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JUDGE ALITO IS AN ACTIVIST JUDGE WHO LEGISLATES FROM THE BENCH, OFTEN LIMITING LEGISLATIVE EFFORTS TO END DISCRIMINATION AND PROTECT INDIVIDUALS.

We, the undersigned American Jewish organizations, devoted to civil rights and social justice, impelled by the core teachings of our ancient tradition, call upon the Senate to carry out its constitutional responsibility and reject the nomination of Samuel Alito as an Associate Justice of the Supreme Court of the United States.

With the selection of Judge Samuel Alito as his nominee for the Supreme Court seat resigned by Sandra Day O'Connor, President Bush has put the rights, opportunities, and security of all Americans in jeopardy. Justice O'Connor has been a pragmatic conservative and has been often a pivotal vote to preserve basic rights and landmark laws relied upon by generations of Americans. Judge Alito, by contrast, has a long activist record of hostility to established guarantees of equal opportunity for women, older Americans, racial, religious, and ethnic minorities, security for families, protection of the environment, and privacy and reproductive rights, and religious freedom for all.

Judge Alito's fifteen years service on the Court of Appeals for the Third Circuit provides ample data from which to gain the measure of his constitutional philosophy. Unfortunately, many of Judge Alito's opinions show that he does not share the values of the American mainstream. He has voted consistently to shrink protections against discrimination, to limit women's right of choice, and to erode the wall of separation between church and state, and he has been chastised on several occasions by his colleagues for his refusal to follow established precedent. He would have made it harder for victims of discrimination in the workplace and victims of discrimination based on disability to prove their case by making it much harder for cases to ever make it to trial. He sided with corporate polluters in a ruling that made it much harder for victims of pollution to sue, even when the polluters were guilty of breaking the law. The Supreme Court eventually rejected Alito's position. Alito's questioning of the right of the Congress to give citizens the authority to sue polluters could be a serious limitation in federal environmental legislation. Most troubling is his willingness to overturn legislation passed by the U.S. Congress by a very narrow and archaic reading of the interstate commerce clause, a reading that harks back to the pre-New Deal decisions of the Court. If its logic were followed, it could invalidate such New Deal laws as Social Security." Despite his repeated lip service to "strict construction" and "original intent," in Judge Alito the President has indeed chosen a radical judicial activist.

As Jews, we are members of a community whose laws command us to take care of the disadvantaged among us. Everything in Judge Alito's record suggests that he lacks

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a commitment to preserving civil rights and civil liberties, to maintaining the rights of the less powerful, and to rectifying the historical racial inequities of this country. His past decisions do not encourage the belief that he will either diligently protect the free exercise of religion, or ensure that government respects citizens of every religion, and of none, by endorsing no particular creed. His opinions suggest that he cannot be counted on to honor the Court's precedents on the rights of privacy, gender equality, and individual self-determination, whether in medical treatment and research or elsewhere.

It is clear that Alito's confirmation would put Americans' rights at risk. Our Jewish tradition recognizes that the well-being of a society depends largely on the strength of its legal system. Among the first commands that God gives the Jewish people when they prepare to establish a new society in the land of Israel is "Appoint judges and chiefs in all of your dwellings. . . and they shall govern the people with due justice." (Deuteronomy 16:18) The rabbinic tradition understands the term "due justice" as a requirement to appoint fair judges (Sifrei Devarim Shofetim) and even goes so far as to compare appointing an inappropriate judge to spreading idol worship, considered the root of all evil behavior, among the people. (Talmud Sanhedrin 7b) In contrast, according to the rabbis "all who judge faithfully are considered as partners with God in creation." (Talmud Shabbat 10a) These traditions, combined with our knowledge of the significance and history of the U.S. Supreme Court, make us aware of the potential power of Alito to move the Court in a direction that may determine U.S. policy for years to come.

We ask that our Senators take seriously their right and duty of advice and consent; that they reject his nomination as one out of consonance with the mainstream traditions of American jurisprudence. We encourage our Senators to employ every means at their disposal to block his confirmation.

Sincerely,

Vic Rosenthal, Executive Director
Jewish Community Action