
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**

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

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STATEMENT OF THE CASE AND FACTS

Floridians for Stem Cell Research and Cures, Inc. is a Florida political committee created principally to promote an amendment to the Florida Constitution through the initiative petition process (the “Embryonic Stem Cell Research amendment”). [A 1.] See Art. XI, § 3, Fla. Const. The chief purpose of the amendment is to require \$20 million a year for ten years to be spent on embryonic stem cell research. The Embryonic Stem Cell Research amendment has qualified for this Court’s review. [A 2.] The Attorney General has requested this Court’s advisory opinion as to whether the amendment encompasses a single subject, and whether the ballot title and summary comply with the pertinent legal requirements.¹ [A 3.] The Court has jurisdiction. Art. V, § 3(b)(10), Fla. Const.²

¹ Section 16.061, Florida Statutes (2005), requires the Attorney General to petition this Court within 30 days after receiving an initiative from the Secretary of State, "requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161." This section implements Florida Constitution article IV, section 10, which requires the Attorney General to "request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI."

² Article V, section 3(b)(10) provides that "The supreme court ... [s]hall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law."

Title, Ballot Summary, and Text
Of the Embryonic Stem Cell Research Amendment

The ballot title for the proposed Embryonic Stem Cell Research amendment is “Funding Of Embryonic Stem Cell Research.”

The ballot summary provides as follows:

This amendment appropriates \$20 million annually for ten fiscal years for grants by the Department of Health to Florida nonprofit institutions to conduct embryonic stem cell research using, or using derivatives of, human embryos that, before or after formation, have been donated to medicine under donor instructions forbidding intrauterine embryo transfer. An embryo is "donated to medicine" only if given without receipt of consideration other than cost reimbursement and compensation for recovery of donated cells.

The full text of the amendment provides as follows:

"Article X of the Florida Constitution is hereby amended by inserting at the end thereof the following section:

Funding of embryonic stem cell research. (a) There is hereby appropriated from the General Revenue Fund to the Department of Health the sum of \$20 million in each of the ten fiscal years beginning with the year in which this amendment is adopted. With such funds the Department of Health shall make grants for embryonic stem cell research using, or using the derivatives of, human embryos that, before or after formation, have been donated to medicine under donor instructions forbidding intrauterine embryo transfer.

(b) For this purpose, an embryo is "donated to medicine" if and only, under conditions that satisfy applicable requirements for informed consent and do not involve financial inducement to any donor, the persons from whose cells the embryo originates give the embryo to another under written instructions that the recipient shall use the embryo in biomedical research or therapy. "Financial inducement" includes any valuable consideration but excludes (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.

(c) The funds appropriated hereby shall be granted to nonprofit academic and other research institutions situated within the state. Grantees shall be chosen on the basis of a recommended ordering of applications by scientific merit as reckoned in a peer review process by disinterested experts in the relevant fields.

(d) This provision shall be self-executing and effective immediately upon adoption. This appropriation shall be nonlapsing such that any portion of a yearly appropriation not distributed shall accumulate for distribution in subsequent years. The Department of Health is authorized to promulgate administrative rules for the implementation hereof."

The Financial Impact Estimating Conference has prepared a financial impact statement pertaining to this amendment. [A 4]. The Attorney General has requested this Court's opinion as to whether the financial impact statement is in accordance with section 100.371, Florida Statutes. [A 5]. The financial impact statement reads as follows:

FUNDING OF EMBRYONIC STEM CELL RESEARCH, #05-22

This amendment requires the state to spend \$20 million a year for ten years.

SUMMARY OF THE ARGUMENT

With respect to the validity of the amendment, the Court must pass on only two legal issues: (1) whether the amendment complies with the single-subject requirement, and (2) whether the ballot title and summary inform the voter of the chief purpose of the amendment. In this original proceeding, the Court reviews the proposed amendment *de novo*. Because of the inherently political nature of the initiative petition process, the Court has always tempered its review by the principle that the people's sovereign right to amend their constitution should be preserved unless a proposed amendment is "clearly and conclusively defective." Thus, review is deferential.

The Embryonic Stem Cell Research amendment satisfies the single-subject rule because it has a logical and natural oneness of purpose and may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. The amendment has only one chief purpose, which is to require \$20 million a year for ten years to be spent on embryonic stem cell research. The amendment also includes directly connected matter, which the constitution expressly allows. The amendment does not constitute logrolling, and it does not substantially alter or perform the functions of multiple branches or levels of government. The amendment thus satisfies the single-subject requirement.

The ballot title and summary of the Embryonic Stem Cell Research amendment comply with the governing legal requirements. They inform the voter

of the chief purpose of the amendment in language that is clear and crisp and unambiguous, and they are not misleading.

The summary accurately tracks key features of the text of the amendment. It explains that the \$20 million a year for ten years will be spent on embryonic stem cell research. It also discloses that the Department of Health will make grants to Florida non-profit corporations to do the research using human embryos that have been donated to research under instructions forbidding intrauterine transfer and explains that payments for the donation are limited to cost reimbursement and compensation for the recovery of donated cells. Floridians For Stem Cell Research and Cures, Inc. urges the Court to approve the Embryonic Stem Cell Research amendment for submission to the voters.

The Court is also required to determine whether the financial impact statement applicable to this amendment complies with section 100.371, Florida Statutes (2006). The financial impact statement reads as follows:

FUNDING OF EMBRYONIC STEM CELL RESEARCH, #05-22

This amendment requires the state to spend \$20 million a year for ten years.

The Court should approve the statement because it accurately sets forth the financial impact of this amendment.

ARGUMENT

Standard of Review. Sponsoring an initiative petition is the exercise of a unique right under the Florida Constitution. The initiative petition process is the only method of constitutional amendment or revision which empowers the people at all stages of the process. Given this context, although review is *de novo*, the Court applies its review deferentially in order to protect the sovereign right of the people to amend their own organic law in whatever manner they choose. *See Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982) (applying standard of “extreme care, caution, and restraint”); *Pope v. Gray*, 104 So. 2d 841, 842 (Fla. 1958) (reviewing initiatives represents the “most sanctified” aspect of the Court’s jurisdiction).

An initiative petition must be upheld unless it is “clearly and conclusively defective.” *Weber v. Smathers*, 338 So. 2d 819, 822 (Fla. 1976) (quoting *Goldner v. Adams*, 167 So. 2d 575 (Fla. 1964)), *receded from on other grounds, Floridians Against Casino Takeover v. Let’s Help Florida*, 363 So. 2d 337 (Fla. 1978). The Court does not pass on the merits, wisdom, draftsmanship, or constitutionality of a proposed amendment in these proceedings. *See Advisory Op. to Atty. Gen. re Tax Limitation*, 644 So. 2d 486, 489 (Fla. 1994); *Weber v. Smathers*, 338 So. 2d at 821-22. Under such review, the Embryonic Stem Cell Research amendment should be approved for submission to the voters.

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

With one exception, not applicable here, Article XI, Section 3, Florida Constitution, restricts citizens' initiatives to "one subject and matter directly connected therewith." The single-subject rule serves two purposes. As explained in *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):

First, the limitation prevents logrolling by "allow[ing] the citizens to vote on singular changes in our government that are identified in the proposal and to avoid voters having to accept part of a proposal which they oppose in order to obtain a change which they support." *Id.* Second, it "prevent[s] a single constitutional amendment from substantially altering or performing the functions of multiple aspects of government." *Advisory Op. to Att'y Gen. re Fla. Transp. Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation Syst.*, 769 So. 2d 367, 369 (Fla. 2000). In so doing, the single-subject rule ensures that the amendment's impact on the Florida Constitution is limited and accurately disclosed.

An examination of each component of the single-subject rule reveals that the Embryonic Stem Cell Research amendment complies fully with the governing law. Accordingly, this Court should approve it for submission to the voters.

A. The Amendment Is Not Guilty Of Logrolling.

One purpose of the single-subject rule is to prevent "logrolling." Logrolling is defined as combining different issues into one initiative which requires voters to cast a vote for something they might not want in order to gain something different

that they do want. *Advisory Op. to Att’y Gen. re: Florida Transportation Initiative for Statewide High Speed Monorail (“High-Speed Rail”)*, 769 So. 2d 367, 369 (Fla. 2000); *Advisory Op. to Att’y Gen.—Save Our Everglades*, 636 So. 2d 1336 (Fla. 1994).

Although opponents of citizens’ initiatives sometimes reflexively assert a single-subject violation whenever details are included in a proposed amendment, the Court has frequently made it clear that such arguments are meritless by approving many amendments which include substantial detail in lists, operative provisions, definitions, and exceptions. *See, e.g., In re Advisory Op. to Att’y Gen. re Patients’ Right to Know About Adverse Medical Incidents*, 880 So. 2d 617, 618-19 (Fla. 2004); *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); *Advisory Op. to Att’y Gen. – Fee on Everglades Sugar Production*, 681 So. 2d 1124, 1127-30 (Fla. 1996); *Advisory Op. to Att’y Gen. re Limited Casinos*, 644 So. 2d 71, 72-73 (Fla. 1994); *Advisory Op. to Att’y Gen. re Limited Marine Net Fishing*, 620 So. 2d 997, 997-98 (Fla. 1993). The key feature of logrolling is *disparity* of subjects, and thus does not exist merely because an amendment sets forth *related* provisions that “may be logically viewed as having a natural relation and connection as component parts or

aspects of a single dominant plan or scheme." *Advisory Op. to Atty. 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 Embryonic Stem Cell Research amendment complies with the single-subject rule because it manifests a "logical and natural oneness of purpose." *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984). The amendment's single subject is to require \$20 million per year for ten years to be spent on Embryonic Stem Cell Research. All of its provisions relate directly to that single subject. As required, it "may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme." *Florida Locally Approved Gaming*, 656 So. 2d at 1263.

Because of prior precedent, the Court in *Advisory Opinion to Attorney General Re: Slot Machines*, 880 So. 2d 522 (Fla. 2004), upheld a proposed amendment that authorized voters in certain counties to approve the use of slot machines, and also, specified that any taxes derived therefrom should supplement public education statewide. Nevertheless, four Justices expressed the view that in future cases they would consider amendments similar in nature to constitute logrolling in violation of the single-subject rule.

The Embryonic Stem Cell Research amendment does not run afoul of this admonition because it simply states that a specific amount of money will be used

for a particular purpose. Since the Embryonic Stem Cell Research amendment satisfies the single-subject requirement, the Court should approve it for placement on the ballot.

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

A second reason for the single-subject rule is to prevent one initiative from "substantially altering or performing the functions of multiple aspects of government." *High-Speed Rail*, 769 So. 2d at 369. This requirement prevents "multiple 'precipitous' and 'cataclysmic' changes in state government." *Advisory Op. to the Att'y Gen. re Right to Treatment & Rehab. For Non-Violent Drug Offenses*, 818 So. 2d 491, 495 (Fla. 2002).

The Court has always recognized that a constitutional amendment may, and almost always will, *affect* multiple branches of government. *E.g., Limited Casinos*, 644 So. 2d at 74. Notably, this Court has consistently held that an amendment should not be stricken unless it *substantially* performs or alters the function of *multiple* branches of government. *High Speed Rail*, 769 So. 2d at 369-70; *Advisory Op. To Atty. Gen. re Fish & Wildlife Conservation Comm'n*, 705 So. 2d 1351, 1353 (Fla. 1998); *Limited Casinos*, 644 So. 2d at 74; *Fine v. Firestone*, 448 So. 2d 984, 988 (Fla. 1984).

In this case, the Embryonic Stem Cell Research amendment does not substantially alter or perform the functions of multiple branches of government. At

the outset, it is clear that it has no impact on the judicial branch. Similarly, the amendment has little or no effect on the executive branch. While it calls for the Department of Health to administer the grants for the research, its impact is minimal. The amendment simply authorizes the department to award grants and to promulgate rules to implement the purpose of the amendment. Far from altering or performing the function of the department, the amendment gives the department the discretion to perform a function to which it is accustomed and which is well within its expertise. *C.F. Advisory Opinion to Att'y Gen. re Tobacco*, 926 So. 2d 1186, 1192 (Fla. 2006) (explaining that proposed amendment delineating components for a program are permissible where the branches of government are left with wide discretion concerning the details).

The amendment's only impact on the legislative branch is that \$20 million per year will have to be spent out of the General Revenue Fund for ten years on embryonic stem cell research. Significantly, this Court has never held that an amendment substantially affects the function of the legislative branch simply because it requires a certain amount of money be appropriated in order to accomplish the purpose of the amendment.

The amendment in no way reaches the level of restrictions on the state's budget that the Court condemned in *Advisory Opinion to the Attorney General re Requirement For Adequate Public Education Funding*, 703 So. 2d 446 (Fla. 1997).

There, the proposed amendment would have required the state to expend forty percent of its entire appropriations under Article III (not including federal funds or lottery proceeds) for public education funding. 703 So. 2d at 447. The Court held that this massive restriction on the entire state budget violated the single-subject rule. The Court explained that it violated the single-subject rule because it limited the entirety of the state's other functions to the remaining sixty percent of the budget, thus rendering many other government functions, including those in the other branches of government, impossible to fund, and effectively prevented the Governor from exercising his line-item veto power if doing so would reduce the total appropriation below forty percent. *Id.*

Such is not the case here. It is self-evident that the removal of \$20 million from the Legislature's authority over an annual general revenue budget that runs in excess of \$25 billion would not constitute a substantial usurpation of the legislative function.

The Embryonic Stem Cell Research amendment does not substantially alter or perform the function of any of the three branches of government, much less more than one of them.

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

Section 101.161(1), Florida Statutes (2005) provides that whenever a constitutional amendment is submitted to the vote of the people, a summary of the amendment explaining its chief purpose shall appear on the ballot.

The Court focuses on two aspects of ballot titles and summaries: (1) whether the summary fairly informs the voter of the “chief purpose” of the measure, and (2) whether the summary is misleading. *Advisory Op. to Att’y Gen. re Florida’s Amendment to Reduce Class Size*, 816 So. 2d 585 (Fla. 2002). In this review, the Court will read the ballot title and summary together to determine whether they accurately inform the voter. *Advisory Op. to Att’y Gen. re: Voluntary Universal Pre-Kindergarten Education*, 824 So. 2d 161, 166 (Fla. 2002) (citing *Tax Limitation*, 673 So. 2d at 868).

The ballot title of the Embryonic Stem Cell Research amendment is “Funding Of Embryonic Stem Cell Research.”

The summary provides as follows:

This amendment appropriates \$20 million annually for ten fiscal years for grants by the Department of Health to Florida nonprofit institutions to conduct embryonic stem cell research using, or using derivatives of, human embryos that, before or after formation, have been donated to medicine under donor instructions forbidding intrauterine embryo transfer. An embryo is "donated to medicine" only if given without receipt of consideration other than cost reimbursement and compensation for recovery of donated cells.

The ballot title and summary of the Embryonic Stem Cell Research amendment easily pass each category of scrutiny, and this Court should approve them.

A. The Summary Fairly Informs The Voter Of The Chief Purpose Of The Measure.

The statute demands of the ballot summary only that it disclose the "chief purpose of the measure." § 101.161(1), Fla. Stat. (2005). The Court has ruled that the purpose of this statute is "to provide fair notice of the content of the proposed amendment so that the voter will not be misled as to its purpose, and can cast an intelligent and informed ballot." *Term Limits Pledge*, 718 So. 2d at 803; *Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954) (holding that "[a]ll that the Constitution requires or that the law compels or ought to compel is that the voter have notice of that which he must decide [w]hat the law requires is that the ballot be fair and advise the voter sufficiently to enable him intelligently to cast his ballot."). While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail, ramification, or effect of the proposed amendment. *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982).

The summary clearly and unambiguously discloses the chief purpose and legal effect. Specifically, the chief purpose of the Embryonic Stem Cell Research amendment is to require \$20 million a year for ten years to be spent on embryonic

stem cell research. The summary accurately reflects the text of the amendment, covering all of the main provisions of the amendment and specifically includes references to key features that may be of interest to the voter. Among those details fairly disclosed in the summary are the amount of cost, the purpose for which the monies will be spent, that the Department of Health will provide grants to non-profit institutions to do the research, and the fact that the donations of human embryos must only be under instructions forbidding intrauterine transfer and only if given without consideration, except for cost reimbursement and compensation for the recovery of donated cells. This disclosure is quite detailed and yet it is an accurate reflection of the amendment itself. It gives the voter the information necessary to make an informed decision. A voter who sees these details disclosed in the ballot summary will have an accurate understanding of the issue to be determined, and is on notice to investigate further if she wishes to do so. *See Carroll v. Firestone*, 497 So. 2d 1204, 1207 (Fla. 1986) (Boyd, J., concurring) (explaining it is immaterial to validity of summary whether voters choose to educate themselves or not, as long as the chief purpose of the measure is disclosed so that they have the opportunity to inform themselves). The summary of the Embryonic Stem Cell Research amendment more than satisfies the requirement that it fairly inform the voter of the chief purpose of the measure. Accordingly, the

Court should approve it so that the voters may have the opportunity to express their views on the amendment at the polls.

B. The Summary Is Not Misleading To The Public.

The summary of the Embryonic Stem Cell Research amendment is not misleading. First, as already discussed, it fully and fairly discloses the chief purpose of the measure, and even discloses details of the proposal. Beyond that, it avoids the political or inflammatory rhetoric designed to influence the voter which often accompanies citizens' initiatives.

Unlike the summaries in *Askew v. Firestone*, 421 So. 2d 151 (Fla. 1982) and *Armstrong v. Harris*, 773 So. 2d 7 (Fla. 2000), the summary here does not disguise the amendment's true purpose. In *Firestone*, while stating that the amendment banned lobbying before one's former agency for two years without making financial disclosure, the summary failed to acknowledge the current prohibition against any lobbying before a former agency. Likewise, in *Armstrong*, the summary failed to explain that the amendment had the effect of changing the prohibition against cruel or unusual punishment to cruel and unusual punishment.

This ballot summary does not mislead the public and clearly explains the amendment's intent and purpose.

III. THE FINANCIAL IMPACT STATEMENT COMPLIES WITH SECTION 100.371, FLORIDA STATUTES

The Financial Impact Statement reads as follows:

FUNDING OF EMBRYONIC STEM CELL RESEARCH, #05-22

This amendment requires the state to spend \$20 million a year for ten years.

The Financial Impact Statement is straightforward and accurately explains the financial impact of this amendment. Since the Financial Impact Statement complies with section 100.371, Florida Statutes, the Court should approve the Financial Impact Statement.

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 2nd day of January, 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing with its Appendix was furnished by United States Mail, this 2nd day of January, 2007, to the following:

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14 point type, a font that is proportionately spaced.

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