



Eric Tung

Nominee to the U.S. Court of Appeals for the Ninth Circuit

COURT

Circuit Court

DATE NOMINATED

July 15, 2025

Introduction

Eric Tung was nominated to the U.S. Court of Appeals for the Ninth Circuit on July 15, 2025. From his early days in law school through his tenure as a prosecutor and a then a corporate attorney, Tung relentlessly promoted an extreme form of originalism — a judicial philosophy that locks our laws to the worldview of the nation’s founders: white men who enslaved human beings and intentionally excluded most people from the rights and freedoms they claimed to cherish. By clinging to their 18th-century outlook, Tung’s approach ensures that the inequalities they built into our nation’s system continue to shape the legal realities of a 21st-century America, even though the Constitution, by its very nature, was never intended to be a stagnant document.

Tung’s professional record shows deep skepticism toward government efforts to protect working people, enforce civil rights, and promote inclusive democracy. From opposing wage protections and attacking reproductive freedom to defending partisan gerrymandering and limiting criminal justice reform, Tung has repeatedly aligned with the powerful at the expense of marginalized communities. Confirming him would further tilt the Ninth Circuit toward an agenda that undermines decades of hard-won and overwhelmingly supported legal protections.

Biography

Tung earned a B.A. in Philosophy from Yale University and a J.D. from the University of Chicago Law School in 2010. His early career was shaped by prominent conservative mentors, including through clerkships with then-Judge Neil Gorsuch on the Tenth Circuit Court of Appeals and Justice Antonin Scalia on the U.S. Supreme Court. He also served as a Bristow Fellow in the Office of the Solicitor General and later returned to clerk for Justice Gorsuch after his Supreme Court appointment.

Between clerkships, Tung alternated between roles in the Department of Justice and corporate defense firms, including Munger, Tolles & Olsen and Jones Day. At Jones Day (where he became a partner in 2023) Tung

represented powerful business interests in high-stakes litigation, siding with powerful corporations against everyday people in cases involving labor disputes, environmental protections, constitutional rights, and criminal appeals.

From his earliest published writings to his recent litigation strategies, Tung's work reveals a clear throughline: a rigid originalist ideology and a suspicion of social and economic protections. His corporate clients and legal arguments show a pattern of siding with the predatory and the powerful over marginalized and preyed upon communities and people.

Legal and Other Views

LABOR & ECONOMIC JUSTICE

Tung repeatedly supported efforts to narrow labor protections and limit economic opportunity, by defending corporate practices that undermine worker rights:

- *Busker v. Wabtec Corp.* – In this case, Tung defended a restrictive reading of California's prevailing wage laws, preserving corporate loopholes that reduce worker pay on public projects.
- *Martirosyan v. UPS* – Here, he represented UPS in a disability discrimination case where the company refused to offer a union position as a reasonable accommodation.
- *Anderson v. UPS* – Tung defended UPS against wrongful-termination and retaliation claims when its employees filed a case involving unpaid overtime work and wage discrepancies.
- *California Hospital Association v. City of Inglewood* – In this case, he sought to strike down a \$25/hour minimum wage for health care workers passed by local ordinance.
- *SEC v. Binance Holdings Inc.* – In an amicus brief filed on behalf of Tung's client, stablecoin provider Circle Internet Financial, Tung argued that standalone sales of stablecoins are not securities, a position that aligns with unsavory but politically connected financial interests, while further limiting oversight of cryptocurrency markets that could cause significant consumer, privacy, and economic harms.

Tung has also advanced his harmful views well beyond the courtroom. In a *Yale Free Press* article, he criticized public assistance as “a welfare system that distorts incentives” and condemned redistributive policy as “Marxist ultra-left ideology” he found “repugnant.” (*Coming out Conservative*, *Yale Free Press*, Apr. 2004). These positions, combined with his legal advocacy, reflect a consistent resistance to measures that rebalance economic power toward working people. Tung has shown that if confirmed as a federal judge, he will rule on behalf of the wealthy and powerful, at the expense of working families and people.

RACIAL EQUITY

Tung has rejected systemic measures to address racial inequality. In a 2003 column for the *Yale Free Press*, he called diversity in education “misguided” and dismissed it as an unworthy goal for college admissions (Disappointing, *Yale Free Press*, Jan. 24, 2003). Such statements, paired with his judicial philosophy, signal an inclination to weaken efforts intended to mitigate historical and current discrimination and to roll back civil rights precedents. Such actions will reinforce decades of racist policies and practices in education and employment.

GENDER & REPRODUCTIVE JUSTICE

Tung has expressed views that diminish women's equality and confine women to traditional gender roles. Criticizing the National Organization for Women, he argued for "emphasizing family and what it means for a woman to be a good wife or partner," claiming that "radical feminists" undermine institutions like marriage. (Susie Poppick, *Speaker calls for renewed women's rights movement*, Yale Daily News, Feb. 18, 2004)

He has also rejected constitutional protection for reproductive freedoms. In prepared remarks during a UCLA Federalist Society event, Tung stated: "Whether there's a constitutional right to abortion ... the answer for the originalist is simple: no." (Mar. 5, 2025: Panelist, "Constitutional Crossroads: A Debate on Interpreting the Law." Federalist Society, UCLA School of Law, Los Angeles, CA.)

This narrow interpretation of liberty and equality directly threatens decades of precedent safeguarding personal autonomy and dignity and puts people's lives at risk.

ENVIRONMENTAL JUSTICE

Tung's record favors property rights and corporate profit over environmental protection. In a 2004 letter to the editor, he argued that environmental progress should come through private wealth creation and property rights "not through governmental regulation or concessions to environmental groups." (Letters to the Editor Re: Seeing the Forest for the Trees, Yale Free Press, Nov. 2004.)

This approach disregards the direct and disproportionate environmental harms borne by low-income communities and communities of color. On the Ninth Circuit, Tung would likely hear several challenges to EPA regulations under the Clean Air Act and other environmental protections — cases where his philosophy suggests skepticism toward government regulation aimed at safeguarding public health.

CRIMINAL JUSTICE

Tung's approach to criminal justice prioritizes procedural finality over correcting injustice. In *Jackson v. Warden*, he opposed habeas relief for a man whose conduct was no longer criminal under updated statutory interpretation, calling it "a feature" of the system and stressing the "need for finality." Such reasoning allows wrongful incarceration to persist, and in a grave miscarriage of justice, favors procedural closure rather than substantive justice.

DEMOCRACY & VOTING RIGHTS

Tung has advanced legal arguments that weaken transparency and undermine judicial oversight of elections:

- He helped real estate developers get claims dismissed under the California Brown Act, a law specifically intended to combat secretive meetings held by local elected officials with no public scrutiny or oversight.
- He filed a brief in *Moore v. Harper* supporting the "independent state legislature" theory, a far-right fringe argument that contradicts the Constitution and would give state legislatures exclusive control over federal elections, insulating extreme partisan gerrymanders from state court review.

If embraced, these arguments would erode state constitutional safeguards, disenfranchise voters, and shield politicians from accountability.

JUDICIAL PHILOSOPHY

Tung's exclusionary originalism philosophy strips constitutional protections to rights not explicitly recognized in the 18th century. As mentioned previously in this report, Tung argued that fundamental rights enshrined in the Constitution over the last 200 years are not protected under his "originalist" judicial interpretation.

He has described conservatism as seeking to "further the common good in a manner pleasing to God" and claimed that "free government cannot thrive... without religion." (Mar. 29, 2025: Panelist, "Has the Right Lost the Argument for Small Government?" Federalist Society, Simi Valley, CA.) He likened living constitutionalism to "a king who giveth and taketh away," underscoring his opposition to evolving interpretations of constitutional rights (A discredited objection to originalism is renewed in a misguided hit piece, Townhall, Nov. 1, 2019). In promoting this view, Tung of course contradicts his own stated judicial interpretation, as the First Amendment clearly establishes the separation of church and state.

CONCLUSION

The Ninth Circuit plays a critical role in protecting the rights of millions. Tung's record — spanning his legal advocacy, public statements, and judicial philosophy — shows a consistent pattern: siding with corporate and political power, resisting efforts to protect marginalized communities, and narrowing the scope of constitutional rights.

A lifetime appointment would allow Eric Tung to advance his harmful agenda for decades and in the process, jeopardize basic human liberties, undermine workers' rights, and hurt working people. The Senate should reject Eric Tung's nomination to the Ninth Circuit Court of Appeals.