

Q53 – How many seats are on the Supreme Court?

DOUGLAS GINSBURG, Federal Judge, U.S. Court of Appeals, D.C. Circuit:

There are nine justices on the Supreme Court.

The Constitution doesn't fix the number of justices, that's up to the Congress. The Judiciary Act of 1789 set the number of Supreme Court justices at six. Back then, justices also sat on federal circuit courts around the country.

Circuit courts were grouped into three regions, with two justices per region. Three times two is how we got six Supreme Court justices.

In 1801 the Congress lowered the number of justices to five – for partisan political reasons. That lessened the chances that Thomas Jefferson – the incoming president – could fill a vacancy on the court. Jefferson and his allies in Congress managed to repeal that law – restoring the number to six.

As the nation grew, so did the number of circuit courts, and so did the Supreme Court – to nine justices. Under President Lincoln, and his successor, and his successor, the number rose to ten, fell to seven, then in 1869 returned to nine – all through partisan politicking.

Film footage: "The Great Depression left millions of able and willing Americans bewildered and jobless." Film footage: "A New Deal era, which is supposed to pull the country out of its chaos."

During the Great Depression, the Supreme Court struck down a series of laws that were part of President Roosevelt's New Deal. Frustrated, Roosevelt proposed in 1937 to add six justices – for a total of 15 – thus packing the Supreme Court with nominees favorable to his administration. Even President Roosevelt's supporters saw the court packing plan as an assault on the independence of the Supreme Court. The Senate rejected it by a vote of 70 to 20. Court packing ended as a political disaster for the president.

As of now, the number of Supreme Court justices remains at nine. The Congress could change that – but history tells us the people will not support a change driven by partisan politics.