No state revenue used for embryonic research

Number: PETITION

Date: January 12, 2007

The Honorable R. Fred Lewis
Chief Justice, and Justices of
The Supreme Court of Florida
The Supreme Court Building
Tallahassee, Florida 32399-1925

Dear Chief Justice Lewis and Justices:

In accordance with the provisions of Article IV, section 10, Florida Constitution, and section 16.061, Florida Statutes, it is the responsibility of the Attorney General to petition this Honorable Court for a written opinion as to the validity of an initiative petition circulated pursuant to Article XI, section 3, Florida Constitution.

On November 9, 2006, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to prohibit state spending for experimentation that involves the destruction of a live human embryo.[1] Pursuant to section 16.061(1), Florida Statutes, "[t]he Attorney General shall, within 30 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, petition the Supreme Court, 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."

The full text of the proposed amendment states:

"Be it enacted by the people of Florida that a new section for Article X of the Constitution is created to add the following:

No revenue of the state shall be spent on experimentation that involves the destruction of a live human embryo."

The ballot title for the proposed amendment is "Prohibiting state spending for experimentation that involves the destruction of a live human embryo." The summary for the proposed amendment states:

"No revenue of the state shall be spent on experimentation that involves the destruction of a live human embryo."

Single Subject

Article XI, section 3, Florida Constitution, requires that a constitutional amendment proposed by citizens' initiative "embrace but one subject and matter directly connected therewith." As this

Court stated in *Fine v. Firestone*, 448 So. 2d 984, 993 (Fla. 1984), this limitation protects the State Constitution from "precipitous" and "spasmodic" changes by preventing logrolling. In addition, the single subject rule "prevent[s] a single constitutional amendment from substantially altering or performing the functions of multiple aspects of government." *Advisory Opinion to the Attorney General--Florida Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System,* 769 So. 2d 367, 369 (Fla. 2000).

To comply with the single-subject requirement, an initiative must manifest a "logical and natural oneness of purpose." *Fine v. Firestone, supra*. This Court stated in *Advisory Opinion to the Attorney General--Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994), that "[t]o ascertain whether the necessary 'oneness of purpose' exists, we must consider whether the proposal affects separate functions of government and how the proposal affects other provisions of the constitution." This Court has recognized that "a proposal that affects several branches of government will not automatically fail; rather, it is when a proposal substantially alters or performs the functions of multiple branches that it violates the single-subject test." *Advisory Opinion to the Attorney General--Patients' Right to Know About Adverse Medical Incidents*, 880 So. 2d 617, 620 (Fla. 2004) (*quoting Fine*, 448 So. 2d at 990). Thus, the single-subject rule ensures that the impact of a constitutional amendment proposed by a citizens' initiative is limited and accurately disclosed.

Therefore, I respectfully request this Honorable Court's opinion as to whether the constitutional amendment, proposed by initiative petition, complies with Article XI, section 3, Florida Constitution.

Ballot Title and Summary

Section 101.161(1), Florida Statutes, sets forth substantive and technical requirements for the ballot title and summary, stating:

"Whenever a constitutional amendment . . . is submitted to the vote of the people, the substance of such amendment . . . shall be printed in clear and unambiguous language on the ballot . . . . The wording of the substance of the amendment . . . shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. . . . The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

This Court has stated "that the ballot [must] be fair and advise the voter sufficiently to enable him intelligently to cast his ballot." *Askew v. Firestone*, 421 So. 2d 151, 155 (Fla. 1982), *quoting, Hill v. Milander*, 72 So. 2d 796, 798 (Fla. 1954). 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 or ramification of the proposed amendment. *Carroll v. Firestone*, 497 So. 2d 1204, 1206 (Fla. 1986). The ballot, however, must give the voter fair notice of the decision he must make. *Askew v. Firestone, supra* at 155. This Court has stated that the purpose of section 101.161, Florida Statutes, is to ensure that voters are advised of the amendment's true meaning.

Therefore, I respectfully request this Honorable Court's opinion as to whether the amendment's ballot title and summary comply with section 101.161, Florida Statutes.

Rule 9.510

Rule 9.510(b), Florida Rules of Appellate Procedure, provides that a request for an advisory opinion of this Honorable Court contain certain information.[2] In compliance with Rule 9.510(b), this office would note the following:

The name and address of the sponsor of the initiative petition: Citizens for Science and Ethics, Inc., 95 South Federal Highway, Suite 200-205, Boca Raton, Florida 33432. The name and address of the sponsor's attorney: Mr. Stephen C. Emmanuel, Ausley & McMullen, 227 South Calhoun Street, Tallahassee, Florida 32301.

The Division of Elections has informed this office that as of November 13, 2006, the sponsor had not obtained the requisite number of signatures to have the proposed amendment placed on the ballot; the supervisors of elections, however, had certified a total of 61,608 valid petition signatures. The division has advised that 611,009 signatures are required for placement on the 2008 general election, the election during which the sponsor is planning to submit the proposed amendment to the voters.[3] The division has further advised this office that the last possible date that the ballot for the general election in 2008 can be printed in order to be ready for the election is unknown at this time. Pursuant to Article XI, section 5(b), Florida Constitution, however, a proposed amendment to the Constitution by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held.

Pursuant to section 100.371(5)(a), Florida Statutes, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement of an initiative within 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State. This office has been advised that a letter was sent to the conference on November 8, 2006, and was received on November 8, 2006. Since the 45th day after receipt is December 23, 2006, a Saturday, it appears that the statement must be completed by December 26, 2006.[4]

Rule 9.510(b)(8), Florida Rules of Appellate Procedure, requires that this office provide the names and complete mailing addresses of all of the parties who are to be served. The following are the names and addresses of interested persons who are known by the Attorney General's Office at this time:

The Honorable Jeb Bush Ms. Sue E. Cobb
Governor Secretary of State
The Capitol PL-05 The R.A. Building
400 South Monroe Street 500 South Bronough Street
Tallahassee, Florida 32399-0001 Tallahassee, Florida 32399-0250

The Honorable Charlie Crist The Honorable Ken Pruitt
Attorney General President, Florida Senate
The Capitol PL-01 409 The Capitol
400 South Monroe Street 404 South Monroe Street
Tallahassee, FL 32399-1050 Tallahassee, Florida 32399-1100

The Honorable Marco Rubio Citizens for Science and Ethics, Inc.
Speaker, Florida House of Representatives 95 South Federal Highway
420 The Capitol Suite 200-205
402 South Monroe Street Boca Raton, Florida 33432
Tallahassee, FL 32399-1300

Mr. Louis Hubener Mr. Stephen C. Emmanuel
Solicitor General Ausley & McMullen
The Capitol PL-01 227 South Calhoun Street
400 South Monroe Street Tallahassee, Florida 32301
Tallahassee, FL 32399-1050

Ms. Dawn Roberts Financial Impact Estimating Conference
Division of Elections The Florida Legislature
The R.A. Building, Room 316 Attention: Amy Baker
500 South Bronough Street 111 West Madison, Suite 574
Tallahassee, Florida 32399-0250 Tallahassee, Florida 32399-1400

Sincerely,

Charlie Crist
Attorney General

CC/tfl
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[1] This office would note that on November 7, 2006, this office submitted an initiative petition to this Honorable Court providing for the funding of embryonic stem cell research. The sponsors of that initiative, as do the sponsors of this initiative, plan to submit the proposed amendment to the voters during the November 2008 general election.

[2] The Rule was adopted by the Court in *In Re: Florida Rules of Appellate Procedure Rule 9.510, Advisory Opinions to the Attorney General*, Case No. SC06-1264 (Fla. November 9, 2006).

[3] *See* s. 15.21, Fla. Stat., which requires verified forms signed and dated equal to 10 percent of the number of electors statewide and in at least one-fourth of the congressional districts required by Art. XI, s. 3, Fla. Const., in order for the Secretary of State's Office to submit an initiative petition to the Attorney General and to the Financial Impact Estimating Conference.

[4] Rule 1.090(a), Fla. R. Civil P. December 26, 2006, appears to be the next day after December 23, 2006, which is not a Saturday, Sunday, or legal holiday.