

Environmental Lawyers Wary of Supreme Court Nominee Alito

WASHINGTON, DC, October 31, 2005 (ENS) - Appeals court Judge Samuel A. Alito, Jr., known for his conservative views, is the President's second choice to fill the U.S. Supreme Court seat of retiring Associate Justice Sandra Day O'Connor. Judge Alito serves on the U.S. Court of Appeals for the Third Circuit, based in Philadelphia, where environmental lawyers say he gutted citizens' access to courts under the Clean Water Act.

President George W. Bush this morning welcomed Alito, 55, to the White House to announce his nomination, as a replacement for White House Counsel Harriet Miers, who withdrew her nomination Thursday in the face of a barrage of opposition from conservative Republicans and some Democrats.

Calling Judge Alito, "one of the most accomplished and respected judges in America," President Bush commended his nominee for his long career in public service and "extraordinary breadth of experience."

Presenting the nominee's record, President Bush mentioned that in the late 1980s, when Alito was serving as U.S. Attorney for the District of New Jersey, he "moved aggressively against white-collar and environmental crimes, and drug trafficking, and organized crime, and violation of civil rights."

With President George W. Bush looking on, Judge Samuel Alito acknowledges his nomination this morning at the White House. (Photo by Paul Morse courtesy The White House)

"Sam Alito showed a passionate commitment to the rule of law, and he gained a reputation for being both tough and fair," the President said.

A Roman Catholic, Alito said this morning that he holds the Supreme Court "in reverence."

"During my 29 years as a public servant, I've had the opportunity to view the Supreme Court from a variety of perspectives - as an attorney in the Solicitor General's Office, arguing and briefing cases before the Supreme Court, as a federal prosecutor, and most recently for the last 15 years as a judge of the Court of Appeals," Alito said. "During all of that time, my appreciation of the vital role that the Supreme Court plays in our constitutional system has greatly deepened."

"I argued my first case before the Supreme Court in 1982, and I still vividly recall that day," said Alito. "I remember the sense of awe that I felt when I stepped up to the lectern. And I also remember the relief that I felt when Justice O'Connor - sensing, I think, that I was a rookie - made sure that the first question that I was asked was a kind one. I was grateful to her on that happy occasion, and I am particularly honored to be nominated for her seat."



Judge Samuel A. Alito, Jr. listens to President George W. Bush sing his praises at the White House this morning's announcement of his nomination to the U.S. Supreme Court. (Photo by Paul Morse courtesy The White House)

Attending the funeral of Chief Justice William Rehnquist in September, Alito says he realized once again that the Supreme Court stands for "our dedication as a free and open society to liberty and opportunity, and, as it says above the entrance to the Supreme Court, 'equal justice under law.'"

But senior legislative counsel with the public interest environmental law firm Earthjustice warned today that Judge Aito "could threaten a wide range of laws that safeguard the health and environment of all Americans."

"With this nomination on Halloween, President Bush appears to be giving a sweet treat to the radical right, and playing a nasty trick on the vast majority of Americans," said Glenn Sugameli. "The entire country knows that Judge Alito was hand-picked by the radical right after they torpedoed the nomination of Harriet Miers."

"Earthjustice is extremely concerned that Judge Alito has repeatedly sought to go even farther than the current Supreme Court majority in restricting Congress' authority to allow Americans to protect their rights in court, and to enact laws that protect our health and environment," Sugameli said.

He gave as an example, Judge Alito's 1997 ruling in the case of Public Interest Research Group (PIRG) v. Magnesium Elektron (MEI) before the Third Circuit Court of Appeals.

"Judge Alito joined in a 2-1 ruling gutting citizens' access to courts under the Clean Water Act," Sugameli said.

"Although the Act authorizes "any citizen" to bring a "civil enforcement action" against alleged polluters, the Third Circuit ruling declared that PIRG did not have standing to sue because it had not demonstrated that MEI's pollution resulted in serious harm to the environment - reversing a rare \$2.6 million fine handed down by the trial court for MEI's violations of the Act," Sugameli explained.

The majority, including Judge Alito, concluded that the Constitution denied Congress the authority to pass a law allowing citizens access to courts in these circumstances.



Earthjustice Senior Legislative Counsel Glenn Sugameli speaks for the other environmental attorneys at Earthjustice when he says he worries that a lifetime appointment to the U.S. Supreme Court for Judge Alito could weaken the country's environmental laws. (Photo courtesy [Earthjustice](#))

Three years later, the Supreme Court essentially reversed and rejected Judge Alito's analysis, ruling, in a 7-2 decision over a heated dissent by Justice Antonin Scalia, that "the relevant showing... is not injury to the environment, but injury to the plaintiff." The case at issue in that ruling was *Friends of the Earth, Inc. v. Laidlaw*.

Judge Alito wrote a dissent in the *U.S. v. Rybar* case that Sugameli says would

have "unjustifiably restricted Congress' authority under the Commerce Clause, which is the basis for most federal environmental laws."

"The majority opinion upheld a conviction under the federal law prohibiting the transfer or possession of machine guns, but Judge Alito would have ruled that the law was unconstitutional," said Sugameli. The Supreme Court refused to review the case.

A new study of interest group reactions to this year's Supreme Court nominations by the Justice at Stake Campaign shows that today's choice of Judge Samuel Alito "may trigger the kind of confirmation battle not seen since Judge Robert Bork was voted down in 1987," said the group's Executive Director Bert Brandenburg. The data show many groups announcing their support or opposition in record time - a certain prelude to unleashing war chests they've been amassing for years, he said.

Two conservative groups that failed to endorse the nomination of Miers moved quickly to back Alito. The Judicial Confirmation Network issued a statement saying that "Judge Alito is the best, in terms of legal credentials, judicial experience, intellectual ability, fairmindedness, and faithfulness to the Constitution."

Concerned Women for America announced its "wholehearted support." Both groups also issued day one declarations of support for Roberts. A new conservative group, Americans for Better Justice, also immediately called for "for the speedy confirmation of Judge Samuel Alito."

People for the American Way and the Alliance for Justice, two liberal groups, both announced formal opposition to Judge Alito's nomination within hours. Each took more than a month to formally oppose the Roberts nomination, while neither had announced a formal position on Miers prior to her withdrawal.

Right-wing conservative James Dobson, chairman of the Christian group Focus on the Family, said his group is "extremely pleased" by President Bush's selection. He said Alito understands that the role of a Supreme Court justice is to "interpret existing law in light of the Constitution, not make new law in service to a personal political agenda."

But Dobson lost no time in showcasing his own political agenda. "Perhaps the most encouraging early indication that Judge Alito will make a great justice is that liberal senators such as Harry Reid and Charles Schumer and leftist pressure groups such as People for the American Way and Planned Parenthood have been lining up all day to scream that the sky is falling. Any nominee who so worries the radical left is worthy of serious consideration."

Senator Harry Reid of Nevada, a Mormon who serves as Senate Minority Leader, said this morning, "I am disappointed in this choice for several reasons. First, unlike previous nominations, this one was not the product of consultation with Senate Democrats. Last Friday, Senator Leahy and I wrote to President Bush urging him to work with us to find a consensus nominee. The President has rejected that approach."

Sandra Day O'Connor became the first woman to serve on the United States Supreme Court when she took her seat as an associate justice in September 1981, following President Ronald Reagan's historic nomination. (Photo courtesy [Library of Congress](#))



“Second,” said Reid, “this appointment ignores the value of diverse backgrounds and perspectives on the Supreme Court. The President has chosen a man to replace Sandra Day O’Connor, one of only two women on the Court. For the third time, he has declined to make history by nominating the first Hispanic to the Court. And he has chosen yet another federal appellate judge to join a court that already has eight justices with that narrow background. President Bush would leave the Supreme Court looking less like America and more like an old boys club.”

“Justice O’Connor has been the deciding vote in key cases protecting individual rights and freedoms on a narrowly divided Court. The stakes in selecting her replacement are high,” said Reid. “I look forward to meeting Judge Alito and learning why those who want to pack the Court with judicial activists are so much more enthusiastic about him than they were about Harriet Miers.”

The MoveOn.org Political Action today said it will mobilize its 3.3 million members in a campaign to urge Senators to oppose Judge Alito's confirmation.

"By nominating someone who regularly sides with big corporations against the rights of ordinary Americans, the President chose a man who passes all of the right-wing litmus tests," said Ben Brandzel, advocacy director of MoveOn.org.

Judge Alito was born in Trenton, New Jersey on April 1, 1950. He graduated from Princeton University with an B.A. in 1972, and went to Yale Law School, where he earned a law degree in 1975.

From 1981 to 1985 he was assistant to Solicitor General Rex Lee, and was deputy assistant to the Attorney General Edwin Meese from 1985 to 1987. After a brief stint as U.S. Attorney for the district of New Jersey, he was nominated by President George H. W. Bush in 1990 to the United States Court of Appeals for the Third Circuit. His chambers are in Newark, New Jersey.

He is known for his conservative views and pointedly written rulings, in the mold of Justice Scalia. Women's rights groups point to a Pennsylvania law that he voted to uphold that required women to tell their husbands before having an abortion. The Supreme Court struck down the law in 1992.

Some lawyers call the judge "Scalito." Roughly translated, the nickname means "Little Scalia," suggesting that Alito has modeled himself after conservative Supreme Court Justice Antonin Scalia.