

April 25, 2003

The Honorable William H. Frist
United States Senate
416 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Thomas Daschle
United States Senate
509 Hart Senate Office Building
Washington, D.C. 20510

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 argued 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
GenderWatchers
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