



Attorney General
Betty D. Montgomery

January 7, 2003

U.S. Senator Patrick J. Leahy
Chairman, Senate Judiciary Committee
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510
Tel: (202) 224-4242

Dear Chairman Leahy:

Almost two years ago, numerous Democratic and Republican Attorneys General and I wrote a letter in support of Jeffrey Sutton's confirmation to the United States Sixth Circuit Court of Appeals. I continue to believe that Mr. Sutton would make an excellent addition to the Sixth Circuit, and hope that you will speedily confirm his nomination.

One issue that has come up during the consideration of his nomination is his work as an advocate in the area of disability-rights litigation. At the Attorney General for the State of Ohio over the last eight years, I have a first-hand perspective on this issue. When Mr. Sutton was serving as my State Solicitor from 1995 to 1998, a case came through my office involving a blind woman named Cheryl Fischer who had been denied admission to the Case Western University Medical School on account of her disability. As occasionally happens in government litigation, different state agencies took different stands on Ms. Fischer's case when it arrived at the Ohio Supreme Court. On the one hand, the Ohio Civil Rights Commission determined that the admissions decision of Case Western had violated Ms. Fischer's rights under Ohio's civil rights statutes. It therefore was my office's responsibility to defend that decision before our State's highest court. On the other hand, the state universities (and their medical schools) took the position that Case Western had not discriminated against Ms. Fischer on account of her disability. They therefore wanted my office to file a brief on their behalf in the Ohio Supreme Court.

As State Solicitor, Mr. Sutton was responsible for overseeing appellate litigation in my office. When the Fischer case arrived at the Ohio Supreme Court, he explained the views of the different state agencies on the case and the need to assign different lawyers in the office to argue these two very-different positions. He then specifically asked me if he could represent Ms. Fischer's side of the case while another lawyer in

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the office represented the state universities. It was clear that Jeff thought Cheryl Fischer had the better legal argument, that he believed in her position, and that he thought the State Solicitor should advocate that position before the Ohio Supreme Court. After I approved this recommendation, his advocacy in the case left no doubt in my mind to his commitment to her cause and to the findings of the Ohio Civil Rights Commission.

I trust the above information will help put Jeff Sutton's real views in the area of disability-rights litigation in the proper perspective.

As Ohio's Attorney General for the past eight years, I have had many opportunities to hire, evaluate and compare extremely capable attorneys. Jeff Sutton is easily in the top 1% of all such individuals. I strongly support his candidacy for a position on the United States Sixth Circuit Court of Appeals.

Thank you, in advance, for your consideration in this matter.

Sincerely,



Betty D. Montgomery
Attorney General of the State of Ohio

BDM:jmf

cc: The Honorable Senator Mike DeWine
The Honorable Senator George V. Voinovich