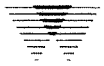

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

January 9, 2006

The Honorable Arlen Specter, Chair
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick Leahy, Ranking Member
Senate Judiciary Committee
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

On behalf of the more than 100,000 bipartisan members of the American Association of University Women (AAUW), we write to express our opposition to the confirmation of Third Circuit Court of Appeals Judge Samuel A. Alito, Jr. to be associate justice of the United States Supreme Court. As the Senate Judiciary Committee opens its confirmation hearings today, you will be faced with critical questions and, ultimately, a critical decision that will affect the balance of the nation's highest court – which will in turn impact the everyday lives of generations to come.

After a careful review of Judge Alito's record, including 15 years of appellate opinions, AAUW finds him to be a troubling choice with red flags in areas critical to our mission and membership, including workplace discrimination, reproductive choice, and affirmative action. Judge Alito's appellate judgments provide little reassurance that he would apply the law in ways that would uphold fundamental civil and women's rights precedents should he ascend to the highest court in the land. Indeed, taken as a whole, his publicly available record – both from his government service and his tenure on the Third Circuit – illustrate a judicial philosophy at odds with AAUW's Public Policy Program.[i] For all these reasons, AAUW has opposed the confirmation of Judge Alito to the U.S. Supreme Court.[ii]

AAUW believes it is more important than ever to ensure the moderate balance of the U.S. Supreme Court by confirming a justice who reflects mainstream America. Decades of progress for women and girls hang in the balance. Further, given that Judge Alito has been nominated to replace the often-deciding vote of Justice Sandra Day O'Connor, this nomination has much at stake. AAUW is concerned that the confirmation of a potentially extremist justice would turn back the clock on decades of progress for women and girls. Two key areas in particular have led to AAUW's opposition to Judge Alito's confirmation:

Equal opportunity and legal protections against discrimination: Judge Alito has a troubling record on a range of civil rights issues, revealing a philosophy that would weaken workplace protections that are central to addressing discrimination against women. A number of Judge Alito's opinions would make it harder for employees to win their suits or even get their case to trial. Judge Alito has also demonstrated opposition towards affirmative action, dismissed constitutional protections against sexual harassment in schools, and aggressively sought to curb congressional authority to legislate on issues such as family and

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medical leave. In several of these cases, U.S. Supreme Court decisions have later espoused views opposite to those put forward by Judge Alito, showing him to be far outside the mainstream.

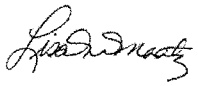
Reproductive rights and approach to precedent: Judge Alito has actively rejected a woman's constitutional right to choose, supported limits on abortion, and consistently upheld limits to this fundamental right. While Judge Alito has been careful to stress the importance of *stare decisis*, his recognition of the importance of precedent is not a predictor that he would follow the principle if confirmed. As a member of the nation's highest court, the obligation to follow settled law is different. Since Judge Alito helped develop the strategy for undermining women's reproductive rights,[iii] it stands to reason that *Roe v. Wade* and related cases maintaining the right to privacy could fall within the exceptions Judge Alito has set for himself regarding adherence to *stare decisis*.

As you know, the Senate has few constitutional duties more significant than that of advising on and consenting to U.S. Supreme Court nominations. AAUW believes you should confirm only a nominee that exhibits the impartiality and independence that are so critical to this third, co-equal branch of our government.

No nominee is presumptively entitled to confirmation. After a thoughtful review of his well-established judicial philosophy, AAUW cannot conclude that Judge Samuel A. Alito, Jr. is the appropriate choice for a lifetime position on the U.S. Supreme Court. AAUW urges senators to reject Alito's nomination and let their votes be a true measure of their commitment to equity for women and girls

If you have any questions, please do not hesitate to contact me at 202/785-7720, or Meghan Kissell, Field Director at 202/785-7704.

Sincerely,



Lisa M. Maatz
Director, Public Policy and Government Relations

CC: Senate Judiciary Committee

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[i] AAUW's Public Policy Program establishes the federal action priorities on which AAUW members across the country will focus their advocacy efforts and guides the work of the national staff. The strength of the two-year AAUW Public Policy Program is that it originates and ends with the membership. The adoption of the Association's two-year Public Policy Program at each national convention is the culmination of a process involving AAUW members nationwide. The 2005-2007 Public Policy Program was adopted in June 2005 at AAUW's National Convention in Washington, DC; a complete copy is available at http://www.aauw.org/issue_advocacy/principles_priorities.cfm.

[ii] AAUW's full position paper on the Alito nomination can be found at http://www.aauw.org/issue_advocacy/actionpages/judicialnoms_alito.cfm.

[iii] Memorandum from Samuel A. Alito, Assistant to the Solicitor General, to Charles Fried, Acting Solicitor General, re *Thornburgh v. American College of Obstetricians & Gynecologists* (June 3, 1985).