

# BIDEN JUDGES:

A Glimmer of Hope on the Lower Courts



# INTRODUCTION

The new wave of high-quality, diverse judges on our federal courts stands out as an important achievement and work in progress of the Biden administration, the Senate, and activists around the country. Although Senate Republicans have tried hard to block the new wave of nominees, the Senate has confirmed 80 Biden nominees to our federal courts as of September 13, 2022. This includes Supreme Court justice Ketanji Brown Jackson and 20 judges on the powerful federal circuit courts of appeals, one level below the Supreme Court. While we look forward to positive shifts across the entire justice system as more Biden judges rebalance the federal courts, it's important to note that new judges have already had an important positive impact on our rights. In several key cases, their influence has made a profound difference in individual people's lives and serves – we hope – as a harbinger of things to come.

In recent years, appellate court judges have become particularly important. Since the Supreme Court decides fewer than 100 cases each year while federal appeals courts handle some [50,000](#), the federal appeals courts effectively are the court of last resort for most Americans. In addition, their decisions on how to interpret federal laws are binding on every court in the states that the circuit court covers. That is why it is so important that the Senate confirm more Biden appellate judges as soon as possible.

Specifically, although the first of Biden's appellate court nominees took the bench less than 18 months ago, our research has already uncovered eleven cases where these new appellate judges have made an important difference. These primarily include cases where new judges cast the deciding vote, and in some cases wrote the opinion, in 2-1 appeals court decisions that provided significant protections to people's rights and equality. Not surprisingly, the judges who dissented in these cases and tried to favor corporations or other vested interests were nominated by then-President Trump. For example:

- New Seventh Circuit judge Candace Jackson-Akiwumi [ruled](#) that students should have a chance to seek refunds from large universities for in-person classes cancelled due to COVID-19, despite a Trump judge's dissent.
- New Fourth Circuit judge Toby Heytens wrote a 2-1 [decision](#) that authorized citizens' groups to file lawsuits under the Clean Water Act to challenge harmful corporate pollution, despite a Trump judge's dissent.
- Judge Jackson-Akiwumi also cast the deciding vote that [overturned](#) a Trump district judge and ruled that a worker claiming age bias and harassment against a corporation should get to present his case to a jury. A Trump judge dissented.

These cases underline the importance of prompt action to confirm additional new nominees to our federal appeals courts. As of September 13, the Senate had yet to take action on 16 such nominees, while 4 more vacancies awaited nominations. The continued harm done by Trump judges, including 53 on the courts of appeals, further necessitates the addition of fair-minded new judges to the federal courts. As it returns from recess, the Senate must act promptly for the sake of our rights and freedoms.

Described below are the important decisions so far in which newly confirmed judges have made a key difference in protecting critical rights. They include cases concerning workers' rights and discrimination, environmental and corporate justice, elections, and claims of mistreatment by state and local government. Below is a one-paragraph description of each case.

## WORKERS' RIGHTS AND DISCRIMINATION

Federal appeals courts play a vital role in helping protect the rights of workers and others from discrimination and other misconduct. Four decisions involving Biden-nominated appellate judges have been crucial in protecting these rights.

### **New Appeals Court Judge Casts Deciding Vote to Give Worker the Chance to Prove Age Bias Case**

Judge Candace Jackson-Akiwumi cast the deciding vote that overturned a Trump district judge in an age discrimination case. The Seventh Circuit panel held that a worker who provided evidence that he was continually harassed because of his age should have the chance to take his case to a jury. Electrical worker Sam Stamey suffered a "relentless and ruthless campaign of age-based harassment" after he turned 61, including repeated "old age insults" and malicious acts that interfered with his work. Trump judge Michael Brennan dissented and would have upheld the ruling throwing out the worker's claim, harming workers' rights. Jackson-Akiwumi's decision not only helped Stamey vindicate his rights, it also set a precedent protecting all working people in Illinois, Indiana, and Wisconsin. The June 2022 decision was in [Stamey v. Forest River, Inc.](#)

### **New Appellate Judge Restores Federal Workers' Rights that Trump Officials Improperly Took Away**

Before her confirmation to the Supreme Court, President Biden nominated Judge Ketanji Brown Jackson to the D.C. Circuit. In that position, then-Judge Jackson wrote a unanimous decision that overturned action by Trump officials and restored federal workers' rights to negotiate and bargain with employers concerning all changes to working conditions except for trivial ones. The Trump rule would have allowed agency managers to "pile on extra hours, limit telework, cut comp time, and slash benefits" unilaterally, without negotiating with workers' representatives. The February 2022 ruling by Jackson was in [American Federation of Government Employees \(AFGE\) v. Federal Labor Relations Authority \(FLRA\)](#).

## **New Appellate Judge Provides Worker with the Opportunity to Prove Disability Claim**

Judge Candace Jackson-Akiwumi wrote a 2-1 decision that reversed a lower court ruling and gave Donna Jarnutowski another opportunity to prove that she is disabled and cannot return to her old job. A Social Security Administrative Law Judge (ALJ) had previously found that a serious foot condition made Jarnutowski unable to work as a store's department manager. But he then concluded, without adequate explanation, that after additional surgery, she could "lift or carry objects more than twice the weight" as before the surgery. Because of the ALJ's failure to "build a 'logical bridge' from the evidence" to the conclusion, the majority overturned the ruling and gave the worker another chance to prove her disability claims. Trump judge Michael Brennan, however, dissented and would have upheld the denial of the worker's disability claims. The September 2022 Seventh Circuit decision was in [Jarnutowski v. Kijakazi](#).

## **New Appellate Judge Gives Black Couple the Opportunity to Prove Housing Discrimination**

Judge Candace Jackson-Akiwumi wrote a 2-1 decision reversing a lower court and providing a Black couple, who were the only people of color in an Indiana community, the opportunity to prove their claim of racial discrimination to a jury. The evidence revealed significant harassment against Tonca and Terence Watters, including harassment from the president of the homeowners' association. This included calling Tonca a "black bitch" and a "black n-----," referring to the couple's grandchildren as "little monkey n-----," and asking "why 'you people' moved here." Trump judge Amy St. Eve dissented, however, and would have upheld the dismissal of the Watters' complaint. The September 2022 Seventh Circuit decision was in [Watters v. Homeowners Assn.](#)

# **ENVIRONMENTAL AND CORPORATE JUSTICE**

Biden appellate court judges have played a key role already in several cases seeking justice for individuals against corporations. These include several cases helping citizens stop pollution or other environmental harm by corporations.

## **New Appellate Judge Rules that Students Should Have a Chance to Seek Tuition Refunds for Cancelled Classes**

Judge Candace Jackson-Akiwumi wrote a 2-1 decision that ruled that students who paid tuition for in-person classes should at least have a chance to seek a refund for the portion of a semester in which such classes were cancelled due to COVID-19. The university wanted to keep the extra tuition paid by the students for in-person classes without offering a refund or other compensation, making the students "bear the entirety of the costs of the pandemic." The court did not decide whether the university had valid defenses. It ruled only that the students should have a chance to pursue their claims. Trump judge Amy St. Eve dissented in favor of the large university. The July 2022 decision was in [Gociman v. Loyola University](#).

## **New Appeals Court Judge Writes Opinion Authorizing Clean Water Act Citizen Suit**

Judge Toby Heytens wrote a 2-1 decision that reversed a Trump district judge and authorized environmental groups to file suit under the Clean Water Act to challenge harmful pollution. In particular, a corporation's actions to develop property resulted in "significant discharges of sediment-laden stormwater onto nearby property" and other damage. Trump judge Marvin Quattlebaum dissented and would have stopped the citizen suit. The court's decision affects how courts will examine similar lawsuits to enforce the Clean Water Act in all the states covered by the Fourth Circuit: North Carolina, Maryland, South Carolina, Virginia, and West Virginia. The July 2022 decision was in [Naturaland Trust v. Dakota Finance LLC](#).

## **New Appellate Judge's Ruling Ensures Full Relief Against Zoo for Cruel and Illegal Animal Mistreatment**

Judge Candace Jackson-Akiwumi wrote a 2-1 decision that reversed a lower court and ordered attorneys' fees and costs as part of the complete relief against a roadside private zoo that committed cruel mistreatment of animals in violation of federal law. The illegal conduct included keeping endangered animals like lions, tigers and lemurs in "squalid and cramped cages" without "clean water," despite "obvious injuries" and "signs of distress." The decision set a precedent that will make it more possible to enforce the Endangered Species Act. A Trump judge dissented in the Seventh Circuit ruling in favor of the corporation. The August 2022 decision was in [Animal Legal Defense Fund \(ALDF\) v. Special Memories Zoo \(SMZ\)](#).

# **ELECTIONS**

Newly confirmed appellate judges have cast deciding votes in two important cases on elections. These include one making clear that insurrectionists, like those who took part in storming the Capitol on January 6, can be forbidden from running for public office, and another stopping a state prosecution against a Democratic attorney general.

## **New Appellate Judge Overturns Trump Judge and Rules that Insurrectionists Can Be Barred from Holding Public Office**

Judge Toby Heytens wrote a decision that overturned a Trump district judge and held that citizens and states can act to bar people who take part in an insurrection, as occurred on January 6, from holding public office. The case involved Madison Cawthorn, who recently lost his bid for re-election. Voters contended that the Fourteenth Amendment barred him from running because he had "engaged in insurrection or rebellion" by encouraging the mob on January 6. The case may become important in efforts to disqualify other January 6 insurrectionists from holding office. A partial dissent by a Trump judge, however, would have created a "flawed blueprint" for lower courts to "stonewall" efforts to prevent such unqualified candidates from running. The May 2022 Fourth Circuit ruling was in [Cawthorn v. Amalfi](#).

## **New Appellate Judge Casts Deciding Vote to Block Local Prosecution of Democratic Attorney General**

Judge Toby Heytens cast the deciding vote to block a grand jury investigation concerning a negative campaign ad run by North Carolina Attorney General Josh Stein, who is a Democrat. Stein's opponent claimed the ad violated state law. The decision said the law probably violates the First Amendment, and enjoined prosecution pending a later appeal of that issue. This was despite a dissent by a Trump judge. The August 2022 Fourth Circuit decision was in [Grimmett v. Freeman](#).

# **INDIVIDUAL RIGHTS AGAINST GOVERNMENT MISTREATMENT**

Two decisions involving new Biden judges recognize individual rights to present claims of state or local government mistreatment to an impartial federal court.

## **New Appellate Judge Rules that Activist Should Have Chance to Prove Government Officials Improperly Retaliated Against Her**

Judge Veronica Rossman wrote a 2-1 decision allowing an environmental activist to amend her complaint and try to prove a county commission retaliated against her by holding a "secret, closed meeting" and "getting a county attorney to file criminal charges against her" because of her political views. The government dropped all those charges and the activist wanted to hold the officials responsible for misconduct. Trump judge Joel Carson dissented and would have not allowed her that opportunity. The court's ruling established a precedent for federal courts in Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming. The July 2022 decision was in [Chilcoat v. San Juan County](#).

## **New Appellate Judge Allows Federal Court Pursuit of Ineffective Assistance of Counsel Claims**

Judge Judge Lucy Koh cast the deciding vote in a 2-1 decision that allowed an individual to pursue in federal court a claim of ineffective assistance of counsel. Troy Ray Emanuel contended that his counsel in state court improperly pushed him to accept and then not appeal a plea deal. A state court then improperly appointed another counsel to represent Emanuel on appeal and refused to make the other lawyer available to testify about what happened. Trump judge Mark Bennett dissented and would have dismissed the claim. The Ninth Circuit decision covers Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. The July 2022 decision was in [Emanuel v. Neven](#).

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# CONCLUSION

Each of these decisions helped ordinary people protect their rights against big corporations and others. They set important precedents in their jurisdictions that will help other people in cases concerning workers' rights, environmental and corporate justice, elections, and other areas. But if the Senate had not approved the recently nominated judges who sat on these cases, the people could well have lost and corporations or improper government actions could have prevailed. With 20 key vacancies now on our federal appeals courts and more to come, it is crucial that the Senate and the administration take prompt action to fill all vacancies on our federal courts. All of us must act to encourage additional confirmation of this new wave of federal judges.