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Leading Advocate for Working Women Urges Senate Not to Confirm Judge Alito

**Statement of Debra L. Ness
President, National Partnership for Women & Families**

“Good morning. I am Debra L. Ness, President of the National Partnership for Women & Families. We are a national advocacy organization that, for more than three decades, has broken new ground on issues that are vitally important to America’s women and families.

We are joined today by Irasema Garza, Director of the Women’s Rights Department at the American Federation of State, County and Municipal Employees, and Lorraine Cole, President and CEO of the Black Women’s Health Imperative. We have come together this morning to urge Senators not to confirm Judge Samuel A. Alito, Jr. to serve as an Associate Justice on the U.S. Supreme Court.

We did not reach this conclusion quickly or easily. But after extensive research and consideration, each of us is convinced that, with the Court so closely divided, confirmation of Judge Alito would put core constitutional rights and legal protections for women, working people, minorities and families at grave risk.

Judge Alito’s nomination comes at a particularly critical moment in the life of the Court and our nation. Many of our hard-won rights and protections are hanging by a thread. Judge Alito’s extensive and deeply troubling record indicates he would turn the Court sharply to the right, reversing decades of progress. From protections against discrimination and sexual harassment, to a woman’s right to make her own reproductive health decisions, to accountability if states violate the Family and Medical Leave Act, Judge Alito’s appointment would jeopardize the rights and liberties of individuals from every walk of life.

The National Partnership has concerns about many aspects of Judge Alito’s record, but I want to focus today on the workplace and his views on employment rights. Time and again, Judge Alito has taken a more restrictive view of the law than his peers on the Third Circuit Court of Appeals. At times, his positions were so regressive that his court colleagues categorically rejected them.

Even though we dug deeply, we could find few examples of Judge Alito siding with victims of job discrimination. But there was no shortage of cases in which he sided with employers charged with discrimination.

One ruling that troubles us deeply is his 2000 opinion in *Chittister v. Department of Community and Economic Development*. In that case, Judge Alito would have shielded the state of Pennsylvania from a lawsuit challenging the firing of David Chittister while he was on medical leave. In this case, Judge Alito would have invalidated parts of the Family & Medical Leave Act (FMLA), narrowing workers' access to leave.

Some of you know that the National Partnership is the group that wrote the Family & Medical Leave Act, led the long fight to pass it, and is now defending it from attacks. So we know a lot about this law. And we know that Judge Alito was wrong in *Chittister* when he found that the state should be immune from lawsuits by state workers whose FMLA medical leave rights had been violated.

In that ruling, Judge Alito took an unnecessarily restrictive position that ignored the law's legislative history. He dismissed the need for medical leave to remedy discrimination that has plagued women in the workforce for most of our history. If the Supreme Court adopted his views, Judge Alito's ruling would cost millions of state workers their ability to vindicate an important component of their FMLA rights. Fortunately, the U.S. Supreme Court reached a very different conclusion in a 2003 case addressing similar issues, enabling state workers to challenge family leave violations under the FMLA.

Also troubling is Judge Alito's 1997 dissent in *Bray v. Marriott*, in which he would have preserved an employer's decision not to hire an African American woman who applied for a promotion, despite numerous irregularities in the hiring and interview process. Judge Alito was willing to ignore the company's failure to follow its own rules, and accept its conclusion that she was not the best qualified person for the job without even exploring whether racial bias played a part in the company coming to that conclusion. His position effectively would have gutted the core purpose of Title VII, dramatically weakening an essential tool for stopping discrimination in the workplace. Once again, Judge Alito's position was so extreme that it did not prevail.

In an especially callous dissent, in *Pirolli v. World Flavors, Inc.*, Judge Alito wanted to deny justice to Kevin Pirolli, who has a mental disability and experienced horrendous sexual harassment – and sexual assault – from his co-workers. Even though the employer admitted to the abuse, Judge Alito would have denied Pirolli a trial because there were deficiencies in the brief his attorney filed. Fortunately, the other judges on the Third Circuit recognized what Judge Alito did not, that a worker's right to be free from harassment and assault matters more than errors in a brief that nonetheless offered ample evidence that discrimination had occurred.

Finally, in *Glass v. Philadelphia Elec. Co.*, Judge Alito dissented from his colleagues to take a position that would have made it much more difficult for a victim of race discrimination to prevail. Judge Alito wrote that Mr. Glass should not be allowed to introduce evidence that flagrant on-the-job racism was the cause of the one poor performance review he received during 23 years of employment, and that therefore the performance review should not be used to deny him a promotion.

Judge Alito acknowledged that the evidence was relevant to Mr. Glass' claim, but wrote that its value was outweighed by the confusion it would have caused – even though the employer was permitted to introduce the poor performance review as evidence to justify denying Mr. Glass the promotion.

These and other rulings and writings by Judge Alito are detailed more fully in the report we release today, *Tipping the Balance: The Record of Samuel Alito and What's at Stake for Women*.

This appointment could not be more critical. The Court is closely divided at a time when our nation has not yet fully leveled the playing field or made real the promise of equality for all its citizens. We need Justices who will protect the rights of women, minorities, working people, seniors, people with disabilities and others who experience discrimination.

The record tells us very clearly that Judge Alito would not be that kind of justice. He has let victims of discrimination down, time and again, on the Third Circuit Court of Appeals, and we have ample reason to fear that he would do the same on the U.S. Supreme Court. The appointment of Judge Alito is a risk that America simply cannot afford to take.

The fact that President Bush nominated Judge Alito to replace Justice Sandra Day O'Connor makes this appointment particularly important, and the prospect of his confirmation deeply troubling. In many cases, Justice O'Connor provided the decisive vote to protect women's and civil rights. To replace her with a justice who does not protect women's rights, civil rights or our right to privacy would be to reverse decades of our nation's progress. That must not happen.

When President Bush proposed to give one of the country's most conservative jurists a lifetime appointment on our highest court, he put his allegiance to the far right ahead of the best interests of the nation. And he gave Senators a stark choice: support the President, or stand up for the women and working families they represent.

We are here today to ask Senators to do the right thing, for their constituents, for the country and for our future by voting 'no' on Samuel A. Alito, Jr.

Thank you. Now, I would like to introduce Irasema Garza of the American Federation of State, County and Municipal Workers. Irasema..."

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The National Partnership for Women & Families is a non-profit, non-partisan advocacy group dedicated to promoting fairness in the workplace, quality health care and policies that help women and men create a balance between work and family responsibilities. For more information: www.nationalpartnership.org.