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RE: Forthcoming bait-and-switch on legislation on embryonic stem cell research and human cloning

Dear Member of Congress:

The purpose of this letter is to warn you that there is a substantial chance that you will soon see an attempt to ram through the House of Representatives, on short notice, legislation that would authorize federal funding of research on human embryos created specifically to be used in research, and open the door to federal funding of human cloning and human embryo farms.

On several occasions in recent weeks, members of the Democratic Leadership have indicated that, as a follow up to recent actions by President Obama, they will soon bring before the House of Representatives legislation to enact a permanent structure for federally funded embryonic stem cell research. Some have assumed, or been led to believe, that the forthcoming legislation will be similar to the embryonic stem-cell bills that the House passed and that President Bush successfully vetoed in 2006 and 2007. We advise you to be skeptical of such assumptions. We believe that the forthcoming legislation will be far more expansive than the stem-cell bills of 2006 and 2007 – and indeed, will contain provisions that directly contradict assurances earlier given to the House, and to the public, by some of the prominent backers of the previous bills. The backers of the legislation will seek to rhetorically minimize the significance of the changes they are making, even as they seek your support for legislation that would greatly accelerate movement down the ethical slippery slope of exploitation of non-consenting members of the species *Homo sapiens*.

The stem-cell bill that the House considered most recently was S. 5, which received final approval from the House on June 7, 2007, and was vetoed on June 20, 2007. That bill would have authorized the National Institutes of Health (NIH) to fund research using "stem cells [that] were derived from human embryos that have been donated from in vitro fertilization clinics, were created for the purposes of fertility treatment, and were in excess of the clinical need of the individuals seeking such treatment." During the House debates in 2007, as in past years, the prime sponsors of the legislation – Congresswoman Diana DeGette and Congressman Mike Castle – offered repeated assurances that they were advocating only the use of so-called "leftover" human embryos – that is, embryos who were "scheduled to be discarded." As Ms. DeGette put it during the June 7, 2007, debate:

> What our bill does is, it says, let's do everything in an ethical way. Let's have ethically conducted embryonic stem cells, but only on embryos that are scheduled to be discarded as medical waste. (*Congressional Record*, page H6142)

Mr. Castle, on the same day, said it this way:

> Second, it is important to understand that we are only talking about research on embryos that would otherwise be thrown away as medical waste. That is a decision which is made by those who created the embryo and whoever was running the IVF clinic before the subject of using them for research was ever brought up. So you are dealing solely with embryos on which the decision has been made to have them eliminated as medical waste, because, simply, they don't want to continue to pay for the storage of the embryo or whatever it may be. So anyone who refers to it as killing needs to understand that's going to happen anyhow. That's a decision that's been made. No stem cell would ever be taken from an embryo that was not destined to be destroyed in any event. (*Congressional Record*, page H6133)

**We write now to alert you to evidence that a "bait and switch" is in the works. As discussed further below, in his March 9, 2009, statements and directives, President Obama made no reference to limiting NIH to the use of stem cells taken from "leftover" embryos, or limiting NIH to the use of embryos created through IVF. We believe that the forthcoming legislation will be crafted in such a way that it will authorize NIH to fund projects that use human embryos created specifically for the purpose of using them in research – both by in vitro fertilization (IVF), and by other laboratory techniques. One method of producing large numbers of human embryos would be somatic cell nuclear transfer (SCNT), the cloning process that has created Dolly the Sheep and thousands of other cloned mammals.**

An article in *Science* (March 20) offers a glimpse into the process now underway behind the scenes to rewrite the stem-cell legislation:

> At issue is the biological source of the hES cell lines now eligible for federal support. **The question is whether work will still be limited to lines derived from surplus fertility clinic embryos or whether the government will approve the use of lines from embryos that have been created solely for research. Many scientists would like to work with lines created through research cloning, or somatic cell nuclear transfer (SCNT) [i.e., cloning**]. . . . The stem cell community was expecting that as soon as Obama acted, Congress would codify the executive order by repassing a measure – twice vetoed by Bush – authorizing the government to support research, regardless of the date of derivation, on stem cell lines derived from excess embryos created for fertility treatments. Now, however, with the source of eligible lines unspecified in the executive order, the bill's sponsors are heading back to the drawing board. ("For Congress and NIH, Headaches Ahead on Stem Cells," by Constance Holden, *Science*, March 20, 2009) (emphasis added)

Although you may have been led to believe otherwise, the most prominent advocates of using human embryos in research never were serious about limiting such research to only "leftover" embryos. That was merely a temporary tactical position, intended to desensitize people to the notion of using non-consenting members of the species *Homo sapiens* for their parts. Now, they are showing their real agenda – they want to deliberately create human embryos for the specific

purpose of research that will kill them. And, they want the federal government – your constituents – to pay for such research.

As ten members of the President's Council on Bioethics said in a March 25 statement:

> What researchers most desire, in fact, are not spare IVF embryos but cloned embryos, produced in order to study disease models. The funding decision announced by the president on March 9 will encourage such cloning. Nor should we be reassured that, at the same time, the president opposed "the use of cloning for human reproduction." If cloned embryos are produced, they may be implanted and gestated. To prevent that, it will be necessary, as we noted in *Human Cloning and Human Dignity*, "to prohibit, by law, the implantation of cloned embryos for the purpose of producing children. To do so, however, the government would find itself in the unsavory position of designating a class of embryos that it would be a felony not to destroy." We cannot believe that this would advance our society's commitment to equal human dignity.
> *http://www.thehastingscenter.org/Bioethicsforum/Post.aspx?id=3298*

Those who wish to promote the deliberate creation of human embryos for research recognize that there are currently several obstacles in their path. For one thing, they have spent years lulling the public into the belief their intent is to use only "surplus" embryos who are "scheduled to be discarded." Moreover, the public is overwhelmingly opposed to creating human embryos for the purpose of using them in research that will kill them, and is also strongly opposed to using human cloning to create embryos for this purpose.

We believe that it is quite likely that those who are crafting the forthcoming legislation hope to overcome these obstacles by false labeling, deceptive definitions, and speed, perhaps with an assist from smokescreens emanating from the Biotechnology Industry Organization (BIO) and its satellite groups.

**Quite likely, the forthcoming legislation will contain some language that at first glance appears similar to that quoted above from 2007's S. 5, authorizing N.I.H. to fund research on IVF-created embryos "in excess of the clinical need"-- *but* the bill will be crafted in such a manner that this "surplus embryo" language is a license but not a limitation. We expect that the bill will also contain language that effectively will give the director of NIH broad authority to sponsor research that depends on the killing of human embryos created specifically for research, including human embryos created by cloning. Such an empowerment clause could, for example, take the form that is already found in Congresswoman DeGette's H.R. 872, which would spell out certain "guidelines" for NIH-funded embryonic stem cell research, but which also confers on the director of NIH the authority to "update the guidelines" in any manner he sees fit, whenever he "determines that such updates are scientifically warranted." H.R. 872 mandates such unconstrained "updates" at least every three years but authorizes them to occur more frequently, at the discretion of the NIH director.**

**Moreover, in the forthcoming legislation, it seems likely that open-ended empowerment language will be coupled with what will be called "a ban on human cloning." This will be**

**an outright deception. What will be labeled as a "ban on human cloning" will actually be language crafted to permit and encourage human cloning.**

Congresswoman DeGette and the Democratic leadership have tried this trick before. On June 5, 2007, DeGette introduced a bill titled the "Human Cloning Prohibition Act" (H.R. 2560), which was rushed to the House floor *the very next day*. A more accurate title for that bill would have been "The Human Clone Harvesting Act," because H.R. 2560 was carefully constructed to encourage the creation of any number of cloned human embryos, and to allow development of these cloned human embryos (individual members, male or female, of the species *Homo sapiens*) in the laboratory, perhaps even for weeks, so that they can be killed in order to harvest their stem cells or used in other research that will kill them.

What DeGette's bill actually would have "banned" was allowing a human clone to survive, by implanting her or him "into a uterus or the functional equivalent of a uterus." Any person who may "perform or attempt to perform" such acts -- including the woman into whom the embryo is implanted or "received" -- would have been subject to a fine of $10 million and up to 10 years in prison. We at the National Right to Life Committee (NRLC) called H.R. 2560 a "clone and kill bill," and that was perfectly accurate, since it was precisely the purpose of the architects of the bill to foster the practice of human cloning, but make it a federal offense to allow a human clone to survive. Under such legislation, for the first time in American history, an entire class of members of the species *Homo sapiens* would have been marked for mandatory death by force of law.

Fortunately, this attempt at fast-tracked legislative duplicity was rejected by the House, 204-213. (The bill fell 74 votes short of the two-thirds majority needed to pass legislation on the Suspension Calendar, and failed to achieve even a simple majority.) For additional information on the complete phoniness of the DeGette "ban" on human cloning, please see NRLC's June 6, 2007, letter in opposition to H.R. 2560, and the documents referenced therein. The letter is posted here: http://www.nrlc.org/killing_embryos/NRLCLettertoHouseonHR2560.html

**We expect that the legislation now being prepared may combine a phony "ban" on human cloning, similar to the rejected H.R. 2560, with the language giving NIH expansive authority to conduct stem-cell research using human embryos of all kinds, both "leftover" and created for research, whether created by IVF, human cloning, or other laboratory methods.**

Even if broad authorization language were enacted, along the lines described above, there would remain one barrier to federal funding of some unethical forms of human embryo research: the Dickey-Wicker Amendment, which has been a provision of the Health and Human Services appropriations bills since 1995. This amendment prohibits the use of any NIH funds for "the creation of a human embryo or embryos for research purposes; or research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death . . . ." The Dickey-Wicker law explicitly defines "human embryo" to include "any organism . . . that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells."

We would not be surprised if the sponsors of legislation to broadly authorize federal support for the creation and killing of human embryos for research, attempted to "hide behind" the Dickey-Wicker prohibition – for example, by assuring Members that "we already have a law in place that prohibits the use of federal funds to create human embryos for research or to kill them for resaerch." This would be another exercise in duplicity. The anticipated authorization bill would establish the basic matrix for future federally supported research involving human embryos and human cloning. In contrast, a limitation amendment on an appropriations bill is a constraint that is by its nature temporary and vulnerable. Moreover, Congresswoman DeGette and her allies have already signaled that they intend to try to repeal the Dickey-Wicker provision during consideration of the FY 2010 Healtha and Human Services appropriations bill, which is soon to come.

> Jim Greenwood, CEO of the Biotechnology Industry Organization (BIO), said he expected Congress to take up legislation to overturn the Dickey-Wicke(r amendment. "The Dickey-Wicker amendment is bad policy," Greenwood charged. (*BioWorld*, March 11, 2009)
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> [DeGette] said she was also talking to her colleagues about overturning the broader Dickey-Wicker restriction. *(New York Times*, March 9, 2009)
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> [DeGette] and her chief Republican ally on the issue, Rep. Michael N. Castle of Delaware, said that Dickey-Wicker should be reconsidered. "Certainly, the Dickey-Wicker amendment . . . is something we need to look at," Castle said. . . . "Some researchers are telling us now that that needs to be reversed." *(CQ Today*, March 9, 2009)

**Thus, any member of Congress who honestly does not want the federal government supporting research that involves the deliberate creation of human embryos to be harvested, whether by human cloning or IVF, should insist that these constraints must be written into the authorization legislation. Otherwise, they are written on water.**

We will devote the rest of this letter to citing some of the specific evidences that back up the assessments that we have offered above.

(1) At the March 9 White House event at which he signed his executive orders on embryonic stem cell research, President Obama made no reference whatever to limiting federally funded research to "leftover" embryos or even limiting it to IVF-created embryos. Instead, the President said that he wanted to open up federal support for stem cell research "of all kinds." He then said, "And we will ensure that our government never opens the door to the use of cloning for human reproduction." Some naive (or disingenuous) commentators reported this as if it had been an endorsement of a ban on human cloning, but the phrase "cloning for human reproduction" is actually doublespeak that should be translated "cloning to produce live births." President Obama carefully left the door open to NIH support for the creation and exploitation of cloned human embryos. (This should come as no surprise: As a U.S. senator, Obama was a co-sponsor of a "clone and kill" bill, S. 1520, in 2005-2006.)

(2) President Obama's actual executive order (no. 13505) contained no language limiting NIH

to "leftover" embryos, nor anything to prevent NIH from using human embryos created for research, whether they are created by IVF, human cloning, or any other process. The order simply says that the Director of NIH may support "human embryonic stem cell research, to the extent permitted by law." [President Obama also specifically revoked a 2007 executive order by President Bush (no. 13435) that had encouraged NIH to support research on sources of pluripotent stem cells that did not depend on creating or killing human embryos.]

(3) On March 12, Majority Leader Steny Hoyer said on the House floor that the forthcoming stem cell legislation "will be consistent with the President's action this week dealing with the executive order on stem-cell research. . . . As you know, when we passed legislation like that before, we made it very clear that human cloning was not something that the Congress supported and that we were specifically prohibiting that." At first blush, Mr. Hoyer's statement was puzzling, because the stem cell bill passed by the House in 2007, S. 5, did not contain any human cloning language at all – it spoke only of donated, IVF-created embryos. It is true that the House twice passed the Weldon-Stupak legislation to ban the creation of human embryos by cloning (H.R. 2505 in 2001 and H.R. 534 in 2003), but that legislation (which never passed the Senate) was *opposed* by Mr. Hoyer, Ms. Pelosi, and most of the other Members who make up the current Democratic leadership of the House. On the other hand, Speaker Pelosi and Mr. Hoyer were supportive of the unsuccessful sneak-attack attempt to pass a clone-and-kill bill on June 6, 2007. It seems that Mr. Hoyer's remark is best interpreted as another signal that serious consideration is being given to advancing a bill to encourage the cloning and killing of human embryos while mischaracterizing it as a ban on "human cloning." (We should note that Congressman Stupak in February reintroduced the authentic ban on human cloning, as H.R. 1050.)

(4) In the weeks since President Obama's March 9 actions, a drum beat of comments has appeared in various pro-cloning outlets, urging that Congress remove any constraints that might limit NIH to using only "leftover" human embryos. For example, on March 16, the editorial board of the *New York Times* (always faithful stenographers for BIO on these matters) published an editorial titled "The Rules on Stem Cells," which argued in part:

> This single-minded focus on the surplus embryos -- left over after patients' fertility treatments were completed -- was mostly because a strong moral argument could be made that these microscopic, days-old embryos were doomed to be discarded anyway. Why not gain potential medical benefits from studying their stem cells? Now President Obama seems open to the possibility of moving beyond the surplus embryos. . . . Let us hope that the N.I.H. broadens the range of stem cells that can be studied. Scientists believe that one way to obtain the matched cells needed to study diseases is to use a cell from an adult afflicted with that disease to create a genetically matched embryo and extract its stem
> cells.

Likewise, the journal *Nature*, in an editorial published March 25, said:

> Both the Dickey-Wicker amendment and the new guidelines on human embryonic stem-cell research being drawn up by the National Institutes of Health merit an intense national conversation. In particular, that dialogue should thoroughly explore attitudes towards studying different types of embryos -- not just those left over from fertility procedures, but also those that might be specially created for research.

In summary: A legislative "bait and switch" is in the works. We anticipate that the forthcoming "embryonic stem cell research" legislation (1) will give NIH authority broad enough to fund research that uses not only "leftover" human embryos but also created-for-research human embryos, including embryos created by human cloning; and (2) may be coupled with a clone-and-kill provision, which will be labeled as a "ban on human cloning" but which will actually define "human cloning" in a manner that allows the mass creation of human embryos by cloning, for the purpose of using them in research that will kill them. The pro-cloning side hopes to smuggle through these radical policy changes on this authorization legislation, and then follow up by gutting or repealing the Dickey-Wicker provision on the Health and Human Services appropriations bill for FY 2010.

**Whatever legislation dealing with embryonic stem cell research and human cloning is actually brought before the House will be accurately described in NRLC's scorecard of key right-to-life roll calls of the 111th Congress. If, as we fear, the forthcoming legislation allows the creation of human embryos by cloning for use in research that will kill them, and grants NIH the authority to fund research that lethally exploits human embryos who were especially created for research, then a vote for that legislation will be accurately described as a vote in favor of federal taxpayer support for human cloning and human embryo farms.**

Thank you for your consideration of NRLC's perspective on these important issues.

Sincerely,

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For additional resources on human cloning and related issues, see:
http://www.nrlc.org/killing_embryos/index.html
http://www.nrlc.org/killing_embryos/CloningMisconceptions.html
http://www.stemcellresearch.org/