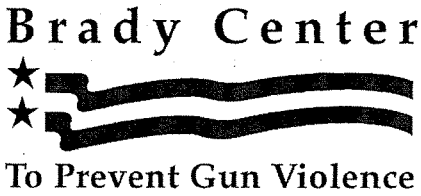

January 11, 2006

Honorable Arlen Specter
Chairman
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

Re: Nomination of Samuel A. Alito, Jr. to the United States Supreme Court

Dear Chairman Specter and Senator Leahy:

The Brady Center to Prevent Gun Violence writes to express its strong opposition to the nomination of Samuel A. Alito, Jr. to the U.S. Supreme Court. The Center does not take this position lightly. This is the first time the Brady Center has ever opposed a Supreme Court nomination.

Judge Alito's nomination poses serious dangers to the safety of our communities, our families, and our children, as evidenced by his troubling dissent in *U.S. v. Rybar*, 103 F.3d 273 (3rd Cir. 1996), *cert. denied*, 522 U.S. 807 (1997). In that case, Judge Alito argued that the federal machine gun ban amounted to an unconstitutional exercise of Congressional power under the Commerce Clause. He attempted to erect arbitrary hurdles to Congressional efforts to reduce the availability of machine guns to criminals. In unusually harsh language, the *Rybar* majority criticized Judge Alito's dissent as having "no authority" in the law and "run[ning] counter to the deference that the judiciary owes to its two coordinate branches of government...." *Rybar* at 281.

If Judge Alito's dissent were to be adopted by the Supreme Court, it would place in jeopardy the ability of Congress to protect the public from gun violence. In a tellingly ominous note of the future impact of Judge Alito's limited view of Congressional power, he argued in his *Rybar* dissent that his view could mean that Congress may have no

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and possession of machine guns not lawfully possessed before May 19, 1986. These "grandfathered" machine guns remain subject to strict registration, possession, transfer, and taxation requirements.

Criminals have used machine guns in deadly crimes around the country, and many of these machine guns have been converted from legal semiautomatic guns to illegal fully automatic guns by their owners. A key element of the federal machine gun ban is its prohibition on the possession of machine guns even if they have been converted to machine guns by their owners and the machine guns have not crossed state lines. If Judge Alito had prevailed in *Rybar*, the federal government would have been prevented from prosecuting criminals who possess machine guns. Such a restriction on federal law enforcement would have posed a grave danger to the public and officers who face criminals possessing these dangerous weapons.

For these reasons, the Brady Center to Prevent Gun Violence opposes the nomination of Samuel A. Alito, Jr. to the United States Supreme Court.

Sincerely,

Mike Barnes
President

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