October 29, 2026

Re: Judicial Review Provisions in the Bipartisan American Affordability and Jobs Act

Dear Member of Congress:

On behalf of the undersigned organizations, we write to express concern with the judicial review provisions in the Bipartisan American Affordability and Jobs Act (BAAJA) and urge that they be struck from the legislation. **Taken together, these provisions would rewrite the rules to limit the public's access to the courts and benefit polluting industries over the people harmed by them.**

An accessible, strong and independent judiciary is more important than ever, yet this legislation would gut judicial review, one of the most basic checks on federal power. Without meaningful judicial review, a federal agency could unlawfully approve a harmful project that contaminates drinking water or endangers public health, leaving the communities harmed with little, if any, recourse. Weakened judicial review may also shape agency behavior long before any lawsuit is filed; when federal officials know they are unlikely to be held accountable, they may shortcut meaningful environmental protections and rush permits through. At a time when our system of checks and balances is already under strain, Congress should be strengthening the public's access to the courts and investing in a transparent and fair judicial system, not weakening it. We urge you to oppose the following provisions:

- **"Certainty" Language that Locks in Flawed Permits:** Framed as a way to protect against the current administration's cancellation of clean energy projects, Section 1401 would lock in every permitted project, from oil pipelines to hardrock mines and beyond, for future administrations as well. For any permit in effect on or after Sept. 16, 2026, an agency could not revoke, suspend, or amend it, no matter how legally flawed, unless a court orders it to. As described immediately below, the bill makes it difficult and perhaps impossible for courts to order agencies to do so.

- **Eliminating Injunctions and Vacatur as Remedies:** Under current law, a court can pause a project while a case is being decided, but only if the plaintiff meets a demanding standard, including showing that they are likely to win and would suffer irreparable harm without relief. Sections 1110 and 2301 would bar courts from doing so for National Environmental Protection Act (NEPA) or National Historic Preservation Act (NHPA) claims, no matter how clear the violation or how severe the harm. And if a court ultimately finds that an agency violated NEPA or NHPA, the bill would eliminate vacatur, the ordinary remedy under the Administrative Procedure Act (APA), which cancels the unlawful approval so the project cannot proceed until the agency gets it right. Instead, a court could only send the decision back to the agency to fix, leaving the unlawful approval in place and allowing the project to move forward. By the time the agency finishes, the project may already be built; in effect, a community could win its case in court while still losing what it went to court to protect.

Moreover, there are no APA workarounds for the bill's limitation on injunctions and vacatur. NEPA, the Clean Water Act (CWA), and other environmental law claims are brought under the APA, but that does not mean the public could simply avoid the new limits on NEPA or other environmental laws by re-labeling its claims as APA claims, like some have proposed. For example, as explicitly stated in Section 1110, the new restrictions on NEPA lawsuits would apply to any NEPA claim brought "under any provision of Federal law," including the APA. The shorter statute of limitations, the limits on remedies, and other restrictions would all still apply, making our bedrock environmental laws practically unenforceable.

- **Letting Permitting Cases Jump the Line:** Section 2201 would require federal courts to "set for expedited consideration" any lawsuit over the approval or denial of an energy, mining, or other covered project. Doing so would put permitting cases ahead of *nearly every other matter on the courts' dockets*, including cases involving voting rights, civil rights, and human trafficking, among others. Sections 1106, 1403, and 2301 go even further, creating new lawsuits that only project developers can bring when an agency misses a permitting deadline and requiring courts to fast-track them, in some cases deciding within 120 days. Congress has reserved mandatory expedited treatment for only a narrow set of matters (e.g., habeas petitions, emergency injunctions), and otherwise defers to judges in deciding when a case warrants priority. Our courts are already managing hundreds of thousands of pending cases and cannot absorb this mandate without pushing other litigants to the back of the line.

- **Restricting Venues for the Public:** Under current law, challenges to federal permitting decisions are generally brought first in federal district court, and the losing party has a right to appeal. The bill would instead send NEPA and NHPA claims directly to a federal court of appeals and route ESA claims to the D.C. Circuit. By eliminating review in the district courts, the bill omits the courts that have the capacity and experience to develop factual records, which most courts of appeals lack. Moreover, the bill treats developers differently. It allows project sponsors who sue over missed deadlines or revoked authorizations to file suit in district court, where they can develop a record.

- **Slashing the Statute of Limitations**: Sections 1110, 1205, 1305, and 2301 would drastically cut the time to challenge federal decisions under NEPA, CWA, the Endangered Species Act (ESA), and NHPA, respectively, from generally six years to just 150 days, or about five months. Section 2201 would apply the same 150-day deadline to a claim under *any* federal law challenging a permit decision for certain energy or mining projects. Doing so would effectively close the courthouse doors to much of the public. Agencies often announce approvals only in the Federal Register, making it difficult for communities to even learn of new projects within five months, much less seek legal representation. Frontline communities and Tribal communities, which often have fewer resources, are at a particular disadvantage.

Together, these provisions would give the public less ability to go to court, fewer ways to prevent irreversible harm, and weaker remedies when it wins, while simultaneously shielding project sponsors, including fossil fuel developers, from the government's efforts to fix unlawful projects.

For too many communities, the result would be justice denied. We strongly urge you to strike these provisions from this bill.

Sincerely,

Alliance for Justice

American Association for Justice

Center for Justice & Democracy

Earthjustice Action

NAACP

National Women's Law Center Action Fund

Public Citizen

Public Justice