

COURTS: Alito says he would defer to EPA's authority

In his last day of testimony before the Senate Judiciary Committee, Supreme Court nominee Samuel Alito indicated he would defer to U.S. EPA in most court cases, but he did not offer an explanation for a ruling that overturned an agency cleanup order for a major chemical company.

"I think that deference is owed to the expertise of administrative agencies," Alito said in testimony yesterday morning. "That's an important part of administrative law. And when you're dealing with an agency like the EPA, you would defer to their area of expertise."

Alito's comment came after Sen. Dianne Feinstein (D-Calif.) -- who has repeatedly questioned the nominee on his environmental record -- brought up a 2001 decision in *W.R. Grace v. EPA* where Alito joined a 2-1 majority opinion in overturning an emergency EPA order forcing the company to clean up ammonia contamination.

Feinstein did not specifically ask the nominee to explain his reasoning in that case, but she did ask him several times what kind of "deference" the courts should give to federal agencies. Feinstein at one point specifically asked whether EPA deserved to receive the "same deference" as other federal agencies.

Alito responded, "I don't see why it should not. It's the expert on environmental questions."

But environmentalists who have opposed the nomination and have been critical of several Alito responses this week argued his statements were far from convincing given that he issued a seemingly contradictory opinion in the *W.R. Grace* case. "He made no attempt to try to reconcile what he was saying with the result that he reached in that case," said Earthjustice Attorney Glenn Sugameli.

Sugameli also called it troubling that when asked by Feinstein whether agencies that protect public health deserve "additional deference," Alito only reiterated that deference is owed to administrative issues but did not specifically respond to Feinstein's question.

Sen. Jeff Sessions (R-Ala.) argued earlier this week that opponents of Alito were misrepresenting his environmental record, pointing out specifically that Alito sided with the regulatory agency in five of the six environmental opinions that he has authored.

Democrats to map out Alito strategy

Although committee Democrats concluded their questioning of Alito last night with numerous concerns about the nominee and an apparent inclination to vote against

him, it remains unclear whether party leaders will attempt to organize a filibuster to block the nomination.

The Judiciary Committee is scheduled to begin debating and possibly vote on the nomination Tuesday, though any member of the committee has the power to push back the vote by one week.

All 10 committee Republicans made clear this week that they will almost certainly vote in favor of Alito, and several Democrats hinted that they would oppose the nominee -- though they have yet to come forth with a definitive decision.

"The evidence before us makes it hard for us to vote yes," said Sen. Chuck Schumer (D-N.Y.) at the conclusion of yesterday's hearing.

Senate Minority Leader Harry Reid (D-Nev.) in a statement again criticized the nomination and said Democrats would meet next week to decide their next course of action. "I have not forgotten that Judge Alito was only nominated after the radical right wing of the president's party forced Harriet Miers to withdraw," Reid said. "The right wing insisted that Justice O'Connor be replaced with a sure vote for their extreme agenda. Four days of hearings have shown that Judge Alito is no Sandra Day O'Connor."

Meanwhile, Alito's testimony did nothing to assuage the concerns of liberal interest groups, who are expected to maintain through next week a campaign opposing the nomination. They will likely lobby moderates in both parties to oppose the nominee.

The Sierra Club has already started radio advertisements in Maine and Arkansas, and Sugameli said his group will maintain efforts to reach out to lawmakers who may be willing to vote against Alito. "He didn't resolve or dispel any of the concerns that lead us to oppose the nomination," Sugameli said.

Although there are some moderate Republicans who have yet to say how they would vote on the nomination, key lawmakers -- including some moderates -- have said in recent days that they see no justifiable reason for a filibuster.

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