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PRESS RELEASE

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**NATIONAL LAWYERS GUILD URGES SENATORS KENNEDY AND KERRY
TO FILIBUSTER ALITO NOMINATION**

Boston, January 6, 2006 —In a letter sent yesterday, the Massachusetts Chapter of the National Lawyers Guild urged Senators Kennedy and Kerry to oppose the nomination of Judge Samuel Alito to the Supreme Court. The NLG stated the following:

"The nomination of Judge Samuel Alito to the Supreme Court threatens to shift the balance of power in the Court towards an activist conservative agenda. Time and again, in dissents from his colleagues on the Third Circuit Court of Appeals, and in opinions reversed by the Supreme Court, he has stood to the right of the legal mainstream. At stake with this nomination are constitutional protections from arbitrary police power, from discrimination, and from state intrusion on reproductive freedom. For this reason, the Massachusetts Chapter of the National Lawyers Guild urged Massachusetts Senators to do all possible to stop his appointment, including a filibuster if necessary.

This is an era when the judiciary must exercise a vigilant check on executive branch police powers, as the recent revelations of the Bush Administration's warrantless eavesdropping on citizens make clear. Judge Alito has repeatedly shown himself deferential to law enforcement and careless of citizens' rights. For example, he would have upheld the strip searches of an innocent 10-year-old girl and her mother, dissenting from the majority opinion of then-Judge Michael Chertoff, now Homeland Security Secretary. Judge Alito would erode the right to a fair criminal trial. He authored an opinion -- reversed by the Supreme Court -- which would have allowed the execution of a man whose lawyer failed to present important mitigating evidence, including mental illness. He also argued in a dissent that the death penalty conviction of a black man by an all-white jury, in a county with an 18% black population, was constitutional; the majority found the exclusion of minority jurors unconstitutional under well-established precedent.

Perhaps the greatest damage an Alito appointment would do is to radically limit Congress' ability to remedy discrimination, regulate pollution, and provide for a host of other federal protections. Since the administration of Franklin Delano Roosevelt, the Court has held that Congress has authority to enact such protections under the Commerce Clause of the Constitution. There are strong indications that Judge Alito would reverse this. As a member of a three-judge panel of the U.S. Court of Appeals for the Third Circuit in 1996, Judge Alito argued in a dissent that Congress lacked the power under the Commerce Clause to regulate machine gun transfer

and possession, though the majority opinion followed five other circuits in upholding the legislation. In 2000 he authored an opinion holding that Congress had improperly allowed workers to sue states for violations of the Family and Medical Leave Act, a position which Chief Justice Rhenquist and a Supreme Court majority rejected three years later.

Judge Alito's confirmation would threaten women's right to reproductive freedom. In *Planned Parenthood of Central Pennsylvania v. Casey*, he voted to uphold a requirement that a woman notify her spouse before having an abortion, a position rejected by the Supreme Court when it reviewed the case. In his 1985 job application to the Reagan Administration he said, "the Constitution does not protect a right to an abortion." While Judge Alito was bound to follow Supreme Court precedent protecting the right to reproductive choice as an appeals court judge, he would have no such constraints as a justice of the Supreme Court.

Senator Patrick Leahy has noted that Judge Alito's Reagan Administration memos reveal 'an aggressive participant in an ideological movement intended to withdraw discrimination protections from workers and even criticized the concept of one person, one vote, among other fundamental rights.' Judge Alito's disavowals of his own previously expressed views, and his claims to be governed by precedent, offer little guarantee of restraint once he is given lifetime tenure on our highest Court.

We have no doubt that Judge Alito will be questioned thoroughly during his nomination hearings, and he should be called upon to discuss his views on particular legal matters just as Justice Ruth Bader Ginsburg did before him. But we have enough information already to know where he stands on the most important constitutional questions of our time. The Massachusetts Chapter of the National Lawyers Guild urged Massachusetts Senators to stand by our state's values and do all within their power to defeat this nomination."