

# Daschle bill may not ban anything

Abortionists could  
use own judgment

By Frank J. Murray  
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A bill written by Senate Minority Leader Tom Daschle that is designed to head off a ban on "partial-birth" abortions proposes a mix of state and federal sanctions that critics say hinges entirely on the judgment of the abortionist.

"[A doctor would] pretty much have to indict himself," said one Capitol Hill aide involved in efforts to stop abortions once a fetus can live outside the uterus.

Even when violations are found, federal officials would not be able to act until 30 days after notifying a state's governor and medical licensing board — and then only if needed "to secure substantial justice," according to a text of Mr. Daschle's bill obtained by The Washington Times.

The South Dakota Democrat says his bill would bar aborting any fetus capable of living outside the uterus. A doctor's certification that a pregnancy risks a woman's life or "grievous injury" to her health would be required to perform such an abortion.

The bill's unusual and complex division of authority was termed an unenforceable "scam" yesterday by interests as diverse as Douglas Johnson, lobbyist for the National Right to Life Committee, and Dr. Warren Hern, who literally wrote the textbook on "Abortion Practice."

The Denver gynecologist said the fact of occasional death in childbearing can justify any abor-

tion, no matter how late it is done.

"I will certify that any pregnancy is a threat to a woman's life and could cause 'grievous injury' to her 'physical health,'" Dr. Hern said, using key words from the Daschle bill, which he criticized as an unwise political stunt to keep pace with pro-life Republicans.

Although Dr. Hern said some doctors would be frightened into complying with the Daschle ban, Mr. Johnson predicted most would follow Dr. Hern's lead.

"In their world, they're not doing anything unethical to sign these certifications. They think it would be unethical not to. They won't see it as lying or bad faith at all," Mr. Johnson said.

The lobbyist would not be drawn into discussing how the partial-birth abortion ban, which would bar a specific type of late-term procedure, and the Daschle bill might be merged.

"You'd still be putting lipstick on a pig," Mr. Johnson said, adding that he is unwilling to help Mr. Daschle "change the subject."

Lingering doubts about whether physical "impairment" mentioned in the Daschle bill would cover psychological stress or depression were unanswered by its text or those who would comment on it.

As many as 41 states have legislation restricting late-term abortion, but pro-life groups say only New York and Pennsylvania have set a time, both at 24 weeks.

That disparity was listed as a congressional finding to justify uniformity so that women cannot cross state lines for abortions once viability occurs.

Dr. Hern said that, in the past year, he performed 13 abortions on women beyond week 26 who "came to me from all over the world."

Among other untested legal questions the Daschle measure poses:

- Whether the Supreme Court would let Congress exercise powers that its Roe vs. Wade ruling assigned to states. The bill's "findings" say the court indicated it is constitutional for Congress to act, but a quote from the ruling is edited to omit specific reference to states having that power.

- How civil or criminal courts might examine a physician's belief that "continuation of the pregnancy would threaten the mother's life or risk grievous injury to her physical health."

- Whether the 1973 Doe vs. Bolton ruling, issued as a companion on the same day with Roe vs. Wade, forbids second-guessing a physician's "professional, that is his best clinical, judgment."

Kristi S. Hamrick, communications director for the Family Research Council, faulted Mr. Daschle for not releasing the text and asking the Senate "to put aside the Partial-Birth Abortion Ban Act in favor of an unseen bill hidden behind the legislative equivalent of Monty Hall's door No. 2."

The draft bill obtained yesterday by The Times, after a spokesman insisted it had not yet been prepared, would bar all abortions "after the fetus has become viable."

Although a Daschle fact sheet titled "The Bipartisan Alternative" includes extensive descriptions of potential medical complications, the proposed statute's entire definition of grievous injury is: "(A) Severely debilitating disease or impairment specifically caused by the pregnancy or (B) an inability to provide necessary treatment for a life-threatening condition."

The bill also would bar enforcement through private lawsuits when government will not act.

There may not even be federal jurisdiction, said a House Judiciary Committee aide to Rep. Charles T. Canady, Florida Republican who sponsored the Partial-Birth Abortion Ban Act that passed the House March 20 by the veto-proof vote of 295-136.

"How does the federal government have any way to get into court on this? It's a civil suit, there's no criminal case here. I don't think they even have a federal nexus," said the aide, who asked not to be named.

In effect, the draft measure would give a doctor, or non-physician allowed to do abortions, the last word on the likelihood a fetus would survive outside the uterus, as well as calculating risks of "grievous injury" to the mother if she continues the pregnancy.

The bill would assign the Department of Health and Human Services to regulate a doctor's certificate that "in his or her best medical judgment the abortion involved was medically necessary." False statements to federal agencies are felonies.