

Why US big business is pleased with Alito's nomination to the Supreme Court

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President Bush's nomination of Samuel Alito to fill Sandra Day O'Connor's seat as an associate justice meets the demands of the corporate elite for another vote on the Supreme Court to slash government regulation of business operations. Alito has, at the same time, expressed sufficiently reactionary views on "hot button" issues such as abortion to placate the religious extremists who torpedoed last month's nomination of White House counsel Harriet Miers.

The White House also calculates that Alito's low-key demeanor will provide the administration's nominal opponents in the Democratic Party with political cover for acceding to this extreme right-wing nomination during the confirmation process.

Already, key members of the "gang of 14"—a group of "moderate" Republican and Democratic senators—are signaling that Alito will be confirmed without a Democratic filibuster. After the Republican faction indicated that Alito was acceptable, Ken Salazar, a Colorado Democrat, announced that the gang of 14 was "not going to blow up" over the nominee, and Ben Nelson, Democrat from Nebraska, said, after speaking with Alito, "I am more comfortable than I was before."

Much of the media attention in coming weeks will focus on Alito's dissenting opinion as a judge on the US Court of Appeals for the Third Circuit in *Planned Parenthood v. Casey* (1991), in which he argued that a state law requiring married women to notify their husbands before obtaining an abortion did not impose an "undue burden." Less attention will likely be given to his unflinching support for expanding police powers and limiting prisoner rights, which strongly suggests that Alito will approve the Bush administration's police-state measures, such as the indefinite jailing of "unlawful combatants" and the use of torture.

Of key concern to big business is Alito's record on rolling back governmental powers to regulate business and commerce. During his 15 years on the Third Circuit Court of Appeals, Alito has heard appeals of federal court rulings in the populous industrialized states of Pennsylvania and New Jersey, as well as in Delaware, where many of the nation's largest corporations have their headquarters. Alito has ruled consistently in favor of big business and against the interests of workers and consumers. The *Wall Street Journal* gushed in a November 1 editorial about Alito's "regard for free markets and ... recognition of the legal and regulatory challenges facing business."

The most dramatic example of Alito's determination to deprive the federal government of power to regulate business is his dissenting opinion in *United States v. Rybar* (1996), where he argued that Congress could not enact a law prohibiting the possession of machineguns. He maintained that such a measure was beyond the constitutionally mandated power of Congress to regulate interstate commerce.

The two-judge majority decision pointed out that Alito's views were contrary to the decisions of every circuit court of appeals which had considered the question, as well as 50 years of Supreme Court precedent upholding federal regulation of firearms.

Sharply criticizing Alito for suggesting that Congress must "assemble empirical evidence documenting" a link between machineguns and interstate commerce, the majority judges wrote that "such a demand of Congress or the Executive runs counter to the deference that the judiciary owes to its two coordinate branches of government, a basic tenet of the constitutional separation of powers." They chided Alito for requiring "either Congress or the Executive to play Show and Tell with the federal courts at the peril of invalidation

of a Congressional statute.”

The importance of Alito’s dissent goes far beyond a sop to the powerful Washington gun lobby. His view that the federal courts must strictly construe the Commerce Clause in the Constitution could be used to invalidate a wide variety of laws enacted to protect workers, consumers and the environment, and roll back federal regulatory authority over business to the pre-New Deal period (prior to the 1930s) of unbridled corporate power.

Alito has published several opinions hostile to workers claiming workplace discrimination. In 1997, he wrote in dissent that a black employee could not sue her employer for promoting a white person, insisting that the employee must establish evidence of racial animus—often impossible to prove—rather than rely on her superior qualifications for the job and the employer’s failure to follow its own procedures. “What we end up doing,” Alito wrote, is “allowing disgruntled employees to impose the cost of a trial on employers who, although they have not acted with the intent to discriminate, may have treated their employees unfairly.”

Alito has also expressed hostility to enforcing anti-pollution laws. He voted to void an order issued by the Environmental Protection Agency, overruling the agency’s determination that there was a “rational basis” to compel W.R. Grace & Co. to clean up ammonia from a fertilizer plant that had polluted drinking-water wells in Lansing, Michigan.

In other pro-business decisions, Alito struck down a Pennsylvania law barring alcoholic beverage advertising and dismissed a shareholder class action suit filed against Burlington Coat Factory Warehouse Corp., of Burlington, New Jersey, after its earnings fell far short of projections and its stock dropped 30 percent.



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