



Written by [David Kelly](#) on June 30, 2023

Biden Claims Expanding Supreme Court Could ‘Politicize’ It Forever

In an [interview](#) with MSNBC’s Nicolle Wallace on Thursday, just hours after the Supreme Court of the United States’ (SCOTUS) [decision](#) on affirmative action, President Joe Biden held firm to his stance against expanding the Court.

During the interview, Wallace asked Biden if he worried “that without court reform, this conservative majority, is too young, and too conservative, that they may do too much harm?” Biden responded stating, “I think they may do too much harm, but I think if we start the process of trying to expand the court, we’re gonna politicize it, maybe forever, in a way we can’t get back.”

Biden’s comments on expanding SCOTUS were a rare moment of clarity for the president, who acknowledged the fact that tampering with the number of justices could backfire, setting a dangerous precedent depending on who holds power in Washington. However, prior to the MSNBC interview, while giving [remarks](#) on the matter at the White House, Biden was asked whether this is “a rogue Court,” and answered, “this is not a normal Court.”

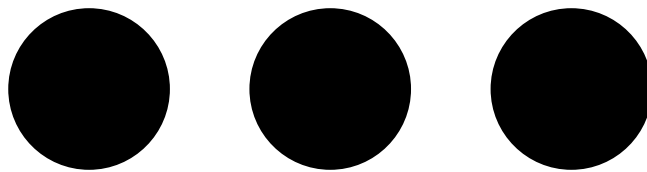
Those comments led Wallace to ask the president to clarify what he meant. As *The Epoch Times* [reported](#):

Biden cited recent judgments such as the overturning of *Roe v. Wade* and the repeal of affirmative action and criticized the court for going against 50–60 years of precedent. “It has gone out of its way,” Biden said, accusing the court of losing touch with “the basic value system of the American people.”

In May, Senator Edward J. Markey (D-Mass.) reintroduced a [bill](#) to expand SCOTUS from the current nine justices to 13 justices.

In Markey’s [press release](#) he wrote:

Congress can determine the size of the Supreme Court; it has already added and removed seats on the Court seven times throughout its history. At a time when the American people’s



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confidence in the nation's highest court has fallen to [a record low](#) and Congressional Republicans have already employed their far-right judicial playbook by disregarding norms and precedent in the confirmations process, Congress must take action by once again expanding the Court.

“Republicans have hijacked the confirmation process and stolen the Supreme Court majority—all to appeal to far-right judicial activists who for years have wanted to wield the gavel to roll back fundamental rights,” said Senator Markey. “Each scandal uncovered, each norm broken, each precedent-shattering ruling delivered is a reminder that we must restore justice and balance to the rogue, radical Supreme Court. It is time we expand the Court.”

The bottom line for Biden on Supreme Court expansion, at least for now, is that it would be a “mistake.” The president told Wallace that he had put together a group of constitutional scholars to explore expanding the Court, sharing that “the judgment was that it didn’t make sense because it can become so politicized in the future.”

Democratic lawmakers are voicing their concerns with SCOTUS as well, some seeking to reform the Court. *The Hill* [shared](#) today that Sen. Markey has renewed “his call to expand the court”:

“We need to repeal the filibuster so that we can expand the Supreme Court to reclaim the two stolen seats on a now illegitimate court, which are stealing the rights of the American people,” Markey declared at a local event covered by the Boston Herald.

Sen. Elizabeth Warren (D-Mass.) on Tuesday also called for the abolition of the Senate filibuster to make it easier to reform the court.

“The United States Supreme Court is out of control and Congress needs to react quickly,” she said.

Both Markey and Warren are in the minority among Democratic lawmakers by seeking to add seats to SCOTUS.

Article III, Section 1 of the U.S. Constitution [states](#) that “The judicial Power of the United States, shall be vested in one supreme Court,” but is silent on the size and composition of SCOTUS, leaving Congress to decide on the number of seated justices. That has led to enacted legislation over the years changing the number of justices, settling on the current nine. That hasn’t changed since 1869.

Biden’s trepidation to push Congress to expand the Supreme Court may also be partly because Democrats are aware of their party’s history, with President Franklin D. Roosevelt’s (FDR) unsuccessful 1937 court-packing plan. According to [History](#), FDR was seeking to stack the Court to “neutralize Supreme Court justices hostile to his New Deal.” At the time, most Republicans and many Democrats in Congress opposed FDR’s plan.

Biden would face similar opposition today if he were to do the same, especially as he seeks reelection. However, if he secures a second term, he could quickly lose today’s clarity and seek to expand the Court.



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