

Justice Antonin Scalia's Son Set to Make Supreme Court Debut in Whistleblower Case

By Jimmy Hoover

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Chief Justice John Roberts Jr. will encounter a familiar name when he calls up one of the attorneys during oral arguments on Oct. 10 in a case about financial whistleblowers.

Taking the lectern on behalf of Swiss bank UBS and its investment arm will be Eugene Scalia, the former labor secretary and son of the late U.S. Supreme Court Justice Antonin Scalia, with whom five of the current justices shared a bench for many years.

This will be Scalia's first argument before the court where his father sat for nearly 30 years before his death in February 2016. Despite being a high-powered Washington corporate lawyer in his own right, the Gibson, Dunn & Crutcher partner had long recused from the firm's Supreme Court cases while his father was alive.

"I'm grateful to have been given the privilege of arguing this important employment case, and of appearing before the Court that meant so much to my father," Scalia said in a short statement Tuesday to the National Law Journal.



Photos: Diego M. Radzinski/ALM

Eugene Scalia, left, and his father, the late U.S. Supreme Court Justice Antonin Scalia.

The UBS case deals with lawsuits brought under the 2002 Sarbanes-Oxley Act, which was enacted after the Enron and WorldCom accounting scandals. The law protects whistleblowers by prohibiting employers from punishing employees for bringing alleged financial misdeeds to light.

Scalia will be arguing for UBS in a whistleblower case brought by a former UBS research strategist. The Supreme Court is set to review a purported split among the federal circuit courts over whether the employer or employee has the burden of proof in such lawsuits.

During his nearly three decades on the Supreme Court, Justice Scalia earned a reputation as a conservative firebrand who transformed the court into the “hot bench” it is today.

Eugene Scalia, the eldest son of the justice’s nine children, is no stranger to appellate litigation.

He served as Labor Department solicitor during the George W. Bush administration and became one of the banking industry’s go-to lawyers to challenge regulations under the 2010 Dodd-Frank Act.

President Donald Trump tapped Scalia in 2019 to lead the department after Alex Acosta resigned amid outcry over his conduct in the investigation of Jeffrey Epstein. Scalia’s tenure overlapped with the outbreak of the COVID-19 pandemic, and he was criticized by unions for the agency’s delay in rolling out workplace standards to minimize the risk of infection.

Scalia defended his agency’s record, saying the department’s Occupational Safety and Health Administration was active in policing violations.

Following his stint in the Trump administration, Scalia returned to private practice at Gibson Dunn in 2021, where he co-chairs the firm’s administrative law and regulatory practice group.

Scalia’s upcoming Supreme Court case represents a major test for Sarbanes-Oxley Act lawsuits.

The petitioner, Trevor Murray, claims he was fired as a research strategist from UBS after asserting his independence from the investment bank’s trading desk. Murray says he was

frequently pressured by a senior UBS trader to color his reports about the bank’s investments in commercial mortgage-backed securities to make them palatable to investors.

Following a more than two-week trial, a jury sided with Murray and awarded him back pay and compensatory damages. However, UBS won its appeal before the U.S. Court of Appeals for the Second Circuit.

Agreeing to hear Murray’s appeal, the Supreme Court is set to determine whether corporate whistleblowers must show at trial that their punishment resulted from their employers’ “retaliatory intent,” or whether employers must show they did not have such intent to mount a successful affirmative defense against a whistleblower lawsuit.

The U.S. Department of Justice has backed the whistleblower’s interpretation of the law, calling it “the most natural reading” of the law. Murray has also received support from Sens. Charles Grassley, R-Iowa, and Ron Wyden, D-Oregon, who submitted an amicus brief “from the perspective of Members of Congress who wrote the provisions at issue.”

The Swiss bank has won amicus support from several business-friendly groups such as the Chamber of Commerce, which said Murray’s interpretation would “penalize employers for taking personnel actions that are in no way motivated by the employee’s decision to engage in protected conduct.”

The case before the Supreme Court is *Murray v. UBS Securities*, No. 22-660.