

United States House Committee on the Judiciary

Subcommittee on Courts, Intellectual Property,
Artificial Intelligence, and the Internet

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

Thursday, May 21, 2026, 10:00 am

Supplemental Testimony of Nikolas Bowie
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Congresswoman Ross:

In a self-reflective moment, the Supreme Court once described its legitimacy as “a product of substance and perception.” The “substance” is the persuasiveness of the Court’s opinions as principled interpretations of the law. The justices observed that “a decision without principled justification would be no judicial act at all.” The justices considered “perception” even more important. They understood the public has no reason to obey their rulings if it sees them as merely siding with friends and political allies instead of reasoning from principle.

The Court sacrifices this substance and perception when it issues consequential orders that consistently favor one party with no argument, no transparency, and no written explanation. Yet the Court is increasingly issuing these sorts of orders to decide the substance of major constitutional and legal questions. This practice has been described as a “shadow docket” in comparison with the Court’s ordinary merits docket. The justices are taking advantage of laws Congress enacted over the years to give the Court more control over its docket—control the justices are exploiting to decide which cases they take, which they ignore, and how they resolve them.

Congress does not need to tolerate this state of affairs. Discretion that Congress has granted, Congress can reclaim. The Constitution explicitly empowers you to manage how the Court hears cases on appeal. If you conclude the Court is abusing its discretion over how it resolves cases, you can regulate how the Court operates to ensure that it serves our constitutional democracy instead of placing itself above it.