



National Association of Women Lawyers®

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January 9, 2006

Re: Evaluation by the National Association of Women Lawyers (NAWL)
of Judge Samuel A. Alito, Jr.

To: Members of the Senate Judiciary Committee

Dear Members:

Attached for your information is a copy of the evaluation of Judge Samuel A. Alito, Jr., conducted by the National Association of Women Lawyers.

Sincerely,

Stephanie A. Scharf
Chair, Committee for the Evaluation of Supreme Court Nominees

NEWS RELEASE

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**JANUARY 8, 2006—FOR IMMEDIATE RELEASE BY THE NATIONAL
ASSOCIATION OF WOMEN LAWYERS[®]**

**NATIONAL ASSOCIATION OF WOMEN LAWYERS ("NAWL") ISSUES
EVALUATION OF JUDGE SAMUEL A. ALITO FOR THE POSITION OF
ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT**

The National Association of Women Lawyers ("NAWL"), Committee for the Evaluation of Supreme Court Nominees, has evaluated Judge Samuel Alito for the position of Associate Justice of the Supreme Court of the United States. The Committee has determined that Judge Alito is not qualified to serve on the Court from the perspective of laws and decisions regarding women's rights or that have a special impact on women.

NAWL's rating of not qualified from a women's rights perspective is the result of its evaluation of Judge Alito's writings, including his judicial record. On those women's rights issues that he has addressed, Judge Alito has shown a disinclination to protect or advance women's rights. Our concern also recognizes that Judge Alito will be replacing Justice Sandra Day O'Connor, who has been a decisive vote in a number of cases involving the rights of women and laws that have a special impact on women. Judge Alito's jurisprudence in the area of women's rights has not been restrained, as some have characterized his general judicial approach; rather, he has too often engaged in strained legal reasoning to effect a narrowing of women's rights beyond the intent of statutes and precedent.

Of primary concern to NAWL is Judge Alito's stance on women's reproductive rights. Judge Alito's dissent in *Planned Parenthood v. Casey*, 947 F.2d 682 (3d Cir. 1991), is a pointed attack on the abortion right. Judge Alito argued that married women should be compelled by law to notify their husbands of their abortions. This conclusion—that women lack medical autonomy—was at odds with the opinion of the Supreme Court in an earlier case, *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986), which affirmed *Roe*, condemning indirect constraints on a woman's right to choose. Judge Alito was willing to require that Planned Parenthood take on the impossible burden of proving the number of women who informed their husbands of their intent to obtain abortions. In addition, he was willing to ignore directly applicable Supreme Court precedent.

In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), Judge Alito's endorsement of spousal notification was explicitly struck down in an opinion by Justice Sandra Day

O'Connor, the Justice he is seeking to replace. NAWL believes that Judge Alito's reasoning in the 1991 *Planned Parenthood* decision stems from a bias against the abortion right and is more results-oriented than precedent supports. This is consistent with the approach advocated by Judge Alito in May 1985, when, working in the Solicitor General's office, he wrote a memo to the Solicitor General expressing the belief that *Roe v. Wade* was wrongly decided and urged an incremental attack on it by means of decisions that would empower the states to regulate abortions and undermine the authority of medical professionals.

In his opinions, Judge Alito has disparaged substantive due process, a critical underpinning of women's reproductive rights. In a zoning case, *Phillips v. Borough of Keyport*, 107 F.3d 164 (3d Cir.1997), Judge Alito concurred with the majority but dissented in part, expressly to attack the validity of a substantive due process argument offered by the plaintiff. His hostility toward the Fourteenth Amendment jurisprudence, upon which *Roe v. Wade* rests, is another basis for NAWL's concerns.

Although Judge Alito's former law clerks and professional associates interviewed by NAWL generally reported that he has had positive and supportive working relationships with women and has appropriately hired women and promoted them to senior positions, Judge Alito's interpretation of statutes affecting women and their families further reflects a narrow reading of the requirements of those statutes to the detriment of women's rights. In this area, he takes a highly technical approach to statutory interpretation that arguably is inconsistent with the intent of the statutes in question. See, e.g., *D.R. v. Middle Bucks Area Vocational Technical School*, 972 F.2d 1364 (3d Cir. 1992); *Sheridan v. E.I. DuPont de Nemours & Co.*, 100 F.3d 1061 (3d Cir. 1996)(Alito, J., sole dissenter to *en banc* opinion); *United States v. Rybar*, 103 F.3d 273 (3d Cir. 1996), *cert. denied*, 522 U.S. 807 (1997); *Chittester v. Department of Community and Econ. Development*, 226 F.3d 223 (3d Cir. 2000).

The National Association of Women Lawyers is the leading national voluntary organization devoted to the interests of women lawyers and women's rights. Founded over 100 years ago, NAWL has members in all 50 states and engages in a variety of programs and activities to advance its mission. The Committee for the Evaluation of Supreme Court Nominees reviews and evaluates the qualifications of each Presidential nominee to the United States Supreme Court with an emphasis on laws and decisions regarding women's rights or that have a special impact on women. Members of the Committee are appointed by the President of NAWL and include a distinguished array of law professors, appellate practitioners and lawyers concentrating in litigation, with diverse backgrounds from around the country and who work in a variety of professional settings. A copy of the Committee's Mission and Procedures may be found at www.nawl.org <<http://www.nawl.org>>.