

Supreme Court Expansion



**Federal Bar
Association**

Voice of the Federal Bar and Bench



An overview of the historical and current efforts to expand the court, including potential legislation and polling.

April 22, 2021

The size of the US Supreme Court has been altered seven times throughout American history

Size of the Court facts

- The Constitution does not specify the number of Supreme Court Justices and the Court has not always had nine members
- Since 1869, the size of the Supreme Court has been set at nine members
- Under the Judiciary Act of 1789, Congress has the authority to alter the structure of the federal courts
- The size of the Court has been expanded or reduced seven times in its history, often for “political” reasons

Key court expansion stakeholders

✓ YES

“To restore power to the people, we must expand the Supreme Court.”

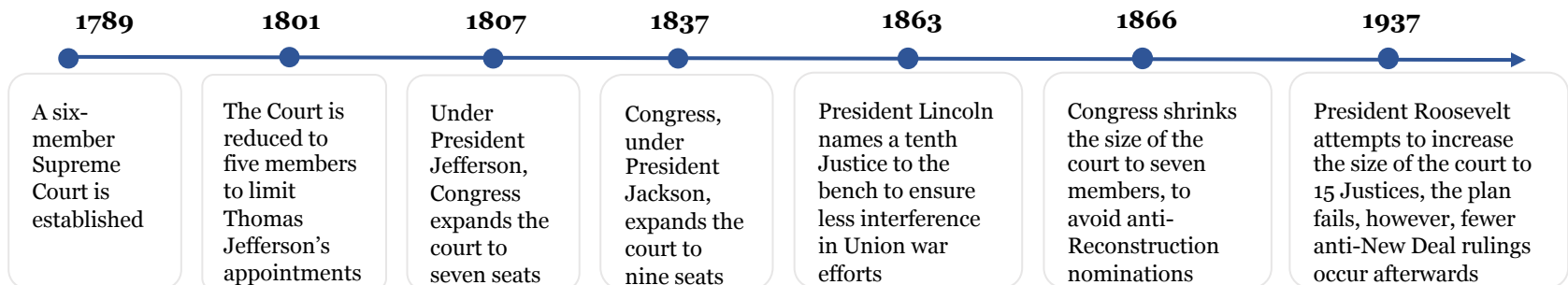
REP. MONDAIRE JONES
REPRESENTATIVE (D-NY-17)

✗ NO

“President Biden campaigned on a promise of lowering the temperature and uniting a divided nation, if he really meant it, he would stop giving oxygen to a dangerous, antiquated idea and stand up to the partisans hawking it.”

MITCH MCCONNELL
SENATE MINORITY LEADER (R-KY)

Significant events impacting the Supreme Court’s size

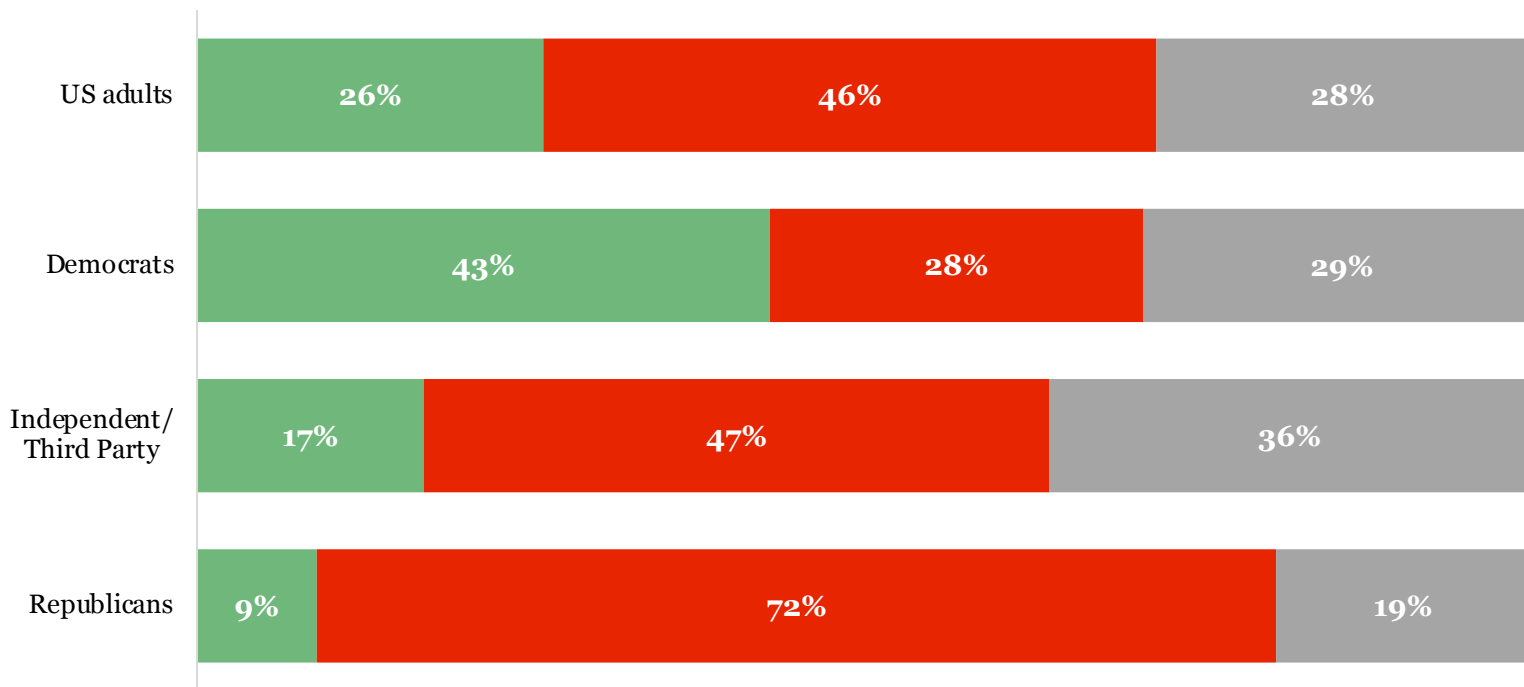


46% of registered voters do not support expanding the Court

Voters were asked if Congress should pass a law to allow more than nine justices to serve on the Supreme Court, or only allow nine justices to serve?

MORNING CONSULT + POLITICO POLL CONDUCTED APRIL 16-19, 2021 OF 1,992 REGISTERED VOTERS

■ More than nine Justices ■ Only nine Justices ■ Don't know/no opinion



Judiciary Act of 2021

Bill sponsor

HOUSE

Rep. Jerry Nadler
D-NY-10

SENATE

Sen. Edward Markey
D-MA

Background

- In response to the three recent controversial Supreme Court nominations and appointments by former President Trump
- Changes in the structure of the Supreme Court fall under the jurisdiction of the US Congress
- Legislation attempts to restore the “balance, integrity, and independence” of the Court

Outlook

- Unlikely to pass either the House or Senate, as Speaker Nancy Pelosi (D-CA-12) stated that she has no plans to bring the bill to the floor
- Endorsed by progressive judicial advocacy groups
- Top Democratic Senators on the Judiciary Committee have not stated their support for the legislation

Key provisions



Expands the size of the Supreme Court from nine members (eight Associate Justices, one Chief Justice) to 13 members (12 Associate Justices, one Chief Justice)



Expands the number of members needed for the Court to form a quorum from six Justices to eight Justices

Status

Senate

Introduced: Senate
4/15/21

Passed Senate

House

Introduced: House
4/15/21

Passed House

Sent to
President

Signed by
president



On April 9, Biden signed an executive order establishing a commission on the Supreme Court

KEY PROVISIONS

Commission make-up

- A 36-member commission, including constitutional scholars, retired members of the Federal Judiciary, advocates of judicial reform, legal practitioners, and/or other individuals with experience and knowledge of the Court will conduct a 180-day review of potential reform measures
- The commission will hold public meetings to hear the views of other experts, groups, or interested individuals
- The two co-chairs of the commission are:
 - Bob Bauer, Professor of Practice and Distinguished Scholar in Residence at New York University School of Law
 - Cristina Rodriguez, Professor at Yale Law School



Key functions

- Issue an account of the contemporary commentary debate about the role of the court and its functions
- Provide historical background into other periods in the Nation's history when the Supreme Court's role and nominations process were subject to criticism and reform
- Solicit public comment, including expert views, to ensure broad viewpoints are heard
- Provide analysis of the legality and merits of contemporary debated court reform proposals





We remain committed to educating students and the public at large about the workings of the federal courts and the importance of an independent judiciary, and as, always, we stand ready to provide you with assistance.

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