

Eagle Forum Report

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The Supreme Test

SCOTUS ON NOTICE

by Tabitha Walter, Executive Director of Eagle Forum

The Supreme Court has long been in the crosshairs of those who want to degrade our Constitutional values. Some Democrats have advocated expanding the Court in response to recent judicial outcomes they oppose. Yet, nine Justices have provided stability to the Court for over 150 years. Now, it is up to members of Congress to solidify that number to maintain the Supreme Court's independence and promote public confidence in the judiciary.

Article III of the U.S. Constitution established the role of the Supreme Court; however, it does not explicitly set the number of justices who can serve on the Court. In 1789, the Supreme Court was created with six justices. That number changed throughout the years. The number even reached ten justices during the Civil War. Finally, in 1869, the Judiciary Act set the number of justices at nine, which corresponded to the nine circuit courts at the time.

Several decades later, Franklin D. Roosevelt attempted to wield ultimate control of the judiciary. Not only did he greatly expand the federal government's reach into Americans' lives, but he urged Congress to pass the Judicial Procedures Reform Bill of 1937 which would have added six more justices to

the Supreme Court. He wanted to hand-pick a court that would greenlight his New Deal reforms. The opposition to this attempt was great, even from his allies. The Senate Judiciary Committee framed the legislation as "needless, futile, and utterly dangerous."

Ultimately, the court relented, upholding the National Labor Relations Act. It was derided as the "switch in time that saved nine," and the court-packing plan was abandoned. Today, scholars across the political spectrum regard it as a blunder. The political impact of FDR's plan was catastrophic for the Democrats, who lost eight Senate seats, 81 House seats, and twelve governors in the 1938 elections.

The late Justice Ruth Bader Ginsburg, whose views often dissented from our own, referenced FDR's actions when forming her own opinion on the number of justices who should serve in the Supreme Court. She stated, "I think that was a bad idea when President Franklin Delano Roosevelt tried to pack the court. If anything would make the court appear more partisan, it would be that. So, I am not at all in favor of that solution. Nine seems to be a good number. It's been that way for a long time."

If only her greatest supporters agreed! Democrats cannot resist entertaining the idea of court packing



after they have suffered from what they deem a "losing streak". During President Trump's first term, he was fortunate to be able to fill three Supreme Court vacancies with Justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett. By appointing justices with a more originalist/textualist approach to the law, the Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*. This 6-3 decision gave the power of regulating abortion back to the American people via their elected representatives. The *Dobbs* case inflamed pro-abortion politicians and activists. Instead of blaming the flaws of *Roe*, which even Justice Ginsburg acknowledged, they turned their ire toward the six justices. Their solution is to harass seated judges and to pack the Supreme Court.

Democrat political strategist James Carville recently said the quiet part out loud. On a left-leaning podcast, he suggested packing

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the Court: “If the Democrats win the presidency and both houses of Congress, I think on day one, they should make Puerto Rico [and] D.C. a state, and they should expand the Supreme Court to 13. [Expletive]. Eat our dust.” Carville then went on to urge Democrats to keep this plan under wraps by not talking about it in campaigns — just make it happen when they are in power again.

Eagle Forum knows all too well the implications of court packing. If Carville’s plan succeeds, the Equal Rights Amendment will be one of the first to be rolled out. ERA would enshrine a host of problems, including creating a Constitutional right to abortion, transgender rights, sex-neutral spaces, and the forced military drafting of women. Parental rights could vanish, giving the bureaucracy more control over the education of children. We could even see personal property and gun rights vanish.

Kamala Harris played by Carville’s rules during her 2024 presidential campaign, but she couldn’t keep it in any longer after her loss. Last month, she suggested expanding the Court by “fighting fire with fire.” Pete Buttigieg has a 15-member Supreme Court Justice plan. It appears presidential hopefuls cannot resist a court-packing scheme like Gollum’s obsession with the One Ring in *The Hobbit*.

With the fate of the Republican majorities looking unclear in the November elections, House and Senate Republicans are finally forwarding a constitutional amendment to protect the number of justices. In May, the House Judiciary Committee held a hearing titled “Court Packing: A Threat to the Supreme Court’s Legitimacy,” where Republicans laid out the dangers of weakening the Court and highlighted previous Democratic opposition to court packing by Justice Steven Breyer and President Joe Biden.

The House Judiciary Committee has marked up Rep. Andy Biggs’s H.J. Res. 1 (Keep 9 Amendment), which would set the number of Supreme Court Justices at nine. For this language to be placed into the Constitution, two-thirds of the House and Senate must agree, and three-fourths of state legislatures must ratify the amendment. Sen. Ted Cruz (R-TX) has introduced the companion bill in the Senate (S.J. Res. 16).

For a ruling party to pack a nation’s highest court would be a national embarrassment, even in less-developed countries. If Democrats manage this scheme, the U.S. would join the ranks of Venezuela in 2004 and Argentina in 1989. That any Democrats are seriously considering a plan to pack the courts is a sad development for their party. The American judicial system is the envy of the world precisely because of its independence.

A renowned historian of the American Revolution, Gordon Wood, has described it as the creation of judges who are “agents of the sovereign people somehow equal in authority with the legislators and executives.” Justices have, therefore, frequently ruled against the presidents and parties that put them on the court. Some of the most prominent, politically sensitive Supreme Court cases in history have involved justices ruling against the parties that put them in power, such as *U.S. v. Nixon*.

Court-packing weakens judicial independence by making judges’ influence contingent on ruling in ways that satisfy the party in power. If political leaders can simply add seats whenever courts issue unfavorable decisions, judges may face pressure to consider political consequences rather than interpret the law impartially. Despite President Trump’s incredible luck to nominate three justices to the Supreme Court, the Court’s decisions have not

always aligned with his preferred outcomes. For example, the Supreme Court decided earlier this year that the President could not use the International Emergency Economic Powers Act to implement tariffs on another country. Limiting the Court to nine justices insulates those seated from the political whims of leaders and current culture allowing them to rule according to the steadfast Constitution.

In addition to court packing, there are other ways to undermine judicial independence. One such idea is term limits for Supreme Court justices. Article III of the Constitution provides life tenure for federal judges, but some term-limit proposals would try to avoid a constitutional violation by merely mandating that justices take “senior” status after eighteen years. Senior justices would continue to be on the federal payroll but only hear cases that the Chief Justice assigns to them, would give the Chief Justice immense power to sway rulings.

Every state’s highest court has between five and nine justices. Similar courts in other countries like Canada, Germany, and France have nine justices. The more justices on a high court, the more likely the court is to be a pawn of the ruling party. As a result of its 2004 packing, the Venezuelan high court grew to 36 Justices, leading to the sad spectacle of the Justices chanting slogans of support for President Hugo Chavez in 2006.

Democrats argue for packing the court that Republicans “stole” two seats by appointing Justices Gorsuch and Barrett. Nothing about those appointments required changing any law. It is telling that the Democrats’ preferred solution is to add four new justices to address the supposed unfairness of the ordinary confirmation of two justices. By the most amazing

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coincidence, there would then be seven Democrat-appointed justices and six Republican-appointed justices instead of the current 6-3 breakdown.

The Democrats' true justification is obvious: they want to control the court so it will rule how they want. This venal motive is leading Democrats astray. Once the court has been politicized, there is no limit to how many times it can be packed. It only has to happen once to destroy the

court's reputation for independence.

Eagle Forum has joined the Keep Nine Coalition to urge lawmakers to support a constitutional amendment to secure the Supreme Court at nine justices. The director of the coalition, Roman Buhler, told *The Federalist*, "We've survived for 250 years with a court that has been able to say no to politicians when it really had to. Not every time, but enough of the time to make an important difference. We

have three branches of government. If we lose that, [it will be like] trying to ride a tricycle with two wheels. It doesn't work."

To learn more about efforts to stop court packing and the Keep Nine Amendment, visit keepnineonthesupremecourt.org. Sen. Mike Lee (R-UT) has also authored a book titled *Saving Nine*, which lays out the history, strategies of the Left, and how to save the Court's integrity. 

NINE IS JUST FINE

by First Liberty Institute www.firstliberty.org

Just when you thought the push for radical court "reform" had gone away, the Far Left is once again insisting on expanding the U.S. Supreme Court. Ahead of the November midterm elections, they're laying the groundwork for a Supreme Court Coup should they regain political power.

In response to the Supreme Court's recent decision on redistricting, former presidential candidate Kamala Harris called for "Supreme Court reform, including the notion of expanding the court" during a call with a Left-leaning nonprofit, Emerge.

"The truly radical project of court-packing is fast becoming a mainstream view, if not a litmus test, on the Left," explains Guy Benson at the *Washington Examiner*. "Lawmakers with presidential ambitions are demanding 'reforms' to the Supreme Court, with several openly calling for the addition of four seats."

"It's a dangerous thing, a dangerous gambit," said U.S. House Speaker Mike Johnson in response to Harris's remarks. "You don't just blow up the system when you lose."

"For the former vice president of the United States and a candidate for president to suggest that you should pack the Supreme Court or destroy these institutions because they lost is,

I just think, outrageous," Johnson added.

For years, activists have put forward radical proposals that

would destroy judicial independence and the constitutional order. They

have poured millions of dollars into trying to convince the public that their changes would "fix" the Court.

The list of bad ideas includes court-packing, ending life tenure for federal judges, and giving Congress the power to oversee the Court's ethics code. Some have proposed keeping the justices from hearing certain cases, effectively destroying the Court's power of judicial review.

They also launched a wave of attacks against the conservative justices. They fabricated "ethics" scandals aimed at making Americans hallucinate misconduct. This line of attack was designed to smear the credibility of the justices and undermine the authority of their rulings. It's clear what this is really about: destroying public trust in the Supreme Court.

During President Biden's administration, there was a major push to pack the Court, an effort that didn't have anything to do with improving our judicial system. It was all about

power and control.

"Court packing would not simply alter the structure of the Supreme Court — it would convert it into a subsidiary of the other branches, destroying our constitutional order," explained First Liberty Executive General Counsel

Hiram Sasser.

"Americans don't want their Constitution destroyed," writes attorney and Yale Law School professor Jed Rubenfeld. "Polls consistently show that 54 percent to 58 percent of Americans oppose court-packing."

"The whole point of constitutional law is to have one branch of government, headed by the Supreme Court, that can stand against majority will when it violates the nation's fundamental law," he added. "The point of court-packing is the opposite: to create a Supreme Court that won't stand in the way of majority will. In other words, court-packing is a wrecking ball to demolish the Constitution itself."

Fighting for religious freedom is meaningless if the courts are politicized and turned into an extension of whoever holds power. First Liberty will do everything we can to protect judicial independence and the integrity of the courts. 



YOU CAN VOTE FOR NINE

by Shawn Fleetwood is a staff writer for The Federalist and a graduate of the University of Mary Washington. He is a co-recipient of the 2025 Dao Prize for Excellence in Investigative Journalism.

Federal elections are no longer about which party gets to appoint SCOTUS justices, but how many justices there will be.

Democrats will oftentimes play the Abigail Spanberger card by working with legacy media to hide their radicalism from voters. But when it comes to their goal of packing the Supreme Court with left-wing activists, they've taken the mask completely off.

Since the release of its *Louisiana v. Callais* decision nuking race-based redistricting, Democrats have revamped their intention to add more justices to the high court as a means of acquiring judicial outcomes that benefit their party. While some have employed coy language about SCOTUS “reforms,” others have been straightforward in their desire to destroy one of America’s last functioning institutions by stacking the court with leftists.

“This is the most partisan Supreme Court in the history of the nation. Time to add term limits and more justices,” wrote Sen. Ruben Gallego (D-AZ) in an X post.

Rep. Ro Khanna (D-CA) wrote that the “next Democratic White House does not need a court reform commission like some college seminar,” but that “we need action.”

“We need term limits for Justices. We need to expand this morally bankrupt Court from 9 to 13,” Khanna wrote.

In calling for “court reform,” Rep. Summer Lee (D-PA) also backed Democrats’ plans to “expand the court” and “set term limits” as a way of stopping what she characterized

as “systematic attacks on our voting rights.”

The officials are but a few of the many Democrats or other leftists who have telegraphed — if not outright declared — their support for packing the Supreme Court since the *Callais* ruling.

While having psychotic meltdowns at not getting their way is nothing new for the left, the open embrace of such power-hungry tactics underscores how Democrats have historically viewed the Supreme Court, and how the body has become yet another flashpoint in the battle for control of Congress.

As The Federalist Editor-in-Chief Mollie Hemingway detailed in her new book, *Alito: The Justice Who Reshaped the Supreme Court and Restored the Constitution*, leftist control of the high court throughout much of the 20th century turned an institution meant to interpret the law into one that invented law through activist rulings. Under the Warren and Burger Courts, SCOTUS “had functioned as a super-legislature, enacting the Left’s policies by a majority vote of justices, no matter what the Constitution said.”

“The Left had come to view the Court as its rightful property and would not cede control willingly,” Hemingway wrote.

As Republican presidents and the conservative legal movement got better at elevating individuals who would properly interpret the

Constitution as written to the bench, the left’s control of SCOTUS steadily waned. Now, with a majority of appointed originalists, the high court is no longer available to Democrats to ram their radical agenda into law with zero input from the American people



and their elected representatives.

This reality and the wave of constitutional decisions from the conservative justices are what’s driving the left’s bid to stack the court with Ketanji Brown Jackson-style activists — leftists who will make decisions based on what’s best for the Democrat Party, not the rule of law.

Federal elections are no longer just about which party gets to appoint justices to the Supreme Court. They’re about whether the number of justices will remain the same or if Democrats will get to pack the court and turn it back into a de facto legislature that invents new constitutional “rights” as a majority of its members see fit.

Should Democrats succeed in their goal, the high court’s legitimacy would shatter, and so too America’s separation of powers. 

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