would encourage students in places like Tuba City, AZ, or Shiprock, NM, who want to make important contributions to their community, to look at the example set by this courageous young woman and consider participating in Futures for Children.

Mr. President, the fact is that at 22, Private Lori Piestewa was, herself, still a young person. But her belief in service and her sense of duty went well beyond her years. Hers is a life of which her family and, indeed, all Native Americans can be extremely proud. The prayers of a grateful nation go out to her family and friends at this very difficult time.

Mr. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CHAMBLISS). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF JEFFREY S. SUTTON, OF OHIO, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go to executive session to resume consideration of Executive Calendar No. 32, which the clerk will report.

The legislative clerk read the nomination of Jeffrey S. Sutton, of Ohio, to be United States Circuit Judge for the Sixth Circuit.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I am pleased that today we are considering the nomination of Jeffrey Sutton to serve on the Sixth Circuit Court of Appeals. The Judiciary Committee had an opportunity to listen to Mr. Sutton answer questions a few months ago in what turned out to be a very lengthy hearing. Probably 60 to 70 percent of the questions asked during the 9½-hour hearing were directed at Mr. Sutton. Those of you who heard this testimony, my colleagues who had the opportunity to hear it or who maybe had the opportunity to review the transcript of that hearing, will no doubt attest to Mr. Sutton's keen intellect, his even temperament, and the depth of his legal knowledge. These attributes demonstrate why Jeffrey Sutton is one of the finest appellate lawyers in the United States today, and why he will be an excellent Federal judge.

Mr. Sutton's legal and life experiences have been extensive. He spent the first part of his life living abroad. The Sutton family remained abroad until a couple of years before Mr. Sutton started high school. They returned to the States because his father took over a boarding school for children with severe cerebral palsy. For over 6 years, Jeff spent much of his time around the school doing odd jobs for his dad. He was deeply affected by this experience and by the interactions he had with these students. It reinforced what he had been taught by his parents, that serving others is an important calling and virtue.

Mr. Sutton attended Williams College where he was a Lehman Scholar and varsity soccer player. He graduated with honors in history. After college, from 1985 to 1987, Mr. Sutton taught 7th grade geography and 10th grade history while also serving as the coach of a high school varsity soccer team and a middle school baseball team.

From there, he went on to law school and graduated first in his class from The Ohio State University College of Law, where he served as an editor of the Law Review. Mr. Sutton then clerked for Judge Thomas Meskill on the U.S. Court of Appeals for the Second Circuit. From this position, he went on to clerk for two U.S. Supreme Court justices—retired Justice Lewis Powell and Justice Antonin Scalia.

From 1995 to 1998, Mr. Sutton was the State Solicitor of Ohio, which is the State's top appellate lawyer.

During his service, the National Association of Attorneys General presented him with the Best Brief Award for practicing in the U.S. Supreme Court—a recognition he received an unprecedented four years in a row.

Jeff Sutton is currently a partner in the Columbus law firm of Jones, Day, Reavis & Pogue. He is a member of the Columbus Bar Association, the Ohio Bar Association, and the American Bar Association. He also has been an adjunct professor of law at The Ohio State University College of Law since 1994, where he teaches seminars on Federal and State constitutional law.

Every lawyer who knows Jeff Sutton already knows he is one of the best lawyers in the country. Recently, The American Lawyer confirmed this by rating him one of its ''45 under 45''—that is, they named him as one of the top 45 lawyers in the country under the age of 45.

He has appeared frequently in court, having argued 12 cases before the U.S. Supreme Court, where he has a 9 and 3 record. In the Supreme Court's 2000–2001 term, Mr. Sutton argued four cases—that's more cases than any other private practitioner in the country. Can you imagine preparing to argue one case before the Supreme Court, much less four? Mr. Sutton, by the way, won all four cases.

Mr. Sutton also has argued twelve cases before the Ohio Supreme Court, six cases before various U.S. Courts of Appeals, and numerous cases before the State and Federal trial courts. And, over the years, Mr. Sutton has been the lawyer for a range of clients on a wide range of issues.

Some of these cases were quite well known and at least one of them has already been raised in debate here on the Floor. For example, he represented the State of Ohio in City of Boerne v. Flores, the State of Florida in Kimel v. Florida Board of Regents, and the State of Alabama in University of Alabama v. Garrett.

While many of the cases that he has argued are well known, I would like to take this opportunity to tell my colleagues about some of his lesser-known cases. Jeff Sutton represented Cheryl Fischer, a blind woman who was denied admission to a State-run medical school in Ohio because of her disability.

He also represented the National Coalition of Students with Disabilities in a lawsuit alleging that Ohio universities were violating the Federal ''motor voter'' law by failing to provide their disabled students with voter-registration materials.

Jeff Sutton also defended Ohio's minority set-aside statute against constitutional attack, and in another case he filed an amicus brief in the Ohio Supreme Court defending Ohio's hate-crimes statute on behalf of the NAACP, the Anti-Defamation League, and an assortment of other civil-rights groups. As this sampling of cases makes evident, Mr. Sutton has represented a variety of clients in the course of his career as an appellate lawyer. I think it is important for Senators to remember this fact as we consider Mr. Sutton's nomination.

In addition to his professional work as a lawyer, Jeff Sutton has found an extraordinary amount of time to give back to his community. Between a demanding law practice and spending time with his wife Peggy and their three young children—Margaret, John, and Nathaniel—Mr. Sutton serves on the Board of Trustees of the Equal Justice Foundation, a non-profit provider of legal services to disadvantaged individuals and groups, including the disabled. He has spent considerable time doing free legal work, averaging between 100 and 200 hours per year. He is an elder and deacon in the Presbyterian Church, as well as a Sunday school teacher.

He participates in numerous other community activities, including ''I Know I Can,'' which provides college scholarships to inner-city children, and ProMusica, a chamber music organization. He also coaches youth soccer and basketball teams.

In conclusion, when considering Jeff Sutton's nomination, I encourage the Senate to consider his broad range of life experiences, as well as his stellar legal background. I also urge my colleagues to take into account his testimony and the very straightforward way that he answered the many questions posed to him during his confirmation hearing. He has been straightforward, and he has been frank with our committee. Finally, I encourage the Senate to consider Mr. Sutton's astute characterization of the role of a

Federal judge. As he said, a Court of Appeals judge must try at all times to ''see the world through other people's eyes.''

I believe that is an excellent summary of one of the core responsibilities of an appellate court judge.

Jeff Sutton understands well the skills and the temperament necessary to be a good federal judge. He has the intellect for the job, and I am confident that he will approach his duties on the bench in a pragmatic, tempered, and thoughtful way. I strongly support his nomination and encourage my colleagues to do the same.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, just before we broke for the recess, I spoke here on the Senate floor for a short amount of time about the nomination of Jeffrey Sutton to be on the Sixth Circuit Court of Appeals and about the deep concerns I have about this nomination. I want to take more time today to explain my concerns that Mr. Sutton, I don't believe, will be able to put aside his own deeply felt and deeply held ideological views; that he will not be able to put aside his determination to be an activist judge and give people a fair and impartial hearing, especially when it comes to cases dealing with civil rights and, more specifically, when it comes to cases dealing with rights under the Americans with Disabilities Act.

I had the opportunity to meet with Mr. Sutton for over an hour and a half in my office. We had a great conversation. I found him to be very personable. I listened to my friend from Ohio talking about how bright he was, that he is an accomplished attorney. I will grant all of that. He is a very bright, capable, and accomplished attorney. He has a great resume: Ohio State Law School, first in his class, and former Ohio Solicitor. He has argued cases before the U.S. Supreme Court, and he has won many of them. But qualifications are just one aspect of whether or not a person ought to have a life tenure—think about it: life tenure—as a Federal judge.

Qualifications are certainly important, obviously. But that is only one part of the equation. The other part has to deal with this person's views. What is the historical analysis of what this person has both said and written in terms of how he would view his role as a Federal judge?

So, again, I think we have a responsibility as Senators to take into account both the qualifications but also this other side of the agenda as to whether or not this person would be a Federal judge who could give a fair and impartial hearing to those who come before him.

These are not occasions on which the Senate ought to just rubberstamp a nominee. This nominee was brought up on the evening before we went out for the break. No one was here. Now it is a Monday, and there are no votes today, so Senators are drifting back from their 2-week spring recess, and we are supposed to vote on Mr. Sutton tomorrow. I hope the majority leader will allow us a little bit more time to discuss this rather than asking Senators just to rubberstamp this nominee.

I can tell you, after careful review of his advocacy, both inside and outside the courtroom, I am not convinced that Mr. Sutton would be able to put aside his personal agenda. I am not convinced that someone with a disability rights or civil rights claim would get a fair shake from Mr. Sutton. Especially, for me, I cannot support putting someone on a Federal bench who has worked to undermine the Americans with Disabilities Act.

Again, many of my colleagues know that when I first came to the Senate in the mid-1980s, I began to work, as I had done in the House, with many disability groups around the country to finally address the glaring omission from the 1964 Civil Rights Act, that glaring omission being Americans with disabilities.

So at that time I became chairman of the Disabilities Subcommittee on the then-Education, Labor, and Health Committee under the great leadership of Senator KENNEDY. In fact, before I took over, it was Senator Lowell Weicker, a Republican, who had introduced the first version of the Americans with Disabilities Act, who became a great champion, and still is a great champion, for Americans with disabilities. So it was really a bipartisan effort in those days to get a civil rights bill through that closed that loophole of not having a Federal civil rights bill that covered people with disabilities.

As many of my colleagues knew at that time—maybe some do today—I had a brother with whom I grew up who was deaf. I saw how he had been treated as a child, growing up, and as an adult, and how he was discriminated against simply because he had a disability.

He was sent away at a young age halfway across the State of Iowa to attend the Iowa State School for the Deaf. In those days, they called it the ''School for the Deaf and the Dumb.'' As my brother once said: ''I may be deaf, but I'm not dumb.'' But that is the way people were treated. In other words, if you had a disability, you were segregated, you were taken out of your home, out of your home community, without any consideration for the family or anything, and you were sent to an institution someplace; in this case, it was a school for the deaf.

While he was there, my brother was told he could be one of three things: He could be a baker, a shoe cobbler, or a printer's assistant—and nothing else. Well, he did not want to be any of those, so they said: OK, you're going to be a baker.

Again, because he had a disability, because he could not hear, it was, I guess, accepted or thought that people had to be told what to do; they could not decide for themselves. Their horizons were limited. That was the real world in which I grew up, the real world of what happened to people with disabilities—travel, accommodations, jobs, employment, everything.

So we in Congress began to look at this. What was it like in this country to be a person using a wheelchair? What was it like to be a person with cerebral palsy? What was it like to be a person with blindness? What was it like to be a person who was deaf, like my brother? What was it like? What were their lives like? How did they live? And how did our Constitution cover them? Were they equal to us? Were they equal to the nondisabled community in America? Or were they somehow discriminated against because of their disability?

We in Congress did not just rush through a law, like Mr. Sutton says. We did not just have a bunch of staff with laptop computers and they just sort of turned it out. We laid the groundwork—years, years, years of accumulating data, of findings, of investigation, of hearings—a legislative record fully documenting the overwhelming evidence that discrimination in this country against people with disabilities was rampant—not a little bit here, not a little bit there, but rampant.

At the time of the drafting of the ADA, we took care to make sure that this important civil rights law had the findings and the constitutional basis to pass muster with the U.S. Supreme Court.

Here are some of the things we did: 25 years of studies by the Congress, going clear back to 1965 with the National Commission on Architectural Barriers; in 1974, the White House Conference on Handicapped Individuals; in 1983, the U.S. Civil Rights Commission published ''Accommodating the Spectrum of Individual Abilities,'' with a comprehensive report on discrimination against people with disabilities; in 1986, the National Council on Disabilities—I knew them well; they were the first group I started to work with when I came to the Senate—15 appointees by then-President Reagan, and their report documenting pervasive discrimination and the need for an omnibus civil rights statute.

I am not going to go through them all, but, again: study after study, 17 formal hearings by congressional committees and subcommittees, a markup by 5 separate committees, 63 public forums across the country, oral and written testimony by the Attorney General of the United States, Governors, State attorneys general, State legislators.

We had in excess of 300 examples of discrimination by State governments in the legislative record—300 examples—and yet in the Garrett case—I will speak more about that; and I was there; I was sitting in the Supreme Court the day Mr. Sutton argued the case there—Mr. Sutton said—and I could not believe my ears when I heard

it—he said there was really no evidence that this was needed, that basically States were doing a pretty good job, that the ADA was not needed. There were over 300 examples of discrimination by State governments.

It took the tireless work of Democrats and Republicans, and when it passed the Senate, it passed 91 to 6. That is pretty overwhelming support. In the House, it passed 403 to 20. Attorney General Thornburgh, Republican Attorney General, the Chamber of Commerce, President Bush, the first one, stood with us. Why did we all stand together on the Americans with Disabilities Act? It was the right thing to do. Justice demanded it.

At the time he signed the ADA into law, President Bush had many good things to say about it. I ask unanimous consent to print in the RECORD President Bush's statement.

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

REMARKS BY THE PRESIDENT DURING CEREMONY FOR THE SIGNING OF THE AMERICANS WITH DISABILITIES ACT OF 1990

JULY 26, 1990

THE PRESIDENT: Evan, thank you so much. And welcome to every one of you, out there in this splendid scene of hope, spread across the South Lawn of the White House. I want to salute the members of the United States Congress, the House and the Senate who are with us today—active participants in making this day come true. (Applause.)

This is, indeed, an incredible day. Especially for the thousands of people across the nation who have given so much of their time, their vision, and their courage to see this Act become a reality.

You know, I started trying to put together a list of all the people who should be mentioned today. But when the list started looking a little longer than the Senate testimony for the bill, I decided I better give up. or that we'd never get out of here before sunset. So, even though so many deserve credit, I will single out but a tiny handful. And I take those who have guided me personally over the years.

Of course, my friends, Evan Kemp and Justine Dart up here on the platform with me. (Applause.) And of course, I hope you'll forgive me for also saying a special word of thanks to two who—from the White House. But again, this is personal, so I don't want to offend those omitted. Two from the White House—Boyden Gray and Bill Roper, who labored long and hard. (Applause.)

And I want to thank Sandy Parrino, of course, for her leadership, and I again—(applause)—it is very risky with all these members of Congress here who worked so hard. But I can say on a very personal basis, Bob Dole inspired me. (Applause.)

This is an immensely important day—a day that belongs to all of you. Everywhere I look, I see people who have dedicated themselves to making sure that this day would come to pass. My friends from Congress, as I say who worked so diligently with the best interest of all at heart, Democrats and Republicans. Members of this administration—and I'm pleased to see so many top officials and members of my Cabinet here today who brought their caring and expertise to this fight.

And then, the organizations. So many dedicated organizations for people with disabilities who gave their time and their strength and, perhaps most of all, everyone out there and others across the breadth of this nation are 43 million Americans with disabilities. You have made this happen. All of you have made this happen. (Applause.)

To all of you, I just want to say your triumph is that your bill will now be law, and that this day belongs to you. On behalf of our nation, thank you very, very much. (Applause.)

Three weeks ago we celebrated our nation's Independence Day. Today, we're here to rejoice in and celebrate another ''Independence Day,'' one that is long overdue. With today's signing of the landmark Americans for Disabilities Act, every man, woman and child with a disability can now pass through once-closed doors into a bright new era of equality, independence and freedom.

As I look around at all these joyous faces, I remember clearly how many years of dedicated commitment have gone into making this historic civil rights Act a reality. It's been the work of a true coalition. A strong and inspiring coalition of people who have shared both a dream and a passionate determination to make that dream come true. It's been a coalition in the finest spirit. A joining of Democrats and Republicans. Of the Legislative and the Executive Branches. Of federal and state agencies. Of public officials and private citizens. Of people with disabilities and without.

This historic Act is the world's first comprehensive declaration of equality for people with disabilities. The first. (Applause.) Its passage has made the United States the international leader on this human rights issue. Already, leaders of several other countries, including Sweden, Japan, the Soviet Union and all 12 members of the EEC, have announced that they hope to enact now similar legislation. (Applause.)

Our success with this Act proves that we are keeping faith with the spirit of our courageous forefathers who wrote in the Declaration of Independence: ''We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights.'' These words have been our guide for more than two centuries as we've labored to form our more perfect union. But tragically, for too many Americans, the blessings of liberty have been limited or even denied.

The Civil Rights Act of '64 took a bold step towards righting that wrong. But the stark fact remained that people with disabilities were still victims of segregation and discrimination, and this was intolerable. Today's legislation brings us closer to that day when no Americans will ever again be deprived of their basic guarantee of life, liberty, and the pursuit of happiness. (Applause.)

This Act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard. Independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream.

Legally, it will provide our disabled community with a powerful expansion of protections and then basic civil rights. It will guarantee fair and just access to the fruits of American life which we all must be able to enjoy. And then, specifically, first the ADA ensures that employers covered by the Act cannot discriminate against qualified individuals with disabilities. (Applause.) Second, the ADA ensures access to public accommodations such as restaurants, hotels, shopping centers and offices. And third, the ADA ensures expanded access to transportation services. (Applause.)

And fourth, the ADA ensures equivalent telephone services for people with speech and hearing impediments. (Applause.) These provisions mean so much to so many. To one brave girl in particular, they will mean the world. Lisa Carl, a young Washington State woman with cerebral palsy, who, I'm told is with us today, now will always be admitted to here hometown theater.

Lisa, you might not have been welcome at your theater, but I'll tell you—welcome to the White House. We're glad you're here. (Applause.) The ADA is a dramatic renewal, not only for those with disabilities, but for all of us. Because along with the precious privilege of being an American comes a sacred duty—to ensure that every other American's rights are also guaranteed.

Together, we must remove the physical barriers we have created and the social barriers that we have accepted. For ours will never be a truly prosperous nation until all within it prosper. For inspiration, we need look no further than our own neighbors. With us in that wonderful crowd out there are people representing 18 of the daily points of light that I've named for their extraordinary involvement with the disabled community. We applaud you and your shining example. Thank you for your leadership for all that are here today. (Applause.)

Now, let me just tell you a wonderful story—a story about children already working the spirit of the ADA. A story that really touched me. Across the nation, some 10,000 youngsters with disabilities are part of Little League's Challenger Division. Their teams play just like other, but—and this is the most remarkable part—as they play at their sides are volunteer buddies from conventional Little League teams. All of these players work together. They team up to wheel around the bases and to field grounders together and most of all, just to play and become friends. We must let these children be our guides and inspiration.

I also want to say a special word to our friends in the business community. You have in your hands the key to the success of this Act. For your can unlock a splendid resource of untapped human potential that, when freed, will enrich us all.

I know there have been concerns that the ADA may be vague or costly, or may lead endlessly to litigation. But I want to reassure you right now that my administration and the United States Congress have carefully crafted this Act. We've all been determined to ensure that it gives flexibility, particularly in terms of the timetable of implementation; and we've been committed to containing the costs that may be incurred.

This Act does something important for American business though, and remember this—you've called for new sources of workers. Well, many of our fellow citizens with disabilities are unemployed, they want to work and they can work. And this is a tremendous pool of people. (Applause.) And remember this is a tremendous pool of people who will bring to jobs diversity, loyalty, proven low turnover rate, and only one request, the chance to prove themselves.

And when you add together federal, state, local and private funds, it costs almost $200 billion annually to support Americans with disabilities, in effect, to keep them dependent. Well, when given the opportunity to be independent, they will move proudly into the economic mainstream of American life, and that's what this legislation is all about. (Applause.)

Our problems are large, but our unified heart is larger. Our challenges are great, but our will is greater. And in our America, the most generous, optimistic nation on the face of the earth, we must not and will not rest until every man and woman with a dream has the means to achieve it.

And today, America welcomes into the mainstream of life all of our fellow citizens

with disabilities. We embrace you for your abilities and for your disabilities, for our similarities and indeed for our differences, for your past courage and your future dreams.

Last year, we celebrated a victory of international freedom. Even the strongest person couldn't scale the Berlin Wall to gain the elusive promise of independence that lay just beyond. And so together we rejoiced when that barrier fell.

And now I sign legislation which takes a sledgehammer to another wall, one which has—(applause)—one which has, for too many generations, separated Americans with disabilities from the freedom they could glimpse, but not grasp. Once again, we rejoice as this barrier falls for claiming together we will not accept, we will not excuse, we will not tolerate discrimination in America. (Applause.)

Mr. HARKIN. A lot of the work we did is being termed irrelevant. Somehow, according to Mr. Sutton, we did not do enough. You may be wondering why I go into all of this. Mr. Sutton says we didn't have the findings, basically.

When I look back on the Supreme Court decisions handed down in the last few years, I am troubled that a lot of the work we have done on civil rights over the last 30 years is in jeopardy. In particular, I see a chipping away of the Americans with Disabilities Act, the bill that symbolizes the inclusion of people in our society. Mr. Sutton has held the hammer and the chisel.

That is why I am convinced Mr. Sutton does not possess all of the qualities needed to serve a life tenure on the Sixth Circuit. I am not convinced that someone with a civil rights claim could walk in the courtroom and be confident they will get a fair shake.

It is not the person himself that troubles me. It is his ideology. It is where he is coming from. It is what he has said and written and advocated. He has advocated for the proposition that civil rights protections for persons with disabilities belongs in the hands of each of the 50 separate States. His arguments before the Supreme Court articulate that States can do a better job of it than Congress and that we did not find enough evidence.

We found the evidence, and it is there in the record. I don't know how anyone in the real world could say: Disability discrimination in a constitutional sense is really difficult to show.

That is what Jeffrey Sutton said on National Public Radio October 11, 2000. You will hear a lot of talk, probably today and leading up to the vote tomorrow, that Jeffrey Sutton was representing his clients. He said this on National Public Radio. He was not representing a client. He said: It is really difficult to show disability discrimination in a constitutional sense.

The unfortunate history of unequal treatment of persons with disabilities in our country has been locked away in institutions for years: People with mental disabilities are subjected to involuntary sterilization; persons with severe hearing loss labeled, as my brother, deaf and dumb; and for way too many years, those who were blind forced to sell pencils on the street corner for a living.

Mr. Sutton seems to have an extremely limited view of our authority as Congress to legislate in this important civil rights area, as well as others. From his arguments before the Supreme Court, he seems to believe each State does its job to protect the constitutional rights of persons with disabilities as the State sees fit. After what I saw, what I heard after all these many years, all the hearings and the record, I can't fathom anyone would actually reach the conclusion that the States were doing a good job protecting people with disabilities. Some States, yes, had pretty decent laws on the books covering people with disabilities. Other States did not.

But I ask, as an American citizen, as a citizen of the United States, should your civil rights depend on your address? Should your civil rights depend on the State in which you happen to live?

I believe the Constitution and civil rights cover us all. And what we found during all these years, all the hearings, the record, was that there was a patchwork quilt of laws around the country so if you were in a State, maybe, that didn't have very good laws and protection of people with disabilities, the only way you could ensure your civil rights was to move to another State. I don't believe that is what the Constitution intends when it covers all Americans with civil rights.

Again, people will say: Mr. Sutton was just defending his clients. He was duty bound to advocate on behalf of his clients.

I am a lawyer. I know the professional code of conduct. But that doesn't tell the whole story. Mr. Sutton has written articles, participated in radio talk shows and panel discussions, where he has expressed his own personal views—not his clients', his views. That kind of publicity is not required by his role as a lawyer advocating on behalf of clients. It is clear to me this lifetime appointment would be detrimental to the civil rights that protect all Americans. He zealously advocates for States rights at the expense of individual rights. Persons with disabilities, senior workers, people of color, and underprivileged children deserve better.

More than 400 disability rights and civil rights groups agree. This chart depicts that. More than 400 have come out in opposition to Mr. Sutton being on the Sixth Circuit.

Jeffrey Sutton did not have to talk to the Legal Times about his pursuit of federalism cases. I want to speak about not the clients he has represented but what he said outside of the courtroom. In a November 2, 1998 article, the reporter writes that Mr. Sutton told him he and his staff were ''always on the lookout for cases coming before the court that raise issues of federalism or will affect local and State government interests.'' He is quoted as saying:

It doesn't get me invited to cocktail parties, but I love these issues. I believe in this federalism stuff.

From the cases he has aggressively pursued, his view is that State power trumps the rights of U.S. citizens. I believe in States rights, too, to do certain things. One of the geniuses of our system is 50 different States experimenting in doing things. But when it comes to basic human rights, civil rights, we are all U.S. citizens. As I said, we should not let a State decide what our civil rights are. That is decided by the Constitution. My freedom of speech should not depend on whether I am in Iowa or California or Georgia or wherever. It is the fact that I am a U.S. citizen, here in this country. The Bill of Rights covers us all regardless of the State in which we may happen to live.

On National Public Radio he said:

As with age discrimination, disability discrimination in a constitutional sense is really very difficult to show.

That was on National Public Radio, October 11, 2000. I guess, according to Mr. Sutton, all of the hearings we had, all of the markups, all of the public forums, all of the witnesses, all of the examples, do not mean a thing. What matters to him is his narrow view that it is up to the States to take care of this.

Now, again, on that same NPR radio broadcast, Mr. Sutton said:

I think it's a positive attribute of this system of divided government that when 51 different sovereigns [including the District of Columbia there], 51 different legislatures [we don't have that here in the District of Columbia] 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.

He wasn't representing a client here. These are his own personal views. What happens when a State wins in these competitions? Do they get a prize? What about the people who are in the ''losing'' States? Are they out of luck? As I said before, do they have to move to another State?

After listening to all of the testimony on the ADA over a several years period of time, I find it hard to believe the 50 States were competing for the best solution on disability discrimination.

In 1997, Mr. Sutton served as a moderator for a panel discussion sponsored by the Federalist Society. As the moderator, Mr. Sutton criticized States for sacrificing ''federalist principles in order to obtain near-term politically favored results.''

I am not certain I know what that means, but I do know it is an opinion. He wasn't representing a client. It is his opinion. I think it is an opinion that State officials should challenge things like the ADA and civil rights laws that cover the elderly, and the Violence Against Women Act.

According to Mr. Sutton, the reason they don't contest a lot of this is because they don't want to upset the respective constituency with what those constituents would probably consider bad policy. I can think of a lot of people in my State who would consider it bad policy to allow discrimination against people with disabilities. Mr. Sutton said he was ''frustrated that, in the pursuit of particular political goals, the States are not rising up together and defending their authority against the encroachments by Congress.'' Frustrated? To me, that is a personal opinion, a personal emotion. I think the majority of us experience frustration when someone is adamant about disagreeing with us. We get frustrated when someone doesn't agree with our point of view. So he is ''frustrated that States are not rising up together''—these are his words—''and defending their authority against encroachments by Congress.''

If he is frustrated, he must think that is what they should do. Maybe he is agitated because the States and Federal civil rights laws are different than what he would want. Maybe most States don't see them as encroachments on their State authority.

A lot of States are not joining in his extreme views on congressional authority to pass civil rights laws. Some States see it differently than Mr. Sutton. Fourteen State attorneys general signed on in support of Patricia Garrett in Garrett v. Alabama. Arizona, Connecticut, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Missouri, New Mexico, New York, North Dakota, Vermont, and Washington wrote saying that Congress had the authority to enact the ADA. The 14 States I just named opposed Alabama's position represented and argued by Mr. Sutton.

Mr. Sutton seemed to favor a States rights philosophy in civil rights based on a personal opinion about what Congress is and what Congress does and how we do our work. Listen to this on the Violence Against Women Act, on which we had extensive findings that supported the passage of that law. He said in an article for the Federalist Society—again not representing a client, but in his own writing:

> Unexamined deference to the VAWA [Violence Against Women Act] factfindings . . . would give to any congressional staffer with a laptop the ultimate Marbury power—to have the final say over what amounts to interstate commerce. . . .

Evidently, we Senators and Congressmen, with all these hearings, all of the investigations, all of the public forums, all of the testimony we have, all of the examples we have compiled—it doesn't mean anything. Evidently, we don't do that. We just have staffers with laptops and they churn out civil rights legislation.

Finally, in another article for the Federalist Society in 2001, Mr. Sutton stated his belief that federalism is a ''zero-sum'' situation in which either a State or Federal lawmaking prerogative ''must fall.'' He wrote:

> The National Government in these types of cases invariably becomes the State's loss and vice versa.

Think about that. Passing the Americans with Disabilities Act becomes a State's loss. How can Mr. Sutton hold such a view, that we break down the barriers of discrimination long held in our society against people with disabilities; and he says the Federal Government wins, the State governments lose. Well, quite frankly, we all saw it differently—Republicans and Democrats. We saw this as a win-win. Everyone wanted this. American citizens wanted it when we broke down these barriers. Statutes like the ADA set a minimum bar for the country. States can always do more, but we passed a minimum bar. To me, that is not a zero-sum game. I don't see the Federal Government winning and States losing on that. I see all of us winning when we become a more inclusive society.

So, again, it is not Mr. Sutton's clients who are driving these issues. It is not just the fact that Mr. Sutton advocated for his clients, as we will hear and have heard and will continue to hear. It is what Mr. Sutton himself believes. It is how he feels. It is his views on whether or not we here in the Congress have the authority to pass civil rights legislation. According to him, no, we don't. The record, Mr. President, was replete. We didn't just pass it overnight, as I said.

We had case after case after case, and I can mention a few. There was the zookeeper who would not admit a child with mental retardation to the zoo because it would upset the chimpanzees. Another child with cerebral palsey was kept out of school because the teacher said his appearance ''nauseated'' his classmates.

What does all this discrimination do to those children with disabilities as they grow up? We had a woman who said:

> We can just go on so long constantly reaching dead ends. I am broke, degraded, angry, and have attempted suicide three times. I know hundreds. Most of us try, but which way and where can we go?

Well, in Mr. Sutton's America, she cannot go to the U.S. Congress. Despite all of the evidence, Congress did not have the power to pass the Americans with Disabilities Act because of States rights. We appointed a task force, led by Justin Dart. We went all over the Nation and had 63 meetings, as I said. Justin Dart heard from over 8,000 people in 50 States. He gathered stacks and stacks of letters into evidence. Just as an example from a health administrator who is blind. He wrote:

> When I walked into the office of one department head, he looked at me and said, ''Ah—if I knew you were blind, I wouldn't have bothered bringing you in for an interview.''

Prior to the ADA, that was all right. A person could be denied a job because he was blind, even though he was fully qualified for it.

We have to go back to July 26, 1990. Well, let's go back to July 25, 1990. On July 25, 1990, if one was a person of color, say an African American, and they saw an ad in the paper for a job for which they were qualified, and they went down to interview for this job and their prospective employer took a look at them and said, get out of here, I am not hiring black people—probably would have used a word worse than that—on July 25 of 1990, he could have walked out of that door, gone right down the street to the courthouse and filed a lawsuit for a violation of his civil rights.

The same day, July 25, 1990, a person using a wheelchair sees an ad in the paper for a job for which they are qualified. They roll their wheelchair down there, go in the door, and the prospective employer looks at them and says, get out of here; I am not hiring your kind; cripples, get out of here. I do not want anybody like you around here. The person rolled their wheelchair out of there and went down to the courthouse on July 25, 1990, but guess what, the courthouse door was locked. They could not get in because they had no cause of action.

On July 25, 1990, as it had been for hundreds of years before, to discriminate against a person on the basis of their disability was not a violation of their civil rights. But on July 26, 1990, after President Bush signed it into law, if a person rolled their wheelchair down there and someone said, get out of here; I am not hiring people in wheelchairs, they could roll their wheelchair down to the courthouse door and, just like African Americans, or national origin, religion, or sex, they could then get in the courthouse door. Think about that. Before that, they could not do anything.

I will be honest and say some States did have certain laws on the books that might have protected people with disabilities. A lot of States did not. That is why we found this patchwork quilt. So a person's civil rights depended upon what State they lived in. We said, that is not correct. We said, that should not be so.

Well, Mr. Sutton's view that the Americans with Disabilities Act is not needed would turn us back to July 25, 1990, where one could be discriminated against.

I suppose Mr. Sutton might say, well, that was then; this is now. States are more enlightened now. Surely they would not do anything like that now.

A couple of years ago—I think 4 years ago, if I am not mistaken—Patricia Garrett, from Alabama, had breast cancer. Patricia Garrett is right here in this picture. She went for medical attention, had surgery, chemotherapy, and then she returned to her work as a nursing supervisor.

Her boss wanted to get rid of her, not because she could not do her job but because her boss did not like having people around who were sick and had cancer. So Mrs. Garrett lost her job. She had to take a lower-paying job, but she decided to fight back. This was in 1997.

Six years later, she is still fighting in the courts about whether Congress had the ability to pass a law that applied to her because Alabama did not. She had to litigate whether Congress could pass the ADA.

Just as an aside, now Alabama claims she cannot sue under the Rehab Act either.

The Garrett case had to do with whether or not Congress had the power to pass Title I of the ADA so it applied to all the States. Mr. Sutton argued for Alabama and against Mrs. Garrett that all 50 States had laws about disability discrimination and therefore Federal laws were not needed. Mrs. Garrett's case today shows why that argument is so wrong and why it is so harmful to individuals whose civil rights are being violated.

Mrs. Garrett could not have sued her employer, the University of Alabama, using State law. The State of Alabama had no enforceable law. They had some nice policy statements but no law. That is why we had to pass the ADA.

As I said earlier, and I will keep saying it, one's civil rights should not depend on their address. It is the role of Congress to enact national legislation to protect people from discrimination wherever they might live.

Mrs. Garrett did not want to rely on her State for her civil rights. She said:

> Mr. Sutton has described the relationship between Congress and the States as a zero sum game where only one side can win. It is distressing that someone with this view could be nominated as a Federal appeals judge. In Mr. Sutton's eyes, I, and others with disabilities, seem to be pawns in a game of power between the Federal Government and the States.

That was Mrs. Garrett at a press conference last month. Mrs. Garrett, and the millions of Americans with disabilities, do not want to be pawns in a power game. They want Federal civil rights laws to apply to them no matter where they live. They want Federal civil rights laws that protect them from a boss who does not like sick people or a potential boss who would not even consider them because of their disability.

The 14th amendment of the Constitution gives Congress the power to provide that protection. The whole point of it is to give Congress the ability to do something when individuals are denied their rights and treated unequally as U.S. citizens. In my mind, that was the original intent of the amendment.

So, again, when one listens to Mr. Sutton, what he said—and again, this is not a court case. This is Mr. Sutton outside the courtroom. He 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.

Mr. Sutton said that on the radio, not in a courtroom with a client, but of himself he said that. So what does this mean? Does this mean Mr. Sutton thinks it is a positive outcome—let's see, what did he say? He said, a positive attribute. Does he think it is a positive attribute that Mrs. Garrett is out of luck in Alabama, but she would be in luck if she lived in another State? Is that a positive attribute?

Should Mrs. Garrett have to move to another State to have her civil rights enforced because some States enforce it more than others or have laws on the books, leave her home, leave her friends, leave her family in Alabama to go somewhere else?

In our Senate report, Harold Russell, the chairman of the President's Committee on the Employment of People with Disabilities, said:

> The 50 State Governors' Committees with whom the President's committee works report that existing State laws do not adequately cover such acts of discrimination.

The 50 States Governors' Committees with whom the President's committee works report that existing State laws do not adequately cover such acts of discrimination against people with disabilities.

According to Mr. Sutton, Congress should not have the power to make that determination and people with disabilities have to just hope their State is going to take care of them.

Perry Tillman, a Vietnam veteran, testified before a Senate subcommittee, and he said: ''I did my job when I was called on by my country. Now it is your job and the job of everyone in Congress to make sure that when I lost the use of my legs in battle, I did not lose my ability to achieve my dreams.''

Under Mr. Sutton's theory of federalism, Mr. Tillman would still be waiting for the American with Disabilities Act to help him achieve his dreams.

Mr. Sutton has a clear lack of understanding of Congress's role in civil rights laws. Should we put on the Federal bench for life a nominee who basically says staffers with laptops are deciding what the Constitution of the United States says by relying upon the 14th amendment to the Constitution?

I may have my differences with Senators on one side of the aisle or the other. We have good healthy debates here. We may not view everything the same. I think that is healthy. I don't know of laws that are passed of this magnitude that cover civil rights that are not thoroughly investigated, aired, hearings, reports, findings, over a long period of time. It is not just some, as he said, ''staffer with a laptop.''

We found time and time again that there were reasons to have this law. We found discrimination against individuals persisting in critical areas of employment in the private sector as well as the public sector, as well as State government. I cannot understand why Mr. Sutton feels that after all this we should have not only the right but the responsibility to do something. Mr. Sutton has a narrow view because he believes this ought to be only in the States and not the Federal Government. That would be a dangerous precedent to set.

Let's look at the Olmstead case. Mr. Sutton did not argue this case but he wrote the brief for it. Let's think what would happen in the Olmstead case if Mr. Sutton's view prevailed.

In the Olmstead case, in Georgia, two women brought suit, arguing that their needless confinement in a mental institution violated the Americans with Disabilities Act. Mr. Sutton wrote the brief for that case for the State of Georgia. Under his theory, the ADA did not specifically address needless confinement of people with disabilities. Imagine that. He wrote, ''The issue of deinstitutionalization simply was not before Congress, was not raised by Congress, was not debated by Congress during the adoption of the ADA.'' That is what Mr. Sutton said in his brief.

Mr. Sutton may be a bright individual but he did not do his homework on this one. One does not have to look further than the findings of the ADA to see that Congress addressed this issue precisely when we passed the ADA. Our findings specifically state: ''Discrimination against individuals with disabilities persists in such critical areas as institutionalization.'' Mr. Sutton says it was not raised by Congress. It was. We said it. Either Mr. Sutton is ignoring this or he simply did not do his homework, and whoever did his research did not do good research.

We in Congress also specifically found ''individuals with disabilities continually encounter various forms of discrimination including segregation.'' Institutionalization, segregation—that is what we found. Mr. Sutton says that is not enough. Once again, Mr. Sutton was ignoring our specific findings, arguing somehow that we had not done enough to show that we meant to end the practice of needlessly locking people in institutions.

Listen to this argument of Mr. Sutton. He said the discrimination ''necessarily requires uneven treatment of similarly situated individuals.'' In other words, you have to show that people without disabilities were treated better than people with disabilities. He writes, ''no class of similarly situated people were even identified.''

But the Court said no. The Court said dissimilar treatment correspondingly exists in this key respect. In order to receive needed medical services, persons with mental disabilities must, because of those disabilities, relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice.

For Lois Curtis and Elaine Wilson, two women in this case, if Mr. Sutton's views had prevailed, they still would be locked up. Lois spent most of her life in an institution, since the age of 14. Elaine had been living in a locked ward of a psychiatric hospital for over a year. She told the district court judge in the case that when she lived in the institution she felt like she was sitting

in a little box with no way out. Day after day, the same routine, same four walls. No wonder Elaine felt like she was in a little box. The ADA was designed to break apart that box. So Elaine and Lois brought suit under the ADA, arguing that their segregation was discrimination.

As I mentioned, our findings in the ADA clearly stated that people with disabilities continually encounter various forms of discrimination, including segregation, and that discrimination persists in critical areas such as institutionalization.

Fortunately, the Supreme Court disagreed with the State of Georgia and with Mr. Sutton. The Court talked about the two reasons, to conclude that needless segregation is discrimination.

First, needless segregation perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life; second, that confinement in an institution diminishes the everyday activities of individuals. The Court was focusing on what matters and how it affects real people.

I mentioned that Lois Curtis and Elaine Wilson were institutionalized for many, many years. How do they live today? Elaine now lives in a house with a caretaker and a friend. Elaine shops, chooses her own clothes, attends family events and celebrations. Lois has close friends in her group home. She visits them all, picks out her own clothes, has favorite meals, plans a menu. At a hearing in the case, Lois and Elaine spoke of the little things that have changed. They can make Kool-Aid when they want to make it. They can go outside and take walks anywhere they want to go. We all take it for granted that we are going to choose what we eat, what we drink, what clothes we are going to put on in the morning, and where we are going to go to take a walk. But those kinds of ordinary activities are not ordinary if you are in an institution and someone else dictates every aspect of your life.

In Mr. Sutton's world, Elaine and Lois would still be living in the institution. You know what Mr. Sutton would say? I am sure he would say: Gee, that's just too bad, but that's the State law. That is the Georgia State law.

What are Elaine and Lois supposed to do, move? They are locked up in a mental hospital. They are locked up in wards. They cannot even leave of their own volition. That is Mr. Sutton's world—tough, tough that they have to live in a State where they institutionalize people. That is why we passed the Americans with Disabilities Act, to get people out of institutions, to get them into the communities and give some dignity and value to their lives outside an institution. That is precisely why we passed the ADA. But Mr. Sutton says: Sorry, Congress did not have the authority to do that.

We all know the law can be a straitjacket if that is the way you want to interpret the law or the law can give you freedom, the ability to develop and grow and expand your horizons, to have dreams and be able to live out your dreams. The law can do that or the law can shatter you. The law can put you in an institution. The law can send you to the State school for the deaf and dumb.

Mr. Sutton's view is that narrow view of law that, if the State doesn't do it, you are out of luck. But as I said, after it is all over, we are all U.S. citizens, and our civil rights should not depend on where we live.

That is why I have taken this time and will take some more time to talk about Mr. Sutton and why he should not be approved to sit on the Sixth Circuit Court of Appeals.

Sometimes these are tough decisions. As I said, I met with Mr. Sutton. He seems like a fine individual. He would probably be a good neighbor. That is not the point. When he puts on that robe for life and he sits on that circuit court, Elaine Curtis or Lois Wilson or Pat Garrett—what are their chances if they have to appear before Mr. Sutton?

Every time I read the things Mr. Sutton has said about inadequate findings, leaving it to the States, I am reminded what Justice Thurgood Marshall said in his concurring opinion in City of Cleburne:

> A regime of state-mandated segregation and degradation soon emerged that in its virulence and bigotry rivaled, and indeed paralleled the worst excesses of Jim Crow. Massive custodial institutions were built to warehouse the retarded for life . . . Many disabled children were categorically excluded from public schools based on the false stereotypes that all were uneducable, and on the purported need to protect nondisabled children from them. State laws deemed the retarded ''unfit for citizenship.''

Justice Marshall further pointed out:

> The mentally retarded have been subject to a lengthy and tragic history of segregation and discrimination that can only be called grotesque.

That is what we were facing when finally the Congress of the United States stepped up and passed the Americans with Disabilities Act. People were institutionalized, segregated, taken from their families, taken from their communities, excluded from going to school. I can't tell you how many people I have met in my sojourn through all these years of fighting for disability rights—I can't tell you how many people I have met with cerebral palsy whose bodies didn't work right and maybe they couldn't control their muscles, maybe their heads hung down, maybe they drooled, maybe they couldn't communicate verbally, but inside that body was a brilliant mind with the capability to contribute to our society. They had the ability to dream and to live out those dreams. Yet they were excluded from education simply because they had cerebral palsy.

If you haven't seen the movie ''My Left Foot,'' which came out almost 20 years ago now, I think you ought to see it. That was exactly the case there. The person could only use his left foot to write, but what a brilliant writer he became. And he was excluded simply because he had a disability.

As I said earlier, how many blind people were confined to selling pencils? How many people using a wheelchair were discriminated against because they wouldn't make a minor modification at a workplace so that person could do the job?

We take curb cuts for granted. We take ramping for granted. We take wide doors for granted. It was not too many years ago there were not any curb cuts and there were not ramps and there were not wide doors and there were not accessible bathrooms.

My nephew Kelly was injured in the line of duty in the military. He became a quadriplegic. While I have seen how society had discriminated against my brother who was deaf, I guess I had not realized the discrimination in our society against someone using a wheelchair until I saw what Kelly had to go through just to get an education. They didn't have ramps. If the class was on the third floor and they didn't have an elevator—tough luck; he couldn't take the class. If it was in a building where there were steps and there was not a ramp—tough luck; he would have to go someplace else—going into a restaurant; going to a movie theater just to watch a movie, be turned away; we don't allow wheelchairs in here; out of here. Get out of here; you can't watch a movie. Later on, they would have a place up in the back to put a few wheelchairs, if they came. But you couldn't sit with your friends and your family. I saw what they had to go through. That is why we passed the Americans with Disabilities Act. Some States had better laws than others. One would have to kind of look and see which States are best for this law and that law, and move there away from their family, friends, and community. Things are a lot better. But we didn't get that way because we relied upon 50 different States in passing 50 different laws dealing with disabilities. We got there because the U.S. Congress saw its responsibility to break down the barriers of discrimination and to for once and for all say people with disabilities are every bit as much of an American as you, me, or anybody else; that there shouldn't be artificial barriers and real barriers; and that there should be accommodations made.

Mr. Sutton says we didn't have enough findings. He said the ADA was not needed. Tell Pat Garrett that. Tell Lois Curtis and Elaine Wilson that the ADA wasn't needed to get them out of the institutions they were in and to give them their freedom as human beings and as American citizens to live outside of an institution. Tell them that the ADA was not needed. Tell my nephew Kelly that the Americans with Disabilities Act wasn't needed.

Mr. Sutton can say all he wants and people here can argue, Well, he was

just representing his clients. But as I have said and will continue to point out, it wasn't just his clients. It was what he said and what he wrote outside of the courtroom.

I believe also his opinions and his views are that Congress doesn't have this power—this right—to pass civil rights legislation.

In The Legal Times, as I said, on November 2, 1998, Mr. Sutton was quoted as saying, ''It doesn't get me invited to cocktail parties. But I love these issues. I believe in federalism stuff.''

He said on National Public Radio—not in a court case but on National Public Radio—''As with age discrimination, disability discrimination in a constitutional sense is really very difficult to show.''

Seventeen hearings, 5 committee markups, 63 public forums across the country, 8,000 pages of transcripts, oral and written testimony from the Attorney General of the United States, Governors, State Attorneys General, legislators—on and on—and he said it is difficult to show.

As I said, it is either clear that he doesn't understand how Congress works or he understands but disdains what we do here in the area of civil rights and civil liberties.

These comments and others seem to suggest Mr. Sutton was doing much more than merely advocating a response, and, in fact, reveal an extreme view of federalism that promotes State power over the rights—the civil rights—of a U.S. citizen.

I know it is said, Well, Mr. Sutton has represented the other side, but we have looked and we have not found any case Mr. Sutton has taken that would be on the opposite side of States rights—not one. My friend from Utah said Mr. Sutton represented people with disabilities and sits on a board that looks out for the interests of people with disabilities. I took a look at that. Mr. Sutton, for the Record, did represent the National Coalition for Students with Disabilities in a case brought in Federal district court, alleging that the Ohio Secretary of State violated the National Voter Registration Act regarding voter registration sites for persons with disabilities. The case was filed on November 6, 2000. Mr. Sutton was nominated for the Sixth Circuit vacancy on May 9, 2001, and it appears Mr. Sutton did not become the attorney of record until April 26, 2002.

It was said earlier by my friend from Ohio that Mr. Sutton represented Cheryl Fischer in her attempt to gain admission to Case Western University Medical School. Ms. Fischer, who is blind, dreamed of becoming a psychiatrist. The university wouldn't admit her to medical school because of her disability. Yes. Mr. Sutton worked on this case. But he did not represent Cheryl Fischer. As Ohio's solicitor, Mr. Sutton represented the Ohio Civil Rights Commission because it was his job. Cheryl Fischer's attorney was Thomas Andrew Downing.

Again, I know others are on the floor to speak and I don't want to hold up the floor any longer. But I think it is clear that all Mr. Sutton has said, all that he has written, and views espoused by him, give us nothing other than a portrait of an individual with extreme views on States rights—a person who will be an activist judge, a person who is an ideologue.

I quote from the New York Times editorial of this morning entitled ''Another Ideologue for the Courts.''

Mr. Sutton argued a landmark disability rights case in the Supreme Court. Patricia Garrett, a nurse at an Alabama state hospital, asserted that her employer fired her because she had breast cancer, violating the Americans With Disabilities Act. Mr. Sutton argued that the act did not protect state employees like Ms. Garrett. His states'-rights argument narrowly won over the court, and deprived millions of state workers of legal protection. He also invoked federalism to urge the court to strike down the Violence Against Women Act. It did so, 5 to 4, dismantling federal protection for sexual assault victims. Mr. Sutton has said that he was only doing his job, and that his concern was building a law practice, not choosing sides. But throughout his career, he has taken on major cases that advance the conservative agenda. He has left little doubt in his public statements that he supports these rulings.

I ask unanimous consent that the New York Times editorial be printed in the RECORD.

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

[From the New York Times, Apr. 28, 2003]

ANOTHER IDEOLOGUE FOR THE COURTS

It seems likely that Jeffrey Sutton, a nominee to the United States Court of Appeals for the Sixth Circuit in Cincinnati, will be confirmed by the Senate this week. But it is important to recognize why he was selected, and how he fits the Bush administration's plan for an ideological takeover of the courts. Whichever way the Senate votes on him, it must insist that the administration start selecting judges who do not come with a far-right agenda.

There is no shortage of worthy judicial nominees. Federal courts are filled with district court judges, Republicans and Democrats, who have shown evenhandedness and professionalism, and many would make fine appeals court judges. State courts are overflowing with judges and lawyers known for their excellence, not their politics.

The Bush administration, however, has sought nominees whose main qualification is a commitment to far-right ideology, Mr. Sutton is the latest example. He is an activist for ''federalism,'' a euphemism for a rigid states'-rights legal philosophy. Although federalism commands a narrow majority on the Supreme Court, advocates like Mr. Sutton are taking the law in a disturbing direction, depriving minorities, women and the disabled of important rights.

Mr. Sutton argued a landmark disability rights case in the Supreme Court. Patricia Garrett, a nurse at an Alabama state hospital, asserted that her employer fired her because she had breast cancer, violating the Americans With Disabilities Act. Mr. Sutton argued that the act did not protect state employees like Ms. Garrett. His states'-rights argument narrowly won over the court, and deprived millions of state workers of legal protection. He also invoked federalism to urge the court to strike down the Violence Against Women Act. It did so, 5 to 4, dismantling federal protection for sexual assault victims. Mr. Sutton has said that he was only doing his job, and that his concern was building a law practice, not choosing sides. But throughout his career, he has taken on major cases that advance the conservative agenda. He has left little doubt in his public statements that he supports these rulings.

At his confirmation hearing, Mr. Sutton faced protesters with guide dogs and wheelchairs, who were upset about his role in rolling back disability law. Naturally, they urged the Senate to reject him. But the senators' duty to advise and consent goes beyond their vote on any particular nominee. They must make it clear that in a nation brimming with legal talent, it is unacceptable to focus the search for federal judges on a narrow group of idealogues.

Mr. HARKIN. Mr. President, no doubt Mr. Sutton is a very bright individual. He is very capable. He has argued cases before the Supreme Court. I don't argue his qualifications—not a bit. But I do argue his views—his views which, if he is permitted to take a seat on the Sixth Circuit Court of Appeals, I believe would mean that when Mrs. Garrett or my nephew Kelly or other people with disabilities walked into that courtroom, or wheeled their chairs into that courtroom—that Mr. Sutton wouldn't see a person. He would not see the years and years of discrimination against people with disabilities. He would not see what that individual person has to put up with day after day.

He would only see one thing: What is the State law? If the State law did not cover it, then we in Congress have no power to act.

That, Mr. President, is an extreme view—an extreme activist view—of the role of our Federal judges, and one which this Senate should not accept.

I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Senator from Ohio.

Mr. VOINOVICH. Mr. President, thank you for allowing me to speak on behalf of Jeff Sutton, a star in the Ohio bar. I am here to express my strongest recommendation for Jeff, whom the President nominated to serve on the U.S. Court of Appeals for the Sixth Circuit on May 9, 2001. Can you believe that? On May 9, I was at the White House when President Bush nominated Jeff, and here we are, almost 2 years later, finally voting on his nomination.

I am extremely disappointed at the length of time it has taken for this most qualified nominee to reach the floor of the Senate. Much of my disappointment stems from the fact that anyone who knows Jeff knows him to be a man of unquestioned integrity, intelligence, and qualifications, with vast experience in commercial, constitutional, and appellate litigation. Jeff will bring a special quality to the bench.

His first career was as a teacher. He was a 7th grade geography and 10th grade history teacher, as well as a soccer and baseball coach before heading off to law school.

Jeff graduated first in his law school class from the Ohio State University

College of Law, followed by a clerkship with the Honorable Thomas Meskill of the U.S. Court of Appeals for the Second Circuit and a clerkship for Justices Powell and Scalia on the U.S. Supreme Court.

From 1995 to 1998, Jeff left his Jones, Day law firm behind and answered the call to public service as the State solicitor general of Ohio. It was during this time that the National Association of Attorneys General awarded Jeff a Best Brief Award for practice before the U.S. Supreme Court 4 years in a row. After his tenure as State solicitor, Jeff returned to Jones, Day to practice law, where he works today. Because he was the State solicitor of Ohio when I was Governor, I worked with him extensively when he represented the Governor's office, and, in my judgment, he never exhibited any predisposition with regard to any issue and had great interpersonal skills.

Jeffrey Sutton has exactly what the Federal bench needs: a fresh, objective perspective. In spite of being a brilliant lawyer, he has never exhibited anything but humility. In fact, Professor John Jeffries of the University of Virginia agrees with me on this point, calling Jeff ''compassionate, humane and modest.'' He goes on to say that Jeff ''does not rush to judgment, nor is he burdened by the kind of unwarranted confidence in his own opinion that closes the mind to concerns of others.'' Let me repeat that: He is not ''burdened by the kind of unwarranted confidence in his own opinion that closes the mind to concerns of others.''

Jeff Sutton's qualifications for this judgeship are best evidenced through his experience. He has argued 12 cases and filed over 50 merits and amicus curiae briefs before the U.S. Supreme Court, both as a private attorney and as Solicitor for the State of Ohio. In addition to the U.S. Supreme Court, Jeff has also argued 13 cases in State supreme courts, 8 cases before the Federal Court of Appeals, and dozens more cases in State and Federal trial courts.

I want to share a story with you that reflects how good a lawyer Jeff really is. I visited the Supreme Court last year to move the admission of some of my fellow Ohio State Law School alumni. We were having our 40th class reunion here in Washington. While giving us a tour of the Supreme Court, Bill Suter, the Clerk of the Court, upon realizing that we were Ohioans, went way out of his way to commend Jeff's abilities as an appellate lawyer. I cannot think of higher praise than the Clerk of the Supreme Court, who witnesses so many arguments and sees so many lawyers every year, remembering Jeff and having nothing but praise for him.

In fact, Jeff has earned such a vaulted reputation among the Supreme Court Judges that they regularly seek him out to participate in proceedings before the High Court. These cases include that of Becker v. Montgomery, where the Supreme Court appointed Sutton to represent an inmate in a prisoner's rights lawsuit against his jailors. The Court unanimously agreed with his position, and Justice Ginsburg even went so far as to remark in the opinion that ''[Jeff's] able representation . . . permit[s] us to decide this case, satisfied that the relevant issues have been fully aired.''

It is also worthy to note that the lawyer for the State of Ohio in this case, Stewart Baker, said of Jeff:

> [T]he Becker case illustrates the fallacy of claims that Mr. Sutton's judicial philosophy can be gleaned from the positions he has advocated in court. . . .While the Becker case may or may not tell us something about his personal views, Mr. Sutton's willingness to take the case without compensation does tell us a lot about his compassion and commitment to justice.

In Westside Mothers v. Haveman, the Supreme Court again invited Jeff's participation in a Medicaid case as amicus curiae after it found the parties' briefing to be ''less than satisfactory.'' And again, the Court responded with thanks and praise, stating:

> Particularly noteworthy for its quality and helpfulness is the amicus participation at the court's request of the [Michigan Municipal] League and its pro bono counsel, Mr. Jeffrey Sutton.

In addition to his appellate practice and family responsibilities, Jeff has exhibited an appreciation that one has a responsibility to contribute to the legal profession. He has been an adjunct professor of law at Ohio State, teaching seminars in constitutional law. He also teaches continuing legal education seminars on the U.S. Supreme Court and Ohio Supreme Court to Ohio State court judges and develops curricula for appellate judges on behalf of the Ohio State Judicial College.

While his unwillingness to shy away from challenging or controversial cases has, in some instances, led critics to allege he has a predisposition toward certain cases, I believe such comments are not accurate—for instance, the allegation that Jeff is biased against people with disabilities.

I disagree strongly with my colleague, the Senator from Iowa, on this point. Anyone who really knows this man knows these allegations are just untrue and that Jeff should not be judged on a handful of cases where he did his job by vigorously advocating on behalf of his clients.

I believe it is patently unfair for groups to take the position that, based upon his advocacy in this handful of cases, this man wants to curtail the civil rights of persons with disabilities. Nothing—nothing—could be further from the truth.

First, I would like to point out that it is a well-established principle in the legal profession that lawyers should not be held responsible for the positions of their clients. By serving as a lawyer to certain groups or individuals, Jeff does not necessarily adopt their viewpoints as his own; he just does his job, as he is supposed to, by subordinating his own interests to those of the client and doing everything possible within the bounds of the law to win.

In fact, the American Bar Association 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.

Second, instead of focusing on a handful of cases, Jeff's detractors should review his history of representing a very diverse group of clients who advocate every conceivable point on the political spectrum. This includes Cheryl Fischer, a blind woman refused entry to an Ohio medical school, whom Jeff represented when he was the Ohio State solicitor. Ms. Fischer wrote a letter of support on Jeff's behalf stating:

> I recall with much pride just how committed Jeff was to my cause. He believed in my position. He cared and listened and he wanted . . . to win for me.

Jeff represented the National Coalition of Students with Disabilities where he successfully argued that Ohio State-run universities were violating the motor voter law by failing to provide their disabled students with voter registration materials. This is very important. In that particular case, Benson Wolman, a former law school classmate of mine, who would smile with great pleasure if described as a liberal civil rights advocate, and a former director of the ACLU in Ohio, asked Sutton to help out in this motor voter case. He supports his nomination, stating:

> [Mr. Sutton's] commitment to individual rights, civility as an opposing counsel, his sense of fairness, his devotion to civic responsibility, and his keen and demonstrated intellect all reflect the best that is to be found in the legal profession.

This is the former head of the Ohio Civil Liberties Union saying 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.

Wolman's endorsement of Jeff is very important. It should give comfort and alleviate the fears of my colleagues who believe Jeff may be too conservative and not sensitive to liberal causes and civil rights.

Third, Jeff's service on the board of the Equal Justice Foundation, a public interest organization that provides pro bono legal services on behalf of disadvantaged individuals, including people with disabilities, is evidence of his interest to advance the interests of the disabled. During his tenure, the foundation tackled a variety of cases which advanced these interests: One, for example, suing three Ohio cities to force them to build curb cuts to make their sidewalks wheelchair accessible; two, suing an amusement park company that had a blanket policy banning the

disabled from their rides; and, three, representing a girl with tubular sclerosis in a case alleging that her school was not providing her with an adequate education plan—to name a few.

Last, anyone who knows of Jeff's work when he was younger at his father's school for children with cerebral palsy knows this is not a man who wants to curtail the rights of the disabled. Think about that. His father ran a school for children with cerebral palsy. Can you think that someone who had that experience in his family would want to curtail the rights of the disabled? In fact, you only need to read the letters of support from those who work in the disabled community to see the number of people who support Jeff.

These include Francis Beytagh, legal director of the National Center for Law and the Handicapped, who 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.

And James Leonard, codirector of the University of Alabama's Disability Law Institute, who wrote:

> In my opinion, Jeffrey Sutton is well-qualified to sit on the Sixth Circuit Court and should be confirmed. . . . I see no ''agenda'' on Mr. Sutton's part to target disabled citizens—

That is something that is going to be advocated on the floor of the Senate for the next day and a half.

He says:

> In my opinion, Jeffrey Sutton is well-qualified to sit on the Sixth Circuit Court and should be confirmed. . . . I see no ''agenda'' on Mr. Sutton's part to target disabled citizens. . . .

Seth Waxman, President Clinton's Solicitor General and Jeff's opposing counsel in University of Alabama v. Garrett, stated:

> I know that some have questioned whether the position Mr. Sutton advocated last Term . . . 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 consistent with the finest traditions of the adversarial system.

Jeff Sutton should not be criticized on assumptions that past legal positions reflect his personal views. Instead, he should be lauded for always zealously advocating his client's interest, no matter the issue.

While I could continue praising Jeff as a lawyer, what I am most impressed by is that I could spend equally as much time praising Jeff, the man. There is no question that Jeffrey Sutton is one of this Nation's premier appellate lawyers and could remain at his law firm and literally make millions of dollars. He has chosen, however, to turn his back on that opportunity because he is deeply committed to public and community service and believes he can do more for his fellow men and their quality of life and the legal system by serving on the appellate bench. His motives, in my opinion, are fundamental to one who seeks a lifetime appointment to a Federal circuit court of appeals.

Jeffrey Sutton wants his job for the right reasons. He does not need it for his ego or the financial well-being of having a permanent job. He has a wonderful wife and three children, whom I have met and talked to, who are willing to make the financial sacrifice so that Jeff can serve.

Jeff is an elder and deacon in the Presbyterian Church, as well as a Sunday school teacher. He also participates in the I Know I Can program, which provides college scholarships to inner-city children; ProMusica, a chamber music organization; and coaches youth soccer and basketball teams.

I have met some exceptional people during my 35 years in government, and Jeff is one of the most exceptional. I have worked closely with Jeff and know that he will make an exemplary addition to the Sixth Circuit, which is in crisis because of the vacancies now on it. I respectfully urge the Senate to confirm Jeff Sutton's nomination as quickly as possible.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I urge my colleagues to vote against the nomination of Jeffrey Sutton to the Sixth Circuit. I am not convinced that Jeffrey Sutton will be fair and open-minded in the range of issues that would come before him; in particular, those on the balance between Federal and State power and the ability of individuals to enforce their civil rights in court.

Mr. Sutton has been the most visible advocate in the rightwing movement to weaken the basic civil rights laws that have brought our country closer to equal opportunity for all of our citizens. Because of the civil rights laws enacted over the last 40 years, we have increased opportunities for minority citizens in all aspects of our Nation. Women and girls have many more educational and sports opportunities. People with disabilities have new opportunities to fully participate in our society. Without the Civil Rights Act of 1964, the Voting Rights Act of 1965, the Housing Act of 1968, the enactment of title IX in 1972, and the Americans with Disabilities Act in 1991, these extraordinary advances could never have been achieved. All of these laws had strong bipartisan support from Democrats and Republicans.

Mr. Sutton has been at the forefront of a campaign to weaken many of these civil rights laws by claiming that Congress has no power to make these laws enforceable against the States or by claiming that individuals cannot enforce these rights in court.

Unfortunately, Mr. Sutton has often found willing support in recent years by five justices of the Supreme Court. Over the last decade, a narrow majority of the Supreme Court has ushered in what some are trying to call the ''new federalism.'' Five justices have rewritten many of the rules on the power of the Federal Government, in some instances overturning their own precedent and ignoring long-standing constitutional language to do so. More Congressional statutes have been struck down or severely limited by this Supreme Court than at any point since the now-widely discredited Supreme Court of the 1930s which attempted to block the progressive legislation of the New Deal.

The agenda in Mr. Sutton's advocacy is all too clear. It's to reduce the power of the Federal Government to protect civil rights. Our constitutional system was founded on respect for the States. But the Civil War Amendments gave broad power to the Federal Government to enact civil rights statutes and make them enforceable against States. Mr. Sutton's advocacy clearly undermines these profound changes made over a century ago in our Constitution.

The human impact of Mr. Sutton's victories at the Supreme Court is also clear. Mr. Sutton's advocacy has meant that: Individuals like Patricia Garrett, a breast cancer survivor who was demoted after working for seventeen years for the University of Alabama, cannot seek damages under the ADA; workers over 40 who are fired or demoted from their state jobs because they are considered too old have no effective federal remedy for age discrimination. In a recent case, a supervisor in a state agency fired a plaintiff because of his age and told the jury that ''In a forest, you have to cut down the old, big trees so the little trees can grow.''

The plaintiff in this case was fired at the age of 48.

Sutton's advocacy has also meant that: Individuals can no longer bring suit under regulations implementing the 1964 Civil Rights Act. This makes it difficult for Bonnie Sanders and Rose Townsend to remedy racial discrimination in their low-income minority community in New Jersey which suffers high rates of asthma and respiratory illnesses from the large number of contaminated waste sites and superfund sites unfairly placed in their small community; persons who complain about gender discrimination in school sports or education programs can be fired or demoted without being able to bring a challenge under Title IX's provisions.

Mr. Sutton's response to many of the concerns raised about his record is that he was making arguments on behalf of his client. All of us understand that the arguments lawyers make in their briefs or in oral arguments do not necessarily represent their own views. But Mr. Sutton's claim that he is not seeking to advance a broad States rights agenda is absurd.

He admits that he has not been involved before the Supreme Court in any cases on the other side of the issue—he has not sought to defend Federal power to enact civil rights laws.

He consistently represents only those States—and there are many States on the other side—who want to limit the scope of Federal civil rights laws. Indeed, Mr. Sutton has stated that he is ''on the lookout'' for States' rights cases.

He is a top officer of the Federalist Society, and he has repeatedly expressed his views on the question of Federal and State power. He has expressed his ''love''—he actually used that word for making State sovereignty claims, even when his arguments are unpopular. He has characterized questions of federalism as a ''zero-sum'' game, an endless battle between the Federal and State governments.

Mr. Sutton called our attention to a few cases in which he has defended the rights of people with disabilities. I commend him for those cases. But I find it curious that we are meant to believe that those few cases reflect his real views on civil rights, while his advocacy in major States rights cases in the Supreme Court reflects only the views of his client. For every plaintiff like Cheryl Fischer—the blind woman whom Sutton represented in his Government capacity after she was denied admission to medical school—thousands more were harmed by his advocacy to deny civil rights protections.

The case that casts the most doubt on Mr. Sutton's claim that he was merely representing his clients and that demonstrates his activism in support of States' rights is Westside Mothers. Poor children and their mothers had challenged Michigan's failure to provide adequate dental services, as required under Medicaid. They were not claiming money damages. They only wanted the State of Michigan to provide the health care required by Federal law. They brought suit under section 1983, which the Supreme Court has long held allows persons to bring claims for violations of Federal statutes. Mr. Sutton argued in a friend-of-the-court brief that these children could not enforce their Medicaid rights using section 1983. The district court accepted his arguments, but the Sixth Circuit reversed—unanimously.

If Mr. Sutton's arguments had prevailed, it would have limited the enforcement of a wide range of spending power statutes, contrary to more than a quarter-century of Supreme Court precedent. He would have effectively closed the court house doors to: Working parents in North Carolina who drove up to 3½ hours each way to obtain dental care for their children, because they could not find a dentist closer to home who would accept Medicaid—even though the Medicaid law requires States to ensure an adequate supply of providers; children with mental retardation and developmental disabilities in West Virginia who faced institutionalization because they could not get Medicaid to pay for the home-based services they needed, even though the Medicaid law requires States to cover the services; families in Arizona who were not receiving notices or hearings when their Medicaid HMOs denied or delayed needed treatments, even though the Medicaid law requires States to provide those rights.

Mr. Sutton's advocacy, if he had prevailed, would have closed the doors to relief for all these individuals.

Mr. Sutton even sought to achieve this result by encouraging the district court to ignore Supreme Court precedent. He failed to cite in his opening brief the leading Supreme Court cases that allowed plaintiffs to bring the challenges. In his reply brief, he told the district court that it need ''not be overly concerned'' with this precedent. It is very disturbing that a judicial nominee would be so cavalier in his dismissal of Supreme Court rulings, and would even invite the lower court to disregard it.

In response to questions about the Westside Mothers case, Mr. Sutton did not back away from the positions he took in the case. He continued to maintain that the far-reaching arguments he made were supported by the law. The Department of Justice and over 75 law professors, liberal and conservative, filed their own friend-of-the-court briefs to emphasize that Mr. Sutton's view, if it had been accepted, would radically change the law.

One of the professors who wrote to us about Mr. Sutton's views in this case was Professor Douglas Laycock. He said that while Mr. Sutton persuaded the district judge that none of the Supreme Court's precedents was binding, his arguments were actually in defiance of settled law. As Professor Laycock wrote, ''The truth is that the power to enforce Federal law by suits against State officers was settled and fundamental.'' Professor Laycock concluded by saying: ''What Westside shows is Sutton aggressively creating new doctrine to restrict or overturn settled law, leading the way at the frontier of the campaign to roll back Federal power and leave citizens without effective protection for their Federal rights.''

Mr. Sutton's advocacy in this case, far beyond what the Supreme Court has ever held, raises major concerns that he will continue to follow his own extreme views on what the law should be if he is confirmed as a judge.

The issue is not whether Mr. Sutton dislikes disabled people. It is not about whether he is a good man. He is very personable, highly credentialed, very intelligent. The question is whether he is committed to the principles of the Constitution, including genuine enforcement of Federal civil rights laws. His record fails to show that he will be able to set aside his own extreme agenda in rolling back Federal power.

Many of the White House nominees to lifetime appointments to our Federal courts of appeals raise such a question. Those courts are charged with making decisions vital to the everyday lives of American people, but far too many of them have records that are extreme. Their goal is to use the Federal courts to limit the rights of workers, dismantle environmental protection, roll back civil rights, undermine the rights of women, and to reject the right of privacy.

When the White House submits nominees who show that they will be fair and open minded in the cases that come before them, we should all support them. Judge Edward Prado, for example, a nominee to the Fifth Circuit, is one such nominee. He is a Republican. He likely holds views with which some of us disagree. He has shown, however, in his time on the bench that he is committed to the rule of law and to honoring the Constitution and the Federal laws, not reshaping the law to fit a right-wing ideological agenda. He was approved by the Judiciary Committee unanimously. There was not a single letter of opposition against him. He is ready to be voted on by the full Senate.

Nominees such as Judge Prado should get our full support; nominees such as Jeffrey Sutton should not.

The basic values of our society, whether we will continue to be committed to equality, freedom of expression, and the right to privacy, are at issue in each of these controversial nominations. If the administration continues to nominate judges who would weaken the core values of our country, roll back the laws that have made our country a more inclusive democracy, the Senate should reject them. No President has the unilateral right to remake the judiciary in his own image. The Constitution requires the Senate's advice and consent on judicial nominations. It is clear that our duty is to be more than a rubberstamp, and I urge my colleagues to vote against Jeffrey Sutton.

I see my colleague and friend from Iowa in the Chamber. He is a member of our Human Resources Committee. In looking over several of these items, he can remember very well, as I am sure I can, the time and deliberation we took on a number of these legislative matters, such as the Americans with Disabilities Act. That legislation in one form or another was before the Congress probably 8 to 10 years before we were eventually able to work that matter through to acceptance. We had broad bipartisan support that said we were going to be an inclusive Nation, we were going to include those individuals who were facing the challenges through some form of disability, and we were going to be a better country because of that.

The overwhelming celebration we had at the White House—I can remember the Senator from Iowa being there when President Bush 1 signed that bill and stated that he believed this was probably the most important single legislative achievement and accomplishment he had during the time of his Presidency. Guarantees were put into place in order to protect those who had some disability so that they would be able to have their rights protected.

That is not what Mr. Sutton says. That is not what the holding is in his case in the Garrett decision. It points out in those cases he has outlined that the State employees will not be covered under the ADA and they will not have those protections. We on the Labor and Human Resources Committee had hearing after hearing and listened to the challenges the disabled people were facing in this country. We took time and listened to suggestions and recommendations from Republicans and Democrats alike so we could pass a meaningful bill to protect those individuals. We thought we did that and the President of the United States believed we had and the Justice Department thought we had at that time, but not Jeffrey Sutton. No, no protections for State employees. I never heard Jeffrey Sutton bring these ideas up before our committee or over in the House of Representatives.

Maybe later on the Senator from Iowa can tell me whether he ever remembered that being brought up or whether or not we were attentive to our duty and our responsibility, or that it was the failure of our committee and the responsibility of the Senator from Iowa and the Senator from Massachusetts that we failed to provide those protections, because we believed that we had. We did not hear any opposition to it.

The Senator from Iowa remembers the various lengthy hearings we had about age discrimination which was taking place in this country, about workers who were being singled out solely on the issue of their age. The Senator can remember the days and the weeks of hearings we had on that issue, and that the legislation we passed was supported by Republican and Democrat alike, but not from Mr. Sutton; one can go right ahead and discriminate freely on the basis of age according to his decision. We had not heard that—we never heard it from the Justice Department during that period of time.

Many of these things occurred during the time when we had a Republican Justice Department which had supported this legislation.

The Senator has talked about the Violence Against Women Act legislation, to which Jeffrey Sutton filed an amicus brief to say there is no civil remedy under the Violence Against Women Act. The Senator can remember the time we spent on that legislation.

Then there was the Religious Restoration Act on which my friend from Utah and I worked long and strenuously, inviting constitutional authorities from all over this country to help us shape legislation to make sure we really were going to move ahead in the protection of rights to be able to practice one's own religion, but we were not able to do it under the holding of Mr. Sutton.

Then, finally the striking down of title VI of the Civil Rights Act, which is basically an opportunity for individuals, primarily poor, primarily men and women of color, when there are going to be actions that are going to be taken which are so blatant and flagrantly discriminatory that puts their lives and their health at risk—no, no, that particular title VI of the 1964 act was going to be struck down as well.

The common factor is—and the Senator from Iowa would agree—the kinds of protections we are talking about in such legislation as this is for the most vulnerable, in many instances the weakest people, in our society. We have heard from those who are going to defend Mr. Sutton that that is not really Jeffrey Sutton; that he was just taking a case at a time. Well, he has taken all of these cases, and he has looked for more, and he has never been a spokesperson for the opposing view in terms of defending these individuals.

We have a difficult time in terms of providing these protections for individuals who are being left out and being left behind. We are always reminded every single day in this city and in this country how those with power and those with wealth are able to take care of themselves very well. But we are talking here about those individuals who had protections under these various statutes who by and large came through our committee after weeks and months of hearings, where there was a bipartisan effort to try to ensure that legislation was carefully drafted and focused and attended to, but they do not meet the test of Jeffrey Sutton.

I say that Jeffrey Sutton does not meet my test either.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Iowa.

Mr. HARKIN. I thank the Senator for the dialog. I thank the Senator for his statement, but I thank the Senator for his great leadership in the 1980s.

When I first came here in 1985 and became a member of the Labor Committee under the leadership of Mr. KENNEDY, the Senator from Massachusetts, we were beginning to develop, as the Senator knows, at that time, the underlying legislation for ADA. It was the Senator from Massachusetts who provided the great leadership that brought us together—Republicans and Democrats, Republican Attorney General, Republican President, States attorneys general, Governors—all over the country, coming together saying, finally, we have to do something about this.

That is why Mr. Sutton's view is so disturbing in how he approaches this matter. As the Senator from Massachusetts so correctly stated, a lot of people are saying he was representing his client. However, he was on an NPR radio interview—not representing a client there, he was representing himself—in which he said disability discrimination in a constitutional test is hard to show, difficult to show.

The Senator from Massachusetts alluded to how much work we had done to show that, 25 years of study. The first study done by Congress showing discrimination against people with disabilities was in 1965, the National Commission on Architectural Behaviors. Finally, in 1989 we passed the Americans with Disabilities Act. Mr. Sutton says that is not enough.

As the Senator from Massachusetts pointed out, we had 17 formal hearings by the committee of the Senator from Massachusetts and the subcommittee which I chaired. Five separate committees marked up this bill. We had 63 public forums across the country, led by Justin Dart, head of the President's national committee—8,000 pages of testimony—as the Senator mentioned, the Attorney General of the United States, Thornburg, Governors, State attorneys general, State legislators. But especially as it pertains to the Garrett case, Mr. Sutton basically said that Congress had not made a showing, that States were not living up to their responsibility to protect people with disabilities. There were 300 examples that came into our committee regarding discrimination by State governments. Mr. Sutton says that is not enough.

I wonder aloud to my friend from Massachusetts, how many do we need, 325? Is it 350? What is the magic number to show that State governments were violating constitutional rights of their citizens? With 300 examples, Mr. Sutton says that is not good enough.

I thank the Senator from Massachusetts for his statement, for his lifelong advocacy and support, especially of people with disabilities. I have geared my remarks on that—and for his advocacy and support for the Americans with Disabilities Act.

People say Mr. Sutton is a nice guy and all that kind of stuff. I suppose he is. I spent an hour and a half with him. I found him to be a very pleasurable individual. The Senator from Ohio said that he does not have any bias against people with disabilities. I don't contend that. I know the Senator from Massachusetts does not contend that Mr. Sutton has any personal bias against people with disabilities. However, his rigid ideology in that we in the Congress cannot pass national laws protecting the civil rights of people with disabilities sets the clock back 25 years or more. So that is the problem with Mr. Sutton. He has this rigid ideology that says people may be hurting, people may be discriminated against because they use a wheelchair or they have cerebral palsy or they are deaf or they are blind, and isn't that just too bad, our hearts go out to them, but we can't do anything about it unless the State does something about it.

I find that to be the primary reason why Mr. Sutton should not be on the circuit court of appeals. If he wants to be on the State bench some place, at a State court he can espouse that, but not as a member of the circuit court of the United States.

I thank the Senator from Massachusetts.

Mr. KENNEDY. I thank my friend from Iowa for giving life to the points

I tried to make about the kind of due deliberation we had on the different pieces of legislation which came through our committee and for which we have a good deal of awareness and knowledge.

I remember when we considered the Americans with Disabilities Act. We would have such questions: How does it apply to a ski lift if someone comes up and is disabled? How many chairs will have to be on a ski lift? We were asked every conceivable policy question, wondering what would happen if it was a little bookstore with one person in it and a blind person walks on in: is the person at the cash register going to have to go back and help the blind person find the books or will they continue to be able to look after the cash register? These are the kinds of questions we had coming out of our ears; so many people were skeptical of taking that kind of action to give protections to our fellow citizens, over 40 million in this country. We faced every possible challenge on these issues. The Senator was there.

But suddenly now we find a new way of rolling all that back. Who is the author? Mr. Sutton. We heard from the Justice Department during that period of time. There was never any kind of question from the Justice Department. I ask the Senator from Iowa, does the Senator remember that the Justice Department commented—I hope you understand you are getting into a real hornet's nest, from a constitutional question. Did you hear that with regard to age or protections of people under the 1964 Civil Rights Act or the Violence Against Women Act? Were we ever told by any Justice Department, Democrat or Republican: Absolutely no.

Here we have a nominee who was able to get a viewpoint and a position that has been effectively undermining those kinds of protections. He has been doing it step by step by step.

I, for one, am not prepared to vote because the next one who is going to come will come right out there on the issues of protection on the basis of race, the last major kind of civil rights issue. That is the large enchilada this is building up to. As we know, slavery was written into the Constitution and this country has paid an extraordinary price to free us from forms of discrimination. We fought a civil war and experienced all the pain, suffering, tears and blood by Dr. King and others.

It was from that strength with the passage of the legislation we moved ahead to try to eliminate discrimination in other forms, discrimination against the disabled, discrimination against the elderly, discrimination against women. And here we have the architect to undermine those commitments. I, for one, am not prepared to vote to take advantage and say maybe he will just stop here and not see a continued rollback.

I agree with the Senator. He is a very fine person and we have a high regard for him but there are many other people that are fine and for whom we have a high regard. We have a responsibility, I believe, that Supreme Court nominees ought do have a commitment to the fundamentals of the Constitution. I am not prepared to take a chance on where he is going to go in the future.

I thank the Senator for his excellent presentation this afternoon. I think it has been very helpful.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have been listening with a great degree of interest at the comments of my colleagues. I, for one, as one of the prime authors of the Americans with Disabilities Act, contend that Mr. Sutton does agree with the bill and that he is an advocate for those who are suffering from disability, in spite of what has been said.

I rise today in support of the nomination of Jeffery Sutton to be a Judge on the Sixth Circuit Court of Appeals. Mr. Sutton is one of the top appellate lawyers in this country today. He has argued over 45 appeals for a diversity of clients in Federal and State courts across the country, including an impressive number—12—before the U.S. Supreme Court. We have not had nominees like this for years, who have the ability, experience, capacity, knowledge and the decency that some of these nominees of President Bush have. In 2001, he had the best record of any advocate before the Court, arguing 4 cases and winning all of them. On January 2, 2003, the American Lawyer named him one of the best 45 lawyers in the country under the age of 45. He is an outstanding nominee, and I urge all of my colleagues to support him.

Mr. Sutton served as a law clerk for United States Supreme Court Justices Lewis Powell and Antonin Scalia. Like his mentor Justice Powell, Sutton is a moderate who favors judicial pragmatism: According to Sutton, Justice Powell ''believed in people more than in ideas, in experience more than ideology and in the end, embraced a judicial pragmatism that served the country well.'' Mr. Sutton served as State Solicitor for the State of Ohio and currently is a partner in the prestigious law firm of Jones, Day, Reavis and Pogue. He also serves as an Adjunct Professor at Ohio State University School of Law.

During his legal career, he has not only demonstrated keen intellect, strong advocacy skills and a commitment to the rule of law, but has dedicated a substantial amount of his time to providing pro bono legal services to a variety of individuals and groups. He enjoys strong support from lawyers in Ohio and across the country, who have written to praise not only his first-rate legal abilities, but also his fairness, open-mindedness, and personal integrity. There can be no serious question as to Mr. Sutton's qualifications for this position. He represents the best of the legal profession and it is shameful to indicate otherwise.

Unfortunately, some of my colleagues seem to be looking past his unassailable credentials in search of issues that could be used to disparage him. I would like to address those points and explain why my colleagues need not be concerned—maybe that is a nice word to use here.

There have been suggestions that Mr. Sutton's record somehow demonstrates a bias against Americans with disabilities. However, there is no evidence in his record to suggest that he has a personal bias against those with disabilities or any other group of individuals. In fact, even the People for the American Way has conceded that ''No one has seriously contended that Sutton is personally biased against people with disabilities.'' I think that is a very important point.

When he was young, Mr. Sutton regularly assisted at his father's school for children with cerebral palsy, and a closer look at his legal record demonstrates that Mr. Sutton has taken up the causes of disabled Americans several times. He represented a talented young woman named Cheryl Fisher, who sought to get into medical school, but was turned down because she was blind. In a letter of support of Mr. Sutton, Ms. Fisher wrote:

> I recall with much pride just how committed Jeff was to my case. He believed in my position. He cared and listened and wanted badly to win for me . . . I realized just how fortunate I was to have a lawyer of Jeff's caliber so devoted to working for me and the countless others with both similar disabilities and interests.

In National Coalition of Students with Disabilities v. Taft, he successfully argued that Ohio Universities were violating the federal motor-voter law by failing to provide disabled students with voter registration materials. Again he received high praise from someone involved in the case. 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 served 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 tubular sclerosis in a case alleging that the school was not properly handling her individual education plan.

There are also many in the disabled community who, though not directly

involved with Mr. Sutton's cases, understand that he is committed to the law and support his nomination. 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.

We should pay attention to this person.

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 interest.

Gee, that is what he is, a good lawyer who represents clients and wins.

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.

I assume, after listening to my colleagues on the other side, what they are trying to do is beat up Mr. Sutton now so that he will bend over backwards in every way for persons with disabilities.

I don't think they have to worry about that. But I think it is unfortunate that they are beating up on a man who basically understands the disability community and who has long fought for it, but who has represented some clients with interests that my friends on the other side don't like.

I agree with Ms. Long, and I have no doubt Mr. Sutton would rule fairly in all cases, including those cases involving disabled Americans. Mr. Sutton's critics hold up the Garrett case as evidence to his insensitivity to the disabled community. I want to take just a few moments to discuss why that criticism is misguided.

Mr. Sutton did not seek to represent the State of Alabama in that case out of any desire to curb the Americans with Disabilities Act. Instead, he was approached by Alabama's attorney general to represent Alabama at the appellate stages of the litigation.

He was approached because he is an excellent lawyer and one of the best appellate lawyers in the country.

As an attorney looking to build a practice before the Supreme Court, Mr. Sutton accepted that representation. I do not see anything wrong with a young lawyer accepting cases in order to gain more experience before our Nation's highest tribunal. I concur with my distinguished colleague, the senior Senator from the State of California who pointed out that she hears from lawyers all the time that they were trying to build Supreme Court practices and picked up cases to do so.

It is a common practice for those who are fortunate enough to try cases before the Supreme Court. I give Mr. Sutton marks for candor for explaining that reason at his hearing.

Mr. Sutton did nothing wrong in accepting that representation—State governments are certainly entitled to representation under our legal system. Yet, I can understand the frustration that some of my colleagues may feel to see the protections of the Americans with Disabilities Act limited by the Supreme Court. I worked many long hours to see that piece of legislation enacted. However, I do not blame Mr. Sutton for the Supreme Court's decision—he is guilty of nothing more than being a very good lawyer for his client. The principle of judicial review is very well-established in American jurisprudence. If anything, we should be thankful that there are lawyers as able as Mr. Sutton to ensure the effective working of our system of checks and balances. It was the Supreme Court that made the decision; Mr. Sutton was simply representing his client.

And, by the way, that is what attorneys do. He had a right to do it. It was legitimate to do it. He did a very good job.

There is no evidence that Mr. Sutton was motivated by a personal agenda when he represented those State governments. In fact, former Clinton Solicitor General Seth P. Waxman, and Sutton's opposing Counsel in the Garrett case, wrote, ''I argued the 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 consistent with the finest traditions of the adversarial system.''

It is important to note that the ABA Model Rules of Professional Conduct state that no inference about a lawyer's personal views should be gleaned from the positions of his client. The rule states, ''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.'' My distinguished colleague, the junior Senator from New York, seems to agree. Back in February, on the Senate floor she noted, ''A long time ago, I used to practice law. I represented a lot of clients of different kinds, all sorts of folks. Their views and positions were not necessarily mine. I won some and I lost some in the trial court, in the appellate court, and in the administrative hearing room, but I do not believe that any of my clients spoke for me. My advocacy on behalf of clients was not the same as my positions about the law, about constitutional issues, and about many other matters.''

I personally think that was very well said by the distinguished junior Senator from New York.

Obviously, I do not think anybody in this body would seriously consider voting against a nominee because of a dislike of the nominee's clients. All of those of us who practice law and try cases represent clients with whom some in the Senate might disagree.

We had an important discussion about clients in connection with the nomination of Marsha Berzon, now a judge on the Ninth Circuit, and the Senate decided not to hold her responsible for her clients' views and confirmed her. I advocated for her even though I probably disagree with her philosophy in many respects. Judge Berzon is well qualified.

Judge Berzon had been a long-time member of the ACLU, serving on the Board of Directors and as the Vice President of the Northern California Branch. She testified that:

''[I]f I am confirmed as a judge, not only will the ACLU's positions be irrelevant, but the positions of my former clients, indeed, my own positions on any policy matters will be quite irrelevant and I will be required to and I commit to look at the statute, the constitutional provisions, and the precedents only in deciding the case.''

Mr. Sutton made similar assurances at his hearing that he will follow the law as an appellate court judge. He stated, ''. . . there's no doubt that when a Federal statute is passed, as the U.S. Supreme Court has made clear, there's a heavy presumption of constitutionality. And there's no doubt that a Court of Appeals judge has every obligation to follow that presumption.'' We accepted Judge Berzon's answer and we should do the same for Mr. Sutton instead of trying to destroy his reputation.

If there are members of this body who nevertheless try to hold Mr. Sutton responsible for the views of the states that he represented, I ask that they at least judge Mr. Sutton on his entire record and not just on a select handful of cases—or here a case, there a case, once in awhile another isolated case, and not just a select handful of cases.

Mr. Sutton has represented a wide range of clients in his legal practice. Most of the clients in the cases that displease his critics paid him to represent them, but he has represented a significant number of clients with very diverse interests on a pro bono basis. These clients include death row defendants, prisoner rights plaintiffs, the National Coalition for Students with Disabilities, the NAACP and the Center for Handgun Violence—to name a few.

In 2001, he was appointed by the U.S. Supreme Court to represent—pro se—Dale Becker in a prisoner rights complaint. Opposing counsel, and former

General Counsel of the National Security Agency during the Bush and Clinton Administrations, Stewart A. Baker, wrote in support of Mr. Sutton stating, ''If Mr. Sutton is to be judged by the positions he takes on behalf of his clients, the Becker case suggests that he favors increased inmate litigation in federal courts as well as a broad and flexible reading of the courts' rules, at least when a literal reading does harm to pro se litigants. In fact, the Becker case illustrates the fallacy of claims that Mr. Sutton's judicial philosophy can be gleamed from the positions he has advocated in court. Although he has apparently taken conservative positions on behalf of some clients, Mr. Sutton has also championed left-liberal positions when his client's welfare called for such arguments.''

Take for example, Mr. Sutton's defense of Ohio's minority set-aside statute when he was Solicitor General. Fred Pressley, Ohio attorney and Democrat who worked with Sutton on the case wrote, ''As Solicitor General, Mr. Sutton was a tenacious defender of all Ohioans, regardless of their race, gender, disability or nationality.''

In addition, I recently received a supportive letter from Mr. Riyaz Kanji, a former law clerk to Supreme Court Justice David Souter and Judge Betty Fletcher of the Ninth Circuit. He said that he contacted Mr. Sutton in August to ask for assistance on an amicus brief for the National Congress of American Indians in an Indian Law case pending before the United States Supreme Court. Mr. Kanji wrote, ''Mr. Sutton took the time to call me back from vacation the very next morning to express a strong interest in working on the case. In our ensuing conversations, it became apparent to me that Mr. Sutton did not simply want to work on the matter for the small amount of compensation it would bring him—he readily agreed to charge far below his usual rates for the brief—but that he instead had a genuine interest in understanding why Native American tribes have fared as poorly as they have in front of the Supreme Court in recent years . . . I think it is fair to say that most individuals who are committed to furthering the cause of State's rights without regard to any other values or interests in our society do not evidence that type of concern for tribal interests.''

I could go on and on in discussing the numerous letters of support that I have received on Mr. Sutton's behalf, but I think the best spokesperson for Mr. Sutton is Mr. Sutton himself. In a 12-hour hearing, Mr. Sutton answered all questions put to him candidly and honestly. He was extremely considerate and deferential, displaying a respect for the process as well as his very impressive legal ability.

Jeffrey Sutton is the best the legal profession has to offer. I urge my colleagues to examine his full and accurate record. I am confident if they do, my colleagues will vote overwhelmingly to confirm Mr. Sutton.

Mr. President, let me just take a moment to address some of my colleagues' concern about the Americans with Disabilities Act and the Supreme Court's decision in Garrett. I was a prime cosponsor of the Americans with Disabilities Act, and I am very proud of it. But this debate is not about whether this body did the right thing in passing that legislation. I personally think we did the right thing, and I could talk for hours on how important that legislation is. However, in our system of checks and balances, the Supreme Court has a role here. And all parties before the Court deserve to have competent, in fact, zealous legal representation—States as well as individuals.

In the Garrett case, the State of Alabama sought the representation of Jeffrey Sutton. Mr. Sutton argued zealously on behalf of the State. However, nowhere—nowhere—does Alabama's brief suggest that Congress does not have the power to protect Americans with disabilities.

Mr. Sutton did not, as some have contended, argue the Americans with Disabilities Act as a whole was not needed or should be repealed. Statements to this effect are a mischaracterization of both the nature of the question before the Court in the Garrett case and the arguments Mr. Sutton advanced on behalf of the State of Alabama.

In fact, Alabama's brief stated:

> The ADA advances a commendable objective—mandatory accommodation of the disabled. . . .

Further, the brief stated specifically that:

> Alabama . . . has not challenged Congress' authority under the Commerce Clause to regulate State employees through the ADA, [or] an individual's authority to bring an injunction action against State officials in Federal court, or the Federal government's authority to bring a claim for injunctive or monetary relief against States in Federal court.

Alabama's brief also specifically credited the Federal Government for prohibiting Government-based discrimination against the disabled, and affirmatively requiring all manner of employment and public-access accommodations designed to provide the disabled with the kind of equal opportunity and dignity all individuals deserve.

Finally, at oral argument before the Court, Mr. Sutton clarified that his client was ''happy that the ADA was enacted.'' Even if his client's statements or sentiments are deemed his own—which they should not be—Mr. Sutton's written and oral statements in the Garrett case dispel any credible notion that he believes the ADA is not needed.

Mr. President, I have no doubt that every litigant appearing in Jeffrey Sutton's courtroom will get a fair shake. Now, some of my colleagues have tried to distort his record, have tried to imply he is not the man that he is, have tried to indicate he is against the Americans with Disabilities Act because he represented clients with which some of my colleagues disagree, and that he is not worthy to be on this court. The total record suggests and demands otherwise.

We should be lucky if we can get other nominees, whichever party is in charge of the White House, who have the kind of abilities and capacities that Jeffrey Sutton has. I have no doubt every litigant appearing before Mr. Sutton will be treated fairly, with dignity, and that the laws will be interpreted appropriately. This is an honest man. This is a great lawyer, although young, and he is a person who will, I think, bring a great deal of balance, integrity, capacity, and ability to the Federal courts of this country and, in particular, the Sixth Circuit Court of Appeals.

So I hope our colleagues in the Senate will ignore some of the, I think, disparaging remarks that have been made and look at the real record. And if they do, they will vote for Jeffrey Sutton.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LEAHY. Mr. President, I might note before I begin, seeing the distinguished occupant of the Chair, who is my neighbor across the Connecticut River—and both he and I, as natives of our States, know you never want to jump to hasty conclusions—it appears that spring is actually coming to New Hampshire and Vermont. It does not mean the bud season is over, but crocuses have been spotted. And, as one of my neighbors used to tell me: The croci have appeared.

Our official reporter, Patrick Renzi, is going to figure out how to spell ''croci,'' and I will be no help to him at all. I am sure, with how good all the reporters are, those who take down our debates here in the Senate, how superb they all are, they will find the correct spelling.

Mr. President, on a more serious matter, Senator HATCH, Senator KENNEDY, Senator DEWINE, Senator VOINOVICH, and Senator HARKIN have spoken about the Sutton nomination, and I want to speak to it, too.

Today, the Senate is considering the nomination of Jeffrey Sutton of Ohio to the U.S. Court of Appeals for the Sixth Circuit.

The responsibility to advise and consent on the President's life-tenured judicial nominees is one that I take seriously and is not an occasion to rubber stamp. And I have taken that position whether we have had a Republican or Democrat in the White House. The

nomination of Jeffrey Sutton presents a number of areas of concern to me. For these reasons, I, along with seven other members of the Judiciary Committee, voted against Mr. Sutton in Committee and I will vote against him being confirmed to a lifetime position on the U.S. Court of Appeals for the Sixth Circuit.

The number of individual citizens who came to the hearing to oppose Mr. Sutton, along with the number of Senators who came to question Mr. Sutton, several times in some cases, is some indication of the controversial nature of this nomination. The hearing had to be moved to a bigger room, a room that had been reserved in advance of the hearing, in order to accommodate the public interest in the nomination. I thanked the Chairman to acceding to my suggestion and the suggestions of others to move the hearing into the larger hearing room in order to provide access to the public and, in particular, those members of the public who are disabled.

In the days preceding his hearing, the Committee received thousands of letters from individuals and organizations, both in and out of Ohio, expressing concerns about appointing Mr. Sutton to the Sixth Circuit, and those letters raise serious issues. Mr. Sutton did not clear up these concerns at his hearing. In fact, his answers to many Senators' concerns, along with his answers to follow-up written questions, seem to raise even more concerns about his impartiality and judgment.

In the few weeks before Mr. Sutton was voted on by the Committee, we received hundreds of calls from individuals and organizations opposed to his nomination. Since he was voted on in Committee, opposition has continued to mount, and I and other Senators have received numerous additional letters of opposition and calls from citizens across the country opposing Mr. Sutton. In fact, these are among the letters I have received, from Members of Congress to individuals, in opposition to Mr. Sutton. It weighs about 25 pounds just lifting the letters.

From my own State of Vermont, I have received letters of opposition, such as a letter from the Vermont Council on Independent Living, and I continue to receive phone calls opposing Mr. Sutton. What I heard and what I continue to hear about this nominee, from people in Ohio and around the country, is troubling.

Mr. Sutton is clearly a bright, legally capable, and accomplished attorney. Yet, as a lawyer, in his own personal writings, and on his own time, he has sought out opportunities to attack federal laws and programs designed to guarantee civil rights protections. Let me be clear, unlike what those on the other side of the aisle may say, I am not opposing Mr. Sutton because he ''happened'' to represent clients whose positions I may disagree with. I have voted on thousands of Federal judges since I have been here, many of them representing clients I totally disagreed with on positions diametrically opposite to my own. As my record shows, I have voted for more than 100 of President Bush's judicial nominees, many of whom took positions or represented clients with which I disagreed, including President Bush's two prior nominees to the Sixth Circuit, who were confirmed while I was Chairman of the Judiciary Committee. While I disagreed with a number of the positions they took, I made sure they had hearings, and I made sure they were confirmed.

Those on the other side of the aisle continue to wrongly characterize Senators' opposition to Mr. Sutton. They claim that those who are opposed to his lifetime confirmation object only to the clients he represented or the court decisions in the cases he argued. Nothing could be further from the truth. For example, I served in private practice. I defended clients charged with crimes. Then I was a prosecutor, and I prosecuted people charged with crimes. I did a lawyer's job in making sure there was adequate representation on both sides.

My opposition to Mr. Sutton is not based on his clients. It is based on the fact that Mr. Sutton has aggressively pursued a national role as the leading advocate of states' rights and has pushed extreme positions in order to limit the ability of Congress to protect civil rights. Moreover, he displayed at his hearing and in his written questions, that he is not able to put aside these strong personal views in order to be fair and impartial.

It was Republicans who most recently held up or voted against a number of President Clinton's circuit court nominees because they were concerned about the clients the nominee represented or disagreed with the nominee's ideology.

For example, President Clinton nominated Timothy Dyk to be a judge on the U.S. Court of Appeals for the Federal Circuit. Judge Dyk was originally nominated in April 1998 but was not confirmed by the Republican-controlled Senate until more than two years later, in May 2000. Judge Dyk received 25 votes against him on the Senate floor, many of them from Republicans who objected to the clients he represented. For example, former Senator SMITH, voting against Judge Dyk, explicitly stated that he did not approve of the clients Mr. Dyk represented on a pro bono basis, such as the well-known and well-respected organization People for the American Way. Other Senators who voted against Judge Dyk, expressed concern over Judge Dyk's involvement in a case in which he represented the Action for Children's Television in a challenge to FCC regulations.

As I have said, I have voted to confirm hundreds of individuals who have represented unpopular clients or positions with which I disagreed. I would like to note, that some of the most respected judges in our history are judges who have stood up to unpopular sentiment to protect the rights of minorities or people whose views made them outcasts. Mr. Sutton is not one of these people. In fact, he has done the opposite. He has stood up for states' rights and against civil rights, and for an arcane constitutional theory over the rights of injured individuals. Any simplification of the opposition against Mr. Sutton as based solely on who he represented is false and misleading.

I have taken a careful look at Mr. Sutton's advocacy record along with his personal writings and speeches. Mr. Sutton has acted as more than just counsel, he has aggressively pursued a national role as the leading advocate of a certain view of federalism and he has succeeded in pushing extreme positions in order to limit the ability of Congress to act to prevent discrimination and protect civil rights. Mr. Sutton himself has stated that his advocacy on the principles of federalism are not just arguments he makes for his clients, but something in which he strongly believes. In a Legal Times article, he was quoted as saying, ''It doesn't get me invited to cocktail parties. But I love these issues. I believe in this federalism stuff.''

Let me just note that, when asked about this comment at his hearing, Mr. Sutton provided conflicting answers. First, he told me that this comment was in response to his pursuit of Supreme Court cases after he left the State Solicitor's office and returned to private practice at Jones Day. However, when later asked about the same comment by Senator DEWINE, Mr. Sutton stated that, at the time of the article, he was State Solicitor and that he was on the lookout for cases because the Ohio Attorney General asked him to look for cases that affected the State. In follow-up written questions, while Mr. Sutton admits that he was on the lookout for Supreme Court cases at Jones Day, he disavows that he was similarly on the lookout as State Solicitor. Rather, he states that he was only a ''subordinate'' and that ''everything [he was] described as doing in the article was done to further'' the interests of the Ohio Attorney General. In contrast, the Legal Times article had several other sources who corroborated that it was Mr. Sutton's own efforts and passion that led to Ohio taking so many cases before the U.S. Supreme Court to assert state sovereign immunity. For example, the Supreme Court Counsel for the National Association of Attorneys General (who applauds Mr. Sutton's work), said that Mr. Sutton was a ''court-watcher'' with a ''first-out-of-the-gate aggressiveness'' who had ''taken a very active role'' in taking on federalism cases.

Based on Mr. Sutton's passionate advocacy and personal efforts to challenge and weaken federal laws and individual rights, and his extreme activism against federal protection for state workers, a large number of disability

rights groups, civil rights groups, environmental protection groups, and women's rights groups are opposed to his confirmation. It is unprecedented for the disability community to speak out so loudly in opposition to a judicial nominee. Overall, his nomination to the Sixth Circuit is opposed by hundreds of national, state and local disability groups, and thousands of individuals.

Mr. Sutton has advocated for states' rights over civil rights and has sought to limit individuals' ability to be compensated when their rights are violated.

Mr. Sutton's record reveals a strong desire to limit Congress' power to pass civil rights laws and to limit the ability of individuals to seek redress for existing civil rights violations. In the last six years, as both a State Solicitor and in private practice, Mr. Sutton has been the leading advocate urging the Supreme Court to develop a new jurisprudence that uses states' rights as grounds to limit the reach of federal laws on behalf of the disabled, the aged, women, and environmental protection. He has argued major cases on civil rights, religion, health care, and education, and, in all of these cases, his arcane constitutional theory of the Eleventh Amendment—not based on text, legislative history, or decades of precedent—has undermined the rights of millions of people.

He has argued, among other things, that Congress exceeded its authority in passing the Religious Freedom Restoration Act, enacted in 1993 with broad bipartisan support under the leadership of Senator KENNEDY and Senator HATCH, and parts of the Americans with Disabilities Act of 1990, a bipartisan bill championed by former Senator Bob Dole and Senator HARKIN, the Age Discrimination in Employment Act, and the Violence Against Women Act of 1994, a bipartisan act cosponsored by Senator HATCH and Senator BIDEN.

In addition to weakening Congress' ability to protect the rights of individuals, Mr. Sutton has sought to limit the ability of individuals to seek redress in federal court for civil rights violations. For example, he has argued to limit the remedies available to victims of sexual abuse and to limit the ability of Medicaid recipients to enforce their rights under the law. In essence, he has argued for the Supreme Court to repudiate more than 25 years of legal precedents that permitted individuals to sue states to prevent violations of federal civil rights regulations.

One of Mr. Sutton's most recent and significant cases in which he attempted to erode legal rights passed by Congress was *Board of Trustees of the University of Alabama* v. *Garrett*, 531 U.S. 356 (2001), a case in which he argued that Congress exceeded its authority in enacting certain provisions of the Americans with Disabilities Act. In this case, in which a nursing director was demoted after undergoing treatment for breast cancer, Mr. Sutton argued against the ability of state employees to sue under Title I of the ADA for money damages if their employer discriminated against them. Mr. Sutton argued that alleged discrimination against the disabled should only receive ''rational basis'' review and that Congress unconstitutionally elevated the standard for disability discrimination in the ADA, an argument that would severely limit Congress' authority to protect individual rights. Moreover, he argued that Congress had not identified a pattern of abuse, despite extensive hearings and findings of discriminatory actions by states, including unnecessary institutionalization and denials of education. During oral argument, Mr. Sutton even said that the ADA was not needed and that the case was a ''challenge to the ADA across the board.''

Mr. Sutton was questioned heavily about his involvement in the Garrett case both at his hearing and in follow-up written questions, but his answers were incomplete and deeply disturbing. Most of his answers flatly contradicted statements that he made in either his legal briefs or articles, or danced around the important substantive issues raised. Moreover, he consistently tried to redirect any questions about his involvement in Garrett to be a discussion about the only case prior to his nomination in which he represented a disabled individual. He is a skilled oral advocate and his skills were on display at his hearing. That is not the question. The question before us is whether he should be confirmed to be a circuit judge, not whether we would like him to argue an appellate case.

At his hearing, Mr. Sutton repeatedly brought up his involvement in *Ohio Civil Rights Comm'n* v. *Case Western Reserve University*, 666 N.E. 2d 1376 (Ohio 1996), a case involving a blind student denied admission to medical school, as an example of the idea that he is sympathetic to persons with disabilities. While no one that I know of has alleged that Mr. Sutton has any personal antipathy to people with disabilities, it troubles me that he has used his representation in this case as a response to questions I and other Senators asked about his involvement in the Garrett case. He testified that he was involved in the Garrett case, without examining the issue of whether his representation would help or hurt people, or was legally right or wrong, because he was eager to develop a Supreme Court practice.

The situation in the Case Western case is, perhaps, more revealing than Mr. Sutton thought when he placed so much reliance on it. In that case, Mr. Sutton was the Ohio Solicitor General in charge of all of the State of Ohio's appeals and, in such a capacity, he would normally have represented a state agency, like the Ohio Civil Rights Commission. Mr. Sutton's statements regarding how he came to take this case are widely divergent and irreconcilable: In his Senate Questionnaire, he states that the case ''fell'' to him as Ohio State Solicitor, since it ''fell'' to the Ohio Attorney General to defend the Commission's decision through the state courts. At his hearing, he testified that he had a choice of which side to take and that it was his job to make a recommendation to the Attorney General. And, in answer to my follow-up questions, he states that he chose to represent the Commission and, thereafter, ''did not have discretion to recommend'' to the Attorney General that she not weigh in on the state medical schools' side of the case. I still do not understand why the Attorney General had to agree to represent the state universities as an amicus party on the other side of the Civil Rights Commission in this case, and would guess that in almost all cases the Attorney General's office did not represent an amicus on the opposite side of a case from a state agency. Regardless, I am troubled by Mr. Sutton's reliance on this case.

Not only does Mr. Sutton's descriptions of his involvement in this case create irreconcilable differences, but his answers display an advocate's skills rather than a judicious consideration of the situation. It troubles me that Mr. Sutton's answers indicate that he believes that the representation of a blind student in one case—and a case in which he acted in his official capacity—balances out the significant detrimental impact that his extreme arguments in Garrett had on millions of disabled individuals. There is nothing that can undo the elimination of rights by Garrett. Mr. Sutton's argument indicates a commitment to ideology over people and convinces me that he is not able to put aside his advocacy even to present his involvement in a case objectively.

Mr. Sutton has also tried to claim that he has represented many clients pro bono. However, in answer to my written questions, he indicates that he did not argue any other case involving disability rights prior to his nomination in May 2001. Since he submitted his original Senate Questionnaire in 2001, he notified us—in January 2003—that he has taken on two death penalty cases and other criminal appeals. He also argued one disability rights case, involving whether the Ohio Secretary of State violated the National Voter Registration Act in failing to designate the disability services offices at state universities as registration sites. This seems like the classic case of ''nomination conversion,'' a nominee who has had his whole career to work on different sides of issues, but, only after he is nominated, does he take cases to ''balance'' out his record. It must certainly be more than a coincidence that every time he chose as a lawyer in private practice to argue a disability rights case before his nomination, he was always on the same side of this issue against the rights of disabled individuals.

Among Mr. Sutton's many other attempts to erode essential legal rights passed by Congress are:

Olmstead v. *LC*, 527 U.S. 581 (1999), a case involving Title II of the ADA, where Mr. Sutton argued on behalf of the petitioners that it should not be a violation of the ADA to force people with mental disabilities to remain in an institutionalized setting rather than a community-based program despite clear Congressional findings to the contrary. Mr. Sutton's arguments in this case were accepted by Justices Scalia and Thomas, but rejected by the majority of the Court.

Pennsylvania Dept of Corrections v. *Yeskey*, 524 U.S. 206 (1998), where Mr. Sutton filed an amicus brief arguing that the ADA does not apply to state prison systems, a position which would have furthered weakened the ADA and severely limited its applicability, had it been accepted.

Kimel v. *Florida Board of Regents*, 528 U.S. 62 (2000), where Mr. Sutton argued for severe limits on the ability of state employees to sue under the Age Discrimination in Employment Act, stating that older workers are adequately protected by local anti-discrimination laws, and that Congress had no record of a pattern and practice of prior constitutional violations by the States and that Congress exceeded its authority since the legislation was concerned with age and not with ''suspect'' classifications like race and national origin. The four Supreme Court Justices dissenting in this case stated that the decision will have a serious impact on Congress' authority and ability to protect civil rights and represented a ''radical departure'' from the proper role of the Supreme Court.

United States v. *Morrison*, 529 U.S. 598 (2000), where he filed an amicus curiae brief on behalf of one state, the state of Alabama, challenging the constitutionality of the federal civil remedy for women who are the victims of sexual assault and domestic violence in the Violence Against Women Act. Of note, VAWA was passed by a broad and bipartisan coalition, and 36 states submitted briefs in support of the constitutionality of the Act. Mr. Sutton argued, and the 5–4 majority of the Court accepted, that gender-based violence does not substantially affect interstate commerce because it is not an ''economic'' activity and the impact of such crimes has only an attenuated connection to interstate commerce. He also argued that the civil remedy provision for private acts of gender-motivated violence was not permissible under Section 5 of the Fourteenth Amendment.

Alexander v. *Sandoval*, 532 U.S. 275 (2001), where he argued that individuals could not privately enforce disparate impact regulations promulgated under Title VI of the Civil Rights Act of 1964. The Sandoval decision reversed an understanding of the law that had been in place for more than 27 years, and makes it nearly impossible to enforce a range of practices with an unjustified disparate impact, such as disproportionate toxic dumping in minority neighborhoods, the use of educationally unjustified testing or tracking practices that harm minority students, or the failure to provide appropriate language services in health facilities. Mr. Sutton argued not only that the disparate impact regulations could not be privately enforced, but that these regulations were an invalid exercise of agency power. If this argument had been accepted by the Court, it would have made it impossible for even the federal government to enforce actions with an unjustified disparate impact. In addition, Mr. Sutton argued in his brief and in oral argument that implied rights of actions are never permissible under the spending power, an argument that the Court also did not accept.

Westside Mothers v. *Haveman*, 1313 F.Supp.2d 549 (E.D. Mich. 2001), where he argued that Medicaid recipients have no legal rights to sue states in order to enforce their rights under Medicaid. Mr. Sutton's primary argument, which formed the core of the district court's ruling, was that Spending Clause statutes were not ''federal law,'' but simply a contract. He then argued that because Spending Clause statutes were simply contracts, the individuals who sought to enforce the contract were mere third-party beneficiaries to such contracts and were not enforcing any federal laws and thus suit could not be brought under Section 1983. Such far-reaching arguments go well-beyond the Supreme Court's jurisprudence, and were ultimately rejected by the Sixth Circuit Court of Appeals, in a case with significant implications for economically disadvantaged individuals.

City of Boerne v. *Flores*, 521 U.S. 507 (1997), where he argued in an amici curiae brief on behalf of 16 states that the Religious Freedom Restoration Act (RFRA) exceeded Congress' power under Section 5 of the Fourteenth Amendment and violated state sovereignty, stating that Congress could not enact a sweeping law without any evidence that religious freedoms were being interfered with and urging that the states ''be the principal bulwark when it comes to protecting civil liberties.'' Mr. Sutton applauded the court's ruling as ''a watershed case . . . respecting states' ability to govern themselves and to look after religious liberties themselves,'' according to a Washington Post article, and, in an essay written for the Federalist Society, he praised the decision as a ''victory for federalism.''

Mr. Sutton's record shows his tendency to present arguments with broad implications that go well-beyond where even the activist, conservative majority on the Supreme Court has been willing to go. For example, in Garrett and Kimel, he advocated a very narrow view of Section 5 of the Fourteenth Amendment (the clause which allows for legislation to enforce that Amendment) so that little remedial legislation in the civil rights area could pass muster unless the plaintiffs can prove longstanding and well documented abuses by the states.

Mr. Sutton's arguments in the case involving the Violence Against Women Act also went beyond what the Court accepted. For example, he stated that ''the record is utterly devoid of support for the notion that the States . . . have violated the rights of their citizens.'' Amicus Curiae Brief in Support of Respondents, 1999 WL 1191432 at 19. Mr. Sutton took a more jaundiced view than the Supreme Court of evidence of discrimination; which could certainly translate into harsher rulings against women and minority interests. Moreover, in an article after the VAWA decision, Mr. Sutton demonstrates his support for the court's outcome and his view of Congress. He wrote:

> Once accepted, only the most unimaginative lawmaker would lack the resources to contend that all manner of in-State activities will have rippling effects that ultimately affect commerce. Such an approach would have a disfiguring effect on the constitutional balance between the States and the National Government . . . and would ultimately make irrelevant virtually every other delegation of power to Congress under Article I.

Unexamined deference to the VAWA fact findings would have created another problem as well. It would give any congressional staffer with a laptop the ultimate Marbury power to have a final say over what amounts to interstate commerce and thus to what represents the limits on Congress's Commerce Clause powers.

These condescending comments towards Congress are troubling. In general, Congress is uniquely situated to gather facts from across the nation, obtain information from constituents who have first-hand experience with the issues, and assess the magnitude of the problem. Moreover, VAWA was passed after numerous hearings, extensive inquiry, and fact-finding and with the bipartisan support of the Senate and House, the President and most states.

Mr. Sutton stated at his hearing that he has not attacked disability or other civil rights but has, instead, merely acted as an advocate for his clients, advancing a theory of limited government.

Yet the record reveals that he has not simply taken an unpopular position in the name of zealously representing the interests of his clients. As I have described, Mr. Sutton has often taken extreme positions and his record is one of activism in order to limit the ability of Congress to act to prevent discrimination and protect civil rights. It seems to me to be no coincidence that Mr. Sutton has been the chief lawyer in case after case arguing that individuals have no right to enforce the civil rights protections that Congress has given them.

As I noted, Mr. Sutton has said that he has been ''on the lookout'' for cases

where he can raise issues of federalism or that will affect local and state government interests. And his federalism practice boomed as he actively pursued cases attractive to his ideology and through his contacts among the members of the Federalist Society. In answer to my follow-up questions, Mr. Sutton admitted that he had taken no case in which he argued against a state claiming immunity from suit under the Eleventh Amendment. Despite his protestation that he might argue either side of any case, it must certainly be more than a coincidence that every time he has argued before the Supreme Court he has always been on the same side of this issue. Despite numerous questions, Mr. Sutton did not adequately address these concerns at his hearing nor show that he has the ability to put aside his years of passionate advocacy and treat all parties fairly. On the contrary, when you talk to Mr. Sutton and you look at his testimony, he demonstrates he has not considered the impact that his arguments have on the lives of millions of women, seniors, the disabled, low-income children, and state employees, and that he favors ideas over people, states' rights over civil rights, and a patchwork of local rules over national standards.

He has every right to these views, but when it becomes clear that those are the views that would be expressed by an extremist, then we have to ask ourselves: Are we rubberstamping or are we advising and consenting? Frankly, I believe in this case we would be rubberstamping, not advising and consenting.

Mr. Sutton has stated in several articles that states should be the principal bulwark in protecting civil liberties, a claim that has serious implications given a history of state discrimination against individuals. In numerous papers for the Federalist Society, he has repeatedly stated his belief that federalism is a ''zero-sum situation, in which either a State or a federal lawmaking prerogative must fall.'' In his articles, he has stated that the federalism cases are a battle between the states and the federal government, and ''the national government's gain in these types of cases invariably becomes the State's loss, and vice versa.''

He also states that federalism is ''a neutral principle'' that merely determines the allocation of power. This view of federalism is not only inaccurate but troubling. First, these cases are not battles in which one law-making power must fall, but in which both the state and the federal government—and the American people—may all win. Civil rights laws set federal floors or minimum standards but states remain free to enact their own more protective laws. Moreover, federalism is not a neutral principle as Mr. Sutton suggests, but has been used by those critical of the civil rights progress of the last several decades to limit the reach of federal laws.

Mr. Sutton tried to disassociate himself from these views, by saying that he does not specifically recall these remarks and that, in the ones he recalls, he was constrained to argue the positions that he argued on behalf of his clients. As far as I know, no one forced Mr. Sutton to write any article, and most lawyers are certainly more careful than to attribute their name to any paper that professes a view with which they strongly disagree. In my view, Mr. Sutton's suggestions that he does not personally believe what he has written are intellectually dishonest, insincere and misleading.

In sum, Mr. Sutton's extreme theories would restrict Congress' power to pass civil rights laws and close access to the federal courts for people challenging illegal acts by their state governments (limiting individuals' ability to seek redress for violations of civil rights). If a State government does something wrong, we ought to be able to sue the State government.

I remember shortly after the Soviet Union broke up, when a group of parliamentarians and lawyers came here to visit with a number of Senators about how they would set up a judicial system in the former Soviet Union.

One asked the question: We have heard that there are cases where somebody may sue the Government, and the Government loses. How could that possibly happen?

So we explained the independence of our courts, and we look for justice in the law and so on.

He said: You mean you didn't fire the judge if he allowed the Government to lose?

I said: Quite the opposite. In fact, the Government often loses.

Listening to Mr. Sutton, there are a lot of areas where the Federal courts would be closed to people who challenge illegal acts by their State government.

In the name of the concept of sovereign immunity, Mr. Sutton threatens to undermine uniform national laws protecting individuals' rights to welfare, housing, clean air, equality, and a harassment-free environment, and to undermine the core protections and services afforded by Congress to workers, the disabled, the aged, women, and members of religious minorities.

This view of federalism undermines the basic principle, announced in Marbury v. Madison, that ''[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.'' The judicial role of enforcing and upholding the Constitution becomes hollow when the government has complete immunity to suit. The burden should be on Mr. Sutton to show that he will protect individual rights and civil rights as a lifetime appointee to the Sixth Circuit Court of Appeals. This he has not done.

As I have said on other occasions, when the President sends us a nominee who raises concerns over qualifications or integrity or who displays an inability to treat all parties fairly, I will make my concerns known. This is one of those times. In his selection of Mr. Sutton for the Sixth Circuit, the President and his advisors are attempting to skew its decisions out of step with the mainstream and in favor of States' rights over civil rights, anachronistic ideas over people.

The Sixth Circuit is one on which Senate Republicans stalled three nominees of President Clinton during his last four years in office. They closed and locked the gates to this court in 1997. Professor Kent Markus' courageous testimony about that partisan process rings in my ears. Despite those excesses by Senate Republicans, during my chairmanship, the Senate confirmed two new conservative members to the Sixth Circuit. With this nomination, the plan of Republicans to pack this court and tilt it sharply out of balance is evident for all to see.

Before and after he took office, President Bush said that he wants to be a uniter and not a divider, and yet he has sent and resubmitted to the Senate several nominees who divide the American people. The Senate has already confirmed 119 of his other judicial nominees. The Committee and the Senate made the judgment that those nominees will fulfill their duties to act fairly and impartially. Most were not divisive or extreme. I urge the President to choose nominees who fit that profile, rather than the alternative he seems intent on imposing for so many circuit court nominees. End the court-packing effort and work with all in the Senate to name consensus, fair-minded federal circuit judges.

The oath taken by federal judges affirms their commitment to ''administer justice without respect to persons, and do equal right to the poor and to the rich.'' No one who enters a federal courtroom should have to wonder whether he or she will be fairly heard by the judge. Jeffrey Sutton's record does not show that he will put aside his years of passionate advocacy in favor of states' rights and against civil rights, and his extreme positions favoring severe restrictions on Congress' authority. Accordingly, I will not vote to confirm Mr. Sutton for appointment to one of the highest courts in the land.

NOMINATION OF JUDGE EDWARD PRADO

Mr. LEAHY. Mr. President, I am disappointed that Senate Republicans continue to focus on the most divisive judicial nominees and the White House continues its efforts to pack the courts ideologically, while the nomination of Judge Edward Prado to the United States Court of Appeals for the Fifth Circuit is being held captive on the Senate calendar. All Democratic Senators serving on the Judiciary Committee voted to report this nomination favorably. All Democratic Senators have indicated that they are eager to proceed to this nomination and, after a reasonable period of debate, voting on the nomination.