



**JEAN SCHMIDT
STATE REPRESENTATIVE**

Good afternoon Chairman Hillyer, Vice Chair Grendell and Ranking Member Galonski. I appreciate the opportunity to testify on House Concurrent Resolution 18. While I fully support the House Resolution introduced by my colleagues, if passed, this concurrent resolution could be considered by the Ohio Senate, making it a product of the Ohio General Assembly, not just the House of Representatives.

My concurrent resolution asks for the Congress to adopt the “Keep Nine” amendment to the United States Constitution that states: “The Supreme Court of the United States shall be composed of nine justices.”

Just last year, a bipartisan, nonpartisan group of former State Attorneys general formed the Coalition to Preserve the Independence of the US Supreme Court. I’m pleased to inform you that the Keep Nine Amendment now has the support of over 160 members of Congress and a growing list of state legislative chambers, Governors, Lt. Governors, and Attorneys General along with other statewide elected officials across the country.

As you know, Congressional Democrats recently unveiled a proposal to expand the number of seats on the Court from nine to 13 – and while Nancy Pelosi has said she has “no plans to bring it to the floor,” I have concerns that the issue won’t go away. I served in Congress with three of the co-sponsors of “The Judiciary Act of 2021 and I know first-hand that when Jerry Nadler, a seasoned legislator, wants something done in the House, he will use his influence as Chair of the House Judiciary Committee to get it done.

This isn’t the first time that we have had this debate as Americans. Nearly 86 years ago, President Roosevelt wanted to make changes to the court as well. Over the course of the Depression, Roosevelt was pushing through legislation and, beginning in May 1935, the Supreme Court began to strike down a number of the New Deal laws. “Over the next 13 months, the court struck down more pieces of legislation than at any other time in U.S. history,” said Dr. David Woolner, a senior fellow and resident historian of the Roosevelt Institute.

Roosevelt’s first New Deal program—in particular, its centerpiece, the National Recovery Administration, along with parts of the Agricultural Adjustment Act—had been struck down by unanimous and near-unanimous votes. This frustrated Roosevelt and got him thinking about adding justices to the court, says Peter Charles Hoffer, history professor at the University of Georgia and author of *The Supreme Court: An Essential History*. When he won the election of 1936 in a landslide, Roosevelt decided to float the plan.

It met instant opposition. While it was never voted on in Congress, the Supreme Court justices went public in their opposition to it. And a majority of the public never supported the bill, either, says Barbara A. Perry, director of presidential studies at the University of Virginia’s Miller Center.

“Congress and the people viewed FDR’s ill-considered proposal as an undemocratic power grab,” she says. “The chief justice (Charles Evans Hughes) testified before Congress that the Court was up to date in its work, countering Roosevelt’s stated purpose that the old justices needed help with their caseload.”

I realize that this concurrent resolution is non-binding. However, I can tell you from experience that when the state legislature sends their Congressional delegation a resolution expressing support or concern over a certain issue, that Members of Congress pay attention to it. By passing this resolution, this legislative body would put Congress on notice: the people of Ohio are watching your actions.

Thank you for your time today and I’m happy to take any questions.