

news and views

[Recognizing the importance of the referendum on South Dakota's extraordinarily restrictive anti-choice law in the last election, we are pleased to provide you this report from a social justice activist who worked there with the pro-choice forces. Cynthia L. Cooper traveled to South Dakota from New York with "Words of Choice," a theater performance by an ensemble of actors that weaves together the works of a dozen writers to share the passion of pro-choice values and to inspire activism. (For more on "Words of Choice," see www.wordsof-choice.org.) Cooper created and produces "Words of Choice" and conducts discussions afterward, drawing upon her experience as the former communications director at a national pro-choice legal organization and a journalist who reports on the issue. As Cooper wrote me, "'Words of Choice' has presented shows in twenty states, including many encountering anti-choice pressures. But the climate in South Dakota in October 2006 was very different" from anything she had seen before. Cooper concludes her report with these words, "The national anti-choice movement will find another vulnerable state to pass an all-out ban as a frontal challenge to Roe. . . . [S]mall and less affluent states cannot be left to spin in the wind on their own. To sustain reproductive freedom in the future, pro-choice leadership must be strengthened in every state." Let us heed her warning. —Claire Moses]

AT A STREET CROSSING in downtown Rapid City, South Dakota, in late October 2006, I looked up at a spiraling old-style church edifice facing into the direction of the Black Hills. Less than ten days before a pivotal ballot box vote on a near-total abortion ban, a handsome acrylic banner stretched across the church archway, ten feet high and twenty feet wide, in the soothing white color of the clouds and with stylish bird's-egg blue and primrose lettering, saying: "Vote Yes for Life on 6." Concealed, however, was the rather drastic intention: to convince passersby to install the most restrictive abortion ban in the country since the decision in *Roe v. Wade* in 1973.

Aside from the disturbing image of a church pushing a ballot measure as if it were the annual summer carnival, that expensive signage frightened me. Here, in the landscape of South Dakota, was the future: this is what states across the nation would face if the United States Supreme

Court overthrows *Roe* and returns the issue of abortion to the states. This was not a comforting picture.

The pro-choice side did win in the November 7 election, and by a solid margin of 11 percent (55.5 percent to 44.5 percent) with a substantial 67.2 percent voter turnout. But this was not a given. At that moment, in late October, pro-choice forces were demoralized and depressed. Despite earlier polls showing them with a lead, a highly-funded and untruthful campaign by the opposition had left few on the pro-choice side feeling truly optimistic.

One television anchor told me the vote on the abortion ban was the most contentious issue he had covered in his seven years on the job. We felt the tensions everywhere. South Dakota is a wide-angle state with big stretches of land and a mere 770,000 people. The two cities of modest population density—Sioux Falls and Rapid City—sit on the opposite borders of the state with a flat 380-mile drive in between. The one abortion clinic in the state is operated in Sioux Falls by Planned Parenthood of Minnesota-North Dakota-South Dakota, and a doctor flies in from Minnesota one day a week to provide services. There were 814 abortions in 2004, the second lowest number in the United States. Only 8 percent of the pregnancies in South Dakota end in abortion, compared to approximately 25 percent nationwide, according to the Alan Guttmacher Institute.

Over the years, a dedicated anti-abortion contingency has developed in South Dakota, and, as in many states, it worked to elect an anti-abortion legislature. South Dakota already had eliminated public funding for abortions and enacted a number of stringent anti-abortion restrictions, including a 24-hour waiting period, parental notification, counseling intended to discourage abortion, “conscience clauses” permitting pharmacists to refuse to fill birth control prescriptions.

Leslee Unruh, president of the Abstinence Clearinghouse, also located in Sioux Falls, and the owner of the state’s largest “crisis pregnancy” center, became the high-profile proponent of legislation that could make a frontal challenge to *Roe v. Wade* after conservatives John Roberts and Samuel Alito were appointed to the U.S. Supreme Court. Unruh, aided by Republican state legislator Roger Hunt, hoped that a state ban on abortion would work its way up to the high court and reverse the core findings of *Roe*.

The ban started to take shape in March 2005, when Hunt convinced the legislature to create a task force to study abortion. Hearings and reports such as this create a legislative history, which provides guidance for judges when they are reviewing the rationale for a new law. From the start, the fifteen-person task force was stacked with nine strongly anti-abortion members, including a Catholic anti-abortion lobbyist and Dr. Alan Unruh, a chiropractor who is also married to Leslee Unruh. A subgroup surprised the full task force with a report replete with questionable science and misleading information. It misquoted abortion rights supporters, if it bothered to quote them at all. One pro-choice member, Senator Stan Adelstein, said, "We found that the majority report was basically a religious document . . . very unscientific, actually in some cases, untrue." The four pro-choice members on the committee asked to file a minority report, and when their request was denied, they walked out. The remaining task force approved the report.

In January 2006, the legislature introduced HB 1215. The act stated (based on the task force report) that "life begins at the time of conception" and "that each human being is totally unique immediately at fertilization" and that abortion should be prohibited "to protect the rights, interests, and health of the pregnant mother, the rights, interest, and life of her unborn child, and the mother's fundamental natural intrinsic right to a relationship with her child."

The act banned abortion in all circumstances, from the moment of fertilization, and offered no exceptions for circumstances of rape, incest, or when the health of the woman was endangered. It stated: "No person may knowingly administer to, prescribe for, or procure for, or sell to any pregnant woman any medicine, drug, or other substance . . . or employ any instrument or procedure upon a pregnant woman with the specific intent of causing or abetting the termination of the life of an unborn human being." The act said that if the woman's life were at stake, the doctor must make "reasonable medical efforts to preserve both the life of the mother and the life of her unborn child."

But the law went even further, acting as the equivalent of a "Human Life Amendment." Despite the medical definition of pregnancy as beginning when a fertilized egg is implanted in the uterus, a definitions section

of the law stated that “pregnant” is “the human female reproductive condition, of having a living unborn human being within her body throughout the entire embryonic and fetal ages of the unborn child from fertilization to full gestation and childbirth.” And lest there be any doubt, “fertilization” was defined as “that point in time when a male human sperm penetrates the zona pellucida of a female human ovum.”

This was not just a bill banning abortion, but redefining the beginning of life. Cynically called the “Women’s Health and Human Life Protection Act,” violation of the law was classified as a felony, punishable by up to five years in prison and a \$10,000 fine. The law was to take effect on June 30, 2006.

In February, HB 1215 was passed by a vote of 50 to 18 in the legislature and Governor Mike Rounds, a Republican, signed the law on March 6, 2006. “The ban,” wrote the Religious Coalition for Reproductive Choice, “is chilling in its disregard of the realities of women’s lives.”

Planned Parenthood intended to file a lawsuit to enjoin the ban and challenge its constitutionality. But something happened on the way to the courthouse. Planned Parenthood State Director Kate Looby recalled being in the state capitol in Pierre. “People kept coming up to me and saying, ‘Put it on the ballot, put it on the ballot.’” A procedure in South Dakota allows citizens to collect signatures and place newly-passed laws up for a general vote. Planned Parenthood announced it would do that. In eight weeks, a new coalition of pro-choice groups, called the South Dakota Campaign for Healthy Lives, amassed 38,000 signatures—double the number needed. HB 1215 was certified for the November ballot as Referred Law 6. Voters would mark Yes, to allow the abortion ban to become effective, or No, to reject the ban. The courts surely would have rejected the abortion ban as unconstitutional, according to Louise Melling, director of the Reproductive Freedom Project of the American Civil Liberties Union in New York. The ballot measure put implementation of the law on hold, and even if the voters supported the ban, Planned Parenthood could still challenge it in court.

So, at its essence, the ballot measure was a fight for the hearts of the people, but a somewhat risky one. South Dakota is a conservative state: 60 percent voted for President Bush in 2004. National polls consistently show

that a majority of the people support the right to choose; South Dakotans, according to analysis by the Center for the Study of Politics and Governance, are split, with 48 percent identifying as “pro-choice” and 48 percent as “pro-life.” The state also has a libertarian streak, however, and after the law was signed, the governor’s ratings dropped. The state polling firm Robinson and Muenster reported the ban garnered only 35 percent support, with 57 percent opposed and 8 percent undecided.

Anti-abortion activists often decry *Roe v. Wade* as “judicial activism” that usurped the will of the people. Had the matter been left to a public vote, abortion would be banned, they say. And the Religious Right is exceptionally good at getting voters to election booths. In those terms, the battle was bound to be fraught. This strategic decision in South Dakota could shape the future of choice across the nation.

After the ban was passed by the legislature, another highly publicized development emerged from the southwestern corner of South Dakota. There, the Oglala Sioux Tribe has sovereignty on the Pine Ridge Reservation. The first female president of the Oglala Sioux, Cecilia Fire Thunder, a nurse by training, suggested that Planned Parenthood could build a clinic on tribal lands. Fire Thunder immediately came under attack by anti-abortion activists. She was suspended from duties by the tribal council in May and removed in June. The council also banned all abortions on tribal lands. Fire Thunder both challenged her removal and then announced that she also would run again.

The passage of the ban also spurred a new crop of pro-choice legislative candidates, many women and a significant number of Native American women. The success in putting the measure on the ballot, using 1,000 volunteers, created an atmosphere of euphoria in pro-choice arenas. An activist group of women in the western part of the state, Democracy in Action, flourished. The SD Healthy Families Coalition hired a new director, as did the state NARAL. Polls in the summer confirmed that most South Dakotans supported the pro-choice position by an 8 percent lead.

The anti-abortion forces also mobilized. A campaign to support the ban, Yes for Life, was launched in July with Leslee Unruh as its director. Two worrying signs emerged from each camp.

The SD Healthy Families Coalition campaign told its coalition partners

that it was going to fight the ban solely on the grounds that it did not contain exceptions for rape, incest, and health. It was not going to address women's reproductive freedom, the right "to decide," or the right of privacy. The SD Healthy Families Coalition picked an undeviating message: the law is too rigid; the law has no exceptions. Many people in the pro-choice community disagreed. Lynn Paltrow of the National Advocates for Pregnant Women in New York, who had testified before the SD task force, was not alone in thinking it was a short-term strategy that would backfire in the long run.

The other worrying sign came from Lynchburg, Virginia, the home base of Jerry Falwell of the Moral Majority. Falwell sent out a letter during the summer, referring to the "historic battle" in South Dakota. "(I)f ever there were a time when Christians need to invest in a pro-life effort, the time is now and the place is South Dakota," wrote Falwell. "What happens in South Dakota will literally affect the future of America." In addition, D. James Kennedy of Coral Ridge Ministries in Florida wrote to South Dakota pastors urging voter activism and offering any assistance "as you stand for biblical truth in the increasingly post-Christian land." The messages were clear: the national anti-abortion movement intended to lock horns in South Dakota.

The effort, like most political battles, began to intensify after Labor Day. A Zogby poll declared that the race had tightened up and was a statistical "dead heat." The blue and pink "Yes for Life" signs grew faster than crops in the best of seasons. Over 40,000 were distributed across the landscape, on lawns, in store windows, on empty lots. Churches not only posted them, but reportedly served as distribution centers. The SD Healthy Families campaign had at first decided not to invest in lawn signs. Signs seem like a minor issue from a distance. But, up close, the Yes for Life signs created a sense of a powerful organizational system and broad popular support, deflating the spirits of pro-choice activists. The signs also spoke to the vast sums of money that the Religious Right would spend on this campaign.

Then came the Yes for Life television advertisements, so slick that they can only be compared to the Swift Boat ads against John Kerry in his 2004 presidential campaign, except they used a "pro-woman" tone and theme. One advertisement, the most audacious, showed a group of South Dakota

doctors, although no obstetricians or gynecologists were among them, who spoke in turns. One said, “Science proves that life begins at conception.” Another (Leslee Unruh’s son-in-law, it turns out) said, “This measure does provide exceptions for the life and the health of the mother.” Others said, “And the morning-after pill may be taken in any event, including sexual assault or incest.” The ad was capped with: “Referred Law 6 is a caring approach to protecting women.”

These statements were untrue: the law did not have exceptions. They confused the viewing audience—even the woman working the breakfast room at our lodging asked us for an explanation. But the media did little to call Yes for Life to account. A state legislator and Paltrow filed complaints, but the ads continued to run without countering.

Instead, articles focused on whether or not emergency contraception was available to rape victims, a sideshow, if ever there were one. One Yes for Life spokesperson said that emergency contraception could be used for 14 days after unprotected intercourse, whereas the accurate time period is 72 hours. Faced with stark untruths and no accountability, the pro-choice campaign floundered, just as John Kerry had when Swift Boat ads appeared. A pro-choice campaign that voluntarily narrowed itself to the issue of exceptions now found itself further narrowed to explaining what emergency contraception is and how it works and why it was not a substitute for abortion access for a rape survivor. The pending total ban on abortion, the nation’s worst, was becoming a distant abstraction.

When “Words of Choice” launched its nine-day tour in South Dakota to help energize pro-choice voter turnout, two of us visited the offices of the SD Healthy Families Coalition. Workers and volunteers looked like they had stayed up too many late nights and had eaten too many stale pizza slices for breakfast. Everyone who could do so was working on the campaign—some students dropped out of school, others were tripling up on jobs and their schoolwork.

Our audiences were appreciative, but also somber. At the first show, Looby from Planned Parenthood and others seemed to be girding for loss, explaining how difficult it was to compete with the churches’ ready-made organizational system, combined with the advertising ploys. “We expected a fight,” said Looby, “but not out-and-out lies.”

At one show in Brookings, South Dakota, an organizer with the American Association of University Women took me aside. She described how people in South Dakota felt isolated and alone, and then cried. This sentiment was repeated again and again in varied communities. We heard from dismayed pro-choice pastors who had been castigated and student organizers who were shunned. Weariness was apparent. In response, we ended every evening with a pep talk. But we were shocked by what we saw—an overwhelmed pro-choice community and possible defeat.

A young activist on the “Words of Choice” team and I felt that we were witnessing something that was not well understood in the wider pro-choice community. We started e-mailing an SOS to our contacts, telling everyone that South Dakota’s campaign needed money, people, and encouragement. We posted on *Feministing.com* and *History-in-Action*, an intergenerational feminist e-mail discussion list. People responded. One contact took our message to dozens of media outlets and organizations. The communications director of a major national organization flew out to South Dakota; so did activists. A women’s news service assigned a story, which was picked up across the Internet. People sent money and goodwill notes, cheering campaign staffers. A major organization in Washington, D.C., sent out a call for volunteers. Independently, the ACLU, also alarmed, offered travel stipends to activists willing to go to South Dakota. The last ten days became a ramp-up of energy and motivation, desperately needed. Another boost came from an unexpected source seven days before the vote when the ballot committees were required to file donor reports.

Throughout the campaign, the anti-abortion group claimed that it represented the true voice of South Dakotans and its support was home-grown. Donor reports showed the Yes for Life group had \$2.65 million in funds, compared to \$1.84 million for the SD Healthy Families Coalition, a significant difference. A close look showed that the pro-choice group’s largest donor was the regional Planned Parenthood; other funding came from the ACLU and the Working Assets Political Action Committee, with modest amounts from other pro-choice organizations and the bulk from individuals. The anti-abortion campaign had collected most of its money from churches and Religious Right organizations, including Focus on the Family, American Family Association, Operation Rescue, the Knights of

Columbus, Faith2Action, the National Center for Freedom and Renewal, Citizens for Community Values, American Life League, the Catholic Chancery Office, right-to-life groups, crisis pregnancy centers, and churches in Oklahoma, Washington, Missouri, West Virginia, and elsewhere. The donor reports bore out that the Religious Right was deeply invested.

But the reports opened another window. They showed that Yes for Life received, by far, the largest amount to either campaign—\$750,000—from an unknown source through a shadowy shell corporation set up by Representative Hunt, the legislator who engineered the ban and was a founder of Yes for Life. In apparent violation of state law, Hunt refused to identify the source of the funds. One television station ran with the story and South Dakota bloggers plugged it. The pro-choice side responded this time without hesitation. Newspapers finally cast a critical eye on the Yes for Life campaign. Yes for Life suddenly was on the defensive, not only about its donors, but on its campaign as a whole.

The pro-choice community was jubilant with its victory, of course. “Unbelievable,” Looby said over and over on election night. In the end, 2,000 volunteers worked for the Healthy Families campaign, many going door-to-door—not the same organizational structure as the churches, but still considerable.

That an anti-abortion campaign begun with falsehoods finally unraveled over its own falseness is not insignificant. That the ban was rejected by South Dakota voters is undeniably important. But only three anti-abortion legislators were replaced. Cecilia Fire Thunder was not reelected and most pro-choice women candidates did not fare well. Should the pro-choice community have done more to address a “big picture” strategy, simultaneous with the ballot vote? Pro-choice activists in the Native American community changed the “No Exceptions” message. When anti-abortion activists were pounding tribal areas with advertising that said “Children Are Sacred,” an ACLU activist created a critical response: “Women Are Sacred.” Native American voters rejected the ban, adding an important element to the margin of victory. It remains to be seen if the “No Exceptions” messaging have a boomerang effect in the long-term, or the ballot victory will effectively squelch further anti-abortion proposals.

This much is assured: the national anti-choice movement will find

another vulnerable state to pass an all-out abortion ban as a frontal challenge to *Roe* and will continue to apply sophisticated and slick Swift Boat-style advertisements to highly personal reproductive choice issues. The lesson is clear that small and less affluent states cannot be left to spin in the wind on their own. To sustain reproductive freedom in the future, pro-choice leadership must be strengthened in every state. Grassroots organizations should be empowered with funding and support. Pro-choice activists need to imitate the civil rights movements of the 1960s by developing cadres of activists and sending people and resources to communities in trouble. More feet are needed “on the ground.” Artists, filmmakers, bloggers, writers, and observers should be integrated into campaigns. And more interfaces are needed between local and national pro-choice communities to play a role that “Words of Choice” accidentally filled.

The future will look like South Dakota, and counteracting the vast bulwark of the Religious Right must become much more central to the pro-choice movement if we are to retain reproductive choice for generations to follow. This is the real message of the banner flying over the church in Rapid City.

—*Cynthia L. Cooper*