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A liberal's opinion

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Prior to reading the newspaper this past Sunday, I was poised to put the final touches on an article about how to write a persuasive legal argument. Although I've discussed the subject in various ways throughout the course of this column, I concluded that the time had arrived to address it head on by setting forth several principles to consider when writing the argument section of the brief.

I decided on Sunday, however, to discuss those principles next month, after I read an article that attempted to predict the type of Supreme Court Justice Judge Samuel Alito, Jr., would be in light of two opinions he authored in which he concluded that Congress exceeded its constitutional authority by, respectively, authorizing state employees to sue their government employers for violating the Family and Medical Leave Act, and restricting the possession of machine guns.

This newspaper article is the most recent among several that I have read, not just about Alito, but also about now-Chief Justice John Roberts and the legal positions that he had advocated when he represented the federal government as a member of the U.S. Solicitor General's office. The common thread running throughout these articles is that each jurist's conservative values are defined by the views they expressed, either as an intermediate appellate court judge applying precedent or as an advocate for a client. I disagree.

Before proceeding any further, I want to make clear that I am not a conservative. In fact, for many years I was a card-carrying member of the American Civil Liberties Union. Although I terminated that status when the organization defended the First Amendment rights of Nazis to march in Skokie, Illinois in the late 1970s, I have since returned to the fold and am at present co-counsel with the ACLU in a case filed in the Circuit Court for Baltimore City on behalf of a number of individuals who are challenging a Maryland statute that prohibits same-sex couples from marrying. I am also the parent of a teenager whose car bears a bumper sticker that says, "Ban Republican marriage. Hatred is unnatural and disgusting." I am, in short, a liberal.

Despite my left-leaning views, however, I have twice been labeled anything but a liberal on the basis of legal positions that I advocated on behalf of my then-client, the state of Maryland.

The first time my personal politics were challenged was when a member of the judicial nominating commission asked me, during my interview for a position as an appellate judge, how I could square the importance of being fair with an argument I successfully made in the 4th U.S. Circuit Court of Appeals that the state could not be sued for monetary relief under the FMLA, the same federal law that Alito concluded did not authorize such relief against a state.

