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## Viewpoint: How Justice Antonin Scalia's death could impact Georgia

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The sudden death of Supreme Court Justice Antonin Scalia came as a shock to our nation this weekend. Justices of his stature, tenure and intellect are rare and we rightly mourn his passing. But we should also be deeply concerned about the implications that could arise due to the vacancy his death leaves on the Supreme Court.

The political intrigue in this already unprecedentedly complicated election cycle is surely going to be escalated exponentially as this process plays out. But there are less obvious consequences that are ominous in their own right, consequences that few Americans would be aware of



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U.S. Supreme Court Justice Antonin Scalia, seen testifying before Congress in 2010.

as an evenly divided court continues to function with a member missing from the bench for an indefinite period of time.

One such consequence falls within the purview of the Georgia Public Service Commission because this situation could potentially resurrect the Supreme Court's interest in the Environmental Protection Agency's Clean Power Plan, an energy plan that would provide intrusive new regulations that would limit carbon based energy generation across the nation. These regulations were stayed recently by a 5-4 vote of the full court, an action that effectively froze the EPA rules for now.

If a new justice is not confirmed, the court can automatically affirm the decision under review without giving reasons and without setting a Supreme Court precedent. It can also set the case down for re-argument in the term that starts in October in the hope that it will be decided by a full court.

Never before had the Supreme Court stayed a set of regulations before a federal court had even heard the initial case or ruled about them. The Supreme Court delivered this big surprise on the very day of the New Hampshire Primary, shocking onlookers from the White House to my house. If the stay were to be revisited and reversed by a Court no longer including Justice Scalia, the impact could be dramatically bad for energy producers and consumers alike. Let me explain.

First, the way I see it the EPA plan was really a back-door effort to implement the infamous "cap and trade" system of carbon trading that the Obama Administration attempted their first year of office. In its first iteration, states could participate in emissions credit trading without the creation of interstate compacts. Fortunately, five Supreme Court justices saw the devastating potential of the rule and issued a "stay," surprising everyone. But as of Feb. 13, one of those justices is no longer with us. So what was being interpreted as a "message" from the Court's majority to the lower court is now up in the air...assuming the President gets his way and appoints a new Supreme Court justice. Stay tuned.



The Clean Power Plan represents an incredible paradigm shift for American energy policy. Essentially, the Clean Power Plan would designate CO<sub>2</sub> as pollution, and for the first time would allow it to be regulated by the EPA. I have long complained that ignoring pollutants far more toxic, like nuclear waste, should be a higher priority. I had no idea the Justices were looking at my Twitter feed.

After all, in Georgia, we have reduced our CO<sub>2</sub> by over 30 percent since 2005 and reduced mercury, Sulphur and nitrogen oxides by over 85 percent since 1990. Just ten years ago in 2005, over 50 percent of Georgia Power's generation was coal. Now, it is 32 percent. In that same ten year period, the use of clean natural gas increased from 27 percent of Georgia Power's generation in 2005 to 49 percent in 2015. Not bad for a state with no RPS and no subsidy.

Twenty six states sued the EPA for relief. Our neighbor to the south, Florida, initially estimated that the cost to comply would be \$26.55 billion. Florida Commissioner Balbis, who drafted the memorandum to the Florida Public Service Commission said, "Depending on how states choose to comply, the rate impacts to customers can be significant. The EPA seemed to have grossly underestimated the cost of compliance." Apparently, the Supreme Court agreed.

The harsh reality of these regulations result not only in customers having to pay for costly new resources, but they will continue to pay for fossil plants that will have to be closed if the rule becomes the law of the land. To put it simply, we barely get one project finished before the federal government creates some new rule requiring us to chart a new course.

Germany is the poster child for this because they broke the bank trying to lead the way in energy transformation. They declared war on coal and nuclear, and set an unbelievable goal to be at 50 percent renewable by 2030 and 80 percent by 2050. But German families now pay three times what most Americans pay for power. That obviously was a driver for many of the states involved in the lawsuit.

If this Clean Power Plan does gain new life from an Obama appointment on the Supreme Court, there are major consequences: first, the construction of additional transmission and gas lines. When coal and nuclear plants are closed and new gas or solar plants are constructed, the environment is disrupted. No one likes big power lines or gas lines in their back yard, but alas, these new assets will need to be built to accommodate this new world we are moving toward.

In places like Vermont where Senator Sanders hails, left-leaning citizens have pressured officials to close nuclear power plants and utilities are going to great extremes to replace baseload nuclear. In one instance, to replace that "controversial" nuclear power, new lines may be built under Lake Champlain as well as above-ground to bring in energy from solar or gas.

If the EPA Clean Power Plan does in fact come out of the deep freeze, Georgia will continue to press the EPA for favorable treatment of our forest resources. If the EPA would allow all logging residues to be collected and burned for zero CO2 power, it would be a game-changer for Georgia. After all, Europe imports our wood pellets to burn in their plants and they consider Georgia pine pellets to be a renewable source of energy. Georgia is averaging over 40 percent annual tree growth over tree removals—so there is plenty of opportunity for us to use this homegrown resource.

Like so many political issues, criticizing carbon has become politically correct, and the President's rhetoric had whipped people into a frenzy. We knew that the courts would wind up deciding the fate of this rule. But just when we thought the fight was over, it is back on. Better buckle your seatbelt for this one. The road ahead could get really bumpy!