

119TH CONGRESS
2D SESSION

S. _____

To amend title 28, United States Code, concerning case assignment procedures for district and circuit courts to ensure randomized case assignments.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To amend title 28, United States Code, concerning case assignment procedures for district and circuit courts to ensure randomized case assignments.

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 “Blocking Overt At-

5 tempts at Shopping By Enforcing Randomization Guide-

6 lines Act” or the “BOASBERG Act”.

7 **SEC. 2. PURPOSE.**

8 The purpose of this Act is to promote confidence in

9 the impartiality of the judiciary and prevent undue influ-

1 ence in the assignment of cases in the Federal courts by
2 mandating the courts implement processes to randomly
3 assign cases amongst judges and reassign cases in limited
4 circumstances following intervention by the Supreme
5 Court of the United States.

6 **SEC. 3. RANDOMIZED CASE ASSIGNMENTS IN DISTRICT**
7 **COURTS; REASSIGNMENT FOLLOWING SU-**
8 **PREME COURT INTERVENTION.**

9 Section 137 of title 28, United States Code, is
10 amended by adding at the end the following:

11 “(c) RANDOM ASSIGNMENT OF CIVIL PRO-
12 CEEDINGS.—

13 “(1) IN GENERAL.—Notwithstanding subsection
14 (a), all district courts shall adopt and observe a rule
15 mandating the random assignment of all civil cases.
16 The rule shall ensure that no party, attorney, or
17 judge (including a chief judge) may select, direct, or
18 influence the assignment of any case to a particular
19 judge.

20 “(2) EXCEPTIONS.—A case may be reassigned
21 from its randomly assigned judge only under the fol-
22 lowing circumstances:

23 “(A) If the assigned judge is required to
24 recuse or is otherwise disqualified under Fed-
25 eral law or judicial ethics rules.

1 “(B) If a case is substantially related to a
2 currently pending case before another judge in
3 the same district, the assigned judge may, at
4 the discretion of that judge, consolidate or reas-
5 sign the case for judicial efficiency if the court
6 issues a memorandum required under para-
7 graph (5)(B).

8 “(C) If the chief judge of the district, pub-
9 licly and with the consent of a majority of ac-
10 tive judges in the district, certifies that for good
11 cause and in the interest of docket efficiency a
12 case needs to be reassigned from the randomly
13 assigned judge, provided that the reassignment
14 is not based on the identity of the parties or at-
15 torneys involved or the nature or subject matter
16 of the case.

17 “(D) In a circumstance described in sub-
18 section (d)(2).

19 “(3) DECLINING A CASE ASSIGNMENT.—A
20 judge may not decline a case after the case has been
21 randomly assigned to that judge. A judge designated
22 as the emergency on-call judge for a period may not
23 decline a case assigned during that period.

24 “(4) RULES FOR CHIEF JUDGES.—A chief
25 judge of a district court shall not self-assign cases

1 outside the randomized process. The chief judge of
2 a district court shall not use the position of chief
3 judge to influence the assignment of any case.

4 “(5) TRANSPARENCY.—

5 “(A) IN GENERAL.—All district courts
6 shall publicly post and disclose any rules, or-
7 ders, policies, or plans regarding the assign-
8 ment of civil cases.

9 “(B) MEMORANDUM.—In any civil case
10 where a judge cannot be randomly assigned, or
11 a case is reassigned, the district court shall
12 publicly issue a memorandum indicating that
13 fact and explaining why the case could not be
14 randomly assigned or was reassigned.

15 “(C) NO POSTING OF RULES.—

16 “(i) IN GENERAL.—To prevent cir-
17 cumvention of random case assignment,
18 district courts shall not publicly post or
19 disclose any rules, orders, policies, or plans
20 regarding the identity of the judge on-call
21 for emergencies.

22 “(ii) RULE OF CONSTRUCTION.—
23 Nothing in this subparagraph shall be in-
24 terpreted to limit the requirements of sub-
25 paragraphs (B) or (D).

1 “(D) STATISTICAL REPORT.—The clerk of
2 the court shall annually publish a statistical re-
3 port summarizing case assignments, including
4 reassignment rates and reasons for reassign-
5 ments.

6 “(6) PROTECTING RANDOM ASSIGNMENT.—Any
7 attempt to manipulate or evade the randomized case
8 assignment system shall be subject to—

9 “(A) in the case of offending conduct by a
10 lawyer, sanctions, including potential case dis-
11 missal or disciplinary action;

12 “(B) in the case of offending conduct by a
13 judge, the judicial misconduct process; or

14 “(C) in the case of offending conduct by a
15 court employee, disciplinary action, including
16 potential termination of employment.

17 “(7) SENIOR JUDGES.—Case assignments for
18 senior judges shall be random to the greatest extent
19 possible. Nothing in this section shall be construed
20 to impede the assignment of cases to senior judges.

21 “(8) RULES OF CONSTRUCTION.—Nothing in
22 this subsection shall be construed—

23 “(A) to prevent district courts from assign-
24 ing cases filed within a division to 1 or more
25 judges; or

1 “(B) to affect the ability of a senior judge
2 to take on a reduced caseload.

3 “(d) REASSIGNMENT AFTER ERRONEOUS RUL-
4 INGS.—

5 “(1) IN GENERAL.—Notwithstanding any other
6 requirement, in any circumstance described in para-
7 graph (2), a case or controversy shall be reassigned,
8 through a random assignment process, from the as-
9 signed district judge to another district judge within
10 the district. If no such judge is available in the same
11 district, the case or controversy shall be reassigned,
12 through a random assignment process, to another
13 available district judge within the circuit, to the ex-
14 tent practicable and consistent with applicable law.

15 “(2) CIRCUMSTANCES DESCRIBED.—The cir-
16 cumstances described in this paragraph are cir-
17 cumstances in which the Supreme Court of the
18 United States—

19 “(A) vacates or reverses, in whole or in
20 part, the judgment of the district court;

21 “(B) vacates or reverses, in whole or in
22 part, an injunction granted by the district
23 court;

1 “(C) vacates or reverses, in whole or in
2 part, the judgment of the court of appeals that
3 affirmed the district court in relevant part;

4 “(D) issues an extraordinary writ author-
5 ized by section 1651 in the case;

6 “(E) issues a stay (other than an adminis-
7 trative stay) of an order of the district court;

8 “(F) issues an injunction where the dis-
9 trict court had declined to issue such an injunc-
10 tion;

11 “(G) issues a writ of prohibition or man-
12 damus involving the assigned district judge re-
13 lated to the case;

14 “(H) issues a writ of habeas corpus where
15 the district court declined to issue such a writ
16 and the prisoner is a Federal officer described
17 in section 1442.”.

18 **SEC. 4. RANDOMIZED PANEL AND CASE ASSIGNMENTS IN**
19 **THE CIRCUIT COURTS.**

20 Section 46(b) of title 28, United States Code, is
21 amended—

22 (1) by striking “(b) In” and inserting the fol-
23 lowing:

24 “(b)(1) In”; and

1 (2) by striking the third sentence and all that
2 follows through the end and inserting the following:

3 “(2) In each circuit, the court shall adopt and observe
4 a rule providing for the random assignment of judges to
5 such panels. The rule shall ensure that no party, attorney,
6 or judge (including a chief judge) may select, direct, or
7 influence the assignment of any judge to a particular
8 panel.

9 “(3) In each circuit, the court shall adopt and observe
10 a rule providing for the random assignment of such panels
11 to cases and controversies. The rule shall ensure that no
12 party, attorney, or judge may select, direct, or influence
13 the assignment of any panel to a particular case or con-
14 troversy.

15 “(4) A judge may be reassigned from a randomly as-
16 signed panel, and a panel may be reassigned from a ran-
17 domly assigned case or controversy, only under the fol-
18 lowing circumstances:

19 “(A) If an assigned judge is required to recuse
20 or is otherwise disqualified under Federal law or ju-
21 dicial ethics rules.

22 “(B) If a case or controversy is substantially re-
23 lated to a currently pending case or controversy be-
24 fore another panel in the circuit, that panel may, at

1 its discretion, consolidate or reassign the case for ju-
2 dicial efficiency.

3 “(C) If the chief judge of the circuit, publicly
4 and with the consent of a majority of active judges
5 in the circuit, certifies that for good cause and in
6 the interest of docket efficiency a case needs to be
7 reassigned from the randomly assigned panel, pro-
8 vided that such reassignment is not based on the
9 identity of the parties or attorneys involved or the
10 nature or subject matter of the case.

11 “(5) Notwithstanding anything in this subsection to
12 the contrary, the United States Court of Appeals for the
13 Federal Circuit shall determine by rule a procedure for
14 the rotation of judges from panel to panel to ensure that
15 all of the judges sit on a representative cross section of
16 the cases heard and, notwithstanding the first sentence
17 of this subsection, may determine by rule the number of
18 judges, not fewer than three, who constitute a panel.

19 “(6) A judge may not decline an assignment to a
20 panel, and a panel may not decline an assignment to a
21 case or controversy, after the relevant random assignment
22 process. A judge assigned as an emergency on-call judge
23 or to an emergency on-call panel for a period shall not
24 decline a case during that period. A panel assigned to be
25 on-call for emergencies for a period shall not decline a case

1 during that period. Nothing in this paragraph shall be
2 construed to affect the ability of a senior judge to take
3 on a reduced caseload.

4 “(7) A chief judge of a circuit shall not self-assign
5 to a panel, or self-assign a panel on which he or she sits
6 to a case or controversy, outside the randomized process.
7 The chief judge of a circuit shall not use the position of
8 chief judge to influence the assignment of any judge to
9 a panel or any panel to any case or controversy.

10 “(8)(A) All circuit courts shall publicly post and dis-
11 close any rules, orders, policies, or plans regarding the as-
12 signment of civil cases.

13 “(B) In any civil case where a judge cannot be ran-
14 domly assigned to a panel or a panel cannot be randomly
15 assigned to a case or controversy, or where a judge is reas-
16 signed from a panel or a panel is reassigned from a case
17 or controversy, the circuit court shall publicly issue a
18 memorandum indicating that fact and explaining why the
19 judge, panel, or case could not be randomly assigned or
20 was reassigned.

21 “(C)(i) To prevent circumvention of random panel
22 and case assignment, circuit courts shall not publicly post
23 or disclose any rules, orders, policies, or plans regarding
24 the identity of the judges or panel on-call for emergencies.

1 “(ii) This subparagraph shall not be interpreted to
2 limit the requirements of subparagraphs (B) or (D).

3 “(D) The clerk of the court shall annually publish
4 a statistical report summarizing case assignments, includ-
5 ing reassignment rates and reasons for reassignments.

6 “(9) Any attempt to manipulate or evade the random-
7 ized case assignment system shall be subject to—

8 “(A) in the case of offending conduct by a law-
9 yer, sanctions, including potential case dismissal or
10 disciplinary action;

11 “(B) in the case of offending conduct by a
12 judge, the judicial misconduct process; or

13 “(C) in the case of offending conduct by a court
14 employee, disciplinary action, including potential ter-
15 mination of employment.

16 “(10) Panel assignments for senior judges shall be
17 random to the greatest extent possible. Nothing in this
18 section shall be construed to impede the assignment of
19 senior judges to panels.”.

20 “(11)(A) Nothing in this subsection shall be con-
21 strued to prohibit a court of appeals from maintaining
22 separate randomized procedures for merits panels, mo-
23 tions panels, emergency panels, screening panels, or other
24 categories of appellate business.

1 “(B) The procedures described in subparagraph (A)
2 shall prohibit any party, attorney, or judge from selecting,
3 directing, or influencing the assignment of a particular
4 judge or panel to a particular case or controversy.”.

5 **SEC. 5. RANDOM ASSIGNMENT TO THREE-JUDGE DISTRICT**
6 **COURTS.**

7 (a) IN GENERAL.—Chapter 155, of title 28, United
8 States Code, is amended—

9 (1) in section 2284(b)(1), in the first sentence,
10 by striking “designate two other judges, at least one
11 of whom shall be a circuit judge” and inserting
12 “cause two other judges, at least one of whom shall
13 be a circuit judge, to be designated through the ran-
14 dom assignment or designation process required
15 under section 2285”; and

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

17 **“§ 2285. Random assignment and designation for**
18 **three-judge district courts**

19 “(a) IN GENERAL.—In each circuit, the court shall
20 adopt and observe a rule providing for the random assign-
21 ment or designation of judges from the relevant pools of
22 district and circuit judges to three-judge district courts
23 in any action required to be heard and determined by a
24 district court of three judges. The rule shall ensure that
25 no party, attorney, or judge (including a chief judge) may

1 select, direct, or influence the assignment of any judge to
2 a particular three-judge court.

3 “(b) EXCEPTIONS.—A judge may be reassigned or re-
4 designated from a randomly assigned or designated three-
5 judge district court only under the following cir-
6 cumstances:

7 “(1) If an assigned or designated judge is re-
8 quired to recuse or is otherwise disqualified under
9 Federal law or judicial ethics rules.

10 “(2) If a case or controversy is substantially re-
11 lated to a currently pending case or controversy be-
12 fore another three-judge court in the circuit, that
13 three-judge court may, at its discretion, consolidate
14 or reassign the case for judicial efficiency.

15 “(3) If the chief judge of the circuit, publicly
16 and with the consent of a majority of active judges
17 in the circuit, certifies that for good cause and in
18 the interest of docket efficiency a judge needs to be
19 reassigned or redesignated from the randomly as-
20 signed or designated court, provided that such reas-
21 signment or redesignation is not based on the iden-
22 tity of the parties or attorneys involved or the na-
23 ture or subject matter of the case.

24 “(c) DECLINING PANEL OR CASE ASSIGNMENTS.—
25 A judge may not decline an assignment or designation to

1 a three-judge district court after the random assignment
2 or designation process. Nothing in this subsection shall be
3 construed to affect the ability of a senior judge to take
4 on a reduced caseload.

5 “(d) RULES FOR CHIEF JUDGES.—A chief judge
6 shall not self-assign or self-designate to a three-judge dis-
7 trict court outside the randomized process. A chief judge
8 shall not use the position of chief judge to influence the
9 assignment or designation of any judge to a three-judge
10 district court.

11 “(e) TRANSPARENCY.—

12 “(1) IN GENERAL.—All circuit courts shall pub-
13 licly post and disclose any rules, orders, policies, or
14 plans regarding the random assignment or designa-
15 tion of judges to three-judge district courts.

16 “(2) MEMORANDUM.—In any civil case where
17 judges cannot be randomly assigned or designated to
18 a three-judge district court, or where a judge is reas-
19 signed or redesignated from a three-judge district
20 court or a three-judge district court is reassigned or
21 redesignated from a case or controversy, the circuit
22 court shall publicly issue a memorandum indicating
23 that fact and explaining why the judge, three-judge
24 district court, or case could not be randomly as-

1 signed or designated, or was reassigned or redesign-
2 nated.

3 “(3) REPORT.—The clerk of the court shall an-
4 nually publish a statistical report summarizing
5 three-judge district court assignments and designa-
6 tions, including reassignment or redesignation rates
7 and reasons for reassignments or redesignations.

8 “(f) PROTECTING RANDOM ASSIGNMENT.—Any at-
9 tempt to manipulate or evade the randomized assignment
10 or designation system shall be subject to—

11 “(1) in the case of offending conduct by a law-
12 yer, sanctions, including potential case dismissal or
13 disciplinary action;

14 “(2) in the case of offending conduct by a
15 judge, the judicial misconduct process; or

16 “(3) in the case of offending conduct by a court
17 employee, disciplinary action, including potential ter-
18 mination of employment.

19 “(g) SENIOR JUDGES.—Three-judge district court
20 assignments or designations for senior judges shall be ran-
21 dom to the greatest extent possible. Nothing in this section
22 shall be construed to impede the assignment or designa-
23 tion of senior judges to three-judge district courts.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENT.—

2 The table of sections for chapter 155 is amended by add-

3 ing at the end the following:

“2285. Random assignment and designation for three-judge district courts.”.

4 **SEC. 6. IMPLEMENTATION.**

5 Not later than 120 days after the date of enactment

6 of this Act, the district courts of the United States and

7 the courts of appeals of the United States shall promul-

8 gate the rules required by the amendments made by this

9 Act.

10 **SEC. 7. SEVERABILITY.**

11 If any provision of this Act, an amendment made by

12 this Act, or the application of such a provision or amend-

13 ment to any particular person or circumstance is held in-

14 valid, the remaining provisions of this Act and amend-

15 ments made by this Act, and the application of such provi-

16 sions and amendments to any other person or cir-

17 cumstance, shall not be affected thereby.