



THE SUPREME COURT AND THE ELECTION: A NONPARTISAN GUIDE



"The ideal would be Scalia reincarnated."
— Donald Trump

"I did not hold Justice Scalia's views."
— Hillary Clinton



This guide uses Justice Antonin Scalia's votes to demonstrate the very different kinds of Supreme Court Justices a new president might appoint. Justice Scalia served 29 years after Ronald Reagan nominated him, and in the time since his death, the Court has been split on most contested issues between four justices nominated by Democrats and four nominated by Republicans.

The Republican Senate leadership has refused to consider President Obama's nominee until after Election Day, so the next president could immediately fill Scalia's open position. At that point, Justice Ruth Bader Ginsburg will be 83, Justice Anthony Kennedy 80, and Justice Stephen Breyer 78. **The new president will likely nominate several justices, determining the Court's direction for decades to come.**

SUPREME COURT RULINGS THAT COULD BE CHANGED BY A NEW JUSTICE

Abortion

Whole Women's Health v. Hellerstedt

Open case: Texas passed a law requiring doctors performing abortions to have admitting privileges at a hospital within 30 miles and requiring abortion clinics to comply with surgical center standards. This law has already caused many abortion clinics in the state to close. Opponents charge that the law is unconstitutional because it places an "undue burden" on women's right to have abortions. Scalia long believed that there is no constitutional right to an abortion and said he would overturn the Roe v. Wade decision that legalized it. His successor could determine if women have a right to an abortion and what restrictions can be placed on it.

Affirmative Action

Fisher v. University of Texas

Open case: In an attempt to make the university's racial make-up match that of Texas's population, the University of Texas uses race as one of several factors in deciding which students to admit. Fisher argues that it is unconstitutional for a state to take race into account in college admissions. Scalia supported banning attempts by public universities to use race as an admissions factor. His replacement could be a deciding vote in related cases.

Climate Change

West Virginia v. EPA

Open case: Under the Clean Air Act, the Obama Administration issued a Clean Power Plan that requires states to reduce carbon emissions 32% below their 2005 levels by 2030. Some states have challenged this law as a violation of the Clean Air Act. Scalia long held that the Clean Air Act does not permit the regulation of greenhouse gases. His successor will likely rule on many climate change-related cases.

Immigration Reform

U.S. v. Texas

Open case: The Obama administration created a program that allows the undocumented parents of American citizens to get a work permit and be exempt from deportation. Texas sued, alleging that it was illegal to do this without Congressional approval. The vote for this and related cases will likely be decided by Scalia's replacement.

Campaign Finance

Citizens United v. FEC (2010)

5-4: The Court ruled that limitations on independent political spending by unions and corporations are unconstitutional. Overturning these and other limits, including those set by the McCain-Feingold campaign finance reform law, has led to the creation of "superPACs," which can accept unlimited money from donors to support a candidate. Scalia provided the fifth vote, permitting unlimited campaign spending by unions and corporations.

Class Action Suits

Wal-Mart v. Dukes (2011)

5-4: The Court ruled that the 1.5 million women who sued Wal-Mart over alleged gender discrimination could not sue as a class action group because they could not prove they all faced the exact same type of discrimination. Scalia wrote the majority opinion. Lawsuits against large corporations often can only proceed as combined class-action suits, because it is too expensive to individually sue a large company. The next justice will have a major say on the rights of corporations vs consumers and employees.

Climate Change

Massachusetts v. EPA (2007)

5-4: The Court ruled that the Clean Air Act (1970) permitted and indeed required the Bush-era EPA to regulate greenhouse gases as pollutants if they posed a threat to human health by contributing to climate change. Scalia argued with the minority that for the EPA to regulate greenhouse gases would require Congress passing a specific law to that end.

Contraception

Burwell v. Hobby Lobby (2014)

5-4: The Court ruled that a for-profit company could deny employees healthcare coverage for contraceptives, based on the religious beliefs of the company's owners. Justice Scalia was the fifth vote.

Gun Rights

District of Columbia v. Heller (2008)

5-4: The Court struck down Washington, D.C.'s law banning handgun ownership. The Court ruled that the Second Amendment guarantees an individual the right to own a firearm, making it unconstitutional for DC to enact a blanket ban on individuals owning certain types of guns, including handguns. Scalia provided the fifth vote for ruling the handgun ban unconstitutional. The next justice could decide whether the right of an individual to carry a handgun overrides state or local laws limiting this right.

LGBTQ Rights

Obergefell v. Hodges (2015)

5-4: The Court ruled that marriage is a fundamental right and thus states cannot prohibit same-sex couples from marrying. Scalia dissented, voting to allow states to prohibit same-sex couples from marrying.

Obamacare

NFIB v. Sebelius (2012)

5-4: The Court ruled that Obamacare's tax on individuals who declined to purchase insurance was constitutionally valid. The Court also ruled that states could opt out of expanding federally covered Medicaid to additional low-income citizens, without threat of losing government funding, leading many states to opt out. Scalia joined the majority decision allowing states to opt out of expanding Medicaid, but argued with the minority that it was also unconstitutional to tax those who did not buy insurance. The next justice could rule on further issues raised by this expansive law.

Presidential Vote

Bush v. Gore (2000)

5-4: Decision, which won't be re-litigated, that halted the recount of Florida election ballots, installing George Bush as president by 537 votes. Scalia voted with the majority, arguing that because each county used different standards in their counting, the recount could not proceed.

Unions

Freidrichs v. California Teachers Association (2016)

4-4: The Court split evenly after Scalia's death, leaving intact an Appeals Court ruling that upheld current law, where, unless a state prohibits it, workers represented by a union are required to pay fees for this representation even if they do not support the union, while being able to opt out of union political spending. Scalia's replacement will decide whether to preserve or reverse this ruling.

Voter ID Laws

Crawford v. Marion County (2008)

6-3: The Court ruled that state laws requiring voters to present photo identification at the polls are constitutional. Scalia voted with the majority to permit voter ID laws, which have been found by some lower courts to make it harder for the elderly and minorities to vote. The next justice could be the deciding vote on which restrictions are constitutional.

Voting Redistricting

Arizona v. Arizona Independent Redistricting Commission (2015)

5-4: The Court upheld the constitutionality of a voter-passed initiative creating a bi-partisan commission to draw congressional districts and prevent partisan gerrymandering. Scalia voted with the minority saying the state legislature had the sole right to create election laws. Many other states have passed or proposed similar laws, so the next justice will have a major say on related cases.

Voting Rights Act

Shelby County v. Holder (2013)

5-4: Section 4 of the Voting Rights Act required states with a history of racial discrimination to obtain permission from the federal government to change their voting laws. The Court ruled that this rule was unconstitutional because the formula for deciding which states it applied to had not been updated since the 1960's. Scalia voted with the majority. The VRA will likely face challenges to its other sections, and Scalia's successor could have big impact on the future of voting rights.

Email us at info@campuselect.org
Check us out at campuselect.org



Follow us on Twitter @campuselect
Like us on Facebook.com/CampusElect