# US Supreme Court issues far-reaching attack on the right to strike

**Tom Carter**
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On Thursday, the US Supreme Court handed down a decision that is a massive attack on the right of workers to strike. By an 8-1 vote, the Supreme Court ruled in favor of allowing an employer to file a lawsuit and recover monetary compensation for "damages" incurred as a result of a strike.

Existing labor law requires striking workers to take "reasonable precautions" to protect the employer's property from being unnecessarily damaged by a sudden work stoppage. In its decision Thursday, the Supreme Court invoked and expanded this concept to such an extent that it would, taken to its logical conclusion, make any strike illegal if it causes any harm to the company's bottom line.

Damaging the company's bottom line to the maximum extent possible utilizing the power of the organized rank and file is, of course, the whole point of a strike, which is a fundamental democratic right and an essential form of workers' collective self-defense.

In her dissenting opinion, Ketanji Brown Jackson, the sole justice to vote against the decision, suggested that the issue in the case was nothing less than whether workers are legally free or whether they are "indentured servants," who can be prohibited by law from putting down their tools.

"Workers are not indentured servants, bound to continue laboring until any planned work stoppage would be as painless as possible for their master," Jackson wrote. Existing labor law, she continued, protects the right of workers to a "collective and peaceful decision to withhold their labor."

The remaining eight Supreme Court justices disagreed. The ostensibly "liberal" justices Elena Kagan and Sonia Sotomayor joined the six-justice bloc that constitutes the far-right majority in an opinion authored by Justice Amy Coney Barrett, a Christian fundamentalist appointed by former President Donald Trump.

Under the legal framework adopted by the majority, as Jackson implies, workers are effectively reduced to the status of unfree laborers by default, bound to work for their employers against their will unless and until special permission is granted from above to stop.

The case arose from a strike of cement truck drivers that took place at a concrete works operated by Glacier Northwest in Kenmore, Washington. After the workers' contract expired on July 31, 2017 and the company refused to accept the minimal terms put forward by the Teamsters, the union was compelled to call a strike on August 11, 2017.

Of the 80 to 90 concrete truck drivers in the collective bargaining unit, 43 were scheduled to work on the day the strike began. On a typical work day, the drivers would pick up and deliver between three and six truckloads of concrete. Meanwhile, the concrete would continuously be prepared ("batched") at the work site and loaded onto the trucks throughout the day. The concrete delivery trucks are fitted with rotating drums that prevent the concrete from hardening during transit.

When the appointed time for the strike arrived at Glacier Northwest, some of the trucks were at the company's yard in the process of being loaded and some were out for delivery. There were 16 drivers who had undelivered concrete on their trucks at the time the strike started. Ignoring management's demands that they deliver the concrete, those drivers safely returned their trucks to the yard fully loaded. This was accomplished without any damage to the trucks, to any equipment or to the environment.

Glacier Northwest claimed that it was "damaged" by the strike because some of the concrete could not be delivered and therefore could not be used. This is wholly frivolous as a factual matter.

Because the concrete is "batched and delivered" throughout the work day, any work stoppage would necessarily interrupt that process and potentially cause the loss of some of the concrete. More importantly, from a legal standpoint, the drivers' contract had already expired, so the company cannot claim to be "surprised" that the drivers abruptly walked out, given that they had already long since fulfilled the legal requirements of the agreement they had been working under.

The union, as required by law, gave management 60 days' notice. If anything, management should have been grateful that the trucks were all safely and conscientiously returned after the strike started, instead of left on the side of the road where they could have been damaged by the hardening concrete. Under the circumstances, Glacier Northwest had nobody to blame for any "damages" but itself.

Nevertheless, the company angrily retaliated against the striking workers by sending out discipline letters and filing a lawsuit against the Teamsters local in Washington state court. The union then complained to the National Labor Relations Board (NLRB) that the discipline letters as well as the lawsuit constituted illegal retaliation. The Washington Supreme Court dismissed the lawsuit, and the NLRB General Counsel sided with the union, issuing a complaint that the lawsuit was meritless and that the company's conduct violated federal labor law.

Under the National Labor Relations Act of 1935, the foundation of the "labor relations" framework imposed under then President Franklin Roosevelt's "New Deal," employers have historically been prohibited from separately filing lawsuits over strikes, requiring them instead to go through the same state-controlled process that the unions must use, namely the NLRB. In 1959, the Supreme Court announced a rule generally precluding state courts from hearing any lawsuits involving labor activity.

The Supreme Court's decision in favor of the Glacier Northwest opens the floodgates for employers to unilaterally file lawsuits in the event of every future strike, claiming that they unfairly suffered "damages" as a result of workers' failure to take "reasonable precautions" to make sure that the company was not harmed by the strike.

If workers at a fast food restaurant walk out over intolerable working conditions, for example, they can now face a lawsuit from the company for the loss of perishable food left out in the open or even the loss of the company's expected profits during the time frame of the strike. Regardless of the ultimate outcome of such lawsuits, they can be filed on the most frivolous or wholly fictional grounds to intimidate and threaten workers and drain their resources.

Meanwhile, the Supreme Court's decision will doubtless provide a further pretext for the union bureaucracies themselves not to call strikes, invoking the excuse that "we can't go on strike or the company will sue us."

The only strikes envisioned under this framework are token, theatrical "strikes" carefully orchestrated by prior agreement between the union bureaucracy and management so as not to cause any harm to the company's bottom line. As for real industrial actions organized by the rank and file from below, aimed at causing decisive economic injury to a company if workers' demands are not met, that kind of activity is to be branded illegal "sabotage."

The Supreme Court's decision is aimed squarely at keeping the growing tide of workplace militancy in the United States within safe channels as major contract battles loom on the immediate horizon, including in the auto industry and at UPS. Moreover, in the context of the escalating US-NATO war in Ukraine, the decision is a further confirmation of the historical law that imperialist war abroad means attacks on democratic rights at home.

While Thursday's decision is a massive and authoritarian attack on the right to strike, the concurring opinions filed by the Supreme Court's most extreme right wing indicated they would go even further. Justice Samuel Alito, joined by justices Clarence Thomas and Neil Gorsuch, would have permitted Glacier Northwest to sue the union simply based on the company's allegation that concrete had been damaged intentionally. Thomas and Gorsuch, in a separate concurring opinion, raised the possibility of overturning outright the 1959 case prohibiting employers from filing lawsuits outside the NLRB.

Notably, while President Joe Biden proclaims himself "the most pro-union president in history," his administration failed to defend the striking concrete truck drivers in the case before the Supreme Court. The Biden administration's official position was that it was "supporting neither party" in the dispute and merely arguing that the case should be decided through the NLRB process. But the Biden administration went out of its way to argue in its brief that "accepting the allegations" made by Glacier Northwest as true, the concrete truck drivers "failed to take reasonable precautions" to prevent harm to the company.

The Biden administration's brief also cited, in an appendix, the "findings and declaration of policy" of the National Labor Relations Act of 1935 itself, which declared that the government's goal was to "eliminate" those "practices by some labor organizations" that "have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce."

In so many words, the Biden administration argued that the existing national legal framework of "labor relations" should be retained because it was put in place to prevent and control strikes, with the assistance of the trade union apparatus.

Thursday's decision attacking the right to strike was handed down by a court that has been stacked with unelected far-right operatives, which is in the midst of waging an unrestrained offensive against democratic rights all down the line (having abolished the right to abortion last year), and which is currently embroiled in a bribery and corruption scandal that calls into question the legitimacy of any of the Supreme Court's decisions over recent decades.

At the center of that scandal is far-right Justice Clarence Thomas and his wife Ginni Thomas, a high-level Republican operative and close Trump ally. Among other things, Justice Thomas has been exposed accepting undisclosed luxury vacations bankrolled by billionaire Republican real estate mogul Harlan Crow, a vicious anti-communist and collector of Nazi memorabilia.

While Thomas is the most brazen offender, the corruption scandal extends to varying degrees to nearly every justice on the court in recent decades, as well as the current chief justice himself. Jane Roberts, for example, the wife of Chief Justice John Roberts, was paid hundreds of thousands of dollars in purported legal recruiting fees by one of the law firms that went on to argue a case in the court.

The decisions emanating from this corrupt court are evermore lawless and reactionary, crisscrossed with tendentious and illogical reasoning and double standards.

It is worth pointing out that when socialist autoworker Will Lehman attempted to file a lawsuit in federal court in November 2022 challenging the suppression of the vote in the UAW elections, he was told that he could not file a lawsuit and must instead go through an administrative process. But as demonstrated by Thursday's decision, when an employer wants to dodge that administrative process, the Supreme Court rushes to intervene and bends the law in whichever direction it needs to be bent to deliver a result in favor of management.

The Supreme Court's 8-1 decision undermining the right to strike comes on the heels of the joint action by Republicans and Democrats and the Biden administration to block a rail strike in the fall of last year. The decision further underscores the reality that whatever the differences between the Democrats and Republicans over various aspects of policy, the entire political establishment is united when it comes to blocking any attempt by the working class to challenge the capitalist social order.