

118TH CONGRESS
2D SESSION

S. 4388

To improve the administration of justice by requiring written explanations by the Supreme Court of its decisions and the disclosure of votes by justices in cases within the appellate jurisdiction of the Supreme Court that involve injunctive relief, and other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2024

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

A BILL

To improve the administration of justice by requiring written explanations by the Supreme Court of its decisions and the disclosure of votes by justices in cases within the appellate jurisdiction of the Supreme Court that involve injunctive relief, and 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 “Shadow Docket Sun-
5 light Act of 2024”.

1 **SEC. 2. SUPREME COURT WRITTEN EXPLANATIONS AND**
 2 **DISCLOSURE OF VOTING IN CASES INVOLV-**
 3 **ING INJUNCTIVE RELIEF.**

4 (a) IN GENERAL.—Chapter 155 of title 28, United
 5 States Code, is amended by adding at the end the fol-
 6 lowing:

7 **“§ 2285. Written explanations and disclosure of voting**
 8 **in Supreme Court cases involving injunc-**
 9 **tive relief**

10 “(a) DEFINITIONS.—In this section—

11 “(1) the term ‘Supreme Court’ means the Su-
 12 preme Court of the United States, including any in-
 13 dividual justice or set of justices when acting on be-
 14 half of the Supreme Court of the United States; and

15 “(2) the term ‘Supreme Court’s appellate jurisdic-
 16 tion’ means all cases within the jurisdiction of the
 17 Supreme Court other than those within the original
 18 jurisdiction of the Supreme Court.

19 “(b) REQUIREMENT.—

20 “(1) WRITTEN EXPLANATION AND VOTE DIS-
 21 CLOSURE.—In any case within the Supreme Court’s
 22 appellate jurisdiction, the Supreme Court may not
 23 issue any order granting, denying, or vacating in-
 24 junctive relief or granting, denying, or vacating a
 25 stay of such relief unless the Supreme Court pub-
 26 lishes a written explanation of reasons supporting

1 such order and indicates in writing how each partici-
2 pating justice voted regarding such order.

3 “(2) MULTIPLE OPINIONS.—The written expla-
4 nation required under paragraph (1) may be made
5 in 1 or more opinions representing a majority of jus-
6 tices participating in a decision, without regard to
7 whether a majority of the justices participating in a
8 decision publish the same written explanation.

9 “(3) ADMINISTRATIVE AND SCHEDULING OR-
10 DERS EXCLUDED.—The requirements of this sub-
11 section shall not apply to orders granting or denying
12 applications that relate only to administrative or
13 scheduling matters or petitions for certiorari and
14 that do not grant, deny, or vacate injunctive relief
15 or grant, deny, or vacate a stay of such relief.

16 “(c) LIMITATIONS AND INCLUSIONS.—In imple-
17 menting this section, the following shall apply:

18 “(1) Nothing in this section shall be construed
19 to modify the substantive standards applied by any
20 court in deciding any case.

21 “(2) Nothing in this section shall be construed
22 to modify the jurisdiction of the Supreme Court
23 under any other law.

1 “(3) This section shall apply with respect to or-
2 ders issued in connection with a claim under chapter
3 5 or 7 of title 5.”.

4 (b) CONFORMING AMENDMENT.—The table of sec-
5 tions for chapter 155 of title 28, United States Code, is
6 amended by adding at the end the following:

 “2285. Written explanations and disclosure of voting in Supreme Court cases
 involving injunctive relief.”.

7 **SEC. 3. REPORTS.**

8 (a) IN GENERAL.—Not later than April 1 of the first
9 year that begins more than 180 days after the date of
10 enactment of this Act, and April 1 of every second year
11 thereafter, the Director of the Federal Judicial Center
12 shall submit to Congress a report—

13 (1) assessing the extent of compliance or non-
14 compliance with the requirements of section 2285 of
15 title 28, United States Code, as added by section 2
16 of this Act; and

17 (2) providing any recommendations of the Di-
18 rector regarding ways to improve compliance with
19 such section 2285.

20 (b) ADDITIONAL TIME.—For the first report required
21 under subsection (a), the Director of the Federal Judicial
22 Center may submit the report after the date described in
23 that subsection if the Director identifies in writing to Con-

1 gress the amount of additional time needed for completion
2 of the report.

3 **SEC. 4. SEVERABILITY.**

4 If any provision of this Act, an amendment made by
5 this Act, or the application of such a provision or amend-
6 ment to any particular person or circumstance is held in-
7 valid, the remaining provisions of this Act and the amend-
8 ments made by this Act, and the application of such re-
9 maining provisions and amendments to any other person
10 or circumstance, shall not be affected thereby.

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