Support the Keep Nine Constitutional Amendment, H.J.Res. 11

On behalf of our activist community, I urge you to contact your representative and ask him or her to cosponsor the proposed amendment to the Constitution, H.J.Res. 11, to require that the number of Supreme Court be limited to nine. Introduced by Rep. Dusty Johnson (R-S.D.), the proposed constitutional amendment would prevent congressional Democrats from playing politics with the Supreme Court.

There has recently been a focus on federal courts as a means to validate or invalidate legislation passed by Congress or actions taken by the Executive Branch. Congressional Republicans have focused on this for several years, as conservative commentators lamented that judges were legislating from the bench. Congressional Democrats have, however, also focused on judges, usually from a standpoint of attempting to slow down or block the consideration of judges in the Senate, particularly in the case of the Supreme Court.

Democrats have claimed that Republicans have “packed” federal courts in recent years. However, we are not aware of any legislation to expand federal courts. We are aware of Senate Republicans filling legitimate vacancies that have occurred over the past four years. This is not “court-packing” in any historical sense of the term.

Back in 1937, President Franklin D. Roosevelt devised a court-packing scheme after the Supreme Court struck down some parts of the New Deal, including significant parts of the Farm Bankruptcy Act in *Louisville Joint Stock Land Bank v. Radford* (1935), the National Industrial Recovery Act in *Schechter Poultry Corp. v. United States* (1935), and the Agricultural Adjustment Act in *United States v. Butler* (1936).

What FDR tried to do in 1937, before the Court flipped in *West Coast Hotel Co. v. Parrish* (1937), was court-packing. Before that decision, known as the “switch in time that saved nine,” FDR had pushed a plan to add one new Supreme Court justice, limited to six in total, for each
one over the age of 70 with at least ten years of service. This would have meant a maximum of 15 justices on the Supreme Court.

FDR’s court-packing scheme was criticized by even members of his own party and, in the end, it didn’t go anywhere.

Democrats’ recent desire to expand the Supreme Court, which was openly talked about long before the confirmation of Justice Amy Coney Barrett, is of a similar vein to that of FDR. Democrats want justices who will rubber-stamp their legislative and regulatory agendas, regardless of constitutionality and statutory limitations.

The number of Supreme Court justices has been statutorily set at nine since 1869. H.J.Res. 11 simply amends the Constitution to reflect what has been in statute for 150 years. This constitutional amendment doesn’t preclude Congress from increasing the size of district and circuit courts.

For these reasons, I urge you to contact your representative and ask him or her to cosponsor the proposed amendment to the Constitution, H.J.Res. 11, to require that the number of Supreme Court be limited to nine.

Sincerely,

Adam Brandon
President, FreedomWorks