

A reauthorization bill should continue to provide the Government with the tools it needs to fight terrorism but must also include sufficient checks to protect against potential governmental abuse of these expansive powers. There is widespread bipartisan support for a reauthorization bill that will protect both national security and the rights of innocent Americans.

I applaud Senators SUNUNU, CRAIG, MURKOWSKI, and HAGEL for their principled stand on this issue. I urge the White House to work with these Senators and with Senators LEAHY and SPECTER to craft a bill that all Senators can support. If a compromise cannot be reached before the end of this week, we are willing to enact another short-term extension of the current law. There has already been discussion of a 6-week extension of the act to give negotiators time to finalize a long-term reauthorization bill. That approach will be satisfactory to this side of the aisle. We do not want the PATRIOT Act to expire. There is no reason it should.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EXECUTIVE SESSION

NOMINATION OF SAMUEL A. ALITO, JR., TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 490, which the clerk will report.

The legislative clerk read the nomination of Samuel A. Alito, Jr., of New Jersey, to be an Associate Justice of the Supreme Court of the United States.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:20 a.m. shall be equally divided.

The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, will the Chair clarify before the time begins how much time we have now to debate?

The ACTING PRESIDENT pro tempore. Right now the minority side has 12 minutes, 30 seconds.

Mr. DURBIN. I thank the Chair. If he will be kind enough to notify me when I have reached 6 minutes.

The ACTING PRESIDENT pro tempore. Certainly.

Mr. DURBIN. I ask unanimous consent that Senator SCHUMER be recognized to follow me for the remaining period of time allotted to the Democratic side.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, after voting on war, a vote on a Supreme Court nominee is the most important vote a U.S. Senator can cast. The selection of a Justice to the Supreme Court of the United States is one of those moments when 100 Senators speak for the rights, the hopes, and the dreams of 300 million Americans. Soon this Senate will vote on a lifetime appointment to the Supreme Court for Judge Samuel Alito. Judge Alito is likely to receive more "no" votes than any confirmed Supreme Court Justice in the history of the United States, other than Clarence Thomas. Why?

Two reasons: The first is Sam Alito's legal career which separates him from the legal mainstream in America. The second is the judge whom Judge Alito would replace. This is no ordinary vacancy. This is the Sandra Day O'Connor vacancy on the Supreme Court. In case after case during her career, Sandra Day O'Connor has cast the fifth and decisive vote. Her votes helped preserve the constitutional rights that many of us cherish: workers' rights, disability rights, the right to privacy, the separation of church and state, and the principle that in a democracy no man or woman is above the law.

As we prepare to vote for Justice O'Connor's successor, I am reminded of the words of Justice Harry Blackmun. Like Justice O'Connor, Justice Blackmun was a lifelong Republican. He was chosen to write the majority opinion in *Roe v. Wade*. In his dissent in a 1989 case that narrowed the protections of *Roe v. Wade*, Justice Blackmun wrote:

For today, the women of this Nation still retain the liberty to control their destinies. But the signs are evident and very ominous, and a chill wind blows.

I may be wrong about Judge Alito. If I am, no one will be more pleased. But I fear on this January morning in the Senate Chamber, a chill wind blows, a chill wind which will snuff out the dying light of Sandra Day O'Connor's Supreme Court legacy.

When you read his record as a Justice Department lawyer and a Federal judge, it seems unlikely that Justice Alito will preserve Justice O'Connor's respected record of measure and moderation. In case after case during his 15 years on the bench, Judge Alito has consistently sided with powerful special interests, big business, and the heavy hand of government against the individual. In many of these cases, Judge Alito was the lone voice. More than any of the 29 judges with whom he served, Sam Alito stood alone. Rarely did he stand on the side of the poor, the powerless, and the dispossessed.

Over the past several weeks during our hearings, we looked closely at the decisions he rendered. We heard about a case in which Sam Alito wrote a dissent denying a fair trial to an African-American defendant who was forced to stand trial for murder before an all-White jury. We heard about the case in which Judge Alito was the only judge on his court to rule that the Constitu-

tion authorized a strip-search of a 10-year-old girl not listed in the search warrant. We heard about a case in which Judge Alito was the only judge on his court to vote to dismiss the case of a mentally retarded man who was the victim of a brutal sexual assault in his workplace. He voted to dismiss this man's case because his lawyer wrote a poor legal brief.

Judge Alito has consistently ruled against those whose lives have been touched by the crushing hand of fate. As an ambitious young lawyer seeking a job with the Reagan administration, Judge Alito wrote flatly:

The Constitution does not protect a right to an abortion.

As a judge, he voted to uphold a controversial restriction on reproductive freedom, a position later rejected by the Supreme Court and Justice O'Connor.

When I asked Judge Alito at his hearing, is *Roe v. Wade* settled law in America, he did the Federalist Society shuffle, dancing away from admitting what he really believes. In all his words, never once would he say what John Roberts said, that *Roe v. Wade* is settled precedent.

With Sam Alito's nomination, when it comes to privacy rights and personal freedom, a chill wind blows for America.

In the area of Executive power, I fear that Judge Alito will do the most damage to our constitutional rights and civil liberties. His history tells us he will be more likely to defer to the President's power than to defend fundamental rights. Judge Alito is a disciple of a controversial theory that gives Presidents extremely broad powers. The so-called unitary executive theory has been cited by the administration in more than 100 bill signings.

What it basically says, according to some of its proponents, is that a President can ignore the laws he doesn't care to follow. I fear that Judge Alito will be an easy ally for this President or any President who seizes more power than the Constitution ever envisioned.

Last Friday I was walking through O'Hare Airport. A woman in an airline employee uniform came by and said hello as she passed. Then she came back to me.

She stopped me and she said: Senator, isn't this Alito thing really about holding a President back from doing things he should not be allowed to do? Isn't this really about checks and balances? It was a wonderful moment, a moment when a person who is busy with their life and family paused to think about the values that make America so unique.

There are some who will cheer the elevation of Judge Alito to the Supreme Court.

Yesterday, the New York Times ran a story with the headline, "In Alito, G.O.P. Reaps Harvest Planted in '82." The article lifted the veil behind the Alito nomination. It revealed that