



Exhibit 1:

Cincinnati Enquirer, March 17, 2017

<http://www.cincinnati.com/story/news/2017/03/16/ohio-justice-sharon-kennedy-toledo-right-to-life-court--abortion-clinic-case/99274538/>

As court considers clinic closure, justice speaks at anti-abortion event

[Jessie Balmert](#) and [Chrissie Thompson](#), Cincinnati Published 6:10 p.m. ET March 16, 2017 | Updated 4:33 p.m. ET March 17, 2017

COLUMBUS - Sharon Kennedy, a state Supreme Court justice from Butler County, spoke Friday at a breakfast held by an anti-abortion group – even though the court is hearing a case that could close Toledo's last abortion clinic.

[Kennedy gave the keynote speech](#) at [Greater Toledo Right to Life's](#) annual legislative briefing breakfast.

When The Enquirer reached her by phone Thursday, Kennedy wouldn't discuss her decision to keep the speaking engagement even though she is scheduled to consider a case in which the anti-abortion group has a stake.

"I don't have a comment on court cases. Thank you for your call," Kennedy said, before hanging up.

Greater Toledo Right to Life invited Kennedy months ago, said Ed Sitter, the group's executive director, and did not feel the need to cancel after learning the state court would hear the Toledo case.

"I really don't see the conflict," Sitter said. "I really believe that a justice can be unbiased."

Kennedy, 54, a Republican-backed justice from Liberty Township, was endorsed by Ohio Right to Life and Greater Cincinnati Right to Life in past elections.

Sitter said he had "no idea" where Kennedy stood on abortion rights and did not know about the anti-abortion groups' endorsements. The Toledo branch doesn't endorse judicial candidates but sometimes promotes those chosen by Ohio Right to Life, he said.

[Judge recuses himself from abortion case](#)

Kennedy speaks routinely at "civic organizations" to talk about the Constitution, she said in a statement released Friday afternoon about the Toledo breakfast. "In December 2016, an individual

who had heard me speak at two previous events invited me to speak with an organization he was affiliated with for breakfast. I treated that request in the same manner as I would treat any request."

The Toledo-area court 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 able 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 state Supreme Court to overturn those lower courts' decisions. On Wednesday, the Republican-dominated court agreed to hear the case.

The Ohio laws that require a transfer agreement with a private, local hospital already have led to the closure of another clinic in Toledo and the end of surgical abortions at a clinic in Sharonville. Numerous abortion restrictions passed by Ohio's GOP-controlled Legislature have helped to close clinics around the state. The state had 14 surgical abortion clinics in 2013 and now has nine.

7 things to know about Ohio's abortion bans

Kennedy, who served as a Butler County judge for years, was first elected to the Ohio Supreme Court in 2012, defeating Democratic Justice Yvette McGee Brown.

In that race, Kennedy won despite receiving the rare rating of "not recommended" from the Ohio State Bar Association. In 2014, she [refused to participate in the state bar association's vetting process](#).

Now, Kennedy should decline to participate in hearing the abortion case before the Supreme Court, said Kellie Copeland, executive director of NARAL Pro-Choice Ohio.

"Justice Kennedy should recuse herself from any case related to legislation that was proposed and supported by the anti-abortion groups that endorsed her candidacy, to avoid any appearance of impropriety," Copeland said in a statement.

In a 2014 questionnaire for Greater Cincinnati Right to Life, Kennedy agreed with the statements: "an unborn child is biologically human at every stage of his or her biological development,

beginning at fertilization” and “there is no provision in the current Ohio Constitution intended to require the use of public funds for abortion.”

[When asked about the questionnaire by The Enquirer’s editorial board, Kennedy said:](#) “I didn't give up my First Amendment rights when I put on a robe.”

Exhibit 2:

National Right to Life News, March 27, 2013

<http://www.nationalrighttolifenews.org/news/2013/03/university-of-toledo-in-contract-with-abortion-clinic/#.WQjOmdrys2w>



March 27, 2013 [Abortion Clinic](#)

University of Toledo In Contract with Abortion Clinic

Publicly Funded College Supports Local Abortion Clinic

Editor's note. This story was provided by Ohio Right to Life and is reprinted with permission.

Today Ohio Right to Life released the findings of its investigation into University of Toledo's support of Capital Care Network of Toledo, one of the largest abortion clinics in Northwest Ohio.

According to government documents obtained by Ohio Right to Life, the University of Toledo Medical Center has entered into a contract with this abortion clinic to allow the clinic to operate and to abort children. A transfer agreement signed by the University's Senior Vice President and Executive Director Scott Scarborough on Aug. 17, 2012, is the reason the abortion clinic remains open.

According to the most recent data from the Ohio Department of Health, 1,033 babies were aborted at Capital Care Network of Toledo due to the University's support of this clinic.

"The only reason Capital Care exists is because of the publicly-funded University of Toledo. Without this transfer agreement, this abortion clinic could not legally operate in Ohio," said Ohio Right to Life's Executive Director, Rev. John Coats. "This violates the conscience rights of Ohio taxpayers as well as pro-life faculty, staff and students. Ohio law clearly prohibits state tax dollars from paying for abortion and it is against the law for publicly funded hospitals to perform non-therapeutic abortions. Yet the University of Toledo circumvented our pro-life laws and the spirit of our public policy by entering into this transfer agreement," said Coats.

According to Ohio law, Capital Care exists as an Ambulatory Surgical Facility and because of this status, the clinic is not a full-service medical facility. In order for Capital Care Network of Toledo to operate legally, the clinic has to have a transfer agreement with a full-service hospital to handle all cases of abortion complications against the mother. The University of Toledo has signed this agreement to allow this abortion clinic to remain open.

Ohio Right to Life is actively working with State Representative Lynn Wachtmann to introduce legislation to ban transfer agreements between tax-funded, public hospitals and abortion clinics in Ohio.

“The University of Toledo is the last place abortion clinics should be allowed to rely on in our community,” Toledo Right to Life’s Executive Director Ed Sitter said. “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 and we thank Rep. Wachtmann for his leadership.”

To read the transfer agreement go to http://library.constantcontact.com/download/get/file/1102213307758-842/CapitalCareNetwork_Documents.pdf

Exhibit 3:

Toledo Blade, July 3, 2003

<http://www.toledoblade.com/Politics/2013/07/03/Right-to-Life-group-celebrates.html>

Right to Life group celebrates

Abortion opponents praise clinic's closing, Kasich budget

By SAM GANS | BLADE STAFF WRITER

Published on July 3, 2013

The Greater Toledo Right to Life hosted a news conference Tuesday afternoon outside the former Center for Choice in central Toledo to celebrate the abortion clinic's closing and Gov. John Kasich's new budget.

Sixteen pro-life supporters - half of whom were women - were at the event on what Greater Toledo Right to Life executive director Ed Sitter called a day of celebration and thanksgiving to God for answered prayer.

"We recommit to the unborn and to those women who are faced with unplanned pregnancies," Mr. Sitter said. "We owe it to these women to make sure that they are fully informed on the irrevocable decision they are about to make. We will work through service, education, and support to empower these women to choose life for their unborn babies and for themselves."

The \$62 billion, two-year budget Mr. Kasich signed into law Sunday, which the group called the most pro-life budget in Ohio's history, prohibits public hospitals from entering into transfer agreements with abortion clinics. State code requires a pact for the transfer of patients needing emergency treatment.

The law also requires doctors to perform an ultrasound to detect a fetal heartbeat before performing an abortion and offer to let the woman see or hear the heartbeat, among other measures.

"We realize as rewarding as these victories are, that we are a long way from seeing the right to life enacted into law," Mr. Sitter said.

Center for Choice closed June 7 after it could not find a local hospital that would enter into a transfer agreement. Mr. Sitter said the center had until June 25 to secure a transfer agreement and contest a \$25,000 fine by the Ohio Department of Health for at least 12 health, sanitary, and safety violations.

Michelle McCauley, executive director for the Toledo Pregnancy Center, said the center provides services to women in all stages of pregnancy, as well as those who have had an abortion. Mr. Kasich's budget establishes new funding for pregnancy centers.

"The number of services that we offer are great," Ms. McCauley said. "You can come through our doors and find a place of hope and of healing and of compassion."

Joan Canning, regional director of the pro-life Silent No More Awareness Campaign, had an abortion 21 years ago. She said lack of resources and emotional support, not unborn children, are the enemies of women with problem pregnancies.

"We want to educate the public at large that abortion is harmful emotionally, physically and spiritually for women, men and families," she said. "We want it to become unacceptable for anyone to recommend an abortion as a fix for a problem pregnancy."

There was no visible or vocal pro-choice opposition at the news conference.

Carol Dunn, former owner of the Center for Choice said she was unaware that a news conference was being held on the clinic's property. She expressed concern about the governor's budget prohibiting transfer agreements between hospitals and abortion clinics.

“I’m appalled by that,” she said. “It’s not over. The folks who worked with us [at the Center for Choice] and volunteered, were very committed.”

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Exhibit 4:

Toledo Blade, March 18, 2014

<http://www.toledoblade.com/Courts/2017/03/18/Activists-call-for-justice-to-recuse-herself.html>

TOLEDO ABORTION CLINIC

Activists call for Ohio justice to recuse herself on abortion case

Justice Kennedy spoke at a Greater Toledo Right to Life event Friday

By [Mark Reiter](#) | BLADE STAFF WRITER

Published on March 18, 2017 | Updated 10:38 a. m.

An Ohio abortion-rights group is demanding Ohio Supreme Court Justice Sharon Kennedy step down from a court case that could decide the fate of Toledo's only remaining abortion clinic.

Kellie Copeland, executive director of NARAL Pro-Choice Ohio, called for Justice Kennedy's recusal from deciding a lower court's ruling on state regulations governing Capital Care Network in Toledo following a speech she gave Friday to the Greater Toledo Right to Life.

Justice Kennedy was the keynote speaker at the anti-abortion organization's annual legislative briefing breakfast in Perrysburg French Quarter. About 185 people paid \$30 each to attend the fund-raiser, at which the justice agreed in December to appear, a spokesman said.

Ms. Copeland said Justice Kennedy should not join the high-court panel in deciding the case because her speech was made to a group that helped raise money for an organization that promoted the law being challenged.

"She is not unbiased on this issue. She was the headliner at an event for an organization that promoted and lobbied for the law that is being challenged and is now before her court," she said.

Justice Kennedy said in a statement that the speech was not a conflict and she will remain on the case.

“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,” the statement said.

The state Supreme Court earlier this week agreed to hear the Ohio attorney general’s appeal of last year’s decision blocking it from shuttering Capital Care Network because it lacks a transfer agreement with a “local” hospital.

Capital Care, which runs a West Toledo clinic, won in Lucas County Common Pleas Court and Ohio’s 6th District Court of Appeals.

The clinic sued the state in 2014 after the Ohio Health Department rejected a written agreement it had with the University of Michigan Health System, which agreed to accept Capital Care’s nonemergency patients if they required further care after a procedure.

Ed Sitter, executive director of Greater Toledo Right to Life, said he asked Justice Kennedy to speak to the anti-abortion group in December. He said she talked about the Ohio Constitution and the relationship of the judicial system to the legislative and executive branches in a speech titled “The Judiciary and You.”

He said the demand made by Ms. Copeland for Justice Kennedy to recuse herself is “totally ludicrous.”

“We are not a party to this case. Greater Toledo Right to Life did not champion the state law being challenged. We have been involved in the law in the fact that the law has been violated,” he said. “I really don’t see any difference in than if she was speaking to the Rotary Club. She is a public official. We elect our judges. They have the right to go out and share with the public how government is supposed to work.”

Justice Kennedy’s campaign website says she was endorsed in 2014 by the Cincinnati Right to Life, Ohio Right to Life, and Ohio ProLife. She became a justice in 2012 to fill an unexpired term and was re-elected in November, 2014.

Ms. Copeland said Ohio Right to Life of Greater Cincinnati called into question the impartiality of a federal judge in 2014 because he served on a local Planned Parenthood board from 1986 to 1989.

Judge Timothy Black at the time was hearing a civil lawsuit against the state challenging the constitutionality of a law that banned abortion surgery centers from partnering with public hospitals and forced the Planned Parenthood clinic to end a long-standing patient-transfer agreement with the University of Cincinnati Medical Center. He later recused himself from the case.

Mike Gonidakis, president of Ohio Right to Life, said Justice Kennedy, by speaking to the organization, did not violate the judicial code of conduct.

“Of course, if she did do anything to impact her ability to be impartial she needs to consider stepping away from the case. By giving a speech, that does not impact your ability to remain neutral,” said Mr. Gonidakis, who is a lawyer.

Susan Martyn, a University of Toledo College of Law professor, said that if Justice Kennedy didn’t speak about the case then it doesn’t appear she did anything ethically wrong.

“I guess the issue here is whether an association with a group that has a definite viewpoint on the matter, she is putting herself in a position where her impartiality might be in question,” she said.

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Exhibit 5 and 6:

Columbus Dispatch, March 25, 2017

<http://www.dispatch.com/opinion/20170325/editorial-ohio-justice-shouldnt-hear-abortion-case>

Editorial: Ohio justice shouldn't hear abortion case

Ohio Supreme Court Justice Sharon L. Kennedy should recuse herself from a case pending before the court — Capital Care Network of Toledo vs. The Ohio Department of Health.

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 prejudice.”

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.

On March 15, the court agreed to hear the health department’s appeal of last year’s decision by Ohio’s 6th District Court of Appeals blocking the state from closing Capital Care, which runs the only abortion clinic in northwest Ohio.

Since September 2013, Ohio has required ambulatory surgery centers to have an agreement with “a local hospital” for the transfer of patients in the event of medical complications or emergencies.

The same law, which had been tucked into the state budget bill, forbids Ohio’s public hospitals from having a transfer agreement with any ambulatory surgery center that performs abortions.

Capital Care had a transfer agreement with the University of Toledo Medical Center, but the new Ohio law prohibits the university from renewing it. So, Capital Care secured an agreement with the University of Michigan Health System in Ann Arbor, Mich. — 52 miles away.

The health department refused to recognize that agreement, saying that the Ann Arbor hospital is not local.

In a 3-0 decision, the appeals court found the Ohio law places an undue burden in the path of a woman seeking to exercise a constitutionally protected liberty. The court also found, unsurprisingly, that the provision violated the Ohio Constitution's single-subject rule.

On March 17, two days after the Ohio Supreme Court agreed to review the appeals court ruling, Kennedy delivered the keynote address at an annual fund-raiser for the Greater Toledo Right to Life organization.

In her 2012 and 2014 judicial campaigns, Kennedy touted 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.

Kennedy, no doubt, believes that she can be impartial in the Capital Care case. But there is no doubt that her ability to be impartial "might reasonably be questioned."

Kennedy and her fellow justices — all judges, for that matter — should take note and seek to avoid the problems Kennedy has created for herself and the judiciary by actions that generate perceptions of impartiality.

Judicial disqualification is a sensitive and evolving discipline. "Judges often remain reluctant to embrace the spirit of these rules," says Charles G. Geyh, a law professor at Indiana University and a specialist on judicial conduct.

Geyh has written of "the disqualification paradox," in which a judge "is being asked to assess whether she harbors a real or perceived bias that she has sworn to avoid."

In 2009 congressional testimony, Geyh said, "The problem inherent in judicial disqualification is that judges who are deeply committed to the appearance and reality of impartial justice are called upon to acknowledge, in the context of specific cases, that despite their best efforts to preserve their impartiality, they are either partial or appear to be so."

Kennedy should acknowledge the obvious and step aside.