

Bush names favorite of Christian right to Supreme Court

Democrats back off of filibuster threat

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President George W. Bush's nomination Monday of Samuel Alito to the US Supreme Court signals that his administration is responding to its deepening political impasse by shifting even further to the right.

In Alito, Bush has chosen a reactionary ideologue whose record on issues such as abortion and civil rights makes him a pole of attraction for the Republican Party's Christian fundamentalist and semi-fascist base. Alito was one of half a dozen right-wing jurists on a "short list" of acceptable candidates for the high court drawn up by Christian fundamentalist groups and submitted to the administration. The nomination now goes before the Senate for confirmation.

Alito's promotion to the Supreme Court will shift the court sharply to the right and further undermine fundamental democratic rights. It will serve to place even greater obstacles in the path of ordinary working people seeking redress in the courts for abuses at the hands of the corporations and the government.

While the Republican Party has quickly rallied around Alito's candidacy in order to promote this reactionary agenda, there is no indication that the ostensible political opposition, the Democrats, are prepared to mount any genuine struggle to keep him off the court.

Senate Democratic leader Harry Reid of Nevada said he was "disappointed" by the nomination of Alito, saying it would require "an especially long hard look by the Senate because of what happened last week to Harriet Miers."

The Democratic leadership was more than happy to accept Miers, Bush's White House counsel, whose nomination was withdrawn last week because of opposition from the Christian right. Despite the fact that her sole qualification was unswerving loyalty to Bush, the Democrats welcomed her absence of a "paper trail" of judicial decisions as a justification for not opposing her nomination and avoiding a confrontation with the White House.

Because of Alito's record, leading Democrats have felt obliged to voice concern over his nomination. None, however, have called for a filibuster, the only means by which the party could actually prevent him from joining the court, given the Republicans' 55-45 majority in the Senate. Sixty votes are required to end a filibuster.

In contrast to the cowardice of the Democrats, the Republican right has welcomed a confrontation over Alito. It sees it as an opening to impose a new rule that would abolish filibusters over federal judicial nominations, a drastic abridgement of traditional minority rights that was dubbed "the nuclear option" by former Senate Majority Leader Trent Lott.

The nomination of Alito comes at a point of intense political crisis for the Bush administration, which has been shaken by the debacle in

Iraq, its catastrophic response to Hurricane Katrina, the collapse of the Miers Supreme Court nomination, and finally last Friday's felony indictment of top administration aide I. Lewis "Scooter" Libby.

Under conditions in which its popularity has fallen to a record low and a clear majority of the American people are opposed to the war in Iraq, the White House is attempting to rally the extreme right in preparation for a renewed assault on the rights of the American people and an intensification of military aggression abroad.

The choice of Alito was made over the weekend by the president and his aides at Camp David in close consultation with leaders of the religious right and other Republican constituencies. It was announced in a deliberately provocative fashion at 8 a.m. on Monday morning. Democratic Senate leaders were given no more than an hour's notice of the decision—the same advance notice provided to the mass media.

Like John Roberts, who was confirmed in September as the new chief justice of the Supreme Court, Alito held posts in both the Reagan and Bush senior administrations. He then became a federal prosecutor in New Jersey, serving as US Attorney there from 1987 to 1990, when the elder Bush nominated him to the US Court of Appeals for the Third Circuit.

Having earlier this month touted Miers as someone from outside the "judicial monastery" who would offer a "fresh approach" to the court, Bush on Monday hailed Alito as someone with "more prior judicial experience than any Supreme Court nominee in 70 years."

It was not lack of experience, however, that sank Miers' nomination. Rather, the Republican right denounced the selection of someone without any judicial record as a capitulation to the Democratic Party and questioned Miers' commitment to right-wing positions on issues such as abortion and civil rights.

With Alito, there are no such objections on this score. As an appeals court judge, he has established such a record of right-wing opinions that some lawyers have given him the nickname "Scalito," equating him with Justice Antonin Scalia, the ideological leader of the extreme right wing on the current high court.

The nominee, however, has avoided public ideological debate, quietly delivering his reactionary decisions from the bench. As the *Washington Post* put it Monday: "Alito is considered far less provocative a figure than Scalia both in personality and judicial temperament. His opinions and dissents tend to be dryly analytical rather than slashing."

He has been tapped to replace retiring Justice Sandra Day O'Connor, one of the court's consistent swing votes on issues such as the death penalty, affirmative action and abortion, in which decisions

have frequently been decided by 5-to-4 or 6-to-3 votes. With Alito on the bench, this balance would shift sharply.

What has earned Alito the backing of the Christian right and other sections of Bush's reactionary political base is, above all, his record on abortion rights.

In the case that has attracted the most notoriety—*Planned Parenthood of Southeastern Pennsylvania v. Casey*—Alito went beyond the majority of the Third Circuit in upholding a law imposing major hurdles in the path of women seeking abortions. In a lone dissent, Alito defended the one provision of the law that the majority of the appeals court found impermissible, a requirement that a woman seeking an abortion provide prior notification to her husband. His arguments dismissed concerns about spousal abuse and relegated married women to a form of second-class citizenship.

In upholding the appeals court decision, the US Supreme Court repudiated Alito's position. Significantly, it was O'Connor, whom Alito would replace, who wrote the decision.

The so-called spousal notification requirement, she wrote, would mean that "a significant number of women who fear for their safety and the safety of their children are likely to be deterred from procuring an abortion as surely as if the Commonwealth had outlawed abortion in all cases."

O'Connor added that the statute defended by Alito "embodies a view... repugnant to our present understanding of marriage and of the nature of the rights secured by the Constitution. Women do not lose their constitutionally protected liberty when they marry."

The Constitution protects all individuals, male or female, married or unmarried, from the abuse of governmental power, even where that power is employed for the supposed benefit of a member of the individual's family."

In a 6-3 ruling, the Supreme Court used the case to reaffirm its support for *Roe v. Wade*, the decision establishing the legal right to abortion. Alito's dissent—which was echoed by Chief Justice William Rehnquist on the high court—clearly implied the overturning of this key precedent.

Just as important as his positions on abortion from the standpoint of the Bush administration's key political constituencies is Alito's slavish defense of big business interests. The influential business magazine *Forbes* declared on its web site, "Business leaders should hail President George W. Bush's nomination of Samuel Alito to replace Justice Sandra Day O'Connor on the US Supreme Court..."

Forbes.com continued: "In his 15 years on the US Court of Appeals for the Third Circuit in Philadelphia, Alito repeatedly has upheld the rights of companies to enforce the terms of their contracts... He's also favored corporate defendants when there is a question about how to apply federal regulations and has been tough on plaintiffs accusing companies of committing securities fraud."

One of Alito's most extreme dissenting positions in this regard came in *US v. Rybar*, a case in which the majority of the court upheld a conviction under a federal law prohibiting the transfer or possession of machine guns. Alito found the law unconstitutional, arguing that Congress overstepped its powers to regulate interstate commerce, the basis for much in the way of federal regulations, including environmental controls.

Similarly, he joined in a 2-1 ruling abrogating the right of citizens to sue polluters under the Clean Water Act. The Supreme Court overturned the decision.

In a number of cases, Alito ruled to severely restrict rights to sue over employment discrimination based on race or disability. He also

issued an opinion that Congress had no authority to require state employers to comply with the Family and Medical Leave Act.

"All and all, business wins," Ted Frank, resident fellow at the right-wing American Enterprise Institute think tank, told *Forbes.com*. "Alito is a solid conservative who understands the importance of the law of contracts, of the free market system."

The nominee's record on basic democratic rights is consistent with this right-wing orientation. In one death penalty case, Alito wrote the majority opinion rejecting the appeal of an African American defendant convicted and sentenced to death by an all-white jury from which all black jurors had been illegally barred.

The decision was overturned by the full Third Circuit, which rebuked Alito for comparing statistics on the exclusion of blacks from capital case juries to the number of left-handed US presidents. The full court wrote that such a supercilious analogy served "to minimize the history of discrimination against prospective black jurors and black defendants."

In a 2004 case, *Doe v. Groody*, Alito argued that narcotics detectives had not violated the constitutional rights of a mother and her 10-year-old daughter whom they strip searched in their home without a valid warrant.

The Republicans' confidence that they can stack the court with right-wingers with impunity stands in stark contrast to the growing mass opposition to the Bush administration.

On the day of the nomination, a new CNN/Gallup/*USA Today* poll was released showing that 55 percent of the American people consider Bush's presidency a failure and believe that it will remain so for the next three years. His approval rating of just 41 percent is the lowest level for any recent presidency.

USA Today reported that the poll "shows the drop has been particularly precipitous among the sort of working-class voters Reagan helped draw to the GOP. Bush's standing has fallen by 15 points among those who have only a high school education and by 14 points among those who earn between \$20,000 and \$30,000 a year."

Underlying the American ruling establishment's sharp turn to the right expressed in the Alito nomination is the unprecedented social polarization between a financial oligarchy and the vast majority of working people. The Democratic Party is incapable of opposing this turn because, like the Republicans, it represents the wealthy elite.



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