
IN THE SUPREME COURT OF FLORIDA

Case Nos. SC06-2183 and SC06-2261

Upon Request From the Attorney General
For An Advisory Opinion As To The Validity Of An
Initiative Petition and Its Financial Impact Statement

**ADVISORY OPINION
TO THE ATTORNEY GENERAL**

**RE: FUNDING OF EMBRYONIC
STEM CELL RESEARCH**

**ANSWER BRIEF OF THE SPONSOR,
FLORIDIANS FOR STEM CELL RESEARCH AND CURES, INC.**

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SUMMARY OF THE ARGUMENT

The embryonic stem cell research amendment clearly contains only a single subject. Its only purpose is to require the state to spend \$20 million a year for ten years on embryonic stem cell research through grants by the Department Health to non-profit corporations.

In an effort to suggest that the amendment consists of logrolling, Citizens for Science and Ethics, Inc. ("Citizens") suggests that the amendment is divided into different sections and asks the rhetorical question of whether the voters might like one section and not like the other. The fact remains, however, that the single subject of this amendment is to provide funding for the stem cell research. The several parts of the amendment which Citizens seeks to characterize as additional subjects are simply related provisions that "may be logically viewed as having a natural relation in connection as component parts or aspects of the single dominant plan or scheme." *Advisory Op. to Att'y Gen. re Fla. Locally Approved Gaming*, 656 So. 2d 1259, 1263 (Fla. 1995) (quoting *City of Coral Gables v. Gray*, 154 Fla. 881, 883-884, 19 So. 2d 318, 320 (Fla. 1944)). The fact that the amendment would permit therapeutic cloning, but prohibits the birth of clones, does not create a single-subject issue.

Citizens fails to demonstrate that the amendment substantially alters or performs the functions of more than one branch of government. The amendment

obviously has no impact on the judicial branch. It affects the executive branch only to the extent that it requires the Department of Health to issue the grants for research, which is a function that the Department is well qualified to perform. The amendment does impact the legislative branch but only to the extent of requiring an annual \$20 million expenditure for ten years. An analysis of the case law clearly indicates that this does not constitute a substantial alteration or performance of the function of the legislative branch, but even if it did, the other two branches are not affected.

The title and ballot summary comply with the governing legal requirements. They fully inform the voter of the chief purpose of the amendment and they are not misleading. In fact, the summary fairly explains the language of the most significant portions of the amendment including its cost, the scope of the research, the fact that the Department of Health will issue grants for the research to non-profit corporations, and that some expense reimbursement and compensation will be paid for burdens associated with the recovery of the cells necessary for the research.

There is no merit in Citizens' argument that the ballot summary is misleading because it does not specify the extent of the consideration which can be paid for recovery of the cells. The amendment, itself, does not specify the extent of the consideration. The ballot summary simply provides a concise synopsis of the

language of the amendment with respect to the consideration which can be paid, and this is all that is required. Inasmuch as the ballot summary fairly describes the amendment, the voters cannot be misled.

ARGUMENT

Standard of Review. While the standard of review is *de novo*, the Court applies its review deferentially in order to protect the sovereign right of the people to amend their constitution in whatever manner they choose. *See Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982).

As the court explained in *Weber v. Smathers*, 338 So. 2d 819, 821 (Fla. 1976):

Previous decisions of this Court have removed amendments from the ballot, but we have historically declined to interfere with the right of the people to vote upon a proposed constitutional amendment absent a showing in the record that the proposal is "clearly and conclusively defective." *Goldner v. Adams*, 167 So. 2d 575 (Fla. 1964).

I. THE EMBRYONIC STEM CELL RESEARCH AMENDMENT SATISFIES THE SINGLE-SUBJECT REQUIREMENT.

A. The Amendment Is Not Guilty Of Logrolling.

In their argument, Citizens tries to divide the embryonic stem cell research amendment into little pieces and then suggests that the voters might like one piece and not the other, thereby demonstrating logrolling. Citizens' position is summarized on page 6 of its brief as follows:

The instant amendment would require voters to decide several important issues: whether they want the state to fund human embryonic stem cell research at all; whether they want the state to appropriate the specific total sum of \$200 million for this research; and whether they want potential donors to be compensated in some way. In addition, the initiative apparently allows “therapeutic cloning” and the creation of embryos specifically for research, both funded by taxpayers.

Citizens first asks whether the voters would want the state to fund human embryonic stem cell research at all. Citizens should have stopped there, because this is the single question the voters will have to decide. It is the single subject of the amendment.

Nevertheless, Citizens then asks whether the voters would want the state to spend \$200 million for the research. The same question could have been asked for any dollar amount which was stated. The amount of money involved is an integral part of the single issue upon which the voters will have to decide.

Citizens attempts to parse out an issue about whether the voters would want potential donors to become compensated in any way. This is not a separate issue, but instead simply a detail which is directly connected to the single subject of amendment. This Court has always recognized that an amendment may include related provisions which have a natural relation to a single dominant plan. *Advisory Op. to Att’y Gen. re Fla. Locally Approved Gaming*, 656 So. 2d 1259 (Fla. 1995). In fact, this Court has often rejected the argument that an amendment which includes substantial detail such as lists of operative provisions, definitions

and exceptions contain more than one subject. *E.g. Advisory Op. to Att’y Gen. re Florida’s Amendment to Reduce Class Size*, 816 So. 2d 580, 581-82 (Fla. 2002); *Advisory Op. to Att’y Gen. re Protect People From the Health Hazards of Second-Hand Smoke (“Smoke-Free Workplaces”)*, 814 So. 2d 415, 416-17 (Fla. 2002).

In a further effort to demonstrate logrolling, Citizens invokes various scenarios which differ from the scope of the amendment and argues that the voters should not have to decide between them and the amendment. The fallacy with this approach is that the voters are only being asked to vote for or against the amendment as it is written.

Thus, Citizens suggests that some voters may desire collaboration between recipients of state funded and privately funded researchers, but that if the latter used embryos obtained other than as required by the amendment, such collaboration could not occur. Again, this does not demonstrate logrolling, because the amendment specifies the scope of the research, and any voter who is concerned about how this may mesh with privately funded research can vote against the amendment.

Citizens admits that the amendment permits therapeutic cloning, sometimes known as somatic cell nuclear transfer (SCNT), but prohibits the birth of any clones.¹ Again, Citizens suggests that some voters might prefer to vote for

¹ The distinction between human cloning and SCNT is discussed in more detail by the Missouri Supreme Court when it approved an initiative providing for

funding stem cell research that did not involve any kind of cloning. This does not create a single-subject issue because the amendment states the kind of research which would be permitted and the kind which is not. By saying that the voters might prefer another version does not serve to divide the stated version into two subjects. The amendment states exactly what kind of research is contemplated. Furthermore, it should be noted that the amendment authorizes the Department of Health to promulgate rules for its implementation. Thus, if any question arises concerning the scope of the amendment, the Department, which has expertise in these matters, can resolve the question through rulemaking. Finally, as unlikely as it may be, should a question ever arise with respect to whether the amendment was being implemented in accordance with its proper meaning, the issue could be resolved in court. *See Advisory Op. to Att'y Gen. re Health Serv.*, 880 So. 2d 659 (Fla. 2004) (recognizing that often the ramifications of an amendment may be the subject of future litigation).

Citizens is doing nothing more than inventing some illusory interpretations in order to make it appear that the amendment contains more than one subject matter.

embryonic stem cell research in *Missourians Against Human Cloning v. Carnahan*, 190 S.W.3d 451 (Mo. 2006).

B. The Amendment Does Not Substantially Alter Or Perform The Functions Of Multiple Branches Of Government.

In arguing that the amendment substantially alters or performs the functions of multiple branches of government, Citizens primarily relies on *Advisory Opinion to the Attorney General re Requirement for Adequate Public Education Funding*, 703 So. 2d 446 (Fla. 1997). Yet, the amendment in that case, which required the state to spend 40% of its entire annual appropriation on public education (excluding federal funds and lottery proceeds) bears no comparison to the embryonic stem cell research amendment. As the Court explained in the *Public Education* opinion:

It is obvious that this amendment would substantially alter the legislature's present discretion in making value choices as to appropriations among the various vital functions of State government, including not only education but also civil and criminal justice; public health, safety, and welfare; transportation; disaster relief; agricultural and environmental regulation; and the remaining array of State governmental services.

Id. at 449.

Unlike the present initiative, that initiative obviously had "precipitous" and "cataclysmic" effects on all three branches of state government.

Contrary to the Citizens' position, this Court's opinions in *Advisory Opinion to the Attorney General re Florida Transportation Initiative for Statewide High Speed Monorail*, 769 So. 2d 367 (Fla. 2000) and *Advisory Opinion to the Attorney General re: Protect People, Especially Youth, From Addiction, Disease, and Other*

Health Hazards of Using Tobacco, 926 So. 2d 1186 (Fla. 2006) fully support approval of the embryonic stem cell research amendment.

The proposed amendment in *High Speed Rail* called for the Legislature to appropriate sufficient funds to acquire the rights of way and to design and build a statewide monorail system. Despite the amendment's comprehensive ramifications, the Court concluded that the amendment did not substantially alter any of the three branches of government. Citizens seems to suggest that *High Speed Rail* is irrelevant because in distinguishing *Public Education*, the Court pointed out that the amendment appeared to leave the branches with wide discretion concerning the details and funding of the project. Yet, Citizens points to no initiative which has ever been rejected because it did not leave the branches of government with discretion as to how to implement the amendment. Moreover, by authorizing the Department of Health to issue the grants and adopt rules, the present amendment gives the executive branch plenty of discretion.

In *Advisory Opinion to the Attorney General re: Tobacco*, this Court approved an amendment which required a specific amount of money to be spent on educating youth concerning the hazards of using tobacco. 926 So. 2d at 1195. Citizens' effort to distinguish that case based upon the Court's comment that the amendment designated the funds for a use which was mandated by the tobacco settlement agreement is misplaced. Citizens wholly fails to analyze the relevance

of that statement with respect to whether the amendment performs or alters the functions of more than one branch of government. Moreover, the monies being received from the tobacco settlement are subject to appropriation without restriction. Thus the *Protect Youth* amendment simply required the Legislature to appropriate a specific amount of money for a specified purpose. In the same manner, the embryonic stem cell amendment requires the Legislature to appropriate a specific amount of money for a specified purpose.

In any event, Citizens' arguments against the applicability of *High Speed Rail* and *Protect Youth* are primarily directed to the amendment's impact on the legislative branch. An amendment should not be stricken unless it substantially performs or alters the impact of more than one branch of government. *Advisory Op. to the Att'y Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353 (Fla. 1998); *Advisory Op. to Att'y Gen. re Limited Casinos*, 644 So. 2d 71, 74 (Fla. 1994).

There is no suggestion that the embryonic stem cell research amendment impacts the judicial branch. With respect to the executive branch, this Court has consistently held that an amendment which mandates the expenditure of state funds to implement the amendment does not substantially alter the Governor's veto power. *High Speed Rail*, 769 So. 2d at 371; *Youth Tobacco*, 926 So 2d at 1193.

Thus, the embryonic stem cell research amendment does not alter or perform the functions of multiple branches of government.

II. THE BALLOT TITLE AND SUMMARY FAIRLY AND UNAMBIGUOUSLY DISCLOSE THE CHIEF PURPOSE OF THE EMBRYONIC STEM CELL RESEARCH AMENDMENT.

A. The Title And Summary Provides Fair Notice Of The Content Of The Proposed Amendment.

Section 101.161(1), Florida Statutes, requires that the title and ballot summary explain "the chief purpose of the measure." Notably, Citizens does not complain that this title and ballot summary fails to explain the chief purpose of the amendment. This is not surprising because, to the extent possible with its limited word length, the summary exactly tracks the language of those portions of the amendment which explain that \$20 million for ten years shall be spent on embryonic stem cell research by using derivatives of human embryos that, before or after formation, have been donated to medicine under instructions forbidding intrauterine embryo transfer.

Instead, Citizens complains that the summary does not provide fair notice of what exactly constitutes compensation and who gets it. Once again, however, the summary uses nearly the same language as the amendment itself.

Even though the summary explains that the Department of Health shall make grants for the research, Citizens also argues that the summary should have

explained that the Department of Health is authorized to promulgate rules for its implementation. Inasmuch as the summary points out the role of the Department of Health, one might assume that the Department would adopt rules with respect to its grant making. Be that as it may, this is a detail for which there was no room in the summary. As this Court has said, the ballot title and summary need not explain every detail or ramification of the proposed amendment. *Advisory Op. to Att'y Gen. re Prohibiting Public Funding of Political Candidates' Campaigns*, 693 So. 2d 972, 975 (Fla. 1997).

B. The Summary Is Not Misleading To The Public.

Citizens complains that the ballot summary phrase "without receipt of consideration other than cost reimbursement and compensation for recovery of donated cells" is ambiguous and misleading. However, this is simply a more concise synopsis of the language of the amendment. On this subject, the amendment states there shall be no financial inducement to the donor and defines financial inducement as a valuable consideration except for "(1) reimbursement for reasonable costs incurred in connection with a donation, and (2) reasonable compensation to a donor from whom an oocyte is recovered, and to the donor of any other cell recovered by an invasive procedure, for the preparation for and time, burden, and risk of such recovery."

The intent of the amendment as reflected by the summary is that while there should not be a large financial inducement for the donation, the donor can be reimbursed for expenses incident thereto and paid reasonable compensation for the preparation for and time, burden, and risk incident to the recovery of the cell. For example, it could be expected that a donor should be reimbursed for the medical expenses incident to the recovery. Likewise, it would not be unreasonable for the donor to be paid compensation for the time lost from work as a result of the procedure. Furthermore, if the amendment is passed, the Department of Health will be able to promulgate rules concerning the expenses for which the donor can be reimbursed and the extent to which the donor can be compensated for the preparation for and time, burden, and risk of recovery.

Citizens is really arguing that the summary should specify the extent of the consideration. However, the amendment itself does not specify the extent of the consideration. In *Advisory Opinion re Marriage Protection*, 926 So. 2d 1229 (Fla. 2006), this Court approved a ballot summary despite the complaint that it did not define the "substantial equivalent of marriage" because the summary essentially tracked the language of the amendment. Similarly, this Court in *Advisory Opinion to Attorney General re Comp. Amendment*, 880 So. 2d 675 (Fla. 2004), upheld a ballot summary which closely followed but did not track the amendment because there were no "material or misleading discrepancies." Moreover, the Court held

that even though an amendment and the ballot summary contain vague terminology, the determination of the precise meaning is better left for subsequent litigation. *Id.* at 679.

Obviously, because of the word limitations, a ballot summary cannot always use the same terminology as the amendment. In fact, this Court has never stricken a ballot summary solely because it did not use the same terminology as the amendment. In *Advisory Opinion to the Attorney General re Florida Locally Approved Gaming*, 656 So. 2d 1259 (Fla. 1995), the Court reasoned that a ballot summary which only stated that casinos would be authorized in individual counties based on the resident population of such counties was not misleading even though the amendment, in substantially different terminology, authorized riverboat casinos in every county with at least 200,000 residents and one hotel casino in every county per each 500,000 residents in each county.

The key to whether a divergence in terminology between an amendment and the summary is fatal is whether the summary is misleading. This summary is not misleading. It clearly summarizes the text of the amendment and alerts the voters that the amendment permits the reimbursement of expenses and some compensation to be paid to the donor for the recovery of the donated cells.

CONCLUSION

The Embryonic Stem Cell Research amendment satisfies the governing legal requirements for the text, ballot title, and summary of a citizens' initiative. The Financial Impact Statement is accurate. Consequently, the Court should approve them for placement on the ballot.

Respectfully submitted this 22nd day of January, 2007.

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I HEREBY CERTIFY that a true and accurate copy of the foregoing with its Appendix was furnished by United States Mail, this 22nd day of January, 2007, to the following:

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