



Written by [Bob Adelman](#) on August 30, 2019

## Senate Dems Threaten to Pack the Supreme Court; Republicans Say No

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Seeing the judicial pendulum swinging back in favor of the Constitution, five Senate Democrats chose a pending case to vent their frustration and to issue a threat: Unless you stop the pendulum, we'll push to pack the court with friendlies.



The case selected is the *New York Rifle & Pistol Association v. the City of New York*. The Association thinks the city's new ordinance limiting the transport of firearms to gun ranges outside the city is unconstitutional and sued the city accordingly. The case moved to the Supreme Court, which granted its petition to review a lower court's ruling. In the meantime, New York City officials modified the offending law, declaring the case "moot."

Five liberal, anti-gun Democrat Senators — Sheldon Whitehouse of Rhode Island, Dick Durbin of Illinois, Mazie Hirono of Hawaii, Richard Blumenthal of Connecticut, and Kirsten Gillibrand of New York — filed a "[friend of the court](#)" brief asking the Court to dismiss hearing the case as the city's modifications have, in their opinion, rendered the suit brought by the Association as now no longer relevant.

They went further. In that letter they made it clear that if the Supreme Court went ahead to hear the case anyway, and ruled in favor of the plaintiffs, they would move to expand the number of justices on the court to include those more friendly to their cause and their agenda.

They accused outside actors of bringing particular cases before the Court in order to "move the law":

As scholars, journalists, and commentators have observed, this Court has employed a number of methods to circumvent justiciability limits [the limits in legal issues over which the Court can properly exercise its judicial authority] in decisions that moved the law....

Others have documented members of this Court affirmatively inviting challenges to long-established precedent, or leaving "time bombs" in opinions by including "subtle dicta or analysis not necessary to decide [a case] with an eye toward influencing how the Court will decide a future case."

The senators concluded that "the Court is not standing back in dispassionate form and 'calling balls and strikes' when it is laying the groundwork for future policy changes or soliciting opportunities to change policy. That should be unacceptable in the context of separated powers."

This from a gaggle of leftist Senators who have provably been substantially violating their oaths of office to uphold and defend the Constitution during their terms in office. Senator Sheldon Whitehouse, for instance, sports a [rating of just 12 out of 100](#) on The New American's Freedom Index for his tenure in the Senate.



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The five went on to declare that the Court is a party to legal manipulation: “The Court and the country have witnessed an accompanying explosion of strategic ‘faux’ litigation — cases fabricated to bring issues before the Court when litigants presume it will give them policy victories.”

Their threat was tangible:

The Supreme Court is not well. And the people know it. Perhaps the Court can heal itself before the public demands it be “restructured in order to reduce the influence of politics.” Particularly on the urgent issue of gun control, a nation desperately needs it to heal.

There it is: The Court is about to rule on a number of pertinent cases involving the Second Amendment, and the five see the Court’s decisions going badly for them and their anti-gun agenda. Several gun-rights groups, including the NRA, are urging the Court to hear challenges to “good cause” concealed-carry permitting laws in Massachusetts and New Jersey. And gun manufacturer Remington Arms is asking the Court to dismiss a lower court ruling stemming from the 2012 Sandy Hook mass shooting. The plaintiffs in that case allege that Remington used “unfair trade practices” in marketing the weapon used in that massacre.

On Thursday, all 53 Republican Senators signed and sent a letter addressed to the Court exposing the move and declaring that as long as they remain in office, packing or expanding or otherwise “healing” the Court of its determination to uphold and defend the Constitution as originally intended by the founders was itself “moot.”

From their letter:

Several of our Democrat colleagues ... openly threatened this Court with political retribution if it failed to dismiss the [New York Pistol & Rifle Association’s] petition as moot....

There is no greater example of the genius of our Constitution than its creation of an independent judiciary. Alexander Hamilton explained in Federalist No. 78 that “the complete independence of the courts of justice is peculiarly essential in a limited Constitution.” Only an independent judiciary can “guard the Constitution and the rights of individuals from ... dangerous innovations in the government, and serious oppressions of the minor party in the community.”

But that “judicial independence” is under attack:

Democrats in Congress and on the presidential campaign trail have peddled plans to pack this Court with more justices in order to further their radical legislative agenda.

It’s one thing for politicians to peddle these ideas in Tweets or on the stump. But the Democrats’ amicus brief demonstrates that their court-packing plans are more than mere pandering. They are a direct, immediate threat to the independence of the judiciary....

Justices ... must not be cowed by the threats of opportunistic politicians.

As for the 53 Republican signers of Thursday’s letter to the Court:

For our part we promise this: While we remain Members of this body, the Democrats’ threat to “restructure” the Court is an empty one. We share Justice Ginsburg’s view that “nine seems to be a good number.” And it will remain that way as long as we are there.

Not only is that a warning, but a reminder to citizens involved in the freedom fight just how tenuous the hold is on Constitutional limitations under attack by tyrants masquerading as politicians. One need not contemplate in advance the consequences if Democrats gained a majority in the Senate next November



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while keeping the House and replacing the present occupant of the White House with any of the gaggle of socialists vying for the position. One need only read a modicum of history to learn, or be reminded once again, of the terrors inflicted upon a people by a government without limits.

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