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Appellate Division, First Department Case No. 2024-02497

Court of Appeals
of the
State of New York

In the Matter of the Application of

LUCIA JAQUEZ,

Petitioner-Respondent,

v.

DANIEL TIETZ, as Commissioner of the New York State Office of Temporary
and Disability Assistance,

Respondent-Appellant,

GARY JENKINS, as Commissioner of the New York City Human Resources
Administration,

Respondent,

For a Judgment Pursuant to Article 78 of the Civil Practice Law & Rules.

**PROPOSED BRIEF OF AMICI CURIAE ACCESS TO JUSTICE
ORGANIZATIONS IN SUPPORT OF PETITIONER-RESPONDENT**

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STATUS OF RELATED LITIGATION

Amici curiae state that they are not aware of any related litigation. *See* Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.13(a).

CORPORATE DISCLOSURE STATEMENT

Amici curiae the National Center for Access to Justice (“NCAJ”), the Center on Civil Justice at New York University School of Law, and Fordham Law School’s Feerick Center for Social Justice state that they have no corporate parents, subsidiaries, or affiliates. No other person or entity other than amici has contributed to the preparation or submission of this brief. Additionally, no party or party’s counsel contributed money that was intended to fund preparation or submission of this brief. *See* Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. §§ 500.1(f), 500.23.

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INTERESTS OF AMICI CURIAE

The National Center for Access to Justice (“NCAJ”) is a national nonpartisan, nonprofit organization based at Fordham Law School that seeks to ensure that all individuals have a meaningful opportunity to assert their rights, be heard, and obtain the protection of the law. NCAJ uses data, research, and policy analysis to identify how the legal system fails to deliver justice, and then develops and drives policy solutions to these issues. NCAJ’s flagship project, the Justice Index, analyzes and ranks states based on their adoption of selected best policies, and serves as a resource for initiatives to increase access to justice across the country. *See* Justice Index, Nat’l Ctr. for Access to Justice, <https://ncaj.org/state-rankings/justice-index>. NCAJ has a significant interest in ensuring that legal mechanisms that promote access to justice are meaningful, and that the law is fair.

The Center on Civil Justice at New York University School of Law is dedicated to advancing an American civil justice system that is accessible, efficient, and equitable. The Center conducts research, convenes practitioners and scholars, and advocates for legal procedures and reforms that broaden access to the courts, improve the administration of civil justice, and promote just outcomes. Among its core areas of focus is access to justice, including the challenges faced by individuals who seek to vindicate legal rights without adequate resources or representation. The Center has a strong interest in advancing individuals’ ability to seek judicial relief.

Fordham Law School's Feerick Center for Social Justice is committed to protecting the rights of low-income and marginalized New Yorkers and individuals seeking humanitarian relief. The Center works with bar associations, community partners, legal services organizations, nonprofit organizations, and public-sector entities to foster long-term solutions to persistent social justice concerns. Through collaboration, direct service, and education, the Center endeavors to expand meaningful access to justice for those least able to navigate the legal system on their own. The Center has a substantial interest in the ability of individuals of limited means to exercise their rights.

This case implicates interests central to amici's missions. The availability of catalyst theory attorneys' fees under the Equal Access to Justice Act bears directly on New Yorkers' access to justice. In this brief, amici show that the catalyst theory is necessary to achieve the EAJA's statutory purpose of enabling people to obtain lawyers to vindicate their rights in circumstances in which unjustified agency action—here, the government's failure to apply the established law, and thus its unjust withholding of \$7,000 from Ms. Jaquez—necessitates litigation that prompts the agency to correct its error after filing of the lawsuit and prior to a ruling from the court. Amici also show how the catalyst theory advances the goal of the EAJA by reinforcing agency adherence to law in future decisionmaking, thus helping to stabilize our rule of law and to secure good government.

PRELIMINARY STATEMENT

The New York Equal Access to Justice Act (“EAJA”) serves two important aims: “to improve access to justice by the state’s most economically challenged citizens, and to reduce and correct erroneous decisions by state agencies.” A.63 (Decision & Order, App. Div., 1st Dep’t). It serves those aims by awarding attorneys’ fees to litigants who prevail in challenging erroneous agency decisions. With too circumscribed an opportunity to recoup fees, people like Petitioner Ms. Jaquez who lack the means to afford lawyers would lack the ability to challenge wrongful agency action in court and be left to bear the consequences of the agency’s error. At the same time, the EAJA balances concern for the public fisc by authorizing fees only when the government cannot demonstrate that its decision was substantially justified.

Petitioner’s brief ably addresses how the catalyst theory advances the first aim of the EAJA. Amici write to underscore how fee-shifting serves the EAJA’s second aim—to ensure that state agencies follow the law in the first place and engage in prompt and meaningful correction of any errors, thereby promoting good government and the rule of law.

The catalyst theory of fee-shifting vindicates the EAJA’s second purpose. Under the catalyst theory, a petitioner is considered a prevailing party entitled to attorneys’ fees not only when the petitioner obtains court-ordered relief but also

when the lawsuit “catalyze[s]” the State to provide the relief sought. *See Matter of Liu v. Ruiz*, 200 A.D.3d 68, 70 (1st Dep’t 2021).

The catalyst theory advances the EAJA’s expectation that agencies correctly apply the law, and relies on the tool of fee-shifting to reinforce accurate decisionmaking. Absent the catalyst theory, rule of law is diminished, as an agency can delay correcting even obvious and egregious errors without real risk of fee-shifting: it can litigate an unjustifiable position, or take an indefinite amount of time to reconsider its error, or even maintain the unlawful position against repeated challenges and then avoid fees—each time—if it abandons its position before the court reaches its judgment. By exposing an agency to a real risk of fees once the agency makes litigation of an unjustifiable position necessary, the catalyst theory incentivizes agencies to apply the law properly, and correct errors promptly, before litigation becomes necessary at all and certainly before extended litigation increases the amount of avoidable legal fees.

The catalyst theory also helps to motivate agencies to implement structural changes to prevent future errors from recurring. In this additional way, the catalyst theory furthers adherence to the law, which is a fundamental objective of the EAJA’s access to justice goal. By giving appropriate reach to the EAJA’s fee-shifting obligation, the catalyst theory also promotes good government by empowering government lawyers to give candid advice to their agency clients.

The catalyst theory, critically, is not an unbounded obligation, but rather is circumscribed to prevent unwarranted claims on government resources. The “substantial justification” standard—under which an agency does not owe fees if its conduct had a reasonable basis in fact and law—sets a limit by ensuring that the public fisc is not taxed for reasonably held, but ultimately unsuccessful agency positions.

FACTUAL BACKGROUND

Ms. Jaquez’s case illustrates how the catalyst theory furthers the EAJA’s twin goals of expanding access to justice and encouraging agencies to correct their errors. The New York City Human Resources Administration (“HRA”) seized Ms. Jaquez’s benefits without adequate justification. A.12. This heavily burdened Ms. Jaquez, a disabled mother of three, who depends on public subsistence benefits. Ms. Jaquez requested and appeared at a fair hearing to challenge the seizure. HRA did not appear and offered no additional evidence.

Nevertheless, the New York State Office of Temporary and Disability Assistance (“OTDA”) affirmed HRA’s decision, holding that Ms. Jaquez had failed to carry her evidentiary burden. A.18. That ruling rested on an unjustifiable error of law. The governing regulation places the burden of proof on the agency, not the recipient: “*the social services agency must establish that its actions were correct.*”

18 N.Y.C.R.R. § 358-5.9(a)(2) (emphasis added). Indeed, the government has never argued that its decision was either correct, or substantially justified.

By imposing the wrong burden of proof on Ms. Jaquez, OTDA and HRA deprived her of benefits that she needed and to which she was entitled. Ms. Jaquez complied with the formal agency requirement of requesting a fair hearing only to see her benefits continue to be withheld. She then asked OTDA to reconsider its ruling pursuant to the agency's discretionary reconsideration procedure, but she never received a decision or any indication from OTDA of when reconsideration might take place, and whether a decision would be made before the statute of limitations to file an Article 78 proceeding expired.¹

In other words, Ms. Jaquez diligently pursued the established channels for redress, including the agency's discretionary reconsideration option. But to no avail.

¹ OTDA's error correction option, referred to as "reconsideration" but not titled as such in the pertinent regulation 18 N.Y.C.R.R. § 358-6.6, provides that OTDA "may review an issued fair hearing decision for purposes of correcting any error found in such decision," and may, after review and notice, "correct any error of law or fact which is substantiated by the fair hearing record." However, this process, in contrast to the "right" to a fair hearing, 18 N.Y.C.R.R. § 358-3.1, is discretionary ("may review" and "may . . . correct"), 18 N.Y.C.R.R. § 358-6.6. The agency's error correction regulation does not provide for tolling of Article 78's four-month statute of limitations. *See* C.P.L.R. § 217. Nor does it impose any limit on the time the agency may take to complete the reconsideration process. 18 N.Y.C.R.R. § 358-6.6(a). OTDA's reconsideration regulation covers review of determinations regarding multiple social services programs including, for example, the Supplemental Nutrition Assistance Program and the Home Energy Assistance Program. *See* 18 N.Y.C.R.R. § 358-1.1.

Only after Ms. Jaquez sued in court did OTDA reverse its error and release the \$7,000 it had been withholding from Ms. Jaquez, 11 months after her initial request for a fair hearing. Significantly, “OTDA failed to argue before [the] Supreme Court that the commencement of this proceeding was not a catalyst that prompted it into action to reverse its original” decision. A.63-64 (Decision & Order, App. Div., 1st Dep’t). The Appellate Division accordingly “decline[d] to consider this new argument on appeal.” *Id.*

OTDA and HRA engaged in a cascade of missteps. At the outset, HRA took a substantively unreasonable position. At the fair hearing stage, OTDA affirmed HRA’s erroneous position without meaningful participation from HRA itself, in a clear and continuing violation of applicable law.

The promise of reconsideration was illusory. Because Ms. Jaquez received no indication that OTDA would reconsider its ruling before the limitations period for her Article 78 claim expired, she was forced to bear the burden of filing litigation which caused the court, the State, and thus the taxpayer to expend resources.

Ms. Jaquez should never have had to bring this lawsuit, but because she did—and because she was awarded attorneys’ fees when she obtained the relief requested—OTDA now has an incentive both to avoid the same mistake in the future and to promptly correct its errors before claimants harmed by such errors are forced to sue.

ARGUMENT

I. A CORE PURPOSE OF THE EAJA IS TO PROMOTE GOOD GOVERNMENT BY PROVIDING ACCESS TO JUSTICE THAT CORRECTS AGENCY ERROR

When New York’s lawmakers passed the EAJA nearly forty years ago, they understood that access to justice was impeded by practical obstacles to litigating erroneous agency decisions. Allowing prevailing parties “to recover fees and litigation expenses” enabled injured parties ““who often lack the resources necessary to vindicate their civil and legal rights”” to do so. *Kimmel v. State*, 29 N.Y.3d 386, 397 (2017) (quoting Letter from New York Lawyers for the Public Interest, Inc., New York State Bill Jacket for Chapter 770 of the Laws of 1989, at 46 (“Bill Jacket”)). New York’s lawmakers also understood that access to justice would promote good government by holding agencies accountable for error.

The EAJA was driven in significant measure by the Legislature’s recognition that the public has an interest in the government acting lawfully. When the EAJA was enacted, state lawmakers described the statute as an instrument to increase access to justice and thereby advance good government. The bill’s sponsor explained that the EAJA would “place the State and [low-income] litigants on more equal footing” and would help ensure that agencies are “more responsive and accountable.” Schimminger Letter, Bill Jacket at 6-7. The sponsor further explained that, “[i]f . . . agencies are abusing their powers, then legislation such as this will rightly rein in any abuse.” *Id.* at 7. In his view, “[e]nacting this measure would send

a clear signal to both the business community and the public at large that the State is not afraid to have its agencies held up to the highest standards.” *Id.* This legislative history shows what the access to justice provided by the EAJA is meant to accomplish: correction and prevention of agency error.

The Legislature understood fee-shifting as a key tool for improving public trust in state government. Governor Cuomo, in approving the bill, called it “highly desirable” to enact an appropriate “program of providing recompense for the cost of correcting official error.” *Matter of New York State Clinical Lab’y Ass’n, Inc. v. Kaladjian*, 85 N.Y.2d 346, 354 (1995) (citing Governor’s Approval Mem., Bill Jacket at 20-21). In other words, the EAJA was intended to shift the cost of correcting agency error to the government and thereby hold the government accountable for its own mistakes. Public supporters celebrated that, by “lowering the economic barriers facing low income individuals or small businesses that lack the resources to contest unjustified governmental action,” the bill “promote[d] accountability in government.” Letter from New York Lawyers for the Public Interest, Inc., Bill Jacket at 46-47. Supporters similarly noted that the legislation “provide[d] a mechanism for overcoming the economic barriers that frequently prevent poor persons from contesting erroneous agency actions,” and was “likely to result in deterring unreasonable government conduct.” Letter from Eileen R. Kaufman, Chair of Touro Law School Committee on Public Interest Law, Bill Jacket

at 48-50. It is plain from this legislative history that, by increasing access to justice, the EAJA was intended to facilitate both the prevention and the correction of official error in furtherance of government accountability.

II. THE CATALYST THEORY IS ESSENTIAL TO THE EAJA’S STATUTORY PURPOSE OF PROVIDING ACCESS TO JUSTICE AND IS SUPPORTED BY THE STATUTORY TEXT AND STRUCTURE

The catalyst theory is essential to the EAJA’s purpose of promoting access to justice because it ensures that the government actually bears a risk of fee-shifting when it forces litigation of an improper agency decision. That risk is what creates the incentive for agencies to avoid errors in the first place and to correct them diligently when they occur. Fee-shifting under the EAJA applies when a party “prevail[s]” against the State. C.P.L.R. § 8601(a). Under the catalyst theory, a party “is considered to have ‘prevailed’ for purposes of collecting attorneys’ fees if commencement of the litigation ‘catalyzed’ the State into voluntarily offering to him or her, in substantial part, the relief that he or she was seeking” without a court order. *Liu*, 200 A.D.3d at 70. Absent the catalyst theory, the State would bear no real risk of fee-shifting under the EAJA. It could always circumvent fee-shifting by “voluntarily” changing its position, thereby mooting the case, whenever it appeared likely to lose even after parties have expended substantial resources to litigate the case. The State’s own brief proves this point. The State argues that, in order for a party to prevail and be entitled to fees, the party must obtain court-ordered relief.

See Appellant Br. at 25. Under the State’s theory, the incentive structure of the EAJA would be overridden, since a party would not be entitled to attorneys’ fees where, at the last second, the State conceded its position in order to moot the case and avoid a court order, regardless of how meritorious the claim or how many resources were required to litigate. In that scenario, the State bears no risk of fee-shifting at all, because the State alone—and entirely—controls whether fees shift.²

The First and Third Departments have properly recognized that the catalyst theory “is critical to achieving the legislative purpose behind the State EAJA.” *Matter of Solla v. Berlin*, 106 A.D.3d 80, 92 (1st Dep’t 2013), *rev’d on other grounds*, 24 N.Y.3d 1192 (2015). In *Solla*, the First Department concluded that “[i]t would be inconsistent with the laudatory goals of the State EAJA to interpret the legislation as depriving plaintiffs of attorneys’ fees simply because the State decided to concede its position.” *Id.* at 93; *see also* A.63 (Decision & Order, App. Div., 1st Dep’t) (“The EAJA’s provision of attorneys’ fees to prevailing parties ensures that state decisions can be challenged by the people affected by them—people who might otherwise be forced to acquiesce in erroneous decisions that profoundly affect their lives. The

² Without catalyst fees, a future agency could adopt a policy of reversing decisions only in response to litigation, since it could effectively guarantee it would never have to pay attorneys’ fees under the EAJA if it “voluntarily” changes its decision after the litigation is filed. Such a policy would detrimentally impact the availability of counsel to individuals seeking to challenge agency actions.

catalyst theory serves these objectives.”). The Third Department, in *Matter of Markey v. Tietz*, 244 A.D.3d 78 (3d Dep’t 2025), similarly recognized that catalyst fees are essential to advance the EAJA’s aim to promote access to justice:

[T]he legislative history and statutory purpose clearly indicate that the Legislature wanted to reach parties reluctant to seek judicial review of meritorious claims because the *prospect* of maintaining a costly action was too daunting. Consistent with this history and purpose, we do not read the statute to require parties to an action against the State who obtain everything in their prayers for relief to have actually endured expensive, years-long litigation to obtain it.

Id. at 87 (emphasis in original). A contrary conclusion would “undermine[] the State EAJA’s purpose by discouraging plaintiffs and petitioners with modest finances from challenging final agency determinations so obviously wrong that the State simply declines to defend them in court.” *Id.* at 86-87.

The catalyst theory is consistent with the title, text, and structure of the EAJA, as well as necessary to its purpose. Beginning with the text, the EAJA awards fees to a “prevailing party,” but does not specify that a party must obtain a court-ordered final judgment to “prevail.” C.P.L.R. §§ 8601(a), 8602(f). The statute instead focuses on whether the petitioner obtained the relief sought, defining a prevailing party as one who “prevails in whole or in substantial part.” *Id.* § 8602(f). As the First Department has explained, “[h]ad the legislature desired to define the term further so as to clarify that some ‘judicial imprimatur’ was necessary, again, it knew how to do so.” *Solla*, 106 A.D.3d at 88. The statute’s definition of “final judgment”

as “a judgment that is final and not appealable, and settlement,” C.P.L.R. § 8602(c), also supports the conclusion that the EAJA provides for catalyst fees. The use of the term “settlement” in the definition of final judgment, as opposed to “order of settlement” or similar, confirms that a successful petitioner is eligible for fees under the New York statute even when relief is obtained without a judicial determination. *See Solla*, 106 A.D.3d at 89.³ Given the presence of the words “order of” in the federal EAJA, it can be assumed that the New York Legislature’s “exclusion of the words ‘order of’ was intentional, and meant to broaden the types of settlements eligible to support an application for attorneys’ fees.” *Id.*

The State asserts that “[s]tate and federal statutes and case law addressing costs and fees have tied prevailing party status to securing a favorable judgment for over two-hundred years,” and that “[t]his Court must presume that the Legislature intended to codify this established meaning.” Appellant Reply Br. at 4-5. At the time of the State EAJA’s enactment, however, every federal court of appeals to address the issue had concluded that catalyzing plaintiffs were “prevailing parties” under the federal EAJA and similar federal fee-shifting statutes. *See Buckhannon*

³ These two definitions distinguish the New York EAJA from the federal EAJA, which does not define “prevailing party” and which provides that “‘final judgment’ means a judgment that is final and not appealable, and includes *an order of settlement*.” 28 U.S.C. § 2412(d)(2)(G) (emphasis added). These “significant difference[s]” explain why the New York EAJA provides for catalyst fees when the federal EAJA does not. *Solla*, 106 A.D.3d at 88-89.

Bd. & Care Home, Inc. v. West Va. Dept. of Health & Human Res., 532 U.S. 598, 625-627 nn.4-5 (2001) (Ginsburg, J., dissenting) (collecting cases). And the Legislature explicitly sought to create a fee recovery mechanism “similar” to that of “the significant body of case law that ha[d] evolved” under the federal EAJA pre-*Buckhannon*. C.P.L.R. § 8600 (“Intent and Short Title”). The State is thus correct that the Legislature intended to codify an established meaning of the term “prevailing party,” but that meaning is the one embodied in “the significant body of case law” surrounding the federal EAJA *as of 1989*.

The structure of the State EAJA also supports an interpretation that embraces catalyst fees. The Legislature carefully limited fee awards through a series of express restrictions, including binding eligibility requirements and the separate constraint that fees are unavailable where the State’s position was “substantially justified.” C.P.L.R. § 8601(a). In this way, the EAJA embodies a deliberate balance—facilitating accountability while limiting fee awards to appropriate cases. As the First Department has explained, “the fact that the legislature took specific steps to limit litigants’ ability to recover suggest[s] that it [gave] thoughtful consideration to all of the possible avenues to doing so, including eliminating the catalyst theory, and thus [can] be presumed to have opted to make only the changes that ended up in the final version.” *Liu*, 200 A.D.3d at 75. The Legislature’s decision to confine recovery through express safeguards, rather than through a

requirement of court-ordered relief, confirms that catalyst fees are available under the statute.

III. CATALYST FEES ADVANCE THE EAJA’S PURPOSE BY DRIVING TIMELY CORRECTION OF PAST DECISIONS AND REINFORCING ACCURATE AGENCY DECISIONMAKING GOING FORWARD

By holding agencies more accountable for unjustifiable errors, catalyst fees drive both prompt error correction and accurate decisionmaking. Prompt error correction and accurate decisionmaking, in turn, relieve the burden on claimants, courts, and agencies themselves—a virtuous cycle that promotes the good government principle of adherence to the law and the salutary result of increased confidence in government.

A. Catalyst Fees Incentivize Prompt Agency Correction Of Erroneous Decisions

For an agency’s reconsideration process to provide effective relief to New Yorkers, it must be prompt and meaningful. Well-designed reconsideration mechanisms should supplement the regulated fair hearing process by creating an additional option for error correction that reduces unnecessary litigation, expense, and the attendant burden on the courts and harm to New Yorkers. Catalyst fees are a critical component of incentivizing prompt error correction through the reconsideration process.

Incentives for agencies to revisit their otherwise final but incorrect decisions are an essential element of good government. Agencies suffer from institutional

inertia, which is “a resistance to being reversed.” *See* Canaparo, *Administrative Inertia After Regents and Department of Commerce*, 6 Admin. L. Rev. Accord. 101, 104 (2021). Once an agency adopts a position, institutional pressures often favor preserving it rather than reassessing it. *Id.* The predictable result is delay in error correction. Absent some external cost, an agency may postpone correcting a questionable decision indefinitely. Catalyst fees impose that missing cost—and with it, an incentive to act promptly.

An agency’s internal procedures for correcting wrong decisions should, in principle, be more efficient and less burdensome than a lawsuit. Those efficiencies, however, are difficult to realize within New York agencies, including OTDA, where the reconsideration processes do not always include meaningful deadlines for decision and the Article 78 statute of limitations is generally not automatically tolled.⁴

Under OTDA’s governing regulations, OTDA may reconsider an adverse fair hearing decision, allowing for correction of the improper decision without court

⁴ Regulations for other state agencies, in contrast, impose time limits on reconsideration decisions. The Workers’ Compensation Board, for example, provides a multi-tiered process for reconsideration—within 30 days of a decision of the workers’ compensation “referee” (i.e., administrative law judge), a claimant may seek reconsideration from the board; and within 30 days of the board’s reconsideration decision, the claimant may both appeal to Third Department’s Appellate Division and seek further reconsideration by the full board. N.Y. Workers’ Comp. Law § 23.

involvement. *See* 18 N.Y.C.R.R. § 358-6.6. OTDA may issue an amended decision to “correct any error of law or fact.” *Id.* § 358-6.6(a). But there is no time limit governing how long OTDA may take to reconsider a fair hearing decision. *See id.* (no time limit on reconsideration process employed by OTDA and other state social services agencies); *see also Matter of Dickinson v. Daines*, 15 N.Y.3d 571, 576-577 (2010) (Department of Health’s self-imposed time limit for fair hearing decision merely “directory,” not “mandatory”).

Moreover, because there is a four-month limitations period in which to commence an Article 78 proceeding to challenge a fair hearing decision—and that period is not tolled by the reconsideration process—individuals are often required to spend time and resources in parallel to secure their claim. Accordingly, OTDA’s existing reconsideration procedures lack the structural features necessary to ensure prompt correction. Catalyst fees are the external incentive that fills the gap, particularly against the backdrop of delays already present at the fair hearing stage. *See Matter of Salem v. Guinn*, 248 N.Y.S.3d 869, 874, 877 (N.Y. Sup. Ct. 2025) (finding “pervasive and extensive delays in the issuance of fair hearing decisions” and noting that, as of May 2025, over 3,600 SNAP and over 36,800 Temporary Assistance hearing decisions were past their deadlines of 60 and 90 days, respectively, for a decision following receipt of a fair hearing request).

Without catalyst fees, OTDA and other state social services agencies

governed by the same regulations have less incentive to engage in and complete reconsideration of their erroneous fair hearing decisions before litigation is filed. That was the case here, where OTDA had opportunity to reconsider its unlawful ruling to uphold HRA's seizure of \$7,000 of Ms. Jaquez's benefits, but had no time limit governing when it had to begin, let alone complete its reconsideration process. If an agency delays its internal discretionary reconsideration process and does not reach a claimant-favorable outcome until after litigation begins, it is the claimant—not the agency—who, in the absence of fee-shifting, would be burdened by the costs of delay and of having commenced the litigation. The agency would bear no consequence for failing to correct its error. The prospect of catalyst fees changes that calculus by establishing an incentive for timely error correction: where an agency that delays reconsideration until after a lawsuit is filed risks paying the claimant's fees, it has an incentive to correct erroneous decisions promptly and meaningfully before litigation.

Catalyst fees also give agencies an incentive to resolve disputes promptly once litigation has been filed. “[T]he longer the litigation, the larger the fees.” *Buckhannon*, 532 U.S. at 639 (Ginsburg, J., dissenting). If fees are shifted to the agency only in the event of judicially ordered relief, “a state may feel free to allow litigation to drag on and on, confident that strategic capitulation”—that is, an eleventh-hour settlement—“will protect it against an adverse judgment and a fee

award.” Albiston & Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General*, 54 UCLA L. Rev. 1087, 1133 (2007); *see also* Stanley, *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources: To the Prevailing Party Goes the Spoils...and the Attorney’s Fee*, 36 Akron L. Rev. 363, 395 (2003) (“[D]efendants who are violating a civil rights law have an incentive to string out the litigation, and when a plaintiff appears likely to prevail just before trial, the defendant can unilaterally change their policies and moot the lawsuit to avoid the fee award.”). “Such cases, where the state folds its hand before being forced to do so by a court, are often those that are most clearly meritorious.” A.63 (Decision & Order, App. Div., 1st Dep’t). By encouraging the State to correct errors early in litigation, catalyst fees reduce unnecessary burdens on litigants and courts alike (redounding to the benefit of taxpayers), while protecting claimants from the compounding injury of delay.

The State expresses concern that catalyst fees have the opposite effect—that they disincentivize meaningful internal reconsideration or settlement. That worry rests on the assumption that an agency, once sued, will refuse to correct an error because conceding would trigger fee liability. *See* Appellant Br. at 11-12 (citing *Buckhannon*, 532 U.S. at 608). But that assumption ignores the critical point that, under the catalyst theory, an agency’s fee exposure grows with the length of the

litigation. An agency that concedes error at the outset of a case owes, at most, the modest fees incurred in preparing and filing the petition; an agency that litigates to judgment and loses owes far more. The catalyst theory thus rewards, rather than penalizes, early correction, and in so doing advances the purpose of the EAJA. The State's rule, by contrast, would reward agencies that hold out until the eve of judgment and then capitulate. Moreover, empirical evidence points the other way: without catalyst fees, plaintiffs lose bargaining power, and settlements become harder—not easier—to reach. Albiston & Nielsen, *supra*, at 1129.

The Legislature has recognized the harms of delay in and of itself in the context of Article 78 proceedings. Article 78 is the primary vehicle through which New Yorkers challenge agency action or inaction and reflects an appreciation of the hardship of delayed correction. Enacted more than eighty years ago, Article 78 aimed “to wipe out technical distinctions” under common law writs that “had been a snare” for claimants and “hampered the court in granting relief for proven grievances.” *Matter of Newbrand v. City of Yonkers*, 285 N.Y. 164, 174 (1941). Article 78 proceedings have “been described as a fast and cheap way to implement a right that is as plenary as an action, culminating in a judgment, but is brought on with the ease, speed and inexpensiveness of a mere motion.” *Explorers Club, Inc. v. Diageo PLC*, 993 N.Y.S.2d 612, 617 (N.Y. Sup. Ct. 2014) (citing *Davidson v. Capuano*, 792 F.2d 275, 280 (2d Cir. 1986)). The streamlined nature of Article 78

and the availability of catalyst fees are complementary features of a system aimed at expediting correction of agency error. Article 78, for its part, provides a mechanism for identifying and challenging unlawful agency action, while catalyst fees encourage agencies to correct legal errors promptly once those errors are brought to their attention, in some cases making the filing of an Article 78 action unnecessary altogether. The result is earlier compliance with the law, fewer unnecessary proceedings, and more efficient use of both judicial and administrative resources.

Ms. Jaquez’s own experience demonstrates both the harms of delay and the need for catalyst fees to incentivize agencies to act promptly. Her benefits were wrongfully withheld for over 11 months while she pursued a fair hearing and then reconsideration. OTDA eventually conceded that its administrative decision was legally incorrect—but only after Ms. Jaquez’s litigation. Without clear entitlement to catalyst fees, under the EAJA, OTDA lacked incentive to correct the mistakes it and HRA made in Ms. Jaquez’s case.⁵ Before Ms. Jaquez sued, OTDA failed even

⁵ At the time of OTDA’s decision, only the First Department had interpreted the EAJA to authorize catalyst fees, whereas the Second and Fourth Departments had rejected them. *See Solla*, 106 A.D.3d at 93; *Matter of Gonzalez v. New York State Dept. of Corr. & Community Supervision*, 152 A.D.3d 680, 683 (2d Dep’t 2017); *Matter of Criss v. New York State Dept. of Health*, 192 A.D.3d 1545, 1548 (4th Dep’t 2021). Since OTDA’s decision, the Third Department has recognized catalyst fees. *Markey*, 244 A.D.3d at 88. In its trial court filing in *Markey*, the State described *Solla* and the First Department as “the lone New York decision and Department, to embrace the catalyst theory.” Mem. of Law in Opp. to Pet. Mot. for Att. Fees, *Markey*, 2024 WL 7006268 (N.Y. Sup. Ct. Apr. 26, 2024).

to respond to Ms. Jaquez’s reconsideration request or to advise whether it would respond before the Article 78 statute of limitations ran. A.19, 57. This was despite Ms. Jaquez’s counsel attempting to resolve the issue without suing. *Id.*

B. Catalyst Fees Incentivize Structural Changes To Reduce Error In Agency Decisionmaking Going Forward

Effective agencies not only reconsider erroneous decisions promptly but implement policy-level changes that improve decisionmaking processes going forward. When agencies can limit the risk of fee-shifting by strategically mooting a case once they know they will lose, they have less incentive to implement those forward-looking efforts. Such efforts may include revising the frameworks for benefits determinations (particularly those understood to be noncompliant), investing in additional personnel and training, or issuing directives that address recurring errors or recent judicial orders. An agency that is not forced to internalize the costs of its errors has less reason to engage in proactive, forward-looking correction.

The threat of catalyst fees provides that incentive. An agency cannot assume that it can avoid fee-shifting simply by changing its position after a lawsuit is filed. By creating a real, ex ante risk of fee-shifting, the catalyst theory encourages agency leadership to improve and accelerate the agency’s decisionmaking processes—not just to prevent the set of errors that could proceed to an adverse final judgment in litigation but to reduce all errors that could trigger and prolong unnecessary litigation.

As the First Department observed, “[t]he threat of fee shifting even in the absence of an adjudication provides added incentive for state agencies to improve their decision-making.” A.63. This incentive motivates agencies to invest in policy-level systems that guard against error from the outset, so that claimants need not resort to litigation.

When agencies act according to policies that promote accurate decisionmaking, they improve public confidence in government by showing constituents that their leadership is committed to reaching fair and correct results. As the Court has recognized, “[j]ustice long delayed cannot only impair the actual fairness, but also the public perception of the evenhandedness of administrative adjudications.” *Matter of Louis Harris & Assocs., Inc. v. deLeon*, 84 N.Y.2d 698, 705 (1994). And by “encourag[ing] litigation against recalcitrant state agencies” as the Legislature intended, *see Solla*, 106 A.D.3d at 93, the public can be confident that the government is accountable to the law and acts in a fair manner. “[P]ublic confidence depends to a great degree upon the cultivation of a perception that the administrative process possesses those attributes of accountability and fairness that are thought to be characteristic of constitutional government.” Taintor, *Federal Agency Nonacquiescence: Defining and Enforcing Constitutional Limitations on Bad Faith Agency Adjudication*, 38 Me. L. Rev. 185, 186 (1986). This is particularly true when, in the absence of catalyst fees, the “most clearly meritorious” cases are

those in which the State would avoid fee-shifting, and thus cases that are more likely to avoid correction. *See* A.63 (Decision & Order, App. Div., 1st Dep’t). Here, prompt correction and accurate decisionmaking assure the public that public benefits are administered in a fair manner, in accordance with the law, and that when there is an error with respect to any individual, that error is corrected expeditiously. Error and delay undermine adherence to the law and public confidence. By reducing both, catalyst fees advance adherence to the law and, with it, public confidence in government.

IV. CATALYST FEES ADVANCE THE EAJA’S PURPOSE BY PROVIDING INCENTIVES FOR GOVERNMENT LAWYERS TO FULFILL THEIR OBLIGATION TO GIVE CANDID ADVICE TO THEIR AGENCY CLIENTS

Catalyst fees further promote good government by empowering agency lawyers to exercise independent judgment, pursue proactive compliance, and recommend prompt and fair resolutions rather than extended litigation strategies. In the same vein, agencies are themselves incentivized to seek straightforward and honest legal advice, even in the face of adverse facts or law. *See* Brief for *Amici Curiae* New York City Bar Association et al. in Support of Petitioner-Respondent at 22-25. “It is crucial that government officials, who are expected to uphold and execute the law and who may face criminal prosecution for failing to do so, be encouraged to seek out and receive fully informed legal advice.” *In re County of Erie*, 473 F.3d 413, 419 (2d Cir. 2007) (citation omitted).

Whether because of institutional inertia, entrenchment, client pressure, or even caseload, government lawyers may continue a course of noncompliance or needless litigation. Catalyst fees give agency lawyers a powerful reason to overcome that inertia and provide independent and candid advice and, where the law requires, to recommend prompt error correction and institutional compliance with law, rather than protracted litigation. Without catalyst fees, the incentive structure invites agency counsel to adopt a wait-and-see approach, which is further reinforced by the likelihood that a claimant awaiting recovery of benefits may be unable to sustain litigation over an extended period. The incentive structure invites delay with the knowledge that, even if a lawsuit is filed, the agency could settle before fee-shifting is triggered. Catalyst fees realign incentives with the purpose of the EAJA by removing such assurances. By shifting litigation costs onto the agency from the moment a meritorious suit is filed, catalyst fees encourage agency lawyers to focus on the merits of the agency's position rather than on an asymmetry of litigation costs and the pressures of delay that would otherwise favor the agency.

Before *Buckhannon*, federal courts recognized the salutary effect of catalyst fees in the context of the federal EAJA, noting that they enhance the force of agency lawyers' advice against unreasonable litigating positions. In *Zimmerman v. Schweiker*, for example, the court recognized that the federal EAJA—then construed to allow for catalyst fees—assisted government lawyers tasked with “defend[ing] a

suit without much confidence in its merit.” 575 F. Supp. 1436, 1440 (E.D.N.Y. 1983). By making such a defense more expensive for the government, “[t]he hope is that government officials in charge will be less apt to take unreasonable positions against the advice of government lawyers.” *Id.*

V. THE EAJA’S “SUBSTANTIAL JUSTIFICATION” REQUIREMENT PROTECTS AGENCIES FROM EXCESSIVE FEE LIABILITY

The State is wrong to suggest that the First Department, by correctly interpreting the EAJA to authorize catalyst fees, disregarded the Legislature’s concern for safeguarding the public fisc. *See* Appellant Br. at 58-59. The Legislature balanced its interests in promoting access to justice and protecting the public fisc by authorizing fee-shifting only if the agency’s decision lacked substantial justification. The EAJA expressly provides that if the court finds that “the position of the state”—that is, the “act, acts or failure to act from which judicial review is sought”—was “substantially justified,” then fee liability does not shift to the State. C.P.L.R. §§ 8601(a), 8602(e).⁶ Put differently, a prevailing claimant will not receive attorneys’ fees if the government’s losing position had a “reasonable basis in both fact and law.” *Kaladjian*, 85 N.Y.2d at 358 (explaining that whether the petitioner receives their requested relief and whether they are entitled to attorneys’ fees are separate analyses).

⁶ The court can decline to shift fees if “special circumstances make an award unjust.” C.P.L.R. § 8601(a).

The “substantially justified” standard protects agencies against unfair fee-shifting that would impose fee liability without regard to the reasonableness of an agency’s position. *See* Governor’s Approval Mem., Bill Jacket at 20-21. It ensures that agencies have room to make reasonable mistakes; recognizes that agencies often face unavoidable constraints; and shields agencies from being held financially responsible for circumstances beyond their control. Even where an agency engages in a “disturbing pattern of failures [that] merits no endorsement,” a prevailing plaintiff has been required to pay his own way when the agency’s conduct was “not so egregious as to fall outside the realm of substantial justification.” *Matter of Wittlinger v. Wing*, 99 N.Y.2d 425, 432-433 (2003). That same limitation applies in catalyst fee cases. Even where a petitioner’s lawsuit prompts the State to change course, fee-shifting is not authorized under the EAJA if the State can show that its original position was substantially justified. The catalyst theory therefore does not expose agencies to fees every time they change their position; it exposes them to fees only when an agency corrects a position that was unreasonable—precisely the kind of error that the EAJA was enacted to deter.

The cases where courts have accepted an agency’s assertion of “substantial justification” show that agencies can take reasonable positions without fearing undue exposure to attorneys’ fees. For example, in *Matter of Barnett v. New York Dept. of Social Services*, the court found that an agency’s termination of the petitioner’s

personal care services was substantially justified because it “had a reasonable basis in law and fact, *even though it was not correct.*” 212 A.D.2d 696, 698 (2d Dep’t 1995) (emphasis added). An agency may also be found to be substantially justified where it relied on then-applicable law. In *Matter of Cintron v. Calogero*, for example, this Court held that an agency was required to consider certain rent-reduction orders in calculating rent overcharges, overturning the precedent that the agency relied on to exclude those orders. 15 N.Y.3d 347, 356 (2010). Although the tenant that sued the agency prevailed, attorneys’ fees were not awarded because it was reasonable for the agency to rely on what was then-current caselaw. *Matter of Cintron v. Calogero*, 99 A.D.3d 456, 457 (1st Dep’t 2012). In another case, the court held that an agency was required to refund all federal Supplemental Security Income retained beyond the statutorily allotted ten-day window for processing any reimbursements owed to the State. *Matter of Baez v. Bane*, 220 A.D.2d 166, 173-174 (1st Dep’t 1995). Although the court ultimately rejected the agency’s position that it could retain those funds, the court nevertheless held that the agency’s position was substantially justified “because no express statute, regulation, or court order mandated return of all funds held longer than ten days at the time that [the] petitions were filed.” *Id.*

Good government is best achieved when agencies face the threat of corrective litigation with strong incentives to avoid it. Catalyst fees make that equilibrium

possible by supporting fee-shifting when agencies act without substantial justification. Without catalyst fees, people like Ms. Jaquez could be deprived of badly needed benefits for even longer periods. The Legislature enacted the EAJA to reduce and correct erroneous decisions by state agencies, promoting the State's adherence to the law. Only with catalyst fees can the EAJA reach its full potential.

CONCLUSION

For the reasons stated herein and in the brief of Petitioner-Respondent Lucia Jaquez, this Court should affirm.

September 28, 2026

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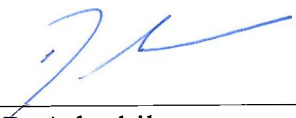
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AFFIRMATION OF COMPLIANCE

Pursuant to 22 N.Y.C.R.R. §§ 500.1(j) and 500.13(c)(1) & (3), the undersigned, as attorney for amici, hereby certifies that the foregoing brief was prepared using the Microsoft Word for Office word-processing system in a proportionally spaced typeface (Times New Roman) and in 14-point type, including footnotes. The undersigned further certifies that according to the word-count feature of Microsoft Word for Office, the brief contains 6,998 words, which complies with the limitations stated in § 500.13(c)(1).

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**COURT OF APPEALS
STATE OF NEW YORK**

IN THE MATTER OF THE
APPLICATION OF LUCIA JAQUEZ,

Petitioner-Respondent,

v.

DANIEL TIETZ, as Commissioner of
the New York State Office of
Temporary and Disability Assistance,

Respondent-Appellant,

GARY JENKINS, as Commissioner of
the New York City Human Resources
Administration,

Respondent.

APL-2026-00027

AFFIDAVIT OF SERVICE

Debo P. Adegbile hereby affirms the following to be true under the penalties of perjury, pursuant to C.P.L.R. § 2106:

1. On September 28, 2026, I caused a copy of the Access to Justice Organizations' Proposed Amicus Brief to be served electronically via email at the email addresses designated by the following attorneys and upon consent of all parties to receive electronic service:

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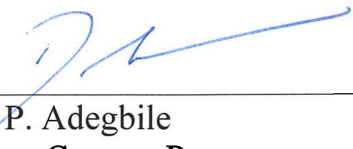
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2. I affirm this 28th day of September 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

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