in this action. The request is granted to the following extent: if there is no appeal from any action taken on remand by the district court, the 60 days shall run from the expiration of time for a notice of appeal to this court and if an appeal is taken, then the time shall run from issuance of mandate by this court on review of the district court's decision. If appropriate, appellees are free to seek further extensions as may be appropriate.

The panel retains jurisdiction and any new appeal from a further disposition by the district court should be directed by the Clerk to this panel.

By the Court:

Richard Cushing Donovan, Clerk

MARGARET CARTER

By _____
Chief Deputy Clerk

CERTIFIED COPY

I HEREBY CERTIFY THIS DOCUMENT
IS A TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY.

FIRST CIRCUIT COURT OF APPEALS
BOSTON, MA

By: J. Calardo Date: 5.4.06

[certified copies: Honorable Joseph A. DiClerico, James R. Starr, Clerk]

[cc: Dara Klassel, Jennifer Dalven, Martin P. Honigberg, Esq.,
Corinne Schiff, Esq., Lawrence A. Vogelmann, Esq., Dinae M.
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Daniel J. Mullen, AAG]