



September 15, 2022

The Honorable Shelly Moore Capito  
Ranking Member  
172 Russell Senate Office Building  
Washington, DC 20510

Dear Ranking Member Capito:

We write in strong support of the Simplify Timelines and Assure Regulatory Transparency (START) Act, which represents meaningful permitting reform that will unleash domestic energy abundance and mend broken supply chains by eliminating barriers to putting private capital to work on needed energy and infrastructure projects that are currently mired in government red tape nationwide. Taken together, the economic activity greenlit by the START Act will bring down rising costs for families and business, which is essential to defeating the looming threat of stagflation.

We applaud the comprehensive nature of the START Act, matching the labyrinth of permitting and regulatory schemes governing key authorizations for projects on federal and private land. By reforming both the procedures and analytical framework used by a range of permitting agencies, the bill will result in timely, higher-quality permit decisions. Naturally, this will benefit highly economic projects, like the Mountain Valley Pipeline, that the market long ago determined will serve businesses and families alike. Unlike the rumored, narrow deal brokered by Majority Leader Schumer, however, the START Act will benefit projects nationwide at a level that will register throughout the economy.

The START Act wisely relies on proven reforms while also pioneering new solutions to accelerate meritorious projects. This balanced approach reflects the reality that permitting backlogs are an old problem that have new urgency under current economic conditions, as government red-tape blocks private attempts to ease supply chains snarled by Covid. These, in combination with other restrictive actions by the federal government, have constrained the supply of energy commodities and raised the cost of driving, heating, electricity, and industrial activity across the board.<sup>1</sup>

Regrettably, the current administration has made a bad situation worse by rolling-back modernization of the National Environment Policy Act (NEPA), improvements to the workability of a range of Clean Water Act (CWA) permit programs, and the streamlined procedures and timelines of One Federal Decision. By re-instituting and making permanent these solutions, which were scrutinized under rigorous notice and comment procedures during the last administration, the START Act will bring certainty to a chaotic regulatory landscape. In turn, this will incentivize long-term investments in energy production and transmission, supply-chain build-out, and key upgrades to private facilities and critical infrastructure.

Simultaneously, the START Act breaks new ground in crafting a vision for energy federalism. We encourage Congress to empower the States to develop energy resources within their borders and recognize the States' exclusive jurisdiction over matters within their traditional sovereign sphere,

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<sup>1</sup> <https://americansforprosperity.org/cook-inlet-emails-foia-discovery/>

such as the regulation of hydraulic fracturing. At the same time, we applaud the START Act's recognition of recent abuses of state certification authority under Section 401 of the CWA to delay or scuttle projects for protectionist purposes, which may violate the Constitution's prohibition on discrimination against out-of-state commerce. Returning to the States the power to authorize energy production and transmission, within constitutional bounds, would relieve overstretched federal agencies of the need to act as *de facto* clearinghouses for permits nationwide and better achieve the multi-use mandate currently neglected by federal land management agencies.

Sadly, Washington is taking us in the wrong direction by proposing difficult to reverse steps that threaten to lock-in continued energy supply shortfalls and sky-high prices. Recognizing this, the START Act boldly preempts agencies' reliance on dubious "interim" metrics that purport to calculate the "social" costs of certain emissions for the purpose of putting a thumb on the scale against issuing energy permits – metrics designed for exclusive use in rulemakings. Already found unlawful by a federal court,<sup>2</sup> reliance on such interim metrics will skew otherwise rational economic analyses by federal agencies, systematically leading to higher cost fuel and less reliable electricity. In our view, these metrics assume an artificially low discount rate that flies in the face of generationally high inflation (in addition to other methodological flaws),<sup>3</sup> to which they will only contribute. We encourage continued efforts to first scrutinize, and then uproot, these flawed analytical "tools" and consideration of similarly speculative or attenuated impacts from agency permit decisions.

Finally, Congress should bless agency efforts to eliminate unnecessary reviews wherever possible. For this reason, we support the interagency use of categorical exceptions from NEPA review and reducing the Kafkaesque burden of interagency consultation under Section 7 of the Endangered Species Act. Likewise, we applaud the START Act's New Source Review reforms under the Clean Air Act to incentivize – through permit streamlining – the retrofitting of existing facilities for more efficient, lower emission operations. And where opportunities to forego lengthy, counterproductive permit reviews rest on unproven legal footing, we encourage Congress to eliminate all doubt.

Ultimately, fighting stagflation is a two-front war. It requires boosting productive economic activity – deepening shipping channels, constructing pipelines, building new housing subdivisions – while simultaneously driving down the supply shortages that drive higher costs throughout the economy. By reducing the permit barriers that have kept worthy projects and the billions in private investment sponsoring them on the sideline while also increasing our ability to produce and deliver energy and other goods, the START Act accomplishes both. We applaud your leadership on this issue and urge passage of these critical reforms.

Sincerely,

Marc Marie  
Regulatory Policy Fellow  
Americans for Prosperity

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<sup>2</sup> *Louisiana v. Biden*, 2:21 - cv - 01074 (W.D.La. Feb. 11, 2022)

<sup>3</sup> Ann Shapir, *Fed seen getting more aggressive as inflation roars*, REUTERS, Sept. 13, 2022

<https://www.reuters.com/markets/us/fed-seen-delivering-75-basis-point-hike-next-week-with-more-come-2022-09-13/>