Before Stacking A Court - 6 Facts You Need To Know About Our US Supreme Court
By KrisAnne Hall, JD

Over the years there have been a few presidential administrations who have proposed adding additional seats the Supreme Court. Court packing is not a new or novel proposal. However, if the American people are to allow their federal politicians to increase, or decrease, the number of Supreme Court justices, it is essential that we understand how this high court was created and its proper limited and defined authority as established by the Constitution.

Those who ratified our Constitution were deeply concerned about the tendency for courts to expand their authority over time and they did everything they could to ensure that America would not be ruled, as Britain often was, by an Oligarchy of judges. Whether you have 3 justices or 13 is not as important as making sure those justice stay confined to the boundaries of their authority as delegated by the Constitution. If we have justices that believe their authority is supreme, if Americans are taught to believe that the Supreme Court is the ultimate authority to their own power and the power of the federal government, we will have created, not by fact but by error, the very government our founders separated from.

Americans, whether liberal or conservative, must know these five facts about the Supreme Court and the Constitution that created it.

1. "The powers not delegated to the federal government…are reserved to the States respectively, or to the people." Tenth Amendment

The Tenth Amendment of the Constitution makes it clear; if a power is not specifically delegated to the federal government is a power that is reserved to the States. Powers that have not been specifically delegated to the federal government are not powers the federal government can lawfully exercise. The powers delegated to the courts are enumerated in Article 3 of the Constitution and thorough read of Article 3 proves there are powers specifically not delegated to the Supreme Court so they will remain at the State level. In fact, the majority of judicial authority was to remain at the State level without federal court involvement. The legal proof of this comes from those who ratified the Constitution, the true authority for the meaning and application of the Constitution.

"The great mass of suits in every State lie between Citizen & Citizen, and relate to matters not of federal cognizance." Madison to Washington 18 Oct. 1787
"The foundation of this assertion is that the national judiciary will have no cognizance of them, and of course they will remain determinable as heretofore by the state courts only, and in the manner which the state constitutions and laws prescribe.: -Federalist #83

2. "…the Laws of the United States which shall be made in Pursuance thereof; …shall be the supreme Law of the Land." Article 6 sec 2

Only laws created by the federal government that are made pursuant to constitutionally enumerated powers are the "supreme Law of the Land." Laws created by Congress, executive orders created by the executive branch beyond that delegation of power have no force or legal binding power over the States or the people; i.e. it is not the supreme Law of the Land. The language of Article 6 section 2 establishes that any law made by Congress that is inconsistent with the Constitution, in this case outside delegated power, is an invalid law, not binding upon the States or to the people. There are many proofs of this principle in the texts of those who created the federal government, here are just two:

"No law, therefore, contrary to the Constitution can be valid." -Federalist #78
"…for the power of the Constitution predominates. Any thing, therefore, that shall be enacted by Congress contrary thereto, will not have the force of law. -James Wilson, Pennsylvania Ratifying Convention, 1787

Additionally, Article V of the Constitution outlines the only legal way the Constitution can be amended and judicial opinion is not one of those ways. Therefore, if the Supreme Court renders an opinion that is contrary to the Constitution, that opinion ought to be seen by the people as "null and void" as well. As Article 6 clause 2 establishes, the judges of the States are not bound by any act that is established outside the authorization of the Constitution.

3. "All legislative Powers herein granted shall be vested in a Congress of the United States,"

Although we often hear people refer to Supreme Court Opinions as the "law of the land" that is Constitutionally incorrect. The writing of law is a power exclusively held by Congress. Court Opinion cannot be law without violating the express limits separation of powers established by the Constitution. A violation of separation of powers is a per se violation of the Constitution which renders the court opinion invalid (see #2).

Violations of separation of power were of the utmost concern to the drafters of the Constitution. James Madison explains, quoting Montesquieu, Spirit of Laws (1748), in Federalist #47:

"there can be no liberty where the legislative and executive powers are united in the same person, or body of magistrates," or "if the power of judging be not separated from the legislative and executive powers,"

Montesquieu, Spirit of Laws, warns of the consequences of allowing the judiciary to violate separation of powers to be violated:

“Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.”

4. “The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;” Article 3 sec 2 cl 1

The power of the Supreme Court is limited to matters “arising under this Constitution, the Laws of the United States, and Treaties” made “under their Authority.” If a power is not specifically delegated it is not a matter over which the Supreme Court has jurisdiction. Article 3 of the Constitution specifically enumerates those powers. The Constitution is not a document of government "can'ts," it is a document of government "cans." If the power is not specifically delegated, it is not authorized. Hear the words of Alexander Hamilton in Federalist 78:

“…an affirmative grant of special powers would be absurd as well as useless, if a general authority was intended." -Federalist #83

To those who ratified the Constitution this was simple logic, but it is a very important fact that is misconstrued and disregarded all too often in modern America. Therefore, using reason, fact, and logic we must conclude Supreme Court Opinions regarding State land, Environment, Education, Firearms, etc... are not binding upon the States. To claim otherwise violates the Tenth Amendment, Article 3, and Article 6 section 2 of the Constitution. (See #1)

5. The Supreme Court is Designed to be the Weakest Branch of Government

When you look at Article 3 you will notice the jurisdiction of the Supreme Court is very limited and very specifically established. As a matter of fact as the Constitution and newly proposed federal government was being debated, Alexander Hamilton explained:

"The judicial authority...is declared by the constitution to comprehend certain cases particularly specified. The expression of those cases marks the precise limits beyond which the federal courts cannot extend their jurisdiction..." - Federalist 83
"The judiciary on the contrary has no influence over either the sword or the purse, no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments…" -Federalist 78

"It proves incontestibly that the judiciary is beyond comparison the weakest of the three departments of power..." -Federalist 78

6. The Supreme Court is Not the Ultimate Authority on Any Federal Authority... Including its own.

For the Supreme Court to be the arbiter of its own power asserts that the federal government's only limitation is its own judgement and will. Such a premise would negate the very existence of the Constitution that created the federal government. The judiciary is just as limited in its power by the Constitution as the other two branches of government.

James Madison explains the limitation of the power of the Judiciary in his Virginia Assembly Report of 1800:

"If the decision of the judiciary be raised above the authority of the sovereign parties to the Constitution [States]… dangerous powers, not delegated, may not only be usurped and executed by the other departments, but that the judicial department, also, may exercise or sanction dangerous powers beyond the grant of the Constitution…consequently, that the ultimate right of the parties to the Constitution, to judge whether the compact has been dangerously violated, must extend to violations by one delegated authority as well as by another--by the judiciary as well as by the executive, or the legislature."

Thomas Jefferson, 1812:

"The great object of my fear is the federal judiciary. That body, like gravity, ever acting, with noiseless foot, and unalarming advance, gaining ground step by step, and holding what it gains, is ingulfing insidiously the special governments into the jaws of that which feeds them…government will become as venal and oppressive as the government from which we Separated."

Courts don't issue rulings, Kings issue rulings. Courts issue Opinions and when those Opinions are not consistent with the Constitution those opinions are no more binding upon you than your next door neighbor's opinions.

In short, it really doesn't matter how many Supreme Court justices we have. What matters will they follow the limited and defined delegation of power as those who created that authority intended and hold the other branches within those same limits? If they answer to that question is "yes," then pack away. We know, however, the politicians who are seeking to "pack the court" are not doing so to get judges who will be true to the Constitution. These politicians seek to manipulate the people and the laws for their political favor by seating activist judges who will ignore the standards over their own authority to increase the power and influence of those who put them in power. Americans of all political ideologies must see the long term damage of this action and deny our members of Congress that authority. To ignore these self-evident truths will ensure Jefferson's warning becomes prophecy and will reconstruct the Supreme Court into the "*venal and oppressive government from which*" they separated.

~ www.KrisAnneHall.com

KrisAnne Hall is a US Army veteran and was a linguist for the US Army.

She was former instructor for the US Navy

She has an undergraduate degree in Bio-Chemistry from Blackburn College and her J.D. from the University of Florida, Levin College of Law

She was prosecutor for the state of Florida and now travels around the United States teaching the US Constitution

Thank You
Gordon Greenstein

US Navy (Veteran)
US Army (Retired)