Working Overtime: The Supreme Court's Assault on the Labor Movement

September 2021

"I must inform you that the labor movement – its leaders, its lawyers, and its members – no longer believe labor organizations and working people seeking to act together to improve their wages, hours and working conditions can obtain a fair hearing before the Court."

— AFL-CIO General Counsel Craig Becker, testimony to the Presidential Commission on the Supreme Court of the United States

The Supreme Court's decisions in labor-related cases demonstrate antipathy for working people & allegiance to corporate power.

For decades, the conservative movement has worked tirelessly to seize control of the judiciary — and, having done so, to use the judiciary as a tool in its efforts to dismantle democracy and impose minority rule on America. From gutting the Voting Rights Act to opening the flood-gates to unlimited corporate spending on elections, there is no topic on which the Supreme Court has been more consistent than consolidating power for Republican politicians and big corporations. As the most effective counterweight to corporate interests, the labor movement is a central target of the right-wing judicial activists who will control the Court for decades to come — unless we expand and rebalance the Court.

A 2013 study of Supreme Court decisions between 1945 and 2011 found that under Chief Justice John Roberts, the Court favored business interests more than at any time covered in the study. Roberts and Samuel Alito are the two most pro-business justices since 1945, with Clarence Thomas joining them in the top five. And that was before the Roberts Court issued some of the most anti-labor rulings in its history.

> **John Roberts and Samuel Alito are the two most pro-business justices since 1945, with Clarence Thomas joining them in the top five.**

A decade of rulings against workers

Knox v. Service Employees Int'l Union **(2012)**

In Knox v. Service Employees International Union, the Court reversed decades of precedent allowing public sector unions to collect fees from nonmembers they represent, as long as they give nonmembers an opportunity to opt out from fees that cover political activities. The Court's anti-worker majority abruptly imposed an opt-in requirement for such fees, though neither party in the case had sought such a requirement. Justice Sotomayor noted that Justice Alito's decision for the majority imposing an opt-in requirement "breaks our own rules and, more importantly, disregards principles of judicial restraint that define the Court's proper role in our system of separated powers" by addressing issues outside the questions brought before the Court. That is: Alito and the Court's conservatives dealt a blow to labor unions entirely on their own, without having been asked to do so by litigants in the case. **Alito's opinion even invited future assaults on labor by telegraphing his desire to overturn Abood v. Detroit Board of Education, a 1977 Supreme Court decision affirming that public sector unions, like their private sector counterparts, can charge nonmembers fees to recover the costs of collective bargaining on their behalf.**

Harris v. Quinn **(2014)**

The plaintiffs in Harris v. Quinn accepted Alito's invitation to attack Abood. Until the Knox ruling, the Harris plaintiffs had not questioned Abood's validity; they had instead simply argued it did not apply to their circumstances. After Alito's decision in Knox, the Harris plaintiffs added an argument that Abood should be overturned. Though the Court ruled in favor of the plaintiffs without fully overturning Abood, Alito used his opinion in Harris to continue undermining Abood.

Epic Systems Corp. v. Lewis **(2018)**

In Epic Systems Corp. v. Lewis, the Supreme Court ruled that workers can be forced as a condition of employment to agree to arbitrate workplace disputes, and to do so as individuals, without the ability to join together in a class action effort. More than half of nonunionized private-sector workers are now subject to mandatory arbitration.

Janus v. AFSCME **(2018)**

Janus v. AFSCME completed the Supreme Court's assault on Abood, overturning that 41-year-old decision and ruling that public-sector unions cannot collect fees from nonunion members they represent.

CNH Industrial N.V. v. Reese **(2018)**

In CNH Industrial N. V. v. Reese, the Court held that retiree health benefits obtained via a collective bargaining agreement can be unilaterally terminated by employers at the expiration of the CBA unless otherwise specified, even if the company said benefits were intended for life — thereby depriving retired workers of their earned, collectively bargained health care benefits.

In October 2020, then-AFL-CIO president Richard Trumka wrote: "If he gains yet another conservative colleague, the Roberts Court may become the most dangerous branch of government." Three weeks later, Amy Coney Barrett was sworn in to fill the seat vacated by the death of Ruth Bader Ginsburg.

Cedar Point Nursery v. Hassid **(2021)**

In Cedar Point Nursery v. Hassid, the Court held that a 46-year-old California law allowing union organizers limited access to private property in order to organize agricultural workers not covered by the National Labor Relations Act was an unconstitutional "taking" from property owners. In doing so, the Court directly weakened workers' rights while laying the groundwork for a challenge to the PRO Act currently being considered by Congress. Cedar Point's broad application of the takings clause "handed business owners a loaded gun to aim at every regulation they oppose"[1] including workplace safety and nondiscrimination rules.

Judicial Activism:

The far-right justices have invited cases they can use to undermine the labor movement.

During his confirmation hearings, Roberts famously declared "I will remember that it's my job to call balls and strikes, and not to pitch or bat." But when it comes to cases related to labor policy, the Court's conservatives, led by Alito, urge the pitcher to throw at the batter's head — and then they call the beanball a strike.

In case after case, the Court's conservatives have proven unwilling to merely assess the cases before them and have instead chosen to invite cases that will advance their pet project of hobbling the labor movement. Their Knox and Harris decisions recruited direct challenges to Abood, laying the groundwork for the Court's Janus decision overturning 40 years of Supreme Court precedent and preventing public-sector unions from collecting fees from nonmembers for bargaining on their behalf.

Rather than waiting to call balls and strikes, the radical right-wing justices are telling their movement allies what pitches they want to see. And in Knox, Alito, Roberts and Thomas went so far as to call a strike on a pitch that hadn't been thrown, breaking the Court's own rules by imposing an opt-in requirement for union dues that plaintiffs didn't even ask for.

---

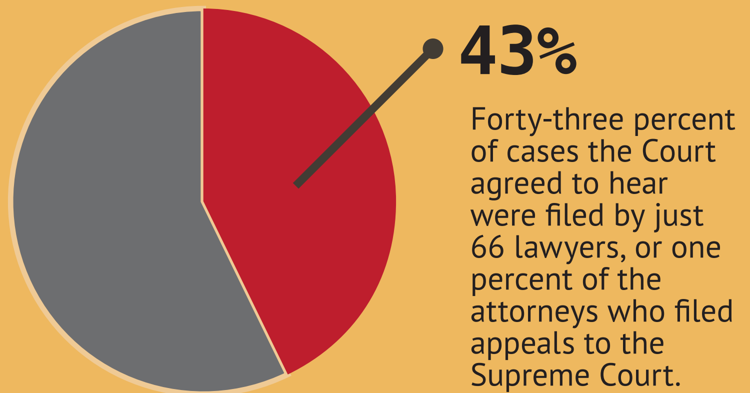
[1] Stern, Mark Joseph. "The Supreme Court's Latest Union-Busting Decision Goes Far Beyond California Farmworkers." Slate Magazine, https://www.slate.com/news-and-politics/2021/06/supreme-court-union-busting-cedar-point-nursery.html

Members Only:

The Supreme Court favors a small circle of corporate lawyers.

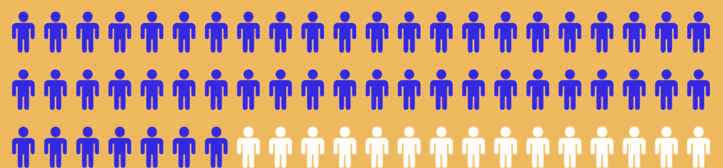
A Reuters study[1] of nine years of Supreme Court cases found that a small group of elite lawyers, many of whom have clerked for Supreme Court justices, enjoys a decided advantage in cases before the Court: One percent of lawyers who filed appeals to the Court accounted for 43 percent of cases the Court agreed to hear. Of these 66 lawyers, 51 worked at law firms that mainly represent corporate interests; they filed more than three times as many appeals for businesses as for individuals. The result of the Supreme Court's preference for this small group of elite lawyers, according to Reuters, is "a decided advantage for corporate America, and a growing insularity at the Court." That insularity applies to the justices' own backgrounds: Seven of the nine current justices represented corporate clients in private practice prior to joining the Court; no current justice has been a member of a labor union — nor has any justice who served on the Court in the last 25 years, at least.[2] Small wonder why working people have been getting such a raw deal from the highest court in the land.

By the Numbers: The Court's Favorite Litigants



The 1%

Of these 66 elite lawyers, 51 worked at law firms that mainly represent corporate interests.



● firms representing corporate clients ○ other

[1] Biskupic, Joan, et al. "The Echo Chamber." Reuters, https://www.reuters.com/investigates/special-report/scotus/

[2] None of the current justices have worked in a unionized job since college; it is not known whether one or more may have held a unionized job during high school or college.