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Washington, D.C. 20004

Via www.regulations.gov
and U.S. First Class Mail

June 17, 2021

The Honorable Katy Kale
Acting Administrator of General Services
c/o Ms. K. J. Brumfield, Associate Administrator
Office of Government-wide Policy
General Services Administration
1800 F St. NW
Washington, DC 20405

Dear Acting Director Kale:

RE: GSA Notice titled "Office of Asset and Transportation Management;
Presidential Commission on the Supreme Court of the United States;
Notification of Upcoming Public Virtual Meeting and Request for Public
Comment," Dkt. PCSCOTUS-2021-01, 86 *Fed. Reg.* 31504 (June 14, 2021)

The National Federation of Independent Business (NFIB) appreciates the opportunity afforded by the General Services Administration to submit to the Presidential Commission on the Supreme Court of the United States these comments on the Commission's work. NFIB urges the Commission to report to the President that the Supreme Court is a sound institution in good working order and that no valid reason exists to increase the number of justices.

NFIB is an incorporated nonprofit association representing small and independent business members across America. Small businesses account for 44 percent of the goods and services the U.S. produces annually, create two-thirds of net new jobs, and employ nearly half of America's workers. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that the legislative, executive, and judicial branches of the governments of the United States and the fifty states hear the voice of small business as they formulate laws, administer laws, and adjudicate cases under laws.

America's small businesses depend on courts to provide stability and predictability in adjudication under the law of property, contracts, torts, insurance, employment, and other business-related matters. Turning federal courts, and in particular the Supreme Court of the United States, into political spoils to be seized instantly by the political party that prevails in congressional and presidential elections in a particular year would destroy the stability and predictability an effective free market economy requires. It would also destroy public confidence in courts, an essential element of a peaceful democracy.

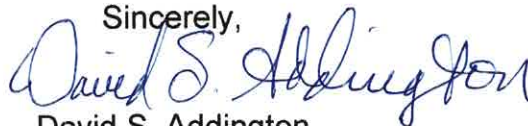
To be sure, the people's will, as expressed through elections, has a proper role in shaping the federal judiciary, just as it has in selecting presidents, senators, and representatives. But the Constitution and laws of the United States establish a process designed to take account of the people's will over time in shaping the judiciary and to do so in a manner that avoids injection of political control over the decisions courts make in cases before them.

The Constitution and laws of the United States provide for an appropriate degree of political input over time into the makeup of the Supreme Court by establishing a set number of justices on the Court and filling vacancies through a three-step process: (1) the President nominates a person to fill the vacancy, (2) the Senate consents (or does not) to that person's appointment to fill the vacancy, and (3) if the Senate has consented, the President appoints the person to fill the vacancy. The political party background of the President and the Senate majority when a vacancy occurs has a substantial impact on the President's choice of a nominee. But vacancies in the Court generally occur infrequently, often with numerous elections occurring between vacancies, which tempers the effect of the party politics of the day on the Court.

Most importantly, before a justice starts work, the justice takes oaths before God to "support and defend the Constitution of the United States" and that "I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me." There is no room in those oaths for a justice to adhere to the party line of a political party in casting votes to decide cases in the Supreme Court.

The Constitution and the laws of the United States on the makeup and functioning of the Supreme Court currently provide a sound institution in which most of the people have confidence. Turning the Supreme Court into a political football, such as by having the political party of the day in control of the presidency and the Congress suddenly expand the number of justices on the Supreme Court so the President and the Senate could pack the court with party adherents, would be folly. The Presidential Commission on the Supreme Court of the United States should recommend leaving alone the provisions of the Constitution and laws of the United States that govern the Supreme Court.

Sincerely,



David S. Addington

Executive Vice President and General Counsel