September 11, 2024

The Honorable Chuck Schumer
Senate Majority Leader
Room S-221, The Capitol
Washington, DC 20510

The Honorable Hakeem Jeffries
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jerrold Nadler
Ranking Member
House Judiciary Committee
2142 Rayburn House Office Building
Washington, DC 20515

Re: Judicial Review Provisions in S. 4753 - the Energy Permitting Reform Act

Dear Leader Schumer, Leader Jeffries, Chairman Durbin, Ranking Member Nadler,

On behalf of our seven organizations and the millions of members and supporters we represent, we are writing to express our opposition to S. 4753, the so-called "Energy Permitting Reform Act of 2024." In addition to causing significant environmental harm, this legislation would enact dangerous new precedents within the judicial system by prioritizing court access to a subset of industries over all other matters that our federal courts must address including voting rights, civil liberties, reproductive freedoms, and criminal cases.

Specifically, Section 101 of the Energy Permitting Reform Act mandates expedited judicial review regarding any litigation related to federal permitting approvals or authorizations of projects demanded by the fossil fuel and timber industries. For example, if a coal mine is denied a permit by the federal government, then this legislation mandates "expedited consideration for any civil action" related to that permit. While the federal courts already possess the inherent discretion and authority to expedite the consideration of any matter in the interest of justice, this legislation *requires* it, even if in doing so, other critical matters before the courts are delayed as a result.

There are several areas where Congress has historically provided for the expedited consideration of judicial matters, including matters relating to the Foreign Intelligence Surveillance Act of 1978, appeals of death penalty actions, and challenges to deportation and removal orders. But even there, Congress only has instructed the courts to move "as expeditiously as possible," recognizing and respecting the inherent powers of the Courts to set their own schedules.[1] This legislation contains no such recognition or deference to the judicial branch.

There would be real harm if Congress were to pass such binding requirements to expedite litigation related to fossil fuels upon the courts. First, it would represent the first time that Congress has granted a specific subset of possible litigants with a legal right to accelerated

[1] Congress has explicitly provided for expedited proceedings in specific circumstances. *See* 50 U.S.C. § 1803 (national security); 28 U.S.C. § 3599(e) (death penalty); 8 U.S.C. § 1252 (challenges to deportation orders).

proceedings in cases that do not involve an immediate threat to a person's welfare. For example, while many parties challenge federal authorizations brought under the National Environmental Policy Act, only those cases related to energy production, mining and logging would get expedited review. Passing such provisions would likely result in other well-funded special interests to seek similar accommodations through Congressional language.

More importantly, however, this legislation seems deliberately ignorant as to the substantial workloads and overburdened federal court system. There are currently 22 judicial emergencies across the nation according to the United States Court database.[2] As of last year, there were 686,000 pending cases in federal district courts across the country, averaging 491 filings per judgeship over a 12-month period. For plaintiffs seeking redress on issues across the spectrum, from workplace discrimination, to voting rights, to civil rights, constitutional rights and indeed, environmental protection, all already face significant delays in achieving justice.

We also have significant concerns with the legislation slashing the statute of limitations from, in most situations, six years down to just five months to bring any challenges regarding permit approvals for mining, logging, drilling and other destructive resource extraction activities. While it is the case that Congress has the power to set the statute of limitations, it is also true that many frontline communities, tribal nations, and concerned citizens often do not even learn a federal approval has been granted within a five-month period, as federal agencies are not always required to notify the public that such approval has occurred. Such an arbitrarily short statute of limitations is simply a back-end tactic to deny some of the most vulnerable communities an opportunity to have their voices heard in the courts.

Punitively slashing the statute of limitations while also forcing ordinary Americans to be forced to the back of the line, just so a few powerful special interest industries have expedited access to the courts would not just be justice delayed, it would for too many, be justice denied. We strongly urge you to oppose these misguided attempts to distort access to the courts and the dangerous precedent it represents.

Sincerely,

American Association for Justice
Center for Justice & Democracy
Earthjustice
Impact Fund
National Consumers League
Public Justice
Workers' Injury Law & Advocacy Group

[2] https://www.uscourts.gov/judges-judgeships/judicial-vacancies/judicial-emergencies