

The Democrats and Alito's Supreme Court confirmation

Joe Kay
27 January 2006

The US Senate's all but certain confirmation of Samuel Alito as associate justice of the Supreme Court will shift the court even further to the right and facilitate the ongoing attack on democratic rights and social conditions in the United States.

Alito has a long judicial record that provides a clear indication of how he will rule on the Supreme Court. Alito favors an interpretation of the Constitution that allocates to the president extensive powers against the legislative and judicial branches of government. He is a strong advocate of the theory of the "unitary executive," which has been used to justify the repudiation of legal constraints on presidential actions. During his 15-year tenure on the Third Circuit Court of Appeals, Alito has consistently favored a broad interpretation of police powers against the privacy rights of ordinary people.

The political context in which Alito will be confirmed is one whereby the Bush administration, using the pretext of the "war on terrorism," has sought to erect the legal framework for presidential dictatorship. The indefinite detention of prisoners without charge and the abrogation of habeas corpus rights, the use of torture, the right to wage preemptive war, and, most recently, the right to spy on the American people—all of these powers have been claimed by the administration as part of the president's role as commander-in-chief.

There can be no doubt that the Bush administration and its supporters will find an important ally in the person of Samuel Alito. Alito will be replacing Sandra Day O'Connor, who, while a right-wing judge, was somewhat less inclined to support the power grab by the executive branch. Together with Antonin Scalia, Clarence Thomas and Chief Justice John Roberts, Alito will help to give the Bush administration's assault on democratic rights and repudiation of the Constitution the imprimatur of the highest court in the United States.

On other issues, Alito's positions are equally right-wing. He has been a trusted friend to the interests of big business, favoring a limited interpretation of federal powers under the Commerce Clause of the Constitution. He will use his position on the bench to further undermine the legal framework that, since the era of the New Deal, has supported corporate regulations and welfare programs.

And Alito has received the enthusiastic support of anti-abortion fanatics. It should be recalled that Bush's choice of

Alito followed the move by Christian fundamentalists to scuttle the nomination of Harriet Miers because her opposition to abortion was not firmly established. In general, Alito has advanced positions that undermine the separation of church and state on many questions, including the teaching of evolution in public schools.

Given Alito's extreme right-wing views on every major issue, the decision by the Democratic Party to abstain from any serious opposition to his nomination is one more demonstration of the Democrats cowardice and complicity with the Bush administration. Leading Democrats have already ruled out the use of the filibuster, which is the only way that his nomination could be halted. The administration has called for an up-or-down vote on Alito by the time of Bush's State of the Union Address on January 31. According to reports, Alito's supporters are so assured of his confirmation that they have already begun congratulating him and introducing new lower-court nominations in the Senate.

The capitulation of the Democrats has been so abject that sections of its media supporters are concerned that the party will become further discredited in the eyes of broader sections of the population. This is the significance of the lead editorial in the *New York Times* on Thursday, entitled "Senators in Need of a Spine."

The *Times* points out, quite correctly, that Alito as a justice will likely "ignore our system of checks and balances, elevating the presidency over everything else," and that he does this at a time when the Bush administration "seems determined to use the cover of the 'war on terror' and presidential privilege to ignore every restraint, from the Constitution to Congressional demands for information."

The newspaper is concerned that the Senate "seems eager to cooperate by rolling over and playing dead." Alito's positions mean that his nomination "cannot simply be shrugged away with a promise to fight another day." The editorial concluded by counseling the Democrats to at least make a show of mounting a filibuster attempt: "A filibuster is a radical tool," the newspaper wrote. "It's easy to see why Democrats are frightened of it. But from our perspective, there are some things far more frightening. One of them is Samuel Alito on the Supreme Court."

Behind the newspaper's editorial is a deep unease, not so much with the prospect of Alito on the Supreme Court, as with the way in which the Democrats have let him pass through the confirmation process. The *Times* is well aware of the enormous anger building up within the party's traditional base over the Democrats' refusal to oppose the administration, and not only in relationship to Alito. Earlier this month, House Minority Leader Nancy Pelosi was booed during a public meeting after she declared herself opposed to the impeachment of Bush for authorizing illegal spying by the National Security Agency.

There is a concern that the spinelessness of the Democrats will undermine one of the parties of big business, posing a threat to the stability of the two-party system. At least a pretense of serious opposition is critical in keeping political discontent within established channels.

Reports Thursday that Senator John Kerry supports a filibuster attempt reflect these same worries. Having originally indicated that it will do nothing but vote against Alito, a section of the party may follow the advice of the *Times* and go through the motions of a filibuster campaign. However, Kerry, and whatever supporters he is able to gather, are well aware that a filibuster will never succeed due to opposition from within the Democratic Party itself.

The nomination of Alito casts light on the significance of the deal made between Democrats and Republicans in May 2005, when leading Republicans in the Senate, confronting opposition from Democrats to some district court appointments, threatened to overturn Senate rules and abolish the filibuster. In response to this threat to use the so-called "nuclear option," seven Democrats and seven Republicans agreed to a deal that would preserve the filibuster with the promise that it would be used only in "extraordinary circumstances."

As an immediate consequence of this agreement, Republicans were able to vote in a number of extreme right-wing judges for district court positions. Most importantly, from the standpoint of the Republicans, was that they succeeded in cowing Democrats so that when Bush presented his nominations for the Supreme Court he would be able to appoint candidates of his choice. Bush's first Supreme Court pick, Roberts, has already been confirmed with significant support from the Democrats. With Alito's confirmation, once again the Democrats will give the Republicans exactly what they want.

The pretext that Democrats used to explain their former capitulations—that they were saving their strength for the "big fight" on Supreme Court appointments—is now exposed as a complete fraud. Outside the nomination of an open fascist, there could hardly be a more "extraordinary circumstance" than the confirmation of Alito. However, a number of the Democrats who participated in the original deal on the nuclear option have already stated that Alito does not merit a filibuster. These include Senators Ben Nelson from Nebraska, Joseph Lieberman from Connecticut, Robert Byrd from West Virginia, Mary

Landrieu from Louisiana and Mark Pryor from Arkansas. Nelson and Byrd, together with Tim Johnson of South Dakota, are the only Democratic senators who have publicly stated that they will vote for Alito.

Senator Dianne Feinstein, who sits on the Senate Judiciary Committee and voted against Alito, foreswore a filibuster over a week ago, saying, "This might be a man I disagree with, but it doesn't mean he shouldn't be on the court." She indicated that she would vote for a closure of debate, currently scheduled for Monday evening. Including the 55 Republicans in the Senate, the number of senators who have already stated their opposition to a filibuster exceeds 61, which is the number needed to force an up-or-down vote.

In discussing the Democrats' spinelessness, the *Times* states that the senators "seem unwilling to risk the public criticism that might come with a filibuster." As always, the population as a whole is blamed for the right-wing positions of the Democratic Party. In fact, the Democrats are not concerned about public criticism, but rather the opposite. Their greatest fear is that the mobilization of popular opposition against the administration will threaten the interests of big business, which the Democrats themselves fully defend.

There are two basic conclusions that can be drawn from the Alito confirmation process. First, it is a further indication that the Democrats intend to conduct the 2006 midterm elections on a right-wing basis. They will make no real attempt to appeal to popular anger over the war or the attack on democratic rights. Second, even if on this right-wing basis the Democrats are able to secure a majority in one or both of the houses of Congress, this would not significantly alter the policies of the US government. The ascension of Justice Alito is further demonstration that there exist no fundamental differences between the two parties.



To contact the WSWWS and the
Socialist Equality Party visit:

wsws.org/contact