

Judith E. Kramer

*Equal Access to Justice Act Amendments of 1996:  
A New Avenue For Recovering Fees From The Government*

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Abstract by Christine Parsadaian

This article analyzes the Amendments to the Equal Access to Justice Act of 1996 (EAJA) in the context of the pre-1996 Act and suggests that while the Amendments create additional benefits to small business, the Amendments contain much ambiguity that may place an unreasonable burden on federal agencies. First, the author discusses the pre-1996 Act at some length to highlight the fact that small businesses were at a disadvantage when facing the government. Under this version of the Act only prevailing parties could recover attorney fees. The author then places the Amendments in the context of the Small Business Regulatory Enforcement Fairness Act (SBREFA). By analyzing the other subtitles to the SBREFA he suggests the goal of the Amendments is to give individuals and small businesses the ability to face the government on equal ground.

Following, the article examines the legislative history of the Amendments to demonstrate that Congress amended the EAJA because the pre-1996 Act did not sufficiently limit government action as intended and placed small businesses at a disadvantage. As a result, specific provisions such as the hourly rate cap increase were implemented to provide individuals leverage when facing the government. The author discusses several of these provisions, but does so in light of the many issues these provisions create. While the article acknowledges that the Amendments allow for necessary benefits for small businesses, it suggests that the Amendments leave too many unanswered questions. For example, the article implies the lack of definition and explicit limits of the term "demand" allow small businesses to take advantage of federal agencies. Therefore, the author argues that the Amendments necessitate judicial and administrative clarification in a few key areas for the Amendments to be fair to both parties.