Statement of Fred D. Gray
Senate Judiciary Committee Hearing on the
Nomination of Samuel Alito to be Associate Justice
Of the United States Supreme Court
January ___, 2006

Chairman Specter; Senator Leahy; my Senator, Jeff Sessions; Senator Kennedy, and other members of the Committee:

My name is Fred Gray. I reside in Tuskegee, Alabama. I practice law in the State of Alabama, with offices in Tuskegee and Montgomery. I appreciate Senator Leahy's invitation to testify before this Committee.

I am delighted to see Senator Kennedy on this Committee. In 1973, he invited me to appear before a Senate Committee, with several of the participants in the infamous Tuskegee Syphilis Study. With the help of Senator Kennedy, Congress passed laws that strengthened health care for persons involved in health research and clinical trials in this nation.

I appreciate that my Senator, the Honorable Jeff Sessions, also serves on this Committee. He represents us well in the Senate.

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I am honored to appear before this Committee. For 50 years, I have filed lawsuits that resulted in the Supreme Court's declaring segregation and discrimination in many areas of the law to be unconstitutional, including voter registration and reapportionment.

As one who has been in the trenches, I appear today to attest to the tremendous importance of the reapportionment cases decided by the Warren Court, one of which I actually litigated, *Gomillion v. Lightfoot*[1]. In a job application to the Reagan Justice Department, Samuel Alito wrote that his "deep interest in constitutional law" was motivated in large part by disagreement with Warren Court decisions," including those involving "reapportionment."[2] I consider Judge Alito's comments to be extremely troubling. The reapportionment cases decided by the Warren Court made certain that that federal courts had the power to ensure that voting rights were meaningfully protected. These rights had been violated by many states since reconstruction. The

[1] 364 U.S. 339 (1960).

[2] Job Application of Samuel Alito, Nov. 15, 1985.

cases eliminated the inequities of mal-apportionment which deprived African Americans of voting strength all across the South. In my view, there is no more important body of law.

Senator Sessions is familiar with my legal career, which began with my representing Mrs. Rosa Parks and Dr. Martin Luther King, Jr. in the Montgomery Bus Boycott. The Bus Boycott gave rise to the case of *Browder v. Gayle*,[3] in which the Supreme Court declared that ordinances and statutes requiring racial segregation on Montgomery city buses were unconstitutional. This was a unanimous decision by the Warren Court.

Prior to *Browder v. Gayle*, African Americans in Alabama and other southern states were actively working toward obtaining the right to vote. In Tuskegee, Alabama – the home of Tuskegee University where Dr. Booker T. Washington was its first president and where Dr. George Washington Carver made many of his scientific discoveries – African Americans filed lawsuits as far

[3] 142 F. Supp. 707 (M.D. Ala. 1956), *aff'd* 353 U.S. 903 (1956).

back as 1945 in order to obtain the right to vote. While the population of Macon County was about 75% African-American, only a handful of African Americans were registered to vote.

After years of litigation, we were able to get approximately 400 African Americans registered in the City of Tuskegee. In 1957, however, the Alabama Legislature passed a law which changed the city limits of Tuskegee from a square to 28 sides, excluding all but three or four African Americans who were registered to vote, but leaving all the white citizens. That law gave rise to the case of *Gomillion v. Lightfoot.* This was my brainchild, and substantially changed the law in securing the right to vote for African Americans.

Gomillion was the first significant reapportionment case decided during the tenure of Chief Justice Earl Warren. In a unanimous decision, the Court held that the boundary change violated the Fifteenth Amendment. Just as importantly, the Court rejected the argument that impairment of voting rights could not be challenged in the face of a state's unrestricted power to realign its

political subdivisions. The Court stated: "When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment. . . . Apart from all else, these considerations lift this controversy out of the so-called 'political arena' and into the conventional sphere of constitutional litigation."[4]

There is no question in my mind that *Gomillion v. Lightfoot* laid the foundation for the concept of 'one man, one vote.' Fifth Circuit Judge John Brown, whose dissenting opinion provided the foundation for the Supreme Court's ruling, considered his dissent to be his most important opinion.[5] Judge John Minor Wisdom would later write that "*Gomillion* had a prompt and decisive effect on reapportionment and the right to vote generally."[6]

Only two years later, the Supreme Court cited *Gomillion* in its seminal ruling in *Baker v. Carr*.[7] There, the Supreme Court

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[4] 364 U.S. at 346-47

[5] Wisdom, *In Memoriam: One of a Kind*, 71 TEX. L. REV. 913, 916 (1993).

[6] *Id.* at 918.

[7] 369 U.S. 186 (1962).

held that federal courts could review a challenge under the Equal Protection Clause to the apportionment of seats in state legislatures. The Court relied on its holding in *Gomillion* that the power of a state lies within the scope of limitations imposed by the Constitution.[8]

Shortly thereafter, in *Gray v. Sanders*,[9] the Court invalidated a Georgia system that provided more voting power to rural voters than urban voters. Again, the Court quoted from *Gomillion*: "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."[10] Immediately after the *Gomillion* quote, Justice William O. Douglas set forth the famous principle: "The conception of political equality from the Declaration of Independence, to the Gettysburg

[8] *Id.* at 230.

[9] 372 U.S. 368 (1963).

[10] *Id.* at 381 (citation omitted).

Address, to the Fifteenth, Seventeenth and Nineteenth Amendments can mean only one thing – one person, one vote."[11]

Finally, in *Reynolds v. Sims*,[12] the Court held that the Equal Protection Clause required Alabama's legislative districts to be apportioned on the basis of population, so that the weight of a citizen's vote would not depend on where he or she lived. Chief Justice Warren held that "[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."[13] Once more, the Court relied on *Gomillion* in holding that "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us."[14]

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[11] *Id.*

[12] 377 U.S. 533 (1964).

[13] *Id.* at 555.

[14] *Id.* at 566 (citation omitted).

I cannot overstate the importance of these cases for they are the foundation of our modern democracy. In recognizing the concept of "one person, one vote," the reapportionment cases enshrined the principle that every citizen has the right to an equally effective vote, rather than the right to simply cast a ballot. State legislatures could not dilute the votes of racial minorities by perpetuating unequal voting districts. Importantly, the reapportionment cases also established principles for challenging "at-large" and "multi-member" electoral systems enacted by many southern jurisdictions after passage of the Voting Rights Act in order to dilute the African-American vote. The concept that no group of voters should wield more power in the election of candidates than another was an essential component.

When I filed the *Gomillion* case, we had very few African Americans registered to vote in Alabama. We had no elected African Americans on city councils, school boards, county commissions, in the legislatures or in Congress. As a result of the Warren Court's decisions in *Gomillion*, *Baker*, *Gray*, *Reynolds* and

other cases, and the enactment of legislation, we now have thousands of African Americans and other minorities serving in elected and appointed positions, from city council persons to members of Congress.

I respectfully suggest that this Committee carefully scrutinize Judge Alito's disagreement with these cases. A nominee to the Supreme Court who has a judicial philosophy set against the Warren Court and against the reapportionment cases is, in effect, saying that he would turn the clock back. If this occurred, not only would African Americans lose, the entire nation would lose the great richness of their contributions as currently enjoyed. In my opinion, a Supreme Court Justice with these views would impede the effective protection of the right to vote.

In conclusion, I submit that the next appointee to the Supreme Court should favor the protection of voting rights and should strengthen, not weaken, the voting rights case law developed by the Warren Court.

Thank you very much. I will be happy to answer questions.