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THE MOST SARCASTIC JUSTICE

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THE MOST SARCASTIC JUSTICE

Richard L. Hasen

JUSTICE SCALIA IS THE MOST SARCASTIC Justice on the Supreme Court. He has been for at least the last thirty years, and there is good reason to believe no other Justice in history has come close to his level of sarcasm. Now your first reaction to this claim, if you are a (sarcastic) Supreme Court aficionado or reader of the *Green Bag* (the two categories overlap almost perfectly), is probably: “Well, duh!” And your second reaction is likely: “Oh really? Well how can you prove that?”

In this short essay, I do four things. First, I present empirical evidence showing that Justice Scalia’s opinions are much more likely to be described in law journals as sarcastic compared to any other Justice’s opinions. The numbers are quite remarkable, and do not vary whether Justice Scalia is compared to liberal or other conservative Justices who have served with him on the Court since his 1986 confirmation. Second, I consider some methodological quibbles. Third, I present some illustrative examples of Justice Scalia’s sarcasm from a list of 75 sarcastic opinions from 1986-2013. His ability (and willingness) to engage in nastiness, particularly directed at other Justices’ opinions, is unparalleled. Finally, I opine that Justice Scalia’s sarcasm is a mixed blessing. On the one hand sarcasm makes his opinions punchy and interesting, clarifying where he stands in a case and why

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and gaining attention for his ideas. On the other hand, such heavy use of sarcasm can demean the Court, and it arguably demonstrates Justice Scalia's lack of respect for the legal opinions of his colleagues. In the end, his sarcasm may be one of his most enduring legacies.

I. THE EVIDENCE

The point that Justice Scalia uses sarcasm heavily in his opinions is not novel. In his recent book, *The Case Against The Supreme Court*, Dean Erwin Chemerinsky writes that "No justice in Supreme Court history has consistently written with the sarcasm of Justice Scalia."¹

But how to turn that claim about Justice Scalia's heavy use of sarcasm into empirical proof? My research design was simple. A research assistant and I searched in the HeinOnline and Westlaw databases looking for mentions in law review articles and journals of "sarcasm" and related terms close to mentions of the names of Supreme Court justices who were on the Court from the time Justice Scalia joined the Court in 1986 through the end of 2013.

I counted each time a Justice's majority, concurring, or dissenting opinion was described by the author of the article as "sarcastic" or "caustic."² I removed from the count references in which a Justice's opinion was described, in one way or another, as not sarcastic or caustic. I also excluded references to Justices making sarcastic comments at oral argument or elsewhere than in a Supreme Court opinion. In a few cases, I counted the description of a Justice's opinion as sarcastic even if the description related to a pre-1986 Supreme Court case, if the reference appeared in a law journal between 1986 and 2013.

The database yielded 134 results in which a Justice's opinion is described as sarcastic or caustic. Justice Scalia had 75 of them, and the rest of the Justices who have been on the Court any time through 1986 and 2013 *combined* had 59 such descriptions of opinions. (The

¹ ERWIN CHEMERINSKY, *THE CASE AGAINST THE SUPREME COURT* (Kindle location 4894) (2014).

² My primary search in Westlaw's databases for law journals was "date (aft 1985) and date (bef 2013) and Justice [Justice Name] / 10 (sarcastic sarcasm caustic)."

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list of Justice Scalia's 75 opinions described as sarcastic appears in the Appendix.) The next highest sarcasm count was Justice Stevens at 9, followed by Justices Rehnquist and Blackmun each at 8. The Justice Stevens finding was the most surprising, as I came across a number of statements from commentators mentioning Justice Stevens' cordiality and lack of sarcasm in opinions.

Table 1 lists the results for all the Justices on the Court from 1986-2013, from most sarcastic to least sarcastic. The median Justice had only 3.5 such references. Chief Justice Roberts and Justice Sotomayor had none.

TABLE 1.
NUMBER OF JUSTICES' OPINIONS LABELED SARCASTIC OR CAUSTIC,
1986-2013 (RANKED FROM HIGHEST TO LOWEST)

Justice	Opinions Labeled "Sarcastic" or "Caustic"
Scalia	75
Stevens	9
Blackmun	8
Rehnquist	8
White	6
Brennan	5
Thomas	5
Marshall	4
Souter	4
Alito	3
Kennedy	2
Powell	1
O'Connor	1
Ginsburg	1
Breyer	1
Kagan	1
Roberts	0
Sotomayor	0
Total	134 cases

To some extent, the comparison of total numbers is unfair, because Justice Scalia has served on the Court during the period of

study more years than some other Justices. Justice Sotomayor and Chief Justice Roberts presumably have lots of time to catch up to Justice Scalia on snark should they so desire. To control for this fact, I divided the total number of sarcastic opinions for each Justice by their total years each on the Court (through 2013) to get a “sarcasm index.”³ The results appear in Table 2. Justice Scalia is a huge outlier once again, beating the other Justices on the sarcasm index by very, very wide margins.

TABLE 2. SARCASM INDEX:
JUSTICES’ OPINIONS LABELED SARCASTIC OR CAUSTIC, 1986-2013,
DIVIDED BY TOTAL NUMBER OF YEARS ON COURT, THROUGH 2013
(RANKED FROM HIGHEST TO LOWEST)

Justice	Opinions Labeled “Sarcastic” or “Caustic”	Years on Court through 2013	Opinions/Years on Court (Sarcasm Index)
Scalia	75	27	2.78
Alito	3	7	0.43
Blackmun	8	24	0.33
Kagan	1	3	0.33
Stevens	9	35	0.26
Rehnquist	8	33	0.24
Thomas	5	22	0.23
Souter	4	19	0.21
White	6	31	0.19
Marshall	4	24	0.17
Brennan	5	34	0.15
Kennedy	2	25	0.08
Powell	1	15	0.07
Breyer	1	19	0.05
Ginsburg	1	20	0.05
O’Connor	1	25	0.04
Sotomayor	0	4	0
Roberts	0	8	0

³ I rounded by year, so that if a Justice was appointed any time in a particular year I counted that as a year on the court.

II. METHODOLOGICAL QUIBBLES

No doubt my methodology for creating the sarcasm index is not perfect. Here I briefly consider three objections.

(1) *What Do You Expect From Liberal Law Professors?* There is no question that on average law professors are a liberal bunch, and it could be that such professors would be more likely to describe a conservative Justice's opinion with a pejorative than a liberal Justice's opinion. The fact that liberal and conservative Justices, aside from Justice Scalia, seem about equally likely to have their opinions described by law review commentators as sarcastic helps alleviate any concern that liberal law review commentators are biased against conservative Justices. Justice Thomas, for example, is often considered as conservative as Justice Scalia, but he ranks in the sarcasm index below liberal Justices Blackmun, Kagan, and Stevens. Indeed, aside from Justice Scalia, occasional use of sarcasm seems to be an equal opportunity offense.

(2) *Law Professors are Victims of an Echo Chamber.* A second objection is that it is possible some commentators are describing Justice Scalia as sarcastic or caustic because he already has this reputation. This objection is somewhat harder to eliminate. My control for this concern is to examine the actual statements which commentators have described as sarcastic or caustic. I have recounted some of them in Part III below. In my view as a regular user of the English language, most fit the bill. Your mileage may vary.

(3) *Justice Scalia is Not Sarcastic; He's a "Snoot."* *New York Times* Supreme Court reporter Adam Liptak raised this point in his column about an earlier draft of this article.⁴ "Justice Scalia might have a different objection [to Hasen's methodology]. 'I'm a snoot,' he once said. 'Snoots are those who are nit-pickers for the *mot juste*, for using a word precisely the way it should be used,' he explained. Professor Hasen, on the other hand, used a broad definition of sarcasm. 'We're talking about a combination of harsh language and irony,' he said.

⁴ Adam Liptak, *Scalia Lands on Top of Sarcasm Index of Justices. Shocking*, N.Y. TIMES, Jan. 15, 2015, www.nytimes.com/2015/01/20/us/scalia-lands-at-top-of-sarcasm-index-of-justices-shocking.html.

Many standard reference works agree, defining sarcasm to include hostile or contemptuous remarks.”⁵

Liptak pointed to a number of Justice Scalia’s opinions in which the Justice “seemed to define sarcasm in a narrower way, as limited to saying one thing while meaning another.”⁶ That’s a fair point. Perhaps a better title for this article would be “The Most *Caustic* Justice.” It is not just the use of irony but the harshness of tone which describes what I am trying to measure here. One can be a snoot without also being nasty. My measure captures the combination of the two.

III. “LET ME GET THIS STRAIGHT:”⁷

JUSTICE SCALIA’S GREATEST (?) HITS

The numbers cannot do justice to Justice Scalia’s sarcasm. Here is Dean Chemerinsky’s catalog of some of Justice Scalia’s more memorable statements:

In dissenting opinions, Justice Scalia describes the majority’s approaches as “nothing short of ludicrous” and “beyond the absurd,” “entirely irrational,” and not “pass[ing] the most gullible scrutiny.” He has declared that a majority opinion is “nothing short of preposterous” and “has no foundation in American constitutional law, and barely pretends to.” He talks about how “one must grieve for the Constitution” because of a majority’s approach. He calls the approaches taken in majority opinions “preposterous,” and “so unsupported in reason and so absurd in application [as] unlikely to survive.” He speaks of how a majority opinion “vandaliz[es] . . . our people’s traditions.” In a recent dissent, Justice Scalia declared:

Today’s tale . . . is so transparently false that professing to believe it demeans this institution. But reaching a patently incorrect conclusion on the facts is a relatively benign judicial mischief; it affects, after all, only the case at

⁵ *Id.* (quoting Justice Scalia in 13 THE SCRIBES J. OF LEGAL WRITING 61 (2010), www.scribes.org/sites/default/files/Scribes-Journal_Volume-13_Garner-transcripts.pdf).

⁶ *Id.*

⁷ *Martinez v. Ryan*, 132 S. Ct. 1309, 1321 (2012) (Scalia, J., dissenting).

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hand. In its vain attempt to make the incredible plausible, however – or perhaps as an intended second goal – today’s opinion distorts our Confrontation Clause jurisprudence and leaves it in a shambles. Instead of clarifying the law, the Court makes itself the obfuscator of last resort.⁸

As Dean Chemerinsky notes, much of the sarcasm in Justice Scalia’s opinions is aimed at his colleagues and appears in dissenting opinions. Justice Scalia has called other Justices’ opinions or arguments which he has disagreed with “bizarre,”⁹ “[g]rotesque,”¹⁰ and “incoherent.”¹¹ Of the 75 sarcastic opinions referenced in law journals, 42 appear in (at least partially) dissenting opinions and 15 appear in (at least partially) concurring opinions.

Justice Scalia has remarked that “Seldom has an opinion of this Court rested so obviously upon nothing but the personal views of its Members.”¹² In a civil rights case, he ended his dissent by stating that “The irony is that these individuals – predominantly unknown, unaffluent, unorganized – suffer this injustice at the hands of a Court fond of thinking itself the champion of the politically impotent.”¹³ In a gender discrimination case, he wrote: “Today’s opinion is an inspiring demonstration of how thoroughly up-to-date and right-thinking we Justices are in matters pertaining to the sexes (or as the Court would have it, the genders), and how sternly we disapprove the male chauvinist attitudes of our predecessors. The price to be paid for this display – a modest price, surely – is that most of the opinion is quite irrelevant to the case at hand.”¹⁴

⁸ Erwin Chemerinsky, *A Failure to Communicate*, 2012 BYU L. REV. 1705, 1715 (citations omitted).

⁹ *Mitchell v. U.S.*, 526 U.S. 314, 338 (1999) (Scalia, J., dissenting).

¹⁰ *District of Columbia v. Heller*, 554 U.S. 570, 587 (2008).

¹¹ “The Court’s argument that state officials have ‘coerced’ students to take part in the invocation and benediction at graduation ceremonies is, not to put too fine a point on it, incoherent.” *Lee v. Weisman*, 505 U.S. 577, 636 (1992) (Scalia, J., dissenting).

¹² *Atkins v. Virginia*, 536 U.S. 304, 338 (2002) (Scalia, J., dissenting).

¹³ *Johnson v. Transp. Agency, Santa Clara Cnty.*, 480 U.S. 616, 677 (1987) (Scalia, J., dissenting).

¹⁴ *J.E.B. v. Alabama*, 511 U.S. 127, 156 (1994) (Scalia, J., dissenting).

In an abortion rights case he declared: “The emptiness of the ‘reasoned judgment’ that produced *Roe* is displayed in plain view by the fact that, after more than 19 years of effort by some of the brightest (and most determined) legal minds in the country, after more than 10 cases upholding abortion rights in this Court, and after dozens upon dozens of *amicus* briefs submitted in these and other cases, the best the Court can do to explain how it is that the word ‘liberty’ *must* be thought to include the right to destroy human fetuses is to rattle off a collection of adjectives that simply decorate a value judgment and conceal a political choice.”¹⁵ Finally, in a concurring opinion in a substantive due process case, Justice Scalia wrote: “Today’s opinion gives the lie to those cynics who claim that changes in this Court’s jurisprudence are attributable to changes in the Court’s membership. It proves that the changes are attributable to nothing but the passage of time (not much time, at that), plus application of the ancient maxim, ‘That was then, this is now.’”¹⁶

IV. THE COSTS AND BENEFITS OF SCALIAN SARCASM

In a recent interview with *New York* magazine, Justice Scalia defended his sharp writing and said it did not affect judicial outcomes:

[Question:] While your opinions are delectable to read, I’m wondering: Do you ever regret their tone? Specifically, that your tone might have cost you a majority?

[Justice Scalia:] No. It never cost me a majority. And you ought to be reluctant to think that any justice of the Supreme Court would make a case come out the other way just to spite Scalia. Nobody would do that. You’re dealing with significant national issues. You’re dealing with real litigants – no. My tone is sometimes sharp. But I think sharpness is sometimes needed to demonstrate how much of a departure I believe the thing is.

¹⁵ *Planned Parenthood v. Casey*, 505 U.S. 833, 983 (1992) (Scalia, J., dissenting).

¹⁶ *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 860 (1998) (Scalia, J., concurring in the judgment).

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Especially in my dissents. Who do you think I write my dissents for?

[*Question:*] *Law students.*

[Justice Scalia:] Exactly. And they will read dissents that are breezy and have some thrust to them. That's who I write for.¹⁷

Dean Chemerinsky is skeptical about Justice Scalia's approach. "No doubt, [Justice Scalia's sarcasm] makes his opinions among the most entertaining to read. He has a great flair for language and does not mince words when he disagrees with a position. But I think this sends exactly the wrong message to law students and attorneys about what type of discourse is appropriate in a formal legal setting and what is acceptable in speaking to one another."¹⁸ And Dean Kathleen Sullivan noted that some observers "have speculated that Justice Scalia's blistering sarcasm" aimed at the opinions of Justices O'Connor and Kennedy "may have driven them toward the center."¹⁹

It is really impossible as a Supreme Court outsider to know how much, if at all, the direction of Justice Scalia's sarcasm toward his colleagues has affected his ability to build bridges and influence the Court's jurisprudence. As a law professor, however, I can attest that students love reading Scalia opinions compared to the tedium of reading many other Justices' writings. But I have not seen that Justice Scalia's writing style has made his opinions any more persuasive to law students.²⁰ And it is difficult to know whether Dean Chemerinsky

¹⁷ Jennifer Senior, *In Conversation: Antonin Scalia*, N.Y. MAG., Oct. 6, 2013, nymag.com/news/features/antonin-scalia-2013-10/.

¹⁸ CHEMERINSKY, *supra* note 1, at Loc. 4894.

¹⁹ Kathleen M. Sullivan, *Foreword: The Justices of Rules and Standards*, 106 HARV. L. REV. 22, 122 n. 602 (1992).

²⁰ Cf. Will Baude, *My Assessment of Justice Scalia's Reputation for Sarcasm [UPDATED with Response from Hasen]*, Volokh Conspiracy, WASH. POST, Jan. 20, 2015, www.washingtonpost.com/news/volokh-conspiracy/wp/2015/01/20/my-assessment-of-justice-scalias-reputation-for-sarcasm/ ("Hasen suggests that students 'love reading Scalia opinions' in part because of their tone, but he 'has not seen' that the writing style makes Scalia's more persuasive than others. I am not so sure that the two can be disentangled, however. The first step to persuading others is *getting them to read you* — a lesson us law-bloggers know all too well.").

is right that Justice Scalia's sarcasm is teaching law students to act uncivilly in formal legal settings. I sure hope not.

We may worry about whether Justice Scalia's intense sarcasm has affected his legacy, but it does not appear to worry the Justice. In that *New York* interview, he expressed doubt about the importance of his earthly legacy. When asked if history might view him as having been on the wrong side of the gay rights issue, Justice Scalia responded: "I don't know either. And, frankly, I don't care. Maybe the world is spinning toward a wider acceptance of homosexual rights, and here's Scalia, standing athwart it. At least standing athwart it as a constitutional entitlement. But I have never been custodian of my legacy. When I'm dead and gone, I'll either be sublimely happy or terribly unhappy."²¹

Justice Scalia may not know if he is heading for heaven or hell when he leaves this earth, but his caustic opinions are likely to remain in the law books, and be one of his most enduring legacies, for good or bad, for many decades to come.

APPENDIX

JUSTICE SCALIA SUPREME COURT OPINIONS DESCRIBED AS SARCASTIC OR CAUSTIC (1986 THROUGH 2013)

Note: Citations are to majority opinions unless otherwise noted.

1. *Almendarez-Torres v. United States*, 523 U.S. 224 (1998) (Scalia, J., dissenting)
2. *Atkins v. Virginia*, 536 U.S. 304 (2002) (Scalia, J., dissenting)
3. *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990) (Scalia, J., dissenting)
4. *Baze v. Rees*, 553 U.S. 35 (2008) (Scalia, J., concurring in the judgment)
5. *Blanchard v. Bergeron*, 489 U.S. 87 (1989) (Scalia, J., concurring in part and concurring in the judgment)

²¹ Senior, *supra* note 17. See also *id.* ("You know, for all I know, 50 years from now I may be the Justice Sutherland of the late-twentieth and early-21st century, who's regarded as: 'He was on the losing side of everything, an old fogey, the old view.' And I don't care.").

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6. Bd. of Cnty. Comm'rs v. Umbehr, 518 U.S. 668 (1996) (Scalia, J., dissenting)
7. Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Gourmet, 512 U.S. 687 (1994) (Scalia, J., dissenting)
8. Boumediene v. Bush, 553 U.S. 723 (2008) (Scalia, J., dissenting)
9. Bowen v. Georgetown Cmty. Hosp. 488 U.S. 204 (1988) (Scalia, J., concurring)
10. Branch v. Smith, 538 U.S. 254 (2003)
11. Brown v. Entm't Merchants Ass'n, 131 S. Ct. 2729 (2011)
12. Brown v. Plata, 131 S. Ct. 1910 (2010) (Scalia, J., dissenting)
13. Burnham v. Superior Court, 495 U.S. 604 (1990)
14. Chisom v. Roemer, 501 U.S. 380 (1991) (Scalia, J., dissenting)
15. Coll. Savings Bank v. Florida Prepaid Post-Secondary Educ. Expense Bd., 527 U.S. 666 (1999)
16. County of Sacramento v. Lewis, 523 U.S. 833 (1998) (Scalia, J., concurring in the judgment)
17. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363 (2000) (Scalia, J., concurring in the judgment)
18. Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261 (1990) (Scalia, J., concurring)
19. Dewnsup v. Timm, 502 U.S. 410 (1992) (Scalia, J., dissenting)
20. District of Columbia v. Heller, 554 U.S. 570 (2008)
21. Edwards v. Aguillard, 482 U.S. 578 (1987) (Scalia, J., dissenting)
22. Ferguson v. City of Charleston, 532 U.S. 67 (2001) (Scalia, J., dissenting)
23. FCC v. Fox Television Stations, 556 U.S. 502 (2009)
24. Good News Club v. Milford Central Sch., 533 U.S. 98 (2001)
25. Grady v. Corbin, 495 U.S. 508 (1990) (Scalia, J., dissenting)
26. Grutter v. Bollinger, 539 U.S. 306 (2003) (Scalia, J., concurring in part and dissenting in part)
27. Hein v. Freedom from Religion Found., 551 U.S. 587 (2007) (Scalia, J., concurring in the judgment)
28. Henderson v. United States, 133 S. Ct. 1121 (2013) (Scalia, J., dissenting)
29. Herrera v. Collins, 506 U.S. 390 (1993) (Scalia, J., concurring)

30. *Hill v. Colorado*, 530 U.S. 703 (2000) (Scalia, J., dissenting)
31. *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229 (1989) (Scalia, J., concurring in the judgment)
32. *Holland v. Illinois*, 493 U.S. 474 (1990)
33. *INS v. St. Cyr*, 533 U.S. 289 (2001) (Scalia, J., dissenting)
34. *Jaffe v. Redmond*, 518 U.S. 1 (1996) (Scalia, J., dissenting)
35. *J.E.B. v. Alabama*, 511 U.S. 127 (1994) (Scalia, J., dissenting)
36. *Johnson v. Transp. Agency, Santa Clara Cnty.*, 480 U.S. 616 (1987) (Scalia, J., dissenting)
37. *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325 (2011) (Scalia, J., dissenting)
38. *Lafler v. Cooper*, 132 S. Ct. 1376 (2012) (Scalia, J., dissenting)
39. *Lamb's Chapel v. Ctr. Moriches Union Sch. Dist.*, 508 U.S. 384 (1993) (Scalia, J., concurring in the judgment)
40. *Lawrence v. Texas*, 539 U.S. 558 (2003) (Scalia, J., dissenting)
41. *Lee v. Weisman ex rel. Weisman*, 505 U.S. 577 (1992) (Scalia, J., dissenting)
42. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)
43. *Madsen v. Women's Health Ctr.*, 512 U.S. 753 (1994) (Scalia, J., concurring in the judgment in part and dissenting in part)
44. *Martinez v. Ryan*, 132 S. Ct. 1309 (2012) (Scalia, J., dissenting)
45. *Maryland v. Craig*, 497 U.S. 836 (1990) (Scalia, J., dissenting)
46. *Michael H. v. Gerald D.*, 491 U.S. 110 (1989)
47. *Michigan v. Bryant*, 562 U.S. 344 (2011)
48. *Minnick v. Mississippi*, 498 U.S. 146 (1990) (Scalia, J., dissenting)
49. *Mistretta v. United States*, 488 U.S. 361 (1989) (Scalia, J., dissenting)
50. *Mitchell v. United States*, 526 U.S. 314 (1999) (Scalia, J., dissenting)
51. *Morgan v. Illinois*, 504 U.S. 719 (1992) (Scalia, J., dissenting)
52. *Morrison v. Olson*, 487 U.S. 654 (1988) (Scalia, J., dissenting)
53. *NLRB v. Curin Matheson Scientific, Inc.*, 494 U.S. 775 (1990) (Scalia, J., dissenting)
54. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987)
55. *PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001) (Scalia, J., dissenting)
56. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part)

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57. *Printz v. United States*, 521 U.S. 898 (1997)
58. *Rapanos v. United States*, 547 U.S. 715 (2006)
59. *Republican Party of Minn. v. White*, 536 U.S. 765 (2002)
60. *Romer v. Evans*, 517 U.S. 620 (1996) (Scalia, J., dissenting)
61. *Roper v. Simmons* 543 U.S. 551 (2005) (Scalia, J., dissenting)
62. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993)
63. *Smith v. United States*, 508 U.S. 223 (1993) (Scalia, J., dissenting)
64. *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (Scalia, J., concurring)
65. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998)
66. *Thompson v. Oklahoma*, 487 U.S. 815 (1988) (Scalia, J., dissenting)
67. *United States v. Booker*, 543 U.S. 220 (2005) (Scalia, J., dissenting in part)
68. *United States v. Mead Corp.*, 533 U.S. 218 (2001) (Scalia, J., dissenting)
69. *United States v. Virginia*, 518 U.S. 515 (1996) (Scalia, J., dissenting)
70. *United States v. Windsor*, 133 S. Ct. 2675 (2013) (Scalia, J., dissenting)
71. *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002) (Scalia, J., dissenting)
72. *Walton v. Arizona*, 497 U.S. 639 (1990) (Scalia, J., concurring in part and concurring in the judgment)
73. *Webster v. Doe*, 486 U.S. 592 (1988) (Scalia, J., dissenting)
74. *Webster v. Reprod. Health Servs.*, 492 U.S. 490 (1989) (Scalia, J., concurring in part and concurring in the judgment)
75. *Whren v. United States*, 517 U.S. 806 (1996)

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