

COURTS: Environmental groups rally against Alito as hearings begin

After months of partisan sparring, talk of a filibuster and numerous campaign-style commercials across the country, the Senate today finally kicks off long-anticipated hearings on the nomination of Samuel Alito to the Supreme Court.

While environmental issues will almost certainly take a back seat during the hearings to various social policy topics, environmentalists and business interests will be closely listening to Alito's answers on a handful of specific issues as a possible indicator of how he would rule on the bench.

Industry groups and environmentalists have lined up on opposite sides of the nomination -- with major business lobbies throwing their weight behind Alito while several major environmental groups have for the first time in two decades decided to oppose a nominee.

Business interests -- including the U.S. Chamber of Commerce and the National Association of Manufacturers -- say they support Alito because he has demonstrated the kind of judicial predictability and consistency sought by the business community. Environmental groups such as the Sierra Club and Earthjustice, on the other hand, point to a handful of decisions as evidence of a philosophy that they claim could cripple if not eliminate altogether several benchmark environmental laws.

Both lawmakers on the Senate Judiciary Committee and their staff members have been unwilling to discuss exactly what questions they will ask the nominee, but there is little doubt there will be at least some questioning over the next few days of Alito's views on environmental law.

One ruling in particular likely to receive heavy scrutiny is his dissent in the 1996 case *U.S. v. Rybar* in the 3rd U.S. Circuit Court of Appeals, where he ruled that the Constitution's Commerce Clause did not give the government authority to regulate sales of machine guns that do not cross state lines. Liberal interest groups and some Democratic senators have repeatedly pointed to that ruling as an indicator that Alito is "out of the mainstream," especially since both the Supreme Court and several other lower courts have rejected such legal reasoning.

While that case had nothing to do with environmental regulations, environmental advocates have said the ruling demonstrates that Alito may seek to severely limit congressional authority under the Commerce Clause -- a constitutional provision that forms the basis for such laws as the Endangered Species Act and the Clean Water Act.

Opponents of the nomination and some committee Democrats said Alito's explanation of the *Rybar* decision will be one of the key factors in determining whether he is the kind of nominee that they believe should not sit on the Supreme Court. "The implications [of the *Rybar* decision] are so radical and so much of a threat to Congress' power ... that I would demand that he credibly repudiate that position," said Democratic lawyer Simon Lazarus, who worked in President Carter's White House and now serves as policy counsel for a senior citizens group that opposes the nomination.

The other key issue that environmentalists expect the panel to address is Alito's viewpoint on access to courts. While sitting on the 3rd Circuit, Alito joined in a 2-1 decision in *PIRG v. MEI*, where the court threw out a \$2.6 million fine against a manufacturing company after it determined the environmental groups that brought the case did not have standing. The court ruled the environmentalists could not claim to have standing because there was no demonstration that the pollution resulted in serious environmental damage.

A Democratic aide on the Senate Judiciary Committee said last week that although it was unclear who would question Alito's position on the standing issue, it was certain that it would come up at some point during the hearing.

GOP leaders hope to confirm Alito by end of next week

Though the hearings are slated to start at noon today, none of the fireworks are expected to take place until at least early tomorrow morning as senators and the nominee use the first day strictly for opening statements.

The hearings will resume at 9:30 a.m. tomorrow when Committee Chairman Arlen Specter (R-Pa.) will begin questioning Alito. Each senator will have 30 minutes to quiz the nominee, with the order of questioning alternating between senators from the two parties. Although committee Democrats are expected to be much more critical, Democratic staff say that while the lawmakers may have discussed what issues they will bring up with the nominee, they have not crafted a specific party-wide strategy for questioning Alito.

The committee has not set a specific time for when it will adjourn each evening, but the first round of questioning will almost certainly spill over into the third day of the hearing. Beyond that, the schedule gets somewhat more murky, as the two parties have agreed to only a tentative schedule for the hearing and the floor debate.

Republican leaders are hoping to conclude the second round of questioning either Wednesday or early Thursday and then move into closed session to discuss Alito's FBI file -- a standard procedure for all Supreme Court nominees. But there has been no specific agreement on how many rounds of questioning Alito will undergo and it is possible Democrats could push for more time -- a move that could potentially push the nomination hearing into the weekend.

Assuming the hearing is wrapped up this week, Republican leaders have previously said they would like to hold a committee vote on Alito on Tuesday, Jan. 17, and move the nomination to the floor the next day with a final confirmation vote to take place by the end of the week. But any member of the Judiciary Committee has the power to postpone the committee vote and press reports surfaced last week that committee Democrats intend to make such a request -- a story Senate Minority Leader Harry Reid (D-Nev.) later denied.

Republicans last week claimed committee ranking member Pat Leahy (D-Vt.) tentatively agreed to the Jan. 17 committee vote when it was first announced in early November. But Leahy and other Democrats have said as recently as this week that they have always reserved the right to postpone the vote.

Senate Democrats have said they will make no decision on whether to postpone the committee vote -- or for that matter whether to filibuster the nominee -- until after the hearings conclude this week. But one key Democrat warned yesterday a filibuster is possible if Alito does not answer

questions to the minority party's satisfaction. "If he continuously -- given his previous record -- refused to answer questions and hid behind, 'I can't answer this because it might come before me,' it would increase the chances of a filibuster," committee member Sen. Chuck Schumer (D-N.Y.) said yesterday on NBC's "Meet the Press."

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