



September 25, 2019

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RE: Vote NO on the Confirmation of Eugene Scalia for U.S. Secretary of Labor

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 organizations to promote and protect the rights of all persons in the United States, I write to **urge you to vote NO on the confirmation of Eugene Scalia for U.S. Secretary of Labor. The Leadership Conference will score this vote in our voting record for the 116th Congress.**

Ensuring the protection and advancement of the rights, economic security, and well-being of all working people in this country is a priority of The Leadership Conference and its members. The Secretary of Labor plays a key role in implementing and strengthening workplace protections and improving economic opportunities for working people. It is critical, then, that a nominee for Secretary of Labor have a record of demonstrated commitment to promoting and enforcing the dignity, safety, and rights of working people. Eugene Scalia does not have such a record. Instead, as was made apparent during his September 19 confirmation hearing before the Senate Committee on Health, Education, Labor and Pensions (HELP), Mr. Scalia has spent the bulk of his career representing corporations and business organizations and advocating against the interests of working people.

The Leadership Conference opposed the nomination of Eugene Scalia as Solicitor of Labor in 2001 based, in part, on his "track record of hostility to crucial worker protections." Since that time, Mr. Scalia has only added to his pro-corporate credentials and has done very little to indicate that he is a suitable choice to be the nation's top official charged with advocating for working people.

Workplace Harassment and Discrimination

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is responsible for ensuring that federal contractors do not discriminate on the basis on race, color, religion, sex, sexual orientation, gender identity, national origin, or disability. As the head of the department, the Secretary of Labor should have a strong, clear record of protecting the rights of working people and enforcing nondiscrimination laws. Mr. Scalia, however, has had a long history of defending corporations from workplace harassment and discrimination claims.

Race Discrimination

In 2016, Mr. Scalia successfully defended an insurance claim processing company in a Title VII race discrimination case after the company withdrew an employment offer to a Black woman who refused to cut her locs. Finding for the company, the Eleventh Circuit Court of Appeals ruled that the employer's hair grooming policy prohibiting "excessive" hairstyles was not racially discriminatory.ⁱ The experiences of Black people in the workplace, however, illustrate that these policies limit equal employment opportunities and are often used to perpetuate race and sex discrimination.ⁱⁱ California and New York have both passed laws to explicitly prohibit this form of race discrimination, and similar legislation has now been introduced in several states.ⁱⁱⁱ Mr. Scalia's defense of this practice may make him an asset to corporations defending against workplace discrimination claims, but it calls into question his commitment to protecting working people of color against discrimination in all its forms and advancing equitable workplaces that promote the dignity of all people.

Sexual Harassment

Mr. Scalia has put forward extreme, troubling views on sexual harassment in the workplace. In 1998, Mr. Scalia authored an article arguing that the Supreme Court should do away with the quid pro quo theory of sexual harassment, which prohibits conditioning employment decisions on the submission to, or rejection of, sexual advances.^{iv} In the article, Mr. Scalia specifically asserts his view that employers should not be held liable for sexually harassing behavior – including when a supervisor threatens to fire an employee if she does not submit to unwanted sexual contact – unless the employer "endorsed the conduct."^v This radical position is inconsistent with legal precedent and would significantly impair the ability of working people to assert their right to be free from sexual harassment on the job. Sexual harassment is already severely under-reported and can be difficult to prove. Under Mr. Scalia's proposal, employers would be able to more easily escape liability, but the most vulnerable workers would have no legal recourse for this type of abusive behavior.

Far from only theorizing about sexual harassment law, as an attorney Mr. Scalia has chosen to devote part of his career to helping corporations avoid liability for sexual harassment, including Ford Motor Company. Dozens of Ford employees in Chicago have come forward to report several disturbing allegations of race and sex discrimination at Ford plants, including allegations of sexual assault, unwanted touching, and requests for sexual favors.^{vi} Scalia has represented Ford in at least 27 employment cases,^{vii} and Ford has a long history of failing to adequately address sexual harassment of its employees.^{viii}

In the wake of #MeToo, as our nation continues to grapple with the pervasive problem of sexual harassment and workplace violence, working people deserve a Secretary of Labor who will prioritize these issues and be a champion for transparency, accountability, and prevention. Mr. Scalia's record does not demonstrate that he will be that champion.

Discrimination against People with Disabilities

Mr. Scalia's record with respect to discrimination against people with disabilities also reflects his pro-corporate background and experience advocating against working people. In one case, Mr. Scalia represented Ford Motor Company in a suit alleging that the company discriminated against an employee with irritable bowel syndrome by denying her request for a reasonable accommodation: the ability to telework up to four days per week.^{ix} Although Ford allowed employees to telework, they denied her request and offered instead to move her cubicle closer to the bathroom. The employee, whose condition "gave her uncontrollable diarrhea and fecal incontinence" refused.^x Ford's attorneys also argued that the employee should not have required an accommodation because she could have worn Depends "to contain the mess" or could have just brought "a change of clothes to clean herself up after the fact."^{xi}

Through his advocacy for major corporations, Mr. Scalia has also sought to weaken the ability of working people to come together as a class to challenge disability discrimination. Mr. Scalia successfully defended UPS against a class action brought by employees who were denied accommodations when they returned to work following leave for injuries received on the job. Though a lower court had certified the class, which sought to prove a policy of non-accommodation in violation of the ADA, Mr. Scalia won reversal of the class certification on appeal.^{xii}

Economic Security for Working People

The Secretary of Labor should be our nation's chief advocate for working people, yet Mr. Scalia has consistently argued against the economic interests of working people. For example, in 2014, Mr. Scalia wrote an op-ed opposing President Obama's executive order mandating a \$10.10 minimum wage for federal contract workers.^{xiii} Mr. Scalia has also worked to prevent employees from taking home all their earnings. In 2013, Mr. Scalia successfully defended a Wynn Las Vegas casino policy that forced employees to share their tips with supervisors.^{xiv}

Mr. Scalia also has a troubling record on workplace safety. In our October 2001 letter of opposition to Mr. Scalia's nomination as Solicitor of Labor, The Leadership Conference expressed serious concerns regarding Mr. Scalia's harsh criticism of the Occupational Safety and Health Administration (OSHA) ergonomics rules as well as his comments questioning whether scientific support for ergonomics protections existed and whether ergonomics injuries are real. Nothing in Mr. Scalia's record alleviates our concerns regarding his attitude toward workplace safety standards. Indeed, in 2014, Mr. Scalia unsuccessfully defended SeaWorld against an OSHA citation after a trainer was killed by an orca whale at one of its facilities.^{xv} The Leadership Conference continues to believe that someone who dismisses years of data on the effects of ergonomics as "quackery" and "junk science,"^{xvi} and who would relieve companies from the responsibility to ensure a safe workplace – even after the death of an employee – is not well-suited to lead the department entrusted to protect the health and safety of millions of working people.

Working people deserve a Secretary of Labor who has demonstrated a commitment to promote and protect the dignity, safety, and rights of working people. A review of Mr. Scalia's

background, however, reveals a career built around advocating against the interests of working people in favor of shielding corporations from liability. That Mr. Scalia, in his confirmation hearing before the Senate HELP Committee could point to a few instances of pro bono representation of individuals, does not balance out his propensity toward working for the benefit of corporations and not everyday working people. The Leadership Conference therefore opposes this nomination and urges every member of the Senate to vote NO on the confirmation of Eugene Scalia for U.S. Secretary of Labor. If you have any questions, please contact Gaylynn Burroughs, Senior Policy Counsel, at burroughs@civilrights.org.

Sincerely,



Vanita Gupta
President and CEO

ⁱ EEOC v. Catastrophe Management Solutions, 852 F.3d 1018 (11th Cir. 2016).

ⁱⁱ See Jena McGregor, *More States are Trying to Protect Black Employees Who Want to Wear Natural Hairstyles at Work*, Washington Post (Sept. 19, 2019), <https://www.washingtonpost.com/business/2019/09/19/more-states-are-trying-protect-black-employees-who-want-wear-natural-hairstyles-work/>.

ⁱⁱⁱ *Id.*

^{iv} Eugene Scalia, *The Strange Career of Quid Pro Quo Sexual Harassment*, 21 Harv. J. L. & Pub. Pol'y 307 (1997-1998).

^v *Id.* at 323.

^{vi} Van v. Ford Motor Co., No. 14-CV-8708, 2016 WL 1182001 (N.D. Ill. Mar. 28, 2016).

^{vii} Hassan A. Kanu, *Ford Turned to Trump Labor Pick Scalia to Fight Harassment Suits*, Bloomberg Law (Aug. 19, 2019), <https://news.bloomberglaw.com/daily-labor-report/ford-turned-to-trump-labor-pick-scalia-to-fight-harassment-suits>.

^{viii} See Susan Chira and Catrin Einhorn, *How Tough is it to Change a Culture of Harassment? Ask Women at Ford*, New York Times (Dec. 19, 2017), <https://www.nytimes.com/interactive/2017/12/19/us/ford-chicago-sexual-harassment.html>.

^{ix} EEOC v. Ford Motor Co., 752 F.3d 634 (6th Cir. 2014), reh'g en banc, opinion vacated, 782 F.3d 753 (6th Cir. 2015).

^x *Id.* at 638.

^{xi} *Id.* at 646.

^{xii} Hohider v. United Parcel Service, Inc., 574 F.3d 169 (3d Cir. 2009).

^{xiii} Eugene Scalia and Rachel Mondri, *Obama's Minimum-Wage Increase is on Shaky Legal Ground*, Washington Post (Feb. 20, 2014), https://www.washingtonpost.com/opinions/obamas-minimum-wage-increase-is-on-shaky-legal-ground/2014/02/20/16509b42-999c-11e3-b931-0204122c514b_story.html.

^{xiv} Wynn Las Vegas, LLC v. Baldonado, 311 P.3d 1179 (Nev. 2013).

^{xv} SeaWorld of Florida, LLC v. Perez, 748 F.3d 1202 (D.C. Cir. 2014).

^{xvi} See Irina Ivanova, *Eugene Scalia, Trump's Pick to Head the Labor Department, Scares Worker Advocates to Death*, CBS News (Jul. 19, 2019), <https://www.cbsnews.com/news/eugene-scalia-trumps-labor-secretary-scares-worker-advocates-to-death/>.