

December 2, 2003

BY HAND DELIVERY

The Honorable George V. Voinovich, Chairman
The Honorable Harry Reid, Vice Chairman
The Honorable Daniel Akaka
The Honorable Blanche Lincoln
The Honorable Pat Roberts
The Honorable Craig Thomas
United States Senate Select Committee on Ethics
220 Hart Senate Office Building
Washington, DC 20510

Re: Ethics Complaint Against Senator Edward M. Kennedy of Massachusetts

Dear Senators:

Judicial Watch, Inc. (hereinafter “Judicial Watch”) is a nonprofit, nonpartisan public interest group that investigates and prosecutes government corruption. Judicial Watch, in the interests of the American public, hereby files this formal complaint, under the provisions of the Senate Ethics Manual, Appendix C (Rules of Procedure, Senate Ethics Committee), Part II (Supplementary Procedural Rules), Rule 2 (Procedures for Complaints, Allegations or Information), against Senator Edward M. Kennedy of Massachusetts for improper conduct reflecting upon the U.S. Senate and the general principles of public service (See Senate Ethics Manual, Appendix E).

According to press reports citing an April 17, 2002 memorandum, Senator Kennedy and members of his staff, acting as Senator Kennedy’s agents, improperly and unlawfully developed and engaged in a scheme to obstruct the confirmation of Tennessee Judge Julia S. Gibbons to the Sixth U.S. Circuit Court of Appeals.¹ Senator Kennedy and his agents deliberately stalled the confirmation of Judge Gibbons in order to improperly influence the outcome of the Sixth Circuit affirmative action decisions dealing with the University of Michigan and its law school. The April 17, 2002 memorandum, reportedly prepared by Senator Kennedy’s agents, specifically describes the ideological and political advantages in furtherance of Senator Kennedy’s scheme. Had Judge Gibbons been confirmed to the appellate court before the case was decided, she would have been able, under Sixth Circuit rules, to review the case and vote on it. Rather than allow the

¹ Charles Hurt, “Memos of Special Interest on Hill,” *Washington Times*, November 15, 2003.

United States Senate Select Committee on Ethics

December 2, 2003

Page 2 of 3

confirmation process to continue in the regular course, Senator Kennedy and his agents deliberately manipulated both the judicial confirmation and legal processes to achieve his partisan political goal. Senator Kennedy's abuse of his office to delay the confirmation hearing serves as ratification of the contents of the April 17, 2002 memorandum to improperly affect a judicial proceeding. Senator Kennedy and his agents must be investigated concerning this improper conduct.

Indeed, it was only on July 29, 2002, nearly two months after the Sixth Circuit decided in a 5-4 decision to uphold the University of Michigan affirmative action program, Judge Gibbons was confirmed. Referring to the April 17, 2002, Kennedy memorandum and the timing of Judge Gibbons' eventual confirmation, Judiciary Committee Chairman Senator Orrin Hatch stated, "It appears that some have attempted to put their thumbs on the scales of justice."²

Judicial Watch successfully brought a judicial complaint against former Sixth Circuit Chief Justice Boyce F. Martin for similar misconduct in manipulating the make-up of the appeals court panel that heard the University of Michigan case. In a complaint filed January 30, 2002, Judicial Watch alleged, based in part on dissenting opinions from Chief Judge Martin's colleagues, that the chief judge improperly manipulated court processes to achieve outcomes he desired.

In the University of Michigan affirmative action case (*Grutter v. James*, 288 F.3d 732 (6th Cir. 2002)), Judicial Watch alleged that Chief Judge Martin manipulated court processes and clearly established Sixth Circuit procedures in order to affect the outcome of the case (which upheld the University of Michigan Law School's race-based admission policies). Speaking for the Sixth Circuit on May 28, 2003, Acting Chief Judge Alice M. Batchelder had found that Chief Judge Martin engaged in misconduct when he manipulated court processes which resulted in two conservative and presumably anti-affirmative action judges not being able to be part of the *en banc* panel that considered the case. [See U.S. Court of Appeals for the Sixth Circuit, Memorandum and Order of May 28, 2003 (J., Batchelder) (Attached)]. The Court ruled 5-4 in favor of the affirmative action policies, and it is clear the outcome would have been different if not for the chief judge keeping two more conservative votes off the case. Chief Judge Martin also was found to have violated Sixth Circuit rules when he inserted himself onto a three-judge appellate panel hearing the case. The panel was supposed to have been drawn randomly.

Judge Martin's unlawful manipulation of the University of Michigan case appears to dovetail with Senator Kennedy's illicit scheme to bar Judge Gibson from fulfilling her duty.³ Senator Kennedy and his agents may have been working in concert with Judge Martin. This should also be investigated by the Committee.

² Charles Hurt, "Special Interest Control Cited," *Washington Times*, November 19, 2003.

³ Charles Hurt, "'The Case Was Fixed'," *Washington Times*, November 18, 2003.

