

United States Senate

WASHINGTON, DC 20510

COMMITTEES:
APPROPRIATIONS
FOREIGN RELATIONS
SELECT COMMITTEE ON INTELLIGENCE
SMALL BUSINESS AND ENTREPRENEURSHIP
SPECIAL COMMITTEE ON AGING

June 27, 2019

Dear Colleague:

As the Supreme Court wraps up another term, we are reminded of the critical role an independent judiciary plays in America's unique federal structure. We are also reminded that, despite media and political narratives, the complex issues that come before the Court do not always neatly align with the ideological structures of today's partisan politics. In June alone, we have seen multiple high-profile decisions jumble the traditional conservative-liberal coalitions.

Unfortunately, a vocal and increasingly influential progressive minority wants to add seats to the Supreme Court with the explicit goal of ensuring an enduring liberal majority on the Court. According to the *New York Times*, at least ten candidates running for the Democratic nomination for president have embraced court packing.

Many suggest that adding more justices is merely a way to depoliticize the Court, but the effort is more transformative. "The emergencies we are facing are so extreme that if you are going to run for president, it's not enough to have policy ideas," the founder of the group *Pack the Courts* said. "You have to explain how you are going to pass those ideas and then how you are going to protect those ideas from the courts."¹

We cannot allow radical, partisan institutional changes to delegitimize our nation's highest court. For that reason, I invite all Senators to cosponsor a constitutional amendment (S.J. Res. 14) to limit the Supreme Court of the United States to nine justices, the number dating back to 1869.

Fortunately, there is bipartisan recognition that a partisan court-packing scheme will not depoliticize the Court. Michigan Law School professor Richard Primus, who clerked for Justice Ruth Bader Ginsburg, warns that court packing would cause federal courts to "lose a hefty share of whatever legitimacy they still retained" in the current politicized era.² Former Obama White House counsel Bob Bauer argues court packing "does not serve to strengthen the institution" because "its actions on the controversial issues would carry less authority, with unpredictable consequences for the rule of law."³ Some of our Democratic colleagues recognize the peril of packing the Court as well.

¹ Pema Levy, How court-packing went from a fringe-idea to a serious Democratic proposal, *Mother Jones* (2019), <https://www.motherjones.com/politics/2019/03/court-packing-2020/> (last visited Jun 25, 2019).

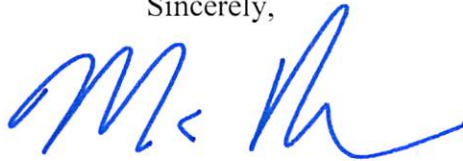
² Richard Primus, Rulebooks, Playgrounds, and Endgames: A Constitutional Analysis of the Calabresi-Hirji Judgeship Proposal, *Harvard Law Review Blog* (2017), <https://blog.harvardlawreview.org/rulebooks-playgrounds-and-endgames-a-constitutional-analysis-of-the-calabresi-hirji-judgeship-proposal/> (last visited Jun 25, 2019).

³ Bob Bauer, Don't Pack the Courts, *The Atlantic* (2018), <https://www.theatlantic.com/ideas/archive/2018/07/dont-pack-the-courts/564479/> (last visited Jun 25, 2019).

The left's court packing proposal represents the latest shortsighted effort to undermine America's confidence in our institutions and our democracy. America's institutions are far from perfect. However, over the past two centuries, they have provided a framework for our nation to become the most dynamic, most vibrant, and most exceptional nation in all of human history.

Should you or your staff have any questions, please contact Samantha Roberts at samantha_roberts@rubio.senate.gov. I hope you will join me in protecting the integrity of the Supreme Court by cosponsoring S.J. Res. 14.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Rubio', with a stylized flourish at the end.

Marco Rubio
U.S. Senator