
From: Dale Bartscher <dale.sdrtl@gmail.com>
Sent: Monday, August 15, 2022 1:24 PM
To: ATG Ballot Comments
Subject: [EXT] SD Right to Life's Comments on the Constitutional Amendment on Abortion
Attachments: Letter to AG Vargo re pro-abortion ballot measure explanation.pdf; ATT00001.htm

Good Monday Afternoon,

Would you please acknowledge receipt of this document for the AG's consideration? Thank You!

-Dale Bartscher
South Dakota Right to Life
605-390-7319

Attorney General Vargo:

South Dakota Right to Life sends its congratulations on your recent appointment as our great state's newest Attorney General. We pray for the Lord's protection over you and your family and for the wisdom and discernment you and your staff will need in navigating the duties of your office. We are writing today to express our deep concern over the draft title and explanation related to the 2024 initiated constitutional amendment to legalize abortion.

Under SDCL 12-13-25.1, you are tasked with drafting "an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed . . . initiated amendment to the Constitution," along with "a description of the legal consequences of the proposed . . . initiated amendment to the Constitution."

The explanation begins with the leading statement: "this constitutional amendment establishes a framework for the regulation of abortion." This statement is misleading and does not educate the voters as to the actual purpose, effect, and legal consequences of the amendment for two primary reasons:

(1) The constitutional amendment doesn't merely "establish a framework for the regulation of abortion." Instead, it overrides the regulatory framework for abortion that's already in place in our state. Numerous regulations which protect unborn babies and pregnant mothers and that make up our state's existing regulatory framework would face being overridden by the constitutional amendment—like parental notification laws respecting minors, criminal protections against coerced abortions, informed consent provisions which require abortionists to be truthful to mothers about the abortion procedure, conscience protections to protect doctors and nurses from being forced to perform abortions or get sued, and state laws preventing taxpayer funding of abortion would almost certainly be overridden by the constitutional amendment.

(2) Beyond merely "establish[ing] a framework for the regulation of abortion," the constitutional amendment legalizes the termination of human life from conception all the way to birth. This leading statement from the explanation, that "this constitutional amendment establishes a framework for the regulation of abortion" fails to educate the voters as to what the actual purpose and effect of the constitutional amendment is: a radical liberalization of legal abortion in South Dakota.

Similarly, the draft title "A Constitutional Amendment Concerning the Regulation of Abortion" fails to educate voters as to the actual subject matter of the amendment. This amendment is indisputably about legalizing abortion, but the title fails to communicate that to the voters.

Turning to the main body of your explanation, as you are aware, state law requires you to educate the voters in your explanation as to the (1) purpose, (2) effect, and (3) legal consequences of the amendment. The main body of your explanation is essentially a restatement of the amendment, which seemingly would satisfy your duty to explain the "purpose" of the

amendment. However, by failing to educate the voters about the existing regulations and protections which would be overridden by the amendment, as discussed above, we believe the explanation fails to explain the “effect” and “legal consequences” of the amendment.

Finally, the explanation concludes that “judicial or legislative clarification of the amendment may be necessary.” We agree that many aspects of the amendment lack necessary clarification, as many important phrases in the amendment, such as “its effectuation” and “reasonably related,” are left completely undefined in the amendment. However, we are concerned that the inclusion of the statement that “legislative clarification of the amendment may be necessary,” is confusing and misleading to voters because it might lead to the conclusion that this measure can be amended or modified by the legislature, which is not true. The phrase might also lead voters to believe that the confusing phrases contained in the amendment can be clarified or defined by legislative action, which is also not true.

In summary, by characterizing the amendment as merely setting up a regulatory framework for abortion, the title and leading statement in the explanation fail to educate the voters as to what this amendment really does: legalize the termination of human life from conception to birth. The explanation also fails to explain the effect and legal consequence of the amendment: the overriding of existing prohibitions on taxpayer funding of abortions, the overriding of criminal protections against coerced abortions, the overriding of prohibitions on extreme late term abortion, and the overriding of many other existing protections which voters might not realize that they are overriding if they approve this amendment.

Thank you for your attention. We ask that you please revise the draft explanation based upon these comments.

Sincerely,

South Dakota Right to Life