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Controversial Issues Will Set Tone for Alito's Term

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Newsday
February 1, 2006

WASHINGTON - When Samuel Alito slips on his new black robe later this month, he will face a quick test on how he will rule on two of the most controversial issues before the Supreme Court: the reach of Congress' law-making power and the extent of the president's executive authority.

On Feb. 21, in his debut, Alito and the court will hear arguments on two consolidated cases about the reach of the Clean Water Act, which could open the door for limiting the power of Congress to pass laws under the Commerce clause.

And on March 28, the court will hear the appeal of Salim Ahmed Hamdan, which will test the constitutional authority of President George W. Bush to create military commissions for trying suspected terrorists.

How Alito rules on these cases will give an indication of what kind of justice he might be and whether he will join other conservatives to form a potentially influential new bloc on the right wing of the court.

Many analysts said the bloc would include the two newest members, Chief Justice John G. Roberts and Alito, and two veterans, Justices Clarence Thomas and Antonin Scalia.

Justice Anthony Kennedy is expected to take the retiring Sandra Day O'Connor's place as the sometimes moderate swing vote on social issues.

In a play on the justices' initials, Supreme Court expert Jeffrey Segal of Stony Brook University has dubbed the new bloc the STAR Chamber, or, alternatively, the RATS Squad.

"There will be a conservative bloc of Scalia, Alito, Roberts and Thomas that much of the time will also garner the vote of Kennedy," Segal said.

"But as Kennedy has a libertarian streak - see his support for abortion and gay rights - there will be limits on how far to the right the court can go."

William Marshall, a law professor at the University of North Carolina, also sees the formation of a new bloc, but one that might differ on some issues. Marshall, a board member of the liberal American Constitution Society, said a Kennedy swing vote shifts the court to the right.

"I think it's going to be a very, very tight bloc," Marshall said. But, he added, "They may splinter on a few issues."

Among them are cases on free expression of religion and on executive power, in which Alito may find himself at odds with Scalia.

But while University of Virginia law professor Lillian Riemer BeVier said she thinks Alito will vote on the same side of the issue as Scalia more often than not, she warned that it will take time to understand Alito's impact on the court.

"I don't think you're going to know much about him before a year or two," said BeVier, who is on the advisory board of the conservative Center for Individual Rights.

Nonetheless, court watchers will follow Alito's first cases closely in the rest of this term.

The first oral arguments Alito will hear as a justice on Feb. 21 will concern the case known as Rapanos v. U.S.

In that case, Michigan developer John Rapanos began putting a shopping center on wetlands, bringing fines and criminal charges.

Rapanos appealed, challenging whether Congress can extend the Clean Water Act to wetlands that are not connected to navigable waters, and whether that is a permissible use of congressional power under the Commerce clause.

On another issue, Alito will hear arguments in the Hamdan case on March 28, a challenge to Bush's November 2001 order creating military commissions. Hamdan, a former driver and aide for Osama bin Laden, is being held at Guantanamo Bay.