



September 28, 2021

The Honorable Dick Durbin
Chair
Senate Committee on the Judiciary
United States Senate
Washington, DC 20515

The Honorable Sheldon Whitehouse
Chair
Subcommittee on Federal Courts,
Oversight, Agency Action & Federal
Rights
United States Senate
Washington, DC 20515

Dear Chairs Durbin and Whitehouse:

On behalf of the Unrig the Courts coalition, thank you for your commitment to holding a hearing on the Supreme Court's so-called "shadow docket," which has been used with alarming frequency in recent years to undermine long-held civil and constitutional rights. Just in the last few months, the shadow docket has been used to effectively overturn *Roe v. Wade* in Texas, allow landlords to throw renters out of their homes in the middle of a surging pandemic, and force immigrants seeking asylum in our country to "remain in Mexico," putting them at grievous risk while they wait for relief.

As you know, shadow docket decisions are not fully briefed or argued in front of the Supreme Court, and the justices who issue these decisions are not required to sign their names to these orders. At the very least, the American public deserves to know where the justices stand on critical issues of law and the constitution -- anonymity should not be granted to justices who seek to put us all in harm's way.

Our coalition agrees that reforms to the shadow docket would be welcome, and increased transparency requirements both for the Supreme Court as an institution and for the justices themselves are necessary. **But this hearing is not enough.**

The central problem with the Supreme Court is that it has been taken over by conservative extremists who are more loyal to far-right political outcomes than they are to the law. Heightened transparency requirements might show just how partisan the Court has become, but it will do nothing to address the conservative capture of the bench. The only solution to that problem is to increase the number of justices by at least four, from 9 to 13.

That is why we write to ask you to schedule an additional hearing as soon as possible about the pressing need for Supreme Court expansion.

This is no passing ideological disagreement on our part with the conservative wing of the Supreme Court. The conservative justices do not behave like umpires calling balls and strikes. Instead, they now routinely throw out decades of precedent on the flimsiest justifications imaginable, all to protect the interests of their preferred political party. From granting corporations personhood rights in *Citizens United*; to trashing 40-years of labor law precedent to undercut worker power in *Janus*; to gutting the Voting Rights Act -- twice -- because “things have changed dramatically” in the South; to allowing the state of Texas to effectively ban abortion without even holding so much as an oral argument, it is beyond clear that this Court is dangerous and is not bound by its own precedents when it comes to waging a culture war with the American public.

The Supreme Court wasn't rigged overnight and it won't be unrigged overnight, either. But Supreme Court expansion is an immediate step we can take to address our broken court system and preserve any future progressive legislation or administrative decisions -- and there is a bill pending this Congress, the Judiciary Act of 2021, which would do just that.

We look forward to working with you and the committee on this critical legislation.

Respectfully,

Demos Action
Indivisible
Just Democracy
People's Parity Project
Stand Up America
Take Back the Court