Bioethics and Fetal Tissue: An Unfounded Attack on Reproductive Freedom

Testimony Presented by

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Members of the Select Investigative Panel: I am honored to submit this testimony.

Today you are conducting a hearing on the topic of bioethics and fetal tissue. Research using fetal tissue is an important area of science that promises to help treat many conditions such as spinal cord injury, cancer, Parkinson’s disease, Alzheimer’s, neurological disorders, and Down syndrome. Some women who choose abortion also decide to donate the fetal tissue for research purposes—a practice that is well-regulated, and which has led to major medical breakthroughs. Current federal laws regarding fetal-tissue donation have as their primary concerns the protection of women, codification of the highest ethical standards, and assurance of humanitarian goals. NARAL Pro-Choice America supports and endorses these laws.

Despite this, for more than 20 years, opponents of reproductive rights have raised a series of alarmist, unproven claims about the practice of tissue donation. They have accused women, doctors, and researchers of systematically “trafficking” in “body parts,” and even more bizarrely, suggested that allowing tissue to be donated encourages abortion. It is essential to note that these allegations have never been proved.

Today’s hearing is yet another effort to advance these charges—in the hope that they will cast aspersions on scientists and their valuable work, shame women, stigmatize and terrify abortion providers, and ultimately, end legal abortion. NARAL Pro-Choice America opposes this attempt to exploit the ethical practice of fetal-tissue donation and to threaten women’s reproductive choice.

This Hearing is Part of a Longstanding Effort to Attack Reproductive Freedom

Scientists have used fetal tissue in important research for decades—but in the 1980s, anti-abortion activists began mounting protests against it. Consequently, in 1988, the anti-choice George H.W. Bush administration imposed a moratorium on federal funding for the promising field of research. Congress passed legislation overwhelmingly to lift the ban—a vote that included many prominent anti-choice lawmakers—but then-President Bush vetoed it. Fetal-tissue research had been taken hostage by anti-abortion forces.

Upon taking office in 1993, newly elected pro-choice President Bill Clinton issued an executive memorandum lifting the moratorium. Soon thereafter, Congress again passed legislation permitting and setting legal guidelines to govern fetal-tissue donation and research—and this time, the president (now Clinton) signed it. That law remains in force today.

Anti-abortion forces mounted more attacks, however. In 1999, an anti-choice group called Life Dynamics circulated a letter on Capitol Hill charging that physicians were altering abortion procedures in order to obtain tissue appropriate for use in research. Life Dynamics also claimed that the tissue was being sold for profit. Founded in 1992, Life Dynamics is dedicated to using “guerilla” methods to make abortion unavailable by any means necessary, including threats, harassment, intimidation, and violence.
Life Dynamics’ allegations found a sympathetic ear among some anti-choice members of Congress: Rep. Tom Tancredo (R-CO) authored a resolution directing Congress to conduct a hearing on this alleged illegal profiteering. The House passed the resolution by voice vote. Sen. Bob Smith (R-NH) forced a floor vote on an amendment to other anti-choice legislation requiring any individual involved in research using fetal tissue to disclose sensitive information to the government - potentially exposing each to anti-choice harassment and violence. (The Smith amendment failed, 46-51, opposed even by some anti-choice senators.)

Life Dynamics also publicized its allegations to the media. As a result, in 2000, the ABC television program 20/20 aired a segment on the topic, showing undercover footage of a tissue-procurement business owner, Dr. Miles Jones, boasting that he earned profit from the sale of donated fetal tissue. Jones was subsequently cited for contempt of Congress, and upon learning of the tape, the pro-choice community contacted the Justice Department and urged an investigation.

In a clearly coordinated effort, the anti-choice-led House Health and Environment Subcommittee held a hearing the day after the 20/20 report. The only witness with allegations of impropriety, however, was thoroughly discredited under questioning from panel members, and was forced to admit that he had no direct knowledge of wrongdoing. The witness, Dean Alberty, also admitted that he had done undercover work for the anti-choice group Life Dynamics while working as a tissue-retrieval technician. The hearing concluded with no evidence of any widespread impropriety in the practice of fetal-tissue donation.

Despite the hearing’s failure to uncover any wrongdoing, immediately following it, then-Rep. Tom Coburn (R-OK) and other anti-choice members of Congress introduced legislation mandating the public reporting of many of the same details Sen. Smith sought to publicize with his earlier bill. The Coburn bill did not progress beyond introduction, but taken together, the various pieces of legislation show an eagerness on the part of anti-choice lawmakers to capitalize on sensational media reports (if not actual facts) to advance their overall agenda of rolling back reproductive freedom.

Another round of attacks following a similar progression began in 2015. Key individuals who previously were associated with the longstanding anti-choice organizations Live Action (which released a series of inflammatory tapes and made charges against Planned Parenthood in 2010 and 2011) and Operation Rescue (an organization on the violent fringe of the anti-abortion movement) reappeared on the scene: in July, an organization calling itself the “Center for Medical Progress” released a series of heavily edited videos claiming to show that Planned Parenthood health centers sell fetal tissue. Planned Parenthood categorically denied the charges. However, in yet another instance of apparent close coordination between advocates and elected officials, anti-choice politicians – in Congress and across states – responded instantaneously with a wide variety of legislative threats against reproductive rights and biomedical research.
Interestingly, press outlets have reported that a number of anti-choice lawmakers admit having seen the “Center for Medical Progress'’ footage several weeks previously but kept it quiet until the public reveal – only then declaring themselves outraged.31 Today’s hearing demonstrates that anti-choice forces are determined to continue these dangerous and unfounded attacks on reproductive freedom.

The Donation of Fetal Tissue for Research is a Legal and Ethical Practice

The most common charges made against fetal-tissue donation and research – specifically, that the practice encourages abortion and is unethical – are utterly unfounded.

Federal law ensures that a woman’s decision to donate is made freely, with proper information, and free from conflicts of interest and explicitly prohibits profiteering in the sale of fetal tissue for research.32 The NIH Revitalization Act of 1993 states that “[I]t shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration...”33 Under this law, selling fetal tissue is a federal crime punishable by fines, imprisonment for up to 10 years, or both.34 Similarly, the National Organ Transplant Act makes it unlawful for a person “to knowingly acquire, receive, or otherwise transfer any human organ,” including fetal tissue, “for valuable consideration...”35 This law also permits the reimbursement for certain expenses related to fetal-tissue donation (transportation, storage, preservation, etc.), just as it does for organ donation.36

Fetal tissue would be discarded if it were not donated, and legal guidelines require that a woman’s decision to terminate a pregnancy is made first – and totally separately – from that of whether to donate tissue.37

When asked to review the appropriateness of research using fetal tissue, a National Institutes of Health panel recommended allowing such research, as long as sufficient protections for women and against conflicts of interest were enacted.38 (Their recommendations were written into the federal law that now governs research with fetal tissue.) The Institute of Medicine and National Academy of Sciences have also examined the issue and concluded similarly.39

As bioethicist John Robertson argues: “In sum, fetal tissue transplants are practically and morally separate from decisions to end unwanted pregnancy.”40 Further, Robertson says, “The disparate issues … can be treated separately, so that ethical concerns and the politics of abortion do not impede the progress of important research.”41

Research Using Fetal Tissue is an Important Area of Science

Due to their capacity to divide rapidly, grow, and adapt to new environments, fetal cells hold unique promise for medical research. Research using fetal tissue has yielded significant advancements in the treatment of numerous diseases and medical conditions, including the
development of polio and rubella vaccines. If not over-regulated or threatened out of existence, research with fetal tissue promises to help treat many conditions such as diabetes, sickle cell anemia, leukemia, Huntington’s, stroke, degenerative eye conditions, radiation poisoning, and others.

It is instructive that those protesting against fetal-tissue donation are not similarly investigating – or expressing outrage about – organ donation. Human organs may also be donated legally, of course – in fact, the practice is widely encouraged and acknowledged as compassionate and ethical. And federal law allows reimbursement to doctors and health-care facilities for reasonable costs associated with that process. Yet there have been no anti-choice objections to this practice.

Nor are the self-proclaimed opponents of fetal-tissue research calling for vaccines or treatments that have been discovered thanks to the use of fetal tissue to be pulled off the market and denied to all patients. Were they genuinely concerned that the practice of fetal-tissue donation actually encourages abortion, then demanding a recall of related vaccines and cures would be ethically consistent – extreme though it may be. The fact that they are instead calling to defund Planned Parenthood and to impose abortion bans on women speaks volumes about whether hearings like today’s are truly concerned with medical ethics or are instead simply trumping up allegations in the service the goal of limiting women’s reproductive choices.

Conclusion

Attacking fetal-tissue donations is part of a broader, calculated strategy. If individual cases of wrongdoing are discovered within the process of fetal-tissue donation, they should be investigated and, if appropriate, prosecuted. This is true of any kind of activity regulated by law; a different standard should not be applied to research that anti-choice advocates have systematically and deliberately politicized. As such, NARAL Pro-Choice America opposes this panel’s attempt to inflame the debate around the ethical and legal practice of fetal-tissue donation and encourages lawmakers to defend against the threats it poses to reproductive freedom and scientific progress.


2 Fetal Tissue: Is It Being Sold in Violation of Federal Law?: Hearing before the House Subcomm. on Health and Environment, 106th Cong. (2000) (testimony of Samuel M. Cohen, M.D., Ph.D., Professor and Chairman, Department of Pathology and Microbiology, University of Nebraska Medical Center, Omaha, Nebraska) (testimony of Joan I. Samuelson, J.D., President, Parkinson’s Action Network); David Wahlberg, Bill Floated to Ban Use of Aborted Fetal Tissue in Scientific Research, WISCONSIN STATE JOURNAL, Apr. 10, 2013 at
in/article_5ba4f816-a175-11e2-88a1-0019bb2963f4.html (last visited July 23, 2015).

3 Press Release, The White House Office of Communications, We Must Free Science and Medicine from the Grasp of Politics, (Jan. 22, 1993); Fetal Tissue: Is It Being Sold in Violation of Federal Law?: Hearing before the House Subcomm. on Health and Environment, 106th Cong. (2000) (testimony of Samuel M. Cohen, M.D., Ph.D., Professor and Chairman, Department of Pathology and Microbiology, University of Nebraska Medical Center, Omaha, Nebraska) (testimony of Joan I. Samuelson, J.D., President, Parkinson’s Action Network).

4 Press Release, The White House Office of Communications, We Must Free Science and Medicine from the Grasp of Politics, (Jan. 22, 1993); Fetal Tissue: Is It Being Sold in Violation of Federal Law?: Hearing before the House Subcomm. on Health and Environment, 106th Cong. (2000) (testimony of Samuel M. Cohen, M.D., Ph.D., Professor and Chairman, Department of Pathology and Microbiology, University of Nebraska Medical Center, Omaha, Nebraska) (testimony of Joan I. Samuelson, J.D., President, Parkinson’s Action Network).


9 U.S. Department of Health and Human Services, National Institutes of Health, Moratorium on Certain Fetal Tissue Research, 17 NIH GUIDE FOR GRANTS AND CONTRACTS (Special Notice, May 9, 1988).


11 Memorandum from William J. Clinton to the Secretary of Health and Human Services, Federal Funding of Fetal Tissue Transplantation Research, 58 FR 7457 (Jan. 22, 1993), codified at 42 U.S.C.A. § 289g.


13 The letter circulated by Life Dynamics was written by J.C. Willke, M.D., the President of Life Issues Institute, Inc., an organization dedicated to “serving the educational needs of the pro-life movement.” Letter from John C. Willke, President, Life Issues Institute, Inc., to Honorable Nita M. Lowey, United States House of Representatives, June 25, 1999.


17 H.R.350, 106th Cong. (as passed by House, Nov. 9, 1999).


42 Fetal Tissue: Is It Being Sold in Violation of Federal Law?: Hearing before the House Subcomm. on Health and Environment, 106th Cong. (2000) (testimony of Samuel M. Cohen, M.D., Ph.D., Professor and Chairman, Department of Pathology and Microbiology, University of Nebraska Medical Center, Omaha, Nebraska).
43 Press Release, The White House Office of Communications, We Must Free Science and Medicine from the Grasp of Politics, (Jan. 22, 1993); Fetal Tissue: Is It Being Sold in Violation of Federal Law?: Hearing before the House Subcomm. on Health and Environment, 106th Cong. (2000) (testimony of Samuel M. Cohen, M.D., Ph.D., Professor and Chairman, Department of Pathology and Microbiology, University of Nebraska Medical Center, Omaha, Nebraska) (testimony of Joan I. Samuelson, J.D., President, Parkinson’s Action Network).

