April 6, 2016

The Honorable Paul Seaton, Chair
The Honorable Liz Vazquez, Vice Chair
House Health and Social Services Committee
Alaska House of Representatives
State Capitol
Juneau, AK 99801

by email: Representative.Paul.Seaton@akleg.gov
Representative.Liz.Vazquez@akleg.gov

Re: SB 89 Version F: Limiting Students' Education about Sexual Health and Sexually Transmitted Diseases
ACLU Analysis of Constitutional and Financial Issues

Dear Chair Seaton and Vice Chair Vazquez:

Thank you for the opportunity to testify about Version F of Senate Bill 89, elements of which unconstitutionally interfere with the freedom of Alaskan parents, students, and educators. Version F of SB 89 singles out and discriminates against Alaskans engaged in legal, socially vital, and constitutionally protected conduct, at the expense of their rights and the rights of others under the Alaska and United States Constitutions. For five reasons, we urge the committee to not pass Version F of SB 89:

1. Bills of attainder;
2. Substantive due process;
3. Freedom of speech and freedom of association;
4. Equal protection; and
5. Unnecessary, avoidable, and expensive litigation.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout Alaska who seek to preserve and expand the individual freedoms and civil liberties guaranteed by the Alaska and United States Constitutions. We engage in public advocacy and education to further those rights, and—when necessary—we litigate to protect them when they are attacked. In this context, we write to advise you that this bill unconstitutionally restricts people's freedoms. In addition to these constitutional harms, if this bill is enacted, Alaska will likely pay hundreds of thousands of dollars in attorney's fees and costs arising out of the seemingly inevitable constitutional challenges that will follow.

1. Sections 3 and 5 of Version F of Senate Bill 89 have characteristics of unconstitutional bills of attainder.

Sections 3 and 5 of Version F of Senate Bill 89 single out a class of persons—abortion services providers, their employees, and volunteers—and prohibits them from contracting with school districts or from providing instruction or course materials relating to human sexual health or sexually transmitted diseases within a school district. This appears intended to reflect legislators' opprobrium towards this class of persons, regardless of the fact that their presence in Alaska schools has nothing to do with providing abortion services and has everything to do with providing age-appropriate, medically accurate, evidence-based instruction on human sexual health to Alaska students who would benefit from receiving such instruction. These elements of the bill appear to express a desire to punish abortion services providers for what they do outside of schools, not to weigh in on what they do inside schools. This legislative intent to punish has characteristics of an unconstitutional bill of attainder.

The Alaska and United States Constitutions prohibit bills of attainder.[1] As the U.S. Supreme Court has observed, "[L]egislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution."[2]

Although the Alaska Supreme Court has never decided a case involving the state constitution's ban on bills of attainder, it has discussed "punishment" for purposes of the ban on *ex post facto* laws, which are prohibited in the same sentence in the Alaska Constitution as the prohibition on bills of attainder.[3] In *Doe v. State*, the Alaska Supreme Court interpreted "punishment" for purposes of the state's ban on *ex post facto* laws more broadly than the U.S. Supreme Court had interpreted it under the federal constitution.[4] It is reasonable to assume that the Alaska Supreme Court would likewise take a broad view of "punishment" when applying the Alaska constitution's ban on bills of attainder, increasing the likelihood that it would find the treatment of abortion services providers—an easily ascertainable group—under Version F of SB 89 to be unconstitutionally impermissible punishment.

Memoranda from the Legislature's own attorneys have consistently pointed out in reviews of versions of SB 89 that the bill is constitutionally questionable as a possible bill of attainder.

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[1] Alaska Const. art. I, § 15 ("No bill of attainder or ex post facto law shall be passed."); U.S. Const. art. I, § 9 ("No Bill of Attainder or ex post facto Law shall be passed.").

[2] *U.S. v. Lovett*, 328 U.S. 303, 315 (1946).

[3] *Supra*, note 1.

[4] 189 P.3d 999 (Alaska 2008). *Compare Smith v. Otte*, 538 U.S. 34 (2003) (holding Alaska's sex offender registration law was not punitive).

2. Sections 3 and 5 of Version F of Senate Bill 89 appear to serve no legitimate purpose, in violation Alaskans' rights to due process.

It is well established that constitutional guarantees of due process include the requirement that laws reflect substantive due process, i.e., that laws serve a legitimate purpose. The U.S. Supreme Court observed in *Nebbia v. People of New York* that "the guaranty of due process, as has often been held, demands . . . that the law shall not be unreasonable, arbitrary, or capricious."[5] The Alaska Supreme Court has expressed this guaranty similarly:

> Substantive due process is denied when a legislative enactment has no reasonable relationship to a legitimate governmental purpose. . . . The constitutional guarantee of substantive due process assures . . . that a legislative body's decision is not arbitrary but instead based upon some rational policy.[6]

Sections 3 and 5 of Version F of SB 89 seriously implicate this constitutional protection. Stated simply, there is no conceivable rational policy reason to prohibit delivery of instruction on matters of sexual health by some of the most well-educated and well-informed people on matters of sexual health—as is the case with the most prominent abortion services provider organization in Alaska, Planned Parenthood of the Great Northwest and Hawaii, an organization we know is the focus of ire for many opponents of abortion rights.

Furthermore, it is worth noting that the bill's sponsor, Senator Mike Dunleavy, has issued sponsor statements concerning SB 89 that fail to explain any purpose for Sections 3 and 5.[7] Rather, the sponsor statements champion parents' rights to direct the education of their children and to promote parents' involvement with local school boards—principles the abortion services provider bans directly undermine. If a parent wanted her school-age children to receive age-appropriate, medically accurate, evidence-based instruction on human sexuality and sexually transmitted diseases, and if age-appropriate, medically accurate, evidence-based instruction on those topics is best made available through Planned Parenthood's sexual education offerings, this bill would prohibit that parent from realizing her wishes for the direction of her children's education. Instead, the State of Alaska would be standing directly in her way and would be interfering with the independence of her local school board.

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[5] 291 U.S. 502, 525 (1934).

[6] *Concerned Citizens of S. Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 452 (Alaska 1974) (citing *Mobil Oil Corp. v. Loc. Boundary Commn.*, 518 P.2d 92, 101 (Alaska 1974) ("We agree that the test of substantive due process is whether the action of the legislature must be said to be arbitrary.")).

[7] Mike Dunleavy, *Senate Bill 89 Sponsor Statement*,
http://www.akleg.gov/basis/get_documents.asp?session=29&docid=52369;
Mike Dunleavy, *Sponsor Statement for Committee Substitute for Senate Bill 89*,
https://www.alaskasenate.org/2016/files/7414/2869/8836/SB89_Sponsor_Statement.pdf.

3. Section 5 of Version F of SB 89 may unconstitutionally restrict the right of free speech and the right of freedom of association.

The right to free speech is enshrined in Article I of the Alaska Constitution[8] and in the First Amendment of the United States Constitution.[9] Both constitutions protect that right robustly; the Alaska Constitution is "at least as protective of expression as the First Amendment to the United States Constitution."[10] That right encompasses the right to associate freely with others to advance one's views.[11]

Here, for example, Version F of SB 89 would implicate the speech rights of students participating in Teen Council, a peer-led sexual education program for teenagers sponsored by Planned Parenthood. With parental approval, participating teens meet outside school with educators from Planned Parenthood, learn about human sexual health, and prepare presentations on human sexuality to be delivered in school classrooms. Section 5 of Version F of SB 89 would effectively ban such presentations.

If this bill is enacted and invoked to shut Teen Council out of Alaska's schools, it would unconstitutionally interfere with students' rights to free speech and association.

4. Sections 3 and 5 of Version F of Senate Bill 89 discriminate against a group of people, violating their right to be treated equally.

As discussed above, Sections 3 and 5 of SB 89 identify one group of people— abortion services providers, their employees and volunteers—and prohibit them from providing instruction on two specific topics in schools—human sexuality and sexually transmitted diseases—on behalf of the abortion services provider. This implicates the Equal Protection Clause of the Alaska Constitution.[12]

If Version F of SB 89 were enacted and challenged in court, and were it to survive the substantive due process challenge outlined above, it would likely fail an equal protection challenge.

As noted above, Alaska has little conceivable interest in classifying abortion services providers for disparate treatment in how they, and only they, are to be treated by schools. It

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[8] Alaska Const. art. I, § 5. ("Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of this right.").

[9] U.S. Const. amend. I ("Congress shall make no law . . . abridging the freedom of speech.").

[10] *Mickens v. City of Kodiak*, 640 P.2d 818, 820 (Alaska 1982).

[11] *See, e.g.*, *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 13 (1988) ("The ability and the opportunity to combine with others to advance one's views is a powerful practical means of ensuring the perpetuation of the freedoms the First Amendment has guaranteed to individuals as against the government.").

[12] Alaska Const. art. I, § 1 ("This constitution is dedicated to the principle[] . . . that all persons are equal and entitled to equal rights, opportunities, and protection under the law.").

is worth noting that animus towards an unpopular group has never been considered a legitimate interest for the purposes of equal protection analysis. As the U.S. Supreme Court put it in *U.S. Dept. of Agriculture v. Moreno*, "[I]f the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest."[13] Justice O'Connor expounded further in her concurrence in the case *Lawrence v. Texas*:

> [W]e have never held that moral disapproval, without any other asserted state interest, is a sufficient rationale under the Equal Protection Clause to justify a law that discriminates among groups of persons. Moral disapproval of a group cannot be a legitimate governmental interest under the Equal Protection Clause because legal classifications must not be drawn for the purpose of disadvantaging the group burdened by the law.[14]

But a legitimate governmental interest is essential to a law's surviving equal protection analysis, as is the fit of that interest with the classification system a law imposes. As the Alaska Supreme Court has held, "Alaska's Equal Protection Clause requires more than just a rational connection between a classification and a governmental interest; even at the lowest level of scrutiny, the connection must be *substantial*."[15]

Next, should this law survive the threshold questions of legitimate interest and substantial fit, a court would evaluate those against the impairment imposed on affected people's interests. As the Alaska Supreme Court noted, "To determine whether a statute violates the Equal Protection Clause of the Alaska Constitution, we apply a sliding scale approach which places a greater or lesser burden on the state to justify a classification depending on the importance of the individual right involved."[16]

Here that includes the free speech rights of Teen Council. It also includes the right of abortion services providers such as Planned Parenthood to be free from the stigma of legislative disdain and to be free to pursue their legitimate, government-sanctioned not-for-profit mission to promote sexual health—without arbitrary restrictions imposed on them by the government in furtherance of no reasonable purpose.

Given the poor fit of any conceivable legislative purpose to the impairment of the free speech rights of students and to the impairment of abortion services providers' rights to be free from state stigma, it seems likely that Version F of SB 89 would be found to violate Alaska's equal protection guarantees.

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[13] *U.S. Dept. of Agriculture v. Moreno*, 413 U.S. 528, 534 (1973).

[14] *Lawrence v. Texas*, 539 U.S. 558, 582-83 (2003) (O'Connor, J., concurring) (citations and internal quotations omitted).

[15] *Alaska Civ. Liberties Union v. State*, 122 P.3d 781, 791 (Alaska 2005).

[16] *Schiel v. Union Oil Co. of California*, 219 P.3d 1025, 1030 (Alaska 2009) (internal quotations omitted).

5. Alaska has probably spent more than $1 million defending unconstitutional laws like Version F of SB 89.

For the reasons described above, Version F of SB 89 is plainly unconstitutional. Passage of the bill would entangle Alaska in lengthy and complex—and avoidable—litigation. As members of this Committee are aware, this would not be the first time, or even the second or third, that unconstitutional laws relating to abortion were struck down following prolonged and expensive litigation.

Alaska was recently embroiled in costly litigation over its attempt to impermissibly restrict the ability of low-income women to have abortions—the court struck down this restriction just over six months ago.[17] Such litigation has been costly for Alaska. When Alaska's endeavor to eliminate Medicaid funding for medically-necessary abortions was struck down in *State, Department of Health & Social Services v. Planned Parenthood of Alaska, Inc.*,[18] Alaska wound up paying the plaintiffs $236,026.16 plus interest (or $321,141.37 plus interest in 2016 dollars).[19] Similarly, the unconstitutional Parental Consent Act spawned a lawsuit, *State v. Planned Parenthood of Alaska*, and multiple appeals, lasting over ten years.[20] Alaska paid the successful plaintiffs $278,127.42 (or $354,277.61 in 2016 dollars).[21] And, any fair accounting of the total cost must include what Alaska had to pay its own attorneys and the other internal costs of defending those suits.

Such unnecessary drain of taxpayer resources would have been avoided had those respective Legislatures simply refrained from passing statues, like Version F of SB 89, that are constitutionally infirm. Alaska has better uses to which it can direct the people's time and money than defending the constitutionality of squarely unconstitutional laws.

Conclusion

We appreciate the opportunity to share our concerns about Version F of SB 89 with the House Health and Social Services Committee. We hope our testimony proves valuable to members contemplating the bill's constitutional infirmities. Because of these deficiencies, we oppose this bill and urge the Committee to vote Do Not Pass.

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[17] *Planned Parenthood of the Great Northwest v. Streur*, No. 3AN-14-04711CI (Anchorage Super. Ct. Aug. 27, 2015), *appeal filed*, No. S-16123.

[18] 28 P.3d 904 (Alaska 2001).

[19] We have used the U.S. Bureau of Labor Statistics inflation calculator, available online at http://www.bls.gov/data/inflation_calculator.htm, to derive the inflation-adjusted 2016-dollar amounts. For the original raw dollar amounts from the litigation addressed in this footnote and the next, please see the attached orders from the Anchorage Superior Court and the Alaska Supreme Court.

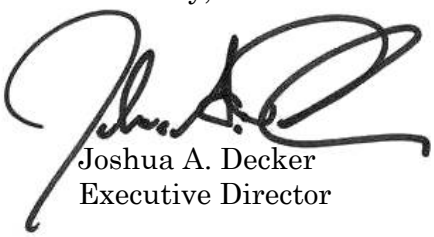
[20] *State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007).

[21] *Id.*

We further hope that this Committee will refrain from approving legislation that squarely violates the Alaska and United States Constitutions and would entangle Alaska in expensive, time-consuming, and needless litigation.

Thank you for considering our testimony. Please let us know if we may answer any questions.

Sincerely,



Joshua A. Decker
Executive Director

cc: Representative Neal Foster, Representative.Neal.Foster@akleg.gov
Representative Louise Stutes, Representative.Louise.Stutes@akleg.gov
Representative David Talerico, Representative.Dave.Talerico@akleg.gov
Representative Geran Tarr, Representative.Geran.Tarr@akleg.gov
Representative Adam Wool, Representative.Adam.Wool@akleg.gov
Senator Mike Dunleavy, Sponsor, Senator.Mike.Dunleavy@akleg.gov

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

APPELLATE COURTS
STATE OF ALASKA

MAR - 6 2001

CLERK

By _____ Deputy

PLANNED PARENTHOOD OF ALASKA, INC., et al.,

Plaintiffs,

v.

KAREN PERDUE, Commissioner, Department of Health and Social Services, et al.,

Defendants.

3-9109

FEB 21 2001

Case No. 3AN-98-07004

PROPOSED AMENDED JUDGMENT

The Plaintiffs having moved the Court and having been granted by the Court awards of attorneys' fees and costs in the sum of $109,928.41 on October 19, 1999, and in the sum of $58,082.35 on January 25, 2001, it is hereby ordered that the Final Judgment be amended to include the prior orders for attorneys' fees and costs totaling $168,010.76. Post-judgment interest at the statutory rate of 7.5 percent per year shall accrue on the October 19, 1999, award from that date until paid. Post-judgment interest at the statutory rate of 8 percent per year shall accrue on the January 25, 2001, award from that date until paid.

ENTERED this 14 day of March, 2001, at Anchorage, Alaska.

Sen K. Tan
Superior Court Judge

I certify that on 3-15-01 a copy of the above was mailed to each of the following at their addresses of record.

Schlueus
Kirsch (AAG)

E Mueller
Secretary/Deputy Clerk

SUDDOCK&SCHLEUSS,P.C.
ATTORNEYS AT LAW
500 L STREET, SUITE 300
ANCHORAGE, ALASKA
99501-5910
TEL: (907) 258-7807
FAX: (907) 276-1158

In the Supreme Court of the State of Alaska

State of Alaska, DHSS, et al.,	)	
	)	Supreme Court No. **S-09109**
Appellants,	)	
v.	)	**Order**
	)	Awarding Costs and Attorney's Fees
Planned Parenthood of Alaska, et al.,	)	
	)	
Appellees.	)	Date of Order: **9/20/01**
	)	

Trial Court Case # **3AN-98-07004CI**

On consideration of the cost bill, filed on 8/30/01, and no opposition having been filed by any party,

IT IS ORDERED:

1. Appellant shall pay appellee the following allowable costs:

Copies of appellee's brief	$572.60
Copies of supplemental brief	$ 48.30
Copies of appellee's excerpt	$244.50
Total	$865.40

2. The following costs are disallowed:

Copies of appellee's memorandum in opposition to motion for stay of injunction	$264.00
Appendix of cases in support of appellee's opposition to stay	$343.20

3. At the direction of an individual justice, attorney's fees in the amount of $67,150.00 are awarded to the appellee.

Clerk of the Appellate Courts

Marilyn May

Marilyn May

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

PLANNED PARENTHOOD OF ALASKA, JAN WHITEFIELD, M.D., ROBERT KLEM, M.D., JANE DOES I-X,

Plaintiffs,

and

STATE OF ALASKA,

Defendant.

CONCERNED ALASKA PARENTS, INC.

Amicus Curie.

CASE NO. 3AN-97-6014 CI

ORDER AND DECISION

This matter is before the court on plaintiffs' Motion for Attorney Fees. Defendant does not oppose an award of reasonable attorney fees, but disputes the reasonableness of the fees sought. Plaintiffs seek $148,692.70 in fees.

ANALYSIS

A prevailing public interest litigant is normally entitled to full reasonable attorney's fees. Dansereau v. Ulmer, Slip Op. No. 4962 at p. 2 (Alaska April 3, 1998). Here, it is undisputed that the plaintiffs are prevailing public interest litigants. The amount and reasonableness of the fee award is to be determined on the facts of the case, and should be evaluated according to the twelve factors set forth in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974). Hickel v. Southeast Conference, 868 P.2d 919, 924 (Alaska 1994).

The defendant, without citing the Johnson factors, asserts several reasons why the requested fees are unreasonable. This opinion first addresses defendant's arguments and then addresses the Johnson factors.

A. DEFENDANT'S ARGUMENTS

Complexity

The State notes that this court must consider the complexity of the case in determining reasonable fees and asserts that this case was not complex. This court respectfully disagrees with defendant's characterization of the case.

This case was not like most other civil cases. First, the lawsuit raised a constitutional question of first impression for Alaska. Due to its nature, this case required substantial work to assimilate the arguments and evidence necessary to support the requests for injunctive relief and for summary judgment, and to oppose the two motions to dismiss.[1] Although the arguments and the facts supporting them may have been similar, each application for relief required a different analysis. Second, this case involved Concerned Alaska Parents ("CAP") as amicus curiae.[2] CAP presented numerous complex issues of its own to which plaintiffs had to respond. This court concludes that this was a complex case.

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[1] Since this case was brought prior to the Alaska Supreme Court decision in Valley Hospital Association v. Mat-Su Coalition, 948 P.2d 963 (Alaska 1997), it was necessary that the plaintiffs draw substantially on federal law as well as analogous state law.

[2] Although CAP was not allowed to intervene as a party, CAP did much more than file a brief as amicus curiae.

Inadequate Support for Request

Defendants challenge that part of plaintiffs' fees request related to work done by attorneys Ms. Schleuss and Ms. Strout on the ground that plaintiffs failed to sufficiently support that part of the request. Since plaintiffs have now provided an affidavit by Ms. Schleuss in support of her fees, I find this argument is now moot as to her fees. As to Ms. Strout's total fees of $700, I find that Ms. Bamberger's affidavit satisfactorily supports this part of plaintiffs' request.

Unrelated Work

Defendants challenge some of the fees on the ground that they represent work unrelated to this action.

Defendants describe Ms. Bamberger's communications with counsel in 97-6019, the concurrent challenge to the partial birth abortion statute, as coordination by the attorneys of their cases which should be uncompensated in this matter. I find that proper representation in a lawsuit includes consulting with counsel in 97-6019, as well as obtaining a copy of the transcript of the TRO ruling in that matter. Further, I find that three telephone conversations to accomplish this purpose was reasonable.

CAP

Defendant argues that it should not be required to pay the fees associated with opposing motions or other arguments asserted by CAP. This argument also fails. First, I find that to rule as defendant requests would result in apportionment by issue, which is prohibited. Dansereau at 5. Further, this court concludes that

the State benefited from CAP's participation as one would benefit from having co-counsel. In this case, CAP was not a neutral "friend of the court." Rather, CAP's position was very much aligned with the State's in arguing that the statute was constitutional. CAP, in this case, supplemented the State's briefing and presented contentions and arguments strengthening the State's case. Accordingly, I find that the State is liable for fees incurred in responding to CAP's briefs.

Duplicative or Unnecessary Work

Defendant asserts that the plaintiffs' attorneys necessarily duplicated each others efforts or engaged in unnecessary work. In support of its argument, defendant relies heavily upon the number of hours each attorney worked on any given product, not on the specifics of what each attorney was doing. For instance, where three, or even four attorneys coordinated briefing or other efforts, defendant concludes that there was necessarily a waste of resources. I disagree.

First, I find that the more pertinent question is, what was the total number of hours spent litigating this case. Here, as defendant points out, plaintiffs' counsel spent a total of 954.28 hours in this lawsuit while defendant spent a total of 579.2 hours, or 375.08 hours less than plaintiff. However, the number of hours spent by the defendant did not include the hours spent by CAP. I suspect that if the hours spent by CAP were included, the total number of hours spent by the State and CAP would be close to what plaintiff's counsel expended in this case. In light of this

understatement, I find the difference in total hours not unreasonable.

Further, I find that the amount of time invested in the preparation of this case is reflected in the high quality of work presented to the court. Plaintiffs' counsels' arguments were extremely precise, well-written, and well-supported by facts and law. Plaintiffs' counsel presented very high qualityf briefing to the court.[3]

Next, after reviewing both parties' arguments, I reject defendant's objections to plaintiffs' use of out-of-state or other attorneys for depositions. For instance, I find that plaintiffs' counsel acted reasonably when they hired Fairbanks counsel to conduct the deposition of Ms. Scully, since the cost to plaintiffs was not significantly different than if their own counsel had conducted the deposition and because Ms. Bamberger, the "local" co-counsel, was thoroughly engaged with other "ninth-hour" depositions.

The State also objects to the cost of other counsel who defended a deposition in Vermont. Defendant suggests that plaintiffs' counsel should have appeared telephonically, as did defendant's counsel. Although defending a deposition telephonically may be a reasonable option, it is not the only

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[3] In making this finding, this court does not say that defendant's counsel's briefing was not of the same caliber. Indeed, the quality of the briefing in this lawsuit by all involved was of the highest degree.

reasonable option. Having counsel present at a deposition to consult with the deponent cannot be deemed an unreasonable expense.

Plaintiff's counsel should have been able to work faster

Defendant asserts that, because of the extensive and collective litigation and civil rights experience of plaintiffs' attorneys, the attorneys should not have required over 900 hours to prepare their case. This court rejects this final argument on the premise that the case presented a case of first impression for the State. Therefore, experience in federal law or the law of other jurisdictions did not have a direct bearing on Alaska's state law.

In conclusion, this court is not persuaded by defendant's objections to the reasonableness of plaintiffs' fees.

B. THE JOHNSON FACTORS

Johnson, supra, directs courts to consider twelve factors when determining the reasonableness of fees. Below, several of these factors are analyzed as they bear directly on the issue of reasonable fees in this case. Other factors are not relevant and were not addressed by the parties, and hence, I reach no conclusions as to them.[4]

1. The time and labor required

As stated above, this court finds that there was substantial

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[4] Those factors are: the preclusion of other employment opportunities for counsel; whether the fee is fixed or contingent; time limitations that prioritize this work so that other work is delayed; the "undesirability" of the case; and the nature and the length of the professional relationship between the attorney and client.

time and labor required to properly prepare this complex case.

2. The novelty and difficulty of the questions

As already stated, this case presented a question of first impression in Alaska, and did not enjoy the benefit of Alaska cases substantially analogous to the issue presented.

3. The skill requisite to perform the legal service properly

As to this factor, the court is instructed to observe the attorney's work product, preparation and general ability before the court. As already noted, this court found plaintiffs' counsels' work to be of the highest quality, reflective of the time invested in the work. Further, this court found counsels' oral presentations to be of the same quality.

4. The customary fee

I find the attorneys' hourly rates, which range from $110 to $180 to be reasonable and customary.

5. The amount involved and the results obtained

Johnson directs that, "[i]f the decision corrects across-the-board discrimination affecting a large class" of claimants or plaintiffs, the attorney's fee award should reflect the relief granted. Johnson at 718. Although no exact figures are ascertainable, I find that a necessarily significant number of women have, or will be affected by this lawsuit.

6. The experience, reputation and ability of the attorneys

I have already dismissed defendant's assertions that, because of the counsels' significant experience their costs should be lower. But, this factor relates more to the hourly rate charged

by the attorney. As already noted, I find the plaintiffs' attorneys' hourly rates reasonable here, particularly since it is recognized that experienced attorneys who specialize in civil rights cases may enjoy a higher rate of compensation than others. Johnson at 718.

7. Awards in similar cases

No argument was presented by the parties to the court related to this factor. However, this court notes that, in Valley Hospital, supra, a 1992 case, the court awarded approximately $110,000 in attorney's fees. The issue presented in that case was analogous to the one here. And, the award of injunctive relief and disposition by summary judgment in that case is also analogous. I find that, considering inflation, an award of $150,000 in 1998 approximates an award of $110,000 in 1992.

Conclusion

Application of the relevant Johnson factors leads to the conclusion that plaintiffs' attorneys' fees are reasonable. Indeed, none of the factors support a contrary conclusion.

CONCLUSION

After consideration of the parties' arguments and application of the factors set forth in Johnson, IT IS HEREBY ORDERED AND ADJUDGED THAT,

1. Plaintiffs are prevailing party, public interest litigants;

2. Plaintiffs' Motion for Attorney Fees is GRANTED; and

3. The State of Alaska shall pay plaintiffs the sum of $148,692.70 as full reasonable attorneys' fees and costs as approved by the Clerk of the Court, and an amended final judgment shall be entered in accordance herewith.[5]

Dated at Anchorage, Alaska this 2 day of October, 1998.

SEN K. TAN
Superior Court Judge

I certify that on 10-5-98 a copy of the above was mailed to each of the following at their addresses of record:
Bamberger
Dougan
Clarkson
Crepps

E Mulder
Secretary/Deputy Clerk

[5] This court notes that, at the time of entry of original judgment in this case, the question of attorney's fees had not been presented to the court.

In the Supreme Court of the State of Alaska

State of Alaska,

Appellant/Cross-Appellee,

v.

Planned Parenthood of Alaska & Jan Whitefield, M.D,

Appellees/Cross-Appellants.

Supreme Court No. **S-11365/S-11386**

Order
Awarding Costs

Date of Order: **1/14/08**

Trial Court Case # **3AN-97-06014CI**

On consideration of the Appellee/Cross-Appellant's **11/13/07** cost bill, and the **12/6/07** non-opposition, **IT IS ORDERED**:

1. Appellant/Cross-Appellee shall pay Appellee/Cross-Appellant **$ 8,537.22** for the following costs:

Filing Fee	$	150.00
Transcript preparation	$	7,657.37
Postage	$	41.99
Copies and printing of brief	$	687.86
Total	**$**	**8,537.22**

Clerk of the Appellate Courts

Marilyn May

Marilyn May

In the Supreme Court of the State of Alaska

State of Alaska,	)	
	)	Supreme Court No. **S-11365/S-11386**
Appellant/Cross-Appellant,	)	
v.	)	**Order**
	)	
Planned Parenthood of Alaska & Jan Whitefield, M.D,	)	
	)	
	)	
Appellees/Cross-Appellants.	)	Date of Order: **1/25/08**
	)	

Trial Court Case # **3AN-97-06014CI**

On consideration of Planned Parenthood of Alaska & Jan Whitefield, M.D.'s 11/13/07 affidavit of services rendered on appeal; the State of Alaska's 12/6/07 non-opposition to the affidavit of services rendered on appeal; Planned Parenthood of Alaska & Jan Whitefield, M.D.'s 12/21/07 motion for leave to file supplemental affidavit of services rendered on appeal, covering attorney's fees expended in responding to the petition for rehearing; and no opposition to the supplemental affidavit having been received, **IT IS HEREBY ORDERED** that, no opposition to appellees/cross-appellants Planned Parenthood of Alaska and Jan Whitefield, M.D.'s attorney's fees request having been filed by appellant/cross-appellee State of Alaska:

Appellant/cross-appellee State of Alaska shall pay to the appellees/cross-appellants **$120,897.50** in attorney's fees.

Entered by direction of an individual justice.

Clerk of the Appellate Courts

Marilyn May

Marilyn May