

Rep. Anna G. Eshoo
House Rules Committee Testimony on H.R. 2021
June 21, 2011

H.R. 2021 contains a rather extraordinary provision. It says that any appeal of an exploration permit decision can only be heard by the D.C. Circuit Court of Appeals. This is a fundamental change to longstanding law and precedent governing the venue for judicial review of challenges to EPA action.

Over forty years ago, when Congress adopted the Clean Air Act in 1970 and established venue for judicial review, Congress made a sensible distinction. Locally- and regionally-applicable EPA actions would be reviewed in the U.S. Court of Appeals for the appropriate circuit. Nationally-applicable actions would be reviewed in the D.C. Circuit Court of Appeals.

This distinction has worked well for the past four decades. A major new industrial source will have significant local air pollution impacts. Nearby communities will want to weigh in. Local businesses will want to ensure that a new source doesn't force more stringent clean up requirements for existing sources. State and local authorities will have views. And the industrial source itself may disagree with EPA's decision.

All of these stakeholders may want to appeal EPA's decision. Under the Clean Air Act, they can do so in the nearest court of appeals, without traveling to Washington, D.C. And for permits issued by states or localities, the decision is reviewed by state courts.

But this bill would create a whole new regime for exploration permits.

In fact, under this bill, even for an exploration permit issued by a state or local permitting agency, all appeals would go to federal court in Washington D.C.

Many of my colleagues on the other side of the aisle like to criticize centralized government and bash Washington, D.C. They extol the virtues of local control. They cite the 10th amendment.

Now you're for centralizing control in Washington, D.C.

This provision makes it far more difficult for regular folks to appeal a decision that can directly affect them. It took one of our Energy and Commerce Committee witnesses from the North Slope of Alaska sixteen hours to get here, and the plane ticket cost about \$1,000.

This provision forces state and local authorities to fly to D.C. to defend a challenged permit decision. That's a huge burden in terms of time and money, and particularly so in these tough economic times.

The premise of this bill is that the oil industry needs faster permit decisions. Moving review from one federal circuit court to another doesn't expedite permit decisions. And the Committee received no testimony identifying any actual problems with review in the relevant circuit courts.

I encourage you to make my amendment in order to preserve local control, community participation, and fiscal common sense.