Congress of the United States
House of Representatives
Washington, DC 20515

January 6, 2006

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

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Specter and Ranking Member Leahy:

As you examine the nomination of Judge Samuel Alito to the United States Supreme Court, we ask that you consider the particular implications that Judge Alito's confirmation would have on the Latino community.

We are deeply disappointed that President Bush did not take this third opportunity to nominate a qualified Latino to the Supreme Court. Given the size of the Hispanic community in the United States, the under-representation of Hispanics in the judiciary and the abundance of Hispanics qualified for appointment, it is difficult to comprehend the President's decision other than in the harsh light of political factors trumping all other considerations.

We do not need to stress to you the importance of this nomination and the impact that the Court has on the lives of our citizens. We are equally confident that you understand the critical role that the Supreme Court has played in safeguarding the rights of minorities. Oftentimes it is the Court to which minorities must turn for protection from discriminatory laws and practices. It is therefore important that nominees are sensitive to the experiences and struggles that minorities have faced in securing their constitutional rights.

While Judge Alito's background and record on the bench have been largely discussed in the public forum, his opportunity to explain his opinions and philosophy will come during the confirmation hearings. Like all Americans, we deserve and expect clear

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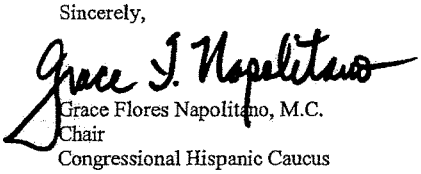
answers on his record both on and off the bench, as many of his opinions and writings give us reason to be concerned. In order to better gauge his current attitudes, we respectfully request that you consider asking Judge Alito the attached questions or questions similar to these during the confirmation hearings in the Senate Judiciary Committee.

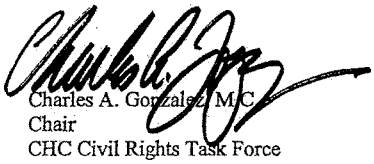
While we should not expect any Supreme Court justice to consistently rule in a manner that we agree with, we hope that the successor to Justice Sandra Day O'Connor will share her tradition of being fair, open-minded and unbiased towards any specific group.

Thank you for taking these views into consideration as you proceed with fulfilling your constitutional duty to provide advice and consent on Judge Alito's nomination.

Sincerely,



Grace Flores Napolitano, M.C.
Chair
Congressional Hispanic Caucus



Charles A. Gonzalez, M.C.
Chair
CHC Civil Rights Task Force

Congressional Hispanic Caucus Questions to Supreme Court Justice Nominee Judge Samuel A. Alito, Jr.

A. Racial (Ethnic) Discrimination:
Pemberthy v. Beyer, 19 F.3d 857 (3d Cir. 1994)

Facts: Alito wrote majority opinion allowing "peremptory challenges" by the prosecution of bilingual prospective jurors because of concerns that ability to understand Spanish would jeopardize jurors' acceptance of official translations of tape recorded conversations.

Question: This holding would provide a vehicle for striking jurors based on ethnicity (i.e., Latinos more likely to speak Spanish) under the guise of "language concerns". Why isn't this unconstitutional as it relates to the prospective juror being struck (deprivation of right to serve on jury, participate in government)? Why isn't this unconstitutional as to the defendant per Batson precedent?

B. Voting Rights Act:
Jenkins v. Manning, 116 F.3d 685 (3d Cir. 1997)

Facts: The issue was the "at-large" election of school board members. After reversing and remanding the District Court's ruling that no violation of the VRA took place, the District Court considered additional evidence and again found no violation. Judge Alito appears to have joined the majority in affirming the District Court's ruling. Judge Rosen's dissent is insightful and a good example of a judge's exercise of discretion in viewing the same evidence and reaching a decision that gives meaning to the VRA.

Question: The "Senate Factors" (after finding Gingles factors present) were additional and necessary considerations and consisted of (1) the extent to which minority group members had been elected to public office in the jurisdiction and (2) the extent to which voting in the elections of the political subdivision is racially polarized. Judge Alito found the that Senate Factors were met when historically only 3 of 10 black candidates over a 10 year period were successful (one in a never-repeated plurality win and one by a black candidate defeating another black candidate). Would Judge Alito please elaborate on his "judicial philosophy" when it comes to VRA and "at-large" voting districts?

C. Immigrant Rights:
1986 Deputy Attorney General Alito Memo to FBI Director William Webster

Facts: The memo reflects Judge Alito's legal analysis that "...illegal aliens have no claim to nondiscrimination with respect to non-fundamental rights."

Question: In light of Plyler v. Doe, 457 U.S. 67 (1982), how does he reconcile his conclusions that appear to be based on the 1976 case of Matthews v. Diaz, 426 U.S. 67 (1976), obviously a case decided PRIOR to Plyler? Does he follow precedent only when convenient? If he is not willing to follow existing precedent (is there any other kind?), then it would appear that if he is able to establish "precedent" (that's what the Supreme Court does), he will do it readily and easily.