

September 8, 2006

## Alito Sworn in as U.S. Supreme Court Justice

WASHINGTON, DC, January 31, 2006 (ENS) - Samuel Anthony Alito Jr. was sworn in this morning as the Supreme Court's 110th Justice replacing Sandra Day O'Connor, who is retiring. In a private ceremony attended by members of the Supreme Court, Chief Justice John Roberts administered the Constitutional and Judicial Oaths. Both oaths were administered so that Justice Alito could begin to participate in the work of the Court immediately.

The U.S. Senate confirmed Alito to a lifetime seat on the Supreme Court this morning on a 58-42 vote. Forty Democrats, one Republican, and one Independent voted against Judge Alito's confirmation. Judge Alito received more "no" votes than any other confirmed Supreme Court nominee in the last 100 years except Justice Clarence Thomas.

President George W. Bush said, "Judge Alito has demonstrated that he is eminently qualified to serve on our nation's highest court, and America is fortunate to have a man of his integrity and intellect willing to serve."

The nonprofit, public interest law firm Earthjustice and more than 60 conservation groups urged the Senate to oppose the confirmation of Judge Alito due to concerns that he would roll back protections for public health and the environment.

U.S. Supreme Court Associate Justice Samuel Alito is known for his judicially conservative rulings. (Photo courtesy U.S. Court of Appeals for the Third Circuit)

"Earthjustice is profoundly disappointed that the U.S. Senate confirmed Judge Alito," said Earthjustice Executive Director Buck Parker. "We knew going in that this was an uphill battle. But the stakes were too high for us to stay out of the fight. The American public needed to know about Judge Alito's record of siding with polluters over communities."

Nominated by President George W. Bush from his position on the U.S. Court of Appeals for the Third Circuit, Judge Alito was the first Supreme Court nominee opposed by environmental groups since Judge Robert Bork in 1987.

Sierra Club Executive Director Carl Pope said, "Judge Alito poses a serious threat to the environmental protections we cherish. We applaud those Senators who recognized that the ability to protect our clean air and clean water are at stake. Those Senators who voted for Judge Alito are putting hard-won protections at risk."

U.S. Senate Majority Leader Bill Frist, M.D., a Tennessee Republican, said, "Today's vote proves that the Senate can hold a free, dignified and thorough debate on judicial nominees, while still fulfilling the Senate's constitutional responsibility to give nominees fair up-or-down votes on the Senate floor. In every respect, Judge Alito is a nominee who meets the highest standards of excellence and I congratulate him on this most deserved achievement."

Senator Jim Jeffords, the Vermont Independent who voted against Judge Alito's confirmation, said during the Senate confirmation hearings Judge Alito "failed to distance himself from the radical views he expressed in his earlier writings on the supremacy of executive power."

"Judge Alito's record includes troubling decisions on vital issues such as search and seizure, reproductive rights, the power of Congress, civil rights, and affirmative action," Senator Jeffords said.

Senator Barbara Boxer, a California Democrat who voted against Judge Alito's confirmation, said she was not convinced by his responses during Senate confirmation hearings that he would vote to uphold Congress' constitutional power to pass laws to protect Americans' health, safety, and welfare.

Boxer said she was concerned about the judge's ruling in the 1996 Rybar case, which also worries environmental groups.

In *U.S. v. Rybar*, Judge Alito dissented from a decision upholding Congress' power under the Commerce Clause to regulate the possession of machine guns. Coming after six other federal appeals courts had upheld the same law, Judge Alito's reasoning is troubling to environmental groups because it could translate into limits on Congress' authority to protect water and air.

Judge Alito voted to strike down the federal ban on the transfer or possession of machine guns because he believed it exceeded Congress' power under the Commerce Clause, Boxer said.

"His 3rd Circuit colleagues sharply criticized his dissent and said that it ran counter to "a basic tenet of the constitutional separation of powers." And Judge Alito's extremist view has been rejected by six other circuit courts and the Supreme Court. Judge Alito stood alone and failed to protect our families," Boxer said.

President George W. Bush announces his nomination Philadelphia Appeals Court Judge Samuel A. Alito, Jr., for Associate Justice of the U.S. Supreme Court, to replace the retiring Justice Sandra Day O'Connor. October 31, 2005. (Photo courtesy The White House)

In a case concerning worker protection, Judge Alito was again in the minority when he said that federal mine health and safety standards did not apply to a coal processing site. He tried to explain it as just a "technical issue of interpretation." Boxer said, "I fear for the safety of our workers if Judge Alito's narrow, technical reading of the law should ever prevail."

The environmental groups say they fear Judge Alito's confirmation "poses an immediate threat to America's commitment to protecting safe drinking water and the health of the vast majority of our creeks, streams and wetlands."

By June, Supreme Court Justice Alito will have a chance to rule on two cases that could result in the loss of clean water protections that America has relied upon for more than 30 years.

Earthjustice has filed a "friend of the court" brief in these cases on behalf of eight environmental groups, joining an unprecedented array of local, state, and federal government officials, hunting

and fishing advocacy groups, scientists, and others in supporting protections for all our nation's waters.

"Judge Alito's record includes decisions that threaten environmental laws passed by Congress, and the ability of citizens and government agencies to ensure that these laws are enforced," Earthjustice said.

"His position on Congress' constitutional authority to pass laws that protect the health and welfare of ordinary Americans could radically undermine the fundamental safeguards that communities depend upon to protect them from toxic pollution," according to Earthjustice.

The Sierra Club's opposition to Judge Alito's confirmation also rests on his Constitutional philosophy, which the group says threatens both the ability of Congress to pass laws to protect the environment, and the ability of citizens to enforce those laws.

Judge Alito ruled in Public Interest Research Group (PIRG) v. Magnesium Elektron that the U.S. Constitution barred citizens from enforcing the Clean Water Act even against a company that admitted it had been violating the law for years.

The Magnesium Elektron decision threatened to put a stop to most Clean Water Act enforcement, but the Supreme Court reversed this decision three years later in another case.

Now that he has been sworn in, Justice Alito will be ruling on two Clean Water Act cases now pending before the Supreme Court (US v. Rapanos and US v. Carabell). The Supreme Court will decide whether the Commerce Clause, gives Congress the authority to protect any of America's streams and wetlands.

"This same philosophy could eventually jeopardize all of the environmental laws that protect clean air, clean water, endangered species," the Sierra Club warns.

"Today is a sad day for our country," said Alliance for Justice President Nan Aron. "The Supreme Court makes decisions that touch the lives of all Americans. Unfortunately, the balance of the Court has now tilted dramatically to the right, placing our fundamental rights and freedoms in jeopardy."

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