position of the minority is the same as it was prior to the break. We don't think there will be any time that would be agreeable on the Owen nomination. That being the case, is it the expectation of the majority leader that he would file cloture on the Priscilla Owen nomination sometime today or tomorrow?

Mr. FRIST. Mr. President, let me get back with the leadership on the other side of the aisle. We, of course, would very much like an up-or-down vote on Priscilla Owen. If not and it is necessary for us to file cloture, it will be done either sometime this week or next week. The final decision has not been made. We would like to discuss this with you, and we will let you know once that decision is made.

Mr. REID. Finally, Mr. President, we are willing to work with the majority on judges. We have a number of circuit judges on which we think we can move very quickly. The leadership should know that.

Mr. FRIST. Mr. President, in response, I recognize that. We are making slow but consistent and steady progress. We have the vote today. We have made reasonable progress up until today. I think as judges are put forward, we will continue to consider them in an orderly way in the Senate. That being said, I am very hopeful that we can ultimately have an up-or-down vote on Miguel Estrada, someone whom we believe is the embodiment of the American dream. We will work in that regard. I hope we will be able to have an up-or-down vote on Priscilla Owen as well.

RESERVATION OF LEADERSHIP TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

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 into executive session and resume consideration of Executive Calendar No. 32, which the clerk will report.

The assistant legislative clerk read the 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 time until 12 noon shall be equally divided between the chairman of the Judiciary committee and the Senator from Iowa, Mr. HARKIN.

The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that Senator DURBIN be recognized on the Democrats' time first for 20 minutes. Our next speaker would be Senator SCHUMER for 15 minutes. There will be a Republican in between, I am sure, if that is the wish. But I ask unanimous consent that our first two speakers be lined up accordingly.

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

The Senator from New York.

Mr. SCHUMER. Mr. President, I ask unanimous consent that I immediately proceed after Senator DURBIN for 15 minutes—that I follow him.

Mr. REID. The Senator from New York understands——

Mr. STEVENS. I reserve the right to object.

Mr. REID. There will be a Republican in between him and Senator DURBIN.

Mr. SCHUMER. Yes.

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

The Senator from Illinois.

Mr. DURBIN. Mr. President, this week appears to be ''Judge Week'' in the Senate. We are going to focus on judicial nominations.

It is interesting, as I traveled across Illinois over the last 2 weeks, not a soul raised a question about Federal judges—the debate here in the Senate. It does not seem to be on the radar screen of average Americans. It is certainly an important issue; it is one that we focus on as political parties, and it is one that I think is timely when we consider the nominees who are before us.

For the average American, it may not mean much, it may not mean much until that day comes that a decision is handed down by a court that has an impact on families across America, and businesses and individuals, because Federal judges have extraordinary power. The men and women we are considering in the Senate are being given lifetime appointments to the Federal bench. If they are good, they will be good for a lifetime; if they are bad, they will be bad for a lifetime. Most of us in the Senate will come and go, and they will still be sitting on the bench with gavel in hand, in their black robes, meting out justice according to their own values. So it is important that we ask questions and make inquiries as to what those values might be.

The judge before us today is Jeffrey Sutton. If you read about Jeffrey Sutton, you find a man of extraordinary intellect. He is a partner in a large Columbus, OH, law firm, and served as State solicitor in Ohio. He is a professor at Ohio State University Law School. He has been a law clerk for Supreme Court Justices Scalia and Powell, and he has done a number of other things which suggest that this is a thoughtful man.

There is no question as to whether he is up to the job intellectually. The question is whether he brings to the job the values that are in the mainstream of America. I would suggest that he does not.

As a result of that, I will oppose his nomination. I would like to spell out exactly why. In the cases he has taken, and the legal arguments he has advanced, Jeffrey Sutton has shown a consistent pattern of insensitivity to civil rights, human rights, and the rights of minorities, women, and the disabled in America.

Time and again, he has asked the Federal courts to remove the authority of Congress to create laws involving individual rights and liberties and to give compensation to those who have been wronged. That is the hallmark of his legal career. That is who Jeffrey Sutton is. That is what he believes.

Given a lifetime appointment to this bench in the Sixth Circuit Court of Appeals, we can predict, with some degree of certainty, he will continue in his quest to try to deny those coming before the court the right for a day in court if they happen to be disabled, victims of age discrimination, victims of civil rights discrimination, and the like.

His hearing was held on January 29, with two other controversial nominees: Deborah Cook, also a nominee for the Sixth Circuit, and John Roberts, for the DC Circuit. It was the first time since 1990 that the Judiciary Committee held a hearing on one day for three circuit court nominees. It is unfortunate. We had some time to ask Professor Sutton questions, but not as much time as we needed. I sent some written questions to him and have those responses.

But if you look at the interest in his nomination, you will find an extraordinary lineup of organizations that oppose Jeffrey Sutton. It is hard to believe, but true, that 70 national and nearly 400 local organizations oppose Jeffrey Sutton for confirmation to the Circuit Court of Appeals. Twenty-three of them are based in Illinois. The disability community is particularly alarmed. And you will understand that as I talk about some of the cases he has taken.

In our history, seldom do people stand and announce publicly they are prejudiced. That is not something you hear very often. There are a lot of things people say. Usually the shield, the explanation, and the rationale for prejudice in America is to say: I am standing up for States rights. Boy, that has been the clarion call from those who oppose universal concepts and principles of human rights and civil rights, I guess dating back to our debates in the Senate and the House about slavery, which led to the Civil War. You remember that, of course.

The States argued that the Federal Government could not impose on them a standard relative to slavery; it would be a matter of States rights. It reached such a high peak of anger and frustration that it led to the secession of States, a civil war, and the bloodiest moment in the history of the United States.

The end of that war did not end the debate. Those who continue to oppose civil rights and human rights—whether

they are for people of color; for those of different ethnic backgrounds, different genders, or sexual orientation; or for those with certain disabilities—never stand up and say: I am really prejudiced against these people; I just don't like these people. They say: No, no, we are for States rights. We don't believe the Federal Government should have a standard across America for all people who are in this category. We think each State should make up a standard.

That is what former Senator Hubert Humphrey referred to as ''the shadow of civil rights''—a shadow cast over America after the Civil War, until Brown v. Board of Education, a case handed down in 1954 across the street at the U.S. Supreme Court. It was finally after that decision that, as Senator Humphrey once said, we came out of the shadow of civil rights into the bright sunshine of human rights.

Jeffrey Sutton has never come out from under that shadow. In fact, he has made a legal career of extending that shadow over more and more Americans so that they would have less likelihood of prevailing when they were discriminated against. While Mr. Sutton's record is devoid of obvious manifestations of prejudice, his vision of a Federal Government with diminished power to enforce civil rights would achieve the goals of those who oppose equality.

Mr. Sutton has been front and center in some of the most important Supreme Court cases of our generation. He personally argued five of the most significant cases in the past decade before the Supreme Court. That attests to his legal skill, but it certainly speaks volumes, as well, as to what is in his heart, what he believes, and where he would stand as a judge if confronted with similar issues. And in every one of these cases, Jeffrey Sutton asked the Supreme Court to restrict the rights of the disabled, women, the elderly, the poor, and racial and ethnic minorities. He is consistent and, from my point of view, consistently wrong.

Consistently he has argued before the Supreme Court to take away the power of individuals to recover for discrimination. One of the most glaring cases is the Board of Trustees of the University of Alabama v. Garrett. I took a look at the published decision in this case because I wanted to read specifically what was at issue.

We can talk a lot about States' rights and discrimination, and the Americans with Disabilities Act, but let me read you what was at issue in this case so you understand where Jeffrey Sutton was in this argument.

This is a case involving a woman, a respondent, Patricia Garrett. She is a registered nurse, and she was employed as the director of nursing, OB–GYN and Neonatal Services, for the University of Alabama in its Birmingham hospital. I might say parenthetically, that this is an extraordinarily well respected medical institution. Patricia Garrett was director of nursing at this hospital, think of that—quite an achievement in her career.

In 1994, Patricia Garrett was diagnosed with breast cancer, subsequently underwent a lumpectomy, radiation treatment, and chemotherapy. Garrett's treatments required her to take substantial leave from work because of this cancer. Upon returning to work in July of 1995, Patricia Garrett's supervisor informed her that she would have to give up her position as director of nursing at the hospital.

Garrett then applied for, and received, a transfer to another, lower paying position as a nurse manager. She brought a case under the Americans with Disabilities Act, and she said: I think the Federal Government passed a law that said you cannot discriminate against a person because of a disability or an illness—exactly the situation that she faced.

I voted for that law. I remember it well. It brought together an extraordinary bipartisan coalition.

In a few moments, the Senate will hear from my colleague, the Senator from Iowa, TOM HARKIN. He was one of the leaders on that bill. Senator Bob Dole was a leader as well. It was bipartisan legislation which, for our generation, said: We will open up opportunities for a group of Americans who have been subject to discrimination because they have a disability or illness.

We passed the bill overwhelmingly with a bipartisan vote. I believed we were establishing a new frontier of civil rights. I was proud to be part of the debate. I contemplated, in voting for it, as many Senators did, people such as Patricia Garrett, a woman who reached a pinnacle of success in her career as director of nursing at an extraordinary hospital in Alabama, learned she had breast cancer, went through the anguish and pain of treatment, successful treatment, only to return to work after her illness and be told that she had been demoted from her position and would suffer a pay cut. She felt she had been wronged. I agreed with her.

When she turned to sue the State of Alabama, which managed the university hospital, she ran into a brick wall named Jeffrey Sutton. Jeffrey Sutton, the nominee before us, stood up and said: Patricia Garrett and people like her, who have been discriminated against by States such as Alabama, have no right to recover under the Americans with Disabilities Act. This was a decision made by Mr. Sutton to take a case which involved more than Patricia Garrett. It involved a basic principle of law. Time and again and this case stands out because the facts are so compelling that has been the story of Jeffrey Sutton's legal career.

In another disability case, Olmstead v. LC, Mr. Sutton argued it was not a violation of the Americans with Disabilities Act to force people with mental disabilities to remain institutionalized even when less restrictive settings were available. Thank God the Supreme Court rejected Jeffrey Sutton's twisted logic in that case 7 to 2. Only Justices Scalia and Thomas, the most—let me be careful of my language—conservative members of the Supreme Court agreed with Jeffrey Sutton's twisted logic.

In Alexander v. Sandoval, Jeffrey Sutton argued that private individuals did not have the power to bring lawsuits under the disparate impact regulations of title VI of the Civil Rights Act of 1964. The Supreme Court agreed with Sutton by the same 5 to 4 majority we saw in the Garrett case. As a result of his advocacy, it is now impossible for individuals to use title VI to challenge the disproportionate impact of many wrongful situations; for example, the dumping of toxic waste in poor minority neighborhoods. Congratulations, Mr. Sutton. You stood up to stop poor families exposed to toxic waste from bringing suit against those responsible for it and who chose their neighborhoods as the dumping grounds. I am sure that is a feather in his cap with some people but not with this Senator.

It is impossible to use title VI—because of Jeffrey Sutton's argument—to challenge educational tests or tracking procedures that disproportionately harm minority students.

Sutton claims that he was just being an advocate in these cases. He says he just wanted to develop a Supreme Court litigation practice. While I accept the principle that it is wrong to ascribe the views of a client to that client's attorney, I believe it is appropriate to consider which clients an attorney chooses to represent. Time and time again, Jeffrey Sutton, who is asking for a lifetime appointment to sit on a bench in a Federal courtroom and decide the fate of people such as Patricia Garrett and victims of discrimination, has chosen to come down on the wrong side of history.

Another indicator of Mr. Sutton's conservative ideology is that he is a member and, indeed, an officer of the famed Federalist Society, an organization with a mission statement claiming:

> Law schools and the legal profession are strongly dominated by a form of orthodox liberal ideology which advocates a centralized and uniform society.

Mr. Sutton, an officer of the organization, came before us as a nominee—no surprise. If you scratch the DNA of most of President Bush's judicial nominees, you will find the Federalist Society chromosome. I think about two-thirds of President Bush's circuit court nominees who have been brought before the committee have to pass the test of being Federalist Society true believers. Jeffrey Sutton goes beyond membership. He is an officer of the organization.

Fewer than 1 percent of attorneys across America belong to the Federalist Society. But if you want to make it big in President Bush's White

House and make it to a high level, you better show credentials with the Federalist Society. That is your ticket to being considered for a nomination. Mr. Sutton had his ticket punched, as did Miguel Estrada, Pricilla Owen, Timothy Tymkovich, Jay Bybee, and Carolyn Kuhl. Jeffrey Sutton is part of a pattern of conservative ideologues that President Bush has nominated to the Federal court.

The Sixth Circuit is evenly balanced now, but the President wants to change it. He has already nominated six staunch conservatives to that court. The President is using ideology as a basis for his nomination, and the Senate should reject it.

Mr. Sutton's legal career has been spent practicing in the shadows of States' rights. He has said repeatedly how much he values federalism. Time and again he has argued important cases on the side of States' rights and not individual rights. We should reject that. We should say that as a matter of principle and practice, the men and women seeking appointments to these circuit courts of appeal, who decide tens of thousands of cases each year and are the gatekeepers for most cases before they come to the Supreme Court, should be people who are moderate, centrist, and reasonable in their views.

Jeffrey Sutton is not one of those nominees. What he brings to this nomination is an extreme viewpoint, one that should be rejected, one that certainly should not be enshrined for a lifetime at the circuit court of appeals.

I was in Alabama several months ago visiting Birmingham, Montgomery, and Selma with JOHN LEWIS, Congressman from Atlanta, GA, who was part of the civil rights movement. He told me, as we visited the shrines of the movement—the street corner where Rosa Parks boarded the bus and refused to sit in the segregated section, and the bridge at Selma where JOHN LEWIS had his head bashed in by an Alabama State trooper trying to protest civil rights discrimination—that none of that could have taken place were it not for one Federal judge with courage, Judge Frank Johnson of Alabama. He stood up to the establishment and other Federal courts and said: We are going to see civil rights in America. He had the courage of his convictions. Because of that courage, people have a chance to succeed in America today that they did not have in the 1960s.

I thought to myself, as I reflected on Frank Johnson, an unheralded hero, how many nominees to the Federal court coming before us today would have the courage and vision of Frank Johnson. Trust me, based on his record, Jeffrey Sutton would not be one of those judges.

Jeffrey Sutton, time and time again in his legal career, has stood in the path of progress toward equality and opportunity. He has denied opportunity to people who are disabled. He has denied people who have been victims of age discrimination, he has denied people of color and poor people who are looking for their day in court, he has denied them that chance.

How can we in good conscience look the other way? How can we say: this is just another political decision, this man may sit on the bench for a lifetime but it is the President's right to pick his nominees?

I don't think we can. In good conscience, we have to say no to this nominee. We have to say to the White House: Send us moderate people. Do not send us people who will preach intolerance from the bench. Do not send us people who will close the courthouse door to Americans who have no other recourse when it comes to protecting their civil rights.

Jeffrey Sutton is just that sort of nominee. For that reason, his nomination should be rejected. I reserve the remainder of my time.

The PRESIDING OFFICER. Who seeks recognition? Who yields time?

Mr. HARKIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. HARKIN. Will the Chair inform the Senator as to the agreement entered into and what is the time agreement?

The PRESIDING OFFICER. It is the Chair's understanding that the Senator from Illinois is to speak for 20 minutes, followed by a Republican to speak, and then Senator SCHUMER is to speak for 15 minutes.

Mr. HARKIN. Therefore, if time is running, it runs off of the other side.

The PRESIDING OFFICER. That is correct. It is being charged to the Senator speaking, but that would be correct.

Mr. HATCH. I have no objection if the Senator from Iowa wants to speak at this time.

Mr. HARKIN. The order was entered into and Mr. SCHUMER is not here.

Mr. HATCH. It is our understanding if we didn't take the floor, Senator SCHUMER would. He is not here, but I would be happy to yield to the Senator from Iowa. I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, if I may ask the Chair to state the parliamentary situation now on the time. My understanding is that we had a total of 2 hours.

The PRESIDING OFFICER. Under the previous order, the time reserved until 12 noon is to be equally divided between the chairman of the Judiciary Committee and the Senator from Iowa, Mr. HARKIN. The Senator from Illinois was recognized first under the agreement. Now the Republican side has the opportunity to respond, followed by Senator SCHUMER of New York.

Mr. HATCH. Mr. President, I reserve the remainder of our time. Senator SCHUMER is now here and he can go ahead.

Mr. HARKIN. Mr. President, parliamentary inquiry: Since the other side is not speaking, does their time run?

The PRESIDING OFFICER. If someone is claiming time on the Democratic side, it would be charged to the Democrats.

The Senator from New York is recognized.

Mr. SCHUMER. Mr. President, before I begin, was the Senator from Iowa seeking extra time?

Mr. HARKIN. Under the previous order, how much time was the Senator from New York given?

The PRESIDING OFFICER. He is to have 15 minutes.

Mr. SCHUMER. Could my colleague from Iowa proceed following me?

The PRESIDING OFFICER. By consent.

Mr. HATCH. I have no objection if the Senator from Iowa would like to follow the Senator from New York.

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

Mr. HARKIN. Mr. President, I was informed that I may reserve time for the end of the debate also.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. Mr. President, I understand the time is divided equally. Whatever is left, they would use.

The PRESIDING OFFICER. That is correct.

Mr. HATCH. As long as it is on their time, it is fine with me.

The PRESIDING OFFICER. The time will be charged to the Senator speaking.

With that understanding, the Senator from New York is recognized.

Mr. SCHUMER. Mr. President, I rise in opposition to the nomination of Jeffrey Sutton to the Sixth Circuit Court of Appeals. I am going to get into Mr. Sutton in a minute, but I just say that Mr. Sutton is another example of nominees who have been nominated who are not simply mainstream conservatives but are way over to the right side. That is what we have seen in this judicial process. We have seen nominee after nominee after nominee who is not simply a mainstream conservative—we voted for most of those—but a nominee who is a passionate ideologue and whose major view—if you had to underline it all, perhaps with the exception of the issue of choice—is a wish to curtail the power of the Federal Government.

They, in a very real sense, wish to turn the clock back—many not to the 1930s but even to the 1890s. There has been 100 years of history that the Federal Government expanded its power to deal with injustices that occurred with individuals. Keeping in concept with a limited government and a free market society, the general consensus in our society has been to move forward. There have been ebbs and flows. I think there was legitimacy to Ronald Reagan. There had been 50 years of Federal expansion and he said retrench. Since that time I think there is

no groundswell among the American people to turn the clock back to 1930 or 1890. Any attempts by either the President or the Congress to do that are always defeated, or almost always defeated in the long run because those two parts of our Government, the article I part, the Congress, and the article II part, the Executive, are elected.

What has happened here, Mr. President, is that those who wish to turn the clock back—a narrow band of ideologues—have either captured the President's ear or certainly captured the nomination process, and they put forward nominee after nominee after nominee who is beyond the mainstream—not people who disagree on views but people, if they sat in this Chamber, would be more conservative perhaps than any of the 100 Senators. But they are not elected.

The President and his allies thought they could do this without a whimper. Some of us, a year and a half ago, said we were going to question these nominees on their ideological views, on their judicial philosophy. Initially, there was an outcry, but I think basically the argument has been settled.

Certainly, there is a right to ask nominees about their views. Secondly, I believe there is an obligation because the article III section of Government, the judiciary, has huge power. The nominees, if they become members of the bench, are there for life. This is the only chance because the White House doesn't vet their views. In fact, there seems to be a philosophy in the White House to tell the nominees to say as little as possible, and the apotheoses of that was Miguel Estrada, who was like a Cheshire cat and would not say a single thing about his views. But with the problems that Mr. Estrada has had on this floor, I think that philosophy is not going to work.

My guess is if any other nominees to the court of appeals took the strategy of not dare telling us how they think on anything, they would reach the same fate as Mr. Estrada, and they would not be supported by a majority here. They will not be nominated either. Mr. Sutton is one of these nominees. He is not merely a conservative judge. In fact, as I said, conservative judges are nominated—there is a nominee, for instance, in the Fifth Circuit who is pending right now, Judge Prado. Judge Prado is conservative, but he is not out of the mainstream. He is Hispanic. He is nominated to the Fifth Circuit. The majority doesn't bring him forward. Why? Because they know he will be supported by the majority on our side. Instead, we are going to refight the nomination of Priscilla Owen, one of the judges like Judge Sutton who is way over.

The point is that we are not blocking every judge. I don't have the exact number, but of approximately 110 or 120 of the President's nominees, I have supported around 100. And 111 out of 116 of the President's nominees have been confirmed. I voted for all 111 of them.

There are some who are so far over that we have to say no. Mr. Sutton is such a nominee. I just wish our President would understand this, would treat the Senate with some respect, would understand that the checks and balances in this Government make sense, and that he cannot just give the nominating process to a small group of ideologues, led by the Federalist Society, who have a view—a very respectful view, but it is out of the mainstream, way out of the mainstream.

Very few people believe the Federal Government's role should be cut so dramatically that we go to a Federal Government ala 1930 or 1890. So I believe our fight on these issues is gaining support, not losing it. It is a tough fight to make.

Why not give the President his way? No one knows the damage these nominees will do because they have not heard these cases. I will say that when our caucus rallied and coalesced around opposing the nominee Miguel Estrada and not letting him come to a vote until he was doing what the Founding Fathers wanted him to do, discuss the issues, we did not do it in this caucus for political advantage. We did it because we were so appalled by the arrogance of a nominating process that said the advise and consent process could be ignored and the nominee could say, I cannot answer this because I might have to judge it on a future case. No other nominee has done that.

In fact, yesterday, in my State, I was proud to support a nominee of the President named Judge Irizarry, another Hispanic nominee. I called her into my office and talked to her. I said, give me some court cases you do not like. And without flinching, this woman, educated, I believe, at Columbia and Yale, an excellent lawyer, an excellent judge, told me two cases, one she disagreed with from the right, one she disagreed with from the left. I told the White House, let's move her.

So this is not an issue of Hispanics or women. This is not an issue of being obstructionist. This is very simply an issue about the Constitution and about some degree of balance that ideologs—neither ideologs of the far left nor ideologs of the far right should capture the judiciary, because when they do, they do not interpret the law, which is what the Founding Fathers wished them to do but, rather, they make law.

The great irony is the conservative movement in the 1960s and 1970s had a revulsion towards judge-made law. I remember arguing with some of my classmates in college about this. All of a sudden it has flip-flopped and now activism on the rightwing side is okay, turning the clock back, which certainly in an Einsteinian way, and I think in a general way, is as much changing direction as moving it forward, is not activism but fidelity to the Constitution? Judge after judge will reverse precedent—that is what activism is—when they should not.

So I believe, with every bone in my body, with every atom in my body, that we are doing the right thing here—that we are doing more than the right thing; we are doing the Nation a service. If we succeed, no one will ever know because the kinds of cases that would be ruled on will not come to the fore. If we fail, people will know, but it may not be for 5 or 10 years. It is the right thing to do. We know it, and I believe most people over there know it.

These are not nominees who are mainstream. They are not the kinds of nominees Bill Clinton generally nominated, people who were to the liberal side but not out of the mainstream, not a whole lot of legal aid lawyers or ACLU advocates but, rather, partners in law firms and prosecutors. That was the Clinton nominee.

Here, it is nominee after nominee who sort of with a passion wishes to say the minute the Federal Government moves its fingers, chop them off.

Let's talk a little bit about Mr. Sutton, because I think he fits that extreme mold. Now to his credit—and I want to give him credit—he answered questions when we asked him. He was not silent like Miguel Estrada. I do not hear anybody saying he is violating Canon No. 5 of the lawyers' ethics by saying how he felt on certain issues. That was why Mr. Estrada would not tell us things.

In general, some of the cases he has talked about advance an agenda that is antirights, antifairness and, in my judgment, antijustice. Probably the most notorious is Patricia Garrett. There, he sought and obtained—this was not just someone who looked up his name in the phone book, went and looked up an ''S'' and came to Sutton. He went out of his way to find the opportunity to oppose a breast cancer patient's bid to vindicate a right to keep her nurse's job. In other words, she was fired because she had breast cancer.

He went so far as to argue the Congress had no power under the 14th amendment to protect the disabled. Whether you agree or disagree with the view, it is clearly an attempt to say the Federal Government, in the kind of general, gradual, fitful progress we have made to protect the rights of individuals, should be pushed back.

In the case of Westside Mothers, Mr. Sutton again grabbed the opportunity to oppose a group of mothers whose children were being deprived of services under Medicaid. Mr. Sutton apparently believed impoverished children should not have the right to force the State they live in to provide them services that Congress guaranteed to them. Again, cut the Federal Government back.

In another case, Mr. Sutton sought the opportunity to file a brief arguing Congress does not have the power to address violence against women and argued that significant portions of the Violence Against Women Act were unconstitutional.

Do my colleagues think most of America agrees with that? Do they think most of America thinks Congress

has no right to legislate, particularly when there are findings that say this is interfering with commerce and interfering with women's rights to hold jobs and be productive citizens? It is sort of obvious if a woman is beaten at home, that that will interfere. Do my colleagues think most Americans agree with Mr. Sutton to say there should be no Federal power to do it?

The bottom line is, in case after case, Mr. Sutton has sought the opportunity to represent States rights at the expense of individual rights. He has sought the opportunity to seek injustice at the expense of basic fairness, guided by some ideological construct that the Federal Government is bad, it is evil, it grabs too much power, in ways that most Americans, 95 percent—99 percent, maybe of all Americans—would have no problem with.

The PRESIDING OFFICER. The Senator from New York has used 15 minutes.

Mr. SCHUMER. I ask unanimous consent that I be given an additional 5 minutes of our time.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. How much time do we have remaining?

The PRESIDING OFFICER. Nineteen minutes 38 seconds.

Mr. HARKIN. Five more minutes.

Mr. SCHUMER. I thank my colleague for his generosity.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Now, it is no exaggeration to say Jeffrey Sutton is one of the architects of the rightwing revolution that is taking place in our Federal courts. In hearings before the Judiciary Committee, he claimed he was trying to build a Supreme Court practice and he cannot be condemned for the views espoused in his advocacy, because lawyers have to represent their clients. Generally, that is true. If Mr. Sutton were a public interest lawyer taking all cases that come to him, I would agree. If he were a junior associate taking the cases partners assigned to him, I would agree. If he had a diverse array of cases taking different ideological perspectives, I would agree. But the cases Mr. Sutton took reflect a clear agenda. He believed in what he was doing.

In one interview, Mr. Sutton said: I love this Federalism stuff. It was obvious to me, at least, that at the hearing this was a personal agenda for him. He has taken positions far beyond what his clients' interests have demanded. His record, viewed as a whole, makes clear he has an agenda and his career has been devoted to advancing that agenda.

Frankly, I do not believe someone with such strong against-the-grain ideological views will simply set them aside to become a fair and neutral judge. That is a pretty tough thing to do.

So the bottom line is we have another nominee from the extreme, another nominee clearly bright, clearly accomplished—I have no dispute with his intellectual character or his ethics, but he comes from way outside the mainstream. It is a pity this judge divides us, does not unite us. If every judge the President nominated were that way, I would say it is not much of an argument, but it is just some. So I would urge my colleagues to oppose Mr. Sutton.

Frankly, I think a large number will. I think because Mr. Sutton answered questions and other reasons that there is not going to be a prevention of his nomination from coming to a vote. He certainly adds weight and burden to future nominees because many Members want to seek balance on the courts. Jeffrey Sutton does not bring a bit of balance to the courts. It continues the push, bringing them far over to the right side to eliminate the powers of the Federal Government or to greatly reduce the powers of the Federal Government at a time when only a small band of ideologues is demanding just that.

I yield the remainder of the time I have not used to my colleague from Iowa, and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

If no one yields time, time will be charged equally to both sides. Senator HARKIN from Iowa has 16 minutes and the chairman of the Judiciary has 53 minutes.

The Senator from Iowa.

Mr. HARKIN. Mr. President, it is an odd game that is being played here by the majority party of the Senate. First, we asked a vote be put off until after the caucus this afternoon. The majority leader could not even do that. Why do they want to rush a vote at noon after we have been gone for 2 weeks? Senators have just come back. Some Members wanted the opportunity to talk about Mr. Sutton in our caucuses. The majority leader says no, we will vote at noon; we cannot vote at 2:15. We will not have any other votes today but they want to ram this through and vote at noon. I know our assistant minority leader, Senator REID, asked if we could have the vote later on and the majority leader objected. Why? What are they afraid of?

Again, I point to an incident that happened today and yesterday that again illustrates why people with disabilities have every reason to be out here in the lobby today—and the reception room—opposing Mr. Sutton's nomination. We had a room reserved, the Mansfield Room, for a press conference this morning for disability groups. Somehow yesterday it was taken away from us. We do not know why; it was just taken away. Then we were told we could use the LBJ Room—fine—at 10 o'clock. People with disabilities lined up outside to come in to that press conference at 10 o'clock, but they were not allowed to come in until 9:30. People with wheelchairs, people what seeing eye dogs, people who are hearing impaired, standing in line out there to try to come in here to exercise their legitimate rights; yet they are held up out there because it takes a long time to process them and get them through.

When I heard this was happening, I called Mr. Pickle, the Sergeant at Arms, and he rushed right down there and he made sure they got through. I thank Mr. Pickle.

But why do we have to do that? The people who are down there should have been treated just like a banker, a financier, or K Street lobbyist who come up here when we have votes on the floor. And they were not—until Mr. Pickle went down there and straightened things out.

People with disabilities struggle every day just to get through. We had years, decades, centuries of discrimination against people with disabilities in this country, so we passed the Americans with Disabilities Act in 1990. Mr. Sutton, the nominee before the Senate, says it is not needed. It was not needed? On National Public Radio he said ''disability discrimination in a constitutional sense is difficult to show.''

We did not think it was that difficult: 25 years of study by the Congress, starting in 1965 with the National Commission on Architectural Barriers, through 1989—25 years. And then Congress, recognizing that we had left out of the Civil Rights Act of 1964 people with disabilities.

After all the studies—we had 17 hearings, we had a markup by five separate committees, 63 public forums across the country, held by Justin Dart, who was President Reagan's appointee to head the National Committee on People With Disabilities. Justin Dart collected over 8,000 pages of testimony of individual acts of discrimination against people with disabilities in this country. Attorney General Thornburg testified on behalf of it and said it was needed, along with Governors and State attorneys general. We had over 300 examples of discrimination by State governments in the legislative record—300 examples of discrimination by State governments. Yet when Patricia Garrett of Alabama was fired from her job because of her disability, Mr. Sutton, in representing the State of Alabama, just said that is tough; we do not need the ADA. He said it is not needed. Well, Congress thought it was needed and people with disabilities all over this country knew it was needed also.

I make it clear, I am not accusing Jeffrey Sutton of having any personal animosity toward people with disabilities. I spent an hour and a half with him. I don't believe he does. But what he does have is a very narrow, rigid view of the law which he summed up best when he said that in the contest involving these laws between the Federal Government and States rights, it

is a zero sum game. In other words, if a claimant on civil rights under a Federal civil rights statute, for example, such as the Americans with Disabilities Act, if that person wins against a State that does not protect those civil rights, then somehow the State loses. The Federal Government wins and the State loses. He says it is a zero sum game.

What an odd view to have that somehow if the civil rights of people with color, the civil rights of women, the civil rights of the elderly, the civil rights of people with disabilities, if somehow they are constitutionally upheld by the Federal courts, a State loses—an odd, odd view. But that is Mr. Sutton's view, a narrow, rigid, interpretation of the law that does not recognize what we did, that does not recognize the history of discrimination, only his own ideology about how that law should be interpreted. If civil rights wins, the State loses, according to Mr. Sutton.

This is what the New York Times said yesterday morning in the editorial: ''Another ideologue for the courts.'' Not that he is a bad man. I am not saying he is a bad man at all. I am just saying his views are antithetical to civil rights laws in this country. That is why over 400 civil rights groups in this country have come out in opposition to Mr. Sutton. Never before have all these groups come together to oppose a nominee to the Federal bench. Maybe this group or that group might have opposed this judge or that judge, but never before have all 400 come together in opposing Mr. Sutton. Yet we are told we have to rush the vote. We have to vote. We cannot debate it. We can't talk to our caucuses; we have to vote at noon.

We hear all this talk that Mr. Sutton was just representing his clients. He wasn't just representing his clients. In his writings, in his statements, in his sayings outside the courtroom, he says his ideology, his belief is that it is a zero sum game. He believes in this federalism stuff.

He says any congressional staffer with a laptop can make constitutional law. That is not what we did when we passed the Americans with Disabilities Act. We spent years documenting discrimination against people with disabilities.

People may get up and say, ''I voted for the Americans with Disabilities Act.'' ''I cosponsored the Americans with Disabilities Act.'' Fine, we appreciate it. It passed the Senate 90 to 6. But I don't understand how you can say you voted for it, you supported the Americans with Disabilities Act, but now you want to put a judge on the bench who wants to undermine that law and has so stated and has so written, that he would be willing to undermine it in preference to States rights.

In 1948, the then-mayor of Minneapolis, Hubert Humphrey, stood up in front of the national convention of the Democratic Party when then Strom Thurmond, who later became a Senator, walked out, took the South with him, and formed the Dixiecrat Party because they didn't like the civil rights plank in the Democratic platform in 1948. It was then-Mayor Humphrey who got up before that Democratic convention and said: It is time we get out of the shadow of States rights and into the sunshine of human rights.

He was right. The history of this country since then has been one of ensuring the civil rights and civil liberties of our citizens.

I say to my fellow Senators, when you come over to vote, go through the reception room. You will see dozens of people there: Hearing impaired, some who are blind, people who use wheelchairs—people with all forms of the different types of disabilities. They are there. Walk by them and tell them you are going to vote for Jeffrey Sutton. Tell them you are going to vote for Jeffrey Sutton because you believe their individual States will protect their civil rights; that the individual States will take care, will make sure they are not discriminated against.

Mr. REID. Will the Senator yield for a question?

Mr. HARKIN. I will.

I just hope Senators will go by and, rather than saying they are going to vote for Sutton, will strike another blow for civil rights in this country and tell the assembled people with disabilities out here in this reception room that we are going to say no to Mr. Sutton and we are going to set a higher standard for our Federal judges.

Let's defeat this nominee, not on a personal basis, but let's have judges who will understand that upholding people's civil rights against States rights is not a zero sum game. When we win on our civil rights, we all win.

I am glad to yield to my friend from Nevada.

Mr. REID. I said yesterday evening as we closed how I appreciated the statements of the Senator from Arkansas yesterday and how the statements were based on substance. A lot of times when we come to the Senate floor we talk in the abstract. You have not. I was touched when I heard the Senator from Iowa speak of his brother who was sent to a school for the deaf and dumb—even though he was not dumb; he just couldn't hear.

Mr. HARKIN. That is true.

Mr. REID. I want the Senator to answer this question. The Senator from Iowa remembers Congressman Jim Bilbray, a Congressman from Nevada. When he was living back here, he had a daughter who had graduated from high school and invited one of her friends from Nevada to come back to Washington. They were trying to find accommodations for her friend, who was a paraplegic. He was confined to a wheelchair. They called over 50 hotels and motels before they could find a place to stay for this young man with his wheelchair. That was prior to the Americans with Disabilities Act.

Is the Senator from Iowa describing what my friend Congressman Bilbray's daughter went through, trying to find State-protected rights for people with disabilities?

Mr. HARKIN. I say to my friend from Nevada, when my brother Frank was out of school and in the workforce, I remember I was in the military. I was a Navy pilot. I was down in Florida. I wanted my brother to come down and visit me on one of his vacations. He didn't want to do that. I was wondering why.

He said, You know, I am really concerned. I can get a car; I have a driver's license. But he was afraid of staying in hotels and motels because he was concerned because he had read about a couple of motel fires. He said, What if I am in a motel or hotel and there is a fire? I won't be able to hear anything. So he was afraid to travel.

Today when you go to hotels or motels, they have lights that flash and modest little improvements to make sure people with disabilities can basically enjoy the same things we do.

The Senator from Nevada has accurately described what this country was like before the Americans with Disabilities Act. Architectural barriers? My nephew is an architect. After the act was passed, I remember my nephew said, Now we can start designing buildings the way they ought to be designed, with universal accessibility. That is happening today.

There was a young child turned away from a zoo because the child had cerebral palsy. The child was turned away from the zoo because they were afraid that child would scare the chimpanzees. That is a true story.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HARKIN. I ask unanimous consent for 5 more minutes.

Mr. REID. Mr. President, I had spoken to the majority staff. The majority leader wants the vote at noon. However, the majority, of course, has indicated if we need another 5 minutes on each side, that would be fine. So I ask unanimous consent the time for the vote be scheduled at 12:10, rather than 12, and that each side have an additional 5 minutes.

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

The Senator from Utah.

Mr. HATCH. Mr. President, the distinguished Senator from Iowa is concerned that they have used up their time. I would have yielded him some time from my time if necessary. So there is no desire to mistreat him or to treat him unfairly.

But let's just get the facts here. The nomination of Jeffrey Sutton has been sitting here for 2 solid years and now we hear complaints that we have to have a vote at 12:10 or 12? Come on.

Plus, I get a little tired of hearing from the other side that they seem to be the only people who care about persons with disabilities. I can tell you

that bill would not have passed had it not been for people on this side, and I was one of the leaders. I managed the floor for the Americans with Disabilities Act. I was in all the meetings. I helped to negotiate the compromise with the White House. I helped to resolve the problem. And I feel every bit as deeply about persons with disabilities, and so do all of my Republican colleagues, as do my wonderful friends on the other side, who seem to think they are the only ones who care about persons with disabilities, or civil rights.

The fact is that had it not been for the Republican Party, the Civil Rights Act of 1964 wouldn't have passed. I get a little tired of this holier-than-thou attitude—that they are the only ones who understand and they are the only ones who feel deeply about it.

I managed the floor the day we passed the Americans with Disabilities Act—and I went with the distinguished Senator from Iowa outside to meet with the folks who were suffering from disabilities, and we both broke down and cried because we were so happy to have passed that bill. I remember the day that I carried my brother-in-law through the Los Angeles temple in my arms with a great effort because he contracted both types of polio. He contracted polio and became a paraplegic who went on to finish his undergraduate, and went on to receive his master's in electrical engineering. He worked up to the day he died, although he came home every night and got into an iron lung.

So I hope our colleagues on the other side quit suggesting that we don't seem to understand on this side the problems people have with disabilities. We do understand.

Jeffrey Sutton worked for his father who ran a school for kids with cerebral palsy. To have him maligned here today and yesterday the way he has been, after 2 years of sitting here waiting to get a chance to have a vote up or down, goes a little bit beyond the pale.

I support this nomination of Jeffrey Sutton to be a judge on the Sixth Circuit Court of Appeals precisely because he is a person of capacity, decency, and honor who cares for those with disabilities. He is one of the top appellate lawyers in the country. He has nearly the highest rating from the American Bar Association. They don't give that rating out easily. To have him presented here today as outside of the mainstream—that means outside of the way certain Senators on the other side believe—well, I have to say that isn't the description of the mainstream. Mr. Sutton is one of the top appellate lawyers in the country. He has argued over 45 appeals in this country—appeals for a diversity of citizens in Federal and State courts across the country, including an impressive number—12 cases—before the U.S. Supreme Court. And I hear that he is outside the mainstream because he wins his cases before the Supreme Court? In a couple of cases, he lost. They disagree with that, too.

I happen to believe the Supreme Court decides what mainstream is, in many cases. They are not always right; I admit that. I was disappointed in some of their decisions. But the fact is he has been more in the mainstream than some of his critics. He understands what mainstream is. In 2001, he had the best appellate advocate record of any advocate before the Supreme Court, arguing four cases and winning all four of them. The fact that my colleagues on the other side do not like the results in those cases—a number of which were decided unanimously by the Supreme Court—shows they are outside the mainstream.

On January 2, 2003, the American Lawyer named him one of the best 45 lawyers in the country under the age of 45. That doesn't sound like somebody who is out of the mainstream.

He is an outstanding nominee. I urge all of my colleagues to support him.

I am happy to yield time to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I thank my colleague from Utah.

After 12 years, in about an hour from now we will finally be voting on the nomination of Jeffrey Sutton, 2 years after his nomination was submitted by President Bush to this body.

I spoke twice yesterday in the Chamber in regard to his nomination, so I will not take much of my colleagues' time today to talk about the nomination. I have listened to my friends' comments—they are my friends—who oppose this nomination. I have a great deal of respect for them. But I believe I had to come back to the floor this morning and respond, however briefly, to their comments.

As I have listened to their comments, it has become clear that the opposition to Jeffrey Sutton really does boil down to this: The fact that the opponents to Jeffrey Sutton, those who in a few moments will vote against his nomination, do not like the positions he has taken in cases he has argued. The Garrett case is a prime example.

Mr. President and Members of the Senate, as I said yesterday, and as I explained in more detail than I will today, I thought Jeffrey Sutton's own argument on behalf of the State of Alabama in the Garrett case was wrong. This Senator from Ohio believed it was wrong. And the U.S. Supreme Court decided that I was wrong. They decided that Jeffrey Sutton and the State of Alabama were right. I happen to still think the Supreme Court got it wrong. I still happen to think Mr. Sutton's arguments on behalf of his client, the State of Alabama, were wrong.

But the fact remains that Jeffrey Sutton was simply acting as a lawyer. He was acting as a lawyer—and in this case a successful lawyer—representing his client. If you analyze the different criticisms and the different cases, what you will find time after time after time is that he was acting in his capacity as a lawyer, and a pretty successful lawyer.

If we would deny Jeffrey Sutton the ability to serve on the Federal bench because we do not like his clients, or we do not like the position of his clients, or we do not like his advocacy for those clients or the position he took as a good lawyer following the canons of judicial ethics, it would set a very dangerous precedent for this Senate. It would have a chilling effect on the practice of law in this country.

Every lawyer in this country who had any thought or any ambition of ever serving on the Federal bench—I will guarantee that there are an awful lot of them out there who someday will have some dream in their mind of serving on the Federal bench, however realistic or not it might be—each one of them would have to think: Gee, is my representation of this client, is my representation of this particular cause going to somehow affect my ability to get on the Federal bench? Will some judiciary committee, will some U.S. Senator, will some White House in the future look at this and say, oh, that was a bad cause, that was something that was just too controversial?

No, my friends in the Senate, we don't want to go down that path. That is a wrong path to go down. We know better. We know better than to do that.

My colleagues on the other side of the aisle have said: No, that is really not what we are talking about. We are not talking about his representation of someone in court. We are talking about what he said outside of the court. I think we have to look at that.

I submit to Members of the Senate, when you look at that allegation, and when you strip it away and look at the real facts, what you find is, in the cases that we look at, Jeffrey Sutton was still working as a lawyer.

I will give you an example: The famous NPR interview, National Public Radio interview, that has been cited time and time again on the floor by the opponents. There are quotes from Jeffrey Sutton about that, and people say: Oh, look. He was talking on National Public Radio, and he was not serving as a lawyer then, or he was not arguing a case in front of the United States Supreme Court; that must have been his own ideas.

What my colleagues fail to mention is that interview was done in conjunction with an oral argument in front of the United States Supreme Court. If I am not mistaken, I think it was actually the same day he was making the oral argument in front of the United States Supreme Court. He was talking, I believe, about the Garrett case, and he was telling the interviewer from NPR what his oral argument was going to be.

We would obviously expect him not to disagree with what his oral argument was going to be. We would not expect him to say anything inconsistent

with what his oral argument was going to be. And we would expect him to advocate for his clients and say the same thing on National Public Radio that he would say in the courtroom of the United States Supreme Court. So again, Mr. Sutton was acting as a lawyer.

So to put it in a common term, it is a ''bum rap.'' This man has a right to be a lawyer—not only has a right to be a lawyer, he has an obligation to be a lawyer. It is what he has to do once he takes a case.

He is a good lawyer. He is a lawyer who has done his job. He is a lawyer who is well qualified to serve on the Federal bench. I hope my colleagues, when they come to the floor, will consider his life experiences, his life's work, things he has done outside the courtroom as far as community service, as well as how well respected he clearly is by courts, by his colleagues, and by the community. Therefore, I hope my colleagues will vote to confirm Jeffrey Sutton to the Sixth Circuit Court of Appeals.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I also compliment my esteemed colleague from Ohio for his excellent remarks. Nobody knows this man better than the distinguished Senator from Ohio. And, frankly, I know him quite well myself. We ought to pay attention to the people who know him and not make up stories about him, which I think is what is happening.

I have seen more and more of a vindictive approach against President Bush's judgeship nominees than I have ever seen in my 27 years in the Senate. To malign these people who have the highest rating from the American Bar Association, as though they are not in the judicial mainstream, I think is hitting below the belt. And everybody suspects the reason why this hitting below the belt is occurring is because, No. 1, they think he might be pro-life. I do not know what he is as far as that particular issue. The fact is, no single issue should stop somebody who is otherwise qualified from serving in the Federal Government and serving his fellow human beings in this country.

But No. 2 is, they are afraid this fellow has Supreme Court potential, as many of President Bush's nominees have who have such high ratings. So there is a deliberate attempt to damage him on his way up to the Sixth Circuit Court of Appeals so he will never be nominated for the Supreme Court.

Mr. President, I support the nomination of Jeffrey Sutton to be a judge on the Sixth Circuit Court of Appeals because he is worthy of it. Mr. Sutton, like I say, is one of the top appellate lawyers in the country today. There is no question about it. I have mentioned how many cases he has argued, appellate cases, and at least 12 before the Supreme Court, winning most of them. I spoke yesterday at length about Mr. Sutton's extremely accomplished legal record and the numerous letters of support I have received on his behalf.

Let me just take a few minutes today to discuss some additional points my colleagues on the other side have raised.

Specifically, I would like to respond to the points raised on the topic of federalism. It is as though they do not believe in federalism, they only believe the Federal Government should have total control over everything. It is one reason I left the Democratic Party long ago, because I realized there is a principle of federalism that is hallowed in this country, constitutionally hallowed.

Mr. Sutton has argued three very important cases that have resulted in hotly debated U.S. Supreme Court opinions concerning the scope of Congress's power under section 5 of the 14th amendment to regulate State governments. Some of his critics—and a number of them, almost all of them—have suggested his involvement in these cases should somehow disqualify him from the bench.

I think everyone here knows I have worked hard to enact some of the very laws Mr. Sutton argued against on behalf of his clients as an advocate, which is his responsibility as an attorney. Together with my good friend and colleague, the senior Senator from Massachusetts, and others, I worked very long hours on the Religious Freedom Restoration Act, which was struck down in the City of Boerne case. I was one of the principal sponsors of and managed the floor for the Americans with Disabilities Act, a small portion of which was limited by University of Alabama v. Garrett, a case argued by Jeffrey Sutton. I also worked closely with the distinguished Senator from Delaware on another law that the Supreme Court, in the Morrison case, found, in part, to be beyond Federal authority—the Violence Against Women Act.

It is important to understand that, notwithstanding the suggestions of some of my Democratic colleagues yesterday, the arguments Mr. Sutton advanced on behalf of his clients in Garrett and Morrison did not advocate an outright repeal of the ADA or the Violence Against Women Act, nor did those arguments suggest the purposes of those laws were not worthwhile. Ultimately, the Supreme Court's decisions in those cases did limit certain aspects of those pieces of legislation, and I will admit it was disappointing to see that happen after I put so much time and energy into their enactment.

Under these circumstances, it would be relatively easy for me to take cheap shots and criticize Mr. Sutton for the role he played as an advocate in those cases. But I am certainly not going to do so, for the simple reason that ascribing to Mr. Sutton the positions of his clients is wrong, it is unfair, it is not right, it is beneath the dignity of those who are attorneys who understand that advocates are advocates, and they should carry the best argument for their clients they can.

This principle is so fundamental that it hardly merits mention, and yet you hear these arguments like he should not have done that. If we should not do things as attorneys, maybe there will not be any advocates to advocate for various positions.

Moreover, as a substantive matter, none of Mr. Sutton's arguments can fairly be characterized as outside the mainstream—not one.

In the City of Boerne v. Flores, a 6-to-3 decision he won, dealing with the Religious Freedom Restoration Act, none—none—of the Supreme Court Justices disagreed with the position Mr. Sutton advocated in that case—none. All nine agreed with him. So he is outside the mainstream of American jurisprudence? Guess who is outside the mainstream. It isn't Mr. Sutton. It is this desire that everybody think in lockstep, and do in lockstep, what some on the other side think ought to be done. No Justice disagreed with him.

Now, as much as my colleagues do not like the Supreme Court, I have to tell you, they are a coequal branch of Government, and they do help us to know what the law really is. And none of them disagreed with Mr. Sutton.

The same was true in Kimel v. Florida Board of Regents—not one Justice on the Supreme Court disagreed with the interpretation of the 14th amendment Mr. Sutton advanced in that case—not one. Who is outside the mainstream? It certainly isn't Mr. Sutton.

Now, I will concede the Garrett case was a bit narrower, but it was still a 5-to-4 decision. Five of the Justices voted with Mr. Sutton's argument in that case. Nevertheless, almost by definition, I think legal arguments which garner that kind of support in the Supreme Court simply cannot be pegged as outside of the mainstream of American legal thinking as to be somehow unworthy of an advocate—or a judicial nominee.

I agree. My colleagues don't agree with him or didn't agree with his arguments. I didn't in some ways. But that disagreement should not stop us from voting for a person who, as an advocate, had an obligation to make those arguments and who won on his arguments.

I would also like to discuss Mr. Sutton's comments in the media mentioned during the course of this debate. Much ado has been made about his comment reported in the Legal Times that:

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

Tell me what is wrong with that. Federalism is a hallowed principle of constitutional law. I believe in it, too. I believe deep down some of my colleagues on the other side believe in it, although I have to admit, I think a

number of them don't. They are wrong not to. They are outside of the mainstream of American jurisprudence.

Well, federalism is not a bad word or an unpopular concept. It is a well-established part of our system of government. As the Supreme Court noted in its 1995 decision in U.S. v. Lopez:

> Just as the separation and independence of coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.

The court also noted that:

> This constitutionally mandated division of authority ''was adopted by the framers to ensure protection of our fundamental liberties.''

Who is outside of the mainstream of American jurisprudence? Certainly not Mr. Sutton. Some of these arguments made against him are outside. I admit that.

That is what federalism means. Like Jeffrey Sutton, I believe in it, too. I think anybody who understands constitutional law must believe in it. We could differ as to how it should be applied in all cases, but those are political arguments. Frankly, an advocate has an obligation to represent his client and do the best he can for them, which Sutton did, and he won.

Just as I believe in the separation of powers of the three branches of the Federal Government, believing in federalism does not mean you always believe States should prevail in any given dispute. Mr. Sutton doesn't believe that; neither do I. As I have stated before, I am disappointed any time the Supreme Court holds unconstitutional any legislation for which I fought and bled, that I vigorously worked to enact. However, I do believe in the Federal system that our Founders created and the courts have protected over the years. I cannot derive from Mr. Sutton's quote that he meant anything more than he believed in federalism as a structural component of our American system of government, something I think is certainly true.

I want to make a few points about Mr. Sutton's record which has been attacked, I believe, unfairly. We are getting used to that in the Senate. Some suggest that the few cases in which Mr. Sutton has represented States, in what some consider unpopular causes, demonstrates a bias towards States rights. However, Mr. Sutton has represented a wide range of clients in his legal practice. In those cases where he represented States, he was either acting in his official capacity or was hired by the State and paid a full fee. However, 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, the Center for Handgun Violence—to name a few. I notice some of my colleagues on the Judiciary Committee on the Democrat side have sent out a letter criticizing him, saying he has never done anything for civil rights. What are those cases?

In addition, I recently received a very supportive letter from Mr. Riyaz Kanji, a former law clerk to Supreme Court Justice David Souter and Judge Betty Fletcher of the Ninth Circuit, neither of whom would be considered conservatives by any judicial measure. He said that he contacted Mr. Sutton in advance to ask for assistance on an amicus brief for the National Congress of American Indians and an Indian law case pending before the U.S. 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 would also like to share a letter from a good friend, former colleague to all of us in this body, Senator Robert Dole. Senator Dole was also in the meetings when we were able to arrive at a final conclusion on the Americans with Disabilities Act. He was instrumental in passing the Americans with Disabilities Act. Senator Dole is a well-known advocate for the rights of disabled Americans. He wrote a letter to the Judiciary Committee strongly supporting Jeffrey Sutton because of his ''demonstrated commitment to safeguarding the rights of all Americans, especially those of persons with disabilities.''

I ask unanimous consent to print a copy of the Dole letter in the RECORD, along with some of the copies of other letters of support for Jeffrey Sutton's nomination that the committee has received.

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

SENATOR BOB DOLE,
Washington, DC, January 16, 2003.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: On May 9 of 2001, President Bush nominated to a vacancy on the U.S. Court of Appeals for the Sixth Circuit one of the most distinguished lawyers in the United States: Jeffrey S. Sutton of Columbus, Ohio. I ask that you join me in backing Jeff's nomination, which I support in part because of his demonstrated commitment to safeguarding the rights of all Americans—especially those of persons with disabilities.

As you know, some in the disability-rights community—for whom I have great respect and with whom I have had the privilege of working in the past, including during our joint efforts to pass the landmark Americans with Disabilities Act in 1990—have raised questions about Jeff's nomination. I believe that these criticisms miss the mark, and do so by a wide margin. For during his career as a lawyer, both as an Ohio government official and in private practice, Jeff Sutton has gone out of his way to defend the interests of the disabled.

In 1996, Jeff tried to convince the Ohio Supreme Court that Case Western Reserve University had unlawfully discriminated against Cheryl Fischer, who is blind, when it refused to admit her to its medical school solely on the basis of her disability. Jeff actively sought out the opportunity to represent Ms. Fischer, and he was passionately dedicated to her cause. But don't take my word for it. Here's what Ms. Fischer has to say:

''Working for the State, Jeff took my case on, firmly convinced I had been wronged. I recall with much pride just how committed Jeff was to my cause. He believed in my position. He cared and listened and wanted badly to win for me. I recall well sitting in the courtroom of the Ohio Supreme Court listening to Jeff present my case. It was then that I realized just how fortunate I was to have a lawyer of Jeff's caliber so devoted to working for me and the countless of others with both similar disabilities and dreams.''

Jeff fell just one vote short of prevailing, but his service to Ms. Fischer leaves no doubt as to his commitment to defending the rights of the disabled.

Cheryl Fischer is not the only person with a disability to be helped by Jeff Sutton. Six years later, Jeff was the lead counsel in a case brought by the National Coalition of Students with Disabilities against the state of Ohio, his former employer. Jeff argued that Ohio universities were failing to provide voter-registration materials to their disabled students, in violation of the federal ''motor voter'' law. As a direct result of Jeff's efforts, the National Coalition of Students with Disabilities prevailed, and the state of Ohio was made to set up voter-assistance stations at state colleges and universities.

Beyond representing them in court, Jeff Sutton has improved the lives of the disabled through his service to a disability-rights group. Since 2000, Jeff has served on the Board of Trustees of the Equal Justice Foundation, which provides free legal services to the disadvantaged, including persons with disabilities. During his service, the Equal Justice Foundation has filed lawsuits against three Ohio cities demanding that they make their sidewalks wheelchair accessible. It has sued an amusement park that flatly prohibited the disabled from riding its rides. And it has represented a woman with a mental illness who lived in subsidized housing, when her landlord tried to evict her on the ground of her disability.

Again, those who know Jeff Sutton best speak with great eloquence about his dedication to the disabled. Kim Skaggs, the Executive Director of the Equal Justice Foundation, testifies that:

''I admired Mr. Sutton's abilities so much that, upon joining the Equal Justice Foundation, I actively recruited him to become a member of the Equal Justice Foundation's Board of Trustees. Much to his credit, Mr. Sutton accepted and has been extremely supportive of the Foundation's work. I believe that Mr. Sutton possesses all the necessary qualities to be an outstanding federal judge. I have no hesitation whatsoever in supporting his nomination.''

These are not the actions of a man who is indifferent to the rights of persons with disabilities. Although he defended the state of Alabama in an Americans with Disabilities Act lawsuit, the complete picture of Jeff Sutton's career reveals a consistent concern

about the special burdens that the disabled face in their everyday lives, and an equally consistent commitment to alleviating those burdens. In all candor, I believe that my friends in the disability-rights community should be actively supporting Jeff Sutton's nomination. For we are not likely to find a more sympathetic ear on the federal bench.

I do not write these words lightly. As you know, I spent many years in the United States Senate fighting for the rights of the disabled. I co-sponsored and worked hard for passage of the 1990 Americans with Disabilities Act. I have no doubt that, if he is confirmed, Jeff Sutton will faithfully enforce that law, just as he will enforce all acts of Congress. And I have no doubt that he will scrupulously respect the rights of the disabled, just as he will respect the rights of all Americans.

Sincerely,

BOB DOLE.

ARENT FOX KINTNER PLOTKIN & KAHN, PLLC,
Washington, DC, January 7, 2003.

Re nomination of Jeffrey S. Sutton to the Sixth Circuit.

Hon. PATRICK J. LEAHY,
Chairman, Senate Judiciary Committee, U.S. Senate, Russell Senate Office Building, Washington, DC.
Hon. ORRIN G. HATCH,
Ranking Member, Senate Judiciary Committee, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY AND SENATOR HATCH: I am writing to urge the prompt confirmation of Jeffrey S. Sutton to the United States Court of Appeals for the Sixth Circuit. I believe that Mr. Sutton is eminently qualified and would be a great asset to the federal judiciary.

Mr. Sutton is one of the top appellate advocates in the country, having argued twelve cases in the United States Supreme Court, with a 9–2 record (and one case pending). In the 2000–2001 Term, he argued more cases than any other private attorney in the country, and won all four of them. And in *Hohn* v. *United States*, 524 U.S. 236 (1998), the Court sua sponte appointed Mr. Sutton to argue the case as a friend of the Court. When he served as the State Solicitor of Ohio, the National Association of Attorneys General presented Mr. Sutton with a Best Brief Award for practice in the United States Supreme Court an unprecedented four years in a row. And this month, the American Lawyer included Mr. Sutton in its list of the top forty-five lawyers in the country under the age of forty-five.

I understand that some legal arguments Mr. Sutton has made in the course of representing clients have aroused some controversy in connection with his nomination. Having recent experience myself with the judicial confirmation process, I strongly urge the Senate to reject any unfair inference that Mr. Sutton's personal views must coincide with positions he has advocated on behalf of clients. It is, of course, the role of the advocate to raise the strongest available arguments on behalf of a client's litigation position regardless of the lawyer's personal convictions on the proper legal, let alone policy, outcome of the case. I am confident that Mr. Sutton has the ability, temperament, and objectivity to be an excellent judge.

Sincerely,

BONNIE J. CAMPBELL.

CLEVELAND, OH,
May 21, 2001.

Hon. Senator MIKE DEWINE,
Member of the Senate Judiciary Committee, Russell Senate Building, Washington, DC.

DEAR SENATOR DEWINE: A few weeks ago my sister called to tell me that President Bush nominated Jeff Sutton to serve on the Sixth Circuit Court of Appeals. I was thrilled to hear the news.

While working as Solicitor General for the State of Ohio, Jeff represented me in a lawsuit the Ohio Civil Rights Commission brought against Case Western Reserve University on my behalf. I sought but was denied admission to the Case Western medical school. I alleged then, as I continue to believe now, that the school denied my application for one impermissible reason: I'm blind. The Ohio Civil Rights Commission agreed with me. After a thorough investigation, the Commission determined that I was otherwise qualified for admission and that the school could make reasonable accommodations to enable me to pursue training to become a psychiatrist.

The case worked its way through the Ohio courts and ultimately landed on the Ohio Supreme Court. It was at this point that I first met Jeff Sutton. Working for the State, Jeff took my case on, firmly convinced I had been wronged. I recall with much pride just how committed Jeff was to my cause. He believed in my position. He cared and listened and wanted badly to win for me. I recall well sitting in the courtroom of the Ohio Supreme Court listening to Jeff present my case. It was then that I realized just how fortunate I was to have a lawyer of Jeff's caliber so devoted to working for me and the countless of other with both similar disabilities and dreams.

Although I ultimately fell short in the courts, Jeff Sutton stood firm by my side. My experience confirmed what President Bush understands: Our nation would be greatly served with Jeff Sutton on the federal bench.

Sincerely yours,

CHERYL A. FISCHER.

STATE OF ARIZONA,
OFFICE OF THE ATTORNEY GENERAL,
Phoenix, AZ, July 24, 2001.

Re nomination of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit.

Senator PATRICK LEAHY,
Chairman, Senate Judiciary Committee.
Senator ORRIN HATCH,
Ranking Member, Senate Judiciary Committee.

DEAR SENATORS LEAHY AND HATCH: As the Attorney General for Arizona, and a former U.S. Attorney, I write to urge that Mr. Sutton's nomination be considered based on his own merits as a prospective judge rather than positions he may have taken as an advocate for particular clients. Lawyers have a professional obligation to be zealous advocates on behalf of their clients, and the ethical rules governing lawyers generally recognize that such representation does not constitute a personal endorsement of a client's position. See ABA Model Rules of Professional Conduct, ER 1.2(b). This principle is particularly important for lawyers representing State governments and other public entities. Often such lawyers have a professional obligation to defend or advocate positions taken by legislatures, elected officials, or public agencies that may differ from the lawyer's personal views on public policy or moral issues. Penalizing a lawyer for vigorously advocating on behalf of such clients would be wrong—it would not only blur the important distinction between the positions a lawyer may take on behalf of a client and the lawyer's own views, it would also undermine effective representation for public entities.

Mr. Sutton served with great distinction as the Solicitor General of Ohio and has otherwise had a distinguished legal career. I respectfully urge that his nomination be scheduled for a hearing and considered based on his individual qualifications rather than positions he may have advanced for particular clients.

Very truly yours,

JANET NAPOLITANO,
Attorney General.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL,
Washington, DC, July 31, 2001.

Re Nomination of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit.

Hon. THOMAS DASCHLE,
Majority Leader, U.S. Senate, The Capitol, Washington, DC.
Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.
Hon. TRENT LOTT,
Senate Minority Leader, U.S. Senate, The Capitol, Washington, DC.
Hon. ORRIN HATCH,
Ranking Member, Committee on the Judiciary, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS: We, the undersigned individual state Attorneys General, are writing to urge your prompt and affirmative vote on confirmation of the nomination of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit.

Mr. Sutton is an award-winning, highly-qualified attorney. Jeff Sutton's intelligence and qualifications are unquestioned, with a great deal of experience in commercial, constitutional and appellate litigation. He has argued nine cases in the United States Supreme Court, including HOHN v. *United States*, in which the Court invited Mr. Sutton's participation, and *Becker* v. *Montgomery*, in which he represented a prisoner's interests pro bono. He has argued twelve cases in the Ohio Supreme Court and seven cases in the federal courts of appeal. And, as the former Ohio State Solicitor, he has also handled countless cases in the state and federal courts. His career has been distinguished, and he has displayed a rare sense of principled fairness throughout it.

Jeff Sutton graduated first in his law school class, and clerked for two United States Supreme Court justices. It deserves note that Mr. Sutton has represented a wide range of clients. For example, he represented Cheryl Fischer, a blind woman, who claimed that Case Western University Medical School discriminated against her on basis of disability in denying her admission to medical school. He also is a board member of the Equal Justice Foundation, which provides legal representation to the indigent and has filed several class actions on behalf of the disabled. Beyond this, he has filed pro bono amicus briefs on behalf of the NAACP, the AntiDefamation League and the Center for the Prevention of Handgun Violence.

Unfortunately, Mr. Sutton's exemplary record is being distorted by some critics, and as state Attorneys General, we are particularly concerned when we see a lawyer being attacked not for positions he advocated as a private individual, but for positions he argued as a legal advocate for State government. For example, some critics have claimed that Mr. Sutton is against the Americans with Disabilities Act because he argued that one provision of the law overstepped States' rights (in the case of *Univ of*

Alabama v. *Garrett*). We do not wish here to debate the merits of that position; although we note that the Supreme Court agreed with that position. The important point here at issue is that Mr. Sutton argued that case as a lawyer representing his client. He was not advocating his personal views; rather, he was working to represent a public-sector client.

This distinction, between personal policy preferences and legal advocacy, is a crucial one, and we Attorneys General have a unique perspective on the importance of that distinction. We are legal advocates, sworn to uphold the interests of our clients, and while we also serve as policy advocates for our States, we often must adopt legal positions that do not match our personal beliefs.

As you know, all attorneys have an ethical duty to zealously represent their clients' interests within the bounds of the law, even where the lawyer may not personally share the client's views. This is especially true for public sector lawyers, because we are bound not only by the same ethical rules as all lawyers, but we are also bound by law to represent our legislatures, governors, and agencies. As Attorney General, each of us has worked to advocate legal positions that may not reflect our personal beliefs. Doing so may be difficult, but that is our job and our duty as lawyers and as public servants.

Just as we do this, so do the attorneys who work for us. They have often been faced with the challenge of espousing a position which might not match their own personal beliefs. While their abilities in representing their clients will surely be evaluated by the Senate whenever those government lawyers are nominated for federal judgeships, we urge you not to unnecessarily mistake their advocacy for personal belief. We all believe that everyone in America deserves legal representation no matter how unpopular his or her cause may seem. Lawyers will not be willing to take on such causes if they fear that their advocacy may later be used against them. The potential chilling effect could be enormous.

Indeed, as legislators, you have a great interest in seeing that government lawyers advocate the government's position and not their own. When Congress passes legislation, you have the right to expect that the United States Solicitor General and the entire Department of Justice will defend Congress's work. Individual federal lawyers cannot pick and choose whether to represent only the federal acts that they like. We expect the same of lawyers for the States.

We respectfully suggest that Mr. Sutton should not be criticized because he has been a vigorous and effective advocate. That has been his duty, and it is to his credit that he has discharged that duty well.

When you review Mr. Sutton's nomination, please look at his qualifications and his ability to understand and apply the law. Please do not assume that his past legal positions reflect his personal views. No lawyer would wish to be personally held to every position which, as an advocate, he or she was required to advance.

Sincerely,

Betty D. Montgomery, Ohio Attorney General; Bill Pryor, Attorney General of Alabama; Robert A. Butterworth, Attorney General of Florida; Alan Lance, Attorney General of Idaho; M. Jane Brady, Attorney General of Delaware; Earl Anzai, Attorney General of Hawaii; Steve Carter, Attorney General of Indiana; Carla J. Stovall, Attorney General of Kansas; J. Joseph Curran Jr., Attorney General of Maryland; Don Stenberg, Attorney General of Nebraska.

Philip T. McLaughlin Attorney General of New Hampshire; Herbert Soll, Attorney General of N. Mariana Islands; Hardy Myers, Attorney General of Oregon; Richard P. Ieyoub, Attorney General of Louisiana; Mike Moore, Attorney General of Mississippi; Frankie Sue Del Papa, Attorney General of Nevada; Wayne Stenehjem, Attorney General of North Dakota; W.A. Drew Edmondson, Attorney General of Oklahoma; Mike Fisher, Attorney General of Pennsylvania.

Sheldon Whitehouse, Attorney General of Rhode Island; Mark Barnett, Attorney General of South Dakota; John Cornyn, Attorney General of Texas; Randolph A. Beales, Attorney General of Virginia; Charlie Condon, Attorney General of South Carolina; Paul Summers, Attorney General of Tennessee; Mark Shurtleff, Attorney General of Utah; Iver A. Stridiron, Attorney General of the Virgin Islands.

Mr. HATCH. Mr. President, I also point out a letter from Bonnie Campbell from Arent Fox, who herself was not approved to go on the court. I feel badly that we were unable to get to her. But she writes:

. . . to urge prompt confirmation of Jeffrey S. Sutton to the United States Court of Appeals for the Sixth Circuit. I believe that Mr. Sutton is eminently qualified and would be a great asset to the federal judiciary.

By the way, Ms. Campbell headed the Violence Against Women efforts on behalf of the Clinton administration; some on the other side have criticized Mr. Sutton and his arguments on the violence against women cases before the Supreme Court.

She goes on to say:

Mr. Sutton is one of the top appellate advocates in the country, having argued twelve cases in the United States Supreme Court, with a 9–2 record (and one case pending). In the 2002 and 2001 Term, he argued more cases than any other private attorney in the country, and won all four of them. And in Hohn v. United States . . . the Court sua sponte appointed Mr. Sutton to argue the case as a friend of the Court.

That in and of itself, I might add, shows the high esteem with which the Supreme Court holds this man, certainly a man not outside the mainstream. She said:

When he served as State Solicitor of Ohio, the National Association of Attorneys General presented Mr. Sutton with the Best Brief Award for practice in the United States Supreme Court, an unprecedented four times in a row.

Does that sound like somebody outside the mainstream? Continuing from the letter:

And this month the American Lawyer included Mr. Sutton in its list of the top 45 lawyers in the country under the age of forty-five.

I understand that some legal arguments Mr. Sutton has made in the course of representing clients have aroused some controversy in connection with his nomination. Having recent experience myself with the judicial confirmation process, I strongly urge the Senate to reject any unfair inference that Mr. Sutton's personal views must coincide with positions he has advocated on behalf of clients.

This is exactly the argument made by a number on the other side, an argument she rejects. She continues:

It is, of course, the role of the advocate to raise the strongest available arguments on behalf of a client's litigation position regardless of the lawyer's personal convictions on the proper legal, let alone policy, outcome of the case. I am confident that Mr. Sutton has the ability, temperament, and objectivity to be an excellent judge.

I respect her for writing that letter. I have to say I admire her for doing so.

I might add that in Senator Dole's letter, he went on to list Mr. Sutton's work on behalf of Cheryl Fischer and the nonprofit Equal Justice Foundation, which often represents disabled clients in the Ohio community. Senator Dole continued:

I do not write these words lightly. As you know, I spent many years in the United States Senate fighting for the rights of the disabled.

I have no doubt that, if he is confirmed, Jeff Sutton will faithfully enforce that law, just as he will enforce all laws of Congress. And I have no doubt that he will scrupulously respect the rights of the disabled, just as he will respect the rights of all Americans.

I hope my colleagues will take note of Senator Dole's endorsement, which I believe speaks volumes on the integrity and fairness of Jeffrey Sutton. His record indicates he will be a brilliant jurist of whom we can all be proud.

I am going to cast my vote in favor of this confirmation to the Sixth Circuit, and I strongly urge all of my colleagues to do the same. I urge my colleagues to get beyond these fallacious arguments that he is outside of the mainstream of American jurisprudence, these arguments that he is unworthy of being in this position—although they admit he is a highly qualified, good person. Think about it.

The fact is, their gold standard rated him—the American Bar Association—nearly the highest possible rating available. Now, that speaks volumes.

I reserve the remainder of my time.

Mr. BUNNING. Mr. President, today I come to the floor of the Senate to offer my support for Jeffrey Sutton and urge my colleagues to support his confirmation. The Sixth Circuit, which includes my State of Kentucky, is experiencing a true judicial emergency. Six of the sixteen seats on that court currently sit vacant, leading to justice delayed—and thus justice denied—for the citizens of Kentucky, Ohio, Tennessee, and Michigan. We need Jeffrey Sutton and we need five others like him on the Sixth Circuit.

Jeffrey Sutton was first nominated by President Bush on May 9, 2001. It has taken him almost 2 years to be confirmed and assume his seat on the bench. That is a long time to wait—but he is one of the lucky nominees, since he is actually getting a vote.

Jeffrey Sutton is an example of the fine nominees President Bush has submitted to the Senate. He was rated ''Qualified'' by the American Bar Association. He has argued 12 cases before the United States Supreme Court, with a strong record of success. He has served as State Solicitor of Ohio and

was highly respected by his peers in that position. He clerked for two Supreme Court justices as well as for the Second Circuit Court of Appeals. Currently, Mr. Sutton is a partner at the well respected Jones Day law firm and he teaches law school classes at Ohio State University. His experience in appellate law practice has earned him acclaim from one legal publication as one of the 45 best lawyers under the age of 45 in the whole country.

I am proud that President Bush nominated Jeffrey Sutton and I am proud to vote for him. He is well qualified to serve on an appellate court and will do a fine job for all states in the circuit. I am glad he will soon be confirmed to the Sixth Circuit, and I urge my colleagues to support him as well.

Mr. FEINGOLD. Mr. President, I will vote no on the nomination of Jeffrey Sutton to be a judge on the U.S. Court of Appeals for the Sixth Circuit. I'd like to take a moment to explain my decision.

I have concluded that I cannot support the nomination of Mr. Sutton because I am not convinced that he will give all those who appear before him a fair and impartial hearing. I am greatly troubled by Mr. Sutton's record of handling cases that have resulted in the curtailment of important civil rights, environmental, and other protections. Mr. Sutton has filed amicus briefs that argued for limiting Congress' authority to enact laws to protect the rights of the disabled, women, the elderly, the poor, and racial or ethnic minorities, as well as laws critical to protecting the environment.

These cases resulted in some of the most notable Supreme Court decisions of the last decade that have restricted the ability of Congress to protect the rights of Americans and the environment.

Now, at his confirmation hearing, Mr. Sutton repeatedly defended his involvement in these cases by stating that he was simply doing his job of zealously representing his client. I appreciate this argument to some extent, especially during his tenure as State Solicitor of Ohio. But my concerns remain because I know that once he went into private practice, he certainly had the ability to choose whether to accept clients and inject himself into cases. Moreover, the purpose of amicus briefs, which Mr. Sutton filed while in both the Solicitor's office and private practice, is not to defend a client against litigation or to seek redress on behalf of that client. It is, as we know, an opportunity for a third party to inject an opinion into a case for which the third party has no immediate interest. In significant states' rights case after case, Mr. Sutton consistently sought out cases in which he could argue for limiting the role of Congress in ensuring constitutional protections for Americans.

Furthermore, it seems as though this is a personal crusade for Mr. Sutton. Outside of his role as a lawyer representing clients, he took time to articulate his personal view that Congress should be restrained in its effort to protect civil rights and the environment. Through his involvement with the Federalist Society, including serving as an officer of its Separation of Powers and Federalism practice group, and his writings and statements, Mr. Sutton has said that he ''believes in this stuff'' and is ''on the lookout'' for cases where he can raise federalism issues.

I am concerned about this pattern of arguments, writings, and statements that challenge laws Congress has worked so hard to advance those that would safeguard our precious wetlands and natural habitats and fight discrimination of any and every kind. We cannot reasonably expect to one day eliminate discrimination in this country if we confirm nominees like Mr. Sutton, who seem to be ready to turn back the clock on civil rights through the application of a dry but extremely consequential federalism doctrine, to one of the most important courts in the nation.

Finally, I want to add that I was troubled by Mr. Sutton's response to one of my questions. In answering to a question about congressional authority for enacting a Federal environmental law, he said that the case involved statutory interpretation and that he simply argued that the Court need not reach the constitutional question. I later reviewed the brief and confirmed that six out of ten pages of his brief, in fact, focused on the constitutionality of the Federal environmental regulation. I confronted him with this fact in a followup question, and he continued to insist that the argument he made was not unusual. I do not believe that is the case. Mr. Sutton himself filed an amicus brief in another case urging ''constitutional avoidance'' without making such an extensive argument against the constitutionality of the statute.

I don't like voting against judicial nominees. This was a difficult decision for me because I do think that Mr. Sutton made an effort to address the Committee's concerns, in contrast to some other nominees who have come before us. I understand that President Bush has the right to nominate whomever he wants to the federal bench. But the Senate is not obligated to let the President's nominees sail through, as if there were no checks and balances, no constitutional requirement of advise and consent. As much as it is our duty to fill vacancies in the Federal judiciary, it is also our duty to give great and searching scrutiny to those nominees who have a record that calls into question their ability to give all those litigants who would appear before the nominees a fair and impartial hearing.

I am more than pleased to vote to confirm judicial nominees that are fair-minded and supported by a consensus of members, and, once again, I urge the President to speed up the nominations process by sending such nominees to the Senate. I do not believe that Mr. Sutton is such nominee. He is a bright and accomplished attorney, but he is not the right person for this seat on the Sixth Circuit Court of Appeals.

Mr. JEFFORDS. Mr. President, I would like to take this opportunity to express my strong opposition to the nomination of Jeffrey Sutton to the Sixth Circuit Court of Appeals.

During my time in Congress, I have worked hard to ensure equal rights for all Americans. Over the last three decades we have made great strides in ensuring equal rights for disabled Americans, older Americans, and other individuals. The confirmation of Jeffrey Sutton to the Sixth Circuit Court of Appeals will set back our progress if he is allowed to continue his work of eroding the coverage of civil rights laws passed by Congress, not just as an attorney, but as a Federal judge.

Let me provide my colleagues a quick review of Mr. Sutton's record and its impact on equal rights for all Americans. In University of Alabama v. Garrett, State workers lost their right to bring damage suits under the Americans with Disabilities Act. In Kimel v. Florida, State workers lost the right to bring damage suits under the Age Discrimination in Employment Act. In Alexander v. Sandoval, all Americans lost the ability to file a private right of action to enforce the disparate impact regulations of title VI of the Civil Rights Act. In fact, the Sandoval rationale has been applied to say that individuals who are fired or demoted because they complain about gender inequities in a school's sports or education program cannot bring a challenge under title IX.

Unfortunately, for all Americans interested in equal rights, the examples above have already occurred. Other arguments Mr. Sutton has made will provide my colleagues and all Americans a look ahead to the further erosion of equal rights if Mr. Sutton is confirmed to the Sixth Circuit Court of Appeals.

Mr. Sutton has argued that advocates for low-income children should not be allowed to effectively enforce a State's failure to provide them essential health services required by the Medicaid Act, Westside Mothers v. Haveman. Families would not be able to challenge a State's failure to provide notices or hearings when their Medicaid HMOs deny or delay needed treatment if Sutton's theories from Westside Mothers had been accepted. Additionally, parents would not be able to bring a challenge to a State's systemic failure to provide occupational therapy, speech therapy, and other services that help ensure that disabled children receive a free and appropriate public education as required by the Individuals with Disabilities Education Act if Sutton's theories in Westside

Mothers had been accepted. Deaf students at State universities would not be able to require schools to provide them with interpreters, captioning, and other assistance as required by title II of the Americans with Disabilities Act. if Sutton's additional far-reaching arguments in Garrett had prevailed.

Mr. Sutton's history shows more than just a desire to represent his clients zealously; it shows a belief in a philosophy. This is a philosophy that says the right of the State trumps all, even in the face of extensive Congressional findings. This is a philosophy that says the right of the State overrules the most basic of equal rights laws that the Federal Government may pass. This is a philosophy that the State can discriminate against its employees and citizens even in the face of Federal antidiscrimination laws. This is not a philosophy I can support, and I urge my colleagues to join me in opposing this nomination.

Mr. LEAHY. Mr. President, this morning we are going to vote on the nomination of Jeffrey Sutton to the U.S. Court of Appeals for the Sixth Circuit. Yesterday, I spoke about some of my concerns, but I want to again discuss my serious concerns with this nominee.

Mr. Sutton has a legal philosophy focused on limiting Congress' historic role in protecting the civil and constitutional rights of all Americans. He has led an aggressive campaign to dismantle longstanding Federal laws, enacted with bipartisan support, that have made this country more inclusive over the last half-century, and to close access to the Federal courts for people challenging illegal acts by their State governments.

As a lawyer in private practice, he has aggressively sought out cases to limit the power of Congress to enact laws protecting individual rights, and has been dismissive of congressional findings and hearings supporting important Federal laws. He has sought to weaken, among other laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Violence Against Women Act, and the Religious Freedom Restoration Act. He has also sought to limit the ability of Medicaid recipients to enforce their rights and the ability of individuals to enforce disparate impact regulations under title VI of the Civil Rights Act. In essence, he has argued for the Supreme Court to repudiate more than 25 years of legal precedents that permitted individuals to sue States when they violate Federal civil rights regulations. His extreme judicial philosophy would undermine the rights of State workers, disabled individuals, women, children, racial and ethnic minorities, and senior citizens.

Mr. Sutton and his supporters have claimed that he was merely acting on behalf of his clients in all these cases, but this claim is unconvincing. Mr. Sutton had no obligation to participate in any of the cases taken after he left the Ohio State Solicitor's office in 1998. In fact, he has admitted that he sought out cases curtailing congressional power as a private lawyer and that he is on the ''lookout'' for these cases. He has aggressively pursued a national role as the leading advocate of States' rights and, as my colleagues have noted, he has stated that his advocacy on the principles of federalism is something that he believes in.

He has made statements praising many of the Supreme Court's decisions undermining Congress' authority to protect and assist citizens, and in his personal writings and speeches he has advocated an even narrower view of Congress' role. Perhaps most significantly, Mr. Sutton has taken not a single case that supports congressional power to enact laws protecting civil and individual rights. In each case he has argued before the Supreme Court he has always been on the same side of this issue—arguing that individuals have no right to enforce the civil rights protections that Congress has given them. This must be more than a coincidence.

His personal writings and speeches promote his theory that State laws adequately protect civil liberties, and display a lack of respect and understanding for Congress' long-standing role in protecting individual rights.

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. 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 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 and insincere.

I would also like to respond to the claim by those of the other side of the aisle. Those opposed to Mr. Sutton's confirmation believe he has a personal antipathy to people with disabilities. I know of no Senator who is claiming that Mr. Sutton has a personal antipathy to the disabled. I have heard from hundreds of people and organizations who express concern that millions of disabled individuals have been harmed by his broad advocacy to limit the rights of the disabled as a class. The fact is that Mr. Sutton has chosen to argue against the rights of people with disabilities in three major cases to the Supreme Court; that he has argued that the ADA is ''not needed''; and that he has devoted his career to making States less accountable.

I have been stunned by the Republican Senators who have come to this floor to argue that Senators should not consider a lawyer's representation of clients in considering a judicial nomination. I am stunned because so many of them voted against so many nominees of President Clinton on that very basis, but they now condemn the approach they themselves took—without, of course, acknowledging the contradiction. I am reminded that a key member of this President's judicial nomination selection team, his former White House Deputy Counsel testified before the Senate in 1997 that:

> Although the Senate Judiciary Committee has long recognized—correctly, in my view—that positions taken as an advocate for a client do not necessarily reflect a nominees own judicial philosophy, a long history of cases in which a nominee has repeatedly urge courts to engage in judicial activism may well be probative of the nominee's own philosophy.

With this nomination, we have Mr. Sutton's admissions in statements and interviews and articles outside the courtroom that he believes strongly in this ''federalism stuff.''

Mr. Sutton is opposed by more than 400 disability and civil rights organizations. They have concluded that his ideological views and extremely narrow reading of the Constitution make it doubtful that he would be a fair and balanced judge. The burden is 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.

The oath taken by Federal judges affirms their commitment to ''administer justice without respect to persons, and of 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 limiting Congress' authority to protect all Americans. Accordingly, I will not vote to confirm Mr. Sutton for appointment to one of the highest courts in the land.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I will use my time as leader to make a few comments regarding this nominee.

Mr. President, I first want to commend the distinguished Senator from Iowa for his extraordinary work on this nomination. I watched him prior to the time we recessed a couple of weeks ago. His passion, his eloquence, and the power of his words were ones that I wish the rest of the country could have heard. I have no doubt he would have persuaded many had they heard him, as I did. He was back in the Chamber yesterday and again this morning. I thank him for that commitment and his extraordinary efforts to make sure that people understand the consequences of this decision and the great difficulty many of us have with this nomination.

Let me also thank our distinguished ranking member for all his work, both in the committee and on the Senate floor, again, in opposition to this nomination.

I have not seen the letter of Senator Dole, and I don't know that many of us have had the opportunity to talk to Senator Dole about it, but I will say this: Senator HARKIN and Senator Dole were both very directly and successfully involved with the passage of the ADA some years ago. That legislation has been monumental in terms of the change it has meant for the rights of the disabled.

The Americans with Disabilities Act passed in 1990. George Bush said at the time that ''as a result of its passage, 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.'' Those were the words of President Bush when he signed this extraordinary legislation.

But that legislation depends, of course, on interpretation, and interpretation depends upon the courts. What happens at the district and circuit court levels, not to mention the Supreme Court level, profoundly affects the words and, obviously, more important, the effect of the act as it is viewed today, 13 years later.

I must say that we are considering a nominee today, to a lifetime position as a Federal judge, who has worked his entire career to roll back the progress of the ADA. Over the past several years, the courts have consistently acted to weaken and limit the important protections provided by the Americans with Disabilities Act, as well, I might add, as the Age Discrimination and Employment Act, the Civil Rights Act, and the Violence Against Women Act.

Those doors to a bright new era, as President Bush once called them, are slowly being closed. Jeffrey Sutton is one of the most significant reasons why. He has spent years fighting aggressively to limit the legal protections of individuals who experience discrimination and restrict the authority of Congress to protect those who are most vulnerable to discrimination.

Mr. Sutton was the lead attorney in the case of the University of Alabama v. Garrett. It has been discussed and noted on several occasions, of course, in the debate, but it bears repeating. In that case, he fought to limit, incredibly, the rights of a breast cancer survivor who was told by her employer, after she finished chemotherapy treatment, that she would have to quit, accept a limited demotion, or be fired solely because of her illness. He was the lead attorney in Kimel v. Florida Board of Regents. In that case, he argued aggressively to limit the rights of Americans who experienced age discrimination.

In both of these cases, Mr. Sutton acted as a private attorney, which means he chose to represent his clients. He didn't have to take those clients. No one forced him, saying, you have to go into court, regardless of your position, and you have to go make your defense, your arguments, as he did before the Court. In both cases, he argued aggressively that, despite clearly discriminatory actions, national legal protections were not only unnecessary; they were unconstitutional.

In other cases, Mr. Sutton has fought to limit the protections under the Violence Against Women Act and to enable States to restrict access to health care for low-income children. He has made a career of fighting to weaken protections for some of America's most vulnerable citizens—the sick, the elderly, the disabled, battered women, and poor children. I don't know what ''compassionate conservatism'' is exactly, but I surely know this is not it.

I must say, Mr. President, we will be casting a number of challenging and difficult votes as we consider the judiciary. Already we have confirmed 18 judges in this Congress. In the last Congress, we confirmed 100.

I am dismayed that this nominee is before us today, given his record, given the implications of that record for his future decisions as a judge on such an important court. I am dismayed and concerned by its implications for all of the vulnerable people of this country, all of those who have already sacrificed, all of those who have hoped and dreamed that there could be a new day of freedom and independence for themselves as a result of the passage of this critical and monumental legislation just 13 years ago. I am dismayed that one person can be so effective in rolling back those protections and eliminating their access in dealing with their independence in such a crass and unfortunate way. Closing the door to those people, after waiting decades for them to reach this point of freedom and independence in our country today, is all the reason one needs to vote against this nomination.

We will have many more nominees, many conservative nominees. Most, if not all, of the nominees who will come before us today will be conservative, and many will have the same Federalist mentality and philosophical approach that Mr. Sutton represents; but they will not be the opponents of those who seek independence, freedom, and equality as disabled people, as Mr. Sutton has done throughout his public career.

I urge my colleagues, let us not retreat from the progress this country has achieved. Let us reject this nomination and protect the hard-won legal protections of America's most vulnerable citizens.

Our only hope in doing so would be to reject this nomination, to speak out as loudly and clearly as we can that ADA is as important today, if not more important, than it was in 1990 when it passed, thanks to the leadership of Senator HARKIN, the leadership of Senator Dole, the leadership of those who understood the importance of equality for everyone, especially those disabled, those who sought that same freedom we take for granted today.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. Mr. President, I yield 5 minutes to the distinguished Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, I rise today in strong support of the nomination of Jeffrey Sutton to the Sixth Circuit Court of Appeals. I have been sitting in my office today listening to the debate on this nomination, and I am really a little bit taken aback, as I was in the Judiciary Committee hearing when I heard the discussion about Mr. Sutton and the opposition to Mr. Sutton.

It is not as though Mr. Sutton is not qualified to be a nominee to the Sixth Circuit. He is a gentleman who graduated first in his class from the Ohio State University Law School. He is a gentleman who has argued 12 cases before the United States Supreme Court, winning nine of them and only losing three. No Sixth Circuit judge currently serving has ever had as much Supreme Court experience before taking the bench.

During the Supreme Court's 2000–2001 term, Mr. Sutton argued four cases and won four cases, the best win-loss record of any private lawyer in the country that year.

On January 2, 2003, the American Lawyer named Mr. Sutton one of the 45 best lawyers in America under the age of 45. They did not say one of the best 45 conservative lawyers or federalist lawyers, but one of the best 45 lawyers in America under the age of 45. He is an eminently qualified man, and I am really appalled by the objections I am hearing.

The critics who are trying to put various labels on Mr. Sutton, such as anti-Americans with Disabilities Act and anti-environment, based on positions that he has taken as an attorney advocate, really miss the whole point about the American adversarial and judicial system. Lawyers routinely adopt positions on behalf of their client as an advocate, positions to which they personally might not subscribe, but that is what makes our judicial system so great. It is the core of our legal system that people are entitled to have attorneys argue their cases for them.

If we start to walk down the road where lawyers are accountable for any of the positions they take on behalf of their clients, then we might as well write off any criminal defense lawyer for judicial appointments because they routinely have to argue for some pretty unsavory characters. Our legal system would not be as great as it is without these attorney advocates fighting for and advancing the rights of their clients.

As an example of this mislabeling, it is wrong to try to paint Jeffrey Sutton as someone who works against the interests of the disabled. In truth, he has actually worked as an advocate in cases where he represented disabled clients in advancing their rights. This man's father ran a home for disabled children where Jeffrey Sutton worked as a young man. Beverly Benson Long, who is the immediate past president of the World Federation for Mental Health, which is among one of many posts she has held, has said:

No doubt that Mr. Sutton would rule fairly in all cases, including those involving persons with disabilities.

Mrs. Long described the lobbying against Mr. Sutton by advocates of the disabled as unfortunate and misguided:

In my own opinion, it is not only unfortunate and misguided, it is just plain wrong.

There was also a quote in the Cleveland Plain Dealer, which is really somewhat of an independent-thinking newspaper in our great country. An editorial which ran on June 17, 2001, compared Sutton to John Adams, who represented the British troops accused of perpetrating the Boston Massacre. The Plain Dealer said:

It is the duty of a lawyer to represent to the best of his ability the interests of his clients. That, the record shows, Sutton has done throughout his career.

A good judge, doing his job, will have but one abiding friend—the law he has sworn to uphold. Sutton's ability to honor that friendship should be the criterion of his consideration.

In summary, one cannot deny Mr. Sutton has the intellectual abilities we need in our appellate judges. Moreover, he has tremendous experience, arguing before the State and Federal Courts of Appeal as well as before the United States Supreme Court.

Finally, he has another quality we need in our appellate judges. The Attorney General of my home State, who is a dear friend of mine, is a man who is an elected Democrat, and he is a man for whom I have the utmost respect and a man who has had an occasion to work with Jeffrey Sutton. He said it best when he told me Mr. Sutton would have a great judicial temperament. So we have a nominee with intellect, with experience, and with temperament. We cannot ask for more than that in a judicial nominee, and yet his confirmation has been delayed because of partisan bickering.

It is no wonder we are in a judicial crisis with so many open judicial seats unfilled. It is no wonder we are stalled in moving forward on other judicial nominees. Jeffrey Sutton is a highly qualified nominee for the appellate bench. Let us move forward. I strongly urge a vote to confirm Jeffrey Sutton to the Sixth Circuit Court of Appeals.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. How much time remains on both sides?

The PRESIDING OFFICER. Twenty minutes on the Senator's side and 5 minutes on the other side.

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

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

The Senator from Iowa.

Mr. HARKIN. Mr. President, a lot of times these debates, especially when they involve a court nominee such as Mr. Sutton, tend to get personal, and they should not. I hope no one here interprets anything I have said as being any kind of personal thing against Mr. Sutton.

I said at the beginning I found him to be a pleasant, intellectual individual with whom I spent an hour and a half. I do not know him personally, of course. That is not the point. It is just like my good friend from Utah, Senator HATCH. Senator HATCH was very helpful when we passed the Americans with Disabilities Act. I have told him that many times. He happens to be a good friend of mine on a whole host of issues on which we have worked together. I have no doubt that perhaps Mr. Sutton has compassion toward people with disabilities, but that also raises a problem with me.

It has been said many times Mr. Sutton's father had a school for kids with cerebral palsy. When Mr. Sutton was in my office, I asked him if that was a segregated school and he said, no, it was not. But he thought I meant male and female. What it was, was kids with cerebral palsy only went to this school. Well, I commend Mr. Sutton's father for his compassion, for having a school for kids with cerebral palsy, but that is what we are trying to get over with the Americans with Disabilities Act. That is what we are trying to get beyond. We are trying to get beyond segregation.

I spoke about my brother Frank when he was sent half way across the State to the school for the deaf—segregation because he was disabled. So, again, to have that mindset that somehow people have to be put in an institution, like the Olmstead case—fortunately, Mr. Sutton did not win that one, but if his view had prevailed, the two women in that case would still be in an institution. Now they are living by themselves, out free to shop, free to make their own meals, free to travel, not being stuck in an institution.

This vote we are about to have has nothing to do with Jeffrey Sutton as a person, but it has a lot to do with him as a potential judge and how he views his role and how he views Congress's role. He said that the Americans with Disabilities Act was not needed. On National Public Radio he said that, ''disability discrimination in a constitutional sense is really very difficult to show.''

Then, later on, Mr. Sutton said that in this context it is a zero sum game; that if civil rights wins, the States lose.

It is not a zero sum game at all. Yes, like my friend from Utah, I believe in federalism. I believe in the Federal/State system on which our country is set up, on which our constitutional framework is established. I think it is the best system ever devised on the face of the Earth. But I do not believe in the kind of federalism that Mr. Sutton espouses, that it is a zero sum game; that if we expand civil rights somehow a State loses, or that somehow Congress does not have the authority, constitutionally, to address the kinds of social ills and social wrongs perpetrated so long in our country on minorities and on people with disabilities. That is why 400 civil rights groups have come out opposed to Mr. Sutton.

We here in the Congress did our job. We worked long and hard over many, many years, Republicans and Democrats, to pass the Americans with Disabilities Act. Mr. Sutton says that discrimination against people with disabilities is very difficult to show. Is that the mindset we want on the Federal bench? I ask my fellow Senators, send a strong message that we are going to stand behind the Americans with Disabilities Act, that we are not going to let it be chiseled away by a Federal judge such as Mr. Sutton. I ask for a ''no'' vote to send that message.

Mr. President, I ask unanimous consent to have printed the RECORD a list of letters the Committee has received in opposition to the confirmation of Jeffrey Sutton to the Sixth Circuit Court of Appeals, and three of these letters which come from large coalitions of civil rights, women's rights and disability rights organizations.

First, a letter from the Leadership Conference on Civil Rights and the Alliance for Justice, dated April 28, 2003.

Second, a letter from 25 women's groups, dated April 28, 2003.

Third, a letter from ADA WATCH, a coalition of disability rights organizations, dated May 14, 2003.

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

OPPOSITION TO JEFFREY SUTTON, NOMINEE TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PUBLIC INTEREST GROUPS

Ability Center of Defiance also signed by: Courage Incorporated, Independent Living Center of North Central Ohio, Ability Center of Greater Toledo, Access II Independent Living Center, Access to Independence of Courtland County, Inc., Access Living, Advocates for Ohioans with Disabilities, ADA WATCH, AIDS Action, Alliance for Disabled in Action, American Association of People with Disabilities, American Association of University Women, American Council of the Blind, American Council of the Blind of Maryland, American Council of the Blind of South Carolina, AFL–CIO, American Federation of State, County and Municipal Employees (AFSCME), Americans for Democratic Action, Arizona Bridge to Independent Living, Brain Injury Association of Tennessee, Capitol District Center for Independence, Inc., Center for Civil Justice, Center for Independent Living Options, Center for Independence of the Disabled in New York, Inc., Cerebral Palsy Association of Ohio, Cerebral Palsy Association of New Jersey.

Civil Rights coalition letter signed by: ADA Watch/National Coalition for Disability Rights, AFL–CIO, Alliance for Justice, American Association of University Women, Feminist Majority, Leadership Conference on Civil Rights, MoveOn.org, NAACP, NAACP Legal Defense and Education Fund, National Council of Jewish Women, National Fair Housing Alliance, National Partnership for Women and Families, National Women's Law Center, People for the American Way, United Auto Workers, Coalition for Independent Living Options, Inc., Council for Disability Rights, Deaf and Hard of Hearing Consumer Advocacy Network, Eastern Paralyzed Veterans Association.

Environmental coalition letter signed by: Clean Water Action, Community Rights Counsel, Defenders of Wildlife, Earthjustice, Endangered Species Coalition, Friends of the Earth, Natural Resources Defense Council, Oceana, Physicians for Social Responsibility, Sierra Club, The Wilderness Society, Everybody Counts Center for Independent Living, Freedom Center, Inc., Gender Justice Action Group, Harrison County Sheltered Workshop, Inc., Heightened Independence & Progress, Human Rights Campaign, Independent Living Center of the Hudson Valley.

Justice for All Project signed by: California Abortion and Reproductive Rights Action League, California Employment Lawyers Association, Committee for Judicial Independence, Democrats.com, Environmental Law Foundation, National Center for Lesbian Rights, California National Organization for Women, Planned Parenthood Los Angeles County, Progressive Jewish Alliance, Stonewall Democratic Club, Unitarian Universalists Project Freedom of Religion, Western Law Center for Disability Rights, Women's Reproductive Rights Assistance Project, Leadership Conference on Civil Rights, Liberty Resources Inc. (the Center for Independent Living in Philadelphia County), Linking Employment, Abilities & Potential, Mental Health Association in Monongalia County, Michigan Centers for Independent Living, Michigan Developmental Disabilities Council, Mid Atlantic Chapter of TASH, National Association for the Advancement of Colored People (NAACP), National Association for Rights Protection and Advocacy, National Association of the Deaf, National Council of Jewish Women, National Disabled Students Union, National Employment Lawyers' Association, National Organization for Women, New York State Independent Living Council, Inc., New York Society for the Deaf, Northern Regional Center for Independent Living, Ocean State Center for Independent Living, Options for Independence, Inc., Oregon Disabilities Commission, Pennsylvania Council of the Blind, Progress Center for Independent Living, Queens Independent Living Center, Inc., Regional Access & Mobilization Project, Inc., River Falls Access Ability Center, Ruben Center for Independent Living, Service Employees International Union, Sierra Club, Southern Maryland Council of the Blind, Statewide Parent Advocacy Network, Inc., United Auto Workers, United Food and Commercial Workers International Union, Utah Statewide Independent Living Council, Vermont Statewide Independent Living Council, Western Law Center for Disability Rights.

Women's Rights Organizations letter signed by: American Association of University Women, Business and Professional Women/USA, Center for Women Policy Studies, Choice USA, Coalition of Labor Union Women, Equity in Education and Employment, Feminist Majority, GenderWatchers, Ms. Foundation for Women, National Council of Jewish Women, National Network to End Domestic Violence, National Partnership for Women & Families, National Women's Law Center, National Organization for Women, NOW Legal Defense and Education Fund, National Partnership for Women & Families, National Women's Conference, National Women's Law Center, Northwest Women's Law Center, Religious Coalition for Reproductive Choice, Wisconsin Coalition Against Sexual Assault, Women Against Abuse, Inc., Women's Caucus for Political Science, Women Employed, Women Empowered Against Violence, Inc., Women's Institute for Freedom of the Press, Women's Sports Foundation, Young Democrats of America Disability Issues Caucus.

ATTORNEYS

Susan Barnhill, Sacramento, CA; Margarette Berg Cashin, Staten Island, NY; Richard Chudner, Cleveland, OH; Kathryn Engdahl, Minneapolis, MN; Frederick Ford, West Palm Beach, FL; Nancy Grim, Kent, OH; Caryn Groedel, Cleveland, OH; Harriet McBryde Johnson, Charleston, SC; Theodore Meckler, city and state unknown; Dahlia Rudasky, Boston, MA.

Also signed by: Ellen Messing; James Weliky; Jeremy Cattani; Shawn Scharf, Youngstown, OH; Judity Schermer, Minneapolis, MN; David Steiner, Cleveland, OH; Richard Treanor, Washington, DC; Brian Williams, Akron, OH; Jeffrey Neil Young, Topsham, ME.

PROFESSORS

Douglas Laycock, University of Texas at Austin School of Law, Austin, TX; American Law Teachers, signed by Michael Rooke-Ley, Emeritus Professor of Law and Paula Johnson, Professor of Law; Rebecca Zietlow, University of Toledo College of Law.

CITIZEN GROUPS

Concerned Citizens of Ohio letter signed by: Tim Harrington, Director and Sue Hetrick, Ability Center for Greater Toledo; Roy Poston, Director, Access Center for Independent Living (Dayton); Patrick Shepherd, President, Cleveland Stonewall Democrats; Bev Rackett, Director, Mid-Ohio Board for an Independent Living Environment; Joan Kazan, Immediate Past President, National Council of Jewish Women, Cincinnati Section; Susan Levine, President, National Council of Jewish Women, Cleveland Section; Cathy Stone, President, National Council of Jewish Women, Columbus Section; William Burga, President, Ohio AFL–CIO; Ronald Malone, Director, Ohio AFSCME United; Sandy Buchanan, Ohio Citizen Action; Fred Gittes, Ohio Employment Lawyers Association; Diane Doge, Ohio National Organization for Women; William Olubodun, Ohio Statewide Independent Living Council; Jonathan Varner, President, Ohio Young Democrats; Belinda Spinosi, Director, Southeastern Ohio Center for Independent Living; NARAL Ohio letter signed by 279 individuals.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS, ALLIANCE FOR JUSTICE,
Washington, DC, April 28, 2003.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Washington, DC.
Hon. TOM DASCHLE,
Minority Leader, U.S. Senate, Washington, DC.

DEAR SENATORS FRIST AND DASCHLE: We, the undersigned civil rights, women's rights, labor, and human rights organizations, together representing millions of Americans across the United States, write to express our opposition to the confirmation of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit. Mr. Sutton's record as a lawyer and advocate reveals him to be an extremely ideological and conservative activist with a particularly troubling record in many areas important to our communities.

We have serious concerns about Mr. Sutton's legal philosophy in a number of areas, particularly his views on Congress' authority to enact laws protecting civil and other individual rights. Mr. Sutton has become, over the last several years, a leading activist in the so-called ''states' rights'' movement. In fact, he has personally argued key Supreme Court cases that, by narrow 5–4 majorities, have undermined Congress' ability to protect Americans against discrimination based on race, age, gender, disability, and religion. Mr. Sutton's arguments in several of these cases sought to restrict civil rights and environmental protections even more severely than has the Supreme Court. Also, Mr. Sutton was not just making a strong case on behalf of his client; he actively sought out these cases in order to expand states' rights doctrines. As he told the Legal Times, ''I love these issues. I really believe in this federalism stuff.''

Mr. Sutton's work on behalf of limiting Congress' power to enact protective legislation has had a devastating impact on the rights of individuals with disabilities. Over the past several years, Mr. Sutton has been involved in an effort to challenge and weaken the Americans with Disabilities Act (ADA), a popular and important bill enacted by a bipartisan Congress and signed into law by President George H.W. Bush. Mr. Sutton represented the University of Alabama in the case of University of Alabama v. Garrett, 531 U.S. 456 (2001), in which the Court ruled 5–4 that it was unconstitutional for the ADA to permit state employees to bring lawsuits for damages to protect their rights against discrimination. In fact, Mr. Sutton's arguments went even further than the Court's decision. During oral argument, Mr. Sutton told the Court that the ADA was ''not needed.'' In another case, Olmstead v. L.C., 527 U.S. 581 (1999), Mr. Sutton argued that it should not be a violation of the ADA to force persons with mental disabilities to remain institutionalized without proper justification, despite clear congressional findings to the contrary. In a third case, Pennsylvania Department of Corrections v. Yeskey, 524 U.S. 206

(1998), Mr. Sutton filed an amicus brief arguing that the ADA does not apply at all to state prison systems. The Supreme Court rejected Mr. Sutton's arguments in Olmstead and Yeskey, which would have further weakened the ADA had they been accepted.

Mr. Sutton has also argued for a narrow view of Congress' ability to protect the environment or to provide a means for individuals to vindicate their rights. In Alexander v. Sandoval, 532 U.S. 275 (2001), he argued against allowing private individuals to sue to enforce the disparate impact regulations of Title VI of the 1964 Civil rights Act, which prohibits discrimination based on race, color, or national origin, by recipients of federal financial assistance. He has also argued for severe limits on the ability of state employees who are victims of age discrimination to recover damages, against increased protection for religious freedom from encroachment by states, and against a federal remedy for victims of sexual assault and violence, positions adopted by the 5–4 Supreme Court majority. He also argued that Congress did not have the Constitutional authority to enact legislation protecting environmentally sensitive wetlands from harmful dumping.

In addition, Mr. Sutton has advocated for other specific steps by the courts to limit federal civil rights protections. In an article for the Federalist Society, Mr. Sutton praised a concurring opinion by Justices Thomas and Scalia in Holder v. Hall, 512 U.S. 874 (1994), which would have severely restricted the application of Section 2 of the Voting Rights Act (prohibiting state and local conduct that has a racially discriminatory purpose or effect), and would have required overturning or reconsidering at least twenty-eight previous Supreme Court voting rights decisions. Mr. Sutton has even suggested that the Thomas-Scalia concurrence provided a blueprint for broadly reconsidering and overturning court decisions that right-wing advocates do not like in civil rights and other areas.

In sum, based on his record as a lawyer and legal advocate, it is clear that Mr. Sutton's legal philosophy is focused on limiting Congress' historic role in protecting the civil and constitutional rights of all Americans. Jeffrey Sutton's advocacy on many issues important to our communities, such as the reach of federal civil rights and environmental statutes, federalism, the right to vote, and the ability of individuals to vindicate their rights, reflect views that are outside the mainstream of judicial thought.

Therefore, given Mr. Sutton's record of hostility to important civil rights and equal opportunity principles, we urge the Senate to reject his nomination to the U.S. Court of Appeals for the Sixth Circuit.

Sincerely,

WADE HENDERSON,
Leadership Conference on Civil Rights.
NAN ARON,
Alliance for Justice.

APRIL 28, 2003.

Hon. WILLIAM H. FRIST,
U.S. Senate,
Russell Senate Office Building,
Washington, DC.
Hon. THOMAS DASCHLE,
U.S. Senate,
Hart Senate Office Building,
Washington, DC.

DEAR SENATORS FRIST AND DASCHLE: We, the undersigned women's rights organizations, write to express our strong opposition to the nomination of Jeffrey Sutton to the United States Court of Appeals for the Sixth Circuit. Jeffrey Sutton is an experienced Supreme Court litigator who has gained prominence because of his staunch advocacy in favor of states' rights and elevating state sovereignty over Congress' power to protect civil rights. As organizations dedicated to the advancement of women, we are extremely concerned about the growing resurgence of states' rights, particularly as a tool to undermine rights essential to women's progress. Jeffrey Sutton is not merely a proponent of state's rights—he has been the principal architect of an effort to curtail Congress' efforts to protect against discrimination and ensure equal opportunity. Indeed, his persistent, single-minded advocacy is reflected not only in his case participation, but also in his speeches and writings. His confirmation to a lifetime position on the federal bench threatens to dismantle the important gains that have been critical to women's success and we urge you to reject his nomination.

Jeffrey Sutton has argued before the Supreme Court in a number of seminal civil rights cases that have weakened the ability of Congress to protect women's rights. For example:

Mr. Sutton represented Alabama as amicus curiae in United States v. Morrison, 529 U.S. 598 (2000), and argued successfully that the civil rights remedy of the Violence Against Women Act (VAWA) was unconstitutional. Congress passed VAWA after hearing wide-ranging testimony that states were not adequately protecting women from violence motivated by gender. Despite substantial evidence gathered by Congress and the views of attorneys general from 36 states, Sutton argue that ''there has been no tenable showing that the [s]tates have violated the Fourteenth Amendment through their regulation of gender-based violence.'' He not only volunteered to write this brief, but also wrote two subsequent articles for the Federalist Society which supported the Court's decision and its rationale.

Mr. Sutton played a significant role in weakening the Civil Rights Act of 1964, arguing in Alexander v. Sandoval, 532 U.S. 275 (2001), that citizens could not sue under Title VI to challenge federally funded programs that had the effect of discriminating on the basis of race, color, or national origin. This case has had a serious impact not only on Title VI cases, but also on the implementation of Title IX, which prohibits gender discrimination in federally funded education programs or activities. Because Title IX was modeled on Title VI, many courts have applied principles established under Title VI to Title IX cases. Already, at least four courts have found that Title IX retaliation claims were not actionable in the wake of the Sandoval decision. While further action in these cases is possible, these decisions illustrate the potential harm posed by Sandoval in cases challenging gender discrimination in education.

Mr. Sutton represented the state of Alabama in Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001), advancing a state's rights argument that ultimately led the Supreme Court to dismiss the claim of a woman who was fired because she had breast cancer and to further undermine the Americans with Disabilities Act. Despite evidence that Congress had mounted to show that states had a history of discrimination in their treatment of citizens with disabilities, Sutton argued to the contrary, and urged the Court to find that Congress had exceeded its power under the Fourteenth Amendment. These same legal arguments are now being used to challenge the Family and Medical Leave Act, another law that is critical to the ability of women and men to balance their work and family responsibilities.

Mr. Sutton's unyielding and extreme views on federalism and civil rights would restrict Congress' power to pass civil rights laws and the abilities of individuals to seek redress for violations of those rights, as well as inhibit access to courts for people challenging illegal acts by their state governments. These views are contrary to the balanced approach we believe is necessary for a federal appeals court judge.

Because we believe Mr. Sutton's confirmation would accelerate the rollback of essential civil rights laws and undermine important gains for women, we urge you to oppose his nomination.

Sincerely,

American Association of University Women.
Business and Professional Women/USA.
Center for Women Policy Studies.
Choice USA.
Coalition of Labor Union Women.
Equity in Education and Employment.
Feminist Majority.
Gender Watchers.
Ms. Foundation for Women.
National Council of Jewish Women.
National Network to End Domestic Violence.
National Organization for Women.
NOW Legal Defense and Education Fund.
National Partnership for Women & Families.
National Women's Conference.
National Women's Law Center.
Northwest Women's Law Center.
Religious Coalition for Reproductive Choice.
Wisconsin Coalition Against Sexual Assault.
Women Against Abuse, Inc.
Women's Caucus for Political Science.
Women Employed.
Women Empowered Against Violence, Inc.
Women's Institute for Freedom of the Press.
Women's Sports Foundation.

ADA WATCH,
Washington, DC, May 14, 2001.

Hon. PATRICK LEAHY,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: President Bush's nomination of Jeffrey Sutton for federal judgeship is of great concern to members of the disability community and it is our hope that you will be willing to meet with representatives of the ADA WATCH to discuss our opposition.

The ADA WATCH is a campaign to protect the civil rights of people with disabilities. This includes an informational network designed to alert and activate the grassroots to respond to threats to the ADA from Congress, the Administration, and the courts. Our 100+ member organizations include: ADAPT, National Council on Independent Living, American Association of People with Disabilities, Consortium for Citizens with Disabilities, Paralyzed Veterans of America, and the National Association of Protection and Advocacy Systems. While the ADA WATCH does not speak for any of these individual organizations, we are currently making the judicial nomination of Jeffrey Sutton a top priority and a great majority of our partners are united in opposing this nomination in light of Mr. Sutton's outspoken disregard for the civil rights of people with disabilities. The nomination of a lawyer who has enthusiastically argued against the constitutionality of the ADA is hardly consistent with the Bush Administration's stated support of the ADA and the legacy of the man who signed the ADA into law, President George H.W. Bush.

Mr. Sutton has made it clear that he is not supportive of the rights granted to people with disabilities by Congress through the passage of the ADA. Despite extensive documentation of state government discrimination against people with disabilities, Mr.

Sutton enthusiastically supported the position that Congress did not have the authority to create the important civil rights protections afforded by the ADA. Mr. Sutton told the Supreme Court last fall when he argued the Garrett case for Alabama that the ADA ''exaggerated discrimination problems by states.'' He told the court that the ADA was ''not needed'' and used similar arguments to weaken civil rights laws in the Kimel and Sandoval cases. His belief that laws of the various states provide adequate protections ignores the hundreds of pages of testimony before Congress that detailed the discrimination faced by people with disabilities across the country at the hands of state government agencies.

Please understand the ADA WATCH's respectful opposition to this nomination and our concern that the nomination of Mr. Sutton represents a serious threat to the civil rights of people with disabilities.

Sincerely,

JIM WARD.

The PRESIDING OFFICER. The time of the Senator has expired.

Who yields time? The Senator from Utah.

Mr. HATCH. Mr. President, I will only take a few minutes and then I intend to yield back the remainder of our time, as long as no one else wants to speak.

I appreciate the distinguished Senator from Iowa. I would have yielded time to him, had he needed time, without the extra 10 minutes that were asked for.

It seems to me the arguments on the other side come down to this. Mr. Sutton is outside the mainstream of American jurisprudence, that he advocated cases that literally the Supreme Court agreed with, that they disagree with, maybe I disagree with, but the Supreme Court did decide in at least two of those cases, nine to zip, in favor of Mr. Sutton's position. That is basically what it seems to come down to.

The fact is, Mr. Sutton, as an advocate, has an obligation to argue the best he can for his clients. He did that, winning 9 of the 12 cases that he had before the Supreme Court, and a number of them unanimously—that they have been complaining about. In the Garrett case, he got five Justices on the Supreme Court, a clear majority, to go along with his particular position.

I have read the letter from some of my colleagues on the Judiciary Committee that indicated he has never advocated for a civil rights position. That is pure bunk, and I have made that case here today.

What is behind this type of treatment of an excellent nominee such as Jeffrey Sutton? I can understand the distinguished Senator from Iowa who is a very strong advocate for persons with disabilities, as am I, who may not have read the full judicial record and who may not, as a nonlawyer, fully appreciate the role of an advocate. But it is very difficult for me to understand how members of the Judiciary Committee who are advocates themselves, who hold their attorney's licenses in good esteem, can make some of the arguments they have made, and especially in the letter they distributed to all Senators.

The record flies in the face of those allegations. The fact is, I believe Jeffrey Sutton will be one of the most sensitive people towards persons with disabilities because he comes from that mindset. His father ran a school for persons with disabilities, kids who suffered from cerebral palsy. He worked for his father. He has argued for persons with disabilities and he has argued in cases where the Court decided against the Americans with Disabilities Act. But the Court made that decision.

Is the Court outside the mainstream of American juris prudence? I am sure each of us in this body can find a case or two in which we disagree with the Supreme Court. I can find a lot of cases with which I disagree. But their pronouncements happen to be the law and that has been the law ever since Marbury v. Madison.

All I can say is that here is a person who is respected by his peers, who receives the highest rating from the American Bar Association—not a conservative organization, something that has been called the gold standard by my colleagues on the other side—who has eminent experience before the U.S. Supreme Court and other appellate bodies in this country, one of the premier appellate lawyers in the country, even though he is only 45 years of age, who has had extensive experience as an advocate for a wide variety of diverse people, who appeared before the committee and everybody on the committee, even those who are against him here today, admit he is a fine person with great ability.

But they try to smear the Federalist Society by saying these are Federalist Society nominees. That is a joke. The Federalist Society puts on the best seminars of any legal society in America today, and those seminars are always balanced with the left and the right. They give the left every chance to explain their position and give the right every chance to explain their position. That is precisely what a good legal society should do. They do not take advocacy positions but they do try to get people to think about the law.

I get a little tired of having the Federalist Society run down when some of the most eminent people in society are members of the Federalist Society, which is basically a debating society considering the various aspects of the law and making sure both sides are heard. That is pretty hard to beat.

I hope I am wrong, that the real reasons against Mr. Sutton is, No. 1, he is so good; No. 2, he has a chance of being on the Supreme Court someday and why not damage him now so he can't be there; No. 3, he might be pro-life, although I personally don't know what he is with regard to that issue. Those seem to be the major issues.

The fact is, he has the highest rating he can possibly have from the American Bar Association. He is an excellent lawyer. He is an excellent advocate. He is a person whom I believe will do justice on the courts. By all measurement by any fair person, any student of the law, you would have to conclude that this man not only is within the mainstream of American juris prudence, but he is one of the leaders in the mainstream of American juris prudence.

For the life of me, I don't understand why anybody would vote against Jeffrey Sutton. The mere fact that he may have represented some clients who they don't like, they on the other side, that is not a good enough argument. In fact, it is laughable. Good lawyers represent their clients.

In the Garrett case, contrary to what has been argued, he didn't ask for that case. He was called by the attorney general of the State involved and asked if he would be willing to represent them, if I recall correctly.

So the arguments that have been made—I haven't heard one meritorious argument on this whole debate. If you look at the record, there is every meritorious argument as to why those who really understand the law, those who really are fair about this process, would vote for Jeffrey Sutton.

Mr. President, if there is no one else who wants to speak, then I yield the remainder of my time.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. SESSIONS). Is there a sufficient second?

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Jeffrey S. Sutton, of Ohio, to be United States Circuit Judge for the Sixth Circuit?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Kansas (Mr. ROBERTS) is necessarily absent.

Mr. REID. I announce that the Senator from Florida (Mr. GRAHAM), the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Georgia (Mr. MILLER), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

I further announce that, if present and voting, the Senator from Maine (Mr. KERRY) and the Senator from Arizona (Mrs. LINCOLN) would each vote ''no''.

The result was announced—yeas 52, nays 41, as follows:

[Rollcall Vote No. 135 Ex.]

YEAS—52

Alexander	Chafee	Dole
Allard	Chambliss	Domenici
Allen	Cochran	Ensign
Bennett	Coleman	Enzi
Bond	Collins	Feinstein
Brownback	Cornyn	Fitzgerald
Bunning	Craig	Frist
Burns	Crapo	Graham (SC)
Campbell	DeWine	Grassley

Gregg	McConnell	Specter
Hagel	Murkowski	Stevens
Hatch	Nelson (NE)	Sununu
Hutchison	Nickles	Talent
Inhofe	Santorum	Thomas
Kyl	Sessions	Voinovich
Lott	Shelby	Warner
Lugar	Smith	
McCain	Snowe	

NAYS—41

Akaka	Dayton	Lautenberg
Baucus	Dodd	Leahy
Bayh	Dorgan	Levin
Biden	Durbin	Mikulski
Bingaman	Edwards	Murray
Boxer	Feingold	Nelson (FL)
Breaux	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Johnson	Schumer
Conrad	Kennedy	Stabenow
Corzine	Kohl	Wyden
Daschle	Landrieu	

NOT VOTING—7

Graham (FL)	Lincoln	Sarbanes
Kerry	Miller	
Lieberman	Roberts	

The nomination was confirmed.

● Mrs. LINCOLN. Mr. President, due to an electronic failure, I was absent during the vote on the confirmation of Jeffrey Sutton to be a United States Circuit Judge for the Sixth Circuit Court of Appeals. Had I been present, I would have voted ''no'' on his confirmation. After reviewing Mr. Sutton's record, I was not confident he could fulfill his obligation as a Federal appellate court judge to follow established precedent, interpret the law and Constitution fairly, and treat all litigants before him without favor or bias. In my estimation, Mr. Sutton's proactive and consistent advocacy to limit Federal civil rights protections is incompatible with the temperament and detachment I look for in nominees being considered for a lifetime appointment.●

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having passed, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:43 p.m., recessed until 2:16 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

Mr. REED. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

NOMINATION OF PRISCILLA OWEN TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

Mr. HATCH. Mr. President, I ask unanimous consent the Senate now resume consideration of the nomination of Priscilla Owen to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read the nomination of Priscilla Richmond Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDING OFFICER. Without objection, the Senator will proceed.

Mr. HATCH. Mr. President, I am pleased today to voice my strong support for the confirmation of Justice Priscilla Owen to the Fifth Circuit Court of Appeals. Justice Owen's nomination has been pending now for nearly 2 years—720 days in total, so I hope we can vote on it soon. Justice Owen is among the longest pending judicial nominees selected by President Bush. She was first nominated on May 9, 2001, so it is natural that we should move forward at this time.

I should say at the outset that I truly hope the news reports are inaccurate about another move by the other side to filibuster a well-qualified nominee and deny a vote by the full Senate. We know the usual liberal interest groups are crying for a filibuster, but we ought to do what the American people have sent us here to do, and vote.

I expressed a similar hope when Miguel Estrada's nomination reached the floor on February 5. Yet here we are 3 months and 4 cloture votes later and still he has not been allowed a vote.

We have 200 years of precedent for providing an up-or-down vote on judicial nominees and we should follow that.

If certain Senators do not like Priscilla Owen or Miguel Estrada, they ought to vote no. That is their right. But they ought to vote.

I fully support an open debate on Justice Owen's nomination. And we have had a number of debates already. I do not, however, support any filibuster on a circuit court nominee, or any judge for that matter, or, frankly, anybody on the Executive Calendar. I think in the past some of us voted against cloture on Executive Calendar nominees without realizing how important it is to not filibuster the President's nominees, whoever the President might be. I believe we have made those mistakes. And I believe I probably have. It is the wrong thing. But nobody has ever filibustered a circuit court of appeals nominee until Miguel Estrada. If they filibuster Priscilla Owen, that means two in 1 year in a procedure that has never before been used.

I fully support an open debate on Justice Owen's nomination. Like I say, we should not suffer through another filibuster. My colleagues on the other side of the aisle have already set a terrible partisan precedent in filibustering for the first time in history a circuit court nominee, Miguel Estrada. A simultaneous filibuster of two nominees would not only be unprecedented, but I think it would damage all three institutions even more. Let us have a full and open debate and then leave it up to each Senator to decide for himself or herself by holding a simple up-or-down vote.

Let me now explain why I intend to vote yes on Justice Owen's nomination.

Justice Owen is a terrific selection for the Fifth Circuit Court of Appeals. She has the intelligence, the education, the experience, and the integrity we look for in a federal judge. A native of Texas, Justice Owen attended Baylor University and Baylor University School of Law. She graduated cum laude from both institutions and served as a member of Baylor's law review. In addition, she finished third in her law school class, which means that she is worthy of the appointment, something most lawyers can never dream about.

Justice Owen went on to earn the highest score on the Texas bar exam and thereafter accepted a position at the nationally ranked Houston law firm of Andrews & Kurth. She worked for the next 17 years as a commercial litigator with the firm, specializing in oil and gas matters and doing some work in securities and railroad issues.

Justice Owen has the full support of Senators HUTCHISON and CORNYN—both Senators from Texas—who know her well. Senator CORNYN has spoken in committee and on the Senate floor about his time working as a fellow Justice to Justice Owen on the Texas Supreme Court. Senator CORNYN has spoken to the criticism of Justice Owen's work on the bench and has made a strong case for Justice Owen's confirmation. I would commend Senator CORNYN's remarks regarding Justice Owen as worthy of the special attention of all my fellow Senators. Senator CORNYN's responses to criticisms of Justice Owen's judicial record are especially enlightening.

Former Texas Supreme Court Justices John L. Hill, Jack Hightower, and Raul Gonzalez—each of them a committed Democrat—also endorse Justice Owen. In particular, they note her impartiality and restraint on the bench. A group of 15 former Presidents of the Texas State Bar supports Justice Owen. This is no partisan group. They write: ''Although we profess different party affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit.''

I ask unanimous consent that a copy of this letter be printed in the RECORD.

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

HUGHES LUCE LLP,
Dallas, TX, July 15, 2002.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, 224 Russell Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: As past presidents of the State Bar of Texas. we join in this letter to strongly recommend an affirmative vote by the Judiciary Committee and confirmation by the full Senate for Justice Priscilla Owen, nominee to the United States Court of Appeals for the Fifth Circuit.