

SUPREME COURT: Sotomayor questioned about upholding environmental protections

By Jennifer Koons, E&E Reporter

During her second day of questioning before the Senate Judiciary Committee, Supreme Court nominee Sonia Sotomayor addressed concerns from Democrats about joining a high court that they view as hostile to environmental protections.

"We've seen in recent decisions of the Supreme Court like the *Solid Waste Agency of Northern Cook County v. U.S. Corps of Engineers* and *Rapanos v. United States* that they have forced the EPA to drop more than 500 cases against alleged polluters. These decisions have impact," said Sen. Ben Cardin (D-Md.).

Cardin went on to accuse current members of the court of rejecting "longstanding legal interpretations in the federal Clean Water Act." The Maryland senator said the issue was particularly important to him "as it relates to the efforts that we're making on the Chesapeake Bay."

Cardin then asked Sotomayor to discuss whether she intends to "follow the intent of Congress and will not try to supplant individual judgment that would restrict the protections that Congress has passed for our community."

The judge repeated her commitment to defer to Congress.

"To the extent that the court has a role -- because it does have a role -- to ensuring that the Constitution is followed, it attempts to do that," Sotomayor said, adding: "It always attempts it with a recognition of the deference it owes to the elected branches in terms of setting policy and making law."

In comments to reporters during a break in the hearings, Cardin said he was pleased by the nominee's answers and happy that Sotomayor does not appear to be an activist judge like Chief Justice John Roberts or Justice Samuel Alito "who will turn the clock back" on environmental policy.

Commerce Clause

During her allotted 30 minutes for questioning, Sen. Dianne Feinstein (D-Calif.) yesterday asked Sotomayor about her views on the Constitution's Commerce Clause, particularly as it relates to the environment.

"One of the main concerns is that [the court's] interpretation, which is much more restrictive now, could impact important environmental laws, whether it be the Endangered Species Act, the Clean Air Act, the Clean Water Act or anything that we might even do in cap and trade," Feinstein told the nominee.

Sotomayor told the California senator that "there are cases pending before the courts raising those arguments." She added: "I can't speak much more further than that because of the restrictions on me."

She also reiterated her intent to pay special attention and deference to congressional findings, comments that pleased legal experts in the environmental community who have been following the hearings.

"Sotomayor's emphasis on paying particular attention to congressional findings was reassuring, as was her stress on deference to Congress in this context and in responding to Senator Cardin's concerns with Supreme Court decisions that he recognized have undermined the Clean Water Act," said Glenn Sugameli, senior counsel for Earthjustice.

Later today, the committee will resume the hearings with a second round of questioning from senators. Witnesses for the Democrats and Republicans are expected to begin testimony tomorrow.

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