February 24, 2014

AMERICAN CIVIL LIBERTIES UNION OF ALASKA
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The Honorable Alan Austerman, Co-Chair
The Honorable Bill Stoltze, Co-Chair
The Honorable Mark Neuman, Vice-Chair
House Finance Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801
by email: Rep.Alan.Austerman@akleg.gov
Rep.Bill.Stoltze@akleg.gov
Rep.Mark.Neuman@akleg.gov

Re: SB 49 and HB 173: Reproductive Health Funding
ACLU Analysis of Financial and Constitutional Issues

Dear Co-Chairs Austerman and Stoltze, and Vice-Chair Neuman:

Thank you for the opportunity to testify about the Sponsor Substitute for Senate Bill 49, as amended, and House Bill 173, both of which impermissibly seek to strip funding for needed medical services in an important area of women's health. On April 11, 2013, we submitted written testimony to the House Finance Committee on SB 49; because of new developments, we submit this updated testimony and again reiterate our opposition to both bills.

The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed by the United States and Alaska Constitutions. We engage in public advocacy and education to further those rights, and—when necessary—would litigate when those rights are attacked. In that context, we write to advise you that these bills are unconstitutional or, at best, academic nullities, and—of specific importance to this Committee—if enacted, the State would likely incur and be ordered to pay hundreds of thousands of dollars in attorney's fees and costs arising out of the inevitable constitutional challenge.

1. The State Has Spent Almost $1 Million in Repeated, Unsuccessful Attempts to Unconstitutionally Limit Women's Reproductive Rights.

As we more fully explain below, SB 49 and HB 173 are—quite plainly—unconstitutional. Passage of either or both bills would entangle the State in lengthy and complex litigation. As Members of this Committee are aware, this would not be the first time, or even the second, that these issues have been litigated. Indeed, the Department of Health and Social Services promulgated a regulation similar to these bills earlier this year, and this regulation is currently in litigation before the Anchorage Superior Court.[1]

Apart from this current constitutional challenge, the State of Alaska has been sued multiple times over its repeated attempts to limit a woman's constitutional right to reproductive autonomy. In addition to the Medicaid medically-necessary abortion case of *State, Department of Health & Social Services v. Planned Parenthood of Alaska, Inc.*,[2] the now-unconstitutional Parental Consent Act spawned a lawsuit, and multiple appeals, which lasted over ten years.[3]

Putting aside what the State had to pay its own attorneys and its other internal costs of defending those suits, it paid the successful plaintiffs $514,153.58 plus interest (or $674,905.82 plus interest in 2014 dollars) for these two unconstitutional actions: $236,026.16 plus interest (or $320,897.38 plus interest in 2014 dollars) in the *State, Department of Health & Social Services* Medicaid medically-necessary abortion case and $278,127.42 (or $354,008.44 in 2014 dollars) in the *State v. Planned Parenthood of Alaska* Parental Consent Act case.[4] If one includes the State's own internal costs—which these figures do not—Alaska likely spent close to $1 million in its unsuccessful defenses of these unconstitutional acts.

Given this clear—and expensive—history, we draw the Committee's attention to the unusual lack of fiscal notes that account for these costs. As stewards of our State's finances, even absent the clear constitutional violations, this is reason enough for the Committee to reject these bills.

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[1] *Planned Parenthood of the Great Northwest v. Streur*, Anchorage Super. Ct. No. 3AN-14-04711CI.

[2] 28 P.3d 904 (Alaska 2001).

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

[4] We have used the US Bureau of Labor Statistics inflation calculator, available online at www.bls.gov/data/inflation_calculator.htm, to derive the inflation-adjusted 2014-dollar amounts. For the original raw dollar amounts, please see the attached orders from the Anchorage Superior Court and the Alaska Supreme Court.

2. SB 49 and HB 173 Cannot Narrow or Further Define the Current Constitutional Right to Medicaid-Funded Medically Necessary Abortions.

The ability of all women in Alaska to make their own medical decisions, including reproductive ones, is a fundamental right guaranteed by the Alaska Constitution.[5] "'Reproductive rights are fundamental . . . [and] include the right to an abortion.'"[6]

This fundamental right of reproductive choice is specifically protected by the "state constitutional guarantee of 'equal rights, opportunities, and protection under the law,'"[7] and Alaska may not "selectively exclude from [its Medicaid] program women who medically require abortions."[8] The requirement to fund medically necessary abortions "affects the exercise of a constitutional right"[9] and thus it may not be narrowed or otherwise altered through legislation.[10]

The contours of this right are clear, but even if, as SB 49's Sponsor Statement provides, "the term 'medically necessary abortion' has acquired a constitutional component of unknown scope," these bills may not delimit that right in any manner that narrows its original constitutional contours.[11] At best, these bills are a nullity that simply mirrors what the Supreme Court required in *State, Department of Health & Social Services*.

But, the bills' text and purpose belie this anodyne construction: they are narrower than the constitutional right announced by the Supreme Court and, putting aside that structural separation of powers infirmity, they are substantively unconstitutional.

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[5] *State, Dept. of Health & Soc. Services*, 28 P.3d at 913.

[6] *Id.* at 907 (quoting *Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997)) (omission and alteration in *id.*).

[7] *Id.* at 908 (quoting Alaska Const. art. I, § 1).

[8] *Id.* at 906.

[9] *Id.* at 909.

[10] *Valley Hosp. Ass'n Inc.*, 948 P.2d at 972 ("However, we cannot defer to the legislature when infringement of a constitutional right results from legislative action."); *Dickerson v. United States*, 530 U.S. 428, 437 (2000) ("But Congress may not legislatively supersede our decisions interpreting and applying the Constitution.").

[11] *Dickerson*, 530 U.S. at 437 (overturning legislation that tried to overrule the *Miranda v. Arizona*, 384 U.S. 436 (1966) decision, which "interpret[ed] and appl[ied] the Constitution."). Emphasis of the Sponsor Statement's quote omitted.

3. SB 49 and HB 173 Are Unconstitutional On Their Face

SB 49 and HB 173's definitions of "medically necessary abortion" are dramatically narrower than the Alaska Constitution's. First, the bills subject "medically necessary abortions" to an after-the-fact, second-guessing scrutiny, linking it to "a physician's objective and reasonable professional judgment after considering medically relevant factors[.]"

Second, and more worrisome, the bills exclusively limit "medically necessary abortion" to "avoid[ing] a threat of serious risk to the life or physical health" of the pregnant woman. Subpart (b)(4)'s lists do not save the bills, because though it attempts to tie the bills' narrower scope to the Supreme Court's examples of medically necessary abortions,[12] the narrow touchstone is still just "life or physical health," which impermissibly omits mental health from medical need. This squarely and unconstitutionally contradicts the Supreme Court, which recognized that mental health, such as "bipolar disorders," is a constitutionally protected and medically necessary basis for an abortion.[13] This omission makes SB 49 and HB 173 unconstitutional on their face.

4. SB 49 and HB 173's Genesis Violate Equal Protection

Apart from the similar new—and now challenged—regulation by the Department of Health and Social Services, SB 49 and HB 173 stand alone in the Alaska Medicaid scheme. "Medically necessary" is a common term, scattered throughout the Medicaid regulations. The State specifically lists "medically necessary" in the regulations for

- hospital stays,[14]
- eye care,[15]
- emergency air or ground ambulances,[16]
- mental health treatment,[17]
- community behavioral health services providers,[18]
- enteral and oral nutritional products,[19]

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[12] *State, Dept. of Health & Soc. Services,* 28 P.3d at 907.

[13] *Id.*

[14] 7 Alaska Admin. Code § 140.325.

[15] 7 Alaska Admin. Code § 110.715(a)(1).

[16] 7 Alaska Admin. Code § 120.415(a).

[17] 7 Alaska Admin. Code § 110.445(a)(1).

[18] 7 Alaska Admin. Code § 135.230(a)(1).

[19] 7 Alaska Admin. Code § 120.240.

- B-complex vitamins,[20] and
- podiatry services[21]

and "medically necessary" is a blanket prerequisite for each and every Medicaid claim: "[t]he department will pay for a service only if that service . . . (5) is *medically necessary*[.]"[22]

Yet, despite its ubiquity, "medically necessary" is not defined in the Alaska Statutes or the Administrative Code. And, given that Alaska administers a functional Medicaid program, "medically necessary" is not vague, unwieldy, or cumbersomely overbroad.

The explicit purpose of SB 49 and HB 173, as announced in their Sponsor Statements, is to "provide[] a neutral definition for a 'medically necessary abortion,'" because, to quote SB 49's Sponsor Statement, there is insufficient "guidance as to how broadly the term 'medically necessary abortion' is to be construed."

In a constitutional challenge of SB 49 or HB 173, the courts will note that "medically necessary" permeates the Medicaid regulations and that its lack of an exhaustive SB 49 or HB 173-like definition has not caused the State to lack "guidance" on how it "is to be construed." Rather, courts will probably acknowledge that the bills' extensive definition is unique in Alaska law and will then likely conclude that they are "based on criteria unrelated to the purposes of the public health care program,"[23] namely, that it is "based solely on political disapproval of the medically necessary procedure."[24]

The bills are not rooted in "neutral criteria" that have a "fair and substantial relation to the object of the legislation."[25] Instead, because they are grounded in a political desire to reduce publicly funded abortions, they violate equal protection.[26]

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[20] 7 Alaska Admin. Code § 120.110(e)(6)(H).

[21] 7 Alaska Admin. Code § 110.505(a).

[22] 7 Alaska Admin. Code § 105.100 (emphasis added).

[23] *State, Dept. of Health & Soc. Services*, 28 P.3d at 915.

[24] *Id.* at 905.

[25] *Id.* at 910–11.

[26] *See id.* at 912 n.59 (noting by example that a "bare congressional desire to harm a politically unpopular group cannot constitute a legitimate government interest," and that a "purpose to discriminate against hippies cannot, in and of itself and without reference to [some independent] considerations in the public interest" satisfy equal protection) (internal quotation omitted and alteration in original).

5. Conclusion

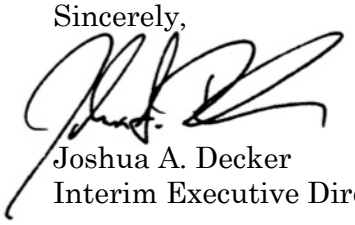
We urge the Finance Committee to avoid passing a bill that is plainly unconstitutional and that will mire the State in an expensive—and entirely avoidable—constitutional challenge.

We appreciate the opportunity to share our concerns about Senate Bill 49 and House Bill 173. We hope that our comments were helpful in identifying the bills' constitutional infirmities, and, because they violate both the Equal Protection Clause and the separation of powers, the ACLU opposes the bills and urges a "Do Not Pass" vote.

Please contact us if you have any questions or if you want any additional information. We are always happy to respond through written or oral testimony, or to answer informally any questions that Members of the Committee may have.

Thank you again for considering our testimony.

Sincerely,



Joshua A. Decker
Interim Executive Director

cc: Representative Mia Costello, Rep.Mia.Costello@akleg.gov
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Representative Gabrielle LeDoux, Sponsor, Rep.Gabrielle.LeDoux@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