

August 19, 2019

The Honorable Lamar Alexander
Chairman
Senate Committee on Health,
Education, Labor & Pensions
U.S. Senate
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Senate Committee on Health,
Education, Labor & Pensions
U.S. Senate
Washington, DC 20510

Dear Chairman Alexander and Ranking Member Murray,

I am writing in support of the nomination of Eugene Scalia to be Secretary of Labor. I believe that he is a superb choice for the position, and I am confident that he would do an outstanding job.

In terms of qualifications: Scalia has a tremendous intellect, and he has devoted much of his career to labor and employment law. As you are aware, he was Solicitor of Labor from 2002 to 2003, where he compiled an excellent record and earned immense respect from diverse people. In private practice, he has specialized in the field. In the process, he has also learned a great deal about federal regulation – both procedure and substance. He counts as a master of the that topic. In terms of background and expertise, he is an exceptionally distinguished nominee, among the very few most impressive and perhaps at the very top in past decades.

In terms of character: Scalia is gracious and honest, and he is unfailingly decent and kind. He knows what it means to be a public servant, and to have the privilege of serving the American public. His knee does not jerk. He doesn't kiss up, and he never kicks down. What most matters, of course, is what a public official does, not whether he is a nice guy. But in Scalia's case, his work and his character are closely related. His decency is part of what makes him someone who tends to go case-by-case, and to end up where the facts and the law take him.

In terms of his likely performance as Secretary: Scalia is exceptionally fair-minded, and he listens to arguments – carefully and always with respect. I should add in this regard that I have known him for thirty years, from his time at the University of Chicago Law School to the present. In all of those years, he has been open to the force of the argument, and he engages carefully with the particulars. (He is also able to change his mind.) I was not at all surprised to see that in the George W. Bush Administration, he worked hard and successfully on behalf of workers, often trying to protect their economic interests.

I am aware that in some domains, Scalia has taken positions, in terms of policy and law, in opposition to regulations that many reasonable people strongly support. (I suspect, though I do not know for sure, that he has opposed regulations that I strongly supported during my time as Administrator of the Office of Information and Regulatory Affairs in the Obama Administration.) For Scalia, as for many lawyers, it is easy to take comments or positions out of context, and to give a less-than-favorable picture of what he really thinks, or what he would do in a position of public trust. It is important to emphasize that there is all the difference in the world between a private lawyer, representing a client, and a Cabinet official, working for the American people. Whether the issue involves occupational health, overtime pay, racial discrimination, or pensions, there is no question that Scalia would be keenly sympathetic to the rights and interests of working people. He does not have an ideological straightjacket. He takes issues on their merits.

With your indulgence, I will conclude with some more personal points. As a Senate-confirmed appointee in the Obama administration, I have had a firm practice, since January 2017, of neither publicly supporting nor publicly opposing *any* nominees of President Trump, on the theory that for officials in the immediately prior administration, silence on such matters is generally golden. This is the first time that I have broken that practice, and I expect that it is the only time that I will do so. I might add on some important questions (including several that involve the Department of Labor) it is an understatement to say that I have been concerned about policies adopted or proposed since 2017. Even – especially -- in these circumstances, there is good reason to support an exceptionally qualified and exceptionally fair person to lead a Cabinet-level Department.

Scalia is a terrific choice. I am honored to support him, and I would be honored to discuss his nomination at any time.

All best wishes.

Sincerely,

Cass R. Sunstein
Robert Walmsley University Professor