

## Rulings portend shaky future for abortion rights

By SIMON HELLER

A RECENT 2-1 decision by the U.S. Court of Appeals for the Fourth Circuit, which found unconstitutional Virginia's statute banning "partial birth infanticide," reminds us how tenuous women's right to choose abortion is in the United States.

It also reminds Americans how much rides on this year's presidential election.

In 2000, I argued a similar case, *Stenberg v. Carhart*, before the U.S. Supreme Court. To prevail, I had to persuade swing-vote Justice Sandra Day O'Connor that Nebraska's "partial birth" abortion statute violated established precedent. It would actually prohibit most abortions in the second trimester.

Justice O'Connor did not believe in abortion. But she saw that legislators had worded Ne-

A 2007 Supreme Court decision eroded the reproductive rights of women and was a stark reminder of how quickly rights can be erased.

braska's law so broadly that it prohibited the most commonly used second trimester abortion method. It also lacked the constitutionally mandated exception for women's health. She pointed out statutes in other states that she believed avoided these defects.

Ultimately, O'Connor provided the fifth vote to strike down Nebraska's law. I remember reading her opinion and admiring what she had done. She ruled not on her ideological leanings — but on precedent.

Those arguing before the U.S. Supreme Court today are not so lucky.

Last year, in *Gonzales v. Carhart*, attorneys for both sides

argued before a very different Supreme Court. President Bush had replaced O'Connor with archconservative Justice Samuel Alito, who opposes abortion rights.

Alito had promised loyalty to precedent during his confirmation hearings — and the case was about a statute the court had struck down in 2000.

But now Alito turned his back on the court's 2000 ruling and joined a new conservative 5-4 majority that upheld the federal law. The decision eroded the reproductive rights of women and served as a stark reminder of how quickly rights can be erased.

This same tragic story line — a result of ongoing efforts to

pack conservatives on federal courts — has unfolded throughout the nation. I suspect it will play out once again as conservatives on the Fourth Circuit maneuver to reverse the 2-1 decision released May 20.

On the morning this ruling was announced, the Fourth Circuit stood equally divided between five judges appointed by Republican presidents and five judges appointed by Democrats. But that afternoon, the Senate confirmed Justice G. Steven Agee, a conservative jurist, as the 11th judge on the Richmond-based circuit.

Agee's confirmation signaled a return to the Fourth Circuit days as the pride and joy of the radical right.

Four Fourth Circuit vacancies remain. Who fills those seats will determine the direction of that circuit — your circuit — for decades to come. As we head into this fall's election, the future of the Fourth Circuit

is at stake, as is the future of all our federal courts.

The next president will appoint one or more justices to serve lifetime appointments on the Supreme Court and will select nominees to fill remaining vacancies on the appeals courts. So vote this November. Get others to vote.

Only then will ordinary Americans see decisions like the one from last month in Richmond survive. Only then will those seeking to vindicate their constitutional rights know that their cases will be heard by judges like O'Connor who not only give lip service to the rule of law — but practice it.

Simon Heller is legal director for the Alliance for Justice Action Campaign, a nonprofit 501(c)(4) organization. AFJAC advocates for a fair and independent judiciary and efficient nonprofit tax and election laws.