girl, ''a reasonable police officer could certainly have read the warrant as doing so . . .'' This casual attitude toward one of our most basic constitutional guarantees—the fourth amendment right against unreasonable searches—is almost shocking. As Judge Alito's own Third Circuit Court said regarding warrants, ''a particular description is the touchstone of the Fourth Amendment.'' We certainly do not need Supreme Court Justices who do not understand this fundamental constitutional protection.

Will Justice Alito vote to let citizens stop companies from polluting their communities? Judge Alito's record says no.

In the Magnesium Elektron case, Judge Alito voted to make it harder for citizens to sue for toxic emissions that violate the Clean Water Act. Fortunately, in another case several years later, the Supreme Court rejected the Third Circuit and Alito's narrow reading of the law. Judge Alito doesn't seem to care about a landmark environmental law.

Will Justice Alito vote to let working women and men have their day in court against employers who discriminate against them? Judge Alito's record says no.

In 1997, in the Bray case, Judge Alito was the only judge on the Third Circuit to say that a hotel employee claiming racial discrimination could not take her case to a jury.

In the Sheridan case, a female employee sued for discrimination, alleging that after she complained about incidents of sexual harassment, she was demoted and marginalized to the point that she was forced to quit. By a vote of 10 to 1, the Third Circuit found for the plaintiff.

Guess who was the one? Only Judge Alito thought the employee should have to show that discrimination was the ''determinative cause'' of the employer's action. Using his standard would make it almost impossible for a woman claiming discrimination in the workplace to get to trial.

Finally, will Justice Alito be independent from the executive branch that appointed him, and be a vote against power grabs by the president? Judge Alito's record says no.

As a lawyer in the Reagan Justice Department, he authored a memo suggesting a new way for the President to encroach on Congress's lawmaking powers. He said that when the President signs a law, he should make a statement about the law, giving it his own interpretation, whether it was consistent with what Congress had written or not. He wrote that this would ''get in the last word on questions of interpretation'' of the law. In the hearings, Judge Alito refused to back away from this memo.

When asked whether he believed the President could invade another country, in the absence of an imminent threat, without first getting the approval of the American people, of Congress, Judge Alito refused to rule it out.

When asked if the President had the power to authorize someone to engage in torture, Alito refused to answer.

The administration is now asserting vast powers, including spying on American citizens without seeking warrants—in clear violation of the Foreign Intelligence Surveillance Act—violating international treaties, and ignoring laws that ban torture. We need Justices who will put a check on such overreaching by the executive, not rubberstamp it. Judge Alito's record and his answers at the hearings raise very serious doubts about his commitment to being a strong check on an 'imperial President.'

In addition to these substantive matters, I remain concerned about Judge Alito's answers regarding his membership in the Concerned Alumni of Princeton and his failure to recuse himself from the Vanguard case, which he had promised to do.

During the hearings, we all felt great compassion for Mrs. Alito when she became emotional in reaction to the tough questions her husband faced in the Judiciary Committee. Everyone in politics knows how hard it is for families when a loved one is asked tough questions. It is part of a difficult process, and whoever said politics is not for the faint of heart was right.

Emotions have run high during this process. That is understandable. But I wish the press had focused more on the tears of those who will be affected if Judge Alito becomes Justice Alito and his out-of-the-mainstream views prevail.

I worry about the tears of a worker who, having failed to get a promotion because of discrimination, is denied the opportunity to pursue her claim in court.

I worry about the tears of a mentally ill woman who is forced by law to tell her husband that she wants to terminate her pregnancy and is afraid that he will leave her or stop supporting her.

I worry about the tears of a young girl who is strip searched in her own home by police who have no valid warrant.

I worry about the tears of a mentally retarded man, who has been brutally assaulted in his workplace, when his claim of workplace harassment is dismissed by the court simply because his lawyer failed to file a well-written brief on his behalf.

These are real cases in which Judge Alito has spoken. Fortunately, he did not prevail in these cases. But if he goes to the Supreme Court, he will have a much more powerful voice—a radical voice that will replace a voice of moderation and balance.

Perhaps the most important statement Judge Alito made during the entire hearing process was when he told the Judiciary Committee that he expects to be the same kind of Justice on the Supreme Court as he has been a judge on the Circuit Court.

That is precisely the problem. As a judge, Samuel Alito seemed to approach his cases with an analytical coldness that reflected no concern for the human consequences of his reasoning.

Listen to what he said about a case involving an African-American man convicted of murder by an all-White jury in a courtroom where the prosecutors had eliminated all African-American jurors in many previous murder trials as well.

Judge Alito dismissed this evidence of racial bias and said that the jury makeup was no more relevant than the fact that left-handers have won five of the last six Presidential elections. When asked about this analogy during the hearings, he said it ''went to the issue of statistics . . . (which) is a branch of mathematics, and there are ways to analyze statistics so that you draw sound conclusions from them. . . .''

That response would have been appropriate for a college math professor, but it is deeply troubling from a potential Supreme Court Justice.

As the great jurist and Supreme Court Justice Oliver Wendell Holmes, Jr. wrote in 1881, ''The life of the law has not been logic; it has been experience . . . The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.''

What Holmes meant is that the law is a living thing, that those who interpret it must do so with wisdom and humanity, and with an understanding of the consequences of their judgments for the lives of the people they affect.

It is with deep regret that I conclude that Judge Alito's judicial philosophy lacks this wisdom, humanity and moderation. He is simply too far out of the mainstream in his thinking. His opinions demonstrate neither the independence of mind nor the depth of heart that I believe we need in our Supreme Court Justices, particularly at this crucial time in our Nation's history.

That is why I will oppose this nomination.

MORNING BUSINESS

Mr. THUNE. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

GSRI HEALTHY LIVING STUDY—THE NEW NORMAL? WHAT GIRLS SAY ABOUT HEALTHY LIVING

Mr. FRIST. Mr. President, America is confronting a childhood obesity crisis, and over the past 25 years, the percentage of overweight girls has more than doubled—to 16 percent of girls ages 6 to 19, up from 6 percent in 1974.

To support the search for a solution, the Girl Scout Research Institute