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“Keep 9 Amendment” Proposed to Stop Court Packing

A new group called “Keep 9 Amendment” has been formed in an effort to propose an amendment to the U.S. Constitution to ban left-wing attempts to increase the number of justices on the U.S. Supreme Court.

Disenchantment among the Left over some recent rulings from the Supreme Court, such as the *Dobbs* decision overturning *Roe v. Wade*, has generated a drive to add more members to the Court. Some have even suggested using a simple vote of Congress to set term limits on federal judges, despite the clear wording of the Constitution that federal judges have lifetime appointments.



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Alexander Hamilton reassured those in his day who expressed concern about the establishment of the Supreme Court that it was “the least dangerous branch” of the federal government. But in the last couple of generations, the Supreme Court has become what some in Hamilton’s day feared it would become — a political institution, sort of a “super-legislature,” implementing much of the radical agenda of the Left, such as the *Roe v. Wade* ruling in 1973.

The Keep 9 Amendment wording being proposed is amazingly simple: “The Supreme Court of the United States shall be composed of nine justices.” Senator Ted Cruz (R-Texas) has introduced the proposal, which would require a favorable vote by two-third of each house of Congress, and subsequent ratification from three-fourths of the states. More than 200 members of Congress and more than 800 state legislators back the amendment.

By contrast, more than 60 Democrats in Congress have supported legislation to expand the size of the Supreme Court, including former House Speaker Nancy Pelosi, current House Minority Leader Hakeem Jeffries, and Senate Majority Leader Chuck Schumer. Planned Parenthood, the National Education Association, and the United Auto Workers Union have publicly backed increasing the number of justices.

Vice President Kamala Harris, the Democratic Party nominee for president, said in 2019 that she was “absolutely open” to packing the Court, although she has waffled recently, as she has on many other issues. Alarming, the Harris campaign hired Brian Fallon, who is the *leader* of the pro-Court packing group “Demand Justice,” as the spokesperson of her campaign.

Not a single Democrat in the current Congress supports the effort to add an amendment to the Constitution to set the number at nine.

Democratic calls for court-packing are not the first effort to increase the membership of the Supreme Court so as to remove that institution as an obstacle to left-wing legislation. In 1937, President Franklin Roosevelt, who had been re-elected the previous year in a landslide, saw the U.S. Constitution and the Supreme Court as a roadblock to his proposals to increase the power of the federal government.

FDR demanded that Congress add six more justices to the Court, bringing its membership up to 15.



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This would enable him to nominate those six new members, thus removing any opposition to his leftist schemes by the justices.

Roosevelt summoned Democratic leaders of Congress to the White House and told them to enact his plan to pack the Court. He had not even consulted his vice president, John Nance Garner of Texas. As the members of Congress were leaving the White House, one of them — the chairman of the House Judiciary Committee, Hatton Sumners of Texas — told his colleagues, “Boys, this is where I can in my chips.” He said he would not support the court-packing plan. The plan never made it to the House of Representatives, as the U.S. Senate — where Democrats outnumbered Republicans 76-16 — shot down the power-grabbing effort of Roosevelt by 70-20.

After that, no serious effort was ever undertaken again to pack the Supreme Court. But things are different now. In Roosevelt’s day, there were still many Democrats who respected the constitutional separation of powers the Founders had written into the Constitution. Today, there are few, if any, who truly believe in following the Constitution.

The Framers of the Constitution had not placed a set number of justices into the document, and originally the Court consisted of five members. It has been set at nine since 1869. James Madison and the other Framers had not considered that the Executive Branch would seek to add more members to the bench in order to advance a legislative agenda that could not pass constitutional muster.

The supporters of the Keep 9 constitutional amendment proposal believe that Framers provided for an amendment process in order to correct such unforeseen “defects” in the Constitution. They are not proposing a Constitutional Convention to consider the amendment, but rather favor passing it through the House and the Senate, like all of the present 27 amendments to the Constitution, including the Bill of Rights.

Still, there are some who urge caution, arguing that this effort could be used by the Convention of States crowd (those who are pushing for a convention to propose various amendments to “rein in” the power of the federal government). Many Americans, such as Barry Goldwater, Ronald Reagan, Phyllis Schlafly, and Antonin Scalia have argued against any such convention, fearing that it would be used by those on the Left to drastically change or even gut our present Constitution. Scalia even said the 21st century was a bad century for having such a convention, as we no longer have men the likes of George Washington, John Adams, and James Madison.

One thing is for certain. The reason that those on the Left want to pack the Supreme Court is because they do not like some its recent decisions. If the Court was always ruling in the leftists’ favor — as it had been doing for many years — there would be no effort to pack the Supreme Court. In fact, Democrats would strongly oppose any such effort if President Trump wins the White House and the Republicans win the Senate, and they then proceed to add more members to the Court, all to be nominated by Trump and confirmed by a Republican Senate.

To be honest, it is unlikely that such an amendment can garner a two-thirds vote of both houses of Congress, although it could be interesting to get members on record on the issue of court-packing. The easier solution, for now, is to elect individuals to Congress who support the Constitution of the United States, and defeat those presently in Congress who want to pack the Court so as to circumvent the Constitution.

Steve Byas is a university instructor in history and government, and teaches Constitutional Law at Randall University in Moore, Oklahoma. He can be reached at byassteve@yahoo.com.



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