TAKE BACK THE COURT

The Supreme Court is Set to Hamstring the Labor Movement — Again

The right-wing justices on the Supreme Court have issued opinion after opinion gutting workers' rights and putting corporations over working people. Now, the Court is going after the heart of the labor movement: the right to strike. In *Glacier Northwest v. International Brotherhood of Teamsters,* the Court could essentially hand corporations the ability to saddle workers with a bill for economic losses related to striking and could open unions up to a barrage of lawsuits. Unions are essential for securing better working conditions, improving democratic participation, and advocating for the working class on a national level. But all those benefits will be at risk if the Court hands corporations a free pass to harass unions with lawsuits for economic losses and erode federal protections in the National Labor Relations Act (NLRA).

The Case Centers Around a Strike Protected Under the NLRA

Glacier Northwest concerns a 2017 strike by cement truck drivers during a contract re-negotiation between the employer, Glacier Northwest, Inc., and the union representing the cement employees collectively bargaining, the International Brotherhood of Teamsters. The cement truck drivers took precautions to limit property damage during the strike: they returned the trucks to the place of business, left the trucks running to prevent the cement from hardening, and told managers on duty that some of the trucks had cement in them. Approximately $11,000 worth of perishable cement product needed to be disposed of due to the strike; under federal law, workers are not responsible for inadvertent financial loss resulting from striking.

Instead of following federal procedure for strike-related disputes, Glacier Northwest filed a tort suit in Washington state court, arguing it had lost $100,000 from failing to fulfill a contract on the day of the strike along with other damages. The Washington Supreme Court unanimously ruled that Glacier Northwest was preempted from bringing suit in state court under the NLRA and that the dispute should instead be heard by the National Labor Relations Board (NLRB). The NLRB is a "centralized administrative agency, armed with its own procedures, and equipped with specialized knowledge and cumulative experience" that Congress created to regularize labor practices across the country.[1]

Now, Glacier Northwest is asking the Supreme Court to rewrite precedent and federal law to allow corporations to circumvent the NLRB and bombard unions with lawsuits they may not be able to afford to litigate. Furthermore, the Supreme Court had no firm reason to take up the case — there was no circuit split, the Washington Supreme Court decision was unanimous, and more than 60 years of precedent supports the union's position.[2] The decision to take up the case has no basis in the traditional role of the Court and indicates that the highest Court is ready to weaken the federally-protected right to strike as part of its broader attack on the labor movement.

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[1] *San Diego Unions v. Garmon,* 359 U.S. 236, 242 (1959).
[2] *The Labor Case Before SCOTUS Has Big Implications for Democracy*, Amicus with Dahlia Lithwick (Jan. 14, 2023).

Anti-worker decisions in just the last five years have included:

- *Cedar Point Nursery v. Hassid* (2021): In a 6-3 decision along ideological lines, the Court struck down a nearly 50-year-old California state law that enabled union representatives to recruit farm workers on agricultural land — which had helped unions reach a historically marginalized and difficult-to-reach group. In doing so, the Court invented a new rule and weakened agricultural workers' ability to engage in collective bargaining.[3]
- *Janus v. AFSCME* (2018): In a 5-4 decision along ideological lines, the Court ruled that public sector unions cannot collect fees from the non-union members they represent. In doing so, the Court overturned a 40-year precedent first set in *Abood v. Detroit Board of Education*.[4]
- *Epic Systems Corp. v. Lewis* (2018): In a 5-4 decision along ideological lines, the Court ruled that employers can force employees to sign away their rights to a day in court as a condition of employment.[5] Forced arbitration and class waiver clauses make workers less likely to find counsel and win.

We summarize a full decade of anti-labor decisions by the Roberts Court in our 2021 report, "Working Overtime: The Supreme Court's Assault on the Labor Movement."

The Court May Once Again Overturn Precedent in *Glacier Northwest*

For decades, the NLRA has protected striking workers from suit and prosecution in state court through preemption. The purpose of these protections is to ensure that the right to strike has teeth; unions and workers cannot meaningfully exercise their right to strike when threats of expensive and harassing lawsuits loom. NLRB preemption does have a narrow exception; striking workers that engage in criminal activity like violence, vandalism, or intentional destruction of property are not protected under the NLRA and can be sued in state court.[6]

In 1959, the Supreme Court issued a decision in *San Diego Unions v. Garmon* (*Garmon*), holding that "[w]hen an activity is arguably subject to § 7 or § 8 of the [NLRA], the States, as well as the federal courts, must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."[7] The *Garmon* rule has been upheld for more than 60 years, and courts and the NLRB have held that spoilage of perishable products during strikes does not constitute intentional property destruction. In the words of Justice Sotomayor during oral argument, once workers walk out on strike, they "[don't] owe you a duty to protect your property from self-perishment."

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[3] *Cedar Point Nursery v. Hassid,* 594 U.S. __ (2021).
[4] *Janus v. American Federation of State, County, and Municipal Employees,* 585 U.S. __ (2018) (overturning *Abood v. Detroit Board of Education,* 431 U.S. 2019 (1977)).
[5] *Epic Systems Corp. v. Lewis*, 584 U.S. __ (2018).
[6] Terri Gerstein and Jenny Hunter, The Supreme Court's Conservative Supermajority May Sabotage Unions' Right to Strike, *Slate* (Jan. 11, 2023).
[7] *Garmon,* 359 U.S. at 245 (1959).

The case law and federal law are clear: Glacier Northwest cannot bring a claim against the union in state court because the dispute falls within the sphere of the relevant sections of the NLRA as protected striking activity.[8] If the Court overrules *Garmon* and ignores federal law to allow the suit to proceed in state court, it will violate the spirit and letter of federal protections for workers and allow employers to circumvent the NLRB.

An Adverse Ruling Would Gut the Right To Strike and Curtail the Benefits Unions Provide

Unions provide enormous benefits to workers and democracy. They are also extremely popular; 70% of private-sector employees support unions, and around half of nonunion members respond that they would like to belong to a union when surveyed.[9] When union density is high enough in an industry, unions raise wages and working conditions not only for members, but for non-members as well, because it forces non-union employers to offer better packages to attract workers.[10] Most importantly, unions are one of the only types of entities that can advocate for the interests of working people at the state and national legislative levels. Though the corporate oligarchy has far more power, unions can in certain circumstances enact change for working class people and play a crucial role in our democratic fabric as the most effective counterweight to corporate interests.[11]

Studies show that joining a union increases civic participation; both registration rates and voting rates are higher for union members and their families. Unions decrease racial pay gaps, and belonging to a union reduces racial resentment among white workers, likely because it introduces a sense of shared interest and collective identity for workers across racial lines.

An adverse ruling in *Glacier Northwest* would have devastating consequences for the right to strike for every worker in the country. Allowing Glacier Northwest to sue the union in state court would have ripple effects and greenlight similar suits against other unions for loss of perishable products — such as crops, food, and other items that could spoil during strikes or walkouts. It could also embolden companies to sue for lost business — like Glacier's unfulfilled contract in this case — or other economic losses that have nothing to do with violence or intentional property destruction. Ultimately, the Court could make it too financially risky for workers and their unions to strike, effectively robbing workers of one of their strongest tools and further tilting the scales in favor of corporations and away from the 16 million union members and well over 100 million workers in the United States.

Even a narrow ruling or "compromise" position would slash at the right to strike. Allowing employers to file harassing and vexatious lawsuits in state court — even if the NLRB retains some role in the process — would nevertheless impose potentially astronomical costs onto unions that would chill workers from being able to exercise their right to strike. Such a scheme

[8] *See* Interfering with employee rights (Section 7 and 8 (a)(1)), *National Labor Relations Board.*
[9] Lawrence Mishel, Lynn Rhinehart, and Lane Windham, Explaining the erosion of private sector unions, *Economic Policy Institute* (Nov. 18, 2020).
[10] *Labor Case and Democracy,* Amicus with Dahlia Lithwick (2023).
[11] *Id.*

would also violate Congress' explicit intentions in creating the NLRB — to regularize labor relations nation-wide — and go against 60 years of precedent established in *Garmon.*

Ultimately, *Glacier Northwest* presents the Court with an opportunity to upend the balance of power between unions and corporations. The right to strike is one of the most crucial tools of the labor movement and is likely to be hollowed out or eviscerated. The case falls into a broader anti-labor pattern at the Court: the right-wing majority has time and time again aligned itself with corporations and demonstrated open hostility toward unions.

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."[12] Yet, 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. 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 consistently calling strikes in their favor. And as their unending streak of ethics scandals demonstrate, the radical Supreme Court supermajority is inextricably entwined with right-wing donors and corporate interests. They will not check their own power — only rebalancing and expanding the Supreme Court can stop its assault on the labor movement, workers' rights, and functional democratic institutions.

[12] Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States, Hearings before the Committee on the Judiciary, United States Senate, 109th Congress, *U.S. Government Printing Office*, 55-56 (2005).