



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: Subcommittee on Oversight and Investigations Republican Members
From: Subcommittee on Oversight and Investigations Staff,
Michelle Lane (Michelle.Lane@mail.house.gov), Annika Erickson
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Date: Monday, December 8, 2025
Subject: Oversight Hearing titled “*Abuse of the Equal Access to Justice Act by Environmental NGOs*”

The Subcommittee on Oversight and Investigations will hold an oversight hearing titled “*Abuse of the Equal Access to Justice Act by Environmental NGOs*” on **Wednesday, December 10, 2025, at 10:15 a.m. in Room 1324 Longworth House Office Building.**

Member offices are requested to notify Sinclair Kouns (Sinclair.Kouns@mail.house.gov) by 4:30 p.m. on Tuesday, December 9, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- The Equal Access to Justice Act (EAJA) was originally intended to combat federal overreach and wrongdoing, primarily by shifting the costs of litigation away from veterans, Social Security recipients, and small businesses.
- Over the years, however, environmental non-governmental organizations (NGOs) have used EAJA to fund their lawfare campaigns with taxpayer dollars.
- These NGOs employ various legal tactics to bog down federal agencies with frivolous lawsuits and force those agencies, and ultimately American taxpayers, to foot the bill for their attorney’s fees.
- Federal land management agencies are spending significant portions of their time and budgets on litigation and decision reversals, rather than managing and protecting our natural resources.
- Continued oversight of EAJA awards to environmental NGOs, paired with legislative reform, is imperative to prevent further waste of taxpayer dollars and empower federal agencies to focus on essential activities rather than defending themselves against litigation abuse.

II. WITNESSES

Panel I (Outside Experts)

- **Ms. Regina Lennox**, Senior Litigation Counsel, Safari Club International, Washington, D.C.
- **Mr. Todd Wilkinson**, South Dakota Rancher, DeSmet, SD
- **Mr. Daniel Rohlf**, Professor of Law, Director at Earthrise Law Center, Lewis and Clark Law School, Portland, OR (*Minority witness*)
- **Mr. Travis Joseph**, President and CEO, American Forest Resource Council, Eugene, OR

III. BACKGROUND

Introduction to Litigation Costs in the U.S., the American Rule, and EAJA

Since at least 1796,¹ U.S. federal courts have typically followed the so-called “American Rule,”² which prescribes that litigants generally pay their own litigation costs.³ Fundamentally, the American Rule aims to prevent “losing litigants [from] being unfairly saddled with exorbitant fees for the victor’s attorney[s],” experts, and other litigation costs.⁴ In the U.S., attorneys and their clients are generally free to agree to whatever cost terms they deem appropriate, with quality legal representation typically being expensive.⁵ Consequently, U.S. courts and legislators have long maintained that the American Rule, by generally requiring litigants to pay their own way, maximizes fairness.

Nevertheless, nearly every rule has exceptions, and the American Rule concedes statutory or contractual⁶ fee-shifting provisions.⁷ The American Rule’s exception for statutory fee shifting is especially significant when a party finds itself opposing the federal government. To “deter government overreach and wrongdoing,”⁸ the U.S. Constitution provides for accessible dispute

¹ In *Arcambel v. Wiseman*, 3 U.S. 306 (1796), the Supreme Court of the United held that “the Judiciary itself would not create a general rule, independent of any statute, allowing awards of attorneys’ fees in federal courts” and recognized that the “general practice of the United States is in opposition” to the “inclusion of attorneys’ fees as damages.” *Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240 (1975) (citation modified). Subsequently, in 1853, Congress “undertook to standardize the costs allowable in federal litigation” to further cement the American Rule. *See id.*

² The American Rule stands in contrast with the “English Rule,” which is followed in many other jurisdictions around the world and stipulates that losing parties pay prevailing parties’ costs, including attorney’s fees.

³ *See, e.g., Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240 (1975); JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>; *Civil Resource Manual: 220. Attorney’s Fees*, U.S. DEP’T OF JUST. (1998), <https://www.justice.gov/archives/jm/civil-resource-manual-220-attorneys-fees>.

⁴ *See Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240 (1975).

⁵ *See, e.g., Staci Zaretsky, The Biglaw Firms With The Highest Hourly Rates* (2024), ABOVE THE LAW (Nov. 14, 2024), <https://abovethelaw.com/2024/11/the-biglaw-firms-with-the-highest-hourly-rates-2024/>.

⁶ Although this memo focuses on EAJA, which is an example of statutory fee shifting, contractual fee shifting is also a considerable exception to the American Rule.

⁷ *See, e.g., Alyeska Pipeline Serv. Co. v. Wilderness Soc’y*, 421 U.S. 240 (1975); JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>; *Civil Resource Manual: 220. Attorney’s Fees*, U.S. DEP’T OF JUST. (1998), <https://www.justice.gov/archives/jm/civil-resource-manual-220-attorneys-fees>.

⁸ *See* JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>.

resolution in a judicial forum.⁹ Yet prospective plaintiffs—particularly those who are indigent or otherwise unable to afford expensive legal representation—may be less likely to file suit when facing the immense financial resources of the U.S. government.¹⁰

To address these concerns, Congress enacted “numerous fee-shifting statutes that allowed awards of fees against the [U.S.] only in specific types of cases, such as cases arising under Title VII of the Civil Rights Act or the Freedom of Information Act”¹¹ or the Endangered Species Act (ESA). In 1980,¹² Congress enacted EAJA as a catch-all, fee-shifting statute intended to permit “awards of attorney’s fees [and other expenses] against the federal government in several types of judicial and administrative proceedings,” except as otherwise already covered by more specific statutes allowing or restricting fee awards.¹³

Originally, EAJA served to “diminish the deterrent effect of seeking review of, or defending against, governmental action” through the award of attorney’s fees and other expenses.¹⁴ This largely took the form of helping veterans, social security recipients, and other individuals access unpaid earned benefits by eliminating the financial burdens of suing the federal government.¹⁵ As the National Environmental Policy Act (NEPA), the ESA, and other federal statutes built up a new regulatory morass, the small business community frequently turned to EAJA to make its lawsuits against improper fines and permitting delays worthwhile.¹⁶ Unfortunately, EAJA also enabled prominent nonprofits already flush with cash, particularly those operating in the environmental and natural resources space, to recover the litigation costs of their vexatious lawfare campaigns.¹⁷

Congressional oversight of EAJA awards to radical environmental nonprofit groups is therefore imperative. Such efforts could inspire legislative reforms that would prevent further EAJA abuse by these repeat offenders.

⁹ The idea that everyone is entitled to their day in court is rooted in the First Amendment’s Petition Clause, the Fifth and Fourteenth Amendments’ Due Process Clauses, and, in a criminal context, the Sixth Amendment. *See* U.S. CONST. amend. I; U.S. CONST. amend. V; U.S. CONST. amend. VI; U.S. CONST. amend. XIV, § 1. This idea is also encapsulated by Rule 3 of the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 3.

¹⁰ *See* JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>.

¹¹ *Id.*

¹² EAJA was first temporarily enacted in 1980, then reauthorized permanently in 1985. *Id.*

¹³ *Id.*; *see also* 28 U.S.C. § 2412; 5 U.S.C. § 504; *Information Interchange Bulletin No. 013: Equal Access to Justice Act Basics*, ADMIN. CONF. OF THE U.S. (2021), <https://www.acus.gov/sites/default/files/documents/13%20EAJA%20Basics.pdf>. Fees and other expenses include reasonable expenses of expert witnesses; reasonable costs of any study, analysis, engineering report, test, or project deemed necessary by the court or agency for the preparation of a party’s case; and reasonable attorney fees. 28 U.S.C. § 2412(d)(2)(A); 5 U.S.C. § 504(b)(1)(A).

¹⁴ *About the Equal Access to Justice Act (EAJA)*, ADMIN. CONF. OF THE U.S., <https://www.acus.gov/eaja/background>.

¹⁵ *See Equal Access to Justice Act Reform*, PUB. LANDS COUNCIL (Oct. 27, 2025), <https://publiclandscouncil.org/what-we-do/policy-issues/equal-access-to-justice-act-reform>; *Equal Access to Injustice*, ROCKY MOUNTAIN ELK FOUND. (Sep. 9, 2021), <https://rmef.org/media/equal-access-to-injustice/>.

¹⁶ *See Equal Access to Injustice*, ROCKY MOUNTAIN ELK FOUND. (Sep. 9, 2021), <https://rmef.org/media/equal-access-to-injustice/>.

¹⁷ *Id.*; *see also Equal Access to Justice Act Reform*, PUB. LANDS COUNCIL (Oct. 27, 2025), <https://publiclandscouncil.org/what-we-do/policy-issues/equal-access-to-justice-act-reform>.

EAJA Fundamentals

EAJA “authorizes the award of attorney’s fees and other expenses to certain individuals, small businesses, and other entities who prevail against the federal government in judicial proceedings and certain adversary adjudications when the government’s position is not substantially justified.”¹⁸ Each award arises from one of three EAJA provisions—28 U.S.C. § 2412(d), 28 U.S.C. § 2412(b), or 5 U.S.C. § 504¹⁹—and are paid from an agency’s appropriations or the Department of the Treasury’s Judgement Fund (Treasury Judgment Fund).²⁰

Since at least 2019, most EAJA awards stem from 28 U.S.C. § 2412(d).²¹ In fact, in Fiscal Year (FY) 2024, all but 14 of the 15,710 awards reported in the EAJA Awards Database fell under this provision.²² Fundamentally, 28 U.S.C. § 2412(d) requires²³ that courts award attorney’s fees and other allowable litigation costs to parties prevailing against the U.S. in a civil action, “unless the court finds that the position of the U.S. was substantially justified²⁴ or that special circumstances make an award unjust.”²⁵ EAJA payments under § 2412(d) are generally made from a defendant agency’s appropriations.²⁶

28 U.S.C. § 2412(b) permits²⁷ courts to “award reasonable fees and expenses of attorneys” and other litigation costs to a “prevailing party in any civil action” against the U.S., an agency, or an agency official when the U.S. would be liable for those costs “under the common law or under the terms of any statute which specifically provides for such an award.”²⁸ There have been very few Section 2412(b) awards since 2019,²⁹ with payments generally coming from the Treasury Judgement Fund.³⁰

¹⁸ *About the Equal Access to Justice Act (EAJA)*, ADMIN. CONF. OF THE U.S., <https://www.acus.gov/eaja/background>.

¹⁹ See ADAM CLINE AND LEA ROBBINS, ADMIN. CONF. OF THE U.S., EQUAL ACCESS TO JUSTICE ACT AWARDS REPORT TO CONGRESS FISCAL YEAR 2024 (Mar. 14, 2025),

https://www.acus.gov/sites/default/files/documents/ACUS%20EAJA%20Award%20Report%20FY2024_Final.pdf.

²⁰ See U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-417R, LIMITED DATA AVAILABLE ON USDA AND INTERIOR ATTORNEY FEE CLAIMS AND PAYMENTS (Apr. 12, 2012), <https://www.gao.gov/assets/gao-12-417r.pdf>. When defendant agencies are obligated to pay EAJA fee awards, the Department of Justice “often advances funds and then receives gradual reimbursements from the agency.” JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>.

²¹ See, e.g., ADAM CLINE AND LEA ROBBINS, ADMIN. CONF. OF THE U.S., EQUAL ACCESS TO JUSTICE ACT AWARDS REPORT TO CONGRESS FISCAL YEAR 2024 (Mar. 14, 2025),

https://www.acus.gov/sites/default/files/documents/ACUS%20EAJA%20Award%20Report%20FY2024_Final.pdf.

²² See *id.*

²³ “. . . a court *shall* award . . .” 28 U.S.C. § 2412(d)(1)(A) (emphasis added).

²⁴ The Supreme Court has interpreted “substantially justified” to require that the government show its position was reasonable in both fact and law. See JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>.

²⁵ 28 U.S.C. § 2412(d). See also ADAM CLINE AND LEA ROBBINS, ADMIN. CONF. OF THE U.S., EQUAL ACCESS TO JUSTICE ACT AWARDS REPORT TO CONGRESS FISCAL YEAR 2024 (Mar. 14, 2025),

https://www.acus.gov/sites/default/files/documents/ACUS%20EAJA%20Award%20Report%20FY2024_Final.pdf.

²⁶ See U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-417R, LIMITED DATA AVAILABLE ON USDA AND INTERIOR ATTORNEY FEE CLAIMS AND PAYMENTS (Apr. 12, 2012), <https://www.gao.gov/assets/gao-12-417r.pdf>.

²⁷ “. . . a court *may* award . . .” 28 U.S.C. § 2412(b) (emphasis added).

²⁸ *Id.*

²⁹ For example, in FY 2024, only one of the 15,710 awards reported in the EAJA Awards Database fell under 28 U.S.C. § 2412(b). ADAM CLINE AND LEA ROBBINS, ADMIN. CONF. OF THE U.S., EQUAL ACCESS TO JUSTICE ACT AWARDS REPORT TO CONGRESS FISCAL YEAR 2024 (Mar. 14, 2025),

https://www.acus.gov/sites/default/files/documents/ACUS%20EAJA%20Award%20Report%20FY2024_Final.pdf.

³⁰ See U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-417R, LIMITED DATA AVAILABLE ON USDA AND INTERIOR ATTORNEY FEE CLAIMS AND PAYMENTS (Apr. 12, 2012), <https://www.gao.gov/assets/gao-12-417r.pdf>.

5 U.S.C. § 504 largely mirrors the language of 28 U.S.C. § 2412(d), but extends the requirement to award attorney’s fees and other litigation costs from court proceedings to adversarial adjudications.³¹ Similar to awards under 28 U.S.C. § 2412(b), there have been very few 5 U.S.C. § 504 awards since FY 2019,³² with payments generally being made from an agency’s appropriations.³³

Beyond the requirements that an EAJA awardee “prevail” against the U.S. and show that the U.S.’s position was not “substantially justified,” EAJA relief under 28 U.S.C. § 2412(d) and 5 U.S.C. § 504 is available only to the following categories of prevailing parties:

- individuals with a net worth not exceeding \$2 million at the time of filing;
- businesses or other organizations with net worths not exceeding \$7 million and no more than 500 employees at the time of filing; and
- 501(c)(3) nonprofit groups, which are exempt from EAJA net worth and employee caps.³⁴

A party seeking EAJA awards must file an application for attorney’s fees and other costs within 30 days of final judgment or disposition and support each claim with an itemized statement justifying the award amount sought.³⁵

EAJA’s Current Framework Enables Award Abuse and Undermines Justice

EAJA, as written and implemented in legal practice, is ripe for abuse by environmental NGOs. Because 501(c)(3) organizations are exempt from EAJA’s net worth and size caps, large environmental nonprofits repeatedly file vexatious or frivolous lawsuits against the U.S., correctly expecting that they will likely recoup any funds expended during litigation under EAJA.³⁶ Effectively, EAJA allows these entities to function as large law firms funded by taxpayer dollars.³⁷ They have developed simple but lucrative strategies to exploit EAJA, namely, suing the federal government to block federal actions and then collecting taxpayer-funded attorney’s fees whenever the NGOs prevail or settle in court.³⁸

³¹ See 5 U.S.C. § 504. In the EAJA context, adversarial adjudications are formal agency proceedings before an administrative law judge or other neutral presiding official during which the U.S.’s position is represented by counsel. See *Id.*; 5 U.S.C. § 554.

³² For example, in FY 2024, 13 of the 15,710 awards reported in the EAJA Awards Database fell under 5 U.S.C. § 504. ADAM CLINE AND LEA ROBBINS, ADMIN. CONF. OF THE U.S., EQUAL ACCESS TO JUSTICE ACT AWARDS REPORT TO CONGRESS FISCAL YEAR 2024 (Mar. 14, 2025),

https://www.acus.gov/sites/default/files/documents/ACUS%20EAJA%20Award%20Report%20FY2024_Final.pdf.

³³ See U.S. GOV’T ACCOUNTABILITY OFF., GAO-12-417R, LIMITED DATA AVAILABLE ON USDA AND INTERIOR ATTORNEY FEE CLAIMS AND PAYMENTS (Apr. 12, 2012), <https://www.gao.gov/assets/gao-12-417r.pdf>.

³⁴ See 28 U.S.C. § 2412(d); 5 U.S.C. § 504. See also JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>.

³⁵ See 28 U.S.C. § 2412(d); 5 U.S.C. § 504. See also JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>.

³⁶ Many of these groups also use such lawsuits to fundraise, further benefitting from EAJA and enabling them to sue indiscriminately.

³⁷ See *Equal Access to Injustice*, ROCKY MOUNTAIN ELK FOUND. (Sep. 9, 2021), <https://rmef.org/media/equal-access-to-injustice/>.

³⁸ See *Time to Fix the Broken Equal Access to Justice Act*, HEALTHY FORESTS, HEALTHY COMMUNITIES (May 14, 2025), <https://healthyforests.org/2025/05/time-to-fix-the-broken-equal-access-to-justice-act/>.

Radical nonprofits routinely file aggressive procedural suits, evade EAJA's statutory cap on attorney's fees, and turn weak cases into fee-award settlements.³⁹ Under EAJA, "prevailing" plaintiffs can recover attorney's fees with "even a partial victory or procedural settlement . . . regardless of the lawsuit's broader merit or public benefit."⁴⁰ The federal government also has an incentive to settle disputes, rather than contest the fee award, to reduce the overall attorney's fees that may accrue.⁴¹ This allows plaintiffs to "prevail on process instead of substance."⁴² Worse yet, because the U.S. often fails to adequately contest EAJA fees and regularly concedes prevailing party status to NGOs in settlement agreements, taxpayer dollars effectively fund these nonprofits' sue-and-settle tactics.⁴³

EAJA caps reimbursable attorney's fees at a rate of \$125 per hour, unless the reviewing court or agency determines that "an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee."⁴⁴ The statute, however, does not sufficiently define "special factor," allowing many environmental lawyers to avoid the \$125-per-hour fee cap by claiming that their expertise is "specialized."⁴⁵ Consequently, environmental NGOs have been reimbursed for attorney's fees at rates as high as \$500 per hour.⁴⁶

EAJA awards are often sizeable enough to fund environmental groups' marketing campaigns and donor outreach.⁴⁷ For example, one of the most litigious environmental NGOs, the Center for Biological Diversity (CBD), keeps a "Trump Lawsuit Tracker" that proudly advertises the 57 lawsuits it has filed so far this year against the Trump administration.⁴⁸ During the first Trump administration, CBD's tracker flaunted 266 lawsuits, claiming that "[its] lawyers worked feverishly to oppose every attempt [the Trump] administration made to worsen climate change, kill wildlife, endanger public health, and destroy public lands."⁴⁹ Located next to the running lawsuit total on CBD's website is a "Donate Now" box that solicits contributions to support their lawfare.⁵⁰ Similarly, Earthjustice includes a lawsuit tracker on their website⁵¹ and maintains a donation page thanking the "generous supporters who have helped to make sure the earth has a good lawyer."⁵²

³⁹ See Lowell E. Baier, *Reforming the Equal Access to Justice Act*, 38 J. LEGIS. 1 (2012), <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1000&context=jleg>.

⁴⁰ *Time to Fix the Broken Equal Access to Justice Act*, HEALTHY FORESTS, HEALTHY COMMUNITIES (May 14, 2025), <https://healthyforests.org/2025/05/time-to-fix-the-broken-equal-access-to-justice-act/>.

⁴¹ See Lowell E. Baier, *Reforming the Equal Access to Justice Act*, 38 J. LEGIS. 1 (2012), <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1000&context=jleg>.

⁴² *Id.*

⁴³ See Chairman Westerman to The Wilderness Society, (December 1, 2025) Letters on File with Committee

⁴⁴ 5 U.S.C. § 504(b)(1)(A); 28 U.S.C. § 2412(d)(2)(A).

⁴⁵ See ENDANGERED SPECIES ACT CONGRESSIONAL WORKING GROUP, REPORT, FINDINGS AND RECOMMENDATIONS (Feb. 4, 2014), https://naturalresources.house.gov/uploadedfiles/esa_working_group_final_report_and_recommendations_02_04_14.pdf.

⁴⁶ See *id.* See also Lowell E. Baier, *Reforming the Equal Access to Justice Act*, 38 J. LEGIS. 1 (2012), <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1000&context=jleg>.

⁴⁷ See *Equal Access to Injustice*, ROCKY MOUNTAIN ELK FOUND. (Sep. 9, 2021), <https://rmef.org/media/equal-access-to-injustice/>.

⁴⁸ See *Standing Strong for Life on Earth: Stopping the Second Trump Administration's Anti-Environment Attacks*, CTR. FOR BIOLOGICAL DIVERSITY, https://www.biologicaldiversity.org/campaigns/trump_lawsuits/index.html.

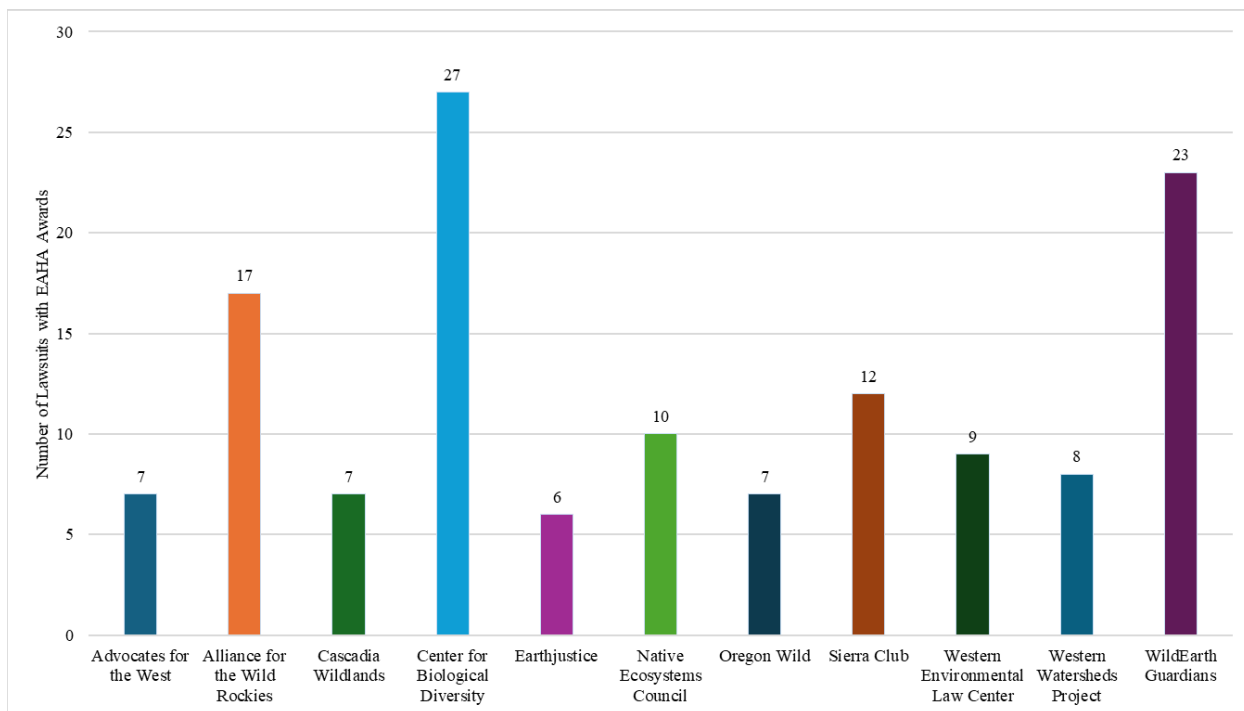
⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See *Our Lawsuits Against the Trump Administration*, EARTHJUSTICE (Aug. 21, 2025), <https://earthjustice.org/feature/trump-environment-lawsuits>.

⁵² *Your Donation at Work*, EARTHJUSTICE (2025), <https://earthjustice.org/about/your-donation-at-work>.

From FY 2019 to FY 2024, the U.S. Department of the Interior (DOI), U.S. Forest Service (USFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Energy (DOE), and Federal Energy Regulatory Commission (FERC) paid \$24.8 million in EAJA awards.⁵³ Approximately 76 percent of those awards, or \$18.8 million, went to environmental nonprofits. Unsurprisingly, only a handful of prominent radical preservationist groups were the awardees for most of these lawsuits, with CBD and WildEarth Guardians leading the charge.⁵⁴



Graph generated using data from the EAJA awards database.⁵⁵ Between FY 2019 and FY 2024, 171 EAJA awards were granted to 501(c)(3) organizations in lawsuits involving DOI, USFS, NOAA, DOE, and FERC. The 11 organizations included in this graph were party to at least 5 lawsuits each during the FY 2019-2024 period.⁵⁶

Environmental Lawfare Impedes Public Lands Management

Environmental NGOs use abusive litigation tactics to delay and hinder any land use or resource management they oppose.⁵⁷ In FY 2023, for example, the federal government paid tens of millions of dollars to serial litigants who had fought to end all grazing on federal land.⁵⁸ These payments diverted funds from essential agency activities aimed at ensuring proper management of federal lands and resources,⁵⁹ including fire mitigation efforts and support for American ranchers.

⁵³ See *EAJA Awards Data: Tables and Statistics*, ADMIN. CONF. OF THE U.S., <https://www.acus.gov/eaja/statistics>.

⁵⁴ See *id.*

⁵⁵ *Id.*

⁵⁶ See *id.*

⁵⁷ See *Equal Access to Injustice*, ROCKY MOUNTAIN ELK FOUND. (Sep. 9, 2021), <https://rmef.org/media/equal-access-to-injustice/>.

⁵⁸ See *Equal Access to Justice Act Reform*, PUB. LANDS COUNCIL (Oct. 27, 2025), <https://publiclandscouncil.org/what-we-do/policy-issues/equal-access-to-justice-act-reform>.

⁵⁹ See *Equal Access to Justice Act Reform*, PUB. LANDS COUNCIL (Oct. 27, 2025), <https://publiclandscouncil.org/what-we-do/policy-issues/equal-access-to-justice-act-reform>.

Similarly, environmental groups have spent decades suing the government to keep grizzly bears listed as an endangered species.⁶⁰ Despite consistent scientific evidence demonstrating sufficient population growth to warrant delisting, NGOs have cited food-source uncertainty or occupied-range expansions to block, through endless litigation, the U.S. Fish and Wildlife Service's (USFWS) decisions on grizzly bears.⁶¹ On two separate occasions, the courts reversed science-based agency decisions and forced relisting, triggering EAJA awards to several groups, including the Alliance for Wild Rockies, CBD, and Sierra Club.⁶² The combined reimbursement request from these NGOs totaled \$1.4 million.⁶³ These taxpayer dollars are taken directly from the budgets of USFWS and other agencies, whose time is spent relitigating the listing of recovered species instead of managing species that face legitimate threats.

Environmental NGOs have also delayed or halted forest management projects, increasing wildfire risk on public lands while collecting attorney's fees under EAJA. In 2016, after spending six years conducting studies and collaborating with local stakeholders, USFS developed the Stonewall Vegetation Project on the Helena-Lewis and Clark National Forest in Montana. The project was designed to enhance wildlife habitat, reduce fire hazards, and improve overall forest health.⁶⁴ The project was halted before implementation, however, when two environmental NGOs, the Alliance for Wild Rockies and Native Ecosystem Council, sued USFS.⁶⁵ Shortly after the injunction, lightning sparked fires in dead and downed timber, eventually burning 18,000 acres, including the project area.⁶⁶ The environmental NGOs that had secured the injunction were able to use EAJA to collect \$100,500 in attorney's fees.⁶⁷ The same two environmental NGOs filed a similar lawsuit in 2020, shortly after USFS issued a revised Stonewall Vegetation Project.⁶⁸

A 2024 study reviewed NEPA-related litigation from 2013 to 2022 and found that environmental reviews are rarely changed as a result of litigation.⁶⁹ Ten well-resourced NGOs initiated 35 percent of the total NEPA challenges brought during the study period, but had a success rate only slightly above that of other plaintiff types.⁷⁰ According to the report, "these [NGOs] make clear that their NEPA litigation is not solely utilized to improve environmental outcomes associated with infrastructure projects, but to obstruct and delay projects themselves, often for the purpose

⁶⁰ See *Equal Access to Injustice*, ROCKY MOUNTAIN ELK FOUND. (Sep. 9, 2021), <https://rmef.org/media/equal-access-to-injustice/>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See *Stonewall Vegetation Project*, U.S. DEP'T OF AGRIC. FOREST SERV. (Sep. 27, 2016), <https://www.fs.usda.gov/r01/helena-lewisclark/projects/archive/30355>. See also Helena-Lewis and Clark National Forest; Montana; Stonewall Vegetation Project, 83 Fed. Reg. 11677 (Mar. 16, 2018), <https://www.federalregister.gov/documents/2018/03/16/2018-05320/helena-lewis-and-clark-national-forest-montana-stonewall-vegetation-project>.

⁶⁵ See *Alliance for the Wild Rockies v. Marten*, No. CV 17-21-M-DLC (D. Mont. May 30, 2017) (order granting preliminary injunction).

⁶⁶ See Helena-Lewis and Clark National Forest; Montana; Stonewall Vegetation Project, 83 Fed. Reg. 11677 (Mar. 16, 2018), <https://www.federalregister.gov/documents/2018/03/16/2018-05320/helena-lewis-and-clark-national-forest-montana-stonewall-vegetation-project>.

⁶⁷ See *Equal Access to Injustice*, ROCKY MOUNTAIN ELK FOUND. (Sep. 9, 2021), <https://rmef.org/media/equal-access-to-injustice/>.

⁶⁸ See *id.* See also *Stonewall Vegetation Project*, U.S. DEP'T OF AGRIC. FOREST SERV. (Sep. 27, 2016), <https://www.fs.usda.gov/r01/helena-lewisclark/projects/archive/30355>.

⁶⁹ See Nikki Chiappa, et al., *Understanding NEPA Litigation: A Systematic Review of Recent NEPA-Related Appellate Court Cases*, BREAKTHROUGH INSTITUTE (June 2024), https://thebreakthrough.imgix.net/Understanding-NEPA-Litigation_v4.pdf.

⁷⁰ *Id.* The top ten NGOs are Sierra Club, CBD, WildEarth Guardians, Natural Resources Defense Council, Alliance for the Wild Rockies, Cascadia Wildlands, Oregon Wild, Defenders of Wildlife, The Wilderness Society, and Western Watershed Project. See *id.*

of preventing the project from ever moving forward at all.”⁷¹ Public lands management projects, particularly forest management projects, were the most common subject of litigation, followed by energy projects. Litigation added an average of 3.7 years and 3.9 years, respectively, for such projects.⁷²

Previous Legislative Proposals for EAJA Reform

Equal Access to Justice Reform Act of 2003 and 2005

The Equal Access to Justice Reform Act of 2003 would have “remove[d] existing barriers and inefficiencies in EAJA” by eliminating the government’s substantial justification defense, raising the net-worth cap to \$10 million for organizations, and broadening the definition of prevailing party to include catalyst cases.⁷³ The bill was reintroduced in the Senate as the Equal Access to Justice Reform Act of 2005 without significant changes.⁷⁴

Government Litigation Savings Act of 2011

The Government Litigation Saving Act, first introduced in 2011, would have revised EAJA provisions relating to the award of fees and other expenses in cases brought against federal agencies. The bill proposed (1) restricting fee awards to parties with a “direct and personal” monetary interest” in an adjudication, including because of “personal injury, property damage, or unpaid agency disbursement”; (2) reducing or denying awards for pro bono representation; (3) limiting awards to \$200,000 in any single adjudication or for more than three adjudications initiated in the same calendar year; and (4) requiring the Administrative Conference to annually report EAJA fee payments made by all agencies and establishing an online searchable database of such payments.⁷⁵

Ideas for Future EAJA Reform

Commentators have proposed various measures to reduce the cost of EAJA to the government and ensure that fee awards benefit only deserving recipients.⁷⁶ Proposed measures to limit costs include removing the “special factor” exception to the attorney’s fee cap, making the \$125-per-hour cap mandatory for all EAJA awards.⁷⁷ Setting annual limits on the amount that can be

⁷¹ Nikki Chiappa, et al., *Understanding NEPA Litigation: A Systematic Review of Recent NEPA-Related Appellate Court Cases*, BREAKTHROUGH INSTITUTE (June 2024), https://thebreakthrough.imgix.net/Understanding-NEPA-Litigation_v4.pdf.

⁷² *Id.*

⁷³ See Equal Access to Justice Reform Act of 2003, H.R. 2282, 108th Cong. (2003), <https://www.congress.gov/bill/108th-congress/house-bill/2282>.

⁷⁴ See Equal Access to Justice Reform Act of 2005, S. 2017, 109th Cong. (2005), <https://www.congress.gov/bill/109th-congress/senate-bill/2017>.

⁷⁵ See Government Litigation Savings Act, S. 1061, 112th Cong. (2011), <https://www.congress.gov/bill/112th-congress/senate-bill/1061>. See also Government Litigation Savings Act, H.R. 1996, 112th Cong. (2011), <https://www.congress.gov/bill/112th-congress/house-bill/1996>.

⁷⁶ See JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>.

⁷⁷ See *id.* See also Regina Lennox and Ryan Bronson, Presentation on the Equal Access to Justice Act (Oct. 22, 2025); *Reforming the Equal Access to Justice Act*, FEDERAL FOREST RESOURCE COALITION, <https://fedforestcoalition.org/reforming-the-equal-access-to-justice-act/>.

awarded to any one entity or capping the number of recoverable hours per lawsuit could also help reduce costs to the government.⁷⁸

Concerned by abusive litigation from NGOs with in-house lawyers, some commentators have proposed holding 501(c)(3) organizations and the legal teams representing individuals to the same net worth and size standards as other organizations.⁷⁹ Others have proposed limiting eligible EAJA awardees to those with a direct and personal interest in the adjudication or civil action.⁸⁰ Measures that narrow how a party can “prevail” would also help reduce abusive litigation in which plaintiffs prevail on process rather than substance. For example, prohibiting attorney’s fees for administrative relief and requiring complete victory to award attorney’s fees could discourage frivolous lawsuits.⁸¹

Conclusion

EAJA incentivizes environmental NGOs to target federal agencies with lawfare and encourages the government to settle with these groups to reduce costs.⁸² As the government’s authority to settle in these cases is “unmediated and unreviewable” and can be used to “appease repeat litigants,” environmental activists have warped the justice system and burdened agencies with lawsuits that divert personnel and resources from core missions.⁸³ These lawsuits prevent necessary land management activities and thwart the efforts of President Trump and Congressional Republicans to safeguard American energy independence and support responsible management of our natural resources. Without reform, EAJA will continue to be abused, and the American taxpayers will be on the hook for attorney’s fees and endless cycles of costly litigation.

⁷⁸ See JOANNA R. LAMPE, CONG. RSCH. SERV., IF11246, ATTORNEY’S FEES AND THE EQUAL ACCESS TO JUSTICE ACT: LEGAL FRAMEWORK (June 2, 2023), <https://www.crs.gov/Reports/IF11246>; Regina Lennox and Ryan Bronson, Presentation on the Equal Access to Justice Act (Oct. 22, 2025); *Equal Access to Justice Act Reform*, PUBLIC LANDS COUNCIL, <https://publiclandscouncil.org/what-we-do/policy-issues/equal-access-to-justice-act-reform>.

⁷⁹ See Regina Lennox and Ryan Bronson, Presentation on the Equal Access to Justice Act (Oct. 22, 2025).

⁸⁰ See *id.*; *Reforming the Equal Access to Justice Act*, FEDERAL FOREST RESOURCE COALITION, <https://fedforestcoalition.org/reforming-the-equal-access-to-justice-act/>.

⁸¹ See Lowell E. Baier, *Reforming the Equal Access to Justice Act*, 38 J. LEGIS. 1 (2012), <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1000&context=jleg>. See also Regina Lennox and Ryan Bronson, Presentation on the Equal Access to Justice Act (Oct. 22, 2025).

⁸² See Lowell E. Baier, *Reforming the Equal Access to Justice Act*, 38 J. LEGIS. 1 (2012), <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1000&context=jleg>.

⁸³ *Id.*