

The SCOTUS on Abortion

Contact Info

Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Telephone: 202-479-3000
TTY: 202-479-3472
(Available M-F 9 a.m. to 5 p.m. eastern)

Email:
https://www.supremecourt.gov/contact/contact_pio.aspx

Summary of positions on abortion

The summaries below are abbreviated. More information on the Justices' histories can be found at <https://www.supremecourt.gov/>

Against:

Roberts	For Restrictions
Alito	Opposes Abortion Rights, For Restrictions
Barrett	Anti-Abortion, For Restrictions
Gorsuch	For Restrictions
Kavanaugh	For Restrictions
Thomas	For Restrictions

For:

Beyer	For Abortion Rights
Kagan	For Abortion Rights
Sotomayor	For Abortion Rights

John G. Roberts, Jr., Chief Justice of the United States,

was born in Buffalo, New York, January 27, 1955. He married Jane Marie Sullivan in 1996 and they have two children - Josephine and Jack. He received an A.B. from Harvard College in 1976 and a J.D. from Harvard Law School in 1979. Law clerk for Judge Henry J. Friendly of US Court of Appeals; Law clerk for then-Associate Justice William H. Rehnquist of SCOTUS; Special Assistant to the Attorney General, U.S. Department of Justice; Associate Counsel to President Ronald Reagan, White House Counsel's Office from 1982–1986, and Principal Deputy Solicitor General, U.S. DOJ. President George W. Bush nominated him as Chief Justice of the United States, and he took his seat September 29, 2005.

For Restrictions

- Roberts voted to uphold restrictions in two major abortion cases, in the majority in 2007 to uphold a ban on a method of abortion opponents call "partial-birth abortion" and in dissent in 2016 when the court struck down Texas restrictions on abortion clinics in a case called Whole Woman's Health.

- joined the court's three liberal justices with SB8, writing that he would have kept the law from being implemented while the legality of the law was weighed in court
- But when a virtually identical law from Louisiana came before the court in 2020, Roberts voted against it and wrote the opinion striking down the Louisiana law. The chief justice said he continues to believe that the 2016 case "was wrongly decided" but that the question was "whether to adhere to it in deciding the present case."
- Roberts' views on when to break with court precedent could determine how far he is willing to go in the Mississippi case. At his 2005 confirmation hearing, he said overturning precedent "is a jolt to the legal system."
- Thinking an earlier case was wrongly decided isn't enough, he said. Overturning a case requires looking "at these other factors, like settled expectations, like the legitimacy of the court, like whether a particular precedent is workable or not, whether a precedent has been eroded by subsequent developments," Roberts said then.

Samuel A. Alito, Jr., Associate Justice,

was born in Trenton, New Jersey, April 1, 1950. He married Martha-Ann Bomgardner in 1985, and has two children - Philip and Laura. He served as a law clerk for Leonard I. Garth of the United States Court of Appeals for the Third Circuit from 1976–1977. He was Assistant U.S. Attorney, District of New Jersey, 1977–1981, Assistant to the Solicitor General, U.S. Department of Justice, 1981–1985, Deputy Assistant Attorney General, U.S. Department of Justice, 1985–1987, and U.S. Attorney, District of New Jersey, 1987–1990. He was appointed to the United States Court of Appeals for the Third Circuit in 1990. President George W. Bush nominated him as an Associate Justice of the Supreme Court, and he took his seat January 31, 2006.

Opposes abortion rights

- Alito has a long record of votes and writings opposing abortion rights, as a jurist and, earlier, a government lawyer.
- Alito has voted to uphold every abortion law the court has considered since his 2006 confirmation, joining a majority to uphold the federal "partial-birth" abortion law and dissenting in the 2016 and 2020 cases.
- As a federal appeals court judge, he voted to uphold a series of Pennsylvania abortion restrictions, including requiring a woman to notify her spouse before obtaining an abortion. The Supreme Court ultimately struck down the notification rule in Casey and reaffirmed the abortion right in 1992 by a 5-4 vote.
- While working for the Reagan administration in 1985, Alito wrote in a memo that the government should say publicly in a pending abortion case "that we disagree with Roe v. Wade."
- Around the same time, applying for a promotion, Alito noted he was "particularly proud" of his work arguing "that the Constitution does not protect a right to an abortion."

Amy Coney Barrett, Associate Justice,

was born in New Orleans, Louisiana, on January 28, 1972. She married Jesse M. Barrett in 1999, and they have seven children - Emma, Vivian, Tess, John Peter, Liam, Juliet, and Benjamin. She received a B.A. from Rhodes College in 1994 and a J.D. from Notre Dame Law School in 1997. After two years in private law practice in

Washington, D.C., she became a law professor, joining the faculty of Notre Dame Law School in 2002. She was appointed a Judge of the United States Court of Appeals for the Seventh Circuit in 2017. President Donald J. Trump nominated her as an Associate Justice of the Supreme Court, and she took her seat on October 27, 2020.

For Restrictions, Anti-Abortion

- Barrett's one public Supreme Court vote on abortion was to allow the Texas "fetal heartbeat" law to take effect. She also cast two votes as an appeals court judge to reconsider rulings that blocked Indiana abortion restrictions.
- In 2016, shortly before the election that put Trump in office, she commented about how she thought abortion law might change if Trump had the chance to appoint justices.
- "I ... don't think the core case — Roe's core holding that, you know, women have a right to an abortion — I don't think that would change," said Barrett, then a Notre Dame law professor.
- She said limits on what she called "very late-term abortions" and restrictions on abortion clinics would be more likely to be upheld.
- Barrett also has a record of personal opposition to abortion rights, co-authoring a 1998 law review article that said abortion is "always immoral."
- But at her 2017 hearing to be an appeals court judge, Barrett said in written testimony, "If I am confirmed, my views on this or any other question will have no bearing on the discharge of my duties as a judge."
- Barrett has been openly critical of the ACA and its requirement that all health plans include no copay birth control coverage.

Neil M. Gorsuch, Associate Justice,

was born in Denver, Colorado, August 29, 1967. He and his wife Louise have two daughters. He received a B.A. from Columbia University, a J.D. from Harvard Law School, and a D.Phil. from Oxford University. Law clerk to Justice Byron White and Justice Anthony M. Kennedy of the Supreme Court of the United States. He taught at the University of Colorado Law School. President Donald J. Trump nominated him as an Associate Justice of the Supreme Court, and he took his seat on April 10, 2017.

Supports Restrictions

- Gorsuch was in the majority allowing Texas' restrictive abortion law to take effect. In dissent in 2020, he would have upheld Louisiana's abortion clinic restrictions.
- As an appeals court judge before joining the Supreme Court in 2017, Gorsuch dissented when his colleagues declined to reconsider a ruling that blocked then-Utah Gov. Gary Herbert from cutting off funding for Planned Parenthood.
- But, at his Senate confirmation hearing, Gorsuch said he was concerned only then about procedural issues: "I do not care if the case is about abortion or widgets or anything else."

Brett M. Kavanaugh, Associate Justice,

was born in Washington, D.C., on February 12, 1965. He married Ashley Estes in 2004, and they have two daughters - Margaret and Liza. He received a B.A. from Yale College in 1987 and a J.D. from Yale Law School in 1990. From 2001 to 2003, he was Associate Counsel and then Senior Associate Counsel to President George W.

Bush. From 2003 to 2006, he was Assistant to the President and Staff Secretary for President Bush. He was appointed a Judge of the United States Court of Appeals for the District of Columbia Circuit in 2006. President Donald J. Trump nominated him as an Associate Justice of the Supreme Court, and he took his seat on October 6, 2018.

For Restrictions

- Kavanaugh's name was added to former President Donald Trump's shortlist of Supreme Court candidates shortly after he sided with the administration in a 2017 case involving abortion. Trump chose him for the court the following year.
- As a justice, Kavanaugh dissented from the Louisiana decision and voted to allow the new Texas law to take effect, though he has taken a less absolutist stance than some of his conservative colleagues.
- In the Louisiana case, Kavanaugh wrote that more information was needed about how the restrictions on clinics would affect doctors who provide abortions and seemed to suggest his vote could change based on that information.
- Kavanaugh's most extensive writing on abortion came while a judge on the federal appeals court in Washington. The Trump administration had appealed a ruling ordering it to allow a pregnant 17-year-old immigrant in its custody to get an abortion. The administration's policy was to decline to help those minors get abortions while in custody.
- Kavanaugh was on a three-judge panel that postponed the abortion, arguing that officials should be given a limited window to transfer the minor from government custody to the care of a sponsor. She could then obtain an abortion without government assistance.
- The full appeals court later reversed the decision, and the teenager got an abortion.
- Kavanaugh called that decision out of step with "many majority opinions of the Supreme Court that have repeatedly upheld reasonable regulations that do not impose an undue burden on the abortion right recognized by the Supreme Court in Roe v. Wade."

Clarence Thomas, Associate Justice,

was born in the Pinpoint community near Savannah, Georgia on June 23, 1948. He attended Conception Seminary from 1967-1968 and received an A.B., cum laude, from College of the Holy Cross in 1971 and a J.D. from Yale Law School in 1974. He married Virginia Lamp on May 30, 1987 and has one child, Jamal Adeen by a previous marriage. He was admitted to law practice in Missouri in 1974, and served as an Assistant Attorney General of Missouri, 1974-1977; an attorney with the Monsanto Company, 1977-1979; served as Assistant Secretary for Civil Rights, U.S. Department of Education, and as Chairman of the U.S. Equal Employment Opportunity Commission. President Bush nominated him as an Associate Justice of the Supreme Court and he took his seat October 23, 1991.

For Restrictions

- Thomas voted to overturn Roe in 1992 during his first term on the court, when he was a dissenter in Planned Parenthood v. Casey. He has repeatedly called for Roe and Casey to be overturned since.
- In 2000, he wrote in dissent when the court struck down Nebraska's ban on "partial-birth abortion."
- Recounting the court's decision in Roe, he wrote, "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. Abortion is a unique act, in which a woman's exercise of control over her own body ends, depending on one's view, human life or potential human life. Nothing in our Federal Constitution deprives the people of this country of the right to determine whether the consequences of abortion to the fetus and to society outweigh the burden of an unwanted pregnancy on the mother. Although a State may permit abortion, nothing in the Constitution dictates that a State must do so."

Stephen G. Breyer, Associate Justice,

was born in San Francisco, California, August 15, 1938. He married Joanna Hare in 1967, and has three children - Chloe, Nell, and Michael. He received an A.B. from Stanford University, a B.A. from Magdalen College, Oxford, and an LL.B. from Harvard Law School. Law clerk to Justice Arthur Goldberg of the Supreme Court of the United States; Assistant Special Prosecutor of the Watergate Special Prosecution Force. He was an Assistant Professor, Professor of Law, and Lecturer at Harvard Law School, a Professor at the Harvard University Kennedy School of Government, and a Visiting Professor at the College of Law, Sydney, Australia and at the University of Rome. President Clinton nominated him as an Associate Justice of the Supreme Court, and he took his seat August 3, 1994.

Supports abortion rights

- Breyer has been the lead author of two majority opinions in defense of abortion rights, in 2000 and 2016. He has never voted to sustain an abortion restriction.
- Millions of Americans believe "that an abortion is akin to causing the death of an innocent child," while millions of others "fear that a law that forbids abortion would condemn many American women to lives that lack dignity," he wrote in the Nebraska case 21 years ago, calling those views "virtually irreconcilable."
- Still, Breyer wrote, because the Constitution guarantees "fundamental individual liberty" and has to govern even when there are strong divisions in the country, "this Court, in the course of a generation, has determined and then redetermined that the Constitution offers basic protection to the woman's right to choose."

Elena Kagan, Associate Justice,

was born in New York, New York, on April 28, 1960. She received an A.B. from Princeton in 1981, an M. Phil. from Oxford in 1983, and a J.D. from Harvard Law School in 1986. Clerked for Justice Thurgood Marshall of the U.S. Supreme Court during the 1987 Term. After briefly practicing law at a Washington, D.C. law firm, she became a law professor, first at the University of Chicago Law School and later at Harvard Law School. She also served for four years in the Clinton Administration, as Associate Counsel to the President and then as Deputy Assistant to the President for Domestic Policy. President Obama nominated her as an Associate Justice of the Supreme Court on May 10, 2010. She took her seat on August 7, 2010.

Supports abortion rights

- Kagan has repeatedly voted in favor of abortion rights in more than 11 years as a justice.
- She also is arguably the most consistent voice on the court arguing for the importance of adhering to precedents and can be expected to try to persuade her colleagues not to jettison constitutional protections for abortion.

- Kagan was in the majority when the court struck down the Texas and Louisiana restrictions on abortion clinics. More recently, Kagan called Texas' new abortion law "patently unconstitutional" and a "clear, and indeed undisputed, conflict with Roe and Casey."
- While working in the Clinton White House, she was the co-author of a memo urging the president for political reasons to support a late-term abortion ban proposed by Republicans in Congress as long as it contained an exception for the health of the woman. Ultimately, President George W. Bush signed a similar late-term abortion ban without a health exception. The Supreme Court upheld it.

Sonia Sotomayor, Associate Justice,

was born in Bronx, New York, on June 25, 1954. She earned a B.A. in 1976 from Princeton University, graduating summa cum laude and receiving the university's highest academic honor. In 1979, she earned a J.D. from Yale Law School where she served as an editor of the Yale Law Journal. In 1991, President George H.W. Bush nominated her to the U.S. District Court, Southern District of New York, and she served in that role from 1992–1998. She served as a judge on the United States Court of Appeals for the Second Circuit from 1998–2009. President Barack Obama nominated her as an Associate Justice of the Supreme Court on May 26, 2009, and she assumed this role August 8, 2009.

Supports abortion rights

- Sotomayor has voted repeatedly in favor of abortion rights since joining the court in 2009.
- Recently, when the court allowed Texas' restrictive abortion law to take effect, accused her colleagues of burying "their heads in the sand."
- She was in the majority in the Texas and Louisiana abortion clinic cases.
- Sotomayor's displeasure with the recent Texas ruling was evident at a recent virtual appearance she made: "I can't change Texas' law, but you can".

Sources

<https://www.supremecourt.gov/>

Where Supreme Court justices stand on abortion, in their own words, writings, votes

By Mark Sherman | AP and Jessica Gresko | AP Oct 13, 2021

<https://chicago.suntimes.com/2021/10/13/22724465/supreme-court-justices-abortion-stance-own-words-writings-votes>

Supreme Court, Breaking Silence, Won't Block Texas Abortion Law

By Adam Liptak, J. David Goodman and Sabrina Tavernise | Sep 1, 2021

<https://www.nytimes.com/2021/09/01/us/supreme-court-texas-abortion.html>