

What's Ahead After Losing Justice Scalia?

On Saturday, shockwaves rippled across the nation when news spread that Justice Antonin Scalia had unexpectedly died during a vacation in Marfa, Texas.

Court observers on both sides of the aisle have expressed how Justice Scalia changed the U.S. Supreme Court and the study of constitutional law itself—by insisting court decisions adhere to the text of the Constitution.

This tragic loss comes only weeks before the Supreme Court is set to hear the case *Whole Woman's Health v. Hellerstedt*, a legal challenge to a Texas pro-life law. How will the loss of this discerning judge affect this case—as well as other vital issues coming before the court?

President of The Justice Foundation based in San Antonio, Texas, Allan Parker has been engaged in pro-life legal advocacy for over 20 years. His public interest legal group recently submitted an amicus brief in the Supreme Court's Texas case on behalf of 3,348 women injured by abortion.

A former Professor of Law, Parker is also a man of great faith. His group has joined with the Texas Loves Life coalition—encouraging believers to stay informed and pray for the Supreme Court during this pivotal season.

In an interview from his San Antonio office, Allan Parker reveals why Justice Scalia meant so much to America, the options the Supreme Court faces in the Texas case, and the process ahead as Washington grapples with how to replace this remarkable justice.

Bound4LIFE: What is the legacy of Justice Scalia on the Supreme Court, particularly regarding the right to life?

Allan Parker: Justice Antonin Scalia was a champion of the original text of the United States Constitution. He was also a champion for the principle that *Roe v. Wade* was wrongly decided and should be overturned; he wrote this clearly in his opinions and stated it publicly.

I was extremely surprised by his death. He was a strong bulwark against a lawless president—of either party—simply doing whatever he wants. Justice Scalia believed in the balance of powers, the court being able to check the power of a president outside proper bounds.

Bound4LIFE: How does the process work from here? Some seem confused, as if the president may have some emergency powers of appointment.

Allan Parker: A vacancy on the Supreme Court is filled by nomination of the president, then the nominee must be confirmed by the Senate. The Senate is in session right now; it is not in recess—the president cannot simply appoint someone.

On a short-term basis, while the Congress is in recess, the president can appoint people with executive-branch authority.

However, President Obama has already been rebuked by the Supreme Court for abusing that appointment power. He tried to appoint members of the National Labor Relations Board when the Senate was not really in recess; they just weren't acting fast enough for the president.

The Supreme Court essentially said in its unanimous ruling, "You cannot do that." No one has absolute power in America; the presidency is only one of three equal branches of government. Justice Scalia often warned against concentrating all power in one branch of government. When the three don't agree, yes, there is sometimes a delay.

The question becomes: "Should the Senate approve the nominee

who will be sent to them?" If the president wants one type of Supreme Court justice and Senate leadership wants a different kind, generally you wait until there's an election.

The American people may throw out one party or the other—but then whatever political philosophy Americans choose can put their type of judge on the bench.

Bound4LIFE: Many in the media suggest it's unreasonable for senators to stand firm and allow the next elected president to appoint a new justice. According to constitutional law, is waiting a viable option?

Allan Parker: Yes because the Senate has the full power to confirm nominees. Appointing a justice is not a sole responsibility of the president; it takes the confirmation of the Senate to put someone on the Supreme Court.

Unfortunately, President Obama has not shown he wants to bring healing to our nation though we desperately need it; his track record has been to bring greater division. (For instance, many criticized his National Prayer Breakfast remarks that maligned Christians while turning a blind eye to religious persecution believers suffer worldwide.)

Core principles of natural law have hung by a 5-4 thread in recent Supreme Court decisions. President Obama will likely bring forward a nominee who believes in a "living Constitution," trying to bring an imbalance of power to the court in this last year of his presidency.

An originalist view of the Constitution holds that it means today what it was written to say; then the people can change it by amending the Constitution. However, a "living Constitution" means whatever a person wants it to mean today. Gradually, ignoring foundational principles undermines the rule of law—liberty itself will be the victim.

Senate leaders need to say, "This is so important to the

future of all Americans.” It is supposed to be a joint responsibility, with the president nominating and the Senate confirming. We have a deep division currently. This should be a major emphasis in the election, and a Supreme Court nomination should wait for the next president.

Then the American people will have their choice as to what kind of future they foresee for these crucial constitutional issues.

Bound4LIFE: On March 2, the court will hear a case challenging Texas pro-life law HB 2. How does Justice Scalia’s passing change the dynamics?

Allan Parker: There is still a quorum on the Supreme Court. However, a 4-4 decision is a tie. In the event of a tie, it is not considered a binding decision of the Supreme Court. Therefore, the decision of the court below still stands.

In the Texas case, the 5th Circuit Court of Appeals upheld the Texas law overall; though they did carve out an exception for an abortion center in the Rio Grande Valley.

If there were a 4-4 split of the Supreme Court, the tie would go to Texas in effect. This law protecting women’s health and common-sense safety requirements would be upheld because the 5th Circuit upheld life in their decision. Now to get a tie here, the most likely scenario would be Justice Kennedy voting on the pro-life side.

There is an option where the Supreme Court can hold on to a case—pushing it into the next term, essentially waiting until the court is full to have a decision. In *Roe v. Wade*, for example, the case was argued one term and re-argued the following term.

So the Supreme Court has some control; they could decide they want to come out with a decision, or if they want to hold the case until the vacancy is filled, they can do so.

Bound4LIFE: As a Christian leader who has defended lives in the womb for decades, are you hopeful for what's ahead?

Allan Parker: I am hopeful because God's side wins in the end. I do believe that hard times are coming for America, that we need to repent as a nation and turn back to God. Those who do so will come to know eternal salvation in Jesus Christ, and many will be protected through the very hard times that are coming.

We are calling on prayer movements around the country to focus in on the Supreme Court. On March 2, the court is going to consider abortion again in this Texas case. It's a very critical time.

God's Word tells us He can use all things together for good. Even the death of Justice Scalia shows us how precious and how tenuous our own lives are. We will all stand before God someday and be judged for our actions in this life—even Supreme Court justices. This is a time of sober evaluation and returning to God.

During the historic Amistad case, one of the Supreme Court justices died. They took a recess for a few days to have his funeral, and then they came back. In that decision, they set the slaves free.

What we see in history is that God can use even the death of individuals to show people how serious, how life-and-death these situations are in which we are involved.

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