



Biden unveils commission to study changes at the Supreme Court after pressure from progressives

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President Joe Biden announced Friday he is forming a commission to study possible changes at the Supreme Court, responding to a call from liberals to expand the nine-member bench to blunt former President Donald Trump's impact on the court.

Biden promised to name the commission as a candidate amid an outcry from Democrats over Trump's nomination of three Supreme Court justices, including the rapid confirmation of Associate Justice Amy Coney Barrett just before the election, and a bevy of lower court judges that tilted the federal judiciary to the right.

The push for change at the nation's highest court, where conservatives now have a 6-3 advantage, has put a squeeze on the White House. Throughout the campaign, Biden hedged when asked whether he supported expanding the court, though he allowed in October that he was "not a fan of court-packing."

Biden's bipartisan commission, which will have a six-month deadline, wouldn't bind the White House to action. At the time, many saw the notion of a commission as a dodge – a way to demonstrate to progressives in the party that he took the issue seriously but not scare of centrist voters concerned about further politicizing the court.

Advocates have been closely watching for any signal about the commission's mandate and membership. Biden signed an executive order Friday creating the 36-member group, which will hold public meetings. The White House said it will study the length of service and turnover of the justices, the size of the court and its case selection, rules, and practices.

The justices currently have lifetime appointments.

Progressive groups have been pushing for a number of other ideas, besides increasing the number of justices. Those include term limits, set perhaps to 18 years; a code of ethics; a more formal process for recusals; and an expansion of lower courts, not only to offset the barrage of Trump appointees, but also to deal with growing caseloads.

"The Supreme Court is a danger to the health and well-being of the nation and even to democracy itself," said Aaron Belkin with the advocacy group Take Back the Court, which has

pushed for an expansion. "This White House judicial reform commission has a historic opportunity to both explain the gravity of the threat and to help contain it."

Underscoring the tension that still exists within the Democratic Party on the issue, Belkin said that six-month timeline was far too long.

"We don't have time to spend six months studying the issue – especially without a promise of real conclusions at the end," he said. "The solution is already clear."

Ilya Shapiro, vice president of the libertarian Cato Institute, said his first impression of the commission gave him some pause. The membership, he said, is stacked with "very progressive" academics.

"The court is the most respected government institution other than the military and arguments for restructuring essentially express progressive-elite dissatisfaction with its current composition," Shapiro said, adding he is not confident that any of its recommendations would be "nonpartisan, feasible, legal" or "actually improve the Supreme Court."

Advocates for expanding the court note the number of Supreme Court justices isn't set in the Constitution and often changed in the past. Congress grew the court to 10 during the Civil War to ensure a majority for Union policies, cut the nation's highest bench to seven to deny President Andrew Johnson nominations, and ratcheted it up to nine to give President Ulysses S. Grant majority support on the court for his monetary policies.

At the same time, President Franklin D. Roosevelt's failed attempt to "pack" the court in his second term underscores the fraught politics Biden would face with such a move.

That is why, throughout much of last year's presidential campaign, Biden sidestepped the question. Trump hammered Biden over his evasive answers on the issue.

A Supreme Court spokeswoman did not immediately respond to a request for comment.

Opponents say growing the size of the court based on political pressure would significantly undermine its work, adding a veneer of politics to an institution that ostensibly decides cases based on legal principle and not politics. Associate Justice Stephen Breyer was the latest to raise that point this week.

Breyer warned Americans to think "long and hard" about structural changes to the court in a wide-ranging address Tuesday.

"Structural alteration motivated by the perception of political influence can only feed that perception, further eroding that trust," said Breyer "There can be no shortcuts to it."

Biden campaign lawyer Bob Bauer, a former Obama White House counsel, will serve as co-chair of the commission, along with Cristina Rodríguez, a Yale Law School professor and former official in the Obama Justice Department. Others named include Sherrilyn Ifill, president of the NAACP Legal Defense Fund and Harvard Law professor Laurence Tribe, an expert on constitutional law.

Gabe Roth, executive director of Fix the Court, a nonpartisan group that advocates for greater transparency in the federal judiciary, described the commissioners named by the White House as an "incredible list of legal minds."

"I hope they strongly consider proposals to institute prospective term limits via statute, not amendment, and that they can find consensus around the need to improve the court's lax travel, disclosure and ethics rules," he said.