Funding of embryonic stem cell 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 October 9, 2006, this office received from the Secretary of State an initiative petition seeking to amend the Florida Constitution to provide for the funding of embryonic stem cell research.[1] According to the information provided by the Secretary of State, the sponsor of the initiative, Floridians for Stem Cell Research and Cures, Inc., has obtained the necessary signatures required to have the petition presented to the Court for review.[2] Mr. Burt Aaronson is the Chair of Floridians for Stem Cell Research and Cures, Inc., located at 2255 Glades Road, Suite 218-A, Boca Raton, Florida 33431.[3] As of this date, the sponsor has not obtained the necessary number of signatures to place the initiative on the ballot. Signatures are currently being collected and the sponsor has indicated its intent that the initiative be placed on the 2008 ballot.

The full text of the proposed amendment states:

"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 ballot title for the proposed amendment is "FUNDING OF EMBRYONIC STEM CELL RESEARCH." The summary for the proposed amendment states:

"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."

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. Logrolling is "a practice whereby an amendment is proposed which contains unrelated provisions, some of which electors might wish to support, in order to get an otherwise disfavored provision passed." *Advisory Opinion to the Attorney General--Referenda Required for Adoption & Amendment of Local Government Comprehensive Land Use Plans*, 902 So. 2d 763, 766 (Fla. 2005), quoting *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). 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, supra*. Thus, the single-subject rule ensures that the impact of a constitutional amendment proposed by a citizen's initiative is limited and accurately disclosed.

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).

Recently this Court in *Advisory Opinion to the Attorney General--Protect People, Especially Youth, From Addiction, Disease, and Other Health Hazards of Using Tobacco*, 926 So. 2d 1186 (Fla. 2006), held that language in an initiative petition requiring a percentage of tobacco settlement funds to be annually appropriated for a tobacco education and prevention program did not violate the single subject requirement. The Court distinguished the funding requirement from that in *Advisory Opinion to the Attorney General--Requirement for Adequate Public Education Funding*, 703 So. 2d 446 (Fla. 1997), which required the state to expend forty percent of its entire appropriations under Article III, Florida Constitution, not including lottery proceeds or federal funds, for public education funding, stating: "This massive restriction on appropriations also limited the entirety of the State's other functions to the remaining sixty percent of the budget, rendering many other government functions impossible to fund." 926 So. 2d at 1193.

In *Advisory Opinion to the Attorney General--Florida Transportation Initiative for Statewide High Speed Monorail, Fixed Guideway or Magnetic Levitation System, supra*, this Court found no violation of the single-subject rule where the proposed amendment did not require the Legislature to spend a specific percentage of the budget or even a specific amount, nor point to a specific tax or fee from which the revenues for the project would come. 769 So. 2d at 370. In *Advisory Opinion to the Attorney General-- Fee on Everglades Sugar Production*, 681 So. 2d 1124 (Fla. 1996), the Court found no violation where the initiative created new funding for a program rather than relying on the appropriations budget of the Legislature. Similarly in *Advisory Opinion to the Attorney General--Funding for Criminal Justice*, 639 So. 2d 972, 974 (Fla. 1994), the proposed amendment mandated the raising of the taxes on the sale of goods or services, established a trust fund and required that funds be spent in excess of current levels, setting forth the particular purposes for which the funds raised could be spent.

The proposed amendment under consideration by this Court, however, requires an annual appropriation from general revenue of twenty million dollars for embryonic stem cell research, with any portion of a yearly appropriation not distributed accumulating for distribution in subsequent years.

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.

Section 101.161(1), Florida Statutes, provides in relevant part:

"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.

Sincerely,

Charlie Crist
Attorney General

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[1] This office has been advised that a Spanish version of the petition, which has not been reviewed by the Department of State, has been circulated and those signed petitions are among those counted toward the percentage required to submit an initiative to this Honorable Court.

[2] According to the Secretary of State's letter, dated October 9, 2006, 61,113 signatures are required by section 15.21 (*i.e.,* 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.). The letter of October 9, 2006 advises that the sponsor has obtained 63,245 verified signatures in at least one-fourth of the congressional districts required by Art. XI, s. 3, Fla. Const.

[3] This office has been advised that the law firm of Weiss & Handler located at the same address is acting as the committee's attorney.