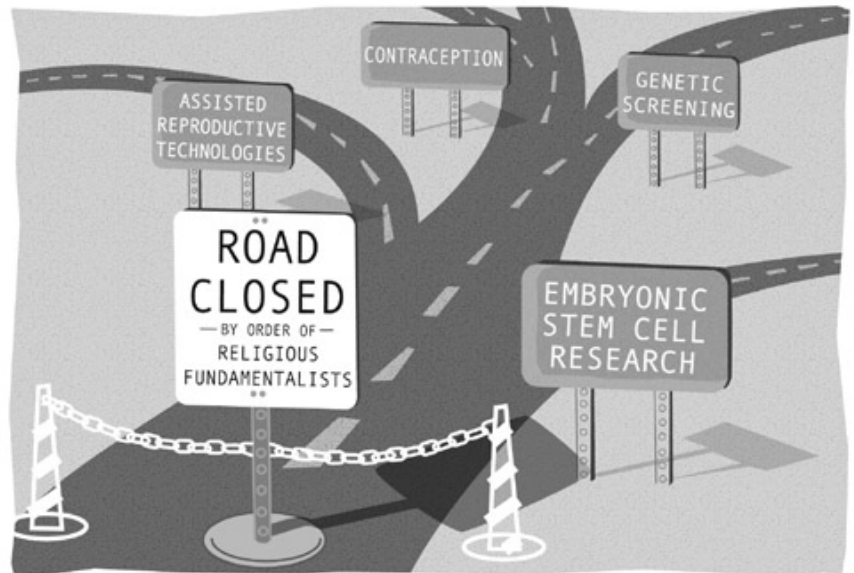


**FIGHTING
RELIGIOUS
HEALTH
RESTRICTIONS**

Embryo Politics: Implications for Reproductive Rights and Biotechnology





Embryo Politics: Implications for Reproductive Rights and Biotechnology

*Based on a presentation
at the annual meeting of the
American Public Health Association
November 8, 2004,
in Washington, D.C.*

by Lois Uttley, MPP,
Ronnie Pawelko, JD, and
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The MergerWatch Project

The MergerWatch Project was founded in 1996 at the Education Fund of Family Planning Advocates of NYS in Albany, NY, after a religious/secular hospital merger caused the loss of patients' access to contraceptive services at a hospital outpatient clinic in Troy, NY.

MergerWatch staff work directly with community coalitions across the nation to protect hospital-based services that are threatened by proposed business partnerships between secular community hospitals and religiously-sponsored health systems. We seek to preserve patients' access to threatened services at the historically-secular facilities through such means as public education, community organizing and regulatory intervention.

Project staff have undertaken research, policy analysis and strategic work at the state and national levels to provide new tools and information that can be utilized by local hospital merger coalitions. The project collaborates with the National Health Law Program to coordinate a National Advisory Board on religious restrictions to health care. Member organizations have specific areas of expertise that can be brought to bear on the problem, or represent those constituencies most affected by the spread of religious health restrictions (such as low-income women, women of color and residents of medically-underserved rural and urban areas).

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This paper is one of a series developed by the MergerWatch Project to inform communities, advocacy groups and medical providers about emerging threats to health care services from religiously-based restrictions.

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Emerging Issues Briefing Paper Series

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Embryo Politics: Implications for Reproductive Rights and Biotechnology

Organizations that describe themselves as “pro-life” are taking their battle well beyond opposition to abortion. Determined to protect all of what they call “pre-born life,” these groups are advocating sweeping legal protections not only for the fetus, but also for the embryo and even the fertilized egg.

Leaders of these organizations — often motivated by fundamentalist¹ or ultra-conservative religious beliefs — oppose emergency contraception and even ordinary birth control pills out of the belief (scientifically unproven) that their use might cause the destruction of a fertilized egg. They decry *in vitro* fertilization (IVF) as violating traditional religious concepts of “natural” reproduction and oppose pre-implantation genetic screening of IVF embryos because the discovery of genetic defects could lead to a decision not to implant an embryo. They also consider embryonic stem cell research and therapeutic cloning to be “pro-life issues.” Embryos, these groups argue, should not be used for research purposes, even when the resulting treatments could save lives and the embryos would otherwise be discarded by IVF clinics. Their opposition extends to research conducted using embryonic stem cells obtained from embryos created through therapeutic cloning, a process that does not require the joining of sperm and egg.

This paper will examine the infusion into state and federal public policies of fundamentalist religious beliefs about when personhood begins, noting that such policies do not reflect the diversity of Americans’ ethical or religious beliefs on this subject. The paper will then review emerging state and federal policies proposing to grant legal protections for embryos. Among the subjects to be explored are the adoption of state laws defining life as beginning at conception for the purposes of according legal protections; federal scientific research policy requiring that embryos be treated as subjects whose welfare must be considered; state legislative bans on embryonic stem cell research and all forms of cloning; and the proliferation of laws that permit health care practitioners and institutions (such as hospitals) to refuse to provide treatment or medications that, in their view, would lead to the destruction of an embryo or even a fertilized egg.

The paper will articulate the shared implications of these policy trends for reproductive rights and biomedical research. We will recommend that reproductive health advocates work together with bioethicists and medical researchers to ensure that fundamentalist religious perspectives about when personhood begins are not allowed to restrict patients’ access to reproductive health services or impede promising medical research. We will conclude by urging increased oversight of embryonic stem cell research to ensure that it is conducted in an ethical manner that ensures informed consent, safeguards the health of women choosing to donate eggs and makes resulting treatments equally available to all patients in need.

I

Introduction



By Lois Uttley, MPP, Ronnie Pawelko, JD,
and Rabbi Dennis Ross, MSW

Leaders of the Religious Right in the United States are campaigning to protect the earliest stages of potential human life: embryos and even fertilized eggs. While continuing their attempts to overturn *Roe v. Wade*, they are working to ban embryonic stem cell research and restrict new medical technologies that are allowing patient choices about reproduction where none existed before.

For example, an increasingly popular infertility treatment, *in vitro* fertilization (IVF), has now been followed by the development of a technique known as pre-implantation genetic diagnosis (PGD). Prospective parents can have their IVF embryos tested for devastating genetic diseases, such as Tay-Sachs, and choose not

to implant any embryos that show signs of the disease.

While this advance has been applauded by scientists and couples at risk of transmitting genetic diseases to their children, it has been met with dismay by groups such as the Colorado-based Focus on the Family, headed by Christian Right leader James Dobson, who equates discarding an embryo with “abortion at an earlier stage of life.”

Also contributing to this focus on the embryo has been the emergence of embryonic stem cell research using cells derived from leftover IVF embryos. This scientific development has highlighted the fact that thousands of extra frozen embryos have been left in fertility clinics by couples who have no intention of using them. Moreover, the development of so-called therapeutic cloning as an alternate means of producing embryonic stem cells for medical research has raised the issue of whether an embryo produced in a Petri dish without fertilization of an egg by

sperm could be considered a person being deserving of protection by “right to life” organizations. The Director of Education for the National Catholic Bioethics Center contended in a 2004 presentation at Albany Law School that, indeed, it would be. Describing how the nucleus of one of his own cells could be transferred into an unfertilized egg and cloned, Father Tadeusz Pacholczyk said the result would be his “identical twin brother.” Stem cell research, he said, would involve “strip mining him for his parts.”²

Some ultra-conservative religious leaders are also condemning the growing use of emergency contraception — particularly the dedicated EC product Plan B — by women who have had unprotected intercourse. EC, these opponents contend, is actually a form of “chemical abortion” if it works to cause the destruction of a fertilized egg, or zygote. (Such a mechanism of action is theorized, but scientifically unproven.)³

Leaders of the Religious Right in the United States are campaigning to protect the earliest stages of potential human life: embryos and even fertilized eggs.

As a result, Religious Right organizations are now advocating sweeping legal protections not only for the fetus, but also for the embryo (including the pre-implantation embryonic stages of zygote and blastocyst). They are actively opposing the use of emergency contraception and birth control pills. They also oppose assisted reproductive technology and pre-implantation genetic screening. Moreover, they consider embryonic stem cell research and therapeutic cloning to be “pro-life issues.” Embryos, these groups argue, should not be used for research purposes, even when the resulting treatments could save lives.

While the groups advocating these views might once have been dismissed as extremists unlikely to influence public policy, they have enjoyed a warm reception by the Bush administration, which considers the Christian Right an important part of its base of political support. In a satellite address from the White

House to a meeting of the Southern Baptist Convention in June of 2004, President Bush called on Congress to approve a “comprehensive” ban on human cloning — including research cloning — and declared, “Life is a creation of God, not a commodity to be exploited by man.”⁴

This paper will examine emerging state and federal policies proposing to grant legal protections for embryos. It will document the infusion into public policies of fundamentalist religious beliefs about when personhood begins, noting the wide diversity of religious views on this topic. Proposed and enacted policies to be examined include:

- State laws defining life as beginning at conception, for the purpose of according legal protections to this life;
- Federal scientific research policy requiring that embryos be treated as subjects whose welfare must be considered;
- State laws allowing pharmacists and/or other health care practitioners to refuse to dispense emergency contraception or ordinary birth control pills based on a religious or moral belief (scientifically unproven) that these pregnancy prevention measures are equivalent to abortion;

- State and federal policies restricting or prohibiting embryonic stem cell research on the grounds that embryos must be protected;
- State and federal policies prohibiting therapeutic cloning on the principle that life should not be created in order to be destroyed; and
- Federal grants by the U.S. Department of Health and Human Services to Christian organizations to promote embryo “adoption.”

The paper will articulate the implications of these policy trends for reproductive health services and biomedical research. Establishment of “personhood” rights for an embryo in one context (such as anti-cloning legislation) could create a climate of public opinion more receptive to protecting embryonic life in other contexts, such as when a woman is seeking reproductive health services, we will

While groups advocating these views might once have been dismissed as extremists unlikely to influence public policy, they have enjoyed a warm reception by the Bush administration.

argue. We will conclude with recommendations for ways that reproductive rights advocates can work together with bioethicists and medical researchers to ensure that ultra-conservative religious beliefs about when life begins are not allowed to restrict patients' access to reproductive health services or promising medical research. At the same time, we will urge increased oversight of such research, so that it is conducted in an ethical manner that ensures informed consent, safeguards the health of women choosing to donate eggs and makes resulting treatments equally available to all patients in need.

II

Focus on the embryo:

*Evidence of the
new strategy*

Conservative religious leaders and anti-choice groups increasingly are exhorting their members, supporters and legislative allies to propose and enact sweeping policies that define life as beginning at conception and establish “personhood” — with attendant legal protections — not only for the fetus, but also for the embryo, even in its earliest stages of development. In 2003 and 2004, they worked to limit or ban use of emergency contraception, assisted reproductive techniques, embryonic stem cell research and cloning. There is ample evidence of their intention to intensify this work in 2005 and beyond:

- In an August 2004 address in Lourdes, France, the late Pope John Paul II issued a worldwide appeal to respect life from “conception to its natural end.” In May 2005, his successor, Pope Benedict XVI, called on Italian bishops to defend “the sacredness of human life” by urging a boycott of an Italian referendum to remove from law a definition of life as beginning at conception. The referendum proposed to loosen restrictions on embryonic stem cell research and fertility treatment.⁵
- Links on the “Pro Life Activities” page of the U.S. Conference of Catholic Bishops website include, in addition to abortion-related topics, analysis and proposed actions concerning contraception, emergency contraception, cloning, embryo research, *in vitro* fertilization and stem cell research.⁶
- Christian fundamentalist groups are targeting contraception through websites such as the one operated by the Arizona-based Christian Answers Network, which asks, “Can birth control pills kill unborn babies?” and answers “A dirty, little secret in the pharmaceutical world is that the Pill if taken in a certain way can actually work AFTER conception by preventing the embryo from implanting on the uterine wall. In other words, the pill can cause the baby to die. This is simply abortion by another name.”⁷ Similarly, the website of Missionaries to the Preborn advises engaged and newlywed couples that if contraceptives work to prevent implantation of a fertilized egg on the lining of the womb, “the new pre-born baby starves to death and passes out of the mother’s body.”⁸
- Pharmacists for Life International is insisting on the right of pharmacists to refuse to dispense birth control pills and emergency contraception because they believe that when women use them, “the human embryonic person dies.”⁹
- Anti-choice groups are focusing attention on the fate of leftover IVF embryos and advocating protections against use of these embryos for research. For example, the ultra-conservative group Concerned Women for America suggests that “parents don’t want their ‘frozen’ embryos treated like research material or trash.”¹⁰

Richard Doerflinger, testifying in September 2004 on behalf of the U.S. Conference of Catholic Bishops before a Senate subcommittee on the topic of embryonic stem cell research, argued that the embryo is a human life worthy of legal protections. Some protections already exist, and more should be enacted, he said:

The principle that the embryo deserves recognition and respect as a member of the human family is ... already reflected in numerous areas of federal law. At every stage of development, the unborn child in the womb is protected by federal homicide laws as a separate victim when there is a violent attack upon his or her mother. That same child is recognized in federal health regulations as an eligible patient deserving prenatal care.

And of course, for the last eight years that same embryo has been protected, in much the same way as other human subjects, from being harmed or killed in federally funded research.¹¹

“The moral issue does not disappear just because the embryos are very small or because they are no longer wanted for reproductive purposes.”

– **Leon Kass,**
Chairman of the
President’s Council
on Bioethics

Doerflinger, the Catholic Bishops and anti-choice religious organizations have found support and encouragement for their views about when personhood begins in the statements and actions of the Bush administration. Leon R. Kass, chairman of the President’s Council on Bioethics and a fellow at the conservative American Enterprise Institute, cited the need to protect “nascent life” in an October 8, 2004, opinion piece¹² defending the administration’s policy on embryonic stem cell research:

Unlike its critics who see only “ideology,” the Bush policy recognizes the moral difficulty surrounding the research and upholds important moral values. Derivation of embryonic stem cells requires the deliberate destruction of 5- to 6-day-old human embryos. The moral issue does not disappear just

because the embryos are very small or because they are no longer wanted for reproductive purposes: Because they are living human embryos, destroying them is not a morally neutral act. Just as no society can afford to be callous to the needs of suffering humanity, none can afford to be cavalier about how it treats nascent human life.

III

The science

Stages of embryonic development

Science does not readily answer the question of whether embryos or fertilized eggs can be considered persons owed legal protections. Although it is true that every living human being began life as a fertilized egg, scientists have shown clearly that the fertilization of a human egg does not lead inevitably to the birth of a human being.

Human embryonic development ordinarily begins with fertilization of a human egg, or ovum, by sperm introduced through sexual intercourse. Fertilization cannot be termed a moment; it is instead a process that begins with the sperm breaking through the outer shell of the ovum. Over a several-hour period the sperm will enter the inner cytoplasm of the egg and the male and female DNA will fuse to form into a complete set of 46 chromosomes. At this point the fertilized egg is termed a zygote.¹³

Within 22 to 28 hours after the fertilization process begins, the zygote will divide into two cells. The zygote will then spend the next four to five days dividing and making its way down the fallopian tube. On the second day, the zygote will divide into four cells and on the third day into 16 cells, when it is called a morula.

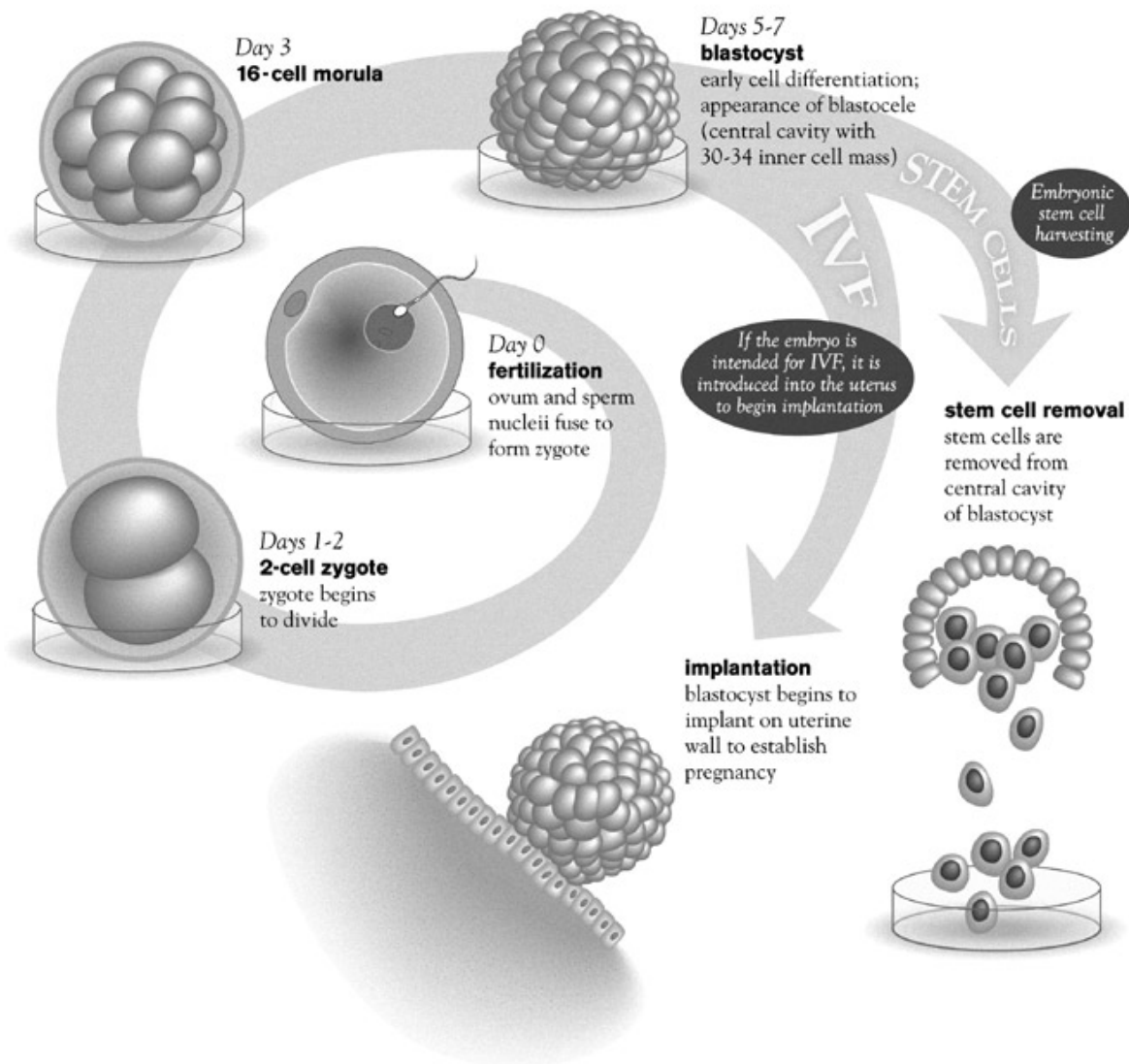
By the fifth day or sixth day, it has become a multi-cell blastocyst, with a distinct outer layer of cells which will become the placenta, and an inner mass of about 30 cells that will become the fetus.

At this point in the ordinary course of embryonic development, the blastocyst is ready to implant in the uterine wall. Pregnancy is considered to be established upon successful implantation (usually 7 to 12 days post-ovulation), according to the definition of pregnancy used by most professional medical organizations.¹⁴

At every stage along this path of early embryonic development, some pre-implantation embryos are lost due to natural causes. In testimony before the President's Council on Bioethics, Dr. John Opitz, Professor of Pediatrics, Human Genetics and Obstetrics/Gynecology at the University of Utah School of Medicine, estimated that more than 60 percent of all human eggs that are fertilized through intercourse die before implantation. Opitz said many of these failures are due to genetic errors that occur during early cell division. At conception "about

Stages of Embryonic Development

In Vitro Fertilization (IVF) Steps Leading to Embryonic Stem Cell Removal -or- Embryo Implantation



50 percent of all potential human beings have a chromosome abnormality, mostly a lethal chromosome abnormality,” Opitz testified.¹⁵

Even after successful implantation in the uterus, an embryo is not guaranteed smooth progress to eventual birth. About a third of established pregnancies fail after implantation, resulting in miscarriages, science writer Stephen S. Hall has explained, summarizing the scientific research. In fact, Hall has written, each time a human ovum is fertilized, there is only a 33 percent chance of the birth of a live baby.¹⁶

The high rate at which embryos are lost in the natural course of development, with no human interference, leads many scientists and ethicists to see them as *potential life*, as opposed to a form of human life that is equivalent to born humans. If society, and governmental policy, were to accept the concept that fertilized eggs are fully human persons deserving of all legal protections and respect owed to existing life, the end result might well be bans on contraception, emergency contraception and all stages of abortion.

If society were to accept that fertilized eggs are fully human persons deserving of legal protections, the result might be bans on contraception and all stages of abortion.

New questions raised by reproductive technology and biotechnology

Clarity on the issue of when human personhood begins has been made even more complex by the development of new reproductive technologies and biomedical research. The advent of *in vitro* fertilization has meant that the earliest stages of embryonic development now can take place in a laboratory, instead of inside a woman’s body. At about day 5 of development, an IVF-produced embryo can be transferred to the uterus in hopes that it will successfully implant and establish a pregnancy.

But not all IVF embryos are selected for transfer. Some are screened out by genetic testing (pre-implantation genetic diagnosis), while others simply are excess embryos, not needed by their donors. Such unused embryos remain frozen in infertility clinics, and often are

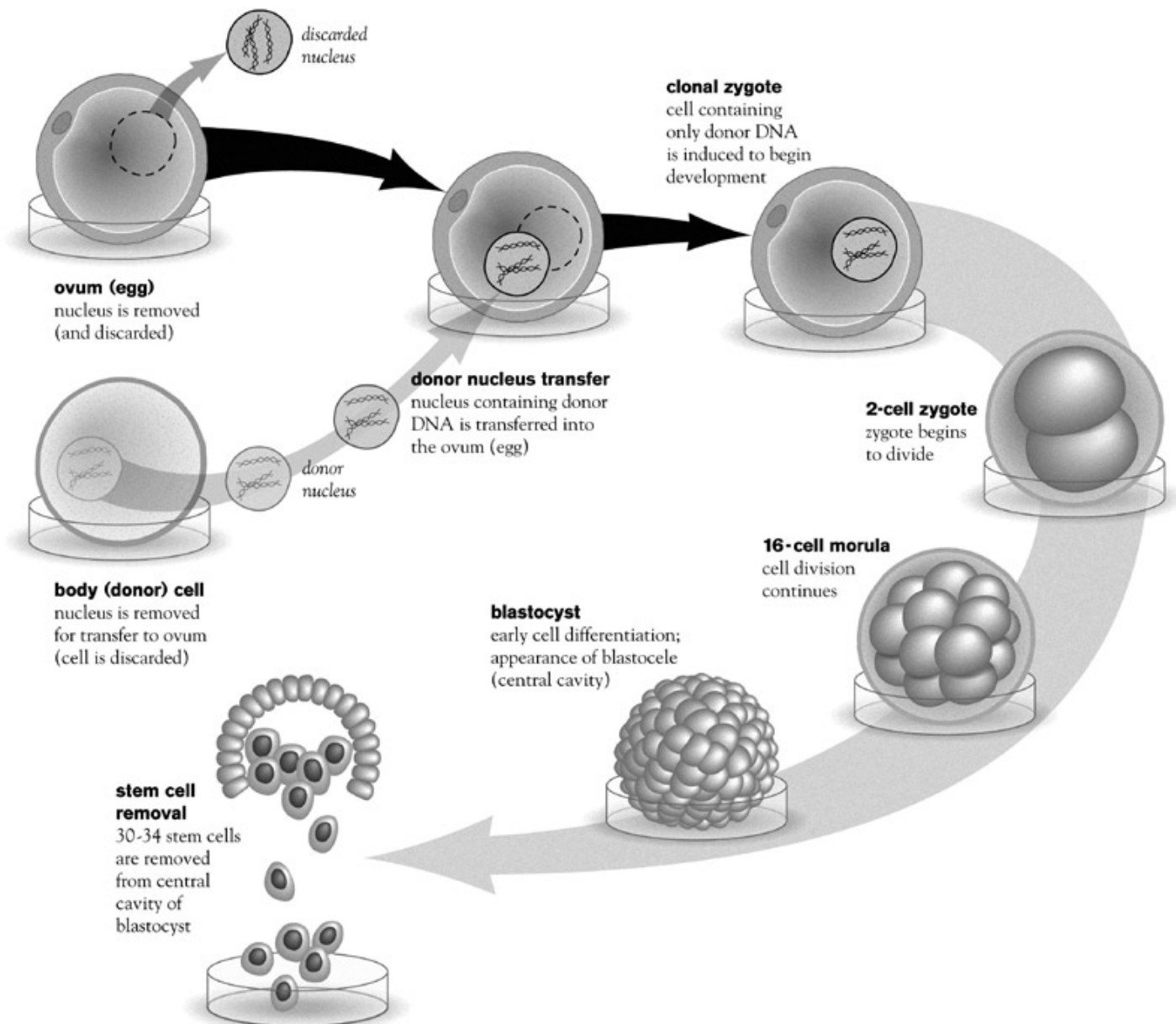
discarded after a period of years. Recently, these leftover embryos (there are an estimated 400,000 in U.S. laboratories¹⁷) have become the subject of intense public debate over whether they can be used to provide the embryonic stem cells needed for embryonic stem cell research.

Scientists obtain embryonic stem cells by removing the inner cell mass from embryos at about 5 to 7 days of development (the blastocyst stage). Embryonic stem cells can be cultured in a lab and can proliferate indefinitely. Scientists are interested in studying them because these cells are considered “pluripotent,” meaning that they have the potential to develop into virtually any kind of cell in the body.¹⁸ This property of embryonic stem cells has led scientists to hope that research will allow them to create nerve cells to treat spinal cord injuries, retinal cells to treat blindness, pancreatic islet cells to treat diabetes as well as treatments for a host of other diseases.¹⁹

The pluripotent quality of embryonic stem cells is also the reason why scientists maintain that the full potential of stem cell research cannot be explored using only adult stem cells, as has been suggested by opponents of embryonic stem cell research. Adult stem cells (sometimes referred to as somatic stem cells) are undifferentiated cells (cells that have not yet changed to become a specialized type of cell) that are found in very small numbers among differentiated cells in tissues of an already-born human being. Adult stem cells have the capacity to become any of the major specialized cell types of the tissue in which they are found, and appear to exist as a sort of ready-made repair kit for that tissue. Scientists have successfully developed ways to use adult blood-forming stem cells in bone marrow transplants and are experimenting with ways to use adult stem cells in generating treatments for specific diseases and conditions.²⁰ While this research holds promise, scientists and groups such as the Coalition for the Advancement of

Stages of Therapeutic Cloning

Methods for Creating Embryonic Stem Cells
in the Laboratory



Medical Research note that adult stem cells cannot be grown in cell culture as easily as can embryonic stem cells and can generate only the cell types of their tissue of origin. Research should proceed using both adult and embryonic stem cells, these scientists say.

The removal of embryonic stem cells from a blastocyst, however, causes the destruction of the blastocyst, and raises a number of ethical and public policy questions, including these:

Is an embryo left over in an IVF clinic an emerging human person entitled to legal protection and thus owed a “right to life”? Does it make a difference that the embryo exists frozen in a laboratory and is not growing in a womb? What are the rights of the donors of the egg and sperm in determining the future of the embryo? How should an embryo’s potential for future development be balanced against the potential to use its embryonic stem cells to develop treatments for already-born human beings suffering from such diseases as Parkinson’s and juvenile diabetes?

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The ethical and public policy analysis of embryonic stem cell research became even more complex when scientists discovered that human embryos could be produced through a cloning process known as Somatic Cell Nuclear Transfer (SCNT). Scientists remove the nucleus from an unfertilized egg, replacing it with the material from the nucleus of an adult somatic cell (for example a skin, heart or nerve cell), and stimulate the cell so it begins to grow. This procedure produces a genetically identical clone of the person whose somatic cell was inserted into the egg. After about 5 to 7 days of the embryo’s development, scientists can remove embryonic stem cells for research, destroying the embryo.²¹

South Korean scientists announced in May 2005 that they had produced 11 human embryo clones of injured or sick patients and harvested individualized stem cells. Such cells might be used to treat patients, such as by repairing damaged heart muscle or brain tissue, without fear of rejection because the stem cells created would be genetically identical to the patient.²²

In the public debate over cloning, scientists have tended to differentiate between reproductive cloning and research or therapeutic cloning. The processes for both reproductive and therapeutic cloning are the same, but the intent is different. Reproductive cloning would be done with the intent of producing an exact duplicate of an animal (which has been done, most famously with the birth of Dolly the sheep) or a person (which has not been done, and may not ever be possible in primates). Therapeutic cloning is done for the purpose of scientific study or to develop treatments for disease, not with the intent of creating a new person.

Most scientists say that there are too many risks and ethical questions concerning human reproductive cloning and agree it should not be done. The Coalition for the Advancement of Medical Research — a coalition of patient organizations, universities, scientific societies, foundations and individuals — says it opposes

reproductive cloning and implantation, which aims to create human beings by cloning human embryos.”²³ Laws that ban reproductive cloning have won the support of both progressive and conservative political leaders and ethicists. Nearly all of the state laws concerning cloning that have been enacted or proposed ban reproductive cloning.²⁴

The current moral and political debate revolves, instead, around whether therapeutic cloning should also be banned. The debate includes such questions as these:

Is an embryo created through cloning a human person entitled to legal protection? Does it make a difference that this embryo was produced not by the union of sperm and egg, but rather by asexual reproduction, and that it was never intended to grow into a new baby? Is it right to create life only to destroy it? Are we “playing God” when we do so?

IV

Diversity of religious and ethical viewpoints

*Not all organized
religious groups view
embryos as persons*

Although scientists can explain the processes that lead to the birth of a new human being, they cannot answer many of the questions that are at the root of the religious and political debate over the legal and moral status of an embryo. During a September 2004 Congressional hearing on embryonic stem cell research, anti-choice Republican Senator Sam Brownback repeatedly pressed Dr. George Daley, a Harvard researcher, to say when life begins and how old a human embryo would have to be before he would consider research using that embryo to be unethical.

“I think there would be consensus among scientists that it would be impossible to define that time,” Daley replied. “But I don’t think it’s at the age of the blastocyst.” When a frustrated Senator Brownback pressed him again, Daley said, “I can’t hug an embryo. I think we (scientists) are comfortable with using the earliest microscopic ball of cells.”²⁵

Public policymakers often turn to religious teachings or ethical principles in trying to establish when personhood begins. Because of the political climate fostered by the Bush administration, the views of conservative or fundamentalist religious leaders have often received more public attention in recent debate.

The contemporary Catholic Church teaches that personhood, which occurs when the soul enters the body, begins at the moment of conception.²⁶ It is this belief that leads the church to oppose embryonic stem cell research. In his 2004 presentation at Albany Law School, Father Tadeuz Pacholczyk, Director of Education for the National Catholic Bioethics Center, began by reminding listeners that “Every person in this room was once an embryo. We all have humble origins.” He went on to warn that in order to do embryonic stem cell research, “you must violate that earliest human being.”

Typical of Catholic Church responses to embryonic stem cell research is this statement from the New York State Catholic Conference, the statewide public policy arm of New York’s Catholic Bishops: “The Catholic Conference views such technology as an alarming assault on the dignity and value of human life. Human cloning and embryonic stem cell research reduces the precious gift of human life to a manufactured product that can be discarded at will. Human embryos become a means to an end rather than an end in and of themselves.”²⁷

Similarly, a minister from the Davis Christian Assembly Church in California contended at an October 2004 press conference that research using human

embryos is akin to Nazi experimentation on concentration camp inmates. “It’s a human embryo we want to slice and dice,” said Jonathan Zachariou. “It has parallels to Nazi Germany in a sense because we are saying the ends justify the means.”²⁸

However, a Harvard University philosopher, Michael J. Sandel, called this type of argument “flawed” in a 2004 article in the *New England Journal of Medicine*:²⁹

The fact that every person began life as an embryo does not prove that embryos are persons. Consider an analogy: although every oak tree was once an acorn, it does not follow that acorns are oak trees, or that I should treat the loss of an acorn eaten

by a squirrel in my front yard as the same kind of loss as the death of an oak tree felled by a storm. Despite their developmental continuity, acorns and oak trees are different kinds of things.

So are human embryos and human beings. Sentient creatures make claims on us that nonsentient ones do not; beings capable of experience and consciousness make higher claims still.

Human life develops by degrees.

Bonnie Steinbock, a bioethicist in the Department of Philosophy at the University at Albany and a fellow of the Hastings Center, also cites sentience as a key factor in evaluating the morality of the potential use of embryos for research. Steinbock asks the following questions: “How ought we to think about human embryos? Are they due the respect owed to any human person? Do they have the same human rights?”

“Although every oak tree was once an acorn, it does not follow that acorns are oak trees.”

– Harvard philosopher
Michael J. Sandel

While affirming that embryos deserve respect and have “moral value” because of their potential to become human beings, she argues that embryos do not yet qualify as human beings with human rights, and thus do not have “moral status.”

If sentience is both a necessary and sufficient condition of moral status, then, since embryos are non-sentient, embryos lack moral status... It is clear that very early embryos, which do not have even a rudimentary nervous system, cannot feel pain, be hurt or made to suffer. Admittedly, they can be killed, but killing an embryo does not have the moral significance that killing a person or an animal has. Now this claim undoubtedly will strike many people as odd. If the embryo is alive, then surely it has a life to lose? But this is just what I am denying. It seems to me that unless there is conscious awareness of some kind, a being does not have a life to lose... The use of a spermicide kills millions of sperm. Surely it would be absurd to speak of all of them as losing their lives or being deprived of their lives (much less that the loss of their lives provides us with some reason not to use this form of contraception). This suggests that it is not biological life that matters, but rather conscious existence.³⁰

Steinbock suggests that the moral value of an embryo can be shown by according it “profound respect” and limiting its use to purposes that are not “trivial or frivolous.” When a couple undergoing *in vitro* fertilization creates more embryos than are needed to ensure the successful birth of a baby, they are deliberately creating surplus embryos, which eventually may be discarded. But this use of embryos is “for a valuable purpose, to help people have a family,” Steinbock says. The use of embryos for medical research that could produce treatments or cures should also be considered appropriate, she argues: “Embryonic stem cell research is not frivolous and it’s not trivial.”

Not all organized religious groups view embryos as persons. The Mormon Church, for example, teaches that personhood begins when the spirit unites with the physical body, a event that does not necessarily occur at the time of conception.³¹ Orrin Hatch, a senator from the overwhelmingly Mormon state of Utah, has argued that leftover embryos in IVF clinics have a different moral status than embryos that are growing in a woman's body. Although he is staunchly opposed to abortion, he supports embryonic stem cell research based on this distinction.

A number of religious organizations strongly support all forms of stem cell research, including those that cause the destruction of an embryo. They point to religious teachings of when life begins, the status and treatment of the fetus and the embryo, and the urgent need to respond to the compelling requirements of individuals suffering from life-threatening and life-altering conditions.

Major branches of Judaism, including Orthodoxy, while viewing the embryo as worthy of respect, respond to the pressing need to seek healing and support all forms of stem cell research. In the Christian tradition,

a pro-embryonic stem cell research argument rises from the mandate to do whatever is possible to reduce human suffering. Unitarian Universalist religious leaders offer a faith-based personal autonomy argument, supported by the mandate to encourage scientific inquiry.

For example, the President of the Unitarian Universalist Association of Congregations has endorsed embryonic stem cell research using leftover IVF embryos.³² Rev. William G. Sinkford stressed the longstanding Unitarian Universalist commitment to uphold the right of the individual to make personal choices in all areas, including reproduction and the disposition of embryos. He also emphasized scientific inquiry as an active avowal of the Unitarian Universalist commitment to social responsibility. As he considered the possibility of treating or curing devastating human medical conditions, he concluded that "as a compassionate faith, we should welcome the development of this infant science" of stem cell research. Because "I do not consider human embryos to be people, and because Unitarian Universalists insist that reproduction is a personal and private matter, I believe that there should be no ban on embryonic

stem cell research," he said. However, he stated disapproval of therapeutic cloning: "No human embryos should be created specifically for stem cell experimentation, thus turning human life and human reproduction into a commodity."

The General Synod of the United Church of Christ adopted a resolution on embryonic stem cell research in 2001 recognizing how "Jesus set an example, by his ministry, of healing and caring for the sick and disabled, challenging us to follow his example... Whereas many scientists believe that embryonic stem cell research could relieve suffering and possibly cure patients... the United Church of Christ supports federally-funded embryonic stem cell research within ethically sound guidelines."³³

"Whereas many scientists believe that embryonic stem cell research could relieve suffering and possibly cure patients, the United Church of Christ supports federally-funded embryonic stem cell research within ethically sound guidelines."

— **Resolution of the General Synod of the United Church of Christ, 2002**

Other Christian denominations that have adopted resolutions or policies expressing support for embryonic stem cell research conducted within ethical guidelines include the Episcopal Church, which specifically stated “it is morally acceptable, in principle, to engage in experimental somatic cell human gene transfer for therapeutic purposes, in an effort to treat or prevent disease.”³⁴ The church’s official statement begins by stating “God has entrusted us to use our medical and other capabilities to work toward healing and restoring creation where it has gone awry.”

When considering the ravages of such conditions as Parkinson’s disease and juvenile diabetes, the Rabbinic Assembly of Conservative Judaism in 2003³⁵ approved

a statement calling upon its members to “publicly advocate for the use of human embryonic ... stem cell research” as an “act of *hesed* (compassion) which may lead to *pikuah nefesh* (saving of life).” To the Conservative rabbinate, though the embryo carries the potential for life, the embryo remains subordinate to the needs of a living person whose life is in jeopardy.

Leaders of Orthodox Judaism — the Union of Orthodox Congregations of America and the Rabbinical Council of America — sent an open letter to President Bush in 2001, expressing “support for federal funding for embryonic stem cell research” using leftover IVF embryos because of the “great life saving potential.” Returning to the traditional Jewish teachings, the rabbis observed that the “isolated fertilized egg does not enjoy the full status of personhood and its attendant protections.” The letter cautioned, however, that “We think it another matter to create embryos *ab initio* for the sole purpose of conducting this form of research.”³⁶

In 2003, the Union for Reform Judaism (URJ) called for “research using both adult and embryonic stem cells, in addition to the existing lines currently approved for funding by the United States and Canadian governments.” The URJ supported therapeutic cloning while firmly opposing “efforts to restrict or penalize scientists,

clinicians or patients for participating in stem cell research and SCNT (therapeutic cloning) technology for therapeutic purposes.”³⁷

While leading Muslim scholars have rejected human cloning because it “contradicts Islamic legislation and is prohibited in all its forms,” they have been supportive of *in vitro* fertilization to help infertile married couples have children. When there are surplus IVF embryos created that would otherwise be destroyed, and when the donor couple have given their consent, at least some Muslim leaders have supported use of these embryos for stem cell research. The Islamic Institute cited the “purposes and higher causes of the *shari’ah* (Islamic law)” in stating, “we believe it is a societal obligation to perform research on these extra embryos instead of discarding them.”³⁸

The Rabbinic Assembly of Conservative Judaism called upon its members to “publicly advocate for the use of human embryonic stem cell research” as an “act of *hesed* (compassion) which may lead to *pikuah nefesh* (saving of life).”

V

Emerging legal protections for embryos

Incrementally establishing “personhood” for embryos

The question of when life begins is often confused or used interchangeably with the questions of “When does personhood begin?” and “When do legal rights and protections apply?” Longstanding public policy affords newborn infants the same legal rights and protections given to all humans.³⁹ A fetus in the third trimester of development is treated differently than one that is in the first two trimesters under the *Roe v. Wade* Supreme Court decision. While opponents of legalized abortion have worked for years to try to overturn *Roe v. Wade* by establishing personhood rights for fetuses, the latest public policy debate is over whether any rights or protections should be afforded to embryos, even in the early pre-implantation stages of zygote and blastocyst.

Spurred by anti-choice groups and fundamentalist religious leaders, state lawmakers and Congressional representatives are proposing laws and policies creating legal recognition or protections for embryos. In some instances, these proposals already have won adoption. Significantly, these laws do not directly target abortion, but instead seek to establish “personhood” for embryos and fetuses, potentially laying the groundwork for new limitations on abortion.

Samuel B. Casey, head of the anti-choice Christian Legal Society, laid out the strategy in a 2003 interview with the *Los Angeles Times*, explaining that “in as many areas as we can, we want to put on the books that the embryo is a person... That sets the stage for a jurist to acknowledge that human beings at any stage of development deserve protection — even protection that would trump a woman’s interest in terminating a pregnancy.”⁴⁰

Among examples of these laws and policies are:

- A Louisiana law regulating assisted reproduction defines an *in vitro* embryo as a juridical person with nearly all the same rights as infants. Any disputes over disposition of an *in vitro* embryo must be resolved by what is in the best interests of the embryo.⁴¹
- An incremental protection for embryos is seen in the charter of the HHS Federal Secretary’s Advisory Committee on Human Research Protections.

A 2002 revision to the charter named embryos as subjects whose welfare needs to be considered when doing research on human subjects.⁴²

- Recent versions of so-called “unborn victims of violence acts” — legislation recognizing the fetus as a separate crime victim when a pregnant woman is criminally attacked — have used expansive definitions of pregnancy. These fetal protections have been enacted into law at the federal level and in many states.

Abortion opponents have been attempting to overturn or circumvent *Roe v. Wade* ever since the decision legalizing abortion in the United States was announced in 1973.

One of their strategies has been to create recognition of fetuses and even embryos as persons in order to eliminate one of the underpinnings of the *Roe* decision: that the fetus is not recognized in U.S. law as a person.

“In as many areas as we can, we want to put on the books that the embryo is a person.”

– Samuel B. Casey,
head of the Christian
Legal Society

A law passed by Missouri in 1986 was an example of early attempts to limit abortion rights by establishing legal recognition for fetuses within the law. The Missouri law, which said in its preamble, “The life of each human being begins at conception,” was part of a broad piece of legislation placing limits on abortion.

Many aspects of the Missouri law were challenged, including the preamble to the law, and the case worked its way to the U.S. Supreme Court. The Court refused to rule on the constitutionality of the preamble language as it had not been used to restrict any activities, and could be viewed as a reflection of the state’s policy favoring childbirth over abortion.⁴³ Such measures cannot, consistent with the

Constitution, function as a ban on abortion. But states can define embryos or fetuses as persons for other purposes, including criminal liability and tort causes of action, such as wrongful death, creating implications for abortion and embryonic stem cell research.

In February of 2005, an Illinois judge ruled that under the state’s Wrongful Death Act, which makes it a crime if a fetus is killed in an accident or assault, a couple can file a wrongful death lawsuit against a fertility clinic that accidentally discarded their frozen embryo. Judge Jeffrey Lawrence II of Cook County, IL, said that “a pre-embryo is a human being... whether or not it is implanted in its mother’s womb.” The judge relied on a state law holding that “an unborn child is a human being from the time of conception and is, therefore, a legal person.” Citing that law, Judge Lawrence wrote: “philosophers and theologians may debate, but there is no doubt in the mind of the Illinois Legislature when life begins. It begins at conception.” Joseph Scheidler, Director of the Pro-Life Action League, voiced his agreement and praise for the ruling: “That’s scientifically correct: Life begins at fertilization, not implantation.”⁴⁴

A Northwestern University law professor, Victor Rosenbaum, predicted the decision would be overturned, but noted its implications, “The problems with defining a

pre-implantation egg as a human being are monumental. Suddenly anyone who damaged a fertilized egg would be open to a wrongful death suit.”⁴⁵ ACLU of Illinois Executive Director Colleen Connell predicted the ruling could potentially chill physicians’ willingness to engage in reproductive medicine.

If the decision were upheld, “it would threaten not only emerging stem cell research, but research on fertility, too,” warned Laurie Zoloth, a bioethics professor at Northwestern University in Chicago and a member of the board of directors of the International Society of Stem Cell Research. “Embryos in a Petri dish, if left alone, will not become a born child. The law should take this very real difference into account — and up until now, certainly did.”⁴⁶

An Illinois judge ruled in 2005 that a couple can file a wrongful death lawsuit against a fertility clinic that accidentally discarded their frozen embryo because “a pre-embryo is a human being... whether or not it is implanted in the womb.”

Fetal assault bills define embryos as crime victims

Among the most popular current methods of creating fetal rights are so-called “Unborn Victims of Violence” bills. These are laws or proposals that treat the fetus, embryo or fertilized egg as a separate crime victim. These laws include exemptions for abortion and consensual acts of the mother, allowing proponents to claim the measures do not affect abortion rights. Some states have laws that apply only after viability, while others have passed or proposed laws that define personhood (for the purpose of being a crime victim) as beginning at fertilization — a time when a woman is not yet considered pregnant from a medical standpoint, and is unlikely to even be aware of the embryo’s existence.

According to the National Right to Life Committee, 18 states provide “complete coverage” by recognizing “unborn children” as victims “throughout the period of pre-natal development.”⁴⁷ Most of the laws that were enacted before 2003 use vague definitions and apply to “unborn children at any stage of prenatal development.” Prior to 2003, Pennsylvania was the only state to have passed an “unborn victims” law defining an unborn child as “an individual organism of the species *Homo sapiens* from fertilization until live birth.”

The much-publicized December 2002 murder of Laci Peterson, who was pregnant at the time of her death, gave anti-choice activists the impetus to push for passage of new unborn victims laws. Many of these more recent versions have included language declaring life as beginning at conception or fertilization. For example, in 2003, Texas redefined “individual” for the purpose of wrongful death civil actions and criminal penalties to include an “unborn child at every stage of gestation from fertilization until birth.” In 2004, Mississippi amended its criminal assault and homicide statutes to define as a human being against whom crimes can be committed, “an unborn child at every stage of gestation from conception until live birth....”⁴⁸

Kentucky also amended its criminal statutes in 2004 to create a new crime of fetal homicide, creating penalties for acts that result in the death of an “unborn child,” which is defined as “a member of the species *homo sapiens* in utero from conception onward, without regard to age, health, or condition of dependency.”⁴⁹

The federal Unborn Victims of Violence Act signed into law by President Bush in March of 2004 defines an unborn child as “a child in utero, and the term ‘child in utero’

or ‘child, who is in utero’ means a member of the species *homo sapiens*, at any stage of development, who is carried in the womb.”⁵⁰ Although sponsors of the legislation never clarified whether an embryo or fertilized egg could be considered a ‘child in utero,’ many opponents to the legislation felt the language could be and was intended to be interpreted in this manner.⁵¹

The murder of Laci Peterson, who was pregnant at the time of her death, gave anti-choice activists the impetus for passage of new “Unborn Victims of Violence” laws and these more recent versions declare life as beginning at conception or fertilization.

At least 30 states now have laws that allow criminal charges for acts that result in the death of a fetus.⁵² Not all of these laws recognize the fetus or embryo as a crime victim separate from the woman who carries it. Some states have rejected attempts to recognize the fetus as a person and have instead addressed violence against pregnant women by creating enhanced penalties for criminal acts that cause a woman to miscarry.

Bills to grant embryos human rights

Although most state legislatures are using fetal assault legislation in their attempts to give embryos legal rights, a few states have tried a more direct, although far less common approach. South Dakota legislators in 2004 passed legislation that granted fetuses, embryos and even fertilized eggs the same rights under the state's Bill of Rights as are provided for human beings already born.

Provisions in the legislation included a finding "that the life of a human being begins when the ovum is fertilized by male sperm."⁵³ The legislation also banned abortion in most circumstances. The bill was vetoed by the state's governor, who was concerned that the state would be left with no abortion restrictions if a court enjoined or struck down the law because the state's existing laws were repealed in the bill.

In Virginia in early 2005, State Delegate Mark L. Cole, a Fredericksburg Republican, introduced a bill that states the constitutional right to "enjoyment of life" is "vested in each born and pre-born human being from the moment of fertilization." The measure was touted by anti-choice delegates as part of a campaign to get legislators on record on abortion-related issues.⁵⁴

Pharmacists seek refusal rights to protect embryonic "preborn clients"

With the 40th anniversary of the *Griswold v. Connecticut* Supreme Court decision legalizing contraception occurring in 2005, some Christian Right and conservative Catholic groups have stepped up their campaign against

contraception. They claim that contraception can cause the "abortion" of a fertilized egg, although medical science does not support that theory. According to the latest research, emergency contraception works by inhibiting ovulation or fertilization, not by interfering with the implantation of a fertilized egg.⁵⁵ Mainstream medical associations hold that contraception (including emergency contraception) prevents pregnancy, rather than ending it.⁵⁶ A number of reproductive health groups, including the Planned Parenthood Federation of America, have conducted public education campaigns to address confusion between emergency contraception and medication abortion, the "abortion pill," which does end an already-established pregnancy if used within 63 days after a woman's last menstruation.⁵⁷

**The South Dakota
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Although contraception is legal and widely-used in the United States, “Griswold did not require pharmacies to stock birth-control pills or contraceptive devices, or compel pharmacists to dispense them,” a correspondent for the *National Catholic Register* wrote in February of 2005.⁵⁸ Pharmacists for Life International is lobbying for adoption of laws that would give pharmacists the legal right to refuse to dispense birth control or emergency contraception out of concern for the life of their “preborn clients,” meaning the fertilized egg. The group reports on its website that “increasing pressures from chains, hospitals and anti-life minded executives bears negatively on those pharmacists who have a semblance of scruples to protect the lives of their preborn clients and the health of the latter’s moms.”⁵⁹

The president of the organization, which claims 1,500 members, is Karen Bauer, who was fired in 1996 for refusing to refill a birth control prescription at a Cincinnati Kmart. She told the *Washington Post* that “Our group was founded with the idea of returning pharmacy to a healing-only profession. What’s been going on is the use of medication to stop human life. That violates the ideal of the Hippocratic oath that medical practitioners should do no harm.”⁶⁰

“This is a very big issue that’s just beginning to surface,” said Steven H. Aden of the Christian Legal Society’s Center for Law and Religious Freedom, in an interview with the *Washington Post* about the Center’s work defending such objecting pharmacists. “More and more pharmacists are becoming aware of their right to conscientiously refuse to pass objectionable medications across the counter. We are on the very front edge of a wave that’s going to break not too far down the line.”⁶¹

Recently-reported instances of such pharmacist objections have included a pharmacist in Texas who refused to give contraceptives to a rape victim and a Wisconsin pharmacist who not only refused to fill a birth control prescription, but also refused to return the prescription, transfer it to another pharmacy or refer the patient to another pharmacy.⁶² The patient filed a complaint with the Wisconsin Department of Regulation and Licensing. An administrative law judge considering the complaint issued an opinion finding the pharmacist’s actions “fell far short of satisfying the standard of care” pharmacists are expected to adhere to under the state’s code of ethics for pharmacists.⁶³

Anti-choice lawmakers have responded to such reports with legislation that, instead of protecting patients’ ability to obtain prescribed medications, explicitly allows phar-

macists to refuse to fill prescriptions for religious or moral reasons. In 2004, Mississippi became the third state — joining Arkansas and South Dakota — to enact a law that explicitly allows pharmacists to refuse to fill prescriptions because of religious or moral objections.⁶⁴ A fourth state, Georgia, has adopted

Pharmacists for Life is lobbying for laws that would give pharmacists the legal right to refuse to dispense birth control or emergency contraception out of concern for the life of their “preborn clients,” meaning fertilized eggs.

a regulation that may permit a pharmacy to refuse to dispense medication, according to the National Women’s Law Center, which also reported that 13 states were considering pharmacist refusal legislation in 2005.⁶⁵

In early 2005, pharmacist refusal legislation was approved by the Arizona legislature, but vetoed by Gov. Janet Napolitano. The measure would have allowed pharmacists, health professionals and any of their employees to refuse to dispense emergency contraception and other prescription contraceptives based on moral objections.⁶⁶ The Senate sponsor of the bill, Dean Martin, said the proposed law was necessary to address his belief that “what was originally done through invasive surgery (abortion) is now done through medication.”⁶⁷ The Arizona

Catholic Conference, supporting the measure, said it believes birth control pills are equivalent to “abortifacient contraceptives.” The measure contained no requirement that objecting pharmacists even refer women to other pharmacies where they could get their contraceptive prescriptions filled. Ron Johnson, a lobbyist for the Arizona Catholic Conference said the lack of a referral requirement was appropriate because “people of faith” believe referring a woman to a place where she can get a pill “to end her pregnancy” is the same as handing her the pills.⁶⁸

In Georgia, freshman state Senator Jim Whitehead, R-Evans, introduced a bill in February 2005 to allow pharmacists to refuse to dispense emergency contraception and be immune from lawsuits or disciplinary action by their employers. “We’re just trying to protect some

pharmacists who feel the way we do as far as having to issue the contraceptive pill — that have Christian values that want to stand up against abortion,” Whitehead said.⁶⁹

A bill to allow pharmacists to refuse to dispense medications to which they have moral or religious opposition was introduced in Wisconsin in the 2005 legislative session. According to Rep. Carol Owens, it is a response to the case of a pharmacist who lost his job after refusing to fill or transfer a prescription for contraception.⁷⁰ A 2004 bill that was introduced by Owens, but did not pass, received the support of Pro-Life Wisconsin, which said the bill “simply recognizes that employers cannot force pharmacists to directly participate in what they know to be the killing of another person.”⁷¹

News of this growing campaign of pharmacist refusals has prompted media coverage and editorials in a number of national and local newspapers and broadcast outlets. The western Massachusetts *Berkshire Eagle* was among the many newspapers expressing outrage. In an April 18 editorial, the paper called the Pharmacists for Life initiative a “disturbing new wrinkle in the religious right’s campaign to impose their narrow morality on everybody else.” Although pharmacists “are expected to exercise judgment...the decisions of the patient in consultation with her doctor must be paramount,” the editorial said, concluding that “anything else is an intrusion into the patient’s privacy and moral universe.”⁷²

Pharmacists for Life’s campaign is “a disturbing new wrinkle in the religious right’s campaign to impose their narrow morality on everybody else.”

— *Berkshire Eagle*

Reproductive health groups and pro-choice policymakers have been responding to the onslaught of pharmacist refusal legislation by promoting counter-measures requiring pharmacists to fill contraceptive prescriptions. On the federal level, several bills have been introduced to require pharmacies to fill prescriptions without delay or, in some cases, to refer a patient elsewhere.⁷³ Four states — California, Missouri, New Jersey and West Virginia — have introduced such legislation.

The proposed California measure, which was approved by the State Senate Health Committee in April 2005, would require an objecting pharmacist to notify the pharmacy in writing in advance and would obligate the pharmacy to make a “reasonable accommodation” for the pharmacist, such as having another pharmacist on duty at the same time to fill contraceptive prescriptions or referring the patient to another pharmacy that could fill the prescription quickly. “This measure respects the rights of those who have moral, religious or ethical objections to dispensing contraceptives but, at the same time, ensures that exercising those beliefs will not interfere with a woman’s right to promptly obtain emergency contraceptives or other lawful medicines,” said bill sponsor Sen. Deborah Ortiz.⁷⁴

In Illinois, Governor Rod Blagojevich issued an emergency regulation requiring those pharmacies in the state that stock contraceptives to make arrangements to fill prescriptions for contraceptives “without delay.” Violators would risk losing their pharmacy licenses. The rule does not, however, require that a pharmacy actually stock contraceptives.

But two conservative law centers with Religious Right sponsorship already have filed lawsuits challenging the emergency regulation. The Christian Legal Society’s Center for Law and Religious Freedom (CLRF) sued on behalf of David Scimio, a pharmacist at a Chicago grocery store. According to CLRF, Scimio is a Christian and “believes that human life is sacred, that life begins at the moment of conception, and that the destruction of a fertilized human ovum ends a human life.” As a result,

Scimio refuses to dispense emergency contraceptives, CLRF said.⁷⁵ The American Center for Law and Justice⁷⁶ also filed a lawsuit alleging that the emergency rule violates the Illinois Health Care Right of Conscience Act, the Illinois Religious Freedom Restoration Act, the Illinois Human Rights Act and Title VII of the Civil Rights Act of 1964.

A spokesman for the Illinois Governor’s office responded to the lawsuits by declaring that “we see this as another attempt to stand in the way of women’s health care,” and pledging that the governor “will fight to see that women are treated with dignity at the pharmacy counter.”⁷⁷

“We see this as another attempt to stand in the way of women’s health care.”

— Illinois Governor’s Office

VI

Embryonic stem cell research prompts new policy battles

A right to life for frozen embryos?

In vitro fertilization is “morally unacceptable because it violates the child’s right to be conceived in a natural way... and produces ‘excess’ embryonic children who will be treated as trash or scientific material.”

—American Life League

The emergence of scientific research using embryonic stem cells obtained from either leftover IVF embryos or embryos created through therapeutic cloning has prompted a new wave of legislative activity focusing on protecting the embryo. One area of anti-choice advocacy focuses on asserting a right to life for frozen embryos in IVF labs.

The late actor and stem cell activist Christopher Reeve commented on this topic in an interview with CNN before his death: “In fertility clinics, every day of the week, fertilized embryos that will not be implanted in the womb are headed for the garbage. Now, if you believe that life begins the moment that an egg is fertilized, then it would seem to me that there would be an outrage that these unwanted fertilized embryos are being thrown in the garbage. And yet I do not see, or I’m not aware, that there’s ever been legislation introduced to shut down fertility clinics.”⁷⁸

In fact, that is a goal of the Catholic-affiliated American Life League, for which in vitro fertilization is “morally unacceptable in itself because it violates the child’s right to be conceived in a natural way by an act of love between his parents, requires intrinsically evil acts in the process of ‘production,’ violates the child’s dignity in reducing her to a ‘byproduct’ of a scientist’s mechanized laboratory procedure, and produces ‘excess’ embryonic children who will be treated as trash or ‘scientific material.’”

The league’s website asks, “Do parents ever have a legitimate right to ‘donate’ their children to science when they know that the result of such cruel charity is imminent death for the babies?” The League’s position is that an embryo is a “human person,” and therefore “it is always and in every case morally wrong to intentionally kill an innocent human being at any point in life, including the embryonic stage of development.”⁷⁹

The Bush administration’s 2001 policy announcement on embryonic stem cell research attempted to address such concerns of the Religious Right by banning use of federal funding for research that involves new instances of destruction of IVF embryos. Only embryonic stem cell lines already in existence as of the date of the announcement (August 9, 2001) could be used. In his speech announcing the decision, Bush noted that these stem cell lines “were created from embryos that have already been destroyed,” and said he would allow federal funds to be used for research on these lines, “where the life-and-death decision has already been made.”

Even that compromise did not satisfy groups like the American Life League, whose President Judie Brown stated, “Bush was aiming for a Solomon image, but came closer to looking like Salome. Basically, his decision says, ‘if babies are already dead, the U.S. has no problem funding research on their body parts.’” Other leaders of ultraconservative and Religious Right organizations, including the Rev. Jerry Falwell and a spokesman for the American Center for Law and Justice, were more cautious about criticizing the decision publicly. The National Right to Life Committee said the President “acted to save the lives he could,”

while Franciscan Brother Daniel P. Sulmasy of the Bioethics Institute at Catholic-affiliated New York Medical College said Bush had come up with a position that is “the best we could have hoped for under the circumstances.”

HHS program to promote “adoption” of frozen embryos

In July 2002, the Bush administration announced the availability of nearly \$1 million in federal funds to promote the “adoption” of surplus frozen embryos. Republican Arlen Specter of Pennsylvania had inserted the funds into the appropriations bill for the U.S. Department of Health and Human Services (HHS) in what one critic described as “a political maneuver to get him some cover on the embryonic stem cell issue.”⁸⁰ Specter, a public advocate of embryonic stem cell research, survived a bruising 2004 re-election primary challenge from Conservative Republican Rep. Pat Toomey, who had the endorsement of the National Right to Life Committee.⁸¹

The committee assembled by the HHS Office of Women’s Health and Office of Population Affairs to review grant proposals for the embryo adoption program included Dana Serrano Chisholm, Executive Director of the Women’s Resource Network, which describes itself as “a network of pro-life organizations.” She described her experience as a grant reviewer and the importance of the program in a column posted on-line⁸² in which she said she was “excited about the new ‘crisis pregnancy center for embryos’” that can help to save “a baby that is here at no fault of its own.” She reported that the committee had decided to award \$506,000 to Nightlife Christian Adoption Services in 2002 to develop an Embryo Adoption Awareness program.

Nightlife Christian Adoption Services runs the Snowflakes Embryo Adoption Program, which had won the praise of *National Review* contributing editor Deroy Murdock. In a sharp retort to the comments of pro-embryonic stem cell research advocates like Christopher Reeve, Murdock wrote that “discussions of ‘surplus embryos’ that will be ‘discarded anyway’ are cruelly dismissive of Micro-

scopic-Americans.”⁸³ The name Snowflakes Adoption program bears a striking similarity to one line in President Bush’s August 9, 2001, speech on embryonic stem cell research: “Like a snowflake, each of these embryos is unique, with the unique genetic potential of an individual human being.”

The Snowflakes Embryo Adoption Program used the HHS funds to develop an Embryo Adoption Awareness Campaign, including a special website (www.embryoadooption.com) explaining that adoption of frozen embryos — done with the permission of the egg and sperm donors — is “allowing other infertile couples the experience of pregnancy and birth.”⁸⁴ Nightlife Christian Adoption Services received another \$329,000 HHS grant in 2004 to continue promotion of embryo adoptions.⁸⁵

Also receiving federal funding to promote embryo adoption was the National Embryo Donation Center (NEDC) in Knoxville, TN, which was awarded a \$304,000 grant, according to an October 26, 2004, announcement from the

“Discussions of ‘surplus embryos’ that will be discarded anyway are cruelly dismissive of Microscopic-Americans.”

—*National Review*
contributor
Deroy Murdock

Christian Medical Association. CMA (which describes itself as “America’s largest faith-based organization for doctors,” announced it will assist with the embryo program, along with the Baptist Health System Foundation and Bethany Christian Services.⁸⁶

The political usefulness of the HHS embryo adoption program was demonstrated in May 2005, when President Bush appeared at the White House with babies wearing T-shirts saying “former embryo” or “this embryo was not discarded.” The children and their families were all clients of the Snowflakes Embryo Adoption Program and were at the White House to help the President oppose any loosening of federal restrictions on embryonic stem cell research. “I think appearing with Snowflakes kids is a potent symbol, and I think it illustrates the truth, which is that the embryo is just that child at an earlier stage of development,” said Bill Saunders, director of the Family Research Council’s Center for Human Life and Bioethics.⁸⁷

VII

The politics of embryonic stem cell research

Scientists
and patients
battle religious
fundamentalists

Many scientists were unhappy with President Bush’s 2001 decision limiting federal funding of embryonic stem cell research to research conducted using stem cell lines created before August 2001. They complained that the number of viable existing stem cell lines actually available for research was only about a third of the 60 to 70 lines that President Bush had cited.⁸⁸ More recently, California scientists reported that even the available lines were tainted by the mouse “feeder cells” on which they had been grown and would provoke an immune response that would destroy the stem cells if they were implanted in a human being. New stem cell lines must be created without use of mouse or other types of biological tissue, the scientists said.⁸⁹

Scientists and the research institutions with which they were associated began to lobby for relaxation of the federal funding restrictions through such organizations as the Coalition for the Advancement of Medical Research (CAMR). CAMR specifically advocates the use of federal funding for research using fertilized eggs developed for in vitro fertilization.⁹⁰ Also unhappy were the many groups representing constituencies eager for treatments that might be developed for juvenile diabetes, Parkinson’s disease, spinal cord injuries and other medical conditions through embryonic stem cell research.

“We will not be able to deliver the cures promised by stem cell research unless we expand current federal policy.”

— Mary Tyler Moore

Actress Mary Tyler Moore, International Chair of the Juvenile Diabetes Research Foundation, went to Capitol Hill in April of 2004 with several members of Congress to release a letter co-signed by more than 200 members of Congress urging President Bush to relax the restrictions on federally-funded stem cell research. In a press statement, she declared herself to be “pro-life” and in favor of embryonic stem cell research because “We will not be able to deliver the cures promised by stem cell research unless we expand current federal policy.” Addressing the ethical questions raised by the research, she said:

I know this is a difficult issue for many. And none of us should minimize how hard it is or how important it is for us, together, to come to terms with the balance of pros and cons. We are, after all, dealing with life in its most vulnerable stages — at its nascence and when it is challenged by deadly illness. Like President Bush, I am pro-life. But unlike the President, I feel we show special reverence for the potential life that resides

in excess IVF embryos by allowing them to save lives in the future rather than watch them be discarded as medical waste without that option. . . . Because of the great potential of stem cell research, allowing couples to donate unused fertilized eggs is much like the life-giving choice a mother whose child has died tragically in an automobile accident makes when donating his organs to save another mother's child.⁹¹

The politics of embryonic stem cell research are being waged at both the federal and state level. Democratic nominee John Kerry made lifting of the federal restrictions a major issue in his Presidential campaign in 2004, criticizing George Bush for favoring “ideology over science.” The Democratic national convention at which Kerry was nominated featured a prime time speech by former Republican President Ronald Reagan’s son Ron, who urged an “Apollo style” national scientific initiative to investigate the potential for embryonic stem cell research

to produce treatments for a wide variety of diseases, including Alzheimer’s, from which his father suffered before his death. “It does not follow that the theology of a few should be allowed to forestall the health and well-being of the many,” Reagan said in his speech.⁹² In an interview with the Dateline NBC program, Reagan argued that:

I don't think that many people, even evangelical Christians, who are faced with the choice of saving of a life of a child and preserving a collection of undifferentiated cells, would flip a coin. They would save the child. They would see that there is a distinction between a living, breathing child — with a mind, with memories, with hopes, with a family and friends — and this bundle of cells that has no mind, no consciousness, feels no pain, is not a human being. There is a difference.⁹³

But President Bush, pressured by the Religious Right to ban all embryonic stem cell research and cloning, held firm to his 2001 policy and won re-election. In his 2005 State of the Union address, he said “I will work with Congress to ensure that human embryos are not created for experimentation or grown for body parts and that human life is never bought or sold as a commodity.”⁹⁴

President Bush’s political supporters said his electoral victory demonstrated that his policies on stem cell research have voters’ support. Wendy Wright, senior policy director Concerned Women of America, (which opposes both reproductive rights and embryonic stem cell research) commented that “Moral values was a strong premise for many people’s vote, and that should give Congressmen pause to look at the public policies they’re backing and assess them against moral values.”⁹⁵

Undeterred, a bipartisan group of U.S. Senators has introduced a 2005 version of proposed legislation to expand federal funding of embryonic stem cell research. The sponsors range from liberal Democrats such as Edward Kennedy of Massachusetts to conservative Republicans like Orrin Hatch of Utah, who told the Reuters News Service that “As I travel across my home state of Utah, more and more Utahns, whether they are pro-life or not, come up to me and say ‘Orrin, we’re with you on this. You’re doing the right thing,’” While staunchly opposed to abortion, Hatch said “I have never believed that life begins in a Petri dish.”⁹⁶

“It does not follow that the theology of a few should be allowed to forestall the health and well-being of many.”

— **Ron Reagan, in a 2004 speech to the Democratic National Convention advocating an Apollo-style national initiative to investigate stem cell research**

In May 2005, the House of Representatives passed by a 238-194 margin a measure to loosen restrictions on embryonic stem cell research, despite a vow by President Bush to veto the bill. Bush said he does not want to use federal funding “to destroy life in order to hopefully find a cure for terrible disease,” adding, “I stand strong on that, to the point where I’ll veto the bill as it now exists.”⁹⁷ In July 2005, Senate Majority Leader Bill Frist broke with the President and said he would support loosening federal restrictions on stem cell research to allow the use of leftover IVF embryos that would otherwise be discarded.

Meanwhile, a great deal of policy action has been occurring in the states. “If the federal government doesn’t act, we’re going to have a patchwork of state laws — that’s already happening,” said California Senator Diane Feinstein, one of the sponsors of the federal bill to expand stem cell research funding.⁹⁸

Religiously-motivated opponents of embryonic stem cell research and therapeutic cloning have prevailed in five states—Arkansas, Iowa, Michigan, North Dakota and South Dakota— that have banned both reproductive cloning (intended to produce a new baby) and therapeutic cloning (intended to produce embryonic stem cells for research). South Dakota’s 2004 law bans human cloning, stem cell research and somatic nuclear cell transfer.⁹⁹

Some of the pending legislative proposals to ban human cloning have been introduced with provisions that equate fetuses and embryos with born people. A bill introduced in Missouri is probably the most explicit example. The proposed bill would make it a felony to “knowingly clone a human being or participate in cloning a human being.” The bill would also ban the use of public funds and facilities to clone humans. The proposed bill requires the laws of the state to “be interpreted and construed to acknowledge on behalf of a cloned human being at every stage of development, all the rights, privileges, and immunities available to other persons, citizens, and residents of this state”¹⁰⁰

A similar proposal that became law in Virginia bans the cloning of humans, which is defined as “the creation of or attempt to create a human being by transferring the nucleus from a human cell from whatever source into an oocyte from which the nucleus has been removed.” This language appears to recognize a cloned zygote as a human being.

Proponents of embryonic stem cell research have also seen legislative success. As of June 2005, three states — California, New Jersey and Massachusetts — had enacted laws sanctioning embryonic stem cell research using either embryos produced through IVF or through therapeutic cloning. All three states banned reproductive cloning. The measures were enacted to reassure researchers and the biomedical industry that the research would be permitted in the future, even though it had not specifically been outlawed in the past.

New Jersey’s law allows research involving “human embryonic stem cells, human embryonic germ cells, and human adult stem cells from any source, including somatic cell nuclear transplantation.” Reproductive cloning to

“If the federal government doesn’t act, we’re going to have a patchwork of state laws — that’s already happening.”

– **U.S. Senator
Diane Feinstein
of California**

create a human being was declared a crime punishable by up to 20 years in prison.¹⁰¹ Then-Governor James E. McGreevey signed the bill in January 2004 with actor and stem cell activist Christopher Reeve (since deceased) at his side.

In Massachusetts, the state Legislature in June 2005 overrode Gov. Mitt Romney's veto of a similar measure, making that state the third to officially sanction embryonic stem cell research. The Governor is a Mormon who says he supports research using adult stem cells or leftover frozen embryos from fertility clinics, but opposes the creation of new embryos using therapeutic cloning.¹⁰² The measure changes previous state law requiring scientists conducting stem cell research to get the approval of the local district attorney.

The new law removes that requirement, but gives the state Health Department some regulatory oversight and creates a 15-member biomedical research advisory council to hold public meetings and make recommendations on such matters as whether women should be paid for donating their eggs. Charles Jennings, executive director of the Harvard Stem Cell Institute, hailed the pending measure as an important reassurance to the research community.¹⁰³

The next step for proponents of embryonic stem cell research on the state level came in New Jersey, which became the first state to appropriate its own funds to create a stem cell institute. The state's new Acting Governor, Richard Codey, followed up on the initiative of his predecessor by announcing

in January 2005 a \$380 million plan for the institute, including investing \$150 million in unused bond funds and asking voters to approve a \$230 million bond issue.¹⁰⁴ But New Jersey was outdone by California, where voters — at the urging of Governor Arnold Schwarzenegger — approved Proposition 71 in 2004, authorizing the state to sell \$3 billion in bonds and distribute up to \$300 million a year to encourage stem cell research in that state.¹⁰⁵

Embryonic stem cell research and cloning are hot topics in 2005 state legislative sessions. As of March 2, 2005, there were 20 state legislatures with pending bills that addressed issues related to cloning and stem cell research, including embryonic stem cell research. Several states had proposals that would ban reproductive cloning, while allowing or remaining silent about the permissibility of therapeutic cloning. These states include Connecticut, Kentucky, Massachusetts, Minnesota, Nebraska, New York, Rhode Island, Texas and Washington.

Meanwhile, conservative legislators in four states — Mississippi, New York, Tennessee and Washington — have introduced identical legislation to ban all forms of cloning. These measures reflect a broader agenda than just regulating scientific research. They would ban cloning and also act to create legal recognition of embryos as human beings. The legislation, which would prohibit “the development of new human beings at the embryonic stage of life,” notes in the findings section that “all human embryos are simultaneously human beings.”¹⁰⁶

Other states have proposals that would encourage research on adult stem cells over embryonic stem cell research through incentives or disincentives such as tax credits or targeted funding for research that does not involve destruction of human embryos. For example, a proposal pending in Arizona would not allow

Embryonic stem cell research and cloning are hot topics in 2005 legislative sessions.

small business tax credits to be used by businesses that “engage in any activities that involve human cloning or embryonic stem cell research.”¹⁰⁷ A proposal to create a tax credit to offset the costs of research done with adult stem cells is pending in Kentucky, while Connecticut has a proposal that would create a stream of state funding to conduct research on stem cells obtained from umbilical cord blood.

“When it comes to stem cell research, let us follow doctors, not doctrines.”

– NYS Assembly Speaker
Sheldon Silver

Meanwhile, New York, Wisconsin and Connecticut all had proposals pending in 2005 legislative sessions to create their own state-based stem cell initiatives using state funds or borrowing. Connecticut’s governor, M. Jodi Rell, was expected to sign its bill, passed by the Legislature in May 2005, to provide \$100 million in state funding over 10 years.¹⁰⁸ In New York, State Assembly Speaker Sheldon Silver backed a bill to appropriate \$100 million in 2005 and \$200 million in 2006 for a state institute stem cell institute. In a direct reproach to the New York

State Catholic Conference and New York Christian Coalition, who oppose the research, Silver said: “When it comes to stem cell research, let us follow doctors, not doctrines.”¹⁰⁹

The battle over embryonic stem cell research and cloning has also ascended to the United Nations, with the Bush administration joining the Vatican and a number of predominantly Catholic countries in urging a global ban on all cloning, both reproductive and therapeutic. In March of 2005, unable to reach agreement on such a binding treaty to ban all cloning, the United Nations approved a non-binding resolution calling on nations to ban human cloning.¹¹⁰

VIII

Shared implications for reproductive rights and biotechnology

“Personhood rights” for embryos would affect both

There would seem to be obvious reasons why advocates for reproductive rights should be working actively with proponents of embryonic stem cell research, assisted reproductive technology and pre-implantation genetic diagnosis. Among these reasons are:

- Most (although certainly not all) opponents of embryonic stem cell research and therapeutic cloning are the same conservatives and religious fundamentalists who oppose reproductive rights.
- These forces are seeking to establish “personhood” rights and legal protections for embryos — with serious implications for reproductive rights, pre-implantation genetic diagnosis and embryonic stem cell research.
- Religious health care doctrine — already used to ban or limit reproductive services, *in vitro* fertilization and genetic counseling of pregnant women at many religiously-affiliated hospitals — is also likely to ban the provision of treatments derived from embryonic stem cell research at those same hospitals.

National reproductive health organizations have been studying embryonic stem cell research and cloning for years, having recognized the potential impact of stem cell and cloning policy on reproductive rights. The Planned Parenthood Federation of America (PPFA) has sponsored educational sessions on these issues for leadership of its local affiliates nationwide, and has published articles in its *Choice!* Magazine about the issue with titles such as “Science Trumps Emotion in

Debate Over Human Life.”¹¹¹ A PPFA special report, “The War On Women: A Pernicious Web,” includes discussion of Bush administration initiatives that have been aimed at granting personhood and legal rights to fetuses and embryos.¹¹² NARAL ProChoice America has developed and posted on its website briefing papers entitled, “Bush Administration Stem Cell Policy Hamstrings Vital Health Research” and “The Bush Administration: Putting Far Right Ideology Before Science and Our Health.”¹¹³ The National Organization for Women (NOW) has regularly included information about stem cell research in its legislative updates, under the heading of “reproductive rights.”¹¹⁴

Two of the leading sources of political news and analysis for reproductive rights activists and health professionals — the *Guttmacher Report on Public Policy*, published by the Alan Guttmacher Institute, and the *Kaiser Reproductive Health Report*, published by the Kaiser Family Foundation — have been covering the issues for some time.

“Women’s health activists are often split on the issue of whether therapeutic cloning offers women more benefits or risks.”

– **Boston Women’s Health Collective**

Reproductive rights advocates’ interest in these issues has not necessarily translated into unanimous support for embryonic stem cell research or therapeutic cloning. The Boston Women’s Health Collective, publishers of the popular women’s health book *Our Bodies, Ourselves*, posted a statement on cloning on its website in 2003 noting that “While most women’s groups, as well as most Americans, agree that reproductive cloning is unethical, therapeutic cloning raises more complex issues. Women’s health activists are often split on the issue of whether therapeutic cloning offers women more benefits or risks.” The Collective has called for a five-year moratorium on therapeutic cloning, citing such concerns as potential

health risks from the use of drugs to hyperstimulate women’s ovaries to produce such eggs. Collective Executive Director Judy Norsigian has testified before Congress, expressing concerns not only about egg donation, but also about the potential for research on human embryo cloning to lead to the development of “designer babies.”¹¹⁵

The most significant split in the feminist and reproductive rights communities over the issue of embryonic stem cell research occurred in the campaigning for and against Proposition 71 in California, the measure authorizing \$3 billion in state funding for stem cell research. Some pro-choice groups joined the pro-Proposition 71 California Research and Cures Coalition, including the Planned Parenthood affiliates of California, Catholics for a Free Choice, Hadassah and the Grey Panthers.¹¹⁶

But the proposal was opposed by a group calling itself the Pro-Choice Alliance. In a press release, the alliance said it was “composed of prominent state, national, and international academics, scientists, women’s health professionals, and advocates who support embryonic stem cell research, but oppose Prop 71, because of its lack of adequate scientific, medical, economic, and ethical control over the research.”¹¹⁷ Alliance co-founder and bioethics historian Tina Stevens, Ph.D., said, “Press coverage on Proposition 71 has portrayed the issue of stem cell research as a conflict between the religious right and secular liberals.

This dichotomous view of the controversy ignores a growing critique from pro-choice, liberal and progressive constituents. Our critique DOES support most embryo stem cell research — in stark contrast to the Catholic Church and other conservatives — but it also points out egregious aspects of Prop 71 that do not preserve the interests of the vast majority of the public.”

Other progressive and liberal organizations have raised concerns about the implications of cloning and other biotechnologies, including the Center for Genetics and Society. The Center, based in Oakland, CA, has been sponsoring symposia on such topics as “Inequality, Democracy and the New Human Biotechnologies.”¹¹⁸ The Center has developed analyses suggesting that “stem cell research entails unique and serious risks. The creation of clonal embryos for research purposes would increase the likelihood of their being used for reproductive purposes. The need for large quantities of women’s eggs would create economic pressures on women to become egg providers, and pose risks to their health. The development of stem cell and research cloning techniques could open the door to a new, high-tech eugenics.”¹¹⁹

For their part, leaders in the biomedical research community and spokespeople for patient groups advocating embryonic stem cell research have been wary of any public association with reproductive rights organizations, for fear of further inflaming abortion opponents. It is notable that in Ron Reagan’s speech to the Democratic National Convention in 2004, he took pains to distance his comments from the abortion debate by pointing out that “No fetal tissue is involved in this process. No fetuses are created, none destroyed. This all happens in the laboratory at the cellular level.”¹²⁰

Despite the qualms on both sides, it is inevitable that the two issues — reproductive rights and biogenetic research — will be linked in the political arena. Acting New Jersey Governor Richard Codey wrote an op-ed piece in April 2003 reflecting on the linkage of embryonic stem cell research and the abortion controversy:

Scientists argue that any real progress in the field of stem-cell research will require the use of embryonic stem cells, as stem cells in this form lack limitations posed by adult stem cells. However, the use of embryonic stem cells has become highly politicized, with anti-abortion advocates claiming the destruction of embryos for research purposes is tantamount

*to abortion. Despite this opinion, it is a reality that fertility clinics in our state and across the country are left with a significant number of unused embryos following successful fertility treatments. Why, then, not utilize these embryos in an attempt to prevent suffering and sustain life?*¹²¹

In fact, advocates for both causes have much to teach each other. Many reproductive rights activists, for example, are wary about being associated with the

Leaders in the biomedical research community and spokespeople for patient groups advocating embryonic stem cell research have been wary of any public association with reproductive rights organizations, for fear of further inflaming abortion opponents.

cloning issue because of lack of education about the distinction between therapeutic cloning for research purposes and reproductive cloning intended to produce a human being. New York State Assembly Health Committee Chair Richard Gottfried, a pro-choice Manhattan Democrat and co-sponsor of a bill to authorize therapeutic cloning while banning reproductive cloning in New York, has referred to what he describes as “the yuk factor” associated with the idea of cloned human beings.¹²²

Advocates for embryonic stem cell research and therapeutic cloning, on the other hand, could benefit from the vast experience of reproductive health advocates in arguing for patients’ rights to medical care unrestricted by fundamentalist doctrine, while avoiding criticizing particular religious beliefs. The late actor and stem cell activist Christopher Reeve learned the need for this careful approach to religion in 2001, when in a newspaper interview, he criticized President Bush for consulting with Catholic leaders before announcing new federal policy on stem cell research.

Reeve was forced to issue a statement clarifying that his remarks “were not intended to disparage the Catholic Church or Catholics in any way” and stating that “I wish to apologize not only to the Catholic Church, but also to the faithful of any religion who may have been offended.”¹²³ His further statement that “freedom of religion is a basic principle of our society” and “I would never criticize anyone for being a practicing Catholic,” echoed similar statements made for years by such reproductive rights and justice groups as Catholics for a Free Choice, the Religious Coalition for Reproductive Choice and the MergerWatch Project.

Advocates for embryonic stem cell research could benefit, as well, from the extensive research that has been conducted by reproductive rights groups on the beliefs and activities of Religious Right organizations. Planned Parenthood, NARAL Pro-Choice America and other leading reproductive rights organizations also regularly track the introduction and progress of proposed legislation that would grant personhood rights and legal protections to embryos.

The third major stakeholder in any policy discussions about the moral or legal status of embryos is the community of patients utilizing assisted reproductive technologies, such as *in vitro* fertilization (IVF), and pre-implantation genetic diagnosis. Couples using IVF to create embryos for potential implantation would be directly affected by any new policies governing the disposition of such embryos or granting them human rights. As a result, both the American Fertility Association (AFA) and RESOLVE, the National Infertility Association, have been active in advocacy to protect the rights of patients to determine the future of embryos they create.

Advocates for embryonic stem cell research could benefit from reproductive rights advocates’ experience in arguing for patients’ rights to medical care unrestricted by fundamentalist doctrine, while avoiding criticizing particular religious beliefs.

AFA has adopted a position statement that “supports a couple’s right to choose what to do with their remaining frozen embryos — keep them for a future attempt at conception, donate them to another infertile couple, donate them to research or destroy them.”¹²⁴ RESOLVE’s position statement on embryo donation is similar, stating that: “RESOLVE supports a couple’s right to choose what to do with their remaining frozen embryos -- keep them for a future attempt at conception,

donate them to another infertile couple, donate them to research or destroy them.”¹²⁵ Both organizations use the term “donation” to refer to the gift of a surplus frozen embryo by a donor couple to a couple seeking to implant the embryo and produce a child. The two organizations use the term “adoption” to refer to the adoption of an already-born child.

Both the AFA and RESOLVE support embryonic stem cell research and therapeutic cloning, while endorsing a prohibition on reproductive cloning, which RESOLVE describes as “at this time...unsafe, irresponsible and unethical.” However, the positions of the two organizations allow for a time when science might make human reproductive cloning possible for couples struggling with infertility, and suggest that any ban on reproductive cloning contain a sunset provision allowing for re-examination of the policy as science progresses.¹²⁶

AFA leadership clearly has recognized the implications of conservative and Religious Right attempts to grant human rights to embryos. In a press statement issued on

February 10, 2005, the AFA criticized an Illinois judge’s ruling that an IVF laboratory’s mistaken disposal of a couple’s frozen embryos could be addressed through a “wrongful death” lawsuit by the couple. The AFA, the release stated, “takes a different view and recognizes embryos created during IVF as only carrying the potential for human life. Not all embryos transferred to the uterus are carried to term or become babies. The Centers for Disease Control and Prevention report that approximately only a quarter of embryo transfers are successful. In their existing form in the laboratory, embryos are not yet viable and should not be considered a human being.”

AFA Executive Director Pamela Madsen warned that, “Elevating an embryo to the status of a living and breathing child has implications for issues of choice and our ability to have children. This judge’s ruling is an affront to reproductive rights and could place limits on the treatment options available for individuals using IVF.” In the future, she wondered, “Will we still have control over our own embryos as patients do today? Will we be allowed to donate, cryopreserve, and thaw without intent to transfer?”¹²⁷

RESOLVE’s website discusses the organization’s concerns about President Bush’s appointees to the President’s Council on Bioethics, all of whom it describes as “known social conservatives.” Council Chair Leon Kass is described as “a vocal critic of ART (assisted reproductive technologies) and other biomedical technologies.”¹²⁸ In comments submitted to the Council in April 2003, RESOLVE’s

“Elevating an embryo to the status of a living and breathing child has implications for issues of choice and our ability to have children.”

– Pamela Madsen,
American Fertility
Association
Executive Director

Acting Executive Director, Bonnie Gilbert, explained the group's interest in embryonic stem cell research and cloning:

RESOLVE believes that while human embryos at any stage are worthy of special respect and consideration, most of them will never be capable of giving rise to a baby. Stem cells are derived from human embryos developed for in vitro fertilization that are in excess of the infertile couple's need. If these excess cells are not used for research or offered to other infertile couples (both are ethical options) they will be discarded. Nearly half of infertile couples say they would like to see some good come from their biological tissue that would otherwise become medical waste and feel that use of these cells in research to help save lives is extremely important. That is why RESOLVE is involved in the current debate about stem cell research and cloning.

Representatives of RESOLVE were so alarmed by some of the Council's draft recommendations that they sought and received a private meeting with Kass and his staff in October 2003. In a follow-up letter¹²⁹ summarizing their concerns, RESOLVE cited several troublesome proposals the Council had been considering, including:

- New reporting requirements that RESOLVE believed would “lead to a governmental data base of infertility patients and their children” and would represent “undesirable governmental intrusion into the private and constitutionally protected sphere of procreation.”
- A plan to track women's and couple's untransferred embryos, information which RESOLVE said it could foresee “being used to the detriment of patients in an anti-ART campaign.”
- A proposal that RESOLVE feared would extend to embryos the “human subjects protections” already required for adult infertility patients participating in clinical trials. Such protections could “call into question something as commonplace and advantageous to treatment as embryo cryopreservation, since some embryos may be damaged by the freeze-thaw process,” RESOLVE warned, saying that “such an outcome could halt fertility treatment in its tracks.”

“The only result we can see of a law commanding doctors to treat the microscopic embryo as ‘patient’ is a not-so-subtle conferring of ‘human status’ on embryos.”

– RESOLVE

- A proposed requirement that infertility physicians “treat children-to-be (embryos) as patients.” At infertility clinics, where the goal of treatment is to produce a baby, “the interests of the doctor, patient and embryo (to the extent one might impute interests to an embryo) are already aligned,” RESOLVE representatives said. “We cannot see what is added by directing doctors to treat microscopic embryos as ‘patients’... What change in behavior is sought? Are physicians to undertake an oath of loyalty to the microscopic embryo? Seek its informed consent? The concept is dubious... The only result we can see of a law commanding doctors to treat the microscopic embryo as a ‘patient’ is a not-so-subtle conferring of ‘human status’ on embryos.”

The Council's report, *Reproduction and Responsibility: The Regulation of New Biotechnologies*, issued several months later in March of 2004, did not appear to carry forward the proposals to which RESOLVE had most strenuously objected.

The Council’s findings included the observation that “there is no comprehensive, uniform and enforceable mechanism for data collection, monitoring or oversight regarding the use and disposition of *in vitro* embryos in the context of clinical practice or research,” but the recommended actions did not include assembling a database of such embryos for tracking purposes. Moreover, the idea that infertility physicians should treat embryos as patients did not appear to have been preserved. Instead, the document recommended that infertility practitioners should “treat the child born with the aid of assisted reproductive procedures as a patient.”¹³⁰

Clearly, the two major organizations representing patients utilizing fertility treatments have assessed and taken direct action to address the potential threats to their members from conservative and Religious Right efforts to grant personhood status to embryos and limit the ability of couples to donate their surplus frozen embryos for research.

IX

Recommendations

Sharing information and strategies

Is it possible that advocates for reproductive rights, assisted reproductive technology and embryonic stem cell research could all work together in a unified effort to address the Religious Right’s “embryo politics”?

Initially, the task may seem a difficult one, given the biomedical community’s fear of abortion politics, as well as some reproductive rights advocates’ concerns about being associated with human cloning or seeming to endorse medical research that could harm women or fail to meet principles of equity and justice in health care.

The third major stakeholder group, the infertility associations, are actively advocating for couples’ ability to donate surplus embryos to stem cell research, and thus have ties with the biomedical research community and patient groups seeking treatments from stem cell research. Less clear is how receptive the infertility groups may be to working side-by-side with reproductive rights organizations in opposing the establishment of personhood rights for embryos. Although their shared interests are obvious, their advocacy strategies may differ and the juxtaposition of abortion rights with infertility treatment may be challenging for some in each group.

Yet, if the obstacles to collaboration could be overcome, there would be compelling reasons for all of these health care advocates to work together to monitor and oppose:

- Legislation or policies that define life as beginning at conception for the purpose of granting legal protections or rights;
- Policies that grant special status or “human subjects” research protections to embryos;
- Laws that seek to ban all forms of embryonic stem cell research and/or cloning based on the concept of “personhood” status for embryos;
- Proposals for government registering and tracking of the status or disposition of IVF embryos.

If the obstacles to collaboration could be overcome, there would be compelling reasons for these health care advocates to work together.

- Legislation or policies granting broad “refusal rights” for health care practitioners, allowing them to refuse to serve their patients if doing so would violate the practitioner’s religious or moral beliefs about when life or personhood begins.

Such efforts might begin with behind-the-scenes exchanges of information and strategies, as a prelude to more public collaborations. Educational exchanges would also be productive. An example was the session at held at the 2004 annual conference of the American Public Health Association in Washington, D.C., entitled “Defining Personhood: Implications for Reproductive Rights and Biogenetic Research,” at which an early version of this paper was presented. Papers were presented by a representative from Johns Hopkins’ Genetics and Public Policy Center, a legal scholar from a Jesuit law school, a legal ethicist affiliated with the UCLA School of Public Health, a legal advocate for low-income people, a prominent New York lawmaker who is both pro-choice and a sponsor of legislation to authorize embryonic stem cell research and a reproductive rights advocate active in opposing religiously-based restrictions to health care access.

The Johns Hopkins Genetics and Public Policy Center has been active in sponsoring research, policy analysis and educational events to promote shared examination of reproductive genetics. The Center sponsored 2002 and 2004

surveys of public awareness, attitudes and beliefs about in vitro fertilization, genetic testing, preimplantation genetic diagnosis, genetic engineering and cloning, as well as a follow-up series of focus groups studies in five different states.¹³¹ In 2004, the Center also sponsored a series of “Genetic Town Halls” in six American cities to give people a chance to learn more about the technology and issues and hear contrasting views from experts. The Center’s current projects include sponsoring research by a University of California, San Diego, sociologist into the views of 180 members of various religious congregations about reproductive genetics.

Also active in such efforts has been the Washington-based Reproductive Health Technologies Project, which describes its focus as being on “issues where science, technology, politics, and the interests of women converge — and often clash.” The project’s website¹³² includes a nuanced statement on cloning, endorsing the use of pre-implantation embryos for research, opposing human reproductive cloning and calling for greater federal or state oversight of such research, including protection of patients’ right to informed consent.

Need for a progressive bioethics agenda

With a pro-Religious Right White House in place for another four years, and Congress in the hands of conservative Republicans, a group of “influential” conservatives is reportedly at work drafting a “bold and plausible offensive bioethics agenda” that would succeed in banning human cloning and limiting research involving human embryos, according to the *Washington Post*.¹³³

A group of influential conservatives is reportedly at work drafting a bold offensive bioethics agenda.

The group, which is reported to include Leon Kass, chair of the President's Council on Bioethics, has produced a draft document obtained by the newspaper, declaring that: "We have today an administration and a Congress as friendly to human life and human dignity as we are likely to have for many years to come. It would be tragic if we failed to take advantage of this rare opportunity to enact significant bans on some of the most egregious biotechnical practices."

According to the newspaper, the Conservative group is critical of anti-choice Sen. Sam Brownback, a Kansas Republican, for pursuing what the group describes as a failed strategy of trying to ban therapeutic cloning by linking it to a ban on reproductive cloning and playing to "nearly universal repugnance elicited by the idea of cloning babies." Instead, the proposed ban on all cloning has been stalled in Congress while "radical techniques of human reproduction and genetic manipulation proceed unscrutinized and unregulated" in the private sector, the group is reported to have concluded.

As Conservatives reassess their strategies, so, too, should the Progressive community. Advocates for reproductive rights, assisted reproductive technologies and embryonic stem cell research must recognize that, whatever their differences and historic difficulties in working together, they face a shared threat from an empowered Religious Right determined to play "embryo politics." Reproductive rights and biotechnology are intrinsically linked in the agenda of the Religious Right, and should be addressed together through the development of a Progressive Bioethics Agenda.

What would a Progressive Bioethics Agenda look like? It would emphasize at least the following key principles:

- **Patients' rights.** The rights, concerns and welfare of the patient must be at the center of medical decision-making and biomedical research. Such rights would

include, at minimum: 1) the right to informed consent, with knowledge of all potential treatment options and their risks/benefits; 2) the right to make personal medical decisions based on one's own ethical or religious beliefs, unrestricted by institutional religious doctrine; and 3) the right to medical privacy, free from government intrusion or the moral judgments of caregivers.

This broadly-framed principle of patients' rights would act to protect, for example, a woman's right to have a prescription for birth control filled at a local pharmacy, or to undergo *in vitro* fertilization and decide to donate surplus embryos to either stem cell research or infertile couples. It would also protect the right of a potential egg donor to understand possible health risks from hormone treatment and/or egg retrieval.

- **Sound medical science.** Caregivers must be expected to use sound medical science — unrestricted by ideology, religious doctrine, financial incentives or other factors — in informing their patients about treatment options and in

Reproductive rights and biotechnology are intrinsically linked in the agenda of the Religious Right, and should be addressed together through the development of a Progressive Bioethics Agenda.

providing medical care. They must not be allowed to obstruct patients' ability to obtain needed medical information, treatments or medications. This principle would also lead to protections for physicians and other health practitioners from undue influence on their ability to practice sound medicine by outside forces — whether political, religious or financial in nature.

• **Responsible and ethical biomedical research.** The rapid development of emerging biotechnologies must be tempered by the need to protect individual patients and the community from the potential ill effects of irresponsible research. So, for example, reproductive cloning should not be attempted with human embryonic cells unless and until the science has progressed to the point that bioethicists and groups such as the National Academy of Sciences are satisfied that it would be safe and ethically sound.

The rapid development of emerging biotechnologies must be tempered by the need to protect individual patients and the community from the potential ill effects of irresponsible research.

• **Social justice and equity.** The development and distribution of new biotechnologies should be guided by the principle of social justice and an intent not to replicate or intensify existing social inequities. So, for example, policy governing the solicitation of donor eggs should not create a two-class system in which white, privileged donors of eggs for infertility treatment are paid large sums and afforded access to medical care, while less privileged donors of eggs for embryonic stem cell research are unable to obtain medical care or are compensated less. Similarly, access to promising treatments utilizing embryonic stem cells should not be restricted to those patients who can afford to make substantial private payments.

• **Respect for the “moral status” of sentient human beings and the “moral value” of embryos.** While affirming the right and ability of already-born human beings to make moral decisions about the future of embryos they have created, the Progressive community must take care to show respect for embryos as potential

human life. In practice, such respect for the “moral value” of embryos should not override the decisions of the couples who have created them, but should guide the appropriate uses of such embryos. Bioethicist Bonnie Steinbock has suggested, for example, that the donation of embryos for either medical research or use by infertile couples can be considered to show appropriate respect for their moral value, but the use of embryos for more frivolous purposes, such as creating cosmetics, would not. She offers for comparison the kind of respect that is accorded to human corpses, which are often donated for medical research, but are not considered appropriate to use for more trivial or frivolous purposes.¹³⁴

How would such bioethical principles be applied to the real-life issues raised by emerging biomedical research and assisted reproductive technology? The progressive Center for Genetics and Society in Oakland, CA, has begun to sketch out a framework for distinguishing between ethical and unethical uses of biotechnology: “The new human genetic technologies hold both great promise and great peril. We can affirm their beneficial uses while drawing the line against

uses that would degrade human life and society.” The Center begins to draw that line by placing new categories of human genetic and reproductive technologies into two classes:

1) Those that have or might have clearly beneficial uses, but may raise social concerns and thus should be regulated and controlled as appropriate.

Examples include embryo screening and selection for life-threatening medical conditions; and

2) Those that have few if any beneficial applications and whose harmful impacts would be profound and irrevocable. These should be banned. The example cited is human reproductive cloning.

The Center suggests that analysis of emerging biotechnologies using that framework would lead to policies that, at a minimum, ban reproductive human cloning and inheritable genetic modification and institute effective accountable regulation of all other technologies.¹³⁵

The Center’s website also reports that people with disabilities are beginning to raise a significant voice in the discussions about emerging biotechnology. While interested in the potential uses of embryonic stem cell research to treat or even cure serious medical conditions, some disabled persons are also expressing concern about the potential for couples using pre-implantation genetic diagnosis to discard embryos they fear might have disabilities. Similarly, some feminist organizations are publicly worrying that couples will use the embryo screening for sex selection.

Such concerns should be addressed through bioethical guidelines based on the recommended principle of social justice. In fact, an ethics committee of the American Society for Reproductive Medicine issued an opinion in 2002 recommending that couples be discouraged from discarding embryos based on their gender.¹³⁶

As this briefing paper was being finalized, the National Academy of Sciences issued a long-awaited series of recommendations to guide embryonic stem cell research.¹³⁷ The Academy is a nonprofit society of leading scientists who advise the federal government on scientific and technical matters. In issuing the guidelines, the Academy addressed a growing national concern that the Bush administration’s limitations on federal funding of embryonic stem cell research had pushed the research into the private sector, where it was proceeding virtually unregulated.

The guidelines were developed “to enhance the integrity of privately funded stem cell research,” the Academy said. “A standard set of requirements for deriving, storing, distributing and using embryonic stem cell lines — one to which the entire U.S. scientific community adheres — is the best way for this research to move forward,” said Richard O. Hynes, a professor at the

The Center for Genetics and Society also reports that people with disabilities are beginning to raise a significant voice in the discussions about emerging biotechnology.

Massachusetts Institute of Technology and co-chair of the Academy committee that developed the guidelines.¹³⁸ One group of guidelines addresses the donation of blastocysts, ovum and sperm, recommending that:

- Donors must give informed consent and should not be coerced or pressured to donate. Consent should include all potential risks to the donor and potential uses of the donated material.
- Donor privacy must be protected.
- There should be no payment to donors beyond reimbursement for expenses incurred.

A second group of guidelines recommends that research institutions form Embryonic Stem Cell Research Oversight (ESCRO) committees that would be responsible for reviewing research proposals and for ensuring that all applicable regulatory requirements are met and that research is conducted in an ethical manner. The oversight committees would be responsible for

tracking and monitoring the types of research done, the stem cell lines being used and the personnel involved in conducting the research. The Academy also recommended creation of a politically-independent national panel to discuss and assess issues raised by embryonic stem cell research.

The report recommends the local oversight committees divide research into three categories with varying levels of oversight depending on the type of research done. These include:

- Research that is permissible after notification of the local oversight committees and completion of any required protocols (such as documentation of cell line derivation). This minimal oversight would apply to research on existing stem cell lines that do not involve human experiments.
- Research that is permitted only after additional review and approval by the local oversight committee. Heightened scrutiny would be applied to requests to develop new stem cell lines, to research involving introduction of human cells into nonhuman animals and to any research in which donor identity would be ascertainable by the researcher.
- Research that should not be permitted at this time. The guidelines recommend that local committees not allow the following types of research to be conducted:
 - a. Research that would involve the culture of human embryos beyond 14 days;
 - b. Introduction of human embryonic stem cells into a nonhuman primate;
 - c. Reproduction by animals into which human embryonic stem cells have been introduced.

The National Academy of Sciences recommends that donors must give informed consent.

The task of pulling together progressive bioethical principles that would cover all of the issues implicated by “embryo politics” remains before us.

These Academy guidelines will be useful in addressing some of the principles we suggest for a Progressive Bioethics Agenda, including patients’ rights to informed consent and medical privacy. There may be debate, however, over the Academy’s recommendation that donors of embryos, sperm or eggs for embryonic stem cell research should not be compensated beyond reimbursement for expenses incurred. Egg donors, in particular, face medical risks in the egg retrieval process. Moreover, egg and sperm donors are presently compensated when they are donors for infertility treatments.

Our suggested principle of responsible and ethical biomedical research would be largely addressed by the Academy’s recommendations as to which types of research should need special approval, or should not be permitted at all at this time. The Academy’s recommendation that researchers not be permitted to culture human embryos beyond 14 days would appear to bar the use of cloned embryos for reproductive purposes.

In the months and years ahead, more guidelines for the conduct of embryonic stem cell research are likely to emerge in California, where a state commission has been appointed to oversee the use of the \$3 billion in state funds allocated for stem cell research by voters in November 2004. Close monitoring of the commission’s work by groups like the Center for Genetics and Society is likely to help identify new ethical problems.

But the task of pulling together progressive bioethical guidelines that would cover all of the related issues implicated by “embryo politics” — from reproductive rights to assisted reproductive technology and embryonic stem cell research — remains before us. This briefing paper concludes, then, with a recommendation for immediate collaboration among progressive constituencies to begin to address this critically important challenge.

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Additional Resources

Organizations

MergerWatch Project

an affiliate of

Community Catalyst

PO Box 540
JAF Station
New York, NY 10116
Phone: (212) 261-4314
Fax: (510) 740-3610
Cell: (518) 281-4134
Email: lois@mergerwatch.org
www.mergerwatch.org

American Civil Liberties Union

Reproductive Freedom Project
125 Broad Street, 18th Floor
New York, NY 10004
Phone: (212) 549-2633
Fax: (212) 549-2652
Email: rfp@aclu.org
www.aclu.org

American Fertility Association

666 Fifth Avenue, Suite 278
New York, NY 10103
Phone: 888-917-3777
E-mail: info@theafa.org
www.theafa.org

Center for Genetics and Society

436 14th Street, Suite 1302
Oakland, CA 94612
Phone: (510) 625-0819
Fax: (510) 625-0874
www.genetics-and-society.org

Christopher Reeve Paralysis Foundation

500 Morris Avenue
Springfield, NJ 07081
Phone: (800) 225-0292
www.christopherreeve.org

Coalition for the Advancement of Medical Research

2021 K Street NW, Suite 305
Washington, DC 20006
Phone: (202) 293-2856
Email: CAMResearch@yahoo.com
www.camradvocacy.org

The Genetics and Public Policy Center

1717 Massachusetts Ave., NW, Ste 530
Washington, DC 20036
Phone: (202) 663-5971
Fax: (202) 663-5992
www.DNAPolicy.org

Juvenile Diabetes Research Foundation International

120 Wall Street
New York, NY 10005-4001
Phone: 1-800-533-CURE (2873)
Fax: (212) 785-9595
E-mail: info@jdrf.org
www.jdrf.org

National Academy of Sciences

2100 C Street, N.W.
Washington, D.C.
Phone: 202-334-2187
E-mail: fsharples@nas.edu
www.national-academies.org

National Health Law Program

2639 S. La Cienega Blvd
Los Angeles, CA 90034
Phone: (310) 204-6010
Fax: (310) 204-0891
Email: nhelp@healthlaw.org
www.healthlaw.org

National Women’s Law Center

11 Dupont Circle, NW, Ste 800
Washington, DC 20036
Phone: (202) 588-5180
Fax: (202) 588-5185
Email: info@nwl.org
www.nwl.org

Our Bodies, Ourselves

34 Plympton Street
Boston, MA 02118
Phone: (617) 451-3666
Fax: (617) 451-3664
Email: office@bwhbc.org
www.ourbodiesourselves.org

Parkinson’s Disease Foundation

1359 Broadway, Suite 1509
New York, NY 10018
Phone: 1-800-457-6670
Fax: 212-923-4778
E-mail: info@pdf.org
www.pdf.org

**Religious Coalition for
Reproductive Choice**

1025 Vermont Ave., NW, Ste 1130
Washington, DC 20005
Phone: (202) 628-7700
Fax: (202) 628-7716
Email: info@rcrc.org
www.rcrc.org

**Reproductive Health
Technologies Project**

1020 19th Street N.W.—Suite 875
Washington, DC 20036
Phone: (202) 530-4401
Fax: (202) 530-4404
www.rhttp.org

RESOLVE:

The National Infertility Association

7910 Woodmont Avenue, Suite 1350
Bethesda, MD 20814
Phone: 301-652-8585
E-mail: info@resolve.org
www.resolve.org

Additional Resources

Publications

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