



FILLING The Swamp: Trump Taps Repetitive-Injury Denier For Labor Secretary

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Eugene Scalia, the nation's most prominent denier that repetitive-strain injuries are valid, was formally nominated to be Secretary of Labor Aug. 27. The son of the late Supreme Court Justice Antonin Scalia, his clients as a management-side lawyer have included the U.S. Chamber of Commerce, when it got rules requiring retirement investment advisors to act in their clients' best interests overturned, and the SeaWorld theme park in Florida, when it unsuccessfully claimed that a six-ton killer whale who'd drowned two trainers was not a "recognized hazard."

Nominating him to run the agency supposed to protect workers' rights and safety is an "appalling joke," 32BJ SEIU President Kyle Bragg said in a statement Aug. 28. "In every conceivable way, Scalia has fought to undermine the right of people to join unions and has rolled back protections for consumers and whistleblowers."

American Federation of Teachers President Randi Weingarten said on Twitter that the appointment continues Donald Trump's "pattern of nominating candidates for important government positions who have backgrounds that undermine the agency's public purpose."

The Senate is expected to hold hearings on his nomination next month, and he is likely to be confirmed on a party-line vote.

Scalia, 56, began his career in 1985 as a speechwriter for then-Secretary of Education William Bennett, a vituperative critic of teachers' unions who said there was "not a thing" the federal government should do about low teachers' salaries and that bad teachers should be paid "zero." He served briefly as the Labor Department's solicitor under President George W. Bush, who named him by recess appointment after a filibuster by Democrats blocked his Senate confirmation. A partner in the Washington office of the Gibson, Dunn & Crutcher law firm, he cochaired their labor-law division for 12 years, and also specialized in litigation over government regulations.

"Eugene Scalia has spent his entire career making life more difficult and dangerous for working people," the AFL-CIO declared after Trump floated the idea of nominating him in mid-July. "We opposed him in 2002 for Solicitor of Labor based on his anti-worker record, and his disdain for working people has worsened, not improved."

Scalia is probably best known for his late-1990s campaign against the federal Occupational Safety and Health Administration's ergonomics rules, which required employers to identify conditions that caused repetitive-strain injuries—such as carpal-tunnel syndrome, in which

chronically repeated motions such as typing or cutting meat irritate the tendons passing through the wrists and put pressure on nerves, making it extremely painful for people to use their hands. In 1999, representing the Chamber of Commerce, he got the District of Columbia Circuit Court of Appeals to suspend an OSHA enforcement program that included ergonomics on procedural grounds, a case the Federalist Society far-right judge farm cites as one of his top 20 achievements.

In a 2000 essay for the libertarian Cato Institute, he called OSHA's proposed ergonomics rule "the most costly and intrusive regulation in its history." He mocked carpal tunnel syndrome as "purportedly" caused by typing, and said the rule would require employers "to implement draconian abatement measures, such as reducing assembly line speeds and redesigning equipment," based on "vague and subjective" symptoms such as "pain," "numbness," and "tingling." In a *Wall Street Journal* op-ed earlier that year, he called the rule a "major concession to union leaders, who know that ergonomic regulation will force companies to give more rest periods, slow the pace of work, and then hire more workers (read: dues-paying members) to maintain current levels of production."

The Labor Department, which said the rule would prevent 600,000 injuries a year, implemented it later in 2000, but it was overturned after the Republicans regained control of Congress in 2001.

Other cases Scalia has been involved in include representing Walmart and other large corporations to challenge a 2006 Maryland law that required them to spend 8% of payroll on either health insurance for their employees or contributions to the state's Medicaid fund. A federal appeals court voided that law in 2007.

In 2010, he represented Boeing after the National Labor Relations Board charged that it had shifted production from the Seattle area to its nonunion plant in South Carolina as retaliation for a 2008 strike. In 2013, he led the team representing the Wynn Las Vegas casino after it mandated that dealers split their tips with their supervisors. Three dealers sued for wage theft, but the Nevada Supreme Court reversed a lower-court ruling in their favor, holding that the company wasn't actually "taking" the tips, it was just splitting them among its employees.

The Economic Policy Institute described Scalia as a "deregulatory wrecking ball," citing reports that the Trump administration was irked at ousted Secretary of Labor Alexander Acosta for not reversing Obama-era regulations aggressively enough. The department is now developing rules to lower how much money salaried employees can make before they can be denied overtime pay, and to limit when a business that hires temporary workers or has franchises can be considered a "joint employer" responsible for working conditions.

California Labor Federation spokesperson Steve Smith, however, speaking to the *Sacramento Bee* in July, fatalistically opined that Scalia running the Labor Department might not change much.

"We're ready for the worst," he said, "but on the other hand, this administration from Day One has been vigorously anti-union, so I don't know how much different it will be under Scalia."