

Faculti Summary

<https://staging.faculti.net/the-paradoxical-impact-of-scalias-campaign-against-legislative-history/>

This video discusses the impact of Justice Antonin Scalia's campaign against the use of legislative history in judicial decision-making, particularly focusing on how this has influenced the behavior of judges over time. The authors investigate whether Scalia's critiques led to a significant shift in judicial practice, analyzing over 240,000 published federal appellate opinions from 1965 to 2011.

The core questions addressed include: How did judges' citation practices regarding legislative history change in response to Scalia's textualist approach? Did these changes differ based on the judges' political affiliations or the timing of their appointments?

Key findings include:

1. Before the 1970s, judges commonly cited legislative history, with committee reports considered reliable and floor statements unreliable. This trend changed in the late 1980s, with Scalia's influence leading to Republican judges increasingly citing committee reports while reducing citations of floor statements.
2. Statistically significant differences emerged in citation practices between Republican and Democratic judges after Scalia's critiques began. Republican judges were less likely to cite unreliable legislative history, while they cited committee reports more frequently than their Democratic counterparts.
3. Post-Reagan judges of both parties demonstrated a marked decline in citing unreliable sources while favoring reliable committee reports over time.

The authors conclude that while Scalia succeeded in shifting the conversation around legislative history and encouraged a return to the reliance on committee reports, he did not achieve his goal of completely disregarding legislative history. Instead, judges adjusted their approaches to emphasize reliability without entirely rejecting legislative context. Overall, the study highlights the nuanced influence of political affiliation and the timing of judicial appointments on citation behavior in the legal system.