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To: Interested Parties

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Re: Senator Byron Dorgan's record and statements on human cloning

Date: September 6, 2004

In recent weeks, there has been considerable discourse in North Dakota regarding the record of Senator Byron Dorgan on human cloning. This discussion was touched off by assertions made by Senator Dorgan's Republican challenger, Mike Liffrig, regarding legislation proposed by Senator Dorgan in 2002. Senator Dorgan actually introduced two different cloning bills in 2002, as discussed below. Regarding these two bills and Senator Dorgan's overall history on human cloning policy, there have been a number of incomplete and inaccurate statements by various parties, including some journalists and editorialists. This memo seeks to clarify the history and the issues in dispute, with citations to documentation on each point that can be checked by anyone who is so inclined. The section of this memo headed "Inaccuracies in Senator Dorgan's Recent Statements," which begins on page 11, discusses several recent statements by Senator Dorgan and his supporters that are at variance with the documented record.

WHAT IS "HUMAN CLONING"?

Cloning is a process of asexual (one-parent) reproduction, accomplished through a laboratory technique called "somatic cell nuclear transfer" (SCNT). In mammalian cloning, the nucleus from any body cell (but not a sex cell) is transferred into an egg cell from which the nuclear material has been removed or inactivated. After that, the nucleated cell is electrically activated to become a developing embryo of whatever species donated the nucleus. This embryo is a genetic "twin" of the single parent who contributed the genetic code. This method was first used successfully to produce a live-born mammal in 1996 -- Dolly the sheep. It has since been used to produce countless other live-born mammals, including livestock.

Since the advent of Dolly, Congress and many state legislatures have been struggling with the question of whether to permit *human* cloning. When I say "human cloning," I mean the use of the cloning technique (SCNT) with a nucleus taken from a *human* body, in order to create an embryo of the species *homo sapiens*. That is exactly what North Dakota law defines as "human cloning" (see North Dakota code Chapter 12.1-39, enacted April 7, 2003). It is also what President Bush and other opponents of human cloning mean by "human cloning."

However, as we will see below, some people -- including Senator Dorgan -- use the term "human cloning" to mean something very different. It is important, then, to seek clear definition of terms.

DIFFERENT HUMAN CLONING PRACTICES

There is really only one "type"of human cloning. **When the cloning method is used with a human cell nucleus, it will produce a human embryo. After that, it is just a question of what you *do* with that human embryo.**

It won't do to say that a little cloned male or female member of the species *homo sapiens* is indeed a human embryo *if* you intend to do one thing with him or her (like carry him or her to birth), but is *not* a human embryo if you intend to do some other thing (like use him or her in research that will end his or her life). That would be a kind of "magical thinking," not science.

Still, there are some who do assert, for political purposes, that a cloned human embryo is not "really" a human embryo, because no "fertilized egg" is involved. This is silly at best and deceptive at worst; it boils down to an assertion that Dolly was not really a sheep, or perhaps that Dolly was a sheep but was never a sheep embryo.

Obviously, it is true that cloning does not involve fertilization by sperm – cloning is, by definition, asexual reproduction – but so what? Every cloned mammal alive today is "unfertilized." If a human clone is implanted in a womb, carried to birth, and lives to be 50 years old, he or she will still be "unfertilized."

In its widely discussed 2003 report "Human Cloning and Human Dignity," the President's Council on Bioethics, although divided on policy issues, unanimously adopted terminology and definitions consistent with what I am setting forth here. The Council defined "human cloning" as "The asexual production of a new human organism that is, at all stages of development, genetically virtually identical to a currently existing or previously existing human being." The Council defined "cloned human embryo" as "(a) The immediate and developing product of the initial act of cloning, accomplished by SCNT. (b) A human embryo resulting from the somatic cell nuclear transfer process (as contrasted with a human embryo arising from the union of egg and sperm)." (The Council's discussion of terminology is here: http://www.bioethics.gov/reports/cloningreport/terminology.html) **These definitions are perfectly consistent with both the North Dakota ban enacted in 2003 (Chapter 12.1-39) and with the proposed federal Brownback-Landrieu bill (S. 245), a bill that Senator Dorgan opposes.**

For other statements by numerous *pro-cloning* scientists and other scientific authorities that cloning with human nucleus does indeed produce a *human embryo*, see
http://www.nrlc.org/Killing_Embryos/factsheetembryo.html
http://www.nrlc.org/Killing_Embryos/gearheart022603.html
http://www.nrlc.org/killing_embryos/TerminologyNewmanDeclaration.pdf

THREE THINGS THAT MIGHT BE DONE WITH A CLONED HUMAN EMBRYO

For this discussion, we need to consider three different things that might be done with a cloned human embryo (although there are still others that need not concern us at the moment), and what Senator Dorgan's position is on each of these three things. This memo will then discuss each of these three discrete issues in more detail.

1. "EMBRYO FARMING" or "THERAPEUTIC CLONING." The human embryo -- a developing male or female of the species *homo sapiens* -- can be allowed to develop to about five days of age, or longer, after which his or her stem cells are removed for research, a process that kills the human embryo. Proponents of this practice sometimes call it "therapeutic cloning," but that is a loaded term; more neutral terminology would be "cloning for research." President Bush has warned that this practice would result in "human embryo farms." Senator Dorgan clearly favors cloning human embryos for use in research, and has voted to block legislation that would prohibit it. Both of the bills that he introduced in 2002 would have left that practice legal.

2. "FETUS FARMING" ("IMPLANT-AND-HARVEST" CLONING): The human embryo might be implanted in a human uterus, or might be implanted in the uterus of some other mammal, allowed to develop for weeks or months, and then aborted in order to harvest specific tissues or organs. This has already been done with cloned cows and cloned mice, and the researchers involved said that these were experiments in "therapeutic cloning." (Details available on request.) Those of us who oppose human cloning refer to this as "fetus farming." (In addition, a cloned human embryo might be allowed to develop in an *artificial* uterus, when technology reaches a feasible point, which some researchers believe is not many years in the future.) On April 9, 2002, Senator Dorgan introduced a bill that would have permitted these practices. Two months later he said that this was not his intent and he introduced a new version of the bill that *did not* permit implant-and-harvest practices. Details on those events are related below. A copy of Senator Dorgan's original bill of April 9, 2002 – it was not a "draft," as Senator Dorgan recently asserted, but a real bill introduced in Congress – is available at the NRLC website at http://www.nrlc.org/Killing_Embryos/DorganS2076.pdf

3. **CLONING FOR BIRTH or "REPRODUCTIVE CLONING"**: A human embryo could be implanted in a uterus and carried to birth. This is sometimes called "reproductive cloning," but biologically "reproduction" has already occurred as soon as the embryo begins to develop, so a more objective term would be "cloning for birth." (The President's Council on Bioethics proposed the term "cloning to produce children.") Under both of Senator Dorgan's 2002 bills, it would have been a felony for anyone to facilitate the birth of a cloned human embryo, including the mother who would carry such a child to term.

FURTHER DISCUSSION OF CLONING PRACTICE NO. 1:
SENATOR DORGAN FAVORS CLONING EMBRYOS FOR RESEARCH ("EMBRYO FARMING"), CONTRARY TO PUBLIC OPINION AND CONTRARY TO THE LAW OF NORTH DAKOTA

It is clear that Senator Dorgan favors allow the creation of human embryos in order to harvest their stems cells. This is the "embryo farming" scenario, number 1 on the list above. Not long after Dolly the sheep was born, the Senate considered legislation to ban the use of cloning to produce human embryos, and Senator Dorgan voted to block that bill (S. 1601, February 11, 1998, roll call vote no. 10).[1]

On June 12, 2002, Senator Dorgan spoke on the Senate floor against the Brownback-Landrieu bill, which is the current proposal to prohibit the creation of human embryos by cloning (he said "I don't believe that we should prohibit" this type of research). The House of Representatives has passed this legislation twice – in 2001 and 2003 – but the Senate has not yet voted on it, because as yet an insufficient number of senators support it.

[1] The nonpartisan website "OnTheIssues.org" accurately reports that on this occasion, Senator Dorgan "Voted NO on banning human cloning."
http://ontheissues.org/Social/Byron_Dorgan_Health_Care.htm

Neither of Senator Dorgan's 2002 bills would in any way have restricted the creation of human embryos by cloning for laboratory research that will kill them, nor has Senator Dorgan ever claimed that either bill would do this, to our knowledge.[2] **Therefore, neither Dorgan bill actually would "make human cloning illegal," as Senator Dorgan said in a "fact sheet" dated August 31, 2004. Rather, both Dorgan bills attempted to dictate what could be done with a human clone *after* he or she is created – or, to say it another way, to regulate to what point such a human clone can be allowed to survive.**

Polls show strong public opposition to creating human embryos for research, whether by cloning or any other method.[3]

As President Bush said in a April 10, 2002 speech, "A law permitting research cloning, while forbidding the birth of a cloned child, would require the destruction of nascent human life." Enactment of "clone and kill" legislation would give the green light to what President Bush aptly called "human embryo farms," with the federal government responsible for preventing the survival of the human clones. NRLC has repeatedly said that such a "clone-and-kill law" would be worse than no cloning legislation at all.

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[2] It is hard to understand, then, why the Grand Forks *Herald* said in a September 2, 2004, editorial, "Would Dorgan's bill, the Human Cloning Prohibition Act, ban reproductive but allow therapeutic cloning? That's a fair topic for debate." But really, there should be no need for debate on this particular point, because it is crystal clear from the plain language of both of Senator Dorgan's 2002 bills that neither bill would have restricted "therapeutic cloning" of human embryos, because Senator Dorgan favors that practice.

[3] Wilson Research Strategies, Inc., 1,000 national adults, August 16-18, 2004, margin of error 3.1%: ***Question: Which of the following comes closest to your view?***
1. Cloning to create human embryos for stem cell research which would kill them should be allowed and only cloning for reproduction should be banned: 24%
2. All human cloning should be banned: 69%
3. Don't know / refused: 7%
Other questions in this poll are here:
http://www.nrlc.org/Killing_Embryos/NRLCStemCellPoll.pdf

International Communications Research, weighted sample of 1,001 adults, August 13-17, 2004, margin of error 3%: ***Question: Should scientists be allowed to use human cloning to create a supply of human embryos to be destroyed in medical research?***
Yes: 13.3%
No: 79.8%
Don't know: 6.1%
Refused: 0.7%
Other questions and answers in this poll related to cloning and other forms of embryonic stem cell research are found here: http://www.usccb.org/comm/archives/2004/04-163.htm

Moreover, in 2003 the North Dakota legislature enacted a bill (HB 1424) that makes it a Class C felony offense to use cloning to create a human embryo for any purpose. This law is substantively the same as the Brownback-Landrieu bill which President Bush supports, but Senator Dorgan opposes.[4] The North Dakota bill passed the state House of Representatives on February 17, 2003, by a vote of 90-1, and the state Senate on March 26, 2003, by a vote of 46-0. It was signed into law by Governor John Hoeven on April 7, 2003. It is now Chapter 12.1-39 of the North Dakota code.

For more details on the North Dakota law, see:
http://www.state.nd.us/lr/cencode/t121.html (bottom of the list), and
http://www.nrlc.org/killing_embryos/cloningbanNorthDakota.html

FURTHER DISCUSSION OF CLONING PRACTICE NO. 3:
SENATOR DORGAN WOULD MAKE CARRYING
A CLONED EMBRYO TO BIRTH A FELONY

It is clear that Senator Dorgan does not believe that cloned human embryos, once created, should be allowed to be born -- number 3 on the list above. Both versions of Senator Dorgan's 2002 bill would have made it a criminal offense to faciltiate the birth of such a cloned human embryo. This amounts, however, not to a "ban on a human cloning," but rather, a legal requirement that human clones must be killed or allowed to die before birth. This is why anti-human-cloning groups refer to Senator Dorgan's bills and other such bills as "clone and kill" bills.

However, it should be noted that the U.S. Justice Department has testified before Congress that if the production of cloned human embryos is allowed (as Senator Dorgan would allow), then there would be no *practical* way to enforce a prohibition against implanting them or carrying them to birth. **Aside from practical considerations, the concept of a law that puts federal law enforcement agencies in charge of making sure that every cloned human embryo ends up dead is obviously objectionable from the pro-life point of view.** See
http://www.nrlc.org/killing_embryos/Justice_Dept_on_cloning.pdf

Indeed, under both versions of Senator Dorgan's 2002 cloning bill, anyone engaged in human cloning *for intended birth* would have been a federal felon, subject to up to 10 years in federal prison. This prohibition applied to anyone, including a woman who facilitated or accepted implantation of a human clone in her own body.

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[4] It is worth noting that in July, 2004, Senator John Kerry (D-Mass.) cosponsored legislation that would permit the cloning and killing of human embryos for stem cell research (S. 303). This bill is similar to the second version of the 2002 Dorgan bill. For details, see
http://www.nrlc.org/Killing_Embryos/kerrydoubletalk082404.html

FURTHER DISCUSSION OF CLONING PRACTICE NO. 2:
WHAT DID SENATOR DORGAN'S 2002 BILLS
DO ABOUT CLONING HUMAN EMBRYOS FOR IMPLANT-AND-HARVEST
("FETUS FARMING")?

So then, Senator Dorgan's positions seem clear on using cloning to create human embryos for research (he favors) and on allowing such human clones to be born (he opposes). The confusion or disagreement has been over Senator Dorgan's past actions with respect to allowing a cloned human embryo to develop into a fetus (unborn child) in a uterus or artificial womb, and then "harvesting" (aborting) that fetus prior to birth to obtain specific tissues or organs.

This concern is not a far-fetched scenario. Indeed, such "fetus farming" has already been done with cloned cows and mice by researchers who called it a form of "therapeutic cloning" (details available on request). The bill that Senator Dorgan originally introduced on April 9, 2002, would have permitted those practices with human clones. But, after NRLC and other groups sharply criticized that bill, Senator Dorgan used an unusual error-correcting procedure to introduce a new version of the bill under which the implantation and harvesting of cloned fetuses would be prohibited. A detailed account follows.

"HUMAN BEING" – THE HEART OF THE ORIGINAL S. 2076

On April 9, 2002, Senator Dorgan introduced a bill that was given the number S. 2076. (It is this original bill that Mike Liffrig has referred to in recent statements.) In a statement entered in the *Congressional Record* that day, Senator Dorgan said the bill "prohibits the cloning of a human being," and the title of the bill itself said it was "a bill to prohibit the cloning of humans." But those were merely labels, without legal effect. What a bill does is governed by its operative language.

Within weeks, three groups opposed to human cloning issued analyses of the bill, each prepared independently. Each of the groups -- the National Right to Life Committee (NRLC), the U.S. Conference of Catholic Bishops (USCCB), and the International Center for Technology Assessment (CTA) -- concluded that S. 2076 would permit implant-and-harvest cloning, or "fetus farming." These analyses are discussed further below. But here is the nub of it: The bill defined three different activities as "human cloning procedure[s]." (None of these, of course, covered the actual process of creating a cloned human embryo, since Senator Dorgan *wants to permit* that practice.) One of the three activities the Senator Dorgan defined as a "human cloning procedure" was "the implantation of a conceptus, blastocyst, or embryo created through somatic cell nuclear transfer into the mammalian uterus." At first blush one might think that meant that this procedure would be banned – but in fact, all three of the so-called "human cloning procedure[s]" were *allowed* by the bill -- not prohibited -- *except* in one specific circumstance.

The *only* prohibition in the bill read as follows:

> SEC. 3. PROHIBITION ON HUMAN CLONING. It shall be unlawful for any person to engage in a human cloning procedure ***for the purpose of creating a cloned human being***. [italics and bold added for emphasis]

Thus, all of the defined "human cloning procedures" were <u>permitted</u> unless they were done "for the purpose of creating a cloned human being."

The entire meaning of the bill, then, turned on the legal meaning of the term "human being." In a revealing omission, the term "human being" was *not defined* in the bill. On April 24, 2002, I pressed Elizabeth Gore – who was then Senator Dorgan's legislative director and who is now his chief of staff – to explain what Senator Dorgan meant by the term "human being" as used in the bill. After some hesitation, she replied that it would interpreted in accord with judicial precedents. Probably so -- and that underscored the basis our objection. One of those key precedents is *Roe v. Wade*, under which "personhood" under the federal Constitution does not attach until birth. (Citations available on request.)

Moreover, Senator Dorgan supports *Roe v. Wade* -- indeed, on October 21, 1999, and again on March 12, 2003, he voted for amendments offered by Senator Tom Harkin (D-Iowa) to explicitly endorse *Roe v. Wade* in expansive terms.[5]

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[5] The 2003 Harkin Amendment read: SENSE OF THE SENATE CONCERNING ROE V. WADE. (a) FINDINGS.--The Senate finds that– (1) abortion has been a legal and constitutionally protected medical procedure throughout the United States since the Supreme Court decision in *Roe v. Wade* (410 U.S. 113 (1973)); and (2) the 1973 Supreme Court decision in *Roe v. Wade* established constitutionally based limits on the power of States to restrict the right of a woman to choose to terminate a pregnancy. (b) SENSE OF THE SENATE.--It is the sense of the Senate that– (1) the decision of the Supreme Court in *Roe v. Wade* (410 U.S. 113 (1973)) was appropriate and secures an important constitutional right; and (2) such decision should not be overturned. [*Congressional Record*, S3640]

NRLC's ANALYSES SIMILAR TO INDEPENDENT ANALYSES BY U.S. CONFERENCE OF CATHOLIC BISHOPS and ICTA

NRLC's analysis of the original S. 2076 were conveyed to Senator Dorgan's staff verbally and in writing soon after the bill was introduced. The substance of our analysis was also contained in a letter sent by NRLC to Senator Tim Johnson (S-SD) on April 29, 2002. Senator Johnson was at that time a cosponsor of the bill, but he later withdrew his cosponsorship, as did the only other cosponsor, Senator Mark Dayton (D-Mn.).

NRLC's assessment was shared by others who independently analyzed the original version of the bill. For example, Richard M. Doerflinger, Deputy Director of Pro-Life Activities for the U.S. Conference of Catholic Bishops (phone 202-541-3070), wrote in a memorandum on the original S. 2076, dated May 16, 2002, that the bill

> goes beyond past bills offered on this topic in an alarming way. It permits the use of cloned embryos to 'initiate a human pregnancy,' and even the implantation of cloned embryos in any 'mammalian uterus,' as long as this is not done 'for the purpose of creating a cloned human being' (by which the sponsors seem to mean a live-born cloned human being). This takes us down the slippery slope toward 'farming' cloned humans to the fetal stage, for harvesting of developed organs and other horrors. By essentially banning live birth, instead of banning use of cloning to initiate human development, the bill focuses its penalties on desperate infertile women and their physicians, instead of on scientists who irresponsibly mass-produce human life in the laboratory as research material. Even more unjustly, the bill would seek to impose a government-mandated death sentence on the completely innocent victim of the cloning procedure, the helpless cloned human. This legislation could be described as anti-woman and anti-life at the same time.

Likewise, attorneys at the nonpartisan International Center for Technology Assessment (CTA) wrote that S. 2076 "is the most permissive piece of human cloning legislation introduced in the Senate. . . .the legislation allows an implanted cloned embryo to develop inside a woman's uterus for an unspecified period of time. . . the legislation gives government approval and support to an industry in which human clones gestate for several months in surrogate mothers to be followed by voluntary abortion of such fetuses for use in research."

The 2002 analyses of the original S. 2076 by NRLC, the USCCB, and the CTA are all posted on the NRLC website here: http://www.nrlc.org/killing_embryos/DorganJohnson050802.html

SENATOR DORGAN REWROTE HIS BILL AND REINTRODUCED IT UNDER AN ERROR-CORRECTING PROCEDURE

Senator Dorgan *never rebutted* the three analyses that showed that the original S. 2076 would allow the implantation and harvesting of cloned human fetuses. Instead, he rewrote his bill. On June 10, 2002, he introduced a revised bill but kept the same bill number. This is allowed under an unusual procedure called a "star print," which is used on rare occasions to correct *errors* in a

bill as introduced.[6] A "star print" replaces the text of the original bill, which is why if someone now goes to the 2002 congressional database they will see the "star print" and not the original bill. To make things even more confusing, the original introduction date of "April 8, 2002" was again printed on the star print, even though the new bill really was not introduced until June 10, 2002.

Senator Dorgan's campaign website now displays the June 10, 2002 version, including the inappropriate date, but the website does not display the original bill that was actually introduced on April 9, 2002. The original bill is posted at the NRLC website at http://www.nrlc.org/Killing_Embryos/DorganS2076.pdf

The biggest change in the new bill was that Senator Dorgan dropped the crucial qualifying phrase "for the purpose of creating a cloned human being." The new bill *still allowed* the creation of any number of cloned human embryos, *but* now made it an offense to implant any such human clone "into a uterus or the functional equivalent of a uterus."

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[6] The Capitol Net glossary of congressional terms defines "star print" as follows: "A reprint of a measure, amendment, or committee report to correct errors in a previous printing. The first page carries a small black star." The Government Printing Office says: "Corrected editions of Congressional documents are issued as star prints. These documents have a star printed at the lower left-hand corner of the title page or cover. Sometimes the words 'star print' also appear adjacent to the star. Star prints are new, revised editions."

On June 12, 2002, Senator Dorgan took the Senate floor to explain the change. His statement appears in the June 12 *Congressional Record* on page S5448. Here is part of it:

> [E]arlier this week I modified my bill, the Human Cloning Prohibition Act, S. 2076. . . . However, in recent weeks those who oppose my legislation have interpreted the language of my bill in a manner that is not consistent with the intent of the bill. They argue that my bill as originally introduced would allow a cloned embryo to be implanted into the uterus and "harvested" at some point prior to birth. I do not believe the language of my bill allows that, and it is certainly not the intent of the bill. But, in order that no one can misinterpret the intent of my bill, I am making an adjustment in the bill language. The revised language will define human cloning as "implanting or attempting to implant the product of somatic cell nuclear transfer, or any other cloning technique, into a uterus or the functional equivalent of a uterus." It makes it unlawful for "any person to conduct or attempt to conduct human cloning." [as so defined]

At the time Senator Dorgan made that change, National Right to Life posted a notice of it on our website at the top of all of the earlier information about S. 2076. The notice remains there unaltered to this day. It reads as follows:

> NOTE: On June 10, 2002, Senator Dorgan introduced a revised version of S. 2076 that does not contain the qualifying phrase "for the purpose of creating a cloned human being" that appeared in the original version of the bill. The new version, called a "star print," has the same bill number. The revised bill would allow any number of human embryos to be created by cloning, but would make it unlawful to implant such an embryo into "a uterus or the functional equivalent of a uterus."

After that, we confined ourselves to criticizing Senator Dorgan's *revised* bill for allowing human embryos to be created by cloning for the purpose of research that will kill them.

However, our analysis of the original bill remains was correct. Senator Dorgan has never rebutted that analysis -- indeed, he cannot do so without asserting that he believes that a human fetus is indeed legally a "human being" beginning at the time of implantation in the womb. If Senator Dorgan now says that he does believe that a fetus is a "human being" from the time of implantation in the womb, then we would ask why he votes to endorse *Roe v. Wade*, a decision that says otherwise.

INACCURACIES IN SENATOR DORGAN'S RECENT STATEMENTS

In recent days, in response to statements by Mr. Liffrig and others about the original S. 2076, Senator Dorgan and his campaign have made a number of assertions -- some accurate and pertinent, and some not. I comment here on letters from Senator Dorgan dated August 24 and August 26, 2004, and a "fact sheet" dated August 31.

In a letter to Mr. Liffrig dated August 26, 2004, Senator Dorgan said that Mr. Liffrig "cynically and dishonestly misrepresent[s] this legislation," and asserts several times that his legislation "would

prohibit the cloning of a human being." **But this is playing with words, because neither version of Senator Dorgan's bill would have prohibited creating clones of the species homo sapiens. Rather, his bills attempted to dictate what could be done with such human clones *after* they are created (see page 1-5 of this memo).**

As already discussed above, neither of Senator Dorgan's 2002 bills would have prohibited the cloning of human embryos, so Senator Dorgan clearly does not regard a human embryos as a "human being." Moreover, the bill that Mr. Liffrig was referring to, the original S. 2076, also did not prohibit implantation and harvesting of cloned human fetuses. As discussed above, Senator Dorgan did not say in 2002 that he regards human fetuses in the womb as legal "human beings," nor does he say that in his August 26, 2004 letter. His votes in favor of *Roe v. Wade* suggest that he does not believe that implanted human fetuses should be legally regarded as "human beings." **Therefore, Senator Dorgan's August 26 letter simply evades the key issue.**

Karen Gumke of Jamestown (home phone 701-489-3564, weekday phone 701-252-0193) wrote a letter that was published in some newspapers in August, 2004, criticizing Senator Dorgan on the basis of the original S. 2076. She received a letter from Senator Dorgan, dated August 24, 2004, in which the senator said:

> I might also note that the International Center for Technology Assessment (CTA) analysis that you quoted in your letter was based on *an earlier draft* of S. 2076, not on the final version. While I don't believe that the CTA's analysis is correct even with respect to the earlier version of S. 2076, it is by no stretch of the imagination an accurate assessment of S. 2076 that, as modified, was *the official bill that I introduced*. [italics added for emphasis]

With all respect to Senator Dorgan, that paragraph misstates the actual events. The bill that Ms. Gumke and Mr. Liffrig were talking about was not a "draft," which is something that is circulated for discussion *before* a bill is formally introduced in Congress. S. 2076 was not a "draft" but precisely an "official bill. . . introduced" in Congress. Senator Dorgan made a brief statement when he introduced the bill, which appears in the April 9, 2002 *Congressional Record* on page S2414. The bill was referred to the Senate Judiciary Committee. It was later cosponsored by Senator Tim Johnson (D-SD) and Senator Mark Dayton (D-Mn.), but they both withdrew their cosponsorship after the fetus farming controversy erupted. **Anyone can easily confirm all of this by going to the congressional database at http://thomas.loc.gov. under "Legislation: Bill Summary and Status: 107th Congress" (enter S. 2076).**

In a document issued on August 31, 2004, titled "Fact Sheet: Senator Dorgan's Record on Human Cloning Legislation," the Dorgan campaign again inaccurately referred to the April 9, 2002 bill as "the initial draft of Dorgan's bill."[7]

The Dorgan "fact sheet" also stated:

> Mike Liffrig has dishonestly misrepresented Senator Dorgan's bill to the public. Mr. Liffrig says the words "human being" leave the door open to growing embryos in a woman's uterus to the fetal stage for the production of organs, tissues, and cells, and then aborting the fetus. That is obviously false, given the fact the bill explicitly prohibits human cloning, defined in the bill's text as "implanting or attempting to implant the product of somatic cell nuclear transfer (or any other cloning technique) into a uterus or the functional equivalent of a uterus."

This is inaccurate as applied to S. 2076 as originally introduced in Congress on April 9, 2002. As explained above, the original S. 2076 did define implanting a clone into a "mammalian uterus" as a "human cloning procedure," but that procedure was *not prohibited* by the bill. The bill was crystal clear that all such "human cloning procedure[s]" were allowed *unless* they were conducted "for the purpose of creating a cloned human being."[8] It was that specific crucial conditional phrase that Senator Dorgan *dropped* when he introduced the second version.

More importantly, the Dorgan "fact sheet" was misleading when it asserted that Senator Dorgan "offered a bill to make human cloning illegal." Both versions of Senator Dorgan's bill clearly allowed the unlimited creation of embryos of the species *homo sapiens* by cloning, and that *is* "human cloning" (see page 2 of this memo).

Another notable aspect of the August 31, 2004 Dorgan "fact sheet" is that it refers readers to Dan Perry "for more information on cloning and stem-cell research." Mr. Perry directs the Washington-based lobbying group called the "Coalition for the Advancement of Medical Research" (CAMR). This is one of the leading pro-cloning advocacy groups in Washington, which last year lobbied vigorously (but unsuccessfully) against the Weldon Amendment, an NRLC-backed amendment that now prohibits the U.S. Patent and Trademark Office from issuing *patents* on cloned human embryos.

The cloning ban enacted by the North Dakota legislature in 2003, with only one dissenting vote in the entire legislature, is the direct anti-thesis of the CAMR policy on human cloning.

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[7] An editorial in the September 5, 2004, *Forum* of Fargo-Moorhead also refers, erroneously, to this as "an early draft of the legislation."

[8] A September 2, 2004, Grand Forks *Herald* editorial also quoted this language, but failed to note that there were two Dorgan bills and that in the original bill, the cloning procedure described was *allowed* unless engaged in "for the purpose of creating a cloned human being."

For details of CAMR's attempt to keep the patenting of human embryos legal, see http://www.nrlc.org/killing_embryos/Human_Patenting/Weldonamendmentsurvives.html

SENATOR DORGAN'S CALL FOR "HONEST DISCUSSION"

In his August 26, 2004, letter to Mike Liffrig, Senator Dorgan said, "Let's have an honest discussion about that [human cloning], not the cynical and dishonest discussion you are engaging in, describing my legislation as the exact opposite of what it is." Honest discussion is a very good thing. Here, an honest discussion requires acknowledgment that the original S. 2076 was a real bill introduced in Congress (not a "draft"), and that it allowed implanting and later "harvesting" a cloned human fetus. (Or is Senator Dorgan now prepared to argue that a cloned human fetus, from the moment of implantation, must legally be regarded as a "human being"?).

An honest discussion certainly includes acknowledging that Senator Dorgan did indeed say, about two months after he introduced his original bill, that such fetus farming was not his *intention*, and that he introduced a new bill using a process that is supposed to be used to correct *errors* in drafting bills – but then, National Right to Life *did* acknowledge exactly that, as soon as Senator Dorgan introduced the second bill, as related on page 11 of this memo.

Most of all, an honest discussion would include recognition by journalists and others that Senator Dorgan wishes to allow the use of cloning to produce human embryos for the sole purpose of using them in research that will kill them -- which is exactly the practice that the North Dakota legislature banned by votes of 90-1 in the state House and 46-0 in the state Senate in April, 2003.

FOR FURTHER INFORMATION OR DOCUMENTATION

For further documentation or discussion of any of the points in this memo, you can contact NRLC Legislative Director Douglas Johnson at 202-626-8820, or at Legfederal@aol.com.

Additional documentation on the original version of S. 2076, including a PDF copy of the original S. 2076, is available at http://www.nrlc.org/killing_embryos/DorganJohnson050802.html

The chronological history of the 2002 Dorgan cloning legislation can be viewed on the congressional database by going to http://thomas.loc.gov. under "Legislation: Bill Summary and Status: 107th Congress" (enter S. 2076).

For further general documentation on the general subject of human cloning, visit: http://www.nrlc.org/killing_embryos/cloningmisconceptions031803.html

For additional discussion of legislation being advanced in some states by the biotechnology industry to facilitate human "fetus farming," see http://www.nrlc.org/news/2004/NRL02/farming_humans_for_fun_and_profi.htm