



January 11, 2006

Senator Arlen Specter – Chairman
Senator Patrick Leahy – Ranking Member
Senator Orrin Hatch
Senator Charles Grassley
Senator Edward Kennedy
Senator Jon Kyl
Senator Joseph Biden Jr.
Senator Mike DeWine
Senator Herbert Kohl
Senator Jeff Sessions
Senator Dianne Feinstein
Senator Lindsey Graham
Senator Russell Feingold
Senator John Cornyn
Senator Charles Schumer
Senator Sam Brownback
Senator Richard Durbin
Senator Tom Coburn

Dear Chairman Specter, Ranking Member Leahy and Members of the Judiciary Committee:

I write to you today as president of Catholics for a Free Choice, an organization that shapes and advances sexual and reproductive ethics that are based on justice and reflect a commitment to women's well being, to express our opposition to the nomination of Judge Samuel A. Alito Jr. to the Supreme Court of the United States.

Our decision to ask the US Senate Committee on the Judiciary to reject this nomination and not to send this nominee for an up-or-down vote by the entire Senate is not one that we take lightly. Indeed, Catholics for a Free Choice, after examining his record and carefully following Chief Justice John Roberts' confirmation hearing, did not oppose his nomination.

Based on public documents released by relevant government agencies and from published interviews and statements with and from the nominee himself during the first days of the confirmation hearing, it is evident that Judge Alito is a vastly different nominee from Chief Justice John Roberts. These differences, however, are not only manifested in judicial philosophy, but sadly in critical aspects of his character and integrity.

Our reasons for opposing this nomination go far beyond Judge Alito's personal and legal opposition to reproductive health services including abortion—but center on the underlying principles of the qualifications necessary to serve on the Supreme Court.

In our view, serving on the highest court in the land takes a fundamental commitment to the individual rights enshrined in the Constitution. These include the rights of women to make decisions about their

bodies; the rights of employees to seek judicial relief when they feel they have been discriminated against based on race or gender; a belief in the “one person, one vote” doctrine that has been a pillar of American democracy; and an understanding that all citizens of the United States have equal standing under the law regardless of which religious tradition they identify with, if any. Throughout his time on the federal bench, Judge Alito has not shown an allegiance to these principles and has in fact, in many cases, shown hostility to them.

Equally important is the integrity and character of the man or woman being nominated. This integrity includes a consistent view of the law and a guarantee that the principles espoused by the nominee are based on sound legal reasoning and conscience—and not based upon which political appointment or job they are applying for at the time. Judge Alito has an unfortunate and well-documented history of changing his positions on key personal rights based upon which position in government he is being considered for. To us, this suggests a nominee whose values in public service are not grounded in principles, integrity and respect for individual rights, but in the politics and personal ideology of the moment.

Judge Alito has also demonstrated through his words and his actions that what he pledges during confirmation hearings does not necessarily reflect his actions once confirmed and behind the bench. During his 1990 confirmation hearings for the US Court of Appeals for the Third Circuit, Alito promised to recuse himself from any cases involving Vanguard Group Inc. and Smith Barney Inc., companies which have handled some of his personal investments. Despite this promise, Alito ruled on a case involving Smith Barney in 1996 and Vanguard Group in 2002. When pressed about this major lapse, Alito responded that the 1990 promise applied only to his first few years on the bench.¹ This is a clearly troubling example of either a major ethical lapse on the part of Judge Alito or yet another example of the nominee saying one thing to get the job, and then playing by different rules when he wins confirmation.

Of critical importance to Catholics for a Free Choice is the outright hostility to and the politicization of reproductive rights by this nominee. Unlike Chief Justice Roberts who was well known to be personally opposed to abortion before he was confirmed to the Court, but pledged to separate those views and respect the law of the land, nominee Alito has made both his personal and legal views on this subject a hallmark of his career advancement.

Throughout his career, Judge Alito has shown that he believes—both personally and legally—that the right to choose, to make decisions about the most private and profound aspect of a woman’s life, i.e. when and whether to have children, is not protected under the Constitution. There are several examples of this, including his 1985 application letter to then-Attorney General Edwin Meese III in which Alito wrote that he was, “particularly proud” of his personal contributions to legal views endorsed by the administration including “that the Constitution does not protect a right to an abortion²,” and his integral role as an attorney in the Reagan Justice Department where he sought “opportunity to advance the goals of overruling *Roe v. Wade* and, in the meantime, of mitigating its effects.”³

We were not convinced by his claim during his confirmation hearings that he has an open mind on the right to choose as embodied in *Roe*. Given his belief that the Constitution does not protect a right to an

¹ Charles Babington and Amy Goldstein, “Alito on Day 1: ‘A Judge Can’t Have Any Agenda’,” *Washington Post*, January 10, 2006.

² Amy Goldstein and Jo Becker, “Alito Helped Craft Reagan-Era Move To Restrict ‘Roe’,” *Washington Post*, December 1, 2005.

³ David Kirkpatrick, “Alito File Shows Strategy to Curb Abortion Ruling,” *New York Times*, December 1, 2005.

abortion and his personal view that abortion is morally untenable, it would be foolhardy to accept his claim of open mindedness.

During opening statements of the Alito hearings, Senator Edward Kennedy asked the defining questions for the entire hearings. He began, “So the question before us in these hearings is this: Does Judge Alito's record hold true to the letter and the spirit of equal justice? Is he committed to the core values of our Constitution that are at the heart of our nation's progress? And can he truly be evenhanded and fair in his decisions?”

Through his words, his legal actions and his incontrovertible actions to date, the simple answer is no. Judge Alito cannot be counted on to issue rulings and to write opinions based upon sound legal philosophy and the proper consideration of past landmark rulings by the Court. Judge Alito cannot be counted on to protect the individual rights and freedoms of Americans who count on the federal judiciary to protect them from undue burdens imposed by ideologically driven governments and administration officials. And lastly, Judge Alito cannot be counted on to deliver justice in a manner that does not commingle previously stated strongly held personal and legal viewpoints that will be of serious detriment to members of our society.

I urge you to vote no on this nomination and by doing so to save the rights to privacy and the individual freedoms and choice to which all Americans—regardless of race, gender, religion or sexual orientation—are entitled.

Sincerely,

A handwritten signature in cursive script that reads "Frances Kissling". The signature is written in dark ink and is positioned above the printed name.

Frances Kissling
President