Twitter Thread by jmhendersonsr



jmhendersonsr
@JMHendersonSr



#Gaslighting alert:

You may come across bot-amplified activists pitching the idea that #Republicans have been packing the Courts for years, and therefore, hypocritically object to Democratic Party machinations to inflict #courtpacking on America if Kamala Harris and her running mate are elected.

So, is it true, have "Republicans been packing" the Courts for decades?

Well, let's start by agreeing that this, or any, conversation is pointless unless we share a common language. If you think so, then ...

The term "court-packing" was devised to describe a proposal by President #FDR to add additional justices to the Supreme Court thereby increasing the number of justices. His plan wasn't so crass as simply to add justices.

Rather, under FDR's plan, the number of justices sitting on the Court would be increased by an additional justice for each sitting justice that reached the age of 70.

So, assuming 9 justices, when 1 or more justices attained the age of 70, #FDR would nominate an additional justice to the Court and the Court would increase its complement accordingly.

#FDR did propose the plan to Congress. It was as welcome there, apparently, as an offer to buy the next round of drinks at a Teetotalers' meeting. It was never adopted by Congress.

Instead, it became the watchword for politically driven efforts to change the outcome of Supreme Court decisions by purposive addition of justices sympathetic to the nominating party's policies and programs.

Now, is it #Courtpacking to nominate a replacement justice for one that has retired, resigned, or died?

No.

It is the fulfillment of two constitutional duties: one, the President's, to nominate judges; the other, the Senate's, to provide advice and consent on the President's nominees.

In my 61 years, every President--except Jimmy Carter--has nominated justices to the Court to return the Supreme Court to its full complement of nine justices. In that same lifetime, every President but Gerald Ford has successfully placed at least two nominees on the Court.

None of the 25 or so successful nominations--not one from any Democratic President, not one from any Republican President--was nominated at a time or in a manner that would have increased the number of Justices above nine, the current complement as provided by federal law.

Title 28 USC § 1 ("The Supreme Court of the United States shall consist of a Chief Justice of the United States and eight associate justices, any six of whom shall constitute a quorum").

No, what you have witnessed in your lifetime, whether you are 70 or 17, is not court-packing. It is the on-going fulfillment of constitutional duties. Whether by Republicans or Democrats in the White House and in the Senate, that is all that you have witnessed, not court-packing.