

## Key Judiciary Committee Accomplishments – 111<sup>th</sup> and 110<sup>th</sup> Congress

The Judiciary Committee was involved in a large number of bills passed during the 111th and 110<sup>th</sup> Congress. Some of the committee's most notable accomplishments include:

- **Hate Crimes Prevention Act** – Division E of the National Defense Authorization Act for Fiscal Year 2010 contained the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act. Created a general felony prohibition against crimes of violence based on prejudice against gender, disability, sexual orientation, or gender identity. Federal prosecution requires a request by the State involved or certification by the Attorney General of a deficiency in State law or enforcement. Authorizes the Attorney General, at the request of a State, local, or tribal law enforcement agency, to provide forensic, prosecutorial, and other assistance in the criminal investigation and prosecution of prejudice-based violent crimes that constitute felonies under State, local, or tribal law. Specific rules of construction make clear that the new law does not prohibit the exercise of constitutionally protected free speech, included but not limited to in religious settings. Became Public Law 111-84 on October 28, 2009.
- **Reducing Disparity in Sentencing for Crack vs. Powder Cocaine** – The Fair Sentencing Act of 2009 amended the Controlled Substances Act to reduce the disparity between sentences involving crack cocaine and sentences involving powder cocaine. Reduced the disparity between sentencing levels from a 100-1 ratio to an 18-1 ratio, and eliminated the mandatory minimum sentence for simple possession of crack cocaine. Also increased fines for drug trafficking and for the importation and exportation of controlled substances. Became Public Law 111- 220 on August 3, 2010.
- **Restoring Civil Rights Protections** – The Lilly Ledbetter Fair Pay Act of 2009 restored traditionally understood coverage of key civil rights laws. Amended title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and modified operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under any of those laws occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice. This restores the longtime legal understanding to these key civil rights laws, protecting the legal rights of victims of discriminatory decisions or practices that have continued over long periods but have only recently been discovered to sue for compensation. Became Public Law Public Law 111-2 on January 29, 2009.
- **Combatting Cigarette Trafficking** – The Prevent All Cigarette Trafficking Act of 2009 (PACT Act) amended the Jenkins Act to strengthen federal safeguards and prohibitions against black-market trafficking of cigarettes in evasion of State tax reporting requirements, by applying those safeguards and prohibitions also to “delivery sellers” who do not sell in local retail establishments. Also brought smokeless tobacco products under the prohibitions’ coverage. Criminal penalties were increased from misdemeanor

to felony. Mailing of these tobacco products is now strictly prohibited, subject to civil and criminal penalties, except for specified narrow circumstances such as business-to-business transactions, consumer testing, and non-commercial purposes. Delivery sellers are required to comply with all applicable State, local, and tribal tax laws and reporting requirements, to clearly mark all packages, to keep careful records, and to verify the age and identity of persons accepting delivery. Common carriers are required to refuse shipment of any package by anyone on the Attorney general's list of non-compliant delivery sellers, without first verifying that the package does not contain these tobacco products. States and tribal governments are authorized to seek injunctive relief and civil penalties directly in federal court. Became Public Law 111-154 on March 31, 2010.

**Satellite Television Distant Signals License** – The Satellite Television License Extension and Localism Act of 2010 extended for five years, and updated for the digital television era, the statutory compulsory copyright license for transmission of “distant signals.” This statutory license enables satellite and cable subscribers to receive non-local network television programming in areas that do not have local network affiliates. The new law addressed changes in technology and in cable and satellite television markets, including new technologies such as “multicasting,” the practice by which local broadcasters transmit multiple channels over one digital signal. The new law also resolved the so-called “phantom signal problem,” which was an industry-chilling dispute between the cable industry and copyright owners about how to calculate royalties in markets where not all consumers receive all distant signal programming. It also created an effective incentive for satellite television providers to provide local television service to subscribers in every single television market in the United States. Prior to its enactment, satellite subscribers in several rural and small markets could not obtain local programming; by October 2010, within a few months after passage, satellite subscribers in all markets could obtain it. Became Public Law 111-175 on May 27, 2010.

**Tribal Law and Order Act of 2010** – Enacted as title II of the Indian Arts and Crafts Amendments Act of 2009. Took several important steps to improve public safety on Indian lands, including: empowering tribes to better police and prosecute violent crime; improving coordination among tribal, State, and federal officials; creating new statutory positions at the Justice Department and in local U.S. Attorneys' offices to ensure appropriate priority is given Indian country crimes; and requiring collection and reporting of data regarding federal prosecution efforts on regular basis to improve transparency and accountability. Reauthorized significant programs for prevention of crime, including juvenile delinquency prevention programs, drug and alcohol treatment programs, and halfway houses and alternative sentencing programs. Also improved procedures in tribal courts, requiring that indigent defendants charged with an offense subject to a sentence of more than a year in prison be provided effective assistance of counsel, requiring that tribal judges be licensed to practice law and have sufficient legal training, and requiring that criminal laws and regulations be published and that a record of the proceedings be maintained. Became Public Law 111-211 on July 29, 2010.

· **Wall Street Reform and Consumer Protection Act of 2009** – The Judiciary Committee was involved in developing a number of provisions in this legislation. The emergency FDIC receivership procedure, for financial institution insolvencies that pose imminent and significant “systemic risk,” was crafted to ensure that this departure from well-established bankruptcy procedures would be limited to cases of genuine emergency, where essential to broader financial and economic stability. The emergency receivership procedure also incorporates core bankruptcy principles of due process and equitable treatment for all affected parties – including due priority for unpaid wages. An antitrust savings clause ensures that the antitrust laws continue indisputably to apply, as a bulwark against undue concentration in the financial sector that could deprive American businesses and consumers of the benefits of competitive choice; this includes preserving full antitrust review of bank mergers, expedited as may be necessary by any urgency presented by risks to financial stability. The authority of the new Consumer Financial Protection Bureau was clarified to preserve core legal protections for attorneys and their clients regarding activities that are part of the practice of law and are subject to effective supervision and discipline by State courts, while not shielding other attorney activities from the Bureau’s oversight. Became Public Law 111-203 on July 21, 2010.

· **Impeachment of U.S. District Judge Samuel B. Kent** – The Committee investigated allegations that Judge Kent, a judge on the U.S. District Court for the Southern District of Texas, had sexually assaulted two courthouse employees and had falsely denied it to an FBI investigation and to a judicial disciplinary inquiry. Judge Kent had been convicted for obstruction of justice and sent to prison, but still refused to resign, and continued to collect his federal judicial salary. The Committee unanimously recommended articles of impeachment, which the House approved unanimously on June 19, 2009, as H. Res. 520. With trial pending in the Senate, Judge Kent resigned on June 30, 2009, bringing the impeachment process to an end.

· **Impeachment of U.S. District Judge G. Thomas Porteous, Jr.** – The Committee investigated allegations that Judge Porteous, a judge on the U.S. District Court for the Eastern District of Louisiana, committed serious misconduct in several different spheres of activity: 1) a course of conduct involving financial entanglements and corrupt relationships with attorneys who appeared in front of him when he was a State and then a federal judge; 2) a course of conduct involving a corrupt relationship with a bail bondsman, characterized by his accepting things of value and taking official acts at the bondsman’s request, when he was a State and then a federal judge; 3) numerous dishonest statements and violations of court orders in a federal judicial proceeding in connection with his personal bankruptcy proceedings; and 4) false statements and concealing material information in his 1994 FBI background check in connection with his nomination to be a federal judge. The Committee unanimously recommended articles of impeachment, which the House approved unanimously on March 11, 2001, as H. Res. 1031. In the Senate, after substantial pre-trial litigation, a five-day trial before a special Senate impeachment trial committee was held, starting on September 13, 2010. The House’s presentation of evidence was directed by the five House Managers appointed

from the Committee (Reps. Schiff, Lofgren, Johnson, Goodlatte, and Sensenbrenner). A Senate vote on the articles of impeachment is pending.

- **Extending and strengthening antitrust enforcement cooperation incentives** – Extended for five years, until June 22, 2015, title II of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, which provides enhanced incentives for secondary participants in illegal price-fixing cartels to report the cartels to authorities and assist with investigation, prosecution, and civil suit against the cartels. Strengthened requirement that cooperation with civil investigation and suit be timely in order for the participant to qualify for reduced legal exposure to damages in civil suit. Became Public Law 111-190 on June 9, 2010.
- **USA PATRIOT Act extension** – Extended for one year, until February 28, 2011, expiring provisions of the USA PATRIOT Act. This enabled Congress to continue its deliberations on reforms to these provisions that were being developed by the Judiciary and Intelligence Committees. Became Public Law 111-141 on February 27, 2010.
- **Fraud Enforcement and Recovery Act (FERA)** – Amended criminal statutes to: (1) add mortgage lending business to the definition of financial institution; (2) make it a felony to make a materially false statement or overvalue property on a mortgage loan application; (3) make it a felony to defraud the government of TARP and other economic recovery funds; (4) include commodities fraud in the securities fraud statute; and (5) strengthen federal money laundering statutes to make them more effective in the fraud context. Also authorized additional funding for the Justice Department, FBI, and other federal agencies to investigate and prosecute fraud-related crimes; amended the False Claims Act in order to more effectively enlist private citizens to help root out fraud against the government; and created an independent, bipartisan Financial Markets Commission to further examine the circumstances giving rise to the financial crisis of 2008. Became Public Law 111-10 on March 20, 2009.
- **Resolution of U.S. Attorney Subpoena Controversy** – In March 2009, the Committee reached an agreement with the former Bush Administration to resolve the Committee's lawsuit and the contempt citations previously issued by the Committee and the full House of Representatives with respect to the refusal of the Bush Administration to produce subpoenaed White House documents or permit the transcribed testimony of former White House officials Karl Rove and Harriet Miers in its investigation into the firing of U.S. Attorneys and related matters. The Committee obtained the documents and transcripts called for, and released them to the public in August 2009.
- **Combating Alien Smuggling Human Trafficking by Sea** – Section 917 of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 strengthens criminal enforcement against alien smuggling and human trafficking by sea. It increased criminal penalties for knowing failure to heave to – essentially, fleeing the Coast Guard or other authorized law enforcement officials in a vessel, or interfering with their boarding of the vessel – when the offense involves alien smuggling, human trafficking, or other forms of serious physical harm or abuse. Became Public Law 111-281 on October 15, 2010.

- **Extension of E-Verify and Visa Programs and Preservation of Pending Permanent Residency Applications** – The Department of Homeland Security Appropriations Act for 2010 included several immigration-related provisions. It extended the E-Verify pilot program to electronically check employment eligibility of job applicants, the R visa program for religious workers, the EB-5 visa program for investors, and the Conrad 30 J-1 visa waiver program for doctors serving rural areas, for three years. And it amended the Immigration and Nationality Act to allow spouses and other close relatives of U.S. citizens or lawful permanent residents to complete the permanent resident process if the petitioning U.S. citizen or the lawful permanent resident passes away before the process is completed. Became Public Law 111-83 on October 28, 2009.
- **Permitting Negotiations for Music Royalty Rates for Webcasters** – The Webcaster Settlement Act of 2009 amended the copyright laws to allow the recording industry and webcasters to continue their negotiations toward consensus royalty rate agreements as an alternative to the rates set by the Copyright Royalty Board’s 2007 decision. Became Public Law 111-36 on June 30, 2009. Later that summer, copyright owners, artists, and royalty disbursement organizations like SoundExchange reached agreements with Pandora and other webcasters on more affordable royalty rates, and agreed to lock them in through 2015.
- **Protection for Trademarks Obtained Under Madrid Protocol** – The Trademark Technical and Conforming Amendment Act of 2010 made an important correction to a drafting error in the Lanham Act that could have led to the unintended abandonment of trademark rights. Trademark owners are required, in order to maintain their trademark registrations, to periodically affirm that they are using their trademarks in commerce. Normally, they have a six-month grace period to complete this affirmation. However, when Congress acceded to the Madrid Protocol, an international agreement meant to streamline multiple-country filing of trademarks, in 2002, the implementing legislation inadvertently neglected to make clear that trademarks obtained via the Madrid Protocol could also make use of the six-month grace period. This law corrected that oversight. In addition, it gave the Director of the U.S. Patent and Trademark Office discretion to allow applicants to correct good faith and harmless errors. Became Public Law 111-146 on March 17, 2010.
- **Legal Protection for Pro-homeowner Mortgage Adjustments by Servicers** – Section 201 of the Helping Families Save Their Homes Act of 2009 established a safe harbor for mortgage servicers against liability for making mortgage loan modifications so long as they are acting in the best interests of all lenders and investors involved in the loan. This is intended to make it easier for servicers to modify mortgage loans to help homeowners avoid foreclosure, preserving more of the loan and property value to the benefit of all concerned – homeowners, lenders, and investors alike. Became Public Law No. 111-22 on May 20, 2009.

- **Strengthening International Human Rights Enforcement** – The Human Rights Enforcement Act of 2009 established a new section within the Justice Department’s Criminal Division to enforce human rights laws. Also strengthened the provision in the Immigration and Nationality Act making committing acts of genocide a ground for inadmissibility into the United States, by clarifying that it applies to acts of genocide wherever and by whomever committed. Became Public Law 111-122 on December 22, 2009.
- **Protection Against Unconstitutional Foreign Libel Judgments** – The Securing the Protection of our Enduring and Established Constitutional Heritage Act (SPEECH Act) reinforced First Amendment protections by restricting enforceability in U.S. courts of foreign defamation judgments to those that are consistent with the First Amendment and due process. These protections include 47 U.S.C. 230, which keeps interactive computer service providers distinct from those who actually provide the content. This legislation protects U.S. writers and publishers from being subjected to damages claims in U.S. courts based on foreign court judgments from countries that do not afford the same measure of free speech protection as under the U.S. Constitution. Became Public Law 111-223 on August 10, 2010.
- **Arbitration rights for terminated auto dealers** – Section 747 of the Consolidated Appropriations Act, 2010, authorized automobile dealers whose franchises were terminated during the bankruptcy reorganizations of General Motors and Chrysler – in which the automakers had received substantial U.S. government financial assistance – to use binding arbitration so pursue continuation or reinstatement of their franchises. The arbitrator was directed to decide based on a balancing of the economic interests of the dealer, the automaker, and the public. As a result of this legislation, General Motors, for example, reinstated more than half its previously terminated dealerships. Became Public Law 111-117 on December 16, 2009.
- **Biologics Price Competition and Innovation Act of 2009** – Title VII(A) of the Patient Protection and Affordable Care Act, the landmark health care reform legislation, established a pathway for quicker and less costly approval by the Food and Drug Administration of generic versions of biological pharmaceutical products, thus helping bring more affordable generics to the market. Under this law, the maker of the generic version may now use, for the safety and efficacy test data submissions required by the FDA, test data from the previously licensed original product. Generic makers must wait to use the original product test data until 12 years after that data was submitted to the FDA; this delay is designed to balance the expedited approval process for the generic with ensuring that the original product maker has an appropriate opportunity to recoup R&D costs. Became Public Law 111-148 on March 23, 2010.

- **Statutory Time-Periods Technical Amendments Act of 2009** – Conformed the deadlines in 28 statutory provisions that affect court proceedings to the new methodology in amendments being made to the time-computation rules in the Federal Rules of Procedure. This enabled the new time-computation rules to take effect and operate as intended. Became Public Law 111-16 on May 7, 2009.
- **Stopgap funding for U.S. Patent and Trademark Office** – Gave temporary authorization to use funds made available under the Trademark Act of 1946 for patent operations. This enabled the USPTO to fill a temporary shortfall in patent applicant user fees, which fund patent operations, thereby avoiding furloughs or reductions-in-force of patent examiners. Became Public Law 111-45 on August 7, 2009.
- **Cell Phone Contraband Act of 2010** – Added cell phones to the list of items that federal prison inmates are prohibited from possessing or being given. This is important as a matter of prison security and deterrence of continued participation by prison inmates in criminal enterprises. Also directed the Government Accountability Office to assess and report on the rates charged prison inmates for telephone service, how those rates compare to the costs of providing such service, and options for making those costs more affordable while maintaining prison security. Became Public Law 111-225 on August 10, 2010.
- **Foreign Evidence Request Efficiency Act of 2009** – Promotes effective international cooperation in criminal investigations, by authorizing the consolidation of foreign government requests for subpoenas and other investigatory orders into any American court of competent jurisdiction. Became Public Law 111-79 on October 19, 2009.
- **Combat Methamphetamine Enhancement Act of 2010** – Strengthened safeguards in the Controlled Substances Act against unlawful availability of products used to make methamphetamine, by expanding them to include mail-order sellers of any such product along with other retail sellers. All sellers are now required to submit a self-certification of compliance with applicable recordkeeping and other regulations established by the Attorney General. The list of self-certified sellers will be made publicly available on the website of the Drug Enforcement Administration (DEA). Became Public Law 111-268 on October 12, 2010.
- **Servicemembers Civil Relief Act Enforcement** – Title III of the Veterans' Benefits Act amended the Servicemembers Civil Relief Act. Section 302 clarified the rights of servicemembers to cancel cell phone contracts without penalty when they are transferred to another location that does not support the contract, and, if they wish, to keep their phone number in reserve for when they return and reinstate the contract. Section 303 clarified the authority of the federal government to enforce the SCRA on behalf of servicemembers, and the right of servicemembers harmed by a violation of the SCRA to bring suit in their own behalf. Became Public Law 111-275 on October 13, 2010.
- **Indian Arts and Crafts Amendments Act of 2009** – Strengthened protections against fraudulent sale of goods misrepresented as Indian-produced, by amending the Indian Arts

and Crafts Act of 1990 to authorize other federal law enforcement officers, not just FBI agents, to investigate possible offenses. Became Public Law 111-211 on July 29, 2010.

- **Secure and Responsible Drug Disposal Act of 2010** – Amended the Controlled Substances Act to allow the user of a controlled substance who lawfully obtained it (or, if the user is deceased, anyone lawfully entitled to dispose of the user’s property) to deliver it to an authorized person for disposal. The Attorney General may authorize long-term care facilities to dispose of controlled substances on behalf of users who reside or have resided there, in a manner that the Attorney General determines is consistent with public health and safety and provides effective controls against diversion. Became Public Law 111- 273 on October 12, 2010.
- **Criminal History Background Checks Pilot Extension Act of 2009** – Amended the PROTECT Act to extend by 14 months the Child Safety Pilot Program, which allows certain volunteer organizations involved in youth mentoring to obtain national and State criminal history background checks on their volunteers). Became Public Law 111-143 on March 1, 2010.
- **Judicial Survivors Protection Act of 2009** – Created a new six-month enrollment window for federal judicial officers to opt into the Judicial Survivors’ Annuities System and begin contributing amounts deducted from salary toward an annuity, in the event of their death, for their surviving spouse and any dependent children. Also gives judicial officers enrolled in the system the option to purchase, at the same rate, up to an additional year of service credit for each year of federal judicial service completed. Became Public Law 111-49 on August 12, 2009.
- **Conferring honorary citizenship posthumously on Casimir Pulaski** – Pulaski was a citizen of Poland who fought alongside American colonists during the American Revolution. He quickly rose to the rank of brigadier general of the American cavalry, and led a courageous charge at the Battle of Brandywine that averted defeat and saved the life of George Washington. Pulaski is often referred to reverently as the “Father of the American Cavalry.” He died in battle fighting for our country’s independence, so never had a chance to become a U.S. citizen. (The exceptional award of honorary posthumous citizenship serves a purely symbolic purpose, and has no effect on the immigration status of any living relatives.) Became Public Law 111-94 on November 6, 2009.
- **Corporation for Travel Promotion** – Section 9 of the United States Capitol Police Administrative Technical Corrections Act of 2009 established a nonprofit Corporation for Travel Promotion to promote the United States as a tourist destination for foreign tourists. Provides for federal matching funds, matched to corporate contributions. The federal share would come from fees assessed on users of the Visa Waiver Program, a program that allows citizens of specified countries (including countries such as many European countries, Japan, and Australia) to travel to the United States for up to 90 days without obtaining visas. Became Public Law 111-145 on March 4, 2010.