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Physicians for Reproductive Choice and Health® Announces Opposition to Nomination of Samuel Alito to the Supreme Court

'We oppose Judge Alito's nomination because of his support for restrictions on abortion and access to contraception, as well as his support of government interference in the doctor-patient relationship,' say physicians

New York, NY—*Physicians for Reproductive Choice and Health*® (PRCH) today announced its opposition to the nomination of Judge Samuel A. Alito to the Supreme Court of the United States. In a letter to members of the Senate Judiciary Committee, PRCH board chair Dr. Wendy Chavkin said that the physician members of PRCH are "very troubled" by Alito's 1985 memo on *Thornburg v. ACOG*, which "reveals that Judge Alito does not understand medically-accepted definitions of the physician-patient relationship or informed consent." In addition, the letter expressed doctors' concerns that Judge Alito supports "restrictions on abortion and access to contraception." Following is the text of the letter issued today by PRCH.

"I write as chair of *Physicians for Reproductive Choice and Health*® (PRCH) to express the concerns of physicians committed to reproductive health about the nomination of Judge Samuel A. Alito to the Supreme Court of the United States. We are deeply concerned, as Judge Alito's record regarding the rights of women and minorities, constitutional safeguards on unreasonable search and seizure and presidential power, workers rights and environmental protections reflects the potential for serious and long-term destructive implications on constitutional rights generally. I will focus here on those issues that are central to the work and expertise of PRCH: scientific integrity, informed consent, physician safety, access to contraception and *Roe v. Wade*.

"*Physicians for Reproductive Choice and Health*® is the only national, physician-led, nonprofit organization dedicated to enabling concerned physicians to take a more active and visible role in support of universal reproductive healthcare, including contraception and abortion. We represent physicians of many specialties, including adolescent medicine, emergency medicine, family practice, internal medicine, obstetrics/gynecology, pediatrics and psychiatry. PRCH works to promote evidence-based science and medicine, and to clarify the distinction between the scientific and the political.

"Judge Alito's memo of May 30, 1985 regarding *Thornburg v. ACOG* was the deciding factor in our decision to oppose his nomination. This memo reveals that Judge Alito does not understand medically-accepted definitions of the physician-patient relationship or informed consent and, most importantly, he does not support a woman's right to make a choice regarding an unintended pregnancy.

"We are very troubled by Judge Alito's apparent misunderstanding of the concept of informed consent, as he seems to believe that legislators—the overwhelming majority of whom have no medical or scientific

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background—are better able to discern what patients need to know than do physicians. He appears to believe that providing misleading or scientifically inaccurate information is permissible when a physician is permitted to contradict or supplement it, as he explains in the *Thornburg* memo. This belief ignores the serious situations of individual patients and the confusion that ensues from receiving information from your doctor that is clearly conflicting.

"The American College of Physicians (ACP) says the doctrine of informed consent requires the physician to provide enough information to allow a patient to make an informed judgment about how to proceed. According to the ACP Ethics Manual, "The physician's presentation should be understandable to the patient, should be unbiased, and should include the physician's recommendation. The patient's (or surrogate's) concurrence must be free and uncoerced." The American Medical Association's Code of Ethics states, "The physician's obligation is to present the medical facts accurately to the patient or to the individual responsible for the patient's care and to make recommendations for management in accordance with good medical practice." *(emphasis added)*

"In the *Thornburg* memo, Judge Alito defines the list of items required to be discussed by the state law to be "relevant, accurate, factual, and non-inflammatory," but then goes on to contradict this by adding the requirement that physicians provide information that is medically inaccurate, specifically that "certain birth control methods are 'abortifacients,' i.e., that they . . . terminate the development of a fetus after conception." The medical definition of a pregnancy specifies that pregnancy begins when the fertilized egg has implanted on the uterine wall, not when sperm and egg meet in the fallopian tube. The failure of a fertilized egg to implant on the uterine wall is not the same thing as an abortion. This failure occurs frequently, without the awareness of most women to whom it occurs.

"We are also gravely concerned about Judge Alito's apparent misunderstanding of significant personal safety issues with which abortion providers must deal on a daily basis. The *Thornburg* Court stated that laws requiring physicians to report their names and those of the facilities where they worked to the government would have "a profound chilling effect on the willingness of physicians to perform abortions." Judge Alito's insensitive response was that "(t)he invalidity of this reasoning hardly needs demonstration," and later stated that, "In truth, what probably chills them . . . is the thought of a visit from an IRS agent investigating tax shelters." This flippant attitude denies the reality that physicians are harassed and threatened every day for providing abortions and even for supporting access to comprehensive reproductive healthcare. According to statistics compiled by the National Abortion Federation, there have been almost 105,000 incidences of violence and disruption against abortion providers and abortion clinics since 1977, including almost 4,500 incidences of burglary, assault, vandalism, arson and the murder of seven healthcare providers.

"In the *Thornburg* memo, Judge Alito clearly states that he saw the case as an "opportunity to advance the goals of bringing about the eventual overruling of *Roe v. Wade* and, in the meantime . . . mitigating its effects." There is ample evidence from the United States, as well as from around the world, that banning abortion will not eliminate the need for this procedure; rather, it will cause women to have unsafe procedures instead. As an organization dedicated to ensuring that people have access to quality services, we work vigorously to ensure that abortions remain legal so they can remain safe.

"Finally, we oppose Judge Alito's nomination because of his support for restrictions on abortion and access to contraception, as well as his support of government interference in the doctor-patient relationship, most clearly seen in his support of spousal notification in *Planned Parenthood v. Casey*, where his dissent would have upheld a state law that would have required a woman to notify her husband prior

to obtaining an abortion. Because bodily integrity and autonomy are at the core of a woman's right to reproductive healthcare, and because a confirmation of Judge Alito bodes irreparable damage to access to such care, *Physicians for Reproductive Choice and Health®* is forced to oppose his nomination."

Wendy Chavkin, MD, MPH
Board Chair, *Physicians for Reproductive Choice and Health®*

PHYSICIANS AVAILABLE FOR COMMENT

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Physicians for Reproductive Choice and Health® *(PRCH) is a national, physician-led, nonprofit organization founded in 1992 to enable concerned physicians to take a more active and visible role in support of universal reproductive health care. PRCH is committed to ensuring that all people have the knowledge, equal access to quality services and freedom of choice to make their own reproductive health care decisions.*