

Written Testimony of John Beard, Jr.
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House Committee on Natural Resources
Energy and Mineral Resources Subcommittee
Legislative Hearing on H.R. __, H.J. Res. 168 and H.R. 6129
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My name is John Beard. I am a second generation petrochemical worker and founder and CEO of the Port Arthur Community Action Network. I live in Port Arthur, Jefferson County, Texas, an environmental justice community afflicted by institutionalized environmental racism. West Port Arthur is a predominantly Black community along the Gulf Coast of Texas, that has been an economic and energy “sacrifice zone” for the fossil fuel industry. West Port Arthur, like many Black, Brown, and Indigenous communities throughout the United States, was intentionally segregated through the practice of redlining - a discriminatory and racist practice that consisted of the systematic denial of mortgages based on race, and the forced centralization of Black people in ways not seen since the height of chattel slavery in the United States. In addition to pillaging the ability of Black folk to establish and maintain generational wealth, redlining also is responsible for the placement of toxic facilities and operations proximate to Black and Indigenous communities, which, in too many instances, has denied their generational health.

The gulf coast has been lucrative for fossil fuel executives, who benefit financially from fossil fuel extraction at the cost of the health and well-being of fence-line communities, predominantly low-income communities of color, who breathe in the toxins released by these facilities. From West Port Arthur, Texas, to Houston, Texas, to St. James Parish, Louisiana - our communities are interconnected by a shared struggle that is intensifying in severity. We are the fence-line of polluting industries and the frontline of climate catastrophes as increasingly powerful hurricanes continue to batter our coasts and are anticipated to become more powerful and calamitous if we continue to pollute our atmosphere with toxic emissions that result from the extraction, refining, and emitting of fossil fuels. With each storm, we witness the destruction of our communities, coupled with the massive displacement of our communities and deeper entrenchment into poverty.

Port Arthur, home to one of the largest concentrations of oil refineries in the nation, with three major refineries and 8 additional oil and gas operating facilities, is the epitome of the afflictions directly associated with redlining. For instance, the asthma rate for children in West Port Arthur is twice the national average. In comparison to the average Texan, Black residents in Jefferson County, where Port Arthur is located, are 15% more likely to develop cancer and 40% more likely to die from cancer.¹ Sulfur dioxide, a hazardous chemical that is released by fossil fuel facilities like those in West Port Arthur, has been correlated with an increase in strokes, pulmonary diseases, and death.² While the Environmental Protection Agency (EPA) has set the

¹ “Fumes Across the Fence-Line: The Health Impacts of Air Pollution from Oil & Gas Facilities on African American Communities”, National Association for the Advancement of Colored People (NAACP); November 2017. Article found at: <https://naacp.org/resources/fumes-across-fence-line-health-impacts-air-pollution-oil-gas-facilities-african-american>

² “Port Arthur, Texas: American Sacrifice Zone”, Natural Resources Defense Council; Article found at: <https://www.nrdc.org/onearth/port-arthur-texas-american-sacrifice-zone>

Sulfur Dioxide threshold at 75 parts per billion, nearby facilities in West Port Arthur routinely surpass 100 parts per billion,³ proving the sage words of environmental justice scholars and practitioners Dr. Beverly Wright and Dr. Robert Bullard who describe communities like mine as, “the wrong complexion for protection”.⁴

And while the fossil fuel industry argues that oil and gas development placement in West Port Arthur supports the local economy, the unemployment rate of my community has continued to grow in spite of fossil fuel industry expansion.³ Additionally, the proximity of West Port Arthur to fossil fuel facilities and operations continues to exhibit an adverse impact on property values - in effect, reducing them to levels that are lower than when some of them were originally purchased. The impacts of redlining are still felt in communities like West Port Arthur and other cities and states nationwide - in “blue states” just as much as in “red states” and throughout Indigenous communities.

The struggles of my community are not felt in isolation. Numerous “cancer cluster” communities are along the gulf coast, just like “asthma alleys” throughout the northeast and western cities. While we all consume oil and gas products, a study found that in the United States, PM2.5 air pollution is disproportionately induced by White Americans and disproportionately inhaled by communities of color.⁵ And while fossil fuel industry pollution creates health and economic consequences for everyone, these consequences are unquestionably borne unequally and disproportionately impact communities of color, low-income communities and Indigenous communities⁶.

Communities in the Gulf Coast stand at the intersection of social justice movements rooted in environmental justice, climate justice, civil rights, feminist economies, and much more. Our fight for justice goes beyond the Gulf Coast, as communities of color throughout the United States disproportionately bear the brunt of toxic facilities. The National Environmental Policy Act (NEPA) of 1970 is one of the few federal laws that provides some protections and requires environmental review and consideration for proposed actions in communities like mine, that is why the National Environmental Policy Act has been called “the People’s Environmental Law.”

This is not my first time coming here to provide testimony on proposed reforms to NEPA. In February of 2023, I came to Washington D.C. from Port Arthur, Texas to share the experience of my community, my experience with NEPA, and my recommendations for how congress should look at “reforms” in legislation. Specifically, I was here to discuss H.R. 1577, the “BUILDER Act.” I warned this body that legislation like the BUILDER Act and other “attempts to

³ “Any Way the Wind Blows: A Koch-owned chemical plant in Texas spent years running from the Clean Air Act. New evidence suggests it bent the law until it broke.”, Naveena Sadasivam, Clayton Aldern; Grist, February 2023; Article found at: <https://grist.org/project/accountability/koch-oxbow-port-arthur-texas-clean-air-act-pollution/>

⁴ “The Wrong Complexion for Protection: How the Government Response to Disaster Endangers African American Communities”, Robert D. Bullard, Beverly Wright, 2012, Article found at: <https://muse.jhu.edu/book/17926>

⁵ “Inequity in consumption of goods and services adds to racial–ethnic disparities in air pollution exposure”, Tessum et. al, March 2019, Article found at: <https://www.pnas.org/doi/full/10.1073/pnas.1818859116>

⁶ “The 2020 Report of the Lancet Countdown on Health and Climate Change: Responding to Converging Crises,” The Lancet, vol. 397, no. 10269, pp. 129-170, 9 January 2021. [https://www.thelancet.com/article/S0140-6736\(20\)32290-X/fulltext](https://www.thelancet.com/article/S0140-6736(20)32290-X/fulltext).

deregulate and weaken NEPA represent a clear and present danger for residents of West Port Arthur and surrounding communities.” At that time, I urged this committee that “as we discuss the future of NEPA, we must shift away from determining ways that NEPA should be “reformed” and instead imagine ways in which NEPA can be strengthened to better serve and protect communities based on the best scientific understanding and analysis available today. The science is clear - communities of color disproportionately bear the brunt of polluting industries and the accompanying health impacts. The science also shows us that climate change already has, and will continue to be, a threat multiplier, wherein communities struggling today will be the first and worst impacted by impending climate catastrophes. Inequality in the United States continues to grow - from America’s disparities in life expectancy to the racial wealth gap. We cannot bring equality, let alone equity, in our nation without intentionally putting protections for communities of color into law.”

Unfortunately for the residents of Port Arthur, and the millions of other people living in sacrifice zones near polluting facilities around the country, many parts of the BUILDER Act were passed into law as a part of the Fiscal Responsibility Act just months after my testimony. Now, just a little over a year later, this committee is considering a discussion draft that would not only codify other pieces of the BUILDER Act, but would even go further in preventing due process and government accountability. In addition, under consideration today are two other bills, H. J. Res. 168 and H.R. 6129, which, taken together, will essentially codify climate denial, further entrench environmental injustices, and advance the pernicious myth that NEPA is somehow a barrier to development. This suite of legislation is a deafeningly loud and alarmingly clear message to my community that our voices don’t matter and that the federal government should be able spend our taxpayer dollars on projects with complete disregard for the impacts on our health and safety.

Before turning to a discussion of the legislation under consideration today, it is worth noting why NEPA is an absolutely critical tool for frontline communities like Port Arthur. NEPA enshrines four core, common sense principles into government decisions. First, NEPA ensures the government will not make a decision, spend taxpayer dollars, or build infrastructure without first looking at the impacts. For decades, courts have made it clear that to fulfill this responsibility, agencies need to look not just at environmental, but also economic, health, climate, and environmental justice impacts. Second, the law rightly requires agencies to be transparent by disclosing those impacts to the public so that decisions on how our taxpayer dollars are spent are not shielded from public scrutiny. Third, NEPA guarantees decisions are democratic by making clear the government needs to meaningfully engage the public before approving actions that may impact their communities. Finally, the law provides for justice and accountability - if the government ignores impacts, tries to operate behind closed doors, or avoids engaging the public, then we can hold it accountable in the courts.

The legislation under consideration today are brazen attempts to undermine these core guarantees, and I urge the Committee to oppose these measures. Port Arthur Community Action Network (PACAN), along with our partners, is submitting a separate letter outlining our concerns with the individual bills and I am including that below:

H.J. Res. 168:

Unfortunately, H. J. Res. 168 is an unwarranted and ill-conceived attack on congress' bipartisan agreement that would weaken environmental protections and slow environmental review and permitting decisions at federal agencies. A key driver of a more effective permitting process is providing clarity and certainty to agencies, project sponsors, and the public on exactly how and when agencies should conduct reviews under NEPA. By increasing community participation, the "Bipartisan Permitting Reform Implementation Rule" will result in improved energy and infrastructure projects. Too often, unresolved conflicts between communities and project developers can result in prolonged reviews, delayed project timelines, and costly litigation. Studies have shown that federal agencies can help resolve these conflicts by proactively engaging with communities early and often.

Furthermore, by passing H. J. Res. 168, under the Congressional Review Act, Congress would forbid CEQ from issuing any future regulations substantially similar to the current rule. Paradoxically, the stated purpose of the legislation that its sponsor has advanced is to ensure the proper implementation of the FRA. This rule faithfully implements the changes included by Congress in the FRA and changes required to comply with repeated court rulings on the application of NEPA to issues including climate change and environmental justice. These changes align the implementation of NEPA with the law. The effect of passing this resolution would be to make it nearly impossible for CEQ to effectively implement the changes to NEPA regulations that Congress required in the FRA or have been required by courts.

As such, this resolution is counterproductive and would only create legal uncertainty for federal permitting decisions to the detriment of project sponsors and the public alike.

Discussion Draft of H.R. _____ (Rep. Westerman), To amend the National Environmental Policy Act of 1969, and for other purposes:

Similarly, Representative Westerman's legislation is an attack on the principles of government accountability, public input, and review provided for under NEPA and its implementing regulations. The bill radically limits the scope of reviews by federal agencies and entirely eliminates government accountability when agencies fail to adequately consider the health, environmental, or economic impacts of their decisions. **If passed, this legislation would fundamentally undermine the purpose of NEPA, codify climate denial, and essentially silence the voices of frontline communities and local governments.**

As an initial matter, the entirety of this bill is seemingly premised on the persistent but demonstrably false myth that NEPA reviews are the primary cause of permitting delay.

This theory has been comprehensively examined and thoroughly debunked by administrations of both parties through numerous studies, including those conducted by the Congressional Research Service (CRS), the Government Accountability Office (GAO), the U.S. Department of Treasury, and other federal agencies and academia.^[1] CRS has repeatedly concluded that NEPA is not a primary or major cause of delay in project development. Instead, CRS identified causes entirely outside the NEPA process, such as lack of project funding, changes in project design, and other factors. Subsequent studies have confirmed that to the extent that there are delays within the NEPA process, they are not attributable to the law or regulations themselves but rather to lack of staff and funding – a problem that Congress began addressing in the Inflation Reduction Act (IRA) by including historic investments for environmental review. Building a more robust

process for a federal environmental review workforce is an essential reform needed to ensure the timely permitting of projects.

Concerningly, this bill would also essentially eliminate meaningful judicial review. **The ability to challenge violations under NEPA and obtain an injunction before a project impacting the health, economy, and environment of frontline communities like mine and the broader public is essential to accountability and the underlying purpose of requiring environmental review. An environmental review process without meaningful judicial review would undermine the ability of communities to have their voices heard by allowing agencies to simply look the other way regardless of public input.** Meanwhile, legal challenges to NEPA decisions are rare, contrary to the often-repeated myth that NEPA is simply a tool for frivolous litigation. Agency data and a review of court filings demonstrate that less than .25% of actions subject to NEPA result in litigation.^[2] Overwhelmingly, the clear majority of actions subject to NEPA go unchallenged.

This legislation must consider the [extensive actions](#) that have been taken by the Biden-Harris Administration and Congress to promote effective and efficient environmental reviews and ensure time for robust implementation for proposed projects. Alongside several reforms made by Congress in the FRA and implemented by the “Bipartisan Permitting Reform Implementation Rule,” this Administration has taken several actions to reform federal permitting. As a result of these changes, the Biden-Harris Administration has cut six months off the median time it takes agencies to complete environmental impact statements. In particular, the Department of Energy has reduced the time it takes to complete environmental impact statements by half. These changes, aided by investments made by Congress in the IRA and Infrastructure Investment and Jobs Act (IIJA), are also a direct result of regulatory changes made in the last year by the Biden-Harris Administration. **Additional actions taken by Congress threaten to increase uncertainty and undo the progress made by this administration in creating a more inclusive and efficient environmental review process.**

H.R. 6129 (Rep. Yakym) - Studying NEPA’s Impact on Projects Act

Despite its title, this legislation seems to completely disregard the impacts of NEPA on projects. Singularly focused on page lengths, time frames, and litigation, the bill entirely ignores what the actual impacts the NEPA process may have on improving project outcomes and fulfilling the statutory purpose of NEPA to improve the human environment for present and future generations. If CEQ is required to issue an annual report on the impacts of NEPA on projects, it should be charged with evaluating how negative health, environmental, and economic impacts were avoided or mitigated by going through the required review process. If this were a serious attempt to assess the impacts of NEPA, then there would also be a requirement for CEQ to determine how many public comments were received and how projects or decisions were improved by meaningful engagement with communities. A sincere interest in how review and meaningful engagement impact federal decisions would also include a requirement to determine what kinds of costs were avoided by avoiding impacts, improving project designs, or reducing health impacts. If the goal of this bill is to improve NEPA, then it should include an assessment by CEQ of agencies staff and resources and how lack of funding may be impacting the ability of agencies to efficiently and meaningfully conduct reviews. However, there are no such requirements in this legislation.

As we discuss the future of NEPA, we must shift away from determining ways that NEPA should be “reformed” and instead imagine ways in which NEPA can be strengthened to better serve and protect communities based on the best scientific understanding and analysis available today. The science is clear - communities of color disproportionately bear the brunt of polluting industries and the accompanying health impacts. The science also shows us that the climate crisis already has, and will continue to be, a threat multiplier, wherein communities struggling today will be the first and worst impacted by impending climate catastrophes. Inequality in the United States continues to grow - from America’s disparities in life expectancy to the racial wealth gap. We cannot bring equality, let alone equity, in our nation without intentionally putting protections for communities of color into law. As such, if this committee is interested in meaningful “permitting reform”, it should focus on legislation such as the “Clean Electricity and Transmission Acceleration Act” or the “A. Donald McEachin Environmental Justice For All Act,” which ensures a transition to a just and equitable clean energy economy future.