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July 31, 2001

The Honorable Thomas Daschle
Majority Leader
United States Senate
The Capitol, S-230
Washington, D.C. 20510

The Honorable Trent Lott
Senate Minority Leader
United States Senate
The Capitol, S-221
Washington, D.C. 20510

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Orrin Hatch
Ranking Member
Committee on the Judiciary
United States Senate
104 Hart Senate Office Building
Washington, D.C. 20510

Re Nomination of Jeffrey Sutton to the
United States Court of Appeals for the Sixth Circuit

Dear Senators

We, the undersigned individual state Attorneys General, are writing to urge your prompt and affirmative vote on confirmation of the nomination of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit.

Mr. Sutton is an award-winning, highly-qualified attorney. Jeff Sutton's intelligence and qualifications are unquestioned, with a great deal of experience in commercial, constitutional and appellate litigation. He has argued nine cases in the United States Supreme Court, including *Hohn v. United States*, in which the Court invited Mr. Sutton's participation, and *Becker v. Montgomery*, in which he represented a prisoner's interests *pro bono*. He has argued twelve cases in the Ohio Supreme Court and seven cases in the federal courts of appeal. And, as the former Ohio State Solicitor, he has also handled countless cases in the state and federal courts. His career has been distinguished, and he has displayed a rare sense of principled fairness throughout it.

Jeff Sutton graduated first in his law school class, and clerked for two United States Supreme Court justices. It deserves note that Mr. Sutton has represented a wide range of clients. For example, he represented Cheryl Fischer, a blind woman, who claimed that Case Western University Medical School discriminated against her on basis of disability in denying her admission to medical school. He also is a board member of the Equal Justice Foundation, which provides legal representation to the indigent and has filed several class actions on behalf of the disabled. Beyond this, he has filed pro bono amicus briefs on behalf of the NAACP, the Anti-Defamation League and the Center for the Prevention of Handgun Violence.

Unfortunately, Mr. Sutton's exemplary record is being distorted by some critics, and as state Attorneys General, we are particularly concerned when we see a lawyer being attacked not for positions he advocated as a private individual, but for positions he argued as a legal advocate for State government. For example, some critics have claimed that Mr. Sutton is against the Americans with Disabilities Act because he argued that one provisions of the law overstepped States' rights (in the case of *Univ. of Alabama v. Garrett*). We do not wish here to debate the merits of that position; although we note that the Supreme Court agreed with that position. The important point here at issue is that Mr. Sutton argued that case as *a lawyer representing his client*. He was not advocating his personal views; rather, he was working to represent a public-sector client.

This distinction, between personal policy preferences and legal advocacy, is a crucial one, and we Attorneys General have a unique perspective on the importance of that distinction. We are legal advocates, sworn to uphold the interests of our clients, and while we also serve as policy advocates for our States, we often must adopt legal positions that do not match our personal beliefs.

As you know, all attorneys have an ethical duty to zealously represent their clients' interests within the bounds of the law, even where the lawyer may not personally share the client's views. This is especially true for public sector lawyers, because we are bound not only by the same ethical rules as all lawyers, but we are also bound by law to represent our legislatures, governors, and agencies. As Attorney General, each of us has worked to advocate legal positions that may not reflect our personal beliefs. Doing so may be difficult, but that is our job and our duty as lawyers and as public servants.

Just as we do this, so do the attorneys who work for us. They have often been faced with the challenge of espousing a position which might not match their own personal beliefs. While their abilities in representing their clients will surely be evaluated by the Senate whenever those government lawyers are nominated for federal judgeships, we urge you not to unnecessarily mistake their advocacy for personal belief. We all believe that everyone in America deserves legal representation no matter how unpopular his or her cause may seem. Lawyers will not be willing to take on such causes if they fear that their advocacy may later be used against them. The potential chilling effect could be enormous.

Indeed, as legislators, you have a great interest in seeing that government lawyers advocate the government's position and not their own. When Congress passes legislation, you have the right to expect that the United States Solicitor General and the entire Department of Justice will defend Congress's work. Individual federal lawyers cannot pick and choose whether to represent only the federal acts that they like. We expect the same of lawyers for the States.

We respectfully suggest that Mr. Sutton should not be criticized because he has been a vigorous and effective advocate. That has been his duty, and it is to his credit that he has discharged that duty well.

When you review Mr. Sutton s nomination, please look at his qualifications and his ability to understand and apply the law. Please do not assume that his past legal positions reflect his personal views. No lawyer would wish to be personally held to every position which, as an advocate, he or she was required to advance.

Sincerely,

Betty D. Montgomery
Ohio Attorney General

Attorney General Bill Pryor
Attorney General of Alabama

Attorney General M. Jane Brady
Attorney General of Delaware

Attorney General Robert A. Butterworth
Attorney General of Florida

Attorney General Earl Anzai
Attorney General of Hawaii

Attorney General Alan Lance
Attorney General of Idaho

Attorney General Steve Carter
Attorney General Indiana

Attorney General Carla J. Stovall
Attorney General of Kansas

Attorney General Richard P. Ieyoub
Attorney General of Louisiana

Attorney General J. Joseph Curran Jr.
Attorney General of Maryland

Attorney General Mike Moore
Attorney General of Mississippi

Attorney General Don Stenberg
Attorney General of Nebraska

Attorney General Frankie Sue Del Papa
Attorney General of Nevada

Attorney General Philip T. McLaughlin
Attorney General of New Hampshire

Attorney General Wayne Stenehjem
Attorney General of North Dakota

Attorney General Herbert Soll
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Attorney General W.A. Drew Edmondson
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Attorney General Hardy Myers
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Attorney General Mike Fisher
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Attorney General Mark Barnett
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Attorney General of the Virgin Islands

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