EAJA: Negative Impacts of a Positive Bill

Imagine this; you are driving down the road and a U.S. postal service vehicle doesn't see you at an intersection and proceeds to crash into the side of your vehicle, leaving you with a mild concussion. Your insurance won't cover you, so you have to go to court. The postal service worker will be represented by lawyers provided through the U.S.P.S., but you will have to personally pay to represent yourself. This could easily cost you thousands of dollars of your hard-earned money. The government realizes that its vast power is going to lead to accidents and negligence. That is why they created the Equal Access to Justice Act to pay for lawyer fees in prevailing cases. Today most of us recognize it as a machine used by environmental organizations to cause constant litigation involving agencies managing public land use, such as the BLM and Forest Service. Over the last 25 years, officials managing public lands have seen their jobs become increasingly constricted. So what exactly is this bill?

Overall, the Equal Access to Justice Act, or EAJA, is a positive and useful bill allowing for people who have legitimate cases against the United States to be represented and not have to worry about legal fees they can't afford. Without the help of EAJA, and other fee-shifting statutory bills, very few of us would have the power or resources to fight back. If the government has been negligent with their power, then those who are affected have the right to compensation without the expensive legal fees that they may not be able to afford. There are, however, certain regulations within the bill to prevent large corporations and rich individuals from using EAJA as a free ticket in court. An individual cannot apply for reimbursement if their net worth is over one million dollars and a similar cap of seven million is put in place for corporations. Also, lawyers cannot receive over $205.25 an hour in fees according to 2019 statutory rates. This may seem like a lot of money, but in the legal world, it is basically minimum wage. The design of EAJA

was meant as a form of relief, not income. There are, however, ways to get around these caps. This has caused major issues in the past, especially in regard to the "environmental groups" that created the widespread outrage concerning this bill.

We all know that non-profit organizations are exempt from most taxes and regulations. The same is true with EAJA. Non-profit organizations are not limited to the caps that all other businesses are. This exception was put in place because their money is generally gathered for charitable purposes. The problem is that this allows non-profit environmental groups these same rights. Some of which have a net worth of almost one hundred million, allowing them to easily represent themselves in court, even with expensive lawyers..

Another loophole is a clause within the act that allows exceptions to be made for lawyers with special abilities. Originally intended for requirements such as bilingual attorneys, this clause has been stretched to fit many other lawyers into this category. Environmental lawyers argue the fact that they have special backgrounds in biological and environmental sciences, thus deserving higher pay. I believe this once again ventures away from the main purpose of EAJA. A study by Budd-Falen law offices found that in some cases, specialty environmental lawyers were paid up to $750 an hour. This is over triple the amount of money that a normal lawyer could receive in fees and personally seems somewhat ridiculous. Obviously, not all cases have this high of a payout, but there is a definite advantage giving these groups a path to cause constant litigation with little expense.

The main reason that EAJA hasn't been changed is due to the Sunset Act of 1995. This removed expensive reports, but made it more difficult to track payments. Few records exist, but a study in 2009 by Lowell Baier found that at least $5.8 million were spent through EAJA on environmental groups that year alone. Having such little knowledge of where my money will be

going as a tax-paying citizen is unnerving. Luckily, the lack of reports was recognized as a problem. In March of 2019, EAJA was ordered to provide annual spending reports, giving us hope in years to come, but the issue isn't just money. These groups, such as the well known Western Watersheds Project and the Sierra Club Foundation, use this bill to create massive impacts on the use of rangelands.

They sue state and federal agencies about procedures and guidelines laid out in protective laws such as the Endangered Species Act. Whether litigating agencies such as the Fish and Wildlife Service, or the Environmental Protection Agency itself, these groups work out ways to effectively stop practices that they consider harmful to the environment, such as effects on wildlife and waterways. I am not saying that enforcing federal procedures is wrong, but rather the way and extent to which they are enforced needs rethinking. I believe that it is important to have groups such as the Sierra Club challenge fossil fuel use, and Western Watersheds challenge grazing. On a small scale, these groups push us to be better stewards of the land, however, the ability to continuously file suits allows them to constantly constrict public lands officials trying to do their jobs. Western Watersheds has a large impact on many ranchers' abilities to graze public lands, including my family. Controversy over the Greater Sage Grouse has put hundreds of ranchers under the gun when it comes to how they can use their grazing privileges, including restrictions on the allotment that my family uses. Most of these came from a case back in 2005 that stopped all grazing on 800,000 acres of land in the Jarbidge Natural Resource area due to a claimed decrease in grouse populations.

What doesn't come up in these cases is how most graziers, as well as other land users, have the utmost respect for the land and do everything in their power to maintain and improve the environment that they are impacting. Rangeland officials work with land users to implement

plans to improve land and wildlife. Plans such as these have shown that sage grouse populations have been increasing and that we are actually helping their environment, contradictory to evidence provided during the Jarbidge case. I am not denying that there are those who abuse their privileges and need to be more responsible about taking care of the environment, but we all deal with the repercussions that come with their misuse. When these cases come to court, the outcome often affects many, if not all users of the land. The evidence presented in these cases can also disqualify our ability to use EAJA through substantial justification. This creates an unfair situation for all of us. However, there is hope that we can change these issues.

The first step is to revise the Equal Access to Justice Act. Progress is already being made with multiple bills having been presented before Congress. The abuse of this bill has become a widespread concern, and the government is taking a close look into non-profit, special interest groups. Revising EAJA will help us exponentially, but it isn't going to fix this situation on its own. It would be nice if we could simply cooperate with these groups and conduct research side by side, resolving our issues peacefully, but that is not a realistic solution. It is highly unlikely that we would convince some of these organizations to cooperate and help us, especially when they expressly want to get rid of multiple uses on rangelands. I believe that the most important part of the problem is that a large portion of the public is unaware of what we do and what our situation is. We need to be actively educating others about rangelands. We need to find better ways to have our research readily available and as accurate as possible, showing both the benefits of public land use and the pending issues we are addressing. We can do this by working side-by-side with rangeland professionals, ensuring consistency and reducing litigation. By having both the public and decision-making officials more informed, we can find realistic compromises and facilitate the process of revision. This will help BLM and Forest Service

officials to get back to doing their intended jobs without the constant litigation they currently face. Fixing EAJA is the first step of fixing a 25-year problem we face every day.

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