

Calendar No. 27

112TH CONGRESS
1ST SESSION**S. 410**

To provide for media coverage of Federal court proceedings.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 17, 2011

Mr. GRASSLEY (for himself, Mr. SCHUMER, Mr. LEAHY, Mr. GRAHAM, Mr. CORNYN, Mr. DURBIN, Ms. KLOBUCHAR, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 7 (legislative day, APRIL 5), 2011

Reported by Mr. LEAHY, without amendment

A BILL

To provide for media coverage of Federal court proceedings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sunshine in the Court-
5 room Act of 2011”.

6 **SEC. 2. FEDERAL APPELLATE AND DISTRICT COURTS.**

7 (a) DEFINITIONS.—In this section:

1 (1) PRESIDING JUDGE.—The term “presiding
2 judge” means the judge presiding over the court
3 proceeding concerned. In proceedings in which more
4 than 1 judge participates, the presiding judge shall
5 be the senior active judge so participating or, in the
6 case of a circuit court of appeals, the senior active
7 circuit judge so participating, except that—

8 (A) in en banc sittings of any United
9 States circuit court of appeals, the presiding
10 judge shall be the chief judge of the circuit
11 whenever the chief judge participates; and

12 (B) in en banc sittings of the Supreme
13 Court of the United States, the presiding judge
14 shall be the Chief Justice whenever the Chief
15 Justice participates.

16 (2) APPELLATE COURT OF THE UNITED
17 STATES.—The term “appellate court of the United
18 States” means any United States circuit court of ap-
19 peals and the Supreme Court of the United States.

20 (b) AUTHORITY OF PRESIDING JUDGE TO ALLOW
21 MEDIA COVERAGE OF COURT PROCEEDINGS.—

22 (1) AUTHORITY OF APPELLATE COURTS.—

23 (A) IN GENERAL.—Except as provided
24 under subparagraph (B), the presiding judge of
25 an appellate court of the United States may, at

1 the discretion of that judge, permit the
 2 photographing, electronic recording, broad-
 3 casting, or televising to the public of any court
 4 proceeding over which that judge presides.

5 (B) EXCEPTION.—The presiding judge
 6 shall not permit any action under subparagraph
 7 (A), if—

8 (i) in the case of a proceeding involv-
 9 ing only the presiding judge, that judge de-
 10 termines the action would constitute a vio-
 11 lation of the due process rights of any
 12 party; or

13 (ii) in the case of a proceeding involv-
 14 ing the participation of more than 1 judge,
 15 a majority of the judges participating de-
 16 termine that the action would constitute a
 17 violation of the due process rights of any
 18 party.

19 (2) AUTHORITY OF DISTRICT COURTS.—

20 (A) IN GENERAL.—

21 (i) AUTHORITY.—Notwithstanding
 22 any other provision of law, except as pro-
 23 vided under clause (iii), the presiding judge
 24 of a district court of the United States
 25 may, at the discretion of that judge, per-

1 mit the photographing, electronic record-
2 ing, broadcasting, or televising to the pub-
3 lic of any court proceeding over which that
4 judge presides.

5 (ii) OBSCURING OF WITNESSES.—Ex-
6 cept as provided under clause (iii)—

7 (I) upon the request of any wit-
8 ness (other than a party) in a trial
9 proceeding, the court shall order the
10 face and voice of the witness to be
11 disguised or otherwise obscured in
12 such manner as to render the witness
13 unrecognizable to the broadcast audi-
14 ence of the trial proceeding; and

15 (II) the presiding judge in a trial
16 proceeding shall inform each witness
17 who is not a party that the witness
18 has the right to request the image and
19 voice of that witness to be obscured
20 during the witness' testimony.

21 (iii) EXCEPTION.—The presiding
22 judge shall not permit any action under
23 this subparagraph—

24 (I) if that judge determines the
25 action would constitute a violation of

1 the due process rights of any party;
2 and

3 (II) until the Judicial Conference
4 of the United States promulgates
5 mandatory guidelines under para-
6 graph (5).

7 (B) NO MEDIA COVERAGE OF JURORS.—
8 The presiding judge shall not permit the
9 photographing, electronic recording, broad-
10 casting, or televising of any juror in a trial pro-
11 ceeding, or of the jury selection process.

12 (C) DISCRETION OF THE JUDGE.—The
13 presiding judge shall have the discretion to ob-
14 scure the face and voice of an individual, if
15 good cause is shown that the photographing,
16 electronic recording, broadcasting, or televising
17 of the individual would threaten—

- 18 (i) the safety of the individual;
19 (ii) the security of the court;
20 (iii) the integrity of future or ongoing
21 law enforcement operations; or
22 (iv) the interest of justice.

23 (D) SUNSET OF DISTRICT COURT AUTHOR-
24 ITY.—The authority under this paragraph shall

1 terminate 3 years after the date of the enact-
2 ment of this Act.

3 (3) INTERLOCUTORY APPEALS BARRED.—The
4 decision of the presiding judge under this subsection
5 of whether or not to permit, deny, or terminate the
6 photographing, electronic recording, broadcasting, or
7 televising of a court proceeding may not be chal-
8 lenged through an interlocutory appeal.

9 (4) ADVISORY GUIDELINES.—The Judicial Con-
10 ference of the United States may promulgate advi-
11 sory guidelines to which a presiding judge, at the
12 discretion of that judge, may refer in making deci-
13 sions with respect to the management and adminis-
14 tration of photographing, recording, broadcasting, or
15 televising described under paragraphs (1) and (2).

16 (5) MANDATORY GUIDELINES.—Not later than
17 6 months after the date of enactment of this Act,
18 the Judicial Conference of the United States shall
19 promulgate mandatory guidelines which a presiding
20 judge is required to follow for obscuring of certain
21 vulnerable witnesses, including crime victims, minor
22 victims, families of victims, cooperating witnesses,
23 undercover law enforcement officers or agents, wit-
24 nesses subject to section 3521 of title 18, United
25 States Code, relating to witness relocation and pro-

1 tection, or minors under the age of 18 years. The
2 guidelines shall include procedures for determining,
3 at the earliest practicable time in any investigation
4 or case, which witnesses should be considered vulner-
5 able under this section.

6 (6) PROCEDURES.—In the interests of justice
7 and fairness, the presiding judge of the court in
8 which media use is desired has discretion to promul-
9 gate rules and disciplinary measures for the court-
10 room use of any form of media or media equipment
11 and the acquisition or distribution of any of the im-
12 ages or sounds obtained in the courtroom. The pre-
13 siding judge shall also have discretion to require
14 written acknowledgment of the rules by anyone indi-
15 vidually or on behalf of any entity before being al-
16 lowed to acquire any images or sounds from the
17 courtroom.

18 (7) NO BROADCAST OF CONFERENCES BE-
19 TWEEN ATTORNEYS AND CLIENTS.—There shall be
20 no audio pickup or broadcast of conferences which
21 occur in a court proceeding between attorneys and
22 their clients, between co-counsel of a client, between
23 adverse counsel, or between counsel and the pre-
24 siding judge, if the conferences are not part of the
25 official record of the proceedings.

1 (8) EXPENSES.—A court may require that any
2 accommodations to effectuate this Act be made with-
3 out public expense.

4 (9) INHERENT AUTHORITY.—Nothing in this
5 Act shall limit the inherent authority of a court to
6 protect witnesses or clear the courtroom to preserve
7 the decorum and integrity of the legal process or
8 protect the safety of an individual.

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