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**HEADLINE:** Alito Is Too Far Right for the High Court: Erwin Chemerinsky

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**BODY:**

Samuel Alito, one of the most conservative federal judges in the U.S., almost certainly will be a vote on the Supreme Court to undermine basic constitutional rights that have been protected for decades.

In selecting Alito, President George W. Bush has chosen a nominee to please the right-wing critics of Harriet Miers and to fulfill his campaign promise to select a justice very much like Antonin Scalia or Clarence Thomas. Senators of both parties must make clear that Alito is far out of the judicial mainstream and thus is unacceptable for a seat on the nation's highest court.

President Bush could have chosen a more moderate judge, in the mold of retiring Justice Sandra Day O'Connor, who would have easily received confirmation by the Senate. Instead, Bush deliberately chose to politicize the process by selecting an individual who he knew would draw intense opposition from Democrats and hopefully moderate Republicans.

The importance of this seat on the Supreme Court for the future of constitutional law cannot be overstated. O'Connor was the fifth vote on the court to protect abortion rights, to allow remedies for racial injustice, to limit government support for religion, and to permit the government to regulate campaign finance to prevent corruption. In each of these areas, Alito is a virtually certain vote to change the law.

Abortion, Federalism Rulings

For example, in the early 1990s, Alito voted to uphold the provisions of a Pennsylvania law that significantly restricted access to abortion, including the requirement that married women notify their husbands before receiving an abortion.

The Supreme Court disagreed with Alito, striking down the requirement for spousal notification for abortions and emphatically reaffirming constitutional protection of a woman's right to choose whether to end her pregnancy. In another abortion case, Alito indicated his opposition to constitutional protection for abortion rights.

Alito's opinions as a federal appeals court judge have consistently urged dramatic limits on congressional power to deal with serious social problems, often going even further than the Supreme Court in seeking to protect states rights.

In one opinion he wrote that state governments couldn't be sued when they violated the provisions of the federal Family and Medical Leave Act. The Supreme Court reached the opposite conclusion in a subsequent case.

He also dissented from a decision that upheld a federal statute prohibiting the transfer or possession of machine guns.

Far Right

In virtually every important area, Alito's opinions are on the far right of the ideological spectrum. In case after case, he has voted against victims of discrimination and to narrow federal anti-discrimination

laws. He has voted to allow religious symbols on government property and is a sure vote to allow far more religious involvement in government.

He dissented from a ruling that found police acted improperly when they strip searched a mother and her 10-year-old daughter while executing a search warrant.

It is completely appropriate for the Senate to deny Alito confirmation because of his conservative ideology. Throughout American history, the Senate has exercised its constitutional responsibility by rejecting presidential nominees whose views are too extreme. George Washington's pick for the second Chief Justice, John Rutledge, was defeated because of the Senate's disagreement with his views. Almost 20 percent of presidential picks for the Supreme Court have been rejected, mostly because the Senate disagreed with the nominee's views.

#### Moderate Needed

Hopefully, Senators from both political parties will oppose Alito and make clear that the new justice must be a moderate like O'Connor, and not someone from the far right, like Scalia and Thomas.

If necessary, Democrats should filibuster to prevent Alito from being on the high court for decades to come.

In June, Democrats and Republicans agreed that judicial nominees can be filibustered when there are "extraordinary circumstances."

Replacing Chief Justice William Rehnquist with John Roberts Jr. is unlikely to change results in constitutional cases in the short term. By all accounts, Roberts can be expected to vote in most cases in much the same way as Rehnquist.

But replacing O'Connor with Alito is a profound shift. Alito's confirmation would lead to decisions that give states more authority to regulate and perhaps even ban abortions; the end of affirmative action programs in colleges and universities; and the overruling of precedents limiting government support for religion.

It is hard to imagine more urgent or "extraordinary circumstances" than these.

**UPDATED-INFO:** Erwin Chemerinsky, a former U.S. Justice Department lawyer, is a law professor at Duke University Law School. The opinions expressed are his own.

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