Congress of the United States
House of Representatives
Washington, DC 20515
January 20, 2005

The Honorable Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
711 Hart Senate Building
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
433 Russell Senate Building
Washington, DC 20510

Dear Sens. Specter and Leahy:

We write to inform you that the Congressional Hispanic Caucus has formally voted to oppose the nomination of Judge Samuel A. Alito, Jr. to the United States Supreme Court.

After five days of hearings and testimony from Judge Alito and his supporters, we have learned nothing more about his judicial philosophy that would serve to allay our concerns with respect to his record on minority and/or women's rights. In examining his background, writings and opinions he does not embody the principles we, the CHC, have articulated we support and would like to see reflected in a Supreme Court Justice. It is our opinion that Judge Alito failed to take the opportunity presented by the Senate confirmation hearings to give us, the American people, insight into the kind of Associate Justice he would be.

We were deeply disappointed that Judge Alito did not expound upon the legal opinions he rendered or joined with on cases of significance to the Latino community. The public had the right to know why he ruled in *Pemberthy v. Beyer* to allow that language be used to discriminate against Spanish-speaking individuals and prevent them from serving on juries. They also had the right to an explanation of how he did not see a violation of the Voting Rights Act in *Jenkins v. Manning*, where the minority's voting rights were diluted by the use of an "at-large" school district voting system. In a case much discussed during the hearings, Bray v. Marriott Hotels, the public deserved to know why Judge Alito believed a higher standard was required to bring an employment discrimination case to court. Similarly, with the matter of his 1986 memo to then FBI Director William Webster, the Caucus would have welcomed an explanation of his reasoning in recommending the denial of constitutional protections to immigrants when prior cases had already settled that question.

Though he provided few responses to the questions posed to him, we were most troubled with the one he gave in response to the question on birthright citizenship. The Constitution's 14th amendment clearly spells out the right to citizenship by virtue of birth in the United States and in 1898, in *United States v. Wong Kim Ark*, the Supreme Court settled the question and subsequent court rulings have upheld this standard. Judge Alito's response to Senator Schumer on whether the Congress can pass a statute denying citizenship was alarming. He

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responded, *"I don't want to say anything that anybody will characterize as an argument that I am making on one side of this question or on the other side of the question."* That he could not - or would not - give an answer to a matter of settled law makes us wonder what other interpretations of the Constitution Judge Alito will call into question.

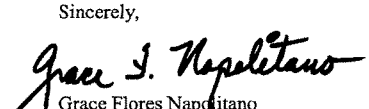
An additional concern of the Caucus with respect to Judge Alito is his support for expanded presidential powers. For us that calls into question whether he will employ the necessary objectivity to curb abuses that may arise on the part of the executive branch. At a minimum, it was imperative for Judge Alito to demonstrate a commitment to uphold not only the independence of the courts but to safeguard and exercise the judiciary's powers as an equal branch of government and an essential element of our system of checks and balances. Our opinion is that he will allow for the excesses such as we are witnessing under this Administration with respect to the illegal surveillance of American citizens.

Judge Alito's ascension to the nation's highest court should be of concern to all Americans. At stake is whether he will vigorously defend the rights of all Americans as enshrined in the Constitution. Minorities have historically relied more heavily on the judicial branch to protect and promote the constitutional guarantees of equal rights and justice to all Americans. We believe that should Judge Alito be elevated to the Supreme Court, we may no longer be able to rely upon an independent judiciary that decides cases on the merits and interprets the Constitution to the benefit of all.

Because fundamental questions remain unanswered as to Judge Alito's views on these and other issues, the CHC cannot embrace his nomination to the U.S. Supreme Court. This is not a time to approve a nominee based solely on academic credentials and his ability to deftly answer questions in a hearing. Too much is at stake for Latinos and all Americans to step back and simply hope for the best. We urge you to consider our position as you move forward to vote in full committee on this nomination.

Thank you.

Sincerely,



Grace Flores Napolitano
Chair
Congressional Hispanic Caucus

Charles A. Gonzalez
Chair
CHC Hispanic Judiciary Initiative

cc: Members of the U.S. Senate Committee on the Judiciary
The Honorable Harry Reid