2021 HOUSE JUDICIARY

HCR 3023

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary
Room JW327B, State Capitol

HCR 3023
2/17/2021

Propose an amendment to the United States Constitution to prohibit changing the number of justices serving on the United States Supreme Court

Chairman Klemin called the hearing to order at 8:36 AM.

Present: Representatives Klemin, Karls, Becker, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, and Vetter. Absent: Satrom

Discussion Topics:

- Resolution process
- Amendment

Rep. K. Koppelman: Introduced the bill. Wants to amend 21.3066.01001.

Roman Behler, Coalition to Preserve an Independent Supreme Court. Testimony 6788 8:49

Chairman Klemin closed the hearing at 9:00

Rep. Karls: Motion made to adopt amendment 21.3066.01001
Rep. B. Paulson: Seconded

Voice vote carried

Rep. Karls: Motion Do Pass as amended
Rep. Christensen: Seconded

Roll Call Vote:

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y

Rep Roers Jones	Y
Rep B. Satrom	A
Rep Vetter	N
Rep Buffalo	Y
Rep K. Hanson	N

11-2-1 - motion carried
Carrier: Rep. Christensen

Stopped 9:04

Additional written testimony: #6541, #6768

DeLores D. Shimek
Committee Clerk by Anna Fiest

DP 2/17/21
1 of 1

21.3066.01001
Title.02000

Adopted by the Judiciary Committee

February 17, 2021

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3023

Page 1, line 3, after "Court" insert "and that the amendment should state the Supreme Court of the United States shall be composed of nine justices"

Page 1, line 5, after the semicolon insert "and"

Page 1, line 7, after the semicolon insert "and"

Page 1, line 15, remove the semicolon

Page 1, line 15, after "and" insert "that the amendment should state the Supreme Court of the United States shall be composed of nine justices; and"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HCR 3023: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HCR 3023 was placed on the Sixth order on the calendar.

Page 1, line 3, after "Court" insert "and that the amendment should state the Supreme Court of the United States shall be composed of nine justices"

Page 1, line 5, after the semicolon insert "and"

Page 1, line 7, after the semicolon insert "and"

Page 1, line 15, remove the semicolon

Page 1, line 15, after "and" insert "that the amendment should state the Supreme Court of the United States shall be composed of nine justices; and"

Renumber accordingly

Mr. Chairman

Thank you for the opportunity to submit testimony in support of HCR 3023, the proposed "Keep Nine" Amendment to the U.S. Constitution.

The Amendment would be the shortest Amendment to the U.S. Constitution.

It simply states:

"The Supreme Court of the United States shall be composed of nine Justices."

The Amendment would set the current number of nine Supreme Court Justices in the Constitution and prohibit a future Congress and President from altering the size of the U.S. Supreme Court.

By doing so it would preserve the independence of the Supreme Court from any effort by a future Congress and President to manipulate the size of the Court for political advantage.

In the first years of our Republic there were several times when Congress passed a law to increase or decrease the size of the Supreme Court to advance the political agenda of the party then in control of Congress.

But in the past 150 years a tradition has been established that the size of the Supreme Court should remain at Nine Justices. This tradition prevents the Supreme Court and its decisions from becoming a mere political extension of the will of the political the majority then in control of Congress.

An independent Court free from the political control of Congress is critical to the rule of law and to respect for the rule of law.

When, in 1937, President Franklin D. Roosevelt sought to increase the size of the Court from 9 to 15, his plan was defeated with overwhelming bipartisan opposition.

Today there are powerful politicians in Washington with the same kind of court-packing agenda.

Given the cyclical nature of American politics, there is no guarantee that someday, sooner or later, advocates of Court packing will have the decisive majority in Congress and the ally in the White House they need to pack the Supreme Court.

A successful Supreme Court packing effort would destroy the independence of an institution that has become a critical check and balance on the abuse of power by any power hungry President or Congress.

To permanently end the risk of Court packing, simple opposition to Court packing is not enough. A Constitutional Amendment is required.

Constitutional Amendments are difficult to enact but the success of Amendments to guarantee a woman's right to vote, to enact and then to repeal Prohibition, to impose Presidential term limits, and to give 18 year olds the right to vote, demonstrates that a simple Amendment with enough popular support can be enacted.

Polling shows that voters would support the "Keep NIne" Amendment by a margin of 62-18 percent.

The Keep Nine Amendment has bipartisan support. It was originally proposed by a bipartisan coalition of state Attorneys General and was first introduced by a Democrat in the U.S. House.

It is now backed by more than 75 Members of the U.S. House and Senate including Rep. Kelly Armstrong of North Dakota.

Resolutions urging Congress to propose the Keep Nine Amendment are now pending in more than a dozen states and, as of today, four legislative Chambers in Tennessee, South Dakota, and Idaho have passed such Resolutions.

As the number of Resolutions urging Congress to propose the Amendment, grows, public awareness of the Amendment will increase and pressure on Congress to act will increase as well.

You as state legislators representing the people of North Dakota have many responsibilities. But none is more important than the responsibility entrusted to you by the authors of our Constitution, to be the ultimate check and balance on the abuse of power by the federal government.

Today, your support of the Keep Nine Amendment will help remind political leaders in Washington that you take. that responsibility with the utmost seriousness.

There are few elements more fundamental to the survival of our Republic then the rule of law and the preservation of our Constitutional system of checks and balances on the abuse of power.

Your support, as state legislators for the Keep Nine Amendment will help to preserve those checks and balances and protect the Constitutional rights that all of us cherish so deeply.

As former Supreme Court Justice Ruth Bader Ginsburg said when she stated her opposition to Court packing in 2019 "Nine is a good number".

Thank you for the opportunity to present this testimony in support of the "Keep Nine" Amendment and HCR 3023.

Roman Buhler
Coalition to Preserve an Independent U.S. Supreme Court
202-255-5000
Rbuhler@KeepNine.org

Before Stacking A Court - 6 Facts You Need To Know About Our US Supreme Court
By KrisAnne Hall, JD

Over the years there have been a few presidential administrations who have proposed adding additional seats the Supreme Court. Court packing is not a new or novel proposal. However, if the American people are to allow their federal politicians to increase, or decrease, the number of Supreme Court justices, it is essential that we understand how this high court was created and its proper limited and defined authority as established by the Constitution.

Those who ratified our Constitution were deeply concerned about the tendency for courts to expand their authority over time and they did everything they could to ensure that America would not be ruled, as Britain often was, by an Oligarchy of judges. Whether you have 3 justices or 13 is not as important as making sure those justice stay confined to the boundaries of their authority as delegated by the Constitution. If we have justices that believe their authority is supreme, if Americans are taught to believe that the Supreme Court is the ultimate authority to their own power and the power of the federal government, we will have created, not by fact but by error, the very government our founders separated from.

Americans, whether liberal or conservative, must know these five facts about the Supreme Court and the Constitution that created it.

1. “The powers not delegated to the federal government…are reserved to the States respectively, or to the people.” Tenth Amendment

The Tenth Amendment of the Constitution makes it clear; if a power is not specifically delegated to the federal government is a power that is reserved to the States. Powers that have not been specifically delegated to the federal government are not powers the federal government can lawfully exercise. The powers delegated to the courts are enumerated in Article 3 of the Constitution and thorough read of Article 3 proves there are powers specifically not delegated to the Supreme Court so they will remain at the State level. In fact, the majority of judicial authority was to remain at the State level without federal court involvement. The legal proof of this comes from those who ratified the Constitution, the true authority for the meaning and application of the Constitution.

"The great mass of suits in every State lie between Citizen & Citizen, and relate to matters not of federal cognizance." Madison to Washington 18 Oct. 1787
"The foundation of this assertion is that the national judiciary will have no cognizance of them, and of course they will remain determinable as heretofore by the state courts only, and in the manner which the state constitutions and laws prescribe.: -Federalist #83

2. "…the Laws of the United States which shall be made in Pursuance thereof; …shall be the supreme Law of the Land." Article 6 sec 2

Only laws created by the federal government that are made pursuant to constitutionally enumerated powers are the "supreme Law of the Land." Laws created by Congress, executive orders created by the executive branch beyond that delegation of power have no force or legal binding power over the States or the people; i.e. it is not the supreme Law of the Land. The language of Article 6 section 2 establishes that any law made by Congress that is inconsistent with the Constitution, in this case outside delegated power, is an invalid law, not binding upon the States or to the people. There are many proofs of this principle in the texts of those who created the federal government, here are just two:

"No law, therefore, contrary to the Constitution can be valid." -Federalist #78
"…for the power of the Constitution predominates. Any thing, therefore, that shall be enacted by Congress contrary thereto, will not have the force of law. -James Wilson, Pennsylvania Ratifying Convention, 1787

Additionally, Article V of the Constitution outlines the only legal way the Constitution can be amended and judicial opinion is not one of those ways. Therefore, if the Supreme Court renders an opinion that is contrary to the Constitution, that opinion ought to be seen by the people as "null and void" as well. As Article 6 clause 2 establishes, the judges of the States are not bound by any act that is established outside the authorization of the Constitution.

3. "All legislative Powers herein granted shall be vested in a Congress of the United States,"

Although we often hear people refer to Supreme Court Opinions as the "law of the land" that is Constitutionally incorrect. The writing of law is a power exclusively held by Congress. Court Opinion cannot be law without violating the express limits separation of powers established by the Constitution. A violation of separation of powers is a per se violation of the Constitution which renders the court opinion invalid (see #2).

Violations of separation of power were of the utmost concern to the drafters of the Constitution. James Madison explains, quoting Montesquieu, Spirit of Laws (1748), in Federalist #47:

"there can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates," or "if the power of judging be not separated from the legislative and executive powers,"

Montesquieu, Spirit of Laws, warns of the consequences of allowing the judiciary to violate separation of powers to be violated:

“Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.”

4. “The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;” Article 3 sec 2 cl 1

The power of the Supreme Court is limited to matters “arising under this Constitution, the Laws of the United States, and Treaties” made “under their Authority.” If a power is not specifically delegated it is not a matter over which the Supreme Court has jurisdiction. Article 3 of the Constitution specifically enumerates those powers. The Constitution is not a document of government "can'ts," it is a document of government "cans." If the power is not specifically delegated, it is not authorized. Hear the words of Alexander Hamilton in Federalist 78:

“…an affirmative grant of special powers would be absurd as well as useless, if a general authority was intended." -Federalist #83

To those who ratified the Constitution this was simple logic, but it is a very important fact that is misconstrued and disregarded all too often in modern America. Therefore, using reason, fact, and logic we must conclude Supreme Court Opinions regarding State land, Environment, Education, Firearms, etc... are not binding upon the States. To claim otherwise violates the Tenth Amendment, Article 3, and Article 6 section 2 of the Constitution. (See #1)

5. The Supreme Court is Designed to be the Weakest Branch of Government

When you look at Article 3 you will notice the jurisdiction of the Supreme Court is very limited and very specifically established. As a matter of fact as the Constitution and newly proposed federal government was being debated, Alexander Hamilton explained:

"The judicial authority...is declared by the constitution to comprehend certain cases particularly specified. The expression of those cases marks the precise limits beyond which the federal courts cannot extend their jurisdiction..." - Federalist 83
"The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments…" -Federalist 78

"It proves incontestibly that the judiciary is beyond comparison the weakest of the three departments of power..." -Federalist 78

6. The Supreme Court is Not the Ultimate Authority on Any Federal Authority... Including its own.

For the Supreme Court to be the arbiter of its own power asserts that the federal government's only limitation is its own judgement and will. Such a premise would negate the very existence of the Constitution that created the federal government. The judiciary is just as limited in its power by the Constitution as the other two branches of government.

James Madison explains the limitation of the power of the Judiciary in his Virginia Assembly Report of 1800:

"If the decision of the judiciary be raised above the authority of the sovereign parties to the Constitution [States]… dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution…consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another--by the judiciary as well as by the executive, or the legislature."

Thomas Jefferson, 1812:

"The great object of my fear is the federal judiciary. That body, like gravity, ever acting, with noiseless foot, and unalarming advance, gaining ground step by step, and holding what it gains, is ingulfing insidiously the special governments into the jaws of that which feeds them…government will become as venal and oppressive as the government from which we Separated."

Courts don't issue rulings, Kings issue rulings. Courts issue Opinions and when those Opinions are not consistent with the Constitution those opinions are no more binding upon you than your next door neighbor's opinions.

In short, it really doesn't matter how many Supreme Court justices we have. What matters will they follow the limited and defined delegation of power as those who created that authority intended and hold the other branches within those same limits? If they answer to that question is "yes," then pack away. We know, however, the politicians who are seeking to "pack the court" are not doing so to get judges who will be true to the Constitution. These politicians seek to manipulate the people and the laws for their political favor by seating activist judges who will ignore the standards over their own authority to increase the power and influence of those who put them in power. Americans of all political ideologies must see the long term damage of this action and deny our members of Congress that authority. To ignore these self-evident truths will ensure Jefferson's warning becomes prophecy and will reconstruct the Supreme Court into the "*venal and oppressive government from which*" they separated.

~ www.KrisAnneHall.com

KrisAnne Hall is a US Army veteran and was a linguist for the US Army.

She was former instructor for the US Navy

She has an undergraduate degree in Bio-Chemistry from Blackburn College and her J.D. from the University of Florida, Levin College of Law

She was prosecutor for the state of Florida and now travels around the United States teaching the US Constitution

Thank You
Gordon Greenstein

US Navy (Veteran)
US Army (Retired)

#6768

Brian Glaeske
403 11th AVE S
Fargo, ND 58103

Dear Members of the House Judiciary Committee,

I am writing to urge a that this this HCR 3023 receives a DO NOT PASS recommendation.

The State of North Dakota has the ability to decide the number of members of the Supreme Court, through our Senators. This resolution is a waste of time and money, and Representatives K. Koppleman, Bosch, Klemin, Louser, Pollert and Senators Burckhard, Dwyer, and Wander should be censored for wasting the time and money of the taxpayers of the state. Please stop with the idocracy.

Again, I am writing to urge that this commit recommend that this resolution receives a DO NOT PASS recommendation.

Sincerely,

Brian Glaeske

2021 SENATE JUDICIARY

HCR 3023

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HCR 3023
3/29/2021

A concurrent resolution urging Congress to propose an amendment to the United States Constitution to prohibit changing the number of justices serving on the United States Supreme Court and that the amendment should state the Supreme Court of the United States shall be composed of nine justices.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson. [9:17]**

Discussion Topics:

- Constitutionality of Supreme Court Justice Count
- Requirements related to appointing a Supreme Court Justice

Rep. Kim Koppelman, R-West Fargo provided testimony in favor [9:20]

Roman Buhler, Keep 9 Coalition, testimony in Favor [9:40]

Senator Dwyer Moved a DO PASS [9:45]
Senator Myrdal Seconded the Motion
Vote Passed 6-1-0
Senator Myrdal Carried the Bill

DO PASS Vote On HCR 3023	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	N
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Hearing Adjourned [9:48]

Jamal Omar, Committee Clerk

REPORT OF STANDING COMMITTEE

HCR 3023, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HCR 3023 was placed on the Fourteenth order on the calendar.