

SENATE BILL COULD BOLSTER ENVIRONMENT SUITS UNDER CIVIL RIGHTS LAW

Sen. Robert Menendez (D-NJ) is poised to introduce a bill that would overturn a key 2001 Supreme Court ruling that significantly limited the legal right to sue under the Civil Rights Act to achieve environmental justice (EJ) and other civil rights goals.

The legislation, a narrower bill than a failed 2004 effort, is being hailed by activists as a welcome attempt to reinvigorate EJ efforts to ensure that low-income and minority communities do not face disparate environmental impacts. But they note the prospects for the legislation are dim in a Republican-controlled Congress, with Menendez polling behind his Republican challenger in his re-election effort. <>

A Menendez source says the legislative effort was sparked in part by a critical EPA inspector general (IG) report released Sept. 19 finding the agency has failed to conduct EJ reviews of its programs and policies despite being required to do so (Inside EPA, Sept. 22, p7).

Menendez' bill would specifically overturn *Alexander v. Sandoval*, in which the Supreme Court decided by a 5-4 majority to raise the bar for private parties seeking to bring civil rights litigation against government by requiring plaintiffs to demonstrate an agency decision intentionally discriminated against minorities.

That has made it difficult for the public to bring suit under Title VI of the Civil Rights Act, which courts had previously interpreted to require plaintiffs show proof that agency policies disproportionately harm disadvantaged communities, without addressing intent.

For example, a federal appeals court in 2002 cited *Sandoval* in blocking New Jersey citizens from proceeding with a civil rights suit against the state environment department over a clean air permit in Camden because the court ruled that they could not prove any discrimination was intentional.

Menendez intends to introduce legislation "that will give people the right to sue under the Civil Rights Act when they are unfairly subjected to a disparate environmental impact," the senator said Sept. 19.

One activist says the narrow scope of Menendez' bill could boost its prospects over far broader civil rights legislation introduced by House and Senate Democrats in 2004 that failed to get committee hearings. But the source says the bill only stands a chance if Democrats take control of either the House or Senate after the midterm elections. "This bill is going nowhere unless there's a change in the Congress," the source says.

Recent polls show Menendez trailing his Republican challenger, New Jersey Sen. Tom Kean, giving Menendez between 38 and 39 percent of the vote to Kean's 44 percent.

Fellow New Jersey Senator Frank Lautenberg (D) told Inside EPA Sept. 27 that EJ issues are likely to be important in Menendez' election bid. Lautenberg said he would be willing to co-sponsor Menendez' legislation once the senator introduces it. "I'm a co-sponsor of everything he does," Lautenberg said.