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Judge Alito fails to respond to concerns over record on access to courts, citizen enforcement of environmental laws

In PIRG v. Magnesium Elektron, 123 F.3d 111 (3d Cir. 1997), Judge Alito joined an opinion holding that environmental groups whose members used polluted waterways lacked standing to sue a polluter—even though the company had violated the Clean Water Act 150 times. The standard he embraced would have forced victims of pollution to scientifically prove harm to the environment in order to establish standing. The Supreme Court rejected this untenably restrictive standing test in Friends of the Earth v. Laidlaw, 528 U.S. 167 (2000), holding that the proper measure of standing is injury to the plaintiffs.

Alito's responses to questions by Senators Leahy and Feinstein did nothing to diminish concerns that he will vote to restrict access to courts and make it more difficult for citizens to enforce environmental laws:

- **Alito did not back away from his Magnesium Elektron decision.** While Alito responded with a generic statement that Laidlaw is “entitled to the respect of stare decisis,” he defended and did not back away from his decision in Magnesium Elektron. Nor was he willing to state that the Laidlaw standard clearly rejected the reasoning he embraced in that case. And when asked whether he agreed with Laidlaw, he simply said that it would apply to him as a Third Circuit judge.
- **In responding to questions about whether he'd reconsider his anti-environmental reasoning in light of Laidlaw, Alito simply offered a summary of that same faulty reasoning.**

In defending his decision Alito stated that “...the plaintiffs in that case had not even alleged personal injury,” and went on to state that because the plaintiffs didn't prove harm to the environment they hadn't alleged injury in fact. But that is precisely the standard that the Supreme Court rejected in Laidlaw, holding that “the relevant showing for purposes of Article III standing, however, is not injury to the environment but injury to the plaintiff.” Laidlaw, 528 U.S. at 181.

Alito also responded by stating that the plaintiffs in Magnesium Elektron “alleged that they enjoyed the Delaware River in a variety of ways...they walked along the canal path, they ate fish from the river, they drank water from the river. But there was no evidence that the discharges into a creek some distance upstream from the river had had any effect whatsoever on the river and, therefore, there was nothing to support a claim that they were personally injured by the discharges of this plant.” But the Laidlaw court expressly rejected this reasoning, stating that “we have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons ‘for whom the aesthetic and recreational values of the area will be lessened’ by the challenged activity.” Laidlaw, 528 U.S. at 182.