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#### PRIVILEGES OF THE CHAIR

Mt. REID. Mr. President, I ask unanimous consent that Richard Culatta, a fellow in Senator MURRAY's office, be granted floor privileges for the duration of today's session of the Senate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### EXECUTIVE SESSION

##### EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar Nos. 103, 416, and 420; that the nominations be confirmed en bloc, the motions to reconsider be considered made and laid upon the table with no intervening action or debate; that no further motions be in order to any of the nominations; that any related statements be printed in the RECORD; that President Obama be immediately notified of the Senate's action and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

##### DEPARTMENT OF COMMERCE

Eric L. Hirschhorn, of Maryland, to be Under Secretary of Commerce for Export Administration.

##### DEPARTMENT OF THE TREASURY

Cyrus Amir-Mokri, of New York, to be an Assistant Secretary of the Treasury.

##### UNITED STATES INTERNATIONAL TRADE COMMISSION

David S. Johanson, of Texas, to be a Member of the United States International Trade Commission for a term expiring December 16, 2018.

#### LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now resume legislative session.

#### APPEAL TIME CLARIFICATION ACT OF 2011

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 196, S. 1637.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1637) to clarify appeal time limits in civil actions to which United States officers or employees are parties.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table with

no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 1637) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:  
S. 1637

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

##### SECTION 1. SHORT TITLE.

This Act may be cited as the "Appeal Time Clarification Act of 2011".

##### SEC. 2. FINDINGS.

Congress finds that—

(1) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure provide that the time to appeal for most civil actions is 30 days, but that the appeal time for all parties is 60 days when the parties in the civil action include the United States, a United States officer, or a United States agency;

(2) the 60-day period should apply if one of the parties is—

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the United States;

(3) section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure (as amended to take effect on December 1, 2011, in accordance with section 2074 of that title) should uniformly apply the 60-day period to those civil actions relating to a Federal officer or employee sued in an individual capacity for an act or omission occurring in connection with Federal duties;

(4) the civil actions to which the 60-day periods should apply include all civil actions in which a legal officer of the United States represents the relevant officer or employee when the judgment or order is entered or in which the United States files the appeal for that officer or employee; and

(5) the application of the 60-day period in section 2107 of title 28, United States Code, and rule 4 of the Federal Rules of Appellate Procedure—

(A) is not limited to civil actions in which representation of the United States is provided by the Department of Justice; and

(B) includes all civil actions in which the representation of the United States is provided by a Federal legal officer acting in an official capacity, such as civil actions in which a Member, officer, or employee of the Senate or the House of Representatives is represented by the Office of Senate Legal Counsel or the Office of General Counsel of the House of Representatives.

##### SEC. 3. TIME FOR APPEALS TO COURT OF APPEALS.

Section 2107 of title 28, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) In any such action, suit, or proceeding, the time as to all parties shall be 60 days from such entry if one of the parties is—

"(1) the United States;

"(2) a United States agency;

"(3) a United States officer or employee sued in an official capacity; or

"(4) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of

the United States, including all instances in which the United States represents that officer or employee when the judgment, order, or decree is entered or files the appeal for that officer or employee."

##### SEC. 4. EFFECTIVE DATE.

The amendment made by this Act shall take effect on December 1, 2011.

#### REMOVAL CLARIFICATION ACT OF 2011

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 197, H.R. 368.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 368) to amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 368) was ordered to a third reading, was read the third time, and passed.

#### FEDERAL COURTS JURISDICTION AND VENUE CLARIFICATION ACT OF 2011

Mr. REID. Mr. President, I ask unanimous consent that we now proceed to Calendar No. 200, H.R. 394.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 394) to amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in *italics*.)

##### H.R. 394

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

##### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Federal Courts Jurisdiction and Venue Clarification Act of 2011".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

##### TITLE I—JURISDICTIONAL IMPROVEMENTS

Sec. 101. Treatment of resident aliens.

Sec. 102. Citizenship of corporations and insurance companies with foreign contacts.

Sec. 103. Removal and remand procedures.

Sec. 104. Effective date.

## TITLE II—VENUE AND TRANSFER IMPROVEMENTS

- Sec. 201. Scope and definitions.  
Sec. 202. Venue generally.  
Sec. 203. Repeal of section 1392.  
Sec. 204. Change of venue.  
Sec. 205. Effective date.

### TITLE I—JURISDICTIONAL IMPROVEMENTS

#### SEC. 101. TREATMENT OF RESIDENT ALIENS.

Section 1332(a) of title 28, United States Code, is amended—

- (1) by striking the last sentence; and
- (2) in paragraph (2), by inserting after “foreign state” the following: “, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State”.

#### SEC. 102. CITIZENSHIP OF CORPORATIONS AND INSURANCE COMPANIES WITH FOREIGN CONTACTS.

Section 1332(c)(1) of title 28, United States Code, is amended—

- (1) by striking “any State” and inserting “every State and foreign state”;
- (2) by striking “the State” and inserting “the State or foreign state”; and
- (3) by striking all that follows “party-defendant,” and inserting “such insurer shall be deemed a citizen of—  
“(A) every State and foreign state of which the insured is a citizen;  
“(B) every State and foreign state by which the insurer has been incorporated; and  
“(C) the State or foreign state where the insurer has its principal place of business; and”.

#### SEC. 103. REMOVAL AND REMAND PROCEDURES.

(a) ACTIONS REMOVABLE GENERALLY.—Section 1441 of title 28, United States Code, is amended as follows:

- (1) The section heading is amended by striking “**Actions removable generally**” and inserting “**Removal of civil actions**”.
- (2) Subsection (a) is amended—  
(A) by striking “(a) Except” and inserting “(a) GENERALLY.—Except”; and  
(B) by striking the last sentence;
- (3) Subsection (b) is amended to read as follows:

“(b) REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—(1) In determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded.

“(2) A civil action otherwise removable solely on the basis of the jurisdiction under section 1332(a) of this title may not be removed if any of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.”.

(4) Subsection (c) is amended to read as follows:

“(c) JOINDER OF FEDERAL LAW CLAIMS AND STATE LAW CLAIMS.—(1) If a civil action includes—

“(A) a claim arising under the Constitution, laws, or treaties of the United States (within the meaning of section 1331 of this title), and

“(B) a claim not within the original or supplemental jurisdiction of the district court or a claim that has been made nonremovable by statute,  
the entire action may be removed if the action would be removable without the inclusion of the claim described in subparagraph (B).

“(2) Upon removal of an action described in paragraph (1), the district court shall sever from the action all claims described in para-

graph (1)(B) and shall remand the severed claims to the State court from which the action was removed. Only defendants against whom a claim described in paragraph (1)(A) has been asserted are required to join in or consent to the removal under paragraph (1).”.

(5) Subsection (d) is amended by striking “(d) Any” and inserting “(d) ACTIONS AGAINST FOREIGN STATES.—Any”.

(6) Subsection (e) is amended by striking “(e)(1) Notwithstanding” and inserting “(e) MULTIPARTY, MULTIFORUM JURISDICTION.—(1) Notwithstanding”.

(7) Subsection (f) is amended by striking “(f) The court” and inserting “(f) DERIVATIVE REMOVAL JURISDICTION.—The court”.

(b) PROCEDURE FOR REMOVAL OF CIVIL ACTIONS.—Section 1446 of title 28, United States Code, is amended as follows:

(1) The section heading is amended to read as follows:

“**§1446. Procedure for removal of civil actions**”.

(2) Subsection (a) is amended—

(A) by striking “(a) A defendant” and inserting “(a) GENERALLY.—A defendant”; and  
(B) by striking “or criminal prosecution”.

(3) Subsection (b) is amended—

(A) by striking “(b) The notice” and inserting “(b) REQUIREMENTS; GENERALLY.—(1) The notice”; and

(B) by striking the second paragraph and inserting the following:

“(2)(A) When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action.

“(B) Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.

“(C) If defendants are served at different times, and a later-served defendant files a notice of removal, any earlier-served defendant may consent to the removal even though that earlier-served defendant did not previously initiate or consent to removal.

“(3) Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.”;

(C) by striking subsection (c) and inserting the following:

“(c) REQUIREMENTS; REMOVAL BASED ON DIVERSITY OF CITIZENSHIP.—(1) A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than 1 year after commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action.

“(2) If removal of a civil action is sought on the basis of the jurisdiction conferred by section 1332(a), the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy, except that—

“(A) the notice of removal may assert the amount in controversy if the initial pleading seeks—

- “(i) nonmonetary relief; or
- “(ii) a money judgment, but the State practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded; and

“(B) removal of the action is proper on the basis of an amount in controversy asserted under subparagraph (A) if the district court finds, by the preponderance of the evidence,

that the amount in controversy exceeds the amount specified in section 1332(a).

“(3)(A) If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as an ‘other paper’ under subsection (b)(3).

“(B) If the notice of removal is filed more than 1 year after commencement of the action and the district court finds that the plaintiff deliberately failed to disclose the actual amount in controversy to prevent removal, that finding shall be deemed bad faith under paragraph (1).”.

(4) Section 1446 is further amended—

(A) in subsection (d), by striking “(d) Promptly” and inserting “(d) NOTICE TO ADVERSE PARTIES AND STATE COURT.—Promptly”;

(B) by striking “thirty days” each place it appears and inserting “30 days”;

(C) by striking subsection (e); and

(D) in subsection (f), by striking “(f) With respect” and inserting “(e) COUNTERCLAIM IN 337 PROCEEDING.—With respect”.

(c) PROCEDURE FOR REMOVAL OF CRIMINAL ACTIONS.—Chapter 89 of title 28, United States Code, is amended by adding at the end the following new section:

#### “**§[1454]1455. Procedure for removal of criminal prosecutions**”

“(a) NOTICE OF REMOVAL.—A defendant or defendants desiring to remove any criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such prosecution is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

“(b) REQUIREMENTS.—(1) A notice of removal of a criminal prosecution shall be filed not later than 30 days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

“(2) A notice of removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds that exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

“(3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

“(4) The United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.

“(5) If the United States district court does not order the summary remand of such prosecution, it shall order an evidentiary hearing to be held promptly and, after such hearing, shall make such disposition of the prosecution as justice shall require. If the United States district court determines that removal shall be permitted, it shall so notify

the State court in which prosecution is pending, which shall proceed no further.

“(c) WRIT OF HABEAS CORPUS.—If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into the marshal’s custody and deliver a copy of the writ to the clerk of such State court.”.

(d) CONFORMING AMENDMENTS.—

(1) The table of sections for chapter 89 of title 28, United States Code, is amended—

(A) in the item relating to section 1441, by striking “Actions removable generally” and inserting “Removal of civil actions”;

(B) in the item relating to section 1446, by inserting “of civil actions” after “removal”; and

(C) by adding at the end the following new item:

“1454. Procedure for removal of criminal prosecutions.”

“1455. Procedure for removal of criminal prosecutions.”.

(2) Section 1453(b) of title 28, United States Code, is amended by striking “1446(b)” and inserting “1446(c)(1)”.

#### SEC. 104. EFFECTIVE DATE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by this title shall take effect upon the expiration of the 30-day period beginning on the date of the enactment of this Act, and shall apply to any action or prosecution commenced on or after such effective date.

(b) TREATMENT OF CASES REMOVED TO FEDERAL COURT.—For purposes of subsection (a), an action or prosecution commenced in State court and removed to Federal court shall be deemed to commence on the date the action or prosecution was commenced, within the meaning of State law, in State court.

### TITLE II—VENUE AND TRANSFER IMPROVEMENTS

#### SEC. 201. SCOPE AND DEFINITIONS.

(a) IN GENERAL.—Chapter 87 of title 28, United States Code, is amended by inserting before section 1391 the following new section:

##### “§ 1390. Scope

“(a) VENUE DEFINED.—As used in this chapter, the term ‘venue’ refers to the geographic specification of the proper court or courts for the litigation of a civil action that is within the subject-matter jurisdiction of the district courts in general, and does not refer to any grant or restriction of subject-matter jurisdiction providing for a civil action to be adjudicated only by the district court for a particular district or districts.

“(b) EXCLUSION OF CERTAIN CASES.—Except as otherwise provided by law, this chapter shall not govern the venue of a civil action in which the district court exercises the jurisdiction conferred by section 1333, except that such civil actions may be transferred between district courts as provided in this chapter.

“(c) CLARIFICATION REGARDING CASES REMOVED FROM STATE COURTS.—This chapter shall not determine the district court to which a civil action pending in a State court may be removed, but shall govern the transfer of an action so removed as between districts and divisions of the United States district courts.”.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 87 of title 28, United States Code, is amended by inserting before the item relating to section 1391 the following new item:

“1390. Scope.”.

#### SEC. 202. VENUE GENERALLY.

Section 1391 of title 28, United States Code, is amended as follows:

(1) By striking subsections (a) through (d) and inserting the following:

“(a) APPLICABILITY OF SECTION.—Except as otherwise provided by law—

“(1) this section shall govern the venue of all civil actions brought in district courts of the United States; and

“(2) the proper venue for a civil action shall be determined without regard to whether the action is local or transitory in nature.

“(b) VENUE IN GENERAL.—A civil action may be brought in—

“(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;

“(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

“(3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.

“(c) RESIDENCY.—For all venue purposes—

“(1) a natural person, including an alien lawfully admitted for permanent residence in the United States, shall be deemed to reside in the judicial district in which that person is domiciled;

“(2) an entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court’s personal jurisdiction with respect to the civil action in question and, if a plaintiff, only in the judicial district in which it maintains its principal place of business; and

“(3) a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.

“(d) RESIDENCY OF CORPORATIONS IN STATES WITH MULTIPLE DISTRICTS.—For purposes of venue under this chapter, in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.”.

(2) In subsection (e)—

(A) in the first paragraph—

(i) by striking “(1)”, “(2)”, and “(3)” and inserting “(A)”, “(B)”, and “(C)”, respectively; and

(ii) by striking “(e) A civil action” and inserting the following:

“(e) ACTIONS WHERE DEFENDANT IS OFFICER OR EMPLOYEE OF THE UNITED STATES.—

“(1) IN GENERAL.—A civil action”; and

(B) in the second undesignated paragraph by striking “The summons and complaint” and inserting the following:

“(2) SERVICE.—The summons and complaint”.

(3) In subsection (f), by striking “(f) A civil action” and inserting “(f) CIVIL ACTIONS AGAINST A FOREIGN STATE.—A civil action”.

(4) In subsection (g), by striking “(g) A civil action” and inserting “(g) MULTIPARTY, MULTIFORUM LITIGATION.—A civil action”.

#### SEC. 203. REPEAL OF SECTION 1392.

Section 1392 of title 28, United States Code, and the item relating to that section in the table of sections at the beginning of chapter 87 of such title, are repealed.

#### SEC. 204. CHANGE OF VENUE.

Section 1404 of title 28, United States Code, is amended—

(1) in subsection (a), by inserting before the period at the end the following: “or to any district or division to which all parties have consented”; and

(2) in subsection (d), by striking “As used in this section,” and inserting “Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section,”.

#### SEC. 205. EFFECTIVE DATE.

The amendments made by this title—

(1) shall take effect upon the expiration of the 30-day period beginning on the date of the enactment of this Act; and

(2) shall apply to—

(A) any action that is commenced in a United States district court on or after such effective date; and

(B) any action that is removed from a State court to a United States district court and that had been commenced, within the meaning of State law, on or after such effective date.

Mr. REID. Mr. President, I ask unanimous consent the committee-reported amendments be agreed to, the bill, as amended, be read a third time and passed; the motion to reconsider be laid upon the table with no intervening action or debate; and any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill (H.R. 394) was read the third time and passed.

### MEASURES READ THE FIRST TIME—H.R. 674, S. 1769

Mr. REID. Mr. President, I am told there are two bills at the desk due for their first reading.

The PRESIDING OFFICER. The clerk will report the bills by title.

The legislative clerk read as follows:

A bill (H.R. 674) to amend the Internal Revenue Code of 1986 to repeal the imposition of 3 percent withholding on certain payments made to vendors by government entities, to modify the calculation of modified adjusted gross income for purposes of determining eligibility for certain health care-related programs, and for other purposes.

A bill (S. 1769) to put workers back on the job while rebuilding and modernizing America.

Mr. REID. Mr. President, I ask for a second reading en bloc of those two measures, and then object to my own request.

The PRESIDING OFFICER. Objection is heard. The bills will be read a second time on the next legislative day.

### ORDERS FOR TUESDAY, NOVEMBER 1, 2011

Mr. REID. Mr. President, I ask unanimous consent that when the Senate