



This dangerous idea gaining traction in American politics could harm religious liberty

By Orrin G. Hatch | Wednesday, April 10, 2019

A dangerous idea is gaining traction in American politics, one that could have significant implications for religious liberty: court-packing.

Since 1869, we have had only nine justices on the U.S. Supreme Court. That number has been fixed, and for good reason; it constrains the administration in power — be it Republican or Democrat — from installing an unspecified number of judges to dramatically shift the ideological balance of our courts.

This time-honored norm has moderated our politics for well over a century. But a growing number of elected officials, including several presidential candidates, want to dispense with it altogether. Instead, they want to “pack the court” — that is, increase the number of justices serving from nine to whatever number they deem necessary to win political control over the judicial branch.

The consequences of such action would be catastrophic and irreversible: The court would no longer serve as a shield against oppression but as a political weapon in the hands of an angry majority. When this proposal was last en vogue in the 1930s, Democratic Sen. Burton Wheeler of Montana cautioned that it would effectively “extinguish (our) right of liberty, of speech, of thought, of action and of religion.”

It is the effect this practice would have on our right of religion that concerns me most. I have spent a lifetime defending religious liberty in the public square. And so, when I see extreme ideas like court-packing seeping into the mainstream — ideas that could undermine this most fundamental freedom — I feel compelled to raise a warning. That so few grasp the severity of this threat to religious liberty exposes a glaring hole in our civic education.

So perhaps a simple civics lesson is in order.

Of all the rights delineated in the Constitution, the framers chose to list religious freedom first. This priority of place suggests that religious exercise has particular significance and merits special protection. Why? Because it goes to the very heart of who we are as human beings and how we make sense of our world. It implicates duties that transcend mere personal choice and become obligatory in the life of the believer.

Religious liberty has served as the bedrock of our laws for centuries. And for most of our history, this right has been treated with the deference it deserved. But today, freedom of conscience is under unprecedented attack — and court-packing is but one threat among many. In recent years, we have seen a flood of litigation, not to mention several legislative proposals, that would limit religious expression in the public square and subordinate individual belief to the demands of government.

Increasing hostility to religious liberty requires us to be extra vigilant in protecting this freedom. I carried this vigilance with me every day as a United States Senator. It's what inspired me to write the Religious Freedom Restoration Act of 1993, my greatest legislative achievement. This landmark legislation prohibits substantial government burdens on the free exercise of religion, allowing all Americans to live, work and worship in accordance with their deeply held personal beliefs.

Although I am retired from the Senate, my commitment to defending religious freedom is as strong as ever. That's why Thursday the Hatch Center, the policy arm of the Orrin G. Hatch Foundation, will host its very first religious liberty symposium — a bipartisan gathering of faith leaders, legal scholars and policy experts committed to defending the rights of conscience.

From threats of court-packing to activist lawsuits, dangers to religious liberty abound. But by uniting people of various faiths and political backgrounds, we can build a coalition of common interest to preserve this precious freedom for future generations. That's exactly what this symposium aims to do. I hope you will join me in defending religious liberty for people of all faiths. Our program will feature an interfaith panel and a who's who of religious liberty luminaries, including keynote speakers Leonard Leo, the Executive Vice President of the Federalist Society; Baroness Nicholson of Winterbourne, a member of the UK House of Lords; and BYU Law Professor Brett Scharffs, the Director of the International Center for Law and Religious Studies. The symposium will be open to the public and will be held in the Moot Courtroom of the S.J. Quinney College of Law from 8 a.m. to 12 p.m.

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Orrin Hatch is a former US senator from Utah.