

**EDITORIALS AND
COMMENTARY ON THE NEED
FOR
CONSULTATION, SENATE
ADVICE AND CONSENT, AND
MODERATION
ON PROSPECTIVE SUPREME
COURT & OTHER JUDICIAL
NOMINATIONS**

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The Fort Worth Star-Telegram, EDITORIAL (Nov. 18, 2004)
Specter under siege

“Frist also opined that the Judiciary Committee chairman "has a clear obligation as a chairman to take what the president nominates ... [and] get that nomination through committee in an expeditious way."

Actually, rubber-stamping isn't a chairman's role, regardless of political party. A nominee certainly is entitled to expeditious consideration and a vote. But the Constitution's "advice and consent" requirement envisions independent Senate assessment.

Senators shirk their role if they act as mere tools of the president -- or of interest groups wielding threats.” [Full text](#)

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The Arizona Republic, EDITORIAL (Nov. 17, 2004)
**GOP could raise a Specter:
Denying Pa. senator the Judiciary chair would create a bitter atmosphere**

“Despite having picked up four additional Senate seats, Republicans cannot hope to break free of the partisan logjam blocking Bush judicial nominees without coming to terms with the minority Democrats, to say nothing of the handful of moderate Republicans who likely will oppose a move against Specter.” [Full text](#)

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The Montgomery Advertiser (AL), EDITORIAL (Nov. 16, 2004)
Senators owe duty to Constitution

“A great deal of attention has been given to remarks by Sen. Arlen Specter, the Pennsylvania Republican who, if seniority is respected, will become the next chairman of the Judiciary Committee. Too little attention has been given to far more troubling remarks by the Senate majority leader, Sen. Bill Frist of Tennessee. . . .

But Frist's words have much greater implications. He said in essence last week that it is the job of the Judiciary Committee chairman to get the president's nominees confirmed. He pulled back from that a bit this week, saying instead that the chairman should "have a strong predisposition" toward supporting the president's nominees in the committee hearings and in the vote on the Senate floor.

Frist is wrong on both counts. The chairman, as should every other senator, should consider each nominee on his or her merits. The Constitution assigns to the Senate a

crucial "advise and consent" role in judicial nominations. It should never be abandoned for partisan reasons." [Full text](#)

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The Journal Times (Racine, WI), EDITORIAL (Nov. 15, 2004)
Moderation a better course on federal court nominees

“We would differ with the Wall Street Journal's "let's go back and fight some more" advice. Why not move ahead? Yes, we can understand that the forces of conservatism and Republicanism in the land view the filibuster as a scourge that defeats the will of the majority - narrow as it was.

But we would remind them that the numbers on judicial confirmations indicate that 88 percent of President Bush's judicial nominees were confirmed by the Senate during his first year. That compares to only 81 percent for the first-term nominees of former President Bill Clinton. . . .

There is another model for judicial selection instead of one that involves such bloodletting and infighting, of course.

We saw it here in Wisconsin just last year when Wisconsin's Congressional delegation agreed to abide by a bipartisan panel's selection of four candidates for the 7th Circuit Court of Appeals in Chicago. That process produced the nomination of former Wisconsin Supreme Court Justice Diane Sykes - a conservative, yes, but no lockstep ideologue - who was then promptly confirmed by the Senate.

If President Bush and the Republicans take the "to the victor's belong the spoils" approach advocated by the Wall Street Journal, there will undoubtedly be more fighting - and more filibustering.

If they want to fill the courts with competent judges in a timely manner, they would do better to follow the advice, "All things in moderation ..." Even judges." [Full text](#)

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Helena Independent Record (MT), EDITORIAL (Nov. 14, 2004)
Racicot for the high court?

“Bush has said that his favorite justices are Antonin Scalia and Clarence Thomas, and you know he'd like to appoint one of them as chief justice in the event Rehnquist, currently being treated for thyroid cancer and 80 years old, chooses to resign. That would leave an associate justice position to fill.

But it is doubtful that Thomas would be interested in going through another confirmation ordeal like the brutal sexual harassment accusations he faced in 1991, and Scalia is so radically far to the right that a filibuster by Democrats in the Senate to block his move to chief justice is pretty much a foregone conclusion. . . .

[I]f he really wants a new conservative justice he'd be better off with a nominee less likely to spark an all-out filibuster.”

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Denver Post, EDITORIAL (Nov. 10, 2004)
Supreme Court battles loom

“If the flap over Sen. Arlen Specter is any indication, some of President Bush's most conservative supporters are mobilizing an effort to reshape the federal judiciary in Bush's second term.

Specter is the moderate Republican from Pennsylvania who is in line to chair the Senate Judiciary Committee, the gateway for nominations to the Supreme Court and other federal courts. . . .

Focus on the Family leader James Dobson says Specter must not be allowed to assume the judiciary chair, and he's not trying to hide his agenda. "Putting conservative judges on the judiciary, that is the key to everything," Dobson said last weekend. . . .

One thing is for sure: The Nov. 2 election was not a mandate for Bush to hand judicial policy to conservative activists

You hear Justice Clarence Thomas' name bandied about as a possible successor to Rehnquist. Thomas has been one of the most controversial figures on the court in recent years, with a voting record that is more conservative even than Rehnquist. . . .

In his victory speech last week, Bush talked about reaching out to Democrats and governing for all Americans. But the feelings of good will could be fleeting if one of the defining moments of his second term is a Supreme Court nomination that satisfies Dobson but sends the entire Senate into its all-out battle regalia.” [Full text](#)

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The Washington Post, EDITORIAL (Nov. 10, 2004)
A New Start on Courts

“PRESIDENT BUSH'S reelection with an enlarged Republican majority in the Senate presents him with a pivotal choice on judicial nominations. He can act as a national

leader to begin defusing the war over the courts, or he can flex his new political muscle and try to maximize short-term conservative gains on the bench. . . .

There is talk of changing Senate rules so that a minority could no longer engage in filibusters to block judicial nominations, the one point of leverage that Democrats in the Senate retain. Pressure for unilateral action will be hard for Mr. Bush to resist, even if he wants to.

But he should. The judicial nominations process has been in a downward spiral for two decades. The ultimate losers are the courts and Americans' faith in impartial justice. . . . With 55 Republicans coming into the Senate, Mr. Bush may decide he can overcome such tactics with raw power. He would do the country a far greater service if he took this opportunity to break the spiral.

He could do so without jettisoning any of his principles or campaign promises. . . . Most of Mr. Bush's appellate nominees have been confirmed without controversy -- a fact that neither Republicans keen to paint Democrats as obstructionists, nor Democrats keen to paint Mr. Bush's nominees as right-wing extremists, like to emphasize. Some have even provoked energetic support from Democrats. There are plenty of qualified conservative candidates, in other words, who could command broad ideological support. By turning to them, rather than to obviously confrontational nominees, Mr. Bush could bring a cease-fire to the judiciary wars -- and demonstrate true leadership.”

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Palm Beach Post, EDITORIAL (Nov. 8, 2004)
Courting only politics?

“If the opening is the chief justice's seat and it comes soon, the nation will see whether Mr. Bush wants to act like a 51 percent president or pick a big political fight. If he were to promote Justice Clarence Thomas, who with the equally right-wing Antonin Scalia is one of the president's favorite justices, Mr. Bush would dare Senate Democrats to filibuster the first African-American chief justice. For the good of the country, though, they would have to do so. In a recent opinion, Justice Thomas all but said that every Supreme Court ruling was subject to revision. Like Justice Scalia, Justice Thomas would shift too much power from the federal government to the states.

[T]he Senate — with Sen. Daschle leading the majority for a time — approved more than 95 percent of Mr. Bush's picks. Republicans blocked a larger percentage of Bill Clinton's.

. . .

As for constitutional law, it is not nearly as clear as Mr. Bush would have Americans believe. Justices interpret the law all the time, because they have to. The interpretation from last week's election is that a moderate choice would be the country's choice.” [Full text](#)

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Kalamazoo Gazette, EDITORIAL (Nov. 8, 2004)

Specter flap bodes ill for any real unity

“The president has said he would like to nominate justices along the lines of Justice Antonin Scalia -- an appalling and divisive idea, we believe. The nomination of moderate justices will assure a divided electorate that 49 percent of them will not be disregarded during the next four years. The nomination of moderates also stands a greater chance of Senate confirmation and not protracted partisan fights.” [Full text](#)

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St. Petersburg Times, EDITORIAL (Nov. 6, 2004)

Bush's bench: With Democratic opposition in the Senate weakened, the president will use his next term to leave a lasting mark on the federal judiciary.

“President Bush has already appointed more than 200 judges to the federal courts, and another four years will bring opportunities to bend the judiciary even more to the right. While Bush has not yet appointed a justice to the U.S. Supreme Court, he will almost unquestionably have at least one appointment during his next term. . . .

In Bush's first press conference after the election, he promised more of the same. "(I)f people are interested in knowing the kind of judges I'll pick," Bush said, "look at the record."

Because of their lifetime appointments, federal judges can shape the legal landscape for decades after the president who appointed them is gone. With Democrats losing four Senate seats in Tuesday's election, the opposition to Bush nominees who hold extreme views has been weakened. Republicans will need 60 votes to cut off a filibuster by Democrats. By the end of his second term, Bush will have left a lasting mark on the third branch of government - the only one that has truly acted as a check against the arrogation of power by Bush.

As for the U.S. Supreme Court, Bush could appoint two or three justices in his second term . . . Bush has said his favorite justices are Antonin Scalia and Clarence Thomas, the court's most strident conservatives. One or two new justices of that philosophical stripe could tip the narrow majority on issues such as . . . environmental protection and workers' rights.

The courts have traditionally stood as the one countervailing force against the tyranny of the majority. But by hand-picking jurists who see their role as supporting the executive

branch and advancing the government's entanglement with religion and its cultural offshoots, Bush is remaking the judiciary as another majoritarian tool.” [Full text](#)

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Detroit Free Press, EDITORIAL (Nov. 6, 2004)

Political Ups and Downs: From morality to the economy, hot issues keep Republicans and Democrats on their toes

“Some hope was injected into the inevitable Supreme Court fight Thursday when Sen. Arlen Specter, a moderate Republican from Pennsylvania who is slated to be chair of the Senate Judiciary Committee, cautioned the president against extreme nominees . . . Of course, Specter had to backpedal after the predictable conservative backlash. Still, his message was sound: With 55 GOP senators, some of them moderate, the president has a good chance of pushing nominees through, but not a lock on anyone too controversial. If Specter isn't unceremoniously bounced from the key chairmanship, the debate over future justices might not be as contentious as previously feared.” [Full text](#)

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The Fort Worth Star-Telegram, EDITORIAL (Nov. 6, 2004)

Unclear road ahead

“Bush surely wants to put the same stamp on the Supreme Court that he has on the lower federal courts. But both he and the Senate, which provides "advice and consent," must ensure that nominees demonstrate -- through what they say and what they've done -- a proper respect for the law and for the role of the highest court in the land.” [Full text](#)

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The Times and Democrat (SC), EDITORIAL (Nov. 5, 2004)

President should build consensus on social policies

“Will he attempt to load the court with archconservative justices and spark major battles in the confirmation process, or will the president consult with both sides of the spectrum and attempt to find the "right" candidate? . . .

[T]he president and Republicans must not treat their victory as one with spoils. This is a nation badly in need of the bipartisanship promised by the president when he was elected in 2000.

No one expects Bush to abandon his principles, but we can expect him to relate to the idea that nearly half of Americans do not agree with him on many issues. And even many

Americans who voted for him and his Republican counterparts are not in the category of so-called social conservatives.

As much as presidents have been surprised by the performances of Supreme Court appointees over the years, the same could be the case with Bush appointments. The people appointed to the nation's high court are professional jurists with deep backgrounds in the law. Social activism is not what they are to be about.

It is our hope that the president in actions from court nominations to the conduct of the war will seek a consensus in a country badly in need of less political division.” [Full text](#)

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Detroit Free Press, EDITORIAL (Nov. 4, 2004)
Nation should hope justices will outlast Bush's 4 more years

“A strong conservative, Rehnquist's judicial philosophy largely fits with that of Justice Antonin Scalia, whom President George W. Bush says is his model for a high court nominee. Many of the judges the president has tapped for the federal courts, a harbinger of his intent for the Supreme Court, share similar outlooks. . . .

Ginsburg and Stevens have often voiced the warning, and O'Connor waged the reasonable compromise, against some justices' tendencies to extremity. They are vital voices on the court.

From privacy to the separation of church and state, fundamental rights are at stake. The country would be better off with the sitting justices on the court than any the president is likely to appoint.” [Full text](#)

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The Daily of the University of Washington, EDITORIAL (Nov. 4, 2004)
Staff editorial: Here's hoping

“In his comments yesterday, Bush was full of proud, bi-partisan rhetoric and promises to unite the bitterly divided country behind him in his second term. . . .

Hopefully, he will take this opportunity to reach out to all Americans. A truly inclusive and politically balanced second-term administration could start bringing the country back together --but only if the president makes it happen.

Bush needs more than 51 percent of the country behind him if he wants to lead us through the next four difficult years. He can't lead effectively if he appoints extremist judges to the Supreme Court.” [Full text](#)

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Contra Costa Times (CA), EDITORIAL (Nov. 3, 2004)
Still too close to call

“The first order of business for the president should be to bring the nation together by reaching out to people who did not vote for him.

The president must be a leader of national unity, not a partisan politician. He must make good on the promise Bush made four years ago -- to be a uniter not a divider.

To accomplish that task, the president will have to move toward the center, where most successful legislation is created, if he expects to make progress on his domestic agenda. .

..
Greater cooperation and communication between the president and congressional leaders should be pursued regarding the nomination of federal judges, particularly in filling positions on the Supreme Court.” [Full text](#)

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El Diario, EDITORIAL (Oct. 28, 2004)
The Future Of Justice

“At this time there are two opposing views of the Constitution: a restrictive one anchored in the past and another that recognizes the evolution of time. . . .

President Bush has said that Supreme Court Justices Antonin Scalia and Clarence Thomas have the qualities that he considers essential in a federal judge. Both consider the Constitution to be a static document. This restrictive view leads them to reject anything that is not explicit in the document or is not specified in a constitutional disposition. The right to privacy, for example, does not exist for these judges because it is not specifically discussed in the Constitution. The same is true in other cases that affect minorities.

The judges should change course. The Constitution is a living document that is enriched constantly. It is absurd to believe that in the “original intent” of the fathers of our country we will find explicit answers to the complex world of today.” [Full text](#)

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The Boston Globe, EDITORIAL (Oct. 27, 2004)
Justice in the Balance

“Most of the attention around the delicate balance that could be upset by the new appointments has focused on hot-button issues . . . But a larger philosophical debate over the balance of power between the federal government and the states could have even more profound effects on the ordinary lives of Americans.

In recent years the Rehnquist court has trended toward decentralization, or federalism, in its decisions, restricting the role of Congress to make national law. On enforcement of the Americans with Disabilities Act, age and gender discrimination laws, and health and safety regulations in the workplace, this court has thrown out federal protections and devolved the matters to the states. Rehnquist has been a chief proponent of this view.

Justice David Souter has often dissented in these cases, warning that such an approach risks a return to the so-called *Lochner* era of the Supreme Court, which lasted from the Civil War until the New Deal. During that period the court held a laissez-faire attitude about most business practices, ruling that certain economic spheres were off-limits to regulation by Congress. (*Lochner* was a New York employer who was upheld by the Supreme Court when he fought enforcement of laws then requiring a 60-hour work week.)

Such a realignment by the Supreme Court in the modern era is not so far-fetched; it is how the court is already trending. But it would jeopardize a whole set of health and environmental regulations, civil rights protections for minorities and workers, and federal safety protections for consumers. . . .

[T]his philosophy of limited government embodied in the nation's highest court would reverse 60 years of progress for every American.” [Full text](#)

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The Journal-Sentinel (Milwaukee), EDITORIAL (Oct. 27, 2004)

“In 2000, we lauded Bush for his ability as Texas governor to work in bipartisan fashion. We admired what seemed to be a tendency to make moderate judicial appointments. We’ve seen precious little of that in his first term as president.” [Full text](#)

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The Dallas News, EDITORIAL (October 27, 2004) Rehnquist Reminder: New Court Expected, but Don’t Expect Change

“[N]either [President Bush] nor GOP senators could afford to antagonize Democrats by ramming through a hard-line conservative.

Bottom line: The next Supreme Court justices will have to be candidates acceptable to both parties. Moderation is all but guaranteed.” [Full text](#)

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The Times Argus (VT), EDITORIAL (Oct. 27, 2004)

“[Senator] Leahy has become something of a villain among partisans of the far right because of his willingness to stand up against judicial nominees who are ideologically extreme. There have been only a few of them, though the Bush administration likes to pretend that, in blocking a handful of nominees, Leahy has brought justice in America to a halt. The recently announced illness of Chief Justice William Rehnquist, who is 80 years old, underscores the importance of Leahy's role as someone who will demand moderate, non-ideological justices for appointments to the Supreme Court.” [Full text](#)

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**Los Angeles Times, EDITORIAL (Oct. 26, 2004)
Court is Back in Voters' Sight**

“On this divided court, any single appointee could shift the balance.

The Supreme Court has been the final arbiter of the nation's most wrenching controversies, from slavery through civil rights and the 2000 presidential election. Today's battles center on the war on terror, the Bush administration's rapacious environmental policies and social issues

President Bush said he wanted only judges who were "strict constructionists" of the Constitution, a statement that masks his own record. He has repeatedly pointed to hyper-conservative justices Antonin Scalia and Clarence Thomas as his models for a Supreme Court appointee. His 201 nominees now sitting on the nation's trial and appeals courts — 24% of all active judges — were promoted and ideologically screened by the partisan Federalist Society. . . .

Jurists chosen more for legal skill than ideological pedigree are best able to protect this nation's principles and fairly balance competing claims. Bush's record offers little evidence of such moderation. [Full text](#)

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**Newsday, EDITORIAL (Oct. 26, 2004)
Rehnquist's Ailment is a Reminder of the Stakes in Supreme Court Picks**

“Bush has appointed an unbroken string of conservatives to lower court judgeships. He has waged war with Senate Democrats over a handful of his most extreme nominees, and resorted to recess appointments in an end run around filibusters. Bush insists he won't impose a litmus test on his top court nominees, but his record makes it likely that all will share his . . . conservative cultural views.” [Full text](#)

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St. Petersburg Times, EDITORIAL (Oct. 26, 2004)
Rehnquist's Reminder: The News That A Supreme Court Justice Is Being Treated For Cancer Should Remind Voters Of A President's Power To Shape High Court

“President Bush says he would have no litmus tests in considering Supreme Court nominees, but his past words and actions are revealing. His lower-court nominees have tended to be relatively young right-wing ideologues, and he says his favorite current justices are Thomas and Antonin Scalia, who were young ideologues when they were appointed to the court.”

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The Oregonian, EDITORIAL (Oct. 26, 2004)
The Court Shows Its Age

“Bush has said his model judges are Justice Clarence Thomas and Justice Antonin Scalia, who dissented in all or most of the above rulings.

Scalia occasionally writes scathingly brilliant defenses of citizens' rights, but he has hurt the court's credibility. His recent refusal to recuse himself from a case involving his pal Dick Cheney, after going on a private duck-hunting trip with the vice president, hints at some dangerous coziness with the executive branch.

Thomas is simply a dud. He's no conservative or federalist; he's a judicial activist with a record that shows chronic disregard for privacy rights and due process. Last term, he was the sole member of the court willing to grant the president unchecked powers over citizens in the war on terrorism.

Bush wants eight more justices like Thomas.” [Full text](#)

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The New Yorker, EDITORIAL (Oct. 25, 2004)
Comment: The Choice

“President Bush often complains about Democratic obstructionism, but the truth is that he has made considerable progress, if that’s the right word, toward the goal of stocking the federal courts with conservative ideologues. The Senate has confirmed two hundred and one of his judicial nominees, more than the per-term averages for Presidents Clinton, Reagan, and Bush senior. Senate Republicans blocked more than sixty of Clinton’s nominees; Senate Democrats have blocked only ten of Bush’s. (Those ten, by the way, got exactly what they deserved. Some of them—such as Carolyn Kuhl, who devoted years of her career to trying to preserve tax breaks for colleges that practice racial discrimination, and Brett Kavanaugh, a thirty-eight-year-old with no judicial or courtroom experience who co-wrote the Starr Report—rank among the worst judicial appointments ever attempted.) . . .

All but one of the sitting justices are senior citizens, ranging in age from sixty-five to eighty-four, and the gap since the last appointment—ten years—is the longest since 1821. Bush has said more than once that Antonin Scalia and Clarence Thomas are his favorite justices. In a second Bush term, the Court could be remade in their images. [Full text](#)

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San Francisco Chronicle, EDITORIAL (Oct. 24, 2004)
A Closer Look At The Bush Record

The judiciary

“There is no one area that gives us greater concern for a second Bush term than the prospect of U.S. Supreme Court appointments, where the composition of the divided court -- primarily because of the age of the justices -- is likely to see its greatest change in decades. Bush, who got his job through a 5-4 vote of the Supreme Court, says he wants to rid the nation of "activist" judges. Yet, he has amassed a record of packing federal courts with conservatives who seem uniquely unqualified for the bench.

The president used a congressional recess to sneak Alabama's attorney general, William Pryor Jr., onto the U.S. Court of Appeals in Atlanta -- this after Pryor . . . testified before Congress in favor of dropping part of the Voting Rights Act.

Another Bush choice, Judge Charles Pickering, now on the U.S. Court of Appeals in New Orleans, once went to extraordinary lengths to reduce the sentence of a man convicted in a cross-burning case.” [Full text](#)

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Newsday, EDITORIAL (Oct. 24, 2004)

“Wasted chances to unite

But even more than his specific policy failures, Bush's failure to bring this bitterly divided nation together may be his greatest fault.

He had two golden opportunities to heal the deep differences that divide the nation. The first was when former Vice President Al Gore delivered his magnanimous concession speech after the bitter 2000 post-election battle. Bush could have seized that moment to define a new center of American politics, to fulfill his promise to be a compassionate conservative. Rather, he chose to scrap arms control treaties, appoint the most conservative-leaning judges possible, follow the Christian right social policy agenda, slash regulation of business and the environment, and cut taxes across the board, especially for the wealthy.”

[Full text](#)

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The Times (Trenton, NJ), EDITORIAL (Oct. 24, 2004)

“Many of Mr. Bush's lower-court nominees have been ideologues, and his favorite Supreme Court justices are Antonin Scalia and Clarence Thomas, the grim twins With three vacancies likely in the next four years, . . . President Bush could recast the court as a body that would make America a harsher, less tolerant country.” [Full text](#)

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Daytona Beach News-Journal, EDITORIAL (Oct. 23, 2004) **The courts' future**

“A president serves for four or eight years. The judges he nominates to the nation's 876 federal judgeships, including the nine seats on the Supreme Court, serve for life, if they so choose.

On the highest court, Chief Justice William Rehnquist was appointed by Richard Nixon in 1972. John Paul Stevens was appointed by Gerald Ford. Sandra Day O'Connor was nominated by Ronald Reagan in 1981.

It is easy to tell how active Bush appointees would be. Asked to describe his ideal Supreme Court judges, Bush pointed to the two most conservative, and most crusading, justices on the bench: Antonin Scalia and Clarence Thomas. A Supreme Court with three Scalias and two Thomases would leave no doubt that a legal revolution would follow.

Based on opinions Scalia and Thomas have written in dissent, it's clear where a like-minded Supreme Court would take the country. As Adam Cohen summed it up in The New York Times, " . . . environmental protection could disappear."

The court, in essence, would return to a mindset that last dominated its thinking in the 1920s court of William Howard Taft. Back then minimum wage laws were struck down on the ground that they interfered with businesses' right to freely contract with their employees.

It was judicial activism of a different sort. Bush's appointees would echo that sort of activism.

Bush's appointments at lower levels have already reshaped swaths of the federal judiciary in his image. In the last four years, he won confirmation for 201 out of 226 nominations to the bench.

Almost one in four federal judges is a Bush appointee, which belies the White House's claim of a "broken judicial confirmation process."

A judicial revolution in Bush's image amassed momentum in his first four years. It would become a juggernaut in the next four. It would eliminate what relatively moderate interpretations of the Constitution persist on the Supreme Court.

It would stamp the reactionary fundamentalism of Scalia, the chief justice's heir apparent, and Thomas on the next generation of laws.

It may not remake America. But it would impair its constitutional ideals, and possibly disgrace them, when the courts should be honoring them." [Full text](#)

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The Washington Post, EDITORIAL (Oct. 23, 2004) The Choice on Courts

“[N]ew appointments likely would affect the court's approach to separation of church and state; the power of the federal government in relation to the states on civil rights and environmental regulation . . .

In assessing what a second Bush term would augur for the courts, it makes sense to look at the first. Some of President Bush's nominees have been highly objectionable, and Mr. Bush, rather than working with Democrats to de-escalate the judicial nominations wars, too often has added fuel to the fire. . . .

The great protection against ideological extremism on the courts is ideological diversity . . . The possibility of conservative judicial radicalism, however overstated by liberal

interest groups, certainly is greater today than the possibility of out-of-control liberal activism.” [Full text](#)

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Tri-City Herald (WA), EDITORIAL (Oct. 22, 2004)
Bush and Kerry on the issues

Supreme Court

“[T]he court is closely divided on significant issues such as affirmative action, states rights and separation of church and state. The retirement of a single justice could alter the court's direction.

Bush's record on judicial nominees is one of advancing far-right conservatives over the protest of women's rights groups, environmentalists and civil libertarians. That record had led some to conclude that a Bush-influenced Supreme Court also would favor corporate interests.

Bush nominee William Pryor has described the Voting Rights Act of 1965, which finally enfranchised black voters in the South

As political winds shift many times over the next 40 years, the Supreme Court needs to be an anchor of consistency. Americans are best served if that anchor doesn't pull too far to either extreme.” [Full text](#)

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The Denver Post, EDITORIAL (Oct. 20, 2004)
High Court's Future

Federal judges are confirmed for life terms.

The current court leans conservative, with seven of the nine justices appointed by Republican presidents. O'Connor has often crossed over to cast key swing votes on a variety of cases, like the Clean Air Act, rights for the disabled and the landmark decision that upheld affirmative action in college admissions.

The direction of the future court will depend, of course, on who leaves and who replaces them.

Bush has sent signals about the types of people he wants on the court. He most admires Justices Antonin Scalia and Thomas, the two most conservative members of the court.

During his first term, he appointed Alabama Attorney General William Pryor and J. Leon Holmes of Arkansas to the federal bench. . . .

While we'd like to think that politics doesn't play a role in court decisions, it is an era when arch-conservatives talk about dumping "activist judges" . . .

We expect that the next Senate will remain closely divided, a dynamic that could influence any president to eschew the extremes. But senators have opinions, too. . . . [Full text](#)

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**The Charleston Gazette (WV), EDITORIAL (Oct. 19, 2004)
Mature Leadership Needed**

“[A] number of justices on the Supreme Court near retirement. The current administration’s hostility toward women’s rights and civil liberties in general gives little confidence that it would choose justice nominees inclined to protect those rights.”

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**The Philadelphia Inquirer, EDITORIAL (Oct. 18, 2004)
High Court Matters**

“George W. Bush says he'd appoint conservative activists in the mold of Justice Antonin Scalia. These would, if they could, drag the court back to the understanding of government's role that held sway in, say, 1920. . . .

Every partisan - liberal or conservative - dreams of a packed court that would endorse his fervent projects. But a court tilted either way would be bad for the nation. Diversity of views drives decisions back to the facts and away from extremes.

Scalia, brilliant and acerbic, is valuable as a counterweight. A court full of Scalias would be a disaster. It would frown on almost all federal bids to protect the environment and workers, to check government's police power. . . .

In the debates, the President signaled to his base that he'd seek a court full of Scalias. . . . Conservative justices, according to this riff, stick to the "original intent" of the Constitution's framers, and a "strict construction" of its words. This is dubious, on several counts.

The framers were a contentious bunch who argued their whole lives over what they'd wrought in Philadelphia. There is no singular "original intent." Groups just deploy the term to gain a patina of purity for a modern political agenda.

Finally, the notion that conservative judges aren't activist, that they humbly leave legislating to the People's House, is poppycock. The Rehnquist court has had a field day knocking down acts of Congress with aims such as gun control and curbing violence against women. This court has no trouble reversing the will of the people if the law in question is enabled by precedents it dislikes.

The court matters, a lot. The court is inevitably political, but it should not be thoroughly political. It should have a balance of views, which is why preemptive litmus tests are wrong. The best justices evolve and surprise the presidents who appoint them. The focus should be on intellect, integrity and the gift of persuasion. . . .

We do know how George W. Bush would [handle nominations]; he's told us. And his approach is the wrong one."

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The Miami Herald, EDITORIAL (Oct. 17, 2004)

The Herald Recommends

"Mr. Bush has also declared that he seeks only judicial wisdom, but his record of nominating controversial, ideologically extreme judges for the federal appeals courts has sparked divisive debate in the Senate and is an unnecessarily narrow criterion for appointment." [Full text](#)

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The Register-Guard (OR), EDITORIAL (Oct. 17, 2004)

"Bush ran as a uniter, and after the contested election of 2000 the nation needed one. But instead, this president has become the most polarizing figure to occupy the White House since Richard Nixon. He promised to be a compassionate conservative, yet Bush's actions in areas ranging from the environment to the judiciary show neither compassion nor conservatism."

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Muskegon Chronicle (MI), EDITORIAL (Oct. 17, 2004)

“Americans will need a president who will nominate the best candidates, the best constitutional scholars, to sit on the most important court in the land, the United States Supreme Court -- not ideologues who toe the line for partisan causes, or who put state's rights above the federal government's.” [Full text](#)

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The Oregonian, EDITORIAL (Oct. 10, 2004)

“President Bush has had no chance to name anyone to the Supreme Court but he has made it clear, through his words and his nominations to the federal bench, what sort of court he wants.

One or more seats on the high court may open in the next four years, and it would be a shame if they were filled with jurists with political and social agendas who seek to turn back the clock.” [Full text](#)

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The Press Democrat (Santa Rosa, CA), EDITORIAL (Sept. 19, 2004)

“Supreme Court: Eight of the nine members of the U.S. Supreme Court are beyond what is traditionally viewed as retirement age. John Paul Stevens is 84. William Rehnquist is 80. Sandra Day O'Connor is 74. The next president is likely to appoint several new members to a tribunal that will decide issues that define our times - the power of corporations, free speech, personal privacy, racial equality, a woman's right to choose. Bush has promised to apply a conservative litmus test for every judge he appoints, leaving voters to ponder the impact of a Supreme Court populated with people like John Ashcroft.”

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Pittsburgh Post-Gazette, EDITORIAL (May 21, 2003)

Editorial: Busting a filibuster / Don't change the rules; cast a wider net for judges

[T]here is a distinct conservative tilt -- even within the Republican context -- to the president's judicial nominations, and some of the nominees are truly scary.

By contrast, Bill Clinton deferred to the opposition party by nominating, even to the Supreme Court, mostly centrist judges. Mr. Bush would do well to follow his example.

Such a strategy would be likelier to curb the Democrats' use of the filibuster than any lawsuit or attempt to change Senate rules. [Full text](#)

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San Francisco Chronicle, EDITORIAL (May 11, 2003)
Injustice for all

“Bush should get the message: his judicial selections are too extreme, with records that suggest they cannot separate their ideology from their administration of the law. The president would be wise to consider only highly qualified jurists that members of both parties can confirm.” [Full text](#)

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COMMENTARY

The Star Tribune, OP-ED (Oct. 26, 2004)
Stakes Couldn't Be Higher for the Supreme Court
By Michael J. Gerhardt

There is a pattern to George W. Bush's comments on the Supreme Court, and it is not good. He has yet to talk straight with the American people about the kinds of appointments he plans to make to the Supreme Court.

As a candidate in 2000 and as president, Bush has delivered one message to the general public but a very different one to his staunchest supporters.

When President Bush speaks to a general audience, . . . he makes cryptic comments whose meaning is clear only to people in the know. Behind closed doors and in campaign rallies (at which attendees must sign loyalty oaths), he promises in a second term to make as many as four appointments that will radically alter the Supreme Court. . . .

Supreme Court appointments are presidents' most enduring legacies. Supreme Court justices serve for life and wield power long after those appointing them have left office. With only one justice under 65, the court is poised for a few vacancies in the near future. One or two appointments will tip the court's delicate balance for years to come over its abilities to protect the environment and privacy rights, to allow local communities to implement flood control, and not to strike down family-friendly legislation such as the Family Leave Act. . . .

As a candidate in 2000, Bush made only a single comment about the court. . . .

In 2000, he said that his models for Supreme Court appointments were Justices Antonin Scalia and Clarence Thomas. That has been enough to keep Bush's base energized.

Most people, however, have no idea who these two justices are. They are the court's two most conservative justices and most ardent opponents of the right of privacy, separation of church and state, restrictions on discrimination based on age and physical disability, and broad congressional authority to regulate guns, protect the environment, and protect women and minorities from violence.

In addition, the president's platform denounces "activist" justices who, unlike Scalia and Thomas, believe the Constitution protects the right to privacy and the rights of all Americans to be free from invidious discrimination. It is telling that the judges denounced as "activists" are mostly Republicans.

Bush's record of nominating judges to the federal bench, which he never mentioned in the debates, provides further insights into the kinds of justices he would appoint to the court.

He rarely consults with Democrats on judicial appointments. . . . He prefers to nominate ideologues, many with constitutional views largely outside the mainstream.

It is no accident that his judicial nominees include one who likened abortion to the Holocaust, another who strongly advocated granting federal tax breaks to Bob Jones University despite its ban on interracial dating, several who opposed the enactment of the Americans with Disabilities Act, and many who opposed women's reproductive rights, workers' rights, civil rights and federal environmental protections. Another Bush nominee was once an ardent defender of state-mandated segregation.

These are the "conservative judges" he promised to appoint after becoming president.

In the debates, Bush dropped two other loaded references. He expressed a preference to appoint "strict constructionists" but never defined the term.

Few people know that "strict constructionists" is a term that President Richard Nixon popularized to characterize the kinds of justices he would appoint -- namely, people who staunchly opposed Warren Court decisions requiring equal treatment for blacks, women and the poor. Given that the decisions have withstood the test of time, the term fell out of use ... until Bush revived it." [Full text](#)

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The Providence Journal, OP-ED (Oct. 22, 2004)

By M.J. Anderson

“Ever since he took office, Bush has been funneling ideological conservatives onto the federal bench. . . . To date, Bush has installed 201 judges - far more than his more moderate, single-term father did. (President Bill Clinton generally chose moderate nominees, but Senate Republicans kept dozens from even getting a hearing.)

Senate Democrats have filibustered against a few of Bush's most outrageous choices. . . .

Because so few cases make it to the Supreme Court, appeals-court positions hold tremendous power in themselves. Republican appointees now hold majorities in 10 of the 13 appeals courts. . . .

This is a leader who pats himself on the back over having no "litmus test" for Supreme Court nominees, but who has vowed to fill the federal courts with conservative judges. Who needs a litmus test when you practically have a sign around your neck reading "No moderates need apply"? . . .

Even if he stops now, the effects of George W. Bush's judicial appointments will be felt for years. They will shape . . . most aspects of our lives, from basic rights to economic rules to environmental protections.

In general, Bush's cadre of judges will ensure that powerful interests are favored over ordinary Americans. Among the most vulnerable are society's least favored . . . [Full text](#)

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The New York Times, OP-ED (Oct. 18, 2004)
Imagining America if George Bush Chose the Supreme Court
By Adam Cohen

“Family and medical leave and environmental protections could disappear.

[O]f course President Bush isn't openly espousing these positions. But he did say in his last campaign that his favorite Supreme Court justices were Antonin Scalia and Clarence Thomas, and the nominations he has made to the lower courts bear that out. Justices Scalia and Thomas are often called "conservative," but that does not begin to capture their philosophies. Both vehemently reject many of the core tenets of modern constitutional law.

For years, Justices Scalia and Thomas have been lobbing their judicial Molotov cocktails from the sidelines, while the court proceeded on its moderate-conservative path. But given the ages and inclinations of the current justices, it is quite possible that . . . Mr. Bush . . . will get three appointments, enough to forge a new majority that would turn the extreme Scalia-Thomas worldview into the law of the land. . . .

President Bush claims to want judges who will apply law, not make it. But Justices Scalia and Thomas are judicial activists, eager to use the fast-expanding federalism doctrine to strike down laws that protect people's rights. Last year, they dissented from a decision upholding the Family and Medical Leave Act, which guarantees most workers up to 12 weeks of unpaid leave to care for a loved one. They said Congress did not have that

power. They have expressed a desire to strike down air pollution and campaign finance laws for similar reasons. . . .

If President Bush gets the chance to name three young justices who share the views of Justices Scalia and Thomas, it could fundamentally change America for decades.” [Full text](#)

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