

January 17, 2003

THE HONORABLE SENATOR PATRICK LEAHY
FAX: (202) 224-3479

Dear Senator Leahy:

As an attorney who practices before the Federal Courts, I am writing to you to express my opposition to the nomination of Ohio Supreme Court Justice Deborah Cook and attorney Jeffrey S. Sutton for the U.S. Court of Appeals for the 6th Circuit. This court is currently one of the few balanced Courts of Appeals. I believe that it is critical for Judges to be fair, impartial and sensitive and to enforce the letter and spirit of our laws. From what I know about these two nominees they appear to lack these qualities.

Justice Cook's record shows that she is insensitive to bigotry. Justice 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. *Bymes v. LCI Communications Holdings Co.* (1996). Justice Justice Cook has to my knowledge never voted to unconditionally affirm a plaintiff's civil rights verdict. Even where evidence of discrimination is abundant, Justice Cook consistently votes against plaintiffs' civil rights verdicts. E.g., *Gliner v. Saint Gobain Norton Industrial Ceramics Corp.* (2000).

Justice Cook creates barriers for people with disabilities. 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 sought to minimize protection for whistleblowers. She 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).

Justice Cook has refused to protect the safety of workers. Justice Cook 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).

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Justice Cook incredibly has even condoned employer deceit. Unlike her six fellow justices, Justice Cook voted to dismiss an action filed against an employer for concealing and destroying evidence and giving untruthful testimony. (Notably, Jeffrey Sutton represented the employer in this case). *Davis v. Wal-Mart Stores, Inc.* (2001).

Justice 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 lying about the presence of beryllium in the workplace (Sutton represented this employer as well). *Norgard v. Brush Wellman, Inc.* (2002).

While I believe there are many other examples suffice it to say that the above ought to be sufficient to disqualify her for a life time appointment to the 6th Circuit.

While I am less familiar with Sutton I am aware that he has attacked the ADA, arguing that its protections are not needed to remedy discrimination by states against people with disabilities. Sutton argued before the U.S. Supreme Court that the 11th Amendment should restrict the rights of employees with disabilities to sue state government employers who discriminated. Sutton urged the Court to disregard evidence of discriminatory conduct by states against people with disabilities, which was compiled by Congress. *Board of Trustees of the University of Alabama v. Garrett* (2001). Sutton has also argued that states should not be covered by the ADEA. *Kimel v. Florida Board of Regents* (2000).

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).

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).

Sutton 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).

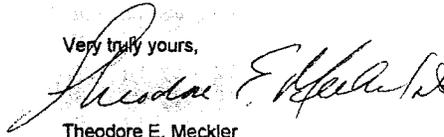
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Sutton is active in the Federalist Society and is an adamant advocate for state's rights and limited federal authority. Sutton worked as a law clerk for Justice Scalia. His writings indicate that his positions as an attorney in court correspond to his personal beliefs.

Neither of these nominees would make an appropriate Court of Appeals Judge. As you know these appointments are for life. I urge you to oppose these two (2) nominations.

Very truly yours,



Theodore E. Meckler

TEM/dp

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