



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 12, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Justice Department is pleased to support HR 2633, the Appeal Time Clarification Act of 2011. This bill would amend 28 U.S.C. 2107 so that the statutory time limit for parties to appeal in civil cases brought against officers or employees of the United States, in either their official or individual capacities, will correspond to Federal Rule of Appellate Procedure (FRAP) 4(a) as recently amended by the Supreme Court. This legislation arose out of a proposal authored by the Department seeking a judicial rule change in order to resolve an ambiguity concerning the appeal time in these types of cases.

It is clear that in suits in which the United States or its officers or agencies are parties, all parties to the case have 60 days after an appropriate judgment or order to file a notice of appeal. However, there is a lack of clarity as to whether this 60-day period (as opposed to the otherwise applicable 30-day period) also applies to suits involving officers of the United States in their individual capacities or to employees of the United States. To remedy this uncertainty, we proposed a rule clarification so that litigants in such cases -- both the Federal Government and private parties -- would not inadvertently lose their right to appeal. On April 26, 2011, the Supreme Court amended FRAP 4(a) in order to accomplish this result. Because the time for filing a notice of appeal is also provided for by statute (28 U.S.C. 2107), corresponding legislation is needed.

The House of Representatives passed HR 2633 on September 12, 2011 by a vote of 384-0. We urge that the Senate pass the House-passed bill. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in cursive script that reads "m weich".

Ronald Weich
Assistant Attorney General

cc: The Honorable Charles E. Grassley
Ranking Minority Member