

## Congressional Attempts to Limit Judicial Review

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Recently, there have been many attempts in Congress to limit judicial review and unnecessarily stack the deck in favor of the government and industry in certain types of cases, including environmental lawsuits. We hope that you will oppose any amendments offered that would restrict this right. Based on past experience, we expect harmful amendments might be offered to for the purposes listed below.

### To Limit Access to the Courts by Prohibiting Plaintiffs from Recovering Attorney's Fees

A number of bills introduced in the past few months would prevent certain parties, including fishermen, small business owners, and environmental groups, from recovering legal costs when they bring *successful* suits to enforce environmental laws such as the Clean Air Act and the National Environmental Policy Act. *See, eg.*, H.R. 1287, H.R. 1229, H.R. 1996, S. 706, S. 953, S. 1061. This runs contrary to the guarantees provided under the Equal Access to Justice Act. *See* 5 U.S.C. § 504; 28 U.S.C. § 2412. The right to challenge harmful government actions is as fundamental to our democracy as our right to vote and freedom of speech. Indeed, in our system of checks and balances, review by the courts is one of the most important ways to ensure government accountability. By reducing opportunities for parties to challenge government actions, these types of provisions would diminish incentives for the government to follow the law.

### To Limit Venue for Certain Types of Cases

Amendments might also attempt to restrict the courts in which certain types of cases may be heard. For example, H.R. 1229 and S. 953 require that all offshore oil and gas cases in the Gulf of Mexico be tried in the Fifth Circuit (ie., Louisiana, Texas, and Mississippi)—the judicial circuit that has been most friendly to oil companies. Sec. 202; Sec. 6. Not only would this type of amendment limit judicial discretion, but it would also unnecessarily tip the scales against plaintiffs and in favor of the government and industry.

### To Limit Judicial Discretion

Amendments might also attempt to restrict judicial authority by setting out rules judges must follow when adjudicating certain types of cases. For example, H.R. 1229 and S. 953 require plaintiffs to bear the burden of proof and prevent them from introducing any evidence outside of the administrative record. Sec. 205; Sec. 6. While these rules would generally apply in administrative law cases anyway, making them law would prevent judges from *ever* making exceptions.