

Calendar No. 7

117TH CONGRESS
1ST SESSION

S. 461

To create a point of order against legislation modifying the number of Justices
of the Supreme Court of the United States.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 2021

Mr. CRUZ (for himself, Mr. WICKER, Mrs. HYDE-SMITH, Mr. MARSHALL, Mr. BOOZMAN, Mr. HAGERTY, Mr. CASSIDY, Mr. LEE, Mr. SCOTT of Florida, Mr. COTTON, Mr. DAINES, Ms. ERNST, Mr. KENNEDY, Mr. BARRASSO, and Mr. INHOFE) introduced the following bill; which was read the first time

MARCH 1, 2021

Read the second time and placed on the calendar

A BILL

To create a point of order against legislation modifying the
number of Justices of the Supreme Court of the United
States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. POINT OF ORDER AGAINST LEGISLATION MODI-**
2 **FYING THE NUMBER OF JUSTICES OF THE**
3 **SUPREME COURT OF THE UNITED STATES.**

4 (a) POINT OF ORDER.—

5 (1) IN GENERAL.—In the Senate, it shall not be
6 in order to consider a provision in a bill, joint resolu-
7 tion, motion, amendment, amendment between the
8 Houses, or conference report amending section 1 of
9 title 28, United States Code, to modify, or that oth-
10 erwise modifies, the total number of Justices of the
11 Supreme Court of the United States.

12 (2) POINT OF ORDER SUSTAINED.—If a point
13 of order is made by a Senator against a provision
14 described in paragraph (1), and the point of order
15 is sustained by the Chair, that provision shall be
16 stricken from the measure and may not be offered
17 as an amendment from the floor.

18 (b) CONFERENCE REPORTS.—When the Senate is
19 considering a conference report on, or an amendment be-
20 tween the Houses in relation to, a bill or joint resolution,
21 upon a point of order being made by any Senator pursuant
22 to subsection (a)(1), and such point of order being sus-
23 tained, such material contained in such conference report
24 or House amendment shall be stricken, and the Senate
25 shall proceed to consider the question of whether the Sen-
26 ate shall recede from its amendment and concur with a

1 further amendment, or concur in the House amendment
2 with a further amendment, as the case may be, which fur-
3 ther amendment shall consist of only that portion of the
4 conference report or House amendment, as the case may
5 be, not so stricken. Any such motion in the Senate shall
6 be debatable. In any case in which such point of order
7 is sustained against a conference report (or Senate amend-
8 ment derived from such conference report by operation of
9 this subsection), no further amendment shall be in order.

10 (c) SUPERMAJORITY WAIVER AND APPEAL.—In the
11 Senate, this section may be waived or suspended only by
12 an affirmative vote of two-thirds of the Members, duly
13 chose and sworn. An affirmative vote of two-thirds of
14 Members of the Senate, duly chosen and sworn shall be
15 required to sustain an appeal of the ruling of the Chair
16 on a point of order raised under this section.

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