

# Green Groups Mobilize Against Alito

## Some of Supreme Court Nominee's Judicial Rulings Trouble Environmentalists

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WASHINGTON -- Environmentalists declined to join women's groups, civil-rights organizations and gay-rights activists in opposing the nomination of Chief Justice John Roberts. But the green community is mobilizing against the Supreme Court bid of Judge Samuel Alito, citing rulings during his 15 years on the bench that suggest to them a constitutional view that could limit laws on clean air, clean water and similar issues.

"These laws are designed to fix large-scale, national environmental problems," says David Bookbinder, senior attorney for the Sierra Club. "It's disingenuous for courts to say, 'I'll read it this way and Congress can fix it.' No one wants to reopen the Clean Air Act. It just doesn't happen."

More than a half-dozen environmental organizations are expected to announce their opposition next week. Lobbyists will work Capitol Hill, and some groups are considering advertisements against Judge Alito. Many will urge members to hold rallies and petition drives in the states of undecided senators.

The environmentalists have a big stake in the fight: In February, the Supreme Court is scheduled to hear two cases on whether Congress has the authority under the Constitution's Commerce Clause to regulate certain wetlands.

The White House wants Judge Alito on the high court by then. The Senate Judiciary Committee will begin hearings on the nomination Jan. 9, and a vote by the full Senate is tentatively slated for later in the month.

Thus far, Democrats aren't considering mounting a filibuster, which could bode well for confirmation early next year. But there is no guarantee that situation will hold, since Judge Alito's adversaries have almost another month to attack before his confirmation hearings, which also could turn up surprises.

Women's groups argue that Judge Alito, who said in 1985 that there is no constitutional right to abortion, could shift the court toward overturning *Roe v. Wade*, the high court's landmark abortion-rights decision. If confirmed, Judge Alito would succeed Justice Sandra Day O'Connor, who voted to affirm *Roe*.

Civil-rights groups, organizations for the disabled, and gay-rights advocates say their opposition is based, like the environmentalists, on Judge Alito's narrow view of congressional authority, which could influence his rulings on civil-rights laws and the Americans with Disabilities Act. They also object to his judicial opinions that set exacting standards for proving discrimination.

The Alliance for Justice, a civil-rights group, on Monday sent a caravan of cars, trucks and a boat to several states to spread the anti-Alito message. Also on Monday, Human Rights Campaign, a

gay-rights group, announced its opposition to the nomination. Today, a coalition of groups representing the disabled also will weigh in against him.

Now, the environment issue could put more pressure on Republican moderates, already uneasy with his stance on abortion, to oppose Judge Alito. Progress for America, a Republican group aligned with the White House, already is running ads to counter attacks. Yesterday, the National Association of Manufacturers, which often spars with environmentalists, announced its support for the nominee.

"It is clear to us that he will be a justice committed to interpreting the law as written, not an activist who will try to legislate from the bench. Business depends on a legal system that is fair and predictable," NAM President John Engler said.

Most groups opposing Judge Alito also campaigned against Chief Justice Roberts's nomination to succeed the late William Rehnquist. Environmentalists raised concerns about Chief Justice Roberts but didn't lobby for his defeat because his record on their issues was thin and mixed. In his two years on the appellate bench, Chief Justice Roberts had few relevant rulings, and as a private attorney he helped score an important victory for environmentalists in a land-development case near Lake Tahoe.

Judge Alito's lengthy record on the Third Circuit Court of Appeals provides a more detailed window into his legal thinking. Environmentalists have examined his rulings on nearly 40 cases, and while those decisions break both ways, several aspects of Judge Alito's record have set off alarms among advocates.

In a 2001 case, *W. R. Grace & Co. v. United States Environmental Protection Agency*, Judge Alito joined a 2-1 ruling that threw out an EPA order under the Safe Drinking Water Act for an ammonia-spill cleanup near Lansing, Mich., and concluded that the government cleanup standard was "arbitrary and capricious." In a dissent, Judge Carol Los Mansmann asserted that the law requires courts to take a more deferential view toward EPA findings because "that is a cornerstone to the EPA's power, enshrined in" the Safe Drinking Water Act.

In a 1996 case, *Public Interest Research Group of New Jersey v. Magnesium Elektron Inc.*, the manufacturer admitted to repeatedly violating a clean-water permit by dumping excessive pollutants into a Delaware River tributary. A district judge imposed a \$2.6 million fine for the violations. On appeal, Judge Alito joined a 2-1 opinion that overturned the district court, finding that the PIRG members had brought the lawsuit improperly because they couldn't prove they or the river and its tributaries were injured by the pollution.

The Supreme Court, in a later case, rejected that reasoning and reaffirmed on a 7-2 vote the ability of citizens to bring such lawsuits to court.

However, Judge Alito was on the side of environmentalists in a 1994 case that was a major toxic-waste-cleanup victory. That case, [FMC Corp. v. U.S. Department of Commerce](#), forced the federal government to spend millions to help remove pollution from a World War II factory site in Front Royal, Va., that polluted groundwater.

When government lawyers complained about the costs to taxpayers -- the estimate at that time was as much as \$78 million -- the judges didn't flinch, saying "that circumstance cannot influence our result and we cannot amend (the cleanup law) by judicial fiat."

Judge Alito also wrote a 1997 opinion in *Southwestern Pennsylvania Growth Alliance v. Browner*, an ozone-pollution dispute that was a victory for the EPA and the Clean Air Act. "Although we are sympathetic to the view expressed by many within the area that this rule threatens serious economic harm, we recognize that our role as a reviewing court is strictly limited," he wrote.

The case in Judge Alito's record that may concern environmentalists most wasn't actually about pollution but gun control. In a 1996 opinion on a machine-gun case, Judge Alito questioned Congress's authority under the Commerce Clause to regulate gun sales. Environmentalists worry that if Judge Alito joins the Supreme Court he would push to shrink congressional authority, including over the nation's environmental laws.

Doug Kendall, founder of Community Rights Counsel, an environmental-law group that hasn't taken a position on the Alito nomination, said the nominee's court record isn't all bad for the environmental community.

"But it's not the little things that we have to worry about with Alito. It's the big things," he said