

Back in 1937 FDR tried to Pack the Supreme Court



Breadlines and soup kitchens were common during the depression



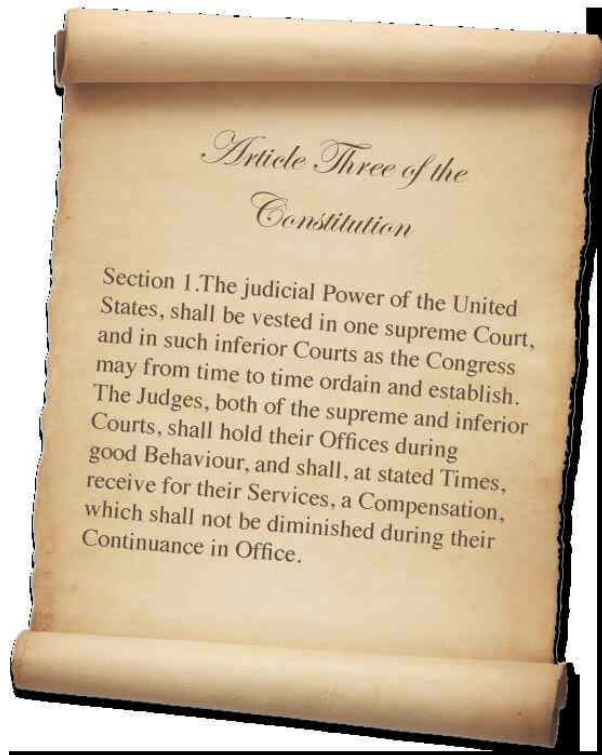
Franklin D. Roosevelt

The year was 1937. Americans were still suffering from the Great Depression which had begun with the stock market crash in October of 1929. President Franklin D. Roosevelt (FDR), who had first taken office in March 1933, had been doing his best to bring prosperity back to the Nation.

Locally, Raritan and Bridgewater, like all towns, were hit hard economically. Numerous businesses had closed. Even the one movie theatre had shut down. Many families had to rely on generous credit terms from local *mom and pop* department stores for basics such as shoes.

FDR, just reelected for the second time, had put through various types of legislation that was intended to get the economy moving.

But toward the end of the previous year the Supreme Court of the United States had struck down several pieces of his legislation declaring them *unconstitutional*.



The Supreme Court was established by our Founding Fathers in 1789 in Article III of the U. S. Constitution.

This type of court was a novel idea (part of a new experimental type of government.) Its purpose was to provide vital checks and balances on the other two branches of government - the legislative (Congress), and the executive (the President).

Initially no one was sure what to make of this Court, but over the decades the level of its power and respect grew substantially.



For its first one hundred and fifty years the Supreme Court did not have its own building as from 1810 to 1935 they held session inside a room in the Capitol Building.

As time went by it was felt that a branch of government as important as the Supreme Court should have a building that was representative of its prominence. In 1935, the beautiful Supreme Court Building that we know today with its marble columns was complete. Both the outside and inside are a marvel to view.

Supreme Court Building back in the 1930s



In 1937 President Franklin Roosevelt was frustrated that the checks and balances of our government were ... well ... checking his power.

Now FDR is rightfully ranked by historians as a great President who led us out of the depression and later to victory in World War II.

But here, due to his blind determination, he wanted to find a way around the veto power of the Supreme Court. He schemed and came up with an idea for how he could get the Court to rule in his favor.

[Many political cartoons opposed the court packing plan.](#)
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There were nine justices on the Supreme Court (same as today). Many recent rulings had been 5-4 against his legislation. Most judges were in their seventies. (All white men at the time.)

FDR knew that our Constitution stated that the Supreme Court Justices were appointed for life. This was done to ensure that the justices were truly independent of any political pressure that could result from an upcoming election or re-appointment.

But the number of justices according to the Constitution was determined by the Senate. This number had varied over the years starting with five in 1789, but had

been set at nine since the Judicial Act of 1869.

The Supreme Court Justices in 1937



Franklin D. Roosevelt at his second inauguration in January 1937.

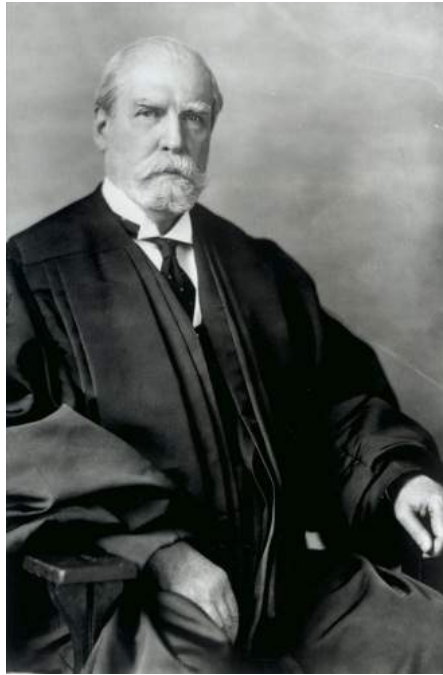
His scheme was that he would be able to appoint additional judges for each judge that was over 70 years old who refused to retire. Up to six additional judges could be appointed.

The President thought with new judges that a previous 5-4 vote against him would now go for him as he would appoint judges who he felt would rule in his favor. All that FDR needed was Senate approval.



So, on February 5th 1937, President Franklin Roosevelt, without consulting with his usual advisors, announced his proposal to add additional judges to the Supreme Court.

His stated reasoning was that the Court needed new blood and that the Court was behind on its work. Congress, the public, and the press were shocked. It was labeled FDR's *court packing* plan.



**Supreme Court Chief Justice
Charles Evans Hughes**

One columnist warned *If the Supreme Court went all other institutions will begin to crumble one by one.*

One Senator, a usual supporter of the President, said *A cause was never won by stacking a deck of cards, by stuffing a ballot box, or by packing a court.*

Supreme Court Chief Justice Charles Evans Hughes, breaking with the usual tradition of judges seldom making public statements, spoke out against the proposal. His basic summary was that it would destroy the Court as an institution. He gave evidence that the Court was not behind on its caseload as FDR had claimed.



Despite negative reactions FDR was ever determined. He explained his plan and the shaky justification for it to the American people on the radio during one of his famous fireside chats. But public sentiment held. Mail to congressmen from their constituents ran 9 to 1 against.

The *court packing* proposal was first voted down in a Senate committee and even a later compromise proposal that made it to a full Senate floor vote was soundly defeated. The lesson of history here is that back in 1937, Congress chose to respect and uphold the

**constitutional principles of
the separation of powers with
an independent judiciary
rather than side with a
President from their own
party.**