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Sent: Monday, August 15, 2022 5:00 PM
To: ATG Ballot Comments
Subject: Fwd: [EXT] Comment

Comment from Elected Members of the South Dakota Legislature on Proposed Ballot Initiative “A Constitutional Amendment Concerning the Regulation of Abortion”

Date: 15 August 2022

To: The Honorable Mark A. Vargo
Attorney General
State of South Dakota

In response to: A proposed ballot initiative which would alter or invalidate the majority of South Dakota laws regulating and prohibiting elective abortions

Dear Attorney General Vargo:

We are elected representatives of the citizens of South Dakota, and we request that you update the Draft Attorney General’s Statement before the final filing deadline on August 24, 2022. The proposed ballot amendment (‘the Amendment’) would supersede virtually every law we have enacted, and the Draft Statement as currently written does not reflect this.

Our constituents send us to Pierre to enact policies that reflect their values, and the Amendment would undo decades of work. The Final Statement is the official statement on the Amendment of the State of South Dakota. Voters will read the Statement before making their decision on how to vote on the Amendment, and they deserve accurate information about the extent to which it would make legislating on abortion impossible.

Currently, abortion is illegal in South Dakota after the Supreme Court of the United States returned lawmaking authority to elected officials, including state legislators, on June 24, 2022. Before the *Dobbs v. Jackson Women’s Health Org.* decision was handed down, we had enacted significant protections that our Attorney Generals had defended in court to ensure that South Dakota protected unborn children and their mothers to the greatest extent possible.

We passed laws preventing dehumanizing procedures like partial-birth abortion and mandating that babies born-alive during an abortion receive life-saving care. We ensured that each woman gives genuine informed consent, providing her with information about her child and her own health risks, that she cannot be coerced, and that there are many resources available if she chooses to parent or adopt.

We have recognized South Dakota’s legitimate interests in the life and dignity of the unborn child, the emotional and psychological risks to the mother, and the damage abortion does to the medical profession. We understand that most South Dakotans do not want to participate in or pay for abortions, and we have honored their wishes by enacting robust safeguards for the conscience rights of healthcare professionals and the public. The Amendment would not permit any of these to stand, allowing lawmakers to legislate only those interests tied directly to the mother’s “physical health” until 29 weeks’ gestation, long after the baby can survive outside the womb.

The Amendment would *create* a right to abortion in the South Dakota Constitution, but the Draft Statement does not reflect any of these massive policy shifts.

We the undersigned urge you to issue a Final Statement summarizing the impact the Amendment would have if voted into law in 2024. As our state's top lawyer, it is your duty to explain the text, not simply repeat it.

We oppose the Amendment and hope that the Final Statement more accurately reflects the changes to South Dakota law it would require, including its limitations on our ability to legislate on behalf of our constituents.

Respectfully,

Representatives Aaron Aylward, Drew Dennert, Fred Deutsch, Lana Greenfield, Jon Hansen, John Mills, Rhonda Milstead, Tina Mullaly, Scott Odenbach, Carl Perry, Sue Peterson, Tom Pischke, Tony Randolph, Bethany Soye, and Marli Wiese

Senators Julie Frye-Mueller, Al Novstrup, Maggie Sutton, and Marsha Symens