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### **Alito's Opponents Stake Out Positions.**

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By Shannon P. Duffy, U.S. Courthouse Correspondent

Senate hearings begin today on the U.S. Supreme Court nomination of 3rd Circuit Judge Samuel A. Alito Jr., but the court of public opinion has been in session for 10 weeks, and the verdicts from various legal organizations and interest groups are nearly all in.

In a post-holiday frenzy, some of the final reports and positions of the remaining groups were issued late last week.

In a country gripped by a red-state/blue-state mentality, it's no surprise that the support for and opposition to Alito has split along predictable lines, with the main opposition coming from environmental, civil rights, women's and disability groups.

Not surprisingly, Alito enjoys significant support from conservative groups, many of which have launched Internet Web sites to tout his strong credentials, such as Progress for America which includes numerous quotes from some of Alito's colleagues, such as former 3rd Circuit Chief Judges Edward R. Becker and Ruggero J. Aldisert, and prominent lawyers such as Laurence Tribe. Becker is quoted on the site describing Alito as a judge "who approached every case with an open mind. I never found him to have an agenda."

And 51 of Alito's 54 past law clerks - including several self-described liberals - sent a letter to Senate leaders endorsing his nomination. According to the clerk who organized the effort, the three clerks who didn't sign the letter also support Alito, but are in jobs where they cannot take a public stand.

In such a polarized setting, even a predictable morsel of support or opposition can prove to be significant. Alito certainly enjoyed a strong news cycle on Wednesday when he received a unanimous "well-qualified" rating from the American Bar Association - the same rating he had earned when nominated to the 3rd Circuit.

With an Ivy League education and a reputation for being one of the smartest judges on the federal bench, Alito was probably assured the ABA's strong endorsement, but it nonetheless carries weight in the minds of many citizens.

Groups hoping to block Alito's confirmation clearly face an uphill battle and are counting on ordinary citizens to put pressure on senators whose votes are considered to be in play, including moderate Republicans who support abortion rights and Democrats who are facing tough re-election battles this year.

But Alito's 15-year tenure on the 3rd U.S. Circuit Court of Appeals, during which he was consistently the court's most frequent author of dissenting opinions, provided the interest groups with ample documentary evidence to mine when preparing reports on Alito's record.

Some of the reports are particularly hefty.

People for the American Way released a 156-page report last week that opens by saying "Alito's ultraconservative judicial philosophy is nothing short of radical."

Alito, the PFAW report says, "would join Justices Clarence Thomas and Antonin Scalia at the center of a radical right-wing bloc that would change the direction of the court and the country for decades to come, and threaten fundamental rights and legal protections."

Apparently anticipating that Alito's affable personality will make for a good performance at the Senate hearings, the PFAW report warns that "Judge Alito's quiet demeanor cloaks a far-right ideology that places him among the most conservative judges on the federal bench. If he replaces Justice [Sandra Day] O'Connor, he would be a consistent vote to turn back the clock on decades of progress in civil rights, civil liberties, health and safety, environmental protection and religious liberty."

Equally harsh condemnation of Alito came in a 19-page report from the National Employment Lawyers Association on Alito's jurisprudence in the area of employment discrimination law that says the group "strongly opposes" Alito's confirmation because he is "hostile to civil rights in the workplace."

The plaintiffs lawyers who prepared the NELA report say they conducted an "extensive review" of Alito's employment decisions and concluded that "Judge Alito is an activist judge whose rulings evidence a desire to roll back Supreme Court precedent that now protects the rights of all workers."

Like the PFAW report, NELA focuses on the fact that Alito would replace O'Connor, a key swing vote in employment cases.

"NELA is especially concerned about Judge Alito's apparent belief that the law has gone too far in the direction of protecting workplace fairness given that he is being nominated to replace Justice Sandra Day O'Connor, who has not only been the critical vote and voice of reason in significant discrimination and harassment rulings during the past 20 years, but who also has demonstrated a thorough understanding of the stereotyping that forms the basis for much workplace discrimination," the report says.

Unlike O'Connor, the report says, Alito "has not only often placed an almost insurmountable burden on plaintiffs to prove workplace discrimination, but he has also ignored the realities of gender and racial stereotyping that still exist today and contribute to ongoing discrimination and harassment."

Although Alito has authored "a few decisions" that are favorable to plaintiffs in employment cases, the NELA report argues that "those decisions are confined to select categories of cases involving religious and disability discrimination."

But when his entire record is examined, the report says, Alito exhibits "a penchant for deferring to employer explanations in place of allowing a jury to make the ultimate factual assessment as to whether those decisions are the product of unlawful employer motivation."

Philadelphia attorney Alice W. Ballard, one of the lawyers who contributed to the NELA report, said the report shows that, if Alito replaces O'Connor, "our commitment to fair employment is going to begin to wane."

The American Civil Liberties Union, in its 72-page report, took no official position on Alito's nomination, but nonetheless offered some sharp criticisms.

In its history, the ACLU has opposed Supreme Court nominations only twice - in 1986 when Justice William H. Rehnquist was elevated to the post of chief justice, and in 1987 when Judge Robert Bork of the Court of Appeals for the D.C. Circuit was nominated to replace Justice Lewis F. Powell.

The ACLU's report on Alito says that his "intellectual qualifications are not in doubt" due to his "stellar academic record" and his "succession of important government positions."

As a judge, the ACLU says, Alito's opinions have been "thoughtful and, on the whole, cautious," exhibiting a tendency to operate "within existing precedent rather than rail against it."

But the ACLU also warns that Alito has shown a strong tendency to reject civil rights claims.

"As every lawyer knows ... there is considerable room to interpret Supreme Court decisions and congressional statutes. Judge Alito has regularly used that opportunity to rule against civil rights and civil liberties claims," the report says.

Alito's opinions, the ACLU argues, "make it more difficult for plaintiffs alleging discrimination to prevail, easier for the government to lend its support to religion, and harder to challenge questionable tactics by the police and prosecution."

But the ACLU found one area in which it said Alito deserves praise, saying he has a "generally positive record on issues involving free speech and the free exercise of religion."

In a 72-page report, the NAACP Legal Defense and Education Fund took a strong stand against Alito, saying a review of his civil rights record shows that he has "failed to heed both Supreme Court and 3rd Circuit precedent as well as the expressed intent of Congress in far too many areas and in far too many ways of vital interest to Americans generally and to African-Americans specifically."

Alito's confirmation, the report argues, "would cause a substantial shift in the Supreme Court's jurisprudence on civil rights and ... his confirmation would be to the detriment of the nation."

Advocates for the disabled have also opposed Alito's confirmation. A report authored by lawyers at the Bazelon Center for Mental Health Law in Washington says Alito's nomination "presents grave concerns for people with disabilities" because he has "a record of decisions that make very clear the threat he poses to disability rights."

The "most troubling" aspect of Alito's record, the Bazelon report says, "is his narrow interpretation of the powers that authorize Congress to pass civil rights laws," including the Americans with Disabilities Act, the Rehabilitation Act, the Fair Housing Amendments Act, and the Family and Medical Leave Act.

The report says Alito's rulings in disability cases show that he takes "cramped views of Congress' powers that would put critical disability rights laws at risk."

O'Connor was "frequently the pivotal vote" in disability cases, the report says, and Alito, if confirmed, "would become the critical fifth vote to strike down portions of these laws as unconstitutional."

In a 22-page report, Americans United for Separation of Church and State opposed Alito's confirmation, saying his opinions show that he often protects the free-exercise of religion, but "gives short shrift to the Supreme Court's long tradition of protecting religious liberty by carefully policing the separation of church and state."

If confirmed, the report says, Alito would "abandon the sensitive approach to church-state issues that has been the defining feature of Justice O'Connor's Establishment Clause jurisprudence."

Instead, the report says, Alito would "join Justices Antonin Scalia, Clarence Thomas, Anthony Kennedy, and, presumably, Chief Justice John Roberts ... in revamping Establishment Clause law in ways that would weaken or dismantle the constitutional wall separating church and state."

**In recent weeks, five environmentalist groups - Earthjustice, Friends of the Earth, the Sierra Club, Greenpeace and the National Environmental Trust - also weighed in with their opposition to Alito's confirmation.**

**Earthjustice warned in its report that Alito "would pursue his own extreme legal theories to create new barriers that prevent the enactment and enforcement of national laws that protect families and communities from pollution."**