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Alito's Power Trip

Editorial
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BY UNANIMOUSLY rating Samuel Alito "well qualified" for the Supreme Court last week, the American Bar Association underlined the difficult task that the United States Senate takes on today: deciding whether to consent to the appointment of a justice who is experienced, but whose views are well to the right of most federal judges.

Alito's past opposition to a federal assault-weapon ban and to abortion have been widely publicized. He also ruled in 2000 that Congress lacked the power to apply the Family and Medical Leave Act to states, a view countered in 2003 by the Supreme Court, in an opinion written by then-Chief Justice William Rehnquist. This case, and Alito's negative comments about affirmative action, are among the reasons the Lawyers' Committee for Civil Rights under Law came out strongly against Alito last week.

Another group, the liberal Alliance for Justice, analyzed a number of cases in which Alito was involved and which were decided on split decisions. The majority were closely split, siding with the government 54 percent of the time and with individual plaintiffs 46 percent, while Alito backed the government 82 to 18, according to the report.

One of the few encouraging decisions from the Supreme Court in 2004 was its ruling that the Bush administration had no right to hold persons without charge at Guantanamo Bay, Cuba, and without a right to challenge their detention in court. "We have long since made clear," the majority said, "that a state of war is not a blank check for the president when it comes to the rights of the nation's citizens." From his writings, it would appear that Alito would vote the other way. This is especially frightening because those clarion words were written by Sandra Day O'Connor, the justice whom Alito would replace.

A Bush administration spokeswoman was quoted in The Wall Street Journal last week saying, "There's no way to say how he would rule" on cases before the Supreme Court. Of course that is true, and it would be a mistake for advocates on either side to have absolute confidence of how Alito would vote on any particular issue.

But Bush certainly has a belief in "how he would rule" generally -- that's why he nominated him. Alito's inclination, repeated time and again in memos when he was a staff attorney and in opinions from the bench, is to say yes to power. Whether it is governmental power, corporate power, or presidential power, Alito is likely to salute.

Alito's 15 years of experience as an appeals court judge contributed to his endorsement by the American Bar Association. But the Senate has a mandate to look more closely at the kind of justice he would be. Unless Alito can convince the Senate and the nation that he has changed fundamentally, his record shows him to be a candidate particularly ill-suited for this court.