

117TH CONGRESS  
1ST SESSION

# H. R. 5140

To establish a process by which the appointment of Supreme Court Justices can occur at regular time intervals, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 31, 2021

Mr. KHANNA (for himself, Mr. BEYER, Ms. LEE of California, and Ms. TLAI B) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To establish a process by which the appointment of Supreme Court Justices can occur at regular time intervals, 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 Term  
5 Limits and Regular Appointments Act of 2021”.

6 **SEC. 2. SUPREME COURT TERM LIMITS.**

7 (a) IN GENERAL.—Chapter 1 of title 28, United  
8 States Code, is amended by adding at the end the fol-  
9 lowing:

1 **“§ 7. Term limits**

2 “The President shall, during the first and third years  
3 after a year in which there is a Presidential election, nomi-  
4 nate, and by and with the advice and consent of the Sen-  
5 ate, appoint one Justice of the Supreme Court.

6 **“§ 8. Senior Justices**

7 “(a) IN GENERAL.—Except as provided in subsection  
8 (c), the panel of justices exercising Judicial power in Cases  
9 and Controversies shall comprise the nine most junior Jus-  
10 tices.

11 “(b) DEEMED RETIRED.—After a Justice has served  
12 18 years, that Justice shall be deemed a Justice retired  
13 from regular active service under section 371(b).

14 “(c) EXCEPTION.—No Justice appointed before the  
15 date of enactment of this Act shall be counted toward the  
16 panel of nine Justices described in subsection (a), nor  
17 shall they be required to retire from regular active service  
18 under subsection (b).

19 **“§ 9. Waiver of advice and consent authority**

20 “If the Senate does not exercise its advice and con-  
21 sent authority with respect to a President’s nominee to  
22 the Supreme Court within 120 days after the nomination,  
23 the Senate shall be deemed to have waived its advice and  
24 consent authority with respect to such nominee, and the  
25 nominee shall be seated as a Justice of the Supreme  
26 Court.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
2 for chapter 1 of title 28, United States Code, is amended  
3 by adding at the end the following:

“7. Term limits.

“8. Senior Justices.

“9. Waiver of advice and consent authority.”.

4 **SEC. 3. SENIOR JUSTICES.**

5 Section 294 of title 28, United States Code, is  
6 amended—

7 (1) by amending subsection (a) to read as fol-  
8 lows:

9 “(a) Any Chief Justice of the United States or Asso-  
10 ciate Justice of the Supreme Court who has retired from  
11 regular active service under section 371(b) of this title  
12 shall be known and designated as a Senior Justice and  
13 may continue to perform such judicial duties as such Jus-  
14 tice is willing and able to undertake, when designated and  
15 assigned by the Chief Justice of the United States.”;

16 (2) in subsection (d), by striking “of such  
17 court” and all that follows through “Supreme  
18 Court.” and inserting: “of such court, except that  
19 any designation or assignment made to the Supreme  
20 Court shall be in accordance with subsection (e).”;

21 (3) by redesignating subsection (e) as sub-  
22 section (g); and

23 (4) by inserting after subsection (d) the fol-  
24 lowing:

1       “(e)(1) When there is a vacancy on the Supreme  
2 Court due to the death, disability certification under sec-  
3 tion 372, or removal of a Justice, the retired Chief Justice  
4 of the United States or Associate Justice of the Supreme  
5 Court who has most recently become a Senior Justice shall  
6 be designated and assigned to serve as a Justice until an  
7 appointment is made under section 7 of this title.

8       “(2) If there is more than one vacancy on the Su-  
9 preme Court, the Senior Justice who has served in such  
10 capacity for the least amount of time shall be designated  
11 and assigned to serve as a Justice by the Chief Justice  
12 until each vacancy on the Supreme Court is filled.

13       “(f) Any Chief Justice of the United States or Asso-  
14 ciate Justice of the Supreme Court who has retired from  
15 regular active service under section 372 may not be a Sen-  
16 ior Justice.”.

17 **SEC. 4. EXCEPTION TO APPOINTMENT OF A SUCCESSOR.**

18       (a) RETIRED JUSTICES.—Section 371 of title 28,  
19 United States Code, is amended—

20               (1) in subsection (d)—

21                       (A) by striking “justice or”; and

22                       (B) by inserting before the period at the  
23 end the following: “or designate a Senior Jus-  
24 tice in accordance with section 294(e) to fill a

1           vacancy resulting from the retirement of a jus-  
2           tice under this section”; and

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

4           “(f) Any justice of the United States who has served  
5 a total of 18 years as a justice shall be treated as a justice  
6 retired from regular active service under this section, un-  
7 less the justice is otherwise eligible to retire as a result  
8 of a disability under section 372.”.

9           (b) **DISABLED JUSTICES.**—Section 372(a) of title 28,  
10 United States Code, is amended in the first sentence, by  
11 inserting after “a successor” the following: “or, in the case  
12 of a justice of the United States, fill the vacancy in accord-  
13 ance with section 294(e)”.

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