

What Antonin Scalia's Death Means for Christians

Friday afternoon at the Palmetto Family presidential forum in Greenville, South Carolina, U.S. Senator Ted Cruz (R-Texas) said he wished the Supreme Court had "seven or eight more Antonin Scalias."

Less than 24 hours, the court had none.

Scalia passed away sometime between Friday evening and Saturday morning while on a hunting trip at a remote West Texas lodge. The 79-year-old jurist's absence from the U.S. Supreme Court, and the battle over how he will be replaced, are causes for concern for Christians.

About Scalia

Scalia was born in Trenton, New Jersey, and later grew up in Queens, New York. His father was an Italian immigrant, and his mother was the daughter of Italian immigrants. He attended a Jesuit military school, and received his college education at Georgetown University.

He attended Harvard Law School, where he met his wife, Maureen. They had nine children, one of whom became a Roman Catholic priest. He was a devout Catholic and made great pains to attend religiously conservative parishes.

Scalia entered the legal profession in Cleveland, Ohio, in 1961 and later served as a general counsel in the Nixon administration, working on telecommunications issues. President Reagan appointed him to the U.S. Court of Appeals for the District of Columbia Circuit in 1982.

Four years later, when William Rehnquist was appointed Chief Justice of the Supreme Court, Scalia was appointed to replace

him as an Associate Justice. His nomination was confirmed on a 98-0 vote.

Scalia vocally rejected the Supreme Court's 5-4 opinion in *Obergefell v. Hodges* that said states' same-sex marriage bans were unconstitutional. He derisively labeled the Affordable Care Act "SCOTUScare" in his dissent of the 6-3 opinion in *King v. Burwell*.

He also voted in favor of states having the right to require identification for voting in *Shelby County v. Holder*, and for states being allowed to enforce their own immigration laws in *Arizona v. United States*. And he joined the majority in the 5-4 *Citizens United v. Federal Election Commission*, which found political spending is protected under the First Amendment.

Reaction

Reaction to Scalia's passing was quick and widespread. Republican presidential candidates quickly released statements of condolences. Among the first to do so were GOP national front-runners Donald Trump and Cruz.

"Justice Scalia was a remarkable person and a brilliant Supreme Court Justice, one of the best of all time," Trump said. "His career was defined by his reverence for the Constitution and his legacy of protecting Americans' most cherished freedoms. He was a Justice who did not believe in legislating from the bench and he is a person whom I held in the highest regard and will always greatly respect his intelligence and conviction to uphold the Constitution of our country."

Cruz called Scalia a "champion of our liberties" and a "stalwart defender" of the Constitution. He also noted the justice would go down as one of the few who "single-handedly changed the course" of U.S. legal history.

“As liberals and conservatives alike would agree, through his powerful and persuasive opinions, Justice Scalia fundamentally changed how courts interpret the Constitution and statutes, returning the focus to the original meaning of the text after decades of judicial activism,” he said. “He was an unrelenting defender of religious liberty, free speech, federalism, the constitutional separation of powers, and private property rights. All liberty-loving Americans should be in mourning.”

Former Florida Gov. Jeb Bush, U.S. Sen. Marco Rubio, Ohio Gov. John Kasich, and Dr. Ben Carson also offered their condolences. At the start of Saturday evening’s presidential debate, they also expressed their thoughts on Scalia’s passing.

President Obama addressed the nation Saturday evening, shortly before the start of the Republican debate, to offer his condolences and to honor Scalia:

“He influenced a generation of judges, lawyers, and students, and profoundly shaped the legal landscape. He will no doubt be remembered as one of the most consequential judges and thinkers to serve on the Supreme Court. Justice Scalia dedicated his life to the cornerstone of our democracy: The rule of law. Tonight, we honor his extraordinary service to our nation and remember one of the towering legal figures of our time.”

Replacement

Obama also said he intended to fulfill his “constitutional responsibilities” by appointing a successor “in due time.”

“There will be plenty of time for me to do so, and for the Senate to fulfill its responsibility to give that person a fair hearing and a timely vote,” he said. “These are responsibilities that I take seriously, as should everyone. They’re bigger than any one party. They are about our democracy. They’re about the institution to which Justice

Scalia dedicated his professional life, and making sure it continues to function as the beacon of justice that our Founders envisioned.”

Until Scalia’s replacement on the court is sworn in, the Supreme Court will continue to function with eight justices. A five-member majority is still required to overturn a lower court decision, and in the event of a 4-4 tie, the lower court opinion will remain in place.

U.S. Sen. Chuck Grassley (R-Iowa), chairman of the Senate Judiciary Committee, after offering his condolences, applauded the justice on his “originalist interpretation” of the Constitution. He then quickly pointed out that it was a long-standing policy to not replace a justice in an election year.

“The fact of the matter is that it’s been standard practice over the last nearly 80 years that Supreme Court nominees are not nominated and confirmed during a presidential election year,” he said. “Given the huge divide in the country, and the fact that this president, above all others, has made no bones about his goal to use the courts to circumvent Congress and push through his own agenda, it only makes sense that we defer to the American people who will elect a new president to select the next Supreme Court Justice.”

Recess Appointment

The Senate, controlled by Republicans with a 54-seat majority, can easily filibuster any Obama nomination, but that is only a temporary stopgap measure. If the president feels the Senate is trying to run out the clock until the end of his term next January, he could make a recess appointment.

Such an appointment would be temporary, but could be used to advance his agenda while bypassing the Republican-controlled Congress. It would be difficult, however, since the Supreme Court previously held that the president’s authority on recess appointments is restricted.

Republicans could prevent a recess appointment by convening every three days to conduct nominal business. Ultimately, however, any long-term successor must be approved by the Republican-led Senate.

What's at Stake

The Supreme Court's docket for 2016 is already set. Among the issues to be considered are the Affordable Care Act's contraceptives mandate, the first major abortion case in nearly a decade, and a challenge to Obama's immigration executive actions.

The court will hear a case next month in which parts of a Texas abortion law that requires doctors who perform abortions have admitting privileges at a nearby hospital, and mandates clinics upgrade their facilities to hospital-like standards, is being challenged. The lower court allowed the Texas law to remain.

All eyes will be on Justice Anthony Kennedy, the court's "swing vote." If he sides with liberals, it is likely there will be a 5-3 decision to overturn the lower court's opinion. If he votes with the court's remaining conservatives—Chief Justice John Roberts and Associate Justices Clarence Thomas and Samuel Alito—a 4-4 tie would mean the Texas law stands.

The Obamacare contraceptives mandate case will easily be the most difficult to figure out because several lower courts have ruled in different ways, meaning a 4-4 tie would not provide a conclusive result. It is a case that could be held over by the court if there isn't a clear majority opinion.