

## South Dakota dreaming

*By Gualberto Garcia Jones*

In 1966, the Mamas and the Papas dreamed of going to L.A. Forty years later, pro-life mamas and papas across the country are dreaming of going to ... South Dakota. No, it isn't the winter weather or the majestic Mount Rushmore; South Dakota has become the nation's pro-life pioneer state setting off a wave of essential pro-life legislation that's sweeping across the country.

The 40th state, the 46th in population, has shown the biggest heart of all the 50 United States. There David has struck down Goliath and the people are beginning to believe that the culture of death may also in turn die—there, the Women's Health and Human Protection Act (H.B. 1215) was passed by the legislature and it was signed into law by Governor Mike Rounds (R). Barring a ballot initiative or court challenge, that means effective July 1, all intentional abortions are illegal.

Nevertheless, many well known pro-life groups have yet to embrace the amazing pro-life victory. The National Right to Life Committee issued no statement of support for the courageous lawmakers of South Dakota. Instead, they reacted by saying that pro-lifers could only count on four Supreme Court votes—never mind that should the bill eventually get to the Supreme Court, the court's personnel could enjoy a pro-life majority. Therefore one wonders whether NRLC and others would have advised David to wait until the invention of the musket before taking a pop at Goliath.

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If most of the pro-life establishment was against this law, how in the world did it come to the forefront of the news cycle and end up reforming the abortion debate in this country? Answer: Truth. In other words, the lawmakers were politically shrewd insofar as they carefully researched the harmful effects of abortion on mothers and society. So the Women's Health and Human Protection Act is quite simply the most consistent, unabashedly pro-life legislation passed in any state since the *Roe v. Wade* decision. Mind you, the law isn't perfect, but it is consistent with the belief that human life is sacred and the intentional taking of it should be both illegal and punishable.

### Distinguishing fact from media spin

Does South Dakota's abortion ban contain a life of the mother exception? The intricacies of this bill, bad journalism and bad faith have caused the mainstream and even some pro-life reporters to misrepresent this law as containing a "life of the mother exception."

In fact, the Woman's Health and Human Protection Act contains no such exception. Instead, the bill adopts and institutes the principle of double effect.

When applied to abortion, the principle of double effect states that if a doctor is faced with the necessity of treating a life-threatening disease in a manner that puts the child in the womb at risk, he may do so, if and only if the procedure is intended to cure the disease. Keep in mind that a preborn child is not a dis-

ease. Thus South Dakota's lawmakers correctly recognize that an abortion never treats illness—it is always the intentional taking of a child's life. Therefore, what has widely been reported as a "life of the mother exception" is nothing more than a protection for doctors should a preborn child die while the physician is acting in the best interest of both mother and child.

In the interest of full disclosure, there is one problem with Women's Health and Human Protection Act because it only serves to punish abortions carried out after the preborn child is detectable through common pregnancy tests. While this is not consistent with the defense of life from fertilization, the Women's Health and Human Protection Act is what lawyers call a "specific intent law." Hence, the law recognizes that when a doctor prescribes so-called Emergency Contraception, he often does not know whether fertilization has occurred.

Indeed EC may prevent the male sperm from reaching the female ovum, but it also can abort a newly formed human being. Furthermore, a prosecutor wouldn't be able to establish whether the doctor who prescribed the chemical had acted with the intent to prevent the formation of a new person or with the intent to kill the newly formed person.

Even so, the body of criminal law provides ways to deal with this conundrum. One option would be to enact another law that criminalizes the prescription of a chemical dangerous to the preborn, just like it would be prohibited to negligently prescribe a poison to the mother such as the provisions in Ohio's pending abortion ban, H.B. 228. So while the Women's Health and Human Protection Act does not protect the newly formed persons before they can be detected by medical tests (about five days after fertilization), it would protect all babies from intentional surgical and medical abortions and we can be extremely grateful for that.

## How is the pro-life community reacting?

If nothing else comes of this remarkable piece of legislation, at least it will allow the American people to look within our movement at those who claim to represent and lead us, as well as those who are supposed to inform us.

When some of the most prominent national pro-life organizations seek to frustrate the will of principled pro-lifers, it's time to look elsewhere for leadership.

In 1999, presidential hopeful George W. Bush

excogitated his pro-life position to the Associated Press, saying that "America is not ready to overturn *Roe v. Wade* because America's hearts are not right. And so, in the meantime, instead of arguing over *Roe v. Wade*, what we ought to do is promote policies that reduce abortions." Seven years later in 2006, evidently hearts are right.

However, when former White House Press Secretary Scott McClellan was asked about President Bush's position on South Dakota's abortion ban, McClellan said the president wouldn't comment because it's a state matter.

"The president believes very strongly that we ought to value every human life" said McClellan. "He is pro-life with three exceptions—rape, incest and the life of—when the life of the mother is in danger."

Nevertheless, Bush was elected by pro-lifers who recognize that every abortion is a terrible injustice and wish to see all preborn children protected.

## Right to Life Act progress

Meanwhile, in the halls of the U.S. House of Representatives, American Life League and a few other hard hitters have quietly increased the co-sponsorship of the federal Right to Life Act (H.R. 552). At the time of this writing, there were at least 90 representatives who are man or woman enough to advocate for the complete, uncompromising, equal protection of preborn children under the 14th Amendment of the United States Constitution.

ALL's congressional liaison, Hon. Bob Dornan, has contacted numerous members of Congress about co-sponsoring the Right to Life Act. Dornan's efforts were doubled by ALL Associate member and pilot Bob Gilbert, director of A Voice for the Unborn. Gilbert tirelessly called upon congressional offices until 20 more members of Congress became Right to Life Act co-sponsors.

The clouds are lifting from the pro-life movement in Washington, D.C. and states from South Dakota, to Michigan, to Tennessee, to Alabama, to Georgia, to Kentucky, to Ohio, to West Virginia and these states are speaking loud and clear, "We want to end the abortion genocide now!"

Gualberto Garcia Jones is legislative analysis director at American Life League. Keep up with progress on the Right to Life Act at [www.RightToLifeAct.org](http://www.RightToLifeAct.org).

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