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Senator Patrick Leahy
 Fax 202-224-3479

Re: Nominees for Sixth Circuit Court of Appeals

Dear Senator Leahy:

As a citizen of Ohio and an attorney who practices in the state and federal courts, primarily in employment law, I urge you to oppose the confirmation of Deborah Cook and Jeffrey S. Sutton for the Sixth Circuit Court of Appeals.

I have had particularly close opportunities to observe Deborah Cook, who hails from Akron, and served on the local court of appeals before she was elected to the Ohio Supreme Court.

Although **Justice Deborah Cook** couches her decisions in the form of judicious rationality, she has shown a consistent determination to mold the law to serve corporate interests at the expense of ordinary people.

Justice Cook's record shows that she is insensitive to bigotry. Cook insisted that even overt racist, sexist and ageist statements are irrelevant in a discrimination case simply because the target of discrimination was not personally named. *Byrnes v. LCI Communications Holdings Co.* (1996). She has never voted to unconditionally affirm a plaintiff's civil rights verdict. Even where evidence of discrimination is abundant, Cook consistently votes against plaintiffs' civil rights verdicts. For example, *Gliner v. Saint Gobain Norton Industrial Ceramics Corp.* (2000). In an astounding decision, Justice Cook ruled that medical schools could refuse to admit blind applicants, ignoring testimony from a successful blind physician about readily available accommodations. *Ohio Civil Rights Comm'n v. Case Western Reserve University* (1996).

Justice Cook has refused to protect the safety of workers, and has sought to minimize protection for whistleblowers. She has denied remedies to workers who suffered catastrophic injuries, and voted (in dissent) to uphold legislation which permitted employers to put their employees in situations where it is substantially certain that employees would suffer serious injuries or death. *Johnson v. BP Chemicals* (1999). Justice Cook has consistently written opinions which would limit remedies for employees who try to prevent dangerous or illegal practices by employers. *Kulch v. Structural Fibers, Inc.* (1997). She has condoned employer deceit. Unlike her six fellow justices, Cook voted to dismiss an action filed against an employer for concealing and destroying evidence and giving untruthful testimony. *Davis v. Wal-Mart Stores, Inc.* (2001). (Notably, 6th Circuit nominee Jeffrey Sutton represented the employer in this case.) Cook wanted to dismiss the case of an employee with a fatal lung disease caused by beryllium, based on late filing, even though the delay in filing was caused by the employer's lying about the presence of beryllium in the workplace. *Norgard v. Brush Wellman, Inc.* (2002). (Sutton represented this employer as well.)

Jeffrey S. Sutton has consistently advocated to limit the protections for working people. As noted above, he urged the Ohio Supreme Court to reward employers who deceive workers about dangerous chemicals. *Davis v. Wal-Mart Stores, Inc.* (2001); *Norgard v. Brush Wellman, Inc.* (2002). He has attacked the Americans

with Disabilities Act, arguing that its protections are not needed to remedy discrimination by states against people with disabilities. *Board of Trustees of the University of Alabama v. Garrett* (2001).

Sutton has fought to limit protections against discrimination. Sutton successfully argued that disparate impact regulations promulgated under Title VI of the Civil Rights Act of 1964 did not contain a private right of action for victims of race discrimination. *Alexander v. Sandoval* (2001). He has argued that states should not be covered by the ADEA. *Kimel v. Florida Board of Regents* (2000).

Sutton argued to ignore precedent in order to restrict the rights of Medicaid recipients. Sutton argued that Congress cannot authorize individuals to sue states to enforce their rights, even in connection with federal funding of state programs. According to Sutton, the Medicaid law and other Spending Clause laws, such as the Rehabilitation Act and the Individuals with Disabilities Education Act, are not supreme federal law. This argument runs counter to over sixty-five years of Spending Clause jurisprudence. *Westside Mothers v. Haveman* (2001).

He argued to allow states to institutionalize people with disabilities. Sutton unsuccessfully argued that states have no duty under the ADA to provide services for people with disabilities in integrated settings, and claimed that keeping people with disabilities in institutions was not a form of discrimination. *Olmstead v. L.C.* (1999).

Nor are these simply the arguments of a skilled advocate. Jeffrey Sutton is an active member of the conservative Federalist Society. His writings indicate that his positions as an attorney in court correspond to his personal beliefs.

Judges should be fair, impartial and sensitive and enforce the letter and spirit of our laws. These two nominees lack these qualities. I urge you to oppose these nominations, to ensure that fair judges are appointed to the federal bench!

Very truly,

Nancy Grim

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