

Alito confirmation reflects national division: Bush lauds "fair-minded" new justice

by [Robert Marus ABP](#) in the [February 21, 2006](#) issue

A new era began this month at the Supreme Court as Samuel Alito took a crucial seat on the bench.

The close Senate confirmation vote—58 to 42—reflected the nation's division over the Court's future. Of those who voted January 31 against Alito, 40 were Democrats, one was a left-leaning independent, and one—Rhode Island senator Lincoln Chafee—was a moderate Republican.

Less than two hours after the vote, Chief Justice John Roberts swore in the fellow conservative jurist—like him a former federal appeals court judge and once a part of the Reagan administration. And in his first case on the evening of February 1, Alito split with the Court's conservatives by joining five other justices in denying Missouri's last-minute plea to execute a death row inmate contesting lethal injection.

The level of opposition to Alito was surpassed in modern Supreme Court history only by the resistance to two other nominees. Robert Bork was rejected by a Democratic-controlled Senate in 1985, and Justice Clarence Thomas was narrowly confirmed in 1987 after late-breaking allegations that he had sexually harassed a former colleague. In contrast, Roberts—President Bush's other nominee for the high court—received only 22 votes in opposition when he was confirmed in September.

Nonetheless, the chamber's Republican leaders were all smiles in a postconfirmation press conference. GOP Senator Arlen Specter of Pennsylvania, the chairman of the Senate Judiciary Committee, which earlier voted to recommend Alito, said he was satisfied that "Justice Alito will be a credit to the Court and a credit to the country."

And President Bush, in a statement released shortly after the vote, said the new justice "is a brilliant and fair-minded judge who strictly interprets the Constitution

and laws and does not legislate from the bench. He is a man of deep character and integrity, and he will make all Americans proud as a justice on our highest court.”

Senators had been subjected to intense pressure from special-interest groups on both sides of the debate, with many conservative groups demanding a vote in Alito’s favor while abortion-rights and civil-rights groups strongly opposed him.

“With the Supreme Court confirmation of Judge Alito, Americans are threatened with an unprecedented erosion of our rights,” said Joe Solmonese, president of the Human Rights Campaign, a gay advocacy organization, in a press release shortly after the vote.

Americans United for Separation of Church and State also issued a press release deploring the senators’ decision, noting controversial statements that Alito made in 1985 deriding Supreme Court rulings that established a high wall of separation between church and state and recognized a right to abortion. “We firmly believe that Sam Alito meant what he said in 1985 about his staunch belief that the . . . Court got it wrong on church-state matters and that the Constitution does not provide protection for reproductive rights,” said Americans United’s executive director Barry Lynn.

The division over Alito derives in part from the fact he replaces retiring justice Sandra Day O’Connor, who proved to be a crucial swing vote on the closely divided Court. In particular, O’Connor regularly voted to uphold the core of *Roe v. Wade*, the landmark Court decision that legalized abortion nationwide. She also generally took a strong position on church-state separation. Alito, however, is widely expected to approach such questions differently.

During his confirmation hearings before the Judiciary Committee January 9-13, Alito avoided giving answers that might have made clear how he would vote on controversial issues if they came before him on the high court. However, he also declined to endorse the *Roe* decision as “settled law” or distance himself significantly from statements he had made in the past setting forth antiabortion views and views in opposition to strong church-state separation.

Coincidentally, both the New York-based Second U.S. Circuit Court of Appeals and the San Francisco-based Ninth Circuit on January 31 upheld lower federal courts’ rulings that the 2003 federal law banning so-called partial-birth abortion is unconstitutional. Together with the Eighth Circuit Court’s similar ruling in July, the

decisions may land in the Supreme Court.

The fate of the law may be determined by the high court's new makeup. O'Connor cast the deciding vote in the Supreme Court's controversial 2000 *Stenberg v. Carhart* decision that said any law restricting abortion must provide exceptions to protect the mother's life and health.

Senator Edward Kennedy (D., Mass.) in an ad-libbed January 30 speech revealed a passion rarely seen on the Senate floor. "Too much blood has been shed in those battles—too much sweat, too many tears—to put at risk that march for progress," Kennedy said, his voice rising and his face getting redder. "And that is what we are doing with this nominee."