At the end of the last week, these comments from John Podesta, a major Democratic Party policy operative, got some attention. He called the permitting reform bill a "loaded howitzer" in the hands of President Trump, should it be enacted as it is currently written. In particular, Podesta argued that the permitting certainty provisions would allow Trump to lock in lots of harmful development projects in ecologically valuable areas, including on federal public lands – and a future administration would find it difficult to unwind those projects, even if they had been illegally issued. Podesta specifically flagged the permit certainty provisions of the bill as the main driver of this dynamic.

I think Podesta is basically right. The key point is that the permit certainty provisions of the bill – as I have written before – raise the barrier for revoking permits to a "clear and convincing" evidentiary standard, while reducing the barriers (such as NEPA review) to issuing permits. So let's say the Trump Administration issues an illegal permit for a project on federal lands (like a coal mining project in a National Monument, perhaps?). It might be hard to stop that project when it is issued – the bill has accelerated timeframes, makes it harder to sue and get NEPA remedies, etc. And a future Administration with different policy priorities would have to show that the project was illegal by "clear and convincing evidence." If the Administration tried to revoke the permit, then the permit holder could sue – in district court (presumably picking a favorable judge if possible) – and require the government to show the project was illegal by "clear and convincing" evidence. And if the government loses, perhaps because it faces a hostile district court judge with opposite ideological preferences? Then it pays large punitive damages.

There are some workarounds, as noted in this article. It is possible for a non-government entity to use the APA to try and sue to stop the project, under the standards of judicial review today. But again, with short statutes of limitations, increased deference to agencies under NEPA, and such, it will be harder for those entities to stop projects. Especially since courts tend to defer to agency decisionmaking when agencies are sued. So that only addresses the problem to some extent.

This is why I have stated that the permit certainty provision needs to be changed – at the very least, to narrow the scope of the projects covered, to allow for updated laws and regulations to apply, to eliminate the possibility that any impact on operations triggers liability, and to change the standard of review away from clear and convincing evidence. Podesta said in his comments that without this change,

he could not support the bill. Podesta is not a green activist – he negotiated the last (failed) permitting reform bill in 2024. He is right.