

Meanwhile, for the third time the President has turned down the opportunity to make history by nominating the first Hispanic to the Supreme Court. How much longer must Hispanics wait before they see someone on the Nation's highest Court who shares their ethnic heritage and their shared experiences?

At the same time, the appointment of Judge Alito largely fails to diversify the Court in terms of professional experience. Judge Alito is a long-serving Federal appellate judge who would join eight other justices with that very same professional credential. While his prior service as a Federal prosecutor is commendable and worthwhile, he was essentially an appellate lawyer like a number of the sitting justices.

We have come a long way from the days when Senators, bar leaders, trial lawyers, leading professors and others with a wide range of life experiences were routinely appointed to the Supreme Court. If Judge Alito is confirmed, the range of professional diversity on the Court will extend all the way from those who served on the D.C. Circuit to those who served on the First, Third, Seventh, or Ninth Circuit before their promotions.

The third and most important basis for my early concern about the Alito nomination is the fact that he was nominated following the forced withdrawal of White House Counsel Harriet Miers. Harriet Miers received a raw deal from her critics. This woman had been the managing partner of a major American law firm, the first female president of the Dallas Bar Association—which, by the way, is larger than most State bar associations. She was the first female president of the Texas Bar Association. She had been one of the Nation's leaders in promoting opportunities for women lawyers and minority lawyers. She has been a champion of ensuring legal representation for the poor. She was a trial lawyer. The one-dimensional portrait her opponents painted of her was malicious and unfair.

Let's not sugarcoat the truth. The nomination of Harriet Miers was derailed by the overwhelming opposition of the extreme right wing. They campaigned against her, they ran paid advertising against her, and they finally succeeded in having the President cave in to these radical right wing activists. They succeeded in defeating her nomination even before this fine woman was afforded an opportunity to make her case to the Senate Judiciary Committee.

Earlier this year we heard Senator after Senator on the other side of the aisle, and conservative commentators across the airwaves, declare that every judicial nominee is entitled to an up-or-down vote. I have a question for those Senators, those commentators: When exactly will Harriet Miers receive her up-or-down vote?

The White House made a half-hearted effort to argue that the Miers nomina-

tion was withdrawn in the face of an impasse over what documents would be provided to the Senate. That is a pretext, a laughable cover story.

She was forced to withdraw by conservative activists who want to change the legal landscape of America. They decided she was inadequately radical or insufficiently aggressive for their purposes, so they gave her the boot. You don't have to take my word for it. Listen to the words of John Danforth, our former colleague, Senator from Missouri and, until recently, President Bush's Ambassador to the United Nations. He was asked on CNN recently who he thought were the winners in the Miers episode. I quote his answer:

The big winner is the right wing of American politics. They have scored a big victory. This was a power play on their part. And they won it . . . they took on Harriet Miers for no explainable reason. It was really an outrage, in my opinion, that this happened.

Senator Danforth is himself a pro-life Republican and an ordained Episcopal priest, but listen to what he says about his fellow Republicans:

I am very concerned about the ascendancy of the political right, particularly in the Republican Party. It's very obvious that nobody can do enough to please them. The President certainly can't. . . . They gave him a kick in the teeth. I think [the Republican Party has] been taken over by people I feel uncomfortable with and a lot of Republicans feel uncomfortable with . . . They want a political judge. They want a judicial activist.

Senator Danforth has revealed an important truth about today's Republican Party. His warnings are precisely why the Senate needs to take a long, hard look at the Alito nomination.

Even in the first 2 weeks of the confirmation process, a picture of Sam Alito is emerging that may explain why the extreme right wing is popping champagne corks. Earlier this week we learned of the 1985 memo in which Alito said, "I am, and always have been a conservative." He also spoke proudly of his work on behalf of an extremely conservative agenda of the Reagan Justice Department.

We don't have to guess whether Judge Alito's description of himself in that memo would predict what kind of a judge he would be. For the past 15 years, Judge Alito has been one of the most conservative judges in the country—some would say extreme. For example, in civil rights cases he has often dissented to argue for higher barriers to recovery for people with claims of discrimination. In *Bray v. Marriott Hotels*, his colleagues said Title VII of the Civil Rights Act "would be eviscerated" if Judge Alito's approach were followed. In *Nathanson v. Medical College of Pennsylvania*, he dissented in a disability rights case where the majority said, "few if any Rehabilitation Cases would survive" if Judge Alito's views were the law. And in *Sheridan v. DuPont*, he was the only one of 11 judges on the court who would apply a higher standard of proof in sex discrimination cases.

In another area of law, Judge Alito has been quick to limit the authority of Congress, even when it is working to help people solve real problems. In *Chittester v. Department of Community Development*, he held that the Constitution did not allow a State employee to enforce the Family and Medical Leave Act. The Supreme Court effectively repudiated that view 3 years later in the *Hibbs* case from my own State of Nevada.

These are a few of Judge Alito's many judicial opinions which merit close review by the Senate. By all accounts, Sam Alito is a decent man, well liked by his colleagues. He has devoted his entire legal career to public service, and for that I admire him. Throughout the confirmation process I will work to ensure that Judge Alito is treated with civility and respect. But there is nothing disrespectful about an open and fair-minded review of a nominee's approach to the Constitution and his commitment to the core American values such as equality, privacy, fairness.

One final point. This nomination will be governed by the 200-year-old rules of the Senate. I was very dismayed to read an essay by the majority leader in the *Chicago Tribune* last week in which he threatened to change the rules of the Senate to ensure that Judge Alito would be confirmed. Think about that. My friend, the majority leader, wrote:

If members of the Democratic minority persist in blocking a vote on Alito's nomination, the Senate will have no choice but to change the rules.

The majority leader's accusation is baseless. Democrats can hardly persist in an activity in which we are not engaged. No Democrat has even raised the issue of extended debate. At this early stage of the process, 2 months before committee hearings on this nomination will begin, it is silly to argue about the terms of floor debate. Earlier this year, the entire Senate breathed a sigh of relief when the so-called "nuclear option" was averted by an agreement of a bipartisan group of Senators. We don't know what is going to happen on this nomination. The majority leader should put his sword back in its sheath and let the Senate move forward on this nomination without idle threats. Let's not talk about changing the Senate rules illegally. Let's not start talking about blaming the Democrats for something in which they are not engaged.

I am confident the Senate Judiciary Committee, under the able leadership of the senior Senators from Pennsylvania and Vermont, will do a good job of illuminating Judge Alito's record and views. The rest of the Senate and the rest of our Nation will pay close attention.

THE ASBESTOS BILL

Mr. REID. Mr. President, I want to comment briefly on the statement of the distinguished majority leader this

morning that the first piece of legislation we will consider in January 2006, after we return from the winter recess, will be the asbestos bill. What a mistake. I know Senator SPECTER has worked hard on this issue. In fact, Senator SPECTER and his good friend and former school roommate Judge Becker, a judge from Pennsylvania, have worked together on this bill for countless hours. However, whatever that personal relationship and despite how long and hard they may have worked on this bill, it is not acceptable in its current form. It is not even close.

All you have to do is look at a bipartisan letter that was sent to Senators FRIST and this Senator, Senator REID, two days ago, dated November 14, 2006. The letter was sent by both the chairman of the Budget Committee, JUDD GREGG of New Hampshire, and the ranking member, KENT CONRAD from North Dakota, and stresses that this asbestos bill is not ready for floor action.

They write:

... we are in the process of gathering data and evaluating available studies in order to provide Senate Members a better understanding of the likely budgetary implication of S. 852. . . .

There are potentially serious costs to Federal taxpayers in this legislation. S. 852 would create a national trust fund to compensate victims of asbestos exposures in lieu of those victims pursuing compensation through the tort system. The legislation was reported by the Senate Judiciary Committee on May 26, 2005. There remain, however, major unresolved questions about the budgetary impact of this bill. These include: the actual cost of the program; whether proposed funding will be sufficient to compensate all claims; clarity on the allocation of assessments to business and insurance entities, including the balance of those assessments and whether these assessments will generate adequate revenues to satisfy the program's costs; the amount that will be borrowed from the Federal Government under the bill's Federal borrowing authority. The legislation proposes a fund of \$140 billion. CBO has advised that this amount could be sufficient to satisfy the program's claims and costs. CBO also cautioned, however that this amount could be insufficient, depending on a number of issues. . . .

Following the release of the CBO report, the Bates White economic consulting firm released a study demonstrating the fund could experience additional costs beyond the proposed amount between \$161 billion and \$421 billion.

Mr. President, \$421 billion in additional costs. The letter concludes:

Because of the major adverse impact the legislation could have on the Federal budget deficit if there are funding shortfalls, we ask that at least until these issues are fully resolved, that the Senate not take any further action on the legislation.

Mr. President, this bill is not ripe for floor debate and will not be in January. This bill does not adequately address the needs of the dying victims who cannot wait for this trust fund to be established. The bill doesn't address the needs of victims if the trust fund runs out of money, which it clearly seems destined to do. The bill provides special benefits for victims at one asbestos site

but ignores the needs of victims at another site. In another letter to Senators FRIST and this Senator, Senator REID, dated yesterday, November 15, 2005, from the Asbestos Victims Groups United, the victims write:

... [W]e write to express our continued and unified opposition to S. 852. We strongly believe that the bill is unfair to victims and is unworkable. . . . We believe it would be wholly irresponsible for Congress to proceed with consideration and passage of this legislation without accurate and complete information concerning the funding issue and the critical factors associated with it. Please do not allow the families who have lost so much to be victimized again.

This legislation will victimize asbestos victims and it will drive American companies out of business. I had a meeting not long ago with the only company in America that still makes wire. They said if this bill goes into effect they will go into bankruptcy. They are able to handle the situation now, but this bill demands that they contribute to a fund for which they have no responsibility. They are willing to take their lumps in the business world as they know them, but they will not be able to sustain themselves if they are told they have to contribute huge amounts of money to this fund.

Another company representative I have met said they spend \$1 million a year on asbestos litigation, but if this bill goes into effect, they will go bankrupt because they can't afford the contributions they will be called on to make.

Let us not rush into asbestos legislation. Let us not do it fast; let us do it right. We owe it to the American taxpayers, to our American businesses and we certainly owe it to our asbestos victims to take the time to get it right.

The PRESIDING OFFICER (Mr. VITTER). The Senator from North Carolina is recognized.

Mr. REID. Mr. President, if I could, I am confident the Chair recognizes that I used leader time for my statement.

The PRESIDING OFFICER. The Senator is correct. The Chair is aware of that.

Mr. SCHUMER. Mr. President, a point of order.

The PRESIDING OFFICER. The Senator from North Carolina has the floor. She can yield time.

Mr. SCHUMER. I want to ask a question so I can establish the floor order.

The PRESIDING OFFICER. The next 30 minutes is controlled by the majority, followed by 30 minutes controlled by the minority.

The Senator from North Carolina.

CONTINUED PROGRESS IN IRAQ

Mrs. DOLE. Mr. President, we are today at war—in Iraq, Afghanistan, and so many other places in the world, with an enemy who knows no borders. The recent bombings in Amman, Jordan during a wedding celebration are a strong reminder that terrorists know no limits to their ambitions and the means by which they would achieve

those ambitions, however violent and horrific.

Our dedicated American service men and women have answered a noble calling to defeat terrorism, taking the fight to the terrorists abroad, so that we do not have to fight them here at home. The central battleground in the war on terror is Iraq. It has been just 3 years since Iraq was liberated from the brutal regime of an evil dictator, and in that time, we have made tremendous progress. A constitutional democracy is taking hold, and the Middle East is moving towards greater stability. It is integral to the continued progress in this region and to the overall war on terror that we not allow the cowardly acts of insurgents to derail our efforts. America must stand firm with the Iraqis and see that this danger is defeated and freedom prevails.

Last January, the world watched as Iraqis voted for a new government. Rejecting intimidation and embracing the foundations of freedom, 8.5 million Iraqis went to the polls to vote in a free national election. Just last month, Iraqis returned to the polls once again for a referendum on a new constitution. This time, we saw significantly fewer insurgent attacks, with nearly 9.8 million Iraqis voting, and 79 percent supporting the approval of the new constitution. Iraqis have shown great courage by participating in the democratic process. They have walked for miles to the polls, stood in line for hours, and literally put their lives on the line to cast a vote for peace. Eighty-three-year-old Qadir Abdullah, seen here, made his way to the polls—on crutches. He said, "I wish I were young. This is the first time in my life that I've voted freely in Iraq. When I was young, there were always wars and misery." After decades of tragedy, there is a new optimism, as shown by the willingness of Iraqis to step forward and vote for a brighter future. And the success of the referendum indeed is a powerful milestone on Iraq's road to democracy.

In another sign of progress toward democracy, the Sunnis, who in large measure refused to even participate in the January elections, turned out in great numbers to vote in the constitutional referendum, exercising their right to engage in the democratic process. And in recent weeks, three major Sunni political groups have united to participate in the December 15 elections, in which Iraqis will elect a new national assembly to pass legislation and implement the constitution.

And Iraq has seen tremendous progress toward freedom in the new public services, infrastructure, free press, economic activity, and legal institutions that are critical to the longterm success of this democracy.

Over 3,400 public schools have been built; Hundreds of water and sewage projects, 149 new health facilities, and over 250 fire and police stations have been completed.

Before the war, Iraq's media was tightly controlled by Saddam Hussein's