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Environmental group opposes Alito confirmation

Letter to the Editor by Glenn Sugameli

The U.S. Senate is considering whether to confirm Judge Samuel Alito Jr. to a lifetime seat on the Supreme Court. Unfortunately, many commentators have not focused on Alito's extreme record as an appellate judge of legislating from the bench on issues central to protecting public health and the environment in Louisiana and nationwide

If confirmed, Alito's record reveals he would vote to undermine Congress' authority to enact laws under the Constitution's Commerce Clause -- the legal basis for most federal environmental laws -- and threaten Congress' ability to ensure citizens have the right to go to court to enforce these laws. That is why he is the first Supreme Court nominee environmental groups have opposed since Robert Bork in 1987. For example, in *PIRG v. Magnesium Elektron*, Judge Alito imposed severe restrictions on citizen enforcement efforts under the Clean Water Act. Alito was the decisive vote -- ruling that evidence that people had stopped drinking water from, and swimming and fishing in, a river because of 150 violations of the Clean Water Act was not enough to show they had the right to sue the corporate polluter. The standard he embraced would have forced victims of illegal pollution to scientifically prove harm to the environment, even though it was already clear they had been harmed by the many violations of the Act. The Supreme Court ultimately rejected Alito's unreasonably restrictive test in *Friends of the Earth v. Laidlaw*, ruling citizens need only show they themselves were harmed.

If confirmed, Alito could be the deciding vote in two of the most important Clean Water Act cases to come before the court in 30 years. In these cases, developers and polluters are arguing that headwater streams and tributaries, and all of the wetlands adjacent to these waters, must

lose all existing federal, anti-pollution protections.

Many of Louisiana's wetlands that survived Hurricane Katrina could be at risk of losing all federal protections if the Supreme Court rules in favor of the developers and other industries in these cases; state law may protect some, but not most, of these waters that are important for flood control, safe drinking water, and fish and wildlife habitat.

Louisiana's wetlands are being literally washed away; wetlands acreage equal to the size of a football field is lost every 35 minutes. The deterioration of coastal wetlands increases the Gulf Coast's vulnerability to tropical storms and causes increased flooding and damage.

An astounding 91 percent of Louisiana's impaired waters affect drinking water. The state cannot afford to lose any more protections for its waterways.

For these and other reasons, we urge Louisiana's Sens. Mary Landrieu and David Vitter, to oppose Alito's confirmation.

Glenn Sugameli is the senior judicial counsel of the nonprofit environmental law firm Earthjustice, which works through the courts to safeguard public lands, national forests, parks and wilderness areas; to reduce air and water pollution; to prevent toxic contamination; and to preserve endangered species and wildlife habitat.