



Ballot Initiative STRATEGY CENTER

Ballot Initiative Overview

2008 Election

South Dakota

South Dakota was the first state to adopt a statewide initiative and popular referendum process in 1898.

In 2006, the citizens of South Dakota challenged a law, passed by the legislature and signed by the Governor earlier that year, via a citizens' veto referendum. That law outlawed all abortions, with no exceptions for rape, incest, or the health of the mother and was, according to the law's proponents in the legislature and the anti-choice movement, designed as a vehicle to directly challenge *Roe v. Wade*. In November of 2006, the voters of South Dakota rejected the law by a 55%-45% margin.

The anti-choice movement is back in 2008. Again they have placed a measure on the ballot designed to challenge the health care privacy of women, this time via initiative. This measure is being described as a version of the 2006 law that includes the exceptions for rape, incest, and the health of the mother that the previous version did not have. In reality, however, the legal requirements placed on the exceptions are so arduous that the exemptions are rendered virtually meaningless. For example, a woman who was raped and requests an abortion would be required by law to submit to a DNA test and allow the fetus to have a DNA test. Despite the extreme nature of the initiative, South Dakota Right to Life opposes the initiative because they believe it does not go far enough.

The 2008 election has also seen activity by anti-government and anti-worker ideologues. An initiative deceptively titled "Open and Clean Government," is being funded by Americans for Tax Reform, which is headed by Grover Norquist, and has possible ties to Howie Rich, the libertarian New York developer behind the 2006 TABOR initiatives. The initiative, while wrapped in the guise of government reform and transparency, would severely restrict the ability of regular South Dakotans to participate in elections or lobbying their government. Any person or entity with a no-bid government contract, including labor unions, would be prohibited from contributing to a political candidate or lobbying the state legislature, as would any member of the extended family of the person with the contract or any person associated

with the entity that has the contract. As an example, the cousin of a member of the teacher's union who contributes to a candidate for the state legislature would be committing a crime if this law passes. The initiative is so extreme that South Dakota's labor unions and chambers of commerce have united to oppose it.

Seven ballot measures were on the statewide ballot (one passed).

Three measures were citizen-petitioned initiatives.

Four were legislative referenda.

2 Constitutional Amendments Qualified

Measure 9: Administration of Government

An Initiative to make certain securities practices and transactions unlawful: State and federal law regulates the purchase and sale of stocks and other securities. A common "stock market" transaction is a "short sale" where, for example, an investor who believes a publicly traded stock is over-priced will borrow that stock from an owner, sell the borrowed stock, and repurchase the stock later at a lower price to repay the loan, thereby making money if the price has fallen. If the price goes up, the investor must repurchase the stock at the higher price to repay the loan, and will lose money. Measure 9 would prohibit short sales. State law currently does not regulate the time frame for the delivery of securities upon sale. Measure 9 would prohibit anyone from routinely taking longer than three business days to deliver securities they have sold. If adopted, Measure 9 will likely be challenged in court and may be declared to be preempted by federal law and the United States Constitution.

Proponents: Vote Yes on 9, <http://www.voteeyes9.com/measure9.php>

Opponents: No Committee Identified

FAILED 43% - 57%

Measure 10: Economic Security

An Initiative to prohibit tax revenues from being used for lobbying or campaigning, to prohibit governmental bodies from lobbying, to prohibit government contractors from making campaign contributions, to prohibit government contracts when the contractor employs a legislator or legislative staff member, and to require contracts with governmental bodies to be published: State law prohibits the acceptance of campaign contributions from all government and tribal entities, expenditure of public funds to support or oppose ballot measures, and certain state and county contracts which financially benefit legislators. Measure 10 would prohibit state and local governments, their officers, employees, independent contractors, consultants and candidates, from using government revenues or resources for campaigning or lobbying. Some communications and appearances before legislators and public bodies are exempted. It would prohibit persons who employ legislators or recent legislators from obtaining government contracts. It would prohibit, until two years after contract termination: some public officers, candidates and their agents from soliciting, accepting or directing contributions from some holders of competitively bid government contracts and their family members; and no-bid government contract holders, their officers, employees, agents, vendors and family members

from making contributions to, or independent expenditures for, all candidate campaigns. The Secretary of State would be required to summarize government contracts over \$500 on its website. If approved, all or part of Measure 10 will likely be challenged in court and may be declared to be in violation of the United States Constitution. If so, the State may be required to pay attorney fees and costs.

Proponents: South Dakotans for Open and Clean Government, <http://cleanupsd.com/>

Opponents: No on 10 Committee, <http://www.voteno.org/>

FAILED 35% - 65%

1 Statutory Initiative Qualified

Measure 11: Reproductive Freedom

An Initiative to prohibit abortions except in cases where the mother's life or health is at a substantial and irreversible risk, and in cases of reported rape and incest: Currently a woman may obtain an abortion during the first 24 weeks of pregnancy. Beyond 24 weeks, abortions may be performed only if necessary to preserve the life or health of the woman. Measure 11 would prohibit all abortions performed by medical procedures or substances administered to terminate a pregnancy, except for: abortions medically necessary to prevent death or the serious risk of substantial and irreversible impairment of a major bodily organ or system of the woman; and abortions to terminate a pregnancy of less than 20 weeks resulting from rape or incest reported to law enforcement. When an abortion is performed as a result of reported rape or incest, the woman must consent to biological sampling from herself and the embryo or fetus for DNA testing by law enforcement. Measure 11 would allow the provision of contraception substances prior to the time pregnancy can be determined by conventional medical testing, or assistance in obtaining abortions in states where the procedure is legal. If approved, Measure 11 will likely be challenged in court and may be declared to be in violation of the United States Constitution. The State may be required to pay attorneys fees and costs.

Proponents: Vote Yes For Life, <http://www.VoteYesForLife.com>

Opponents: South Dakota Healthy Families, <http://www.sdhealthyfamilies.org>

FAILED 45% - 55%

4 Constitutional Amendments Were Referred

Constitutional Amendment G: Administration of Government

An Amendment to the South Dakota Constitution, to repeal certain reimbursement restrictions for travel by legislators to and from a legislative session: The Constitution fixes the mileage reimbursement rate for legislators at five cents per mile for their travel to and from a legislative session. Constitutional Amendment G would repeal this constitutional limitation.

FAILED 41% - 59%

Constitutional Amendment H: Economic Security

An Amendment to the South Dakota Constitution, to repeal certain provisions relating to corporations: The Constitution limits "corporations" to business entities with powers or privileges not possessed by individuals or partnerships. The Constitution also requires the

payment of money, property or labor for issuance of corporate stock and bonds; prohibits the increase of corporate stock and debt without consent of stockholders holding a larger value of stock first obtained; and protects cumulative voting rights of stockholders. Constitutional Amendment H would repeal the above provisions and permit a 2008 Legislative Session bill (HB 1139) to become law. The new law would allow a corporation to restrict cumulative voting and to issue corporate stock for any consideration determined to be adequate by its board of directors.

FAILED 31% - 69%

Constitutional Amendment I: Administration of Government

An Amendment to the South Dakota Constitution, to provide for a maximum of forty legislative days each year: The Constitution limits the length of regular legislative sessions held during odd-numbered years to no more than forty legislative days, and those held during even-numbered years to no more than thirty-five legislative days. Constitutional Amendment I would set all regular legislative sessions at a maximum of forty legislative days.

PASSED 52% - 48%

Constitutional Amendment J: Election Reform

An Amendment to the South Dakota Constitution, to eliminate term limits for legislators: The Constitution establishes term limits for legislators. No legislator may serve in the state house of representatives or the state senate for more than four consecutive terms, or a total of eight consecutive years. Constitutional Amendment J would repeal legislator term limits.

FAILED 24% - 76%

For additional information please visit the South Dakota Secretary of State:

<http://www.sdsos.gov/index.shtm>