30+ Precedents Justice Thomas Has Called for Unraveling

1. *Planned Parenthood v. Casey* (1992): "*Casey's* fabricated undue-burden standard . . . does not . . . merit[] adherence."[1] "*Casey* must be overruled."[2]

2. *Buckley* v. *Valeo* (1976): "I continue to believe that *Buckley* . . . should be overruled."[3]

3. *Griffin* v. *Illinois* (1956) and *Carter* v. *Kentucky* (1981): "I would be inclined to vote to overrule *Griffin* and its progeny."[4]

4. *Bacchus* v. *Dias* (1984): "*Bacchus* should be overruled."[5]

5. *McMillan* v. *Pennsylvania* (1986): "I would . . . overrule *McMillian* and reverse the Court of Appeals."[6]

6. *Penry* v. *Lynaugh* (1989): "In my view, *Penry* should be overruled."[7] *Penry* "cannot command the force of stare decisis."[8]

7. *Solem* v. *Helm* (1983): "I would not feel compelled by stare decisis to apply [*Solem*]."[9]

8. *Powers* v. *Ohio* (1991): "*Powers* . . . should be overruled."[10]

9. *BMW* v. *Gore* (1996) (limits on punitive damage awards): "I would vote to overrule *BMW*."[11]

10. *Zadvydas v. Davis* (2001): "*Zadvydas* was wrongly decided and should be overruled."[12]

[1] *Stenberg v. Carhart*, 530 U.S. 914, 982 (2000) (Thomas, J., dissenting).
[2] *Id.* (Scalia, J., dissenting) (joined by Thomas).
[3] *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 465 (2001) (Thomas, J., dissenting).
[4] *M.L.B. v. S.L.J.*, 519 U.S. 102, 139 (1996) (Thomas, J., dissenting); for *Carter*, see *Mitchell* v. *United States*, 526 U.S. 314 (1999) (Thomas, J., dissenting).
[5] *Granholm v. Heald*, 125 S. Ct. 1885, 1925 (2005) (Thomas, J., dissenting) ("Bacchus should be overruled, not fortified with a textually and historically unjustified "nondiscrimination against products" test.").
[6] *Harris v. United States*, 536 U.S. 545, 573 (2002) (Thomas, J., dissenting).
[7] *Graham* v. *Collins*, 506 U.S. 461(1993) (Thomas, J., concurring).
[8] *Tennard* v. *Dretke*, 542 U.S. 274 (2004) (Thomas, J., dissenting).
[9] *Ewing v. California*, 538 US 11 (2003) (Thomas, J., concurring).
[10] Campbell v. Louisiana, 523 U.S. 392, 404 (1998) (Thomas, J., dissenting).
[11] *Cooper Indus. v. Leatherman Tool Group*, 532 U.S. 424, 443 (2001) (Thomas, J., dissenting).
[12] *Clark v. Martinez*, 543 U.S. 371 (2005) (Thomas, J., dissenting).

30+ Precedents Justice Thomas Has Called for Unraveling

11. *Austin* v. *Michigan* (1990): "I would overrule [*Austin*] and return our campaign finance jurisprudence to principles consistent with the First Amendment."[13]

12. *Calder* v. *Bull* (1789): "I would be willing to reconsider *Calder* and its progeny. . . ."[14]

13. *Berman* v. *Parker* (1954) and *Hawaii Housing Authority* v. *Midkiff* (1984): "Our cases have strayed from the Clause's original meaning, and I would reconsider them."[15]

14. *Allen v. State Bd. of Elections* (1969) and *Thornburg v. Gingles* (1986): "a systematic reassessment of our interpretation of § 2 is required. . . . I cannot subscribe to the view that in our decisions under the Voting Rights Act it is more important that we have a settled rule than that we have the right rule."[16]

15. *Lemon* v. *Kurtzman* (1971), *County of Allegheny* v. *ACLU* (1989), and *Lee* v. *Weisman* (1992): "I would take this opportunity to begin the process of rethinking the Establishment Clause. I would acknowledge that the Establishment Clause is a federalism provision, which, for this reason, resists incorporation."[17]

16. *Estelle* v. *Gamble* (1976): "I remain hopeful that . . . the Court will reconsider *Estelle* in light of the constitutional text and history."[18]

17. *Central Hudson* v. *Public Service Commission of N.Y.* (1980): "Rather than continuing to apply [*Central Hudson*] a test that makes no sense to me. . . I would return to the reasoning and holding of *Virginia Pharmacy Bd.*"[19]

[13] *McConnell* v. *FEC*, 540 U.S. 93, 323 (2003) (Kennedy, J., dissenting) (joined by Thomas).
[14] *Eastern Enterprises v. Apfel*, 524 U.S. 498, 538-39 (1998) (Thomas, J., concurring).
[15] *Kelo* v. *City of New London*, 125 S. Ct. 2655, 2678 (2005) (Thomas, J., dissenting).
[16] *Holder v. Hall*, 512 U.S. 874, 892 (1994) (Thomas, J., concurring).
[17] *Elk Grove Unified School Dist.* v. *Newdow*, 542 U.S. 1 (2004) (Thomas, J., concurring).
[18] *Farmer* v. *Brennan*, 511 U.S. 825 (1994) (Thomas, J., concurring).
[19] *44 Liquormart, Inc., et al. v. Rhode Island et al.*, 517 U.S. 484 (1996) (Thomas, J., concurring).

30+ Precedents Justice Thomas Has Called for Unraveling

18. *United States v. Wheeler* (1978): "As this case should make clear, the time has come to reexamine the premises and logic of our tribal sovereignty cases."[20]

19. *J. W. Hampton, Jr., & Co. v. United States* (1928): "I would be willing to address the question whether our delegation jurisprudence has strayed too far from our Founders' understanding of separation of powers."[21]

20. More than 8 separate cases regarding the "negative Commerce Clause," including but not limited to *Welton v. Missouri* (1876); *Robbins v. Shelby County Taxing Dist.* (1887); *Philadelphia v. New Jersey* (1978); *Hughes v. Oklahoma* (1979); *Moorman Mfg. Co. v. Bair* (1978); *Complete Auto Transit, Inc. v. Brady* (1977); *Quill Corp. v. North Dakota* (1992); *Pike v. Bruce Church, Inc.* (1970): "The negative Commerce Clause has no basis in the text of the Constitution, makes little sense, and has proved virtually unworkable in application. . . . I think it worth revisiting the underlying justifications for our involvement in the negative aspects of the Commerce Clause, and the compelling arguments demonstrating why those justifications are illusory."[22]

[20] *United States* v. *Lara*, 541 U.S. 193 (2004) (Thomas, J., concurring).
[21] *American Trucking Assc* v. *Whitman*, 531 U.S. 457 (2001) (Thomas, J., concurring) (arguing for a reconsideration of the Court's non-delegation jurisprudence, beginning with *Hampton*).

[22] *Camps Newfound/Owatonna, Inc. v. Town of Harrison,* 520 U. S. 564, 610 (1997) (Thomas, J., dissenting).