

Judge won't release drafts of Hillary Clinton Whitewater indictment

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A federal judge has rejected a conservative group's lawsuit demanding the release of drafts of a criminal indictment of Hillary Clinton prosecutors prepared, but never issued, during the Whitewater investigation in the 1990s.

U.S. District Court Judge Reggie Walton ruled Tuesday that Clinton's "substantial privacy interest" outweighed any public interest in disclosure and that the material was protected from disclosure by a court rule enforcing grand jury secrecy.

"The fact that information about the independent counsel's investigation and potential indictment of Mrs. Clinton is readily available to the public does not extinguish Mrs. Clinton's privacy interest," Walton wrote. "Although an individual's interests in privacy fade when the information involved already appears on the public record'...'the fact that an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of [the requested] information,'" the judge added, quoting earlier cases.

The group [suing for the records](#) under the Freedom of Information Act, Judicial Watch, argued that public interest in the draft indictments was magnified by Clinton's presidential bid.

Walton's [30-page opinion](#) said Clinton's public role "heightened" interest in how investigators treated her, but he said she was a private citizen at the time of the Whitewater real estate investment that ultimately led to the independent counsel probe.

"While Mrs. Clinton was first lady of the United States at the time of the investigation, she was neither part of a government agency nor a government official when the events that were the subject of the independent counsel's investigation occurred, which led to the drafting of the proposed indictments," the judge wrote. "Disclosure of the drafts of the proposed indictment would not shed light on any agency's performance of its statutory duties, but potentially shed light solely on the character of Mrs. Clinton, independent to her position as a public official, which is not the objective of the FOIA."

The judge, an appointee of President George W. Bush, also noted that the independent counsel's office shut down years ago. Walton called the office "a discrete and now defunct government agency that has not been in existence for nearly two decades." (It actually closed in 2004.)

Hillary Clinton's lawyers made no submission to the court about her privacy interests. A longtime attorney for the Clintons', David Kendall, declined to comment on the decision.

A spokesman for Judicial Watch, Chris Farrell, expressed disagreement with the judge's conclusions.

"It's difficult to imagine how a person running for the presidency enjoys a form of 'privacy' concerning their near-indictment on criminal charges that somehow supersedes the public's right to know," Farrell said in a statement. "Judicial Watch will continue to fight to make the facts public."

The existence of the draft indictments was confirmed in 1999 by Deputy Independent Counsel Hickman Ewing at a criminal contempt trial in Arkansas for Susan McDougal, the wife of a former business partner of Clinton and her husband, President Bill Clinton.

The draft indictments have never been publicly disclosed, but Ewing said he was spurred to draft them because he doubted the veracity of then-first lady Hillary Clinton's statements in interviews in 1995 and her testimony before a grand jury in 1996. Ewing said some of Clinton's statements about her law firm's work for the failed Madison Guaranty Savings & Loan were not consistent with those of others at the firm.

The National Archives, which now holds the independent counsel records, has released some files that it said do not implicate grand jury information. In one memo that was made public, a prosecutor put Hillary Clinton's chance of being convicted by a jury at 10 percent.

Prosecutor Paul Rosenzweig said at the time there was a 2 percent chance a judge would toss the case out. His memo continued: "18 percent = Acquittal; 70 percent = Hung Jury; 10 percent = Conviction."

<http://www.politico.com/story/2016/10/hillary-clinton-whitewater-indictment-drafts-229093>