

Questions for the Record from Rep. Deborah Ross (D-NC-02) for Professor Nikolas Bowie,  
Harvard Law School

“Court Packing: A Threat to the Supreme Court’s Legitimacy”

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The Roberts Court continues to use the “shadow docket” to bypass the time-tested procedures of the justices listening to oral arguments and publishing detailed written explanations of their reasoning and in doing so, is substantively reshaping the balance of power by shifting power away from Congress towards the Executive and undermining our system of checks and balances.

What was intended as a narrow emergency mechanism is now being used to allow significant policy changes to take effect without a full briefing or explanation, leaving the Supreme Court less accountable to the public.

1. Can you explain how the Supreme Court’s increased use of the shadow docket differs from its traditional emergency function?
2. What risks arise when major constitutional questions are decided, at least temporarily, through unsigned orders without transparency or detailed reasoning?