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# LCV endorses Supreme Court expansion

The League of Conservation Voters joined calls to add more justices as the court gets ready to decide a landmark EPA climate case.

BY: **LESLEY CLARK** | 06/03/2022 06:43 AM EDT

The Supreme Court. | Francis Chung/E&amp;E News

**CLIMATEWIRE** | The League of Conservation Voters will announce today its endorsement of efforts to add four justices to the Supreme Court, arguing that key environmental protections are at risk in the hands of the current six-member conservative majority.

In an exclusive interview with E&E News, LCV said the group decided to put its weight behind a push to expand the court because it believes Republicans have already stocked

the nation's highest bench with conservative justices — and teed up unprecedented legal battles like *West Virginia v. EPA*, which threatens the federal government's climate authority.

“It's not something we came to lightly,” said Doug Lindner, LCV's advocacy director for judiciary and democracy. “We wish that we were not in extraordinary times to call for extraordinary measures, but in order to protect the rights to clean air, clean water, to vote and to be equal before the law, we need a Supreme Court that's willing to do those things and has not been thoroughly captured by polluters and their far-right allies.”

The green group's endorsement of court expansion — sometimes referred to as "packing" — comes at a critical moment for the court, which appears poised to overturn the right to abortion, according to a draft opinion published by [POLITICO](#) last month. A final ruling is expected in the coming weeks.

Among the developments worrying LCV is the Supreme Court's decision to take up *West Virginia v. EPA*, a case that has the potential to seriously curb the federal government's ability to craft rules for power plant emissions — even though no such regulation currently exists ([Climatewire](#), March 1).

The justices agreed to hear the case at West Virginia's urging, even as the Biden administration said it did not intend to revive the Obama-era power plant regulation at the heart of the case after a lower court struck down the Trump administration's replacement. A ruling in *West Virginia* is expected by early July.

But the court could have avoided the question altogether: The justices decline to take up most of the petitions they receive, and legal observers had expected *West Virginia* to be rejected.

“It's pretty discouraging that they agreed to hear *West Virginia* in the first place,” Lindner said.

“In this particular case, they are ruling on EPA's authority to do something the EPA is not currently doing,” he said. “The fact that they agreed to take it anyway suggests that they are less concerned with the law and more concerned about pursuing an ideological agenda that serves the interests that got them there.”

Lindner noted that LCV is also concerned about the Supreme Court's upcoming ruling in *American Hospital Association v. Becerra*, which is not an environmental case but could have implications for environmental regulations. And it awaits arguments in a blockbuster Clean Water Act case, *Sackett v. EPA*, that environmentalists fear will spur the court to limit EPA's ability to curb water pollution.

LCV is endorsing expansion of the court broadly, and in particular supporting the "Judiciary Act," sponsored by Democratic Sen. Ed Markey of Massachusetts. That bill would expand the court from nine justices to 13 — the same number of federal judicial circuits.

The cause is popular among progressive groups but faces stiff odds in Congress. A bipartisan commission President Joe Biden established last year to look at court reform did not take a stand on enlarging the court when it issued its report in December — though it said the move would be possible.

Former federal judge Nancy Gertner and Harvard Law School professor Laurence Tribe, who served on the commission, wrote an [op-ed](#) after the final report was published, arguing that “offsetting the way the court has been ‘packed’ in an antidemocratic direction with added appointments leaning the other way is the most significant clearly constitutional step that could be taken quickly.”

Still, Markey’s bill has just two co-sponsors in the Senate — and 56 in the House.

Republicans are hotly opposed to the concept and pressed Biden's then-nominee Ketanji Brown Jackson for her opinion at her Supreme Court confirmation hearings. She declined to say whether she supports adding more justices.

Retiring Justice Stephen Breyer, a Clinton appointee whom Jackson will replace on the court, has warned that adding more members to the court could hurt its reputation. Speaking at a [Harvard Law School](#) address last year, he said that “structural alteration motivated by the perception of political influence can only feed that perception, further eroding that trust.”

Florida Republican Sen. Marco Rubio has [introduced](#) a proposed constitutional amendment that would mandate that the high court have nine justices.

LCV will look to “persuade” members of Congress, as well as fellow green groups and the public, that expansion of the court would help secure a variety of rights, Lindner said.

The group, which has nearly 1 million members and chapters in 30 states, has emerged as a power player in electoral politics in recent campaigns. During the 2020 election cycle, LCV spent more than \$42 million on federal races — making it one of the top 20 groups spending outside money on campaigns, according to [OpenSecrets.org](#).

“We know it’s going to take a lot of time and energy to get this done,” Lindner said. “But this is a situation where if we don't act, this Supreme Court will continue their extremist, ideological and unpopular agenda for decades to come.”

The high court hasn't always had nine seats. It has sometimes had more justices and sometimes had fewer. The Judiciary Act of 1869 set the total at nine — eight associate justices and one chief justice — and it has remained at that number ever since.

Democrats, who have accused Republicans of politicizing the judiciary by blocking one of former President Barack Obama's nominees in an election year, have seized on the idea of expanding the court as a way of recalibrating its ideological balance. Six conservative and three liberal justices currently serve on the court.

Though judges' rulings are not always in line with the ideology of the president who nominated them, Lindner said the court's current composition is a result of Senate Republicans taking "unprecedented and extraordinarily partisan actions" to see that former President Donald Trump was able to seat three justices on the court.

When Justice Ruth Bader Ginsburg died in late 2020, Trump and Senate Republicans moved swiftly to name Amy Coney Barrett as her replacement. Democrats opposed the speed at the time, noting that Senate Republicans had refused to give Obama's nominee a hearing in 2016, citing the upcoming election.

"We're not happy to be in this position where our highest court has been politicized, but because the court has already been packed, we think it's really important," Lindner said.

*This story also appears in Energywire.*



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