

National Organization for Women

Kim Gandy
President
Olga Vives
Executive Vice President
President



Melody Drnach
Action Vice President
Latifa Lyles
Membership Vice

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Dear Senator:

NOW is strongly opposed to the elevation of Judge Samuel Alito to the Supreme Court of the United States. We urge you to review his record, writings and judicial philosophy and join us in opposing his nomination. If Samuel Alito is confirmed by the U.S. Senate, many of our fundamental rights and principles of equality will be at great risk.

Twenty years ago, Judge Alito applied for a political appointment in the Reagan Administration's Department of Justice. He not only outlined his personal and political beliefs but he touted putting those conservative beliefs into action: *"I am particularly proud of my contributions in recent cases in which the government has argued in the Supreme Court that racial and ethnic quotas should not be allowed and that the Constitution does not protect a right to an abortion."* Washington Times, 11-14-05

Two decades later, Judge Alito is applying for the highest legal job in the nation and has been making Senate visits as part of his final interviews. We must not be lulled by his vague promises to respect legal precedent. In fact, Judge Alito recently made it clear that he is open to reconsidering Supreme Court precedents, saying to Senator Brownback that he is *"open to a review of cases."* NYTimes, 11-9-05

NOW believes that these endangered precedents are those which involve not only abortion rights and privacy, but civil rights and affirmative action as well as education and employment discrimination. In a case vital to working families, Justices O'Connor and Rehnquist were the swing votes *affirming* Congress' right to extend the Family and Medical Leave Act protections to state employees. Samuel Alito has taken the opposite position and adding his vote to the Court could undo this important precedent.

A bedrock principle for NOW is full Constitutional equality for women, and the heart of that equality is self determination for women in dealing with their reproductive health care and child bearing decisions. But there are many other equality issues that come before the Court that affect the lives, safety and economic security of girls and women. How will Judge Alito deal with educational opportunity and Title IX? How will Judge Alito deal with pay equity and workplace policies as well as affirmative action and job benefit issues that disproportionately affect women? How will Judge Alito deal with challenges to federal legislation guaranteeing disability rights, lesbian and gay rights, and freedom from domestic and sexual violence?

Please consider all of these questions as you review Samuel Alito's fitness to serve on our highest court in the land. Based on his record, he will not come down on the side of fairness and equality for all. We ask that you vote against his nomination.

Sincerely,

Kim Gandy, President

Appendix:

REPRODUCTIVE RIGHTS: Judge Alito has argued in support of many restrictions to a woman's right to abortion. Going farther than any other judge on his circuit, Judge Alito argued in 1991 that, under his interpretation of the Constitution, a state can require women to notify their husbands before they are allowed to have an abortion. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, Alito dissent.

SEX AND RACE DISCRIMINATION IN THE WORKPLACE: NOW fought for the Civil Rights Act of 1991 which, for the first time, gave women the right to a jury trial in sex discrimination and sexual harassment cases under Title VII. Our goal was to remove absolute power from judges in these employment discrimination cases, and let juries decide. Judge Alito's opinions consistently demonstrate that he would make it easier for judges to dismiss cases before they ever get to a jury, and would erect procedural hurdles for plaintiffs seeking justice in employment cases. *Sheridan v. E. I. DuPont de Nemours and Co.* (Alito dissent, sex discrimination) *Bray v. Marriott Hotels* (Alito dissent, race discrimination).

FAMILY AND MEDICAL LEAVE: Judge Alito wrote the Court of Appeals decision that Congress did not have the power to require state governments to comply with the provisions of the Family and Medical Leave Act. Three years later, in an opinion written by William Rehnquist, the Supreme Court took the opposite position, upholding the right of Congress to require state and local governments to follow FMLA. *Chittister v Department of Community and Economic Development*, Alito opinion.

PRIVACY: Judge Alito argued to uphold a police strip search of a woman and her ten year old daughter who were at home when the police executed a search warrant, even though the warrant specified only a search of the premises and one named person, a male. Alito said that a police officer could have reasonably assumed that the warrant gave them the right to search other people. *Doe v. Groody*, Alito dissent.

ANTI-HARASSMENT POLICIES: A Pennsylvania school district's anti-harassment policy defined harassment as "Verbal or physical conduct based on...race, religion, color, national origin, gender, sexual orientation, disability or other personal characteristics." A student group sued, arguing that the policy violated their first amendment right of freedom of speech because their Christian beliefs compelled them to speak out against homosexuality. Judge Alito agreed with them, and struck down the policy on first amendment grounds saying that kind of speech did not "pose a realistic threat of substantial disruption" in the schools. *Saxe v. State College Area School District*, Alito opinion.

VIOLENCE AGAINST WOMEN: Judge Alito joined in a closely divided circuit court decision that two high school girl students who were repeatedly molested by fellow students do not have a civil rights action for deprivation of their civil rights (42 U.S.C 1983) because the state did not have a special duty to care for them. In criticizing the majority opinion, one dissenter said, "we owe immature school children attending public school who are seriously injured as a result of a policy of deliberate indifference to their danger no less a remedy than we are willing to provide to incarcerated criminals." *D.R. v. Middle Bucks Area Vocational Technical School*.