



September 9th, 2019

Honorable Lamar Alexander
455 Dirksen Senate Office Building
Washington DC 20510

Dear Chairman Alexander:

On behalf of Allied Progress, a leading consumer watchdog group, I am writing to urge you to reject the President's nomination of Eugene Scalia for U.S. Labor Secretary when the matter comes before you in the Senate Health, Education, Labor and Pension Committee. We know everything we need to know about Scalia's record to conclude today that he is too extreme and too conflicted for this role, including his troubling views that companies shouldn't be held responsible for sexual harassment at the workplace.

The President has a history of appointing known enemies of federal agencies to lead them, whether it was Scott Pruitt's corruption-soaked tenure at the EPA or Mick Mulvaney's 'bull in a china shop' turn as Acting Director of the CFPB. Eugene Scalia would be no different as someone who regularly criticized and litigated against Labor Department policies. As a typical example, Scalia represented the U.S. Chamber of Commerce in 2017 as it was challenging the U.S. Labor Department's Fiduciary Rule, the Obama-era consumer protection that required financial advisers and their firms provide retirement investment advice that is in their clients' best interests.¹ The Fifth Circuit Court of Appeals ultimately ruled in Scalia's client's favor², allowing unscrupulous Wall Street brokers to continue grifting their own clients out of [billions of dollars](#) of retirement savings without any consequences.³

The Labor Secretary is supposed to be the Advocate-in-Chief for America's hard-working men and women. Instead, Trump chose a high-powered corporate attorney who built a career on representing powerful interests at the expense of everyday workers, including cases involving workplace safety and sexual harassment. It is your responsibility to consider whether someone who put themselves in an adversarial role against workers time and again is able to 'flip a switch' and advocate on behalf of all the nation's working families, even when their interests come up against those of his long list of former corporate clients. We firmly believe he is not capable of making that transition.

It is the kind of bad corporate behavior he was willing to defend that we believe is most disqualifying for this post. For instance, Scalia represented a major auto manufacturer as it was sued for harboring a culture of sexual harassment, racial discrimination, and retaliating against employees who spoke out against the hostile work environment.⁴ Scalia also represented the same company after its retirement plan allegedly "violated its fiduciary duties" and shortchanged an employee's retirement benefits.⁵ Scalia represented a package delivery company as it was accused of a "pattern or practice of unlawful discrimination" in violation of the Americans With Disabilities

¹ [Chamber of Commerce of the U.S. v. Hugler](#), 231 F. Supp. 3d 152 (N.D. Tex. 2017).

² ["Fifth Circuit Vacates Labor Department's 'Fiduciary Rule' 'In Toto' In Chamber Of Commerce Of U.S.A., Et Al. V. U.S. Dep't Of Labor."](#) *Gibson, Dunn, & Crutcher*, March 19, 2018.

³ Scheiber, Noam. ["Trump's Labor Pick Has Defended Corporations, and One Killer Whale."](#) *The New York Times*, July 19, 2019.

⁴ Kanu, Hassan A. ["Ford Turned to Trump Labor Pick Scalia to Fight Harassment Suits."](#) *Bloomberg Law*, August 19, 2019.

⁵ [Jennifer Strang v. Ford Motor Company General Retirement Plan et. al.](#), (6th Cir. 2017), cert. denied, (U.S. June, 25, 2018) (No. 16-2090)

Act.⁶ Scalia defended a major airline company as it was accused of illegally threatening a union and attempting to force it to agree to a “No-Strike Clause” in its Labor Agreement.⁷ Scalia represented a major retail corporate chain as it fought lawsuits accusing it of illegally firing corporate whistleblowers, and again as the corporation fought against a Maryland Law requiring it to help cover its employees’ healthcare costs.⁷ And Scalia represented an electronic component distributor when employees sued the company for allegedly denying them overtime compensation by misclassifying them as ““administrative”” workers.⁸

The list of cases of this kind goes on and on. For any corporation accused of violating workers’ rights or defrauding consumers that is in need of legal representation, they could not do much better than Eugene Scalia. It is clearly what he is good at. But it is these same deep relationships with corporate America that makes him perhaps the most conflicted choice Trump could have made to be the next Labor Secretary.

What is also deeply concerning is the extremes Scalia was willing to go to defend companies in conflict with workers. Consider:

- **Scalia Argued That Companies Shouldn’t Necessarily Bear Legal Responsibility for Bosses Who Sexually Harass or Threaten Employees.** In 1998, Scalia argued that companies should be let off the hook in sexual harassment cases in the *Harvard Journal of Law & Public Policy*, offering these scenarios: “One supervisor orders his assistant to accompany him on a business trip and gropes her on the plane, at dinner, and in the hotel. A second supervisor does the same and tells her that’s what he did with her predecessors ... I believe the employer should not be liable in any of these scenarios unless it endorsed the conduct.” Scalia also opined: “Saying ‘You’re an incompetent stupid female bitch’ a single time is not actionable environmental harassment.”⁹
- **Scalia Argued the Federal Government Does Not Have A Leading Role in Occupational Safety and That Repetitive Stress Injuries on the Job are Medical “Quackery”.** Scalia fundamentally disagrees that one of the most important responsibilities of the Labor Department is enforcing the laws that protect the health and safety of the nation’s workers, writing in 2005: “The Government does not have the sole-or even primary-role in furthering occupational safety and health or compliance with the employment laws.”¹⁰ Scalia’s opposition to federal workplace oversight made him a natural fit to represent a number of corporate interests in their 2001 fight to undo the Clinton-era ergonomics rule – a regulation designed to prevent injuries among workers who perform repetitive tasks. Scalia called it “the most costly and intrusive regulation in (OSHA’s) history”¹¹ and often trashed the science of ergonomics as “quackery.”¹² Scalia changed his tune, however, when he was nominated to be Labor Solicitor during the Bush administration, admitting that "ergonomic pain is real" when a promotion was on the line.¹³

⁶ [Hohider v. United Parcel Service, Inc.](#), 574 F.3d 169 (3rd Cir. 2009).

⁷ Haberman, M., Scheiber, N., and Crowley, M. “[Trump to Nominate Eugene Scalia for Labor Secretary Job.](#)” *The New York Times*, July 18, 2019.

⁸ [Colson V. Avnet, Inc.](#), 687 F.Supp.2d 914 (D. Ariz. 2010).

⁹ Scalia, Eugene. “Article: The Strange Career of Quid Pro Quo Sexual Harassment.” *Harvard Journal of Law & Public Policy*, Spring 1998, 307–25.

¹⁰ Scalia, Eugene. “Inspection and Enforcement Strategies at the U.S. Department of Labor.” *University of Pennsylvania Journal of Labor & Employment Law*, Spring 2005

¹¹ Gearan, Anne. “SUPREME COURT NOTEBOOK: Marksman Scalia bags a buck.” *Associated Press*, May 1, 2001.

¹² Benton, James C. “Bush Upsets Unions by Choosing Scalia.” *Congressional Quarterly Weekly*, August 10, 2001.

¹³ Jackson, Robert. “Split panel approves Scalia for Labor post.” *The Chicago Tribune*, October 17, 2001.

Workers deserve a Labor Secretary who is always on their side, not just when it is politically convenient. Someone who believes the government should have minimal say in keeping workers safe may be a great choice to represent corporations that like to cut corners, but they are a dangerous choice to be enforcing laws as Labor Secretary.

There is no mystery what Eugene Scalia stands for. When there is a dispute, Scalia believes corporate CEOs are always right, and workers are always wrong. This is not someone who would take his responsibility to uphold the Family And Medical Leave Act¹⁴ seriously after repeatedly defending corporations against lawsuits from workers who claimed they were fired for taking leave.¹⁵¹⁶ This is not someone who will be concerned about fair wages or the income inequality crisis in America after publicly deriding even a modest proposal for raising the minimum wage for federal workers. This is not someone interested in helping workers hoping to climb into the middle class if it in any way impacts the corporate bottom line.¹⁷

Eugene Scalia may be a gifted legal mind when it comes to defending big businesses, but he has no business leading the Labor Department. America's working families deserve far better. I strongly encourage you to oppose this nomination on its face.

Respectfully,

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¹⁴ “[Major Functions of the U.S. Department of Labor](#).” *Congressional Research Service*, September 7, 2018.

¹⁵ [King v. Ford Motor Co.](#), 872 F.3d 833 (7th Cir. 2017).

¹⁶ [Buckman v. MCI World Com Inc.](#), 374 Fed. Appx. 719 (9th Cir. 2010).

¹⁷ Scalia, Eugene & Mondl, Rachel. “[Obama’s minimum-wage increase is on shaky legal ground](#).” *The Washington Post*, February 20, 2014.