

118TH CONGRESS
1ST SESSION

S. _____

To amend title 28, United States Code, to provide for the regularized appointment of justices of the Supreme Court of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend title 28, United States Code, to provide for the regularized appointment of justices of the Supreme Court of the United States, and for other purposes.

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 “Supreme Court Bien-
5 nial Appointments and Term Limits Act of 2023”.

6 **SEC. 2. SUPREME COURT TERMS OF OFFICE.**

7 (a) IN GENERAL.—Chapter 1 of title 28, United
8 States Code, is amended—

1 (1) by striking by section 1 and inserting the
2 following:

3 **“§ 1. Number of justices; quorum**

4 “(a) IN GENERAL.—The Supreme Court of the
5 United States shall consist of a Chief Justice of the
6 United States and not fewer than 8 associate justices, any
7 6 of whom shall constitute a quorum.”

8 “(b) APPELLATE JURISDICTION CASES.—Only the 9
9 most recently appointed justices of the Supreme Court of
10 the United States who are not unavailable due to a tem-
11 porary absence shall preside over appellate jurisdiction
12 cases.

13 “(c) ORIGINAL JURISDICTION CASES AND OTHER
14 POWERS.—All justices of the Supreme Court of the
15 United States shall preside over original jurisdiction cases,
16 and may, subject to any procedures established by the Su-
17 preme Court, continue to exercise all other official powers,
18 duties, or responsibilities of a justice of the Supreme
19 Court required by law.”;

20 (2) by striking section 3 and inserting the fol-
21 lowing:

22 **“§ 3. Vacancy in office of Chief Justice; disability**

23 “(a) POWERS AND DUTIES OF CHIEF JUSTICE.—
24 Whenever the Chief Justice is unable to perform the duties
25 of the office or the office is vacant, the powers and duties

1 of Chief Justice shall devolve upon the associate justice
2 next in precedence who is able to act, until such disability
3 is removed or another Chief Justice is appointed and duly
4 qualified.

5 “(b) PERMANENT VACANCY IN OFFICE OF CHIEF
6 JUSTICE.—In the event of a permanent vacancy in the of-
7 fice of Chief Justice of the United States, the first ap-
8 pointment of a justice under this chapter following such
9 vacancy shall be to the office of Chief Justice of the
10 United States.”; and

11 (3) by adding at the end the following:

12 **“§ 7. Appointment**

13 “(a) APPOINTMENTS.—

14 “(1) IN GENERAL.—The President shall ap-
15 point, by and with the advice and consent of the
16 Senate, 1 individual to be a justice of the Supreme
17 Court of the United States within the first 120 days
18 of the first and third years of a Presidential term.

19 “(2) WITHDRAWAL OR DISAPPROVAL.—If the
20 nomination of an individual under this section is
21 withdrawn or disapproved by the Senate, the Presi-
22 dent shall appoint, by and with the advice and con-
23 sent of the Senate, 1 individual to be a justice of the
24 Supreme Court of the United States not later than

1 120 after the date of such withdrawal or dis-
2 approval.

3 “(3) APPLICABILITY.—The President shall not
4 appoint any individual to be a justice of the Su-
5 preme Court of the United States if the number of
6 justices who do not hear appellate jurisdiction cases
7 is 9.

8 “(b) EXCLUSIVE MANNER OF APPOINTMENT.—Ex-
9 cept as provided under subsection (c), the President shall
10 not appoint an individual to be a justice of the Supreme
11 Court of the United States except as provided under this
12 section.

13 “(c) FEWER THAN 9 JUSTICES.—If due to a perma-
14 nent vacancy the total number of justices of the Supreme
15 Court of the United States is fewer than 9, the President
16 shall appoint, by and with the advice and consent of the
17 Senate, such number of individuals as necessary to be a
18 justice of the Supreme Court until the total number of
19 justices of the Supreme Court is 9.

20 “(d) EFFECTIVE DATE OF APPOINTMENT.—

21 “(1) IN GENERAL.—Except as provided in para-
22 graph (2), the term for justices appointed under this
23 section shall begin on July 1.

1 “(2) FEWER THAN 9 JUSTICES.—The term of
2 an appointment under subsection (c) shall begin on
3 the date on which the appointment is made.

4 **“§ 8. Definitions**

5 “In this chapter—

6 “(1) the term ‘appellate jurisdiction cases’
7 means any action, proceeding, or controversy under
8 section 1253, 1254, 1257, 1258, 1259, or 1260;

9 “(2) the term ‘original jurisdiction cases’ means
10 any action, proceeding, or controversy under section
11 1251;

12 “(3) the term ‘permanent vacancy’ means a va-
13 cancy in the office of justice of the Supreme Court
14 of the United States due to death, resignation, re-
15 tirement, or removal; and

16 “(4) the term ‘temporary absence’ means an
17 absence due to disability, recusal, or disqualifica-
18 tion.”.

19 (b) TECHNICAL AND CONFORMING AMENDMENT.—

20 The table of sections for chapter 1 of title 28, United
21 States Code, is amended by adding at the end the fol-
22 lowing:

 “7. Appointment.

 “8. Definitions.”.

23 (c) RULES OF THE SENATE.—This section is enacted
24 by Congress—

1 (1) as an exercise of the rulemaking power of
2 the Senate, and as such it is deemed a part of the
3 rules of the Senate, and it supersedes other rules
4 only to the extent that it is inconsistent with such
5 rules; and

6 (2) with full recognition of the constitutional
7 right of the Senate to change such rules (so far as
8 relating to the procedure of the Senate) at any time,
9 in the same manner, and to the same extent as in
10 the case of any other rule of the Senate.

11 **SEC. 3. EFFECTIVE DATE.**

12 This Act, and the amendments made by this Act,
13 shall apply beginning on the date on which the first full
14 term of a President commences pursuant to section 101
15 of title 3, United States Code, after the date of enactment
16 of this Act.

17 **SEC. 4. SEVERABILITY.**

18 If any provision of this Act or any amendment made
19 by this Act, or any application of such provision or amend-
20 ment to any person or circumstance, is held to be invalid,
21 the remainder of the provisions of this Act and the amend-
22 ments made by this Act and the application of the provi-
23 sion or amendment to any other person or circumstance
24 shall not be affected.