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Justice Samuel Alito, who wrote the opinion overturning Roe v. Wade, retires

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Nina Totenberg



Justice Samuel Alito, seen here in April 2021, retired Friday.

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Justice Samuel Alito, who wrote the Supreme Court's opinion reversing Roe v. Wade, is retiring, the court announced Tuesday.

Alito was nominated to the court in 2005 by President George W. Bush to fill the seat vacated by Justice Sandra Day O'Connor.

In the history of the Supreme Court, the names of just a few justices are linked with a single very famous, or infamous, decision. Chief Justice John Marshall for his groundbreaking decision in 1803, declaring that courts have the power to strike down laws that violate the Constitution. Chief Justice Roger Taney for his infamous decision in the Dred Scott case declaring that no African American, enslaved or free, could be a citizen of the United States, a decision that led in part to the Civil War; Chief Justice Earl Warren for his 1954 decision declaring racial segregation in public schools to be unconstitutional. And in our own times, Alito's name is indelibly linked with the court's opinion overturning a half century's worth of decisions declaring that women have a right to abortion.

A consequential conservative

Alito, unlike Marshall, Taney and Warren, was not chief justice, and he may even now be little known to the public generally. But throughout his tenure, he played a key role on the court, often leading the conservative charge, not just on abortion, but for expanded religious rights, against LGBTQ+ rights, against expanded voting rights, for the death penalty, against labor unions, and more.

His arrival at the court in 2006 to replace the more centrist Justice O'Connor, marked a decided shift to the right on the court. On contraception, for instance, he wrote the court's 5-to-4 decision declaring that closely held, for-profit corporations could refuse, on religious grounds, to comply with a federal law that requires employer insurance policies to cover contraception for their employees.

"This court has said time and again that we have no business judging whether any sincere religious belief is valid or reasonable and it would be dangerous if we started down that road," he said in his opinion.

On gun control, he wrote the court's 2010 decision striking down state bans on handguns in the home.

"The right to keep and bear arms is implicit in our understanding of ordered liberty and deeply rooted in the traditions of our country," he wrote in his decision.

In death penalty cases, Alito was impatient with attempts to limit capital punishment. In voting rights cases, he repeatedly sided with state laws that make it more difficult for people to vote.

As he wrote in a 2021 opinion, "Mere inconvenience cannot be enough to demonstrate a violation" of the voting rights act.

Views on the culture wars

Few issues appeared to rankle Alito as much as those that directly or indirectly involved religion, and perhaps not incidentally, the modern culture wars.

As he put it in a 2022 speech in Rome: "There's also growing hostility to religion or at least the traditional religious beliefs that are contrary to the new moral code."

Yale law professor Akhil Amar says that for the conservatives on the court, Alito time and again was a workhorse, not a show horse.

"He's not flashy or flamboyant. But by not overreaching he's able to succeed," Amar said.

Alito's opinion for the 5-to-4 court majority in the abortion case was, in essence, his magnum opus on abortion and constitutional interpretation. He likely had been writing it in his head for years. There was no announcement of the opinion from the bench because the court stopped those public statements during the pandemic. But as Alito explained in his written opinion, the Supreme Court's 1973 Roe decision and the decades of decisions that followed had to be overruled because Roe was "egregiously wrong," the arguments for it "exceptionally weak," and because there was "no history or tradition of abortion at the time of the founding or thereafter."

Adam Congioli, an early Alito law clerk who became a close Alito friend, describes the justice as a man very comfortable with the law as a system of rules, rules that Alito believed were broken to create a right to abortion.

So, according to Congioli, as the justice saw things, "we should never have been in this business in the first place. This is not our job under the rules so I'm going to get us out of this business and I'm going to send it back to the legislatures for people to fight about."

Others see Alito's abortion opinion differently.

Sarah Isgur, who served in the Trump Justice Department and is now the host of a podcast for the *Dispatch*, a conservative news outlet, said she saw Alito's abortion opinion as failing the critical test of persuasion.

The question, she said, should not have been whether Roe was correctly decided. "The question is: 'Do you overturn a precedent that has been on the books for 50 years. The most famous case probably to most Americans in the country?' And it's not even close."

Michael Dorf, a constitutional law professor at Cornell University, is more pointed, calling the Alito opinion "dishonest" because it so selectively cited history to make a one-sided case.

"One wonders how so many prior justices, a majority of whom were appointed by Republican presidents, could have found a right to abortion in the Constitution and then reaffirmed that right. There's a kind of arrogance to the opinion in the way it proceeds in a one-sided manner."

A legacy-defining opinion

Alito's friend Ciongoli acknowledges that the justice will be both praised and reviled for his abortion decision. That single opinion will be his legacy.

"Sam will undoubtedly be remembered for Dobbs. Period," he said. "I don't think he thought that out."

Indeed, in the immediate aftermath of the decision, Alito, who had long fought to reverse Roe, seemed more and more angry, even concluding at one point that the unprecedented leak of the draft opinion made the justices who voted to overturn Roe "targets for assassination," Ciolgoil said. "There were people who were going to try to kill them to try to change the outcome of the case."

"That sentence was aimed at his colleagues [on the court] who refused to issue a dissent in order to get the opinion out," he said.

In other words, Alito, and perhaps others in the majority, thought that after the leak of the abortion opinion, it was important to get the decision released quickly, thus preventing any deranged person from thinking he could change the outcome

by killing one of the justices in the majority. But as Alito saw things, the three dissenters refused to be rushed, so that it was almost two months later that the decision was released to the public, a delay that clearly infuriated him.

Amar, the Yale professor, however, sees all this as mere atmospherics.

"For better and worse it is one of the most important and most recognized and consequential [decision] for the lives of all Americans and their deepest beliefs in all of American history," he said. "He took sown Roe versus Wade. So that's how he he will be forever remembered."

supreme court justice samuel alito



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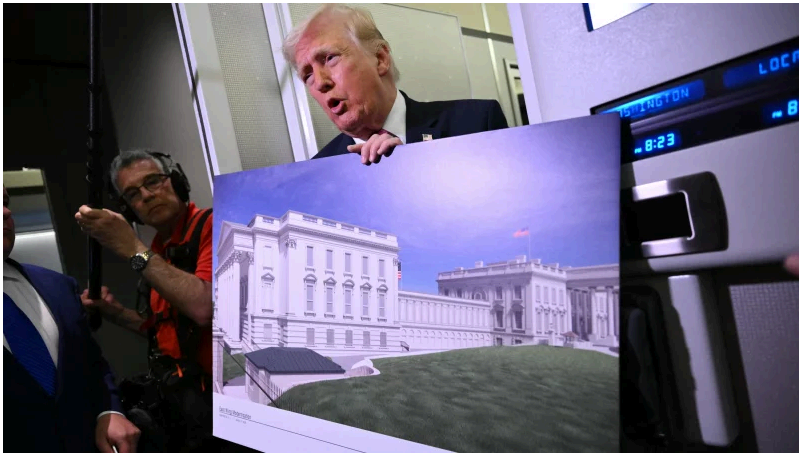
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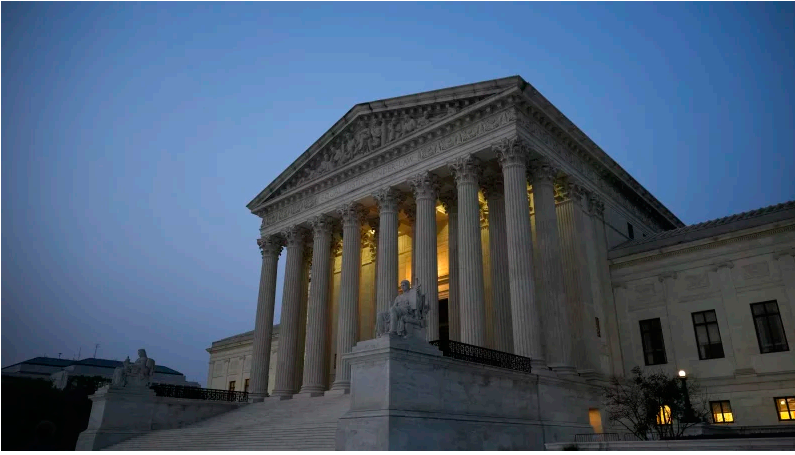


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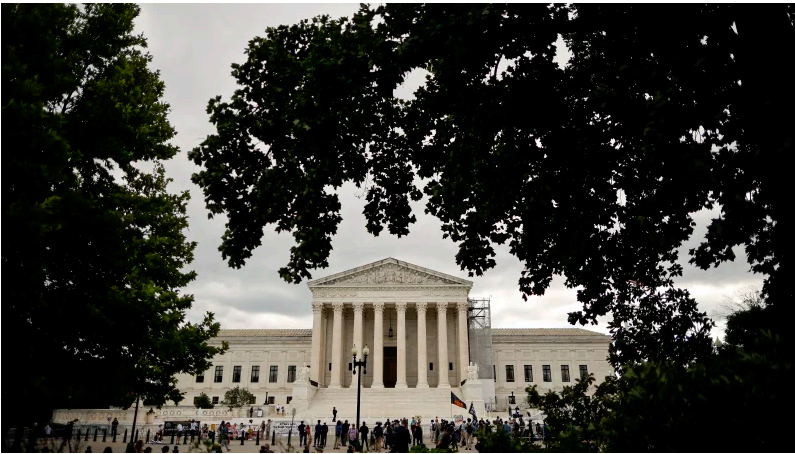


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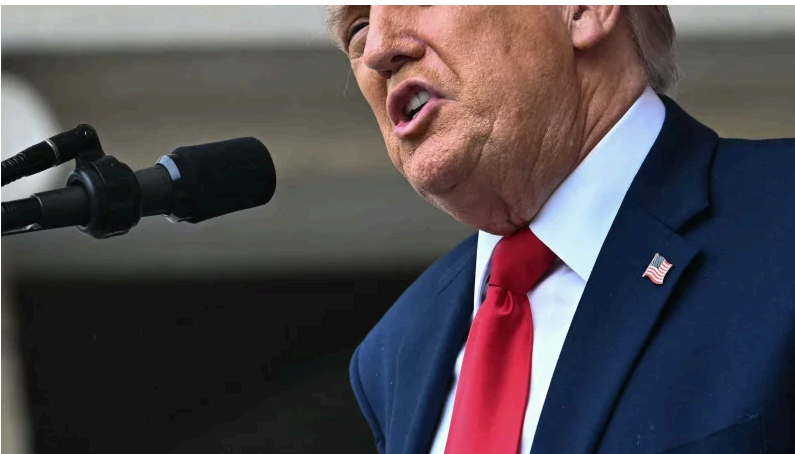
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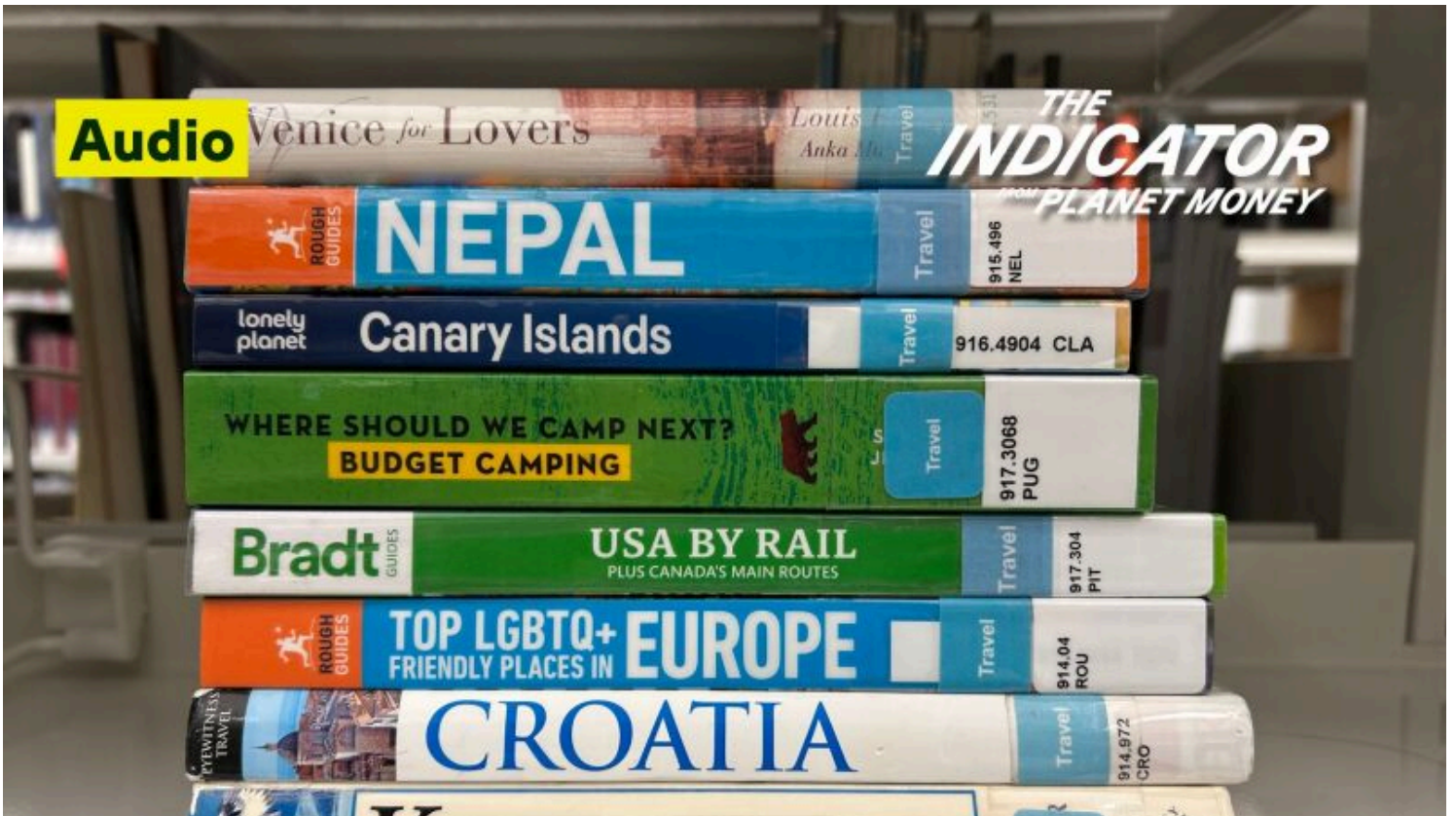


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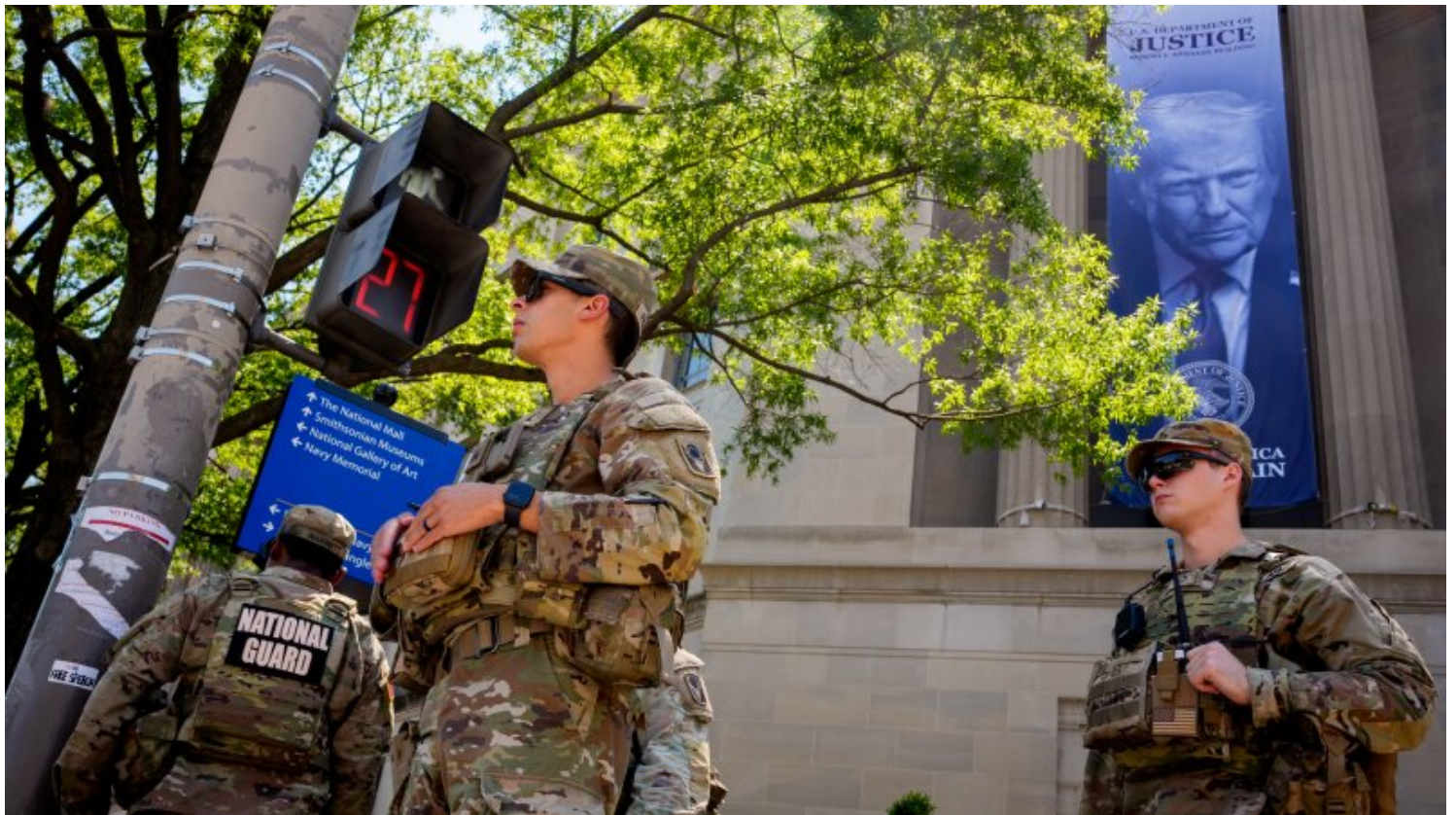
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