



AMERICAN COUNCIL OF THE BLIND

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Charles Crawford
 Executive Director

May 22, 2001

Senator Orrin Hatch, Chairman
 Senate Committee on the Judiciary
 SD-224
 Dirksen Senate Office Building
 Washington, DC 20510-6275

Dear Senator Hatch,

I am writing this letter on behalf of the American Council of the Blind, an organization with some twenty-five thousand members nationwide, to express our opposition to the nomination of Jeffrey Sutton to the United States Court of Appeals for the 6th Circuit. We are disturbed by this nomination because of the degree of enthusiasm Mr. Sutton has demonstrated for legal arguments challenging the Constitutionality of the Americans with Disabilities Act. His arguments in cases such as Board of Trustees of the University of Alabama, v. Patricia Garrett, demonstrate a patent disregard for the civil rights of Americans with disabilities and an unwillingness to recognize the authority of Congress to enact laws that protect those rights.

Of particular concern to us, are the following arguments successfully made by Mr. Sutton in the above-mentioned Garrett case. First, Mr. Sutton alleges in his brief for the petitioners that only a "rational basis" standard of review should be applied to instances of alleged disability discrimination perpetrated by entities of state government under the Fourteenth Amendment. This position appears to be based upon an assumption that the class Congress intended to protect when it enacted the ADA was an artificially created one, and that the evidence of discrimination which led to the enactment of this landmark civil rights act was exaggerated. We believe that both of these assumptions are inaccurate. In fact, they are contradicted by reams of evidence gathered by Congress prior to enactment of the ADA, and submitted to the courts considering the Garrett case. Further, to adopt the position taken by Mr. Sutton would place people with disabilities in a position of second-class citizenship, since the degree of scrutiny the courts give instances of discrimination against other minority groups under the Fourteenth Amendment is much more stringent. For Mr. Sutton to openly contend that people with disabilities deserve less protection under the provisions of the Fourteenth Amendment than other minority groups in this country represents a most unfortunate misinterpretation of the Constitution, which we find unacceptable for an officer of the U.S. Court of Appeals.

Mr. Sutton has criticized the ADA because it allegedly encourages individuals to litigate claims, which result in exorbitant compensation of lawyers, while individuals with disabilities receive little or no remuneration in redress of their grievances. We question where Mr. Sutton thinks people with disabilities, many of whom are living on fixed incomes with little or no discretionary

funds, will be able to obtain legal assistance in pursuing legitimate cases of disability-based discrimination if they are unable to pay the attorneys who help them. To deny courts the option of awarding attorney fees in ADA cases will effectively shut a majority of Americans with disabilities out of the legal process at both state and federal levels. If the legal fees awarded in ADA cases are too high, that, we contend, is the fault of Mr. Sutton's profession, and not the ADA. It is the responsibility of the Bar to remedy their own conduct, and not at the expense of people with disabilities.

We believe that this nominee's insensitivity toward people with disabilities and calloused attitude toward their civil rights is inconsistent with President Bush's stated commitment to continued enforcement of the ADA. Therefore, we urge the members of the Senate Judiciary Committee to defeat the nomination of Jeffrey Sutton to the U.S. Court of Appeals.

Respectfully,



Melanie Brunson, Director of Advocacy and Governmental Affairs

CC: Senator Patrick Leahy, Gian-Carlo Pirelli, Associate Director, White House Office of Public Liaison