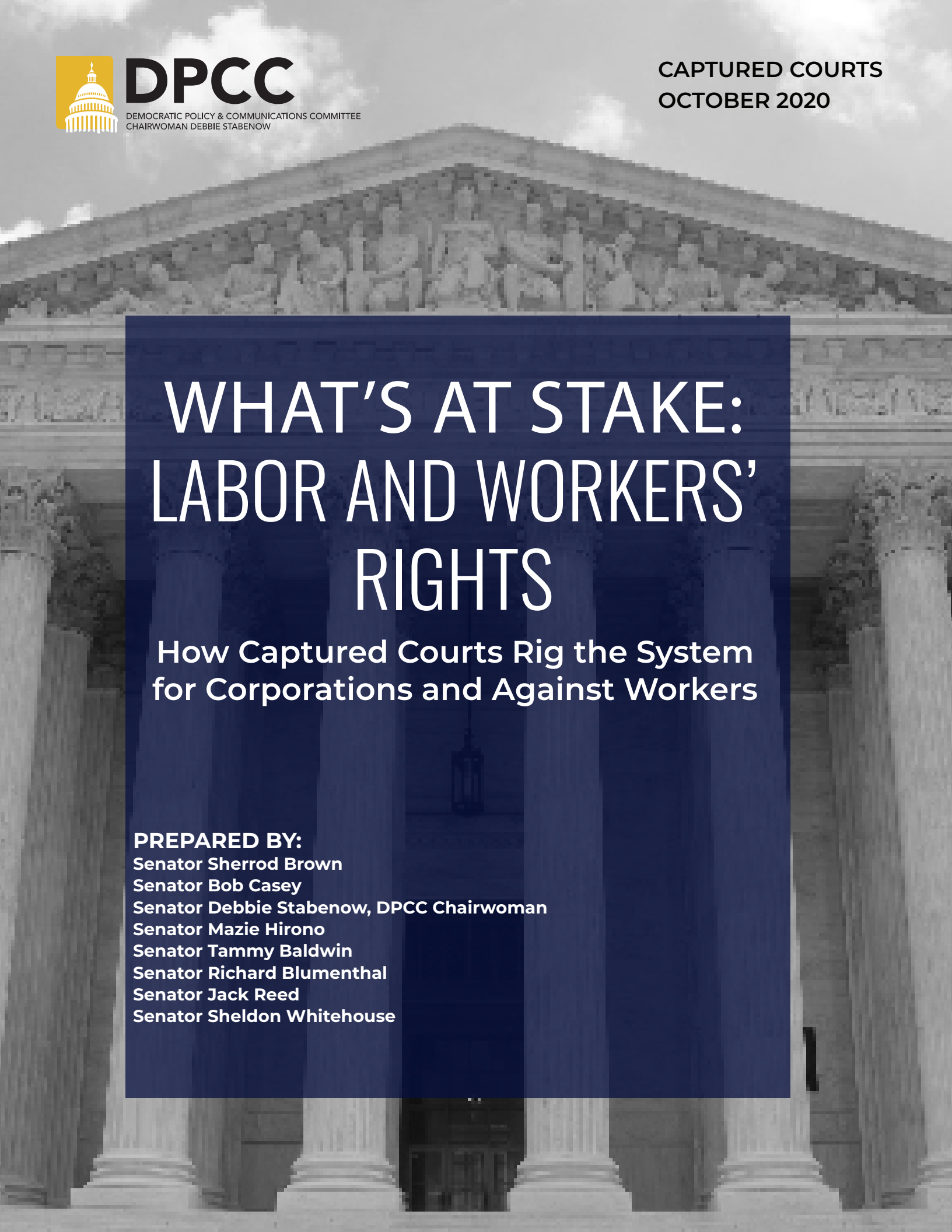

DPCC
DEMOCRATIC POLICY & COMMUNICATIONS COMMITTEE
CHAIRWOMAN DEBBIE STABENOW

CAPTURED COURTS
OCTOBER 2020

WHAT'S AT STAKE: LABOR AND WORKERS' RIGHTS

How Captured Courts Rig the System for Corporations and Against Workers

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Justice Ruth Bader Ginsburg

Supreme Court of the United States

Throughout her career, Justice Ruth Bader Ginsburg worked tirelessly to bend the arc of the moral universe toward justice. As a litigator and co-founder of the Women's Rights Project of the American Civil Liberties Union, she pushed the Supreme Court to recognize that the 14th Amendment forbade sex discrimination. When she joined first the D.C. Circuit and then the Supreme Court, she was known for building consensus among judges across the political spectrum. Ginsburg authored one of her most consequential dissents in Ledbetter v. Goodyear Tire & Rubber Co., Inc., a case involving wage discrimination based on gender. Though her opinion did not prevail that day, Congress heard her arguments and overturned that decision with the Lilly Ledbetter Fair Pay Act of 2009.

Justice Ginsburg was an unremitting champion for workers' rights, an advocate for the power to unionize, and a guardian of the disadvantaged and disenfranchised. As the Court has fallen increasingly under the influence of corporate and special interests, her dissents pulled back the curtain on how the Court has taken the side of the powerful at the expense of the powerless. She sought to award back pay to an immigrant fired for unionizing (Hoffman Plastic v. NLRB), mandate that employers receive employees' consent on comp time agreements (Christensen v. Harris County), and protect workers from forced arbitration, upholding the principle that "arbitration is a matter of consent, not coercion" (Epic Systems Corp. v. Lewis). Her absence on the Court will echo for years to come.

Justice Ginsburg's death places the legitimacy of the Court and our political process in jeopardy. Little more than an hour after Ginsburg's passing, Mitch McConnell announced that the Senate would vote on Trump's nominee for her replacement. For Senate Republicans, it hardly matters whom Trump selects. The wealthy special interests that fund the Republican Party have made sure that whomever President Trump nominates will be a reliable vote to roll back protections for workers in favor of corporate interests and to put more obstacles in the way of workers' right to organize.

- **The Roberts Court has made clear whose side it is on.** Time and again, in partisan 5-4 decisions, the Republican appointees on the Supreme Court have shown they value corporations and their profits over employees and the dignity of their work.

- **Workers' right to organize, the right to sue abusive employers, the right to receive fair pay, and the right to a workplace free from discrimination have all come under judicial attack by the Roberts Court.** With scores of like-thinking judges appointed by President Trump, these attacks will continue for years to come.

- **Our federal courts are captured by corporate special interests,** worsening historic injustices and systemic inequalities faced by communities of color, women, religious minorities and other groups subject to workplace discrimination and unequal pay.

What the Supreme Court Has Done

Under Chief Justice John Roberts, the Supreme Court's Republican-appointed majority has been consistently anti-labor and pro-corporation.[1] This trend has accelerated since President Trump appointed Justices Neil Gorsuch and Brett Kavanaugh to the Court and a slew of anti-worker judges to the United States Courts of Appeals and the district courts.[2] This Court has proved again and again that it stands on the side of powerful corporations, not American workers.

The Supreme Court's decision in Janus v. AFSCME is a stark example of what the corporate judicial takeover means for workers.[3] In 2018, by a 5-4 vote along partisan lines, the Republican-appointed justices decided that it was unconstitutional for public-sector unions to collect "fair-share" fees from public-sector employees they represent. This was not an isolated case. The decision was a culmination of years of planning by right-wing anti-labor groups and donors that pushed to fill the federal judiciary with anti-union and anti-worker judges who welcomed efforts to undermine workers' rights through the courts. It was intended to gut public-sector unions by requiring them to represent all workers without requiring all of those workers to reimburse the union for that representation.

Janus was judicial activism at its most egregious. The Court's ruling overturned a 41-year-old Supreme Court precedent, Abood v. Detroit Board of Education, under which public-sector unions had been permitted to collect fair-share fees.[4] The Supreme Court had reaffirmed Abood over and over, more than 20 states enacted statutes in reliance on the decision, and public entities of all stripes entered into multiyear contracts with unions following Abood's guidance.[5] Respect for precedent (or "stare decisis"), years of affirmance of this decision, and reliance interests all militated in favor of maintaining this 41-year-old precedent. But those opposed to workers' rights to organize were not content to let Abood stand, and Justice Alito gave them a roadmap to reach and succeed before the Court.

It began in 2012 when Justice Alito digressed from the "question presented" in Knox v. Service Employees International Union, Local 1000 to raise questions about the constitutionality of the unions' fair-share fees, all but directly inviting a challenge to Abood.[6] Next, in Harris v. Quinn,[7] the five Republican-appointed justices further unsettled this settled area of the law by concluding that the First Amendment prohibits the collection of fair-share fees from home health care providers who do not wish to join or support a union. The five Republican appointees and right-wing donor groups then took a run at fair-share fees in Friedrichs v. California Teachers Association, but the death of Justice Scalia left the Court gridlocked. After Majority Leader Mitch McConnell blocked President Obama from replacing Justice Scalia for nearly a year so he could replace Justice Scalia with Neil Gorsuch, the Court overruled Abood in Janus in 2018. In her dissent, Justice Kagan aptly summed up the conservatives' naked judicial activism:

Rarely if ever has the Court overruled a decision – let alone one of this import – with so little regard for the usual principles of stare decisis. There are no special justifications for reversing Abood. It has proved workable. No recent developments have eroded its underpinnings. And it is deeply entrenched, in both the law and the real world . . . . Reliance interests do not come any stronger than those surrounding Abood. And likewise, judicial disruption does not get any greater than what the Court does today.[8]

Janus is just one case in a pattern of partisan decisions by the Supreme Court that put the interests of big corporations and ultra-wealthy individuals ahead of the interests of their workers.

The Roberts Court has also relentlessly steered employees with employment disputes into forced arbitration. Forced arbitration takes away a worker's right to have claims against an employer heard by a jury of his or her peers. The decision instead is made by a privately appointed arbitrator who is almost always from a firm selected by the corporate employer.[9] Employees subject to forced arbitration are less likely to win their claims, and even when they do win, they tend to recover significantly less in arbitration than they would in federal court.[10]

In Epic Systems Corp. v. Lewis, the first Supreme Court decision authored by Trump appointee Neil Gorsuch, the five Republican-appointed justices cited the Federal Arbitration Act and decided that employment contracts requiring forced individual arbitration are enforceable and that the National Labor Relations Act does not entitle workers to class or collective action.[11] As a result, workers have been forced to give up these rights by an activist Republican majority on today's Supreme Court. Supposed textualists and constitutionalists, the majority sailed right by any mention of the

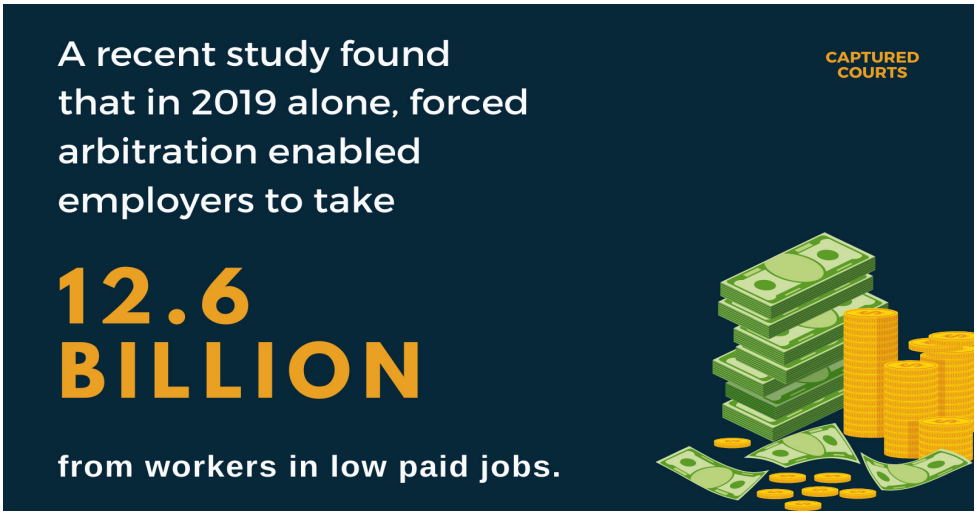
Seventh Amendment guarantee of the right to a trial by jury.

"If these untoward consequences stemmed from legislative choices, I would be obliged to accede to them. But the edict that employees with wage and hours claims may seek relief only one-by-one does not come from Congress. It is the result of take-it-or-leave-it labor contracts harking back to the type called 'yellow dog,' and of the readiness of this Court to enforce those unbargained-for agreements." – Justice Ruth Bader Ginsburg, Epic Systems Corp. v. Lewis (dissenting).

In 14 Penn Plaza LLC v. Pyett[12] and Lamps Plus v. Varela,[13] the Court again used the Federal Arbitration Act to undermine rights granted to workers by Congress, making it easier for corporations to impose unfair arbitration requirements on their employees, and preventing workers from seeking justice through the court system, sometimes even in cases of alleged workplace discrimination. One recent study estimated that in 2019 alone, forced arbitration enabled employers to take $12.6 billion from workers in low-paid jobs by preventing workers from recovering stolen wages they were legally owed.[14] Over half of all private-sector nonunion workers are now estimated to be subject to mandatory employment arbitration procedures, including an estimated 59%of Black workers and 58% of female workers.[15]

"It has become routine, in a large part due to this Court's decisions, for powerful economic enterprises to write [forced-arbitration agreements] into their form contracts with consumers and employees . . ., leaving them without effective access to justice." – Justice Ruth Bader Ginsburg, DIRECTV v. Imburgia (dissenting)

For those workers lucky enough to not be ensnared in a forced-arbitration agreement, the Roberts Court has made it increasingly difficult for them to prevail in court. In Ledbetter v. Goodyear, the Republican majority made it harder for workers to prove they had been the victims of gender discrimination.[16] Over 40% of women report experiencing discrimination in the workplace, with the most common form of discrimination being getting paid less than men with the same responsibilities.[17] The first law signed by President Barack Obama was the Lilly Ledbetter Fair Pay Act, which reversed the Supreme Court's decision.[18]



Two years after Ledbetter, the Republican majority was at it again in Gross v. FBL Financial Services, making it more difficult for older workers to prove they were victims of age discrimination.[19] To reach this result, the Republican justices answered a question not properly before the Court and disregarded both the Court's precedents and congressional intent.[20] The number of older Americans who report being forced into retirement by their long-term employer has increased over time, and many struggle to return to the workforce.[21] Making it harder to sue employers for illegally discriminating on the basis of age will only exacerbate this trend.

In 2011, the conservative majority threw out a class action by 1.6 million women alleging gender discrimination by Wal-Mart in Wal-Mart v. Dukes.[22] After lower courts had twice recognized female Wal-Mart employees nationwide as having the right to band together to sue their employer in a class action, the Supreme Court ruled, again 5-4, they did not.

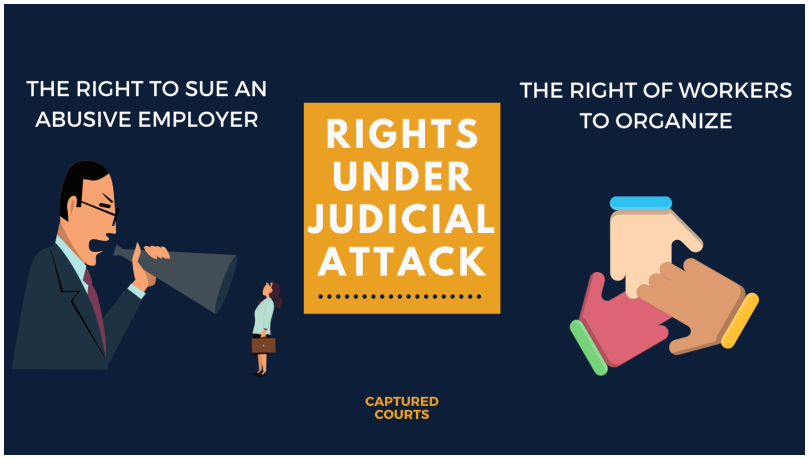
When workers are able to sue collectively, it makes it easier for them to share their stories, pool their resources, and show a common scheme. It also allows them to afford adequate legal representation and makes it easier to discover evidence. Dukes was not only inefficient for courts and harmful to workers but was also a boon to corporate employers.[23] Within two years of the decision, it had been cited over 1,200 times by lower courts and used as grounds to dismiss class action claims against large

corporate employers accused of abuses ranging from race and gender discrimination to wage theft.[24]

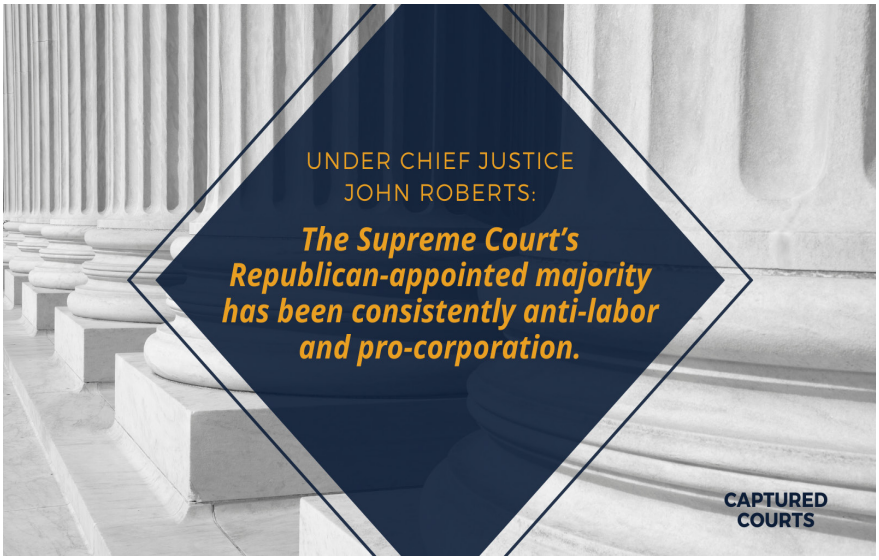
Finally, in two decisions under the Fair Labor Standards Act, Christopher v. SmithKline Beecham[25] and Encino Motorcars v. Navarro,[26] partisan 5-4 majorities made it harder for certain groups of workers to take advantage of fair pay protections implemented by Congress. All of these rulings, in conjunction with the series of anti-worker and anti-union decisions issued by the Trump-appointee-controlled National Labor Relations Board, are systematically undermining the rights of employees in the workplace and leaving workers more vulnerable to mistreatment and exploitation.

Who's Behind It

As Senate Democrats documented in their May report, Captured Courts,[27] the corporate special interests that support the Republican Party have spent decades developing a legal infrastructure to advance their interests. The same special interest donors that funnel millions of dollars in dark money to groups that bring lawsuits, file amicus briefs in support of those lawsuits, and promote judicial nominees carefully vetted to be favorably inclined toward the arguments made in those lawsuits. Behind the screen of multiple entities lurks a small group of big funders.



Janus was the result of a multi-year, multi-case legal campaign by a few foundations and donor-advised funds with ties to corporations and radical right-wing millionaires and billionaires, including the Charles Koch Foundation, the Bradley Foundation, the Ed Uihlein Family Foundation, the Walton Family Foundation, DonorsTrust, and Donors Capital Fund.[28] The foundations are not legally required to disclose their donors, so the public has an incomplete picture of where exactly this money comes from and what their interests are.



Two groups that represented the Janus plaintiffs – the National Right to Work Legal Defense Foundation and the Liberty Justice Center – are part of this right-wing, dark-money network.[29] The Liberty Justice Center is a project of the Illinois Policy Institute (IPI). According to a New York Times report, IPI is largely funded by Richard Uihlein, an Illinois industrialist who has spent millions of dollars backing Republican candidates and anti-union efforts in recent years.[30] Following the Supreme Court's Janus decision, Mark Janus, the Illinois state employee who acted as the plaintiff in the case, quit his public-sector job and went to work full-time for IPI.[31]

Another dark-money recipient is the State Policy Network (SPN). SPN is a coordinated set of think tanks with a combined budget of over $80 million whose goals include to "defund and defang … government unions."[32] SPN receives backing from tobacco companies and other corporate groups.[33] SPN members were responsible for 13 of the 19 amicus briefs filed by interest groups against public-sector workers in the Janus case.[34]

These groups have also promoted and maintained close ties to President Trump's Supreme Court nominees, raising a number of ethical concerns. In a particularly brazen arrangement, Justice Gorsuch headlined an event sponsored by the Fund for American Studies – an organization backed by the Bradley Foundation – at the Trump International Hotel on the same day that the Court granted cert in the Janus case. The Bradley Foundation provided funding to both groups representing the Janus plaintiffs.[35]

The same interests behind Janus are working to undermine the rights of non-union workers throughout the economy.

The United States Chamber of Commerce, a pro-corporate trade association and the country's biggest lobbying organization,[36] is a regular presence at the Supreme Court. The Chamber claims to represent "more than 3 million businesses and organizations of every size, sector, and region,"[37] but it keeps its funding and the identities of its members secret. As the Captured Courts report documented, anonymity lets the Chamber do its members' anti-worker or anti-environment dirty work, taking legal positions its members prefer not to in public.[38]

The Chamber's in-house Litigation Center – whose funding is also undisclosed – has lobbied the Roberts Court with amicus briefs in nearly 400 cases,[39] more than any other organization, including seven cases profiled in this report. [40] Since John Roberts and Samuel Alito joined the Supreme Court in the 2005-2006 term, the Court has ruled for the Chamber's position **70% of the time**.[41] The Chamber also actively lobbied Congress to confirm judges and justices who it believes are likely to advance its anti-worker agenda, including Brett Kavanaugh in 2018.[42]

As Senate Democrats documented in Captured Courts, "public interest" litigation groups often work in concert to prop up cases important to Republican Party corporate donors. Cases attacking the rights of workers are no different. At least four such groups – Pacific Legal Foundation (PLF), Atlantic Legal Foundation (ALF), New England Legal Foundation (NELF), and Washington Legal Foundation (WLF) – filed amicus briefs in the cases highlighted in this report. Despite the neutral-sounding names, these groups were founded with roughly the same organizational structure by industry executives with the express purpose of diminishing worker power and protecting businesses from legal accountability.[43]

While technically independent organizations, these "legal foundations" receive funding from many of the same sources. For example, the Scaife family foundations, heirs to large fossil fuel and banking fortunes,[44] have been a chief donor to all four of

those nonprofits (giving at least $4.4 million to PLF,[45] at least $2.2 million to ALF,[46] at least $1.1 million to NELF,[47] and as much as $3.8 million to WLF between 1985 and 2014[48]).

How Trump Judges Are Rigging the System Against Workers and Unions

As Senate Democrats explained in Captured Courts, Mitch McConnell has turned the Senate into a conveyor belt that sends dozens of extreme nominees vetted by special interests to all levels of the federal bench. With life tenure, these judges will have a profound effect on the law for decades to come, whether Democrats or Republicans control the presidency or Congress.

With President Trump heavily relying on the Federalist Society and Heritage Foundation – which refers to unions as "cartels"[49] – to put forward names for possible judicial appointments, many of these nominees had a track record of hostility to labor unions and workers' rights before their nomination to the bench.[50] Demonstrating allegiance to these anti-worker forces has become a form of auditioning for aspiring judges to secure a Republican nomination to the federal courts. Some examples:

Neil Gorsuch, Trump's first Supreme Court nominee, wrote the majority opinion in Epic Systems,[51] a 5-4 decision that allowed employers to use forced-arbitration clauses to strip employees of rights to join together in cases to fight discrimination and wage theft. Gorsuch's watershed decision was hardly a surprise given his long track record of pro-corporate rulings while a judge on the Tenth Circuit[52] and his writings as a private attorney. According to a 2019 study, **Justice Gorsuch has sided with the Chamber of Commerce's position in 86% of cases since he joined the Supreme Court in 2017, making him easily the Court's most pro-corporate jurist**.[53]

Brett Kavanaugh, President Trump's second Supreme Court nominee, made his anti-worker sympathies clear while a judge on the D.C. Circuit. In majority decisions and dissents, Judge Kavanaugh routinely ruled against organized labor and questioned the authority of the National Labor Relations Board (NLRB) and the Occupational Safety

Politico

and Health Administration (OSHA). In AFL-CIO v. Gates, for example, Judge Kavanaugh concluded the Department of Defense could curtail federal employee bargaining rights, taking a position that "empowers [the Secretary of Defense] to abolish collective bargaining altogether – a position with which even the Secretary disagrees."[54] Judge Kavanaugh has also argued that a company did not have to negotiate with a union because some of its members were undocumented,[55] that an OSHA safety citation against SeaWorld after a trainer was drowned by a killer whale was "paternalistic,"[56] and that the First Amendment authorized a casino to ask police officers to issue criminal citations against legal protesters.[57] Another appeals court had concluded those same protesters had a First Amendment right to seek union representation.[58]

Britt Grant, now a judge on the United States Court of Appeals for the Eleventh Circuit, was pushed through the Senate even though she has consistently worked to undermine public-sector workers. While working in the Office of the Georgia Attorney General, Grant was involved in an amicus brief in which Georgia and eight other states supported the elimination of fair-share fees, as the corporate donor machine worked toward securing Janus.[59]

Leonard Steven Grasz, now serving on the Eighth Circuit Court of Appeals, was nominated for a lifetime appointment despite ardent personal hostility toward police and firefighter unions. In 2013, while speaking at a convention to review the charter of the City of Omaha, Grasz spoke in favor of a proposal to eliminate basic worker protections for Omaha's fire and police chiefs.[60]

Neomi Rao, who was appointed to Brett Kavanaugh's seat on the powerful D.C. Circuit, has a long record in Koch-funded organizations of anti-labor extremism.[61] As President Trump's Administrator for the Office of Information and Regulatory Affairs (OIRA), Rao eliminated reporting requirements proposed by the Equal Employment Opportunity Commission (EEOC) that aimed to identify wage discrimination on the basis of race or gender.[62] The EEOC's proposed rule would have required private employers with 100 or more employees to report certain wage data. The U.S. District Court for the District of Columbia reversed Rao's decision, ruling that Rao's decision was "arbitrary and capricious" and that her rationale was "unsupported by any analysis." (NWLC v. OMB.[63])

Neomi Rao
Roll Call

Don Willett sits on the Court of Appeals for the Fifth Circuit and, like Rao, is often included on Trump short-lists for the United States Supreme Court. During his time working for Governor George W. Bush in Texas, Willett wrote a memo denying that sexual harassment and unequal pay existed for women in the workplace and arguing that there was no such thing as a "glass ceiling."[64] These claims were raised at Willett's confirmation hearing, where he refused to state whether the views stated in the memo were reflective of the views he holds today.

We already are seeing how Trump judges will rule when it comes to workers and labor once confirmed. For example:

All four judges President Trump appointed to the Seventh Circuit, **Amy Coney Barrett**, **Michael Brennan**, **Michael Scudder**, and **Amy St. Eve**, voted in an en banc decision to reverse their circuit court colleagues. They decided the three-judge panel was wrong to conclude that an employee should be given the chance to prove that the qualifications for a job to which he applied were discriminatory on the basis of his age. A dissenting judge called their en banc reversal a "deliberately naïve approach to an ambiguous statutory text, closing its eyes to fifty years of history, context, and application."[65]

Amy Coney Barrett
The Federalist Society

Amy Coney Barrett, a Seventh Circuit Trump judge, ruled that Grubhub drivers could not claim a statutory exemption from forced arbitration, denying gig workers their day in court while they face unprecedented risk as frontline workers during the COVID-19 pandemic.[66]

John Bush, on the Sixth Circuit, dissented in a case where a jury found that the city of Cleveland retaliated against a police officer for filing a racial-discrimination claim. In doing so, Bush substituted his own judgment for the jury's assessment of the facts at trial, something appellate judges are not supposed to do.[67]

Chad Readler
Roll Call

Chad Readler,also on the Sixth Circuit, dissented in a case where the NLRB imposed extraordinary remedies against an employer after prior remedies by the NLRB had proven ineffective. Despite the NLRB having the authority and discretion to impose the penalties at issue, Readler simply disagreed.[68]

When it comes to workers and employers, Trump judges think they know better than juries and the agencies Congress has established to protect them.

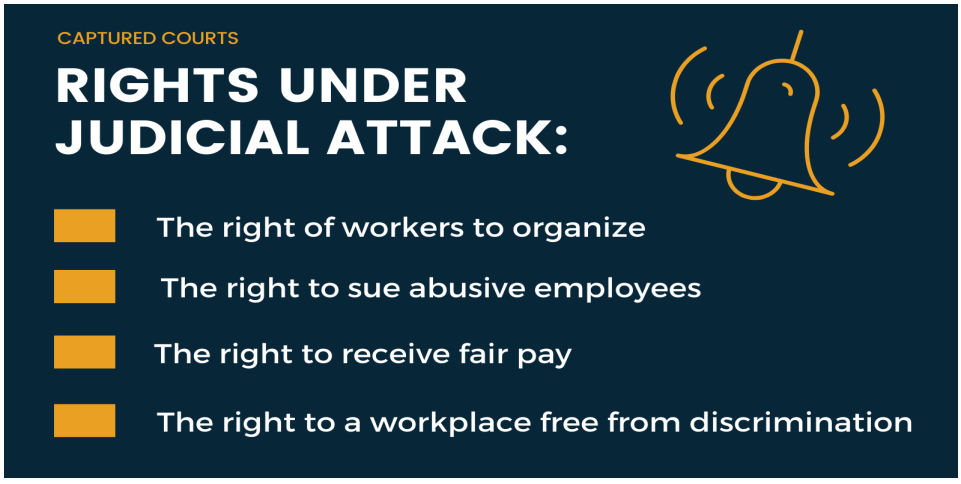
Where the Courts are Headed

Attacks on public-sector unions will continue.

Emboldened by the Janus decision, dark-money, corporate donors and the "public interest" law firms they bankroll have launched a wave of new attacks against public-sector workers and the unions that represent them. In a recent interview, the president of the National Right to Work Foundation claimed that there are "at least 70 cases out there" that seek to build on Janus and weaken public-sector organizing.[69] The National Right to Work Foundation is currently pushing almost half of these anti-union cases.[70] Other major litigants in these cases include Illinois Policy Institute, Freedom Foundation, the Buckeye Institute, and the Commonwealth Foundation, all four of which are members of the State Policy Network and share overlapping funding.[71]

The current legal attacks on public-sector workers vary, but all have the intended goal of draining union resources and putting barriers between workers and the unions that represent them. Notable tactics include:

- Trying to claw back fair-share fees that have already been spent to represent workers.
- Throwing up barriers for workers trying to sign up for union membership.
- Undermining the ability of public-sector workers to vote for an exclusive representative



To date, unions have won all of the post-Janus court cases that dark-money groups have orchestrated against them. However, Republicans continue to pack the courts – from the Supreme Court down – with judges who consistently side with corporate interests over the rights of employees.

Trump judges and the Republican Supreme Court majority will continue to make it harder and harder for workers to get their day in court.

The Seventh Amendment guarantees every American, including workers, access to the courts – a critical feature of our democracy. However, under our judicial system, lower courts have to apply precedents from the Supreme Court. **From arbitration to class actions to discrimination, the Roberts Court is sending a loud and clear message to the lower courts: the employer wins**. Trump nominees to federal courts all around the country have been carefully vetted to rule in lockstep with these decisions. America's workforce is more diverse than ever, but if you are a person of color, a woman, a senior, or a low-wage worker, the courthouse door is closing on you being able to bring claims against your employer. To this Court, it hardly matters whether a worker's rights were given by Congress through the democratic process. Epic Systems is just the beginning. As the Roberts Court continues to apply a perspective that prioritizes the rights of employers over workers, we must appoint judges who respect the Seventh Amendment and more generally the rights of workers in the workplace. For now, the Seventh Amendment has disappeared from the jurisprudence of the Roberts Five.

Captured courts will increasingly take the side of coporations and the rich and powerful.

Workers, not large corporations, drive our economy. Workers understand, however, that hard work doesn't pay off like it used to in today's economy. It is not just stagnant or declining wages and the loss of manufacturing jobs. Temporary work, the gig economy, reliance on sub- and independent contractors, and right-to-work laws undermine the economic security our country needs to sustain a strong middle class.

We have laws and agencies designed to empower workers and ensure that employers offer more than hollow promises of fair pay, safe workplaces and the right to organize. **Trump judges scoff at these protections. They see agencies like OSHA and NLRB as "paternalistic," unaccountable, and outright illegitimate**. They interpret anti-discrimination and labor laws from the perspective of the employer, forgetting that these laws were enacted to protect workers from the inherent imbalance of power in

the employer-employee relationship.

In just four years, President Trump has left an indelibly pro-corporate imprint on the federal judiciary with scores of judges appointed precisely because they can be relied upon to take the side of corporate America when given the choice. Workers will feel the effect of these decisions for decades to come.

Appendix 1.

CAPTURED COURTS OVERVIEW

The GOP's Big-Money Assault on the Constitution, Our Independent Judiciary, and the Rule of Law

In May 2020, DPCC released a report with Senators Schumer and Whitehouse to shed a light on the right-wing takeover of our judicial system. The Trump Administration and Mitch McConnell's Senate Republicans have few significant legislative accomplishments. Instead, they're packing the judiciary with far-right extremist judges. The Senate has confirmed more than 200 new life-tenured federal judges, most of whom were chosen not for their qualifications or experience—which are often lacking—but for their allegiance to Republican political goals.

This court capture has been perpetrated through a complex network of anonymously-funded groups like the Federalist Society and spearheaded by right-wing activists like Leonard Leo. Their web consists of:

1. deep-pocketed, special-interest donors, who provide the money;

2. shell entities, which funnel the money and exploit tax laws to keep donors' identities secret;

3. public relations firms and political operatives who run multi-million-dollar ad campaigns to support and oppose judges and generate press to craft favorable public narratives; and

4. a brain trust of ideological think tanks, academic institutions, and "public interest" law firms, filled with lawyers and professors who generate "intellectual capital"—law review articles, *amicus* briefs, and so on—to advance the donors' interests through the courts.

Senate Democrats' report exposes that web:

- ☑ How the "conservative legal movement" has rewritten federal law to favor the rich and powerful with 80 partisan Supreme Court decisions
- ☑ How the Federalist Society, Leonard Leo, and special-interest money dominate our courts
- ☑ How Mitch McConnell's broken Senate confirmation process helps Republicans and the big-money donors behind them

WHAT DOES GOP COURT-PACKING MEAN FOR AMERICA:

- Voters across the country wait in line for hours to vote
- Special interests flood our airways with political ads
- Workers have discrimination cases thrown out of court
- Communities can't regulate gun violence
- Polluters can pollute our air and water without consequence
- Access to healthcare, including protections for pre-existing conditions, remains under attack

BY THE NUMBERS:

AT LEAST $250 MILLION in dark money is funding Republicans' court capture machine

86% of Donald Trump's nominees to the Supreme Court and influential appellate courts are Federalist Society members

FOR 50 YEARS right-wing donors and paid-for activists built a "conservative legal movement" to deliver for their agenda

80+ PARTISAN 5-4 DECISIONS at the Roberts Supreme Court have delivered wins to the Republican Party and the big corporate interests behind it

NEARLY 90% of the House-passed bills that Mitch McConnell sidelined to confirm partisan judges received bipartisan support

Endnotes

1 See J. Maria Glover, All Balls and No Strikes: The Roberts Court's Anti-Worker Activism, 2019 J. Disp. Resol. 129 (2019), available at https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=3183&context=facpub.
2 See Billy Corriher, Trump's Anti-Worker Judges Will Outlast His Administration, CENTER FOR AMERICAN PROGRESS (Oct. 3, 2017), available at https://www.americanprogress.org/issues/courts/news/2017/10/03/440078/trumps-anti-worker-judges-will-outlast-administration/.
3 Janus v. American Federation of State, County, and Mun. Employees, Council 31, 138 S.Ct. 2448 (2018).
4 Abood v. Detroit Bd. of Educ., 431 U.S. 209 (1977).
5 See Brief for Senators Sheldon Whitehouse and Richard Blumenthal as Amicus Curiae, p 14-15, Janus v. AFSCME Council 31 et al..
6 Knox v. Serv. Emps. Int'l Union, Local 1000, 567 U.S. 298 (2012).
7 Harris v. Quinn, 573 U.S. 616, 645-46 (2014).
8 Janus v. American Federation of State, County, and Mun. Employees, Council 31, 138 S.Ct. 2448, 2487 (2018) (Kagan, J., dissenting)
9 See Katherine V.W. Stone and Alexander J.S. Colvin, The arbitration epidemic, ECONOMIC POLICY INSTITUTE (Dec. 7, 2015), available at https://www.epi.org/publication/the-arbitration-epidemic/.
10 See Christopher Ingraham, There's a little-known employment contract provision enabling billions of dollars in wage theft each year, WASH POST (Feb. 13, 2020), available at https://www.washingtonpost.com/business/2020/02/13/theres-little-known-employment-contract-provision-enabling-billions-dollars-wage-theft-each-year/.
11 Epic Systems Corp. v. Lewis, 138 S.Ct. 1612 (2018).
12 14 Penn Plaza LLC v. Pyett, 556 U.S. 247 (2009).
13 Lamps Plus, Inc. v. Varela, 139 S.Ct. 1407 (2019).
14 Report: Forced Arbitration Enabled Employers to Steal $12.6 Billion from Worker in Low-Paid Jobs in 2019, NATIONAL EMPLOYMENT LAW PROJECT (Feb. 13, 2020), available at https://www.nelp.org/news-releases/report-forced-arbitration-cost-workers-low-paid-jobs-12-6-billion-stolen-wages-2019/. Estimate calculated for private-sector, non-union workers earning less than $13 an hour who were forced into arbitration and prevented from collecting wages their employers were legally required to pay.
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