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Hatfield's abortion legislation stands best chance of success

By William Kogut
Of the Emerald

Of all the anti-abortion legislation that the Senate could soon consider, a bill proposed by Oregon's Sen. Mark Hatfield probably stands the best chance of approval.

It has that chance not because it was designed as a compromise, but because it deletes controversial areas included in other legislation, says Mary Ann Serratt, a Hatfield staff aide.

Pro-choice advocates disagree. They see the bill as being different in appearance, but not in substance.

Hatfield's bill permanently outlaws federal funding of abortion, expedites Supreme Court review of the abortion issue and would give any citizen the right to bring a court action because of alleged violation of the bill's funding provisions.

"It's more tightly drafted and better crafted than other legislation," says Ron Fitzsimmons, legislative coordinator for the National Abortion Rights League. "But it goes about (similar) things in a more roundabout, clever way. It took us a while to figure out what's going on."

Pro-choice partisans add that because of Senate respect for Hatfield, his bill, which could come to the floor at any time, will be more seriously considered than others.

Hatfield has said he proposed his bill because of his exasperation each year with having anti-abortion funding amendments tie up appropriations bills which he, as chairman of the Senate Appropriations Committee, has to guide through the Senate.

This is yet another reason why the Hatfield bill stands the best chance of being passed of any pending anti-abortion legislation, says Jan Borgen, director of the Salem NARAL chapter. Most Congressmen, not just Hatfield alone, are tired of dealing with anti-abortion funding amendments tacked on appropriation bills, she says. The Hatfield bill would do away with that annoyance by making funding restrictions permanent, not a year-to-year affair.

"But the funding restrictions in the bill are the broadest yet proposed," she says.

Here are those restrictions:

- The funding provisions would continue to deny Federal funds for abortion to Americans who rely on government health care programs, except when the life of the mother would be endangered if the child were carried to term. (This exception holds wherever else it is applicable in the bill.)

- No Federal funds could be used to perform an abortion. NARAL contends that this is ambiguous. Does this mean, asks Fitzsimmons, that if a doctor is on a Federal salary his salary is involved in an abortion performed after hours in a private facility?

"That's extending it too far, an extreme example" counters Serratt. This provision would apply only to a doctor's pay for hours when he or

she is working for the Federal government, she says.

- No Federal funds could be used "to refer for abortion." Fitzsimmons asks if this standard is violated when a doctor in a federally funded facility refers a patient to Planned Parenthood, but with no specific recommendation for treatment.

Serratt, however, interprets the provision to mean that a doctor can counsel a patient, but cannot set up appointments. "It's not our intention to keep people from getting information," she says.

- Originally, the bill contained a provision that no Federal funds could be used to teach abortion techniques. But Hatfield dropped that provision because that it might have resulted in funds being denied to medical schools that teach abortion procedures for use only in the case of danger to a mother's life.

"The Senator is not fanatical," Serratt says.

The bill would also allow any citizen to bring a civil action for an alleged violation of the funding provisions. Usually, someone who brings a suit must have a stake in the outcome of a case, Fitzsimmons says. He claims fear of such suits would intimidate clinics, hospitals and doctors.

Serratt says the bill's right-to-sue (standing) clause is the same as one in the Clean Air Act.

"If Federal dollars are involved, the taxpayer should have standing to sue," she contends.

Finally, because the Hatfield approach is more sophisticated than similar legislation — such as the Helms human life statute — it's not obvious one of its goals is the same: reversal of the 1973 Supreme Court decision that upheld the right to abortion, *Roe v. Wade*.

The Hatfield bill states as a fact that "Unborn children who are subjected to abortion are living members of the human species." This fills in a void in *Roe v. Wade*, wherein the Court said, "We need not resolve the difficult question of when life begins." Using this "human species" clause in a state law would speed up Supreme Court review of the whole abortion issue.

How would this work?

If a lower Federal court (District Court) upholds a state anti-abortion law, the Hatfield bill is designed so that parties challenging that law must pursue, and pay for, their appeals through the usual channels.

On the other hand, if a Federal court throws out any state law based on the Hatfield bill "human species" finding, the decision can be appealed directly to the Supreme Court. So, in effect, a decision against the right-to-life side would be leap-frogged over any Federal Court of Appeals to a Supreme Court which is decidedly more conservative than the 1973 Court. Hatfield hopes the Court then would see fit to re-evaluate *Roe v. Wade* and decide to eliminate the right to abortion.

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