

The Legal and Political Prognosis for Embryonic Stem Cell Research

Helen M. Alvaré, J.D., Senior Fellow in Law

January 7, 2009

Incoming President Barack Obama's strenuous support for legal abortion is well-known. His unbridled enthusiasm for destructive embryonic stem cell research (ESCR) is likely less visible to most Americans. But President-elect Obama's statements about ESCR throughout his campaign, and his behavior as a U.S. Senator, make him a "warrior" for the cause no less fierce than (now-disgraced) Senator John Edwards, who famously over-stated that if the federal government had funded ESCR all along, the late actor Christopher Reeve might have "[gotten] up out of that wheelchair and walk[ed] again." (CNN.com. Frist Knocks Edwards for Comment on Christopher Reeves, cnn.com/2004/ALLPOLITICS.10/12/edwards.stem.cell/, Oct. 12, 2004). Fast forward four years, and science is demonstrating, as (Dr. E. Christian Brugger wrote in his recent "Morning of the Stem Cell Revolution) that it is adult stem cell research which is providing actual patient treatments.

Current law dates back to President Bush's Aug 9 2001 issuance of an executive order limiting federal research funds for ESCR to "lines" of stem cells created before that date. No limitations were placed upon state or private funding. (While it is too lengthy a topic to take up at the moment, some may be interested in the fact that federal funding for research can be controlled directly by the Executive via executive orders. Citizens are used to Congress "appropriating" funds for this or that federal program, via legislation. The scope of the Executive's power to issue executive orders on this and other matters is a subject of intense legal, scholarly debate. Suffice it to say at the moment that presidential executive order power is broad, rarely overturned by the judiciary, and has not been called into question here, although it does not trump Congress' power to pass a competing law, as will be further described below. Our last several presidents have made extensive use of executive orders).

At the time President Bush issued his executive order in August of 2001, it was thought that approximately 70 existing stem cell lines would be eligible for federal funding. The number was eventually lower. In the years since then, several states promised lavish funding for ESCR, despite their virtually-nonexistent record of accomplishment, and despite the research depending upon the unethical destruction of human life. California (now in dire financial straits) committed three billion dollars to ESCR. The disgraced former Governor of New Jersey, James McGreevey, established the state-funded Stem Cell Institute of New Jersey with tens of millions of dollars in taxpayer funds. Even this year, in 2008, Massachusetts authorized one billion taxpayer dollars to fund ESCR.

But the "dream" of fast cures using ESCR has evaporated with every passing year. I recall in 2001 and 2002, during my appointment to the Advisory Council of the



CULTURE of LIFE
FOUNDATION®

1413 K Street NW
Suite 1000
Washington, DC 20005
Tel: 202-289-2500
Fax: 202-289-2502
info@culture-of-life.org
www.culture-of-life.org

National Institutes on Child Health and Human Development (I was appointed by then-Secretary of Health and Human Services Tommy Thompson as a lawyer/ethicist to advise the body), that this federal research institute was not having an easy time “giving away” even the federal money they were given, to promote research on ESCR. Researchers were hesitant to apply for the available monies, citing the great difficulties involved with embryonic stem cells. The chief complaint was that researchers could not well-control the cells’ “decision” to turn into one or another kind of cell. This created rejection and tumor problems for patients.

Meanwhile, adult stem cell and alternative research was not sitting still, as well-chronicled by Christian Brugger in his most recent piece for this site. The promise of adult cells is such that even members of the scientific community find themselves voting with their feet in favor of adult stem cell research. There is the case of the prominent stem cell researcher in England who moved to France in order to pursue adult stem cell research because of the ESCR-biased climate in England. There is the internal fight within the Juvenile Diabetes Research Association – long the literal poster child for embryonic stem cell research – over that group’s ideological refusal to credit the promise demonstrated by adult stem cell research. And there is finally the move by stem cell pioneer James Thomson to re-focus his work toward reprogramming mature stem cells back to the embryonic stem cell stage. In September 2008, Dr. Thomson was quoted to say: “I personally believe that the future in the (adult skin) cells.” (See, Lifenews. Com, New Obama Advisor Backs Embryonic Stem Cell Research Despite Failures, Nov. 18, 2008, www.lifenews.com/bio2637.html)

None of this has diminished the insistence of ESCR supporters that federal funding of ESCR is still warranted. Their argument? The limited success of ESCR is due to its opponents’ having “h[e]ld [researchers] at the starting line.” (Newsmax.com, Stem Cell Research Foes Brace for Obama Fight, Nov. 23, 2008). President-elect Obama himself subscribes to this line, and during his campaign referred to President’ Bush’s executive order as “handcuff[ing] our scientists.”

So what now for an Obama administration? An administration, it must be noted that claims it is facing “the worst economy since the Depression?” Will it throw money at demonstrably unsuccessful research? Unless Obama dramatically reverses his rhetoric as a Senator, as well as his campaign promises, the answer is “yes.”

Despite a notably small record of action during his years as a U.S. Senator, Barack Obama did vote to help pass a Senate bill (S. 5) to lift President George W. Bush’s restrictions on funding embryonic research. This bill, the Stem Cell Research Enhancement Act, would have amended the Public Health Service Act to provide federal funding for unlimited lines of embryonic stem cells. Senator Obama was a co-sponsor of a similar act in 2007. In April 2007, his campaign released a statement in which (www.obama.senate.gov/press/070411_obama_renews_su/) Obama repeated the claims made by ardent embryonic stem cell fans, namely that ESCR could potentially offer cures for the most debilitating diseases Americans face, including Alzheimers and diabetes. To wit: “For most of our history, medicine



CULTURE of LIFE
FOUNDATION®

1413 K Street NW
Suite 1000
Washington, DC 20005
Tel: 202-289-2500
Fax: 202-289-2502
info@culture-of-life.org
www.culture-of-life.org

has offered little hope of recovery to the 100 million individuals suffering from these and other devastating illnesses and injuries. Until now.” The 2007 bill passed, but was vetoed by President Bush, who simultaneously issued an Executive order (June 20, 2007) (www.usccb.org/comm/archives/2007/07-113.shtml) supporting ethical adult stem cell research.

A closer look at the “character” of Obama’s support for ESCR indicates that he closely parrots the most extreme claims of scientists who embrace ESCR unreservedly. He has called ESCR the “gold standard” for stem cell research, mimicking exactly the language used by the scientist (Jonathan Moreno) he has now appointed to head up the Obama administration’s “bioethics” efforts. (Steve Ertelt, Life News.com, New Obama Advisor Backs Embryonic Stem Cell Research, Despite Failures). Obama referred to ethical objections to such research as “ideological predispositions” in his candidate-response to an interest group called Science Debate 2008.

In a prepared statement issued in support of the 2007 legislation, Obama gives the briefest nod to the existence of “moral and ethical issues surrounding this debate,” while proceeding to repeat the claim that ESCR could “save the lives of millions of Americans,” and contrasting President Bush’s response to ESCR with that of Franklin Delano Roosevelt’s to polio. Obama claimed that the latter’s support for the March of Dimes led to Jonas Salk’s discovery of the polio vaccine. President Bush, on the other hand, was affirmatively delaying cures.

During this campaign, Obama stated that “it is ethical to use these extra embryos for research.” The head of his current transition team further “hinted” that the president would fund more embryonic sc research soon after his inauguration. (Newsmax.com, Stem Cell Research Foes Brace for Obama Fight, Nov. 23, 2008). This is possible of course, without Congress’ involvement, given that the president could accomplish this with a “stroke of the pen,” in an executive order. Democratic Speaker of the House Nancy Pelosi, has also indicated that she would be willing to promote legislation to the same effect in Congress, although she is not yet sure what the vote count will tally.

President Obama may decide to issue an executive order opening the funding floodgates for ESCR, early in his presidency. It is a way of throwing red meat to his base supporters, and distracting observers from the difficult problems inherent in our economy and with the wars in Afghanistan and Iraq. Obama could alternatively decide not to fritter his political capital with “the middle” by lighting a flame to the culture wars with too quick a decision in favor of ESCR. If he does allow federal funding, President Obama’s robust support for destructive embryonic stem cell funding may result in a burst of scientific attempts to succeed where previously there has been failure. It may also run up against growing scientific enthusiasm for adult versus embryonic stem cell research. Clinical success is sweeter than failure. The next few months will tell.

(c) Culture of Life Foundation, 2009. Further publication granted, attribution required.



CULTURE of LIFE
FOUNDATION®

1413 K Street NW
Suite 1000
Washington, DC 20005
Tel: 202-289-2500
Fax: 202-289-2502
info@culture-of-life.org
www.culture-of-life.org