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Law and Politics, National



ELECTION 2016: Workers' Rights In The Balance

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Washington, DC – The most critical issue of the presidential campaign facing workers of this country is its impact on the Supreme Court.

Electing Donald Trump would create a systemic risk that many worker protections taken for granted today—federal minimum wage laws, child labor laws, anti-discrimination—will be lost. The current Supreme Court is already the most business-friendly Court since World Word II.

A 2013 study published by a respected federal appeals judge and others in the Minnesota Law Review revealed that in

nearly 60% of the cases between businesses and employees or consumers the five justices appointed by Republican Presidents ruled in favor of business, often in 5-4 decisions over dissents by the Court's four Democratic-appointed judges.

The death last year of Republican Justice Antonin Scalia means the next President will nominate his replacement (unless the Senate unexpectedly confirms President Obama's nominee), but three other seats soon may be in play since two Democrats, Ruth Bader Ginsburg (83) and David Breyer (78), and one Republican, Anthony Kennedy (80), are at an age when judges often leave the bench. So the next President could replace four of the nine Supreme Court justices, changing the current 4-4 Republican-to-Democratic balance to 7-2 under Trump or 3-6 under Clinton.

Unlike Presidents and members of Congress, who can be voted out of office in a few years if their policies prove unpopular, federal judges serve for life. Thus, the philosophical bent of the next President's Supreme Court picks, i.e., pro-business or pro-worker, will dictate the law affecting employees' rights and quality of life for the next 20 to 30 years, regardless of who's in the White House.

One critical labor issue the next Supreme Court will tackle is how and where non-union workers can sue for employment discrimination, underpayment of wages and other labor law violations. Employees have a First Amendment right to sue in court and, under the Wagner Act, the right to band together and bring group lawsuits. That is certain to change if Trump wins.

The pro-business Supreme Court Justices have enabled companies to force employees to waive their rights to sue in court and bring group lawsuits and to limit employees to suing individually before civilian arbitrators picked by their employer rather than a judge. As a result, employees very often drop their claims, and the employer continues to violate the law.

The National Labor Relations Board has convinced two federal appeals courts that the Wagner Act outlaws this forced arbitration practice. A Clinton Supreme Court will likely agree and protect workers' rights to sue and bring group actions in court. A Trump Court assuredly will not.

Worse still, Trump has identified twenty-one people he might appoint to the Supreme Court, several of whom have vowed to strip basic worker protections. Utah Senator Mike Lee said he would declare federal child labor laws unconstitutional.

Texas Judge Don Willett wants to strike down federal health and safety regulations, which he calls intrusions on corporate "economic liberty." He wants to restore early 1900s laws that prevented the government from setting maximum workers' hours or minimum wages and from outlawing "yellow-dog" contracts.

Federal appeals Judge William Pryor said that federal laws enacted during the New Deal (which includes social security) and Civil Rights movement are unconstitutional.

Most on Trump's list are "states' rights" advocates and "strict constructionists," which are fancied-up rationalizations for limiting individuals' rights and letting corporations do just about whatever they want.

Workers should think strenuously about the stark choices they face before voting on November 8.


