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Supreme Court and Congress

A Supreme Court justice is a lifetime seat that has played a major role in shifting public policy making in the United States with historical cases such as *Brown v. Board of Education* (1954) and *Roe v. Wade* (1973). Under the Constitution, the Supreme Court is established but allows Congress to decide how the Supreme Court is organized. The only permanent member mentioned is the Supreme Court chief justice. This loose structure has allowed the Supreme Court to decrease to as little as five justices and to as much as ten. Congress first used this authority in the Judiciary Act to create the first Supreme Court with six justices (1789). Since then the number has changed multiple times to assist one party and hinder the minority party. I believe that Congress should preserve that number of Supreme Court justices at nine.

The first reason is political; the number has changed to allow the president to either have the opportunity to make a lasting impact or to be barred from doing so. The Supreme Court justices have been used by presidents for a specific agenda, whether positive or negative. The Federalist Party did so to expand federal jurisdiction over the states and to limit the coming president's appointments to the Court. Around, before and after, the Civil War, the number was changed to favor the Republican Party at a time when citizenship controversies were tense. These changes have leaned into favoring a political party's agenda rather than the country as a whole. Over recent years, the Supreme Court has become more politicized with one political party fearing the reversal of a ruling, and therefore a change in public policy, by the rival political party. This has led, in the past more often than presently, for the number of justices, and even who is choosing the justices, to be controversial.

The second reason is the impact on picking Supreme Court justices regardless of the amount of seats available. To fill a Supreme Court justice seat, the Senate must approve the nomination placed by the president. A president can therefore be somewhat constrained when making an appointment with the reality that the nominee must be endorsed by the Senate. However, judicial vacancies on the Supreme Court have certainly been controversial in the past, depending on the context of the time in question (e.g., in 2016 when Merrick Garland was selected to fill the vacancy of the late Justice Antonin Scalia). Yet history suggests that this has always been a political reality, given the case of the midnight judges by President John Adams on his last day in office, which culminated in *Marbury v. Madison* (1803). The question of whether the lame-duck president had the right to make one final permanent decision for the country still exists today. While President Barack Obama was thwarted in his attempt to get Judge Garland confirmed in 2016, President Donald Trump succeeded in getting Amy Coney Barrett approved during the 2020 presidential election (Mayoroquin). Clearly, political party adherents have always desired to maintain their legacy in the federal courts, but particularly in the U.S. Supreme Court. In this sense, not much has changed in U.S. history.

The final reason is the core function of the Supreme Court, which means steering away from excessive partisanship. “Equal Justice Under Law” are the words inscribed above the main entrance of the Supreme Court building. This ideal is the ultimate duty of the Supreme Court justices, and the obligation of the justices is to protect and defend the U.S. Constitution for the people of the United States. In history, it appears that the change of number and selection of justices has become a power-grasp for political parties to pass their own agendas with little to no concern for questions of constitutionality. The shifting ideologies of the justices over time has a

discernible impact on their rulings. Yet their focus should remain steadfast on the Constitution itself, regardless of their political views and affiliations.

Though these reasons overlap at certain points, each one offers a reason why Congress should preserve that number of Supreme Court justices at nine. I contend that Congress should maintain the size of the Supreme Court at nine justices. This number has been intact since 1869. Political agendas have evolved in the history of the United States. This predictable pattern in human behavior is omnipresent. The battle between the political parties, and various political and judicial philosophies, will undoubtedly ensue as well, as varying opinions, and the freedom to express those opinions, are essential components of American democracy. The Supreme Court should be a separate entity away from the traditional political work of the legislative and executive branches of government. Hence the number of justices should be preserved at nine to better ensure that the justices promote the motto of the Supreme Court.

Work Cited

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