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Testimony of Phyllis Snyder,

President of the National Council Jewish Women,

on the Nomination of Judge Samuel A. Alito, Jr. to be

Associate Justice of the US Supreme Court

January 11, 2006

On behalf of 90,000 members and supporters of the National Council of Jewish Women (NCJW), I am submitting testimony in opposition to the nomination of Judge Samuel A. Alito, Jr., to become an Associate Justice of the US Supreme Court. NCJW is deeply concerned that our courts have become a battleground where those who seek to roll back the progress of the last half-century are attempting to do by judicial edict what they cannot do by legislative action. Our courts exist to protect our individual constitutional rights and to provide a buffer for religious, racial, ethnic, and political minorities against an arbitrary majority. Judge Alito's lifelong view of our constitutional rights is sharply at odds with the values we espouse and with the progress we believe has been made as a result, among other things, of the civil rights and women's movements and the Supreme Court's continuing efforts to maintain separation of religion and state.

Rather than address details of Judge Alito's legal career that are already known to the Judiciary Committee, I would like to convey our conclusions regarding what kind of justice Judge Alito would be based on the totality of his record to date.

As a young man, Judge Alito joined a conservative alumni organization formed to oppose coeducation and affirmative action at his alma mater, Princeton University. Several years later, when he applied for a promotion in the Reagan Justice Department, he noted his membership in that group and his active participation in the Federalist Society, a group devoted to a far right wing legal agenda. He described himself as motivated to enter law school by his opposition to decisions of the Supreme Court led by Chief Justice Earl Warren on criminal procedure, separation of religion and state, and legislative reapportionment (the

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one-man, one-vote decision). He also expressed pride in his work on briefs opposing the right to choose an abortion – a right affirmed by the Supreme Court 12 years earlier.

Judge Alito's subsequent career in the Department of Justice reveals a consistent dedication to efforts to apply a cramped view of the Constitution to questions of individual liberty and federal power. In a May 1985 memo he outlined a legal strategy to undermine *Roe* that coincides with the strategy used by *Roe's* opponents in the years since – a strategy that has since been embodied in his judicial decisions on abortion cases.

Independent assessments of Judge Alito's 15-year record as a judge on the 3rd Circuit Court of Appeals have concluded that his decisions are driven by an ultraconservative compass. An analysis of his career by the Knight Ridder newspaper chain concluded that, "During his 15 years on the federal bench, Supreme Court nominee Samuel Alito has worked quietly but resolutely to weave a conservative legal agenda into the fabric of the nation's laws." In three areas that most concern NCJW – the right to privacy, antidiscrimination law, and separation of religion and state – Judge Alito has blazed a path far from the consensus that has governed these issues for the last 30-50 years.

Judge Alito strongly opposes *Roe v. Wade* on constitutional grounds. He not only believes that abortion is wrong, which is his right, but that it is unconstitutional, and there is every reason to believe, based on his long record, that he will support every restriction imposed upon it. In *Planned Parenthood of Southeastern Pennsylvania v. Casey,* the only case to reach the 3rd Circuit regarding *Roe v. Wade* where Judge Alito was not constricted by precedent, he voted to uphold a state law that would have required a woman to inform her husband if she sought an abortion. His ruling disregarded evidence of the hardship this provision would impose on women estranged or separated from their husbands; women whose husbands had abandoned them; women who were the victims of spousal abuse; or women who feared the consequences should their husbands discover they were pregnant. Moreover, it disregarded the fundamental principle that women have an independent right to control their own bodies. A majority of the court agreed that, "A State may not give to a man the kind of dominion over his wife that parents exercise over their children."

Judge Alito's extensive list of rulings regarding claims of employment discrimination also reveal a cramped view of civil rights laws and the ills they are designed to correct. He has ruled consistently to make it harder for victims of discrimination to prove their case and easier for employers to avoid responsibility for discriminatory actions. In one such race discrimination case, Judge Alito's dissent was dismissed by the majority of judges on the case, who said that his approach would usurp the jury's role such that "Title VII [of the Civil Rights Act of 1964] would be eviscerated."

Finally, although Judge Alito has an admirable view of the right to free expression of religious views, his record on the bench demonstrates that he also would permit the government to sponsor religious displays, looks favorably on school prayer, and generally displays a lack of sensitivity regarding the rights of religious minorities forced to support majority religious expression through their tax dollars.

Judge Alito has been nominated to fill the seat now held by Justice Sandra Day O'Connor, the swing vote on the court for more than 20 years. He is not the man for this job. His ideological approach to the law, no matter how carefully couched in the language of judicial neutrality, is the opposite of the approach taken by Justice O'Connor. She has sought to balance competing interests and has adopted a pragmatic approach to the law. He would pull the court far to the right and would surely provide a vote for the side that seeks to make a hollow shell of *Roe v. Wade*, if not overturn it altogether.

With the demise of the nomination of Harriet Miers to the Supreme Court, it became clear that the far right was determined to see a justice appointed who would implement an extreme right wing agenda from the bench. In Judge Alito, this wish appears to have been granted. We are extremely disappointed that the President chose this path and gave in to those forces demanding a nominee dedicated to rolling back fundamental constitutional rights, rather than protecting them. We urge the Senate to reject his nomination.

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November 29, 2005

The Honorable Arlen Specter
Chairman, Senate Judiciary Committee
711 Hart Senate Office Building
Washington, DC 20510

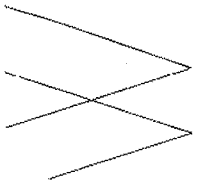
Dear Chairman Specter:

I am writing to you on behalf of 90,000 members and supporters of the National Council of Jewish Women (NCJW) to express our strong opposition to the nomination of Judge Samuel A. Alito, Jr. to fill the seat of Justice Sandra Day O'Connor on the US Supreme Court. We have decided to oppose Judge Alito for many reasons, most notably because of his record concerning the right to privacy, his views on civil rights and women's equality, and his support for weakening the wall of separation between religion and state. In light of this record, NCJW believes that Judge Alito should not be confirmed for a lifetime position on the Supreme Court.

When Justice Sandra Day O'Connor announced her intention to retire from the Supreme Court, NCJW called upon President Bush to seek a mainstream consensus nominee that would unite and not divide the nation. Instead, he has selected a nominee who is deeply ideological with a demonstrated commitment to pulling the court to the far right.

Judge Alito is clearly not a nominee in the tradition of Justice O'Connor, who sought to balance competing interests and adopted a pragmatic approach to the law. Rather, over the course of his career, Judge Alito has ruled to severely restrict a woman's constitutional right to abortion and against civil rights protections for both women and minorities. He has shown a cramped view of the power of Congress to legislate, ruling, for example, that Congress lacked authority to ban fully automatic machine guns and that Congress overstepped its bounds in passing the Family and Medical Leave Act.

With the withdrawal of the nomination of Harriet Miers to the Supreme Court, it became clear that the extreme right wing was determined to see a justice confirmed who would implement their agenda from the bench. Judging from his record, Samuel Alito appears to be just such a nominee. We are extremely disappointed that the President chose this path and gave in to those forces demanding a nominee dedicated to rolling back fundamental constitutional rights, rather than protecting them. We urge the Senate to reject Judge Alito's nomination.



We applaud your intention to hold hearings that will thoroughly explore Judge Alito's views and judicial philosophy. While we hope that he will be candid in his answers, the hearing is only part of the record that senators must take into consideration as they determine whether or not a nominee is fit to be confirmed to be an Associate Justice of the Supreme Court. With the stakes so high, it is all the more critical that the Senate take into account Alito's entire record -- not just his brief appearance before the Judiciary Committee. President Bush must immediately turn over all of the records requested by the senators. And Judge Alito must now be forthcoming regarding his judicial philosophy and views on settled legal questions.

NCJW believes that the most basic qualification for a lifetime seat on the federal bench is a commitment to fundamental rights and freedoms. What we know of Judge Alito's record raises sufficient doubt that he meets that essential qualification and therefore we urge the Committee to reject his confirmation.

Sincerely,

Phyllis Snyder

Phyllis Snyder
NCJW President

Cc: Members of the Senate Judiciary Committee