**Biden’s Veiled Threat to Pack the Supreme Court Should Disqualify Him from Being President**

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Joe Biden says he will make known his views on adding justices to the Supreme Court “after the election.” And now he adds that he will set up a commission to study the question – which I understand to be a veiled strategy for carrying out the plan. His running mate Kamala Harris earlier told the New York Times that she was “absolutely open to” the idea of adding more justices, and many leading Democrats are also calling for such a change.

This threat of court packing should worry every American. It is so serious a threat that I think, by itself, it should lead Americans to vote against Biden and Harris on election day. Let me explain why.

**1. The separation of powers is at the heart of the Constitution**

The authors of the U.S. Constitution understood that the federal government would have immense power, and that power tends to corrupt even the best leaders. Many of them were familiar with the Bible, including biblical narratives showing that even good kings like David and Solomon committed evil deeds later in life (2 Samuel 11; 1 Kings 11). They knew that power has a corrupting influence on people and an unrestrained ruler such as a king would “take” and “take” and “take,” and eventually the people “shall be his slaves” (1 Samuel 8:11-17). They knew that human beings are fallible, because “all have sinned and fall short of the glory of God” (Romans 3:23).

The American colonists’ experience of living under King George III of England had increasingly become “a history of repeated injuries and usurpations, all having in direct object the establishment of an *absolute tyranny* over these states” (*Declaration of Independence*, italics added).

In order to protect against such tyranny in the future, they devised a brilliant *separation of powers* by which the immense power of government was divided into many parts, thus preventing any one person or small group from gaining absolute power over the nation.

The separation of powers has many aspects. Here’s a brief overview:

**(1.) The Constitution:** The highest government power is given not to any persons but to the Constitution. It places numerous restraints on the power of government and protects the people from the government. (The Constitution can be amended, but only with great difficulty, by 2/3 vote of both houses of Congress and approval by ¾ of the states.)

**(2.) The three branches:** At the national level, the Constitution divides power among three branches.

- The Congress (legislative branch) alone has the power to *make laws*, with the signature of the president.

- The president (executive branch) has the power to *enforce the laws*. Today that power is administered through numerous cabinet members who oversee the many parts of government and who report to the president.

- The courts (judicial branch) have the power to *interpret the laws*. Judges act like referees, and if the president or Congress try to act contrary to the Constitution, judges have the authority to say they are violating the Constitution, and to order them to stop.

- These three branches each have some ability to restrain the other branches through a system of “checks and balances”

- Every state also has these three branches of government (legislative, executive, and judicial), further dividing power at the state level.

**(3.) State and local governments:** Individual states have significant authority to make their own laws about much of life. Under the 10th Amendment, any power not specifically delegated by the Constitution to the federal government, or prohibited to it by the states, is “reserved to the states respectively, or to the people.” Within the states much authority rests with individual cities and counties (such as local taxes and police forces). In this way, significant governmental power is distributed to states and cities, and this restrains the power of the federal government.

**(4.) Regular elections:** The people who alone can make the laws (Congress and the state legislatures) are the people in government who are most accountable to the citizens generally, because they have to be reelected at regular intervals. This process reserves much government power to “we the people of the United States” and helps guarantee that those who exercise the power of government do so with the consent of those who are governed.

**(5.) Bill of Rights:** The Constitution guarantees many important rights to us as individuals, and these rights further limit the power of government. No government is allowed to take away our freedom of religion, freedom of speech, freedom of the press, freedom of assembly, freedom to petition the government, the right to bear arms, the right to a trial by a jury of our peers, and several other rights.

It’s a complicated, often messy system, but it works!

**2. The separation of powers has protected us from any dictator or powerful group consolidating all power in one place.**

I don’t think Americans adequately appreciate that this system of government, structured with such a complex separation of powers, has protected us from any evil dictator taking over the United States and subjecting us to the cruelties of a totalitarian government. Unfortunately, that has not been the case in Russia (under Stalin), Germany (under Hitler), China (under Mao and now under Xi), North Korea (under Kim Jong-un), Cuba (under Castro), and many other countries. These countries have not had the great privilege of a government whose power is limited by such an extensive separation of powers.

**3. Justices on the Supreme Court are the nation’s final defense against the destruction of the freedoms and rights guaranteed to us by the Constitution**

Judges in the lower courts and justices on the Supreme Court are supposed to act like referees, blowing the whistle when a player violates a rule. If Congress passes a law or the president issues an executive order that violates the Constitution, the courts are to act as a referee and rule that that law or order is invalid. They are appointed for life in order to guarantee that they will impartially enforce the rules and uphold the Constitution. *But judges have no authority to make new laws, and certainly no authority to change the Constitution!*

The Constitution says, “*All legislative powers* herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives” (Article 1, Section 1). The power to make federal laws belongs only to Congress, which is appropriate, because members of Congress are accountable to the people through regular elections.

**4. Democrats rely on judge-made laws to short-circuit the political process**

As far back as 1990, the brilliant law professor and judge Robert Bork, in his book *The Tempting of America*, pointed out that when liberal politicians cannot get their agenda approved by Congress or by the state legislatures they often try to persuade judges to enforce their goals anyway. This had already happened with regard to abortion rights and restrictions on religious freedom, and in the time since Bork’s book it has also happened with same-sex marriage and some other issues.

Here are the details: In *Lemon v. Kurtzman* (1971), the court created a restrictive 3-part test for government interactions with religion, and this test led to outlawing several kinds of religious expression (such as a high school football coach praying with his team before a game, or a local clergyman giving a prayer at high school graduation ceremony). But the Constitution does not rule out such activities because it explicitly protects the “free exercise” of religion.

Then in *Roe v. Wade* (1973), the Supreme Court “discovered” a right to abortion in the Constitution, which says not a word about abortion. More recently, in *Obergefell v. Hodges* (2015), the Supreme Court “discovered” a right to same-sex marriage in the Constitution, which says not a word about same-sex marriage

In reality, these justices were just *creating* new laws and claiming that they found them in the Constitution! The Supreme Court was acting like the referee who scoops up the ball again and again and carries it into the end zone, scoring touchdown after touchdown for his favorite team. And beyond these decisions of the Supreme Court, there was no appeal, no opportunity for instant replay. On those issues, the game was over.

**5. Republicans appoint judges who rely on the original meaning of the laws**

On the issue of judges there is a vast difference between Democrats and Republicans. Republicans will not appoint judges who reveal that they have an agenda to enact certain policies that they favor. That is why President Trump’s appointments of justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett, are so significant. They have proven track records of abiding by the original meaning of the Constitution and the laws; they are, for the most part, convinced “originalists,” and they join Justices Thomas, Alito, and Roberts, which will make a 6-3 majority who share similar convictions. They are committed only to *returning to the Congress and state legislatures* the sole authority to make new laws, because that is what the wording of the Constitution *originally* intended. This means that they are committed to restoring to our nation the separation of powers that has protected us for so long from tyranny.

**6. Packing the court with judges who create laws would leave us defenseless against tyranny**

James Madison wrote in *Federalist* 47, “The accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.” But that could happen to us.

Quite often, the leadership of the executive branch (the president) and the leadership of the legislative branch (Congress) are in the hands of the same party. If the Supreme Court is then taken over by that party appointing several new liberal justices, *and if a majority of justices are willing to go beyond their rightful authority and create new laws* (such as they did with abortion and same-sex marriage and restrictions on religious freedom), then we will be approaching what Madison called “the very definition of tyranny.” All of the massive power of the federal government will be in the same hands and they will be free to violate the provisions of the Constitution as much as they wish. They will be free to remake the nation according to their own preferences and override the will of the people.

This is no minor issue. This separation of the power to make laws from the power to judge conformity to the laws is essential to preserving our existence as a free nation with government accountable to the people.

**7. Planning to pack the Supreme Court with more justices attacks the very heart of the structure of our government**

Any plan to turn the Supreme Court into a kind of super-legislature is a plan to nullify the separation of powers between those who make the laws and those who judge the laws. If judges can make new laws through their decisions, there will be no one to act as referee over them, and they will be able to expand and even violate the Constitution as often as they wish.

**8. The threat of enacting the liberal agenda through cases brought to the Supreme Court**

If Democrats succeed in packing the Supreme Court with a majority of liberal justices, leftist Democrats in a liberal state (say, New York or Illinois or California) could pass laws severely restricting even basic rights such as freedom of speech, freedom of the press, freedom of religion, or the right to bear arms. Such laws would of course violate the Bill of Rights, and conservatives would certainly challenge such laws in court, and these cases would eventually be appealed up to the Supreme Court. Then the justices who feel it their duty to “update” the Constitution could uphold these new laws and thus, one after another, our most cherished freedoms could be severely restricted or even taken away.

As an evangelical Christian, I am particularly concerned about decisions that would

- make abortion up to the minute of birth legal in all 50 states,

- force companies owned by Christians to pay for drugs that cause abortions and for sex-change surgeries,

- remove the accreditation or the tax-exempt status of Christian colleges because of illegal “discrimination” if they will not hire homosexuals or transgender persons, or if they require their students to abide by a statement of faith or a code of conduct,

- categorize and punish as “hate speech” any expression of dissent from the LGBT agenda,

- silence as “hate speech” more and more Internet communication that advocates conservative policies,

-require public school teachers and government employees to affirm that homosexual conduct is morally good,

- severely restrict or abolish private schools and any school choice programs for children, and

- require all schools to allow biological males who claim to be transgender females into women’s sports teams, restrooms, and locker rooms.

In addition, working in concert with regulatory agencies that can issue rules chipping away at our freedoms, such a Supreme Court could uphold rulings that

- place severe restrictions on gun ownership,

- tightly regulate campaign contributions so that the mainstream media gain an even more dominant role in people’s perceptions of political candidates,

- effectively prohibit all use of coal to produce energy, and

- prohibit making any new cars that run on gasoline.

Because every political issue could potentially be turned into a court case, the entire progressive/liberal wish list could eventually be enacted by the regulatory agencies and the courts, and upheld by the Supreme Court, bypassing the need for Congress and the president to approve all new laws.

In short, intentionally packing the Supreme Court with liberal justices is following a path by which freedoms are lost, tyrannies are established, and nations are destroyed.

**8. A presidential candidate who plans to pack the court cannot honestly promise to protect the Constitution**

When a president is inaugurated, he must swear the following: “I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.”

But how could anyone honestly swear to “preserve, protect and defend the Constitution” while he intends launch an assault against the separation of powers at its most powerful point?

Undermining the separation of powers at the national level is not like supporting an amendment that adds or modifies some details. It is rather an attack on one of the most foundational ideas of the Constitution, the separation of powers between the legislative and judicial branches of government. It is undermining the central idea that has made our Constitution so effective for so long.

That is why, in my opinion, Joe Biden’s veiled plan to pack the Supreme Court should disqualify him from becoming president. He would not protect but would attack and undermine the Constitution at its foundation. And “If the foundations are destroyed, what can the righteous do?" (Psalm 11:3)

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