

**SOUTH DAKOTA VOTER GUIDE**  
**INITIATED MEASURE 11: THE ABORTION BAN**

**Let Families**  
**DECIDE**

**NO** *on* **11**

September 23 – Early Voting Starts  
October 20 – Voter Registration Deadline  
November 4 – Election Day



[www.sdhealthyfamilies.org](http://www.sdhealthyfamilies.org)

# A Message from the South Dakota Campaign for Healthy Families

Fellow South Dakotans,

We remember all too well what South Dakota went through in 2006, when Governor Mike Rounds signed into law the most restrictive abortion ban of any state in the nation. After that law was referred to a vote of the people, South Dakotans rejected the abortion ban by a wide margin.

However, the out-of-state special interests that want to use South Dakota to advance their political agenda are at it again. Abortion ban proponents have initiated a new law to ban abortion, known as Initiated Measure 11. You will have a chance to vote on this law in November and this voter guide has been written to provide additional information about what the law says and the consequences it will have for the health and well-being of women and families in South Dakota.

Measure 11 is a sweeping ban on abortion in South Dakota. This law requires Government to interfere in the most difficult, personal decisions that women and families make.

If Measure 11 passes, a woman would be forced to carry a pregnancy to term even if the fetus couldn't survive after delivery.

Measure 11's vagueness recklessly endangers women's health. By threatening doctors with a felony and jail time, the law would have a chilling effect on a doctor's ability to exercise proper medical judgment and protect the health of his or her patients.

The Attorney General said this abortion ban will likely be challenged in court and South Dakota taxpayers would be required to pay substantial attorneys fees and costs to defend the law.

**Put simply, banning abortion has serious consequences, and Measure 11 is a poorly crafted law.**


Nowhere is abortion more heavily restricted or difficult to obtain than in South Dakota. South Dakota already has one of the lowest abortion rates of any state. Our current law requires a 24-hour waiting period, mandatory education about the woman's options, and review of a sonogram.

The decision to have an abortion is profoundly difficult for a woman and her family. No woman makes this decision without intense soul-searching and consultation with her family and trusted loved ones. This complex, personal decision should be between a woman, her family, her doctor, and God. But this law will put the ultimate decision in the hands of Government in virtually every instance.

Families need to be making these complex decisions, not the Government.

Abortion is already rare in South Dakota and only performed after carefully considering all options. Let families decide. VOTE NO on INITIATED MEASURE 11.

Sincerely,



Jan Nicolay  
Co-Chair, SDCHF



Elaine Roberts  
Co-Chair, SDCHF

## No Exception for Fatal Fetal Anomaly

For many expecting mothers, news of their pregnancy is both a joy and a blessing. Too often, that joy turns to sadness when a woman realizes that her pregnancy involves a fatal birth defect and has no chance of surviving after delivery. In this situation, a woman is faced with many medical decisions – none of which warrant Government interference. However, Initiated Measure 11 would force a woman to carry any pregnancy to term, even in cases of fatal fetal anomalies.

The following are some examples of fatal fetal anomalies, also known as lethal congenital birth defects. It is important to note that the following list, though extensive, is not comprehensive.

- *Anencephaly* – a condition where portions of the brain are missing or reduced to small matter attached to the base of the skull. [American College of Obstetrics and Gynecology Position Statement on 2006 Abortion Ban, 9/26/06]
- *Inencephaly* – a severe abnormality of the spine and vertebrae, with the brain and much of the spinal cord occupying a single cavity. [American College of Obstetrics and Gynecology Position Statement on 2006 Abortion Ban, 9/26/06]
- *Hydraanencephaly* – complete or near complete absence of the hemispheres of the brain. [American College of Obstetrics and Gynecology Position Statement on 2006 Abortion Ban, 9/26/06]
- *Infantile Polycystic Kidney Disease with anhydramnios* – a lack of amniotic fluid during development. [American College of Obstetrics and Gynecology Position Statement on 2006 Abortion Ban, 9/26/06]
- *Triploidy* – the presence of three full sets of chromosomes. [American College of Obstetrics and Gynecology Position Statement on 2006 Abortion Ban, 9/26/06]
- *Limb-Body Wall Complex*- “Limb-body wall complex refers to a rare combination of disruptive and lethal abnormalities which start early in the gestational process. Abnormalities commonly associated with this disorder include cranio-facial abnormalities, scoliosis, ventral body wall defect (thoraco-abdominoschisis), limb deformations, short umbilical cord, and others. Other terms used to describe similar findings include short umbilical cord syndrome, body-stalk anomaly, and amniotic band syndrome.” [http://www.obgyn.net/us/cotm/9802/cotm9802.htm, accessed 9/9/08]
- *Bilateral Renal Agenesis*- “Bilateral Renal Agenesis is the absence of both kidneys at birth. It is a genetic disorder characterized by a failure of the kidneys to develop in a fetus. This absence of kidneys causes a deficiency of amniotic fluid (Oligohydrannios) in a pregnant woman. Normally, the amniotic fluid acts as a cushion for the developing fetus. When there is an insufficient amount of this fluid, compression of the fetus may

occur resulting in further malformations of the baby.” [http://www.webmd.com/a-to-z-guides/renal-agenesis-bilateral, accessed 9/9/08]

- *Achondrogenesis*- “Achondrogenesis is a group of severe disorders that affect cartilage and bone development. These conditions are characterized by a small body, short limbs, and other skeletal abnormalities. As a result of serious health problems, infants with achondrogenesis usually die before birth, are stillborn, or die soon after birth from respiratory failure.” [http://ghr.nlm.nih.gov/condition=achondrogenesis, accessed 9/9/08]
  - *Thanatophoric Dysplasia*- “Thanatophoric dysplasia is a severe skeletal disorder characterized by extremely short limbs and folds of extra (redundant) skin on the arms and legs. Other features of this condition include a narrow chest, short ribs, underdeveloped lungs, and an enlarged head with a large forehead and prominent, wide-spaced eyes... The term thanatophoric is Greek for "death bearing." Infants with thanatophoric dysplasia are usually stillborn or die shortly after birth from respiratory failure.” [ http://ghr.nlm.nih.gov/condition=thanatophoricdysplasia, accessed 9/9/08]
  - *Meckel-Gruber Syndrome*- “Meckel-Gruber syndrome (MGS) is an inherited condition that causes skull abnormality, enlarged cystic kidneys, liver damage, and extra fingers and toes. Infants with MGS are usually stillborn or die shortly after birth.” [http://www.enotes.com/genetic-disorders-encyclopedia/meckel-gruber-syndrome, accessed 9/9/08]
- [American College of Obstetrics and Gynecology Position Statement on 2006 Abortion Ban, 9/26/06]

Some women and families, understandably, decide not to carry to term a pregnancy with lethal fetal birth defects. However, some do decide to carry such pregnancies to term. That decision should always stay with a woman and her family – Initiated Measure 11 would put the decision in Government’s hands and force every woman to carry her pregnancy to term, even when the fetus has no chance of survival after delivery.

## **Initiated Measure 11 is a Poorly Crafted Law with Dangerous Consequences**

- *Alleged Exceptions*

*“This [Initiated Measure 11] lays the foundation for the next step,’ – a more-stringent ban like the one that failed in 2006.”* – Patti Giebink, Treasurer, VoteYesForLife.com, Wall Street Journal, 8/12/08

Those pushing the new abortion ban are promoting Initiated Measure 11 as 2006-abortion-ban-lite. They claim the new law has adequate exceptions for victims of rape or incest and to protect the health of the woman. Their claims are both wrong and disingenuous: this new abortion ban is every bit as dangerous as the one South Dakotans rejected in 2006.

One of the primary authors of the abortion ban is a New Jersey trial lawyer named Harold Cassidy. He wrote an obscure memo to radical abortion ban proponents across the nation in which he defended the way the new law is written. He said that their real intention is to pass Initiated Measure 11 and then work to remove the “exceptions” for rape, incest and even the health of the woman from the law. Cassidy said the bill creates a “foundation” for banning all abortions in the United States.

*“Those exceptions – as well as one for women in poor health – are included in the new measure. But they are far from simple; the full text of the proposed law is more than 2,400 words. In the voting booth this November, citizens will be presented only a 249-word summary.”* - Wall Street Journal, 8/12/08

- ***Initiated Measure 11 Endangers Womens' Health***

*“The exceptions in the new South Dakota proposal create some knotty questions for voters. For instance, should a woman be forced to continue a pregnancy if the fetus isn't going to survive? How ill must a woman be to qualify for an abortion under an exception for a woman in poor health?”* - Wall Street Journal, 8/12/08

If Measure 11 passes, doctors would risk felony charges and up to 10 years in prison if they believed terminating a pregnancy is best for their patient. The abortion ban would have a chilling effect on a family doctor's ability to care for patients. Facing a health complication during a pregnancy is a difficult thing for a family, and every situation is different. Families should be allowed to weigh all options and determine what is right for their health and well-being.

The “health exception” contained in Initiated Measure 11 permits an abortion when “there is a serious risk of a substantial and irreversible impairment of the functioning of a major bodily organ or system of the pregnant woman,” unless in reaching that judgment the physician “knowingly disregards accepted standards of medical practice.” The “health exception” standards in the abortion ban are dangerously vague.

The following list includes a few examples of medical conditions that create health complications for a woman during pregnancy. In all of these cases, an argument could be made that the condition does or does not involve “serious risk of a substantial or irreversible impairment of the functioning of a major bodily organ or system of the pregnant woman.” The problem with Initiated Measure 11 is that those disputes would be settled in a courtroom after the fact and not left to the sound medical judgment of South Dakota physicians consulting with their patients.

- *Diabetes with renal disease and retinopathy* – Pregnant women with diabetic complications risk worsening their condition if they carry a pregnancy to term, which could lead to blindness or need for dialysis.
- *Cervical cancer* – When cervical cancer is first diagnosed in early pregnancy, a woman's life is not immediately threatened. However, if the cancer is not treated until after a nine-month pregnancy, her life span could be shortened. Similar situations may arise for other forms of cancer first diagnosed during pregnancy.
- *Chorioamnionitis* – This condition involves an inflammation of embryonic membranes.
- *Severe pulmonary hypertension* – This condition involves increased pressure within the lung's circulation system.

[American College of Obstetrics and Gynecology Position Statement on 2006 Abortion Ban, 9/26/06]

These conditions, and many others, sometimes warrant termination of a pregnancy to protect a woman's health and life. That decision should always be left to a woman, her doctor, her family and others she elects to involve. Under Initiative Measure 11, Doctors would be threatened with felony charges and prison time for exercising proper medical judgment in these situations. Such a situation has a chilling effect on a doctor's ability to properly care for his or her patients and would jeopardize women's health.

*"Marvin Buehner, a Rapid City obstetrician and gynecologist who is campaigning against the ban, says he has performed abortions for seriously ill patients, including a woman with rectal cancer who needed chemotherapy and radiation. But he says he wouldn't perform that abortion if the ban passed, at the risk of spending 10 years in prison. The phrase 'accepted standards of medical practice,' he adds, 'is so vague and nebulous that no physicians I know, myself included, would take the chance.'" - Wall Street Journal, 8/12/08*

## **Abortion in South Dakota: Rare and Heavily Regulated**

South Dakota has one of the lowest abortion rates in the country and abortions performed in South Dakota represent just 0.1% of all abortions in the United States. [[Guttmacher Institute](#), 8/11/08]

In 2007, approximately one quarter of abortions in South Dakota occurred among women aged 30 – 45 years. Additionally, more than 80% of abortions occurred among women aged 20 – 45 years. [[Planned Parenthood of Minnesota, North Dakota, and South Dakota](#), 8/11/08]

According to the South Dakota Department of Health's 2006 abortion report, 710 of the 748 abortions done in South Dakota (94.9%) were performed in the first trimester. [[SD Department of Health](#), 8/11/08]

Fully 81% of women receiving abortion care in South Dakota in 2007 are at or below 200% of the federal poverty level (\$35,200 for a family of three.) [[Planned Parenthood of Minnesota, North Dakota, and South Dakota](#), 8/11/08]

In 2006, over half (55%) of women seeking abortion were already mothers of at least one child. [[SD Department of Health](#), 8/11/08]

South Dakota's regulations on abortion are the most extensive in the country. Before an abortion is performed, the following requirements must be met:

- The woman must receive state-mandated "counseling." [[SD Codified Law, 34-23A-10.1](#), 8/11/08]
- The woman must wait at least 24 hours after the state-mandated "counseling" before procedure may be provided. [[SD Codified Law, 34-23A-10.1](#), 8/11/08]
- If the patient is a minor, a parent or guardian of the patient must be notified. [[SD Codified Law, 20-9-4.2](#), 8/11/08]

- The doctor must offer the woman an opportunity to view a sonogram, and must then record any responses in her permanent medical records. [SD Codified Law, 34-23A-52 8/11/08]
- The doctor must deliver a Government-dictated, ideological message to women designed to discourage her decision. The mandatory language includes statements presented as fact that are contrary to available medical research. [SD Codified Law, 34-23A-10.1, 8/11/08]

## **Tiffany and Chris' Story**

Dear South Dakota Voter:

This isn't about politics.

It's about what is right.

In June 2006, we were ecstatic to learn that we were pregnant with our third child.

Soon we would be faced with a decision that would force us to examine our ethical, spiritual, and moral fibers in a manner we never dreamt imaginable.

From the first ultrasound we learned that we were expecting identical twin boys. Our initial reaction of shock was quickly replaced by gratitude as we felt truly blessed. However, our hearts began racing as it became apparent that something was not right.

After two days of testing we learned the diagnosis – Twin to Twin Transfusion Syndrome. One boy was clinging to life, while the other was slowly dying...without prompt intervention both were likely to die.

We were faced with the most difficult decision of our lives.

We chose to end one boy's life so the other could live.

No one should ever be faced with this decision; however, the reality is that these are real decisions that ultimately have to be made.

Measure 11 would have stripped us of our decision and we could have lost both of them.

We made our decision based on the assessment of our doctors, prayer, and our personal beliefs. The only thing more excruciating than making this decision ourselves would have been to sit on the sidelines while the government made this decision for us.

Measure 11 is a bad idea. Families should make these complex decisions not the government. Please Vote No on Measure 11.

Tiffany and Chris Campbell  
Sioux Falls

## **Government Intrusion into Difficult, Private Medical Decisions**

Initiated Measure 11 takes a difficult and private medical decision away from a woman, her family, her doctor and God and puts it in Government's hands.

The South Dakota Medical Association strongly condemns interference by the Government or other third parties that causes a physician to compromise his or her medical judgment as to what information or treatment is in the best interest of patients.

This legislation will interfere with good medical practice and cause physicians to compromise their medical judgment as to the information and treatment they believe is in the best interest of patients.

Section 18 of Initiated Measure 11 also falls short of protecting a woman's privacy if she has an abortion for any reason. Upon demand of the Department of Health, doctors would have to turn over patients' medical records to the Government, with only the patient's name redacted. Other identifying information, like social security number, address, birthdates, etc. would remain. The Government would maintain records of women's circumstances, procedures and related characteristics.

## **Abortion Law Will Be Challenged in Court**

*"Unruh agreed with abortion rights supporters that the goal of [votesforlife.com](http://votesforlife.com) is a law that could be used to challenge the *Roe v. Wade* court case..."* - Gannett News Service, 8/15/08

Our opponents' goal runs counter to what is best for women and families in South Dakota. If this abortion ban passes, they will not stop until they have eliminated all exceptions and abortion is not permitted under any circumstance. Initiated Measure 11 is part of a broader strategy to ban all abortions in the country by using South Dakota as a pawn to challenge a Supreme Court case. If they succeed in mounting such a challenge, South Dakota taxpayers will be left to cover the costs of the lawsuit.

In South Dakota Attorney General Larry Long's explanation of Initiated Measure 11, he said, "If approved, Measure 11 will likely be challenged in court and may be declared in violation of the United States Constitution. The State may be required to pay attorneys fees and costs." [South Dakota Attorney General Explanation of Initiated Measure 11, accessed 9/9/08] Leslee Unruh has previously predicted that such a lawsuit "could cost two to three million dollars." [Alpha Center Fundraising Letter, 2/23/06]

If Measure 11 passes, the state will spend millions of dollars defending the lawsuit to advance Unruh's political agenda instead of using that money to improve education, health care and provide tax relief to South Dakotans.



## FAQ's

*Q: I heard that the new abortion ban includes exceptions for rape, incest and health. Does this mean that the new law protects victims of rape and incest and women who face complications during a pregnancy?*

**A: No.** While the new law includes technical language called “exceptions” for victims of rape and incest and women’s health, those “exceptions” are so narrowly construed as to be meaningless. The rape and incest exception includes a laundry list of conditions and requirements that a woman must meet to qualify for the “exception.” If she falls short on any condition or requirement, she will not be permitted the option of an abortion. Additionally, the “health exception” is so vague that it is meaningless. By threatening doctors with felony charges and jail time, no doctors in South Dakota will perform an abortion, even if they think it is in the best interest of the health of their patient.

*Q: I'm upset that we have to vote on this again. If this abortion ban passes, will the issue be settled?*

**A: No.** The special interests pushing this abortion ban have vowed that, if it passes, they will continue working to eliminate any exceptions included in the ban and take their case to the Supreme Court to ban all abortion in the United States. Even if the abortion ban passes, we can expect a court challenge that will take years to resolve and further attempts by the same activists to continue to restrict access to reproductive health care and contraception in South Dakota.

*Q: Who decides if a woman is sick enough that she should be allowed to have an abortion to protect her health or life?*

**A: Initiated Measure 11 is incredibly vague and does not clearly state how such cases would or should be handled.** If and whenever a doctor performs an abortion under the “health exception,” they could be called into Court to defend their decision to a judge and jury. The patient whose life and health they protected could also be compelled to testify against their doctor. In the end, the decision will be in the hands of lawyers with no relationship to the woman and her family.

*Q: If the abortion ban passes and is challenged in court, who would pay to defend the law?*

**A: South Dakota taxpayers.** Attorney General Larry Long has said that if the ban passes, it could be challenged in court and could be found in violation of the constitution. Furthermore, South Dakota taxpayers would be forced to pay millions of dollars in attorneys’ fees.

**Let Families**  
**DECIDE** **NO** *on* **11**

SOUTH DAKOTA CAMPAIGN FOR

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FAMILIES**

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**Paid for by the South Dakota Campaign for Healthy Families**