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**To:** Interested Parties

**From:** Mary Spalding Balch, J.D.  
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**Re:** Kelly Ayotte's pro-life credentials

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Recently, there have been claims by some that Kelly Ayotte, Attorney General of New Hampshire, is being misleading about her prolife credentials. Those criticizing her erroneously claim that she lost the court case dealing with New Hampshire's Parental Notification Law, and further attempt to criticize her prolife credentials because she "approved" the payment of Planned Parenthood's attorney fees in the case.

However, the facts are that she was successful on the portion of the case for which she was fully responsible. Peter Heed was Attorney General at the trial level and was responsible for establishing the record when the state lost the case in the U.S. District Court. *Planned Parenthood v. Heed*, 296 F. Supp.2d 59 (D.N.H. 2003). Heed appealed to the First Circuit U.S. Court of Appeals. *Heed v. Planned Parenthood*, 390 F.3d 53 (1<sup>st</sup> Cir.2004). Kelly Ayotte was appointed Attorney General after the appeal to the First Circuit U.S. Court of Appeals was filed. The Court of Appeals affirmed the holding of the district court.

On November 4, 2005, Attorney General Ayotte appealed the case - over the objections of Governor John Lynch - to the United States Supreme Court. The Supreme Court granted certiorari to review the case. *Ayotte v. Planned Parenthood* 544 U.S. 1048 (2005).

On January 18, 2006, in a 9-0 decision issued by the high court, the Justices said the appeals court went too far in rejecting the law in its entirety and remanded it back to the lower court for reconsideration. This was a victory for the state of New Hampshire.

The New Hampshire legislature then repealed the Parental Notification Act in June 2007. Governor Lynch signed the repeal on July 5, 2007, making any rehearing of the case moot. On July 12, 2007, U.S. District Judge DiClerico ruled that the case was moot in light of the law's repeal.

On August 12, 2007, Judge DiClerico issued an opinion finding that Planned Parenthood was entitled to attorney fees and court costs. Judge DiClerico ordered both sides to meet and make their best efforts to resolve the amount, to avoid further court proceedings.

At this point there was no law for Ayotte to defend when the payment of plaintiff's fees was ordered. The DEMOCRATS cost the state the loss of the case by repealing the law and they cost the state \$300,000 by repealing the law and handing Planned Parenthood the win and New Hampshire and its families the loss. The Democrats turned a winnable case and, most importantly, protection for the state's minor daughters from unscrupulous abortionists into a gift to Planned Parenthood.

Based on Judge DiClerico's decision, it was a given that Planned Parenthood was going to receive attorney fees. Attorney General Ayotte had no alternative but to negotiate the best settlement possible.

In order to build toward reversal of *Roe v. Wade*, the prolife movement must constantly push to enact and Attorneys General must constantly defend laws that push at its boundaries. There is always the danger that such laws would be struck down. In such case, the state, under existing law, must pay attorney fees. We must encourage Attorneys General - not deter them - from making every effort to uphold increasingly protective prolife laws. If we turn on them when they are forced to pay attorney fees, then in the future many will be reluctant to defend any but the most minimal prolife legislation. This we cannot do.