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Article

Environmental Groups Declare Opposition To Alito's Nomination to Supreme Court

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Five environmental groups announced Dec. 20 that they will oppose the nomination of Judge Samuel A. Alito to the U.S. Supreme Court because they believe that Alito's narrow reading of congressional authority in past cases will undermine environmental laws.

At a news conference on Capitol Hill, representatives of **Earthjustice**, Sierra Club, Greenpeace, Friends of the Earth, and the National Environmental Trust said Alito will be the first nominee to be opposed by environmental groups in nearly 20 years. The last Supreme Court nominee to be opposed by these groups was Robert Bork, nominated in 1987 by President Reagan.

"There were eight nominees between Bork and Alito whom we did not oppose," said Earthjustice Senior Counsel Glenn Sugameli.

Commerce Clause Concerns

The group's opposition stems from Alito's interpretation of congressional authority in the interstate commerce clause, which provides the legal foundation of most environmental laws.

Sierra Club Senior Attorney David Bookbinder cited a 1996 ruling by the U.S. Court of Appeals for the Third Circuit in which Alito issued the sole dissenting opinion. The 1996 ruling upheld a conviction under a federal law prohibiting the transfer or possession of machine guns. Alito, however, contended in his dissenting opinion that Congress had the authority to regulate interstate sale of machine guns but not the individual sale of a machine gun within a state, as it did not affect the interstate commerce (*United States vs. Raymond Rybar*, 3rd Cir., No. 95-3185, 12/30/96).

Bookbinder said Alito's dissension was "troubling" because the Supreme Court on Feb. 21, 2006, will be considering two Clean Water Act cases that raise constitutional questions pertaining to the interstate commerce clause. The Supreme Court will review two appeals court decisions reaffirming federal claims that the Clean Water Act requires property owners and developers to obtain permits before building on wetlands that indirectly link to navigable waters, such as rivers and lakes (*Rapanos v. United States*, U.S., No. 04-1034, 10/11/05; *Carabell v. U.S. Army Corps of Engineers*, U.S., No. 04-1384, 10/11/05; 196 DEN A-5, 10/12/05).

Alito "will draw an arbitrary line about how and where congressional authority is limited," Bookbinder said. "It will not be good."

Citizen's Right to Sue.

Alito came under fire from the environmental groups for refusing to hear what these groups believe were legitimate citizen suits. The groups cite a 1997 case in which Alito joined the

majority in barring the New Jersey Public Interest Research group and Friends of the Earth from suing a chemical company for Clean Water Act violations.

The court held that NJ PIRG members had not suffered from pollution emitted by the defendant and had no standing to sue (*New Jersey Public Interest Research Group v. Magnesium Elektron Inc.*, 45 ERC 1001 (CA 3 1997)).

In this case, "Judge Alito said Friends of the Earth and other environmentalists lacked standing to sue a polluter--even though it was uncontested that the company had violated the Clean Water Act 150 times," said Sara Zdeb, legislative director for Friends of the Earth.

Industry Support.

As the environmental groups resorted to calling Alito the corporate world's "point man," the National Association of Manufacturers (NAM) also forsook its longstanding policy in 2005 by weighing in favor of Alito's nomination. Earlier this year, NAM supported the nomination of Chief Justice John Roberts.

In a Dec. 13 statement, NAM President John Engler affirmed his support for Alito, who he believes would not be "legislating from the bench," but would "interpret the law, as written."

Meanwhile, the U.S. Chamber of Commerce commended Alito's experience as an appellate judge and urged Senate for a speedy confirmation process (212 DEN A-6, 11/3/05).

Senator Questions Alito's views.

A Democratic senator already has sent a letter to Alito seeking explanations for his views on congressional authority.

In a Dec. 19 letter to Alito, Sen. Patrick Leahy (D-Vt.), ranking member of the Senate Judiciary Committee, said:

"Along with many others, I have grown increasingly concerned over the last few years at the Court's overruling of congressional actions to protect the environment, ensure equal justice and provide health care and other basic benefits. Your speeches to the Federalist Society in these regards raise particular concerns, and I am sure that you will be asked about your endorsement of such judicial activism," Leahy wrote.