



**Course/Grade Level: High School U.S. History**

**Lesson Title: Challenge to Separation of Powers: FDR's Court Packing Plan**

**Teacher: Rick Elston, Guilford High School**

- 1. Essential Question: Should the three branches of government remain separate and independent as checks and balances against each other?**
- 2. Set Induction:**
  - a. Three branches of government review
  - b. Discussion- what if one branch was gone or controlled by another branch? How would this change our government? Why keep the branches separate and independent?

**3. Aims/Objectives and Standards:**

**POLITICAL SYSTEMS**

- Interpret how geographic, economic, technological, and social forces have affected the politics of the United States. *USH-01*
- Analyze political interactions between the United States and other countries within a global context. *USH-02*

**ECONOMICS**

- Examine the relationships between historical events and the economy of the United States. *USH-03*

**HISTORY**

- Apply methods of historical inquiry (pose questions, collect and analyze primary and secondary sources, make and support arguments with evidence, and report findings). *USH-04*
- Analyze historic events within their context and evaluate how interpretations of those events changed over time. *USH-05*

**GEOGRAPHY**

- Interpret various geographic representations (e.g., maps, graphs, charts), including those that show the relationship between the United States and the world. *USH-06*

**SOCIAL SYSTEMS**

- Compare and contrast ways in which social systems are affected by political, economic, environmental, demographic, and technological changes. *USH-07*
- Examine the evolution of the American identity through the eyes of different cultural groups (e.g., African Americans, immigrants, Native Americans, religious groups, role of women in society). *USH-08*

**4. Procedures, Assessments and Materials Required:**

- a. Show the background powerpoint to students
- b. Hand out Gannett letter transcript and Document Analysis Worksheet
- c. After students complete analysis, assign any of the activities described on the activities sheet.

**5. Resources and Scholarship**

- a. Library of Congress Website

- 6. Conclusion/Lesson Wrap-up:**
  - a. See attached lesson ideas

# FDR's Supreme Court Packing Plan

Constitutional Issues: Separation of  
Powers

# Separation of Powers

It is safe to say that a respect for the principle of separation of powers is deeply ingrained in every American. The nation subscribes to the original premise of the framers of the Constitution that the way to safeguard against tyranny is to separate the powers of government among three branches so that each branch checks the other two. Even when this system thwarts the public will and paralyzes the processes of government, Americans have rallied to its defense.

# Conflict

At no time in this century was the devotion to that principle more vigorously evoked than in 1937, when Franklin Roosevelt introduced a plan to increase the number of Justices on the Supreme Court. The conflict set off by the President's plan is more understandable when viewed in the historical context of expanding judicial power as well as in the contemporary context of pro- and anti-New Deal politics.

# Supreme Court and Workers

After the Civil War, the Court entered a phase of judicial activism based on a conservative political outlook that further enhanced its own power. In accepting the view that the 14th amendment should be interpreted to protect corporations, the Court struck down laws that protected workers, such as minimum wage laws and laws prohibiting child labor. Critics of the Court's stand, including Justice Oliver Wendell Holmes, argued that these decisions were not based on the Constitution but upon the laissez-faire theory of economics. By 1937 the Court was widely regarded by the public as an enemy of working people.

# Supreme Court and the New Deal

This sentiment was exacerbated by the Great Depression. In 1935-36, the Court struck down eight of FDR's New Deal programs, including the National Recovery Act (NRA) and the Agricultural Adjustment Act (AAA). Public antijudicial sentiment intensified; many critics questioned the constitutionality of the concept of judicial review itself. As a result of this reaction, several constitutional amendments were introduced into Congress in 1936, including one that would require a two-thirds vote of the Court whenever an act of Congress was declared unconstitutional; another that would permit Congress to revalidate federal laws previously declared unconstitutional by repassing them with a two-thirds vote of both houses, and even one that would abolish altogether the Court's power to declare federal laws unconstitutional.

# FDR: “Judicial Reform”

FDR remained silent, hoping that the antijudicial public sentiment would continue to grow without his having to enter the fray. He avoided any direct references to the Court in the 1936 election campaign. After his election victory, however, he submitted to Congress early in February 1937 a plan for "judicial reform," which forever came to be known as his attempt to "pack" the Supreme Court. Given Roosevelt's record for legislative success, it is interesting to discover why this plan to reconstitute the Court with Justices more favorable to the New Deal backfired.

# Court Packing Plan

Franklin Roosevelt and his Attorney General, Homer Cummings, had considered several options. They could have attacked the issue of judicial review head on, as Congress's proposed amendments had sought to do, but they chose not to, perhaps anticipating the public's attachment to the idea of the judiciary as the guardian of the Constitution. Instead, they chose to change the number of Justices on the Court, which had been done six times since 1789. Their plan had a different twist, however, for it proposed adding a justice for every justice over the age of 70 who refused to retire, up to a maximum of 15 total.

# Angry Public Reaction

Letters poured into the White House and the Justice Department both attacking and supporting the President's plan. Many of the letters of support came from ordinary citizens who had worked in industries hurt by the Great Depression. The Worker's Alliance of Kalispell, MT, wrote, "We consider that Recovery has been delayed materially by the dilatory action of the Supreme Court. . . . An immediate curb on the Supreme Court is of utmost importance, then an amendment to put it in its proper place would be well and good." But others, most notably the legal establishment and the press, thought that the Supreme Court was already "in its proper place."

doesn't  
like

# The Gannett Newspapers

Frank E. Gannett  
President

A STATEMENT BY

*Reed*

Executive Offices  
Rochester, N. Y.

FRANK E. GANNETT, PUBLISHER GANNETT NEWSPAPERS

President Roosevelt has cleverly camouflaged a most amazing and startling proposal for packing the Supreme Court. It is true that the lower courts are slow and overburdened, we probably do need more judges to expedite litigation but this condition should not be used as a subtle excuse for changing the complexion and undermining the independence of our highest court. Increasing the number of judges from nine to fifteen would not make this high tribunal act any more promptly than it does now, but it would give the President control of the Judiciary Department.

A year ago I predicted that this is exactly what would happen if Roosevelt was reelected. The Supreme Court having declared invalid many of the administration measures the President now resorts to a plan of creating a Supreme Court that will be entirely sympathetic with his ideas. Provision has been made for amending the Constitution. If it is necessary to change the Constitution it should be done in the regular way. The President is mistaken, if he thinks he can conceal his real purpose of packing, influencing and controlling the Supreme Court by confusing that objective with a long dissertation on the slow action of our various courts.

The Supreme Court has been the anchor that has held America safe through many storms. Its absolute independence and integrity must never be in doubt.

Our Government is composed of three departments, Legislative, Executive and Judiciary. These are the foundations of our Democracy. As a result of the election and the transfer of powers by so-called emergency measures, the Executive now dominates the Legislative Department. The President now proposes also to dominate the Judiciary. Do we want to give to this man or any one man complete control of these three departments of our Government which have from the beginning of the Republic been kept entirely separate and independent?

This proposal should give every American grave concern for it is a step towards absolutism and complete dictatorial power.

Frank E. Gannett

*Handwritten initials*  
FEB 20 1937

35868

GENERAL  
Correspondence Section

Primary Source:  
Letter From  
Frank Gannett  
Newspaper  
Publisher

# Assignment

- Use the transcript of Gannett's letter and complete the document analysis sheet

## **Transcription:**

### **A STATEMENT BY**

### **FRANK E. GANNETT, PUBLISHER GANNETT NEWSPAPERS**

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Frank E. Gannett

# Written Document Analysis Worksheet

Name \_\_\_\_\_

1. Title of document: \_\_\_\_\_

2. Type of document (Check one):

- |                                     |  |   |
|-------------------------------------|--|---|
| <input type="checkbox"/> Newspaper  | <input type="checkbox"/> Telegram      | <input type="checkbox"/> Congressional record |
| <input type="checkbox"/> Letter     | <input type="checkbox"/> Press release | <input type="checkbox"/> Census report        |
| <input type="checkbox"/> Patent     | <input type="checkbox"/> Report        | <input type="checkbox"/> Other: _____         |
| <input type="checkbox"/> Memorandum | <input type="checkbox"/> Advertisement |   |
| <input type="checkbox"/> Map        |  |   |

3. Unique Physical Qualities of the Document (check one or more that apply):

- |   |   |
|---|---|
| <input type="checkbox"/> Interesting letterhead | <input type="checkbox"/> Notations        |
| <input type="checkbox"/> Handwritten            | <input type="checkbox"/> "Received" stamp |
| <input type="checkbox"/> Typed                  | <input type="checkbox"/> Other: _____     |
| <input type="checkbox"/> Seals                  |   |

4. Date(s) of the document:

5. Author (or creator) of the Document:

Position (Title):

6. For What Audience was the Document Written?

7. Document Information (There are many possible ways to answer A-E)

A. List three things the author said that you think are important:

1.

2.

3.

B. Why do you think this document was written?

C. What evidence in the document helps you to know why it was written? (Use specific quotes from the document.)

D. List two things the document tells you about life in the United States at the time it was written:

1.

2.

E. Write a question to the author that is left unanswered by the document:

## Reading for the Main Idea

Students should review what their textbook has to say about the court-packing controversy. Ask them to read the document and answer the following questions.

1. How many Justices does FDR want to add to the Supreme Court?
2. What does Gannett feel will be the result of this increase?
3. What alternative method for changing the system does Gannett propose?
4. List three principles of government that Gannett mentions in this statement.

## The Constitutional Issue

1. Ask students to define the constitutional issue. Why was this issue so controversial?
2. In paragraph 4, Gannett expresses his fear that the executive will dominate the other two branches of government. Ask students to recall other times in our history when one of the three branches became too powerful.
3. Some have argued that our system of separation of powers and checks and balances paralyzes the efficient working of government and that we should amend the Constitution to provide for a parliamentary system of government. Ask interested students to research and stage a debate for the class on the question: RESOLVED that the Constitution should be amended to provide for a parliamentary system of government.

## Thinking Metaphorically

1. In the third paragraph, the author uses a metaphor when he compares the Supreme Court to an anchor. Play with this idea with your students. How is the Court like an anchor? If the Court is the anchor, what is the ship? What is the sea? What other storms might there have been in our history? Invite them to suggest other possible metaphors for the Court's role in our system.
2. Supporters of Roosevelt's plan would have seen the Supreme Court differently. Follow the steps below to help students write their own metaphorical statement.
  - a. List on the board how the supporters of the President's plan might have viewed the Supreme Court.

- b. Ask students to look at the list and suggest something in nature or something mechanical that has those qualities. List their suggestions on the board.
- c. Ask students to write several possible metaphorical statements that FDR's supporters might have used to describe the Court.

## **Techniques of Persuasion**

Ask students to reread the document and underline the parts that are particularly persuasive, and then to complete one of the following activities.

1. Rank in order of importance the three most persuasive sections and discuss why they are most persuasive.
2. Write a brief paper describing the reasons why this document is or is not persuasive.