

**House Judiciary Committee Testimony**  
**The Honorable Dusty Johnson**  
**Member Day Hearing**  
**October 22, 2021**

Chairman Nadler, Ranking Member Jordan, and Members of the Judiciary Committee,

Thank you for the opportunity to testify before the committee today. I am here to urge the committee to consider my resolution, H.J.Res.11, which proposes a Constitutional amendment requiring that the Supreme Court of the United States be composed of nine justices.

Historically, both parties have agreed that expanding the number of Supreme Court justices bears considerable risk. Earlier this year, Democrats introduced legislation to expand the Supreme Court to thirteen justices. I believe that preserving the integrity of the Supreme Court is necessary, especially during this divisive time in our nation.

I am not alone in this belief; my resolution has reached 178 cosponsors in the House of Representatives, and Senator Cruz's companion resolution (S.J.Res.9) has reached 20 cosponsors in the Senate. Recent polls suggest that a majority of the public similarly does not support expansion of the highest court.

Even Supreme Court justices agree that altering the court is dangerous. The late Justice Ruth Bader Ginsburg called expanding the court beyond nine justices a "bad idea."<sup>1</sup> Justice Stephen Breyer warned lawmakers to "think long and hard" about the risks of expanding the court.<sup>2</sup> Earlier this year, Justice Breyer said that the court's authority depends on "a trust that the court is guided by legal principle, not politics."<sup>3</sup> He added, "Structural alteration motivated by the perception of political influence can only feed that latter perception, further eroding that trust."<sup>4</sup>

Supreme Court justices take an oath to uphold the Constitution in a nonpartisan manner. To hear my fears of court-packing echoed by them further validates my belief that it is necessary to pass H.J.Res.11.

President Biden himself has said he is 'not a fan of court-packing.' Despite the President's constitutional inability to alter the Supreme Court, President Biden established a commission to study changes to the Supreme Court.<sup>5</sup> Article III, Section 1 states "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." As such, Congress retains exclusive authority to amend or preserve the Supreme Court.

However, even the commission has admitted expanding the court is dangerous. On Thursday, October 14, the commission stated that "the risks of Court expansion are considerable, including that it could undermine the very goal of some of its proponents of restoring the Court's legitimacy."<sup>6</sup> This

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<sup>1</sup> Totenberg, Nina "Justice Ginsburg," NPR. 24 July 2019. [Ruth Bader Ginsburg On Her Health, Opposition To Court-Packing : NPR](#)

<sup>2</sup> Breyer, Stephen G. "The Authority of the Court and the Peril of Politics," *The Scalia Lecture*, Harvard Law School. 6 April 2021. <https://www.youtube.com/watch?v=bHxTQxDVTdU>

<sup>3</sup> Breyer, "The Authority of the Court and the Peril of Politics," *The Scalia Lecture*.

<sup>4</sup> Breyer, "The Authority of the Court and the Peril of Politics," *The Scalia Lecture*.

<sup>5</sup> Presidential Commission on SCOTUS, *The White House*. <https://www.whitehouse.gov/pscscotus/>

<sup>6</sup> Presidential Commission on SCOTUS, *The White House*. 15 October 2021.

<https://www.whitehouse.gov/pscscotus/public-meetings/october-15-2021-pcscotus-meeting/>

acknowledgement by the commission makes me hopeful that President Biden and my congressional colleagues will support our efforts to keep the Supreme Court at nine justices. It is critical we preserve the credibility of the judicial branch during this divisive time and maintain the long-standing structure of our nation's highest court.

Thank you again for holding this Member Day Hearing and I look forward to working with the committee on passing my resolution and protecting the independence of our judicial system.