

— TOP TAKEAWAYS —

Court-Packing and Judicial Independence

OUR SYSTEM OF CONSTITUTIONAL GOVERNANCE REQUIRES AN INDEPENDENT JUDICIARY.

- Under the U.S. Constitution, power is separated among three co-equal branches of government: the legislative branch, which makes law; the executive branch, which enforces the law; and the judiciary, which interprets the law.
- Once appointed by the president and confirmed by the U.S. Senate, federal judges serve for life.
- Life tenure is intended to insulate federal judges from political pressures and to ensure that they are responsive to the Constitution, the laws, and judicial precedent—not to the desires of the mob.

SOME POLITICIANS TODAY SEEK TO ENLARGE THE SIZE OF THE SUPREME COURT BECAUSE THEY WANT TO CONTROL HOW THE COURT RULES ON PARTICULAR MATTERS.

- In August 2019, five U.S. Senators filed a brief in a Second Amendment case, demanding that the Court dismiss the case or risk “restructuring.”
- In other words: do as we say, or we will pack the Court with additional justices who will.

THREATS TO PACK THE COURT UNDERMINE THE SEPARATION OF POWERS AND THE INDEPENDENCE OF THE FEDERAL JUDICIARY.

- Threatening to “restructure” the Court if it does not rule in a certain way is “adjudication by extortion.”
- Packing the Court with justices sympathetic to the political views of the party in power will ignite a judicial arms race where each party seeks to add justices whenever they are in power.
- Adding justices to try to make the Court more responsive to current cultural norms undermines the Court’s institutional legitimacy as a non-partisan branch of government—with unpredictable consequences for the rule of law.