



NARAL
Pro-Choice America Foundation

JUSTICE CLARENCE THOMAS

*"I write separately to reiterate my view that the Court's abortion jurisprudence, including Casey and Roe has no basis in the Constitution."*¹

Biography

- Born June 23, 1948, in Pin Point, Georgia
- Associate Supreme Court Justice 1991–present (appointed by President George H. W. Bush)

Current Role on the Supreme Court

Justice Thomas is one of four staunchly anti-choice members of the Court, along with Chief Justice John Roberts and Associate Justices Scalia and Alito. During his more than fifteen years on the Court, he has consistently voted with Justice Scalia to limit or eliminate the constitutional protection of a woman's right to choose.

A History of Opposition to Reproductive Freedom

- Justice Thomas believes that the Constitution does not protect the right to choose and he believes that both *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* should be overruled.
 - He remarked that "Although a State *may* permit abortion, nothing in the Constitution dictates that a State *must* do so."²
 - He has described the Court's decision in *Roe* as "grievously wrong."³
 - In *Casey*, he joined then-Chief Justice Rehnquist's dissenting opinion, which stated that "*Roe* was wrongly decided[;] it can and should be overruled."⁴
 - He wrote: "The standard set forth in the *Casey* plurality has no historical or doctrinal pedigree. The standard is a product of its authors' own philosophical views about abortion, and it should go without saying that it has no origins in or relationship to the Constitution and is, consequently, as illegitimate as the [*Roe*] standard . . ."⁵
- Justice Thomas has voted to uphold restrictions on the rights of privacy and choice.

- He voted to uphold all of the restrictive provisions of Pennsylvania’s abortion regulation statute, including the spousal notification requirement that the majority found unconstitutional.⁶
- He would have upheld Nebraska’s ban on abortion procedures, even though it criminalized safe and common procedures, and lacked a provision to protect women’s health.⁷
- He voted to uphold the Bush Federal Abortion Ban, a law that outlaws certain second-trimester abortions and does not include any exception for when a woman’s health is threatened.⁸
- He voted to uphold a policy that required warrantless, nonconsensual drug testing of pregnant women.⁹
- He voted to uphold a state law criminalizing consensual sex between adults because, unlike the majority, he held that the Constitution does not contain a general right to privacy.¹⁰
- Justice Thomas consistently voted to strike down policies intended to protect clinics from anti-choice violence.
 - He agreed with the statement that “[t]here is no right to be free of unwelcome speech on the public streets while seeking entrance to or exit from abortion clinics.”¹¹
 - He would have struck down Colorado’s clinic protection statute, which the Court upheld 6-3.¹²
 - He would have disallowed injunctions establishing 15-foot and 36-foot “buffer zones” around women’s health clinics that had experienced significant anti-choice harassment.¹³
 - In a 5-4 decision, the majority of the Court — including Thomas — ruled that victims of anti-choice blockaders and violence could not use federal civil rights laws for protection.¹⁴

Notable Quotations

“In 1973, this Court struck down an Act of the Texas Legislature that had been in effect since 1857, thereby rendering unconstitutional abortion statutes in dozens of States. As some of my colleagues on the Court, past and present, ably demonstrated, that decision was grievously wrong.”¹⁵

“[T]he Casey joint opinion was constructed by its authors out of whole cloth. The standard set forth in the Casey plurality has no historical or doctrinal pedigree. The standard is a product of its authors’ own philosophical views about abortion, and it should go without saying that it has no origins in or relationship to the Constitution and is, consequently, as illegitimate as the standard it purported to replace.”¹⁶

“But the Court’s abortion jurisprudence is a particularly virulent strain of constitutional exegesis. And so today we are told that 30 States are prohibited from banning one rarely used form of abortion that they believe to border on infanticide. It is clear that the Constitution does not compel this result.”¹⁷

“And, just like Justice Stewart, I ‘can find neither in the Bill of Rights nor any other part of the Constitution a general right of privacy,’ or as the Court terms it today, the ‘liberty of the person both in its spatial and more transcendent dimensions.’”¹⁸

March 2010

Notes:

- ¹ *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America*, 127 S. Ct. 1610, 1639 (2007) (Thomas, J., concurring) (citation omitted).
- ² *Stenberg v. Carhart*, 530 U.S. 914, 980 (2000) (Thomas, J., dissenting).
- ³ *Stenberg*, 530 U.S. at 980 (Thomas, J., dissenting).
- ⁴ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 944 (1992) (Rehnquist, J., dissenting).
- ⁵ *Stenberg*, 530 U.S. at 982 (Thomas, J., dissenting).
- ⁶ *Casey*, 505 U.S. at 979.
- ⁷ *Stenberg*, 530 U.S. at 980.
- ⁸ *Gonzales v. Carhart* and *Gonzales v. Planned Parenthood Federation of America*, 127 S. Ct. 1610, 1618 (2007).
- ⁹ *Ferguson v. City of Charleston*, 532 U.S. 67, 91 (2001) (Scalia, J., dissenting).
- ¹⁰ *Lawrence v. Texas*, 539 U.S. 558, 605–06 (2003); see *Roe v. Wade*, 410 U.S. 113 (1973); *Casey*, 505 U.S. 833.
- ¹¹ *Schenck v. Pro-Choice Network*, 519 U.S. 357, 386 (1997) (Scalia, J., concurring in part, dissenting in part).
- ¹² *Hill v. Colorado*, 530 U.S. 703, 705 (2000).
- ¹³ *Schenck*, 519 U.S. at 387, 395 (Scalia, J., concurring in part, dissenting in part); *Madsen v. Women’s Health Center, Inc.*, 512 U.S. 753, 785 (1994) (Scalia, J., concurring in the judgment in part, dissenting in part).
- ¹⁴ *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 265, 267–68 (1993).
- ¹⁵ *Stenberg*, 530 U.S. at 980 (Thomas, J., dissenting) (citation omitted).
- ¹⁶ *Stenberg*, 530 U.S. at 982 (Thomas, J., dissenting).
- ¹⁷ *Stenberg*, 530 U.S. at 1020 (Thomas, J., dissenting).
- ¹⁸ *Lawrence*, 539 U.S. at 605–06 (Thomas, J., dissenting) (alterations omitted) (*quoting Griswold v. Connecticut*, 381 U.S. 479, 530 (1975) (Stewart, J., dissenting) and *Lawrence*, 539 U.S. at 562 (Kennedy, J.)).