

In an [opinion](#) today dealing with FCC regulation of naughty language, the Supreme Court made it easier for the government to repeal or replace existing rules. Ironically, this green light for the Obama Administration came from conservative stalwart Antonin Scalia.

One issue in today's case was whether the FCC needed to give a fuller explanation of its action because it was modifying existing policy. Some courts have read a prior Supreme Court case to require more evidence and explanation when an agency is shifting policy. The Court rejected this view. Justice Scalia did say that the agency must acknowledge the change of policy and must take into account any evidence that was relied on to support the previous rule. But, according to the Scalia opinion, the fact that an agency is changing course does not require a harder look at its decision by a reviewing court. A concurring opinion by Justice Kennedy blurs the holding somewhat but Kennedy did join the majority opinion as well.

Particularly given the Kennedy concurrence, today's ruling may not be a stark change from the approach taken by lower courts in reviewing agency policy shifts. But Justice Scalia's opinion does make such shifts by agencies easier and at least at the margins should improve the agency's chances of surviving judicial review. Today's decision may or may not be good administrative law doctrine. But there's no doubt that it will make life easier for the Obama administration. Thank you, Justice Scalia!