
Douglas Bendell Award

**Roosevelt's Great Defeat:
The Court Packing Fight of 1937**

Amy Trujillo

Throughout the history of the United States, the president has often quarreled with the Supreme Court over matters of policy and the Constitution, but rarely has a president tried to overhaul the Court to accomplish his goals. At the start of Franklin Delano Roosevelt's second administration in 1937, the nation faced a crisis as the President attempted to change the Court that had obstructed his attempts to alleviate the effects of the Great Depression. While Roosevelt was understandably frustrated with the Supreme Court's thwarting of his policies, the actions he took were too drastic to be tolerated by the majority of the population. While many felt that the Supreme Court was getting in the way of New Deal legislation, few felt that the President had the right to attempt to change it. Opposition to this plan extended from Washington, D.C., to the rural United States as people realized its implications. The fact that Roosevelt was popular and had just won a huge victory in the 1936 presidential election did not necessarily mean that he had the support of the public in such an unprecedented move as to pack the United States Supreme Court. As Roosevelt stubbornly pursued his plan, the reactions of the people and changes in the policy of the Court made it almost impossible for Roosevelt to win. The events of 1937 eventually handed Roosevelt the greatest defeat he had as President.

Roosevelt's conflict with the Supreme Court cannot be understood without a look at the events that led up to his decision to pack the Court. When Roosevelt became president in 1933, he promised the people of the United States that he would turn the country around and lead them into the future. He proposed a number of governmental and social reforms which he called the New Deal. While many of these reforms were necessary, many people felt that the President was becoming too powerful. The

reforms were attempts to centralize the government under the authority of the executive branch, while at the same time limiting the role of Congress. The keys to all of these reforms were the agencies that Roosevelt created to act on the new laws. New Deal agencies such as the Interstate Commerce Commission (ICC) and the National Recovery Administration (NRA) were responsible for implementing the laws under the authority of the president.¹

Roosevelt, unlike his predecessor, had no problem exercising national influence in the affairs of the state governments during the Depression. He believed that the national government had to take a stand to aid those who were in need. Many of his early programs were designed to give immediate monetary aid to the people who needed it the most. Roosevelt approved federal aid that would supply millions of dollars to the poor. By the end of his first year, over five million people had received assistance from the federal government. At the same time, he realized that there would have to be programs that benefitted people in the long run, establishing work programs and long term employment.²

One of Roosevelt's most controversial reform projects was the National Recovery Administration (NRA). The NRA attempted to facilitate economic growth by controlling the industrial powers in the nation. While this would attempt to create work for the people, its purpose was to regulate and reform the factory system in the United States. Reforms, such as the recognition of labor unions and the elimination of child and sweatshop labor, were the concern of many who passed this bill, despite the constitutional questions that it raised. The NRA's constitutionality was questioned even before it passed through Congress. Many people doubted the constitutionality of the clause that gave the president the ability to create legal codes for factories. Still others questioned the role the NRA would have in regulating intrastate commerce. Despite this, Roosevelt went ahead and signed the legislation, believing the factories had to function and produce goods in order for the economy to improve. Similarly, the people had to work in order to be able to purchase products. It was hoped that this administration would accomplish both of these goals.³

¹Arthur M. Schlesinger, *The New Deal In Action, 1933-1939* (New York: Macmillan, 1940), 2-3.

²*Ibid.*, 5-6.

³Joseph P. Lash, *Dealers and Dreamers: A New Look at the New Deal* (New York: Doubleday, 1988), 122-25.

The unanswered constitutional questions brought about the NRA's downfall when it came before the Supreme Court. While the NRA had been created with good intentions, it had overreached the boundaries that many believed were acceptable for a national administration. From the very beginning, people had questioned the ability of Congress to create any law giving the President the power to make programs that did not have to go through Congress first. When the NRA finally came before the Supreme Court, the unanimous decision struck it down, because it gave the president powers that he could not constitutionally have. Even without the question of presidential interference, the NRA would have been destroyed because of the role that it had been assigned in the regulation of intrastate commerce. The Supreme Court restated the established doctrine that Congress had no right to regulate intrastate commerce; the NRA was thus unconstitutional because of this attempt. It was at this point that the first real split between the President and the Supreme Court could be seen. While Roosevelt had some reservations about the monopolistic qualities in the NRA, he had backed it as being for the good of the nation. When the Supreme Court ruled that the NRA was unconstitutional, Roosevelt saw it as an attack on himself and his attempt to help the nation.⁴

Even before the defeat of the National Recovery Administration, the Supreme Court had struck several blows at New Deal Legislation that angered the President and dismayed the people. To give pensions to retired railroad workers, Congress created the Railroad Retirement Act in 1934. When this case came before the Supreme Court, a small majority of the justices ruled the entire law was unconstitutional. This made it impossible for Congress to go back and make the Railroad Retirement Act acceptable. While the majority prevailed in this case, the minority was vocal in its criticism of the decision. Unlike the later NRA case, the minority number of justices did not see this as infringing on the intrastate commerce powers of the state. In 1934, in the *Fraizer-Lemke Act* decision, the Court eliminated the aid farmers had been receiving on their mortgages. For the first time, many saw how the Supreme Court could affect the nation, and many felt that the President was justified in his anger at the justices.⁵

Roosevelt soon found that he had support for his Supreme Court plan. Due to actions taken by the lower courts, Congress now felt that it had

⁴Schlesinger, *The New Deal in Action*, 18-19.

⁵Robert Jackson, *The Struggle for Judicial Supremacy* (New York: Vintage, 1941), 104-07.

justification to attack the courts. From the beginning of New Deal legislation, many of the lower courts had attempted to stop or limit the authority of the administrations. In a number of cases, these were conservative justices that were acting with the approval and support of the businesses that the legislation was attempting to change. Many of the lower courts were hostile to the attempts that Congress and the President were making to grasp more power. While the Supreme Court did not uphold the decisions of the lower courts in some of these cases, enough laws were found unconstitutional for the entire judiciary to come under scrutiny. It did not help matters that even when the lower courts did decide in favor of an act, such as the Tennessee Valley Authority (TVA) in 1936, other judges often ignored the decision and attempted to restrict the power of the laws. From the view of an outsider, it would seem that the judiciary was at war with itself, as well as the other two branches of the government.⁶

For many, the last straw occurred in 1936, when the Supreme Court ruled that the Agricultural Adjustment Administration (AAA) was unconstitutional. The AAA had been created as a form of relief for the farmers of the nation. The administration tried to curb overproduction by paying farmers to plow under their crops and limiting the number of acres they planted. The AAA made millions of contracts with farmers that guaranteed prices for their crops and attempted to regulate how much of a certain crop would be produced in a year. By the end of 1934, the result was higher prices, but much of this could be attributed to the drought that limited the production of many crops. While the AAA helped the farmers, it hurt the people living in the cities who now had to pay higher prices.⁷ When the Supreme Court ruled that the AAA was unconstitutional, all the good it had done came to an end. The Supreme Court decision stated that Congress had attempted to take over the state power of controlling agriculture and production within its boundaries. The taxes that the federal government had created to make crop payments to the farmers were also unconstitutional. The Supreme Court allowed the AAA to continue to exist, but without the money for payments or the ability to regulate the amount of a crop produced, its main function had been destroyed. The peoples' reaction to this was one of shock. While this program had its detractors, no one could doubt that it had been successful in increasing farm prices and supporting the farms.⁸

⁶Ibid., 115-121.

⁷Schlesinger, *The New Deal in Action*, 21-22.

⁸Ibid., 23.

Roosevelt was unable to act immediately upon his growing animosity toward the Court. He had to turn his attention to winning the presidential election of 1936. Roosevelt was at the height of his popularity. When the results were counted, he had won an unprecedented majority of the electoral votes, carrying every state except Maine and Vermont. With this victory, Roosevelt brought the Democratic party to its most powerful majority in recent memory. Both houses of Congress were controlled by the Democratic party and could be counted on to vote the way the President wanted. The only branch of the government that remained outside Roosevelt's grasp was the Judiciary, which continued to frustrate him at every opportunity.⁹

With his overwhelming victory in the presidential elections, Roosevelt became convinced that any action he took would have the blessing of the people. With the obvious support he had, Roosevelt felt that he had been given a mandate from the people to ensure the security of the nation's well-being. To the President, this meant that any and all actions that would ensure swift and permanent solutions to the problems the nation faced would be implemented.¹⁰ With the support of the nation, Roosevelt announced his plans to overhaul the federal judiciary. Despite his popularity, this proposal immediately brought about a rash of criticism, as well as a split in the Democratic Party. Some felt that the judicial branch should not be tampered with, and they were willing to fight the President to ensure the future security of the nation.

Roosevelt's plan to change the Supreme Court was simple and straightforward. When his proposed legislation passed, he would add another six justices to the Court. These would eventually replace the six on the bench currently over seventy years of age. As old justices retired, the appointees would take over until the number of justices was once again nine. With this proposal, the President felt he could finally get the Court on his side by appointing justices that would be loyal only to him. His attack on the older justices was based on his belief that people over seventy could not perform all the duties the office required. The new, younger justices were necessary to keep the Court moving smoothly, as well as bringing it into the future.¹¹

⁹William E. Leuchentburg, "Franklin D. Roosevelt's Supreme Court 'Packing Plan,'" in *Essays on the New Deal*, ed. Harold M. Hollingsworth and William F. Holmes (Austin: University of Texas Press, 1969), 69.

¹⁰Leonard Baker, *Back to Back: The Duel Between FDR and the Supreme Court* (New York: Macmillan, 1967), 4.

¹¹*Ibid.*, 8-9.

This court packing plan was not the only possible solution toward the problem that Roosevelt was having with the Supreme Court. Before Roosevelt announced this plan, he had considered several other solutions but abandoned them as too time consuming. The most talked-about solution was a constitutional amendment that would have allowed Congress to overrule split decisions. This would have been possible with a two thirds vote, similar to the way that Congress could override a presidential veto. While these plans may have been accepted by the public as emergency measures, the impatient President felt they would take too long. He was not sure that he could force a constitutional amendment the way he could force a bill through Congress. He was unwilling to take that chance. More importantly, Roosevelt felt that the Constitution did not need to be changed. The Court was the only entity in need of change. Even with an amendment, the actions of Congress could be destroyed by a hostile Court.¹²

The court packing proposal came as a shock to those who were the president's greatest supporters. While everyone agreed that the Court was in need of some reform, most within Roosevelt's circle believed that trying to enlarge the Supreme Court was an overly drastic measure. By attempting to pack the Court, the President would run the risk of looking like a tyrant or a bully. Most believed that the balance of power had to be maintained, and Roosevelt's plan would tip the balance too far in favor of the executive branch. Even if the Court did not become subservient to the president, the idea that the president could change the Court at will would have been established. Most of the people in Roosevelt's circle of friends were shocked by his radical plan. They had never seen this radical side of Roosevelt before this time. It made many wonder if his overwhelming victory had given him a sense of invulnerability in the face of what would surely be great opposition.¹³

While Roosevelt had some loyal supporters, he soon found himself opposed by those he had considered to be his allies. The most surprising of these was the split between the President and Senator Burton K. Wheeler of Montana. Wheeler disliked the secrecy in which the bill had been created. No one but Roosevelt's attorney general had any idea that the President was planning such a drastic measure. Wheeler was the first significant Democrat to break with Roosevelt over this plan. Wheeler feared

¹²Leuchentburg, "Roosevelt's Supreme Court 'Packing Plan,'" 73-74.

¹³Kenneth S. Davis, *Into the Storm, 1937-1940: A History* (New York; Macmillian, 1967), 55.

this scheme would put too much power in the hands of the President, destroying the Constitution in the process. To Wheeler, the President's plan was an attempt to demolish the Supreme Court with an arrogant and unconstitutional attack. The President's plan would destroy the independence of the judiciary and upset the balance of powers the founders of the Constitution had established. Wheeler feared that if this plan were allowed, Roosevelt would continue to gain power until the U.S. became a dictatorship, and it quickly became his mission to oppose the court packing plan.¹⁴

After Wheeler split publicly with the President, Roosevelt tried to get him back into his corner, but Wheeler was intent on opposing the President's plan. Charley Michelson, publicity director of the Democratic National Committee, tried to persuade Wheeler to support the President. Wheeler bluntly told him to try to get "some of those weak-kneed boys and go after them because he can't do anything with me."¹⁵ While Wheeler did not agree with most of the Court's recent decisions, he was unwilling to allow the President to have his way with the court, and he would not back down.

The President's primary argument for restructuring the Supreme Court rested on the age of the majority of the justices. He stated that with greater age came less stamina, and the system bogged down as the justices grew unable to perform their duties. Roosevelt's attempt to gain control of the Court was carefully hidden amidst the idea of placing younger justices on the bench. The main problem was that while this "new blood" would assume the bench, the bill did not eliminate the older justices. The problem with this idea was that it relied entirely upon the old judges. If a judge retired, the President could appoint whomever he wanted. The only way that another judge would be added to the Court was if one of the current justices refused to retire. If a judge would not retire, the legislation gave the president the right to appoint another judge to the Court. The new judge would not take over for the one already on the bench, he would simply be adding his opinion to the decisions. This would not increase the efficiency of the Court; it would make the Court's decisions even more divided as the new judge's opinion countered the decision of the old judge.¹⁶

¹⁴Marian C. McKenna, "Prelude to Tyranny: Wheeler, F.D.R., and the 1937 Court Fight," *Pacific Historical Review* 62 (November 1993), 414-415.

¹⁵Burton K. Wheeler and Paul F. Heaty, *Yankee From the West* (Garden City, NY: Doubleday, 1962), 321-22.

¹⁶Senate, Committee on the Judiciary, *Reorganization of the Federal Judiciary*, 75th Cong., 1st ses., 1937, Senate Report 711, 4.

While it was true that most of the justices on the Supreme Court were over seventy, this did not mean they were incompetent nor out of touch with the needs of the nation. Senate Judiciary Committee investigations revealed that not only were the judges over seventy competent, they were often the judges who were the most effective. This created serious doubts to the President's claim that the older judges received fewer cases and in many cases were in need of replacement.¹⁷

Roosevelt may have wanted to eliminate the older justices on the Supreme Court, but, in attempting to do this, he would be taking away some of his strongest supporters. Three of these justices, most notably Louis Brandeis, age seventy-six, were staunch liberals who had voted in favor of the majority of New Deal legislation that had come before them. In reality, the President's mission was to eliminate the four conservative justices that were blocking all of his attempts at reform. Roosevelt was soon forced to abandon this line of attack. He could find no real evidence of incompetence. More to the point, many of the President's backers in the Democratic Party were over seventy, and they did not appreciate the notion that anyone over seventy was incompetent.¹⁸

The main problem with the court packing bill was that it did not accomplish the goal of making the judiciary more efficient and modern. The bill's plan, as originally stated, was meant to increase the speed with which cases were read, as well as the number of cases, and to give the courts a more modern outlook. Roosevelt felt that this was necessary in a time when the decisions of the Court affected a nation already reeling from the effects of the depression. These objectives would have been laudable if the bill presented to Congress had done anything to actually give the judicial branch these powers. As the bill was stated, the only thing that it could do in the case of a judge that had been on the bench too long was to place a new judge on the bench beside the one that already existed. In many instances, the district that the old judge lived in did not have the backlog of cases that would warrant creating a new position. The real reason to make this law was to deal with the age of the original judge, and most agreed that this was not sufficient reason to create a new judgeship. The bill's solution to this problem was the idea of a roving judge that would go where there was a backlog of cases. It was customary for a judge to live in his district so that he would know the area. With a roving judge this would be

¹⁷Ibid., 4.

¹⁸Leuchentburg, "Roosevelt's Supreme Court 'Packing Plan,'" 85-86. .

impossible. This was a dangerous idea: a judge could be moved and put in place to deliver verdicts that would favor the party in power over others. The idea of a roving judge was hazardous, not only for the judiciary, but for the nation as a whole.¹⁹

The biggest problem was that Roosevelt's plan did not accomplish the goal of revitalizing the Court because it did not remove the old justices. It did not give a base for retirement, and it did not eliminate the problem of old judges. The bill that Roosevelt endorsed said nothing about the retirement of judges, except that they should retire after they were seventy and had served for ten years. This did not mean that the President would not be able to appoint older judges. It just meant that the judges could serve for ten years and then retire or have another judge come to the Court. There is also the fact that the amount of new blood allowed into the Supreme Court was limited. If there were fifteen justices on the Court, as the bill allowed, the President could not put any more judges on the bench without more legislative action.²⁰

The problem with the court packing bill as stated was that it would have given the Congress and the President more power over the Supreme Court. If the justices did not find in favor of popular legislation, it would be possible for the President to appoint a new justice that might change the decision. If the court packing plan passed then the Supreme Court, indeed the entire judicial branch of the government, was open to tampering whenever a conflict arose. This would have set a dangerous precedent. It would have limited the freedom of the judiciary branch guaranteed in the Constitution. The founders of the Constitution realized that there had to be a section of the government that would not be bound up in the petty disputes of politicians.²¹

The method of court reform that Roosevelt attempted was doomed almost from the start. What the bill failed to anticipate was the retirement of justices after the new justices had been appointed. If there was a full court of fifteen justices, then the President could not appoint another even if they all became too old. If there were fifteen justices and one retired, the Court would be left with fourteen justices, making a tie possible. If the Court was put in a position where a tie was possible, then it would become completely

¹⁹Senate, *Reorganization of the Federal Judiciary*, 4-5.

²⁰*Ibid.*, 7.

²¹Alfred Haines Cope and Fred Krinsky, eds., *Franklin D. Roosevelt and the Supreme Court* (Boston: Heath, 1952), 76-77.

ineffective. The power of the Supreme Court would be destroyed and any good it would have done would cease to exist. The whole point of being able to appoint new judges would be lost as the Court turned inward and the justices, out of frustration, fought among themselves, in the process becoming dependent on the retirement of one or two judges.²²

While the President was confident that his plan would pass, opposition arose immediately after he announced his intentions to change the judicial system. While many in the Democratic Party would follow Roosevelt's lead, he remained concerned about the reaction of the liberal Supreme Court justices when they learned of his plan. It goes without question that one of the biggest drawbacks to his plan was the opposition of the liberal justices in the Court. Before the President formally announced his plan, he wanted to warn the more liberal justices, specifically Louis Brandeis, that this plan was not meant as an attack on them. When Brandeis heard Roosevelt's proposal, his reaction was similar to that of many others in the nation. He stated that he opposed the plan and that he would do what he could to ensure that it failed, because it was a serious blunder. While the popularity of the President made most believe that the bill would pass, the reaction of Brandeis, one of the most liberal justices, was a severe blow to the legitimacy of the court packing plan.²³

Roosevelt's fight soon extended past the judicial branch. Members of his own party felt that he was in error and soon opposed him. There were those who believed that the President was attempting to overthrow the American system of government, and they would do anything to see that this did not happen. Some of the people who became Roosevelt's opponents surprised even him. Along with the disastrous defection of Montana Senator Burton K. Wheeler, many other influential people soon found reason to oppose the President's plan. Previously strong supporters such as the powerful liberal Senator George Norris of Nebraska and Senator Hatton Sumners of Texas, chairman of the Senate Judiciary Committee, turned against Roosevelt and began to campaign against his program. Sumners's change of heart, in particular, should have warned the President that his plan would not have smooth sailing. Sumners's position on the Senate Judiciary Committee assured that as long as he was against the plan, it was unlikely to get a favorable review.²⁴

²²Senate, *Reorganization of the Federal Judiciary*, 10-11.

²³Lash, *New Look at the New Deal*, 295.

²⁴Davis, *Into the Storm, 1937-1940*, 65.

Those who stayed loyal to the President through the end were those who were dependent on Roosevelt and the few who believed that he was truly doing the right thing. Many members of the House and Senate that were set to vote on this bill had been elected by running on the President's ticket that past November. They had chosen to run with Roosevelt, and they often had received his endorsement for the election. While many of these people sided with Roosevelt out of party loyalty, many of them had serious doubts about the legality and the ethics of the proposed bill. Many of the freshmen senators and representatives felt that they had no choice but to go along with the President's plan. If they did not, they could lose Roosevelt's patronage and basically kill their political career. These people often looked for a way to oppose the bill, but most were unwilling to risk the political backlash if they failed. While this may have shown their loyalty to the President, it did not say much about their faith in the legislation. Other members of the Democratic party were bullied by Roosevelt, or by Majority Leader Joe Robinson, into voting for the plan. It was not until widespread animosity toward the bill grew that most felt that it was safe to go against the President.²⁵

This should have been the time when Roosevelt was at his greatest power. Instead, he found himself locked in a bitter struggle, with his power and prestige being called into question by the people who had just elected him. Roosevelt's assumption that the people would go along with anything was quickly proven faulty as many came to the defense of the Supreme Court. Almost immediately after the President announced his intentions, newspapers and magazines around the country began to print editorials that blasted the President for attempting to alter the federal judiciary. Roosevelt tried to discredit his opponents in the press by saying that they were all conservatives. The truth was that the more people learned about the bill, the more they disliked it. Through editorials and letters to the editor, some of the opinions of the American people were shown. Editorials printed at this time called the court packing plan an attempt to make a "paper shell of the American Constitution."²⁶ As opposition mounted, the decision of the Senate Judiciary Committee would decide the fate of the bill.

When the Senate Judiciary Committee's decision against the court packing plan came out, it was obvious that the Supreme Court had a hand in the decision. The committee had decided that the bill did not meet its

²⁵Leuchentburg, "Roosevelt's Supreme Court 'Packing Plan,'" 88-89.

²⁶Cope and Krinsky, *Roosevelt and the Supreme Court*, 27.

stated objective and was therefore unnecessary. The most persuasive argument against the bill came from the Supreme Court itself. While the justices had decided that they could not ethically defend themselves to the public, they did feel that it was necessary to state their opinions and arguments against the bill. These arguments came through a letter that Chief Justice Charles Evans Hughes had written for the Judiciary Committee's hearings. The letter was read by Senator Wheeler, who happened to be a good friend of Justice Brandeis. In it, Hughes countered every argument that the President had made for the bill. He stated that the court had kept up with its business and that it had not allowed any case to linger that deserved to be heard. As to the number of justices on the Court, he stated:

An increase in the number of Justices of the Supreme Court . . . would not promote the efficiency of the Court. It is believed that it would impair that efficiency so long as the Court acts as a unit. There would be more judges to hear, more judges to confer, more judges to discuss, more judges to convince and to decide. The present number of justices is thought to be large enough so far as the prompt, adequate, and efficient conduct of work of the Court is concerned.²⁷

With this letter Hughes managed to counter every argument that the President had raised for his bill. The logic behind the argument Hughes made was nearly irrefutable; the Court had been doing its job. It just had not been doing its job in the way that Roosevelt had wanted it to function.

Even with the Senate committee's decision, Chief Justice Hughes's convincing argument, and the majority of the public opinion against the court packing bill, Roosevelt refused to abandon the legislation. He still wielded great influence in Congress and believed that the bill could still be passed. It is here that Roosevelt let his emotional ties to the bill and its mission get in the way of his logic. He had several chances to compromise. He refused any and all attempts to alter his bill. The Court damaged his New Deal policies and, as far as he could see, it showed no signs of changing; therefore, it had to be altered. With the support of Majority Leader Joe Robinson, the dependent freshmen senators, and the New Deal loyalists,

²⁷Charles Evans Hughes, *The Autobiographical Notes of Charles Evans Hughes*, ed. David J. Daneiski and Joseph S. Tulchin (Cambridge, Mass.: Harvard University Press, 1973), 305-06.

the President believed he could still force his bill through the Senate. Subsequent events rapidly proved him wrong.²⁸

The first key to Roosevelt's strategy to go wrong was the sudden reversal of the Court in its decisions on New Deal legislation. Previously the Court had rejected almost every important piece of legislation that came before it. Suddenly, it was reversing itself for no apparent reason. Some speculated this was in reaction to the President's actions, but the real reason was the unexpected switch of Justice Roberts. Previously, Roberts had sided with the more conservative members of the Court. Now he switched sides, voting with the liberal justices on the legislation presented to them. Roberts was most likely reacting to the court packing threat when he made his change in policy. Because of this, it is seen as a clear attempt to destroy the President's plan. It began on March 29, 1937, when Roberts decided in favor of a minimum wage bill from the state of Washington. This took everyone off guard, including the President, as this bill was similar to one presented by New York that had been struck down by the Court. The decision came as a complete surprise--no one had expected the Court to change its opinion. This decision was followed by two other equally shocking changes in the Court's established opinions. The Court decided in favor of the National Labor Relations Act and the new Social Security law in narrow majorities made possible only by Robert's defection to the other side. With these judgments, the Court changed national policy and began to allow the state and federal government to have more power in governing the nation.²⁹

Another blow to Roosevelt's plan occurred when Justice Van Devanter suddenly announced his intention to retire. Previously, Roosevelt had been angered by his inability to appoint a judge to the Court, and now one was being handed to him. Since Van Devanter was one of the most conservative justices on the Supreme Court, his retirement affected the entire makeup of the Court's philosophy. This retirement may have pleased Roosevelt on one level, but it created serious problems for his court plan. The greatest reason for the creation of the court packing scheme had just been eliminated. With the ability to appoint a justice to the Supreme Court, Roosevelt could be sure that his views would have more impact.³⁰

²⁸Leuchtenburg, "Roosevelt's Supreme Court 'Packing Plan,'" 91-93.

²⁹Ibid., 94-96.

³⁰Schlesinger, *The New Deal in Action*, 47.

While the court packing legislation was in jeopardy, the President believed that powerful Majority Leader Joe Robinson could force the bill through the Senate. The truth about the President's beliefs will never be known, for on July 14, just a few days before the bill was going to be voted on, Senator Robinson died. Robinson had been the driving force for Roosevelt in the Senate. He had kept order and loyalty to the President despite all of the criticism. Without Robinson to keep the Democrats together, those with doubts about the bill found more freedom to express their real views. Robinson's sudden death threw the balance of power to the opposition as many senators switched sides. The bill went down in defeat.³¹

With all of the rapid changes, it seemed that this ill-fated bill would finally be put to rest, but Roosevelt was unwilling to give up. Roosevelt attempted to get several compromise versions of the bill passed, but the opposition resisted all of these attempts. When the bill was voted on, the original reason for its existence, altering the Supreme Court, had been removed. By this time, the bill was so unpopular that this meaningless version went down in flames, being defeated seventy to twenty in the Senate.³²

From the very beginning, the court packing bill had been in trouble and the events of the last few months before its vote proved how unnecessary the bill really was. The slightest change in the position of the Court had almost completely discredited the President's assertion that the Court needed to be reformed. While the Court had not voted the way the President wanted, its members had decided as they saw fit. The testimony of the justices and the statistics behind their work proved that they were doing their jobs and keeping to a proper schedule. The age question had been answered early on and was generally the weakest argument of the President's bill. The older judges worked as well as, if not better than, the younger judges. The fact that the Court was the only branch of the government not voting his way was not enough of a reason for Roosevelt to attempt to change it.

The fact that Roosevelt even attempted such a scheme suggests the tremendous political influence he commanded as he began his second term of office. In Roosevelt's assessment of this action, he had no doubt that he would be victorious. Despite his popularity, Roosevelt discovered that he was not invincible, as the opposition grew in strength. His stubbornness might have been laudable in a different situation, but attempting to subvert

³¹Wheeler and Healy, *Yankee from the West*, 338.

³²*Ibid.*, 339.

the Constitution went beyond a political argument. Once all was said and done, the opposition had the power to defeat Roosevelt's court packing bill and hand the President his greatest defeat at the height of his popularity.