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Working for Women's Equality

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Senator Arlen Specter
Chair, Committee on the Judiciary
United States Senate

Senator Patrick Leahy
Ranking Member, Committee on the Judiciary
United States Senate

Chair Specter and Senator Leahy:

The Feminist Majority strenuously opposes the nomination of Samuel Alito to the United States Supreme Court. We have carefully reviewed Alito's extensive public record, and have concluded that Samuel Alito should not be confirmed to the Supreme Court.

The hearings thus far have only amplified our concerns. Perhaps most shocking, Judge Alito has repeatedly refused to distance himself from his 1985 statement that the Constitution does not protect the right to an abortion, even though he did distance himself from other earlier positions. Based on his record we can only conclude that Judge Alito would be a vote on the Supreme Court against the Family and Medical Leave Act, affirmative action, women's rights, and enforcement of anti-discrimination laws, and he would be a vote on the Supreme Court to overturn *Roe v. Wade*.

Judge Alito's record on a wide range of issues important to the American people has led major women's rights, civil rights, environmental, and labor organizations to oppose his confirmation. This is the largest group of organizations committed to protecting the rights of individuals to come out against a Supreme Court nominee since the failed nomination of Robert Bork.

To our great disappointment, 86 years after women finally won the fight for the right to vote, women are still not fairly represented on the nation's highest court. Justice O'Connor's seat on the Supreme Court is especially critical because she was not only the first woman to sit on the Court, but she also has been the key vote to preserve a range of legal protections essential to women, including anti-discrimination laws, the Family and Medical Leave Act, a woman's right to choose abortion, and affirmative action. Judge Alito's writings and records indicate he is no Sandra Day O'Connor and will move the Court rightward away from women's rights.

Alito's record makes clear that if confirmed he will vote to erode important federal laws that protect women at work and women and girls at school, and that he would make it nearly impossible to obtain jury trials in sex discrimination cases under Title VII. His approach to discrimination cases is so extreme that the other judges on his own circuit noted in one case, that under Alito's approach, "Title VII [of the Civil Rights Act of 1964] would be eviscerated." His record is especially troubling in the area of sexual harassment, where his decisions in several cases strongly suggest that he is insensitive to the pervasive problem of sexual harassment and the way in which it is used as a weapon to deny women access to education and equal opportunity at work.

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Women across the country worked for years to enact a Family and Medical Leave law. Alito wrote the Third Circuit decision arguing that Congress did not have the power to require state and local governments to comply with the Family and Medical Leave Act. Three years later, the Supreme Court, with Justice O'Connor in the majority, took the opposite position, upholding the power of Congress to require state and local governments to follow FMLA, referring specifically to the importance of the law for women.

Alito is on the record stating that the Constitution does not protect the right to abortion, and he helped craft the legal strategy designed to first chip away and then overturn *Roe v. Wade*. In a 1985 Justice Department job application, Alito state, "It has been an honor and source of personal satisfaction to me... to serve in the Office of the Solicitor General during President Reagan's administration and to help advance legal positions in which I personally believe very strongly." He stated that he was "particularly proud" of "contributions in recent cases in which the government has argued...that the Constitution does not protect a right to an abortion." He was the only judge on the Third Circuit who would have permitted a law that required women to notify their husbands before obtaining an abortion, and he minimized the potential impact this requirement would have on victims of domestic violence. Alito's opposition to women's reproductive freedom may not be limited to the right to choose abortion. Shockingly, in a 1985 memo, Alito equated some forms of birth control with "abortifacients."

Affirmative action outreach programs have been essential to the progress of women and people of color in the workplace and in higher education. If he is confirmed to replace Justice O'Connor, Alito will also shift the current 5-4 balance on the court regarding affirmative action. In his 1985 application for a Justice Department job, Alito said he was "particularly proud of [his] contributions as a government lawyer to cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed." In the Solicitor General's office, he co-authored three briefs attacking affirmative action programs, sometimes in sweeping terms. As a Judge on the Third Circuit he joined a ruling striking down a school district's affirmative action plan.

These are just a few of the major areas in which Judge Alito's confirmation threatens to turn back the clock on women. This nomination is a critical juncture in our nation's history. Too much is at stake for women's rights for the Senate to confirm Samuel Alito. We respectfully implore members of the Senate Judiciary Committee to remember women when you cast your vote. We urge you to vote no on the confirmation of Samuel Alito to the U.S. Supreme Court.

For Equality,

Ellie Smeal

Eleanor Smeal
President