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January 14, 2003

United States Senate  
Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senators Hatch and Leahy:

On behalf of the New York State Independent Living Council (NYSILC), I am writing to strongly **OPPOSE** the nomination/confirmation of Jeffery Sutton to the Federal Court.

Mr. Sutton has been a chief proponent of 11th Amendment states rights that come at the direct sacrifice of 14th Amendment civil rights. As an American with a disability, I resent the reversal of my civil rights for the benefit of a privileged few. I truly question the confirmation of an individual who has directed such a premeditated pursuit of gutting the comprehensive civil rights that made our country unique.

This is not a new debate. The roots go back to the founding of our country. Over 600,000 Americans then died in a Civil War to secure a strong national government that would protect the equality of ALL citizens. Once the 14<sup>th</sup> Amendment was added in 1868, it took yet another century before our country put what was established in law into practice. People with disabilities fared even worse as a protected class. Far-reaching civil rights were not provided until 1990 with the passage of the Americans with Disabilities Act (ADA). Mr. Sutton has worked very hard to deny us of our rights. Even more ironic, President George W. Bush is nominating a man to the Court who has decimated a law that was a hallmark of his father's Presidency.

What impact has Mr. Sutton's actions had on real people? Since a person can no longer sue in Federal Court for damages, it is getting very hard to find legal representation in such cases. The vast majority of Americans do not have the cash to put a retainer down for a lawyer. Most people secured representation on a contingency basis. In addition, a national government that does not take an active role protecting the equality of its citizens will allow states to influence its "remedies." These are the same remedies that Mr. Sutton feels is more appropriate. Given the opportunity, states will deny, discriminate, and retaliate against anyone who dares to challenge them.

Here's an example of how Mr. Sutton's legacy has created dysfunction and a lack of accountability at the state level. A woman with a disability from Long Island waited years for affordable and accessible housing. She ended up winning a lottery and being the alternate for a newly constructed housing unit. She was offered the

unit when the original person declined. Unfortunately, the upstairs part of the dwelling wasn't accessible because the builder and all other parties involved refused to construct readily accessible housing as mandated by Federal law. The housing agency then made a rash judgment of what they would give her as a final offer for her reasonable accommodation. The woman argued that she needed an accessible unit. Instead of meeting her needs, the agency sold the dwelling to another person without a disability.

Feeling slighted, the woman started to investigate the situation on her own. All the parties involved had no policy of how to accommodate people with disabilities during a lottery process, nor a policy on enforcing the applicable Federal law. The law requires that at least 5% of their total units be fully accessible to people with physical disabilities and 2% accessible to people with sensory impairments. All the parties involved do not and can't even begin to verify how many of their units do meet such requirements, let alone a registry of how many people with disabilities occupy them. They are in violation of Federal law.

The woman has made several attempts to find legal representation. Despite periodic interest, she still does not have a lawyer to this day. She looked to HUD for guidance. Regional HUD staff has given her conflicting interpretations causing her to contact the national HUD headquarters for assistance. HUD has yet to resolve this matter.

She contacted the state agency involved and was promised a meeting and a physical inspection to verify compliance. Going against their original promise, they changed the context of the meeting from a physical inspection and wanted her to meet with the housing agency's attorneys. She told them that she wouldn't meet with their attorneys until she could obtain her own representation. They have since tried to dismiss their obligations to her because they said she declined their meeting even though she has a letter from the agency saying they were sorry for the misunderstanding and were willing to reschedule.

The woman then filed a complaint with the state's human rights office. After looking into the matter with the housing agency, the human rights office gave her a copy of the housing agencies response, prepared by their lawyers, which questioned her claim as a person with a disability! The human rights office wanted the woman to go through a rigorous process to document that she, in fact, had a disability. She immediately postponed the complaint out of fear of retaliation. So much for the State's impartiality!

As a result, Mr. Sutton's efforts have led to limited access to Federal Court, minimized access to legal representation, compromised bureaucratic remedies, unchecked state violation of Federal law, fear, and retaliation. As an American, he is certainly entitled to his opinion, but he should never be allowed to serve on the bench of a Federal Court.

Respectfully,



Brad Williams  
Executive Director

cc: Senator Charles Schumer  
Senator Hillary Clinton