# **Originalists, Textualist and Liberal SCOTUS Justices transcript**

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**Adia Samba-Quee:** [00:00:00] Civics 101 is supported in part by the Corporation for Public Broadcasting.

**Antonin Scalia:** [00:00:03] I don't care a fig for the framers. I care for the people that ratified the Constitution. What [00:00:10] was the meaning of the Constitution when the people ratified?

**Stephen Breyer:** [00:00:14] Look at those words. A state shall not deny any person equal protection of the laws through [00:00:20] the lens of what actually happened.

**Hannah McCarthy:** [00:00:23] That was the late Justice Antonin Scalia in conversation with Justice Stephen Breyer. And they're tackling [00:00:30] quite tactfully, I might add, a key difference in interpreting the Constitution. So we're going to do the same thing.

[00:00:36] This is Civics 101. I'm Hannah McCarthy.

**Nick Capodice:** [00:00:38] I'm Nick Capodice.

**Hannah McCarthy:** [00:00:39] And [00:00:40] today we're appealing it all the way up to the Supreme Court to answer a listener who asks, what's the difference between a justice, who is a strict textualist, a strict constructionist, [00:00:50] and the more liberal justices?

**Nick Capodice:** [00:00:53] Let's define our terms here, because I first need to understand what textualist constructionist actually means.

**Hannah McCarthy:** [00:01:00] A [00:01:00] constructionist is someone who approaches the words of the Constitution hyper literally, without thinking about the statute itself or how that word is approached in the legal [00:01:10] world.

**Amy Steigerwalt:** [00:01:10] That one is this idea that you read the words, that's it, you're done. And it sort of creates, in the words of Justice Scalia, [00:01:20] a judicial straitjacket because that's not how the world works.

**Hannah McCarthy:** [00:01:23] She says, by the way, that most political scientists hate the term constructionist because it doesn't really make sense.

[00:01:29] But [00:01:30] a textualist?

**Amy Steigerwalt:** [00:01:31] A textualist looks at the words that were used in the context of the statute. An originalist does [00:01:40] the same thing as a textualist, but wants to know what the words meant at the time the statute or constitutional provision was passed.

**Nick Capodice:** [00:01:49] Ok, [00:01:50] so a textualist is like focus on the words themselves and consider them in the context of the statute. And that's it. And an originalist, I'm glad you brought that term up, because we hear it a lot [00:02:00] when it comes to Supreme Court justices and Originalist says, yes, that and think about what was going on when this text was written.

**Hannah McCarthy:** [00:02:08] Yeah. And even within originalism, [00:02:10] there are some differences like does originalism mean that you define the terms in the Constitution based on what the framers would have thought and their definition at the time? Or is it based on what [00:02:20] the public would have thought and what they were reading in newspapers at the time?

**Nick Capodice:** [00:02:23] Alright. Now, if we think of originalist and textualist as more conservative interpretations of the Constitution, what is a liberal [00:02:30] interpretation mean?

**Amy Steigerwalt:** [00:02:31] A lot of the liberal justices would argue that, yes, it was written back then, but we're now existing in, in many [00:02:40] ways a different time. And so the words in order for it to still be useful, to not be that sort of straitjacket that Justice Scalia had talked about, we need [00:02:50] to recognize how the meaning of the words have changed. And sometimes if we were to, for example, hold to the [00:03:00] intent of those who wrote a provision, it would actually lead us to some weird outcomes.

**Hannah McCarthy:** [00:03:07] Amy brought up the 1964 Civil Rights [00:03:10] Act, which prohibits discrimination based on race and sex, and that conservative lawmakers included the terms and sex in there because [00:03:20] they thought that that would prevent the law from passing. Their intent was to kill the bill by including the hilarious, ridiculous idea of not discriminating [00:03:30] against, let's say, women. But then the act passed. Now, if you consider the intent of the people who wrote that act, you will also undermine the very [00:03:40] point of the act.

**Nick Capodice:** [00:03:41] As far as intent goes, I think that's pretty hard to pin down. The framers were arguing about the meaning of the Constitution before it was even ratified. [00:03:50]

**Amy Steigerwalt:** [00:03:50] So we had the Federalist Papers and the anti Federalists and they went back and forth in the newspapers at the time arguing over no right.

[00:03:59] If you say X, [00:04:00] it means this. And so even at the time, there was a lot of angst.

**Hannah McCarthy:** [00:04:07] That angst hasn't really gone away.

[00:04:10] It [00:04:10] now just falls into the hands of Supreme Court justices who attempt to make sense of things in the Constitution. That does it for this Civics 101.

[00:04:18] But if you have questions [00:04:20] about our government and politics, you can always click the button at the top of our home page to submit them at Civics 101 podcast dog.