

him to be the Secretary of Education. Do we want someone who is not?

Secretary Paige talks about preferring a school that has a strong sense of values; not that he is requiring or thinks all children should go to Christian schools. He never said that. He uses Christianity as an example of those values because that is his background, because he has made it very clear he believes the same could be said of other religions.

I agree with what the Secretary said, and I think that those who would attack him for talking about the state of American education are doing a tremendous disservice to our children.

Let's face it, this is part of a regular, organized attack on faith more than it is a complaint about Dr. Paige. It is close to requiring a religious test for public service, prohibited by our traditions in law. It is saying that your religion must be secular; people of faith need not apply. If you have any religious beliefs, keep them to yourself, do not let them guide you, for heaven's sake, in anything that you might do.

Unfortunately, there is a group in this country, small but very vocal, who are offended by any expression of faith in public life. I think we have drifted out of sync, we have drifted away from what we are about. I do not think it is healthy.

Religion is woven into the fabric of our great Nation. Faith has always guided our leaders. I think most Americans were taught, as I was taught, not to make fun of someone else's religion, to respect their faith. It did not have to be the same as yours. Ronald Reagan called America "a shining city on a hill."

We are a nation that believes so deeply in our values we confidently promote those values around the world.

Reagan understood the role of religion in fulfilling our mission. Here is what he believed about God in schools:

The Declaration of Independence mentions the Supreme Being no less than four times. "In God We Trust" is engraved on our coinage—

And I will note, on that wall right there.

The Supreme Court opens its proceedings with a religious invocation—

Hear ye, hear ye, hear ye. God bless this Honorable Court and save these United States.

And the Members of Congress open their sessions with a prayer.

We have a prayer every time this door opens.

I just happen to believe the schoolchildren of the United States are entitled to the same privileges as Supreme Court Justices and Congressmen.

I think we have gone too far. Thomas Jefferson, whom we know to be the architect of that great Virginia Statute for Religious Freedom, and who is considered to be a great bulwark of the separation of church and state, said:

I consider the doctrines of Jesus as delivered to contain the outlines of the sublimest system of morality that has ever been taught.

He would not make Secretary of State today if he were to say that. People can have different views. Public officials can express their own views. President Reagan said:

Without God there is no virtue because there is no prompting of the conscience; without God, there is a coarsening of the society; without God democracy will not and cannot long endure. If we ever forget that we are One Nation Under God, then we will be a Nation gone under.

If one wants to see a nation that has a virtueless government, all they have to do is look at Iraq for the last 25 years. Certainly, Saddam Hussein was not a religious person of any kind, Muslim or any other faith. To see such a nation gone under and to see a revival, one had to just turn on the television on Wednesday morning to see the exhilaration of the Iraqis dancing on Saddam Hussein's statue.

I thought about that poem: My name is Ozymandius, king of kings. Look on my face and beware, and now it has fallen in the desert and nobody has seen it in a thousand years.

For decades, these helpless citizens have lived under a government without, more or less, virtues or values. The only thing that was valued by the government was the power and privilege of the Saddam Hussein regime. Their own might was their God.

The Iraqi people, on the other hand, have been liberated by a group of nations, led by our Nation, a government that was motivated by values—liberty, justice, democracy, morality, fairness, equality. Those are the sorts of values I think Secretary Paige was talking about. Right and wrong. Right and wrong does not come from the self-interest of whatever dictator happens to be in power. Right and wrong comes from the Creator.

At our core, we are, and remain a people who believe that each life has sacredness, and that is why our military would not leave one life or not rest with one POW still in prison or even without a body recovered because we believe life is sacred. As the Declaration says, we are a people endowed by our Creator with certain inalienable rights. Thus, right and wrong for believers never changes. And millions of Americans, many of them Christians, Muslims, and Jews, take their guidance on questions of right and wrong out of their core faith in a creating God.

Before those on the secular left attack people for expressing their religious beliefs or their desires to instill values and moral and religious values in their children, I would urge them to take a step back and think about the millions of people of faith in this country. We strike the right balance in America, I believe. Religion is okay, we think. It is good. It is to be encouraged, not diminished, but we respect people of other faiths. We do not demean them.

People can come here from Muslim nations and live happily and safely, and if any of them are harmed we de-

fend them; we prosecute those who harm them. We will not accept that. It is our heritage.

The complaints on Secretary Paige should be turned down. It is time to reacquaint ourselves with the principles of our Founders. They got it right. Every person was free to be faithful or to be secular, to follow their own creed. Government should never bring force to bear, our Founders said, on the mind of man. Never establish a church by the government.

But the Constitution does provide free exercise. The Constitution simply says about religious faith: Congress—us—shall make no law respecting the establishment of religion or prohibiting the free exercise thereof.

Secretary Paige was not out stirring this issue up. He had to be asked repeatedly before he even got into the subject. It was not on his mind. He was asked and he gave his personal view. He said: I think. He did not say "everybody else did" or "You must believe." He said: I think we should have an appreciation for values, the kinds of values often associated with the Christian community.

What is wrong with that? Have we gone that far down the road to denying the right of our American citizens to freely exercise and comment on their faith? I hope not.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

NOMINATION OF JEFFREY SUTTON

Mr. HARKIN. Mr. President, we are wrapping up prior to going on a 2-week break from the Congress. We have the supplemental appropriations bill yet to do, so we are wrapping up this evening, late on Friday night. Congress will be gone for 2 weeks.

Something happens when we come back. Something very important and something very meaningful happens when we come back. I will talk about that for a few moments.

Mr. President, what is going to happen when we come back, there will be at some point soon after we get back from our break, a vote up or down on the Senate floor on whether or not the Senate will advise and consent to approving President Bush's nominee, Mr. Jeffrey Sutton, to be a judge on the Sixth Circuit Court of Appeals.

I will speak for a while tonight about Jeffrey Sutton, but when we come back I will have a lot more to say. I don't think too many people have focused on this. There has been a lot of talk about Mr. Estrada and now there is talk about Judge Owen from Texas but not too much has been said about Mr. Sutton. I will lay out the case and lay out for my fellow Senators and for the public at large what is at stake in this nomination.

First, for the record, Mr. Sutton is a 42-year-old lawyer, currently a partner at Jones, Day, Reavis and Pogue in the Columbus, OH, office. He is an adjunct

professor of law at Ohio State University College of Law. He served as State Solicitor of Ohio from 1995 to 1998. He is a former law clerk to Justice Powell and Justice Scalia and Justice Thomas Meskill of the Second Circuit Court of Appeals. He has been nominated by President Bush to be a member of the Sixth Circuit Court of Appeals.

At the outset, Jeffrey Sutton has a great résumé. He hails from Ohio State Law School, is a former solicitor for the State of Ohio, and he has argued cases before the U.S. Supreme Court. Quite frankly, he has won many of them. So he has a great résumé. Quite frankly, my arguments will not be about whether he is qualified. That is not the point.

I will state at the outset in terms of legal qualifications and background that Mr. Sutton is qualified to sit on a bench. However, I don't believe that is all we have to look at.

I had the opportunity to meet with Mr. Sutton for about an hour and a half in my office. He was kind enough to come to my office. We sat there and discussed an issue of great importance to me and to him. We had a great conversation. I found him to be personable. I found him to be highly intelligent, very bright. He is definitely an accomplished attorney. Frankly, I enjoyed my conversation with him for an hour and a half.

However, I take very seriously our responsibility to advise and consent on lifetime judicial nominees. These are not positions to rubberstamp or just to lightly say that simply because someone is qualified they should be on the court. I have done a careful review of Mr. Sutton's advocacy inside and outside the courtroom.

What I come to, I am not convinced Jeffrey Sutton would be able to put aside his own personal agenda and be a fair and balanced judge. Especially for me, I cannot support putting someone on a Federal circuit court who has worked, worked assiduously, worked intelligently, to undermine the Americans with Disabilities Act.

As many here know, my brother, Frank, now deceased, was deaf. Through his eyes and through his life, my family and I saw firsthand what discrimination against persons with disabilities looks like. It was not something abstract. It was real. It was personal. It was up close. I often said if I could ever be in a position to do something about the kind of discrimination that my brother and so many others had faced, I would do it. Through the generosity of the voters of Iowa, I was in that position. In both the House and later in the Senate, I spent my time working to develop legislation to bring out of the shadows of discrimination, of institutionalization, people with disabilities, bring them out of the shadows and bring into the sunshine of civil rights laws in this country.

The day before the Americans with Disabilities Act was signed by the first President Bush, the day before it was

signed, if you were a person of color in this country, say, you were an African American, and you went down the street and answered an ad for a job for which you were qualified, and you walked in there and your prospective employer looked at you and said, I'm not hiring Black people, get out of here. You could have walked out that door, walked down the street, and walked right into the courthouse because we passed a Civil Rights Act in 1964 that outlaws, bans that kind of discrimination, based upon race.

If, however, on that same day a person in a wheelchair, qualified for that job, had rolled that wheelchair down there and the prospective employer looked at you and said, Get out of here; I don't hire cripples, and you rolled that wheelchair down to the courthouse door, the doors were locked. They were open if you were a person of color and you had been discriminated against. But, if you were a person with a disability, the courthouse door was locked because there was no law that banned discrimination based upon disability.

The next day President Bush signed it into law and you, Mr. President, or anybody else who might have a disability, took their place alongside those who had been brought into our civil rights laws in America.

We did not pass that bill overnight. We didn't just all of a sudden decide we were going to pass a civil rights bill for people with disabilities, and pass it. We spent years. I am going to have more to say about this when we come back after the break, but we spent years on this, holding hearings and hearings, in forums all over the United States; a Presidential task force appointed by a Republican President, having hearings all over the United States. There were years of drafting, debating, trying to hone it down to make sure we had it right. With bipartisan support it passed overwhelmingly in the Senate. It passed overwhelmingly in the House of Representatives with bipartisan support.

I will never forget that grand day when President Bush signed that into law on the White House lawn. At that time it was the biggest gathering ever in White House history for the signing of legislation.

Justin Dart was there. Justin Dart was right there on the platform. Justin Dart, the hero of the disability rights movement in America, now also sadly deceased. Justin Dart sitting up there, and President Bush talking about Justin Dart leading this great movement to bring people with disabilities under our civil rights laws.

Here is what President Bush said that morning:

The Civil Rights Act of '64 took a bold step towards righting that wrong—the wrong of discrimination against people of color—but the stark fact remained that people with disabilities were still victim of segregation and discrimination, and this was intolerable. Today's legislation brings us closer to that day when no Americans will ever again be de-

prived of their basic guarantee of life, liberty, and the pursuit of happiness.

Justin Dart was there that day. Before he died, Justin Dart wrote this letter:

I feel certain that the great majority of 54 million Americans with disabilities, and millions more of their family members, join me in urging President Bush to reconsider his nomination of Jeffrey Sutton as a Federal judge.

I won't read the whole letter. I ask unanimous consent Justin Dart's letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

REMARKS BY JUSTIN DART, ADA WATCH PRESS CONFERENCE, MAY 19, 2001, WASHINGTON, DC

I feel certain that the great majority of fifty four million Americans with disabilities, and millions more their family members, join me in urging President Bush to reconsider his nomination of Jeffrey Sutton as federal judge.

The Americans with Disabilities Act is the world's first comprehensive civil rights law for people with disabilities. Barbara Bush has described it as the finest accomplishment of her husband's administration.

Abraham Lincoln led this nation to war and died to establish the authority of our federal government to protect the rights of our citizens no matter what the state of their residence.

It is very difficult to understand how President George W. Bush could send to the Federal Court a man who challenges the "across the board" constitutionality of a great civil rights law written in the tradition of Abraham Lincoln and signed by his father, George Bush Sr.

I am deeply concerned for the future of American democracy. I am deeply concerned for the civil rights not only of Americans with disabilities, but of all Americans. I am deeply concerned not only for the principle of federal civil rights, but also for the economic prosperity of our nation. As more and more Americans triumph over death to live with disabilities, it becomes absolutely imperative that they be empowered to get off of the welfare rolls and onto the tax rolls.

At the last count more than seventy percent of employable Americans with disabilities were unemployed. Millions more were underemployed. In 1990 President Bush Sr. estimated the resulting burden to the nation to be 200 billion dollars annually, and growing.

Finally I love the American Dream. I am passionately serious about the pledge: "one nation, under God, indivisible with liberty and justice for all."

Mr. President, you have pledged to support the ADA. You have pledged to support one nation with liberty and justice for all. You must send people to the court who support those pledges.

Mr. HARKIN. We in Congress met, these many years, overwhelming evidence that discrimination in this country against people with disabilities was rampant, unchecked, building up year after year. It was not just in the private sector but in the public sector. State governments and the Federal Government discriminated against people with disabilities. It was pervasive in our society. We took care, when we passed that bill, to make sure we had the findings and the constitutional

basis to pass muster in the United States Supreme Court.

The signing sealed the work of a monumental bipartisan effort that sought to right decades of wrong. It took the tireless work of Democrats and Republicans alike. As I said, it passed the Senate 91 to 6. The House passed it 402 to 20. Then-Attorney General Thornburgh was a strong supporter. The Chamber of Commerce was on our side, the business community, the States, President Bush, all stood together. Why did we all stand together on the ADA? Because it was the right thing to do. Justice demanded it.

July 26, 1990—President Bush said a lot of good things that day as he signed this bill. As I said, I will never forget it.

I was proud of this because it represented the hard work of a lot of people and it broke down these old barriers of exclusion and intolerance and injustice toward people with disabilities. Now after all the work we did, all the findings, all the hearings, all the documentation we compiled, all that President Bush said, Mr. Sutton—guess what he said. He said it wasn't needed. He said the ADA was not needed.

Why did he say it was not needed? Why, because the States were doing the job. This was a State responsibility and Congress did not have the findings that States had been discriminating. As I told Jeffrey Sutton when he sat in my office that day, I said, "How could you say that?" I said, "Did you read all the documentation? Did you read all the findings that we had? Twenty-five years of studies going clear back to 1965 and beyond; 1974. There were 17 formal hearings by congressional committees, markup by 5 separate committees. There were 63 public forums across the country by congressionally established task forces. There was oral and written testimony by the Attorney General of the United States, Governors, States' attorneys general and State legislators. There were over 300 examples of discrimination by State governments in that record.

Yet before the Supreme Court of the United States, Mr. Sutton said it wasn't needed. That is *Garrett v. Alabama*. I'll have more to say about Pat Garrett, too. But he said it just wasn't needed.

Regarding the Americans With Disabilities Act, I see them chipping away at a law that symbolizes the inclusion of all Americans in our society. For the past few years, Jeffrey Sutton has held the hammer and the chisel.

In my mind it is not about whether he is qualified to be a Federal judge, or whether he is a nice guy. As I said, I happen to have enjoyed my conversation with him. Frankly, I know who the six Senators were who voted against the ADA in the Senate. I hope to enjoy my conversations with them, too. I just disagreed with them and so did 91 other Senators disagree with them. But that doesn't mean the six who voted against it are bad people. I,

frankly, enjoy the friendship of those six people.

That is not the point. The point is whether or not someone should be on the circuit court who holds that same kind of opinion. His qualifications—to me, a judge's qualifications are half of the equation. In other words, I think they have to meet the test of are they qualified. I think the other half of our responsibility is to determine whether or not that person can be a fair and balanced judge who understands the role of Congress in correcting ancient wrongs and helping to make our society more fair and more just. Frankly, in his writings and in his statements, and even in my conversation with him in my office, Mr. Sutton seems to have a unique view of our role here that somehow when it comes to civil rights laws, especially the Americans with Disabilities Act, that we have a very narrow area in which we can operate; the rest must be left to the States.

As I said, you read his writings. I was in the Supreme Court. I sat there in the front row the day he argued the *Garrett* case, sat right next to Bob Dole. And when I heard him stand up and say the ADA was not needed, I said: Wait a minute. When I heard him talk about how we had not really established the record, that we had not really had the findings of State discrimination, I said: How could he possibly say that? Only someone who did not know what we did could ever say that.

And that is what I talked to him about in my office. How could he say such a thing, when we had all this? Well, he said, yes, OK, he appreciated that, but I never got to the bottom of it with him.

Anyway, his arguments before the Supreme Court articulated that States can do a better job of it than we can, and Congress did not find enough evidence. We found the evidence. It is there. It is in the record. It is compiled.

Mr. Sutton has said a lot of times: Well, I was only representing my client, and I am duty bound as a lawyer to do the best I can for my client. And he was representing the State of Alabama. Well, OK, I can accept that. But here is what Mr. Sutton said on National Public Radio on October 11, 2000. Now, a lawyer's responsibility to fully represent his or her client does not spill over into talking on National Public Radio. That is his personal opinion. And here is what he said:

Disability discrimination, in a constitutional sense, is really difficult to show.

That is what Mr. Sutton said on National Public Radio.

I am going to talk more about this when we come back after the break, about the extensive record that we found of constitutionally based discrimination against people with disabilities—discrimination that was pervasive in our society, the institutionalization of people, the blatant discrimination in jobs, in transportation, in

public places against people with disabilities. And yet he said it is difficult to show.

Well, we showed it. But evidently that was not enough for Mr. Sutton because he has his own narrow view, his own personal view of what the limits of Congress are in addressing these wrongs.

People with disabilities, as I said, locked away in institutions for years; people with mental disabilities subjected to involuntary sterilization because, in the words of the late Justice Holmes: "Three generations of imbeciles are enough." Persons with severe hearing loss, like my brother Frank, labeled deaf and dumb. They sent my brother away to a school, segregated him away from his friends, from his family, from his community, to go to the Iowa State School, as they said in those days, for the deaf and dumb. What does that do to people, simply because they are deaf, being called dumb? For too many years, those who were blind were forced to sell pencils on a street corner to earn a living.

When the day is done, and we all go home, Jeffrey Sutton—no matter how likable he is, no matter how good his qualifications are—has an extreme, limited view of our congressional role to legislate in this important area. From his arguments before the Supreme Court, he seems to believe that each State does its job to protect the constitutional rights of persons with disabilities as the State sees fit.

After what I saw and heard with my own ears, and during the crafting of the ADA over all those years and all those hearings, I cannot fathom anyone reaching that conclusion.

Pat Garrett—I will have more to say about the *Garrett* case—Pat Garrett, from Alabama, working in a job for the State, came down with breast cancer. She had to go have an operation. She had chemotherapy. She recovered. She went back to work. She was told by one of her fellow coworkers that her boss didn't like sick people. Her boss fired her.

So she brought a case under the Americans with Disabilities Act. She won. She won her case in the lower court. Then the State of Alabama hired Jeffrey Sutton to argue its case before the Supreme Court, and the Supreme Court found for Alabama by a 5-to-4 decision.

It seems to me that according to Jeffrey Sutton, that if Pat Garrett does not like the fact that the State of Alabama did not have a law that protected her rights as a disabled person, why, she can move to Nevada, maybe move to Minnesota, maybe move to Iowa. That is her right, that she can just move out of the State, maybe find some other place to live, where a State does have laws against discrimination against people with disabilities in their State institutions.

But is that what we have become in our country, a patchwork quilt? That is what we found in all these hearings

on the ADA, a patchwork. Yes, some States were good; some States had none—a patchwork quilt.

I do not believe that your civil rights ought to depend on your address. Your civil rights, under the Constitution of the United States, ought to depend on whether you are in this country and you are a citizen of the United States, not whether you live in Minnesota, Iowa, Nevada, or Alabama.

States rights—I don't know which seat the occupant of the chair from Minnesota holds, but it was that great Senator from Minnesota who, back in 1948, took on his own party—my party—the Democratic Party, in that great speech he gave at the convention and said: It is time to come out of the shadow of States rights and into the sunshine of civil rights. And that is when the Dixiecrat, Senator Strom Thurmond, left the party, because of what Hubert Humphrey said.

But Hubert Humphrey was right, it was time to come out of that shadow of States rights and recognize that civil rights inures to all of us as citizens of the United States and not just because I happen to live in one State or another.

But Jeffrey Sutton does not believe that; down deep inside he does not. And I say that only because of what he has said and what he has written, not just because of his representation of a client, but what he has said outside the courtroom.

All the lawyer code and duty talk does not tell the whole story. He has written articles, participated in radio talk shows, panel discussions, expressing his personal views, not his clients', but his own personal views. That kind of publicity is not required by his role as a lawyer advocating on behalf of his clients.

So based on his advocacy, based upon his own words, I am not convinced that a person with a disability, walking into Jeffrey Sutton's courtroom, can expect a fair shake from Mr. Sutton.

Again, as I said, I find him a likable individual, obviously very intelligent. But he means to undo with his position all we have done here to make sure that people with disabilities have their civil rights.

There are over 400 disability rights and civil rights groups in the United States opposing this nomination to the Sixth Circuit. I am hard pressed to know of any disability group that supports Mr. Sutton.

Again, this is nothing personal. People with disabilities understand how tenuous their hold on their civil rights is today. The Supreme Court has chipped away a little bit here, a little bit there on the Americans with Disabilities Act. There are still those in our country who believe we should not have had that law. Mr. Sutton, obviously, is one of those. He says it wasn't needed.

People with disabilities live every day wondering whether or not they will be treated fairly based not upon their

disability but on their abilities: Will I be able to get a good education? Will I be able to be treated fairly and equitably in terms of employment? Will I be able to find some reasonable accommodation so I can do a job? Will I go into a place of business and be ignored because I look different, maybe I act differently?

That is what people with disabilities live with every day. They know their hold on this is tenuous. I can understand very deeply the concern that people with disabilities all over America have about this individual, the deep concern they have, because they see in Mr. Sutton the personification of all of the people in their lives who made life harder for them, people who had a view that was narrow, who said that somehow our National Government cannot do anything to secure their civil rights, they only have to look to the State.

I will have more to say about Mr. Sutton. I will close with this. On that National Public Radio broadcast I talked about, he also said:

I think it is a positive attribute of this system of divided government that when 51 different sovereigns, 51 different legislatures tackle a difficult social problem, they all arrive at different approaches. And the ultimate idea and really transcendent purpose of federalism is to have them compete for the best solution.

That is his personal view. He was not representing anyone. This is Jeffrey Sutton talking:

I think it is a positive attribute of this system of divided government that when 51 different sovereigns, 51 different legislatures tackle a difficult social problem, they all arrive at different approaches. And the ultimate idea and really transcendent purpose of federalism is to have it compete for the best solution.

What happens when a State wins in these competitions? Do they get a prize? What happens to the people who are in the losing States? Are they just unlucky? What about Pat Garrett? Obviously, Alabama was not competing to have the best antidisability discrimination laws in the country.

I would be the first to say that one of the great things about our system of government is, it does allow for experimentation in different States. It allows different States to approach problems differently. Out of that we do get not a top-down, one-size-fits-all type of government. That is one of the beauties of our system. But when it comes to fundamental issues of fairness and justice and equity, when it comes to the basic, fundamental issues of civil rights, I say again, your civil rights as an American citizen should not depend on your address. It should not depend upon the shadow of States rights. It should depend upon the sunshine of being a U.S. citizen and having the Federal Government make sure that our civil rights are protected no matter where we are.

Again, if we want to have competition among States on education and transportation and all kinds of different things, that is fine. But on fundamental, basic civil rights, one law,

one Constitution, one Bill of Rights that covers us all.

Mr. Sutton is going to be before us. He is not now, but I understand he will be as soon as we come back. I wanted to start the debate. Quite frankly, I don't think Mr. Sutton has received the kind of attention and the kind of discourse and debate in this body that a circuit judge of his stature deserves, at least one who has this background and one who by his statements invites this kind of controversy.

We have approved circuit court judges around here almost on voice vote, 98 to nothing, 96 to nothing. I have joined in that. The people were not only qualified, but they didn't raise these kinds of troubling questions about how they will deal with fundamental civil rights laws. But Jeffrey Sutton does. He raises those issues. He has done it on his own.

I will have more to say about his statements when we come back. I am hopeful—not in a vindictive sense or anything like that—that this Senate will disapprove of putting Mr. Sutton on the court, thereby sending a very loud and strong message to people with disabilities all over this country that we passed the Americans with Disabilities Act with our eyes wide open; that we knew what we were doing; that we assembled the data. We had all of the evidence we needed. We compiled the record, and we want to keep it as the law of the land—as the civil rights law of the United States.

It would be a powerful message because I can tell you this. If Jeffrey Sutton ascends to the Sixth Circuit Court of Appeals, Americans with disabilities all over this country will see the hands of the clock turning backward—back, back to the days of discrimination, back to those days when they were afraid to enter that door, or to demand their rights as an American citizen, as a human being. I believe it is going to cause people with disabilities to wonder whose side we are on.

Whose side are we really on? I hope we are on the side of civil rights.

Mr. HATCH. Mr. President, I would like to respond to the comments made by my good friend from Iowa, Senator HARKIN.

I was also a cosponsor of the Americans with Disabilities Act, and I believe very much in that legislation and its goals. It is one of the most important pieces of legislation that I have worked on during my tenure in the Senate. I can certainly understand my distinguished colleague's concerns about the limitations that the Supreme Court placed on the Act in their decision in Garrett. However, I do not believe for one minute that Mr. Sutton's representation of the State of Alabama is in any way indicative of an agenda, personal or otherwise, against Americans with disabilities.

Even the People for the American Way has conceded, "No one has seriously contended that Sutton is personally biased against people with disabilities." Furthermore, Mr. Sutton's opposing counsel in the Garrett case, former Clinton administration Solicitor Seth P. Waxman, has written to me in support of Mr. Sutton. He stated:

I know that some have questioned whether the position Mr. Sutton advocated . . . in the Garrett case reflected antipathy on his part toward the Americans with Disabilities Act. I argued that case against Mr. Sutton, and I discerned no such personal antipathy. Mr. Sutton vigorously advanced the constitutional position of his client in the case, the State of Alabama; doing so was entirely within the finest traditions of the adversary system.

When Mr. Sutton was young, he regularly helped out at his father's school for children with cerebral palsy. As Ohio State Solicitor, he represented Cheryl Fisher, a blind woman who was refused admission to medical school. Ms. Fisher wrote of Mr. Sutton, "I recall with much pride just how committed Jeff was to my cause. He cared and listened and wanted badly to win for me. It was then I realized just how fortunate I was to have a lawyer of Mr. Sutton's caliber so devoted to working for me and the countless of others with both similar disabilities and dreams."

In National Coalition of Students with Disabilities v. Taft, Mr. Sutton successfully argued that Ohio universities were violating the federal motor-voter law by failing to provide disabled students with voter registration materials. Benson A. Wolman, former Director of the ACLU for Ohio and currently a member of its National Advisory Council, who recruited Mr. Sutton to work on the case, wrote:

[Mr. Sutton's] 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.

Mr. Sutton also serves on the Board of the Equal Justice Foundation, a public interest organization that provides pro bono legal services to the disadvantaged. During his tenure on the board, the Foundation has sued three Ohio cities to force them to build curb cuts to make their sidewalks wheelchair accessible, sued an amusement park company that banned disabled individuals from their rides, represented a mentally disabled woman in an eviction proceeding against her landlord who tried to evict her based on her disability, and represented a girl with tubercular sclerosis in a case alleging that the school was not properly handling her individual education plan.

I have received other letters from those who work in the disabled community who support Mr. Sutton. Francis Beytagh, Legal Director of the National Center for Law and the Handicapped, wrote:

I believe Jeff Sutton would make an excellent federal appellate judge. He is a very bright, articulate and personable individual

who values fairness highly . . . I do not regard him as a predictable ideologue . . . I recommend and support his confirmation without reservation.

James Leonard, co-director of the University of Alabama's Disability Law Institute, writes:

In my opinion, Jeffery Sutton is well-qualified to sit on the Sixth Circuit Court and should be confirmed . . . I also see no "agenda" on Mr. Sutton's part to target disabled citizens . . . Just as I would not infer an anti-disabled agenda from Mr. Sutton's participation in Garrett, neither would I assume from his role in the Fisher case that he had the opposite inclination. Rather, he seemed to be a good lawyer acting in his client's interests.

Beverly Long, Immediate Past President of the World Federation of Mental Health and former Commissioner of President Carter's Commission on Mental Health writes:

I have followed news reports of the intense lobbying against Mr. Sutton by various people who advocate on behalf of the disabled. This effort is unfortunate and, I am convinced, misguided. I have no doubt that Mr. Sutton would be an outstanding circuit court judge and would rule fairly in all cases, including those involving persons with disabilities.

In addition, my good friend from Iowa mentioned that he sat next to Senator Robert Dole at the Garrett arguments. Senator Dole, who has always been a great champion of disability rights, has of course joined the chorus of those who have written in support of Mr. Sutton.

There is simply no evidence to suggest that Mr. Sutton took the Garrett case due to any personal agenda. It is a well-established principle in the legal profession that lawyers should not be held responsible for the positions of their clients. The ABA Model Rules of Professional Conduct state, "A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities." Lawyers from across the country have written suggesting that it is not appropriate to attribute a client's views to the attorney, and it is certainly not appropriate in Mr. Sutton's case specifically.

My distinguished colleagues' own constituent and good friend Bonnie Campbell is included in those lawyers. She wrote, "I strongly urge the Senate to reject any unfair inference that Mr. Sutton's personal views must coincide with positions he has advocated on behalf of clients. It is, of course, the role of the advocate to raise the strongest available arguments on behalf of a client's litigation position regardless of the lawyer's personal convictions on the proper legal, let alone policy, outcome of the case. I am confident that Mr. Sutton has the ability, temperament, and objectivity to be an excellent judge."

In the Garrett case, Mr. Sutton was advocating for his client, the State of Alabama. Just as accused murderers are entitled to representation under the laws of this country, so are state

governments. Mr. Sutton has represented them both. We cannot attribute the position of the State of Alabama to Mr. Sutton, and we should not disparage him for fulfilling his ethical duty of zealous advocacy to his client. If the Supreme Court chose to accept the arguments he put forth on behalf of his client, we must respect its decision. While some of us who worked so hard on that legislation understandably may be disappointed, that disappointment should not be directed at Mr. Sutton. The principle of judicial review is well-established; Mr. Sutton ethically and honorably was fulfilling his role as an advocate. He has no personal agenda against Americans with disabilities. I have no doubt that if confirmed, Mr. Sutton will give any disabled American that comes before him a trial that is fair, impartial, and consistent with all our notions of justice.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

MORNING BUSINESS

Mr. SUNUNU. Madam President, I ask unanimous consent that the Senate proceed to a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

DANIEL PATRICK MOYNIHAN

Mr. AKAKA. Madam President, I rise to join my colleagues in honoring the memory of our dear friend and colleague, Senator Daniel Patrick Moynihan. Millie and I extend our deepest condolences and prayers to his wife Elizabeth and the Moynihan family.

History will remember Daniel Patrick Moynihan as one of the most prescient American voices on public policy and international relations issues for the second half of the 20th Century. As a professor, author, adviser to four Presidents, Ambassador to India, and Ambassador to the United Nations, he had a rich and distinguished career, and a tremendous impact on our Nation's public policy and foreign relations, prior to his election to the Senate.

In the Senate, Pat Moynihan's illustrious service to his country and to his constituents in New York for four terms in the world's greatest deliberative body gave greater truth to that appellation. Many of my colleagues have spoken of Senator Moynihan's intellect, the encyclopedic width and breadth of his knowledge on an incredible range of public policy issues—history, architecture, culture, and philosophy, to name a few. He used the power of his intellect, along with great wit and dogged persistence, to fashion a record of accomplishments in the Senate that stands as a testament to his commitment to the preservation of the