

.....
(Original Signature of Member)

119TH CONGRESS
2D SESSION

H. R. _____

To amend section 2101 of title 28, United States Code, to set forth factors
for stays pending appeal.

IN THE HOUSE OF REPRESENTATIVES

Mr. RASKIN introduced the following bill; which was referred to the Committee
on _____

A BILL

To amend section 2101 of title 28, United States Code,
to set forth factors for stays pending appeal.

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 Hon-
5 esty and Disclosure of Orders and Writs Act” or the
6 “SHADOW Act”.

1 **SEC. 2. REQUIREMENT TO SET FORTH FACTORS FOR STAYS**
2 **PENDING APPEAL.**

3 Section 2101(f) of title 28, United States Code, is
4 amended—

5 (1) by striking “In any case” and inserting “(1)
6 In any case”; and

7 (2) by adding at the end the following new
8 paragraphs:

9 “(2) In determining whether to grant or deny
10 a stay under this subsection the Supreme Court or
11 a justice thereof shall—

12 “(A) require a showing of specific, con-
13 crete, and irreparable injury that is distinct
14 from and greater than any harm resulting sole-
15 ly from the operation of the stay that is being
16 challenged;

17 “(B) ensure that the determination under
18 this section does not entail findings or conclu-
19 sions on the ultimate merits of the case or the
20 likelihood of a particular party prevailing; and

21 “(C) provide that any such stay shall not
22 be accorded precedential effect except to the ex-
23 tent necessary to resolve the dispute between
24 the parties in which the stay was entered.

1 “(3)(A) The Supreme Court or justice shall set
2 forth on the record the basis for an issuance or de-
3 nial of a stay under this section, including—

4 “(i) whether, absent such relief, the
5 applicant will suffer an injury described in
6 paragraph (2)(A);

7 “(ii) whether issuance of such relief
8 will substantially injure any other party in-
9 terested in the proceeding; and

10 “(iii) whether the determination to
11 issue or deny such stay was in the public
12 interest.

13 “(B) The basis under subparagraph (A)
14 shall be published on the public docket of the
15 Supreme Court at the time of the issuance or
16 denial of such stay.

17 “(C) The requirement under subparagraph
18 (B) shall not apply if the Supreme Court or a
19 justice thereof determines that immediate ac-
20 tion is necessary to prevent imminent or irrep-
21 arable harm. If there is such a need, the basis
22 under subparagraph (A) shall be published on
23 the public docket of the Supreme Court not
24 later than 7 days after the issuance or denial
25 of such stay.

1 “(4) For purposes of this subsection, a ‘stay’
2 includes any order of the Supreme Court or a justice
3 thereof granting or denying relief to suspend, mod-
4 ify, or preserve the effect of a lower court’s order
5 granting or denying injunctive relief.”.

6 **SEC. 3. CONFORMING AMENDMENT TO THE ALL WRITS**
7 **ACT.**

8 Section 1651 of title 28, United States Code, is
9 amended by adding at the end the following new sub-
10 section:

11 “(c)(1) The Supreme Court or a justice thereof may
12 only issue a writ enjoining any party from the conduct
13 specified in the writ, if the Court or a justice thereof deter-
14 mines that enjoining such conduct is necessary as a result
15 of a critical and exigent circumstance to protect an indis-
16 putably clear legal right that is at issue in the case

17 “(2)(A) The Supreme Court or a justice thereof shall
18 set forth on the record the reasons for the determination
19 made under paragraph (1) including identifying, if appli-
20 cable, the legal right at issue in the case and why it is
21 indisputably clear, the motion for a writ.

22 “(B) The reasons under subparagraph (A) shall be
23 published on the public docket of the Supreme Court at
24 the time at which the motion for the writ is granted or
25 denied.

1 “(C) The requirement under subparagraph (B) shall
2 not apply if the Supreme Court or a justice thereof deter-
3 mines that immediate action is necessary to prevent immi-
4 nent or irreparable harm. If there is such a need, the basis
5 under subparagraph (A) shall be published on the public
6 docket of the Supreme Court not later than 7 days after
7 the writ is granted or denied.”.