

## **Opposition to Packing the United States Supreme Court**

Chairman Hillyer, Vice Chair Grendell, Ranking Member Galonski and honorable members of the House Civil Justice Committee, I thank you for the opportunity to give testimony today on House Resolution 57, to urge the protection of the integrity and independence of the United States Supreme Court.

*“It was a bonehead idea. It was a terrible, terrible mistake to make. And it put in question, for an entire decade, the independence of the most significant body... in this country, the Supreme Court of the United States of America.”*

In 1983, then-Senator Joe Biden used these words to describe Franklin D. Roosevelt’s “court packing” plan. Roosevelt endeavored to appoint up to six new justices to the Supreme Court.

The late Justice Ruth Bader Ginsburg, when asked about court packing in 2019, described it as “a bad idea when President Franklin Delano Roosevelt tried to pack the court...Nine seems to be a good number, and it’s been that way for a long time.”

Ginsburg explained that this process would politicize the high court and erode its independence, stating that "If anything would make the court appear partisan it would be that. One side saying when we’re in power we’re going to enlarge the number of judges so we’ll have more people who will vote the way we want them to. So I am not at all in favor of that solution.”

As a brief historical background, the number of Supreme Court justices, which can be altered by legislation, has varied from six to ten at various points during the 18th and 19th centuries. The Judiciary Act of 1789 established the first Supreme Court, with six justices. In 1801, President John Adams reduced the Court to five Justices in an attempt to limit incoming President Thomas

Jefferson's appointments. Jefferson soon repealed that act, putting the Court back to six Justices. In 1807, Jefferson and Congress added a seventh Justice when it added a seventh federal court circuit. In early 1837, President Andrew Jackson was able to add two additional Justices after Congress again expanded the number of federal circuit court districts. Congress created a 10th circuit in 1863 during the Civil War, and it briefly had a 10th Supreme Court Justice. However, Congress, after the war, passed legislation in 1866 to reduce the Court to seven Justices. That only lasted until 1869, when a new Judiciary Act set the number back to nine Justices, with six Justices required at a sitting to form a quorum. Since then, that number has been fixed. For now 152 years, nine justices have been the standard for America's Supreme Court.

In 1937, following President Franklin Roosevelt's 46-state landslide reelection to a second term, he attempted to pack the Supreme Court.

Frustrated by several conservative Supreme Court decisions endangering his New Deal, Roosevelt proposed a radical reshaping of the court. Under Roosevelt's complicated legislative plan, the size of the court would increase each time a sitting justice reached his 70th birthday and failed to retire. What this meant in practice was that, if the legislation passed, Roosevelt would have the power to immediately appoint six new justices to augment the six who were then already over 70. Thankfully, this effort failed.

Historically, court packing was a terrible idea, as a matter of politics and principle. Court packing is the majority party adding justices to the court in order to get the political results they desire. As history shows us, once a country does this, the independence of the judiciary is over.

The purpose of court packing is not to make the court better. Its purpose is to control the outcomes. This is diametrically opposed to what the Constitution says that the Supreme Court is

supposed to do. The Constitution states in Article III, Section 1 that “The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.”

The biased political outcomes would be true, irrespective if this were Democrats, Republicans, Independents, or another party. Court packing makes the court superfluous, and it would cause it to become a representative body, not a judicial body. You as an American would no longer have “Constitutional rights.” You would have whatever “rights” the majority party allows.

Recent polling found that 68 percent of Americans oppose court packing in any form. This includes virtually all Republicans, the overwhelming majority of independents, and even a third of Democrats. Nearly two-thirds see court packing as a partisan attempt to increase political power, and nearly 60 percent believe that President Biden is using court packing to threaten the Supreme Court into submission.

The American people are right. This process would permanently politicize the Supreme Court, removing the separation of powers, and totally changing the character of the Court. It would simply be an agent under the political party in charge. Its legitimacy would wither, eroding public confidence in its rulings. Whatever rights you cherish most — religious liberty, the right to own and bear arms, free speech, private property rights, freedom of the press — could be in danger.

If the steps toward packing the Supreme Court take place, we as Americans would no longer have a “Supreme Court.”

Respectfully submitted,

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