

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

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OFFICE OF THE CLERK

RECUSAL ORDER BY JUDGE KOPF)
REGARDING CIVIL CASES) **GENERAL ORDER**
CHALLENGING THE REGULATION)
OF ABORTION) **NO. 2011-10**
_____)

After several decades of presiding over disputes on abortion,¹ I have decided to recuse myself from such controversies. The reasons for my decision flow *solely* from my experience as a judge and not because of some extra-judicial source. Normally, disqualification would be unwarranted in such circumstances. However, my views have grown too strong to be effectively sublimated any longer.²

A judge has a duty to judge if the judge can be impartial and there is no other statutory or ethical disqualification. When a judge decides to remove himself or herself from a case or a category of cases, the judge should normally give a concrete explanation. By doing so, fellow judges, counsel and the public can determine whether the judge is shirking his or her responsibility. But, here, there is a

¹*Compare Carhart v. Stenberg*, 11 F. Supp. 2d 1099 (D. Neb. 1998) (Nebraska’s partial-birth abortion statute was unconstitutional), *aff’d*, 192 F.3d 1142 (8th Cir. 1999), *aff’d*, *Stenberg v. Carhart*, 530 U.S. 914 (2000) with *Carhart v. Ashcroft*, 331 F. Supp. 2d 805 (D. Neb. 2004) (the federal partial-birth abortion statute was unconstitutional), *aff’d*, *Carhart v. Gonzales*, 413 F.3d 791 (8th Cir. 2005), *rev’d*, *Gonzales v. Carhart*, 550 U.S. 124 (2007). I am honestly unable to provide a principled explanation as to why the Supreme Court affirmed the decision in the first case, but reversed the decision in the second one. My inability to do so troubles me greatly.

²Nasty correspondence—such as the one I received on November 5, 2003, stating that “I hope someone puts a knife into your skull and kills you before you can put your robe back on”—plays no part in my decision. Empty threats go with the territory, and the rare real ones are effectively dealt with by the United States Marshals Service.

countervailing concern. If I were to detail the reasons for my recusal, my explanation would be caustic.

I recognize that corrosive words, even when legitimate, can impede civil discourse. That is a bad thing. More important, when acidic words are uttered by a federal judge, those words may in turn lessen the public's perception of the federal judiciary as whole. That would be even worse. As a result, I have opted for relative brevity.³

So, I will put the point simply. I can no longer impartially judge cases challenging restrictive abortion laws. That is *my* failing and *my* fault. No one else can, or should, be blamed because I cannot remain open-minded no matter how hard I might try. Regretting this decision will burden one of my wonderful colleagues,

IT IS ORDERED that:

1. I preemptively recuse myself from all civil cases challenging the regulation of abortion. In the future, the Clerk shall endeavor not to assign such cases to me, as I will recuse myself in the event of such an assignment.
2. The Clerk shall add this decision to my recusal list.

DATED this 6th day of September, 2011.

BY THE COURT:

s/ Richard G. Kopf

United States District Judge

³*Cf. Moran v. Clarke*, 309 F.3d 516, 517 (8th Cir. 2002) (en banc) (when a judge writes an opinion regarding that judge's decision to recuse himself, the judge should avoid "a personal polemic").