



## **Guess What? Rightbloggers Don't Think Obama Should Be Able to Appoint Scalia Replacement!**

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Supreme Court Justice Antonin Scalia has died, and conservatives are in mourning — by which I mean, they're dashing to the barricades to prevent someone they don't like from getting on the court.

Some memorialize Scalia as a great scholar of the law, and he did get in some good innings on civil liberties. He was also a dispenser of legal zingers, and American Thinker praised him for “wittiness that made conservatives smile and chuckle.” Recall how, when someone argued that mentally challenged offenders “face a special risk of wrongful execution,” Scalia answered, “‘special risk’ is pretty flabby language...and I suppose a similar ‘special risk’ could be said to exist for just plain stupid people, inarticulate people, even ugly people.” He also once declared that exonerating evidence was insufficient reason to overturn a death penalty. And no one will soon forget his thoughts on gay marriage — or, for that matter, homosexuality in general.

You can see why conservatives loved him. (And “libertarians” too — like Ilya Shapiro, who at *Reason* said Scalia's anti-gay and -abortion and pro-death penalty opinions were cool with him because “there are plenty of religious libertarians, and policy issues like abortion and the death penalty split the liberty movement.”)

For some the grief was too much. Plenty of the nuttier rightbloggers accused Obama of murdering Scalia (“The SCOTUS was about to spank Obama once more for ruling by fiat and slap down his renegade EPA. Scalia died of natural causes my ass”). But even some of the better-known columnists and bloggers got a little carried away.

“Who wants to bet that future historians will count the death of Scalia as marking an important milestone on the road to the 2nd civil war?” sweatily tweeted Kurt Schlichter a/k/a The Widman. “Obama was informed of the Scalia news well before he got to hole 18. Yet he decided to keep golfing anyway,” Breitbart.com's Matthew Boyle tweeted through angry tears.

“CBS Evening News Makes Sure to Hype Scalia's ‘Controversial’ Texas Affirmative Action Remarks,” headlined NewsBusters, outraged that the liberal media had slurred Scalia by quoting

him. “ANTONIN SCALIA’S DEATH COULD MARK END OF CONSTITUTION” screamed Ben Shapiro at Breitbart.com.

“One could sense Scalia’s growing frustration with the perverted and flawed laws of man on this world in recent years,” Daniel Horowitz wrote for Conservative Review. “He is now with the ultimate King who created the perfect set of laws. And he is now united with the Founders of this great nation who are undoubtedly dazzled by a man who was so committed to upholding their foundation of democracy over 200 years later, even when it was no longer in vogue.” Can someone please do a version of Rock Dreams based on this?

Other, more practical-minded rightbloggers said Republicans should drop the old-fashioned tradition of considering a SCOTUS nominee before rejecting him or her, and instead reject all Obama nominations preemptively.

“Senate must simply refuse to appoint anybody,” tweeted *National Review*’s Charles C.W. Cooke. “Would be outrageous to replace a giant like Scalia with a minnow like Sotomayor.” In a blog post, Cooke explained he supported pre-rejecting Obama’s nominee to replace him because “President Obama has a bad record on judges, and because there is no good reason to think that his instincts will change now.”

“No hearings. No votes,” tweeted GOP debate moderator Hugh Hewitt. “Lame ducks don't get to make life-time appointments.” “¡No Pasarán! The Senate Must Not Give Obama A Supreme Court Appointment!” yelled Some Guy at Red State.

You might expect this from grief-stricken ideologues — but supposedly responsible Republican Senators also picked it up. In fact, Majority Leader Mitch McConnell said “this vacancy should not be filled until we have a new president.” “We owe it to [Scalia], & the Nation, for the Senate to ensure that the next President names his replacement,” tweeted Ted Cruz. Marco Rubio, Cruz's rival for the Republican presidential nomination, agreed and was even more definitive: “There comes a point in the last year of the president, especially in their second term, where you stop nominating,” he said.

No one knows where, besides desperation, this no-nominations-during-final-11-months thing came from. In fact, some folks showed how weird the notion was by compiling lists of Justices who had in fact been confirmed during Presidential election years.

Rightbloggers dealt with these precedents in a couple of ways. Some focused on the most recent and therefore frequently-cited case of Anthony Kennedy’s nomination — he may have been approved in 1988, but that nomination cycle started in 1987! Aha, libtards! Read the rule book!

The previous same-year nomination-confirmation was in 1940, allowing room for the claim that it’s been “over 80 years” since something *quite* like this came up, which was seized on by GOP Senator Chuck Grassley and rightbloggers like *National Review*’s Ed Whelan (“It’s been more

than 80 years since a Supreme Court justice was confirmed in an election year to a vacancy that arose that year”). Tyler O’Neil of PJ Media gets extra credit for a piece he wrote with the headline, “Obama Breaks Tradition, Will Nominate Supreme Court Successor to Scalia.” He wrote: “No lame duck president has nominated a Supreme Court justice in an election year for eighty years...” Apparently “traditions” can be either too young *or* too old to follow.

Others pretended McConnell’s stated refusal to consider any Obama nomination was really the same thing as considering and rejecting an actual nominee, and that liberals were thus denying the Senate’s advise-and-consent role.

For example: “Liberals are up in arms over the idea that President Obama’s SCOTUS nomination may be blocked by the Republican-controlled Senate,” said John Binder at Right Wing News. “Which, just proves once again, that liberals know nothing about history because if they did, they’d understand that there is actually precedent for blocking the nomination... But yes liberals, please tell us about how Obama’s nomination can’t be blocked.” Would you be surprised to learn Binder linked to no “liberal” who suggested this?

Some of the brethren went still further: “Honor Justice Scalia by Keeping His Court Seat Empty — for Years, If Necessary,” proposed John Zmirak at The Stream. First, elect a true-believer President, he wrote; then have him nominate another Scalia, and if he’s challenged “broadcast the fact that if this nominee is rejected, the next one will be as conservative or more conservative, as will the next one after that.” Liberals would give up eventually, right?

“President Obama isn’t even entitled to nominate a replacement for Justice Scalia — or at least, Congress can deny him that right,” said Michael F. Cannon of the Cato Institute. “The Constitution gives Congress the power to decide how many seats there are on the Supreme Court. In 1789, there were only six.” In fact, where does this Obama get the gall to do *anything* Presidential? Doesn’t he know Congress can impeach him?

Eventually some rightblogger will claim to have returned from a *Nicolas Cage/National Treasure* adventure where they found something scrawled on the back of the Constitution about not letting Democratic presidents make SCOTUS nominations while the GOP is in meltdown. Now *that’s* Originalism!