

Roth: Justice Antonin Scalia and the Clean Power Plan

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U.S. Supreme Court Justice Antonin Scalia's sudden death at the age of 79 leaves a vacancy on our nation's highest court larger than one single person. In fact, it probably leaves a vacancy the size of many people, as the justice's 29-year tenure certainly suggests.

English philosopher John Stuart Mill, a political economist, feminist and civil servant in the 19th century, probably

wouldn't have agreed much with our late Justice Scalia, but one of his quotes seems a foreshadow of the impact of just such a man:

"One person with a belief is equal to a force of ninety-nine who have only interests."

Justice Scalia certainly was a man of firm beliefs. He has long been described as the "intellectual anchor for the originalist and textualist position" of the U.S. Supreme Court's conservative wing. It was Scalia's consistent belief that the U.S. Constitution provided clear lines of separation among the three branches of government: legislative, executive and judicial.

This rigidity was evident in his approach to three decades of opinions, including those cases involving America's energy and environmental issues.

Just this month, Scalia joined the majority in an unusual move to grant a judicial stay on the regulatory efforts of the U.S. Environmental Protection Agency and its Clean Power Plan, which prior to the stay seemed on its own path for review on the merits at the D.C. Circuit Court level, then likely headed to the Supreme Court for review.

However, the SCOTUS stay halts states' implementation of the final rule requiring states to develop plans to limit carbon emissions from the power sector in the coming years, with a deadline of September.

Now the fate of the Clean Power Plan, albeit delayed in time, is likely going to land in the hands of a different Supreme Court in the coming years. The issues being debated in the Clean Power Plan case – EPA authority, congressional actions within the Clean Air Act, states' rights, citizens' health and environmental protections – will be an early test for a new, possibly rebalanced SCOTUS.

In most every opportunity, Scalia strongly opposed the idea of a living Constitution, the notion that the judiciary can revisit the meaning of constitutional provisions in applying the facts of modern times. He believed instead that those laws must be viewed in their historical context, as they would have been understood at the time they were drafted.

Only time will tell if his viewpoints, beliefs and work-product legacy will receive the same frozen-in-time approach, or whether his beliefs live beyond the life of the believer.

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