

PRESS STATEMENT OF DOUG KENDALL

Three weeks ago, the United States Supreme Court ruled in a case called *Palazzolo v. Rhode Island*. *Palazzolo* involved protections for coastal salt marshes, among the world's most fragile and important ecosystems. Coastal marshes are the spawning grounds for this country's commercial fishing industry. They protect upland property from erosion and floods. They purify the drinking water consumed by millions of Americans.

Yet in the three separate opinions written by the five justices who voted to undermine these protections, there is not a single sentence recognizing the critical role these marshes play in protecting human health and our natural environment. Instead, and remarkably, there is a fight between Justices Scalia and Justice O'Connor about whether it is appropriate to compare the government to "a thief" when it acts to protect salt marshes. Justice Scalia uses this comparison, Justice O'Connor rejects it.

This is not the first time Justice Scalia has described environmental protections in pejorative terms. In another case, Justice Scalia labeled an effort to maintain public access to the California coastline a "plan of out and out extortion." In a third case, Justice Scalia accused environmental groups of using citizen suits to line their personal pockets.

Nor is Justice Scalia alone in expressing hostility towards environmental protection. A federal judge recently referred to environmental crimes statutes as "crazy" and ignored sentencing guidelines even though the criminal conduct was both intentional and egregious. Another judge prohibited an Earth Day celebration at a public high school on the grounds that this celebration encouraged "the worship of the earth," what the judge termed a "recognized religion."

Environmental protections face an unfair playing field in our nation's federal courts. A handful of judges are willing to express abject hostility to environmental protections. Many more judges, including a slim majority on the justices on the U.S. Supreme Court, are willing to ignore procedural and substantive obstacles in order to strike down environmental protections.

The report we are releasing today: *Hostile Environment: How Activist Judges Threaten our Air, Water and Land*, chronicles a disturbing story that has been unfolding in the federal courts for the last decade. Activist federal judges, most of them appointed by Presidents Reagan and Bush, are striking at the very core of this nation's environmental protections.

In doing so, these judges are being activist in a manner that would make Justice Brennan blush. Let me give you an example. The Takings Clause requires

compensation when the government “takes private property.” It says nothing about government regulations. Nevertheless in recent years, federal judges have found even the most innocuous environmental regulations to be takings. One judge, for example, found a regulation of fast motorboats in a wilderness area to constitute a taking. Interpreting the Taking Clause to create a constitutional right to use fast motorboats is not only activist, it’s ridiculous.

This is not an isolated example. As chronicled in our Hostile Environment report, in the last decade judges have imposed a gauntlet of new hurdles in the path of environmental regulators. They have slammed the courthouse doors in the face of citizens seeking to protect the environment. They have sketched the outline of a jurisprudence of "economic liberties" that would frustrate or repeal most environmental protections.

President Bush has promised to appoint judges that will interpret the law, not make it up; judges that will not make social policy from the bench. Such promises rule out the appointment of anti-environmental judicial activists. Environmentalists are committed to holding the President to his promises.

This is not about partisan politics. We are not asking President Bush to appoint liberals or environmentalists. We are asking only that he honor his own promises about the type of judges he favors. And we are doing so for an important reason: the future of environmental law is at stake.