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A LOOK AT . . . The New Politics of Abortion; When 'Compromise' Means Caving In

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The antiabortion legislation put forward by Senate minority leader Tom Daschle (D-S.D.), incongruously endorsed by President Clinton and rejected by the Senate, has been dismissed as political window dressing by the most uncompromising right-to-life activists.

More astute observers, both Republican and Democrat, have correctly characterized the Daschle alternative as a major, substantive concession to antiabortion forces that offers them a politically promising avenue toward curbing a woman's right to choose abortion. Intended to head off the "partial-birth" abortion ban sponsored by Sen. Rick Santorum (R-Pa.), the Daschle "compromise" was -- and is -- more threatening to a woman's right to choose abortion than the Santorum prohibition itself.

The Santorum bill seeks to outlaw intact dilation and extraction abortions, a late-term procedure that some physicians have employed both pre-viability (prior to the 24th week of pregnancy) as well as in more tragic post-viability situations (usually involving serious fetal defects). The Daschle proposal, in contrast, proposed to outlaw all abortions after the point of fetal viability, irrespective of a doctor's particular procedure, unless a woman's pregnancy threatens her life or "risk[s] grievous injury to her physical health" because of "a severely debilitating disease or impairment specifically caused by the pregnancy."

The understandable reluctance of pro-choice interest groups to criticize Clinton, whose promised veto of the Santorum bill is a crucial political lifeline, has unfortunately inhibited them from denouncing the Daschle measure and its backers with the fervor that is merited. Daschle's approach, as a model for abortion "compromise," suffered from constitutional infirmities even more blatant and far-reaching than Santorum's. It's downright amazing that the Clinton White House allowed the president to endorse a measure which, if it had passed, would have provided even less legal protection for a woman's right to choose a later-term abortion than existed before *Roe v. Wade*, the landmark 1973 Supreme Court abortion rights decision.

Only the intransigence of the antiabortion forces is protecting American women from Clinton and Daschle's capitulation. Santorum's Partial-Birth Abortion Ban Act is now just three votes short of the 67 Senate supporters needed to override an expected Clinton veto. But anyone who follows abortion politics already knows the two most important facts about Santorum's bill: It's so expressly unconstitutional that there is literally no chance the federal courts would uphold it. And, even if the law somehow did briefly take effect, it wouldn't prohibit a single abortion; doctors would simply have to employ different procedures, albeit ones that are potentially more dangerous to pregnant women.

Santorum's hollow endeavor, no matter how successful it has been as self-promotion, is not intended to reduce the number of abortions. It is aimed rather at obscuring and eclipsing fetal viability as the crucial legal benchmark that Supreme Court opinions from 1973 to the present have utilized to delineate when a state can block a woman from obtaining an abortion. Santorum and other enemies of women's choice hope to create a slippery slope in which a "partial-birth" ban leads to prohibition of all second- and third-trimester abortions. Santorum's bill points the way by deploying a criminal statute targeting doctors for the purpose of abridging women's constitutional right to obtain the safest possible pre-viability abortions.

Daschle's proposal would have had an even worse effect. It repudiated the possibility that a post-viability abortion, required perhaps by a late-term discovery of major fetal abnormalities, might have a "grievous" effect on a woman's mental health. How an administration that professes to take mental health issues seriously chose to overlook so stark a deficiency is astonishing. Clinton and Daschle's disregard for women's mental health transgresses the definition of maternal health -- "psychological as well as physical well-being" -- that the Supreme Court laid down in its first abortion decision, *United States v. Vuitch*, in 1971, two full years before *Roe v. Wade*.

But *Vuitch* is far from the only Supreme Court precedent that Daschle's proposal contradicted. *Roe v. Wade*, an equally important companion case known as *Doe v. Bolton*, and the Court's most recent and most important abortion decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), all comprehensively safeguard maternal health, a standard that Daschle's harmfully restrictive definition expressly violates. It's no wonder that Harvard Law School professor Laurence H. Tribe remarked that "I cannot understand how anyone could doubt the inconsistency of the Daschle language with the requirements of the Constitution as construed in *Roe* and *Casey*."

After the Senate defeated his measure on May 15, Daschle compounded his legal recklessness by supporting Santorum's measure while nonetheless admitting that it was unconstitutional. In a self-contradictory floor speech, the minority leader claimed his affirmative vote would help "accelerate the legislative process to allow the earliest review of the law by the Supreme Court." It was one of the more ignominious moments in the recent history of the Senate.

Daschle's vapid inconsistency, like President Clinton's paradoxical behavior, represents a more serious long-term danger to legal protection for women's constitutional rights than do the wholly transparent efforts of a Rick Santorum. Republican strategist Ralph Reed recently told the *New York Times's* Katharine Q. Seelye that anti-choice activists' biggest achievement in the recent debate was staying "on-message" and never getting "taken off it to talk about the health of the mother or any other rabbit trail . . . ."

It is not surprising that a Ralph Reed would liken the importance of women's health to an animal path. Reed's casual contempt for women is just the polite face of a movement that is a spawning ground for violence, including 11 attacks on abortion clinics in the United States in 1997. On May 23, one or more arsonists in Portland, Ore., succeeded in torching the Lovejoy Surgicenter for the fourth time. This attack on one of the preeminent abortion clinics in the country received all of 79 words of coverage in *The Washington Post*. In January, a previous arsonist was

sentenced to a remarkable 60 days in jail, a penalty that received no attention by newspapers outside Oregon.

It is surprising, though, that Tom Daschle and Bill Clinton would cave in so cravenly to antiabortion forces. Mental health professionals, as well as advocates of a woman's right to choose, must resist. With friends like those in times like these, Rick Santorum is the least of anyone's worries.

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