

TO: House Democrats
FROM: Demand Justice
DATE: September 1, 2026
RE: Key Vote Alert: Vote **NO** on H.J. Res. 1

Demand Justice opposes H.J. Res. 1, a Republican-backed proposal to permanently freeze the Supreme Court of the United States (Supreme Court or Court) at nine members. H.J. Res. 1 is a blatant power grab that would calcify the anti-democratic Roberts majority, regardless of current or future circumstances; and provide cover for the decades-long campaign by Leonard Leo, the Federalist Society, and their allies to create a Supreme Court that shields the wealthy and powerful while denigrating the economic, civil, and voting rights of everyday Americans. This memo outlines reasons to oppose H.J. Res. 1.

Demand Justice has designated H.J. Res. 1 as a key vote for 2026.

1) H.J. Res. 1 Is an Undisguised Partisan Effort to Lock in the Current Supreme Court Majority

In May, the Republican Majority hastily organized a Courts Subcommittee hearing on “Court Packing: A Threat to the Supreme Court’s Legitimacy.” Rather than an intellectually honest effort to explore the arguments for and against expanding the Court, the hearing was political theater designed to bolster support for permanently freezing the size of the Court just when it has a 6-3 conservative supermajority. The timing is not random—it is part of a concerted campaign to ensure the Court continues to advance the interests of the country’s most wealthy and powerful.

Given the current supermajority, the relative youth of the three of the most recently appointed conservative justices (all members of Gen X, born in 1965 or later), and the current practice of timing retirements to in order to ensure that seats remain ideologically consistent, this proposal could cement a conservative Court majority for decades to come—particularly given that H.J. Res. 1 is being advanced in the absence of complementary proposals such as term limits, binding ethics rules, and shadow docket reform. Democrats should not vote for any constitutional amendment that would lock-in a conservative supermajority, particularly a supermajority that has already demonstrated its hostility to voting rights, civil rights, and worker rights, among others.

2) Congressional Democrats Must Continue to Oppose Republican Power Grabs

Whether or not House Democrats believe that expanding the Court would be good policy *now*, it is good policy to oppose *this* resolution at *this* time. Adjusting the size of the Supreme Court has a long history. While some past size adjustments advanced dual political and functional purposes, the three adjustments in the 1860s are considered primarily political in that they advanced the pro-Union, anti-slavery position and Reconstruction.¹ Indeed, it is likely impossible to find any

¹ Presidential Commission, supra n. 2, at 68-69.

adjustment to the Court's size that **didn't** accomplish the political ends—even if there were also non-pretextual, non-partisan reasons for the change.²

Court expansion is the only court reform option that would promptly redress the 6-3 supermajority, which is itself the result of a partisan power grab. When the American people are counting on congressional Democrats to be the last line of defense against the Administration's assault on rule of law,³ it is more critical than ever to fight MAGA power grabs.⁴ Removing court expansion from the table would be democratic and political malpractice.

3) H.J. Res. 1 Would Needlessly Erode Congress's Power

Congress's broad constitutional authority to determine the size of the Court is well established. Congress established a six-member Supreme Court in the Judiciary Act of 1789,⁵ and altered the Court's size seven times since then (in 1801, 1802, 1807, 1837, 1863, 1866, and 1869).⁶ While Congress has typically jealously guarded its constitutional authority, H.J. Res. 1 would permanently relinquish Congressional power to determine the proper size of the Court. This power is important even when Congress chooses not to use it (consider, e.g., congressional consideration of FDR's 1937 proposal to expand the Court to 13, a proposal that arguably put an end to the Court's shameful Lochner Era).

Trump has made clear his contempt for any constitutional limitations on his power, and the Supreme Court responded by providing him with broad immunity.⁷ Congress should not support H.J. Res. 1 or advance any other legislation that would limit its ability to take whatever actions are necessary and appropriate to restore justice, equality, and rule of law.

4) H.J. Res. 1 Is Just Plain Bad Policy

After a fifty year campaign to create a conservative, pro-oligarchy majority in the federal courts, now is not the time to cement right-wing gains by permanently freezing the size of the Court. As noted previously, court expansion is the only option that, if and when enacted, would be poised to provide immediate relief from the current unpopular, ethically-challenged, Leonard Leo-backed 6-3 supermajority. In the wake of Callais and Dobbs, trust in the Supreme Court is falling and support for expansion is growing. For members of Congress who have not yet taken a public position on court expansion, it makes little sense to lock in opposition now.

The most persuasive argument in favor of expansion is the aggressive approach of the Court itself: the right-wing majority will continue to dramatically remake the law to favor the oligarchy. Given

² *Ibid.*, ch 1-2.

³ In a recent survey, "10% of Americans said that the worst thing about Democrats was that they were weak and did not stand up to Trump or stand up for what was right." This was the only answer that exceeded single digits. "[Americans most likely to say Democrats don't stand up to Republicans. Republicans support Trump too much: ABC News/Washington Post/ipsos poll](#)," Emily Guskin, [Abcnews.com](#), May 27, 2026.

⁴ An April Strength In Numbers/Verasight poll found that the biggest complaint against Democrats is that they are "[weak, and not particularly effective](#)."

⁵ An Act to Establish the Judicial Courts of the United States, ch. 20, 1 Stat. 73 (1789).

⁶ Presidential Commission on the Supreme Court of the United States, Final Report (2021) at 73-74.

⁷ Trump v. United States, 603 U.S. 593 (2024).

former Majority Whip and Assistant Democratic Leader Jim Clyburn's recently announced support for a 13-member Supreme Court, we recommend a NO vote on H.J. Res. 1.