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January 10, 2006

The Honorable Arlen Specter, Chairman
The Honorable Patrick J. Leahy, Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Specter and Ranking Member Leahy:

On behalf of the YWCA USA, representing over 2 million women and girls with 300 associations nationwide, I am writing to write to express our opposition to the confirmation of Judge Samuel A. Alito, Jr. to the Supreme Court of the United States. His views are not consistent with the value of equality that our country holds dear, nor are they consistent with the YWCA USA mission of eliminating racism and empowering women. Over the past 50 years the Supreme Court's jurisprudence has often served to protect the fundamental constitutional rights of all Americans. After closely examining his record, the YWCA USA has concluded that if Judge Alito were to replace Justice O'Connor on the Court, this protection would likely halt and in fact reverse with regard to individual rights. Judge Alito's record reveals a history of troubling decisions in the areas of civil rights, civil liberties, and fundamental freedoms. The YWCA USA is extremely concerned that the confirmation of Judge Alito to the Supreme Court would be harmful for women and people of color.

If Judge Alito were confirmed, he has the potential to change the direction of the court and devastate the rights of women. For example, in the landmark case *Planned Parenthood of Southeastern Pennsylvania v. Casey*, Judge Alito concluded that is was not an "undue burden" for a married woman seeking an abortion to have to notify her husband, a position that the Supreme Court later struck down. This case raises key questions about whether, if confirmed to a seat on the Supreme Court, Alito would vote to overturn *Roe v. Wade*. Furthering the YWCA USA's concerns, about whether Judge Alito would seek to strip away women's reproductive freedoms, are his own words. As a lawyer in the Reagan administration, Samuel Alito wrote, that he "personally believed" that "the Constitution does not protect a right to an abortion." In addition, during his tenure with the Solicitor General's Office he was one of the chief engineers of a multi-tiered strategy to reverse *Roe v. Wade*. Alito wrote that an amicus brief in *Thornburgh v. American College of Obstetricians and Gynecologists* was an "opportunity to advance the goals of bringing about the eventual overruling of *Roe v. Wade* and, in the meantime of mitigating its effects." While it is impossible to know for certain how Alito would rule in a particular case before the Supreme Court, these statements along with Judge Alito's past opinions make it difficult to believe that he would effectively uphold the fundamental freedoms of women. The rights, health, and safety of women are too important to the YWCA USA to justify this risk

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The YWCA USA is also concerned with Judge Alito's record on civil rights and affirmative action. It is quite troubling that Samuel Alito touts his work as a lawyer in the Reagan administration opposing certain affirmative action programs as something he was "particularly proud" of. One example of Alito's work against affirmative action during the Reagan administration is the case of *Local 28 of the Sheet Metal Workers' International Association v. EEOC*. Alito and the Solicitor General's office argued that it was illegal for courts to order remedies including affirmative action even in cases of intentional, on-going and "egregious racial discrimination." Alito signed a brief arguing the extraordinary theory that relief in Title VII cases could be granted only to "identifiable victims of discrimination," contradicting an earlier view of the Equal Employment Opportunity Council (EEOC) itself. The Supreme Court rejected Alito's argument, stating that affirmative action relief "may be ordered by a court as a remedy for past discrimination even though the beneficiaries may be non-victims." Furthermore, in the 1970s and 1980s Alito was a member of Concerned Alumni of Princeton (CAP), an organization that actively sought to limit the number of women and minorities accepted to the university. In contrast, Justice O'Connor cast the decisive vote in *Grutter v. Bollinger,* upholding affirmative action in higher education. If Judge Alito's views on affirmative action were to replace Justice O'Connor's on the Supreme Court, institutes throughout the country would be harmed. Eliminating this important tool for promoting diversity would deny universities, workplaces and other organizations the enlightenment provided by a greater variety of backgrounds.

In addition to a restrictive approach towards affirmative action, Judge Alito's record strongly questions the legitimacy of employment discrimination claims, and in a number of instances, Judge Alito issued opinions that made it far more difficult for victims of discrimination to get to court and prove their cases. Again, this is an area where Justice O'Connor has often been the swing vote in protecting and advancing civil rights. In contrast, Alito has ruled against three of every four people who claimed to have been victims of discrimination.

In one such gender discrimination case, *Sheridan v. E.I. Dupont de* Nemours, Alito was the sole dissenter in a 10-1 decision; arguing that he would, require victims of discrimination to present much more evidence before they would be entitled to take their case to trial. Were this position adopted more broadly, it would make it much more difficult for victims of discrimination to have their day in court and remedy these actions of prejudice. In another employment discrimination case, this one dealing with race, Alito went even further than upping the level of evidence needed for a trial stating that even if discrimination occurred it may not be against the law. In *Bray v. Marriott Hotels*, Ms. Bray, an African-American woman, applied for a promotion but a white woman was hired for the job instead. Her employer, Marriott, did not follow its own guidelines for hiring and several of the key employees involved in the process gave conflicting statements about how the decision to hire the white woman was ultimately made. Judge Alito argued in his dissent that it might not be illegal for an employer to overlook a qualified person of color even if the employer's belief that it had selected the 'best' candidate was the result of conscious racial bias." The majority opinion responds to this analysis by noting that Title VII would be eviscerated if the analysis were to halt where the dissent suggests. In addition to the troubling interpretation of Title VII, Alito's dissent demonstrates skepticism about the legitimacy of discrimination claims. He closed his dissent with the disturbing pronouncement that a percentage of discrimination cases are manufactured by disgruntled employees, rather than victims of discrimination. This shows a lack of sensitivity about the on-going national problem of discrimination in the workplace. In contrast to Judge Alito, 70% of Americans believe racism is a problem in the workplace today. This again illustrates that Samuel Alito is out of step with mainstream America in the area of discrimination.

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Finally, it is important to look at the make-up of the court. Given the role that Justice O'Connor plays on the court, it is necessary to review Judge Alito not only on his merits but also in the context of whom he will be replacing on the bench. Justice O'Connor has added an important, independent and unique voice to the Supreme Court. As the first women to sit on the nation's highest court, she has broken barriers for women not only by blazing a trail but also by providing a voice and a vote on the Court for all women. Indeed, time and again on those issues that affect civil rights, and women's rights, including reproductive freedoms, Justice O'Connor is the deciding fifth vote. Numerous laws have been shaped and upheld by this 5 to 4 margin. Thus it is important to evaluate not only if Judge Alito is qualified to sit on the Supreme Court, but also if he will protect and honor the legal and social legacy of the woman he would be replacing.

The concern that Alito would overturn well-established legal principles and social achievement in the areas of women's rights and civil rights, that the YWCA has worked to protect for almost 150 years, is too great to ignore. That is what his record indicates and furthermore, during his confirmation hearing he stated, "If I'm confirmed...I'll be the same person I was on the Court of Appeals." For these reasons, the YWCA USA feels that Judge Alito's confirmation to the Supreme Court would negatively impact the lives of women and people of color and therefore is urging you to **reject the nomination of Judge Samuel Alito to the United States Supreme Court.** Senators must standup and protect the rights of the people they represent by voting against Alito's lifetime appointment to the Supreme Court. The nation has come too far in the fight for equality and worked too hard to protect the rights of all individuals

Sincerely,

Peggy Sanchez Mills
YWCA USA CEO

cc: Members of the Judiciary Committee