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My name is Michael K. Allen. I have been a criminal defense attorney in private practice for the last sixteen years. Prior to that, I served as the Hamilton County Prosecuting Attorney and before that I served as a Hamilton County Municipal Court Judge.

I have been asked to weigh in on the subject of expanding the number of justices on United State Supreme Court. Let me say from the outset that this is an absolutely terrible idea that should never see the light of day.

All one needs to do is to look to history to find out that court size has been used as a political weapon before in our country.

President Franklin D. Roosevelt tried to do this in 1937 and after a great number of legislative victories, he was dealt a blow on this proposal. It became clear that the country did not want this. Another example of a prior attempt to expand the court can be found in a recent column by columnist James Evensen:

“[I]n 1801 John Adams was a lame-duck president, having lost the previous November to Thomas Jefferson. Just before that election, Chief Justice Oliver Ellsworth resigned because of an illness. So, Adams hurriedly nominated John Marshall to take his place only a month before Jefferson took office, and the lame-duck Federalist Congress confirmed him, making today’s complaints about the quick Republican confirmation of [Amy Coney] Barrett seem tame by comparison. But Adams went further. He and the Federalists passed a law shrinking the court to five justices, making it less likely Jefferson would ever get to nominate one. When Jefferson assumed office, he and the new Congress quickly returned the number to six. This was the first time the judicial branch was used as a political weapon.”

The Supreme Court is not a political body, and it never should be. Expanding the Supreme Court would, in essence, make it a political body and that is not what the founders intended. Congress does have the option of adding justices. The Founders did not establish a number for Supreme Court Justices. George Washington appointed six justices, but many believe that was only because it was considered the right number needed to travel to the circuit courts over which the justices presided.

Simply put, it was a bad idea when John Adams tried it, it was a bad idea when Franklin D. Roosevelt tried it, and it would be an absolute disaster if it happened now. In a recent Mason-Dixon poll, 68% of those polled said they oppose court packing while only 27% said they support court packing. This is not something that the nation needs or wants.

You can rest assured that Congress and the President will continue their political turf battles, but for the good of the country, leave the United States Supreme Court out of the fight.



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Michael K. Allen, Esq.