



South Dakota Abortion Ban

On Monday, March 6, 2006, Governor Mike Rounds (R) signed into law House Bill 1215, an outright ban on abortion. The ban provides no exceptions for rape, incest, or to protect a woman's health—it contains only an inadequate life exception. Supporters of the ban admit that this clearly unconstitutional bill is an attempt to challenge *Roe v. Wade*.¹

By signing HB 1215 into law, Governor Rounds and anti-choice legislators have enacted the most restrictive ban on abortion since *Roe v. Wade*. Although Louisiana and Utah passed unconstitutional and unenforceable bans on abortion in the early 1990s, even those both contained exceptions for rape and incest, unlike the South Dakota ban.² It is likely that HB 1215 will be challenged immediately in court, potentially preventing it from going into effect unless and until the Supreme Court reconsiders *Roe's* core holdings.

When the legislature passed a similar ban in 2004, Governor Rounds estimated that it could cost the state up to one million dollars to defend the ban against a court challenge.³ An anonymous donor has pledged one million dollars to contest any court challenge to HB 1215 and according to the bill's author, Rep. Roger Hunt (R), individuals have contacted the governor's office about making further donations.⁴ Governor Rounds also signed a bill that would create a state fund to finance the legal defense of laws regulating abortion and contraception.⁵

As of March 3, 2006, legislatures in 11 states in addition to South Dakota are considering abortion bans that would outlaw abortion in all or most circumstances: AL, GA, IN, KY, MS, MO, OH, RI, SC, TN, WV.

SUMMARY OF FINAL VERSION OF HB 1215

HB 1215 bans abortion in South Dakota. The law prohibits any person from knowingly prescribing, administering, procuring or selling any medicine, drug or other substance to pregnant women with the intent to cause or aid in the termination of the "life of an unborn human being." The law also prohibits any person from knowingly employing or using any instrument or procedure on a pregnant woman with the intent to cause or abet the termination of the "life of an unborn human being." Any violation of these provisions is a felony.⁶

Thus, HB 1215 can be characterized as a ban on abortion. It has no exception for cases of rape or incest, or when a woman's health is in jeopardy. The ban contains what could be interpreted as a narrow exception for when a woman's life is in danger, but the language is confusing and is at

best inadequate in this area. The bill's author, Rep. Hunt, fought against adding any exceptions to the bill, claiming that it would lose its focus and therefore have no impact on the national arena.⁷

HB 1215 refers to the findings of the "South Dakota Task Force to Study Abortion" as the support for its declaration that "each human being is totally unique immediately at fertilization."⁸ This task force, authorized by a bill enacted last session,⁹ is very controversial. The task force was itself created with an anti-choice slant and directed to study and comment on such things as abortion possibly causing cancer and "whether abortion is a workable method for the pregnant woman to waive her rights to a relationship with the child."¹⁰ During hearings conducted by the task force, pro-choice witnesses were turned away, scientific and medical falsities were adopted as fact, and the ultimate report produced by the task force¹¹ reads like a policy paper from an anti-choice activist group.

CONCLUSION

South Dakota has become the first state to outlaw abortion in nearly 15 years, and the first state since *Roe v. Wade* to pass a ban on all or most abortions with an exception only to avert a woman's death. Other states appear to be following South Dakota's lead, which may ultimately result in the newly reconstituted U.S. Supreme Court reconsidering its more than three-decade-long protection of a woman's right to choose.

¹ Celeste Calvitto, *Governor Hedges on Bill to Ban Abortion*, RAPID CITY JOURNAL.COM, Feb. 24, 2006, available at <http://www.rapidcityjournal.com/articles/2006/02/24/news/local/news02.prt>.

² LA. REV. STAT. ANN. § 14:87 (Enacted 1942; Amended and Re-enacted 1991); UTAH CODE ANN. § 76-7-302 (Enacted 1974; Last Amended 1991).

³ Joe Kafka, *South Dakota Governor Seeks Technical Corrections in Abortion Ban Bill*, AP, Mar. 9, 2004.

⁴ Celeste Calvitto, *Governor Hedges on Bill to Ban Abortion*, RAPID CITY JOURNAL.COM, Feb. 24, 2006, available at <http://www.rapidcityjournal.com/articles/2006/02/24/news/local/news02.prt>.

⁵ S.B. 154, 81st Legis. Assem., Reg. Sess. (S.D. 2006).

⁶ S.B. 1215, 81st Legis. Assem., Reg. Sess. (S.D. 2006).

⁷ Megan Myers, *State Ban Bill Enters Senate*, ARGUSLEADER.COM, Feb. 22, 2006; “‘The momentum for a change in the national policy on abortion is going to come in the not-too-distant future,’ said Rep. Roger W. Hunt, a Republican who sponsored the bill. To his delight, abortion opponents succeeded in defeating all amendments designed to mitigate the ban, including exceptions in the case of rape or incest or the health of the woman. Hunt said that such ‘special circumstances’ would have diluted the bill and its impact on the national scene.” Evelyn Nieves, *S.D. Abortion Bill Takes Aim at ‘Roe,’* WASH. POST., Feb. 23, 2006, at A1.

⁸ S.B. 1215, 81st Legis. Assem., Reg. Sess. (S.D. 2006).

⁹ H.B. 1233, 80th Legis. Assem., Reg. Sess. (S.D. 2005).

¹⁰ H.B. 1233, 80th Legis. Assem., Reg. Sess. (S.D. 2005).

¹¹ *Report of the South Dakota Task Force to Study Abortion, Submitted to the Governor and Legislature of South Dakota* (Dec. 2005), at <http://www.dakotavoice.com/Docs/South%20Dakota%20Abortion%20Task%20Force%20Report.pdf>.