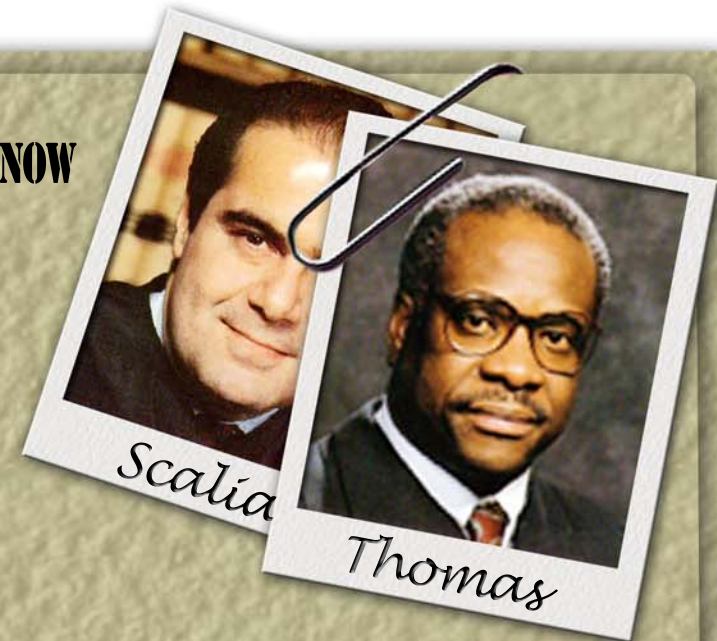


# TOP TEN THINGS PRESIDENT BUSH DOESN'T WANT YOU TO KNOW ABOUT SCALIA AND THOMAS

- 1 SCALIA OPPOSES EFFORTS TO DESEGREGATE SCHOOLS:** In his concurrence on *Freeman v. Pitts*, Scalia indicated he would favor stripping the authority of Federal courts to regulate school desegregation, "even for those schools that remain significantly segregated." [*Freeman v. Pitts* 1992]
- 2 THOMAS FAVORS STATE-SPONSORED RELIGION:** Thomas has "advanced the position" that constitutionally mandated church/state separation applies "to the federal government, but not to individual states – a position that would allow Virginia, for example, to declare a state religion." He would allow individual states to "adopt particular religions and use tax money to proselytize for them." [*Elk Grove v. Newdow*, 2004]
- 3 SCALIA SUPPORTS SEX DISCRIMINATION:** Scalia dissented from the Court's 7-to-1 decision that rejected the Virginia Military Institute's male-only admissions policy. He called the male-only admissions standard at the school a "well-rooted" tradition. [*U.S. v. Virginia*, 1996]
- 4 THOMAS WOULD ALLOW THE PRESIDENT TO EFFECTIVELY WAIVE DUE PROCESS RIGHTS:** In last term's confrontation over detainees in the war on terror, eight of the nine Justices squarely rejected the Bush administration's sweeping claim that it could detain citizens indefinitely as enemy combatants based merely on the executive branch's assertion of enemy combatant status. "Only Thomas supported the Bush administration's position." He claimed "due process requires nothing more than a good-faith executive determination." [*Rasul v. Bush*, 2004]
- 5 SCALIA AND THOMAS OPPOSE FAMILY AND MEDICAL LEAVE:** The Family and Medical Leave Act "guarantees most workers up to 12 weeks of unpaid leave to care for a loved one." Last year, the Court upheld the law, but Scalia and Thomas voted to strike it down, arguing that Congress exceeded its power in passing the law. [*Nevada v. Hibbs*, 2003]
- 6 SCALIA AND THOMAS SUPPORT EXECUTING THE MENTALLY RETARDED:** Scalia and Thomas dissented from the Court's 6-3 ruling that executing mentally retarded convicts constituted "cruel and unusual punishment." [*Atkins v. Virginia*, 2002]
- 7 SCALIA AND THOMAS SUPPORT BRUTALITY AGAINST PRISONERS:** A recent case considered a Louisiana inmate who "was shackled and then punched and kicked by two prison guards while a supervisor looked on." The beating left the inmate "with a swollen face, loosened teeth and a cracked dental plate." The Court ruled the inmate's treatment violated the Eighth Amendment's prohibition of cruel and unusual punishment, but Scalia and Thomas dissented, arguing "the Eighth Amendment was not violated by the 'insignificant' harm the inmate suffered." In another case last year, Scalia and Thomas dissented from a 6-3 decision to ban the Alabama practice of chaining prisoners to outdoor "hitching posts" and abandoning them for hours without food, water, or a chance to use the bathroom. [*Hudson v. McMillan*, 1992; *Hope v. Pelzer*, 2002]
- 8 SCALIA AND THOMAS SUPPORT CRIMINALIZING CONSENSUAL SEX:** Scalia and Thomas dissented from the Court's 6-3 decision to strike down a Texas state "sodomy" law, "banning private consensual sex between adults of the same sex" and approvingly cited the execution of homosexuals during colonial times. Scalia lashed into the decision for pandering to the "so-called homosexual agenda." [*Lawrence v. Texas*, 2003]



- 9 SCALIA AND THOMAS OPPOSE FEDERAL ENVIRONMENTAL REGULATION OF POLLUTERS:** Scalia and Thomas voted to strip the EPA "of the authority to prevent damaging air pollution by industries when state agencies improperly fail to do so." They dissented from the Court's decision that the EPA could make polluting companies use the "best available control technology" to limit pollution when they built new facilities. [*Alaska v. EPA*, 2004]
- 10 SCALIA AND THOMAS WOULD ALLOW STATES TO DISCRIMINATE AGAINST THE DISABLED:** After a Tennessee man was arrested for failure to appear in court because he was unwilling to crawl or be carried up the stairs to his second-story courtroom, Scalia and Thomas argued the state was right to arrest him because the Americans with Disabilities Act could only be enforced at the federal level. [*Tennessee v. Lane*, 2004]

**TOP SECRET**