

1. **Mark your confusion.**
2. **Show evidence of a close reading.**
3. **Write a 1+ page reflection.**

Background: U.S. Supreme Court Justice Antonin Scalia died on February 13, 2016, at the age of 79. Scalia died of apparent natural causes at the Cibolo Creek Ranch south of Marfa, Texas.

Justice Antonin Scalia's Death Shifts Balance of High Court, Creates Major Election Issue

Source: David G. Savage, *Los Angeles Times*, February 13, 2016

The death of Justice Antonin Scalia, the Supreme Court's most acerbic conservative voice, immediately changes the balance of the nation's highest court and thrusts its future into the center of the already intense presidential campaign.

Until Scalia's death at age 79, the high court had been divided between four appointees of Democratic presidents, all fairly liberal, and five Republican appointees, all relatively conservative. Scalia's death will leave the justices evenly split, unable to definitively resolve several major issues and with the partisan balance to be determined by the next nominee.

Democratic appointees have not had a majority on the high court for more than four decades — since President Nixon's first year in office.

President Obama said Saturday evening that he planned “to fulfill my constitutional responsibilities to nominate 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.”

But Majority Leader Mitch McConnell of Kentucky quickly made clear that the Republican-controlled Senate does not plan to act until after the November election in hopes that a Republican president would appoint another conservative.

“The American people should have a voice in the selection of their next Supreme Court justice. Therefore, this vacancy should not be filled until we have a new president,” McConnell said in a statement. Democrats just as quickly protested, setting up round one of what will likely be a yearlong political fight over the future of the court.

“Failing to fill this vacancy would be a shameful abdication of one of the Senate's most essential constitutional responsibilities,” Senate Democratic leader Harry Reid of Nevada said in a statement.

Scalia's death will have an immediate and significant impact on the court's work. Pending this term is a series of cases in which Scalia would have been key in forming a conservative majority. Without his vote, the justices could be deadlocked and unable to issue a decision.

In early March, the court will hear arguments in an abortion case from Texas that was expected to decide whether states can adopt stringent medical regulations that shut down most or all abortion clinics. Both sides in the abortion struggle saw the case as crucial. But without Scalia, the justices may not have a majority to rule on the matter.

So far, the court has temporarily blocked the Texas rules from taking effect, a decision that might remain in effect if they cannot make a formal ruling in the case.

Similarly, the court during the spring was set to decide on President Obama's immigration orders. A federal judge in Texas blocked the administration from proceeding with Obama's plan to shield from

deportation as many as 5 million people who entered the country without legal authorization or overstayed visas. The administration lost a second time before a federal appeals court panel.

The high court decided early this year that it would consider Obama's appeal, but already the calendar is working against the president. Even if the court were to rule in the administration's favor by the end of its session in June, Obama would have little time to put the program into effect.

With Scalia's death, the court could be evenly divided on the case. That would prevent the justices from issuing a formal ruling, but would uphold the lower courts' decisions. Such an outcome would block the administration from proceeding, although it could leave the way open for a future Democratic president to relitigate the issue.

A third pending case threatened a huge defeat for public employee unions over the fees they charge for nonmembers. When the justices heard arguments in the case in December, its five conservative justices, including Scalia, seemed on track to rule that those fees violate the free-speech rights of nonmembers.

A ruling striking down the fees could severely damage the unions. Now, the justices may be evenly split, which would have the effect of preserving the union-friendly rules.

The court hasn't often had to deal with such a vacancy in modern times. Deaths of Supreme Court justices were relatively common in the 19th century, but not a single justice died in office between 1955 and 2005, according to an analysis by Marquette University. Chief Justice William H. Rehnquist was the last to die in office, in 2005; he was 81.

The last extended vacancy on the court came after Justice Abe Fortas stepped down in May 1969. President Nixon suffered defeats in his first two picks to replace Fortas, Clement Haynesworth and G. Harrold Carswell. It was not until June 1970 that the Senate confirmed Justice Harry M. Blackmun to replace Fortas. If Senate Republicans stick to their insistence on not approving a nominee this year, the current vacancy likely will last even longer.

In the presidential campaign, each of the potentially affected court cases could become an issue. In addition, Scalia's death will almost surely put a spotlight on other closely divided rulings.

Democrats, including both Hillary Clinton and Sen. Bernie Sanders, have promised to seek the reversal of the court's Citizens United ruling, a 5-4 decision that opened the door to unlimited campaign spending by corporations.

Meanwhile, Republicans have been promising to appoint conservatives to cut back the rights to abortion and same-sex marriage.

On many of those questions, a single new justice could tip the majority.

Possible Response Questions:

- Should President Obama have the right to select the next Supreme Court justice? Why? Why Not?
- Pick a passage and respond to it.