

117TH CONGRESS
1ST SESSION

S. RES. 164

Expressing the sense of the Senate that the number of justices of the Supreme Court of the United States should remain at 9.

IN THE SENATE OF THE UNITED STATES

APRIL 19, 2021

Mr. DAINES (for himself, Mr. LANKFORD, and Mr. RUBIO) submitted the following resolution; which was referred to the Committee on the Judiciary

RESOLUTION

Expressing the sense of the Senate that the number of justices of the Supreme Court of the United States should remain at 9.

Whereas the first section of the Act entitled “An Act to amend the Judicial System of the United States”, approved April 10, 1869 (commonly known as the “Judiciary Act of 1869”) (16 Stat. 44; chapter 22), states that “the Supreme Court of the United States shall hereafter consist of the Chief Justice of the United States and eight associate justices”;

Whereas the Supreme Court of the United States has consisted of a Chief Justice and 8 associate Justices for 152 years;

Whereas previous attempts to increase the number of justices on the Supreme Court of the United States have been re-

jected and widely condemned by individuals of both political parties;

Whereas, in 1937, when former President Franklin Delano Roosevelt proposed the Judicial Procedures Reform Bill of 1937, a bill that sought to expand the number of justices on the Supreme Court of the United States from 9 justices to 15 Justices, he was harshly criticized by both parties and his own Vice President, John Nance Garner;

Whereas, the 1937 Senate Judiciary Committee report, in response to the Court-packing plan by President Roosevelt, decried the plan as “a needless, futile, and utterly dangerous abandonment of constitutional principle”, that “[i]ts ultimate operation would be to make this government one of men rather than one of law” and that it was “a measure, which should be so emphatically rejected that its parallel will never again be presented to the free representatives of the free people of America”;

Whereas, during the Trump Administration, Democrats have refused to recognize the legitimacy of nominations made by President Trump to the Supreme Court of the United States and have advocated for packing the Court with additional justices appointed by a future Democrat president;

Whereas, in 1983 during a Senate Judiciary Committee hearing, then-Senator Joe Biden noted that Court packing was a “bonehead idea” and “a terrible, terrible mistake” that “put in question for an entire decade the independence of the most significant body—including the Congress, in my view—the most significant body in this country, the Supreme Court of the United States of America”;

Whereas, in 2005 during a speech on the Senate floor, then-Senator Joe Biden praised members of the Democrat Party for their “act of courage” in opposing the Court-packing plan of President Roosevelt, which he described as a “power grab”;

Whereas, in 2019, the late Justice Ruth Bader Ginsburg stated, “I think it was a bad idea when President Franklin Roosevelt tried to pack the Court”, and that “if anything would make the Court look partisan, it would be that”;

Whereas, in 2021, Justice Stephen Breyer urged supporters of court packing to “think long and hard” about undermining the independence of the court, noting that it is imperative the public “trust that the court is guided by legal principle, not politics” and that “structural alteration motivated by the perception of political influence can only feed that latter perception, further eroding that trust”;

Whereas the Constitution of the United States is based on the principle of separation of powers to provide for checks and balances on each branch of the Federal Government and expanding the Supreme Court of the United States purely for political advantage threatens the separation of powers and the system of checks and balances established in the Constitution of the United States;

Whereas the Federal judiciary is insulated from political influence through lifetime appointments and other measures to preserve its independence and an attempt to expand the Supreme Court of the United States purely for political purposes threatens the independence and integrity of the Supreme Court and, thus, the entirety of the judiciary it oversees; and

Whereas any attempt to increase the number of justices of the Supreme Court of the United States or “pack the Court” would undermine the democratic institutions and destroy the credibility of the highest court in the United States: Now, therefore, be it

- 1 *Resolved*, That the Senate opposes any attempt to in-
- 2 create the number of justices of the Supreme Court of
- 3 the United States or otherwise pack the Court.

