

LEGISLATIVE HEARING ON: H.R. 5468, THE “PER-  
MITTING LITIGATION EFFICIENCY ACT OF  
2018,” AND H.R. 4423, THE “NORTH TEXAS  
WATER SUPPLY SECURITY ACT OF 2017”

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
REGULATORY REFORM,  
COMMERCIAL AND ANTITRUST LAW  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTEENTH CONGRESS  
SECOND SESSION

APRIL 12, 2018

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ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Memorandum and Letter submitted by the Honorable Tom Marino, Pennsylvania, Chairman, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Committee on the Judiciary. These materials are available at the Committee and can be accessed on the Committee Repository at:

*<https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-20180412-SD002.pdf>*

Statement submitted by the Honorable John Ratcliffe, Texas, Vice Chairman, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Committee on the Judiciary. This material is available at the Committee and can be accessed on the Committee Repository at:

*<https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-20180412-SD004.pdf>*

Letters submitted by the Honorable Val Demings, Florida, Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Committee on the Judiciary. These materials are available at the Committee and can be accessed on the Committee Repository at:

*<https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-20180412-SD003.pdf>*

115TH CONGRESS  
2D SESSION

# H. R. 5468

To amend chapter 7 of title 5, United States Code, to provide for certain limitations on judicial review of agency actions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2018

Mr. MARINO (for himself, Mr. CUELLAR, Mr. GOODLATTE, Mr. SMITH of Texas, Mr. COLLINS of Georgia, and Mr. AMODEI) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend chapter 7 of title 5, United States Code, to provide for certain limitations on judicial review of agency actions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Permitting Litigation  
5 Efficiency Act of 2018”.

6 **SEC. 2. LIMITATIONS ON JUDICIAL REVIEW OF AGENCY AC-**  
7 **TIONS.**

8 Section 706 of title 5, United States Code, is amend-  
9 ed—

1 (1) by striking “To the extent” and inserting

2 “(a) To the extent”; and

3 (2) by adding at the end the following:

4 “(b) A court shall presume a delay in final action on  
5 an application for Federally-required permits to be an un-  
6 reasonable delay for purposes of subsection (a) if final ac-  
7 tion on all permits applied for is not taken before—

8 “(1) the date for final action established in a  
9 schedule set by an official designated by the Presi-  
10 dent, provided that such schedule is established not  
11 later than 60 days of the filing of the completed ap-  
12 plication and includes, in addition to such date for  
13 final action, a date prior to such date for the final  
14 determination of the scope of any statutorily re-  
15 quired environmental review; or

16 “(2) in the absence of such a date for final ac-  
17 tion on the application, the date that is 2 years after  
18 the date the completed application was filed, other  
19 than in accordance with—

20 “(A) a timetable under section 41003(c)(2)  
21 of the Fixing America’s Surface Transportation  
22 Act;

23 “(B) section 139 of title 23, United States  
24 Code; or

1                   “(C) section 2045 of the Water Resources  
2                   Development Act of 2007.

3                   “(c) Notwithstanding any other provision of law, judi-  
4                   cial review of any permitting determination for a permit  
5                   described in subsection (b) shall be barred unless the ac-  
6                   tion is filed not later than 180 days after the date of the  
7                   final record of decision or approval or denial of the permit,  
8                   unless a different time is otherwise specified in law. In  
9                   any action seeking judicial review of such a determination,  
10                  such review shall be limited only to matters that were in-  
11                  cluded in any record of the proceeding of the agency that  
12                  pertain to the issuance of the permit, including the final  
13                  determination of the scope of any environmental review.”.

14                  **SEC. 3. ISSUANCE OF RESTRAINING ORDERS AND INJUNC-**  
15                  **TIONS.**

16                  (a) PRELIMINARY INJUNCTIONS OR TEMPORARY RE-  
17                  STRAINING ORDERS.—Section 705 of title 5, United  
18                  States Code, is amended—

19                         (1) by striking “When an agency” and inserting

20                         “(a) When an agency”; and

21                         (2) by adding at the end the following:

22                         “(b) In any action seeking review of a determination  
23                         to issue a permit, if a party moves for a temporary re-  
24                         straining order or preliminary injunction pertaining to the

1 permit or the permitted activity, the court, in addition to  
2 any other applicable equitable considerations—

3 “(1) shall consider, in assessing the balance of  
4 the equities and the public interest, the potential  
5 beneficial and harmful effects resulting from such an  
6 order or injunction on public health, safety, the envi-  
7 ronment, and economic interests, including in areas  
8 that will be affected by the permitted activity and on  
9 the employment of United States workers;

10 “(2) may not presume that any harms identi-  
11 fied pursuant to paragraph (1) are reparable;

12 “(3) may condition such an order or injunction  
13 upon the payment by the party seeking such order  
14 or injunction of a bond equal to an amount not to  
15 exceed \$5,000,000 or a lesser, but material, percent-  
16 age of the reasonably anticipated costs of delay of  
17 the project for which the permit or permits were ap-  
18 plied; and

19 “(4) may not issue a temporary restraining  
20 order unless the party seeking the order shows that  
21 it was not reasonably possible to seek a preliminary  
22 injunction at an earlier date.”.

23 (b) PERMANENT INJUNCTIONS.—Section 706 of title  
24 5, United States Code, as amended by this Act, is further  
25 amended by adding at the end the following:

1       “(d) In any action seeking review of a determination  
2 to issue a permit, if a party moves for a restraining order  
3 or injunction pertaining to the permit or the permitted  
4 activity, the court, in addition to considering any other  
5 applicable equitable factors, shall issue such order only if  
6 it is determined to be in the public interest, and shall,  
7 in making such determination, consider—

8           “(1) the environmental benefits of the per-  
9 mitted activity; and

10          “(2) the costs, including detrimental effects on  
11 the environment, of any delay in undertaking the  
12 permitted activity.

13       “(e) The court may preclude recovery by a permit ap-  
14 plicant on a bond required under section 705(b)(3) if the  
15 court determines the action was substantially justified.”.

○

115TH CONGRESS  
1ST SESSION

# H. R. 4423

To limit claims under Federal law seeking judicial review of any environmental impact statement, environmental review, or authorization for the Lower Bois d'Arc Creek Reservoir Project in Fannin County, Texas, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2017

Mr. SAM JOHNSON of Texas (for himself, Mr. SESSIONS, Mr. RATCLIFFE, and Mr. HENSARLING) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To limit claims under Federal law seeking judicial review of any environmental impact statement, environmental review, or authorization for the Lower Bois d'Arc Creek Reservoir Project in Fannin County, Texas, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "North Texas Water  
5 Supply Security Act of 2017".

1 **SEC. 2. LIMITATIONS ON CLAIMS UNDER FEDERAL LAW**  
2 **SEEKING JUDICIAL REVIEW OF ANY ENVI-**  
3 **RONMENTAL IMPACT STATEMENT, ENVIRON-**  
4 **MENTAL REVIEW, AND/OR AUTHORIZATION**  
5 **FOR THE LOWER BOIS D'ARC CREEK RES-**  
6 **ERVOIR PROJECT IN FANNIN COUNTY, TEXAS.**

7 (a) DEFINITIONS.—

8 (1) AGENCY.—The term “agency” has the  
9 meaning given the term in section 551 of title 5,  
10 United States Code.

11 (2) AUTHORIZATION.—The term “authoriza-  
12 tion” means any license, permit, approval, finding,  
13 determination, certification, or other administrative  
14 decision issued by an agency or a State agency act-  
15 ing under delegated or other Federal authority that  
16 is required or authorized under Federal law in order  
17 to site, construct, reconstruct, or commence oper-  
18 ations of the reservoir project.

19 (3) ENVIRONMENTAL IMPACT STATEMENT.—  
20 The term “environmental impact statement” means  
21 the detailed statement required under section  
22 102(2)(C) of the National Environmental Policy Act  
23 of 1969 (42 U.S.C. 4332(2)(C)).

24 (4) ENVIRONMENTAL REVIEW.—The term “en-  
25 vironmental review” means procedures and processes  
26 conducted to comply with section 102 of the Na-

1 tional Environmental Policy Act of 1969 (42 U.S.C.  
2 4332).

3 (5) PROJECT SPONSOR.—The term “project  
4 sponsor” means the North Texas Municipal Water  
5 District.

6 (6) RESERVOIR PROJECT.—The term “reservoir  
7 project” means the Lower Bois d’Arc Creek Res-  
8 ervoir Project located in Fannin County, Texas, pro-  
9 posed for construction by the North Texas Municipal  
10 Water District.

11 (b) JUDICIAL REVIEW.—Notwithstanding any other  
12 provision of law, a claim arising under Federal law seeking  
13 judicial review of any environmental impact statement, en-  
14 vironmental review, and/or authorization issued by an  
15 agency or a State agency acting under delegated or other  
16 Federal authority for the reservoir project shall be barred  
17 unless—

18 (1) the action is filed not later than 60 days  
19 after the date of publication in the Federal Register  
20 of the final record of decision or approval or, unless  
21 a shorter time is specified in Federal law under  
22 which judicial review is allowed; and

23 (2) in the case of an action pertaining to an en-  
24 vironmental impact statement for, environmental re-  
25 view of, or authorization for the reservoir project,

1 the action is filed by a party that submitted a com-  
2 ment during the public comment period on the re-  
3 vised draft environmental impact statement for the  
4 reservoir project.

5 (c) SEPARATE ACTION.—The final agency action that  
6 follows preparation of a supplemental environmental im-  
7 pact statement, if required, shall be considered a separate  
8 final agency action, and the deadline for filing a claim for  
9 judicial review shall be 60 days after the date of the Fed-  
10 eral Register notice of the final agency action.

11 (d) DISTRICT COURT VENUE AND DEADLINE.—All  
12 actions related to the reservoir project—

13 (1) shall be brought in the United States Dis-  
14 trict Court for the Eastern District of Texas; and

15 (2) shall be resolved as expeditiously as pos-  
16 sible.

17 (e) INJUNCTIVE RELIEF.—

18 (1) IN GENERAL.—In addition to considering  
19 any other applicable equitable factors, in any motion  
20 for a temporary restraining order or any injunction  
21 against an agency, a State agency acting under dele-  
22 gated or other Federal authority or the project spon-  
23 sor in connection with review or authorization of the  
24 reservoir project, the court shall—

1 (A) consider the potential effects on public  
2 health, safety, and the environment, and the po-  
3 tential for significant negative economic effects  
4 resulting from an order or injunction;

5 (B) not presume that the harms described  
6 in subparagraph (A) are reparable;

7 (C) not waive or limit the requirements of  
8 Federal Rule of Civil Procedure 65(c) as to any  
9 movant for a temporary restraining order or in-  
10 junction; and

11 (D) determine the amount of security de-  
12 scribed in subparagraph (C) in the same pro-  
13 ceeding in which the court considers the tem-  
14 porary restraining order or any injunction.

15 (2) SECURITY.—With respect to the security  
16 described in paragraph (1)(C)—

17 (A) an order granting injunctive relief shall  
18 not be effective unless and until such security  
19 has been posted by the movant;

20 (B) an order granting injunctive relief  
21 shall require such security to be posted within  
22 15 calendar days or less from the issuance of  
23 the order; and

24 (C) if the movant fails to post such secu-  
25 rity within the time provided in an order grant-

1           ing injunctive relief, the order granting injunc-  
2           tive relief automatically terminates.

3       (f) SAVINGS PROVISION.—Nothing in this section—

4           (1) creates a right to judicial review;

5           (2) supersedes, amends, or modifies any Fed-  
6       eral statute or affects the responsibility of any State  
7       or Federal officer to comply with or enforce any  
8       statute;

9           (3) creates a presumption that the reservoir  
10       project will be approved or favorably reviewed by any  
11       agency or a State agency acting under delegated or  
12       other Federal authority; or

13          (4) places any limit on filing a claim that a per-  
14       son has violated the terms or conditions of a permit,  
15       license, approval, or certification.

○



**LEGISLATIVE HEARING ON: H.R. 5468, THE  
“PERMITTING LITIGATION EFFICIENCY ACT  
OF 2018,” AND H.R. 4423, THE “NORTH TEXAS  
WATER SUPPLY SECURITY ACT OF 2017”**

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**THURSDAY, APRIL 12, 2018**

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON REGULATORY REFORM,  
COMMERCIAL AND ANTITRUST LAW

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2141, Rayburn House Office Building, Tom Marino, [Chairman of the Subcommittee] presiding.

Present: Representatives Marino, Goodlatte, Issa, Collins, Buck, Ratcliffe, Handel, Cicilline, Johnson of Georgia, Schneider, and Demings.

Staff Present: David Flores, Chief Counsel; Slade Bond, Minority Counsel; and Andrea Woodard (Lindsey), Clerk.

Mr. MARINO. Good morning. The Subcommittee on Regulatory Reform, Antitrust and Commercial Law will come to order. Without objections, the chair is authorized to declare a recess of the committee at any time. I do not expect there to be votes before noon, so I think we should be fine.

We welcome everyone to today’s hearing on “the Permitting Litigation Efficiency Act of 2018” and “the North Texas Water Supply Security Act of 2017.” And I now recognize myself for an opening statement.

Following the recession, it took until June 2014, 78 months after the prior jobs peak, or 6.5 years later, for even the New York Times to claim that we, as a Nation, had recovered all of the recession’s job losses. Billions of Americans lost for years the ability to earn a living and support a family with a fulltime job. Americans were ready to work and employers were eager to create jobs.

The problem was that government just would not get out of the way. One of the biggest ways government was too much in the way was in the tortuously slow Federal permitting of construction projects. One did not have to be a supporter or an opponent of the nearly trillion-dollar 2009 stimulus bill to recognize that it would not deliver enough recovery fast enough if the construction projects

it sought to fund were not shovel ready. As President Obama famously remarked, too many projects were not shovel ready.

Much of that failure is due to the Federal Government's red tape and obstruction, heavy permitting, and litigation system. In 2011, a study of proposed projects in just one sector of the economy, the energy sector, found that if a modest number of these projects were allowed to go forward and break ground, the direct and indirect economic benefits would be tremendous.

An identified 351 project, if approved, could generate \$1.1 trillion and create 1.9 million jobs annually. But our permitting system for years has frustrated that kind of help, giving us instead overwhelming delays in administrative review and obstructive litigation, challenging worthy permits.

By the end of 2015, Congress responded with desperately needed permit streamlining reform and title 41 of the Fixing America's Surface Transportation Act, commonly known as FAST-41, but FAST-41 was only a start. It covered only certain categories of construction projects, and generally just those projects that required investments of \$200 million or more. Moreover, FAST-41 was subjected to a 7-year sunset. That means that if, in just a few years, Congress does not extend them, all of FAST-41 reforms will be lost.

Beyond question, there is more that needs to be done. My bipartisan bill, H.R. 5468, the Permitting Litigation Efficiency Act of 2018, is designed to meet that need, fairly, squarely, and simply. Whether or not 41 is extended, my bill sets a default rule for all permitting, that an agency that delays more than 2 years in granting or denying a permit application should be presumed to have unreasonably delayed in taking action on the application, subjecting the agency to liability in court, and enabling the court order it to get the job done. That 2-year rule is consistent with actions taken by the Trump administration to implement both FAST-41 and the president's own executive orders on permitting.

My legislation also carries forward and extends to all permitting FAST-41's reforms, that require anyone suing to challenge an agency's ultimate decision, to sue promptly and sue only on the basis of arguments the agency had a chance to consider during its administrative process.

This will bring to a definitive end the days in which anti-growth, anti-permitting advocates can lie in the weeds during permit review, hiding arguments from the agency and then wait up to the full 6 years allowed by current law once a permit is finally granted before ambushing good-faith project developers with job-killing litigation. The Permitting Litigation Efficiency Act is short, simple, and balanced legislation to help make sure recent advances in permitting reform do not go up in smoke soon, but instead are advanced and entrenched.

I look forward to our witness's testimony concerning my bill and the other bill we consider today, the North Texas Water Supply Security Act of 2017. That bill introduced by Representative Sam Johnson of Texas is consistent with my bill and highlights the need for reform to prevent the kinds of infrastructure crisis that North Texas and communities throughout the country could face without further legislation. The chair now recognizes my good friend, and

ranking member from Rhode Island, Congressman Cicilline, who is, once again, a ranking member.

Mr. CICILLINE. Thank you, Mr. Chairman. Since 1970, the National Environmental Policy Act has saved time and American taxpayers money while also ensuring that major Federal actions that have a significant impact on the environment are safe and do not harm local communities.

So whether the project is a new power plant or highway, this democratic framework ensures that concerned citizens, local businesses, and State and local governments have a voice and opportunity to be heard on the impact of Federal decisionmaking on their community. In enacting NEPA, Congress recognized that hardworking Americans deserve to have a say in how their taxpayer dollars are being used on major projects where they live.

I am a strong advocate of making a comprehensive investment in our infrastructure, once the envy of the world, to create good paying jobs and expand economic opportunity by rebuilding our crumbling infrastructure. But this requires a serious plan and Federal resources, not a false tradeoff between an investment and making projects less safe, illuminating public input or harming local communities.

There is ample nonpartisan evidence that delays in federally funded projects are due to inadequate funding, local opposition, insufficient agency resources, and project complexity, not environmental protections and safety guardrails.

In 2002, the Nonpartisan Congressional Research Service reported that transportation project approval delays are not caused by NEPA. They are caused by, and I quote, "Project funding levels, local opposition to a project, project complexity, or late changes in project scope," end quote, among other factors unrelated to NEPA.

Dina Bair, who oversaw NEPA as the general counsel of the Council on Environmental Quality for over two decades under Republican and Democratic administrations similarly tested that the principle cause of delay in implementing permitting are inadequate agency resources, project complexity, changes in budget, and other factors unrelated to permitting procedures or judicial review in environmental permitting decisions.

Nevertheless, under the guise of streamlining the permitting process, today's hearing concerns a pair of bills that will close the courthouse doors to local citizens, public interest organizations, businesses, and local government when attempting to seek judicial review of projects of Federal permitting decisions.

The first of these is H.R. 4423, the North Texas Water Supply Security Act of 2017, which only applies to a single project in North Texas that has already received Federal permitting approval. This bill would block judicial relief for any person who has not already commented on this permit and would dramatically narrow the statute of limitations for filing cases related to this permit from 6 years to 2 months.

In addition to my substantive concerns with this bill, I am somewhat stunned that we are considering a bill that would establish different rules for a single construction project that has already received Federal approval and is not subject to any lawsuits that we are aware of. This bill also raises serious federalism concerns re-

garding the judicial rights of State citizens concerning their access to water, a judicial right that should concern the citizens of Texas, not the Federal Government. If this bill is not a solution in search of a problem, I am not sure what it is.

The second bill we will consider is a far more sweeping proposal, the Permitting Litigation Efficiency Act which was only introduced yesterday. This bill is designed to establish more sweeping limitations on the judicial review of permitting decisions required by law.

Simply put, it would create special rules for environmental permitting projects on the administrative procedures act which Congress designed to ensure transparency, fairness, public participation, and access to justice in the regulatory system while placing a heavy thumb on the scales of justice in favor of regulated corporations. It does so by shortening the period for judicial review of these projects from 6 years to 6 months with limited exceptions.

Second, it establishes expensive barriers to prevent any construction of a Federal permitting decision by requiring as much as a \$5 million bond before a person can seek an injunction of a project that requires a Federal permit. This bonding requirement will apply to any party seeking a stay, including local governments, small businesses, and certain citizens and nonprofit organizations regardless of the merits of the case.

Even worse, the bill would require costs to give this bond to defendants, regulated corporations, unless the court determines that the action was substantially justified. A standard that does not appear in current law is not defined by the bill.

And lastly, the bill, in my view, unwisely disregards the balancing test the courts have long applied to determine whether to grant injunctive relief, and instead requires courts to conduct a lengthy cost-benefit analysis of the economic effects of providing relief, a lengthy and detailed analysis that courts are ill-equipped to conduct.

Notwithstanding these concerns, I certainly thank our witnesses for appearing before us today, and I look forward to hearing your testimony on these matters. And with that, I yield back.

Mr. MARINO. Without objection, other members' opening statements will be made a part of the record.

I will begin now by swearing in our witnesses before I introduce them. Would you please rise? Raise your right hand. Do you swear that the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth, so help you God? Let the record reflect that all the witnesses have answered in the affirmative. Please be seated.

I am going to go through and introduce each one of you, and then we will get back to the questioning. So we will get that out of the way.

Donald Elliott is professor of law at Yale Law School, and he is senior counsel at Covington and Burling, LLP and chair of the firm's environmental practice group. Prior to joining Covington, he was a partner in Willkie Farr and Gallagher, LLP, chairing the firm's worldwide environment, health, and safety department.

Mr. Elliott also served as assistant administrator in general counsel at the U.S. Environmental Protection Agency. Mr. Elliott also testifies frequently in Congress on environmental issues and

has served as a consultant on improving the relationship of law and science to the Federal Courts Study Committee, which was chartered by Congress to make recommendations for improving the Federal courts, and to the Carnegie Commission for Law, Science, and Government.

Mr. Elliott is a senior fellow of the Administrative Conference of the United States, and an elected member of the American College of Environmental Lawyers, as well as a member of the Boards of the Environmental Law Institute, the Center for Clean Air Policy, and NYU's Institute for Policy Integrity.

He is the author or coauthor of seven books and has published more than 70 articles in professional journals. He earned his B.A. *summa cum laude* in Phi Beta Kappa, and his J.D. from Yale. Following graduation, he was a law clerk for Judge Gerhard Gesell of the U.S. District Court for the District of Columbia and for Chief Judge David Bazelon of the U.S. Court of Appeals for the District of Columbia Circuit. Welcome, sir.

Mr. William Kovacs is a recently retired senior policy executive with over 40 years of experience in trade associations, government, and private law practice. His most recent position was senior vice president for Environment, Technology, and Regulatory Affairs for the U.S. Chamber of Commerce where he worked for 20 years and led the institution's regulatory reform efforts including advocacy for permit streamlining legislation.

His prior positions include government service as a chief counsel for the House of Representatives, Subcommittee on Transportation and Commerce, Committee on Interstate and Foreign Commerce, Vice Chairman and Chairman of the Virginia Hazardous Waste Facilities Board, and partnerships in several Washington, D.C. law firms. He has written many policy and law review articles and produced several nationally recognized regulatory studies. He earned a J.D. from the Ohio State University College of Law, and a bachelor of science degree from the University of Scranton *magna cum laude*. We welcome to you, sir.

Emily Hammond is the Glen Earl Western Research professor of law at the George Washington Law School. Professor Hammond previously taught at several universities including Wake Forest, the University of Oklahoma College of Law, the University of Texas, Florida State University, and the University of Georgia. Professor Hammond practices law with Bondurant—did I pronounce that right? Okay, good.—Mixson, and Elmore in Atlanta, Georgia. Professor Hammond's articles have appeared in numerous top-ranked journals, and she is the coauthor of one of the nation's leading energy law texts.

She is an elected member of the American Law Institute, a chair elect of the Association of American Law Schools, Administrative Law Section, and a member scholar of the Center for Progressive Reform. She has served as a hearing examiner for State administrative proceedings and has provided service to the International Atomic Energy Agency. Professor Hammond earned her bachelor's degree from Virginia Tech and a J.D. from the University of Georgia. Welcome, professor.

Mike Rickman is the deputy director of the North Texas Municipal Water District and has been employed with the district since

October 2002. Mr. Rickman is directly responsible for the following district departments, water, wastewater and solid waste operations, environmental services, maintenance services, and information technologies.

The district was created in the 1950s to provide wholesale treated water to the areas north and east of Dallas. The district has added wastewater treatment and solid waste disposal services in its service area. The district's current service area covers approximately 2,000 square miles and continues to grow. Prior to joining the district, Mr. Rickman was employed by the City of Dallas Water Utilities Department for 33 years.

Before we go any further, I would like to recognize the chairman of the full Judiciary Committee for his opening statement, the gentleman from Virginia, Chairman Bob Goodlatte.

Chairman GOODLATTE. Thank you, Mr. Chairman. I appreciate your holding this hearing. America's voters sent the 115th Congress to Washington to do one thing above all others, help turn around this Nation's struggling economy. The Judiciary Committee has been doing everything it can to fulfill that mandate including on the regulatory reform front.

In fact, with regard to the specific issue before us today, reform of America's outdated, slow-moving permitting system, the Committee made a big down payment on reform during the 114th Congress, helping in the enactment of title 41 of the Fixing America's Surface Transportation Act. FAST-41 contained the biggest permit streamlining reforms in recent years. It has already begun to clear the logjams that have stood in the way of permitting decisions for many of the nation's largest proposed construction projects.

The Trump administration has been working hard to implement FAST-41 as effectively as it can. Just this week, the administration's leading permitting agency signed a memorandum of understanding, committing to even more steps to reach quicker permitting decisions, including by agreeing to meet a 2-year target for the issuance of decisions for large infrastructure projects. These reforms mean faster decisions and faster delivery of jobs and investment for projects that win a permitting green light. But there remains much work to be done.

Good as it is, FAST-41 is scheduled by its own terms to sunset by 2022, unless Congress extends it. Further, FAST-41 applied only to specific categories of the largest construction projects, those involving \$200 million or more in investment. Many, many other projects still need permit streamlining reform.

And in case FAST-41 is allowed to expire, it would be best if Congress legislated permitted streamlining reform applicable to all projects before FAST-41 sunset can arrive. The Permitting Litigation Efficiency Act of 2018, of which I am proud to be an original cosponsor, delivers precisely that reform. It establishes a strong incentive for permitting agencies to wrap up their permitting decisions for year or for year within 2 years.

It also, like FAST-41, sets a prompt statute of limitations for lawsuits challenging those decisions, requires those suits to be based on matters actually presented to the permitting agencies during the administrative process, and assures that judges considering preliminary injunction requests in those cases will take into

better account the economic potential and environmental harms of delaying project construction by injunctions. These are balance bi-partisan and sorely needed reforms.

The second bill we consider today, the North Texas Water Supply Security Act of 2017 is consistent with them and precisely highlights the concrete need for these kinds of reforms. That is because, under existing law, opponents of the urgently needed North Texas Water Supply Project can lie in wait for up to 6 years before suing, file suit on the basis of matters never presented to the relevant permitting agencies and seek preliminary injunctive relief.

All of that could conspire to plunge North Texans into a water crisis that could be avoided if only litigation were required to be brought in a more timely manner on the basis of matters the agencies had a chance to consider during the administrative process, as the North Texas Water Supply Security Act requires.

I urge my colleagues to consider these important pieces of legislation. I look forward to the testimony of our witnesses and I yield back the balance of my time. Thank you, Mr. Chairman.

Mr. MARINO. Thank you. Each of the witness's written statements will be entered into the record in its entirety, and I ask that each witness summarize his or her testimony in 5 minutes or less.

To help you, I think you are familiar with the lights. There will be a green light in front of you. When that green light switches to yellow, that indicates that you have a minute left. And when it switches to red, you have no time left. I will politely and diplomatically just sort of grab the gavel and give you a little hint that you should please try and wrap up.

So please, Professor Elliott.

**STATEMENTS OF PROFESSOR E. DONALD ELLIOTT, YALE LAW SCHOOL, SENIOR OF COUNSEL, COVINGTON AND BURLING, LLP; MR. WILLIAM L. KOVACS, FORMER SENIOR VICE PRESIDENT FOR ENVIRONMENT, TECHNOLOGY AND REGULATORY AFFAIRS, U.S. CHAMBER OF COMMERCE; PROFESSOR EMILY HAMMOND, GLEN EARL WESTON RESEARCH PROFESSOR OF LAW, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL; AND MR. MIKE RICKMAN, DEPUTY DIRECTOR OF OPERATIONS AND MAINTENANCE, NORTH TEXAS MUNICIPAL WATER DISTRICT**

**STATEMENT OF E. DONALD ELLIOTT**

Mr. ELLIOTT. Thank you very much, Mr. Chairman, Mr. Ranking Member, and distinguished members of the committee. I am appearing as private citizen not representing anyone, but I consider myself a lifelong environmentalist. And like the ranking member, I am a strong supporter of the National Environmental Policy Act.

In my written testimony, I give some examples of how valuable it has been. And I certainly agree with that. I support the Permitting Litigation Efficiency Act precisely because I think we need those kinds of reforms in order to save NEPA, and not so much to save it from itself, but to save it from judicial interpretations that have gradually fed back into the agency process to make it unduly cumbersome.

I have submitted, for the record, a report by an unbiased non-partisan NGO Common Good called, "2 Years, not 10 Years." And I think it comprehensively lays out the case for why we need the kinds of reforms that are in the legislation. Among other things, it shows that a number of other countries, including Canada and Germany, which are probably greener than we are, do a much better job of permitting and environmental review than we do. And I think that is true for most countries around the world.

NEPA is an American invention. It has been a very successful invention. It has been copied in over 200 countries, but as often happens, countries that do something the second or third time are able to learn from the mistakes of their predecessors, and I think we need to go back and make the process more efficient.

Now, having said that, NEPA works very well in about 90 percent of cases. They go through pretty quickly with an environmental assessment that concludes that there are no significant environmental effects. The problem in my judgment comes with regard to the larger, more controversial projects which require an environmental impact statement. And unfortunately, I think NEPA has become a way for opponents to oppose projects and delay projects rather than really to improve environmental review, which was not the original purpose.

As I state in my written testimony, my experience is that the review of environmental impact statements by the experts at the EPA under section 309 of the Clean Air Act is what really improves the quality of environmental impact statements, as well as the guidelines set by the Council on Environmental Quality.

The costs of undue delay, which are caused by judicial review, fall into several categories. First of all, as the Common Good report documents, delaying a project by 6 years typically doubles its cost. And the Common Good report also documents that delays of public projects, not big business or private projects, but public projects alone have cost the United States more than \$3.7 trillion, with a "T." And that will be even greater if we go forward with the infrastructure reforms, but the costs are measured not just in money, but also in adverse environmental effects.

For example, the decaying electrical infrastructure results in the equivalent of 200 coal-fired power plants. So if you are in favor of improving the environment, you have to be in favor of speeding up environmental review.

The third cost, which is more subtle, is that because environmental review takes so long, particularly where there is an environmental impact statement, and particularly where there is opportunities for preliminary injunctions and judicial review, Congress is often tempted, reasonably, to exempt projects from NEPA.

There are over 50 examples of where particular projects or even whole programs are exempted from NEPA, and therefore get no mandatory environmental review. The culprit is not public participation or environmental review. The culprit is the judicial review process, which has been tacked onto NEPA. There is no judicial review provision in NEPA.

My last point is NEPA is really an exception to review under the Administrative Procedure Act. Under the Administrative Procedure Act, and I cite a Supreme Court case to this effect in my written

testimony, it is generally not permissible for a single district judge to issue a preliminary injunction against a government agency. That is an exception that was created under NEPA because we did not realize early on that review was under the Administrative Procedure Act.

So I support the reforms in the Permitting Litigation Efficiency Act, and I would be glad to answer any questions. Thank you, Mr. Chairman.

Mr. Elliott's written statement is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-Wstate-ElliottE-20180412.pdf>.

Mr. MARINO. Thank you. Mr. Kovacs.

#### STATEMENT OF MR. WILLIAM L. KOVACS

Mr. KOVACS. Thank you, Mr. Chairman, and Ranking Member Cicilline, and Members of the Committee. A lot of what is in my testimony I think you have already hit. But let me hit a few of the really key points.

This Committee, in 2012, starting with Chairman Goodlatte and then Mr. Marino, were the ones who really started the permitting review process through the Rapid Act, and the discussion at that time, after numerous hearings, was really the debate between the environmental community and the business community.

And the business community had a point, which is the permitting process takes too long for a lot of what Professor Elliott said, a lot of litigation, infinite reviews of every aspect of a deficiency in an EIS. And the environmentalists were very concerned that we were going to, in some way, gut NEPA, which was never the concern of the business community.

The compromise that came out of this was a bill which did two things, which were really, I think, very important, and which were the basis for going forward. One is that they recognize that the substance of NEPA should stay intact. But if the problems with NEPA were truly structural in the sense that you could not get a study out in 2 years, or 3 years, or 5 years, that what should happen is you leave the substance intact, but you put a structure around it to make sure that the agencies get it done. And that is what FAST-41 did.

When we got to the Senate side, a lot of the provisions that were part of the House bill were picked up by both Senators Portman and McCaskill. And two of the provisions that were offensive to the environmental community, the automatic permitting, was taken out and the statute of limitations was moved, I think, from 150 days to 2 years. That was still down from 6 years. And that was the essence of the compromise, and that had the environmental community's support, and it had the business community's support.

So, in that sense, you had a solid piece of legislation. In addition to FAST-41, you have WRDA and MAP-21. So you have highways covered, waterways and you have large infrastructure projects. There are a lot of other projects in the United States. In fact, OMB, when we were going through FAST-41, only estimated that there were about 200 large projects in the U.S., but you have thousands

of projects moving forward at any one time, and that is one of the things that the Permitting Litigation Efficiency Act addresses.

So, the two issues that are of concern right now; why you need this new law is, one, FAST-41 does expire in 7 years; in 2022 it goes away. When it goes away, several things are going to happen. One is the structure, which actually gets the agencies to start up front and do the work that is needed is gone. And the work that is done up front, everyone is brought into the process.

The States are brought in. The local communities are brought in. There is a timeline set. There is a continuous monitoring of the projects. There is responsibility in the sense of, if you are not going to meet the timeline, something has to be reported to the President. There is a dispute resolution process. You have the structure there.

But the second thing, in addition to it going away is it only applies to projects that are \$200 million or more. And so, what the Permit Litigation and Efficiency Act does, through very simple language, it defines what an unreasonable delay is and by defining what an unreasonable delay is, it, in effect, tells the agencies you have to act by the permit time or within 2 years after the application is completed; and, two, it then picks up the statute of limitations and makes it uniform throughout the code, which is something that would really be extraordinarily helpful.

So, with that, I think what you are finding that Congress has a choice. It can let FAST-41 expire, in which case we are going to have no time limits on environmental reviews. You are going to have a 6-year statute of limitations, which was never imposed by Congress. It was imposed, really, by the courts when they decided that there was judicial review.

So, with that, I think that the Permit Litigation and Efficiency Act is a solid piece of legislation that frames ideas, and keeps the process going. If FAST-41 goes away or if the better alternative might be to make FAST-41 force permanent and then put in the Permit Litigation Efficiency Act for the remainder of the smaller projects. Anyway, thank you very much, and I look forward to questions.

Mr. Kovacs' written statement is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-Wstate-KovacsW-20180412.pdf>.

Mr. MARINO. Thank you. Professor Hammond.

#### **STATEMENT OF EMILY HAMMOND**

Ms. HAMMOND. Thank you, Chairman Marino, Ranking Member Cicilline, and distinguished Members of the Subcommittee for the opportunity to appear before you again today.

Amending a general statute like the Administrative Procedure Act to address a particular perceived problem is guaranteed to cause confusion in the courts, produce unintended consequences, and undermine the rule of law. I will provide examples in my testimony today.

Turning first to PLEA, the bill suffers from an initial flaw in that its scope is entirely unclear. The bill applies to Federally required permits but does not define those terms. The closest definition is

in section 5518 of the APA which provides that a license is a whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission. The APA does not define permit.

So, PLEA creates confusion. Does it include all licenses, some subset of licenses? We do not know. Section II's presumption of unreasonable delay creates perverse incentives and is unnecessary.

The first two subsections, which leave agencies to set schedules or resort to the default 2-year action deadline, creates a perverse incentive for agencies either to forego creating schedules altogether, the detriment of transparency and public engagement, or to schedule final action dates so far into the future as to be meaningless.

These provisions are all the more problematic when compared to the cross-references in subsections A, B, and C. Those provisions are subject matter specific statutes that are already aimed at streamlining environmental permitting. They foster transparency. They acknowledge that agencies may lack the resources to complete permit reviews if they are insufficiently funded. They highlight the importance of public participation in the permitting process, and they promote agency coordination as a means of limiting red tape.

These cross-reference provisions are superior to the bill, and only highlight the difficulties of using a general statute like the APA to address highly fact specific permitting issues.

Section 2(c) of PLEA establishes a one-way ratchet in favor of regulated entities with its special statute of limitations, but even more concerning is the component of 2(c) that limits judicial review, only to matters that were included in the record of proceeding. That is already the law. It has been since 1943 in *SEC v. Chenery Corporation*, and it is also present in most agency statutory mandates. There are a few rare and necessary exceptions to the *Chenery Rule* that permits supplementing the record only very narrow, but important circumstances. These include cases in which an agency has failed to place all of the information upon which it has relied into the record.

This also includes cases where relief, like a preliminary injunction, is at issue. In fact, the limitation in 2(c) would have the impact of forbidding courts from considering the vast scope of matters required by section 3.

Section 3 is further flawed because its new standards for equitable relief invite a protracted, unmanageable, unpredictable judicial exploration of matters of the general economy. The current standard for equitable relief is sufficiently flexible to permit courts to tailor their considerations to the matters at hand.

The bond requirement chills public engagement, and has grave Federalism implications. Read in conjunction with subsection E, the \$5 million bond requirement amounts to a massive fee shifting provision that expects petitioners to gamble on unpredictable judicial outcomes. This chills more than public interest groups' access to justice. States and local governments frequently have a stake in Federal permitting decisions, especially those that implicate land or water use. These governments can no more afford the bond risk

than can public interest groups if their participation in judicial review protects important Federalism ideals.

Business competitors are also frequent petitioners before the courts. The bond requirement chills healthy competitive forces as well by weighting the scale in favor of a single permit applicant.

The second bill is deficient for many of the same reasons as PLEA but, in addition, by retroactively changing the rules of engagement for a project that has already reached a full decision, the bill makes a mockery of the public participation that took place already and undermines the democratic legitimacy of the administrative process.

I urge you to reject both of these bills, and I look forward to your questions. Thank you.

Ms. Hammond's written statement is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-Wstate-HammondE-20180412.pdf>.

Mr. MARINO. Thank you. Mr. Rickman.

#### STATEMENT OF MR. MIKE RICKMAN

Mr. RICKMAN. Chairman Marino, Ranking Member Cicilline, my name is Mike Rickman. I am the deputy director of the North Texas Municipal Water District, and we are located in Wylie, Texas, which is a suburb in the Dallas area.

I appreciate the opportunity to testify today in support of H.R. 4423, the North Texas Water Supply Security Act of 2017. This legislation provides much needed, much needed limitations on judicial review and decisions and authorizations associated with the Lower Bois d'Arc Creek Reservoir. The district currently supplies drinking water to over 1.7 million people in the North Texas area, and is a service area that covers 2,200 square miles. And to put that in perspective, that is a little bit larger than the State of Delaware.

The area has some of the fastest-growing cities in the United States, and over the next 50 years we have water demands that are projected to be 1.5 times what they are today. We have a myriad of water supply reservoirs to meet the demands of this rapidly growing population. However, even with these resources and conservation programs that have been enacted to maximize the existing supplies, the district needs to develop new supplies.

This reservoir project is critical, a critical component of the region's long-term supply plan. The reservoir is projected to cover approximately 16,000 acres and will provide 108,000,000 gallons of water per day. The project is the only viable supply that can address the district's immediate water supply needs. It is essential that this water supply come online in 2022 to prevent having a water crisis in the area.

To that end, the Corps of Engineers issued a 404 permit that allowed construction to begin on the reservoir. The permit was issued on February 2nd of this year. The 404 permit comes after approximately 15 years of the district's collaboration with Federal, State, and local officials to study the proposed reservoir, obtain the necessary State water rights permit, and perform the environmental reviews required under the 404 permitting process.

To date, the district has invested more than \$164 million toward planning, permitting, engineering, and acquiring the land for the project. Construction of the project commenced earlier this month and is expected to be completed in 2022.

Lower Bois d'Arc Creek Reservoir is the first reservoir to be permitted and built in Texas in over 30 years. I want to thank Congressman Sam Johnson for introducing H.R. 4423, and for Congressman John Carter, Jeb Hensarling, John Radcliffe, and Pete Sessions for their co-sponsorship. H.R. 4423 provides a critical protection for the Lower Bois d'Arc Creek Project. H.R. 4423 limits the judicial review of the 404 permit so this multi-million, multi-year, \$1.6 billion project is not constrained by legal challenges.

H.R. 4423 accomplished the goal in four ways. First, it limits who may challenge the environmental reviews. There have been numerous public meetings. There has been a draft EIS and a revised draft EIS, which both had public comment periods. So, limiting the standing is something that we think is reasonable.

The second thing it does, it limits when the suit can be filed. Currently under the NEPA process, it can be filed 6 years. So, that means that we could have the project completed, in service, and operational, and get a legal challenge that would not allow us to use that project. And with public funds being spent, we would continue to make payments on that project without having the ability to use it.

Third, 4423 limits where the legal challenges can take place. We think it should be in the Eastern District of Texas where the reservoir is located.

And fourth, it ensures that any Federal action for a temporary restraining order or injunction against construction or operation of the project that the court consider how critical this project is to the residents of North Texas.

As you can see, 4423 does not completely circumvent the judicial process. If enacted, it prevents further unnecessary delays in critical water supply projects in the Federal courts. Therefore, it is imperative that the critical supply project be reasonably protected from frivolous legal challenges that have the potential to seriously harm the water supply.

Thank you for the opportunity to comment. I would be happy to answer any questions.

Mr. Rickman's written statement is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-Wstate-RickmanM-20180412.pdf>.

Mr. MARINO. Thank you. The Chair now recognizes the chairman of the full Committee, Chairman Goodlatte, for his questioning.

Chairman GOODLATTE. Thank you, Mr. Chairman. Mr. Kovacs, FAST-41 was bipartisan legislation that you referred to containing good reforms. But it, unfortunately, has a 7-year sunset. Is not the legislation before us today, the Permitting Litigation Efficiency Act, generally consistent with the policy goals of FAST-41?

Mr. KOVACS. Yes.

Chairman GOODLATTE. And if FAST-41 is allowed to sunset, but this legislation is enacted before it does, will the latter at least as-

sure that a permanent base line of genuine permit streamlining reform, remain in place?

Mr. KOVACS. Yes, it would be the default provision.

Chairman GOODLATTE. And if FAST-41 is made permanent, which is my hope, is there any reason to believe that the Permitting Litigation Efficiency Act could not remain in place as a good adjunct to it, providing permit streamlining for projects not covered by FAST-41?

Mr. KOVACS. You are correct. They would actually work together. FAST-41 would take the projects over 200 million and the Permit Litigation Efficiency Act would take smaller ones.

Chairman GOODLATTE. Mr. Elliott, the Permitting Litigation Efficiency Act does not eliminate judicial review of NEPA claims. It just insists that they be brought in a more timely way, based on issues presented to the agency. I would like you to respond to some of the criticisms of Professor Hammond, and tell me: is it not more consistent with the original intent of NEPA because it allows permitting decisions to be made efficiently, and better assures that agencies actually are able to consider all of the relevant information during their initial reviews?

Mr. ELLIOTT. Yes, Mr. Chairman. I think it is. I do not believe that it would adversely affect the ability of citizens' groups to come in and raise issues during the administrative process in any way.

With regard to the bonding requirements, when judges somewhat capriciously stay projects, issue preliminary injunctions, there are real economic costs. I give the example of the Atlantic Sunrise Pipeline, which was only stayed by a court for 3 days. But in that 3 days it put 2,500 people out of work for 3 days, and imposed \$24 million of costs on the company that was promoting the project, and that is a real economic loss.

I believe, in that case, it was an administrative stay that was issued by the clerk's office in the D.C. Circuit without even being looked at by a judge, based on my experience, having been a clerk on that court. So, I think it is important to make challengers think twice about the real economic harm they have. They can still challenge a NEPA statement. They just do not need to get a preliminary injunction that halts the construction of a pipeline and puts 2,500 people out of work. And this really builds on existing law. Bonding requirements already exist. This simply beefs it up and tries to make it more frequent.

I would go farther. I think that preliminary injunctions and permanent injunctions under NEPA are inappropriate. We do not do that under the Administrative Procedure Act in any other area and, again, as I said in my opening summary, that was really based on a longstanding judicial mistake.

Initially, we were not clear whether or not a judicial review under NEPA was under NEPA and, therefore, preliminary injunctions applied or under the Administrative Procedure Act. It is now clear it is under the Administrative Procedure Act, and we do not allow judges under the Administrative Procedure Act to issue preliminary injunctions in ordinary, Administrative Procedure Act cases.

Chairman GOODLATTE. Thank you. Thank you, Mr. Chairman.

Mr. MARINO. The chair recognizes the ranking member, Congressman Cicilline.

Mr. CICILLINE. Thank you, Mr. Chairman. Thank you again to our witnesses. Professor Elliott, I just wanted to start with you. You have previously written about something you described as “regulatory ossification,” a concept that you use to describe agencies that have been burdened by too many requirements such as inflexible procedural and analytical requirements in the rulemaking process, presumably to some unnecessary delay.

And so, I wonder whether you still have that concern today, that agencies lack the resources, staff, and funding to achieve their statutory missions, and whether or not this inadequate funding and insufficient resources have an impact on the delays that you describe in environmental permitting?

Mr. ELLIOTT. I think all of that is true, but in my view, the primary problem is that these reviews have become too complicated as a result of what I call “defensive medicine,” or my friend, Philip Howard, calls “leaving no pebble unturned.” And what we need to do is to set deadlines that will require agencies to prioritize.

There is never going to be enough funding to get into all of the very small details, and the incentives that are created by NEPA, and litigation under NEPA, are to find some issue, no matter how small, that has not been adequately considered, and then use that as a ground to stop a project.

I ask my students sometimes: there is a case where——

Mr. CICILLINE. I do not mean to cut you off.

Mr. ELLIOTT. Okay, I will stop.

Mr. CICILLINE. I just have a limited amount of time. I want, Professor Hammond, I would ask if you would respond to that. Do agencies have the resources they need and the personnel to do the reviews that are required under NEPA?

Ms. HAMMOND. No, they do not. They are underfunded and one of the problems with PLEA is that it does not account for that possibility, whereas, for example, FAST-41 does. So, again, we see this problem with using a general statute as a very awkward way to get at a specific problem.

Mr. CICILLINE. And would you, Professor Hammond, speak a little bit about how these bills, particularly the broad sweeping pieces of legislation, undermine public participation for Federal projects that affect local communities? I served as a mayor of Providence before I came to Congress, and the idea of silencing the voices of local officials in these important projects that have a tremendous impact on the local community is very alarming to me.

Ms. HAMMOND. This is where I think that the \$5 million bond requirement is, indeed, a terribly scary thing for any local government that might be wanting to participate in the process and see it through. And so, just seeing that number on the paper will chill a number of meritorious claims, and I think that is a significant problem with this bill.

Mr. CICILLINE. And, you know, one of the things that, and I mean, I guess part of this is whether or not you believe that public participation and community engagement on these major projects that require Federal permitting is a positive, net positive or net negative?

The thing that concerns me in particular about the legislation is I think people already have a sense that, very often, their voices are not heard, that very often their voices are not heard, that the voices of ordinary citizens are not heard, and the powerful voices of corporate, special interests are taking precedence.

And I would like your assessment as to whether or not you think that makes it more likely or less likely, as a result of this proposal?

Ms. HAMMOND. I think it is more likely to be a problem. There are all kinds of social science research, legal research showing that when people have a voice that is heard, not only do we reach better decisions, but we have greater acceptance of the decisions that are made. That promotes community, as well as promoting necessary projects.

Mr. CICILLINE. And Professor Hammond, do you agree that there is a substantial amount of evidence out there that the delays for projects require Federal permits are a result of inadequate funding of agencies, a number of other factors unrelated to the permit, the permitting process?

Ms. HAMMOND. That is correct. There are a number of causes, and underfunding and understaffing are major ones.

Mr. CICILLINE. My final question is the Permitting Litigation Efficiency Act also provides for the automatic award of a litigation bond to the defendant unless a plaintiff's claim was substantially justified. Are you aware of any similar requirements in current law, and do you believe that this is essentially a fee shifting requirement, which I think you already referenced? But are you aware of any other place that this happens in existing law?

Ms. HAMMOND. I am not aware of any and, again, we heard this concern raised about the capriciousness of judges. There is no standard to define what should happen there, and it does look very much like a presumption in favor of fee shifting.

Mr. CICILLINE. Thank you. I yield back, Mr. Chairman.

Mr. MARINO. The chair now recognizes Congressman Handel from Georgia.

Ms. HANDEL. Thank you, Mr. Chairman, and thank you to each of our witnesses for being here.

I would like to start with Mr. Kovacs please. I come out of local government, a former county commissioner, chairman of that County Commission in Fulton County Georgia, and one of the things that I have seen with the NEPA process is extreme delays of very critical public projects, in addition to extreme delays on private projects. But, in particular, public, to the point where in my congressional district some jurisdictions have literally said, "No, we do not even want to participate with the Federal Government around projects," and would rather go it alone.

So, there was an original intent behind NEPA that the review process would be efficient, and that NEPA, itself, would not contain an authorization of judicial review. Is it fair to say that the Permitting Litigation Efficiency Act, which we are discussing today, rather than somehow undermining NEPA actually restores the NEPA process, and any time consumed by NEPA litigation more closely aligns with the original congressional intent?

Mr. KOVACS. I think you are right because it does two things. The original congressional intent was just to consider the environ-

mental issues. Through the course of years, which I think is where the problem has started, the courts decided to legislate, rather than Congress. And when the courts decided to graft on a private right of action they decided that, instead of looking at all of the large details to find out what the environmental issue was, they decided that everything was a deficiency in the process. And that is what extended it out.

Now, when you get into the Permitting Litigation Efficiency Act that you are considering today, all it says is that you are going to do this in a shorter period of time. You are going to do it by the time of the assigned permit date for considering it, or if there is no unassigned date, you are going to do it within 2 years. And at that point in time, that is when litigation starts. So, the time limit is really something that Federal agencies right now have an obligation to meet. If they are not meeting it, there is no consequence. So, yes, I agree with you.

Ms. HANDEL. One thing that I want to point out is that when local jurisdictions are teeing up various projects, before the funding component of it is even pursued, and the permitting process is even pursued, there is already a long, public comment period through the various regional commissions that exist, in my case, in Georgia, the Atlanta Regional Commission.

So, is there anything in this new legislation that, from your perspective, in any way limits what would be done pre, to deciding what a project might be, from a public comment standpoint, and then, secondly, limiting public comment, in regard to the timeline?

Mr. KOVACS. Absolutely nothing.

Ms. HANDEL. Okay, thank you very much. And with that, I will yield back, Mr. Chairman.

Mr. MARINO. The chair recognizes the gentleman from Georgia, Congressman Johnson.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman. Gosh, this is a pretty chaotic time that we are in. The Mueller investigation continues to get warmer and warmer. The U.S. Attorney for the Southern District of Georgia has procured and executed a search warrant for the hotel room, home, and offices of President Trump's lawyer. The President sits, beleaguered, thinking about pulling the trigger on an effort in Syria, a military effort, that could wind up involving the Russians. We have got a brand-new National Security Advisor, the third advisor, in this brand-new administration; just took the job on Monday, the same day that the Director or the Homeland Security Advisor resigned. It just looks like total chaos around here.

Now, Mr. Rickman, we have a process that has been in place to ensure that the Federal Government follows its own environmental laws, but this bill would create an exception for just one project. Do you believe that Congress should be spending its precious time favoring one parochial project over another?

Mr. RICKMAN. I think Congress should be addressing the issue of what it takes to permit a project of this size and scope, and that once you go through that almost 15 years of permitting, you need something to shorten that process.

Mr. JOHNSON of Georgia. I understand that this is an issue of grave importance to you, but there are so many other issues that

appear to be of importance that this committee should be looking at, and it is my opinion that we have a lot of things that take precedence and priority over this local issue.

But let me move to Professor Elliott, and thank you for your response, Mr. Rickman.

Mr. Elliott, you are a published author; 7 books, 70 articles, including one that is entitled, "Why Punitive Damages Do Not Deter Corporate Conduct Effectively." Do you still support the premise of that article that you wrote?

Mr. ELLIOTT. Yes.

Mr. JOHNSON of Georgia. And you have spent your entire career defending big corporations, have you not?

Mr. ELLIOTT. Not entirely, no.

Mr. JOHNSON of Georgia. Well, you have done some teaching in addition to that. I will give you that.

Mr. ELLIOTT. I was general counsel of EPA.

Mr. JOHNSON of Georgia. And a very corporate friendly EPA.

Mr. ELLIOTT. I do not know about that. We passed the 1990 Clean Air Act amendments when I was there. I think that the first Bush administration, Bush 41, was really to the left of the Clinton administration.

Mr. JOHNSON of Georgia. I tell you. It was certainly to the left of Scott Pruitt and—

Mr. ELLIOTT. I am not going to comment on that.

Mr. JOHNSON of Georgia. My hat is off to you. Do you believe that a \$5 million bond to bring a case will create a perversion of the legal system, and make courtrooms available only to the wealthy?

Mr. ELLIOTT. Yes, but, of course, that is not what this bill does.

Mr. JOHNSON of Georgia. Well, that is the effect of this bill.

Mr. ELLIOTT. No, no, that is not right.

Mr. JOHNSON of Georgia. How can it not be right?

Mr. ELLIOTT. Well—

Mr. JOHNSON of Georgia. If the legislation that you are here to testify about today gives judges the authority to order a litigant to post up to a \$5 million bond before the litigation can proceed, recognizing that we are packing the courts with right wing, corporate friendly, antiregulatory judges?

Mr. ELLIOTT. Well, thank you for that question, which I think really goes to the heart of the matter. The bond only applies, as I understand it, if the challenger seeks to enjoin the project, and it would be perfectly—

Mr. JOHNSON of Georgia. That is exactly what—

Mr. ELLIOTT. May I finish my answer?

Mr. JOHNSON of Georgia. That is the kind of litigation that we need to protect harms to the public. Now professor—

Mr. ELLIOTT. But if all of these States—

Mr. JOHNSON of Georgia. And my time is limited, Professor Elliott. Let me go to Professor Hammond.

Mr. ELLIOTT. So is mine.

Mr. JOHNSON of Georgia. I understand, but I appreciate you being here, too. Professor Hammond, how will this legislation chill the ability of litigants to bring actions to protect the health, safety, and well-being of Americans?

Ms. HAMMOND. If I may respond. The \$5 million bond does give this discretion to judges. It is scary. It will chill litigation. We can expect only those who can afford it to come to court, further marginalizing all of the voices that do have an interest in what happens with these projects.

Mr. JOHNSON of Georgia. I thank you, and I am at the end of my time. I yield back.

Mr. MARINO. The chair now recognizes Congressman Ratcliffe from Texas.

Mr. RATCLIFFE. Thank you, Mr. Chairman. I would like to thank all the witnesses for being here today and I am grateful for the opportunity to speak in support of the North Texas Water Supply Security Act as one of its original cosponsors.

I want to thank all my North Texas colleagues for all of their hard work and time and effort on this bill over a considerable period of time, specifically its sponsor, Congressman Sam Johnson. Mr. Chairman, at this point I would ask a unanimous consent to submit a statement in support of this bill from Congressman Johnson.

Mr. MARINO. No objection.

[NOTE.—This material is available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-20180412-SD004.pdf>.]

Mr. RATCLIFFE. I want to start out with comments from my friend, Mr. Johnson from Georgia. Mr. Rickman, he talked about the specific project, the Lower Bois d'Arc Creek Project and questioned whether or not Congress should be spending its time on a local issue that is just important to you. North Texas Municipal Water District services how many North Texans?

Mr. RICKMAN. One-point-seven million.

Mr. RATCLIFFE. And without this legislation that we are considering today, and the resources that it will allow North Texas Municipal Water District to supply to those 1.7 million, at what point does North Texas Municipal Water District become unable to service 1.7 million Texans?

Mr. RICKMAN. Currently, the projections are showing in 2021 or 2022 that we would not be able to support the population that is projected to be there.

Mr. RATCLIFFE. I would submit that 3 years is not a long period of time, and it is not a trivial matter, and every member of Congress that has time to devote to this issue should do so. So, I thank you for being here to speak to this specific issue. With the Lower Bois d'Arc Creek, we saw an environmental review process take longer than usual, and that was due essentially to delays and the environmental impact statement having to go through a number of revisions, correct?

Mr. RICKMAN. That is correct.

Mr. RATCLIFFE. What is your opinion on the harm that is caused by delays in the environmental review process on important projects like Lower Bois d'Arc?

Mr. RICKMAN. The issue that you have to address is the timeliness and the cost. The timeliness meaning that the process of going through the environmental impact statement, getting that pre-

pared, submitting it for public comment, and in this case, we had to have a draft EIS and a revised draft EIS, which took over 2 years. The result of a Federal agency not liking the type of testing that was taking place in the field, although they had agreed to it up front. The second part of it is the cost associated with that. The delay was a little more than \$25 million in cost.

Mr. RATCLIFFE. And again, I know you have testified to this, but the permitting process here for the Lower Bois d'Arc Project has taken 15 years, correct?

Mr. RICKMAN. The actual permit for the 404 permit was filed in June of 2008, but we had spent several years prior to that working with the Federal agencies getting the application prepared correctly.

Mr. RATCLIFFE. And do you think 15 years is an appropriate period of time for people to have the opportunity to raise issues with the permitting agencies for a project like this?

Mr. RICKMAN. Absolutely. There were numerous public meetings at the State, Federal, and local level.

Mr. RATCLIFFE. And yet currently, despite the 15 years to raise those concerns under the current law, they would have an additional 6 years to interrupt the project with an injunction or a temporary restraining order, correct?

Mr. RICKMAN. That is correct.

Mr. RATCLIFFE. So, North Texas Municipal Water District could move forward with this project, get it 95 percent complete, and someone could theoretically, under the current state of the law, despite having 15 years prior, stop this project and North Texas Municipal Water District's ability to service those 1.7 million Texans relying on that water supply, correct?

Mr. RICKMAN. That is accurate, and there is no viable option out there to get something to replace this in the short term.

Mr. RATCLIFFE. Mr. Rickman, thank you again for speaking on this issue and again, I would like to encourage all my colleagues to support this legislation. With that I yield back.

Mr. MARINO. The chair now recognizes the gentlewoman from Florida, Congresswoman Demings.

Ms. DEMINGS. Thank you so much, Mr. Chairman, and thank you to all of our witnesses for being here. Ms. Hammond, I would like to start with you. We have heard a lot of talk about judicial review actually undermining the original intent of NEPA, but what effect will limiting judicial review have on local economic interests like those of small businesses, in your opinion?

Ms. HAMMOND. Well, those are the very small businesses that may have an interest in seeking judicial review and so, if it is limited, once again, they cannot make their voices heard. This is both in inherent limitations in the way the statute is set up, and again, in the bond requirement.

Ms. DEMINGS. You know, I also come from local government and I do believe that public participation is not only important, but it is necessary, and we have talked a bit about it, but let's talk about it a little bit more. Are you concerned that the proposed bill will undermine public participation for Federal projects that affect local communities?

Ms. HAMMOND. Yes. It does do that. I should note that it is already the law that any issues that are raised in litigation must have been raised before an agency. What this bill does is appear to restrict that even further to cut off the ability to raise further arguments to judges that the agency did not do their job properly, despite comments raised. That final check of judicial review is a key part of not just making sure that agencies exercise their power properly but giving voice to those who would participate.

Ms. DEMINGS. Thank you so much, professor. Mr. Kovacs, you have argued that the major causes of delays in Federal permitting is the mandate to conduct environmental reviews under NEPA. Of the many, many Federal actions undertaken every year, about how many require an environmental assessment in the first stage of the NEPA approval process, would you say?

Mr. KOVACS. Actually, I have never said that the mandate to do the environmental impact statement caused any harm at all. It should be done. What I have said is that what the dispute is over, if the mandate is to stay, then the problem is timing, and you can put a structure around timing. So when you get into the public participation requirements bringing the State and local governments in, but you do it in a coordinated way up front so that you can meet the time deadlines. That is what FAST-41 does.

Ms. DEMINGS. Okay, and roughly how many would you say?

Mr. KOVACS. In the course of a year, I am going to say 50, 60, 70.

Ms. DEMINGS. It is not a great number.

Mr. KOVACS. Out of the thousands, most of them go either through a categorical exclusion or through an environmental assessment.

Ms. DEMINGS. So, would you say only the largest projects would require that type of thing?

Mr. KOVACS. Well, that is why FAST-41 was limited to the projects over \$200 million because that seems to be where the bottleneck would come about.

Ms. DEMING. How many of the transportation projects, again, very concerned about local issues, how many of the transportation projects would you say are subject to a full NEPA review?

Mr. KOVACS. The best statistics I have is that when Congress enacted MAP-21, the time for a transportation project based on the MAP-21, which is different than FAST-41, was cut in half, and that is a DOT study. And then if you look at the Recovery Act, which was the Barrasso-Boxer amendment where they said all projects are to go in the most expeditious route possible, out of the 192,000 projects, only 841 went through a full environmental review. So, it gives you an idea. It is a very small percentage.

Ms. DEMINGS. About 3 percent, would you say? It is pretty small?

Mr. KOVACS. You are probably better at math than I am.

Ms. DEMINGS. Small percentage.

Mr. KOVACS. It is small. It is not a lot.

Ms. DEMINGS. Okay. I just have one more question in my less than 50 seconds. You know, these are very important issues, and I know that I want to get it right. It is important to our local communities.

Professor Elliott, my colleague, who ran out of time, and it just concerns me. When he said that his time was limited, he was referring to the 5 minutes that the chairman gives him that he has to control; 5 minutes is not much time to ask for witnesses. These are critical questions so we can get it back. So, he was referring to that.

I know you have done some outstanding work, but I am interested, just for my own personal edification. When you said your time was limited what exactly were you referring to?

Mr. ELLIOTT. The same thing that he was.

Ms. DEMINGS. You were concerned about the 5 minutes that he had to control?

Mr. ELLIOTT. Right. I was not allowed to answer his question because his time was expiring.

Ms. DEMINGS. But you do understand that he controls the time, right?

Mr. ELLIOTT. Yes.

Ms. DEMINGS. Okay. All right.

Mr. ELLIOTT. Yes, I do, and that is why I shut up.

Ms. DEMINGS. Thank you, and with that, I yield back, Mr. Chairman. Thank you so much.

Mr. MARINO. I think everybody understands the rules here. The chair now recognizes Congressman Buck from Colorado.

Mr. BUCK. Thank you, Mr. Chairman, and I yield to as much time as the young lady from Florida would like if she has any further questions that she would like to ask.

Ms. DEMINGS. I appreciate that. I appreciate your willingness to do that, but I am complete. So thank you very much.

Mr. BUCK. You bet. Are any of you familiar with the Northern Integrated Supply Project in northern Colorado? It does not look like it. You are, Mr. Rickman?

Mr. RICKMAN. I know the name and I am aware of the project.

Mr. BUCK. Okay.

Mr. RICKMAN. But I do not know much about it.

Mr. BUCK. Well, it just seems like this is a recurring theme that many Members of Congress hear about, and it is a concern really to all of us. There is no profit incentive in government, and there should not be necessarily a profit incentive in government, but we cannot allow these issues to drag on and on.

There were a dozen communities in northern Colorado, fairly small towns, that got together to develop a water project. They started 20 years ago. The five acres of land was wetlands and so, the Federal Government had jurisdiction. The Army Corp of Engineers had jurisdiction. It continued on and on.

There are two projects, actually, in Colorado. One is the Chatfield Reservoir that was only filled half way, and they wanted to fill it two-thirds of the way for drinking water for the Denver area. It has been 20 years now since that started.

My question to all of you really is, and Mr. Rickman, we can start with you. Do you understand the concern that we have and the need for legislation and what we are trying to do here in Congress? Balance interest. Not just take one side of this issue but really, how do we protect the environment at the same time that

we try to speed this process up so we do not bankrupt communities that are trying to develop drinking water?

Mr. RICKMAN. Absolutely we understand it. The organization we work for; we are an environmental organization. We look at the environment. We protect the environment, but we also understand the need that we cannot predict and cannot control the population coming into our area, and we have to have water there and be available for public health and safety, unlike a highway. A highway you can have traffic jams, but water is for public health and safety and it takes much longer to develop.

Mr. BUCK. And Professor Hammond, I guess the critical issue in my mind is in northern Colorado there are two alternatives. One, we can develop water. We send more water out of the State than we are required to based on the compacts that we have. So, we can develop water projects or municipalities, and they have done this; buy farms. Take the water off the farms and let the farms dry up, and that has a huge environmental impact in drying up farms. We end up with dust bowls in areas, and if that continues, because of the growing population in Colorado, that has a serious environmental impact. So, there is no real good answer here if we do not move this process along more quickly. Your thoughts?

Ms. HAMMOND. It is absolutely fair to ask agencies to move as expeditiously as possible provided we also are asking them to do a good job, and it is a difficult thing to balance.

Mr. BUCK. And the agencies do not have unlimited resources. We just cannot throw a ton of money at this situation and say, here is another hundred people. Go do the job.

Ms. HAMMOND. That is right, and that is why PLEA is problematic. Because it does not recognize that agencies do have those barriers to moving expeditiously and to doing that good job. It slaps a very large Band-Aid on a much more particular problem that is addressed in FAST-41.

Mr. BUCK. Okay. Mr. Kovacs, any thoughts?

Mr. KOVACS. Well, whether you are a Republican or a Democrat, one thing for years that I have heard, is I have got this project in my district and how do we get it to move? And one of the balances that was so important in FAST-41 is that it recognized all the public participation has to come in, but it has to come in in a coordinated way and in a timeframe so that the agency can do it.

Second, by limiting FAST-41 to the \$200 million and above projects or those projects that have many multiple agencies involved, it is limited to roughly about 200 projects in the country, but they are the largest projects. It said we are going to put our resources on these to get these out the door. The reason that the Permit Litigation Efficiency Act is so important is that it shortens the statute of limitations and extends the definition of what is unreasonable delay to the smaller projects so that they have some of the benefits of FAST-41, since they cannot get all the benefits.

Mr. BUCK. Great. Professor Elliott, just a little time left. Any thoughts?

Mr. ELLIOTT. I think the most important part is setting deadlines, which then sets priorities. It is not just a matter of funding but setting priorities. I think it is very important to understand that the bonding requirement applies to seeking an injunction to

shut down a project does not close the courthouse to anyone. They can do it just the way they do in other cases, and that is get a final judicial opinion before they seek to shut down a project.

Mr. BUCK. Great. Well, thank you very much for all of you being here. I appreciate it very much. Yes. I yield back.

Mr. MARINO. Thank you. I have a couple questions to finish up. Mr. Elliott, I do not think there is anybody in this room that does not like clean air and clean water. I live out in the country, and I get my water from a well behind my house while watching a bear and a deer go through my property in the woods, and they are taken very seriously. And everyone should be concerned about our environment. But can you provide me with some examples concerning what the long delays in permitting review can actually end up perpetuating real environmental harm caused by existing infrastructures?

Mr. ELLIOTT. Certainly, Mr. Chairman. I have given a number of examples in my testimony, but as a general matter, new infrastructure is cleaner and more environmentally conscious than the old infrastructure that it replaces. So, when we delay new infrastructure by looking unnecessarily at very small issues that really do not go to the environmental benefit of a project, part of the cost is that the environmental benefit of the project is deferred. That is a general answer to the question, but there are lots and lots of examples, some of which I have given in my testimony.

Mr. MARINO. I can give an example, too. There is an electric coal-fired plant in my district that spent millions of dollars on scrubbing the exhaust. The whole nine yards. They switched over to natural gas. It took years. Cost them tens of millions of dollars because of the permitting process, but finally, in about another month, that is going to go online. So, there could have been significant cost reductions there if we did not have to wait for the years and years that it took to get the permitting process through.

Mr. Kovacs, in your estimation, you talked about jobs could be created and how fast those jobs would become reality. Could you expand on that a little bit, please?

Mr. KOVACS. I am sorry. Could you repeat the question?

Mr. MARINO. Yes. Yes. You talked a little bit early on about jobs and how those jobs are created. Could you expand on that and how soon they would be created?

Mr. KOVACS. Sure. You know, if you are building a project—and Project No Project, which was the study I think you probably are referring to—if you looked at the number of jobs that would be created by the various projects, it was 1.1 million jobs just during the construction period.

So, every project is going to create jobs, and the good part about the Permit Litigation Efficiency Act that you are considering today is that in the history of the United States, until FAST-41 when a court was looking to impose an injunction or being asked to impose an injunction, it looked at the environmental benefits, but it never looked at the job benefits. Right now, what would happen is the court would have to look at not only the environmental benefits but also, the impact on jobs of the community.

Mr. MARINO. Okay. Professor Hammond, you talked about your emphasis on access to justice in your written testimony, and I sup-

port access to justice. I was a prosecutor for 18 years so, I really know both in the State and the Federal system. But what about quick access to water supply or replacement of bridges, of roads that we are running into? Plants, housing projects are going to go up that just take endless amounts of time to get a permit, and then at the last moment when the permit process is almost done, somebody runs in and says there is an environmental issue in here.

Do you not think that they should be brought early on instead of waiting in that I do know that there are groups out there that wait until the last day and then file?

Ms. HAMMOND. They already must raise environmental issues before the permitting agencies, before those permits can issue if they plan to also seek consideration of those issues in court. The issue in court is to say that the agency did not do its job, which is something we should ask of our government in addition to asking it to move as quickly as it reasonably can on projects.

Mr. MARINO. There is a reasonable presumption there before the court and the agency can address that issue immediately.

Ms. HAMMOND. I am sorry, sir?

Mr. MARINO. There is a reasonable, rebuttable presumption that the agency can raise immediately in the court if they feel that there is something that they missed concerning litigation. Do you not agree with me on that? The agency certainly can come in and address that issue immediately without waiting to the end of the period or some environmental agency coming in and saying, well, we have a problem here now.

Ms. HAMMOND. That is right. That is why we already ask people to raise the issues there before the agency. Sometimes the agency does not do it.

Mr. MARINO. That is what I would like to see. If there are environmental issues, let's raise them early on so we can address it, and I know you have an issue about the \$5 million bond, but then again, that is discretionary. That is up to the court, correct?

Ms. HAMMOND. It is discretionary, but it is certainly a large and chilling number.

Mr. MARINO. Well, the judge cannot impose that at all or lower that significantly, correct? I have clerked for Federal courts.

Ms. HAMMOND. One can make that argument, but one certainly has to be fearful of the risk that they are taking with the capriciousness of a particular judge in a given situation. And I should note, this is for injunctions because you cannot put the environment back.

Mr. MARINO. Yes. Yes, but also, how about the capriciousness of a judge that just simply says, look? Okay. I am going to grant this injunction and we are going to slow this project down. So, you know, you can make that argument. I can make this argument. We certainly want our environment to be clean, and I am right out there with everybody on that, but we have to get these permits done to create jobs. Thank you very much. I appreciate you all being here.

Without objection, the following items will be made a part of the record: A letter of support by the U.S. Chamber of Commerce for the Permitting Litigation Efficiency Act of 2018 and the administration's new interagency memorandum of understanding on per-

mitting, which sets a goal of 2 years for completion of permit review for major infrastructure projects.

These materials are available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-20180412-SD002.pdf>.

Ms. DEMINGS. Mr. Chairman.

Mr. MARINO. Yes.

Ms. DEMINGS. Thank you for that recognition. I ask a unanimous consent to insert into the record a letter from several groups, including the American Association of Justice, The Center for Biological Diversity, Center for Justice and Democracy, Earth Justice, and several others that could not be with us today, but certainly have grave concerns about the legislation we are discussing today.

Mr. MARINO. Without objection, all the above requests will be entered as part of the record.

These materials are available at the Committee or on the Committee Repository at: <https://docs.house.gov/meetings/JU/JU05/20180412/108120/HHRG-115-JU05-20180412-SD003.pdf>.

Ms. DEMINGS. Thank you.

Mr. MARINO. This concludes our hearing. I want to thank all the witnesses for being here. I am speaking for all of us. I know we learn from you when you take the time to travel here and have discussion with us. I know I, personally, learn a great deal every time I leave one of our hearings and other hearings that I sit in, and my door is always open. You always have the invitation to come and visit, and to send me information that you would like us to have so we understand all points in these issues.

I was involved some time ago in trying to get a bypass put in my district which was on the board for 60 years for a myriad of reasons. Well, the first thing I did was get everybody in the same room; the Feds, the States, and the locals, and I asked them: Did you ever meet before to sort out these issues? They said, no.

Construction started a couple of years ago, thousands of jobs, and in 8 years there is going to be a completion of some beautiful highway that is going to be safer for our drivers and create more business for the establishing stores that are in operation around it for people to get in and out.

I know when my wife says to me, let's go down to the mall, I say, "No, no, no. I have got to go through all that traffic. Please do not make me do that." But this will make it more efficient.

We are adjourned and thank you all very much for being here.  
[Whereupon, at 1:03 p.m., the Subcommittee adjourned.]