

118TH CONGRESS  
1ST SESSION

# S. 3096

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.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 19, 2023

Mr. WHITEHOUSE (for himself, Mr. BOOKER, Mr. BLUMENTHAL, Mr. PADILLA, Ms. HIRONO, Mr. MERKLEY, Mr. WELCH, and Mr. SCHATZ) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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.

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