

‘I am not necessarily my clients’: Secretary of labor nominee Eugene Scalia testifies during confirmation hearing

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Washington — Eugene Scalia attempted to buck his reputation as a defender of solely corporate interests during his confirmation hearing for secretary of labor on Sept. 19.

Appearing before the Senate Health, Education, Labor and Pensions Committee, Scalia highlighted his work as solicitor of labor – the department’s third-highest ranking official – from 2002 to 2003 and his behind-the-scenes advice to clients as a partner at the Gibson, Dunn & Crutcher law firm.

Among his many high-profile cases, Scalia argued on behalf of SeaWorld of Florida LLC against OSHA after the death of killer whale trainer Dawn Brancheau in February 2010.

Scalia also criticized OSHA’s former ergonomics regulation in a commentary published by the Cato Institute in 2000, writing that the rule “would afford little benefit to workers because it is based on thoroughly unreliable science.” The regulation was the first rescinded by the Congressional Review Act in March 2001.

The son of late Supreme Court Justice Antonin Scalia attempted to contrast his role as a lawyer with his projected new role, which carries a “new set of responsibilities.”

“I am not necessarily my clients,” Scalia said during the hearing. “I will seek to defend them, to vindicate their rights. That doesn’t mean that I think what they did was proper or I agree with them.”

Sen. Chris Murphy (D-CT), however, argued, “I have plenty of friends who work for big companies and work in employment law and many of them are fine people, but I don’t know that I would select them to be the one representative in the federal government, in the cabinet who is supposed to speak for workers.

“You might make a fine secretary of commerce in a Republican administration. I just don’t know that your experiences actually are qualifications to be the sole representative of workers. I put that on the record as the struggle I am having.”

Questions

Sen. Tammy Baldwin (D-WI) questioned Scalia about OSHA having its lowest number of inspectors in the agency's history. That total was 875 as of the beginning of this year, according to a National Employment Law Protect data brief issued in March.

"The number of OSHA inspectors is lower than [former Secretary R. Alexander Acosta] wanted it to be," Scalia said. "I would commit to you to take a look at steps that might be necessary to get the number of inspectors up to an appropriate level."

Baldwin also asked about workplace violence in health care and social work, an OSHA regulation that is in the early rulemaking stages. A Small Business Regulatory Enforcement Fairness Act panel on the rule is scheduled to convene in October.

Scalia noted that OSHA does have a role to play in the issue but stressed the need to weigh its approach carefully.

"There is a balance to be struck, obviously, for those instances when it's purely personally motivated and one wouldn't expect to hold the employer responsible," he said. "I have been briefed on this issue. If confirmed, I would like to look at it more closely."

Vote on nomination next week

The HELP Committee is scheduled to vote on Scalia's nomination Sept. 24 and likely will send it on to the full Senate for confirmation. Ranking member Sen. Patty Murray (D-WA) sought to delay the process because Scalia's nomination was not formally sent to the Senate until Sept. 11.

Committee Chair Sen. Lamar Alexander (R-TN) said President Donald Trump first announced his intention to nominate Scalia on July 18 via Twitter. The committee also received all the relevant paperwork by Aug. 27. Alexander added that Scalia has offered to meet with each committee member.

Alexander also pointed out in his opening statement that the HELP Committee received the paperwork for former President Barack Obama's final secretary of labor, Thomas Perez, about 10 days before the confirmation hearing. For former Secretary of Education John King Jr., it was six days before the hearing.

Alexander said he scheduled the hearing and vote "because I believe it's important that we have a confirmed and accountable cabinet member for presidents."

If confirmed, Scalia would replace acting Secretary of Labor Patrick Pizzella. The deputy secretary of labor has run the department since Acosta resigned July 19, amid renewed controversy over his involvement in convicted sex offender Jeffrey Epstein's plea deal in a 2008 sexual abuse case in Florida.