

CENTER FOR CIVIL JUSTICE

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June 5, 2001

Honorable Patrick Leahy
United States Senator
433 Russell Senate Office Building
Washington, DC 20510

Re: Opposition to the Nomination of Jeffrey S. Sutton to the Court of Appeals for
the Sixth Circuit

Dear Senator Leahy:

I write on behalf of the Center for Civil Justice and its clients to express out opposition to the nomination of Jeffrey S. Sutton to sit on the Sixth Circuit Court of Appeals.

The Center for Civil Justice is a non-profit law firm serving low income clients in a 10 county region of eastern Michigan. Our clients include:

- The elderly and persons with physical or mental disabilities who rely on governmental health insurance programs like Medicaid and Medicare, as well as on cash assistance paid under the Supplemental Security Income (SSI) program and the SSI state supplement;
- Low income working families who depend on employment supports including the child day care subsidies funded by the Child Care and Development Fund (CCDF) and the Temporary Assistance to Needy Families (TANF), Food Stamps, Transitional Medicaid health insurance, and transportation assistance funded under TANF and other federal transportation programs that support state and local transportation infrastructures and systems.
- Student parents who are pursuing education as a means to advance beyond their low wage, entry level jobs and to escape poverty, and whose success depends on federal financial aid and other subsidies for adult and higher education in the states. These parents also depend on the availability of supports such as work study, TANF-funded cash assistance, CCDF- and TANF-funded child day care subsidies, Food Stamps, and low income family Medicaid health insurance for themselves and their children.
- Families, the elderly, and persons with disabilities whose ability to live in safe, suitable housing depends on the availability of subsidized rental housing or homeownership programs created by the federal government.

All of these clients depend on the so-called "safety net" of federally-created and federally-funded programs that are administered in Michigan by a variety of state agencies.

Much our legal work involves advocacy to improve state policies and practices in administering government benefit programs, and to enforce the federal laws that Congress

enacted to create and control these programs. It is in connection with the second part of our work – the enforcement of federal laws – that Mr. Sutton's nomination poses a significant danger to our clients – and indeed to all citizens who benefit from the many programs that are created and funded by the federal government but are administered in part by state agencies and officials.

While the positions that an attorney advances on behalf of a client do not always reflect the attorney's personal opinion, it is our understanding that Mr. Sutton was selected by the judge presiding in the recent Westside Mothers v Haveman case to file a brief advocating for the elimination of a citizen's right to enforce laws passed by Congress under the Spending Clause, precisely because of Mr. Sutton's personal opinions on this issue. Indeed, it is our understanding that Mr. Sutton's *amicus* brief in the Westside Mothers case expresses Mr. Sutton's personal views on these very significant issues – a view which is at odds with well-established Supreme Court precedent and which allows state agencies and officials to ignore the expressed will of Congress and violate the rights of individual citizens with impunity.

In short, Mr. Sutton is an advocate for the elimination of a citizen's right to enforce federal laws that Congress enacted for the purpose of aiding and protecting those citizens, whenever the laws to be enforced were passed pursuant to Congress's spending power. Indeed, in Mr. Sutton's view, spending clause legislation passed by Congress is not law and does not create rights that citizens should be permitted to enforce in federal court. Mr. Sutton's position is based on 19th century jurisprudence and ignores the significant body of Supreme Court case law that has developed since that time. Under Mr. Sutton's analysis, the only remedy for a state's violation of the limits set by Congress in Spending Clause legislation is the federal government's withholding of all federal funding for the program. This illusory "remedy," would, of course, be unworkable and counterproductive, as it would merely punish the citizens who Congress intended to protect and assist by creating the program in the first place.

It seems clear that if confirmed, Mr. Sutton would use his position as a Circuit Judge to advance his theories of Constitutional law, and to eliminate the rights of individuals to be protected from arbitrary and unlawful conduct by state officials and agencies. State officials who disagree with Congressional limits on the operation of federally-funded programs would have virtual *carte blanche* to simply ignore Congressional intent, with no fear of federal court enforcement.

Because low income individuals depend heavily on social welfare programs that are created and funded by Congress, Mr. Sutton poses a particular danger to our clients. To be sure, however, his views would affect middle- and upper-income citizens as well, since according to Mr. Sutton's theories, they too would no longer have a meaningful way to enforce the provisions and protections enacted by Congress if state officials were to disregard the federal legislation that governs administration of federally funded, but state-administered education, environmental, housing, transportation, and other public works programs.

Accordingly, we urge you to carefully question Mr. Sutton when he appears before the Judiciary Committee and to vote against his nomination to the Court of Appeals for the Sixth Circuit.

Please do not hesitate to contact our office should you have any questions concerning our position on this matter.

Sincerely,

CENTER FOR CIVIL JUSTICE


Jacqueline Doig
Attorney at Law