



NARAL
Pro-Choice America Foundation

JUSTICE ANTONIN SCALIA

*"[T]he Constitution contains no right to abortion."*¹

Biography

- Born March 11, 1936, in Trenton, New Jersey
- Associate Supreme Court Justice September 26, 1986–present (appointed by President Reagan)

Current Role on the Court

Justice Scalia is one of four extremely anti-choice members of the Court, along with Chief Justice Roberts and Justices Thomas and Alito. For over 20 years, he has voted to limit a woman's right to choose, and has called for *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* to be overruled.

A History of Opposition to Reproductive Freedom

- Since Scalia joined the Court in 1986, he has consistently voted in to limit or entirely abolish the constitutional protection for a woman's right to choose.²
- He has held that a woman's right to choose is not protected by the Constitution³ and that given the chance he would "explicitly" overrule *Roe v. Wade*.⁴
- He also supports the reversal of *Planned Parenthood v. Casey*, the 1992 case that limited but did not overrule *Roe v. Wade*'s core protection for a woman's right to choose.⁵
- In 2007, he voted to uphold the Federal Abortion Ban, federal legislation that outlaws certain second-trimester abortions and does not include any exception for when a woman's health is threatened.⁶
- In the Federal Abortion Ban case, he joined Justice Thomas's concurring opinion, which stated that "the Court's abortion jurisprudence, including *Casey* and *Roe v. Wade* has no basis in the Constitution."⁷
- He supports a return to a pre-*Roe* framework of abortion regulation, which would allow states to criminalize abortion.⁸

- Scalia voted against the constitutionality of certain measures, upheld by the majority of the Court, that were designed to protect clinics from anti-choice violence.⁹
- Scalia also wrote the majority opinion in a case that found that anti-choice clinic blockaders did not violate federal civil rights laws.¹⁰
- Scalia supports extreme restrictions on a minor's right to choose and would uphold mandatory parental notice requirements, even those that do not allow for the option of going to a judge in order to get around the notification requirement.¹¹
- Scalia has consistently voted to uphold bans on the use of public funds for abortions.¹²

Notable Quotations

*"[T]he Constitution contains no right to abortion."*¹³

*"Roe was plainly wrong — even on the Court's methodology of 'reasoned judgment,' and even more so (of course) if the proper criteria of text and tradition are applied."*¹⁴

*"The issue is whether [abortion] is a liberty protected by the Constitution of the United States. I am sure it is not. . . . (1)[T]he Constitution says absolutely nothing about it, and (2) the longstanding traditions of American society have permitted it to be legally proscribed."*¹⁵

*"If only for the sake of its own preservation, the Court should return this matter to the people — where the Constitution, by its silence on the subject, left it — and let them decide, State by State, whether this practice should be allowed. Casey must be overruled."*¹⁶

*"I am optimistic enough to believe that, one day, Stenberg v. Carhart will be assigned its rightful place in the history of this Court's jurisprudence beside Korematsu and Dred Scott."*¹⁷

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Notes, cont'd:

- ¹ *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 520 (1990) (Scalia, J., concurring).
- ² See, e.g., *Stenberg v. Carhart*, 530 U.S. 914, 953 (2000) (Scalia, J., dissenting); *Planned Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833, 980 (1992) (Scalia, J., concurring in the judgment in part and dissenting in part); *Webster v. Reproductive Health Services*, 492 U.S. 490, 532 (1989) (Scalia, J., concurring).
- ³ *Akron Center for Reproductive Health*, 497 U.S. at 520 (Scalia, J., concurring); *Webster*, 492 U.S. at 532 (Scalia, J., concurring).
- ⁴ *Webster*, 492 U.S. at 532 (Scalia, J., concurring).
- ⁵ *Stenberg*, 530 U.S. at 956 (Scalia, J., dissenting); *Webster*, 492 U.S. at 532 (Scalia, J., concurring). In fact, Scalia attacked *Casey* and *Roe* as “erroneously decided precedent” as recently as June 2003. See *Lawrence v. Texas*, 539 U.S. 558, 587 (2003) (Scalia, J., dissenting).
- ⁶ *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America*, 127 S. Ct. 1610, 1618 (2007).
- ⁷ *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America*, 127 S. Ct. at 1639 (Thomas, J., concurring) (citation omitted).
- ⁸ *Stenberg*, 530 U.S. at 956 (Scalia, J., dissenting).
- ⁹ See, e.g., *Hill v. Colorado*, 530 U.S. 703, 741 (2000) (Scalia, J., dissenting); *Madsen v. Women’s Health Center, Inc.*, 512 U.S. 753, 784 (1994) (Scalia, J., concurring in the judgment in part and dissenting in part).
- ¹⁰ *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 266 (1993).
- ¹¹ *Hodgson v. Minnesota*, 497 U.S. 417, 479 (Scalia, J., concurring in the judgment in part and dissenting in part).
- ¹² See, e.g., *Rust v. Sullivan*, 500 U.S. 173, 177 (1991).
- ¹³ *Akron Center for Reproductive Health*, 497 U.S. at 520 (Scalia, J., concurring).
- ¹⁴ *Casey*, 505 U.S. at 983 (Scalia, J., concurring in the judgment in part and dissenting in part).
- ¹⁵ *Casey*, 505 U.S. at 980 (Scalia, J., concurring in the judgment in part and dissenting in part) (citation omitted).
- ¹⁶ *Stenberg*, 530 U.S. at 956 (Scalia, J., dissenting).
- ¹⁷ *Stenberg*, 530 U.S. at 953 (Scalia, J., dissenting). In *Stenberg*, the Supreme Court ruled that under the Constitution, a ban on so-called “partial-birth” abortion that lacks an exception to protect a woman’s health and that bans more than one procedure is unconstitutional.