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Cloning, Science and Public Policy

transcribed remarks of
SENATOR DEBORAH ORTIZ*

Let me give you a little bit of personal background on why I became interested in this issue. As was mentioned in my bio, I am the chair of the Senate Health and Human Services Committee. I really enjoy dealing with the very complex issue of access to health care and have a history of interest in medical care system costs for long-term, chronic diseases—specifically things like cancer.

I got involved with the issue of cancer research when I was in the State Assembly and authored a piece of legislation to fund \$25 million per year for gender-based cancer research. Unfortunately, that funding is subject to the annual appropriation of our general fund. For three years, we were able to appropriate a lot of dollars from the general fund into prostate and ovarian cancer research. I have a particular interest in this area because my mother died from ovarian cancer. This year, we are struggling with the state budget. There has been an effort, which we dealt with a couple of days ago, to take \$10 or \$15 million out of the \$25 million that had already been given to researchers who are in the midst of research projects. This effort, in fact, called for not funding some of the projects that already have received funding. So I certainly have a personal, scientific and policy interest in how we tackle the cost of our health care system over time, particularly as it relates to chronic disease. I've looked at stem cell research as a way of addressing this very important policy issue. Politicians, believe it or not, actually do love public policy. This area poses a fascinating combination of not only legal issues but ethical, medical and scientific issues as well. It was an area in which I knew I would want to be involved.

My bio failed to mention that I am a graduate of McGeorge School of Law. (I was wait-listed here at Hastings, and I'll have to talk to someone before I leave about not getting in.) I was fortunate enough to take Constitutional Law from Justice Kennedy. I recall very clearly his analysis of *Roe v. Wade*¹ and his dependence on the

* California State Senator (Democrat, Sacramento).

1. 410 U.S. 113 (1973).

first trimester and the absolute right to privacy of a woman to make that decision on her own. I am hoping that we can hang our hat on his reasoning and on the First Amendment arguments posed by the previous speaker. I also think that there is a possibility of making out an interstate commerce clause argument, although I won't talk about that now.

Having given you a bit of background, let me also tell you why I feel strongly about California stepping out and being a leader in this area. I happen to be a politician who absolutely believes in the hope of political advocacy and policy making. But I also know the limitations of politicians making policy. As chair of the Senate Health and Human Services Committee, I am often approached by one special interest group or another. In one recent incident, a group was trying to push a mandatory Hepatitis A vaccination for every child before they enter elementary school. This might not seem like a complex policy question. Either the science says you need it or you don't. But it wasn't that clear, so we spent three-and-a-half hours on whether or not the medical community agrees on a very expensive—and some will argue unnecessary—means of protecting people against Hepatitis B and C as adults and not necessarily Hepatitis A in children.

I love the area of stem cell research. I am reading everything I can get my hands on and I welcome the debate from both sides of the legal argument. But I also know the limitations of politicians who do not work in this area every day. As a result, I am convening a task force of the legal minds, the scientific minds and the ethicists in this area to help guide California's policy. Absent that kind of leadership, we will continue to make imperfect policy. The ban on reproductive cloning may in fact be one of those political decisions and legislative acts that, in the future, will not withstand the information developed in the scientific and medical community.

I look at therapeutic stem cell research as something that is incredibly promising. It is something that I believe we have an obligation to allow as a legislature. But let me talk a bit about the limitations of a legislative or political decision to move forward on therapeutic stem cell research. California is viewed as this wonderfully progressive and liberal state. The reality is, it is not. We have a very divided state. Politicians differ on just the simple question of whether or not a woman has a right to choose. I think it is an absolute right. But if you've ever sat in on a health committee hearing on something as basic as public funding for poor or undocumented women's access to health care, you'd understand how close we are as a legislative body to some very arcane and backward decisions. This issue, of course, is very much like that.

I think the question of therapeutic, or non-reproductive, stem cell research is very clear. But I've seen the debate that ensued in the committee that presented its report to the legislature. I have witnessed discussions in which people disagreed on even the value of non-reproductive therapeutic cloning. Politicians like myself and others will have to be very vigilant, not about the science or the logic, but about the political implications of those who fiercely believe that we ought not to be engaging in therapeutic stem cell research. It is a battle and it is a challenge. I am committed to showing my colleagues two things: number one, that California believes that the Bush line of stem cell research is limited; and number two, that there is a role for the public funding of research. It's going to take careful maneuvering and constant effort to battle those ethical arguments against therapeutic research, which many of us believe are unfounded.

The fact that the committee recommended, based on primarily scientific reasons, to ban reproductive cloning in California is not without controversy. However, I suspect the controversy of lifting that ban or leaving that question open would have caused greater problems. There is a very entrenched, very difficult part of our constituency which is uncomfortable with this area. Quite frankly, this segment is not strictly partisan. There are Democrats—and I am a Democrat—who are also very uncomfortable with drawing the line and who may in fact be very uncomfortable with my efforts to allow public funding of therapeutic research. So, let me say that as we face these ethical quandaries, there are also very real political quandaries. Politicians often operate in a sort of system in which we try to incrementally do good, or incrementally do no harm. I do believe that it's going to be a battle for California to make a commitment to therapeutic stem cell research and to fund that with public dollars. But it's a battle that we have to embark upon. It's critical.

I do believe that we will suffer in California, if in fact Congress is successful in banning various types of research beyond what the President has done to date. I fear that California will suffer the kind of brain drain that we are beginning to see. We are uniquely situated with some of the brightest minds and institutions in the biotech industry to innovate, to cure disease and to bring down the cost of health care. We have a responsibility to take on this battle so that the rest of the states will hopefully look to us for some direction.

The precedent for public funding of research is very strong in our country. It has fueled the development of our semi-conductor industry. It has played a role in the development of the aerospace industry and the human genome project. Some of my colleagues will say it is not the government's place to fund this. But in fact, government has often funded research and but for that public

funding, we wouldn't have the innovation and success in key areas of science and medicine that we have today.

What is the relationship of private entities to public funding? Private entities, I believe, play a very critical role in translating the fruits of publicly-funded research into effective medical therapies. I think that a partnership should be developed within some parameters. I believe if we are indeed successful in moving forward with public funding, we will see innovation in therapeutic stem cell research. I'd prefer that it happen in the open, that it be open to public scrutiny and that there be some sunshine on that research. That would be the responsibility of those private entities that want those public dollars.

It is going to be a huge challenge to educate the average person on the value of this research. I think many people who have family members who are suffering from disease will understand this. I think that most Californians, ultimately, will want to do the right thing to save lives and to prevent suffering. And in the end, I always like to make the fiscal argument. This is key to where we are going in our health care system in general, as we negotiate the scope of health care coverage for persons who are covered, and as we fight to get health insurance for those who don't have health insurance in California.

Bush's limitations are pretty intriguing.² They actually created a division in the anti-choice community. And I point that out because I think we have to remember how important the politics are to this issue. The fact that very active anti-choice politicians, legislators and key people in the anti-choice movement divide on this question is a good thing. I think there needs to be more debate in the anti-choice community and among politicians. This suggests to me that there is an opportunity to form religious and inter-faith alliances on behalf of therapeutic stem cell research. There is much data to suggest that the limitations imposed by the Bush administration could sound the death knell for the research if we stop at that point. We also have a concern with the genetic biodiversity of those stem cell lines. Are they all white, middle class embryos? Does that reflect California? We need genetic diversity and there are some who suggest that it's not available in those lines. There is a concern that even with access to the sixty or sixty-four lines, assuming that they are all viable, could the public actually access those that are owned or held by private companies given the surrounding intellectual property questions? Are they obligated to share those and if so, will they share them only with the highest bidders? So even if all the available lines are good,

2. In late 2001 President Bush decided to allow federal funding of research using sixty existing stem cell lines derived from human embryos. The President declined to allow federal funding for research using stem cells derived from frozen embryos.

usable and would be sound for research, the public may have other impediments before it could access them.

Let me talk a bit about the legislation. My colleague, Senator Dede Alpert, has introduced a bill to continue the current ban on reproductive cloning that is set to end in 2002. I believe that she is striking the sunset that is proposed. In effect, that would mean that if this bill reaches the Governor's desk and is signed, it would indefinitely ban reproductive cloning. I have two measures, one of which is resolution SCR 55. It essentially establishes a panel to guide the legislature as we move forward in publicly-funded—I hope—therapeutic stem cell research. It assures that there will be scientists, specialists, ethicists and lawyers guiding the legislature and preventing whatever harm politicians might do while making policy. The other bill is SB 1272. At this point, it is an outline for moving forward on research. Essentially, it would allow that research to occur in California. It would allow a woman to donate embryos with some requirements. It would also prohibit the sale or purchase of embryos for research. It is just a basic outline and I don't think there is much debate on what is in there now. It really serves as a foundation to begin the discussion in California.

This year, I hoped to look at a means for public funding. Given the budget situation, that is going to be very difficult. We're probably going to have a \$12.5 billion deficit and right now, we're simply fighting to hold on to some basic safety net health care systems. I've made that my battle, particularly for the working poor in California who don't have health care. My hope—and hopefully I'll be re-elected this year to have four more years to pursue it—is that somewhere down the line, like infrastructure for freeways, highways and roads, we will invest, as a state, in human and scientific infrastructure. We need to provide ongoing and risk-free sources of funding that are built into our state budget to continually fund research like this. With the cancer research funding of \$25 million subject to annual appropriation, my experience is that in a year like this year, those dollars will be quickly taken away. It sends the worst message to the brightest minds that they cannot rely on California for a long-term commitment to research.

I would like to take a bond measure to the voters statewide and ask them whether they would support a permanent source of funding for our infrastructure on research—particularly on stem cells. It will probably have a bit more momentum in two or three years. I believe that the average voter will say this is the right thing to do. We could say to researchers across the country and across the world: "Come to California. We will fund you for a long period of time." As most people know, researchers don't achieve success in a year or two. That, I believe, is the obligation we owe to all Californians. I also

believe that this research really does hold the key to curing disease, injury, and to long-term medical problems. Based on the cost and the inequities and disparities in our health care system, it is the right thing to do.

We are going to have the first of a series of informational hearings on stem cell research and the taskforce I'm forming on March 8, 2002, at Stanford University. We will begin to look more closely at the limitations in the Bush position and the potential in California to go beyond that. With that, I thank you for inviting me.

Thank you.