



**TIPPING THE BALANCE:
THE RECORD OF SAMUEL ALITO AND WHAT'S AT STAKE FOR WOMEN**

EXECUTIVE SUMMARY

Justice Sandra Day O'Connor's retirement threatens to alter the balance on the U.S. Supreme Court and undermine years of progress on women's rights, civil rights and the right to privacy. The Court is as closely divided right now as it has been at any time in our nation's history, and Justice O'Connor cast the deciding vote in many cases that had a significant impact on women, minorities, seniors, people with disabilities and others. Americans have a lot of stake with her replacement.

That is why the National Partnership for Women & Families looked closely at Judge Alito's available record, examining his writings and opinions on a range of issues from employment to reproductive rights to affirmative action, and more.

There is just one possible conclusion from a close examination of his record: Judge Alito would turn the Supreme Court sharply to the right, and vote to reverse crucial gains from recent years. From protections against discrimination such as sexual and racial harassment, to a woman's right to make her own reproductive health decisions, to accountability if states violate the Family & Medical Leave Act (FMLA), Judge Alito's appointment would put the rights and liberties of women, working people, minorities and families at grave risk. He must not be confirmed.

Evaluating Samuel Alito and his Record. Time and again, Judge Alito has interpreted the law in an overly restrictive and unnecessarily rigid manner, at times taking positions so regressive that his court colleagues categorically rejected them. There are few examples of Judge Alito siding with victims of job discrimination, but no shortage of cases in which he sided with employers charged with discrimination. It is clear that he would deny critical rights and protections to women and people of color.

- ③ Judge Alito would make it harder for workers to challenge state employers for violating the FMLA. He ruled that states are immune from lawsuits by state workers alleging violations of the FMLA's medical leave provisions. In doing so he ignored the persistent gender stereotypes that often have limited women's job opportunities, and concluded that Congress' creation of a leave remedy was not justified.
- ③ He frequently erects evidentiary or procedural hurdles that make it difficult for plaintiffs to win employment discrimination cases or even have their day in court. He has a propensity for discounting the evidence presented by victims of discrimination, while

deferring to the evidence presented by employers, even in the face of inaccuracies and discrepancies. In one case, Judge Alito defended an employer's decision not to promote an African American female employee, despite evidence of irregularities in the hiring and interview process. He was willing to accept on its face the employer position that she was not the "best" qualified candidate, without examining whether racial bias was the reason the employer reached that conclusion. Judge Alito would not have allowed this case to even go to trial.

- ③ Judge Alito's briefs urging the Supreme Court to strike down affirmative action programs raise serious questions about whether he would uphold the Court's precedent, or undo the careful balance the Court struck to achieve diversity, nondiscrimination and equal opportunity goals. His views could turn back the clock on advances that have been critical to the success of women and people of color.
- ③ He consistently questions the constitutional right to privacy, touting his work on cases in which he argued that the Constitution does not protect a right to an abortion, and indicating his personal belief that *Roe v. Wade* should be overturned. As a government lawyer, Judge Alito was the architect of a strategy to uphold restrictive regulations that would make it harder for women to make their own reproductive health decisions without government interference and ultimately lead to complete elimination of women's right to choose.
- ③ His judicial philosophy often results in higher burdens for plaintiffs, greater deference to states or institutional defendants, and limits on Congressional authority.

When President Bush nominated Third Circuit Court of Appeals Judge Samuel A. Alito, Jr. to replace Justice O'Connor, he asked Congress to confirm one of the most conservative judges in the nation to take her seat – a judge who would endanger our right to make our own private family decisions without government intrusion, to be free from gender-based stereotypes, and to have full and fair access to jobs, education and fair pay. Americans deserve a Supreme Court justice who is committed to the principles of equality and fairness enshrined in our Constitution, and at the heart of hard-won gains central to women's success. Judge Alito would not be that Justice. The Senate should reject him.