# court packing for NB.wav

**Adia Samba-Quee:** [00:00:00] Civics 101 is supported in part by the Corporation for Public Broadcasting.

**Trump:** [00:00:04] Given power, Biden and his supporters would pack the court, you know they're talking about packing the court.

**Biden:** [00:00:08] The way that people [00:00:10] have a right to determine who's going to be on the court is how they vote for the senators and their president.

**Nick Capodice:** [00:00:14] You're listening to Civics 101.

[00:00:16] I'm Nick Capodice.

**Hannah McCarthy:** [00:00:17] And I'm Hannah McCarthy.

[00:00:18] Today, we answer a question from listener [00:00:20] Felix Owusu. He wrote, We've heard so much about packing the Supreme Court since the passing away of Ruth Bader Ginsburg. How does packing the court work?

**Hannah McCarthy:** [00:00:29] I love [00:00:30] this question because there are a lot of things that we have to define filibuster the nominating process, how seats are added to the court.

**Nick Capodice:** [00:00:38] Well, let's start with the nominating process. [00:00:40] Simply the president nominee to justice and the Senate votes to confirm them. But this leads to one more term I learned from talking today's guest, Robinson Woodward [00:00:50] Burns. He teaches political science at Howard University. And that term is constitutional hardball.

**Robinson Woodward Burns:** [00:00:57] Constitutional hardball is the practice by which [00:01:00] partisan actors and usually members of Congress violate constitutional norms or procedural rules to entrench their party interests [00:01:10] and power, usually in the judiciary or electorate, while operating within the rules of the constitutional text.

**Nick Capodice:** [00:01:17] A prime recent example of constitutional hardball [00:01:20] was the Democrats in 2013 rewriting the Senate rules to remove the filibuster for judicial nominees in the lower federal courts, and then the GOP retaliating by doing the same thing for Supreme [00:01:30] Court seats in 2017.

**Robinson Woodward Burns:** [00:01:31] Parties, if they want to get their legislative agenda through, rely on tinkering with the rules, passing, for example, budget legislation or tax legislation. [00:01:40] That act was passed under a procedural sort of tinkering that way. And we also, again, see increasingly a rollback of the filibuster.

**Hannah McCarthy:** [00:01:48] The filibuster, by the way, is a [00:01:50] procedure in the Senate where bills or appointments can be debated endlessly unless something called cloture is invoked, which requires 60 votes. But [00:02:00] back to Felix's question, how do we decide how many justices are on the Supreme Court?

**Robinson Woodward Burns:** [00:02:05] The US Constitution allows Congress to set the size [00:02:10] of federal courts, and Congress over time has used that to enlarge or sometimes to subtract [00:02:20] federal court seats. This was largely done not for political reasons, but because Supreme Court judges, justices were expected also to serve as federal [00:02:30] judges in federal circuit courts. This was called riding circuit.

**Hannah McCarthy:** [00:02:33] Riding circuit?

**Nick Capodice:** [00:02:34] Yeah, the early Supreme Court justices rode in horse drawn carriages across treacherous terrain [00:02:40] to rule on cases across the country. One almost drowned in a swamp. One was attacked by a former defendant. These guys got sick all the time.

**Robinson Woodward Burns:** [00:02:49] And so as [00:02:50] the circuits were expanded, as the nation increased in territory, so too were Supreme Court seats.

**Hannah McCarthy:** [00:02:56] Was this court packing?

**Nick Capodice:** [00:02:57] Robinson says not really. [00:03:00]

**Robinson Woodward Burns:** [00:03:00] Court packing is a kind of court enlargement done for political reasons. Parties occasionally in Congress have attempted to entrench [00:03:10] their partisan power on the Supreme Court or on the federal courts by using that constitutional authority to add seats and put in [00:03:20] those seats.

[00:03:21] partisan allies.

**Nick Capodice:** [00:03:22] Like Robinson said, the Constitution clearly lays out how to add seats to the bench by an act of Congress, but it says very [00:03:30] little on how to remove justices from the court. It's a lifetime appointment until death, resignation or impeachment.

**Hannah McCarthy:** [00:03:37] So if court packing occurs [00:03:40] only when it is a purely partisan divergence from congressional norms, are there any bipartisan solutions, a way to prevent this game of constitutional [00:03:50] hardball.

**Nick Capodice:** [00:03:51] There is one proposal that was supported by both Republican Senator Ted Cruz and the late Justice Ruth Bader Ginsburg, and that is to set term limits for Supreme [00:04:00] Court justices. And this can be done through an act of Congress or a constitutional amendment.

[00:04:04] One of the arguments for it is that every other democracy in the world has term limits for [00:04:10] justices, as do forty nine out of the 50 states. The U.S. Supreme Court is quite literally unique in this regard.

[00:04:19] That's court packing, Felix, [00:04:20] I hope we answered your question. And if any of you out there have any questions whatsoever, send them our way. Just go to Civics101podcast.org.