

September 18, 2019

The Honorable Lamar Alexander
Chairman
Senate Committee on Health,
Education, Labor and Pensions
835 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Patty Murray
Ranking Member
Senate Committee on Health,
Education, Labor and Pensions
649 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Alexander and Ranking Member Murray,

As members of the BlueGreen Alliance, a coalition of the nation's largest labor unions and environmental organizations collectively representing millions of members and supporters, we urge you to oppose the confirmation of Eugene Scalia as Secretary of Labor. Mr. Scalia has built his career endangering, dismissing, and cheating American workers. His nomination is an offense to the Department of Labor (DOL), its mission, and our nation's workforce.

Mr. Scalia is a partner at Gibson, Dunn & Crutcher where he specializes in defending corporate clients on employment and labor law issues. Scalia has built his practice by sustaining an assault on government efforts to protect American workers and communities.

Oil Refinery Safety at Risk

In the wake of catastrophic refinery fires in Houston, Texas; Philadelphia, Pennsylvania; and Superior, Wisconsin, Mr. Scalia—rather than taking steps to improve the safety of the nation's refineries—has instead chosen to file lawsuits in both federal and state courts on behalf of Chevron, Shell, Phillips 66, PBF, BP, Valero, Marathon, and other refiners to obstruct the nation's first modern refinery safety regulations. These regulations were adopted in California in 2017, after a catastrophic explosion and fire in 2012 at the Richmond, California Chevron refinery, which nearly killed 19 refinery workers and caused 15,000 residents to seek medical attention for symptoms related to exposure to the smoke and fire gases.

Another catastrophic explosion in 2015 at the ExxonMobil refinery in Torrance, California threatened a tank containing tens of thousands of pounds of hydrofluoric acid (HF). Given the 330,000 residents, 71 schools, and eight hospitals located within three miles of the plant, the U.S. Chemical Safety and Hazard Investigation Board (CSB) concluded that had the tank ruptured, the resulting HF release—which vaporizes when released from its container—had “the potential to cause serious injury or death to many community members.”¹

California's 2017 refinery safety regulations represent the nation's first successful update to refinery safety since 1992, and Mr. Scalia is going to court to stop them, despite the

continuing record of 150 major industrial chemical fires, explosions, and releases that occur each year, on average, in communities across the nation.

Bulldozing Basic Workplace Protections

In his legal practice, Mr. Scalia has focused on cynically attacking the safety and economic security of American workers and their families. For example, he has:

- Fought to overturn rules that require employers to pay for workers' protective equipment, such as hardhats, respirators and gloves;ⁱⁱ
- Fought OSHA for SeaWorld, arguing that the company did not need to follow OSHA regulations after a trainer was killed on the job by an Orca whale;ⁱⁱⁱ
- Stopped a Maryland law that would have required Walmart and other employers with more than 10,000 workers to spend 8% of payroll on their workers' health insurance, or contribute to the state's Medicaid fund;^{iv}
- Fought for Boeing against NLRB charges that the company illegally retaliated against striking workers in its unionized Seattle plant by transferring work to South Carolina; and^v
- Successfully led the U.S. Chamber of Commerce effort to stop OSHA's ergonomic regulations, which would have protected millions of workers from disabling injuries caused by unsafe workplace design.^{vi}

Scalia's virulent attack on the proposed Ergonomics Standard was enough to stop the Senate from confirming his 2001 appointment as solicitor of the Labor Department. President Bush later used a recess appointment to give him that job.

Taking Us Back 100 Years

Safety regulations are borne out of tragedy. They reflect "lessons learned" and seek, albeit imperfectly, to protect workers and communities from industrial hazards. The historical record illustrates that regulations also protect industry from its own excesses and shortsightedness.

From the fire exit rules that resulted out of the Triangle Shirtwaist fire of 1911 to California's 2017 refinery regulations in the wake of the Richmond Chevron fire, safety is a thin line drawn out of public concern and shaped by public officials who respond to that concern with new laws and regulations. Mr. Scalia will be charged with enforcing those protections, including the Occupational Safety and Health Act, the Fair Labor Standards Act, the Family and Medical Leave Act and others that American workers and their families have come to depend on.

Mr. Scalia has devoted his career to demolishing these basic protections. The signatories to this letter urge you in the strongest possible terms to oppose his appointment.

Sincerely,

BlueGreen Alliance

International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART)

International Union of Bricklayers & Allied Craftworkers

Natural Resources Defense Council

Sierra Club

Union of Concerned Scientists

United Steelworkers Union

Utility Workers Union of America

ⁱ U.S. Chemical Safety Board (CSB), *U.S. Chemical Safety Board Finds Multiple Safety Deficiencies Led to February 2015 Explosion and Serious Near Miss at the Exxon Mobil Refinery in Torrance, California*, January 2016. Available online: <https://www.csb.gov/us-chemical-safety-board-finds-multiple-safety-deficiencies-led-to-february-2015-explosion-and-serious-near-miss-at-the-exxon-mobil-refinery-in-torrance-california/>

ⁱⁱ Court of Appeals of Michigan, *United Parcel Service Inc V. Bureau Of Safety And Regulation*, November 2007. Available online: <https://caselaw.findlaw.com/mi-court-of-appeals/1469254.html>

ⁱⁱⁱ United States Court of Appeals, District of Columbia Circuit, *Seaworld Of Florida Llc V. Perez*, April 2014. Available online: <https://caselaw.findlaw.com/us-dc-circuit/1663286.html>

^{iv} Casetext, "Retail Indus., v. Fielder," January 17, 2007. Available online: <https://casetext.com/case/retail-indus-v-fielder>

^v National Labor Relations Board (NLRB), *NLRB v. The Boeing Company, Case 19-CA-32431*. June 2011. Available online: https://www.nlr.gov/sites/default/files/attachments/basic-page/node-3347/mot.19-ca-032431.rs_opp_to_agcs_mot_to_strike_boeings_14th_aff_def.pdf

^{vi} Eugene Scalia, *OSHA's Ergonomics Litigation Record: Three Strikes and It's Out*, August 2016. Available online: <https://documents.pub/document/oshas-ergonomics-litigation-record-three-strikes-and-its-out.html>