

# ERIC TUNG

Eric Tung has built a legal career as a prosecutor and corporate attorney, as well as his public identity around a rigid, originalist worldview that prioritizes corporate power, entrenched social hierarchies, and narrow, biased readings of the Constitution over equality, justice, and progress. His legal advocacy and writings reveal deep skepticism toward government efforts to support working people, protect civil rights, and promote inclusive democracy. From opposing wage protections and attacking reproductive freedom to defending partisan gerrymandering and undermining criminal justice reform, Tung's record paints a troubling picture of how he would wield lifetime judicial power. If confirmed to the Ninth Circuit, Tung would further tilt the bench toward an agenda that disregards the rights and dignity of marginalized communities.

## LABOR AND ECONOMIC JUSTICE

Throughout his legal career, Tung has consistently fought efforts to strengthen labor protections and expand access to economic opportunity — all while elevating corporate interests and conservative ideology. In *Busker v. Wabtec Corporation*, Tung successfully defended a restrictive reading of California's prevailing wage laws, limiting protections for workers performing public work and helping preserve corporate loopholes. In *Martirosyan v. UPS*, he represented UPS against claims that it failed to provide reasonable accommodations for a disabled employee, defending the company rather than advocating for worker rights under the ADA.

Tung's views are made explicit in his own words. As a student at Yale, he contributed to an article titled "Coming Out Conservative" in the *Yale Free Press*, where he argued that "encouraging the belief that the state is responsible to help you in your indigence and hardship results in big problems" and claimed that "people have less of an incentive to better their situation when there is a governmental safety net." He dismissed social services altogether as "a welfare system that distorts incentives for people to enter the workforce" and rejected the idea of redistributive policy as "Marxist ultra-left ideology" that he called "repugnant."

More recently, Tung represented the California Hospital Association in a lawsuit to strike down a city ordinance, backed by SEIU, that established a \$25/hour minimum wage for healthcare workers. These legal positions reflect a consistent hostility toward working people seeking better wages, safer conditions, and basic dignity in the workplace.

## RACIAL EQUITY

Tung has openly criticized diversity efforts in education and beyond. In a 2003 Yale Free Press column, he dismissed racial equity entirely, writing that "treating diversity as an end and some 'good' that should be strove for in America's college institutions... is misguided." This view reflects a broader skepticism of affirmative action and systemic responses to racial inequality — views that risk undermining decades of civil rights precedent.

## GENDER AND REPRODUCTIVE JUSTICE

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Tung has expressed deeply patriarchal views about gender roles, feminism, and family. He has criticized feminist organizations like the National Organization for Women (NOW), stating that he thinks “NOW is too radical.” More revealingly, he has said, “I believe in emphasizing family and what it means for a woman to be a good wife or partner,” adding that “when these radical feminists try to blur gender roles, they undermine institutions like marriage — institutions which hold society together.” These statements show a troubling resistance to gender equality and signal a worldview at odds with the constitutional protections for women’s autonomy and rights.

## DEMOCRACY AND VOTING RIGHTS

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Tung has supported fringe legal theories that could dismantle judicial oversight of elections and entrench partisan gerrymandering, further undermining the democratic process. In *Moore v. Harper*, he filed a brief backing the independent state legislature theory, an extremist and misguided theory that would grant state legislatures largely unchecked power to suppress voting power and gerrymander electoral maps. He claimed that the North Carolina Supreme Court had overstepped in striking down a gerrymandered map, asserting that election authority lies “exclusively in ‘the legislature’ of ‘each state’ and not any other entity.”

This theory would gut state constitutional protections and allow legislators to draw extreme partisan maps that would disenfranchise millions of voters with impunity. This extremist view fundamentally undermines the judiciary’s authority to protect voters and democracy within our governmental system — even at the state level. Confirming a nominee who holds this view, which directly contradicts the Constitution, would cause irreparable harm.

## ENVIRONMENTAL JUSTICE

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In his letters to the editor, responding to election issues in 2004, Tung argued that “the best way to support the environment is through a strengthened system of property rights... not through governmental regulation or concessions to environmental groups.” He continued: “Wealth creation and private property rights are by far the best ways to balance economic and environmental concerns.”

This market-centric view places profits over people and ignores the disproportionate environmental burdens borne by low-income communities and communities of color. It reflects a worldview that consistently opposes government action to address the climate crisis and environmental injustice, and in turn, places public health and the nation’s future in grave danger

## CRIMINAL JUSTICE

Tung has taken positions that value procedural finality over justice and fairness for incarcerated individuals. In *Jackson v. Warden*, he opposed a habeas petition from a man whose conduct was no longer considered criminal after a new statutory interpretation. Tung argued that “only claims of new evidence or new constitutional rules” are valid grounds for relief and dismissed the petitioner’s claim as not a defect but “a feature.” He emphasized the “need for finality,” even in the face of unjust incarceration, revealing a rigid commitment to process over substantive justice.

## JUDICIAL PHILOSOPHY

Tung’s judicial philosophy is rooted in an aggressive and exclusionary form of originalism. During a speaking engagement for the UCLA Federalist Society, he drafted remarks that argued most high-profile constitutional cases “are not hard,” and declared that “whether there’s a constitutional right to abortion, same-sex marriage, sodomy... the answer for the originalist is simple: no.” He criticizes the use of terms like “liberty,” “due process,” and “equal protection,” calling them “open-ended” and “highly manipulable.” In his view, only rights explicitly protected at the time of the Constitution’s ratification deserve legal recognition today.

Tung has also remarked as a panelist for a Federalist Society event that “conservatism is a philosophy that seeks to maintain and enrich societies characterized by respect for inherited institutions... aimed at furthering the common good in a manner pleasing to God,” and that “conservatives understand that free government cannot thrive or long exist without [religion].”

Tung reserves special criticism for “living constitutionalists,” comparing their interpretive method to “a king who giveth and taketh away.” He warned that if judges interpret the Constitution as a living document, they could just as easily rule that “fetuses have a substantive due process right to life” and remove abortion rights from “democratic debate,” a disingenuous argument that nonetheless reveals his disdain for court-recognized individual rights.