ADAWatch

National Coalition for Disability Rights

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The Honorable Arlen Specter
Chairman, Senate Judiciary Committee
224 Dirksen Building
Washington, DC 20510

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

Via Facsimile

Dear Senators Specter and Leahy:

On behalf of the ADA Watch/NCDR Board of Directors, I write to inform you of our coalition's opposition to the nomination of Judge Samuel Alito to a lifetime seat on the U.S. Supreme Court.

Following extensive research, we have concluded that Judge Alito's confirmation would put at risk the Americans with Disabilities Act (ADA), *Olmstead*, Section 504 of the Rehabilitation Act, the Fair Housing Amendments Act, the Family and Medical Leave Act (FMLA), and other laws and precedents of great importance to people with disabilities.

ADA Watch/NCDR is a nonpartisan alliance of hundreds of national, state and local disability, civil rights and social justice organizations united to protect and promote the human rights of children and adults with physical, mental, cognitive and developmental disabilities.

While not all of our members take positions on judicial nominees, dozens of our coalition partners opposed to the confirmation of Judge Alito include ADAPT, Association of Programs for Rural Independent Living, Disability Rights Education and Defense Fund, Judge David Bazelon Center for Mental Health Law, Disabled Action Committee, National Association of People with AIDS, National Association of Rights Protection and Advocacy, National Council on Independent Living, The Polio Society, World Association of Persons with Disabilities and many more.

The fact that the next Supreme Court Justice will be filling the seat of Justice Sandra Day O'Connor is of particular concern to the disability community. While Justice O'Connor did not take the side of persons with disabilities in all cases, she was the swing vote in a number of important 5-4 disability rights decisions.

With the selection of Judge Samuel Alito, President Bush is making good on his stated intention to fill a Supreme Court vacancy with a nominee in the mold of Justices Scalia or Thomas – Justices who consistently ruled against people with disabilities in these narrowly decided landmark cases. If Judge Alito is confirmed, such 5-4 decisions would certainly go in the other direction and reverse the historic gains of people with disabilities.

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Our opinion is not just that of staunch disability rights advocates. In *Nathanson v. Medical College of Pennsylvania*, for instance, Alito's *fellow judges* said that the standard for proving disability-based discrimination articulated in Alito's dissent was so restrictive that "few if any cases would survive summary judgment."

Judge Alito's record is filled with cases relying on a cramped interpretation of the authority of Congress to pass legislation protecting the rights of everyday American citizens. As such, he has been an active participant in the wave of judicial activism that, from the lower courts on up to the Supreme Court, has ignored the intent of Congress and weakened protections for people with disabilities among others.

Referring to the landmark *Garrett* case which significantly weakened the ADA, Senator DeWine stated, "When the court considered the ADA in the *Garrett* case, however, it ignored the act's broad support, cast aside the legislative record and struck down a portion of the law. In such a difficult case, where the Constitution does not clearly support the majority's decision, the proper response is not to strike down the law. In such a case, the court should defer to the will of the people."

Judge Alito's record is replete with an adherence to an ideological outcome that ignores both the intent of Congress and the extensive factual record of discrimination and abuse experienced by people with disabilities in the United States. It is our conclusion that Judge Alito will not "defer to the will off the people;" will ignore the substantial legislative record underpinning the ADA; and will not provide equal justice for people with disabilities.

Judge Alito's indifference to injustices suffered by people with disabilities is graphically illustrated his 1999 dissent from an opinion reinstating the claims of an employee with developmental disabilities who was subjected to repeated cruel assaults. The man's coworkers forcibly sodomized him with a broom, stuffed him into a garbage can, beat him, and made humiliating comments about his mental disability. Shockingly, Judge Alito would have dismissed the man's claims simply because he did not use the right language in his brief. (1999 WL 1065214 [E.D. Pa. Nov. 23, 1999]).

We call your attention to numerous cases where Judge Alito has disregarded the claims of Americans with disabilities in favor of ideology and powerful special interests including: *Chittister v. Department of Community & Economic Development, Nevada Department of Human Resources v. Hibbs, Helen L. v. DiDario, Sabree v. Houstoun, ADAPT v. United States Dep't of Housing & Urban Development, Doe v. National Board of Medical Examiners, Three Rivers Center for Independent Living v. Housing Authority of Pittsburgh, Katekovich v. Team Rent A Car of Pittsburgh, Inc.* and more.

The Americans with Disabilities Act (ADA) was passed with broad bipartisan support and signed into law by Republican President George H.W. Bush in 1990. Fifteen years after this historic event, people with disabilities find little to celebrate as this landmark civil rights legislation is being decimated in the courts. On behalf of the many millions of Americans citizens with disabilities, we ask that you vote against confirmation of Judge Alito to a lifetime seat on the Supreme Court and call for a nominee who will uphold our civil rights – and those of all Americans.

Respectfully,

Jim Ward
President, ADA Watch/NCDR