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Co-Presidents

February 25, 2005

The Honorable Arlen Specter
Chair, Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Minority Leader
Committee on the Judiciary
United States Senate
269 Russell Senate Office Building
Washington, D.C. 20510

RE: The Opposition of the Society of American Law Teachers (SALT)
to the Nomination of William H. Pryor, Jr. to the
United States Court of Appeals for the Eleventh Circuit

Dear Senators Specter and Leahy:

On behalf of the Society of American Law Teachers (SALT), we write to express our strong opposition to the nomination of William H. Pryor, Jr. to the United States Court of Appeals for the Eleventh Circuit.

When Judge Pryor was nominated for this position in 2003, SALT opposed the nomination (see attached letter). Although Judge Pryor was not confirmed by the Senate, he was given a recess appointment in 2004. Nothing that has occurred in the interim has caused us to change our position, and we continue to oppose him for the reasons given in the attached letter.

We therefore urge the Committee to reject the nomination of William H. Pryor to the United States Court of Appeals for the Eleventh Circuit..

Yours very truly,

Professor José Robert (Beto) Juárez, Jr.
Professor Holly Maguigan
Co-Presidents

July 13, 2003

The Honorable Orrin G. Hatch, Chair
The Honorable Patrick Leahy, Ranking Minority Member
Committee on the Judiciary
United States Senate
104 Hart Senate Office Building
Washington, D.C. 20510

Re: Nomination of William H. Pryor, Jr.,
to the United States Court of
Appeals for the Eleventh Circuit

Dear Senators Hatch and Leahy:

On behalf of the Society of American Law Teachers (SALT), the largest organization of law professors in the United States, representing over 800 law professors from over 150 law schools, we write to express our strong opposition to the nomination of William H. Pryor, Jr., to a seat on the United States Court of Appeals for the Eleventh Circuit.

In our judgment, Attorney General Pryor is an extreme advocate of a "turn-back-the clock" form of federalism that threatens to undermine the basic constitutional rights of, among others, children, women, people with disabilities, gays and lesbians, and senior citizens. Through the positions he has taken in various cases, both in representing the State of Alabama as a party and as an *amicus curiae*, he has shown insensitivity to such basic constitutional rights as the right to privacy, the separation of church and state, the Commerce Clause, and the Eighth Amendment. He also has expressed hostility to such important congressional enactments as the Clean Water Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Title VI of the Civil Rights Act of 1964, and the Violence Against Women Act. When linked to his well-documented intemperateness, his positions belie his claim that, if confirmed, he will simply follow the applicable law, ignoring the values he obviously holds dear.

Attorney General Pryor has made active use of the *amicus curiae* brief to propagate his extreme positions. He filed a brief in the recent Supreme Court case of *Lawrence v. Texas*, 2003 U.S. Lexis 5013 (June 23, 2003), which struck down Texas's sodomy statute. In the brief, he argued that reversal of the lower-court decision (which the Supreme Court in fact did) would entail protection for prostitution, adultery, necrophilia, bestiality, possession of child pornography and even incest and pedophilia. He filed the lone state *amicus curiae* brief to argue for a weakening of the Clean Water Act in *Solid Waste Agency of Northern Cook County v. United States Corps of Engineers*, 531 U.S. 159 (2001). He filed a brief unsuccessfully opposing recognition of the Family and Medical Leave Act as a valid exercise of congressional power under Section 5 of the Fourteenth Amendment in the recent case of *Nevada Dep't of Human Resources v. Hibbs*, 123 S. Ct. 1972 (2003). He also filed a brief in *Atkins v. Virginia*, 536 U.S. 304 (2002), against recognition of mental retardation as a disqualifying condition for application of the death penalty under the Eighth Amendment. Once again, the Supreme Court ruled against the position he advocated.

Mr. Pryor has sought to participate in various challenges to the constitutionality of Title II of the Americans with Disabilities Act (ADA), which proscribes discrimination on the basis of disability in state and local programs. He has filed *amicus curiae* briefs in two cases challenging the constitutionality of Title II, *Yeskey v. Pennsylvania*, 524 U.S. 206 (1998) (where the Court rejected his view), and *Medical Bd. of California Hason*, No. 02-479, *cert. dismissed*, 173 S. Ct. 1779 (2003). The issue of Title II's continuing validity remains very alive as the Supreme Court has granted *certiorari* in another Title II case to be heard next term, *Tennessee v. Lane*, No. 02-1667, *cert. granted*, 2003 U.S. Lexis 4818 (June 23, 2003).

In cases where the Court has adopted the result Attorney General Pryor's *amicus curiae* briefs have sought, his positions suggest his hostility to key pieces of federal legislation. For example, he filed the only *amicus curiae* brief on behalf of a state against the constitutionality of the Violence Against Women Act in *United States v. Morrison*, 529 U.S. 598 (2000). He also filed a brief in opposition to the constitutionality of the Age Discrimination in Employment Act, *Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000).

Attorney General Pryor has called *Roe v. Wade* the worst abomination of constitutional law in our history. He has supported the judicial display of the Ten Commandments in the courtroom and the invocation of Christian prayers before the impaneling of juries. He has defended Alabama's practice of tying inmates to hitching posts for long periods of time, a practice the Supreme Court called "degrading and dangerous" and "obvious[ly] cruel." *Hope v. Pelzer*, 122 S. Ct. 2508 (2002). He has praised the extremist decision of *Westside Mothers v. Haveman*, 133 F. Supp. 2d 549 (E.D. Mich. 2001), *rev'd in relevant part*, 289 F. 3d 852 (6th Cir.), *cert. denied*, 154 L. Ed. 2d 516 (2002), a case where the district court would have held that congressional legislation passed pursuant to the Spending Power is not the "supreme law of the land" for purposes of the Supremacy Clause. He argued unsuccessfully for vacating a consent decree (entered into by his predecessor) in a case concerning the care and custody of foster children in Alabama despite the fact that the state had not complied with the decree. *R.C. v. Nachman*, 969 F. Supp. 682 (M.D. Ala. 1997). Apparently unconcerned about whether his position would harm vulnerable children in the state's care, he noted, "My job is to make sure that the state of Alabama isn't run by federal courts. . . . My job isn't to come here and help children."

Attorney General Pryor's litigation positions have had consequences far beyond his desire to protect Alabama's interests as he sees them. In *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001), he successfully argued that Title I of the ADA was not a constitutional exercise of Congress's power under Section 5 of the Fourteenth Amendment, and thus could not override the state's Eleventh Amendment immunity from damage actions brought by individuals. This decision has significantly hamstrung the reach and effectiveness of the ADA. On remand for consideration of whether plaintiffs could pursue a claim under Section 504 of the Rehabilitation Act, the Attorney General argued that the state had not knowingly waived its Eleventh Amendment immunity in accepting federal funds, and hence could not be sued under this statute either, a position that the district court accepted. (The case is once again on appeal.) The inescapable conclusion is that Attorney General Pryor believes the federal government has virtually no role to play in enforcement of well-established principles of non-discrimination on the basis of disability.

The Attorney General's zealotry is not limited to trenching upon the rights of people with disabilities. He was responsible for litigating *Alexander v. Sandoval*, 532 U.S. 275 (2001), which limited the relief available to plaintiffs suing under Title VI of the Civil Rights Act of 1964. *Sandoval's* conclusion that the Title VI regulations cannot address disparate impact is a major blow to civil rights enforcement.

As law professors, we would be the last people to criticize lawyers for zealous advocacy of their clients' causes, even if we disagreed with those clients' positions. But Attorney General Pryor's views go well beyond those necessary to represent his client zealously. He has sought out, and staked out, a position as the prime defender of an extraordinarily limited view of federal power that would have the effect of undoing legal developments that date not only from the New Deal but from the time of Reconstruction. His views should be particularly troubling for members of Congress who have played key roles in sponsoring the various pieces of legislation he has opposed with such vehemence. Mr. Pryor is entitled to his views, and the people of Alabama, if they choose to do so, are entitled to re-elect him to public office. But the Senate Judiciary Committee should exercise its advise and consent power to keep those views from being foisted on litigants in the United States Court of Appeals for the Eleventh Circuit and on the broader body politic. We urge the Committee in the strongest possible terms to reject this nomination.

Sincerely,

Michael Rooke-Ley
Professor of Law Emeritus
University of Oregon School of Law

Paula C. Johnson
Professor of Law
Syracuse University School of Law

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Society of American Law Teachers