



Judicial Appointments

Federal Bench Appointments

With the exception of “recess appointments,” which last only until the next congressional session, federal judges enjoy lifetime terms on the bench.

- President Bush's conservative appointees now fill over 30% of U.S. judiciary posts.¹

Bush Appointees to the Supreme Court

President Bush has successfully appointed two anti-choice justices to the Supreme Court.

- Chief Justice John Roberts replaced Chief Justice William Rehnquist after his death in 2005.
 - In his previous post as Deputy Solicitor General, Roberts co-wrote a brief for *Rust v. Sullivan* (1991) arguing that *Roe* had been wrongfully decided.²
 - Roberts defended Operation Rescue, a group of anti-choice radicals who had blocked access to family planning clinics and harassed patients seeking abortion care. Roberts argued on behalf of the DOJ that this violent and harassing conduct did not constitute gender discrimination, even though only women have abortions.³
 - In his confirmation hearings before the Senate Judiciary Committee, Roberts said, “*Roe v. Wade* is the settled law of the land. There’s nothing in my personal views that would prevent me from fully and faithfully applying that precedent, as well as *Casey*.”⁴ He also said, “[T]here’s nothing in my personal views based on faith or other sources that would prevent me from applying the precedents of the court faithfully under principles of *stare decisis*.”⁵
 - Nevertheless, Roberts joined the narrow majority in *Gonzales v. Carhart* to uphold the Federal Abortion Ban, reversing the precedent set seven years earlier in *Stenberg v. Carhart*.⁶
- Justice Samuel Alito replaced Justice Sandra Day O’Connor after she retired in 2006.
 - In 1985, Alito wrote a memo for the Solicitor General's office urging the DOJ to file an amicus brief in *Thornburgh v. American College of Obstetricians and Gynecologists* that advocated overruling *Roe* without mounting a “frontal assault.”⁷ He wrote that the case was “an opportunity to nudge the Court...to provide greater recognition of the states’ interest in protecting the unborn throughout pregnancy.”⁸
 - As a circuit court judge in *Planned Parenthood v. Casey*, Alito upheld the spousal notification provision later struck down as unconstitutional by the Supreme Court.⁹
 - In his confirmation hearings, Alito professed that “[Precedent is] important because it reflects the view that courts should respect the judgments and the wisdom that are embodied in prior judicial decisions.”¹⁰

¹ Alliance for Justice, Connect with the Issues, <http://www.afj.org/connect-with-the-issues/>.

² Reclaiming Choice, Broadening the Movement: Sexual and Reproductive Justice and Asian Pacific American Women, a National Agenda for Action, available at http://www.napawf.org/file/issues/RJPolicy_Agenda.pdf; *Rust v. Sullivan*, 500 U.S. 173 (1991).

³ http://www.nominationwatch.org/2005/08/robertss_involv.html; *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993).

⁴ Alliance for Justice, Fact Sheet: The Impact of Justices Roberts and Alito on the Bench, <http://www.afj.org/about-afj/press/fact-sheet-roberts-and-alito-review.html>.

⁵ *Id.*

⁶ *Gonzales v. Carhart*, 127 S. Ct. 1610 (2007); *Stenberg v. Carhart*, 530 U.S. 914 (2000). The Court distinguished the two cases based on the specificity of the procedure banned, but decided that the lack of an exception to protect the health of the woman did not render the law unconstitutional because of “medical uncertainty” as to its necessity.

⁷ *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986); National Women’s Law Center, Nomination Watch: Alito, Ayotte and Abortion,

http://www.nominationwatch.org/2005/12/alito_ayotte_an.html.

⁸ National Women's Law Center, *supra* note 7; *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

⁹ U.S. Supreme Court Media, Oyez: Samuel A. Alito, Jr., U.S. Supreme Court Justice, http://www.oyez.org/justices/samuel_a_alito_jr/.



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- Regarding abortion, Alito said, “I think that the case law is very clear that protecting the life and the health of a mother is a compelling interest throughout pregnancy.”¹¹
- Contrary to the views he publicly espoused just one year earlier, Alito joined the majority opinion in *Gonzales v. Carhart*, upholding the Federal Abortion Ban even though it provides no exception for the health of the woman.¹²
- It’s possible that President Bush will have the chance to nominate a third Supreme Court Justice before his term ends, given the age and medical conditions of several Justices.

The Future of the Supreme Court

If 2008 ends without further high court nominations by President Bush, the next president will have a crucial role in shaping the court's future.¹³

¹⁰ Alliance for Justice, *supra* note 4.

¹¹ *Id.*

¹² *Gonzales v. Carhart*, *supra* note 6.

¹³ Associated Press, Analysis: Court’s Course in Next President’s Hands, CBS NEWS, June 12, 2008, <http://www.cbsnews.com/stories/2008/06/12/ap/politics/main4177222.shtml>.