FACT SHEET: The Escalating Attack on Judicial Review

Why Congress Must Protect the Public's Last Line of Defense Against Corporate Greed

Judicial review is under threat. But why?

An independent and strong judiciary is an essential pillar of our democracy. Without judicial review, federal agency actions can go unchecked, no matter how unlawful they are. In other words, everyday people, tribes, states, and local governments would have no way to stand up to decisions that pollute their communities, hurt their health, infringe on their rights, or otherwise cause harm.

Unsurprisingly, judicial review is a top target for polluting industries that have lobbied for quicker, more reckless federal permitting processes for years. These corporate polluters have had recent success in obtaining strict environmental review timelines and other permitting shortcuts, but they want to tip the scale even further in their favor. By attacking judicial review, polluters aim to keep the public out of the courtroom and keep federal agency decision-making in their pocket.

Polluters see an opportunity in permitting reform.

The "permitting reform" debate has dominated energy policy debate in recent years; there is broad consensus that we need more effective project permitting to meet the country's growing energy needs. Unfortunately, polluting industries and their political allies have capitalized on these discussions, pushing false narratives about the causes of permitting delays to wage attacks on our most fundamental environmental protections, namely the National Environmental Policy Act (NEPA) and judicial review.

Follow the Money...

The key players bankrolling the attack on judicial review are:

- ✓ Koch Brothers Network, which has a long history of dark money deregulation efforts
- ✓ Major industry groups, like the American Petroleum Institute
- ✓ Conservative think tanks, like Project 2025's Heritage Foundation

Ongoing Attacks on Judicial Review

Polluting industries know they can't always win in court, so they're pushing Congress to set the rules in their favor. The playbook is simple: shorten deadlines, limit who can sue, weaken court powers, or just block judicial review entirely. The list below describes the efforts we've seen so far and expect to see even more in the future.

1. Cutting the Statute of Limitations	Right now, the public generally has six years to bring a case challenging an unlawful permit. Polluters want to slash that window to as little as 90 days. These shorter timeframes make legal challenges, which require organizing, research, and legal representation, nearly impossible, especially for communities with limited resources. *Ex. The Protect LNG Act (H.R. 3592, Hunt and S.1901, Cruz) requires certain claims to be filed within 90 days of publication in the Federal Register.*
2. Mandating Fast-Tracked Judicial Review	Some proposals dangerously force courts to push corporate permitting cases to the very front of the line, putting them above civil rights, criminal cases, national security, or any other issue. These proposals ignore how overburdened the U.S. court system already is and the harms that would be exacerbated even further. *Ex. The Energy Permitting Reform Act of 2024 (S. 4753, Manchin/Barrasso) mandated expedited judicial review regarding any litigation related to federal permitting approvals.*

3. Eliminating Judicial Review Entirely	The most extreme attack is a flat-out ban on judicial review of certain types of projects or agency actions. Corporate polluters effectively get a free pass on their projects, no matter how unlawful or dangerous they are. Stripping judicial review is nothing less than suspending the rule of law to benefit polluters. *Ex. The REPAIR Act (S. 1355, Cassidy) exempts final remediation plans from judicial review entirely. Earlier versions of the One Big Beautiful Bill Act (OBBB) also eliminated judicial review for certain projects.*
4. Limiting Power of Temporary Injunctive Relief	Courts can currently issue injunctions to pause harmful projects before irreparable damage is done. Polluters want to strip or weaken that power by capping injunctions to as low as 30 days or by eliminating them altogether. *Ex. The SPEED Act (H.R. 4776, Westerman) narrows the availability of injunctive relief and limits courts' ability to remand agency actions.*
5. Restricting Court Jurisdiction	Some proposals would force all permitting cases into a single hand-picked court (e.g., DC Circuit). This makes it harder for communities to bring cases in their own regions and stacks the deck in favor of industry-friendly judges. It also means industry only needs to win once to set a nationwide precedent. *Ex. The Complete American Pipelines Act of 2023 (H.R. 2384, Miller) and Infrastructure Project Acceleration Act (H.R. 2783, Langworthy) require challenges to go to the DC Circuit Court.*
6. Limiting Standing to Sue	Some proposals would make it much harder for communities to even get into court in the first place. For example, only allowing challenges from people who submitted detailed comments at every stage of the permitting process, or limiting nonprofits' ability to bring cases on behalf of their members. These hurdles impact frontline communities with fewer resources the most. *Ex. Both the Lower Energy Costs Act of 2023 (H.R. 1, Scalise) and earlier versions of the OBBB restricted who would have legal standing to sue.*
7. Raising the Standard of Proof	Right now, communities can win a case by showing that an agency's decision isn't backed by enough evidence to reasonably support it (i.e., "substantial evidence"). Polluters want to raise that bar to "clear and convincing evidence," a nearly impossible standard that would require challengers to eliminate almost all doubt about their case. *Ex. Both the SPEED Act and earlier versions of the OBBB shifted the standard for legal challenges in favor of polluter project developers.*
8. Banning Third-Party Settlement Payments	When communities win lawsuits against corporate polluters, those companies are sometimes required to fund projects that repair the harm they caused (e.g., restoring wetlands or supporting public health programs). Polluters want to ban these kinds of third-party payments, limiting settlements only to direct financial restitution, which is often inadequate when the harm is not quantifiable. *Ex. The Stop Settlement Slush Funds of 2023 (H.R. 788, Gooden) and earlier versions of OBBB eliminated third-party payments for certain projects.*