

THOMAS, J., concurring

SUPREME COURT OF THE UNITED STATES

Nos. 05–380 and 05–1382

ALBERTO R. GONZALES, ATTORNEY GENERAL,
PETITIONER

05–380

v.

LEROY CARHART ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

ALBERTO R. GONZALES, ATTORNEY GENERAL,
PETITIONER

05–1382

v.

PLANNED PARENTHOOD FEDERATION OF
AMERICA, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[April 18, 2007]

JUSTICE THOMAS, with whom JUSTICE SCALIA joins,
concurring.

I join the Court’s opinion because it accurately applies current jurisprudence, including *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992). I write separately to reiterate my view that the Court’s abortion jurisprudence, including *Casey* and *Roe v. Wade*, 410 U. S. 113 (1973), has no basis in the Constitution. See *Casey*, *supra*, at 979 (SCALIA, J., concurring in judgment in part and dissenting in part); *Stenberg v. Carhart*, 530 U. S. 914, 980–983 (2000) (THOMAS, J., dissenting). I also note that whether the Act constitutes a permissible exercise of Congress’ power under the Commerce Clause is not before the Court. The parties did not raise or brief that issue; it

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is outside the question presented; and the lower courts did not address it. See *Cutter v. Wilkinson*, 544 U. S. 709, 727, n. 2 (2005) (THOMAS, J., concurring).