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An Analysis of S. 2076 Human Cloning Prohibition Act of 2001

INTRODUCTION

On April 9, 2002, Senator Dorgan (D-ND) introduced S. 2076. As of April 18, 2002, the following senators have joined as cosponsors: Sen. Dayton (D- MN) and Sen. Johnson (D- SD). Sen. Dorgan introduced the legislation stating, "Today, I am introducing legislation that prohibits the cloning of a human being. It is a simple bill, but it reflects my view and a view that is held by almost everyone. My bill reflects the common ground that we can all agree to in this debate. My legislation makes it illegal to clone a human being and imposes strict penalties against anyone who violates this prohibition." 148 Cong Rec. S2414, April 9, 2002. Despite such pronouncements, S. 2076 is the piece of Senate legislation most likely to lead to widespread reproductive human cloning.

CONCLUSIONS

S. 2076 strays far from the Senate's "common ground" and is the most permissive piece of human cloning legislation introduced in the Senate. The bill does the following:

- (1). Legalizes the implantation of a cloned human embryo into a woman's uterus. The only prohibition of law is when implantation takes place with the intent to produce a child;
- (2). Makes enforcement of the its prohibition on reproductive human cloning unenforceable. The legal violation is triggered only by intent. This makes such a violation virtually impossible to prove until the implanted human clonal embryo actually results in a cloned child;
- (3). Expands the key ethical issues surrounding human cloning by allowing an implanted cloned human embryo to grow into any stage of development up to viability or birth before it is to be destroyed; *and*
- (4) Fails to ban the sale of clonal embryos. Therefore, allowing researchers of corporations to sell them to a foreign entity which could then use them for reproductive purposes outside the legal reach of the United States.

I. SPECIFIC BILL ANALYSIS

The legal department of the International Center for Technology Assessment's (CTA) preliminary legal analysis finds that the Dorgan legislation is the Senate legislation most likely to lead to human reproductive cloning. Additionally, the legislation joins other human cloning legislation - S. 704 (Campbell), S. 1758 (Kennedy-Feinstein), and S. 1893 (Harkin-Specter) - in failing to address the myriad of regulatory issues surrounding human cloning such as protecting women's health from the extraction of human oocytes (eggs) necessary for human cloning procedures and the commodification of human life through the patenting of cloned embryos.

(A). S. 2076 Would Allow the Implantation of a Cloned Embryo in a Woman's Uterus.

Sec. 3. Prohibition on Human Cloning of S. 2076 reads as follows:

It shall be unlawful for any person to engage in a human cloning procedure for the purpose of creating a cloned human being (emphasis added).

By combining the bill's definition of "human cloning procedure" (sec. 2) with section 3, it is clear that under S. 2076 a cloned human embryo may be implanted into a woman's uterus without a violation of law. Moreover, the legislation allows an implanted cloned embryo to develop inside a woman's uterus for an unspecified period of time. This provision is more permissive than any other piece of Senate cloning legislation. The only time such action becomes illegal is when a woman (or possibly an aiding researcher or doctor) intends to keep the clonal embryo implanted in her uterus for the purposes of bringing a clone to term.

As written, section 3 of S. 2076 creates two critical problems. First, the reproductive cloning prohibition in the legislation is unenforceable. The legal violation is triggered only by intent. This makes such a violation virtually impossible to prove until the implanted human clonal embryo actually results in a cloned child.

Second, the bill greatly expands the breadth of the key ethical issue of whether we should intentionally create any form of human life solely for its exploitation and destruction. By allowing implantation of a cloned human embryo for an unlimited time period, 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.

II CRITICAL OMISSIONS

(A). S. 2076 Encourages a Commercial Industry in Cloned Embryos While Providing No Regulation or Regulatory Authority Over Such an Industry.

(1). The bill specifically endorses the cloning of human embryos while providing no regulatory authority over the potential mass production of these cloned embryos;

(2). Unlike other pending Senate legislation, the bill would not make it illegal to implant a cloned embryo into an artificial uterus and bring such embryo to term as a human being (researchers around the world are already working to create artificial wombs and expect to have success in a few years, see e.g., <http://www.observer.co.uk/international/story/0,6903,648024.html>);

(3). The bill encourages the full scale commodification of human life by not forbidding or providing regulatory oversight for the “sale” or “patenting” of cloned human embryos or cells and other material from such embryos;

(4) The bill in no way bans or regulates the sale of eggs from women to corporations or researchers involved in cloning human embryos; *and*

(5) The bill fails to ban or even regulate the “purchasing” of “surrogate mothers” as gestators for the embryo or fetal reproductive cloning allowed by this bill.

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