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South Dakota Abortion Bill Takes Aim at 'Roe'

By Evelyn Nieves
The Washington Post

Thursday 23 February 2006

Senate ban does not except rape, incest.

South Dakota lawmakers yesterday approved the nation's most far-reaching ban on abortion, setting the stage for new legal challenges that its supporters say they hope lead to an overturning of *Roe v. Wade*.

The measure, which passed the state Senate 23 to 12, makes it a felony for doctors to perform any abortion, except to save the life of a pregnant woman. The proposal still must be signed by Gov. Mike Rounds (R), who opposes abortion.

The bill was designed to challenge the Supreme Court's ruling in *Roe*, which in 1973 recognized a right of women to terminate pregnancies. Its sponsors want to force a reexamination of the ruling by the court, which now includes two justices appointed by President Bush.

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"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.

Kate Looby, director of Planned Parenthood of South Dakota, which plans to immediately challenge the ban, said that while she was not surprised, she was still a "little shocked" by the vote. "Clearly, this is a devastating day for the women of South Dakota," she said. "We fully expected this, yet it's still distressing to know that this legislative body cares so little about women, about families, about women who are victims of rape or incest."

National abortion rights organizations said the South Dakota vote has set the stage for a new fight to keep abortion legal at the federal level and in the states. "When you see them have a ban that does not include exceptions for rape or incest or the health of the mother, you understand that elections do matter," said Nancy Keenan, president of NARAL Pro-Choice America. "We will be very active in '06 and in '08 in electing candidates that represent the views of most Americans."

The antiabortion movement has focused primarily in recent years on a state-by-state effort to enact restrictions on access to abortion, including pushes for parental-notification laws and waiting periods before the procedure may be performed. A 1992 Supreme Court decision again affirmed a right to abortion in a Pennsylvania case, known as *Planned Parenthood v. Casey*, that said states cannot put an "undue burden" on women getting access to abortions.

Not all antiabortion groups agreed with the South Dakota supporters' effort to directly challenge *Roe*.

"If you're just reading the law as it stands now, South Dakota's law doesn't really stand any chance under *Roe* or *Casey*. I have to agree with those who think it's remote," said Chuck Donovan, executive vice president of the Family Research Council and a former lobbyist for the National Right to Life Committee.

He said there is not a consensus for a national approach to finding a way to overturn *Roe*. "There are lots of voices out there and nobody has a single strategy, so South Dakota has stepped in to fill that void," Donovan said.

Still, some abortion opponents are more confident than they have ever been that Roe could be overturned with two new conservative members of the high court, Chief Justice John G. Roberts Jr. and Justice Samuel A. Alito Jr. Roberts has not publicly expressed his view on abortion rights. Alito opposed Roe as a young Reagan administration lawyer and had a mixed record on abortion rights while a federal appeals court judge.

On Tuesday, the Supreme Court agreed to decide whether a federal law banning a procedure that opponents call "partial birth" abortion is constitutional. The law passed Congress in 2003 but has been struck down by three federal appeals courts and has yet to take effect.

South Dakota is the first but not the only state to consider new abortion restrictions this year. Ohio, Indiana, Georgia, Tennessee and Kentucky have introduced similar measures.

Rounds has indicated that he would sign the South Dakota measure if it does not jeopardize existing abortion restrictions while the legislation is challenged. In 2004, he vetoed a similar bill because of concerns that abortion restrictions would be eliminated during legal wrangling. Hunt said his bill has addressed the governor's concerns.

Hunt has also said that when the inevitable challenge to the ban is filed in court, the ban's supporters will be prepared for a costly court fight with \$1 million already pledged by "an anonymous donor."

Even without this latest ban, South Dakota was already one of the most difficult states in the country in which to get an abortion, those on both sides of the issue say. It is one of three states with only one abortion provider (Mississippi and North Dakota are the others), and its one clinic, the Planned Parenthood clinic in Sioux Falls, offers the procedure only once a week. Four doctors who fly in from Minnesota on a rotating basis perform the abortions, since no doctor in South Dakota will do so because of the heavy stigma attached.

About 800 abortions are performed each year in South Dakota, which has a population of 770,000 spread out over 77,000 square miles. Last year, South Dakota passed five laws to restrict abortions, including one that would compel doctors to tell women that they would be ending the life of a "whole, separate, unique human being." That law has been blocked by a lawsuit filed by Planned Parenthood.

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South Dakota Approves Bill Outlawing Nearly All Abortions

By Monica Davey

The New York Times

Wednesday 22 February 2006

Pierre, SD -The South Dakota Senate today approved a bill that would outlaw nearly all abortions in the state, a measure that could become the most sweeping ban approved by a state in more than a decade.

If the bill is signed by Gov. Michael Rounds, a Republican who opposes abortion, advocates of abortion rights have pledged to challenge it in court immediately - and that is precisely what the bill's supporters have in mind.

The bill passed by a vote of 23 to 12 after opponents tried unsuccessfully to attach amendments that would have created exceptions for cases of rape and incest and that would have blocked spending of state money to defend against the court challenge that is sure to come.

Before it reaches the governor's desk, a slightly reworded version of the bill - one that does not change its overall meaning - has to be sent back to the House, where the bill was overwhelmingly approved earlier.

Optimistic about the recent changes on the United States Supreme Court, some abortion opponents say they have new hope that a court fight over a ban here could lead to the overturning of Roe v. Wade, the 1973 decision that made abortion legal around the country.

"I'm convinced that the timing is right for this," State Representative Roger Hunt, a Republican who has sponsored the bill, said earlier, noting the appointments of Chief Justice John G. Roberts Jr. and Justice Samuel A. Alito Jr. to the court.

"The strong possibility of a third appointee sometime soon makes this all very real and very viable," Mr. Hunt added, a reference to conjecture that Justice John Paul Stevens, 85, might soon retire. "I think it will all culminate at the right time."

Supporters of the bill said Tuesday that they sensed encouraging signs from the Supreme Court, including an announcement that day that the justices will hear a challenge to a federal law prohibiting one abortion procedure.

Not since before 1992, when the Supreme Court reaffirmed a core right to abortion in *Planned Parenthood v. Casey*, has a state legislature adopted a direct challenge to *Roe*, said Eve C. Gartner, a senior staff lawyer for Planned Parenthood Federation of America.

Since 2005, bans similar to the bill have been proposed in at least five states, but those on both sides of the abortion debate say this effort has the strongest chance of succeeding. That possibility has brought a flurry of forces from both sides to this small state capital in recent days.

"While they are making political maneuvers, we're trying to fight for the women of South Dakota," Kate Looby, the state director of Planned Parenthood in South Dakota, said before the bill was passed.

Ms. Looby said she had spent hundreds of hours meeting with lawmakers and others as a vote drew near. "I hate to envision the day when the women of South Dakota are treated differently than the women elsewhere when it comes to safe and legal health care," she said.

The timing of all of this, though, has divided abortion opponents. Some, who argue that a failed Supreme Court challenge now may damage their efforts, have opposed the ban, placing them, somewhat awkwardly, on the same side as abortion rights advocates.

"I don't think it's the most prudent thing to do at this time," Daniel McConchie, vice president for Americans United for Life, a group that opposes abortion rights, said earlier. "It's really a long-shot type of situation."

For the moment, Mr. McConchie said he believed that those who oppose abortion should focus on measures to restrict and reduce abortions. Last year, state legislatures adopted more than 50 such restrictions - parental notification rules, waiting periods before abortions, requirements for clinics - and scores are pending again this year, abortion rights advocates said.

Suggestions by Mr. Hunt and others that Justice Stevens might also soon step down, creating an appointment that could shift the balance of the court, were mere speculation, Mr. McConchie said.

State Senator Brock L. Greenfield, a Clark Republican who is also director of the South Dakota Right to Life chapter, said he, too, was concerned about the bill.

"Is this the right time to proceed with legislation when we still have five justices who have suggested they will vote to uphold Roe?" Mr. Greenfield asked.

Nonetheless, Mr. Greenfield and Senator Jay Duenwald, a Hoven Republican who said he was a member of the board of the National Right to Life Committee, said they each had decided, despite their reservations, to support the ban when it came to a vote.

The legislation, which states that "life begins at the time of conception," would prohibit abortion except in cases where the pregnant woman's life was at risk. Felony charges could be placed against doctors, but not against those seeking abortions, the measure says.

Some states have similarly broad abortion bans, but they either pre-date Roe or are "trigger laws," which would only take effect if Roe were overturned.

In 2004, the South Dakota House and Senate passed a similar abortion prohibition. That year, though, Governor Rounds issued a "style-and-form" veto, sending the bill back to the Legislature for what he said was a technical problem. As written, he said, the law might have led a court to prohibit the state's restrictions on abortion as they awaited a decision on the larger question. When the governor sent a reworded bill back, the Senate defeated it, 18 to 17.

On Tuesday, Mr. Rounds declined to say in an interview whether he would sign the bill. He never answers such questions until he sees a finished bill, he said.

Personally, he said, he believes that continuing to press for more restrictions may be more successful and "save more lives" than instigating a "full frontal attack on Roe."

But Mr. Rounds added that blocking a full ban seemed likely to create a harmful rift with the forces who oppose abortion rights. Both approaches - a ban here and more rules to restrict abortions - might work all at once, he said. That way, he said, "I think we bring perhaps a united front among the pro-life groups."

In this state of some 770,000 people, about 800 abortions are performed each year, nearly all at one clinic in Sioux Falls. Several years ago, the political atmosphere in South Dakota became such that no

local doctors felt comfortable performing abortions, Ms. Looby said, so doctors are now flown in from Minnesota.



"When you see a state in the heartland willing to make these kinds of really drastic moves, it doesn't bode well," she said.

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