

The Annotated Bobblehead

Justice Antonin Scalia

For an enterprise that relies on imagery, such as the *Green Bag's* bobblehead series, the opinions of Justice Antonin Scalia are the mother lode. Alas, there is a limit to how much of his work we can display without making his bobblehead look like a Christmas tree, and we certainly do not want to see his doll banned from public buildings under the *Lemon* test! Here, mostly in his own words, are explanations of the basic features of our version of Justice Scalia.

On the negative commerce clause: "It takes no more than our opinions this Term, and the number of prior decisions they explicitly or implicitly overrule, to demonstrate that the practical results we have educed ... form not a rock but a 'quagmire' ... Nor is this a recent liquefaction. ... It is astonishing that we should be expanding our beachhead in this impoverished territory, rather than being satisfied with what we have already acquired by a sort of intellectual adverse possession." *Tyler Pipe v. Washington*, 483 U.S. 232 (1987); see *Nollan v. California Coastal Comm'n*, 483 U.S. 825.

On separation of powers and the independent counsel law in *Morrison v. Olson*, 487 U.S. 654 (1988): "Frequently an issue of this sort will come before the Court clad, so to speak, in sheep's clothing: the potential of the asserted principle to effect important change in the equilibrium of power is not immediately evident, and must be discerned by a careful and perceptive analysis. But this wolf comes as a wolf."

"As to the Court's invocation of the *Lemon* test: Like some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried, *Lemon* stalks our Establishment Clause jurisprudence once again, frightening the little children and school attorneys of Center Moriches Union Free School District. ... Over the years, however, no fewer than five of the currently sitting Justices have, in their own opinions, personally driven pencils through the creature's heart ..., and a sixth has joined an opinion doing so." *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*, 508 U.S. 384 (1993).

Webster's New Int'l Dictionary (2d ed.). See, e.g., *Vieth v. Jubiliter*, 541 U.S. 267 (2004); *Smith v. United States*, 508 U.S. 223 (1993).



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