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Unitarian Universalist Association of Congregations Urges Opposition to the Confirmation of Judge Samuel Alito Jr. to the United State Supreme Court

Dear Senator,

On behalf of the over 1,000 congregations that make up the Unitarian Universalist Association, I urge you to oppose the confirmation of Judge Samuel Alito Jr., to the United States Supreme Court. After a careful review of his decisions, and in particular dissents, we have concluded that Judge Alito does not show sufficient respect for civil liberties. His deciding vote on the court could undermine fundamental rights for decades.

The decision to take a position on a judicial nominee is not one the UUA takes up lightly—or frequently. Indeed, it was only in 2004 that our highest policy-making body approved language explicitly stating that the Association would oppose nominees whose records demonstrated insensitivity to civil liberties. We did not take a position on the confirmation of either Judge John Roberts or Harriet Myers.

The nomination of Judge Samuel Alito Jr. is significantly different, in that he has an extensive judicial record—more than 15 years on the 3rd Circuit Court of Appeals—that clearly reveals his judicial philosophy on a wide range of issues. After extensive research, Unitarian Universalist Association staff agreed that Judge Alito's rulings demonstrate a pattern of views that were outside the mainstream and hostile to established precedent favoring civil liberties. In case after case, Judge Alito found against the rights of individuals in relation to government or corporations. In at least six cases, the Supreme Court voted to overturn decisions of the Third Circuit or Alito's dissent in Third Circuit cases. Several notable cases and patterns are mentioned below.

Police Power

In the case of *Doe v. Groody*,[1] Judge Alito dissented from a Third Circuit ruling that police officers had violated clearly established constitutional rights. Police had strip-searched a mother and her ten-year-old daughter while executing a search warrant authorizing only the search of her husband and their home. Then-Third Circuit Judge Michael Chertoff, now Secretary of Homeland Security, held that the unauthorized search violated "clearly established" rights. Alito disagreed, arguing that even if the warrant did not authorize the search, an officer still could have read the warrant as allowing it.

[1] 361 F.3d 232 (3rd Circ. 2004).

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Religious Liberty

In the case of *ACLU-NJ v. Schundler*, Judge Alito held that religious symbols displayed on government property during the holiday season (in this case a crèche and menorah) were not unconstitutional when "secular" decorations such as Frosty the Snowman and Santa Claus were subsequently added to the display. While Justice O'Connor has voted to allow secular holiday displays, she has rejected efforts for religious symbols, including the Ten Commandments, to stand alone in public display.

In *ACLU of New Jersey v. Black Horse Pike Regional Board of Education*, Judge Alito joined a dissent from the Third Circuit's ruling which struck down a public school board policy allowing high school seniors to vote on whether to include student-led prayer at their school-sponsored graduation ceremonies. In a subsequent case (*Santa Fe Independent School District v. Doe*), the Supreme Court, with Justice O'Connor in the majority, struck down a public school board policy allowing students to vote on whether to include student-led prayer at high school football games.

Limiting Access to the Courts:

Among the most troubling pattern is Judge Alito's consistent finding that plaintiffs in discrimination cases did not have enough evidence to bring their cases to trial. By denying even the opportunity for judicial remedies, Judge Alito's philosophy undermines one of the most fundamental checks and balances in our system of government. For example:

- Judge Alito has strongly disagreed with Third Circuit rulings protecting the civil rights of African Americans. In *Bray v. Marriot Hotels*,[2] Alito disputed a ruling by Theodore McKee – the Circuit's only African American judge – allowing a race discrimination case to go to trial. McKee said that Alito's position would "immunize an employer from the reach of Title VII if the employer's belief that it had selected the 'best' candidate, was the result of conscious racial bias."
- Judge Alito has narrowly construed statutes in gender discrimination cases. In *Sheridan v,. E.I. DuPont de Nemours and Co.*,[3] Alito was the only judge to dissent from a ruling clarifying the nature of evidence permitting a jury to find an employer engaged in discrimination. Alito's position would have denied the plaintiff the opportunity to go to trial despite significant evidence of discrimination.
- Judge Alito's dissents would have made it harder for victims of discrimination based on disability to prove their cases. In *Nathanson v. Medical College of Pennsylvania*, the majority lamented that under Alito's restrictive standard for proving discrimination based on disability under the Rehabilitation Act of 1973, "few if any Rehabilitation Act cases would survive summary judgment."

Reproductive Freedom

Dissenting in *Planned Parenthood v. Casey*, Judge Alito wrote that the right to reproductive freedom does not prevent states from requiring women to notify their spouses, except in limited circumstances, before getting an abortion.[4] Justice O'Connor cast the deciding vote rejecting Judge Alito's position. Joined by Justices Kennedy and Souter, O'Connor held that the provision Alito supported harkened back to the days when "a woman had no legal existence separate from her husband" and created an undue burden on a woman's ability to obtain an abortion.[5]

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[2] 110 F.3d 986 (3rd Cir. 1997).
[3] 100 F.3d 1061 (3d Cir. 1996), *cert. denied*, 521 U.S. 1129 (1997).
[4] *Planned Parenthood v. Casey*, 947 F.2d 682 (3d Cir. 1991)
[5] *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

We Are Not Alone

When the Unitarian Universalist Association makes a decision to adopt a particular stance, we generally find ourselves in the company of other religious organizations with similar views. This holds true for our opposition to the confirmation of Judge Alito.

In late November, the biennial convention of the Union for Reform Judaism—the largest branch of Judaism in North America—voted overwhelmingly to oppose Judge Alito's confirmation, saying that it "would threaten protection of the most fundamental rights" that the Reform Movement supports. "On choice, women's rights, civil rights and the scope of federal power," Alito would "shift the ideological balance of the Supreme Court on matters of core concern to the Reform Movement," according to the resolution adopted by the more than 2,000 voting delegates from more than 500 congregations in all 50 states.

Both our denominations reviewed Judge Alito's rulings and found that his record did not support our stated values. The Unitarian Universalist Association of Congregations criteria and supporting materials are available at http://www.uua.org/. Materials from the Union for Reform Judaism can be found at at http://urj.org.

Liberty is at the core of our Unitarian Universalist faith. Civil liberties are at the heart of our American experiment in democracy. Those civil liberties guaranteed by the Bill of Rights are as fundamental to our practice of democracy as freedom of conscience is to our religion. We believe that Judge Alito's philosophy does not sufficiently respect these fundamental rights, and we urge you to oppose his confirmation.

In Faith,

Robert C. Keithan, Director