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January 3, 2003

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

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

Re: Nomination of Jeffrey S. Sutton to the Sixth Circuit

Dear Senators Leahy and Hatch:

I write in support of confirmation of Jeffrey Sutton – perhaps from a different perspective than many of his supporters. My background is that of a liberal Democrat, former Executive Director of the American Civil Liberties Union of Ohio for seventeen years, then a member of the National Board of the ACLU, and currently a member of its National Advisory Council. I also clerked for a federal judge. As a partner in a four-lawyer firm, I engage in constitutional and civil rights litigation and have argued at all levels of the federal courts.

I have known Mr. Sutton for nearly eight years. He and I have litigated opposite each other twice, and we have co-counseled two cases. I am particularly concerned that some of my friends in the disability rights community have sought to brand him as hostile to their plight, for I know his devotion to civil rights and liberties for all people. While I do not regard him as a liberal and expect to take issue with some of his decisions if he is confirmed, I believe him to be a moderate conservative in the style and manner of the late Justice Lewis Powell for whom he clerked.

Two cases in which we were on opposing sides arose while he was State Solicitor. The first involved a constitutional challenge to the Ohio drunk driving law (the State prevailed). The second case was a constitutional challenge to a legislative act that attempted to preclude a state-court judge from drawing a pension after he retired and was then re-elected (my client, the judge prevailed). In both cases Jeff's work reflected his brilliance and creativity as a lawyer, and his relationship with opposing counsel was dignified and respectful.

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The cases that we have co-counseled were after his service as State Solicitor. In an ACLU case he volunteered as a cooperating attorney in a First Amendment challenge of the conviction of an individual who was jailed for a thought crime (that case is still in progress). In another case, I asked him to assume the role of lead counsel on behalf of the National Coalition of Students with Disabilities (he secured a declaratory judgment and preliminary injunction that required the Ohio Secretary of State to set up voter-registration-and-assistance locations at State colleges and universities as required by federal law).

Jeff's commitment to individual rights is not born of the nomination and confirmation process. Long before he was nominated by President Bush – indeed well before Bush was elected – I prompted him to serve as a fellow member of the Board of the Equal Justice Foundation, an Ohio-based nonprofit organization dedicated to class-action economic and civil rights litigation on behalf of the poor. And, while he was State Solicitor – also well before the election of Bush – he represented a blind woman seeking to gain admission to a medical school.

Jeff is an open-minded person, void of the rigidity that too often characterizes those who call themselves conservative. His commitment to individual rights, his civility as an opposing counsel, his sense of fairness, his devotion to civic responsibilities, and his keen and demonstrated intellect all reflect the best that is to be found in the legal profession.

Without qualification or reservation, I urge his speedy confirmation as a Judge of the United States Court of Appeals for the Sixth Circuit.

Sincerely,



Benson A. Wolman

cc: The Honorable Mike DeWine
The Honorable George Voinovich