

THE "KEEP NINE" AMENDMENT PROTECTS THE INDEPENDENCE OF THE SUPREME COURT

By former Attorney General Paul Summers of Tennessee*

We have challenges and disagreements daily in our country, but there is one issue around which a broad bipartisan majority of Americans can agree.

"The Supreme Court of the United States shall be composed of nine Justices."

That is the language of the proposed "Keep Nine" Amendment to the U.S. Constitution. It would permanently preserve the independence of the Supreme Court. We urge Members of Congress and candidates in both parties to endorse it.

The Constitution is silent on the size of the Supreme Court. Without an Amendment defining the number of Justices, a future Congress and President could change that number for political advantage. This strategy is known as "court packing."

Polling shows that by more than a 3-1 margin, voters would support the "Keep Nine" Amendment. Support among moderates and independents is nearly 4-1.

There have been suggestions that a new President with a majority in Congress might do that which FDR famously attempted, but failed, when he tried to pack the Court. FDR sought to increase the number of Supreme Court Justices and then fill those new positions with ideological allies.

FDR's plan was rejected by the American people and Congress. It divided his allies, and emboldened his opponents.

"Court packing" was then and would be today a disaster for the nation and any party that embraced it. If one party packed the Court, another party with a new majority would retaliate by trying to pack the Court again. The result would undermine both the independence of the Court and the rule of law itself. Nine Supreme Court Justices has worked well since 1869.

Polling shows that a majority of voters believe that packing the Court would weaken the checks and balances on the abuse of power by a future President or Congress.

Candidates in close races who were perceived as receptive to court packing could lose and cost their party the chance of winning control of the White House or Congress.

To say, as a candidate, that you are against court packing is not enough. Stated opposition to court packing will not permanently protect the nation from bitter and divisive consequences of a possible future packing attempt.

Political positions, the occupant of the White House, and majorities in Congress can change over time. To permanently preserve the independence of the Court from a future President and Congress that might wish to manipulate it, a Constitutional Amendment is required.

Some might say that amending the Constitution is too difficult. But America just celebrated the 100th Anniversary of the adoption of the 19th Amendment, guaranteeing women the right to vote, which Congress ratified because of overwhelming pressure from voters and states around the nation.

In the same way that the 22nd Amendment codified the longstanding two term limit for Presidents, a new 28th Amendment would permanently preserve the current number of nine Supreme Court Justices. The late Justice Ruth Bader Ginsburg, who opposed Court packing, had called nine "a good number."

In 2019 a bipartisan, nonpartisan group of former State Attorneys General formed the Coalition to Preserve the Independence of the United States Supreme Court. Of the original 15 AGs, 8 were Democrats and 7 were Republican. The purpose: support the Keep Nine Amendment to have it passed by 2/3 majority in the U. S. House and Senate and then ratified by 3/4 of the states. There now have been resolutions introduced in both Houses of Congress.

We urge all Americans, regardless of party, to endorse the "Keep Nine" Amendment. Their support will ensure the U.S. Supreme Court remains an independent guardian of our rights and freedoms for future generations.

Perhaps 2021 and future years will be remembered as when American leaders, despite their deep differences on many issues, came together. We can all be unifiers to protect the independence of one of the key institutions that protects our democracy.

VR,

A handwritten signature in black ink that reads "Paul G. Summers". The signature is written in a cursive, flowing style.

Paul G. Summers

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*Paul Summers is a former appellate and senior judge, district attorney, and Attorney General of Tennessee. He co-chairs the Coalition, whose website is keepnine.org. Roman Buhler is Executive Director. His email is leaders@KeepNine.org, and phone number is (202) 255-5000.