

**Fw: Judicial Watch Files Suit, Challenges Hillary State Department Appointment**

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**From:** Mills, Cheryl D MillsCD@state.gov

RELEASE IN  
PART B5, B6

**To:** hdr22@clintonemail.com

**Subject:** Fw: Judicial Watch Files Suit, Challenges Hillary State Department Appointment

Fyi - tps below; justice will defend this suit.

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From: Thessin, James H  
To: Mills, Cheryl D  
Cc: Conklin, Maegan L; Sullivan, Jacob J; Townley, Stephen G  
Sent: Thu Jan 29 18:17:17 2009  
Subject: Judicial Watch Files Suit, Challenges Hillary State Department Appointment

Cheryl,  
For comment. Both Beth Nolan and Dan Koffsky at OLC have cleared the answer. I then added the background and Dan has cleared it in substance.

Jim  
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Question: Do you have any comment on the lawsuit filed by Judicial Watch challenging Secretary Clinton's appointment as Secretary of State?

Answer:

B6

Background:

B5

B5

Jim  
U.S. Department of State  
Deputy Legal Adviser  
Rm. 6421 Main State Bldg.  
Washington, DC 20520-6421  
202-647-8460

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From: Beth Nolan [mailto:Sent: Thursday, January 29, 2009 6:06 PM  
To: Thessin, James H  
Subject: Re: FW: JW Files Suit, Challenges Hillary State Department Appointment

B6

Think the comment is good. Not unexpected.

On Thu, Jan 29, 2009 at 3:32 PM, Thessin, James H > wrote:

Would welcome your comments.

Question: Do you have any comment on the lawsuit filed by Judicial Watch challenging Secretary Clinton's appointment as Secretary of State?

Answer:

B5

Jim

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Deputy Legal Adviser  
Rm. 6421 Main State Bldg.  
Washington, DC 20520-6421  
202-647-8460

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From: Conklin, Maegan L  
Sent: Thursday, January 29, 2009 2:32 PM  
To: Legal-EMP-DL; Thessin, James H  
Cc: Donoghue, Joan E  
Subject: FW: JW Files Suit, Challenges Hillary State Department Appointment

Please see request for press guidance on the lawsuit filed by Judicial Watch (on behalf of a current foreign service officer) challenging Clinton's appointment as Secretary of State. Will it be possible to get draft guidance to PA by COB?

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From: Yehl, Ashley C (PACE) [mailto:YehIAC2@state.gov] ]  
Sent: Thursday, January 29, 2009 2:20 PM  
To: Conklin, Maegan L; Prosser, Sarah E; Greenberg, Brenda L  
Subject: FW: JW Files Suit, Challenges Hillary State Department Appointment

Hi Meagan, Sarah, and Brenda

We received the below story from our AP reporter Matt Lee and Robert is requesting guidance on it. When you have a draft, would you mind sending it to us?

Thanks!

Ashley

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From: Jill Farrell [mailto:  
Sent: Thursday, January 29, 2009 1:44 PM  
To: jfarrell  
Subject: JW Files Suit, Challenges Hillary State Department Appointment  
FOR IMMEDIATE RELEASE  
January 29, 2009  
Contact: Jill Farrell (202) 646-5172 ext 305

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B6

Judicial Watch Files Lawsuit Challenging  
Hillary Clinton Appointment on  
Behalf of State Department Foreign Service Officer

Hillary Clinton Constitutionally Ineligible to Serve as Secretary of State

Washington, DC -- Judicial Watch, the public interest group that investigates and prosecutes government corruption, announced today that it has filed a lawsuit against newly sworn-in Secretary of State Hillary Rodham Clinton on behalf of U.S. Foreign Service Officer and State Department employee David C. Rodearmel, (Rodearmel v. Clinton, et al., (D. District of Columbia)). The lawsuit maintains that Mrs. Clinton is constitutionally ineligible to serve as Secretary of State and that Mr. Rodearmel cannot be forced to serve under the former U.S. Senator, as it would violate the oath he took as a Foreign Service Officer in 1991 to "support and defend" and "bear true faith and allegiance" to the Constitution of the United States.

Under the "Emoluments" or "Ineligibility" clause of the U.S. Constitution, no member of Congress can be appointed to a civilian position within the U.S. government if the "emoluments" of the position, such as the salary or benefits paid to whoever occupies the office, increased during the term for which the Senator or Representative was elected.

Specifically, article I, section 6 of the U.S. Constitution provides, "No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time." The text of the provision is an absolute prohibition and does not allow for any exceptions.

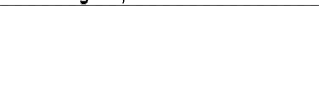
According to Judicial Watch's lawsuit, the "emoluments" of the office of U.S. Secretary of State increased three times during Mrs. Clinton's most recent U.S. Senate term. That term, which began on January 4, 2007, does not expire until January 2013, regardless of Mrs. Clinton's recent resignation. The lawsuit notes that Congress attempted to evade this clear constitutional prohibition with a so-called "Saxbe fix" last month, reducing the Secretary of State's salary to the level in effect on January 1, 2007. This maneuver, first used in the Taft Administration, has been more frequently used in recent years by both parties, allowing notably Republican Senator William Saxbe to become U.S. Attorney General in 1973 and Democratic Senator Lloyd Bentsen to become Treasury Secretary in 1993. A similar "fix" has been enacted for Senator Ken Salazar to join the Obama Cabinet as Secretary of the Interior.

Judicial Watch's lawsuit, however, points out that the legislation "does not and cannot change the historical fact that the 'compensation and other emoluments' of the office of the U.S. Secretary of State increased during Defendant Clinton's tenure in the U.S. Senate . . . ." The U.S. District Court for the District of Columbia is required to give expedited consideration to the lawsuit.

"This historic legal challenge should remind politicians of both parties that the U.S. Constitution is not to be trifled with," said Judicial Watch President Tom Fitton. "Mrs. Clinton is constitutionally ineligible to serve as the U.S. Secretary of State until at least 2013, when her second term in the U.S. Senate expires. We hope the courts will put a stop to these end runs around the Constitution and affirm the rule of law."

To read a copy of the lawsuit against Hillary Clinton, visit [www.judiciwatch.org](http://www.judiciwatch.org) .  
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Washington, DC 20024



Director Bios: <http://www.judicialwatch.org/dirbios.shtml>

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