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BACKGROUND: Human Cloning Legislation in Congress
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Congress Resumes Action on Human Cloning Legislation This Week, As Supporters of Cloning Human Embryos Try to Fool Lawmakers, Journalists, and the Public with Deceptive “Egg-Speak”

For further information, contact the Federal Legislation Department at the National Right to Life Committee (NRLC) at Legfederal@aol.com or 202-626-8820, and visit the Human Cloning page on the NRLC website at www.nrlc.org/killing_embryos/index.html

INTRODUCTION

Congress is renewing consideration of whether to ban all human cloning, as a number of other major nations have already done. **On Wednesday, February 12, the House Judiciary Committee will act on the Weldon-Stupak bill (H.R. 534).** This bill, which is backed by President Bush, would ban the creation of human embryos by cloning. In the Senate, the same policy is embodied in the Brownback-Landrieu bill (S. 245).

Those who favor cloning human embryos are proposing competing legislation that would allow the mass cloning of human embryos to be killed in research, but attempt to ban implantation of such an embryo in a womb. In the House, we expect that this “clone and kill” approach will be advanced by Rep. Jim Greenwood (R-Pa.), who offered such a proposal in 2001. In the Senate, a cloning-embryos-for-research bill has been introduced by Senator Orrin Hatch (R-Utah), Dianne Feinstein (D-Ca.), and others as S. 303.

In recent days, a number of news outlets have transmitted inaccurate reports about what these competing bills would each allow and forbid – reports that obscure what the argument is really about. These points of confusion are discussed in more detail below.

PRESIDENT BUSH’S POSITION

President Bush has repeatedly called on Congress to ban all human cloning (i.e., to ban the cloning of human embryos). In remarks on January 22, the President said, “I also urge the Congress to ban all human cloning. We must not create life to destroy life. Human beings are not research material to be used in a cruel and reckless experiment.” In his January 28 State of the Union speech, the President said, “Because no human life should be started or ended as the object of an experiment, I ask you to set a high standard for humanity, and pass a law against all human cloning.” In a speech on human cloning last year, President Bush

warned that unless such legislation is enacted, human “embryo farms” will be established in the United States. (See www.whitehouse.gov/news/releases/2002/04/print/20020410-4.html)

THE SITUATION IN CONGRESS

The House Judiciary Committee is scheduled to mark up the Weldon-Stupak bill (H.R. 534) on **Wednesday, February 12, at 10:15 a.m., at 2141 Rayburn House Office Building.** Once the committee completes its work, the full House could take up the bill at any time. H.R. 534 is nearly identical to the measure that passed the House on July 31, 2001, by lopsided bipartisan vote of 265-162 (roll call no. 304). When the House considered the issue on that occasion, it decisively rejected (249-178) a substitute amendment, the Greenwood-Deutsch Amendment, that would have allowed the cloning of human embryos for research (roll call no. 302)

The Senate companion to the Weldon-Stupak bill, the Brownback-Landrieu bill (S. 245), currently has 26 cosponsors. A radically different measure, the Hatch-Feinstein bill (S. 303), has only eight cosponsors, but it has considerable additional support, mostly among Senate Democrats.

The Brownback-Landrieu bill has been referred to the Committee on Health, Education, Labor, and Pensions (HELP), which is chaired by Senator Judd Gregg (R-NH), who was a cosponsor of the bill in the 107th Congress. The Hatch-Feinstein bill has been referred to the Senate Judiciary Committee, which Hatch chairs. Whatever happens in these committees, the full Senate ultimately will vote on both of these diametrically conflicting approaches.

The recently selected Senate Majority Leader, Bill Frist (R-Tn.), said in a January 12 interview on *Fox News Sunday*, “I am opposed to any time that you create an embryo itself with the purpose being destruction, and that would include the so-called research cloning. And remember, research cloning is just that, it’s experimental. There’s been no demonstrated benefit of that to date, so I don’t think you ought to destroy life. . .”

The key differences between the two bills are discussed below. In many recent news media reports on human cloning issues, the differences have been mischaracterized, and the specific activities that each bill would allow and prohibit have been widely misunderstood.

MISCONCEPTIONS AND FACTS

MISCONCEPTION: The Brownback-Landrieu/Weldon-Stupak legislation prohibits cloning of human “cells,” while the Hatch-Feinstein bill would allow cloning of “cells.”

REALITY: The Brownback-Landrieu bill (S. 245) and the Weldon-Stupak bill (H.R. 534) –

like their predecessors in the 107th Congress – explicitly allow “**the use of nuclear transfer or other cloning techniques to produce molecules, DNA, cells other than human embryos, tissues**, organs, plants, or animals other than humans.” [Sec. 2 of the bill, at (d) in H.R. 534 and at (e) in S. 245; boldface added for emphasis] Thus, the methods currently used to “clone” new skin, for example, or to “clone” DNA, are perfectly okay under the Brownback-Landrieu bill. Moreover, any cloning method that would produce *stem cells* without first producing and killing a human embryo -- as some researchers have claimed that they eventually will be able to do -- is explicitly permitted by this language. In addition, the Brownback-Landrieu and Weldon-Stupak bills place no restrictions on research of any kind on human ova (“eggs”).

In short, the Brownback/Weldon legislation and the Hatch-Feinstein legislation are *alike* in that they would both permit cloning involving merely eggs, cells, or tissues, *but they differ on one profound issue*: The Hatch-Feinstein/Greenwood proposals would allow the use of the somatic cell nuclear transfer (SCNT) process to clone *human embryos*, and the Brownback/Weldon legislation would forbid the use of SCNT to clone *human embryos*.

Verbiage by supporters of “research cloning” about “eggs” and “cells” is intended to conceal what the argument is really about: whether it should be permitted to clone human embryos.

MISCONCEPTION: *So-called “therapeutic cloning” does not involve creating human embryos.*

FACT: That SCNT using human genetic material will create a developing embryo of the species *Homo sapiens* is something that authorities on all sides agreed on until sometime in 2001, when some of the pro-cloning forces decided to try to obscure this fact for political purposes. Among those who clearly affirmed that SCNT will create human embryos were the bioethics panels of both Presidents Clinton and Bush, the embryo research panel at NIH, and the chief cloning researchers at Advanced Cell Technology in Massachusetts. Some samples of such statements, which pre-date the current disinformation campaign, are posted here: www.nrlc.org/Killing_Embryos/factsheetembryo.html.

To cite just one example here, a group of scientists, ethicists, and biotechnology executives advocating so-called “therapeutic cloning” and use of human embryos for research – Arthur Caplan of the University of Pennsylvania, Lee Silver of Princeton University, Ronald Green of Dartmouth University, and Michael West, Robert Lanza, and Jose Cibelli of Advanced Cell Technology -- wrote in the December 27, 2000 issue of the *Journal of the American Medical Association*, “CRNT [cell replacement through nuclear transfer, another term for “therapeutic cloning”] requires the deliberate creation and disaggregation of a human embryo.” They also wrote, “. . . because therapeutic cloning requires the creation and disaggregation *ex utero* of blastocyst stage embryos, this technique raises complex ethical questions.”

In its 2002 report on human cloning, the President's Council on Bioethics, although divided on policy recommendations, provided without dissent recommendations regarding the use of honest terminology in this crucial public policy debate, including acknowledging that successful SCNT will create human embryos. The Council said, **"The product of 'SCNT' is not only an embryo; it is also a clone, genetically virtually identical to the individual that was the source of the transferred nucleus, hence an embryonic clone of the donor."**

The Council recommended use of the terms "cloning for biomedical research" and "cloning to produce children" to distinguish between two of the purposes for which human embryos might be cloned. ("Cloning for research" or "cloning for birth" convey pretty much the same thing.) The Council's discussion on accurate and neutral terminology is here:
www.bioethics.gov/cloningreport/terminology.html

The phrase "reproductive cloning" is misleading, because whenever somatic cell nuclear transfer produces a developing embryo, "reproduction" has occurred. The term "therapeutic cloning" is misleading, because no therapies have been demonstrated *using cloned embryos* (even in animals, as discussed below), and the process is certainly not "therapeutic" for the human embryo who is dissected – which is what the argument is about.

MISCONCEPTION: The Hatch-Feinstein bill would allow research only on "unfertilized eggs up to 14 days."

REALITY: As can be confirmed by reference to any biology text or even any decent dictionary, a human ovum or "egg" is, by definition, a *single cell*. Moreover, it is a very unusual cell – a gamete cell, which means it has only 23 chromosomes. An ovum has no sex.

As discussed above, once one has a complete nucleus from any species that is activated (whether by sexual fertilization or by asexual somatic cell nuclear transfer, SCNT) and developing, then one has a developing embryo of that species (sheep, cow, *Homo sapiens*, etc). **There is no such thing in biology or in any dictionary as a human "egg" or "egg cell" that has 46 chromosomes, is either male or female, and is five days old (consisting of several hundred cells) or even 14 days old (consisting of thousands of cells). In short, calling a five-day-old or a two-week-old human embryo an "egg" is an attempt to deceive the public regarding what the policy argument is really about. We submit that this is not an effort in which responsible journalists should enlist.**

The actual text of the Hatch-Feinstein bill coins the term "unfertilized blastocyst." But "blastocyst" is simply a technical term for an embryo at an early stage of development. As for "unfertilized," this is just another word trick aimed at the gullible. *Of course* human embryos produced by cloning will be "unfertilized," because that is what cloning is: asexual reproduction – no sperm. Every cloned mammal in the world was unfertilized from the one-

celled embryo stage, and every one of them will be unfertilized on the day they die. If a human embryo created by cloning instead of fertilization is implanted in a womb, is born, and lives to be eighty, she will still be unfertilized.

MISCONCEPTION: *The Hatch-Feinstein bill is a compromise that would accomplish what almost everyone agrees on, banning “reproductive cloning.”*

REALITY: Far from representing “common ground,” the Hatch-Feinstein bill represents a policy disfavored by most Americans and strongly opposed by the Bush Administration. It will not become law. But that does not bother many of its backers, such as the biotechnology industry lobby, because the primary purpose of the Hatch-Feinstein bill is to impede enactment of the real ban on human cloning, by providing political cover for lawmakers who favor allowing the creation of human embryos for research.

Notwithstanding the marketing efforts of the biotechnology industry lobby and its allies, the policy the Hatch-Feinstein bill or the Greenwood amendment would enact a policy that is far from a consensus position – indeed, a policy that the substantial majority of Americans oppose. A Gallup poll in May 2002 found that 61% of the American people opposed “cloning of human embryos for use in medical research” (34% approved), which is precisely what the Hatch-Feinstein bill is crafted to allow and indeed encourage. In other polls, substantially higher numbers are opposed when it is explained that the human embryos will die in the research.

The Hatch-Feinstein bill is not a partial solution or a middle ground. Rather, it is a step in the wrong direction. The Hatch-Feinstein bill would give a green light to the establishment of human embryo farms.

The “clone and kill” approach has already been emphatically rejected by the Bush Administration and by the House of Representatives (in 2001). Secretary of Health and Human Services Tommy Thompson last year sent a letter to Senator Brownback warning that such a bill would face a presidential veto. Thompson wrote, “The President does not believe that ‘reproductive’ and ‘research cloning should be treated differently, given that they both require the creation, exploitation, and destruction of human embryos . . . the Administration could not support any measure that purported to ban ‘reproductive’ cloning while authorizing research cloning, and I would recommend to the President that he veto such a bill.” (See www.nrlc.org/Killing_Embryos/ThompsonoBrownback.pdf)

The Hatch-Feinstein bill would give federal law enforcement agencies responsibility for trying to enforce a ban on implanting a cloned embryo in a womb – an approach that the Justice Department in 2002 rejected as unworkable. The Department explained that once large numbers of cloned human embryos are created, there is no practical way to prevent

some of them from being implanted in wombs, and no remedy to apply after that occurs. The testimony is posted here: www.nrlc.org/killing_embryos/Justice_Dept_on_cloning.pdf

MISCONCEPTION: *The Hatch-Feinstein bill would “ban human cloning” or “ban the cloning of human beings.”*

REALITY: The Hatch-Feinstein bill does not ban “human cloning.” It bans implanting a cloned human embryo “into a uterus or the functional equivalent of a uterus” (the latter term is not defined), an act to which criminal penalties are attached. It also attempts to impose a rule against allowing a cloned human embryo (a so-called “unfertilized blastocyst”) to develop past 14 days of age (not counting time frozen). Violations of this “14-day rule” are subject to a civil fine of up to \$250,000, and there is nothing in the bill to prevent the threat of such a fine from being applied even against a woman who carries an unborn cloned human *in utero*, perhaps in an attempt to compel her to procure an abortion.

In other words, the bill bans not “human cloning,” but the survival of human clones, which is a very different thing.

Any bill that permits cloning (somatic cell nuclear transfer) with human nuclei does *not* “ban human cloning,” because such a bill allows the cloning of embryos of the species *Homo sapiens*, and an embryo of the species *Homo sapiens* is *human* (just as the cloned embryo that was later born as Dolly the sheep, the first cloned mammal, was always a member of the species *Ovis aries*).

As to whether a cloned human embryo is to be regarded as a “human *being*,” we would think that journalists would want to avoid blatantly taking sides on that question. A statement that the Hatch-Feinstein bill “bans the cloning of human beings” is certainly taking sides on the issue, because it amounts to a declaration that a two-week-old embryo of the species *Homo sapiens* is not a “human being.” (If not, what species of being is it?)

It appears that President Bush is among those who recognize cloned human embryos as human beings: in his January 22 statement, the President said, “I also urge the Congress to ban all human cloning. We must not create life to destroy life. *Human beings* are not research material to be used in a cruel and reckless experiment.” [emphasis added]

The National Right to Life Committee believes that if a cloned human being is born, she should have the same status as other humans -- but Senator Hatch and some others apparently are not so sure. In a press release dated February 5, 2002, Senator Hatch said, “No doubt somewhere, some -- such as the Raelians -- are trying to make a name for themselves and are busy trying to apply the techniques that gave us Dolly the Sheep to human beings. **Frankly, I am not sure that human being would even be the correct term for such an individual**

heretofore unknown in nature.”

As Slate.com columnist Will Saletan commented (“Killing Eve,” December 31, 2002, <http://slate.msn.com/id/2076199/>), “The first cloned baby – Eve or whoever comes after her – won’t be fertilized. If fertilization is a prerequisite to humanity, as Hatch and Feinsein suggest, that baby will never be human. You can press the pillow over her face and walk away.” (See also: www.nrlc.org/killing_embryos/arecloneshuman.html)

MISCONCEPTION: *Those who favor cloning for research would never allow clones to develop past two weeks of age.*

REALITY: While the Hatch-Feinsein bill purports to establish a two-week “deadline” for killing human clones, there are substantial reasons to doubt that the biotechnology industry would support such a limitation in a bill it actually expected to become law. Already, some policymakers are opening the door to “fetus farming” with human clones.

For example, the New Jersey legislature appears close to giving final approval to a bill that would permit cloned humans to be grown through any stage of fetal development, even to birth, to obtain tissues for transplantation, as long as they are not kept alive past the “newborn” stage. (SB 1909, as amended) Four members of the President’s Council on Bioethics wrote to Gov. James McGreevey to warn about the bill’s radical implications. (See www.nationalreview.com/document/document020303c.asp)

Last year, researchers reported harvesting tissue from cloned cows at six and eight weeks of fetal development, and from cloned mice at the newborn stage. Both studies were widely reported by the news media as breakthroughs for so-called “therapeutic cloning.” Indeed, so far these are the only two animal studies that have claimed to show “therapeutic” results from cloning.