

Alliance for Justice ▫ **American Association for Justice**
American Federation of State, County and Municipal Employees
Americans United for Separation of Church and State
Center for Effective Government ▫ **Center for Food Safety**
Center for Justice & Democracy at New York Law School
Center for Science in the Public Interest ▫ **Disability Rights Education and Defense**
Fund (DREDF) ▫ **Earthjustice** ▫ **Human Rights Defense Center**
Lambda Legal Defense and Education Fund, Inc.
Legal Aid Society-Employment Law Center ▫ **NAACP**
National Center for Youth Law ▫ **National Employment Law Project**
National Health Law Program ▫ **National Law Center on Homelessness & Poverty**
National Police Accountability Project, Inc. ▫ **National Senior Citizens Law Center**
New York Lawyers for the Public Interest ▫ **People for the American Way**
Public Citizen

June 10, 2014

Re: Please Defend Citizen Enforcement and the Rule of Law—Oppose the “Endangered Species Litigation Reasonableness Act” (H.R. 4318)

Dear Representative:

For decades, Congress has recognized the critical role that citizens play in enforcing our most fundamental federal laws. Under many statutes—including those securing civil rights, consumers, the environment, government transparency, people with disabilities, private property, public health, and workers—Congress has authorized the filing of enforcement actions by Americans of all political persuasions. Recognizing that such cases can only be brought with the assistance of competent counsel, Congress has also provided for “reasonable,” market-based reimbursements of citizens’ attorneys’ fees when their suits are successful. H.R. 4318 is an irresponsible attack on this system of citizen enforcement. We urge you to oppose it.

Private actions are essential to the laws they enforce. As the Supreme Court has emphasized, a citizen who brings an enforcement action “does so not for himself alone but also as a ‘private attorney general,’ vindicating a policy that Congress considered of the highest priority” (*Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968)). In order to ensure citizens have the resources required to fulfill this role, Congress has long allowed those who file successful suits to recover their litigation costs—including “reasonable” attorneys’ fees, based on

prevailing market rates.¹ The importance of these fee-recovery provisions lies beyond dispute. If a citizen ““does not have the resources”” to pursue an enforcement action, ““his day in court is denied him; the congressional policy which he seeks to assert and vindicate goes unvindicated; and the entire Nation, not just the individual citizen, suffers”” (*City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986) (quoting 122 Cong. Rec. 33,313 (1976))).

H.R. 4318, the so-called “Endangered Species Litigation Reasonableness Act,” is an assault on citizen enforcement and the rule of law. If enacted, the bill would place an unreasonable cap on the recovery of attorneys’ fees in suits brought under the Endangered Species Act. By limiting fee recoveries to below-market rates, H.R. 4318 would make it difficult for many citizens to obtain effective legal representation—undermining enforcement of the law. The bill would also establish a dangerous precedent, threatening every other statute that Congress has secured with a fee-recovery provision.

While the sponsors of H.R. 4318 have attempted to obscure its impact by relying on the limits of the Equal Access to Justice Act, members of both parties have acknowledged that EAJA’s \$125 cap is outdated and inadequate. As Rep. Howard Coble has explained, “in many parts of the country a good lawyer, the kind you would want to hire if the Federal Government was on the other side, costs in excess of \$125 per hour” (House Judiciary Committee, Oct. 11, 2011). H.R. 4318, in other words, would defy the very purpose of federal fee-recovery provisions by denying citizens ““full and complete”” reimbursement of their litigation costs and accordingly discouraging private enforcement of basic statutory protections (*Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 483 U.S. 711, 737 (1987) (quoting H.R. Rep. 94-1558)).

On behalf of our millions of members and supporters, we ask that you defend citizen enforcement and the rule of law by opposing H.R. 4318.

Sincerely,

Nan Aron
President
Alliance for Justice

Linda A. Lipsen
Chief Executive Officer
American Association for Justice

¹ See, e.g., 5 U.S.C. § 552(a)(4)(E)(i) (freedom of information); 15 U.S.C. § 2060(c) (consumer-product safety); 29 U.S.C. § 794a(b) (disability rights); 29 U.S.C. § 2617(a)(3) (workers’ rights); 42 U.S.C. § 1988(b) (civil rights); 42 U.S.C. § 5207(c)(3) (gun rights); 42 U.S.C. § 7604(d) (clean air).

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