

Mommy Dearest?

As South Dakotans prepare to vote on the nation's most draconian abortion law, they're hearing a frightening argument: that the state must "protect" women from abortion by forcing them to bear children. And the argument is spreading.

BY REVA SIEGEL AND SARAH BLUSTAIN

NEXT MONTH, SOUTH DAKOTANS WILL VOTE on whether to uphold the most radical abortion ban in the nation. Allowing for abortion only "to prevent the death of a pregnant mother," the ban was enacted last March in the belief that the changing membership of the Supreme Court made timely a direct challenge to *Roe v. Wade*. The nation awaits the outcome of this referendum; but in a crucial sense, the damage has already been done.

That's because in enacting the ban South Dakota's governor and legislature gave prominent official endorsement to a claim that's been quietly spreading for decades: that abortion harms women. Asserting that women are subject to coerced and dangerous abortions, the state prohibited the procedure, it said, not only to protect the unborn, but to protect *women's* choices, *women's* health, and *women's* welfare—new justifications that borrow pro-choice language and infuse it with some very old notions about women's roles. Prohibiting abortion, the movement now emphasizes, protects women's health and choices as *mothers*.

South Dakota based its ban on a 70-page set of findings contained in the "Report of the South Dakota Task Force to Study Abortion"—by far the most comprehensive government account of the arguments and evidence for protecting women from abortion. A transparently one-sided publication—even the anti-abortion chair of the task force voted against it to publicize her objections to its abstinence recommendations and abortion "facts"—the report includes a variety of findings explicitly endorsed by the legislature as the basis for the ban. Some are the more

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familiar, fetal-focused items, emphasizing that a fetus is a “whole separate unique living human being.” But more than half of the 10 findings focus on women. The task force found that abortions cause long-term emotional and physical damage to women, everything from suicidal ideation to the possibility of breast cancer. But the task force’s report went even further: It argued that the state needed a ban because of the epidemic overriding pressures on women to abort—from a family member, a husband or boyfriend, or an abortion clinic—that make extra protection from abortion necessary. Finally, to make credible its claims about women’s health and women’s choices, the task force made repeated claims about women’s nature. It asserted that women would never freely choose an abortion—even absent outside pressures—because doing so would violate “the mother’s fundamental natural intrinsic right to a relationship with her child.” The task force took as a statement of biological and psychological fact that a mother’s connection to her unborn baby was more authentic than her own statement of desire not to be pregnant. These gender-role convictions are at the heart of the movement’s claim that the nation must now combat an epidemic of dangerous and coerced abortions.

Even as major medical authorities challenge the “science” supporting new woman-protective anti-abortion argument, the claim is spreading. “The abortion-hurts-women movement is the most serious issue that we are dealing with in the election in South Dakota,” Sarah Stoesz, president and CEO of Planned Parenthood Minnesota, North Dakota, South Dakota, told the *Prospect* this summer, relating how a busload of “post-abortive women,” called the Fleet for Little Feet, was crisscrossing the state testifying about the grievous harm abortion caused them. Pro-choice activists in states from Louisiana to Ohio to Texas said it is now one of the dominant forms of anti-abortion activism that they have to fight.

South Dakota’s official endorsement of these arguments gives them more validity than ever and virtually assures that they will be employed to justify abortion restrictions across the nation. This is happening already. Repetition of these arguments in statehouses and courthouses may soften the public perception of the anti-abortion claim—especially among the moderate middle. Even if South Dakota’s ban is voted down for want of a rape or incest exception, the woman-protective argument against abortion will spread, making ever more commonplace the 19th-century forms of reasoning about women that underwrote the law. Pro-choice pundits who say there’s nothing to lose in *Roe* might think again.

IN 2004, A NEW JERSEY LAWYER NAMED HAROLD CASSIDY visited South Dakota. A bill proposing a radical ban on abortion had been submitted by a Republican state representative named Matt McCaulley, and the state was hearing testimony. Cassidy analyzed abortion from an interesting new angle. In legislating on abortion, Cassidy suggested, lawmakers might fruitfully look to adoption.

In offering this novel analogy, Cassidy was drawing on experience that began in the 1980s, when he had gained some notice as the lawyer for Mary Beth Whitehead—a woman who contracted to serve as a surrogate mother, gave up her child, known as Baby M—and then tried to get the child back. Cassidy argued that

Whitehead could not possibly have known what she was giving up—could not grant informed consent—until she physically held her child after birth. (He lost the case, but he won significant visitation rights for Whitehead.)

Cassidy, who says he had been rather casually pro-choice at the time, began hearing from women who regretted their abortions, and applied lessons from his adoption work to their cases. His analogy—and the women’s grief—claim an equivalence between the born and the unborn.

Cassidy’s vision ended up in South Dakota’s bills in language that pro-choice activists say they have not seen in any other legislation so far. Language in the ban announces that the state is prohibiting abortion to “protect the mother’s fundamental natural intrinsic right to a relationship with her child.” Similar language also appears in an informed consent law, now being fought over in court, that was passed in South Dakota in 2005. Enforced by criminal penalty, the law requires a doctor to tell a woman that the abortion will terminate “her existing relationship and her existing constitutional rights with regards to that relationship”—and requires a doctor to attest belief that the woman “understands.” If ever there was legislation that pushed women into motherhood, this is it.

This contribution to abortion law fits nicely into the patchwork of arguments in South Dakota’s task force report that attempt to draw a picture of women as mothers who cannot but be damaged by the experience of abortion. Even the purported medical claims in the task force report are used to support this notion. Rejecting the finding of the American Psychological Association that abortion has “no lasting or significant health risks,” the report argues that abortion inflicts grave psychological injuries on women, including bipolar disorder, depressive psychosis, neurotic depression, schizophrenia, guilt, anger, post-traumatic stress disorder, and suicidal ideation. The report finds that women who have abortions are more likely to have substance abuse problems, relationship and sexual problems, and parenting problems. Advocates describe these symptoms as a form of trauma they call post-abortion syndrome (PAS). Significantly, the task force argues that abortion causes PAS symptoms because abortion violates women’s nature: “It is simply unrealistic to expect that a pregnant mother is capable of being involved in the termination of the life of her own child without risk of suffering significant psychological trauma and distress. To do so is beyond the normal, natural, and healthy capability of a woman whose natural instincts are to protect and nurture her child.”

If women aren’t able to choose abortion, someone must be making them do it. Abortion clinics are public enemy No. 1 in this campaign.

If women are not able to choose abortion, then someone must be making them choose it. And public enemy No. 1 in this campaign—and in the task force report—are abortion clinics, which push women into the procedure without providing them with information on the purported health risks or informing her that “the procedure would terminate the life of a human being.” Indeed, the vision of women as victims, not agents, of choice is



Perched for a Battle: South Dakota Planned Parenthood's Kate Looby

so stark that the report asserts that clinics lead unwitting women into acting contrary to their “very nature as a mother”: “It is so far outside the normal conduct of a mother to implicate herself in the killing of her own child. Either the abortion provider must deceive the mother into thinking the unborn child does not yet exist, and thereby induce her consent without being informed, or the abortion provider must encourage her to defy her very nature as a mother to protect her child. Either way, this method of waiver denigrates her rights to reach a decision for herself.”

Responding to the characterization of women as weak, emotional, and confused decision-makers in the task force report and the state’s 2005 informed-consent law—a law justified in part on the grounds that women seeking an abortion might suffer from “an emotional crisis” and “clouded judgment”—minority members of the task force retorted that these legislative findings rested on “a sexist, insulting, condescending, and inaccurate stereotype of women,” and objected to the exclusion of all nonconforming testimony from the task force report. Kate Looby, the South Dakota state director of Planned Parenthood and a member of the task force who walked out before the final vote on the report, is outraged at the paternalism of the women-protective argument. “The idea coming out of the members of the task force [is] that women just really aren’t smart enough to figure out what they want, they need to be told,” says Looby. “And [what] they need to be told is, of course, coercion into the pregnancy.”

Janet Crepps, staff attorney in the domestic program at the Center for Reproductive Rights, says South Dakota has argued that “women are not capable of being informed decision-makers in the context of abortion, which is shocking.” It is “the first time you have a whole legislative body adopting this kind of bad abortion science and this kind of fairly outrageous statement of their view of the proper role of women in society.”

THE WOMAN-PROTECTIVE RHETORIC HAS RICH ANTECEDENTS in the 19th-century campaign to criminalize abortion and contraception. But in the last several decades, it has not been the dominant form of anti-abortion argument. When debate over whether to criminalize abortion erupted in the 1970s, the women’s movement was ascendant and opponents of abortion emphasized the need to protect the unborn, rather than to preserve traditional roles of women.

The woman-protective argument for restricting abortion appeared in the 1980s when a researcher began to analyze abortion responses on the model of post-traumatic syndrome. Powerfully placed anti-abortion activists resisted this shift in emphasis, hoping to keep the moral focus on the unborn. This fight over who was rightly the object of anti-abortion concern reached its height when some leaders of the anti-abortion movement urged President Ronald Reagan’s surgeon general, C. Everett Koop, to make official findings that abortion posed a public-health threat to women, on the model of his anti-smoking campaign. Koop, who was a prominent and passionate opponent of abortion, refused. He judged the new claim mistaken on the grounds that there wasn’t sufficient evidence to decide on abortion’s harm to women—and more: “Abortion was more a moral issue than a medical issue,” Koop reasoned in his 1991 book *Koop: The Memoirs of America’s Family Doctor*. “The pro-life movement had always focused—rightly, I thought—on the impact of abortion on the fetus. They lost their bearings when they approached the issue on the grounds of the health effects on the mother.”

But with the abortion debate deadlocked through the 1980s and 1990s, growing numbers of anti-abortion advocates began to recognize that they needed better ways to speak about the wrongs of abortion to the majority of Americans now concerned about women’s rights. And so anti-abortion advocates experimented with forms of woman-friendly argument that fused women’s rights talk and women’s roles talk into a case against abortion that could claim concern for a woman and her child at the same time. Recalling the genesis of this “new rhetorical strategy,” Frederica Mathewes-Green of Feminists for Life of America—founded in 1972 as an anti-abortion, pro-Equal Rights Amendment organization—recounts “Dr. Jack Willke’s early-nineties project to develop a concise response to the other side’s ‘Who decides?’ rhetoric (you may have seen ‘Love them both’ placards) and the trend of pregnancy care centers to shift focus, changing from storefronts that discourage abortion to full-fledged medical clinics or professional counseling centers.”

The political strategy behind all this is laid out in David Reardon’s 1996 book, *Making Abortion Rare*. (Reardon, whose research on “post-abortion syndrome” is extensively cited in the South Dakota report, writes regularly to advise the anti-abortion movement about how to vindicate its moral and religious convictions in politics and science.) As the title suggests, Reardon delights in flipping his opponents’ frames. The book explains to the anti-abortion movement the importance of addressing women’s interests to persuade “the middle majority [which] is paralyzed by competing feelings of compassion for both the unborn and for women.” In the early 1990s, Reardon and his allies advised the movement that it needed to “take back the terms ‘freedom of choice’ and ‘reproductive freedom’ ... to emphasize the fact that we are the ones who are really defending the right of women to make an *informed* choice; we are the ones who are defending the freedom of women to reproduce without fear of being coerced into *unwanted* abortions.” When this rhetoric was added, Reardon reports one anti-abortion activist as saying, “[t]he result has been almost dramatic. ... We are listened to once again.” Today, such rhetoric is the cutting-edge argument

for restricting abortion, and the rallying cry “abortion hurts women” may now be more prevalent in some political and counseling contexts than the claim that abortion is murder.

INDEED, TO LESLEE UNRUH, A DRIVING FORCE BEHIND THE South Dakota ban and the campaign manager of VoteYesforLife.com, the abortion-equals-murder argument is worse than useless. “When people stop doing what they have been doing, which has not worked, when they listen to the women speak, then there will be change,” Unruh says. “We can’t count on National Right to Life [Committee] to protect women. The pro-life movement has exploited us.”

It’s for this reason that Unruh takes obvious pride in what’s happened in South Dakota. “The face of this campaign [in South Dakota] has not been dead babies or babies, it’s been the women. I get real angry when people want to come to South Dakota and drive around with pictures of dead babies ... it just infuriates me.”

Unruh, a self-proclaimed feminist, is the founder of the Alpha Center, which counsels what they call “post-abortive” women, and president of the National Abstinence Clearinghouse. In 2004, she says, a South Dakota legislator came to her and said they were having a hard time getting a ban through, “would you come and talk to the legislators.” She lined up 20 women to tell their post-abortion stories. One woman told legislators that she had been violently raped, but that the abortion had been like a second rape. Another said she had tried to kill herself as a result. One legislator, a witness later learned, excused himself and went to

another room to weep. According to Unruh, the legislators were in “shock.” Within a year, the South Dakota Legislature had convened a task force, on which Unruh’s husband sat; two years later, they voted for the ban. Governor Mike Rounds, who had resisted a ban two years earlier, was forced to sign.

Today, many anti-abortion organizations are collecting the testimony of post-abortive women specifically for use in litigation and legislation. The most prominent may be Operation Outcry.

“We can’t count on National Right to Life to protect women,” says Leslee Unruh, a leader of South Dakota’s ban effort.

In the early 2000s, the Justice Foundation, a conservative legal organization in San Antonio, Texas, funded by Texas powerhouse James Leininger, set out to upend *Roe* by having Norma McCorvey, the original Jane Roe plaintiff, challenge the validity of the case that bears her pseudonym. To support McCorvey’s case, the foundation’s project Operation Outcry collected more

than 1,000 affidavits, which it submitted in court and in Congress.

McCorvey’s case foundered, but the stories the center collected—and continues to collect through online affidavit forms—have proven invaluable. More than 1,500 of these affidavits were submitted by Justice Foundation Vice President Linda Schlueter in testimony before the South Dakota task force, which noted: “Of these post-abortive women, over 99 percent of them testified that abortion is destructive of the rights, interests, and health

“Does that run on gasoline?
Dang. Haven’t seen one of those since I was a kid.”



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of women and that abortion should not be legal.”

Such affidavits—from Operation Outcry and other organizations—are ubiquitous in anti-abortion efforts these days. They have been entered into the record of the so-called partial-birth abortion case that the Supreme Court will hear this term. And they have been entered into the record of at least four other state legislatures that took some legislative action abortion bans in 2006: Ohio, Louisiana, Mississippi, and Alabama.

Lisa Dudley, described by the liberal Columbus, Ohio, *Free Press* as “a paralegal and traveling witness” for Operation Outcry, has appeared repeatedly. Her testimony includes quotations from the collected affidavits, as well as her own story of a traumatizing abortion when she was 24 which she said led her to drinking, drugs, night clubs “to numb the pain,” uncontrollable crying, and diagnosed depression. She concludes, “If abortion had not been legal, I would have never been in that abortion facility that day. ... Because of the scientific evidence we now have, because of testimony upon testimony of women about how abortion hurt them, because we know it is not good for women and it really isn’t a choice, abortion should no longer be legal.”

SCIENCE, HOWEVER, CONTRADICTS DUDLEY’S CLAIMS. IN July, Democratic Congressman Henry A. Waxman released a report on the “False and Misleading Health Information provided by Federally Funded Pregnancy Resource Centers.” These anti-abortion and “crisis pregnancy centers” (CPCs), according to a March report in *The Washington Post* based on a review of federal records, received more than \$60 million in federal funds between 2001 and 2005 and represent a small fraction of the more than 3,000 centers in North America. According to Waxman’s report, the centers provided “false and misleading” information about a link between abortion and breast cancer, the effect of abortion on future fertility, and the mental-health effects of abortion. Indeed, Waxman’s report details the major government and professional studies that discredit PAS.

Which is why the stories of women are so important. What the PAS movement lacks in scientific credibility, it makes up for with dramatic and often touching stories of individual women who feel it is legal abortion that allowed them to be coerced into giving up pregnancies they wanted to continue. CPCs help women understand that feelings of loss and self-destructive conduct can be traced to unacknowledged guilt over past abortions. In offering suffering women this relief, the CPCs produce meaning. In the process, abortion comes to symbolize women’s disempowerment—and its prohibition promises women healing, protection, maternal recognition, and freedom. “The CPCs are the platform from which they produce ... ‘faux evidence,’” Roger Evans, Planned Parenthood Federation of America’s senior director for public policy litigation and law, put it. “They’re sort of a traveling road show.”

The predicament of women who grieve their abortions does

raise important questions about the forms of counseling available to pregnant women considering abortion—services that neither abortion clinics nor the CPCs may be well suited to provide. And there are pressing questions about the lack of social supports that lead women who want to bear children to abortion.

But criminalizing abortion is not a response, and there is little reason to believe it would provide relief, even to the suffering few. Criminalizing abortion would not, for instance, address the needs of women who seek an abortion because they lacked contraception or were raped or are living in abusive relationship, or will have to drop out of work or school to raise a child alone, or are stretched so thin that they cannot emotionally or financially provide for their other children. Likewise, an informed-consent law that threatens doctors if they do not tell women unproven “facts” about abortion or that would sanction doctors who fail to lecture patients about terminating “the life of a whole, separate, unique, living human being” with whom “the pregnant woman has an existing relationship” may well intimidate women into continuing pregnancies—without ever addressing the reasons a pregnant woman has attempted to avoid or defer motherhood. Indeed, says Planned Parenthood’s director of government relations, Jackie Payne, “The willingness to do wholesale bans with only an exception for life and not for health and not for rape or incest ... is 100 percent against” the idea that they are helping women. “They always start out talking about protecting the woman, but they always end up protecting the fetus.”

The spread of this kind of women’s testimony has dangers far beyond harsh abortion bans like South Dakota’s. It makes more reasonable the coercive informed-consent statute now in the South Dakota courts, which—given the current membership of the Supreme Court—has better chance of legal survival and greater political appeal. What, after all, is wrong in warning women of health harms and ensuring their abortion choices are free and informed? With anti-abortion drafting and incremental litigation strategies, the informed-consent paradigm could turn out to be the Trojan horse that will take down *Roe*.

There is a cautionary message in these testimonies, as well, to supporters of choice—Bill Clinton chief among them—who in recent years have embraced a vocabulary of grief around abortion. There is an ocean of difference between “safe, legal, and rare,” as Clinton put it, and criminal, as in South Dakota. But it is plain that the new progressive emphasis on abortion-as-tragedy will feed right into the woman-protective frame unless the pro-choice camp anticipates its opponents’ arguments and grounds the case for abortion rights in an account of the reasons women need to control the timing of motherhood, and in a broader agenda of progressive family values.

The figure of a woman suffering abortion grief invokes a deep truth about mother love that, in different ways, is recognized by advocates across the political spectrum. But the anti-abortion movement is deploying this image to excite acts of public coercion that will not make women, or their families, more natural or loving or free. **TAP**

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