United States Senate

WASHINGTON, DC 20510

October 27, 2026

The Honorable Shelley Moore Capito
Chairman
Senate Committee on Environment
& Public Works

The Honorable Sheldon Whitehouse
Ranking Member
Senate Committee on Environment
& Public Works

The Honorable Mike Lee
Chairman
Senate Committee on Energy
and Natural Resources

The Honorable Martin Heinrich
Ranking Member
Senate Committee on Energy
and Natural Resources

Dear Chairmen Capito and Lee and Ranking Members Whitehouse and Heinrich:

As we carefully review the Bipartisan American Affordability and Jobs Act of 2026 (BAAJA) and evaluate whether to vote in favor of the motion to proceed on November 9, 2026, we have been searching for evidence that the Trump administration would faithfully implement BAAJA without fear, favor or retribution if it became law.

We appreciate that each of you, along with your dedicated staff members, have invested significant time and energy in negotiating a bipartisan framework of reforms intended to improve the efficiency of the Federal permitting process. We share the goals of addressing unnecessary delays and providing clean energy developers with valuable certainty. We also support updating our fragmented and inefficient patchwork of aging electric grids that enrich corporate utilities at the expense of ratepayers.

Nevertheless, in seeking our support for BAAJA, you are asking every Senator to rely on informal assurances from a Trump administration that has proven to be an untrustworthy and erratic negotiating partner and demonstrated a willingness to ignore and violate the plain language of the law. Beyond consideration of the actual text, **the promise of BAAJA will only succeed if President Trump takes care that it is faithfully executed. The Trump administration's record gives us no basis to assume that he will.**

On October 1, 2025, Office of Management and Budget Director Russell Vought announced that nearly $8 billion in funding for energy projects in 16 States would be canceled. President Trump lost each of those States in the 2024 presidential election. Hours later, the U.S. Department of Energy (DOE) announced that after "a thorough, individualized financial review" it had terminated 321 awards supporting 223 projects, worth approximately $7.56 billion, disrupting State energy planning, harming economic growth and threatening thousands of American jobs.

On January 12, 2026, the U.S. District Court for the District of Columbia held in *City of Saint Paul v. Wright* that the terminations at issue violated the equal protection guarantee of the Fifth Amendment. The district judge in that case noted: **"Defendants freely admit that they made**

grant-termination decisions primarily—if not exclusively—based on whether the awardee resided in a state whose citizens voted for President Trump in 2024."

DOE has since conceded more. In a stipulation made public on July 15, 2026, in a separate case, *Thakur v. Trump*, DOE agreed that the inclusion of grants in the **October 2025 terminations "was based solely on the political identity of the grant recipient's state."** It defined a "Blue State" as one that awarded its electoral votes to former Vice President Kamala Harris in 2024 and "has two Democratic-caucusing Senators." DOE also acknowledged that its program offices had proposed terminating similarly situated awards in other States and that those awards "were not terminated in October 2025, and they have not since been terminated."

This vindictive, partisan discrimination based on whether a grantee is in a State represented by two Democratic Senators that President Trump lost in the 2024 election is disgraceful. It violates core constitutional protections, harms communities comprised of Americans from across the political spectrum and, ironically, harms millions of Trump voters who live in these States. No American should be caught in the crosshairs of such a brazenly corrupt scheme.

No one has explained why a Senator from a targeted State should help the Trump administration fast-track fossil fuel projects while it refuses to restore funding that Trump officials admitted was terminated on an illegal, partisan basis.

Many of us represent States the Trump administration has illegally targeted numerous times. To date, DOE has only restored a small share of the terminated awards, some of them under court order. Hundreds remain terminated, including the California and Pacific Northwest hydrogen hubs, projects to help oil and gas producers cut methane emissions from wells and carbon capture and removal research and development. These grants would have lowered costs for American families, created good-paying American jobs and supported American leadership in clean energy industries. Failure to restore funding for these clean energy initiatives is especially unfortunate given BAAJA's likely outcome of significant acceleration of profitable oil and gas development with less oversight.

We all share the goal of investing in American businesses and research organizations advancing innovative clean energy solutions to improve grid efficiency and reliability, reduce harmful oil and gas development emissions and create new technological breakthroughs to make natural gas and other power plants smaller, more efficient and less water intensive. Reinstating these unlawfully terminated DOE awards would create jobs in rural oil and gas communities and help rebuild American solar manufacturing in parts of the supply chain now dominated by China.

For example, the Trump administration terminated a $210 million award to help small oil and gas producers find and fix methane leaks at roughly 22,500 wells. It canceled a pilot power plant testing technology to make natural gas and other power plants more efficient, after DOE had already paid more than $68 million of the original $127 million commitment. It canceled a project to prepare a site to store carbon dioxide permanently underground near the municipally owned Dallman coal-fired power plant in Springfield, Illinois. And it terminated up to $1.2 billion for California's hydrogen hub, which threatened more than 200,000 American jobs.

These projects are representative of the hundreds of terminated awards that sought to strengthen American energy production while reducing harmful emissions. Each was canceled under a test that turned on whether President Trump won or lost a State represented by two Democratic Senators, not the merits of the project. The Trump administration has received multiple requests seeking the full reinstatement of the illegally terminated awards, including a July 2026 letter led by the Vice Chair of the Senate Appropriations Committee that was signed by 39 Senators. As of today, the Trump administration has failed to do so.

Core components of BAAJA depend on effective and fair implementation. For example, BAAJA's transmission title would require the Federal Energy Regulatory Commission (FERC) to permit an interstate transmission line if a State withholds approval for more than one year or denies the application and FERC finds the line consistent with the public interest. Unlike current law, that authority would not be limited to corridors designated by the Secretary of Energy.

Ultimately, **FERC's authority would be only as fair as the officials who exercise it.** And we cannot ignore President Trump's Executive Order 14215, which asserts President Trump's "supervision and control" over independent regulatory agencies, a statutory category that includes FERC, or the Supreme Court's decision in *Trump v. Slaughter*, which held that President Trump may remove Federal Trade Commission commissioners at will—a holding that is nearly certain to extend to FERC commissioners who also perform executive functions.

Put simply, the Trump administration confirmed it terminated energy awards for States based on whether President Trump won or lost the State in the 2024 presidential election. **Why should we be confident that a Trump administration, empowered with national authority to overrule States, would treat this bill differently?**

This concern is heightened because several of BAAJA's proposed remedies for ensuring project certainty come with a host of risks and new potential tools for the Trump administration to use to favor fossil fuel or data center developers at the expense of taxpayer funds, clean energy projects or a reliable and affordable electric grid. The Trump administration has been unrelenting in blocking clean energy projects and rewarding fossil fuel donors. Whether intentional or not, some of the certainty provisions in BAAJA have the potential to enable those tendencies further. And beyond addressing the ongoing quid pro quo between this administration and fossil producers and the blockades of clean energy projects, we should not miss this opportunity to create strong, enforceable guardrails to prevent the Trump administration from repeating its unlawful termination of billions of dollars in job-creating DOE clean energy awards for vindictive, partisan purposes.

A bipartisan permitting law will succeed only if President Trump faithfully carries it out. As evidenced by the challenge in drafting workable language to guarantee project certainty, there is an inherent logical inconsistency in trying to write a new law that will finally stop the Trump administration from engaging in the obstructionist activities that courts have repeatedly found to be illegal under current law.

It would be compelling if, before the motion to proceed vote, the Trump administration directed DOE to 1) reinstate every award it terminated in October 2025 that it has not

already restored, 2) to allow recipients to draw down those funds under the original award terms and 3) to commit in writing that it will not terminate an award because of the political identity of the recipient's State or the party affiliation of its elected officials.

While such action may not fully address the wide range of concerns individual Senators have about various portions of this complex legislation, it would represent an important first step and carry far more weight with us and, more importantly, our constituents whose awards were illegally terminated, than mere informal assurances that the Trump administration will stop interfering with clean energy projects.

Accordingly, we ask that you convey this request to the Trump administration's BAAJA negotiators and *before* the roll call vote on the motion to proceed, obtain written confirmation from the Secretary of Energy that DOE has begun reinstating every outstanding terminated award, with a clear timeline for swift completion.

If BAAJA is intended to serve as an effort to restore fairness, then restoring these unlawfully terminated DOE clean energy awards would be a small but important first step to clarify that intent. This should not be a difficult request.

Reinstating these DOE awards is the least the Trump administration can do to show that if BAAJA became law, it would be more likely to implement BAAJA provisions in good faith. Full restoration represents the type of meaningful *action* that many Senators are seeking while evaluating whether to support or oppose the motion to proceed to BAAJA without any guarantee of an open or fair amendment process.

And if the Trump administration refuses to overturn one of the most blatantly partisan actions in DOE history, it would only confirm that the Trump administration cannot be trusted to fairly implement BAAJA, to honor its informal commitments and to not abuse the provisions intended to curtail its actions.

Sincerely,

Tammy Duckworth
United States Senator

Ron Wyden
United States Senator

Jeffrey A. Merkley
United States Senator

Edward J. Markey
United States Senator