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Dear Senator:

On behalf of the 1.7 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing to announce our opposition to the nomination of Judge Samuel Alito to be an Associate Justice on the U.S. Supreme Court. We have reviewed his record and determined that his views are far too extreme and out of the mainstream of judicial philosophy. His presence on the Supreme Court therefore would further divide the country and disenfranchise even more average citizens and working Americans.

We believe that working people who are already seeing their rights and protections under attack would not fare well if Judge Alito was elevated to the Supreme Court. Judge Alito has authored a number of decisions and dissenting opinions contrary to the rights of employees and individuals. Of particular concern to our members is Judge Alito's established practice of "closing the court-room door" to victims of civil rights violations by substantially increasing the burden of proof placed on plaintiffs prior to their cases ever getting to a jury of his or her peers. In evaluating plaintiffs' discrimination claims, he has also repeatedly taken a high-handed approach in dismissing the merit and weight of their evidence and has been chastised by his colleagues on the Third Circuit for doing so.

As a judge on the 3rd Circuit Court of Appeals in Philadelphia, Alito's extreme views can be seen in his rulings where he consistently limits Congress' authority to enact laws that protect the rights of workers and individuals, including the Americans with Disabilities Act (ADA) and the National Labor Relations Act. And, although the majority of his fellow judges disagreed with him, Alito set a standard so high that victims of sex discrimination would find it virtually impossible to prove their case. In one such case, Alito denied a female police officer's sexual harassment claims despite overwhelming evidence that she had indeed been victimized.

Public employees also have not been spared under Judge Alito. He wrote an opinion in a Pennsylvania case where he stated that the Family and Medical Leave Act (FMLA) did not apply to state employees. Rightfully so, the Supreme Court ruled in disagreement with Alito, upholding the family care provision of the FMLA. Several courts since then, including the very conservative Fourth Circuit Court of Appeals, have concluded that state employees should have access to the entire range or protections under the FMLA, thus rejecting Alito's earlier ruling.

Perhaps most disturbing about Judge Alito's judicial philosophy is his narrow reading of our civil rights laws, notably Title VII of the Civil Right Act of 1964, which bars various forms of discrimination in employment. Even when plaintiffs in these cases come forward with substantial evidence of Title VII violation, Judge Alito voted—often in dissent—to deny relief without even letting juries decide whether discrimination occurred. In addition, in

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reviewing a plaintiff's evidence, he has on several occasions improperly assumed the role of jury or trial judge by casting judgment on the weight and merits of the evidence and the credibility of a witness' testimony.

As U.S. citizens, we are concerned on several other fronts as well. Alito consistently ruled against victims of discrimination based on a disability. His philosophy would restrict Congress' power to enact disability rights laws and few if any such cases would survive under Judge Alito. Also, he ruled to significantly reduce the ability of citizens to bring suit against polluters under the Clean Air Act.

While Alito's 15 years as a Judge raises major concerns, the time he spent as a Presidential appointee in the Reagan White House is equally disturbing. When Alito was a Justice Department lawyer in the 1980s he urged President Reagan to veto legislation that would have protected consumers from crooked car dealers by making odometer fraud more difficult. Alito wrote that protecting Americans is not the federal government's job. He said in his memo, "After all, it is the states, and not the federal government, that are charged with protecting the health, safety, and welfare of their citizens." This philosophy is extremely harmful to state employees who deserve to have federal worker protections apply to them as well.

Judge Alito clearly is a staunch advocate of the federalism movement which poses a tremendous threat to employees of state governments. State and local governments, like private sector companies and non-profit organizations, are also employers. And, as employers they should be required to adhere to the same laws and regulations that all other employers are subject to. Unfortunately, Judge Alito and the federalism movement seek to limit the power of the federal government to protect individuals who happen to be employees of state governments, in effect, making state employees second class citizens.

We strongly urge the Senate to insist that all of the relevant information about Judge Alito be released, particularly the Solicitor General and the Office of Legal Counsel memoranda. We believe that there are underlying reasons why the Administration continues to resist releasing this vital information.

Judge Alito's record is extremely troubling to AFSCME and the workers we represent. He is one of the most extreme federal judges in the whole country. If confirmed, Alito would tilt the court further to the right and place in jeopardy decades of progress protecting individual rights and freedoms.

For the forgoing reasons, AFSCME strongly urges the Senate to reject Judge Alito's nomination. President Bush should nominate an individual that does not pose such an enormous threat to the rights and freedoms of working men and women.

Sincerely,

GERALD W. McENTEE
International President