

Community Rights Counsel · Earthjustice

Judge Samuel A. Alito, Jr. and the Environment Post-Hearing Talking Points

The nomination of Judge Samuel A. Alito, Jr. has triggered broad opposition from more than 50 conservation and environmental groups, including the League of Conservation Voters, Natural Resources Defense Council, Sierra Club, and The Wilderness Society. None of these organizations opposed the confirmation of Chief Justice John Roberts. The environmental community has united around the opposition of Judge Alito to a lifetime seat on the Supreme Court for the following reasons:

- **Commerce Clause:** Judge Alito's record, including most prominently his dissent in *Rybar v. United States*, indicates that he has a very narrow view of the Congress's authority under the Constitution's Commerce Clause, which underlies most federal environmental laws. During the hearing, Judge Alito refused to acknowledge his faulty reasoning even though the only court to agree with him was ordered by the Supreme Court to reconsider its judgment. In February, the Court is scheduled to hear oral arguments on the scope of the Commerce Clause in two critical cases that could restrict the geographic jurisdiction of the Clean Water Act to a small fraction of its current coverage.
- **Standing and Access to Courts:** Judge Alito has placed unjustifiable hurdles in front of citizens that are trying to make polluting corporations comply with basic environmental safeguards. His record indicates that he will shut the courthouse doors on citizens who are injured by polluting companies. In *PIRG v. Magnesium Elektron*, Judge Alito overturned a \$2.6 million dollar verdict against a polluter who violated their Clean Water Act permit more than 150 times. In his hearing testimony, Judge Alito refused to acknowledge that the subsequent Supreme Court decision in *Friends of the Earth v. Laidlaw* invalidated the reasoning he employed to deny the plaintiffs their day in court.
- **Unitary Executive:** Judge Alito's embrace of the "theory of the unitary executive" threatens not only citizens' participation in ensuring that laws are enforced through legal action, but also the constitutionality of many environmental statutes that give states a role in enforcing federal laws.
- **Corporate Interests:** In divided cases, Judge Alito has regularly favored corporate interests over workers and the environment. See <http://www.communityrights.org/CombatsJudicialActivism/JEP/Alito.asp> for further information and case details.
- **Hearing Testimony:** Unlike Chief Justice Roberts' Senate Judiciary Committee hearing testimony, the hearing testimony of Judge Alito has only exacerbated concerns.

We urge you to visit Earthjustice's website for factsheets, analysis, Senator's statements and editorials (at http://www.earthjustice.org/policy/judicial/whats_new/index.html#alito), and Community Rights Counsel Web site for CRC's report (at <http://www.communityrights.org/alitoreport.pdf>) and CRC's post-hearing opposition (at <http://www.communityrights.org/alitooopposition.pdf>) on Judge Alito and the ways that his judicial philosophy would put in jeopardy America's critical laws protecting the environment.

For further information please contact Doug Kendall (doug@communityrights.org, 202.296.6889) or Glenn Sugameli (gsugameli@earthjustice.org, 202.667.4500). We would be happy to answer questions you might have.