

Sunrise, Sunset: S. 410, The Sunshine in the Courtroom Act

The Sunshine in the Courtroom Act (the “Act”) is back on the horizon. If the Act becomes law, it would allow judges to open federal courtrooms to television cameras and radio broadcasts. On February 17, 2011, Senator Charles Grassley reintroduced the Act, S. 410, 112th Congress, 1st Session (2011).¹ He was joined by Senators from both sides of the aisle, including Minnesota’s Senior Senator, Amy Klobuchar.² There was no objection to the reintroduction and the text of the Act was printed in the Congressional Record.³

Senator Klobuchar is an unabashed supporter of the Act. She scheduled legislative hearings concerning the Act for December 6, 2011, and, in response to questions concerning the Act, she stated: “[o]ur democracy works best when citizens have access to our government, and that includes our courtrooms. This legislation does a good job of striking a balance between ensuring accountability and transparency while protecting the interests of the parties in a trial. At the end of the day, the Supreme Court does the people’s business. It simply must be accessible to the citizens whose daily lives are affected in the courthouse.”

As Senator Grassley has remarked, and as the Act’s title suggests, the purpose of the Act is to let “the sun shine in on federal courtrooms” and to improve public access and understanding of the Federal Courts:

Openness in our courts improves the public’s understanding of what goes on there. Our judicial system is a secret to many people across the country. Letting the sun shine in on federal courtrooms will give Americans an opportunity to better understand the judicial process. Courts are the bedrock of the American justice system. Allowing greater access to our courts will inspire faith in and restore appreciation for our judges who pledge equal and impartial justice for all.⁴

In general, the Act would give District, Circuit and Supreme Court Judges the discretion to permit “the photographing, electronic recording, broadcasting, or televising to the public of any court proceeding over which that judge presides,” unless to do so would “constitute a violation of the due process rights of any party.”⁵ In proceedings involving more than one judge, this discretion would rest with the “presiding” judge – *i.e.*, the most senior active judge participating, or, in *en banc* sittings, the chief judge, whenever the chief judge par-

ticipates.⁶ As the Act itself makes clear “the presence of the cameras in Federal trial and appellate courts [would be] at the sole discretion of the judges—it [would not be] mandatory.”⁷ As of April 26, 2011, the Congressional Budget Office estimated that the implementation of the Act would cost approximately \$5 million over the 2012-2016 budget period.

The Act is not without limits and it does provide protections for participants in broadcasted proceedings at the District Court level.⁸ Most notably, a non-party witness may request that his face and voice be obscured or the presiding judge may order the obscuring of any witness for good cause.⁹ In addition, upon enactment of the Act, the U.S. Judicial Conference would be charged with promulgating mandatory guidelines concerning the obscuring of vulnerable witnesses, including “crime victims, minor victims, families of victims, cooperating witnesses, undercover law enforcement officers or agents.”¹⁰ Finally, the Act includes a sunset provision, which terminates the authority of the District Courts to broadcast proceedings three years after passage of the Act.¹¹

As Senator Grassley’s “reintroduction” of the Act indicates, legislation to allow the broadcasting of proceedings in Federal courtrooms has been introduced before. Senator Grassley himself introduced similar “Sunshine in the Courtroom” legislation in 2005, 2007, and 2009.¹² The House of Representatives also introduced its own, similar legislation in 2005, 2007, and 2009.¹³ These prior incarnations of the Act reflected the same purpose of improving public access to the federal courts—indeed, Senator Grassley’s introductory speeches included many of the same rhetorical flourishes—but, as might be expected, some of the specific language has changed since 2005.¹⁴ In each of the prior instances, no vote was held and no “sunshine” law was passed.

Of course, it is impossible to predict what might happen on Capitol Hill, particularly in the current political climate. However, there is some chance that this time a little sun may shine on the Act. As of November 7, 2011, the Act was on the Senate’s Calendar of Business as General Order No. 27. More importantly, in September 2010, the Judicial Conference announced that it had approved a pilot project “to evaluate the effect of cameras in federal district courtrooms and the public release of digital video recordings of some civil proceedings.” Since then, the pilot project has gained steam and is now moving forward. Indeed, in March 2011,

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Judge Julie A. Robinson (D. Kan.), chair of the Conference Committee on Court Administration and Case Management (CACM) stated:

We encourage districts to participate in the pilot project. We especially want to ensure that judges who hold a range of views on the recording of courtroom proceedings will participate. It is important to the validity of this pilot to include the skeptical as well as the supportive.¹⁵

However, there have been efforts made at pilot programs before and the Act has risen in the past, only to set without any real action. Only time will tell whether the Act sees the light of day this time.

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FOOTNOTES

1. See 157 Cong. Rec. S908-09 (daily ed. Feb. 17, 2011) (statement of Senator Grassley).
2. See *id.*
3. See *id.*
4. *Id.*
5. See Sunshine in the Courtroom Act of 2011, S. 410, 112th Cong. § 2(b) (1st Sess. 2011).
6. See S. 410, § 2(a).
7. See 157 Cong. Rec. S908-09 (daily ed. Feb. 17, 2011) (statement of Senator Grassley).
8. See S. 410, § 2(b) (2).
9. See S. 410, § 2(b) (2) (A) (ii).
10. See S. 410, § 2(b) (5).
11. See S. 410, § 2(b) (2) (D).
12. See S. 657, 111th Congress, 1st Session (2009); S. 352, 110th Congress, 1st Session (2007); S. 829, 109th Congress, 1st Session (2005); see also 152 Cong. Rec. S837 (Jan. 22, 2007) (remarks of Sen. Grassley); 150 Cong. Rec. S3822-23 (April 18, 2005) (remarks of Sen. Grassley).
13. See, e.g., H.R. 3054, 111th Congress, 1st Session (2009); H. R. 2128, 110th Congress, 1st Session (2007); H.R. 2422, 109th Congress, 1st Session (2005).
14. Compare S. 410, 112th Congress, 1st Session (2011) with S. 657, 111th Congress, 1st Session (2009); S. 352, 110th Congress, 1st Session (2007); S. 829, 109th Congress, 1st Session (2005).
15. See http://www.uscourts.gov/News/TheThirdBranch/11-03-01/Digital_Video_Recording_Pilot_Project_Seeks_Courts.aspx.