

= Antonin Scalia =

Antonin Gregory Scalia (/ sk??li?? / ; March 11 , 1936 ? February 13 , 2016) was an Associate Justice of the Supreme Court of the United States from 1986 until his death in 2016 . Appointed to the Court by President Ronald Reagan in 1986 , Scalia was described as the intellectual anchor for the originalist and textualist position in the Court 's conservative wing .

Scalia was born in Trenton , New Jersey . He attended public grade school , Xavier High School in Manhattan , and then college at Georgetown University in Washington , D.C. He obtained his law degree from Harvard Law School and spent six years in a Cleveland law firm , before he became a law school professor at the University of Virginia . In the early 1970s , he served in the Nixon and Ford administrations , eventually as an Assistant Attorney General . He spent most of the Carter years teaching at the University of Chicago , where he became one of the first faculty advisers of the fledgling Federalist Society . In 1982 , Ronald Reagan appointed him as judge of the United States Court of Appeals for the District of Columbia Circuit . In 1986 , Reagan appointed him to the Supreme Court . Scalia was unanimously confirmed by the Senate , becoming the first Italian @-@ American justice .

Scalia served on the Court for nearly thirty years , during which time he espoused a conservative jurisprudence and ideology , advocating textualism in statutory interpretation and originalism in constitutional interpretation . He was a strong defender of the powers of the executive branch , believing presidential power should be paramount in many areas . He opposed affirmative action and other policies that treated minorities as special groups . He filed separate opinions in many cases and often castigated the Court 's majority in his minority opinions using scathing language .

= = Early life and education = =

Antonin Scalia was born on March 11 , 1936 , in Trenton , New Jersey , and was an only child . His father , Salvatore Eugene Scalia (1903 ? 1986) , an Italian immigrant from Sommatino , Sicily , was a graduate student at Columbia University and clerk at the time of his son 's birth . The elder Scalia would become a professor of Romance languages at Brooklyn College , where he was an adherent to the formalist New Criticism school of literary theory . His mother , Catherine Louise (née Panaro) Scalia (1905 ? 1985) , was born in Trenton to Italian immigrant parents and worked as an elementary school teacher .

In 1939 , Scalia and his family moved to the Elmhurst section of Queens , New York , where he attended P.S. 13 . After completing eighth grade in public school , he obtained an academic scholarship to Xavier High School , a Jesuit military school in Manhattan , where he graduated first in the class of 1953 and served as the valedictorian . He later stated that he spent much of his time on schoolwork , and admitted , " I was never cool . " While a youth , he was also active as a Boy Scout and was part of Scouting 's national honor society the Order of the Arrow .

Classmate and future New York State official William Stern remembered Scalia in his high school days :

This kid was a conservative when he was 17 years old . An archconservative Catholic . He could have been a member of the Curia . He was the top student in the class . He was brilliant , way above everybody else .

In 1953 , Scalia enrolled at Georgetown University , where he graduated valedictorian and summa cum laude in 1957 with a Bachelor of Arts degree in history . While in college , he was a champion collegiate debater in Georgetown 's Philodemic Society and a critically praised thespian . He took his junior year abroad at the University of Fribourg , Switzerland . Scalia studied law at Harvard Law School , where he was a Notes Editor for the Harvard Law Review . He graduated magna cum laude from Harvard in 1960 , becoming a Sheldon Fellow of Harvard University . The fellowship allowed him to travel throughout Europe during 1960 ? 1961 .

= = Early legal career (1961 ? 1982) = =

Scalia began his legal career at the international law firm Jones , Day , Cockley and Reavis in Cleveland , Ohio , where he worked from 1961 to 1967 . He was highly regarded at the law firm and would most likely have been made a partner , but later stated he had long intended to teach . He became a Professor of Law at the University of Virginia in 1967 , moving his family to Charlottesville .

After four years in Charlottesville , Scalia entered public service in 1971 . President Richard Nixon appointed him as the General Counsel for the Office of Telecommunications Policy , where one of his principal assignments was to formulate federal policy for the growth of cable television . From 1972 to 1974 , he was the chairman of the Administrative Conference of the United States , a small independent agency that sought to improve the functioning of the federal bureaucracy . In mid @-@ 1974 , Nixon nominated him as Assistant Attorney General for the Office of Legal Counsel . After Nixon 's resignation , the nomination was continued by President Gerald Ford , and Scalia was confirmed by the Senate on August 22 , 1974 .

In the aftermath of Watergate , the Ford administration was engaged in a number of conflicts with Congress . Scalia repeatedly testified before congressional committees , defending Ford administration assertions of executive privilege regarding its refusal to turn over documents . Within the administration , Scalia advocated a presidential veto for a bill to amend the Freedom of Information Act , greatly increasing its scope . Scalia 's view prevailed and Ford vetoed the bill , but Congress overrode it . In early 1976 , Scalia argued his only case before the Supreme Court , *Alfred Dunhill of London , Inc. v. Republic of Cuba* . Scalia , on behalf of the U.S. government , argued in support of Dunhill , and that position was successful . Following Ford 's defeat by President Jimmy Carter , Scalia worked for several months at the American Enterprise Institute . He then returned to academia , taking up residence at the University of Chicago Law School from 1977 to 1982 , though he spent one year as a visiting professor at Stanford Law School . In 1981 , he became the first faculty adviser for the University of Chicago 's chapter of the newly founded Federalist Society .

= = D.C. Circuit Court Judge and nomination to the Supreme Court (1982 ? 1986) = =

When Ronald Reagan was elected President in November 1980 , Scalia hoped for a major position in the new administration . He was interviewed for the position of Solicitor General of the United States , but the position went to Rex E. Lee , to Scalia 's great disappointment . Scalia was offered a seat on the Chicago @-@ based United States Court of Appeals for the Seventh Circuit in early 1982 , but declined it , hoping to be appointed to the highly influential United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) . Later that year , Reagan offered Scalia a seat on the D.C. Circuit , which Scalia accepted . He was confirmed by the US Senate on August 5 , 1982 , and was sworn in on August 17 , 1982 .

On the D.C. Circuit , Scalia built a conservative record , while winning applause in legal circles for powerful , witty legal writing , which was often critical of the Supreme Court precedents he felt bound as a lower @-@ court judge to follow . Scalia 's opinions drew the attention of Reagan administration officials , who , according to *The New York Times* , " liked virtually everything they saw and ... listed him as a leading Supreme Court prospect . " In 1985 , though there was then no vacancy on the Court , Reagan administration officials put Scalia on a short list with fellow D.C. Circuit Judge Robert Bork , to be considered if a justice left the Court . In 1986 , Chief Justice Warren Burger informed the White House of his intent to retire . Reagan first decided to nominate Associate Justice William Rehnquist to become Chief Justice . This choice meant that Reagan would also have to choose a nominee to fill Rehnquist 's seat as associate justice . Attorney General Edwin Meese , who advised Reagan on the choice , seriously considered only Bork and Scalia . Feeling that this might well be Reagan 's last opportunity to pick a Supreme Court justice , the President and his advisers chose Scalia over Bork . Many factors influenced this decision . Reagan wanted to appoint the first Italian @-@ American justice . In addition , Scalia was ten years younger , and would likely serve longer on the Court . Scalia also had the advantage of not having Bork 's " paper trail " ; the elder judge had written controversial articles about individual rights . Scalia was called to the White House , and accepted Reagan 's nomination .

When Senate Judiciary Committee hearings on Scalia 's nomination opened in August 1986 , he faced a committee that had just argued divisively over the Rehnquist nomination . Witnesses and Democratic senators contended that , before becoming a judge , Rehnquist had engaged in activities designed to discourage minorities from voting . Committee members had little taste for a second battle over Scalia and were in any event reluctant to oppose the first Italian @-@ American Supreme Court nominee . The judge was not pressed heavily on controversial issues such as abortion or civil rights . Scalia , who attended the hearing with his wife and nine children seated behind him , found time for a humorous exchange with Democratic Ohio Senator Howard Metzenbaum , whom he had defeated in a tennis match in , as the nominee put it , " a case of my integrity overcoming my judgment " .

Scalia met no opposition from the committee . The full Senate debated Scalia 's nomination only briefly , and confirmed him 98 ? 0 on September 17 , 1986 , creating the first Italian @-@ American Justice . This vote followed Rehnquist 's confirmation as Chief Justice by a vote of 65 ? 33 on the same day . He took his seat on September 26 , 1986 . One committee member , Democratic Delaware Senator Joe Biden , later stated that he regretted not having opposed Scalia " because he was so effective " .

= = Jurisprudence (1986 ? 2016) = =

= = = Governmental structure and powers = = =

= = = = Separation of powers = = = =

It was Scalia 's view that clear lines of separation among the legislative , executive , and judicial branches follow directly from the Constitution , with no branch allowed to exercise powers granted to another branch . In his early days on the Court , he authored a powerful ? and solitary ? dissent in 1988 's Morrison v. Olson , in which the Court 's majority upheld the Independent Counsel law . Scalia 's thirty @-@ page draft dissent surprised Justice Harry Blackmun for its emotional content ; Blackmun felt " it could be cut down to ten pages if Scalia omitted the screaming " . Scalia indicated that the law was an unwarranted encroachment on the Executive Branch by the Legislative . He warned , " Frequently an issue of this sort will come before the Court clad , so to speak , in sheep 's clothing ... But this wolf comes as a wolf . "

The 1989 case of Mistretta v. United States challenged the United States Sentencing Commission , an independent body within the judicial branch whose members (some of whom were federal judges) were removable only for good cause . The petitioner argued that the arrangement violated separation of powers , and that the United States Sentencing Guidelines promulgated by the Commission were invalid . Eight justices joined in the majority opinion written by Blackmun , upholding the Guidelines as constitutional . Scalia dissented , stating that the issuance of the Guidelines was a lawmaking function that Congress could not delegate , and dubbed the Commission " a sort of junior @-@ varsity Congress " .

In 1996 , Congress passed the Line Item Veto Act which allowed the President to cancel items from an appropriations bill (a bill authorizing spending) once passed into law . The statute was challenged the following year . The matter rapidly reached the Supreme Court , which struck down the law as violating the Presentment Clause of the Constitution , which governs what the President may do with a bill once it has passed both Houses of Congress . Scalia dissented , seeing no Presentment Clause difficulties and feeling that the act did not violate separation of powers . Scalia indicated that he felt that authorizing the President to cancel an appropriation was no different from allowing him to spend an appropriation at his discretion , which had long been accepted as constitutional .

= = = = Detainee cases = = = =

In 2004 , in *Rasul v. Bush* , the Court held that federal courts had jurisdiction to hear habeas corpus petitions brought by detainees at the Guantanamo Bay detainment camp . Scalia accused the majority of " spring [ing] a trap on the Executive " by ruling that it could hear cases involving persons at Guantanamo when no federal court had ever ruled that it had the authority to hear cases involving people there .

Scalia (joined by Justice John Paul Stevens) also dissented in the 2004 case of *Hamdi v. Rumsfeld* , involving Yaser Hamdi , an American citizen detained in the United States on the allegation he was an enemy combatant . The Court held that although Congress authorized Hamdi 's detention , Fifth Amendment due process guarantees give a citizen held in the United States as an enemy combatant [Hamdi] the right to contest that detention before a neutral decision maker . Scalia wrote that the AUMF could not be read to suspend habeas corpus and that the Court , faced with legislation by Congress which did not grant the President power to detain Hamdi , was trying to " Make Everything Come Out Right " .

In March 2006 , Scalia gave a talk at the University of Fribourg , in Switzerland , where he was asked about detainee rights . He responded , " Give me a break ... I had a son on that battlefield and they were shooting at my son , and I 'm not about to give this man who was captured in a war a full jury trial . I mean it 's crazy . " Though Scalia was not referring to any particular individual , the Supreme Court was about to consider the case of Salim Ahmed Hamdan , supposed driver to Osama bin Laden , who was challenging the military commissions at Guantanamo Bay . A group of retired military officers that supported Hamdan 's position asked Scalia to recuse himself , or step aside from hearing the case , which he declined to do . The Court held , 5 ? 3 , in *Hamdan v. Rumsfeld* , that the federal courts had jurisdiction to consider Hamdan 's claims ; Scalia , in dissent , contended that any ability by the Court to consider Hamdan 's petition had been eliminated by the jurisdiction stripping Detainee Treatment Act of 2005 .

= = = = Federalism = = = =

In federalism cases , pitting the powers of the federal government against those of the states , Scalia often took the states ' positions . In 1997 , the Supreme Court considered the case of *Printz v. United States* , a challenge to certain provisions of the Brady Handgun Violence Prevention Act which required chief law enforcement officers of localities in states to perform certain duties . In *Printz* , Scalia wrote the Court 's majority decision . The Supreme Court ruled the provision which imposed those duties unconstitutional as violating the Tenth Amendment , which reserves to the states and to the people those powers not granted to the federal government . In 2005 , Scalia concurred in *Gonzales v. Raich* , which read the Commerce Clause to hold that Congress could ban the use of marijuana even where states approve its use for medicinal purposes . Scalia opined that the Commerce Clause , together with the Necessary and Proper Clause , permitted the regulation . In addition , Scalia felt that Congress may regulate intrastate activities if doing so is a necessary part of a more general regulation of interstate commerce . He based this decision on *Wickard v. Filburn* , which he now writes " expanded the Commerce Clause beyond all reason . "

Scalia rejected the existence of the negative Commerce Clause doctrine , calling it " a judicial fraud " .

Scalia took a broad view of the Eleventh Amendment , which bars certain lawsuits against states in the federal courts . In his 1989 dissent in *Pennsylvania v. Union Gas Co .* , Scalia stated that there was no intent on the part of the Framers to have the states surrender any sovereign immunity , and that the case that provoked the Eleventh Amendment , *Chisholm v. Georgia* , came as a surprise to them . Professor Ralph Rossum , who wrote a survey of Scalia 's constitutional views , suggests that the justice 's view of the Eleventh Amendment is actually contradictory to the language of the Amendment .

= = = Individual rights = = =

===== Abortion =====

Scalia argued that there is no constitutional right to abortion, and that if the people desire legalized abortion, a law should be passed to accomplish it. Scalia wrote in his dissenting opinion in the 1992 case of *Planned Parenthood v. Casey*,

The States may, if they wish, permit abortion on demand, but the Constitution does not require them to do so. The permissibility of abortion, and the limitations upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting.

Scalia repeatedly called upon his colleagues to strike down *Roe v. Wade*. Scalia hoped to find five votes to strike down *Roe* in the 1989 case of *Webster v. Reproductive Health Services*, but was not successful in doing so. Justice Sandra Day O'Connor authored the decision of the Court, allowing the abortion regulations at issue in the case to stand, but not overriding *Roe*. Scalia concurred only in part. Scalia wrote that, "Justice O'Connor's assertion, that a 'fundamental rule of judicial restraint' requires us to avoid reconsidering *Roe*, cannot be taken seriously." He noted, "We can now look forward to at least another Term of carts full of mail from the public, and the streets full of demonstrators."

The Court returned to the issue of abortion in the 2000 case of *Stenberg v. Carhart*, in which it invalidated a Nebraska statute outlawing partial @-@ birth abortion. Justice Stephen Breyer wrote for the Court that the law was unconstitutional as it did not allow an exception for the health of the mother. Scalia dissented, comparing the *Stenberg* case with two of the most reviled cases in Supreme Court history: "I am optimistic enough to believe that, one day, *Stenberg v. Carhart* will be assigned its rightful place in the history of this Court's jurisprudence beside *Korematsu* and *Dred Scott*. The method of killing a human child ... proscribed by this statute is so horrible that the most clinical description of it evokes a shudder of revulsion."

In 2007, the Court upheld a federal statute banning partial @-@ birth abortion in *Gonzales v. Carhart*. University of Chicago law professor Geoffrey R. Stone, a former colleague of Scalia's, criticized *Gonzales*, stating that religion had influenced the outcome as all five justices in the majority were Catholic, whereas the dissenters were Protestant or Jewish. This angered Scalia to such an extent that he stated he would not speak at the University of Chicago as long as Stone is there.

===== Race, gender, and sexual orientation =====

Scalia generally voted to strike down laws that make distinctions by race, gender, or sexual orientation. In 1989, he concurred with the Court's judgment in *City of Richmond v. J.A. Croson Co.*, in which the Court applied strict scrutiny to a city program requiring a certain percentage of contracts to go to minorities, and struck down the program. Scalia did not join the majority opinion, however. He disagreed with O'Connor's opinion, for the Court, that states and localities could institute race @-@ based programs, if they identified past discrimination, and if the program was designed to remedy the past racism. Five years later, in *Adarand Constructors, Inc. v. Peña* he concurred in the Court's judgment and in part with the opinion which extended strict scrutiny to federal programs. Scalia noted in that matter his view that government can never have a compelling interest in making up for past discrimination by racial preferences,

To pursue the concept of racial entitlement? even for the most admirable and benign of purposes? is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American.

In the 2003 case of *Grutter v. Bollinger*, involving racial preferences in the University of Michigan's law school, Scalia mocked the Court majority's finding that the school was entitled to continue using race as a factor in admissions to promote diversity, and to increase "cross @-@ racial understanding". Scalia noted,

This is not, of course, an "educational benefit" on which students will be graded on their Law

School transcript (Works and Plays Well with Others : B +) or tested by the bar examiners (Q : Describe in 500 words or less your cross @-@ racial understanding) . For it is a lesson of life rather than law ? essentially the same lesson taught to (or rather learned by , for it cannot be " taught " in the usual sense) people three feet shorter and twenty years younger than the full @-@ grown adults at the University of Michigan Law School , in institutions ranging from Boy Scout troops to public @-@ school kindergartens .

Scalia argued that laws that make distinctions between genders should be subjected to intermediate scrutiny , requiring that the gender classification be substantially related to important government objectives . When , in 1996 , the Court upheld a suit brought by a woman who wished to enter the Virginia Military Institute in the case of United States v. Virginia , Scalia filed a lone , lengthy dissent . Scalia felt that the Court , in requiring Virginia to show an " extremely persuasive justification " for the single @-@ sex admissions policy , had redefined intermediate scrutiny in such a way " that makes it indistinguishable from strict scrutiny " .

In one of the final decisions of the Burger Court , the Court ruled in 1986 in Bowers v. Hardwick that homosexual sodomy was not protected by the right of privacy and could be criminally prosecuted by the states . In 1995 , however , that ruling was effectively gutted by Romer v. Evans , which struck down a Colorado state constitutional amendment , passed by popular vote , which forbade anti @-@ discrimination laws being extended to sexual orientation . Scalia dissented from the opinion by Justice Kennedy , believing that Bowers had protected the right of the states to pass such measures , and that the Colorado amendment was not discriminatory , but merely prevented homosexuals from gaining favored status under Colorado law . Scalia later said of Romer , " And the Supreme Court said , ' Yes , it is unconstitutional . ' On the basis of ? I don 't know , the Sexual Preference Clause of the Bill of Rights , presumably . And the liberals loved it , and the conservatives gnashed their teeth . "

In 2003 , Bowers was formally overruled by Lawrence v. Texas , from which Scalia dissented . According to Mark V. Tushnet in his survey of the Rehnquist Court , during the oral argument in the case , Scalia seemed so intent on making the state 's argument for it that the Chief Justice intervened . According to his biographer , Joan Biskupic , Scalia " ridiculed " the majority in his dissent for being so ready to cast aside Bowers when many of the same justices had refused to overturn Roe in Planned Parenthood v. Casey . In March 2009 , openly gay Congressman Barney Frank described him as a " homophobe " . Maureen Dowd described Scalia in a 2003 column as " Archie Bunker in a high @-@ backed chair " . In an op @-@ ed for The New York Times , federal appeals judge Richard Posner and Georgia State University law professor Eric Segall described as radical Scalia 's positions on homosexuality , reflecting an apparent belief that the religious stances supposedly held by the majority of US citizens should take precedence over the Constitution and characterizing Scalia 's " political ideal as verg [ing] on majoritarian theocracy . "

= = = = Criminal law = = = =

Scalia believed that the death penalty is constitutional . He dissented in decisions that hold the death penalty unconstitutional as applied to certain groups , such as those who were under the age of 18 at the time of offense . In Thompson v. Oklahoma (1988) , he dissented from the Court 's ruling that the death penalty could not be applied to those aged 15 at the time of the offense , and the following year authored the Court 's opinion in Stanford v. Kentucky sustaining the death penalty for those who killed at age 16 . However , in 2005 , the Court overturned Stanford in Roper v. Simmons and Scalia again dissented , mocking the majority 's claims that a national consensus had emerged against the execution of those who killed while underage , and noted that less than half of the states that permitted the death penalty prohibited it for underage killers . He castigated the majority for including in their count states that had abolished the death penalty entirely , stating that doing so was " rather like including old @-@ order Amishmen in a consumer @-@ preference poll on the electric car . Of course they don 't like it , but that sheds no light whatever on the point at issue . " In 2002 , in Atkins v. Virginia , the Court ruled the death penalty unconstitutional as applied to the mentally retarded . Scalia dissented , stating that it would not have been considered cruel or

unusual to execute the mildly mentally retarded at the time of the 1791 adoption of the Bill of Rights , and that the Court had failed to show that a national consensus had formed against the practice .

Scalia strongly disfavored the Court 's ruling in *Miranda v. Arizona* , which held that a confession by an arrested suspect who had not been advised of his rights was inadmissible in court , and voted to overrule *Miranda* in the 2000 case of *Dickerson v. United States* , but was in a minority of two with Justice Clarence Thomas . Calling the *Miranda* decision a " milestone of judicial overreaching " , Scalia stated that the Court should not fear to correct its mistakes .

Although , in many areas , Scalia 's approach was unfavorable to criminal defendants , he took the side of defendants in matters involving the Confrontation Clause of the Sixth Amendment , which guarantees defendants the right to confront their accusers . In multiple cases , Scalia wrote against laws that allowed alleged victims of child abuse to testify behind screens or by closed @-@ circuit television . In a 2009 case , Scalia wrote the majority opinion in *Melendez @-@ Diaz v. Massachusetts* , holding that defendants must have the opportunity to confront lab technicians in drug cases ; a certificate of analysis is not enough to prove a substance was drugs .

Scalia maintained that every element of an offense that helps determine the sentence must be either admitted by the defendant or found by a jury under the Sixth Amendment 's jury guarantee . In the 2000 case of *Apprendi v. New Jersey* , Scalia wrote the Court 's majority opinion that struck down a state statute that allowed the trial judge to increase the sentence if he found the offense was a hate crime . Scalia found the procedure impermissible because whether it was a hate crime had not been decided by the jury . In 2004 , he wrote for the Court in *Blakely v. Washington* , striking down Washington state 's sentencing guidelines on similar grounds . The dissenters in *Blakely* foresaw that Scalia would use the case to attack the federal sentencing guidelines (which he had failed to strike down in *Mistretta*) , and they proved correct , as Scalia led a five @-@ member majority in *United States v. Booker* , which made those guidelines no longer mandatory for federal judges to follow (they remained advisory) .

In the 2001 case of *Kyllo v. United States* , Scalia wrote the Court 's opinion in a 5 ? 4 decision that cut across ideological lines . That decision found thermal imaging of a home to be an unreasonable search under the Fourth Amendment . The Court struck down a conviction for marijuana manufacture based on a search warrant issued after such scans were conducted , which showed that the garage was considerably hotter than the rest of the house because of indoor growing lights . Applying that Fourth Amendment prohibition on unreasonable search and seizure to arrest , Scalia dissented from the Court 's 1991 decision in *County of Riverside v. McLaughlin* , allowing a 48 @-@ hour delay before a person arrested without a warrant is taken before a magistrate , on the ground that at the time of the adoption of the Fourth Amendment , an arrested person was to be taken before a magistrate as quickly as practicable . In a 1990 First Amendment case , *R.A.V. v. St. Paul* , Scalia wrote the Court 's opinion striking down a St. Paul , Minnesota , hate speech ordinance in a prosecution for burning a cross . Scalia noted , " Let there be no mistake about our belief that burning a cross in someone 's front yard is reprehensible . But St. Paul has sufficient means at its disposal to prevent such behavior without adding the First Amendment to the fire . "

= = = = Litigation and " Standing " = = = =

Following the death of Scalia , Paul Barrett writing for *Bloomberg News Weekly* , reported that : " Translating into liberal argot : Scalia changed the rules for who could sue . " The issue elevated the recognition of Scalia as a notable influence on establishing and determining the conditions under which cases could be brought to trial and for litigation , and by whom such litigation could take place . David Rivkin , from the conservative standpoint , stated that : " He (Scalia) did more to clarify and limit the bounds and scope of judicial power than any Supreme Court Justice in history , particularly in the area of standing and class actions . " Scalia indicated his long held position from the time his 1983 law review article titled " The Doctrine of Standing as an Essential Element of the Separation of Powers " . As summarized by Barrett , " He (Scalia) wrote that courts had misappropriated authority from other branches of government by allowing too many people to sue corporations and government agencies , especially in environmental cases . " In a practical sense , Scalia brought to

the attention of the Court the ability to restrict " standing " in class action suits in which the litigants may be defined in descriptive terms rather than as well @-@ defined and unambiguous litigants .

= = = Other cases = = =

Scalia concurred in the 1990 case of *Cruzan v. Director , Missouri Department of Health* in which the family of a woman in a vegetative state sought to have her feeding tube removed so she would die , believing that to have been her wish . The Court found for the State of Missouri , requiring clear and convincing evidence of such a desire . Scalia stated that the Court should have remained away from the dispute , and that the issues " are [not] better known to the nine Justices of this Court any better than they are known to nine people picked at random from the Kansas City telephone directory " .

Scalia joined the majority per curiam opinion in the 2000 case of *Bush v. Gore* , which effectively ended recounts of ballots in Florida following the 2000 US Presidential election , and also both concurred separately and joined Rehnquist 's concurrence . In 2007 , he said of the case , " I and my court owe no apology whatever for *Bush v. Gore* . We did the right thing . So there ! ... get over it . It 's so old by now . " During an interview on the Charlie Rose show , he defended the Court 's action :

The decision was not close , it was 7 ? 2 on the principal issue of whether there had been a constitutional violation ... But what if it was unconstitutional to have that recount ? You 're going to let it continue and come to a conclusion ? And then overturn it ? The reason to stop it sooner was not , " Ooh , we 're worried that it 's going to come out the wrong way . " ... you forget what was going on at the time . We were the laughingstock of the world . The world 's greatest democracy that couldn 't conduct an election . We didn 't know who our next president was going to be . The lengthy transition that has become standard when you change from one president to another could not begin because you didn 't know who the new president was going to be . It was becoming a very serious problem . The issue before the United States Supreme Court is : having decided the case , having decided this is unconstitutional , should we nonetheless let the election go on ? Or is it time cut it off and let 's move on ?

In 2008 , the Court considered a challenge to the gun laws in the District of Columbia . Scalia wrote the majority opinion in *District of Columbia v. Heller* , which found an individual right to own a firearm under the Second Amendment . Scalia traced the word " militia " , found in the Second Amendment , as it would have been understood at the time of its ratification , and stated that it then meant " the body of all citizens " . The Court upheld Heller 's claim to own a firearm in the District .

Scalia 's opinion for the Heller Court was widely criticized by liberals , and applauded by conservatives . However , Seventh Circuit judge Richard Posner disagreed with Scalia 's opinion , stating that the Second Amendment " creates no right to the private possession of guns " . Posner called Scalia 's opinion " faux originalism " and a " historicizing glaze on personal values and policy preferences " . In October 2008 Scalia stated that the court 's originalists only needed to show that at the time the Second Amendment was ratified , the right to bear arms did not have an exclusively military context , and that they were successful in so showing .

= = Legal philosophy and approach = =

= = = Judicial performance = = =

During oral argument before the Court , Scalia asked more questions and made more comments than any other justice ? and a 2005 study found that he provoked laughter more often than any of his colleagues . His goal during oral arguments was to get across his position to the other justices . University of Kansas social psychologist Lawrence Wrightsman wrote of Scalia 's style , " he communicates a sense of urgency on the bench , and his style is forever forceful " . Since Chief Justice John Roberts joined the Court in 2005 , he has taken to questioning counsel in a manner

similar to Scalia 's and sometimes the two questioned counsel in seeming coordination . Dahlia Lithwick of Slate described Scalia 's technique :

Scalia doesn 't come into oral argument all secretive and sphinxlike , feigning indecision on the nuances of the case before him . He comes in like a medieval knight , girded for battle . He knows what the law is . He knows what the opinion should say . And he uses the hour allocated for argument to bludgeon his brethren into agreement .

Scalia wrote numerous opinions from the start of his career on the Supreme Court . During his tenure , he wrote more concurring opinions than any other justice , and only two justices have written more dissents . According to Kevin Ring , who compiled a book of Scalia 's dissenting and concurring opinions , " His opinions are ... highly readable . His entertaining writing style can make even the most mundane areas of the law interesting . " Conor Clarke of Slate comments on Scalia 's written opinions , especially his dissents :

His writing style is best described as equal parts anger , confidence , and pageantry . Scalia has a taste for garish analogies and offbeat allusions ? often very funny ones ? and he speaks in no uncertain terms . He is highly accessible and tries not to get bogged down in abstruse legal jargon . But most of all , Scalia 's opinions read like they 're about to catch fire for pure outrage . He does not , in short , write like a happy man .

At the Supreme Court , justices meet after the case is briefed and argued , and vote on the result . The task of writing the opinion is assigned by the Chief Justice , or if they are in the minority or not participating , by the senior justice in the majority . After the assignment , the justices generally communicate about a case by sending notes and draft opinions to each other 's chambers . In the give and take of opinion writing , Scalia did not compromise his views in order to attract five votes for a majority (unlike the late Justice William J. Brennan , Jr. who would accept less than he wanted in order to gain a partial victory) . Scalia , known to his friends and colleagues as " Nino " , attempted to influence his colleagues by sending them " Ninograms " ? short memoranda aimed at trying to get them to include his views in their opinions .

In an October 2013 issue of New York magazine , Scalia revealed that he scanned the Wall Street Journal and the Washington Times , got most of his news from talk radio and did not read The New York Times or The Washington Post . The latter he described as " shrilly liberal . "

= = = Statutory and constitutional interpretation = = =

Scalia was a textualist in statutory interpretation , believing that the ordinary meaning of the statute should govern . In 1998 , Scalia vociferously had opposed the idea of a living constitution , or the power of the judiciary to modify the meaning of constitutional provisions to adapt them to changing times . Scalia warned that if one accepted that constitutional standards should evolve with a maturing society , " the risk of assessing evolving standards is that it is all too easy to believe that evolution has culminated in one 's own views . " He compared the Constitution with statutes , which he contended were not understood to change their meaning through time . Constitutional amendments , such as the 1868 Fourteenth Amendment , according to Scalia , were to be interpreted based on their meaning at the time of ratification . Scalia was often asked how this approach justified the result in the 1954 case of Brown v. Board of Education , which held that segregated schools were unconstitutional , and which relied on the Fourteenth Amendment for the result .

In interpreting statutes , Scalia did not look to legislative history . In the 2006 case of Zedner v. United States , he joined the majority opinion written by Justice Samuel Alito ? all except one paragraph of the opinion , in which Alito cited legislative history . In a concurring opinion in that case , Scalia noted , " The use of legislative history is illegitimate and ill advised in the interpretation of any statute . " His dislike of legislative history may have been a reason why other justices have become more cautious in its use . Gregory Maggs wrote in the Public Interest Law Review in 1995 that by the early 1990s , legislative history was being cited in only about forty percent of Supreme Court cases involving the interpretation of statutes , and no case of that era used legislative history as an essential reason for the outcome . Maggs suggested ,

With Justice Scalia breathing down the necks of anyone who peeks into the Congressional Record or Senate reports , the other members of the Court may have concluded that the benefit of citing legislative history does not outweigh its costs . It is likely for this reason that the percentage of cases citing it has decreased dramatically . No one likes an unnecessary fight , especially not one with as formidable an opponent as Justice Scalia .

Scalia described himself as an originalist , meaning that he interpreted the United States Constitution as it would have been understood when it was adopted . According to Scalia in 2008 , " It 's what did the words mean to the people who ratified the Bill of Rights or who ratified the Constitution . " In 2006 , before George W. Bush appointees Roberts and Alito had time to make an impact , Rossum , wrote that Scalia had failed to win converts among his conservative colleagues for his use of originalism , whereas Roberts and Alito , as younger men with an originalist approach greatly admired Scalia battling for what he believed in .

In a 2009 public conversation , Justice Stephen Breyer questioned Scalia , indicating that those who ratified the Fourteenth Amendment did not intend to end school segregation . Scalia called this argument " waving the bloody shirt of Brown " , and indicated that he would have joined the first Justice Harlan 's solitary dissent in Plessy v. Ferguson , the 1896 case that Brown overruled .

Scalia 's originalist approach came under attack from critics , who viewed it as " a cover for what they see as Scalia 's real intention : to turn back some pivotal court decisions of the 1960s and 70s " , reached by the Warren and Burger Courts . Ralph Nader argued in 2008 that Scalia 's originalist philosophy was inconsistent with the justice 's acceptance of the extension of certain constitutional rights to corporations when at the time of the Fourteenth Amendment 's ratification , corporations were not commonly understood to possess constitutional rights . Nader 's view preceded the Court 's 2010 decision in Citizens United v. Federal Election Commission . Scalia , in his concurrence in that case , traced his understanding of the rights of groups of individuals at the time of the adoption of the Bill of Rights . His argument was based on the lack of an exception for groups such as corporations in the free speech guarantee in the Bill of Rights , and on several examples of corporate political speech from the time of the adoption of the Bill of Rights . Professor Thomas Colby of The George Washington University National Law Center argued that Scalia 's votes in Establishment Clause cases do not stem from originalist views , but simply from conservative political convictions . Scalia responded to his critics that his originalism " has occasionally led him to decisions he deplores , like his upholding the constitutionality of flag burning " , which according to Scalia was protected by the First Amendment .

In 2009 , after nearly a quarter century on the Court , Scalia characterized his victories as " damn few " .

Writing in The Jewish Daily Forward in 2009 , J.J. Goldberg described Scalia as " the intellectual anchor of the court 's conservative majority " . He traveled to the nation 's law schools , giving talks on law and democracy . His appearances on college campuses were often standing room only . Ginsburg indicated that Scalia was " very much in tune with the current generation of law students ... Students now put ' Federalist Society ' on their resumes . " John Paul Stevens , who served throughout Scalia 's tenure until his 2010 retirement , said of Scalia 's influence , " He 's made a huge difference . Some of it constructive , some of it unfortunate . " Of the nine sitting justices , Scalia was most often the subject of law review articles .

= = Public attention = =

= = = Requests for recusals = = =

Scalia recused himself from Elk Grove Unified School District v. Newdow (2004) , a claim brought by atheist Michael Newdow alleging that the recitation of the Pledge of Allegiance (including the words " under God ") in school classrooms violated the rights of his daughter , who he said was also an atheist . Shortly after the United States Court of Appeals for the Ninth Circuit ruled in Newdow 's favor , but before the case came before the Supreme Court , Scalia spoke at a Knights

of Columbus event in Fredericksburg , Virginia , stating that the Ninth Circuit decision was an example of how the courts were trying to excise God from public life . The school district requested that the Supreme Court review the case , and Newdow asked that Scalia recuse himself because of this prior statement , which he did without comment .

Scalia declined to recuse himself from *Cheney v. United States District Court for the District of Columbia* (2005) , a case concerning whether Vice President Dick Cheney could keep secret the membership of an advisory task force on energy policy . Scalia was asked to recuse himself because he had gone on a hunting trip with various persons including Cheney , during which he traveled one way on Air Force Two . Scalia issued a lengthy in @-@ chambers opinion refusing to recuse himself , stating that though Cheney was a longtime friend , he was merely being sued in his official capacity , and that were justices to step aside in the cases of officials who are parties because of official capacity , the Supreme Court would cease to function . Scalia indicated that it was far from unusual for justices to socialize with other government officials , recalling that the late Chief Justice Fred M. Vinson played poker with President Harry Truman , and that Justice Byron White went skiing with Attorney General Robert F. Kennedy . Scalia stated that he was never alone with Cheney during the trip , the two had not discussed the case , and the justice had saved no money since he had bought round @-@ trip tickets , the cheapest available . Scalia was part of the 7 ? 2 majority once the case was heard which generally upheld Cheney 's position .

= = = Religious views = = =

Scalia was a devout Roman Catholic , and his son Paul entered the priesthood . Uncomfortable with the changes brought about following Vatican II , Scalia drove long distances to parishes that he felt were more in accord with his beliefs , such as the Tridentine Latin Mass in both Chicago and Washington and also the Latin version of the Mass of Paul VI at St. Catherine of Siena in Great Falls , Virginia . In a 2013 interview with Jennifer Senior for *New York* magazine , Scalia was asked if his beliefs extended to the Devil , and he stated , " Of course ! Yeah , he 's a real person . Hey , c 'mon , that 's standard Catholic doctrine ! Every Catholic believes that " . When asked if he had seen recent evidence of the Devil , Scalia replied , " You know , it is curious . In the Gospels , the Devil is doing all sorts of things . He 's making pigs run off cliffs , he 's possessing people and whatnot ... What he 's doing now is getting people not to believe in him or in God . He 's much more successful that way " . In another 2013 interview , Scalia stated that " In order for capitalism to work , in order for it to produce a good and stable society , traditional Christian virtues are essential " .

In 2006 , Scalia was asked by a reporter upon leaving church , if being a traditionalist Catholic had caused problems for him and responded by asking , " You know what I say to those people ? " , and with a gesture , cupping his hand under his chin and flicking his fingers out . The gesture , which was captured by a photographer , was initially reported by the *Boston Herald* as obscene . Scalia responded to the reports with a letter to the editor accusing the news staff of watching too many episodes of *The Sopranos* and stating that the gesture was a strong brush @-@ off . Roger Axtell , an expert on body language , described the gesture as possibly meaning " I 've had enough , go away " and noted , " It 's a fairly strong gesture " . The gesture would later be parodied by comedian Stephen Colbert during his performance at the White House Correspondents ' Association Dinner later that year , with the justice in attendance : cameras showed that unlike most of the butts of Colbert 's jokes that evening , Scalia was laughing .

= = = 1996 presidential election = = =

According to John Boehner , as chairman of the House Republican Conference , he sought to persuade Scalia to run for election as vice president with Bob Dole in 1996 . As related by Boehner , Scalia listened to the proposal and dictated the same reply Justice Charles Evans Hughes had once given to a similar query : " The possibility is too remote to comment upon , given my position . " Dole did put Scalia on his list of potential running mates , but eventually settled on Jack Kemp .

= = Personal life = =

On September 10 , 1960 , Scalia married Maureen McCarthy at St. Pius X church in Yarmouth , Massachusetts . The two had met on a blind date while he was at Harvard Law School . Maureen was an undergraduate student at Radcliffe College when they met and subsequently obtained a degree in English from the school .

The couple raised nine children , five boys and four girls . Two of the sons , Eugene Scalia and John Scalia , are attorneys . Paul Scalia is a Catholic priest , Matthew had a career in the Army , and Christopher is a writer . All four daughters , Catherine , Ann , Margaret and Mary , have families . According to Scalia , Maureen raised all nine children " with very little assistance from me . "

He resided in McLean , Virginia , a suburb of Washington , D.C.

Scalia enjoyed a warm relationship with fellow Justice Ruth Bader Ginsburg , considered a member of the court 's liberal wing , with the two attending the opera together , and even appearing together onstage as supernumeraries in Washington National Opera 's 1994 production of *Ariadne auf Naxos* . Ginsburg was a colleague of Scalia 's on the D.C. Circuit , and the Scalias and Ginsburgs had dinner together every New Year 's Eve .

= = = Death = = =

Scalia died in his sleep on the night of February 12 or the morning of February 13 , 2016 , following an afternoon of quail hunting and dining at the Cibolo Creek Ranch in Shafter , Texas . He was pronounced dead of apparent natural causes . His physician , Rear Admiral Brian P. Monahan , said that Scalia had a history of heart trouble , including high blood pressure , and had recently been deemed too weak to undergo surgery for a torn rotator cuff .

For the month following Scalia 's death , his chair in the Supreme Court chamber and the front of the bench where he sat were draped with black wool crêpe , with more over the court 's entrance , a tradition dating from the death of Chief Justice Salmon P. Chase in 1873 . Flags on the Court 's front plaza were flown at half @-@ staff for 30 days . Scalia 's body lay in repose in the Great Hall of the Supreme Court of the United States on February 19 , 2016 . His son , Rev. Paul Scalia , delivered the homily at a Catholic funeral Mass the next day at the Basilica of the National Shrine of the Immaculate Conception in Washington , D.C. The interment was private , at Fairfax Memorial Park , Fairfax , Virginia .

= = Succession = =

Scalia 's death ? only the second death of a serving justice in a span of sixty years ? left eight justices remaining on the Supreme Court , split 4 ? 4 between being fairly conservative and fairly liberal , during a presidential election year . Cases that were not decided before Scalia 's death will be decided by the remaining eight members of the Court . When the Court issues a split 4 ? 4 ruling , the ruling of the lower court will be upheld , but the Supreme Court 's decision will have no precedential effect and the Court will not publish a written opinion with respect to the merits of the case . Citing the Court 's practices following the death of Justice Robert H. Jackson in 1954 , Tom Goldstein wrote that the Court is more likely to rehear evenly @-@ divided cases after a new justice is appointed to the Court .

In a 2012 interview , Scalia said that he would prefer Judge Frank H. Easterbrook of the Seventh Circuit Court of Appeals as his successor . President Barack Obama said at the time of Scalia 's death that he would nominate his successor in " due time " . On March 16 , 2016 , he nominated Merrick Garland , Chief Judge of the United States Court of Appeals for the District of Columbia Circuit , to fill Scalia 's seat on the Court .