



Written by [Michael Tennant](#) on May 25, 2021

Democrats Vow to Pack Supreme Court If It Modifies “Roe v. Wade”

Democrats are renewing their calls to pack the Supreme Court should the Court’s upcoming decisions accurately reflect the Constitution as originally understood rather than as interpreted by the courts since the 1930s.

Soon-expected rulings related to ObamaCare and gun control could spur court-packing efforts to some degree, but the big driver is likely to be the decision in *Dobbs v. Jackson Women’s Health Organization*, a case challenging Mississippi’s ban on abortions after 15 weeks of pregnancy, which the justices [agreed to hear](#) last week. The court, whose pro-abortion majority vanished with the death of former Justice Ruth Bader Ginsburg, could take the opportunity of *Dobbs* to modify or even overturn *Roe v. Wade*, which is heresy to the Left.



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“It will inevitably fuel and drive an effort to expand the Supreme Court if this activist majority betrays fundamental constitutional principles,” Senate Judiciary Committee member Richard Blumenthal (D-Conn.) told [The Hill](#).

Of course, by “fundamental constitutional principles,” Blumenthal means the court’s 1973 invention of the right to abortion on demand, not such things as federalism and limited government. Indeed, Blumenthal would likely concur with President Franklin Roosevelt, who, in introducing his own (failed) court-packing scheme in 1937, thundered that the court’s anti-New Deal rulings were predicated on a “horse-and-buggy” understanding of the Constitution.

Note, too, that in Blumenthal’s telling, a court that works to restore the original intent of the Constitution is “activist,” while one that tries to eviscerate it is simply an unbiased referee. Senator Jeff Merkley (D-Ore.), likewise, told *The Hill* that “there’s no easy answer on how to restore the court to be [a] fully legitimate, non-political arbiter of the Constitution,” i.e., one that will uphold *Roe* and other blatantly unconstitutional decisions.

As Democrats see it, justices who rule in favor of big government are honest, public-minded jurists, while those who don’t are tools of evil capitalists.

Senator Sheldon Whitehouse (D-R.I.), who is also on the Judiciary Committee, told *The Hill* the court’s willingness to consider *Dobbs* “really enlivens the concerns that we have about the extent to which right-wing billionaire money has influenced the makeup of the court and may even be pulling strings at the court.”



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Democrats have already introduced bills in both chambers of Congress to increase the number of Supreme Court justices from nine to 13, thereby giving President Joe Biden the opportunity to appoint enough liberal justices to thwart the conservative ones. Moreover, as Whitehouse pointed out, “We’ve got a whole array of options we’re looking at in the courts committee,” referring to the [commission Biden created in April](#) to study ways to guarantee the courts will rule as Democrats desire.

“Chipping away at *Roe v. Wade* will precipitate a seismic movement to reform the Supreme Court,” said Blumenthal. “It may not be expanding the Supreme Court, it may be making changes to its jurisdiction, or requiring a certain number of votes to strike down certain past precedents.”

According to *The Hill*, Whitehouse

cited “easy” reforms such as “proper disclosure and transparency” of the “gifts, travel and hospitality” received by the judges themselves and the “people who are behind front-group amicus curiae briefs” and who were “funding the political advertisements for the last three judges, writing \$15 million and \$17 million checks.”

Unlike the rulings they want from the courts, Democrats’ proposed “reforms” are to some degree constitutional. The Constitution merely establishes the High Court’s existence; Congress is free to determine its composition, jurisdiction, and so on.

Whether they will achieve their objectives, on the other hand, remains to be seen. The Senate, after all, is evenly split between Democrats and Republicans, and the filibuster remains an option. In addition, Biden’s signature on any court-changing bill is not guaranteed. He has opposed court-packing in the past, although he refused to state his position on the issue just before the election, which suggests another of his patented flip-flops is in the offing.

But Democrats don’t necessarily need to pass any bills to get the court to rule the way they want. Roosevelt’s doomed court-packing plan persuaded the existing justices to begin ratifying the New Deal, setting the stage for decades of genuine judicial activism. So what if, as Biden has [repeatedly observed](#), this sudden about-face made the Court’s subsequent decisions suspect? To the Left, power is far more important than the public’s perception of how it was attained.



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