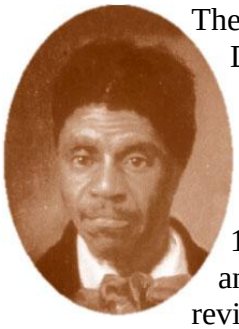
Dred Scott Shepardized
Informing Pro-life Strategy

April 2010

Dred Scott, Plaintiff in Error v. John Sandford [*sic*]* (1857)

The U.S. Supreme Court has mentioned its own pro-slavery *Dred Scott* decision 56 times in more than 150 years since issuing their opinion that many blacks and some other humans could be owned as property. What have they said about their own ruling, and what might that tell us about the fight to re-criminalize abortion? This Shepardization of the *Scott* opinion, analyzing each subsequent reference of that iconic case answers these questions and will help educate the person who works to end abortion.



The Supreme Court has been mostly positive or neutral in its references to its own pro-slavery Dred Scott decision as documented below. As late as 1992 in an abortion decision they actually make excuses for their own century-old *Plessy* ruling which upheld law based on the amount of "colored blood" in a person's veins. Both *Roe v. Wade* and *Dred Scott* falsely present living human beings as property, and not as persons with full human rights. For decades, national pro-life organizations, arguing that the Supreme Court is not ready to overturn its 1973 ruling, have therefore actually opposed efforts to assert the personhood of the unborn, and likewise they have opposed those who advocate for the right to life for the unborn. This review of the court's references to its own atrocious violation of the human rights of millions of enslaved human beings indicates that it is politically naïve to craft a pro-life strategy based primarily on the composition and humility of the court.

The Supreme Court justices should have been able to readily condemn their own *Dred Scott* ruling shortly after issuing it. Why? After America's civil war (1861 – 1865) slavery here effectively ended. The U.S. Constitution by the 13th Amendment ratified in 1865 does not abolish slavery in total, but permits certain forms of slavery. However it did prohibit the form of slavery widely practiced in America, thankfully. The Bible also, which was formerly more influential in law, prohibits only certain kinds of slavery, and because the Scriptures condemn kidnapping, which is what fueled the African slave trade, therefore the Old and New Testaments (Ex. 21:16; 1 Tim. 1:9-10; etc.) condemn slave trade kidnapping and therefore, the teaching of Scripture condemns virtually the entirety of American slavery. Meanwhile, in England, William Wilberforce, member of Parliament and evangelical Christian, had already succeeded in not only abolishing slavery but in making it unthinkable. Thus America's Supreme Court should have been able to quickly reverse and condemn their 1857 *Dred Scott* opinion.

Scott and Roe – 40 Years Out: The sin of human pride, extrapolated into institutional pride, makes it very difficult for any court to admit its own grave wickedness, and surely, its own crimes against humanity. It has been four decades since the court issued its brutal *Roe v. Wade* opinion, and in the forty years after *Dred Scott* what the court said about its own wicked ruling is summed up in its 1896 majority decision of *Plessy v. Ferguson*, when it *upheld* a Louisiana law that required Plessy, who had 1/8 "colored blood" in him, to sit in the "black section" of a train. In *Plessy* the majority acknowledged that slavery was abolished and that black persons were entitled, not by justice or judicial ruling, but by Constitutional amendment, to equal treatment. The direct parallel to today's pro-life fight, corroborated by the court's 56 references to *Dred Scott* below, indicates that when this battle is won, the court's hand will have been moved by the force of history and perhaps by amendment, but not by its own humility. *Plessy*, forty years after *Scott*, showed the court's rebellion against the human rights granted by the Creator when it declared that states may distinguish between persons based upon the amount of colored blood pumping through their veins. So *Plessy* sums up the courts lack of repentance and continued indefensible attitude against blacks four decades after their illegitimate *Dred Scott* decision, just as 2007's brutally wicked *Gonzales v. Carhart* opinion sums up the Supreme Court's attitude against unborn

children (in which they note their preferred word "fetus"), almost forty years to the day after Colorado, for various excuses, decriminalized child killing.

Dred Scott 1900 to 1950: During the next half century since *Scott*, the U.S. Supreme Court ruled on 13 cases containing majority or minority opinions which cited this pernicious decision. These cases, for example, would reference the *Scott* decision as precedent for property rights. No majority opinion proclaimed the *Scott* decision to be ill-founded, illegal, nor immoral. As *Plessey* proved that the court did not learn from its own history after *Dred Scott*, so too *Skinner v. Oklahoma* sums up the court's lack of repentance in the first half of the twentieth century. The court continued its legal maneuvers and appeal to process in order to defend its own blatant injustice including ruling in favor of forced sterilization laws which gave teeth to the cruelty of eugenics. Regarding America's crime against humanity with our forced sterilization of over 60,000 people, including prisoners, in 1942 the U.S. Supreme Court absurdly ruled in *Skinner v. Oklahoma* that the equal protection clause of the constitution would not be violated as long as forced sterilization of prisoners included white-collar criminals. Anti-abortion strategy that focuses on the Supreme Court recognizing as illegitimate its own ruling against children appears historically and politically uninformed.

Dred Scott 1950 till 2010: U.S. Supreme Court justices have mentioned *Dred Scott* 26 times since 1950. In all that the majority never found the opportunity to acknowledge the case as illegitimate, and has been sluggish toward meeting the public's condemnation. For many decades the American public, along with much of the world, has recognized the court's 1857 ruling as a gross violation of human rights and a crime against humanity and specifically, against *Dred Scott*. To put it mildly, the court is slow on the uptake. For example, in 1992 in *Planned Parenthood of Southeastern Pennsylvania v. Casey* 505 U.S. 833, the majority opinion argues that some decisions need to be overturned because public opinion demands it (ignoring of course, as it does, the basic principles of justice and morality). At page 863 the majority even defends, though lightly, the opinion in *Plessy v. Ferguson* (that states can treat people differently based on how much black blood they have). The majority perhaps thought they were protecting their institution's reputation by pointing out that *Plessy* expressed prevailing public opinion, for as they wrote in 1992, a century earlier, "Society's understanding… was… the basis claimed for the decision in 1896." In other words, *Plessy* was not really illegitimate because that's the way people thought back then. German judges from the 1940s offered similarly worthless arguments at the Nuremberg trials. As recently as 2007 in *Parents Involved in Community Schools v. Seattle School District No. 1* 551 U.S. 701, 781, 782 Justice Clarence Thomas expressed concern that "racial theories that motivated the *Dred Scott* and *Plessy*" decisions could arise in the future.

What Christians know about the nature of man, and the nature of politics, indicates that anti-abortion strategy from Americans United for Life (AUL's Attorney Clarke Forsythe) and National RTL (Attorney James Bopp), based on getting the Supreme Court to correct its own grave injustice is historically, psychologically, and legally naïve.

Shepardizing Dred Scott: At the request of American RTL, this legal research by Indiana's Brown & Brown was performed for free *(pro bono* as attorneys put it) as a labor of love for the pre-born child and in thanks to the sacrifice of frontline activists in the pro-life community. If thousands of pro-lifers are willing to put in long hours at abortion clinics as the last line of defense before the child is dismembered, surely Christian attorneys can do likewise as part of their service to God and neighbor. Sadly, tens of millions of dollars donated by trusting, hard-working Christians have gone to overpriced attorneys who have become wealthy due to abortion. Often, these are the same legal "experts" who actually fight against personhood and try to stop any effort to enforce the God-given right to life of the unborn. Of course, over the last forty years, there have been many

attorneys with integrity who have not fleeced the pro-life community, and ARTL says thank you to all those who have served selflessly, and here, we especially thank Brown & Brown! What follows is a chronological listing and summary of the U.S. Supreme Court's references to its own *Dred Scott* decision.

*** Note**: The U.S. Supreme Court repeatedly misspelled Sanford's name through the years. In 1986 a dissenting opinion recognized the error. See the paragraph numbered 45 below.

1. **61 U.S. 296 Thomas Jackson v. The Steamboat Magnolia (1857)** The steamboat Wetumpka and the steamboat Magnolia collided. The owners of the Wetumpka sued for libel. The question was whether the court had jurisdiction. Nine months after their pro-slavery ruling, the court referenced *Dred Scott* (60 U.S. 393) for the premise that the Constitution must be strictly construed. [This concept of Strict Constructionism, repopularized through modern presidential campaigns beginning with Richard Nixon in 1968 till John McCain in 2008, was widely used before America's civil war in an attempt to protect the institution of slavery. Of course, *Dred Scott* was the epitome of a strict constructionist ruling, and George W. Bush was exactly wrong when he said that a strict constructionist court would not have rendered the *Dred Scott* ruling, claiming against all jurisprudence and history and that the 1857 majority were activist judges. Of course reading the actual *Dred Scott* opinion is a horrific experience that recounts many of the racist laws in the United States like for example Connecticut's general prohibition against establishing schools for "persons of the African race" who might not have the luxury of being full-time inhabitants of the State. Judges who elevate side agreements that men make between themselves (constitutions) above God's enduring command, *Do not kill the innocent* (Exodus 23:7) in fact are not following the rule of law, but are lawless, and their strict constructionism has become a justification for legal positivism and secular humanism.]

2. **109 U.S. 3 'The Civil Rights Cases' United States v. Stanley [Certificate of Division in Opinion] (1883)** Four cases in which the defendants discriminated against Blacks in accommodations. The court discussed *Dred Scott* on the basis of citizenship.

3. **75 U.S. 342 Express Company v. Kountze Brothers (1869)** The Court affirmed a judgment holding a common carrier liable for the loss of gold dust when it was robbed. *Dred Scott* was cited in a footnote concerning citizenship.

4. **83 U.S. 36 Slaughter-House Cases (1872)** Louisiana enacted a law making it illegal for any private business to engage in the slaughter house business in the New Orleans area. The state created a charter to allow only one business to engage in the slaughter house business. *Dred Scott* was cited by the majority as follows:

> Whether this proposition was sound or not had never been judicially decided. But it had been held by this court, in the celebrated Dred Scott case, only a few years before the outbreak of the civil war, that a man of African descent, whether a slave or not, was not and could not be a citizen of a State or of the United States. This decision, while it met the condemnation of some of the ablest statesmen and constitutional lawyers of the country, had never been overruled; and if it was to be accepted as a constitutional limitation of the right of citizenship, then all the negro race who had recently been made freemen, were still, not only not citizens, but were incapable of becoming so by anything short of an amendment to the Constitution.

The majority also explains why the 14th Am overrules *Dred Scott*. The dissenting opinion also referenced the *Dred Scott* decisions for establishing that US citizenship of natives was dependent on state citizenship.

5. **83 U.S. 338 Merrill v. Petty (1872)** A schooner came into collision with a sloop sailing toward Connecticut and sunk her. The owners of each vessel blamed the officers and crew of the other, and sought relief in admiralty. *Dred Scott* was referenced in a footnote as authority for the premise that consent of the parties cannot grant jurisdiction.

6. **93 U.S. 4 South Carolina v. Georgia Et al (1876)** This case concerned a dispute about obstructing one channel of a river used by both states. *Dred Scott* was cited by SC in its complaint for the premise that adoption of the federal constitution did not abrogate a prior treaty between the states.

7. **94 U.S. 391 McCready v. Virginia (1876)** A citizen of MD was arrested for planting oysters in VA. *Dred Scott* was referenced in relation to the privileges and immunities of citizens of the several states.

8. **95 U.S. 485 Hall v. Decuir (1877)** This case addresses a black woman's complaint for damages for being denied a cabin in the white section of a steamboat in violation of a Louisiana statute forbidding discrimination in Inter-state commerce. The court cited *Dred Scott* in the context that the 14th Amendment and Civil Rights Act abrogated the *Dred Scott* decision.

9. **99 U.S. 309 University v. People (1878)** The issue is whether Cook Co IL can levy a property tax on land owned by Northwestern University. *Dred Scott* was referenced for the, "principle of contemporaneous and practical construction..."

10. **97 U.S. 404 Four Packages v. United States (1878)** This case involved the collection of customs for imported goods and to prevent smuggling. Property unloaded from a ship was seized because it didn't have a permit from the tax collector. *Dred Scott* was cited because, "...consent cannot give jurisdiction to the Federal courts."

11. **100 U.S. 339 Ex Parte Virginia 100 U.S. 339 (1879)** A VA county court judge filed Habeas Corpus after being arrested for excluding blacks as jurors, which was made a criminal act by statute. *Dred Scott* was referenced in the dissenting opinion. It said that the 14th Am settled the question of whether blacks are citizens.

12. **111 U.S. 379 Mansfield, C. & L. M. Ry. Co. and Another v. Swan and Others (1884)** This is an action for breach of contract. The question for the Court was whether the case was properly removed to the U.S. Circuit Court. *Dred Scott* was cited for the "general rule, that the court will not allow a party to rely on anything as cause for reversing a judgment which was for his advantage."

13. **112 U.S. 94 Elk v. Wilkins (1884)** An Indian sued the registrar of one of the wards of the city of Omaha, for refusing to register him as a qualified voter. The court referenced *Dred Scott* in discussing the citizenship of Indians and blacks.

14. **114 U.S. 15 Murphy v. Ramsey and others. Pratt v. Same. Randall and another v. Same. Clawson and another v. Same. Barlow v. Same (1885)** Five plaintiffs sued the election board in Salt Lake City to be registered as voters. The court considered whether the US statute preventing bigamists and polygamists from voting was constitutional and whether it was properly applied to the plaintiffs. *Dred Scott* was cited for the general principal that the rights of the people not delegated to the government are reserved to the people. Voting is a privilege which is given in the legislative discretion of the congress.

15. **135 U.S. 100 Leisy v. Hardin (1890)** Action for replevin of property. *Dred Scott* was referenced in regard to citizenship.

16. **143 U.S. 135 Boyd v. State of Nebraska ex rel. Thayer (1892)** This case is about a disputed election for Governor of NE. The decision cited *Dred Scott* as authority in determining the issue of citizenship.

17. **163 U.S. 537 Plessy v. Ferguson (1896)** Plessy was 7/8 white and 1/8 black. Louisiana law allowed for segregated accommodations. He was removed from a train because he refused to sit in the black section. The supreme court found the law constitutional. Justice Harlan referenced *Dred Scott* in his dissenting opinion:

In my opinion, the judgment this day rendered will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott* Case.

It was adjudged in that case that the descendants of Africans who were imported into this country, and sold as slaves, were not included nor intended to be included under the word 'citizens' in the constitution, and could not claim any of the rights and privileges which that instrument provided for and secured to citizens of the United States; that, at time of the adoption of the constitution, they were 'considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.' 17 How. 393, 404. The recent amendments of the constitution, it was supposed, had eradicated these principles from our institutions. But it seems that we have yet, in some of the states, a dominant race,-a superior class of citizens,-which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race. The present decision, it may well be apprehended, will not only stimulate aggressions, more or less brutal and irritating, upon the admitted rights of colored citizens, but will encourage the belief that it is possible, by means of state enactments, to defeat the beneficent purposes which the people of the United States had in view when they adopted the recent amendments of the constitution, by one of which the blacks of this country were made citizens of the United States and of the states in which they respectively reside, and whose privileges and immunities, as citizens, the states are forbidden to abridge.

18. **169 U.S. 649 U.S. v. Wong Kim Ark (1898)** The question is whether a child born in the United States, of parents of Chinese descent, who at the time of his birth are subjects of the emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the emperor of China, becomes at the time of his birth a citizen of the United States, by virtue of the first clause of the fourteenth amendment of the constitution: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.' *Dred Scott* is cited twice in the case in the context of determining citizenship.

19. **182 U.S. 1 De Lima v. Bidwell (1901)** This was an action originally instituted in the supreme court of the state of New York by the firm of D. A. De Lima & Co. against the collector of the port of New York, to recover back duties alleged to have been illegally exacted and paid under protest upon certain importations of sugar from San Juan, in the island of Porto Rico, during the autumn of 1899, and subsequent to the cession of the island to the United States. The court cited *Dred Scott* for the conclusion that the right to acquire territory involves the right to govern it and dispose of it.

20. **182 U.S. 244 Samuel Downes v. George R Bidwell (1901)** This was an action by Downes, against the collector of the port of New York, to recover back duties paid under protest upon certain oranges consigned to the plaintiff at New York, and brought there from the port of San Juan in the island of Porto Rico (as Puerto Rico was then spelled). *Dred Scott* was cited throughout the case and addressed the following:

a. the right to acquire territory;
b. the power over property in the territories;
c. the intent of Congress with regard to territorial laws;
d. even though the inferior court did not have power to hear the case would not prevent the court from correcting other errors in the decision;
e. that the territorial clause of the Constitution was confined to the territory which belonged to the United States at the time the Constitution was adopted, and did not apply to territory subsequently acquired from a foreign government;
f. citizen could not be deprived of his property merely because he brought it into a particular territory of the United States, and that this doctrine applied to slaves as well as to other property;

g. Dred Scott invalidated the MO compromise;
h. that whether he was made free by being taken into the free state of Illinois and being kept there two years depended upon the laws of Missouri, and not those of Illinois;
i. If the assumption be true that slaves are indistinguishable from other property, the inference from the Dred Scott Case is irresistible that Congress had no power to prohibit their introduction into a territory;
j. The difficulty with the Dred Scott Case was that the court refused to make a distinction between property in general and a wholly exceptional class of property;
k. the court was unanimous in holding that the power to legislate respecting a territory was limited by the restrictions of the Constitution

21. **191 U.S. 376 Anglo-American Provision Co v. Davis Provision Co (1903)** The Court examined the constitutionality of a NY statute that prevented offset of IL and NY judgments. The court dismissed the appeal and referenced the dissenting opinion of the *Dred Scott* case for the premise that a party can't appeal a decision using a finding that was for his own advantage.

22. **195 U.S. 138 Fred Dorr v. United States (1904)** The case presents the question whether, in the absence of a statute of Congress expressly conferring the right, trial by jury is a necessary incident of judicial procedure in the Philippine Islands, where demand for trial by that method has been made by the accused, and denied by the courts established in the islands. The court quoted Justice Curtis (a *Dred Scott* Justice) concerning power over US territories.

23. **199 U.S. 580 Sofre Alexander v. Seferino Crollott (1905)** This is an appeal from a judgment of the supreme court quashing a writ of prohibition issued by that court to the defendant Crollott, a justice of the peace of the county of Bernalillo, which commanded him to desist and refrain from any further proceedings in five several actions of forcible entry and detainer, instituted by one Cleland before said justice and against Alexander and four other parties. *Dred Scott* was referenced as support for the statement, "The fact that the judgment may have been void will not prevent its reversal upon appeal."

24. **199 U.S. 437 State of South Carolina v. United States (1905)** Do liquor stores set by the state owe federal taxes? Chief Justice Taney (who wrote for the majority in *Dred Scott*) was quoted for the premise that the constitution must be strictly construed.

25. **206 U.S. 46 Kansas v. Colorado (1907)** Kansas sued Colorado to restrain Colorado and certain corporations organized under its laws from diverting the water of the Arkansas River for the irrigation of lands in Colorado, thereby, as alleged, preventing the natural and customary flow of the river into Kansas and through its territory, the United States filed an intervening petition claiming a right to control the waters of the river to aid in the reclamation of arid lands. It was not claimed that the diversion of the waters tended to diminish the navigability of the river. Chief Justice Taney (*Dred Scott*) was quoted as saying that when the US came into existence it was a new nation.

26. **252 U.S. 189 Eisner v. Macomber (1920)** This case presents the question whether, by virtue of the Sixteenth Amendment, Congress has the power to tax, as income of the stockholder and without apportionment, a stock dividend made lawfully and in good faith against profits accumulated by the corporation since March 1, 1913. This case refers to the *Dred Scott* decision as an "extraordinary decree."

27. **290 U.S. 398 Home Bldg. & Loan Ass'n v. Blaisdell (1934)** MN enacted a law that placed a moratorium on real estate foreclosures during emergencies. The appellant contended that such a law violated the contracting clause in the constitution (Art I sect 10). The Court found the law constitutional. The dissenting opinion cited *Dred Scott* for the conclusion that the Constitution must be strictly construed. Justice Sutherland quoted *Dred Scott* author Chief Justice Taney that the constitution "must be construed now as it was understood at the time of its adoption..."

28. **307 U.S. 496 Hague, Mayor, et al., v. Committee for Industrial Organization Et al. (1939)** A suit to enjoin municipal officers from enforcing ordinances forbidding the distribution of printed matter, and the holding without permits of public meetings, in streets and other public places. The court referenced *Dred Scott* in pointing out that many people thought state citizenship created US citizenship.

29. **325 U.S. 226 Williams v. State of North Carolina (1945)** Supreme court upheld the conviction of a NC couple for bigamous relationship. The dissenting opinion said that *Dred Scott* did not settle the slavery issue.

30. **332 U.S. 46 Adamson v. People of State of California (1947)** A CA citizen appealed his criminal conviction on the ground that the 5th Am protected his right against self-incrimination in state court. The court referenced *Dred Scott* for the premise that one of the purposes of the 14th Am was to overturn the *Dred Scott* decision.

31. **341 U.S. 6 American Fire & Cas. Co. v. Finn (1950)** This case addressed the propriety of removing a case from state court to federal court. Also whether the federal district court would have had original jurisdiction of the case. This case quoted the dissent in *Dred Scott* about the rules for reversing a judgment.

32. **352 U.S. 567 United States v. Auto. Workers (1957)** One hundred years after its *Dred Scott* ruling, the court said:

> The wisdom of refraining from avoidable constitutional pronouncements has been most vividly demonstrated on the rare occasions when the Court, forgetting "the fallibility of the human judgment," (fn4) has departed from its own practice. The Court's failure in *Dred Scott v. Sandford*[sic], 19 How. 393, "to take the smooth handle for the sake of repose" by disposing of the case solely upon "the outside issue" and the effects of its attempt "to settle the agitation" are familiar history. (fn5) *Dred Scott* does not stand alone. These exceptions have rightly been characterized as among the Court's notable "self-inflicted wounds." Charles Evans Hughes, The Supreme Court of the United States, 50.

A German court describing its ruling to execute a Jewish man (Markus Luftgas) for hoarding eggs as a "self-inflicted wound" would be excoriated for such a self-obsessed perspective. (*Time Magazine*: "War Crimes: The Bureaucrat" Mar. 29, 1948; UMKC Law School's Prof. Doug Linder's: "The Nuremberg Trials: The Justice Trial.") That 1857 wound was inflicted against Dred and millions of enslaved human beings yet the U.S. Supreme Court has refused to acknowledge its 1857 ruling as illegitimate and a gross violation of human rights. The court shows itself more concerned with image than substance and justice. This same kind of concern motivated the U.S. Supreme Court's brutally wicked *Gonzales v. Carhart* opinion. Out of concern for the public relations image of the court and the abortion industry, the 2007 court regulated a method of abortion by publishing a virtual manual on how to perform acceptable late-term abortions based, not at all on any concern for the rights of the child but on "the public's perception" of the government and the abortion industry.

33. **366 U.S. 117 Cohen v. Hurley (1960)** This case addressed a lawyer's constitutional right not to incriminate himself in case involving professional misconduct. *Dred Scott* was addressed in the context of Constitutional rights being established by long standing practice.

34. **378 U.S. 226 Bell v. Maryland (1963)** Twelve blacks staged a sit-in in a Baltimore restaurant to protest the restaurant's policy of not serving blacks. The protesters were arrested and convicted of a crime. The court referred to the *Dred Scott* decision as "ill starred." The court further recognized that the purpose of the 14th Am was to overrule *Dred Scott*.

35. **387 U.S. 253 Afroyim v. Rusk (1967)** The court held that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Justice Black in the majority opinion, referenced the *Dred Scott* decision,

"disturbed many people about the status of Negro citizenship." Justice Harlan also cited *Dred Scott* in the dissent with regard to citizenship.

36. **400 U.S. 112 Oregon v. Mitchell (1970)** Case about the voting rights act amendments of 1970. Justice Brennan's concurring and dissenting opinion mention *Dred Scott* in relationship to citizenship.

37. **413 U.S. 634 Sugarman v. Dougall (1973)** The court found that Section 53 of the New York Civil Service Law which provides that only United States citizens may hold permanent positions in the competitive class of the state civil service violates the 14th Am. Justice Rehnquist cited *Dred Scott* in his dissent:

> It is unnecessary to venture into a detailed discussion of what Congress intended by the Citizenship Clause of the Fourteenth Amendment. The paramount reason was to amend the Constitution so as to overrule explicitly the Dred Scott decision. *Scott v. Sandford*[sic], 19 How. 393 (1857). Our decisions construing "the privileges or immunities of citizens of the United States" are not irrelevant to the question now before the Court, insofar as they recognize that there are attributes peculiar to the status of federal citizenship...

38. **419 U.S. 601 North Georgia Finishing v. Di-Chem (1975)** The court overturned a GA garnishment statute as unconstitutional. The court referenced *Dred Scott* in a footnote:

> [71] *fn3 Mr. Chief Justice Hughes described the result in the Legal Tender Cases as one of "three notable instances [in which] the Court has suffered severely from self-inflicted wounds." C. Hughes, The Supreme Court of the United States 50 (1928). The others he named were the Dred Scott decision, *Scott v. Sandford*[sic], 19 How. 393 (1857), and the Income Tax Case, Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429 (1895), on rehearing, 158 U.S. 601 (1895).

39. **438 U.S. 265 Regents University California v. Bakke (1978)** Bakke claimed that a special medical school admissions program discriminated against him because he was white. The court found that it did, but also found that the school could continue to consider race in its admissions. Justice Marshall in a separate opinion wrote:

> The individual States likewise established the machinery to protect the system of slavery through the promulgation of the Slave Codes, which were designed primarily to defend the property interest of the owner in his slave. The position of the Negro slave as mere property was confirmed by this Court in *Dred Scott v. Sandford[sic]*, 19 How. 393 (1857), holding that the Missouri Compromise -- which prohibited slavery in the portion of the Louisiana Purchase Territory north of Missouri -- was unconstitutional because it deprived slave owners of their property without due process. The Court declared that, under the Constitution, a slave was property, and "[t]he right to traffic in it, like an ordinary article of merchandise and property, was guarantied to the citizens of the United **[p390]** States. . . ." *Id.* at 451. The Court further concluded that Negroes were not intended to be included as citizens under the Constitution, but were:
>
> > regarded as beings of an inferior order . . . altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect . . . .

40. **443 U.S. 368 Gannett Co. v. Depasquale (1979)** The question presented in this case is whether members of the public have an independent constitutional right to insist upon access to a pretrial judicial proceeding, even though the accused, the prosecutor, and the trial judge all have agreed to the closure of that proceeding in order to assure a fair trial. *Dred Scott* was cited in a footnote as an example of why justice should be open to the public.

41. **448 U.S. 448 Fullilove Et al. v. Klutznick (1980)** The court considered a facial constitutional challenge to a requirement in a congressional spending program that, absent an administrative waiver, 10% of the federal funds granted for local public works projects must be used by the state or local grantee to procure services or supplies from businesses owned and controlled by members of statutorily identified minority groups. Justice Powell mentions *Dred Scott* in his concurring opinion:

> [177] In the history of this Court and this country, few questions have been more divisive than those arising from governmental action taken on the basis of race. Indeed, our own decisions played no small part in the tragic legacy of government-sanctioned discrimination. See Plessy v. Ferguson, 163 U.S. 537 (1896); *Dred Scott v. Sandford[sic]*, 19 How. 393 (1857). At least since the decision in Brown v. Board of Education, 347 U.S. 483 (1954), the Court has been resolute in its dedication to the principle that the Constitution envisions a Nation where race is irrelevant. The time cannot come too soon when no governmental decision will be based upon immutable characteristics of pigmentation or origin. But in our quest to achieve a society free from racial classification, we cannot ignore the claims of those who still suffer from the effects of identifiable discrimination.

42. **460 U.S. 325 Briscoe Et al. v. Lahue Et al. (1983)** The court found that a convicted criminal cannot sue for damages against a policeman who perjured himself while testifying. The dissent in this case cited another case that referenced *Dred Scott* for the conclusion that Supreme Court cases are a better indication of Congressional intent than state court cases.

43. **465 U. S. 367 South Carolina v. Regan (1984)** SC sought an injunction preventing implementation of an Internal Revenue Code section. *Dred Scott* was referenced in a footnote to a dissenting opinion.

44. **472 U.S. 846 Jean v. Nelson (1985)** Undocumented aliens from Haiti sued the INS. The court held the Court of Appeals properly remanded the case to the District Court. On remand, the District Court must consider (1) whether INS officials exercised their discretion under the statute to make individualized parole determinations, and (2) whether they exercised this discretion under the statutes and regulations without regard to race or national origin. The Court cited *Dred Scott* for a statement in the case, "freed slaves were not 'people of the United States,' " which was overruled by the 14th Am.

45. **477 U.S. 21 Schiavone Et al. v. Fortune (1986)** The court found that a libel case could not be re-filed naming the correct defendant after the statute of limitation had run. *Dred Scott* was referenced in a footnote by the dissent because Sanford's (should be Sanford instead of Sandford) name was misspelled.

46. **481 U.S. 279 McCleskey v. Kemp (1987)** This case presents the question whether a complex statistical study that indicates a risk that racial considerations enter into capital sentencing determinations proves that petitioner McCleskey's capital sentence is unconstitutional under the Eighth or Fourteenth Amendment. The court cited *Dred Scott* in a footnote:

> [116] At the time our Constitution was framed 200 years ago this year, blacks "had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect." *Dred Scott v. Sandford[sic]*, How. 393, 407 (1857). Only 130 years ago, this Court relied on these observations to deny American citizenship to blacks. Ibid. A mere three generations ago, this Court sanctioned racial segregation, stating that "if one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane." Plessy v. Ferguson, 163 U.S. 537, 552 (1896).

47. **497 U.S. 261 Cruzan v. Director Missouri Department of Health (1990)** The court described Nancy Cruzan as being in a persistent vegetative state. The parents petitioned to remove artificially supplied nutrition and hydration. The U.S. Supreme Court affirmed the Missouri Supreme Court's conclusion that no person can

assume the choice to terminate medical treatment for an incompetent in the absence of the formalities required by the Living Will statute or clear and convincing evidence of the patient's wishes. *Dred Scott* was referenced for support of the statement, "...it is unnecessary to reopen the historically recurrent debate over whether 'due process' includes substantive restrictions."

48. **505 U.S. 833 Planned Parenthood Of Southeastern Pennsylvania, Et al., Petitioners, v. Robert P. Casey, Et al. (1992)** At issue in these cases are five provisions of the Pennsylvania Abortion Control Act of 1982. In a separate opinion, not endorsed by the majority, Justice Scalia referenced Justice Curtis who dissented in the *Dred Scott* case:

> "[W]hen a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean." *Dred Scott* v. *Sandford*[sic], 19 How. 393, 621 (1857) (Curtis, J., dissenting).

Scalia continued regarding *Dred Scott*:

> In my history-book, the Court was covered with dishonor and deprived of legitimacy by *Dred Scott v. Sandford[sic]*, 19 How. 393, 15 L.Ed. 691 (1857), an erroneous (and widely opposed) opinion that it did not abandon, rather than by West Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S. Ct. 578, 81 L.Ed. 703 (1937), which produced the famous "switch in time" from the Court's erroneous (and widely opposed) constitutional opposition to the social measures of the New Deal. (Both *Dred Scott* and one line of the cases resisting the New Deal rested upon the concept of "substantive due process" that the Court praises and employs today. Indeed, *Dred Scott* was "very possibly the first application of substantive due process in the Supreme Court, the original precedent for Lochner v. New York and Roe v. Wade." D. Currie, The Constitution in the Supreme Court 271 (1985)

And further:

> There comes vividly to mind a portrait by Emanuel Leutze that hangs in the Harvard Law School: Roger Brooke Taney, painted in 1859, the 82d year of his life, the 24th of his Chief Justiceship, the second after his opinion in *Dred Scott*. He is all in black, sitting in a shadowed red armchair, left hand resting upon a pad of paper in his lap, right hand hanging limply, almost lifelessly, beside the inner arm of the chair. He sits facing the viewer, and staring straight out. There seems to be on his face, and in his deep set eyes, an expression of profound sadness and disillusionment. Perhaps he always looked that way, even when dwelling upon the happiest of thoughts. But those of us who know how the lustre of his great Chief Justiceship came to be eclipsed by *Dred Scott* cannot help believing that he had that case--its already apparent consequences for the Court, and its soon to be played out consequences for the Nation--burning on his mind. I expect that two years earlier he, too, had thought himself "call[ing] the contending sides of national controversy to end their national division by accepting a common mandate rooted in the Constitution." (emphasis added)

49. **512 U.S. 1256 McFarland v. Scott (1994)** The court refused to hear a case addressing a guaranteed right to qualified legal counsel to all capital defendants in federal Habeas Corpus proceedings. Justice Blackmun dissented to the refusal of the court to hear the case and cited *Dred Scott* twice in reference to a new practicing attorney who said that the Dred Scott case was one of two cases he knew about.

50. **514 U.S. 211 Plaut v. Spendthrift Farm, Inc. (1995)** Case about fraud in the sale of stock. Justice Scalia referenced *Dred Scott* in his majority opinion:

> By the middle of the 19th century, the constitutional equilibrium created by the separation of the legislative power to make general law from the judicial power to apply that law in particular cases was so well understood and accepted that it could survive even Dred *Scott v. Sandford*[sic], 19 How. 393 (1857). In his First Inaugural Address, President Lincoln explained why the political branches could not, and need not, interfere with even that infamous judgment: … (emphasis added)

51. **517 U.S. 44 Seminole Tribe of Florida v. Florida (1996)** An Indian Tribe sought to sue a state under the Indian Gaming Regulatory Act. Justice Souter in his dissent quotes Judge Taney in *Dred Scott* as follows, in a footnote:

> Regardless of its other faults, Chief Justice Taney's opinion in *Dred Scott v. Sandford[sic]*, 19 How. 393 (1857), recognized as a structural matter that
>
> > [t]he new government was not a mere change in a dynasty, or in a form of government, leaving the nation or sovereignty the same, and clothed with all the rights, and bound by all the obligations of the preceding one.

52. **526 U.S. 489 Saenz v. Roe (1999)** This case addresses a state's ability to treat welfare recipients that have just moved to a state differently from those recipients that have resided there for a longer period. *Dred Scott* was cited in a footnote:

> (fn15) The Framers of the Fourteenth Amendment modeled this Clause upon the "Privileges and Immunities" Clause found in Article IV. Cong. Globe, 39th Cong., 1st Sess., 1033-1034 (1866) (statement of Rep. Bingham). In *Dred Scott v. Sandford*[sic], 19 How. 393 (1857), this Court had limited the protection of Article IV to rights under state law and concluded that free blacks could not claim citizenship. The Fourteenth Amendment overruled this decision. The Amendment's Privileges or Immunities Clause and Citizenship Clause guaranteed the rights of newly freed black citizens by ensuring that they could claim the state citizenship of any State in which they resided and by precluding that State from abridging their rights of national citizenship.

53. **521 U.S. 702 Washington v. Glucksberg (1997)** Washington's prohibition against "caus[ing]" or "aid[ing]" a suicide does not violate the Due Process Clause. Judge Souter referenced *Dred Scott* several times in his separate concurring opinion in connection with the Fourteenth Amendment, Due Process and property rights.

54. **530 U.S. 914 Stenberg v. Carhart (2000)** The court found that Nebraska's statute criminalizing the performance of "partial birth abortion[s]" violates the Federal Constitution. Justice Scalia, mentioned *Dred Scott* in his dissent which is partially reproduced below:

> I am optimistic enough to believe that, one day, Stenberg v. Carhart will be assigned its rightful place in the history of this Court's jurisprudence beside Korematsu and Dred Scott. The method of killing a human child - one cannot even accurately say an entirely unborn human child - proscribed by this statute is so horrible that the most clinical description of it evokes a shudder of revulsion. And the Court must know (as most state legislatures banning this procedure have concluded) that demanding a "health exception" - which requires the abortionist to assure himself that, in his expert medical judgment, this method is, in the case at hand, marginally safer than others (how can one prove the contrary beyond a reasonable doubt?) - is to give live-birth abortion free rein. The notion that the Constitution of the United States, designed, among other things, "to establish Justice, insure domestic Tranquility, . . . and secure the Blessings of Liberty to ourselves and our Posterity," prohibits the States from simply banning this visibly brutal means of eliminating our half-born posterity is quite simply absurd.

55. **551 U.S. 701 Parents Involved In Community Sch. v. Seattle Sch. Dist. No. 1 (2007)** Petitioners are parents of children either in Seattle, WA or Jefferson Co, KY. They objected to the school districts' plan to assign students to a particular school based solely on race. The supreme court found that a plan to assign students to schools based solely on race violates the Constitution. Justice Thomas wrote a concurring opinion in which he said, "Can we really be sure that the racial theories that motivated *Dred Scott* and *Plessy* are a relic of the past or that future theories will be nothing but beneficent and progressive? That is a gamble I am unwilling to take, and it is one the Constitution does not allow."

56. **553 U.S. Boumediene v. Bush (2008)** Petitioners were enemy combatants captured in Afghanistan. They appealed a statute which denied them the right to file a writ of Habeas Corpus. The Court stated that they were entitled to Habeas Corpus. While this case does refer to the *Dred Scott* decision as notorious (though not unjust nor illegitimate), it goes on to argue from *Dred Scott* in connection with Congressional power to make rules and regulations respecting territory or other property belonging to the U.S.

The world's rebellion against the truth, as testified to throughout the Old and New Testaments, alerts pro-lifers to expect courts to reverse themselves, yes, but typically when they are changing good rulings to bad rulings. Pro-life strategy should be informed by this review of the court's references to its own atrocious violation of the human rights of millions of enslaved blacks. This Shepardization of Dred Scott indicates that it is historically and politically naïve to craft a pro-life strategy for victory based on the composition and humility of the court.

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