

10 A RESOLUTION CONCERNING
20 REFORMING THE EQUAL ACCESS TO JUSTICE ACT

30 WHEREAS: 28 U.S.C. § 2412(d)(1)(A) states: “Except as otherwise specifically provided by
40 statute, a court shall award to a prevailing party other than the United States fees
50 and other expenses, in addition to any costs awarded pursuant to subsection (a),
60 incurred by that party in any civil action (other than cases sounding in tort),
70 including proceedings for judicial review of agency action, brought by or against
80 the United States in any court having jurisdiction of that action, unless the court
90 finds that the position of the United States was substantially justified or that
100 special circumstances make an award unjust”; and,

110 WHEREAS: This statute essentially eliminates the possibility of the United States ever
120 recovering costs incurred from litigation in a proceeding; and,

130 WHEREAS: If a court finds in favor in any part of a proceeding for those other than the
140 United States, the government must pay all fees, no matter how small the
150 finding; and,

160 WHEREAS: This has resulted in cases where a judge awards only \$50,000 to the prevailing
170 party, but more than \$450,000 in attorney fees for the prevailing party; and,

180 WHEREAS: Because of the current law, there is little incentive to prevent attorneys from
190 pursuing every available case to maximize their attorney fees; and,

200 WHEREAS: This has overwhelmed both the courts and the limited number of attorneys
210 for the United States; and,

220 WHEREAS: Current British law mandates that the prevailing party is awarded attorney fees
230 whether or not the prevailing party is the government; and,

240 WHEREAS: This has decreased the amount of frivolous litigation brought before the British
250 Courts and has saved billions of dollars that would be spent on litigation; and,

260 WHEREAS: If the United States changed current law to reflect British law, it could incur
270 the same kind of changes that have occurred in Britain; and,

280 WHEREAS: This would also lessen the work load of federal attorneys, allowing them to
290 focus on the more important and necessary cases before the government; and,

300 WHEREAS: It would finally save all the tax payers money that’s spent on both paying for the
310 extra work that the federal attorneys perform, in addition to all the money spent
320 to pay for the prevailing parties attorney fees.

330 THEREFORE BE IT RESOLVED THAT: The Maryland Student Legislature urges Congress to
340 amend the Equal Access to Justice Act (28 U.S.C. § 2412) to remove the
350 provision preventing the United States government from recovering attorney
360 fees and expenses in litigation; and,

370 BE IT FURTHER RESOLVED: That if the United States is found to be the prevailing party,
380 the opposing party must pay for attorney fees and other expenses, which would
390 include the specific amount of time the attorney spent on the case times their
400 hourly wage; and,

410 BE IT FURTHER RESOLVED: That this new law should take effect January 1st, 2004.

420 MANDATES: President George W. Bush
430 Vice President Dick Cheney
440 Senate Majority Leader Bill Frist
450 Senate Minority Leader Tom Daschle
460 Speaker of the House Dennis Hastert
470 House Majority Leader Tom Delay
480 House Minority Leader Nancy Pelosi
490 Congresswoman Sue Kelly
500 Congressman F. James Sensenbrenner, Jr., Chairman, House Judiciary
510 Committee
520 Senator Orrin Hatch, Chairman, Senate Judiciary Committee

Sponsor:

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