

Talking points for expressing opposition to the Confirmation of Judge Samuel Alito to the U.S. Supreme Court

(scheduled for hearings in the Senate Judiciary Committee beginning January 9, 2006)

For Ministers, Social Action Chairs, Concerned Unitarian Universalists



General:

- Judge Alito is known as one of the most conservative voices on the very conservative 3rd circuit court of appeals. His uniformly conservative rulings in close cases have led some to compare his judicial philosophy to that of Supreme Court Justice Antonin Scalia. This is particularly concerning considering that he is being considered for the seat currently held by Justice Sandra Day O'Connor, a swing vote on key issues of concern to our communities.
- Alito's record is troubling in areas of civil liberties and civil rights. (More details under heading of Civil Liberties, Civil Rights and Human Rights)
 - He dissented from a Third Circuit ruling that police officers had violated clearly established constitutional rights. In the case in question, police strip-searched a mother and her ten-year-old daughter while executing a search warrant authorizing only the search of her husband and their home. Alito disagreed, arguing that even if the warrant did not authorize the search, a police officer still could have read the warrant as permitting the search.

Other concerns include the following:

- He has a record of siding with corporations over individuals and of voting to limit women's access to abortions.
 - He has sided many times that plaintiffs in discrimination cases (sex discrimination, disability, civil rights, etc) did not have enough evidence to bring their cases to trial.
 - He has repeatedly sided against plaintiffs in asylum cases concerning persecution in plaintiff's home country.
 - He has sided repeatedly in favor of free exercise of religion (notably excepting cases concerning the free exercise of prisoners), but many of his cases in terms of the establishment clause of the first amendment are troubling.
- Judge Alito has aggressively sought to curb Congress' legislative authority to tackle issues of national importance, voting to invalidate a federal prohibition on machine gun possession and part of the federal Family and Medical Leave Act
 - Judge Alito wrote a court opinion, denying state employees the right to sue the state for violating their right to medical leave under the Family Medical Leave Act. The Family & Medical Leave Act (FMLA) is critically important to working families. Without the FMLA, millions of workers would be forced to choose between their job and their health, or their job and a child or parent who needs care.

- Judge Alito is considered by many to be outside the mainstream of American jurisprudence. Out of hundreds of cases, he has been the lone dissenting voice 41 times. In at least six cases, the Supreme Court voted to overturn decisions of the Third Circuit or Alito's dissent in Third Circuit cases. Alito has shown that he will turn back the clock on civil rights progress, worker protections, environmental safeguards, and our health and safety. With the nomination of Alito, all of those rights are now at risk.
- The UUA and our member congregations do not question Judge Alito's character, his competence or his temperament; we question his vision for a "just" America. The America Judge Alito seeks to create simply does not correspond to the nation Unitarian Universalists, as justice loving people, seek to build.

Unitarian Universalist Concerns:

- As Unitarian Universalists, we believe in Justice, equity and compassion in human relations. We believe that Mr. Alito does not share a vision for equity of all people and justice for individuals.
- As UU individuals and congregations, we covenant to promote the inherent worth and dignity of every person. Judge Alito has repeatedly shown that he does not legally value individual civil and human rights. We are not attacking Mr. Alito's character or personal beliefs, we are concerned with his judicial record. One that too often favors corporations and police departments over individual citizens.
- Our faith tradition has a long history of supporting Women's Rights and Reproductive Freedom. The UUA General Assembly has passed numerous resolutions expressing official support for fundamental freedoms and respect for women's bodies, minds and lives. We are concerned that Mr. Alito does not share this same respect in his judicial philosophy. He has expressed opinions that call for more restrictions on a woman's right to choose, including going further than any other American judge in stating that a woman should be required to notify her husband, even an abusive husband, before access to an abortion will be granted. We are gravely concerned by this opinion and others that indicate that Mr. Alito does not necessarily see a married woman as a legal entity on her own, separate from her husband. For these reasons and more, the Association is opposed to the nomination of Mr. Alito to the Supreme Court.
- Our religious movement is committed to civil liberties and civil rights. The UUA and many UU congregations have passed repeated resolutions calling for civil liberties and the right to privacy for all Americans and civil and human rights for all people, regardless of citizenship. Beyond our faith, these rights are fundamental to our national identity and the values we hold as Americans. We believe that Judge Alito would not protect the rights and freedoms of all Americans and would not stand for the human and civil rights of immigrants and those seeking asylum. The UUA is opposed to the Alito nomination.
- Judge Alito is a highly qualified justice with a long and complex judicial record. We believe that much of Mr. Alito's record exhibits legal values that are not in line with those we hold as a faith community and concerned citizens. We urge the Senate Judiciary committee to investigate fully Mr. Alito's judicial philosophy in preparation for and during the hearings on his nomination beginning on January 9th. However, he has much to prove, for according to his written record, his views do not show a clear

respect for judicial president, power of congress and rights of the individual, especially concerning civil liberties, civil rights and the rights of women. We ask senators to oppose the nomination of Mr. Alito to the Supreme Court of the United States.

On Issues of Civil Liberties, Civil Rights and Human Rights:

- Judge Alito has twice voted in dissent to uphold intrusive police searches of women and children who were not named in search warrants and were not the subjects of any investigation. In one of the cases, which involved strip searches of a mother and daughter caught in the wrong place at the wrong time, President Bush's Director of Homeland Security, Michael Chertoff – then Judge Alito's colleague on the Third Circuit – sharply criticized Judge Alito's position.
- Alito has shown limited appreciation for the rights of the accused. In one noteworthy dissent, he dismissed evidence of race discrimination by a prosecutor in jury selection. In another opinion, he upheld a death sentence against a claim that the defendant's counsel was constitutionally deficient. The Supreme Court reversed 5-4, with Justice O'Connor casting the deciding vote.
- In a series of divided decisions, Judge Alito has ruled against individuals seeking to remain in the United States to avoid persecution in their home country or simply seeking to remain here lawfully.
- In numerous decisions, Judge Alito has ruled against individuals charging companies with discrimination based on race, gender and disability. The rights of individuals to protect their interests would be seriously compromised by Justice Alito were he to sit on the Supreme Court.

On Issues of Women's Rights and Reproductive Health:

- Alito has upheld curbs on reproductive freedom. In *Planned Parenthood v. Casey*, Alito dissented from the Third Circuit stating that a Pennsylvania statute requiring married women to notify their husbands before obtaining an abortion did not create an "undue burden" for a significant enough number of women to warrant striking the statute. Justice O'Connor compared the spousal notification restriction to other legal practices that subjugated wives to their husbands.
- In *Cai Luan Chen v. Ashcroft* Alito concludes that the Bureau of Immigration Appeals' decision to deny asylum applications to *unmarried* partners of persons who suffered forced abortions or involuntary sterilizations was "rational."
- In numerous cases, Alito concluded that women seeking sex discrimination settlements did not have enough evidence to bring their case.

On Issues of Religious Freedom:

- In a case involving religious display's on public land, Judge Alito held that the addition of secular symbols such as Frosty the Snowman, Santa Claus, a Christmas tree and Kwanzaa symbols, was enough to prevent the display from creating an Establishment Clause violation of the First Amendment.

- Judge Alito concluded that a Newark, NJ police department policy allowing beards for medical purposes but did not allow devote Muslim men to wear beards for religious purposes must be struck down. (This decision is in accordance with UUA policy)