

The following text may be printed, copy/pasted, or downloaded and emailed.

No on Alito

Editorial
The Record (NJ)
January 17, 2006

LAST week's extensive hearings did nothing to dispel the conclusion of just about everybody that Samuel Alito Jr. would almost certainly tilt the U.S. Supreme Court well to the right.

That's hardly a surprise since President Bush has consistently said this is exactly what he would do with his Supreme Court nominations.

But it's also the reason why any senator concerned with a woman's right to an abortion, the rights of individuals versus the rights of the federal government and big corporations, and the abuse of presidential power must vote against Mr. Alito's confirmation.

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 and even abortion rights.

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

Almost nobody questions Mr. Alito's eminent intellectual qualifications or his judicial temperament. Judges who served with him - even liberal judges - testified glowingly in both of those areas. But the important issue here is not just intellect or how carefully the nominee would weigh the cases before him. 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.

In his 15 years as a judge, Mr. Alito almost always decided such cases - granted, after careful analysis - in favor of business or the government. He said nothing at the hearing that would indicate he'd rule any differently on the Supreme Court.

Cases will come before the court involving minorities, women, immigrants, the disabled and workers. Americans concerned about the rights of the powerless versus those of the powerful should be very worried about the direction the Supreme Court would take with Mr. Alito on its bench.

At the Senate hearings, he insisted he would keep an open mind when faced with abortion rights cases. But according to judges who have served with him, he has kept an open mind on all his cases. In the end, however, he has interpreted the Constitution and legal precedent to be restrictive on abortion. Nothing he said last week indicated anything other than that he could be expected to vote with those on the high court who favor limiting abortion rights or even overturning *Roe v. Wade*.

Mr. Alito also affirmed his belief in checks and balances and the equality of the three branches of government.

But in a time of what can only be called an imperial presidency, with the White House defying congressional law and the Constitution, Mr. Alito offered no assurance that he would vote to rein in the Bush administration or any future abuse of presidential authority.

Contrast his past rulings siding with government at the expense of the individual - including a 2004 case of FBI surveillance without a warrant - with one of Ms. O'Connor's. She wrote in a Supreme Court ruling that the government cannot detain people without charge at Guantanamo Bay, that "a state of war is not a blank check for the president when it comes to the rights of the nation's citizens."

During last week's hearings, Mr. Alito praised Ms. O'Connor and said she would be remembered "with great admiration." But, he noted, "I am my own person."

That person, while receiving the highest marks from his colleagues for his integrity, intellect and decency, would nevertheless move the Supreme Court away from the moderate mainstream that Ms. O'Connor favored.

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.