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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, April 29, 2003, at 2 p.m.

Senate

MONDAY, APRIL 28, 2003

The Senate met at 12 noon and was called to order by the President pro tempore [Mr. STEVENS].

The PRESIDENT pro tempore. Today's prayer will be offered by Rabbi Arnold E. Resnicoff, retired U.S. Navy chaplain.

PRAYER

The guest Chaplain offered the following prayer:

Let us pray.

Oh God, who made the world and said it was good, we pray our faith—and faiths—can help us see that good, despite the bad that sometimes blocks our way. Oh God, who said, ''Let there be light,'' we pray our faiths—in different ways, with different prayers and customs, but with shared hopes and dreams of better times—can help us see that light, despite the darkness that sometimes obscures our view.

Almighty God, I remember twenty years ago, in a foxhole in Beirut: I looked around at the others in the bunker, and had a simple thought. ''We Americans,'' I said, ''must have the only 'interfaith foxholes' in the whole Mid-East.'' And then I thought, that if more foxholes had room for those of different faiths, perhaps we would need less room for foxholes—and have more room for faith.

And so, we pray that we be touched and inspired by the dreams of faiths that make our Nation rich; and that we work with all who share the dream of freedom—and freedom's holy light. Let us see the danger is not that sometimes faiths see God—see You—in different ways, but that there are those in every faith who see themselves as gods. Let us keep faith, but let faith keep us humble, so that we know our limits, even as we learn our strength. Then the time will come when even interfaith foxholes will no longer be required and we learn war no more.

And may we say, Amen.

The PRESIDENT pro tempore. Senator REID, will you lead us in the Pledge of Allegiance.

PLEDGE OF ALLEGIANCE

The Honorable HARRY REID led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Ohio is recognized.

SCHEDULE

Mr. DEWINE. Mr. President, on behalf of the majority leader, following the morning business period, the Senate will resume consideration of the nomination of Jeffrey S. Sutton to be a circuit judge for the Sixth Circuit. Under the previous consent agreement reached, a vote will occur on the confirmation of that nomination on Tuesday at approximately 12 noon. There will be no rollcall votes during today's session.

The majority leader has also stated that this week the Senate will also resume consideration of the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit.

In addition, there are a number of other legislative items that may be scheduled for action, including the bioshield bill, the digital and wireless technology legislation, the FISA bill, and any other legislative or executive items that can be cleared.

Again, as a reminder, the first rollcall vote will occur at approximately 12 noon tomorrow.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 1 p.m., with the time equally divided between the two leaders or their designees.

The Senator from Ohio.

HONORING OUR ARMED FORCES

Mr. DEWINE. Mr. President, shortly before Congress adjourned for the Easter recess, I came here to the Senate floor and had a chance to speak briefly about the magnificent service that our Armed Forces are performing in Iraq. The hard-working men and

women in all branches of our military—those who are serving in Iraq and those who are helping to support them—they are all doing an absolutely tremendous job. We are so proud of our service men and women and so grateful for their service and dedication to our country.

Since Operation Iraqi Freedom began, we have watched on television and read in the newspapers about our troops' countless acts of bravery, strength, and leadership. We have seen our service men and women take control of Baghdad, driving out Saddam Hussein and freeing the Iraqi people from his oppressive regime. And, Mr. President, we have rejoiced as the many statues of Saddam—and all that they represent—have toppled. But, at the same time, Mr. President, while there certainly are many reasons to rejoice and there is clearly much to be thankful for, I also am reminded of something Dwight D. Eisenhower said nearly 60 years ago in a speech following the defeat of Nazi Germany in June 1945. General Eisenhower said that there are certain things that military honors and battlefield victories cannot hide. As he so eloquently said, Mr. President—and I quote:

> [Military] honors cannot hide . . . the crosses marking the resting places of the dead. They cannot soothe the anguish of the widow, or the orphan, whose husband or father will not return.

Sadly, Mr. President, there are sons, husbands, and fathers who will not be returning home from Iraq. Our hearts go out to the families of those who have lost their lives. We pray for them. We pray for those who have been injured. We pray for those who are recovering. And, we think about them—we thing about them every day.

President John F. Kennedy once said that ''a nation reveals itself not only by the men it produces, but also by the men it honors [and] remembers.'' And so today, Mr. President, I would like to honor and remember three valiant men from my home State of Ohio—three brave men who gave the ultimate sacrifice to protect us and to protect our children and our grandchildren and the Iraqi people—three brave men who serve as true examples of what defines patriotism and love of country.

Today, Mr. President, I would like to honor and remember the lives and sacrifices of Army Private Brandon Sloan, Army First Sergeant Robert Dowdy, and Marine Private First Class Christian Gurtner—all of whom upheld with strength and conviction what General Douglas MacArthur called the soldier's code, a code of ''Duty, Honor, Country.''

I did not have the privilege of knowing these men. I did, however, have the honor of attending their funerals and meeting their families and friends and hearing from them about the lives of these men and about their dreams and their hopes and their aspirations. I am grateful. I am grateful to have had that opportunity, and I thank their families for allowing me to attend those services. I learned a great deal about these three Ohioans.

And though I am here on the Senate floor today to pay tribute to these men, I know that my words will fall short. My words will fall short because really, it is their families and friends and the men and women with whom they served—many still in Iraq right now—who knew them best. They are the people who could give the most adequate tribute.

But, at the same time, I do feel it is very important for my colleagues here in the United States Senate and for the American people to know what I have learned about these three fine men, because each one of them, in his own way, has revealed the strength and the greatness of our Nation.

PVT Brandon Sloan was born in Cleveland, OH, on October 7, 1983, to the Rev. Tandy Sloan and Kimberly Sloan. Brandon was special. Rev. Walter Thornhill, the pastor at Brandon's church in Cleveland, remembered him as ''a gentle person with a goodness of spirit.''

Brandon was a loving and caring person, with a strong faith in God. He radiated joy because of that faith, and his joy spread to everyone around him, especially to his younger sister Brittney, and to his friends and to his community.

His friends described Brandon as ''a big guy—happy-go-lucky and loyal to a fault.'' His friend Tony Tucker said Brandon was a ''kind, sweet person . . . a cool person to be around.'' That was his faith shining through.

It was not surprising that Brandon was a popular and friendly student at Bedford High School in Bedford Heights, OH. He was a gifted athlete, who proved to be a talented football player, working hard on the field to earn a position as defensive lineman for the Bedford High Bearcats.

Store owners recalled how pleasant and personable Brandon was when he would stop by their stores after high school football practice. He was a nice young man who was respectful and considerate of others, they recalled. Again, that was Brandon's faith shining through.

Brandon's faith in God, and the warmth that radiated from him because of it, extended to his love of his country. When he turned 18 years old, he enlisted in the U.S. Army. His service in the Army began with great promise. He became a logistics specialist and was assigned to Fort Bliss, TX.

In January 2003, he was sent to Kuwait with the 507th Maintenance Company. But, after just 1 year of service, at the age of 19, Brandon was killed in action when the 507th was ambushed by Iraqi troops near Al Nasiriyah. He was killed while defending the Nation he was so proud to serve and protect.

Brandon Sloan wanted to be a soldier. He was proud to be a soldier. His father, Rev. Sloan, recalled how Brandon just exuded pride at his boot camp graduation. He wanted to protect his country. He wanted to protect us and our children and our grandchildren. His faith in God and his commitment to serving America is what made Brandon Sloan a very special person. He is a role model for all of us.

I know he will be greatly missed by his friends and by his family. He leaves behind to cherish his memory his father, his mother, his sister, and his grandmothers Dr. Rementa Pippen and Luberta Sloan. My prayers are with all of them.

1SG Robert Dowdy was also from Cleveland and also served and died with the 507th Maintenance Company where he was the highest ranking enlisted soldier.

Robert was born on August 21, 1964, and attended Cleveland South High School, and before graduating in 1982, he lettered in five sports. After high school, Robert followed his older brother Jack, a former marine, into the military, and his service carried him to bases in South Korea and across the United States.

Even when far away from home, however, he always kept close to Cleveland and followed his beloved Cleveland Indians whenever and wherever he could—and, I might add, when they were having good seasons or bad seasons.

One of Robert's other passions was distance running. He was an avid runner with a level of perseverance and commitment that permeated everything else that he did in life. His friends said in a race he always would cross the finish line in high spirits.

Robert also liked to take time to enjoy all things in life, including the little things. He was a devoted son, devoted husband, devoted father. And, he loved doing small things for his family, things such as teaching his mother how to drive. His family was everything to him. His family was his life, his passion, his whole world.

Robert married his high school sweetheart, Kathy, and they were blessed by the birth of their daughter Kristy. Their marriage was one of balance. Robert never made a decision without consulting Kathy. They were equals. They were partners. They were best friends. Robert had great respect for his wife and loved her and loved Kristy with all of his heart.

Robert's bravery as a soldier was something he passed on to his daughter Kristy. At the age of 14, she had the courage and the strength to design the program cover for her dad's funeral.

Kristy created an enduring and heartfelt tribute not only for her father, but also for other Americans who have dedicated their lives to protecting us. For the program cover, she took a picture of her father and placed in the background additional pictures of policemen and firefighters saving lives on September 11, 2001. I think we can be sure that Robert would have been so proud of his daughter Kristy, as we know he always was.

Mr. President, 1SG Robert Dowdy was an inspiration, not only to his family, but also to his fellow troops. He led by example. He led by his actions, not just by his words. As a first sergeant, he was a leader. He was strong, yet compassionate. He truly loved those under his command, and they knew it. He touched their hearts. He loved them, and they loved him back.

MSG John Hite, who eulogized Robert at his funeral, relayed a story of a young soldier who was clearly touched by Robert's life and leadership. Master Sergeant Hite spoke of a big, strapping 6-foot-4-inch, 250-pound soldier who came up to him the day before First Sergeant Dowdy's burial and told him about the love and admiration he had for Robert. As they talked, they were standing by a bouquet of flowers adorned with a tiny replica of Robert's machine gun, his helmet, and his combat boots. Before long, as this big, strong, tough Army soldier spoke of First Sergeant Dowdy, his eyes swelled with tears. He looked at those combat boots and simply said: ''No one will ever fill them. . . .''

Robert Dowdy loyally served his country for 18 years. He was only 18 months from retirement when he deployed for Iraq—a deployment he volunteered for so that another soldier could stay home with his family.

This act defines who Robert Dowdy was, and no one who knew him was surprised that he would offer to help a fellow soldier in this selfless way.

As his brother, Jack, said: ''[Robert] was a very patriotic and very loyal man who loved his country. . . . He just wanted to serve his country to the best of his ability before he retired.'' First Sergeant Robert Dowdy did serve his country and he served it loyally, heroically, and honorably.

In the end, Robert Dowdy ran a good race. And as St. Paul wrote in his second Epistle to Timothy: He finished the course; he kept the faith.

Robert Dowdy is survived by his wife Kathy, his daughter Kristy, his brothers Jack Jr. and Jim, his sisters Roxanne and Anita, and his parents Jack and Irene Dowdy. My heart goes out to them all.

PFC Christian Daniel Gurtner was born on June 23, 1983. He grew up in Ohio City, OH, and graduated from Van Wert High School in Van Wert, OH. He joined the Marines last year after graduating from high school and was assigned to the 3rd Light Armored Reconnaissance Battalion, based out of Twentynine Palms, California. He was deployed to Kuwait in February 2003.

Christian's friends described him as respectful, motivated, and hard-charging. He was proud of what he was doing and was committed to the Marines. As his friends described, he was so excited about being in the Marines and was so honored to serve.

He frequently signed letters back home with the Marine Corps motto ''Semper Fidelis.'' In February, one of the last times Christian spoke to his family, he told his mother that he was ready to do whatever was needed to protect our Nation. He told her that he was ''good to go.''

And, in a letter he wrote home—a letter that his mother received just days ago and portions of which were printed in yesterday's Washington Post—Christian wrote of how he missed and loved his family, but that he was fighting so we all ''can sleep better at night because there is less terrorism in the world.'' In typical fashion, he closed this letter with ''Semper Fi.''

Christian was a faithful, hard-working, and well-loved member of the Ohio City community. He loved to laugh, and, as his friend Alicia Sterling said, ''He had this smile, and you knew when you saw that smile [that] you were going to get into trouble!''

Christian loved to have fun, and he loved to watch sports. He followed both the Atlanta Braves and the Ohio State University football team. He also enjoyed bowling and spent many evenings at the bowling alley with friends.

To celebrate this, his friends brought to his funeral a bowling pin signed by his teammates. It was a touching gesture—one of love and admiration for their friend and fellow teammate.

When he joined the Marines, Christian found a cause in which he believed deeply and a vehicle through which he could pursue his beliefs. He served our country well and fought valiantly to preserve the security of this Nation and fight for the freedom of the Iraqi people. Christian Gurtner passed away on April 2, 2003. As Chief Warrant Officer Suzanne Handshoe so fittingly said upon his death, ''We lost a brother. As Marines, we honor our own.''

Christian Gurtner was good-natured. He was loyal. He was true to his family and friends. And, he was just a decent, loving, kind-hearted young man who died fighting for a cause he strongly believed in.

At his funeral, Christian's mother picked a very special song to be played in her much-loved son's honor, a song called ''Forever Young.'' When I heard that song, I was reminded of a poem that was sent to me shortly after my wife and I lost our daughter 10 years ago. Our daughter was about Christian's age. It was sent to me by a dear friend of mine, Jack McKernan, who had lost his own son—a young man who was also about Christian's age. It was a poem that was written during World War I, by a man named Laurence Binyon. Here is a stanza from that poem:

They shall not grow old, as we that are left grow old; Age shall not worry them, nor the years condemn. At the going down of the sun and in the morning, we will remember them.

And we, too, will remember you, Christian.

PFC Christian Gurtner is survived by an infant daughter, his mother Eldonna, and his stepfather Gary Wagonrod, and his grandmothers Sally Mae Gurtner and Dorothy Wagonrod. They have been and will remain in my thoughts and prayers.

Brandon Sloan, Robert Dowdy, and Christian Gurtner demonstrated great nobility both in their lives and in their deaths. They revealed all that is good and strong about our Nation—a Nation they gave their lives for to defend and protect. Each of these men was an amazing individual, whose families and friends loved them dearly. My heart aches at their loss, but after learning more about these three remarkable men, I am even more proud to say that I am an American, and that I come from a country and a state that could produce such admirable individuals—men who, indeed, upheld the code of Duty, Honor, Country.

Though, they were but three of the several hundred thousand women and men who serve this country in the military, they represented the courage and the selflessness of them all.

My wife, Fran, and I extend our most heartfelt sympathy and prayers to the families of Brandon Sloan, Robert Dowdy, and Christian Gurtner. To their parents, I must say that you raised incredible sons. We will never forget them. As President Ronald Reagan said of the troops who perished at Normandy in World War II: We will always remember. We will always be proud.

I thank the Chair and yield the floor.

Mr. President, 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. DOMENICI. Mr. President, I rise to pay tribute to Army PFC Lori Piestewa from Tuba City, AZ. Private Piestewa was killed in action during Operation Iraqi Freedom on March 23. As the first Native American female member of the U.S. Armed Forces to lose her life in combat, Lori's sacrifice is historic. It is also a source of tremendous inspiration for our country's Native American population, many of whom reside in New Mexico.

I think most are now familiar with the story of the 507th Maintenance Company that was ambushed near An Nasiriyah. It was during this attack that Private Piestewa lost her life in defense of our country. The daughter of a Vietnam veteran, and the granddaughter of a World War II veteran, it is no wonder that she would volunteer to confront the threats facing our country. Obviously, patriotism runs deep in the Piestewa family, and it was surely this proud family history that inspired Lori to heed the call of duty.

As I read some of the reports about Lori Piestewa's life, I noticed that as a youngster, she participated in a program called Futures for Children. This program, which I have been privileged to support over the years, is focused on empowering Native American high school students to be leaders and role models in their community. Clearly, Private Piestewa was the embodiment of what this program stands for—both as a leader and as someone young people can pattern their lives after. I

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

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

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

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

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

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

The PRESIDING OFFICER. The Senator from Ohio.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Iowa is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JULY 26, 1990

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On National Public Radio he said:

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

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

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

> I think it's a positive attribute of this system of divided government that when 51 different sovereigns [including the District of Columbia there], 51 different legislatures [we don't have that here in the District of Columbia] tackle a difficult social problem, they all arrive at different approaches, and the ultimate idea and really transcendent purpose of federalism is to have them compete for the best solution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> I think it is a positive attribute of this system of divided government that when 51 different sovereigns, 51 different legislatures tackle a difficult social problem, they all arrive at different approaches.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Justice Marshall further pointed out:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANOTHER IDEOLOGUE FOR THE COURTS

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

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

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

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

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

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

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

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

I yield the floor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In fact, the American Bar Association Model Rules of Professional Conduct state:

> A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

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

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

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

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

This is the former head of the Ohio Civil Liberties Union saying Mr. Sutton's commitment to individual rights, his civility as an opposing counsel, his sense of fairness, his devotion to civic responsibilities, and his keen and demonstrated intellect all reflect the best that is to be found in the legal profession.

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

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

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

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

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

I believe Jeff Sutton would make an excellent federal appellate judge. He is a very bright, articulate and personable individual who values fairness highly. . . . I do not regard him as a predictable ideologue. . . . I recommend and support his confirmation without reservation.

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

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

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

He says:

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Massachusetts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I thank the Senator from Massachusetts.

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

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

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

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

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

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

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

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

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

The PRESIDING OFFICER. The Senator from Utah.

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

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

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

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

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

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

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

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

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

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

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

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

involved with Mr. Sutton's cases, understand that he is committed to the law and support his nomination. Francis Beytagh, Legal Director of the National Center for Law and the Handicapped wrote:

I believe Jeff Sutton would make an excellent federal appellate judge. He is a very bright, articulate and personable individual who values fairness highly . . . I do not regard him as a predictable ideologue . . . I recommend and support his confirmation without reservation.

We should pay attention to this person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There is no evidence that Mr. Sutton was motivated by a personal agenda when he represented those State governments. In fact, former Clinton Solicitor General Seth P. Waxman, and Sutton's opposing Counsel in the Garrett case, wrote, ''I argued the case against Mr. Sutton, and I discerned no such personal antipathy. Mr. Sutton vigorously advanced the constitutional position of his client in the case, the State of Alabama; doing so was entirely consistent with the finest traditions of the adversarial system.''

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In fact, Alabama's brief stated:

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

Further, the brief stated specifically that:

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

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

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

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

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOMINATION OF JUDGE EDWARD PRADO

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

I am confident this nomination will be confirmed by an extraordinary majority—maybe unanimously. The question arises why the Republican leadership in the Senate has made no effort to proceed to Senate consideration of this judicial nomination—none.

In a statement in the RECORD early this month, I raised this matter. Then at the Judiciary Committee business meeting on April 10, more than two weeks ago, I raised this matter, again. Still, there has been no response and no effort to bring this matter before the Senate for consideration and a vote. The Republican leadership would rather focus exclusively on those controversial circuit court nominees that raise the most problems than proceed to fill vacancies with nominations on which we are able to achieve agreement.

That is most unfortunate and most telling.

Instead of proceeding to the nomination of Judge Prado, Republicans insisted on pressing forward with the controversial and divisive nomination of Priscilla Owen in early April and with the controversial and divisive nomination of Jeffrey Sutton this week.

Judge Prado is nominated to the Fifth Circuit and is an exceptional candidate for elevation to the appeals court. He has significant experience as a public servant in west Texas. Perhaps the fact that he has bipartisan support is the reason why he is not being brought forward at this time for a floor vote.

That does not fit the Republican message but reveals the truth: That Democratic Senators, having already acted on 119 judges appointed by President Bush are prepared to support even more of his nominations when they are mainstream, consensus nominees. Perhaps the fact that Democrats unanimously supported his nomination in Committee is seen as a drawback for Mr. Prado in the Republican world of nomination politics. I hope that is not the case.

I also hope the fact that Judge Prado is Hispanic is not a factor in the Republican delay. Some have suggested that Judge Prado is being delayed because Democratic Senators are likely to vote for him and thereby undercut the Republican's shameless charge that the opposition to Miguel Estrada is based on his ethnicity. Republican partisans have made lots of partisan hay attacking Democrats in connection with the Estrada nomination. We all know that the White House could have cooperated with the Senate by producing his work papers and the Senate could have proceeded to a vote on the Estrada nomination months ago. The request for his work papers was sent last May.

Rather than respond as every other administration has over the last 20 years and provide access to those papers, this White House has stonewalled. Rather than follow the policy of openness outlined by Attorney General Robert Jackson in the 1940's, this administration has stonewalled. And Republican Senators and other partisans could not wait to claim that the impasse created by the White House's change in policy and practice with respect to nominations was somehow attributable to Democrats being anti-Hispanic. The charge would be laughable if it were not so calculated to do political damage and to divide the Hispanic community. That is what Republican partisans hope is the result. That is wrong.

So some have come to the conclusion that Republican delay in connection with the consideration of Judge Prado's nomination may be related to the political strategy of the White House to unfairly characterize Democrats. Might the record be set straight if Democrats were seen to be supporting this Hispanic nominee to the Fifth Circuit. Might the Republicans' own record of opposing President Clinton's nominations of Judge Jorge Rangel and Enrique Moreno to that same circuit court be contrasted unfavorably with Democrats' support of Judge Prado.

Might Judge Prado, a conservative from Texas with a public record service as a Federal district court judge, become the first Hispanic appointed by President Bush to the circuit courts with widespread support from Senate Democrats. Might this more mainstream, consensus nominee stand in stark contrast to the ideological choices intended to pack the courts on which the White House and Senate Republicans concentrate almost exclusively.

Judge Prado has 19 years of experience as a U.S. District Court judge, which provides us with a significant judicial career to evaluate. A review of Judge Prado's actions on the bench demonstrates a solid record of fairness and evenhandedness.

While I may not agree with each and every one of his rulings or with every action he has taken as a lawyer or judge, my review of his record leads me to conclude that he will be a fair judge. No supervisor or colleague of Judge Prado's has questioned his ability or willingness to interpret the law fairly. Judge Prado enjoys the full support of the Congressional Hispanic Caucus and the Mexican American Legal Defense and Education Fund. Not a single person or organization has submitted a letter of opposition or raised concerns about Judge Prado. No controversy. No red flags. No basis for concern. No opposition.

This explains why his nomination was voted out of the Judiciary Committee with a unanimous, bipartisan vote on an expedited basis.

To understand the importance of Judge Prado's nomination, we must put it in the context of prior nominations to the Fifth Circuit Court of Appeals. Until Judge Prado's hearing, it had been more than a decade since a Latino nominee to that Court had even been allowed a hearing by the Senate Judiciary Committee, let alone a vote on the floor. I recall President Clinton's two Hispanic nominations to the Fifth Circuit and the poor treatment they received from the Republican-led Senate.

Judge Jorge Rangel was a former Texas State judge and a dedicated attorney in private practice in Corpus Christi, Texas when President Clinton nominated him to the United States Court of Appeals for the Fifth Circuit in 1997. Judge Rangel is a graduate of the University of Houston and the Harvard Law School and earned a rating of ''Well Qualified'' by the American Bar Association. Yet, under Republican leadership, he never received a hearing on his nomination, let alone a vote by the Committee or by the full Senate. His nomination languished without action for 15 months. Despite his treatment, this outstanding gentleman has recently written us in support of a judicial nominee of President Bush.

After Judge Rangel, disappointed with his treatment at the hands of the Republican majority, asked the President not to resubmit his nomination, President Clinton nominated Enrique Moreno, a distinguished attorney in private practice in El Paso, Texas. Mr. Moreno is a graduate of Harvard University and the Harvard Law School. He was given the highest rating of unanimously ''Well Qualified'' by the ABA. Mr. Moreno also waited 15 months, but was never allowed a hearing before the Senate Judiciary Committee. President Clinton renominated him at the beginning of 2001, but President Bush, squandering an opportunity for bipartisanship, withdrew the nomination and refused to renominate him.

In addition, President Clinton nominated H. Alston Johnson to the 5th Circuit in 1999. This talented Louisianan came to the Senate with the support of both of his home state Senators, but he never received a hearing on his nomination or a vote by the Committee or the full Senate in 1999, 2000, or the beginning of 2001. His nomination languished without action for 23 months.

In contrast, when I served as Chair of the Judiciary Committee last Congress, we granted Edith Clement a hearing within months of her nomination. At that time there had been no hearings on 5th Circuit nominees since 1994 and no confirmations since 1995.

Under Republican leadership, none of President Clinton's nominees to this Court received a hearing during his entire second term of office.

Some of my friends on the other side of the aisle have made the outrageous claim that Democratic Senators are anti-Hispanic or anti-Latino. I think it is important to set the record straight.

Of the 10 Latino appellate judges currently seated in the Federal courts, eight were appointed by President Clinton. Three other Latino nominees of President Clinton to the appellate courts were blocked by Republicans, as

well as several others for the district court. In fact, in contrast to the President's selection of only one Latino circuit court nominee in hist first 2 years in office, three of President Clinton's first 14 judicial nominees were Latino, and he nominated more than 30 Latino nominees to the Federal courts.

During President Clinton's tenure, 10 of his more than 30 Latino nominees, including Judge Rangel, Enrique Moreno, and Christine Arguello to the circuit courts, were delayed or blocked from receiving hearings or votes by the Republican leadership.

Republicans delayed consideration of Judge Richard Paez for over 1,500 days, and 39 Republicans voted against him. The confirmations of Latina circuit nominees Rosemary Barkett and Sonia Sotomayor were also delayed by Republicans. Judge Barkett was targeted for delay and defeat by Republicans based on claims about her judicial philosophy, but those efforts were not successful.

After significant delays, 36 Republicans voted against the confirmation of this nominee who received a ''Well-Qualified'' rating by the ABA. Additionally, Judge Sotomayor, who also received a ''Well-Qualified'' rating and had been appointed to district court by President George H.W. Bush, was targeted by Republicans for delay or defeat when she was nominated to the Second Circuit. She was confirmed, although 29 Republicans voted against her.

It is unfortunate how few Latino nominees this President has sent to the Senate. It is reassuring, however, that the Latino nominations that we have received have been acted upon in a expeditious manner.

They have overwhelmingly enjoyed bipartisan support. Under the Democratically-led Senate, we swiftly granted hearings for and eventually confirmed Judge Christina Armijo of New Mexico, Judge Phillip Martinez and Randy Crane of Texas, Judge Jose Martinez of Florida, U.S. Magistrate Judge Alia Ludlum, and Judge Jose Linares of New Jersey to the district courts. This year, we also confirmed Judge James Otero of California, and we would have held his confirmation hearing last year if his ABA peer rating had been delivered to us in time for the scheduling of our last hearing.

Also on the Senate executive calendar is the nomination of Cecilia Altonaga to be a Federal judge in Florida.

We expedited consideration of this nominee at the request of Senator GRAHAM of Florida. She will be the first Cuban American woman to be confirmed to the Federal bench when Republicans choose to proceed to that nomination. Indeed, Democrats in the Senate have worked to expedite fair consideration of every Latino nominee this President has made to the Federal trial courts in addition to the nomination of Judge Prado.

Another example, may be the nomination of Consuelo Callahan to the Ninth Circuit Court of Appeals. Unlike the divisive nomination of Carolyn Kuhl to the same court, both home state Senators returned their blue slips and support a hearing for Judge Consuelo Callahan. I hope she receives a hearing in the near future and look forward to learning more about her record as an appellate judge for the State of California. Rather than disregarding time-honored rules and Senate practices, I urge my friends on the other side of the aisle to help us fill more judicial vacancies more quickly by bringing those nominations that have bipartisan support to the front of the line for Committee hearings and floor votes.

As I have noted throughout the last two years, the Senate is able to move expeditiously when we have consensus, mainstream nominees to consider. Nationally-respected columnist David Broder made this point in an April 16 column that appeared in the Washington Post. Mr. Broder noted that when he asked Alberto Gonzales if there might be a lesson in Judge Prado's easy approval, Mr. Gonzales missed the point. In Mr. Broder's mind: ''The lesson seems obvious. Conservatives can be confirmed for the courts when they are well known in their communities and a broad range of their constituents have reason to think them fair-minded.'' To date the Senate has proceeded to confirm 118 of President Bush's nominees, 100 in the 17 months in which Democrats made up the Senate majority.

The lesson that less controversial nominees are considered and confirmed more easily was the lesson of the last two years and that lesson has been lost on this White House.

Unfortunately, far too many of this President's nominees raise serious concerns about whether they will be fair judges to all parties on all issues. Those types of nominees should not be rushed through the process. I invite the President to nominate more mainstream individuals like Judge Prado. His proven record and bipartisan support makes it easier for us to uphold our constitutional duty of advise and consent. I encourage those on the other side of the aisle to allow us to consider his nomination.

I look forward to casting a vote in favor of his confirmation.

I, again, urge the Senate Republican leadership to work with us and to agree to proceed to this consensus nomination, to provide adequate time for debate and to proceed to a vote without further delay. Judge Prado's nomination has been delayed on the Senate executive calendar for several weeks, unnecessarily in my view. I recall all too vividly when anonymous Republican holds delayed Senate action on the nomination of Judge Sonia Sotomayor to the Second Circuit for seven months. I do not want to see that experience repeated by Judge Prado. Let us work together. Let us debate and act on the nomination of Judge Prado without further unnecessary delay.

I ask unanimous consent that a copy of David Broder's April 16 column on the nomination of Judge Prado be printed in the RECORD.

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

TALE OF TWO JUDGES

(By David S. Broder)

Were it not for an old friend, I would have been as oblivious to the story of Judge Edward Prado of San Antonio as the rest of the Washington press corps.

Judge Tom Stagg of Shreveport, La., told me his pal was up for appointment to the U.S. Court of Appeals for the 5th Circuit and suggested I go by and ''see how they treat him'' at his confirmation hearing.

Turns out it's like the Sherlock Holmes story of the dog that didn't bark. In the midst of the bitter partisan battle in which Democrats have repeatedly blocked a Senate confirmation vote on the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit, Prado went through like gangbusters.

The story of why one Latino Republican has such an easy time while another creates such controversy is an instructive tale—and one with hopeful implications.

Estrada has been denied an up-or-down vote on the Senate floor because Democrats call him ''a stealth nominee,'' a man of high credentials but no judicial experience and one they say was unresponsive to their questions. Their demand to look at memos he wrote while serving in the Justice Department has been rejected by the administration and neither side has yielded.

Given this background, I was expecting to see Prado, 55, put to the test at his Judiciary Committee hearing. His credentials are impressive: a graduate of the University of Texas and its law school, four years each as a prosecutor and a public defender, a short stint as a state judge, U.S. attorney for three years and, since 1984, a federal district judge—the last two appointments coming from President Ronald Reagan.

But Prado is also a character. His courtroom is wired with the latest audiovisual equipment, which Prado, a music lover and showman, loves to demonstrate. Three years ago, during a murder-for-hire trial, he came onto the bench while a recording of ''Happy Together'' by the Turtles filled the air, and then sang: ''Imagine me as God. I do. I was appointed by the president. Appointed forever. My decisions cannot be questioned by you. I'm always right.''

Many judges may feel that way; few say so, and even fewer put it to music.

More seriously, in answering the committee's questionnaire, Prado noted controversial cases in which he ruled against a woman's claim of job discrimination by the San Antonio fire department, a diabetes patient's claim that he was unfairly found to be medically ineligible for a police officer's job, and a claim that the Texas high school graduation test discriminated against Hispanics.

In another part of the questionnaire, he listed 68 criminal, immigration and civil cases in which he had been reversed or criticized by the court of appeals. Plenty of fertile ground, one imagined, for liberal groups to challenge elevating a Reagan judge to a closely balanced and important bench just one level below the Supreme Court.

But in fact the Congressional Hispanic Caucus—which has vigorously opposed the Estrada nomination—wrote a letter endorsing Prado. Rep. Charlie Gonzalez, a Texas Democrat and co-signer of the letter, told me that he had known Prado for almost 40 years and ''he was everything you want in a

judge—he's smart and articulate, he's not arbitrary, and he really understands people. Some of his rulings I would take issue with, but when the caucus interviewed him, he talked honestly about cases that have impacted minorities and he made it clear he knows how important the courts have been to us. It was so different from our hour's conversation with Estrada, who conveyed no sense of what we would think a Latino should appreciate about the historical role of courts in bringing us to where we are today and where we need to be tomorrow.''

With the backing of the White House and the Hispanic caucus, Prado's confirmation hearing was perfunctory Sen. Patrick Leahy of Vermont, the ranking Democrat and scourge of Estrada, read a statement complaining of past Republican treatment of President Bill Clinton's Latino nominees, then left without asking any questions. The two Republicans present—Sens. John Cornyn of Texas and Jeff Sessions of Alabama—said they had known Prado for years and simply congratulated him.

Prado was then unanimously confirmed by the Judiciary Committee.

When I asked Alberto Gonzales, the White House counsel, if there might be a lesson in Prado's easy approval, he replied, ''It's hard to say. We view Judge Prado as no more qualified than Miguel Estrada or others they [the Democrats] have opposed.''

But the less on seems obvious. Conservatives can be confirmed for the courts when they are well known in their communities and a broad range of their constituents have reason to think them fair-minded. Even if they can't resist breaking into song.

Mr. LEAHY. Mr. President, I am concerned that we seem to have these divisive nominees. The Republicans are unwilling to bring forward Judge Edward Prado to the U.S. Court of Appeals for the Fifth Circuit. I mention this because I have checked every single Democrat who is willing to have an extremely short time agreement and go to a vote on Judge Prado. Apparently, it is not being brought forward because of a hold on the Republican side. I mention this because we hear often from the White House: Why are Democrats holding up these court of appeals judges?

Well, here is one where every Democrat is willing to vote on the President's nomination to the Fifth Circuit. He is a distinguished Hispanic, Judge Edward Prado. We are ready to vote on him. We have cleared it on this side of the aisle. Apparently, it is being held up on the Republican side. So the next time the White House asks why we cannot move forward with some of these people, let's say: Don't look at us; you may want to ask the other side.

It is even interesting that David Broder wrote a column, April 16, on the nomination of Judge Prado to this seat and pointed out that he had come to the hearings to see what kind of divisiveness there was and found a love-in, and he was probably surprised—I don't want to put words in his mouth, but he is probably surprised that it has not been voted on.

I will note that Judge Prado has significant experience. I do not agree with him on everything, by any means, but he was originally appointed, I believe, by President Reagan to the district court. He is a conservative Republican, a Hispanic. Every Democrat is prepared to go forward. I ask whoever is holding him up on the Republican side to release the hold, let this man go forward and let him be elevated to the U.S. Court of Appeals.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I want to talk for just a moment about a case that has seen the most attention in this debate over Mr. Sutton's nomination, and that is the case of the Board of Trustees of the University of Alabama v. Garrett.

Mr. Sutton has been criticized for representing the University of Alabama in the U.S. Supreme Court; specifically, for presenting Alabama's constitutional sovereignty immunity argument before the U.S. Supreme Court.

In the Garrett case, the Supreme Court held that a disabled individual cannot sue a State for money damages for employment discrimination under the Americans with Disabilities Act. The Court held that in order for Congress to pass that particular remedy—money damages against a State—it first had to show that States were engaging in a pattern of employment discrimination against the disabled. The Court said that Congress had not met the burden of proof required by the Constitution. That was the finding of the U.S. Supreme Court.

I disagreed with the Court's decision in Garrett, and I disagreed with Alabama's argument as presented by Mr. Sutton in the Supreme Court. I believe that Congress did, in fact, meet its burden in passing the ADA. Congress established a record of discrimination against the disabled necessary to pass constitutional scrutiny by the courts. Congress sent a loud and clear message to the courts in the findings of the ADA and in an extensive legislative history.

What happened in Garrett was that the Supreme Court—unwisely, I believe—substituted its judgment for ours. The Court reviewed our extensive findings and our legislative history, then, one by one, dismissed them as inadequate.

I must say to my colleagues that I am deeply troubled by the Court's lack of deference to Congress in the Garrett case. This lack of deference is why many of us in this body believe the U.S. Supreme Court, in Garrett, simply got it wrong.

Ultimately, whether I agree or disagree with Mr. Sutton's arguments, or whether this Senator from Ohio agrees or disagrees with the Supreme Court in that Garrett case, is really irrelevant to whether Mr. Sutton is qualified to serve on the Federal bench because, you see, Mr. Sutton was doing nothing more than acting as a lawyer, as an advocate.

It is clear that all Mr. Sutton has done is successfully argue his client's position in that case and in some other controversial cases. Bluntly, that is what lawyers do. They argue for their clients. As Mr. Sutton has testified, he has argued on behalf of a wide range of clients, on a wide range of issues.

Back in January of this year, the Columbus Dispatch weighed in on this exact point when it wrote:

> The fact is, Sutton is guilty of nothing except being a good lawyer. When he represents a disabled client, he fights hard for the disabled client. When he is representing a State opposing an extension of Federal power, as in the ADA case, he fights hard for his State client. That is what attorneys are supposed to do.

I absolutely agree with that editorial from the Columbus Dispatch and with that assessment. I believe arguing that Jeff Sutton should not be confirmed because of his legal representation in Garrett or any other case would set a very bad precedent for this body. We should not go down that path today or tomorrow when we vote. We should not go down the path of denying the confirmation of a nominee because we may not like some of the clients he has represented or because we disagree with the arguments he has made as an attorney. Think about it. If that is the standard we apply, we would never confirm anyone who has a background as a criminal defense lawyer.

The examples are legion.

What would this criterion have meant for Supreme Court Justice Thurgood Marshall? In 1943, Thurgood Marshall successfully argued a case before the U.S. Supreme Court on behalf of an accused rapist.

He used a technical jurisdictional argument to defend his client. Specifically, he argued that the Federal Government could not prosecute his client for a rape that took place on a Federal military installation in Louisiana, based on an obscure land acquisition act. There was no question in this case as to the actual guilt of the defendant, only whether the Federal Government had jurisdiction to prosecute the individuals guilty of the crime.

Nobody argued that Thurgood Marshall should not be confirmed because of his role as a defense lawyer in that case. He was doing his job—defending his client's legal position.

Obviously his role in this case did not mean that he believed that the Federal Government should not be able to prosecute crimes, or that Thurgood Marshall was not sympathetic to women's issues, or that he was in any way sympathetic to rapists, for Heaven's sake.

Let me raise an example that was called to the attention of the Senate Judiciary Committee by a another Court of Appeals nominee—the famous example is John Adams. John Adams, the revered and well-known patriot of our Nation's Revolutionary War, represented extremely unpopular clients while acting in his capacity as a private attorney.

As some of my colleagues may recall, John Adams argued in a murder trial on behalf of a prominent captain in the British army and several of his soldiers

who had allegedly killed five Boston citizens and injured several others in what is known as ''the Boston Massacre.'' Adams described his work on behalf of the British soldiers as ''the most gallant, generous, manly and disinterested Actions of my whole life, and one of the best pieces of service I ever rendered my country.'' He also described his involvement in the Boston Massacre case as a source of great anxiety—evidence enough that his representation of the soldiers was, as a political and social matter, extremely unpopular at the time.

As my colleagues know, John Adams was successful in his representation of the soldiers. Clearly, however, John Adams was not sympathetic to British rule or murder nor opposed to popular citizen uprisings.

Would the Senate have not confirmed John Adams to a court because of his work as a lawyer? I certainly hope that would not have been true.

There are many examples of individuals who were confirmed by this body for service on the Federal bench and had, during their time in private practice, represented unpopular clients or causes.

Supreme Court Justice John Paul Stevens, for example, represented two corporations charged in two separate cases with conspiracy to monopolize markets and illegal restraint of competition. Despite his work on behalf of these corporations, few would argue that Justice Stevens unfairly favors the interests of businesses over those of consumers or that his efforts as a lawyer in these cases reflect his personal feelings about corporate misconduct.

To take a few more recent examples, Eric Clay, confirmed in 1997 to the 6th Circuit Court of Appeals, represented a number of client positions that many might find personally problematic: An insurance company that was seeking to deny benefits to a disabled individual covered by the company's policy; a defendant in a sex discrimination suit; and a corporation which was seeking to displace, by condemnation if necessary, an entire town in Michigan so that an automaker could build an assembly plant on the land. Nonetheless, nobody would argue that Judge Clay then or now on the basis of his work as an attorney, held personal views that were hostile toward employees, the disabled, or people who live in small towns.

Frank Hull, who was confirmed in 1997 to the 11th Circuit, represented a company seeking to deny life insurance benefits to the spouse of a deceased employee and also represented an accounting firm that was accused of financial fraud. Justice Hull was confirmed 96 to 0. Nobody believed that Judge Hull had a bias against widows or that he supported financial fraud.

Merrick Garland was confirmed in 1997 to the D.C. Circuit Court. Prior to that, in his capacity as a Federal prosecutor, he successfully opposed a defendant who was trying to assert his constitutional right to due process in order to overturn a drug conviction. Nobody in the Senate believes that Judge Garland has any personal opposition to constitutional due process protections.

Robert Bruce King, confirmed in 1998 to the 4th Circuit Court of Appeals, represented a client accused and convicted of defrauding the U.S. Department of Housing and Urban Development. Nonetheless, nobody believes that Judge King advocates the practice of defrauding the Government or that he is somehow hostile toward the mission of the Department of Housing and Urban Development.

The list goes on and on, and I am sure that Members of the Senate and their staffs could easily come up with a laundry list of examples where an individual has represented potentially unsavory clients or causes in private practice and has nonetheless been confirmed to the Federal bench by the Senate. Members of this body did not oppose these nominees just because they might not have liked all of the nominee's clients, or because they did not like the positions they took or the issues they stood for while advocating for that particular client.

This should not even be an issue. The idea of zealously advocating for your client, no matter who that client is and what he or she is accused of, is basic and fundamental to the very idea of being a lawyer. And, I might add, it goes to the core obligation of being a lawyer. Once a person takes a case, they must represent that client to the fullest of their ability.

In fact, the American Bar Association Model Code of Professional Conduct explicitly addresses this issue. The Model Code, Canon 7–1, states this:

> The duty of a lawyer, both to his client and to the legal system, is to represent his client zealously within the bounds of the law.

The individuals listed above represented their clients, even the unpopular ones I have mentioned, because they understood their role as attorneys. They were dedicated to representing their clients, whomever they might be, and to advocating the cause and positions of their clients. Jeff Sutton has shown the same dedication.

He has been a passionate advocate for his clients, as every lawyer is dutybound to be. He should be judged by his advocacy and ability as a lawyer. He should not be condemned for this.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Mr. President, I listened with care to the arguments espoused now by my good friend and colleague from Ohio, Senator DEWINE. I compliment him on many aspects of his statement especially when he first opened up and said that he believed the Court got it wrong in the Garrett case; Congress did have our findings, which I have pointed out time and time again this afternoon that, in fact, Congress did have years and years of testimony, markups by five separate committees, 17 formal hearings, on and on, making the case for the Americans with Disabilities Act. As I understood what my colleague from Ohio said, he believed the Court got it wrong. I commend him for his statement on that; obviously, I concur in that opinion.

My good friend from Ohio goes on to say that basically Mr. Sutton, in arguing against Mrs. Garrett and in arguing for the State of Alabama in this case, was simply representing his client and following the canons of legal ethics in making sure he fought as vigorously as possible on behalf of his client. I understand that and I can accept that is what Mr. Sutton was doing in this particular case.

However, the canons of legal ethics also make it clear that in representing your client to the best of your ability and to vigorously defend your client that you also have to adhere to the codes of ethics and legal ethics and one of those is to be truthful and to do due diligence in terms of understanding the parameters of mistakes. People do make mistakes; I understand that, but I do believe Mr. Sutton in what he said in his oral argument before the Court when he said the ADA was not needed. I think that goes a little bit far. Earlier I said he either did not know what Congress had done or he did know and treated it with disdain. If that were the only thing, if Mr. Sutton's representation in the Garrett case were the only thing, I would say those who oppose him would, indeed, have a weak reed on which to stand.

But that is not the point. It is not just Garrett. It is the things Mr. Sutton has said outside of his representation of a legal client.

Before I get to that I will, again, reiterate for the sake of emphasis what the Senator from Massachusetts, Mr. KENNEDY, said earlier, that in all of his representations he has never taken a case on the other side that is against States rights. Never; not one. So he picks out and looks at those cases where he can be on the side of States rights versus ability or the authority of Congress to legislate on a national basis.

Beyond that, it is what Mr. Sutton has said outside of the courtroom. First, I have pointed out before the Legal Times article in 1998 in which Mr. Sutton told a reporter he and his staff were always on the lookout for cases that would be coming before the Court that raise issues of federalism. He is always looking out for those cases. And what cases does he take? Only those in which he can argue on behalf of States rights versus Federal authority. He says: It does not get me invited to cocktail parties, but I love

these issues. I believe in this federalism stuff.

Again, that in and of itself might be kind of harmless. But then on National Public Radio in 2000 he said, ''As with age discrimination, disability discrimination in the Constitution is really very difficult to show.'' Here is the evidence: 17 hearings, markup by five committees, 63 public forums across the country, thousands of pages of documents, oral and written testimony by the Attorney General of the United States, Governors, State attorneys general, State legislators, or 300 examples of discrimination by State governments, all on the legislative record. Yet he said it is really difficult to show. He did not say this on behalf of a client; he said this in a radio interview. So we have to add all of these and look at the whole picture that emerges of Mr. Sutton.

Then in an article for the Federalist Society of 2000 Mr. Sutton says: Unexamined deference to the Violence Against Women Act fact findings would give to any congressional staffer with a laptop the ultimate Marbury power to have the final say over what amounts to interstate commerce.

Take that with the statement about how difficult it is to show in a constitutional sense, discrimination against disability, then his comments about how he believes and loves this federalism stuff, and the fact that he only takes cases on that side of the ledger. It adds up to one thing: That Mr. Sutton, in wanting to be a Federal judge, believes that when it comes to civil rights legislation, States rights trumps what we do here. When it comes to our ability to address underlying civil rights issues, States rights trumps the Federal Government. The fact he would even think that somehow Congress, in passing a law such as the ADA or the Violence Against Women Act, or any of these other civil rights bills, that somehow we have a staffer just sit down and type it out on a laptop and we bring it out here and pass it, again, that either illustrates that Mr. Sutton has a terribly uninformed view as to how we operate or he just has a disdain for what we do here.

As I said, I may disagree with some of my colleagues on the other side of the aisle on this issue or that issue, or how we approach this, but I do believe, whether it is under Republican control or Democratic control, Senators and Congressmen work very hard. We take an oath of office to uphold and defend the Constitution. We do not come out here willy-nilly and let ''staffers with laptops'' draft up a bill and just sort of vote it through. That is not what we do.

According to Mr. Sutton, he says we do that. Well, we do not do that. We have hearings. We have findings. We work things out. We took a long time in the case of the Americans with Disabilities Act—many, many years—to get it right, to make sure that we pass constitutional muster.

So it is not just Mr. Sutton's representation of his client in any particular case. It is the cases he takes, the writings he has made, the statements he has made outside the courtroom that indicate he would be an ideology-driven, activist judge on the circuit court.

If Mr. Sutton is so balanced, why didn't he ever take a case that took the opposite side on States rights? Not one. Not one.

My friend from Utah earlier pointed out he has represented people with disabilities and he sits on a board that looks out for the interests of people with disabilities. Let's take a look at that. Jeffrey Sutton did, indeed, represent the National Coalition of Students with Disabilities. According to my staff's research, the case was filed on November 6, 2000. Mr. Sutton was nominated for this court on May 9, 2001, almost 6 months later, and then Mr. Sutton did not become attorney of record on this case until April 26, 2002. That is quite a bit later. I find that very curious. In all the cases Mr. Sutton has taken, the one case they point to where he represented some people with disabilities he took after he was nominated for the vacancy on the Sixth Circuit Court of Appeals.

We have heard here time and time again that Mr. Sutton represented Cheryl Fischer in her attempt to be admitted to Case Western Medical School. Again, Mr. Sutton did work on the case, but he did not represent Cheryl Fischer. He was the Ohio Solicitor. He represented the Ohio Civil Rights Commission that supported Cheryl Fischer because that was his job. Again, he represented his client, which was the Ohio Civil Rights Commission. Cheryl Fischer's attorney was Thomas Andrew Downing.

Again, I commend Mr. Sutton's work on that case. But I guess it troubles me that Mr. Sutton's hearing testimony indicates his view that his work on that single case, a case in which he acted in his official capacity, balances out the significant impact that his arguments had on all these other cases, Garrett included.

Last, someone said Mr. Sutton sits on the board of the Equal Justice Foundation. Mr. Sutton came on that board a year before he was nominated. My question is, Has Mr. Sutton ever been the lawyer for any of the cases my colleagues mentioned that the foundation took? The foundation took cases. Was Mr. Sutton ever a lawyer for any of the cases my colleagues mentioned?

My friend from Utah named a few individuals who ''work in the disability community'' who support Mr. Sutton. I understand that. There are a few individuals who claim to be active in the disability community, and they support Mr. Sutton's nomination. But here is a list of 400 civil rights organizations, including every major disability organization, that have come together opposed to Mr. Sutton's nomination. As I look through this list, as I look especially at those who deal with disability issues, because that is my area of interest, I see sometimes they might have been opposed to this judge and then a different part of the group might have been opposed to that judge, but this is the first time that I know of that all of them came together on one judge: Mr. Sutton. All of them came together in opposing him.

My friend from Utah mentioned a person in particular, Francis Beytagh, mentioned by the Senator as the Director of the National Center of Law and the Handicapped.

I have been dealing in disability issues now going on 25 years. I said I don't know about this group. Let's find out about it. There is nothing in Mr. Beytagh's current and very detailed resume posted on the Web page of the Florida Coastal School of Law that mentions any work of his in the disability community—not even one mention. But I did find out that the National Center of Law and the Handicapped was founded in the early 1970s, in South Bend, IN, and has not existed for 15 years at least, according to Harvey Bender, one of its founders.

I don't know. My friend from Utah said he was the legal director for the National Center of Law and the Handicapped. We can't even find that that exists anymore, but evidently, in the 1970s, it was someplace at Notre Dame.

I understand from Mr. Beytagh's letter of support he worked extensively with Mr. Sutton when Mr. Beytagh was Dean of the Ohio Law School, and I also notice Mr. Beytagh also worked for Jones Day law firm, which is on his resume, which of course is the law firm for which Mr. Sutton works.

That is all great. But the statement that Mr. Beytagh represents a viewpoint of the disability community is totally inaccurate—totally inaccurate.

I just wanted to make those points to clear up some misconceptions that may have come out here on the floor earlier today, and hopefully I will have some more to say about this tomorrow.

Again, I want to make it very clear that it is not just Mr. Sutton's statements in the Garrett case. My friend from Ohio, Senator DEWINE, is absolutely right. He is representing his client. That is not the point.

However, he did say one thing in that case that bothers me. That was, basically, that ADA was not needed.

OK, maybe you might excuse that and say that is just pushing the envelope on being a vigorous proponent of his client's views. But then take that in the contextual framework of everything else—Mr. Sutton always taking cases that are just on one side of the States rights issue, just one side; the fact that on numerous occasions outside the courtroom, in speaking and in writing, Mr. Sutton has shown either a total misunderstanding of how we operate here or a clear disdain for the ability of Congress to respond nationally in the area of civil rights. Take this all together and, again, it points to a person who has an ideology, as the New

York Times editorial said this morning: It is another ideologue for the court, someone who is driven by an ideology.

I don't mind someone having an ideology. All of us have different beliefs. But to be driven by an ideology and to carry that on the court indicates to me that Mr. Sutton would be an ideologically driven activist judge who would do all that he could to find on behalf of States rights as opposed to Federal rights.

There may be times when States rights should trump Federal rights—obviously. Sometimes Federal rights ought to trump States rights. That is the give and take of our system. But according to Mr. Sutton's views, his writings, his statements, the cases he has taken, his view is that States rights should always trump what we do here at the Federal level.

That is why I believe Mr. Sutton should not be on the circuit court. Maybe he should be on a State court someplace but not on the Federal bench.

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

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

Mr. SESSIONS. Mr. President, I would like to make some remarks on the pending nomination of Jeffrey S. Sutton, a nominee for the Sixth Circuit Court of Appeals. He is an extraordinary and excellent attorney whom the President has nominated.

In 1990, he graduated first in his class at Ohio State University Law School. I know Senator DEWINE would agree that that is one of America's great law schools. After law school, he served as a law clerk for a judge on the Second Circuit Court of Appeals, the same kind of court of appeals on which he would be now a judge. He has had firsthand experience on how a court of appeals operates. Then he clerked for two Justices on the U.S. Supreme Court. That is not something easily achieved for a graduating lawyer. To be chosen to be a law clerk for a Supreme Court Justice is a remarkable achievement. Not many get it, and many apply for it. He clerked for Justices Lewis Powell and Antonin Scalia on the Supreme Court.

From 1995 to 1998, he served as the Solicitor for the State of Ohio. That means he was chosen to argue appellate cases for the State of Ohio, to advise the State on what cases to take up, what positions to take on those cases. Again, it is the kind of experience that is invaluable for a court of appeals nominee.

Since 1995, he has taught courses on Federal and State constitutional law as adjunct professor at Ohio State. He is currently a partner in the Columbus, OH, office of the esteemed law firm of Jones, Day, Reavis & Pogue.

Mr. Sutton has argued 12 cases before the U.S. Supreme Court; he has won 9 of them. That is quite an extraordinary record. Whether he won them or not, just being chosen to argue any case before the Supreme Court is a great honor. Very few lawyers in their entire career will ever be able to argue a single case before the Supreme Court. Why was he chosen to argue 12 cases before the Court? Because he was recognized as a brilliant lawyer, a person who understood appellate law and procedure, who understood constitutional issues and statutory construction and the things that appellate judges do. That speaks well of him. He also has argued 14 cases in State supreme courts.

Just this year, the American Lawyer magazine named Mr. Sutton one of the best lawyers in America under age 45. To recite his credentials is to reach one conclusion: If you need representation in appellate court, you could hardly do better than Jeffrey Sutton. We are looking at a preeminent nominee, one of the best lawyers in America.

The ABA has given Mr. Sutton what the Democrats call the gold standard, a qualified rating, with a minority voting ''well-qualified.'' His qualifications don't seem to matter to a few who are dedicated opponents, and who, I have to say, are not being realistic in this matter. They are not being fair, and they are showing partisanship, and an extreme ideological bent.

The special interest groups and some in this body have targeted this nominee. They have raised the same arguments we have heard before. They allege, amazingly, that he is hostile to the rights of the disabled. They claim he favors weakening laws that deal with age discrimination. They say he is pro-life because he is a member of the supposedly pro-life Federalist Society. But these claims are not pertinent. They miss the mark.

Let's start with this disability rights question. It is a very important issue. It is something we ought to talk about with regard to Jeffrey Sutton, and we need to remember the concepts on this matter as we deal with other nominees who come before the Senate.

The charges and complaints are based in large part on Mr. Sutton's representation of my home State of Alabama in Board of Trustees of the University of Alabama v. Garrett. In the Garrett case, what happened was that an employee of the university sued the university, claiming that university's policies violated the Americans with Disabilities Act. Mr. Sutton argued on behalf of the State of Alabama, and the Supreme Court agreed with him that Congress had not identified a pattern of irrational State discrimination in employment against the disabled. Congress, therefore, he argued, could not abrogate the State's 11th amendment immunity from suits for money damages by the passage of the Americans with Disabilities Act. This well-established principle was recognized centuries ago by Blackstone before the founding of this country.

I would say parenthetically that I served as attorney general of the State of Alabama. I know what the duties of attorneys general are, as does Senator CORNYN in the chair, a member from the State of Texas. It is the duty of the State to defend its prerogatives. An attorney general who does not defend the legal authority of a State, and allows that authority to be eroded from any source whether it be the Congress or any other entity is failing in his or her duty.

Blackstone, with regard to the concept of being able to sue the States, said:

> No action lies under a republican form of government against the state or nation, unless the legislature has authorized it: [this is] a principle recognized in the jurisprudence of the United States, and of the individual states.

So no action lies against the State or the Nation unless a legislature authorizes it.

The reason is pretty simple. The power to sue is the power to destroy. States or the Federal Government will not allow themselves to be destroyed by lawsuits. So the ability of private parties to sue a sovereign Federal Government, or a sovereign State government, is limited.

Now, State sovereign immunity under the Eleventh Amendment is the concept we are dealing with, but those who want to oppose Mr. Sutton have taken the position that his defense of sovereign immunity shows that he is opposed to the Disabilities Act. Critics say he doesn't care about disabled children because he defended the legitimate interests of the State of Alabama in a lawsuit involving how the Americans with Disabilities Act ought to be interpreted. This argument is baseless on many levels.

First, I want to talk about these sovereign immunity cases. Some critics say that because Mr. Sutton argues for state sovereign immunity, he somehow believes that persons who are discriminated against because of their disabilities are not entitled to redress. That is not true. The National Association of Attorneys General—which I was pleased to be a member of, as was the Presiding Officer, and I'm sure as were a majority of attorneys general at that time who were also members of the Democratic Party—in a letter signed by 27 of their members, including 12 Democrats, said:

> 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 the State government.

Well said. It is not a question of whether Mr. Sutton believed that an employee of any State ought not to have redress. The question is whether or not this was a constitutionally proper way to go about it. If lawyers were

attacked for vigorous client representation, this would have a chilling affect on their willingness to take unpopular cases. That would be unfortunate for our legal system.

With respect to the Garrett case, it is not an exaggeration to say that the case has nothing to do with the overall worthiness of the Americans with Disabilities Act—nothing at all. Mr. Sutton himself stressed in his brief to the U.S. Supreme Court that the ADA ''advances a commendable objective—mandatory accommodation for the disabled.''

Seth Waxman, President Clinton's Solicitor General and Mr. Sutton's opponent in the Garrett case, said he saw nothing to suggest that Mr. Sutton disagreed with the aims of the Americans with Disabilities Act. What Mr. Sutton did argue was that the 11th amendment principle of State sovereign immunity protects States from lawsuits in federal court asserting violations of the Americans with Disabilities Act. Seven other States—Arkansas, Hawaii, Idaho, Nebraska, Nevada, Ohio, and Tennessee—submitted briefs joining with him to affirm this position. The Supreme Court ultimately agreed.

In the Garrett case, the question before the Supreme Court was not the validity or purpose of the ADA; it was whether the Federal Government could abridge State sovereign immunity by making States liable in Federal court for violations of the ADA. This issue involves a very narrow and small part of the act. In fact, only the 3.7 percent of the American workforce employed by a State would be affected by this issue. The 96.3 percent of the workforce not employed by a State was not at all affected by the Supreme Court's decision. In other words, this Congress authorized individuals to file lawsuits for ADA violations against both private entities and also against the States. The State of Alabama said that allowing the Garrett lawsuit to go forward against the State violated the State's sovereign immunity.

When the State of Alabama took the case to the Supreme Court, it looked around the country for one of America's best appellate lawyers, and it chose Jeffrey Sutton. He argued the case and won it in the Supreme Court. That win does not gut the ADA; it hardly impacts it in even a minor way. Only 3.7 percent of the workforce would be impacted by it. So the Supreme Court's decision in Garrett meant almost nothing, as far as the overall enforcement of the ADA was concerned, in dealing with discrimination against those employees who are disabled.

What was at stake for the States in Garrett was how the Constitution defined the fundamental relationship between the State government and Federal Government. The Supreme Court explained the relationship in the Garrett case this way:

> The ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by private individuals in Federal Court. We have recognized, however, that Congress may abrogate the States' Eleventh Amendment immunity when it both unequivocally intends to do so and ''act[s] pursuant to a valid grant of constitutional authority.'' Congress may subject nonconsenting States to suit in Federal Court when it does so pursuant to a valid exercise of its Section 5 power under the Fourteenth Amendment.

That is what the Supreme Court was talking about. It didn't have anything to do with the merits or demerits of the Americans with Disabilities Act itself. The Supreme Court went on to conclude that the narrow provision applying the ADA to the States was not a valid exercise of Congress's section 5 power under the 14th amendment:

> Congress is the final authority as to desirable public policy, but in order to authorize private individuals to recover money damages against the States [also sovereign entities, I add parenthetically], there must be a pattern of discrimination by the States which violates the Fourteenth Amendment, and the remedy imposed by Congress must be congruent and proportional to the targeted violation. Those requirements are not met here.

So when my good friend Senator DEWINE—an excellent lawyer from Ohio—earlier indicated he thought the Supreme Court was in error, maybe that was because he was here when the ADA was passed and I wasn't. But as a former attorney general, I think the Supreme Court was correct: If we allow Congress to go around willy-nilly and knock down the classical, historic sovereign immunity of our States, it will weaken the States to an extraordinary degree.

The Supreme Court went on to take pains to emphasize that its decision did not deprive the disabled of their rights:

> Our holding here that Congress did not validly abrogate the States' sovereign immunity from suit by private individuals for money damages under Title I [of the Americans with Disabilities Act] does not mean that persons with disabilities have no Federal recourse against discrimination. Title I of the ADA still prescribes standards applicable to the States. Those standards can be enforced by the United States in actions for money damages, as well as by private individuals in actions for injunctive relief. . . .
>
> In addition, State laws protecting the rights of persons with disabilities in employment and other aspects of life provide independent avenues of redress.

In other words, the Supreme Court said this would not leave a disabled person who works for a State without a remedy for discrimination. That person can file for an injunction, receive back wages if they have been unfairly terminated, and get an order that they have to be reinstated. But given the classical doctrine of sovereign immunity, given the record this Congress developed in passing the ADA, and given the language of the statute that was passed, the Supreme Court could not legitimize an action for money damages against the States.

As a matter of fact, I would note all 50 States have passed laws to give protections to the disabled, in addition to the Federal ADA, in part by providing remedies like injunctions and back pay. It is simply not true that the States do not have any concern for disabled citizens.

I also think it is notable that when Congress passed the ADA, it did not impose on the Federal Government the obligations it placed on the States. The Members of this body express great anguish that the States did not gracefully allow themselves to be sued, and they complain that the attorneys general of the States did not knuckle under by allowing people to sue the States. But when Congress passed the ADA, it did not make the act applicable to the United States Government. Even though the Federal Government is the largest employer in America, it does not have to extend to its own disabled employees the same benefits it demands of the States. It would be ironic, to say the least, for us to criticize Jeffrey Sutton for advocating State constitutional immunity from suit under the ADA when this very Senate exempted the Federal Government from the ADA's requirements.

This criticism is particularly unfair to Mr. Sutton because he has a demonstrated commitment to the disabled. Beyond his sound historical and effective legal arguments in the Garrett case before the Supreme Court, anyone who knows Jeffrey Sutton knows that he is sensitive to the needs of the disabled. When Mr. Sutton started ninth grade, his father became head of the Matheny School in Peapeck, NJ. Matheny was a boarding school providing education and life skills to disabled children with cerebral palsy.

Mr. Sutton spent time at the school doing maintenance work. This experience made him well aware of the challenges faced by the disabled.

Since that time, Mr. Sutton has continued his commitment to the disabled. Few are better qualified to speak about that than Cheryl Fischer. Ms. Fischer, a blind woman, applied for admission to Case Western Reserve University's medical school. The school denied her admission because of her disability.

Mr. Sutton was asked to participate in the case by Ohio's attorney general, and was given a choice of whom to represent. He was told, ''you can represent the school and oppose a blind woman's right to be admitted to the medical school, or you can represent her.'' He chose to represent Cheryl Fischer, without charge, pro bono, and he passionately argued her case before the Supreme Court of Ohio.

He lost the case, but Ms. Fischer has no doubt about Mr. Sutton's ability and integrity. She said:

> I think he believes thoroughly in the civil rights of all people. He is not someone who would want to minimize the rights of disabled people. He helped me stand up for what I believe in.

She went on to say:

> I would definitely like to see him on the Federal court.

Cheryl Fischer is just one of many who believe Jeffrey Sutton would protect disability rights and civil rights

generally as a judge on the very important Sixth Circuit Court of Appeals.

Mr. Sutton is also a board member of the Equal Justice Foundation. It is a nonprofit organization based in Columbus, OH, that provides legal representation to the disadvantaged, including the disabled. In 1999, the Foundation sued to compel the city of Columbus to comply with the Americans with Disabilities Act by installing curb cuts for wheelchairs on city streets.

The executive director of the Equal Justice Foundation, Kimberly Skaggs, disagrees with Jeffrey Sutton politically but supports his nomination to the Sixth Circuit. She said:

Mr. Sutton possesses all the necessary qualities to be an outstanding Federal judge. I have no hesitation whatsoever in supporting his nomination.

Frankly, I have been disappointed by the leaders of the disability community on this issue. They have stirred up opposition. They have told the American disabled community that Jeffrey Sutton does not care about the disabled. That is not true, but that is what they have said. They said that the sovereign immunity position he advocated for his clients in ADA cases meant he personally did not care about the disabled, that he did not like them, that he was opposed to them, and that he would not give them a fair shake in court.

That is basically what they have said. They have suggested his legal efforts were aimed at harming the disabled, when in truth he was simply vindicating the historical legal protection of the States for his clients. The State governments have long enjoyed this protection from federal lawsuits.

Another groundless allegation is that Mr. Sutton opposes laws against age discrimination. This allegation stems from his representation of the State of Florida in a case called *Kimel* v. *Florida Board of Regents*. In Kimel, the Supreme Court agreed with Mr. Sutton's argument that it was not necessary for Congress to abrogate State sovereign immunity through the Age Discrimination in Employment Act because the States were already protecting their senior citizens against discrimination. As with the disabilities right issue, Mr. Sutton did not advocate judicial repeal of the act. Far from it. He explicitly stated that the ADEA advances a commendable policy—nondiscrimination against the elderly. What he argued for was the proper constitutional balance between the State and Federal governments. The Supreme Court agreed with him. So now these people are saying that a reasonable and honorable position he advocated for his client—whether he won or not, even though he did in fact win—somehow disqualifies him from the bench. I think that is unfair, and I am disappointed with some of the people who are making these arguments because I think if they took a moment to look at it, they would know these arguments were not well taken.

Some have even brought up that he is a member of the Federalist Society. One special interest group deems the society hostile to reproductive rights, and suggested that this nominee is guilty by association. The way some of my colleagues on the other side of the aisle have talked about the Federalist Society, it would seem that membership might amount to a scarlet letter that nominees should wear during the hearings. But this is an unwarranted attack on the Society and its members. Although it sponsors numerous discussions of controversial issues, from abortion to the war against terrorism, the Federalist Society takes no position on any of these issues. Regular panelists at their conferences include noted liberals like Harvard law professor Laurence Tribe and ACLU president Nadine Strossen. The society cannot be said to be hostile to abortion rights or any other rights, and so its members—here, Jeffrey Sutton—should not be blamed for having participated in the Society.

Finally, we should move this nomination forward because of the understaffed Sixth Circuit bench. The Judicial Conference of the United States, which deals with court staffing and other issues related to our Federal judges, has determined that the vacancy that would be filled by Mr. Sutton's appointment is a judicial emergency. In fact, there are currently six vacancies on the Sixth Circuit, all of which have been deemed emergencies. This court is in crisis. Those six vacancies impair the administration of justice.

The current understaffing on that court makes it imperative we promptly examine and approve nominations of all the six circuit candidates, particularly this eminently, extraordinarily qualified nominee, one of the best lawyers in America, Jeffrey Sutton.

I had the pleasure to see Mr. Sutton testify. He was asked questions all day long until 9 p.m. at night. He was complimented by Senator DIANNE FEINSTEIN for his willingness to discuss anything he was asked. He answered the questions openly. He answered the questions with great legal skill and judgment time after time after time. I cannot think of a single answer that he gave in that long examination that anyone found offensive. It was a tour de force of legal exposition. I was extremely impressed not only with his brilliance but with his kind demeanor and his sensitivity to the questions. He listened to people's questions. He responded very carefully and sensitively to those questions.

Those were precisely the qualities I believe would make him an extraordinary court of appeals judge. You could look throughout this country and find very few people more qualified by ability, by experience, by integrity, to hold this high office.

I strongly urge my colleagues to confirm his nomination.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. REID. Mr. President, I had the opportunity today to listen to Senator HARKIN speak on the Sutton nomination. I was terribly impressed with his ability to explain to the American public on a very personal basis, as a result of his brother's handicap, why this nomination is so important. I hope all the Senate has the opportunity to see and review Senator HARKIN's comments. They were so appropriate and directly on point.

Again, the Senator from Iowa, the junior Senator from Iowa is a person of stature who always brings substance to a debate as he did in this instance.

Mr. SESSIONS. Mr. President, I will comment to the distinguished Senator from Nevada about Senator HARKIN's passionate advocacy for the disabled in America. He cares deeply about that issue and there is no one more eloquent on it than he is.

I ask the Senator from Nevada if he is aware that Jeffrey Sutton voluntarily agreed, on a pro bono basis, to prepare and to passionately argue a case before the Supreme Court of the State of Ohio that a woman who was blind should be admitted to the Case Western University Medical School, even though he lost the case. I wonder if the Senator knew that? A lot of the Senators have not known that he has a personal concern about this issue and has given of his own wealth—that is, his time—toward that effort.

Mr. REID. I say to the distinguished Senator from Alabama, I am aware of the information we have all been given on the nomination, and he certainly did do this.

What we have to look at, though, is his entire background and we will all do that. My point was that I think the Senator from Iowa, Mr. HARKIN, laid out a foundation for our taking a very close look at this nominee. As the Senator from Alabama knows, the nominee has stated his views over a considerable period of time, more than just the one case he argued in Ohio.

All Members have a decision to make tomorrow as to whether this man, Jeffrey Sutton, would be the kind of person we want on the circuit court. We all have that decision to make, and we can weigh what he has done with what he has not done and make that judgment.

My point I was making is that we oftentimes in the Senate debate in the abstract. Senator HARKIN did not do that. He formed his debate based upon his brother, who was accepted to a school for the deaf and dumb; as Senator HARKIN said, his brother may have been deaf but he wasn't dumb. I think this is the only case I am aware of where the disabled community has been so up in arms over a nominee.

First, I hope we have the opportunity tomorrow to speak to our respective caucuses—the majority leader has to make that decision as to whether we will vote at noon tomorrow or after the caucuses. Regardless, it is quite clear that we are going to vote tomorrow. All 100 Senators have to make a decision as to what they want to do.

Mr. SESSIONS. I note that the Senator from Nevada, who is himself a superb lawyer, has represented criminals and defended them on occasion, as I have. I would point out that just because he represented a cause and advocated it, it does not necessarily mean he shared all those views, personally. I also would note, and am pleased to see, that the State of Nevada joined Alabama as amicus curiae in the Garrett case.

Maybe the Senator would like to once again respond. I am not entitled to the last word. If not, I will go forward with morning business.

Mr. REID. Mr. President, if I could just ask the Senator to yield, I have learned, having served in the Senate, that the majority always gets the last word, so the last word is that of the Senator from Alabama.

MORNING BUSINESS

Mr. SESSIONS. Mr. President, I ask unanimous consent that we proceed to a period of morning business.

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

ADDITIONAL STATEMENTS

COMMEMORATING THE ANNIVERSARY OF THE BEGINNING OF THE ARMENIAN GENOCIDE

● Mrs. FEINSTEIN. Mr. President, I rise today, as I do every year, to commemorate the anniversary of the Armenian Genocide. It has now been 88 years since this tragic event unfolded, and after another year, the historical fact of this atrocity continues to be questioned.

April 24, 1915, marked the beginning of the Ottoman Empire's brutal and unconscionable policy of mass murder, directed against men, women and children Armenians. Over 8 years, Armenians faced starvation, deportation, and violent death at the hands of their own government. Before the genocide began, 2.5 million Armenians lived in the Ottoman Empire. One and a half million Armenians were killed and another 500,000 were driven from their homes, their property and land confiscated.

Many descendants of the survivors of the Armenian Genocide live in the United States, and some actual survivors settled in my own State of California. Overall, half a million Armenian Americans live in California, and I am proud to serve them in the Senate. The strength and importance of their community exemplifies how any group of people can be reborn in the United States. Armenian Americans are at the forefront of the effort to keep the events of the Armenian Genocide in the public eye, but it is the duty of us all, as citizens of a nation that embodies justice, liberty, and freedom not to forget.

We must take time each year to acknowledge this act of ethnic cleansing because we cannot afford to forget. The 20th century saw too many genocides, the events in the Ottoman Empire being only the first. In Germany and Eastern Europe, Cambodia, Rwanda, Bosnia, and Serbia, millions of people were killed because of their race, ethnicity, or religion.

Through these tragedies, too many have remained silent. We must make clear, in the 21st century, that mass murder cannot be tolerated, will not be tolerated. We cannot afford to forget or hide events such as the Armenian Genocide, or another group in another place will experience the same persecution and the same systematic intent to destroy an entire people. This is why we must commemorate this horrific period in the history of the Armenian people each and every year.

Let us remember the Armenian Genocide. Let us ensure that those who suffered did not die in vain. Let us ensure that those who survived did not do so to watch the world forget their sufferings. We honor the living by speaking out today.●

GUADALUPE CENTER FOR DEDICATION TO IMPROVING THE LIFE OF LATINO COMMUNITY

● Mr. BOND. Mr. President, today I would like to commend the Guadalupe Center Inc. for their continued commitment to improving the life of Latinos throughout Kansas City, MO.

The Guadalupe Center began as a volunteer school and well baby clinic for Mexican immigrants in Kansas City's Westside in 1919, becoming one of the Nation's first social service agencies for Latinos in the United States.

Once working out of the rectory of Our Lady of Guadalupe Shrine on West 23rd Street, the Guadalupe Center now has nine buildings and has expanded to serve the entire Kansas City Metropolitan Latino community.

Today, the Center provides a number of essential services and is a leading advocate for the Latino community.

Health programs at the center include substance abuse, teen pregnancy, and HIV/AIDS education and counseling. The center's diligent work in reaching this disproportionately affected Latino population is to be congratulated and encouraged.

Also, the center has had a great deal of success with increasing employment opportunities for the unemployed and underemployed in the Latino community. This success goes hand in hand with the center's constantly expanding education programs, which provide participants with a number of opportunities, including second language GED and job training skills.

Beyond reaching adult and young adults, the center also works to expand opportunities for children through its Plaza de Ninos preschool, which prepares young Latino children for early school success and helps them with the necessary English language skills, while providing childcare for working parents.

The Guadalupe Center's activities and services, which continue to grow in number and impact, serve as an example of the center's vision and dedication for the Latino community.

The future of Kansas City and the quality of life for its residents, especially the Latino community, depends on the decisions and the investments made today. The Guadalupe Center had taken the lead in making these strategic investments in Kansas City's urban core. Their efforts have improved the lives of the Latino community's children and families and the effects will be felt for generations to come.

I look forward to partnering with the Guadalupe Center in future investments in Kansas City's Latino community.●

CHAMPION TREE PLANTING AT THE U.S. CAPITOL

● Ms. STABENOW. Mr. President, I rise today to commemorate a wonderful Arbor Day gift that was donated to the U.S. Capitol by the Champion Tree Project and the Mount Vernon Ladies' Association. Last Thursday, on April 24, 2003, the U.S. Capitol planted a 6-foot sapling clone of a white ash tree grown by George Washington in the late 1700s. This sapling clone is the first successful recreation of the Champion Tree Project's efforts to spawn exact genetic duplicates of each of Washington's surviving trees at Mount Vernon.

This gift is extremely special to me for two reasons. First, the Champion Tree Project is a Michigan-founded, grassroots organization that was founded by a Michiganian father and son team, David and Jared Milarch. The Milarch family has been the driving force behind this organization, and I commend them for their historic efforts to protect these important trees. In addition to working to protect historically significant trees like those on the Mount Vernon estate, the Champion Tree Project is dedicated to protecting Champion trees, which are the biggest—and often among the oldest—known members of their species in the United States. After cloning, these saplings are planted in protected sites where they can be enjoyed and studied by future generations.

Second, I was at Mount Vernon on August 1, 2001, when the Champion Tree Project collected the budwood and branches from the 13 surviving trees planted under George Washington's direction over 200 years ago. The DNA

that was collected at Mount Vernon over a year and half ago is what was used to create this white ash sapling clone, and I am proud that this sapling has found a wonderful home at the U.S. Capitol today.

Mr. President, I thank the Champion Tree Project and the Mount Vernon Ladies' Association for their historic gift and their ongoing dedication to preserving these trees for future generations.●

LEXINGTON POLICE CHIEF ANTHANY BEATTY

● Mr. BUNNING. Mr. President, I rise today to honor and pay tribute to one of Kentucky's finest law enforcement officers. Lexington Police Chief Anthany Beatty has been recognized as Eastern Kentucky University's Outstanding Alumnus for 2003 and was inducted into EKU's Hall of Distinguished Alumni.

Chief Beatty's commitment to excellence has not only honored the Lexington police force where he has served since 1973 but also his alma mater, Eastern Kentucky University. A 1978 graduate of EKU, Beatty credits his success in law enforcement to the undergraduate work he completed while majoring in police administration. The obstacles Beatty overcame as a student would prepare him for the challenges faced by the Lexington police force.

Included in the recognition to Anthany Beatty's rise to chief of police, which he was selected for in August of 2001, is his family. The relentless years of love and support that Anthany's wife Eunice and their two sons, Embry and Anthany, Jr., have shown provided Anthany with the stability and stature necessary to meet the high demands of police work. His family's support and his spirituality have made all the difference in his life and career.

Chief Anthany Beatty's example should be followed by law enforcement officers throughout Kentucky. The citizens of Lexington are fortunate to call Anthany Beatty one of their own. They should be privileged to be served by such a fine officer. Congratulations, Anthany. And may God bless you and your family.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

ENROLLED BILLS SIGNED

Under the authority of the order of January 7, 2003, the Secretary of the Senate, on April 12, 2003, during the recess of the Senate, received a message from the House of Representatives announcing that the House has agreed to the following concurrent resolution:

S. Con. Res. 38. Concurrent resolution providing for a conditional adjournment or recess of the Senate and conditional adjournment of the House of Representatives.

Under the authority of the order of January 7, 2003, the Secretary of the Senate, on April 14, 2003, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 1770. An act to provide benefits and other compensation for certain individuals with injuries resulting from administration of smallpox countermeasures, and for other purposes.

H.R. 145. An act to designate the Federal building located at 290 Broadway in New York, New York, as the ''Ted Weiss Federal Building''.

H.R. 258. An act to ensure continuity for the design of the 5-cent coin, establish the Citizens Coinage Advisory Committee, and for other purposes.

H.R. 1559. An act making emergency supplemental wartime appropriations for the fiscal year 2003, and for other purposes.

Under the authority of the order of January 7, 2003, the enrolled bills were signed by the Acting President pro tempore (Mr. WARNER) on April 14, 2003.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, April 28, 2003, she had presented to the President of the United States the following enrolled bill:

S. 151. An act to prevent child abduction and sexual exploitation of children, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1903. A communication from the President of the United States, transmitting, pursuant to the Authorization for Use of Military Force Against Iraq Resolution of 2002, the report of Congress related to planning for post-liberation Iraq under section 7 of the Iraq Liberation Act of 1998, received on April 16, 2003; to the Committee on Foreign Relations.

EC–1904. A communication from the Director, Regulations Management, Office of Inspector General, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Referrals of Information Regarding Criminal Violations (2900–AL31)'' received on April 11, 2003; to the Committee on Veterans' Affairs.

EC–1905. A communication from the Assistant Administrator, National Marine Fisheries Service, Office of Sustainable Fisheries, State/Federal Fisheries Division, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''American Lobster Fishery (RIN 0648–AP15)'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1906. A communication from the Assistant Administrator, National Marine Fisheries Service, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Magnuson Act Provisions; Foreign Fishing, Fisheries off West Coast and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures (0648–AQ18)'' received on April 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1907. A communication from the Program Analyst, Federal Aviation Administration Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Sikeston, MO; Docket no. 03–ACE–2 ((2120–AA66)(2003–0066))'' received on April 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1908. A communication from the Attorney, Office of the Chief Counsel, Research and Special Programs Administration, transmitting, pursuant to law, the report of a rule entitled ''Revisions; Definitions of Administrator (2137–AD43)'' received on April 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1909. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Closure of fishing for Pacific cod by catcher vessels 60 feet (18.3 m) length overall (LOA) and longer using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI)'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1910. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Closure of directed fishing for Pacific cod by catcher/processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI)'' received on April 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1911. A communication from the Acting Assistant Administrator, Human Resources, Headquarters, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''NASA Astronaut Candidate Recruitment and Selection Program (2700–AC56)'' received on April 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1912. A communication from the Attorney Advisor, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Light Truck Average Fuel Economy Standards Model Years 2005–2007 (2127–A170)'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1913. A communication from the Senior Attorney, Research & Special Programs Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Materials: Requirements for Cargo Tanks (2137–AC90)'' received on April 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1914. A communication from the Deputy Assistant Administrator, Operations, National Marine Fisheries Service, Office of

Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Final rule to Authorize and manage a subsistence fishery for Pacific halibut in waters in and off Alaska (0648–AQ09)'' received on April 24, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1915. A communication from the Deputy Assistant Administrator, Regulatory Programs, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Final Endangered Status for a Distinct Population Segment of Smalltooth Sawfish (Pristis pectinata) in the United States (0648–XA49)'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1916. A communication from the Assistant Administrator, Office of Oceanic and Atmospheric Research, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Joint Hurricane Testbed (JHT) Opportunities for Transfer of Research and Technology into Tropical Cyclone Analysis and Forecast Operations'' received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1917. A communication from the Assistant Administrator, Procurement, National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule relative to NASA interagency acquisition policies, received on April 11, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1918. A communication from the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the 2002 Report to Congress on Apportionment of Membership on the Regional Fishery Management Councils (Council); to the Committee on Commerce, Science, and Transportation.

EC–1919. A communication from the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the biennial report describing funding to Atlantic States Marine Fisheries Commission and the Atlantic coast states for projects that support the Atlantic Coastal Fisheries Cooperative Management Act, received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1920. A communication from the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report relative to Atlantic highly migratory species for 2003, received on April 16, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1921. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Canadian Retirement Plan Trust Reporting (2003–25)'' received on April 16, 2003; to the Committee on Finance.

EC–1922. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Special Estimated Tax Payments (2003–34)'' received on April 16, 2003; to the Committee on Finance.

EC–1923. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Collectively-bargained welfare benefit funds and section 419A(f)(5) (2003–24)'' received on April 16, 2003; to the Committee on Finance.

EC–1924. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Debit Instruments with Original Issue Discount, Annuity Contracts (1545–AT60) (TD 8993)'' received on April 22, 2003; to the Committee on Finance.

EC–1925. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revenue Procedure for Industry Resolution Program (Rev. Proc. 2003–36)'' received on April 22, 2003; to the Committee on Finance.

EC–1926. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''2002 Nonconventional Source Fuel Credit (Notice 2003–27)'' received on April 2003; to the Committee on Finance.

EC–1927. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Final TEFRA Regs—Unified Partnership Audit Procedures (1545–AW86)'' received on April 22, 2003; to the Committee on Finance.

EC–1928. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Exclusion of qualified automated demonstration use Taxation of non-qualified demonstration use (Rev. Proc. 2001–56)'' received on April 22, 2003; to the Committee on Finance.

EC–1929. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Clarification of the Conformity Election (2001–59)'' received on April 22, 2003; to the Committee on Finance.

EC–1930. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability (Rev. Proc. 2002–2)'' received on April 22, 2003; to the Committee on Finance.

EC–1931. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Restaurant Smallwares (Rev. Proc. 2002–12)'' received on April 22, 2003; to the Committee on Finance.

EC–1932. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Automatic Consent to Change a Method of Accounting (Rev. Proc. 2002–9)'' received on April 22, 2003; to the Committee on Finance.

EC–1933. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Qualified 501 (c)(3) Bonds (Notice 2002–10)'' received on April 22, 2003; to the Committee on Finance.

EC–1934. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Application of Partial Payments to Assessed Tax, Penalty, and Interest (Rev. Proc. 2002–26)'' received on April 22, 2003; to the Committee on Finance.

EC–1935. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Weighted average interest rate update notice (notice 2002–28)'' received on April 22, 2003; to the Committee on Finance.

EC–1936. A communication form the Regulations Coordinator, Centers for Medicare Management, Centers for Medicare & Medicaid Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Notice of Ambulance Fee Schedule in Accordance with Federal District Court Order (0938–AM60)'' received on April 22, 2003; to the Committee on Finance.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of April 11, 2003, the following reports of committees were submitted on April 24, 2003:

By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, with amendments:

S. 165. A bill to improve air cargo security (Rept. No. 108–38).

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment:

S. 925. An original bill to authorize appropriations for the Department of State and international broadcasting activities for fiscal year 2004 and for the Peace Corps for fiscal years 2004 through 2007, and for other purposes (Rept. No. 108–39).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS—April 24, 2003

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. LUGAR:

S. 925. An original bill to authorize appropriations for the Department of State and international broadcasting activities for fiscal year 2004 and for the Peace Corps for fiscal years 2004 through 2007, and for other purposes; from the Committee on Foreign Relations; placed on the calendar.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. VOINOVICH:

S. 926. A bill to amend section 5379 of title 5, United States Code, to increase the annual and aggregate limits on student loan repayments by Federal agencies; to the Committee on Governmental Affairs.

By Mr. WARNER (for himself and Mr. LEVIN) (by request):

S. 927. A bill to promote the national security by providing a National Security Personnel System for the Department of Defense; a streamlined acquisition system both efficient and effective in order to provide servicemembers on the battlefield with the most modern and lethal equipment; realistic appropriations and authorization laws responsive to an ever-changing national security environment; and the coordination of the activities of the Department of Defense with other departments and agencies of the Government concerned with national security; to the Committee on Armed Services.

By Mr. ALLEN:

S. 928. A bill to amend the Internal Revenue Code of 1986 to allow individuals to designate any portion of a refund for use by the Secretary of Health and Human Services in providing catastrophic health coverage to individuals who do not otherwise have health coverage; to the Committee on Finance.

By Mr. MCCAIN (for himself, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. SMITH, Ms. SNOWE, Mr. BREAUX, and Mr. LAUTENBERG):

S. 929. A bill to direct the Secretary of Transportation to make grants for security improvements to over-the-road bus operations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. INHOFE (for himself and Mr. JEFFORDS):

S. 930. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to establish a program to provide assistance to enhance the ability of first responders to prepare for and respond to all hazards, and for other purposes; to the Committee on Environment and Public Works.

ADDITIONAL COSPONSORS

S. 59

At the request of Mr. INOUYE, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 59, a bill to amend title 10, United States Code, to permit former members of the Armed Forces who have a service-connected disability rated as total to travel on military aircraft in the same manner and to the same extent as retired members of the Armed Forces are entitled to travel on such aircraft.

S. 114

At the request of Mr. COCHRAN, the name of the Senator from Georgia (Mr. CHAMBLIS) was added as a cosponsor of S. 114, a bill to amend title XVIII of the Social Security Act to remove the 20 percent inpatient limitation under the medicare program on the proportion of hospice care that certain rural hospice programs may provide.

S. 127

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 127, a bill to allow a custodial parent a bad debt deduction for unpaid child support payments, and to require a parent who is chronically delinquent in child support to include the amount of the unpaid obligation in gross income.

S. 224

At the request of Mr. DASCHLE, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 224, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

S. 253

At the request of Mr. CAMPBELL, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 253, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

S. 255

At the request of Mrs. FEINSTEIN, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 255, a bill to amend title 49, United States Code, to require phased increases in the fuel efficiency standards applicable to light trucks; to require fuel economy standards for automobiles up to 10,000 pounds gross vehicle weight; to increase the fuel economy of the Federal fleet of vehicles, and for other purposes.

S. 336

At the request of Mr. DOMENICI, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 336, a bill to amend title 10, United States Code, to expand reimbursement for travel expenses of covered beneficiaries for specialty care in order to cover specialized dental care.

S. 356

At the request of Mrs. LINCOLN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 356, a bill to amend the Energy Policy Act of 1992 to increase the allowable credit for biodiesel use under the alternatively fueled vehicle purchase requirement.

S. 365

At the request of Mr. BINGAMAN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 365, a bill to amend title 23, United States Code, to establish a program to make allocations to States for projects to expand 2-lane highways in rural areas to 4-lane highways.

S. 384

At the request of Mr. REID, the names of the Senator from Maryland (Ms. MIKULSKI) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 384, a bill to amend the Internal Revenue Code of 1986 to prevent corporate expatriation to avoid United States income taxes.

S. 392

At the request of Mr. REID, the names of the Senator from Idaho (Mr. CRAIG) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 392, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 516

At the request of Mr. BUNNING, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 516, a bill to amend title 49, United States Code, to allow the arming of pilots of cargo aircraft, and for other purposes.

S. 539

At the request of Mr. DOMENICI, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 539, a bill to authorize appropriations for border and transportation security personnel and technology, and for other purposes.

S. 623

At the request of Mr. WARNER, the names of the Senator from Idaho (Mr. CRAPO) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 623, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 647

At the request of Mr. KENNEDY, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 647, a bill to amend title 10, United States Code, to provide for Department of Defense funding of continuation of health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents, and for other purposes.

S. 678

At the request of Mr. AKAKA, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 678, a bill to amend chapter 10 of title 39, United States Code, to include postmasters and postmasters organizations in the process for the development and planning of certain policies, schedules, and programs, and for other purposes.

S. 756

At the request of Mr. THOMAS, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 756, a bill to amend the Internal Revenue Code of 1986 to modify the qualified small issue bond provisions.

S. 764

At the request of Mr. CAMPBELL, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 764, a bill to extend the authorization of the Bulletproof Vest Partnership Grant Program.

S. 767

At the request of Mr. SMITH, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 767 a bill to amend the Internal Revenue Code of 1986 to repeal the increase in the tax on social security benefits.

S. 789

At the request of Mr. NELSON of Florida, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 789, a bill to change the requirements for naturalization through service in the Armed Forces of the United States.

S. 797

At the request of Mr. HATCH, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 797, a bill to prevent the pretrial release of those who rape or kidnap children, and for other purposes.

S. 798

At the request of Mr. HATCH, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 798, a bill to assist the States in enforcing laws requiring registration of convicted sex offenders.

S. 799

At the request of Mr. HATCH, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 799, a bill to require Federal agencies to establish procedures to facilitate the

safe recovery of children reported missing within a public building.

S. 800

At the request of Mr. HATCH, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 800, a bill to prevent the use of a misleading domain name with the intent to deceive a person into viewing obscenity on the Internet.

S. 811

At the request of Mr. ALLARD, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 811, a bill to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance initiative under the HOME Investment Partnership Act, and for other purposes.

S. 816

At the request of Mr. CONRAD, the names of the Senator from Michigan (Ms. STABENOW) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 816, a bill to amend title XVIII of the Social Security Act to protect and preserve access of medicare beneficiaries to health care provided to health care provided by hospitals in rural areas, and for other purposes.

S. 822

At the request of Mr. KERRY, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 822, a bill to create a 3-year pilot program that makes small non-profit child care businesses eligible for SBA 504 loans.

S. 823

At the request of Mr. SANTORUM, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 823, a bill to amend title XVIII of the Social Security Act to provide for the expeditious coverage of new medical technology under the medicare program, and for other purposes.

S. 877

At the request of Mr. BURNS, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 877, a bill to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

S. 884

At the request of Ms. LANDRIEU, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. 884, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 888

At the request of Mr. GREGG, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 888, a bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 899

At the request of Mrs. HUTCHISON, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 899, a bill to amend title XVIII of the Social Security Act to restore the full market basket percentage increase applied to payments to hospitals for inpatient hospital services furnished to medicare beneficiaries, and for other purposes.

S.J. RES. 11

At the request of Mr. KENNEDY, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S.J. Res. 11, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

S. CON. RES. 3

At the request of Mr. MILLER, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. Con. Res. 3, a concurrent resolution recognizing, applauding, and supporting the efforts of the Army Aviation Heritage Foundation, a nonprofit organization incorporated in the State of Georgia, to utilize veteran aviators of the Armed Forces and former Army Aviation aircraft to inspire Americans and to ensure that our Nation's military legacy and heritage of service are never forgotten.

S. CON. RES. 7

At the request of Mr. CAMPBELL, the names of the Senator from Florida (Mr. NELSON) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. Con. Res. 7, a concurrent resolution expressing the sense of Congress that the sharp escalation of anti-Semitic violence within many participating States of the Organization for Security and Cooperation in Europe (OSCE) is of profound concern and efforts should be undertaken to prevent future occurrences.

S. CON. RES. 32

At the request of Mr. GRAHAM of South Carolina, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. Con. Res. 32, a concurrent resolution expressing the sense of Congress regarding the protection of religious sites and the freedom of access and worship.

S. RES. 118

At the request of Mrs. BOXER, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 118, a resolution supporting the goals of the Japanese American, German American, and Italian American communities in recognizing a National Day of Remembrance to increase public awareness of the events surrounding the restriction, exclusion, and internment of individuals and families during World War II.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. VOINOVICH:

S. 926. A bill to amend section 5379 of title 5, United States Code, to increase the annual and aggregate limits on student loan repayments by Federal agencies; to the Committee on Governmental Affairs.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the Federal Employee Student Loan Assistance Act be printed in the RECORD.

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

S. 926

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Employee Student Loan Assistance Act.''.

SEC. 2. STUDENT LOAN REPAYMENTS.

Section 5379(b)(2) of title 5, United States Code, is amended—

(1) in subparagraph (A), by striking ''$6,000'' and inserting ''$10,000''; and

(2) in subparagraph (B), by striking ''$40,000'' and inserting ''$60,000''.

By Mr. MCCAIN (for himself, Mr. HOLLINGS, Mrs. HUTCHISON, Mr. SMITH, Ms. SNOWE, Mr. BREAUX, and Mr. LAUTENBERG):

S. 929. A bill to direct the Secretary of Transportation to make grants for security improvements to over-the-road bus operations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. MCCAIN. Mr. President, I am pleased to be joined today by Senators HOLLINGS, HUTCHISON, LAUTENBERG, SMITH, and SNOWE in introducing the Over-the-Road Bus Security and Safety Act of 2003. The purpose of the bill is to provide funding assistance for security improvements to the intercity bus industry. The legislation is the bipartisan product of work that occurred during the last Congress under the leadership of Senator Max Cleland.

Since the terrorist attacks on September 11, 2001, Congress and the Administration have taken extraordinary steps to improve security. We have enacted the Homeland Security Act, which consolidated 22 agencies in a new Department of Homeland Security. We also have enacted the Aviation and Transportation Security Act, ATSA, which closed security gaps at our nation's airports and largely transferred the responsibilities of the security of air transportation to the federal government. In addition, we've enacted the Maritime Transportation Security Act, MTSA, which, for the first time ever, established a framework for security at our nation's maritime ports. Yet, much remains to be done as we work to identify and close security gaps.

As we have witnessed in other countries, bus transportation can be the target of terrorist attacks. This is further evidenced by the fact that terminals that have already implemented a passenger screening process have seen a rise in discarded weapons in bus stations. In our view, facility improvements and baggage screening efforts

would be a significant step to improving bus security.

Therefore, the bill we are introducing today authorizes $35 million for fiscal year 2003 and $99 million for fiscal year 2004 to fund an intercity bus security grant program that would be administered by the Secretary of Transportation. It would include a matching requirement that recipients of federal grants fund 10 percent of the security improvement expenses.

Already, $15 million was appropriated for bus security grants in the fiscal year 2002 Supplemental Appropriations Act and another $10 million was appropriated in the fiscal year 2003 Omnibus Appropriations Act. This bill, if enacted, will authorize the funding already appropriated, along with an authorization of $99 million for fiscal year 2004 and, in turn, give Congress time to further study existing and future needs for bus transportation security and determine what, if any, changes should be made to the program.

The bill will help improve bus security by authorizing grants for security improvements at terminals; for the installation of surveillance equipment; for improvements to protect or isolate the driver; and for other specified improvements. The legislation also would require the Department of Transportation to complete a preliminary report assessing the adequacy of over-the-road bus security and determine what, if any, additional steps should be taken to improve bus security.

There have been several well-publicized bus accidents since September 11, 2001, including an accident on October 3, 2001, that involved an attack on the driver and claimed seven lives. Passing this measure will allow Congress to take short-term action that will have a beneficial effect on the security of the bus industry and does not preclude consideration of longer-term security policy considerations.

Efforts to pass similar legislation is also underway in the House of Representatives, where the House Committee on Transportation and Infrastructure, under Chairman YOUNG's leadership, has already reported legislation to be considered by the full House.

I want to thank Senators HOLLINGS, HUTCHISON, BREAUX, LAUTENBERG, SMITH, and SNOWE for joining me in this effort. I look forward to working with all members to move this legislation forward.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 929

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Over-the-Road Bus Security and Safety Act of 2003''.

SEC. 2. EMERGENCY OVER-THE-ROAD BUS SECURITY ASSISTANCE.

(a) IN GENERAL.—The Secretary of Transportation, acting through the Administrator of the Federal Motor Carrier Safety Administration, shall establish a program for making grants to private operators of over-the-road buses for system-wide security improvements to their operations, including—

(1) constructing and modifying terminals, garages, facilities, or over-the-road buses to assure their security;

(2) protecting or isolating the driver;

(3) acquiring, upgrading, installing, or operating equipment, software, or accessorial services for collection, storage, or exchange of passenger and driver information through ticketing systems or otherwise, and information links with government agencies;

(4) training employees in recognizing and responding to security threats, evacuation procedures, passenger screening procedures, and baggage inspection;

(5) hiring and training security officers;

(6) installing cameras and video surveillance equipment on over-the-road buses and at terminals, garages, and over-the-road bus facilities;

(7) creating a program for employee identification or background investigation;

(8) establishing an emergency communications system linked to law enforcement and emergency personnel; and

(9) implementing and operating passenger screening programs at terminals and on over-the-road buses.

(b) REIMBURSEMENT.—A grant under this Act may be used to provide reimbursement to private operators of over-the-road buses for extraordinary security-related costs for improvements described in paragraphs (1) through (9) of subsection (a), determined by the Secretary to have been incurred by such operators since September 11, 2001.

(c) FEDERAL SHARE.—The Federal share of the cost for which any grant is made under this Act shall be 90 percent.

(d) DUE CONSIDERATION.—In making grants under this Act, the Secretary shall give due consideration to private operators of over-the-road buses that have taken measures to enhance bus transportation security from those in effect before September 11, 2001.

(e) GRANT REQUIREMENTS.—A grant under this Act shall be subject to all the terms and conditions that a grant is subject to under section 3038(f) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note; 112 Stat. 393).

SEC. 3. PLAN REQUIREMENT.

(a) IN GENERAL.—The Secretary may not make a grant under this Act to a private operator of over-the-road buses until the operator has first submitted to the Secretary—

(1) a plan for making security improvements described in section 2 and the Secretary has approved the plan; and

(2) such additional information as the Secretary may require to ensure accountability for the obligation and expenditure of amounts made available to the operator under the grant.

(b) COORDINATION.—To the extent that an application for a grant under this section proposes security improvements within a specific terminal owned and operated by an entity other than the applicant, the applicant shall demonstrate to the satisfaction of the Secretary that the applicant has coordinated the security improvements for the terminal with that entity.

SEC. 4. OVER-THE-ROAD BUS DEFINED.

In this Act, the term ''over-the-road bus'' means a bus characterized by an elevated passenger deck located over a baggage compartment.

SEC. 5. BUS SECURITY ASSESSMENT.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a preliminary report in accordance with the requirements of this section.

(b) CONTENTS OF PRELIMINARY REPORT.—The preliminary report shall include—

(1) an assessment of the over-the-road bus security grant program;

(2) an assessment of actions already taken to address identified security issues by both public and private entities and recommendations on whether additional safety and security enforcement actions are needed;

(3) an assessment of whether additional legislation is needed to provide for the security of Americans traveling on over-the-road buses;

(4) an assessment of the economic impact that security upgrades of buses and bus facilities may have on the over-the-road bus transportation industry and its employees;

(5) an assessment of ongoing research and the need for additional research on over-the-road bus security, including engine shut-off mechanisms, chemical and biological weapon detection technology, and the feasibility of compartmentalization of the driver; and

(6) an assessment of industry best practices to enhance security.

(c) CONSULTATION WITH INDUSTRY, LABOR, AND OTHER GROUPS.—In carrying out this section, the Secretary shall consult with over-the-road bus management and labor representatives, public safety and law enforcement officials, and the National Academy of Sciences.

SEC. 6. FUNDING.

There are authorized to be appropriated to the Secretary of Transportation to carry out this Act $35,000,000 for fiscal year 2003 and $99,000,000 for fiscal year 2004. Such sums shall remain available until expended.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Tuesday, May 6, at 2:30 p.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of this oversight hearing is to receive testimony on Department of the Interior programs addressing western water issues. Contact: Shelly Randel at 202–224–7933 or Jared Stubbs at 202–224–7556.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

ORDER FOR STAR PRINT—S. 880

Mr. SESSIONS. Mr. President, I ask unanimous consent that the committee report No. 108–37 which accompanies S. 880 be star printed with the changes that are at the desk.

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

ORDER FOR STAR PRINT—S. 876

Mr. SESSIONS. I ask unanimous consent that S. 876 be star printed with the changes that are at the desk.

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

APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the Democratic Leader, pursuant to Public Law 105–83, announces the appointment of the Senator from Nevada (Mr. REID) as a member of the National Council on the Arts, vice the Senator from Illinois (Mr. DURBIN).

ORDERS FOR TUESDAY, APRIL 29, 2003

Mr. SESSIONS. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 10 a.m. Tuesday, April 29. I further ask unanimous consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then return to executive session and resume consideration of the nomination of Jeffrey Sutton to be circuit judge for the Sixth Circuit, with the time until 12 noon equally divided between the chairman of the Judiciary Committee and Senator HARKIN.

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

Mr. SESSIONS. In accordance with the agreement of April 11, I inform my colleagues on behalf of the majority leader that the vote on the Sutton nomination will occur at 12 noon tomorrow.

I further ask unanimous consent that the Senate recess from 12:30 p.m. to 2:15 p.m. tomorrow for the weekly party luncheons.

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

PROGRAM

Mr. SESSIONS. For the information of all Senators, tomorrow morning the Senate will resume debate on the nomination of Jeffrey Sutton. At 12 noon, the Senate will vote on the Sutton nomination.

Tomorrow afternoon the Senate will resume consideration of the nomination of Priscilla Owen to be a circuit judge for the Fifth Circuit. We will continue to work with the Democratic leader in an effort to reach a time agreement on this important nomination.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. SESSIONS. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 5:41 p.m., adjourned until Tuesday, April 29, 2003 at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate April 28, 2003:

EXECUTIVE OFFICE OF THE PRESIDENT

NICHOLAS GREGORY MANKIW, OF MASSACHUSETTS, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS, VICE ROBERT GLENN HUBBARD, RESIGNED.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

CHARLES DARWIN SNELLING, OF PENNSYLVANIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY FOR THE REMAINDER OF THE TERM EXPIRING MAY 30, 2006, VICE NORMAN Y. MINETA.

DEPARTMENT OF HOMELAND SECURITY

FRANK LIBUTTI, OF NEW YORK, TO BE UNDER SECRETARY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION, DEPARTMENT OF HOMELAND SECURITY. (NEW POSITION)

JOE D. WHITLEY, OF GEORGIA, TO BE GENERAL COUNSEL, DEPARTMENT OF HOMELAND SECURITY. (NEW POSITION)

THE JUDICIARY

ALLYSON K. DUNCAN, OF NORTH CAROLINA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, VICE SAMUEL J. ERVIN, III, DECEASED.

CLAUDE A. ALLEN, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT, VICE FRANCIS D. MURNAGHAN, JR., DECEASED.

ROBERT C. BRACK, OF NEW MEXICO, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO, VICE A NEW POSITION CREATED BY PUBLIC LAW 107–273, APPROVED NOVEMBER 2, 2002.

JAMES O. BROWNING, OF NEW MEXICO, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEW MEXICO, VICE C. LEROY HANSEN, RETIRED.

GLEN E. CONRAD, OF VIRGINIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF VIRGINIA, VICE JAMES C. TURK, RETIRED.

ROBERT J. CONRAD, JR., OF NORTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA, VICE A NEW POSITION CREATED BY PUBLIC LAW 107–273, APPROVED NOVEMBER 2, 2002.

MARK R. FILIP, OF ILLINOIS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, VICE HARRY D. LEINENWEBER, RETIRED.

KIM R. GIBSON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA, VICE D. BROOKS SMITH, ELEVATED.

DORA L. IRIZARRY, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF NEW YORK, VICE REENA RAGGI, ELEVATED.

H. BRENT MCKNIGHT, OF NORTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF NORTH CAROLINA, VICE A NEW POSITION CREATED BY PUBLIC LAW 107–273, APPROVED NOVEMBER 2, 2002.

DANIEL P. RYAN, OF MICHIGAN, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MICHIGAN, VICE PATRICK J. DUGGAN, RETIRED.

GARY L. SHARPE, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK, VICE THOMAS J. MCAVOY, RETIRED.

LONNY R. SUKO, OF WASHINGTON, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF WASHINGTON, VICE WM. FREMMING NIELSEN, RETIRED.

DEPARTMENT OF ENERGY

PAUL MORGAN LONGSWORTH, OF VIRGINIA, TO BE DEPUTY ADMINISTRATOR FOR DEFENSE NUCLEAR NONPROLIFERATION, NATIONAL NUCLEAR SECURITY ADMINISTRATION, VICE LINTON F. BROOKS.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIGADIER GENERAL KENNETH M. DECUIR, 0000
BRIGADIER GENERAL BOB D. DULANEY, 0000
BRIGADIER GENERAL ROBERT J. ELDER JR., 0000
BRIGADIER GENERAL PAUL J. FLETCHER, 0000
BRIGADIER GENERAL DOUGLAS M. FRASER, 0000
BRIGADIER GENERAL WILLIAM M. FRASER III, 0000
BRIGADIER GENERAL STANLEY GORENC, 0000
BRIGADIER GENERAL ELIZABETH A. HARRELL, 0000
BRIGADIER GENERAL WILLIAM F. HODGKINS, 0000
BRIGADIER GENERAL RAYMOND E. JOHNS JR., 0000
BRIGADIER GENERAL TIMOTHY C. JONES, 0000
BRIGADIER GENERAL FRANK G. KLOTZ, 0000
BRIGADIER GENERAL ROBERT H. LATIFF, 0000
BRIGADIER GENERAL RICHARD B.H. LEWIS, 0000
BRIGADIER GENERAL HENRY A. OBERING III, 0000
BRIGADIER GENERAL MICHAEL W. PETERSON, 0000
BRIGADIER GENERAL TERESA M. PETERSON, 0000
BRIGADIER GENERAL GREGORY H. POWER, 0000
BRIGADIER GENERAL ROBIN E. SCOTT, 0000
BRIGADIER GENERAL ROBERT L. SMOLEN, 0000
BRIGADIER GENERAL MARK A. VOLCHEFF, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COL. STEPHEN L. LANNING, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. STEVEN W. BOUTELLE, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. MICHAEL J. MCCABE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be admiral

ADM. WILLIAM J. FALLON, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. BRIAN G. BRANNMAN, 0000