



Office of Disciplinary Counsel
Supreme Court of Ohio
250 Civic Center Drive, Ste. 325
Columbus, Ohio 43215-7411

May 16, 2007

Dear Sir or Madam:

Recent conduct by Ohio Supreme Court Justice Sharon Kennedy raises serious questions about her impartiality. The organizations and individuals listed below believe that her conduct is a clear violation of the Ohio Code of Judicial Conduct's call to "avoid the appearance of impropriety" and "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." We strongly urge the Office of Disciplinary Counsel to investigate this matter.

Justice Kennedy helped to finance the activities of Right to Life when she spoke a March 17 fundraiser hosted by Greater Toledo Right to Life. Justice Kennedy has a well-established relationship with Right to Life. As you will see from **Exhibit 1**, in a questionnaire she filled out for Cincinnati Right to Life, Justice Kennedy agreed with this statement: "an unborn child is biologically human at every stage of his or her biological development, beginning at fertilization...." Right to Life has successfully lobbied to close nearly half of Ohio's abortion clinics and add 18 new abortion restrictions to Ohio law – including one restriction facing a challenge before the very court on which Justice Kennedy sits. That pending case could decide the fate of Greater Toledo's last abortion clinic.

The role that Greater Toledo Right to Life played in passing the restriction is not in dispute. In March 2013, Ohio Right to Life issued a news release to step up attacks on the University of Toledo Medical Center for signing a transfer agreement that abortion clinics must obtain to remain open. (**Exhibit 2**) Greater Toledo Right to Life's Executive Director Ed Sitter was quoted in the release saying, "The University of Toledo is the last place abortion clinics should be allowed to rely on in our community. This is a black eye for the University and their pro-life alumni should express their concern. Toledo Right to Life looks forward to passionately advocating for this legislation...."

In July 2013, Greater Toledo Right to Life praised Gov. John Kasich for signing legislation that prohibits the UT Medical Center and other public hospitals from entering into transfer agreements with abortion clinics. **(Exhibit 3)**

The legal case started in 2014 when the Ohio Department of Health ordered an abortion clinic to close after it failed to obtain a transfer agreement with a private Toledo-area hospital, which would take patients in case of an emergency. The clinic, Capital Care Network of Toledo, filed a lawsuit to protest the decision, saying it should be permitted to count its agreement with a hospital at the University of Michigan, 52 miles away.

The clinic won its cases in Lucas County and the appeals court, which called the state's transfer-agreement restrictions unconstitutional. Ohio Attorney General Mike DeWine asked the Ohio Supreme Court to overturn the lower courts' decisions. On March 15, 2017, the Ohio Supreme Court agreed to hear the case. Justice Kennedy spoke to Greater Toledo Right to Life two days later.

Justice Kennedy has been endorsed in the past by Ohio Right to Life and by one of its affiliates, Greater Cincinnati Right to Life.

Justice Kennedy had the option of cancelling her speech to Right to Life – or recusing herself from hearing the case. Instead, she went forward with the speech and issued this statement:

“For the past 6 years, I have appeared at numerous civic organizations to speak about the founding of this republic, the Constitution, and the separation of powers. In December 2016, an individual who had heard me speak at two previous events invited me to speak to a civic organization he was affiliated with for breakfast. I treated that request in the same manner as I would treat any request.” **(Exhibit 4)**

In her 2012 and 2014 judicial campaigns, Justice Kennedy highlighted her endorsements from anti-abortion organizations. In 2014, Kennedy filled out a judicial candidate survey for Right to Life of Greater Cincinnati, in which she affirmed that she agrees with every position espoused by the anti-abortion organization, including its views on legal and constitutional interpretation. **(Exhibit 5)**

Newspaper editorials calling for Justice Kennedy to recuse herself from the case clearly show that her decision to not step down tarnishes the reputation of Ohio's highest tribunal.

In its editorial, the Columbus Dispatch said this:

The Ohio Code of Judicial Conduct, which mirrors the model code of the American Bar Association, states: "A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned."

In related commentary, the code states: 'A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as bias or prejudiced.'

In the Capital Care case, Kennedy should recognize that her speech, gestures and conduct — both recently and over the years — "reasonably" call into question her ability to be impartial. (Exhibit 6).

We respectfully ask that you give our request serious consideration.

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