

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

PLANNED PARENTHOOD OF NORTHERN)	
NEW ENGLAND, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. C-03-491-JD
)	
KELLY AYOTTE, Attorney General of)	
New Hampshire, in her official capacity,)	
)	
Defendant.)	
)	

**PLAINTIFFS’ OBJECTION TO DEFENDANT’S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Plaintiffs, through counsel, object to Defendant’s motion for partial summary judgment, which asks this Court to issue only a limited injunction of the Parental Notification Prior to Abortion Act (the “Act”), N.H. RSA 132:24-132:28, prohibiting application of the Act to circumstances where a doctor has a good-faith belief that a pregnant woman has a medical health emergency that requires an immediate abortion.

As grounds for this objection, Plaintiffs allege as follows:

1. This Court held, and the First Circuit and the Supreme Court affirmed, that without a health exception, the Act is unconstitutional. Ayotte v. Planned Parenthood, ___ U.S. ___, 126 S. Ct. 961, 967 (2006); Planned Parenthood v. Heed, 390 F.3d 53, 59-62 (1st Cir. 2004); Planned Parenthood v. Heed, 296 F. Supp. 2d 59, 65-67 (D.N.H. 2003).

2. Contrary to Defendant’s arguments, this Court cannot be sure whether the legislature would have passed the law with a health exception. The available evidence – including the legislature’s deliberate omission of the required exception, the

constitutional context in which it did so, the intense political controversy surrounding health exceptions, and the legislature's subsequent failure to amend the Act to include a health exception – demonstrates that it would not. Under the governing standard, where, as here, this Court cannot be sure whether the legislature would have passed the law with a health exception, the proper course is to invalidate the Act and send the issue back to the legislature.

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

3. In support of this objection, Plaintiffs submit a memorandum of law and the Declaration of Jamie Sabino that has been revised to take into account the procedures that the New Hampshire Supreme Court approved for implementation of the judicial bypass.¹ For the Court's convenience, Plaintiffs have also resubmitted the Declarations of Wayne Goldner, M.D. and Rachel Atkins, P.A., M.P.H. that were originally filed with this Court in support of Plaintiff's Motion for Preliminary Injunction that was filed in November 2003.

Wherefore, Plaintiffs request that this Court DENY the Defendant's Motion for Partial Summary Judgment.

¹ The memorandum of law and the additional documents submitted also support the Plaintiff's Cross-Motion for Summary Judgment filed contemporaneously herewith.

Date: October 2, 2006

Respectfully submitted,

/s/ Martin P. Honigberg

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Wayne Goldner, M.D.

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2006, the foregoing objection was served through the ECF system.

/s/ Martin P. Honigberg
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