

LINCOLN TIMES-NEWS

Lincoln County's Home Newspaper

Antonin Scalia, revolutionary

Ilya Shapiro

February 18, 2016

Justice Antonin Scalia, who was marking his 30th year on the Supreme Court, is indisputably the most influential jurist of my lifetime (and probably longer than that). He reoriented the study and practice of constitutional law toward the meaning of the actual Constitution and the interpretation of statutes toward their actual text. Originalism and textualism simply wouldn't exist in a way worthy of their names without him.

But that's not the only way in which he revolutionized the law. His writing style — clear, direct and with obvious personality — blew fresh air through often staid and technocratic jurisprudence. He knew that he was writing not just for legal experts, but for the ages. There's a reason that his opinions get reprinted in law school casebooks even when he's not in the majority.

In coming days, we'll see plenty of analyses of Scalia's "greatest hits," and there were plenty, whether you agree with him or not. I especially appreciate his opinion for the Court in *District of Columbia v. Heller* (2008), which confirmed that the Second Amendment protects an individual right. (And note that the dissenting justices pushed back on originalist grounds.) I especially regret his concurring opinion in *Gonzales v. Raich* (2005), where the Supreme Court authorized the federal government's regulation of (marijuana) plants that people grow in their backyard for their own consumption. But agree with him or not in any particular case, you cannot deny his impact.

Scalia's passing is a huge event not simply because this justice was a giant, or because the Court is increasingly split 5-4 on the biggest cases. Those facts are significant, to be sure — and this term alone so many key cases will now be recast, in areas ranging from affirmative action to abortion, workers' First Amendment rights to immigration, voting rights to Obamacare's contraceptive mandate. But the bigger deal is that, of course, we are now in the midst of a presidential election, one that is going down as one of the most bizarre and bitter ever.

Given how consequential Justice Scalia's replacement will be — deciding all those 5-4 cases and serving on the Court for decades — it would be irresponsible for the Senate to confirm any nominee President Barack Obama may send them. Election 2016 is now about the direction of the Supreme Court. Let the people decide. My condolences to the Scalia family. RIP.

Ilya Shapiro is a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the Cato Supreme Court Review. This column originally appeared on the Cato @ Liberty blog.