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Article

Environmentalists oppose Alito for Supreme Court

Dec. 20- Judge Samuel A. Alito Jr. has run into opposition from environmentalists in his bid to assume the seat of retiring Supreme Court Justice Sandra Day O'Connor.

Four environmental groups and a nonprofit, public interest environmental law firm have formally declared their opposition to Alito for the lifetime Supreme Court appointment — the first environmentalist campaign against a Supreme Court nominee in 18 years.

The Sierra Club, Friends of the Earth, National Environmental Trust and Greenpeace joined the law firm Earthjustice in stating that Alito's nomination endangers laws that US citizens rely upon, including fundamental safeguards for public health and the environment.

The last Supreme Court nominee to be opposed by Earthjustice and other national environmental groups was Judge Robert Bork, nominated in 1987. Earthjustice did not oppose any of the eight Supreme Court nominees between Judge Bork and Judge Alito.

"Like Judge Bork, Judge Alito has an extreme record on issues that are central to fundamental legal safeguards for public health and our environment, including the scope of the Commerce Clause, which is the constitutional basis for most federal environmental laws," the groups said.

Judge Alito's views raise concerns that he would support Commerce Clause challenges by polluters and developers to public health and environmental laws that US citizens have relied upon for decades, including the Clean Water Act, the Clean Air Act, the Endangered Species Act and the Safe Drinking Water Act, the groups said.

They base their concerns in part on Judge Alito's dissent in the 1996 case of *US v. Rybar*. The case was heard in the Third Circuit Court of Appeals, where Judge Alito sits today. In that case, Alito argued that the Constitution did not give the government authority to regulate sales of machine guns that do not cross state lines, contradicting many circuit courts of appeal decisions.

The *Rybar* case did not cover environmental regulations, but environmental advocates say Alito's dissent shows that he may seek to limit congressional authority on other laws.

If confirmed, Judge Alito would be ruling on two cases now pending before the Supreme Court on whether this same Constitutional provision — the Commerce Clause — gives Congress the authority to protect US streams and wetlands. This same philosophy could also eventually jeopardize the environmental laws that protect clean air, clean water, wildlife and more.

Alito's position in *Rybar* was "extreme and unusual," said Glenn Sugameli, Earthjustice senior judicial counsel.

"Judge Alito's record indicates that he would pursue his own extreme legal theories to create new barriers that prevent the enactment and enforcement of national laws that protect families and communities from pollution," said Sugameli. "There is too much at stake; Judge Alito's nomination must be defeated."

What is at stake, Sugameli said, is the ability of the Supreme Court to act as check and balance to the other two branches of government — the executive and the legislative.

Also at stake is the balance of the Supreme Court on environmental issues. There is now a four judge anti-environmental minority on the court, the environmentalists say. If confirmed, Alito could provide the fifth vote to tip the court against environmental protection.

The environmentalists worry that if he is confirmed, Judge Alito's decisions could erode the public's legal right to go to court to stop or penalize violators of environmental safeguards. As a Supreme Court justice, they said, "Judge Alito could essentially rewrite the Constitution to establish new barriers to justice for people who want to ensure that environmental laws are upheld and enforced."

The groups point to his past rulings that imposed restrictions on Americans' ability to enforce environmental laws.

In the case of Public Interest Research Group (PIRG) v. Magnesium Elektron, Alito ruled that the Constitution bars citizens from enforcing the Clean Water Act even against a company that admitted it had been violating the law for years. The Magnesium Elektron decision threatened to put a stop to most Clean Water Act enforcement. But the Supreme Court effectively reversed this decision three years later in another case.

"Judge Alito has also voted to shut courthouse doors to citizens concerned about their environment," said Sara Zdeb, legislative director with Friends of the Earth (FOE).

"Citizen enforcement suits are an indispensable feature of every major environmental law, empowering ordinary Americans to sue polluters when government lacks the resources or political will to enforce the law," said Zdeb.

"In one case," she said, "Judge Alito held that FOE 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."

On the Third Circuit Court of Appeals, Alito has provided the deciding vote in favor of polluters to overturn pro-environmental actions by the US Environmental Protection Agency (EPA), the environmental groups said.

One of these cases overturned an EPA emergency Safe Drinking Water Act cleanup order that protected drinking water for 180,000 people from toxic pollution in Lansing, MI. The polluter, WR Grace, sued to block the recommendations of the collaborative cleanup team, known as the Saginaw Aquifer Technical Evaluation Team.

Judge Alito and a colleague ruled in favor of WR Grace. This decision blocked both the health standard for safe ammonia cleanup and the preferred technology to remove excess ammonia from the drinking water supply.