

Editorial Excerpts on Samuel A. Alito, Jr.'s Supreme Court Nomination and the Environment, the Scope of Congressional Authority and the Commerce Clause

[Post-Hearing Editorials:]

***The Baltimore Sun* [MD], Editorial, Supreme shift, (February 1, 2006)**

Yesterday was a day of ceremony for Samuel A. Alito Jr., who was approved by the Senate, 58-42, and then sworn in as an associate justice of the U.S. Supreme Court. But the ceremonial now gives way to the practical business of deciding cases, and based on his judicial record and his appearance before the Senate Judiciary Committee, we still have serious doubts about Justice Alito's suitability for the court.

Whether or not he's on an ideological mission, the views and values revealed by his appellate court rulings and his Senate testimony do not seem to coincide well with the constitutional rights that the court is expected to uphold. A consistent conservative, he will likely favor more protections for government and corporate entities that are challenged by individuals . . .

While it's always difficult to predict how someone will vote once on the court, Justice Alito, together with Chief Justice John G. Roberts Jr., is expected to solidify the court's conservative wing and have a profound impact on the court for years to come. After more than a decade of stability, the balance of power on the court is about to shift. We can only hope that, from his new perch, Justice Alito will recognize the important stamp that the Supreme Court puts on the nation through its rulings and by helping to provide the checks and balances that are integral to our democracy. It can't do its job effectively when politics, of the left or right, subverts the process. http://www.baltimoresun.com/news/opinion/bal-ed.alito01feb01_1_5890284.story?coll=bal-opinion-headlines

***Pittsburgh Post-Gazette*, Editorial: Justice Alito / The Supreme Court enters a troubling era (February 1, 2006)**

In time for President Bush's State of the Union address, the Senate yesterday confirmed Samuel A. Alito Jr. as an associate justice of the U.S. Supreme Court. After a late attempt at a filibuster was easily defeated Monday, Judge (now Justice) Alito was confirmed 58-42, the most partisan victory in modern times.

In both respects, the way this played out provided an appropriate political ending to a disheartening process. After all, the context of this nomination was entirely political.

Justice Alito was the thoroughly conservative judge served up to appease and delight Mr. Bush's right-wing base, who were united in their displeasure with the previous nominee, White House counsel Harriet Miers, whose main offense was not being demonstrably conservative enough.

But the political stamp was undeniable. The margin of victory was closer for Justice Clarence Thomas in 1991 -- 52 to 48 -- but 11 Democrats voted yes on that occasion. This time the victory belonged entirely to Mr. Bush and the Republicans -- and that may yet bring a day of reckoning.

Perhaps America has become as rabidly right-wing as supporters of this nominee suppose. But if Justice Alito performs to universal expectations, a lot of things ordinary Americans take for granted may change.

[L]owly petitioners seeking redress from some wrong perpetrated by a powerful entity may find no sympathy.

If all this comes to pass, this partisan vote will be a reminder of who was responsible.
<http://www.post-gazette.com/pg/06032/647433.stm>

***Brattleboro Reformer* [VT], Editorial, All over but the shouting (February 1, 2006)**

With Tuesday's 58-42 Senate vote, Samuel Alito joined the Supreme Court.

While our senators, Patrick Leahy and James Jeffords, cast votes against Alito, they could not overcome the Republican majority that supported him. Looking back at court nominees over the past century, only Clarence Thomas received less Senate support than Alito.

But it doesn't matter now. Conservatives now have a solid majority on the Supreme Court for decades to come. There will now be enough votes on the court to support expanded presidential power and to erode civil rights, labor and **environmental protections** and, in general, attempt to turn the clock back to the way America was circa 1900.

<http://www.reformer.com/Stories/0,1413,102~8854~3222101,00.html>

***The Charleston Gazette* [WV], Editorial, Alito: Personal rights at risk? (January 31, 2006)**

TODAY, the Republican-controlled U.S. Senate is likely to confirm Samuel Alito to the U.S. Supreme Court, increasing conservative domination of America's justice system.

If it happens, more uncertainty may be cast over personal liberties Americans enjoy under the Bill of Rights and other bulwarks of democracy. During the past century, the high court repeatedly made breakthroughs for human rights, striking down restrictive laws passed by elected legislators.

Conservatives endlessly attack “activist judges” who apply the Bill of Rights to set legal precedents like these, reversing actions by elected legislators. President Bush pledged to pick nominees of an opposite sort, and he has done so.

Some Supreme Court justices don’t behave on the bench as their nominators expected. Since Alito’s confirmation seems inevitable, we hope he turns out to be one of those.

<http://www.wvgazette.com/section/Editorials/200601308>

***The Albuquerque Tribune* [NM], Editorial: President could score points, but he won't (January 31, 2006)**

Here's what you're not likely to hear - but should - from President Bush this evening, when he delivers his sixth State of the Union address to Congress and the nation.

For starters, Bush should admit he and his administration have made serious mistakes.

He should acknowledge, first, that he has failed to live up to his promise to be a uniter, not a divider. Having misspent his political capital during the last year, Bush almost certainly will ignore the reality that the country remains divided - primarily because he has avoided moderation, compromise and mainstream politics like the plague.

His nomination of conservative Judge Samuel Alito to the U.S. Supreme Court to replace the first woman justice is only the most recent example of how his wedge politics continue to frustrate the majority of Americans on most issues.

http://www.abqtrib.com/albq/op_editorials/article/0,2565,ALBQ_19867_4429682,00.html

***The Concord Monitor* [NH], Editorial, Alito doesn't belong on Supreme Court (Jan. 30, 2006)**

It is Alito's excessive deference to assertions of presidential power, demonstrated as a lawyer for President Ronald Reagan and as a judge, that make him a poor candidate for the high court.

Unless his longstanding views change significantly - something possible but improbable - Alito will vote to weaken the rights of citizens and diminish the authority of Congress and the courts.

Particularly troubling is Alito's notion that a president's intent, revealed through his statements when he signs a bill, is as important as Congress's intent when it passed the law.

If sanctioned by the court, that belief would muddy the law and radically skew the balance of power. It would accommodate any president with a desire to stretch the law to enhance his power. Supreme Court justices are created by presidential elections, especially when the president's party holds a majority in the Senate. The likelihood that any nominee, unless clearly unqualified, will be approved gives a president license to be more ideological and less moderate in his choice.

It could easily take a citizenry unhappy with the exercise of that newly sanctioned presidential authority decades to restore the balance of power. Inevitable as Alito's confirmation may be, that makes a vote to confirm him a mistake.

<http://www.concordmonitor.com/apps/pbcs.dll/article?AID=/20060130/REPOSITORY/601300315/1224>

***The Sacramento Bee*, Editorial: Power of Congress is at stake in vote on Alito (Jan. 29, 2006)**

Nominee favors executive power but limits legislative branch

And when it comes to congressional power, let no one doubt that Alito would line up with the "Revolution of 1995." The court had not struck down a law on Commerce Clause grounds in a half century. In 1995, a narrow 5-4 majority on the Supreme Court began to use the Commerce Clause to limit the ability of Congress to make laws on national issues. Alito's record suggests he would go farther down that path.

Consider the 1996 Rybar case where Alito, writing a lone dissent, would have overturned the conviction of a man who illegally possessed and sold fully automatic machine guns in Pennsylvania. Alito argued that Congress exceeded its power under the Commerce Clause in banning the transfer or possession of machine guns and Congress should issue findings showing interstate impact. Yet in question were one gun from China and another made during World War II by General Motors. Clearly, both guns had traveled through interstate commerce to Pennsylvania. Alito's colleagues sharply criticized his dissent as violating "a basic tenet of the constitutional separation of powers."

The issues of overreaching presidential power and encroachments on congressional power are the most important that the Supreme Court will face in coming years.

As it stands, the vote-counters foresee Alito will receive 56 to 62 yes votes on Tuesday. That could change in the next couple of days, but if it doesn't, it's a sad commentary on Congress as an institution. This is no time to confirm an individual for a lifetime appointment to the Supreme Court who has a record of undue deference to executive power and a **record seeking to impose radical limits on the power of Congress to make laws.**

<http://www.sacbee.com/content/opinion/story/14124923p-14953941c.html>

***Sarasota Herald Tribune* [FL], Editorial, The Alito Nomination (Jan. 29, 2006)**

A qualified judge with troubling positions

The nomination of Samuel Alito poses a dilemma to proponents of the traditional balance of power among the federal government's three branches.

If that swing occurs, the Supreme Court could soon issue rulings inconsistent with the consensus views and values in moderately conservative Southwest Florida -- undermining environmental regulation and consumer protection, upsetting the checks and balances in government and weakening privacy rights.

Our hope is that, if Alito is confirmed, he will be a justice who rules according to the law, acts on America's highest principles, provides intellectual equilibrium on the court, and works to maintain the checks and balances that were envisioned by the nation's founders and remain essential for protecting our freedoms today.

<http://www.heraldtribune.com/apps/pbcs.dll/article?AID=/20060129/OPINION/601290622/1030/OPINION01>

The Charleston Gazette [WV], Editorial, Letdown (Jan. 28, 2006)

Byrd and Alito

Byrd was satisfied with Alito after his own interview, in which the judge spoke of his respect for the separation of powers and promised not to rule in support of a power-hungry president. Apparently that swayed Byrd, and gave him confidence that Alito will be a fair Supreme Court justice. The nominee also pledged to respect past Supreme Court rulings . . .

We hope, rather than believe, the senator is correct.

<http://www.wvgazette.com/section/Editorials/200601276>

The Buffalo News [NY], Editorial, Alito too great a shift right (Jan. 27, 2006)

The president may nominate a candidate of his liking from his ideological camp. Alito may be highly conservative, but his qualifications, level of experience or judicial capabilities are reasonable. **Once confirmed, though, Alito shoulders a responsibility to defend the Constitution, not legislate from the bench.** The next steps are his, and they should be ordained and guided by true respect for the Constitution and the law.

<http://www.buffalonews.com/editorial/20060127/1061404.asp>

Palm Beach Post, Editorial, Democrats have a case, probably won't make it (Jan. 27, 2006)

Take the issue of presidential power. Judge Alito's record, as a jurist and an overweening applicant for a job in the Reagan administration, shows that he supports Mr. Bush's view of broad presidential authority. Polls, however, show that Americans are divided on whether President Bush had the authority to wiretap Americans without a warrant.

http://www.palmbeachpost.com/opinion/content/opinion/epaper/2006/01/27/a20a_alito_edit_0127.html

The Seattle Times, Editorial, Alito and the drumroll of executive authority (Jan. 27, 2006)

Samuel Alito is a troubling choice for the Supreme Court. **Our deepest discomfort is over his deference to executive authority.**

What America needs on the Supreme Court are justices who will not defer to executive authority. Yet, Alito's jurisprudence is deferential.

We can always hope. Robert Jackson served in the Justice Department under Franklin Roosevelt, and publicly campaigned in favor of his boss's court-packing plan. During the New Deal, Jackson defended executive power. Yet by 1952, he was on the Supreme Court, and a free man; and in the steel-seizure case, he slapped down a president of his own party.

Alito may need to be another Jackson. We hope he is — and fear he is not.

http://seattletimes.nwsourc.com/html/editorialsopinion/2002764399_samaed27.html

Seattle Post-Intelligencer, Editorial, Supreme Court: Regrettable reality (Jan. 26, 2006)

Judge Samuel Alito will soon get his lifetime appointment to the U.S. Supreme Court. **Alito's history of extreme views on . . . executive powers makes that nothing more than a regrettable political reality.**

No matter the procedure, Democrats need to send Alito, their Republican colleagues and the country a timely message. Alito's philosophy regarding omnipotent executive power . . . runs contrary to the views of most Americans.

http://seattlepi.nwsourc.com/opinion/256986_justed.asp

The Roanoke Times [VA], Editorial, Reject Alito's nomination (Jan. 26, 2006)

A disregard for checks and balances and an unwavering deference to the executive make the judge a dangerous Supreme Court choice.

Essentially, the "unitary executive" theory holds that the Constitution vests all executive authority in the president. Such authority, especially in times of war, is "plenary, exclusive and subject to no legal limitations," according to an opinion issued by the Reagan Justice Department.

In other words, Congress and the courts should butt out and let the president do anything he believes necessary to protect national security, whether it violates statutory law or the Constitution.

As University of Chicago law professor Geoffrey Stone wrote recently in the Chicago Tribune, "The most fundamental responsibility of the Supreme Court is to preserve both the separation of powers and the individual liberties guaranteed by our Constitution. They are the bulwarks of our freedom."

Alito's overwhelming deference to executive power raises serious doubts about his ability to fulfill that responsibility.

This is anything but an academic issue, given President Bush's repeated claims that the so-called war on terror grants him incredibly broad and unchecked powers -- ranging from the authority to indefinitely detain U.S. citizens to the power to authorize torture despite an explicit congressional ban and, most recently, the authority to engage in surveillance of American citizens without court approval.

As Slate senior editor Dahlia Lithwick pointed out, there are very few precedents to guide the courts as they continue to address what limits, if any, check presidential power during this nebulous and unending "war."

Sandra Day O'Connor, whom Alito was tapped to replace, wrote in a recent decision that the war on terror did not give the president "a blank check." Alito has given the Senate no reason to believe he shares that vital sentiment.

That, not ideology, is why he should be rejected.

<http://www.roanoke.com/editorials/wb/wb/xp-49924>

The New York Times, Editorial, **Senators in Need of a Spine (Jan. 26, 2006)**

Judge Samuel Alito Jr., whose entire history suggests that he holds extreme views about the expansive powers of the presidency and the limited role of Congress, will almost certainly be a Supreme Court justice soon. His elevation will come courtesy of a president whose grandiose vision of his own powers threatens to undermine the nation's basic philosophy of government — and a Senate that seems eager to cooperate by rolling over and playing dead.

But portraying the Alito nomination as just another volley in the culture wars vastly underestimates its significance. **The judge's record strongly suggests that he is an eager lieutenant in the ranks of the conservative theorists who ignore our system of checks and balances, elevating the presidency over everything else.** He has expressed little enthusiasm for restrictions on presidential power and has espoused the peculiar argument that a president's intent in signing a bill is just as important as the intent of Congress in writing it. This would be worrisome at any time, but it takes on far more significance now, 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.

Judge Alito's refusal to even pretend to sound like a moderate was telling because it would have cost him so little. Chief Justice John Roberts Jr., who was far more skillful at appearing mainstream at the hearings, has already given indications that whatever he said about the limits of executive power when he was questioned by the Senate has little practical impact on how he will rule now that he has a lifetime appointment.

Senate Democrats, who presented a united front against the nomination of Judge Alito in the Judiciary Committee, seem unwilling to risk the public criticism that might come with a filibuster — particularly since there is very little chance it would work. Judge Alito's supporters would almost certainly be able to muster the 60 senators necessary to put the nomination to a final vote.

A filibuster is a radical tool. 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.

<http://www.nytimes.com/2006/01/26/opinion/26thur1.html? r=1>

The Oregonian, Editorial, **The fig-leaf filibuster**, (Jan. 26, 2006)

If Senate Republican leaders respected the historic right of the minority to filibuster, Alito wouldn't make the cut

He's likely to take an expansive view of presidential authority, though the American public seems increasingly frustrated and distressed by the current administration's above-the-law attitude and over-reaches of power.

He's likely to interpret the Constitution through an 18th-century lens, as he promised to do during his confirmation hearings, though Americans generally prefer living in the 21st century.

Alito may turn out to be no more conservative than Chief Justice Roberts, who earned bipartisan support. However, . . . Roberts talked at some length about the judiciary's duty to check the power of the elected branches of government. **Alito seemed predisposed to rubber stamp new assertions of power.**

And Roberts described the Constitution as an evolving document. Alito didn't.

For these reasons, we supported Roberts but oppose Alito. We applaud Oregon Sen. Ron Wyden for doing the same.

<http://www.oregonlive.com/editorials/oregonian/index.ssf?/base/editorial/1138240533209520.xml&coll=7>

The Fresno Bee [CA], Editorial, A troubling symptom (Jan. 26, 2006)

Alito nomination is only part of a frightening executive pattern.

President Bush has, in recent years, asserted "inherent powers" and "exclusive authority" regardless of laws passed by Congress and language in the U.S. Constitution - and has used the purported powers as a reason to withhold information and exclude Congress from decisions.

On occasion, the court, with the support of outgoing Justice Sandra Day O'Connor, has thwarted the administration's radical agenda, as in its ruling that the president may not hold, indefinitely and without trial, anyone he declares an "unlawful enemy combatant."

The court will grow much more compliant with Alito's ascension. That is one of the many reasons that we think his nomination should be rejected, although we understand that won't happen with this Senate.

Congress, curiously, has played a major role in the diminishing of its own powers.

All of this is taking place under the rubric of a reactionary theory of American government called the "unitary executive." That theory has clanked around among right-wing academics and think tanks since at least the Reagan years. But in the hands of the Bush administration, it has become an aggressive battle plan for altering the very fabric of representative government in the United States.

In essence, the theory holds that the executive - the president - may interpret the laws and the Constitution as he wishes, without regard to congressional legislation or court ruling.

Alito has been a disciple of this radical theory for many years, and it shows in his record on the federal bench. He has rarely met a government intrusion that he didn't like. He has rarely found a limit to government's power.

That's not conservative. That's authoritarian. And that's frightening.

<http://www.fresnobee.com/opinion/story/11731994p-12455206c.html>

The Dayton Daily News [OH], Editorial, Alito wrong choice for high court (Jan. 25, 2006)

President George W. Bush has made no effort to compromise here. **He picked a person to his liking, or, as The Washington Post's David Broder said, "the perfect company man who is likely to deliver exactly the kind of conservative rulings Bush prefers."**

But the U.S. Constitution just says the president shall nominate. Then, just as in cases of cabinet nominees, it's up to the Senate. The Senate should give the president's view overwhelming weight in the case of cabinet nominees, because they will be his team. But the courts are

nobody's team. **Judicial appointments should reflect the combined will of the Senate and the president, meaning compromise if necessary.**

The high court will soon face questions about the Bush White House's relentless effort to expand presidential power. **Judge Alito, who seems to favor more executive power, on top of seeming "the perfect company man," is the wrong choice.**

<http://www.daytondailynews.com/search/content/opinion/daily/0124alito.html>

Detroit Free Press, Editorial, Alito's Record (Jan. 24, 2006)

Confirmation would jeopardize checks on power

While demonstrably bright enough to do the job, Alito has not as a government attorney and federal judge demonstrated sufficient respect for the checks and balances on which this democracy depends. President George W. Bush, who nominated Alito, has been asserting presidential powers not readily found in the Constitution or the laws that have derived from it. **He has shown a disdain for the tempering role of Congress and the judiciary -- sentiments similar to that found in Alito's writings.**

The weight of the robes they wear and the Constitution they uphold has led many justices to reconsider, or at least moderate, previously held positions. Alito may well have such growth inside him.

But such hope is too ethereal a property on which to base an endorsement. The Senate would offer Bush its best advice by not consenting to the Alito nomination.

<http://www.freep.com/apps/pbcs.dll/article?AID=/20060124/OPINION01/601240318/1068/OPINION>

Florida Today, Editorial, Reject Judge Alito (Jan. 24, 2006)

Radical views on executive power and other issues make him unsuitable for high court

But his unwillingness during confirmation hearings to give forthright answers about critical issues that could drastically alter the course of the nation means his fitness for the high court must be decided mostly on his long judicial record:

And it's not pretty.

The issue that disturbs us the most is Alito's history of favoring greater -- and excessive -- executive branch powers.

He also backs the president's use of signing statements on new laws, which can undermine congressional intentions and usurp Congress' constitutional role.

Alito has repeatedly come down on the side of government and big corporations in rulings and memos that would slash legal protections for the ordinary, hard-working men and women of our nation.

He has opposed enforcing safety protections for employees, workplace discrimination laws, and needed environmental protections.

He's the wrong man at the wrong time for the court, and the Senate should reject him.

<http://www.floridatoday.com/apps/pbcs.dll/article?AID=/20060124/OPINION/601240315/1004>

***San Jose Mercury News* [CA], Editorial, Alito's conservative views will tip court to the right (Jan. 24, 2006)**

NOMINEE'S STANCES ON BASIC RIGHTS, EXECUTIVE POWER ARE ESPECIALLY DISTURBING

Alito believes in virtually unchecked presidential power. **He believes Congress has far more limited power, especially when it comes to protecting the environment and the rights of individuals, women, racial minorities and workers.**

But the vote on Alito shouldn't be solely partisan.

Republicans should remember that Bush's slim electoral victories -- not to mention his low poll numbers -- are hardly a mandate to tilt the nation's highest court sharply to the right. If they choose to go along with their president and vote to confirm Alito, as most will likely do, voters should hold them accountable for the erosion of basic rights that is certain to follow.

<http://www.mercurynews.com/mld/mercurynews/news/opinion/13697969.htm>

***The New York Times*, Editorial, Judge Alito's Radical Views (Jan. 23, 2006)**

Judge Alito is exactly the kind of legal thinker President Bush wants on the Supreme Court. He has a radically broad view of the president's power, and a radically narrow view of Congress's power. He wants to reduce the rights and liberties of ordinary Americans, and has a history of tilting the scales of justice against the little guy.

It is likely that Judge Alito was chosen for his extreme views on presidential power. The Supreme Court, with Justice O'Connor's support, has played a key role in standing up to the Bush administration's radical view of its power, notably that it can hold, indefinitely and without trial, anyone the president declares an "unlawful enemy combatant."

Judge Alito would no doubt try to change the court's approach. He has supported the fringe "unitary executive" theory, which would give the president greater power to detain Americans and would throw off the checks and balances built into the Constitution. He has also put forth the outlandish idea that if the president makes a statement when he signs a bill into law, a court

interpreting the law should give his intent the same weight it gives to Congress's intent in writing and approving the law.

Judge Alito would also work to reduce Congress's power in other ways. In a troubling dissent, he argued that Congress exceeded its authority when it passed a law banning machine guns, and as a government lawyer he insisted Congress did not have the power to protect car buyers from falsified odometers.

Judge Alito has consistently shown a bias in favor of those in power over those who need the law to protect them. Women, racial minorities, the elderly and workers who come to court seeking justice should expect little sympathy. In the same flat bureaucraic tones he used at the hearings, he is likely to insist that the law can do nothing for them.

<http://www.nytimes.com/2006/01/23/opinion/23mon1.html? r=1>

***The Daily Camera* [CO], Editorial, The trouble with Alito: His views on executive power raise serious concerns (January 22, 2006)**

The most compelling reason to oppose the confirmation of Samuel Alito to serve on the U.S. Supreme Court is his sympathy for, if not outright embrace of, a judicial philosophy that recognizes scant limits on the power of the president. In his long career as a judge, in his other writings, and in his testimony before the Senate Judiciary Committee, Alito has offered few promising signs that he would strengthen the Supreme Court as a barrier — the one truly formidable barrier — to unchecked presidential authority.

On the subject of executive power, though, Alito's approach is best suggested by his endorsement as a Department of Justice official of "signing statements," in which a president spells out his interpretation of a law's meaning. President Bush has used this power far more than any previous chief executive; in the case of the McCain bill prohibiting torture, Bush's obvious intent was to declare his own authority to ignore the bill when he found its application inconvenient.

Alito believes that statements of this kind are a way for the president to influence judicial interpretation of the law. They might influence him more strongly than explicit statements of congressional intent would, because the same Alito who defers to presidential power is often dismissive of Congress. Senators grilled Alito at length on a theory known as the "unitary executive," shedding light on his view that Congress and the courts have little authority to infringe power lodged in the president.

And he struck down a congressional ban on machine guns because he believed it exceeded Congress's power to regulate interstate commerce.

Whatever he decides, Alito probably would not hesitate to overturn settled law. He identified himself during the hearings with the judicial philosophy known as originalism, which limits itself

to interpreting the views of those who wrote and ratified the document. Justices who hold this view, such as Clarence Thomas, are those most comfortable with upending decades of precedent. http://www.dailycamera.com/bdc/editorials/article/0,1713,BDC_2489_4404116,00.html

***Sentinel & Enterprise* [MA], Editorial, Three reasons to reject Alito (Jan. 20, 2006)**

Alito entered the hearings obviously well-prepped by his White House handlers -- including, at one point, Republican Sen. Lindsay Graham, a member of the Senate Judiciary Committee (so much for the pretense of honest hearings). But while he made no embarrassing gaffes, Alito did reveal three areas where he is far out of mainstream America -- and three reasons why he should be rejected for the Supreme Court.

He's either for the limits on presidential power spelled out in the Constitution, or he's not. If he won't say, he doesn't belong on the court.

http://www.sentinelandenterprise.com/opinion/ci_3421514

***Rutland Herald* [VT], Editorial, No to Alito (Jan. 20, 2006)**

Leahy made a compelling case for the rejection of Alito's nomination. The problem is not just with Alito but also with the president who nominated him.

Alito made an admission that ought to set off alarm bells among the senators. He said he was an originalist in the way that he interprets the Constitution. That means he joins Justices Antonin Scalia and Clarence Thomas in the belief that the Constitution must be read as the Founding Fathers would have read it.

Third, maintaining an 18th century view of government in the 21st century places government in a straitjacket. **Over time, the Supreme Court has increased its willingness to interpret the commerce clause in a way that gives Congress broader powers of regulation. If Alito believes the Constitution must be read as Hamilton or Madison read it, he will have written off the lessons that might have been learned over more than 200 years of history.**

<http://www.rutlandherald.com/apps/pbcs.dll/article?AID=/20060120/NEWS/601200306/1018/OPINION>

***Fallon Star Press* [NV], Editorial, The Executive, The Legislative and Alito (Jan. 20, 2006)**

Enter Judge Alito, who, as a lawyer in the Reagan administration, helped bring about an innovation in the presidency that hasn't gotten much attention until recently. It's called a "signing statement" -- the words a president says and writes when signing a bill into law. Alito didn't invent signing statements; long before Ronald Reagan's presidency, presidents made brief

statements while signing bills -- sometimes to highlight or express concern over particular provisions, and sometimes as mere rhetorical flourishes. **But, as reported in The Washington Post, what Alito did help to bring about was a new use for signing statements, wherein presidents would express their particular interpretation of the law in question, an interpretation that might or might not square with what Congress had in mind when it drafted a particular law.** And should a law ever come before the courts for review, the thinking went, the signing statement could allow a president's intentions for a law to get consideration alongside on-the-record congressional deliberations.

Are there legislative powers that belong solely to Congress? In what matters should one branch of government defer to the other? **These are among the important questions being raised in the current push-and-pull between the executive and legislative branches, and if they're to be answered, they will likely be answered by the third branch and, ultimately, the Supreme Court.**

<http://news.rgj.com/apps/pbcs.dll/article?AID=/20060120/FALLON04/601200346/1033/FALLON>

***Pittsburgh Post-Gazette*, Editorial, The Alito vote / Americans will regret his confirmation (Jan. 19, 2006)**

Judge Alito comes as advertised. Last week, he did little to confirm or deny what everybody knows about him. He kept his mask firmly in place as the posturing and hypocrisy swirled about him. Once on the court, freed of the need to parry questions, he will revert to type -- and that type will vex the American people, whether they know it or not, for years.

In other words, Judge Alito's vaunted "open mind" will be informed by his very conservative nature. For all his sincere statements about it not being proper for judges to be influenced by their own views, judges are not robots. In fact, Judge Alito briefly broke cover on this point. Asked where his heart was, he repeated the part in his opening statement about being a son of poor immigrant parents.

An Associate Justice Alito will be meticulous, but he will read the law narrowly to favor authority -- presidential, police or otherwise -- He will do it because it is his nature to do it -- as his most fervent supporters well understand -- and that is why he should be opposed.

<http://www.post-gazette.com/pg/06019/640345.stm>

***The New Republic*, Editorial, Restraining Order (Jan. 19, 2006)**

More important in our view are the central questions of the confirmation hearings: namely, Alito's views about congressional and executive power. We were especially troubled by Alito's vote to strike down the federal ban on the possession of machine guns, on the grounds that Congress had not offered convincing evidence of a connection between machine-gun possession

and interstate commerce. Indeed, in his hearings, Alito emphasized that, in his view, Congress needs to explicitly identify the effects of its laws on interstate commerce for them to pass constitutional muster. Alito reaffirmed his view that the Supreme Court's 1995 decision striking down the federal ban on guns in schools was a constitutional "revolution"--a development he seemed to view as positive. And he refused to say that all of the Supreme Court's Commerce Clause decisions of the past 50 years are "well-settled precedents," allowing only that "most" of them are settled. Showing little of Roberts's emphasis on the importance of judicial deference to Congress, Alito raised fears that he would join Scalia and Thomas in overturning a host of federal laws. **After all, many of the cases upholding congressional power during the last 50 years are arguably inconsistent with the original understanding of the Constitution; and, if Alito is willing to deny Congress the power to regulate machine-gun possession, it's not unreasonable to fear that he might deny Congress the right to regulate drug possession or protect the environment.**

And then there is executive power. Alito was questioned extensively on his views about the theory of the "**unitary executive**," which holds that all executive power is vested in the president and cannot be infringed upon by Congress or the courts. Alito had endorsed this theory in the Reagan Justice Department and reaffirmed his support for it as recently as 2000. Perhaps most disturbingly, he did not convincingly explain his enthusiasm, as a Justice Department official, for presidential "signing statements," which an executive can use to record his interpretation of a bill, whether or not that interpretation meshes with the legislature's intent. Bush, for example, is now using a presidential signing statement to argue that the recent congressional ban on torture does not, in fact, prevent the executive from ordering torture in certain circumstances. **In a conflict between the president and Congress, nothing in his record suggests that Alito would defer to Congress's explicit wishes.** As TNR Legal Affairs Editor Jeffrey Rosen argues this week, Alito might join advocates of unchecked executive power, such as Thomas, who argue that the president can do whatever he likes in the war on terrorism, despite the opposition of Congress and the lower courts. As the Bush administration's rejection of congressional efforts to restrict domestic surveillance and torture suggests, the prospects of an imperial presidency unrestrained by the courts or Congress could be grave.

Although the decision is not easy, our concerns about Alito's lack of commitment to bipartisan judicial restraint compels us to urge Senate Democrats to vote against his nomination.

<http://www.tnr.com/user/nregi.mhtml?i=20060130&s=editorial013006>

Winston-Salem Journal [NC], Editorial, Alito a Bad Choice (Jan.18, 2006)

Although the U.S. Senate is on the brink of confirming Judge Samuel Alito as an associate justice of the U.S. Supreme Court, the Journal cannot endorse that decision.

If Alito holds true to his previous decisions, he can be expected to prefer the arguments of a strong government over those for individual rights. **He will not be sympathetic to concerns about environmental protection.**

http://www.journalnow.com/servlet/Satellite?pagename=WSJ%2FMGArticle%2FWSJ_ColumnistArticle&c=MGArticle&cid=1128769368773&path=!opinion&s=1037645509163

San Francisco Chronicle, Editorial, Why Alito is the wrong choice (Jan. 17, 2006)

Of the two, Alito had far more explaining to do about his past, and his answers fell short of satisfying concerns about his record of . . . **all too frequently siding with government and businesses against individuals seeking redress.**

One of the focal points in the Alito hearings was the balance of power between the executive, legislative and judicial branches of government. **That issue was not only timely because of the Bush administration's attempts to usurp the authority of Congress, but also because of Alito's past support for the concept of a "unitary executive" with extensive powers.** In fact, as a Justice Department lawyer in the Reagan administration, Alito laid out a strategy for presidents to "increase the power of the executive to shape the law" by putting caveats with their signature on legislation. President Bush has been doing just that -- using "signing statements" more than 100 times to essentially reserve his right to ignore a law he might find unduly constraining. For example, in recently signing the torture ban, Bush included language that could allow him to override it for national security purposes.

From a strategic perspective, Alito's succinct, low-fiber responses to the often overwrought senators' questions paid off. Alito left no doubt about his impressive command of the Constitution and various milestone cases.

But Americans deserved more. **They deserved greater assurances that Alito's history as an ideologue did not presage an activist justice who would roll back the clock on rights and policies that have made this nation freer and more equitable.**

Alito failed to satisfy such concerns. Senators should reject this nomination.

<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2006/01/17/EDGIAGNDL01.DTL>

The Record [NJ], Editorial, No on Alito, (Jan. 17, 2006)

Mr. Alito would replace Sandra Day O'Connor, who currently holds the court's deciding vote in favor of moderation. While basically conservative, Justice O'Connor has, often in 5-4 decisions, gotten the court to take a more mainstream position in many cases involving affirmative action, the environment . . .

With Mr. Alito's presence, the court would rule differently on these issues.

The important issue is also how the court will side on cases involving, say, a company like Ford that dumped toxic material in Ringwood or a president who ignored an act of Congress.

That could mean huge setbacks for decades to come on the environment, on civil rights, civil liberties, privacy and the balance of power in government.

<http://www.bergen.com/page.php?qstr=eXJpcnk3ZjczN2Y3dnFIZUVFeXk0MDUmZmdiZWw3Zjd2cWVIRUV5eTY4NjE3MDAmeXJpcnk3ZjcxN2Y3dnFIZUVFeXkxNA==>

Berkshire Eagle [MA], Editorial, No to Alito (Jan. 17, 2006)

Five years ago, Mr. Alito told The Federalist Society that "the president has not just some executive power but the executive power - the whole thing," and nothing he said or didn't say before the Judiciary Committee indicates he believes any differently today. This is not a conservative belief but a radical one, and it is a belief shared by the architects of our imperial presidency. **Mr. Alito's contradictory past rulings that the federal government has little authority to enforce environmental, health or safety regulations indicates that he has either not thought through his beliefs or is willing to cast them aside when convenient. Neither possibility is comforting.**

http://www.berkshireeagle.com/editorials/ci_3409542

Star Tribune [MN], Editorial: Why confirm the mystery man? Alito did little in hearings to quell concerns. (January 17, 2006)

Perhaps Samuel Alito would be a fine addition to the U.S. Supreme Court. Perhaps not. But given the nominee's performance before the Senate Judiciary Committee, the answer is hard to conjure. Though Alito's questioners may have prattled as much as they probed, the nominee himself proved a most artful dodger. After hours of inquiry and polite response, Americans who tuned in to the hearings know little more about Alito than they knew before. Deprived of enlightenment, they shouldn't be blamed for uneasiness over his likely confirmation.

It's long been clear -- and pretty well accepted -- that President Bush's high court picks will cleave to conservative jurisprudence. But these days "conservatism" can mean almost anything, which is why confirmation hearings matter so much. They offer onlookers a chance to assess a candidate's character -- to determine if his or her judicial philosophy resonates with reason. If a seat-seeker speaks with candor, insight and at least a glimmer of reverence for the Constitution, even reflexive fretters may acquiesce.

Hence the hesitancy about Alito's performance last week. Short on substance and long on sidestepping, his halting words left few clues about this man's constitutional vision. Bypassing many opportunities, Alito somehow managed not to answer the queries most crucial to the curious or to offer assurances sought by the skeptical.

Thus those initially unsettled about Alito's fitness for the high court remain so. They're still wondering how closely Alito's judicial past might resemble his high court future. In 15 years on the Third U.S. Circuit Court of Appeals, the judge racked up quite a record as a contrarian: . . . His dissents were often so markedly off course that his colleagues rapped him repeatedly for "legislating from the bench" -- the very accusation Alito's allies typically hurl at judges they deem "liberal."

Other concerns still linger about Alito . . . They remain haunting only because Alito has done so little to banish them.

But why has he done so little? A confirmation hearing, after all, represents a nominee's best chance to calm unfounded concerns and to advance a vision of justice that captivates the public mind. That's what new Supreme Court Chief Justice John Roberts did during his committee appearance last fall: Responding candidly to scores of questions, Roberts soothed fears that he sought to reverse decades of established law -- noting his great respect for precedent . . .

It would have been so easy for Alito to heed the Roberts precedent, to seize his one golden moment to reveal his mind and explain how he'll carry on the tradition of American justice. Because he didn't, his Senate questioners don't know for certain what he stands for. And if they don't, can they really in good conscience send him to the Supreme Court?

<http://www.startribune.com/561/story/182730.html>

***Baltimore Sun*, Editorial, Not Good Enough (Jan. 15, 2006)**

Despite Judge Alito's periodic assurances of having an open mind, the disturbing impression from the hearings is that on critical issues . . . he does not.

In addition, while we do not doubt the sincerity of witnesses - including a panel of judges from his own 3rd U.S. Circuit Court of Appeals - who testified to Judge Alito's fine character and nonideological judicial philosophy, he still has a judicial record of favoring corporations and other large institutions over individuals challenging discrimination or disability rules and workers protesting unsafe conditions.

Perhaps Judge Alito is as good as could be expected from a conservative Republican administration, but for a lifetime appointment to the nation's highest court and with the prospect that hard-won rights could be diminished, he's not good enough.

<http://www.baltimoresun.com/news/opinion/bal-ed.alito15jan15,1,2936585.story?coll=bal-opinion-headlines>

***The Oregonian*, Editorial, The judge of Bush's dreams (Jan. 15, 2006)**

Senators lulled by Alito's mild demeanor and legal skills can't ignore the likely consequences of confirmation

Alito possesses an expansive notion of presidential authority. Except in free-speech cases, he shows great deference toward the government. Those opinions might seem academic in less tumultuous times, but they're troubling now. What's more, Alito supports the originalist view of the Constitution shared by Thomas and Scalia.

"In interpreting the Constitution," Alito told senators on Wednesday, "I think we should look to the text of the Constitution, and we should look to the meaning that someone would have taken from the text of the Constitution at the time of its adoption."

This 18th-century view, if part of a court majority, could roll back many hard-fought federal protections that Americans enjoy today.

<http://www.oregonlive.com/editorials/oregonian/index.ssf?/base/editorial/1137205503294320.xml&coll=7>

St. Louis Post-Dispatch, Editorial, SUPREME COURT: Alito: Evasions and reservations (Jan. 15, 2006)

In 2000, Mr. Alito gave a speech to the Federalist Society in Washington in which he advocated the "**unitary theory**" of the executive branch, which holds that the Founding Fathers wanted all executive power to be in the hands of the president and be shared with administrative agencies or with Congress. **Despite persistent questions by Democratic senators, Mr. Alito refused to say how he would apply that expansive view.**

In general, the president has the right to see his appointees confirmed, as long as they are qualified and as long as their views are not out of the mainstream of constitutional thought. There is no doubt that Mr. Alito meets the first standard. **But until he is more forthcoming on the second standard, he does not merit confirmation.**

<http://www.stltoday.com/stltoday/news/stories.nsf/editorialcommentary/story/2642984259E0802B862570F600384A3A?OpenDocument>

Sacramento Bee, Editorial, Constitutional powers hanging in the balance (Jan. 15, 2006)

Alito nomination gives senators a chance to re-assert the rightful role of Congress

These are tough times for Congress. In recent years, both President Bush and the Supreme Court have aggressively claimed powers at the expense of the legislative branch.

The president has asserted "inherent powers" and "exclusive authority" regardless of laws passed by Congress and language in the U.S. Constitution - and has used the purported powers as a

reason to withhold information and exclude Congress from decisions. For its part, the Rehnquist Court began limiting the power of Congress in the "Revolution of 1995" with a series of 5-4 decisions striking down laws passed by Congress.

Equally disturbing, Alito seems willing to go further than the current court in overturning laws passed by Congress. Alito has shown throughout his career that he has a cramped view of congressional power and an expansive view of presidential power. That, surely, is a prime reason why Bush nominated him.

<http://www.sacbee.com/content/opinion/story/14072835p-14903371c.html>

***The New York Times*, Editorial, The Imperial Presidency at Work (Jan. 15, 2006)**

Both of the offensive theories at work here - that a president's intent in signing a bill trumps the intent of Congress in writing it, and that a president can claim power without restriction or supervision by the courts or Congress - **are pet theories of Judge Samuel Alito, the man Mr. Bush chose to tilt the Supreme Court to the right.**

The administration's behavior shows how high and immediate the stakes are in the Alito nomination, and how urgent it is for Congress to curtail Mr. Bush's expansion of power. Nothing in the national consensus to combat terrorism after 9/11 envisioned the unilateral rewriting of more than 200 years of tradition and law by one president embarked on an ideological crusade.

<http://www.nytimes.com/2006/01/15/opinion/15sun2.html>

***The Boston Globe*, Editorial, Not fit for the court (Jan. 14, 2006)**

In four days of hearings before the Senate Judiciary Committee, Alito appeared contained and well informed. **But Americans who were concerned about his views on presidential power, privacy, and minority rights heard little to have those fears allayed.**

Alito declared his overarching constitutional philosophy of originalism: a strict adherence to the actual written text. In deciding court opinions, he said, "We should look to the meaning that someone would have taken from the text of the Constitution at the time of its adoption." Given that, at the time of its adoption, women could not vote and slaves were considered three-fifths of a person, such a philosophy is outdated, to say the least.

http://www.boston.com/news/globe/editorial_opinion/editorials/articles/2006/01/14/not_fit_f_or_the_court/

***The Boston Phoenix*, Editorial, Republicans large and small Bush, Alito, Abramoff... and Healey (Jan. 13-19, 2006)**

In the view of professor Sanford Levinson of the University of Texas Law School, "The major issue before the Court, and the nation, both now and in the foreseeable future ... [will be] the ability to stave off ever more aggressive assertions of executive power unchecked by either Congress or the judiciary." **There is a great deal of evidence in Alito's record, on and off the bench, that indicates he is a strong advocate of unrestrained presidential powers - at least as long as the president is a right-wing Republican.** His record as a judge hews so closely to his personal conservative beliefs that it strains credulity to imagine him as anything other than a right-wing radical, a Bork without the silly beard. It is at least possible to imagine his smoother and more sophisticated brother conservative, Chief Justice John Roberts, entertaining heretical legal opinions if they are sufficiently intellectually enticing. Alito is nothing more than the kinder, gentler face of conservative extremism, an understated, opera-loving guy from a modest background who earned prestigious degrees from Princeton and Yale Law and hitched his star to plutocrats who put the screws to working people and made the well-off even more affluent - all while cloaking their agenda in pious hosannas. Who says you can't fool most of the people most of the time?

http://www.bostonphoenix.com/boston/news_features/editorial/editorial.html

Daytona Beach News-Journal, Editorial, Power to the president (Jan. 12, 2006)

Alito's record on the matter is clear. The Constitution "makes the president the head of the executive branch, but it does more than that," Alito told the Federalist Society in a 2000 speech cited by the Wall Street Journal. "The president has not just some executive powers, but the executive power -- the whole thing." **This view of the authority of the president may be savvy and original, like its advocate. That doesn't make it constitutional.** Yet it fits like an iron glove with President Bush's expansionist, ends-justify-means interpretation of presidential powers.

That only raises the stakes of the Alito nomination, and of the Senate's responsibility on its way to consenting, or rejecting, the nomination. Given the stakes, and the momentous shift away from democratic principles and toward autocracy that Alito would enable on the Supreme Court, the Senate should reject his nomination. His qualifications are not in question. His philosophy is: It isn't mysterious or unsettled. It's unsettling. He construes many constitutional provisions (and rights) strictly in light of executive prerogative. **Alito's philosophy represents as close as there's been to an embodiment of the law as adjunct to presidential power -- of the judicial system as a check only on congressional power, and as rubber stamp for the executive.** In Alito's interpretation presidential authority would rise so high that in some cases it would be the law.

<http://www.news-journalonline.com/NewsJournalOnline/Opinion/Editorials/opnOPN38011206.htm>

San Francisco Chronicle, Editorial, Alito's 'open mind,' (Jan. 12, 2006)

In some ways, Alito has proved to be a less-polished version of John G. Roberts Jr., who was similarly circumspect during his confirmation hearings before the Senate Judiciary Committee. **But one of the distinctions between the two nominees is Alito's more extensive record of actions that suggest a rigid, hard-right ideology.**

Americans are left to wonder what happened in Alito's life over the past 20 years to reach his current "open mind" on basic matters of privacy and equality -- or whether his real views are being kept locked up for strategic reasons during the confirmation hearings.

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/01/12/EDGIAGLF1K1.DTL&hw=alito+editorial&sn=003&sc=317>

[Pre-Hearing Editorials:]

***Florida Today*, Editorial, Tough probe essential: Senate must vet Supreme Court nominee Alito with the greatest possible intensity (Jan. 9, 2006)**

Other worrisome stands are those **undermining environmental protections**, affirmative action, and racial and workplace discrimination laws.

His own trail of evidence shows Alito's vote on the Supreme Court could create a right-leaning majority that nullifies protections for the average American that have taken more than 70 years to construct.

Committee members must be unrelenting in their examination to guard this nation against any such risk.

<http://www.floridatoday.com/apps/pbcs.dll/article?AID=/20060109/OPINION/601090310/1004>

***The Tennessean* [Nashville], Editorial, Alito deserves the scrutiny (Jan. 9, 2006)**

As an assistant to the solicitor general in the Reagan Justice Department, Alito defended the right of government officials to order domestic wiretaps for national security - a pertinent issue in the recent revelations by the Bush White House. He boasted to then Attorney General Edwin Meese of his pride in arguing against racial and ethnic quotas.

Supporters of Alito will argue that his background and comments did not prevent Democrats from supporting his nomination to the 3rd Circuit Court of Appeals. That's true, but a nominee for the Supreme Court demands tougher scrutiny. **To allow Alito's name to be put forward without a thorough review of his own words and thoughts ill serves the court and Congress.** It's not too much to ask that a judicial nominee explain his actions and his writing, especially when this may be the last time Americans can expect an answer.

<http://www.tennessean.com/apps/pbcs.dll/article?AID=/20060109/OPINION01/601090328/1008/OPINION>

***Sentinel & Enterprise* [MA], Editorial, Alito a sorry choice for Supreme Court (Jan. 9, 2006)**

Civil-rights and other liberal groups are up in arms against Alito because of his narrow reading of the law and apparent judicial rigidity.

Documents recently released from Alito's service in President Ronald Reagan's Justice Department show he leans heavily toward presidential power over the other branches of government.

The country does not need a Scalia-dominated conservative court that believes in giving a free hand to a president who has already grabbed too much power.

http://www.sentinelandenterprise.com/archives/ci_3385459

***St. Petersburg Times*, Editorial, Judge Samuel Alito's position on Roe vs. Wade should not be the focus of this week's proceedings, but rather his views on executive power. (Jan. 9, 2006)**

Only when a company is challenging a federal regulation does Alito more often side with the plaintiff than the government, according to the Post analysis. Otherwise, he is typically willing to give government at all levels the ruling it seeks.

On federalism and Congress' power to regulate through the Commerce Clause, Alito seems allied with those conservatives who would put sharp limits on the ability of Congress to enact, among other laws, environmental protection and health and safety rules.

http://www.sptimes.com/2006/01/09/Opinion/The_Alito_hearings.shtml

***Seattle Post-Intelligencer*, Editorial, Alito Nomination: Time isn't right (Jan. 8, 2006)**

His presence on the court would tip power the wrong way on issues of the role of government and executive power and personal privacy. Indeed, Alito has done more than his share to heighten tensions.

While favoring executive powers, Alito's judicial record also indicates great deference to the business sector. Again, such pro-corporate attitudes have played a role in unraveling the country's ability to act on a sense of the common good.

http://seattlepi.nwsourc.com/opinion/254770_alitoed.asp

New York Times, Editorial, Judging Samuel Alito (Jan. 8, 2006)

CONGRESSIONAL POWER **While Judge Alito seems intent on expanding the president's power, he has called for sharply reducing the power of Congress.** In *United States v. Rybar*, he wrote a now-infamous dissent arguing that Congress exceeded its power in passing a law that banned machine guns. As a Reagan administration lawyer, he argued that Congress did not have the power to pass the Truth in Mileage Act to protect consumers from odometer fraud.

There are other areas - including civil rights, sex discrimination, the **environment** and criminal law - where Judge Alito's record appears extreme. The Senate should question him closely on all of them.

Those who care about the broad range of rights and liberties that Americans now have, and about honesty in government, should tune into the hearings starting tomorrow - and call their senators with their reactions to what they hear.

<http://www.nytimes.com/2006/01/08/opinion/08sun1.html>

Philadelphia Inquirer, Editorial, The Alito Hearings A need for scrutiny (Jan. 8, 2006)

In 1996, in *United States v. Rybar*, Alito was the lone dissenter in a 10-1 ruling that said the Constitution's Commerce Clause allowed Congress to regulate the sale of machine guns. **His ruling stands far apart from the mainstream of judicial thought on the limits of congressional authority.**

<http://www.philly.com/mld/inquirer/news/editorial/13573412.htm>

The Nation, Editorial, The Case Against Alito (posted Jan. 5, 2006)

[from the January 23, 2006 issue]

This is big-government jurisprudence with a vengeance. **The only exception to Alito's big-government activism comes with the regulation of business.** There he seems to be on a one-man crusade to undo decades of regulation, most clearly displayed in a still-astounding dissent arguing that the **federal ban on machine guns violates the Constitution's commerce clause**--a radical position (exceeding even Chief Justice John Roberts's famously constricted view of the Endangered Species Act) that would shred not only gun-control statutes but **a host of environmental laws** and other Congressional action.

<http://www.thenation.com/doc/20060123/editors>

***Oregon Daily Emerald*, Editorial, Judge's conservatism conflicts with needed objectivity (Nov. 22, 2005)**

As Judge Samuel Alito's January judiciary committee questioning slowly approaches, some Americans may begin to take it for granted that he will be appointed to the Supreme Court. He may well be appointed as a justice unless someone from the Democratic party can stand up and rightly attack Alito for his **laundry list of unappealing characteristics**.

This week, Sen. Ken Salazar, a Democrat from Colorado, said in an interview that there is still a small chance that Democrats might filibuster the Alito hearing. Comparing Judge Alito to the what a Supreme Court judge should be, it is apparent that a filibuster may be the best choice. http://www.dailymerald.com/vnews/display.v/ART/2005/11/22/4382eb1ed60ff?in_archive=1

***The Washington Post*, Editorial, Judge Alito on the States (Nov. 21, 2005)**

THERE IS perhaps no area of American constitutional law as important and as in flux at the Supreme Court as the balance of power between the federal government and the states. Judge Samuel A. Alito Jr. does not have extensive writings on the subject as a lower court judge, but he has written two opinions that liberal groups cite as evidence of the grave danger his confirmation would carry. The two cases deal with different aspects of the broad question of what the court quaintly calls "our federalism." One involves the scope of Congress's power to regulate interstate commerce, the other the breadth of state immunity from lawsuits for money under the Constitution's 11th Amendment. In both cases, Judge Alito adopted states-rights ground from which later Supreme Court opinions seemed to turn away. Yet in our view, his opinions differ considerably in their merit.

[H]is dissent in a constitutional challenge to a federal machine gun ban is troubling. In *U.S. v. Lopez* in 1995, the Supreme Court struck down a law forbidding guns within school zones as an invalid exercise of Congress's power to regulate interstate commerce. The basic idea was that the law attacked activity that had nothing to do with commerce. This decision was right, but its logic is dangerous if taken too far. **So much of modern federal policymaking relies on a robust understanding of the commerce power that even minor retrenchments could doom important federal laws.**

In the wake of *Lopez*, the U.S. Court of Appeals for the 3rd Circuit upheld the federal ban on machine gun possession, but Judge Alito would have struck it down, arguing that the law was indistinguishable from the one the court invalidated in *Lopez*. No other circuit that considered the matter agreed with him, and for good reason. The machine gun law was much more obviously a regulation of a market than the school zones statute, which regulated not what guns people bought or possessed but where they walked with them. The machine gun law banned both transfer and possession of machine guns -- the ban on possession being an effort to criminalize the demand side of the gun market, while the transfer ban criminalized the supply side. **Judge Alito's desire to extend the logic of *Lopez* to such a law seems to indicate an**

overly restrictive approach to the commerce clause -- though he did note that Congress could fix the statute quite easily. Senators will need to satisfy themselves that he does not envision a dramatic curtailing of national power.

<http://www.washingtonpost.com/wp-dyn/content/article/2005/11/20/AR2005112000838.html>

The New York Times, Editorial, **The Democrats and Judge Alito** (Nov. 13, 2005)

The Alito nomination is a defining moment for the country, and for the Democratic Party. Given the sharp divisions on the court, the next justice could decide the scope of . . . **environmental and workplace protections that Americans will live with for years**. Although many questions remain to be answered, there is reason to believe that Judge Alito could do significant damage to values Democrats have long stood for.

<http://www.nytimes.com/2005/11/13/opinion/13sun1.html?ei=5090&en=58437abee2146bdc&ex=1289538000&partner=rssuserland&emc=rss&pagewanted=print>

Commonweal, Editorial, **Alito & Armageddon** (Nov. 8, 2005)

As an appeals court judge, his task was to interpret Supreme Court rulings, and evidently he did so scrupulously. Sitting on the Supreme Court, however, Alito would have much greater freedom to let his philosophical views about the proper role of the law influence his judicial decision making. **There is every indication that Alito's thinking on federalism, executive power, church-state relations, gender discrimination, environmental issues, and Congress's legislative power, especially under the commerce clause of the Fourteenth Amendment, is likely to frustrate those with an expansive view of the Court's mandate.** In short, there is little doubt that the Court's jurisprudence will become more predictably "conservative," should Alito be confirmed.

Still, perhaps what is more important than whether Alito will change the Court is how he will change it. Will he be a radical in the mode of Antonin Scalia and Clarence Thomas, both of whom can be described as "activist" justices eager to overturn much of the Court's recent jurisprudence? Or will Alito be an incrementalist, someone who understands that judicial precedent is important to both political comity and the moral authority of the Court? Except in the most exceptional circumstances, the Supreme Court best serves the nation and justice by moving the law by degrees rather than turning established practice upside down. Determining if Alito is a legal conservative in this sense should be the principal task of the Senate hearings scheduled to begin in January.

http://www.commonwealmagazine.org/article.php?id_article=1434

The Memphis Flyer, Editorial, **Judging Alito** (Nov. 4, 2005)

Whatever the president's reasons, Alito is the nominee about whom a polarized U.S. Senate must exercise its historical advise-and-consent role. What is obvious right away is that this 15-year veteran of the federal judiciary is not just conservative but perhaps predisposed to disbelieve in what has come to be regarded as a constitutionally protected right to privacy.

All of this is ample reason for the Senate to subject Alito to the most thoroughgoing examination. It may even be reason for that body's Democrats to avail themselves of the loophole in the recent bipartisan agreement which permits, in specific cases, the resort to filibuster on judicial nominations.

<http://www.memphisflyer.com/gyrobase/Content?oid=oid%3A10472>

Houston Chronicle, Editorial, **Hear him out** (Nov. 1, 2005)

Alito's published opinions also reveal unorthodox views that Congress' powers under the Constitution's commerce clause are extremely limited, that religious expression on public property should be tolerated and that affirmative action can constitute illegal discrimination. While he cannot be asked to say how he would rule in future cases, Alito should be prepared to expand on his reasoning in previous cases that allowed police broad latitude to conduct searches, **placed private property rights above environmental protection, elevated the power of the states over the federal government** and tended to favor employers when sued by employees.

Where Democrats reluctantly accepted the generalities of Judge Roberts, they are unlikely to be so accommodating in the Alito hearings.

<http://www.chron.com/cs/CDA/ssistory.mpl/editorial/3431935>

Daytona Beach News-Journal [FL], Editorial, **Alito's red flags: Supreme Court nominee or GOP call to arms?** (Nov. 1, 2005)

Alito is an activist whose judicial philosophy scorns modern jurisprudence in deference to pre-New Deal interpretations of the Constitution. He's no conservative, if by conservative one implies, as John Roberts implied in his recent confirmation hearings, judicial restraint and respect for precedent. **Alito is a judicial fundamentalist who sees virtually no role for the federal government in regulating civil rights, privacy, the workplace or the environment -- regulations foreign to the framers of the Constitution.** His opinions advocate for a regression to such a 19th century interpretation of the Constitution. That makes him a radical, not a conservative. His philosophy places him to the right of Antonin Scalia, where the only thing left is the apostolic legalism of Clarence Thomas. Nothing in the last five years, and even less in the last five months, has earned Bush a mandate to so extremely shove the court rightward.

Alito's rich record is a Christo exhibit of red flags. **His coldhearted application of the law favors evidence presented by the powerful against evidence presented by the weak. [I]n an opinion with far-reaching consequences, if it carried a majority on the Supreme Court, he has ruled Congress' right to regulate guns null and void with the sort of reasoning that**

would nullify Congress' right to regulate the environment, civil rights, education, or extend federal anti-discrimination and privacy laws to the states.

***The Philadelphia Inquirer*, Editorial, New Supreme Court Nominee: The right stuff? (Nov. 01, 2005)**

But would having another Scalia actually be good for the court? Scalia has a radical view of the Constitution and the court's role. Scalia and others use a self-congratulatory vocabulary about "originalism" to dress their personal views up as some kind of constitutional purity. But these "originalist" jurists are as activist as they come. **If their views had held sway over the last half-century, America would be a different place, with fewer minority and worker rights, and weaker environmental protection.**

Privacy is only one area of Alito's judicial philosophy that needs to be tested by Chairman Arlen Specter (R., Pa.) and his Senate Judiciary Committee colleagues. Executive privilege, torture, civil rights, and the **scope of the interstate commerce clause** are among the others Alito should discuss.

An initial review of Alito's record suggests he takes an exceedingly narrow approach to the law. This can have the effect, whether intended or not, of curtailing individual rights.

<http://www.philly.com/mld/inquirer/news/editorial/13047624.htm>

***The Courier-Journal* [Louisville, KY], Editorial, Another war of choice (Nov. 1, 2005)**

Early reviews also focus on his apparently restrictive views of the "**commerce clause**" in the Constitution that allows Congress to regulate industry through its power to control interstate commerce.

A slew of federal environmental laws and rules rests on the commerce clause and could be overturned if the Supreme Court adopts a narrow interpretation.

<http://www.courier-journal.com/apps/pbcs.dll/article?AID=/20051101/OPINION01/511010338/1055/OPINION>

***San Francisco Chronicle*, Editorial, The battle is on (Nov. 1, 2005)**

Some of those rulings should be of great concern to Americans who believe in a fundamental right to privacy as well as the ability of Congress to pass laws on health and safety issues that require a national solution.

Alito was also the sole dissenter in 1996 when the appeals court upheld the ability of Congress to prohibit individual ownership of fully automatic machine guns.

Alito's reasoning in the machine-gun case could have enormous implications for how he might address a wide variety of issues. Alito argued, unsuccessfully, that Congress lacked the authority to regulate machine-gun possession because it was not directly related to interstate commerce.

Right-wing ideologues have been using similarly narrow interpretations of the Commerce Clause to try to shoot down other environmental and public-safety laws passed by Congress.

It is critical to remember that Alito would be succeeding Justice Sandra Day O'Connor, the first woman to serve on the high court and a conservative with centrist sensibilities who was willing to look at issues with a tough-minded independence. She was the swing vote on many issues, including rulings that upheld . . . the ability of Congress to protect public health and safety.
<http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2005/11/01/EDGFTFG41T1.DTL>

***Newsday*, Editorial, Now it's Alito: Bush's latest choice for U.S. Supreme Court has a powerful resumé - but powerful opponents, too (Nov. 1, 2005)**

The wisdom of his positions on race, the **environment**, civil liberties and the power of Washington vs. the states will be hotly debated.
<http://www.newsday.com/news/opinion/ny-vpsco014493151nov01,0,7643522.story?coll=ny-editorials-headlines>

***Rutland Herald* [VT], Editorial, Asking for trouble (Nov. 1, 2005)**

In naming Appeals Court Judge Samuel Alito, Bush deliberately chose a nominee whom he had been warned by Senate Democrats would cause trouble.

One of the areas of most concern has to do with issues of federal power. In recent years, the Rehnquist court began to narrow the reach of congressional power, calling into question jurisprudence in effect since the 1930s that has been the foundation of the modern state.

Before the New Deal era, the Supreme Court narrowly interpreted the interstate commerce clause of the Constitution and strictly limited Congress's power to enact regulations. Thus, the court found that Congress had no power under the Constitution to enact a minimum wage or child labor laws.

But in the 1930s, the court began to interpret the interstate commerce clause more broadly, allowing for a broad range of labor, welfare and environmental law. **If the court begins to reverse itself on congressional power, the entire edifice of the modern state might be shattered, and whole areas of law having to do with environmental protection and workers' rights might be thrown out.**

<http://www.rutlandherald.com/apps/pbcs.dll/article?AID=/20051101/NEWS/511010301/1038/OPINION01>

Oregon Daily Emerald, Editorial, New court nominee leaves much to be desired (Nov. 01, 2005)

As if Alito didn't seem conservative enough, it has also been reported that Alito once asserted that the federal government has no right to curb the sale of automatic machine guns.

<http://www.dailyemerald.com/vnews/display.v/ART/2005/11/01/4367490b4a3d4>
