July 8, 2003

★ Justice
★ Independence
★ Dignity
★ Security

Honorable Orrin Hatch, Chair
Honorable Patrick Leahy, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senators Hatch and Leahy:

As organizations dedicated to promoting and protecting the interests of senior citizens, we are writing to express our opposition to the nomination of William Pryor to the United States Court of Appeals for the Eleventh Circuit. As Attorney General of Alabama and in public statements, publications, and professional activities, Mr. Pryor has vigorously championed a "federalism" ideology aimed at curtailing Congressional legislative authority and citizens' ability to enforce federal rights conferred by Congress and the Constitution. Especially if further implemented as Mr. Pryor has vowed to do, this ideology will result in the dismantling of major components of the network of protections that Congress carefully constructed over the last several decades, on which older Americans rely.

The contraction of Federal authority promoted by Mr. Pryor constitutes a substantial threat to the interests of older Americans. Because older people tend simultaneously to have both greater needs than the rest of the adult population and less income with which to meet those needs, they are disproportionately dependent on government programs and protections. Moreover, the effectiveness of laws and programs addressed to senior citizens – the extent to which legislated benefits and protections actually register in the everyday lives of the intended beneficiaries – particularly depends upon the threat and reality of court enforcement.

Conferring the vast powers of a federal appellate judge, secured by life tenure, on someone with Mr. Pryor's record, will present unacceptable risks and send a signal of Congressional indifference to preserving its own

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capacity to meet the needs of the aging community. This conclusion is compelled by a brief overview of that record:

- **Mr. Pryor invoked the doctrine of state sovereign immunity to enable his state of Alabama – and all states – to ignore their obligations under the 1967 Age Discrimination in Employment Act not to discriminate against their employees on the basis of age. Alabama's challenge was upheld by a 5-4 Supreme Court majority, in *Kimel v. Florida Board of Regents* (2000). The majority held that employees cannot challenge age-discriminatory legislation – even if it is based on patently inaccurate negative stereotypes about older citizens. But it was precisely to liberate the nation from the oppressive impact of such stereotypes that Congress passed the ADEA. Mr. Pryor's evident aim – which, regrettably, has already been significantly advanced by the current Supreme Court majority – is to frustrate that objective.**

- **Similarly, Mr. Pryor asserted the power of his state to ignore obligations to its employees under the 1989 Americans with Disabilities Act, in *Board of Trustees of the State of Alabama v. Garret* (2001). He strongly advocates extending that ruling to bar private enforcement of ADA requirements to ensure equal access for persons with disabilities to state services and facilities – an essential component of that important law. The protections afforded by the ADA have greatly enhanced the quality of life of many senior citizens. The ideology to which Mr. Pryor professes to be deeply committed would not only undermine the ADA and similar protections enacted by Congress over the past several decades, but eliminate the authority of future Congresses ever to re-enact these or similar safeguards.**

- **Also in 2001, in *Alexander v. Sandoval*, Mr. Pryor successfully urged the same 5-4 Supreme Court majority to contravene decades of precedent, and hold that private citizens can challenge discriminatory state practices and policies under the 1964 Civil Rights Act, only when discriminatory intent can be proven. This narrow concept of civil rights enforcement particularly weakens age discrimination safeguards, because it is often especially difficult to prove that many widespread and damaging age-discriminatory practices involve intentional or "invidious" discrimination.**

- **Mr. Pryor praised as "sublime" and "brilliant" a 2001 Federal District Court decision, *Westside Mothers v. Haveman*, subsequently reversed on appeal, that would have barred Medicaid recipients from enforcing Federal program requirements or their federal legal rights against state governments responsible for administering the Medicaid program. Mr. Pryor's position would terminate the status that Medicaid has held for four decades as an entitlement providing the equivalent of health insurance to its now nearly 50 million beneficiaries. Over 30% of Medicaid expenditures benefit senior citizens who cannot cover the costs of essential health services, such as prescription drugs, skilled nursing home facilities, and long-term care. Medicaid pays 46% of all payments to nursing homes and 38% of all home care payments, and Medicaid minimum standards constitute the sole guarantee of safety and quality of care for all nursing home patients, regardless of their income level or sources of**

support. Without the threat and reality of private enforcement, Medicaid beneficiaries and Congress itself will be left without effective means to ensure conscientious and effective state compliance with Congressional mandates. As his state's senior legal officer, Mr. Pryor has thus urged the federal courts to remove this foundation Congress has built to guarantee the health and financial security of older Americans. As a federal judge himself, there is every reason to expect Mr. Pryor to continue that campaign against court enforcement of Medicaid and similar programs.

Apart from his actions in specific cases, Mr. Pryor's general conception of his role as a public official, and the low priority he attaches to government's responsibility to vulnerable communities, require deep concerns on the part of representatives of senior citizens' interests. Indicative of this attitude is a statement Mr. Pryor made in 1997, when defending his effort to rescind a 1991 consent decree entered into by the state of Alabama to ensure that the state Department of Human Resources would meet federal legal obligations to foster children under its care. "My job," Mr. Pryor explained:

> "is to make sure the state of Alabama isn't run by [a] federal court. *My job isn't to come here and help children.*" (Emphasis added)

This is not a job description appropriate for any public official, let alone the chief legal officer of a state. In particular, Mr. Pryor's abdication of responsibility to citizens dependent on enforcement of federal law is unacceptable in a candidate for a life-tenured position as a federal judge. We urge the Senate to reject his nomination.

Sincerely,

Edward C. King,
Executive Director,
National Senior Citizens Law Center

For:
National Senior Citizens Law Center
AFCSME Retirees Program
Center for Medicare Advocacy
Families USA
Gray Panthers