

Democrats may try to derail Alito

This past week, President George W. Bush nominated Judge Samuel Alito Jr. to replace Associate Justice Sandra Day O'Connor on the U.S. Supreme Court. The president has made an excellent selection. In nominating Judge Alito, the president has selected someone who has more on-the-job experience than any other Supreme Court nomination in the last 70 years.

Alito, a New Jersey native, received his undergraduate degree from Princeton University and attended Yale Law School, where he served as an editor on the Yale Law Journal. He served as an assistant U.S. attorney in the appellate division, as an assistant to the solicitor general, as deputy assistant attorney general in the Reagan administration, as a U.S. attorney for the District of New Jersey, and as judge on the U.S. Court of Appeals for the Third Circuit for more than 15 years.

Throughout this distinguished career, Alito has argued 12 cases on behalf of the federal government before the U.S. Supreme Court as well as dozens of other cases in federal courts of appeals. While a U.S. attorney, Alito was best known for prosecuting white-collar and environmental crimes, drug trafficking, organized crime and violations of civil rights. As a judge, he has authored hundreds of opinions, giving senators plenty to consider during the upcoming Senate confirmation hearings.

Alito's respect for "legislative intent" and his preference for judicial restraint make him very comparable to Chief Justice John G. Roberts. Both Roberts and Alito have shown a careful and cautious approach to the law in their past written decisions. Both men under-



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stand that Congress makes the laws, and it's a judge's role to interpret the laws, not make them. Much like Roberts, Alito is a steadfast defender of the Constitution of the United States. Battle lines are already being drawn, both politically and ideologically, in the U.S. Senate and by the national media. Many are claiming Alito has deeply held conservative views, which will lead to a tough political fight during the confirmation hearings. There can be little doubt that Democratic senators will attempt to berate Alito into discussing his views on abortion, racism, religion and other "hot-button" subjects.

On one level, the Democratic senators are certainly entitled to their day in court. There is nothing wrong with asking the judge tough questions. However, everyone needs to recognize that Supreme Court Justices are somewhat limited in the answers they are able to give the Judiciary Committee without potentially prejudicing future cases that may come before their court.

As we have discussed before in this column, Judge Ruth Ginsberg recognized this dilemma in 1993. That year, President Clinton nominated Ginsberg to replace Justice Byron White on the Supreme Court. Throughout her confirmation hearings, Ginsberg, a former leader of the ACLU and world renowned liberal activist, denied answering questions regarding her

personal views on 54 separate occasions, saying her personal views were irrelevant to the rulings she would issue as a justice.

During those hearings, Sen. Joe Biden, the likely leader of any Alito opposition, and other Democratic senators on the hearing panel continually supported Ginsberg in her refusal to answer these pointed questions. It will be interesting to see if they take this same approach during the upcoming hearings in January.

It should be noted that Alito was unanimously confirmed by the Senate to serve as U.S. attorney for the District of New Jersey. He was also unanimously confirmed by the Senate for the U.S. Court of Appeals. His balanced approach to interpreting the law has been heralded by non-partisan groups, such as the New Jersey Law Journal, that have called him the legal profession's "best" with "exemplary" judicial qualifications.

Democrats have threatened to filibuster this nomination. However, given Alito's record, there can be no question that he deserves a fair confirmation hearing and an "up-or-down" vote on the floor of the Senate.

Once again, Hoosiers should watch Indiana Sen. Evan Bayh closely as this process moves forward. Bayh could be the swing vote on any filibuster. But, as the senator returns to Washington, D.C., from presidential campaign stops in New Hampshire, one has to wonder: Will Evan Bayh support this high-quality nomination or will he cave into the liberal elites of his party in an effort to further his presidential campaign?

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