Representative Debbie Wasserman Schultz
20th District of Florida

Statement to the Senate Judiciary Committee Hearing for Judge Samuel Alito's Nomination to the United States Supreme Court
January 12, 2006

I am honored to speak to you as you consider the nomination of an individual to a lifetime position on the Supreme Court. Someone who, if confirmed, would serve well into this century.

I come before you today in several capacities.

First, I am here as a Member of Congress, proudly serving the people of South Florida.

Second, I am here to underscore my concerns with Judge Alito's record on gender discrimination.

Third, I am here in one of my most rewarding roles: **as the mother of three young children** who will come of age in an

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America guided by many of the decisions this Court will make.

My generation benefited from long, fought Supreme Court battles--resulting in the rights that we enjoy today.

I cannot imagine my children's future in an America without these same hard-won freedoms.

It is for these reasons-- that I am here today to urge you to **reject Judge Samuel Alito's nomination to the United States Supreme Court.**

There is no question that Judge Alito has impressive academic credentials and has led a distinguished career, but academic credentials alone do not qualify an individual for elevation to the highest court in the land.

I realize you are quite familiar with the well-publicized Thornburgh case brief that Judge Alito helped develop as a deputy U.S. Solicitor General.[1]

As Judge Alito's own memorandum on this case demonstrates, he urged the courts to sustain a series of burdens on a woman's right to make her own reproductive health care decisions. He then went further and expanded this notion to include even certain forms of birth control.

This strategy set forth in his 1985 memo is remarkably similar to the strategy adopted by the current pro-life movement to eviscerate the foundations of *Roe vs. Wade*.

Judge Alito also dissented in a key case on women's liberty and personal responsibility.

[1] (Memorandum from Samuel A. Alito, Assistant to the Solicitor General, to Charles Fried, Acting Solicitor General, re "Thornburgh v. American College of Obstetricians & Gynecologists No. 84-495; Diamond v. Charles, No. 84-1379," at 8 (June 3, 1985)

His written opinion on a law requiring spousal notification by a woman seeking to terminate a pregnancy is as troubling as the analysis that he used to arrive at the decision.[2]

In assenting to spousal notification, Judge Alito clearly ignored a woman's right to autonomy.

This blatant disregard for individual right is what our Founding Fathers designed a system of meaningful checks and balances to guard against.

Once any branch of government surrenders itself to the others, that authority is difficult to regain.

I come from a state where executive power and government intrusion on privacy rights has been world news.

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[2] (Memorandum from Samuel A. Alito, Assistant to the Solicitor General, re: "Mitchell v. Forsyth 472 U.S. 511 (1985)

Florida's Governor pushed the State Legislature to grant him authority to overturn a judicial decision in the Terri Schiavo case, and Congress inserted itself into that family's private tragedy.

Ultimately, the case could have reached the Supreme Court. Judge Alito's work on privacy and Executive expansion cases suggest that if he were confirmed, he might not stand in the way of a similar intrusion.

If confirmed, Judge Alito will be in a position to influence final rulings on executive branch boundaries.

Judge Alito's dissention in another privacy case is particularly disturbing.

In this case, a police officer strip searched a 10-year-old girl and her mother. [3] They were not named in the search warrant; they were simply on the premises.

[3] (Doe v. Groody, 361 F.3d 232 (3d Cir. 2004)

According to the Boston Globe, the 10-year-old girl's lawyer, Andrew Solomon, later reported Judge Alito as saying: ***"Why do you keep bringing up the fact that this case involves the strip search of a 10-year-old child?"***

Yes. Why do we keep bringing up the fact that this case involved the strip search of a 10-year-old child? Because this was not a simple case of whether or not the officers exceeded their investigative authority—it escalated to an unconscionable level.

Judge Alito was the **only** member of a three-judge panel who found the strip search of the 10-year-old acceptable under his interpretation of the law.

I am horrified to think that someone could strip search my children based on selective interpretation of a warrant.

The standard must be higher when cases involve the most vulnerable members of our society: our children. When enforcement authorities lapse in their judgment, our courts MUST not!

As you consider this nomination, I ask you to reflect: Would you be comfortable if your own child was the subject of a strip search? Would you be comfortable if your little girl was the plaintiff with Justice Alito as the deciding vote that sanctioned this authority?

This case was about a child, but it was also about the protections of the Constitution that apply to each of us.

Judge Alito's record also indicates an indifference to civil rights.

One of the most telling indicators of Judge Alito's stance on discrimination is his membership in the Concerned Alumni of Princeton (CAP.)

Let's be clear. The organization was hostile to Princeton's efforts to increase admission of women and minorities.

To put this in perspective, Judge Alito was highlighting his CAP membership in a 1985 job application for the Reagan Justice Department four years after Sandra Day O'Connor broke the glass ceiling to become the first woman to serve on the Supreme Court.

Senators, in closing, I suggest to you, that while highly regarded for his intellect, integrity, and legal experience. Judge Alito is a nominee who will replace one of only two women justices. This **reflects a missed opportunity to retain, or expand, the existing diversity of the Court**.

While I have not always agreed with her decisions, Justice O'Connor has cast the deciding vote to protect fundamental freedoms time and again.

I distinctly remember the feeling I had in 1981, when I was 14-years old and heard that a woman was going to serve on the Supreme Court. It proved what my parents told me my whole life: that in America, little girls really can grow up to be anything they want to be.

Replacing Justice O'Connor with Judge Alito risks turning back the clock, both literally and figuratively. It would mock President Reagan's legacy.

Long after we have completed our public service, the decisions made by the Supreme Court will continue to impact all Americans.

While it is not my place or role to cast judgment on your ultimate decision, **we can be certain that history will!**

Again, thank you for the opportunity to speak with you this afternoon.