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Good morning, Chair Gosar and Members of the Subcommittee. Thank you for having me here this morning.

My name is Regina Lennox, and I am Senior Litigation Counsel representing Safari Club International ("SCI"). SCI is a non-profit organization exempt under Section 501(c)(4) of the Internal Revenue Code representing over 100,000 members and advocates and 170 independent chapters across the country and around the world. SCI's missions include conserving wildlife, protecting hunters' rights, and educating the public about hunting and its role in conservation. SCI fulfills its mission in collaboration with its sister organization, SCI Foundation, which has invested over $100 million in conservation projects since 2000. In addition, SCI recently launched the SCI Center for Conservation Law and Education, which utilizes SCI's in-house counsel, state liaisons, and the "Hunters' Embassy" on Capitol Hill to bolster SCI's legal defense and education missions. Together, we litigate mission-critical cases, educate and support science-based decision-making in state commissions and agencies, and inform federal lawmakers and staff about issues of importance to hunting, conservation, and wildlife management.

SCI is almost unique among pro-hunting conservation organizations in having dedicated, in-house litigation counsel, like me, who handle cases involving Endangered Species Act listings, public lands access, hunting seasons, and more. Most of our cases are in federal court. Most involve a limited set of organizations that oppose responsible use and management of species and habitat. SCI's litigation program spans 27 years and is the most senior among our peer groups.

SCI has significant experience with the Equal Access to Justice Act ("EAJA"). We regularly litigate cases in which anti-hunting organizations claim victory and seek the recovery of attorneys' fees and costs. While we strongly support EAJA's original purpose—to ensure those negatively impacted by the mistakes or overzealous actions of federal agencies can protect their rights in court—we are seriously concerned that EAJA has strayed from Congress' intent and is now being exploited by wealthy non-profits that use EAJA to advance activist agendas. In SCI's experience, these cases do not serve the interests of our country or its wildlife, but only the non-profits themselves.

We recommend several fixes, but primarily we ask you to restore fairness so that EAJA is truly "equal," not preferential to certain interest groups or their attorneys.

Background on EAJA

EAJA was enacted in 1980. It was introduced as the **Small Business** Equal Access to Justice Act in the House Committee on Small Business. Its purpose was to ensure **small businesses** were

able to fight back against government overreach due to prohibitive litigation costs. However, it had a three-year sunset provision. Congress was sensitive to opening up the U.S. Treasury to broad litigation payments against the government.[1] EAJA was permanently reauthorized in 1985 because its initial costs were modest—just $1.3 million in 1984.[2]

EAJA applies to both civil litigation and administrative adjudications.[3] I will focus on civil litigation awards because they account for over 99% of EAJA payments. Under the text of EAJA, in litigation involving the United States, a court shall award to a prevailing party besides the United States, that party's fees and expenses, "unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." 28 U.S.C. § 2412(d)(1)(A).[4] EAJA allows recovery of not only attorneys' fees, but also expert fees and the costs of studies or reports. To control costs, EAJA capped attorneys' fees at $125 per hour, unless the court increases this rate to reflect the cost of living "or a special factor." § 2412(d)(2)(A).

Eligible prevailing "parties" include individuals with a net worth below $2 million at the time the action was filed or businesses, organizations, or local government units with a net worth below $7 million and fewer than 500 employees. § 2412(d)(2)(B). This definition of an eligible "party" was meant to encompass entities deemed "small businesses."

Just before EAJA passed the House, a carve-out was added to remove organizations that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code from the net worth and employee limitations. § 2412(d)(2)(B). Attorney and author Lowell Baier chronicled the history of EAJA in a 500-page book yet found zero discussion in the legislative history of the purpose or origin of this exception. Yet this provision made it through conference and to this day, while an organization like SCI, which is exempt under § 501(c)(4), is subject to the net worth and employee caps, a peer organization which is exempt under § 501(c)(3) is not.[5]

While EAJA does not define the term "prevailing party," that term has been interpreted to mean a party that has obtained some of the relief sought on any significant issue and, specifically, a "judicially sanctioned change in the legal relationship of the parties." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 605 (2001). Courts have found that a settlement which is court-approved and designates the prevailing party can support EAJA

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[1] Lowell E. Baier, *Reforming the Equal Access to Justice Act*, 38 J. Legis. 1, 23 (2012), https://scholarship.law.nd.edu/jleg/vol38/iss1/1 (cited as "*Reforming EAJA*"). Mr. Baier passed away in late November and will be sorely missed in the conservation and legal communities.

[2] *Reforming EAJA* at 23–24.

[3] 28 U.S.C. § 2412; 5 U.S.C. § 504.

[4] Under the "American rule," each party is responsible for its own attorneys' fees and litigation costs. *E.g.*, *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 245 (1975).

[5] In addition, it is worth noting that before EAJA passed the House, language requiring a party to have a "direct and personal interest" in the case was deleted during conference.

fees. *See, e.g.*, *Ctr. for Food Safety v. Vilsack*, 2011 WL 6259891, at *2 (N.D. Cal. Oct. 13, 2011), *report and recommendation adopted*, 2011 WL 6259683 (N.D. Cal. Dec. 15, 2011).

Unequal Justice Under EAJA

I will now turn to the problems that SCI has identified with EAJA's implementation. One of the primary issues is the abuse of EAJA awards by so-called "green" 501(c)(3) organizations. When first enacted, EAJA required courts and agencies to report on the number and amounts of fee awards. The reports showed that awards were modest. Most were in social security and veterans' benefits cases, and in total, EAJA cost only a few million dollars per year. Consequently, Congress eliminated the reporting requirement in the Federal Reports Elimination and Sunset Act of 1995. But rescission of this reporting requirement may have transformed EAJA into what some call the "Unequal Access to Justice Act." According to Mr. Baier, the lack of reporting sparked a surge in 501(c)(3) non-profits suing the government frequently and aggressively, then seeking the recovery of their attorneys' fees under EAJA.[6]

As one example, the Natural Resources Defense Council ("NRDC") sued the U.S. Fish and Wildlife Service and obtained relief on one claim (out of three): the revision of a biological opinion regarding the Endangered Species Act-listed delta smelt. NRDC's attorneys from Earthjustice were awarded over $1.9 million in attorneys' fees under EAJA.[7] In a nearly identical case involving the same attorneys, same biological opinion, same projects, and same result, but three different fish species, Earthjustice received an award of over $2.1 million in attorneys' fees.[8] The awards were not publicly reported but documented in Mr. Baier's research. And these were just some of the at least $5.8 million in EAJA awards to 20 environmental groups in the period 2009-2010, all issued without any reporting to Congress. While this may not seem high in today's dollars, these awards were well above all EAJA payouts combined in the reporting period from 1981–1994.[9] Congress recognized a problem and, in 2019, the John D. Dingell Jr. Conservation, Management, and Recreation Act reinstated reporting for EAJA fee awards per fiscal year in a publicly available database (https://eaja.acus.gov) and annual report to Congress.

This database is not perfect, as we have identified EAJA fee awards that are not included. Still, it contains useful information about the recipients and amounts of EAJA awards. It confirms that over 90% of awards are made to social security and veterans' benefits claimants. These awards are modest. In social security cases, most fee awards are below $9,000; in veterans' cases, most are below $14,000. By contrast, claimants in environmental cases receive much larger awards.

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[6] *Reforming EAJA* at 41–45.

[7] *Reforming EAJA* at 44 (citing *NRDC v. Salazar*, No. 05-CV-1207 (E.D. Cal.), ECF 873 (judgment entered Sept. 23, 2009), ECF 913 (order approving stipulation for $1,906,500 in attorneys' fees to Earthjustice, entered Feb. 1, 2011)). NRDC had net assets in 2024 of 447 million. https://projects.propublica.org/nonprofits/organizations/132654926.

[8] *Reforming EAJA* at 44–45 (citing *Pac. Coast Fed'n of Fishermen's Ass'ns v. Guiterrez*, No. 06-CV-245 (E.D. Cal.), ECF 477 (order approving stipulation for $2,193,500 in attorneys' fees to Earthjustice, entered Jan. 25, 2011)).

[9] *Reforming EAJA* at 49–50.

These payments are concentrated among certain 501(c)(3) non-profit groups and typically exceed $80,000.

For example, in the period 2018 to 2024[10] the Forest Service/Department of Agriculture paid $7,263,200[11], the Department of the Interior paid $11,066,712[12], and the National Marine Fisheries Service/NOAA paid $1,025,000,[13] for a total of $19,354,912.61 in EAJA awards to environmental groups. This represented over 53% of the EAJA awards by those three departments to both environmental and non-environmental plaintiffs from 2018-2024. When you remove the Department of Commerce, EAJA awards to environmental groups by USDA and Department of the Interior represented nearly 80% of the total awards that those two departments paid during the last six years—at least the awards represented in the database.

Many of these payments run afoul of EAJA's intent. EAJA awards were made to certain environmental groups that are not small businesses but rather legal powerhouses. Earthjustice and Center for Biological Diversity, two groups receiving multiple EAJA awards, together have almost 300 attorneys and reported 2024 net assets of $244 million and $54.9 million.[14] Humane Society of the United States (now Humane World for Animals) received at least one EAJA fee award that does not seem to appear in the EAJA Database.[15] Humane World's 2024 net assets were $457.7 million.[16] Other groups that regularly litigate like Advocates for the West and WildEarth Guardians also report millions of dollars in annual receipts but qualify as small businesses under EAJA's definition. These groups often partner together and pay legal fees to "non-profit" law firms such as Earthjustice or Western Environmental Law Center.

One of SCI's primary objections is that these organizations benefit from the generosity of U.S. taxpayers when tax-deductible donations are made then again when they (or their attorneys)

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[10] The database does not contain complete data for 2018 or 2024 for the Department of the Interior. It does not contain any awards before 2020 for the Department of Agriculture.

[11] Awards to all recipients ranged from $1,000 through $650,000, with an average of $120,957 and median of $90,000. It is difficult to identify all repeat recipients because individuals and law firms are often named as awardees instead of the plaintiff organization(s). However, the database indicates that Alliance for the Wild Rockies, Timothy Bechtold, Crag Law Center, Friends of the Clearwater, Matt Kenna, Native Ecosystem Council, Rene Voss, and WildEarth Guardians received multiple awards, sometimes on behalf of themselves and sometimes on behalf of other plaintiffs.

[12] Awards to all recipients ranged from $400 through $1.36 million, with an average of $153,498 and median of $92,000. Again, it is difficult to identify all repeat recipients, but it appears that Advocates for the West, Cascadia Wildlands, Center for Biological Diversity, Earthjustice, Eubanks & Associates, Kenneth Shade, Public Employees for Environmental Responsibility, Western Mining Action Project, Trustees for Alaska, Western Environmental Law Center, and WildEarth Guardians all received multiple awards.

SCI obtained one EAJA award in 2018. Since 2018, SCI has grown and now exceeds EAJA's income limitations.

[13] Awards to all recipients ranged from $82,552 through $375,000, with an average of $224,806 and median of $180,000. Center for Biological Diversity and Oceana, Inc. received fees in more than one case.

[14] https://projects.propublica.org/nonprofits/organizations/941730465; https://projects.propublica.org/nonprofits/organizations/273943866.

[15] *See Ctr. for Biological Diversity v. U.S. Dep't of the Interior*, No. 22-CV-134 (D. Mt. May 16, 2023), ECF No. 24 (stipulated order for attorneys' fees).

[16] https://projects.propublica.org/nonprofits/organizations/530225390.

receive EAJA fee awards. While some of these cases undoubtedly have merit, many do not. A significant number of these cases delay necessary habitat management or simply advance the plaintiffs' ideologies.

SCI's experience includes instances where these groups have secured procedural victories or overturned science-based decisions. While those cases will likely continue even if EAJA is amended, removing EAJA's financial incentive could reduce the motivation to pursue litigation aimed at changing agency priorities. It would also ensure that Treasury funds are not used to finance suits against the U.S. government.

Grizzly bear and gray wolf delisting litigation illustrates the scale of EAJA awards, and the policy concerns they raise. The U.S. Fish and Wildlife Service has twice determined (in 2007 and in 2017) that the Greater Yellowstone Ecosystem population segment of grizzly bears is recovered due to the bears' habitat and population expansion. The same federal district court overturned both the Service's decisions. In the six cases challenging the Service's second delisting, **over $1 million in attorney's fees** were awarded under EAJA to the attorneys representing the six sets of plaintiffs. Likewise, in a case that overturned the Service's delisting of gray wolves in the Great Lakes (a population estimated in the thousands), plaintiffs received at least $330,000 in EAJA fees. These cases demonstrate how EAJA can incentivize litigation undermining agency expertise and science-based decisions. The Service continues to follow the science through reissuing delisting rules and actions, yet it is stymied by repeated litigation.[17]

SCI has also seen a number of settlements where the merits of the case were not considered by a court. In many cases, agencies chose to settle because it was easier or cheaper than prolonged litigation. These settlements often allow non-profits to walk away with a procedural "victory" that generates zero benefit for species, habitat, or the American public—but does generate EAJA fees. Notably, federal agencies may settle because, under EAJA, the government can be liable for "fees on fees." If the government disputes a claim for an EAJA award and loses, it must pay attorneys' fees for the underlying litigation and the litigation over fees.[18] This creates a significant incentive for agencies to settle at every stage of litigation rather than risk escalating costs.

For example, SCI recently defended a U.S. Fish and Wildlife Service decision to continue the use of traditional lead ammunition on the Canaan National Wildlife Refuge. In the 2022-2023 "Hunt Fish Rule", the Service acknowledged the West Virginia Department of Wildlife Resources objected to proposed restrictions on lead ammunition and stated it would withdraw the changes, but "may revisit all or some of the proposed changes in a future rulemaking." 2022-2023 Station-Specific Hunting and Sport Fishing Regulations, 87 Fed. Reg. 57108 (Sept. 16, 2022). Although

[17] For example, after the 2009 delisting rule was vacated, the Service issued another rule in 2011. After that rule was yet again vacated, the Service issued a rule delisting gray wolves across the lower 48 States in 2020.

[18] *Reforming EAJA* at 45–46.

this decision was wholly consistent with the National Wildlife Refuge System Improvement Act[19], three plaintiffs sued and immediately negotiated a settlement with the Department of Justice. In the final settlement, the Service committed to reconsider its decision—something it had already stated that it might do. It also agreed to include the refuge in a pilot program for lead ammunition swaps that was already in development.

Although the Service agreed only to do things it was **already** doing, the plaintiffs claimed to have "prevailed." The Department of Justice and the plaintiffs negotiated $35,000 in attorneys' fees and costs under EAJA. SCI opposed this settlement. Our opposition was noted in the motion for fees.[20] But the federal district court approved the motion for EAJA fees immediately after it was filed—without giving SCI an opportunity to argue our opposition. SCI firmly believes this case did nothing to advance wildlife or habitat conservation and the plaintiffs failed to change the Service's actions in any way. Justice was not served in providing these plaintiffs with $35,000 in taxpayer dollars.

Finally, another significant issue is that many attorneys in environmental cases receive rates far above EAJA's statutory cap of $125/hour. Many courts have broadly interpreted environmental litigation as a specialized area of law that justifies fees above $125 per hour—sometimes several times higher. Courts like the Ninth Circuit have also increased the cap to account for cost-of-living adjustments.[21]

EAJA was designed to **level** the playing field for individuals and small businesses facing the federal government, **not** to bankroll well-funded organizations with extensive legal teams in suing the government. EAJA has evolved into a mechanism that rewards litigation strategies rather than genuine legal redress, as these examples show. While well-intentioned, EAJA is not achieving its purpose in wildlife or environmental litigation.

Bringing the "Equal" Back

SCI believes it is essential to reform EAJA to its original intent. This will protect taxpayer dollars, preserve agency expertise, and ensure that government-funded litigation serves the public interest rather than organizational fundraising goals. A few targeted amendments could resolve

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[19] 16 U.S.C. § 668dd. The Improvement Act was drafted by former U.S. Rep. Don Young, a noted hunter and SCI member. The Act directs the Service to "administer" the National Wildlife Refuge System to make compatible wildlife-dependent recreational uses, including hunting and fishing, the system's "priority general public uses." The U.S. Fish and Wildlife Service must give these uses "priority consideration in refuge planning and management." 16 U.S.C. §§ 668dd(a)(3)(C), 688ee(2). The Act further mandates that "[r]egulations permitting hunting or fishing of fish and resident wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans," 16 U.S.C. § 668dd(m).

[20] *Nat'l Wildlife Refuge Ass'n v. Haaland*, No. 23-CV-2203 (D.D.C. 2023), ECF No. 37 (motion to approve attorneys' fees filed Apr. 30, 2025); ECF No. 38 (order granting stipulation for $35,000 in fees entered May 2, 2025).

[21] For example, the Ninth Circuit has raised the EAJA cap to $251.84. Website, Statutory Maximum Rates Under the Equal Access to Justice Act, available at https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/.

these issues—ensuring equal access to justice rather than favoring litigation by certain non-profits or attorneys.

First, SCI suggests that EAJA be amended to require nonprofit organizations exempt under Section 501(c)(3) meet the same net worth and employee caps as any other organization. Some of these groups are not the "small businesses" or aggrieved private citizens that EAJA was intended to benefit. It is SCI's belief that their ability to recover EAJA fees has fueled and sustained frequent litigation regarding environmental issues.

When EAJA was proposed, the House required that eligible claimants demonstrate a "direct and personal injury" to be redressed in the case. One option would be to reinstate this requirement, which would further limit special interest groups from recovering fees without impacting social security or veterans' benefits claims.

Second, SCI supports additional safeguards to ensure EAJA awards are not misused. This is not a new idea. The 2011 Government Litigation Savings Act, sponsored by Senators Lummis and Barrasso, proposed some of these guardrails. They are worth revisiting. For example:

- Limit the total number of EAJA awards available to one organization per year (e.g., the Government Litigation Savings Act proposed to limit recovery by any one party to three agency adjudications and three civil cases annually);
- Cap the total amount of EAJA fees per organization (and its affiliates) per year;
- Cap the total EAJA award per case (e.g., the Government Litigation Savings Act proposed to limit recovery to $200,000 per case), or adopt a tiered schedule for each stage of litigation (e.g., $10,000 for a complaint, $30,000 for an appeal, etc.)[22];
- Narrow the definition of a "prevailing party" by disallowing EAJA fee awards for settlements or if the plaintiff receives a limited benefit (e.g., further explanation in an agency decision), or remove procedural relief from the definition of a "prevailing party" (e.g., National Environmental Policy Act relief);
- Require complete victory for EAJA fee recovery, rather than permitting a plaintiff to recover fees if it prevails on even one issue; and
- Eliminate "fees on fees" by eliminating the award of attorneys' fees under EAJA if the government contests the initial EAJA fee claim or seeks to prove that its position was "substantially justified."

Third, SCI believes EAJA should impose a strict hourly cap on fees which cannot be exceeded for any reason. This would eliminate the discretion of activist courts to award special

[22] SCI has been involved in several cases where multiple plaintiffs challenge one federal action, sometimes in one suit and sometimes across several suits. We encourage Congress to consider limiting the total available EAJA award even when multiple parties bring multiple suits.

factor rates and ensure consistent, equitable payments. Such a cap should significantly reduce total EAJA awards, reducing the burden on taxpayers as well.

Last, SCI encourages Congress to require direct reporting by courts approving EAJA fee awards. We have identified several cases missing from the EAJA database—which suggests there are potentially more missing cases. Requiring federal courts to submit real-time forms would help improve this data collection and ensure the costs of EAJA are fully recorded.

Conclusion

The federal government should not subsidize special interest groups to sue itself, to stop projects, or to enforce unnecessary procedures. No organization should receive additional taxpayer funds for activities that taxpayers are already funding it to do. EAJA currently incentivizes these actions; therefore, SCI recommends amendments to remove these incentives and level the playing field. SCI respectfully requests that members of the Subcommittee consider legislation that would renew Congress' intent in enacting EAJA and potentially reduce some unnecessary and unproductive litigation by environmental organizations.