

IN THE SENATE

SENATE JOINT MEMORIAL NO. 105

BY STATE AFFAIRS COMMITTEE

A JOINT MEMORIAL

1
2 TO THE PRESIDENT OF THE UNITED STATES, THE SENATE AND HOUSE OF REPRESENTA-
3 TIVES OF THE UNITED STATES IN CONGRESS ASSEMBLED, AND TO THE CONGRES-
4 SIONAL DELEGATION REPRESENTING THE STATE OF IDAHO IN THE CONGRESS OF THE
5 UNITED STATES.

6 We, your Memorialists, the Senate and the House of Representatives of
7 the State of Idaho assembled in the Second Regular Session of the Sixtieth
8 Idaho Legislature, do hereby respectfully represent that:

9 WHEREAS, the federal Equal Access to Justice Act (EAJA), as enacted
10 in 1980, together with other attorney fee shifting statutes, were enacted
11 to restrain overzealous regulators and reimburse parties subjected to
12 unreasonable government action by providing equal access to courts. These
13 federal statutes were designed to reimburse attorney's fees so that a party
14 that otherwise would not be able to afford litigation against the govern-
15 ment, could have an opportunity to recover attorney's fees if the federal
16 government's litigation position was not substantially justified; and

17 WHEREAS, certain nonprofit environmental groups have abused the origi-
18 nal intent of many of these fee shifting statutes, finding procedural flaws
19 in agency actions, suing the government and receiving millions of federal
20 taxpayer dollars in attorney's fees for settling or winning such cases. Re-
21 ceipt of fees in this manner allows groups to continue litigation against
22 the government. Ranchers and those who are the subject of these lawsuits
23 must pay their own attorney's fees in order to intervene and participate in
24 litigation. The Equal Access to Justice Act is also inequitable in that it
25 permits any nonprofit to receive reimbursement regardless of its net worth,
26 while limiting for-profit reimbursement to only those entities with a net
27 worth of less than \$7 million; and

28 WHEREAS, the Equal Access to Justice Act provides that the Chairman of
29 the Administrative Conference of the United States shall report annually
30 to Congress as to the amount of fees and other expenses awarded during the
31 preceding fiscal year, along with the number, nature and amount of awards,
32 claims involved in controversy and any other relevant information which
33 might aid Congress in evaluating the scope and impact of awards. In 1995,
34 however, the Conference was no longer funded. Although reauthorized in
35 2008, the Conference remains without a chairman and staff. The lack of
36 reporting has acted to eliminate the transparency of the program which
37 is vital to maintaining public trust in taxpayer expenditures as well as
38 assuring that taxpayer funds are properly expended; and

39 WHEREAS, the United States economy is in severe distress with the fed-
40 eral government exceeding over \$1 trillion in deficit spending in the previ-
41 ous fiscal year. Congress needs to look closely at every expenditure of tax-
42 payer dollars before it is spent and scrutinize expenditures to ensure they
43 are necessary and constitutional.

1 NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Ses-
2 sion of the Sixtieth Idaho Legislature, the Senate and the House of Represen-
3 tatives concurring therein, that the State of Idaho hereby urges the Presi-
4 dent of the United States and the United States Congress to undertake an im-
5 mediate and thorough review of federal expenditures under the Equal Access
6 to Justice Act and other fee shifting statutes.

7 BE IT FURTHER RESOLVED that the Idaho Legislature strongly supports
8 the passage of federal legislation that restores the mandatory reporting
9 requirements under the Equal Access to Justice Act, and other federal fee
10 shifting statutes, and makes all data associated with federal awards under
11 the Act publicly available, including the name and location of recipients of
12 awards, the lawsuit for which the awards were made, the amount of attorney's
13 fees paid and the per hour rate in which they were calculated and the names of
14 the attorneys who were compensated.

15 BE IT FURTHER RESOLVED that the Idaho Legislature requests the relevant
16 committees of Congress conduct thorough oversight hearings on the use and/or
17 abuse of Equal Access to Justice Act and other fee shifting statutes, and
18 hear testimony about potential reforms to the Act that would make it more
19 transparent, equitable and accountable to the taxpayers that fund it.

20 BE IT FURTHER RESOLVED that the Secretary of the Senate be, and she is
21 hereby authorized and directed to forward a copy of this Memorial to the
22 President of the United States, the President of the Senate and the Speaker
23 of the House of Representatives of Congress, and the congressional delega-
24 tion representing the State of Idaho in the Congress of the United States.