

In the Circuit Court of Cole County, Missouri
Division No. _____

FILED

NOV 23 2005

BRENDA A. UMSTATT
CLERK CIRCUIT COURT
COLE COUNTY, MISSOURI

MISSOURIANS AGAINST HUMAN CLONING,)
a Not-For-Profit Corporation of Missouri)
600 Clark Avenue,)
Jefferson City, Missouri 65101)

and)

DAVID W. MASON)
2901 Mitchell)
St. Joseph, MO 64507-1617)

and)

SARAH E. MASON)
2901 Mitchell)
St. Joseph, MO 64507-1617)

and)

WILLIAM P. BIERMANN)
7018 Forest Oak Drive)
Barnhart, MO 63012)

and)

TAMMY M. COLEMAN)
5420 Blue Ridge Cutoff, #308)
Raytown, MO 64133)

and)

MARY S. WEBER)
P.O. Box 24)
Mokane, MO 65059)

Plaintiffs,)

v.)

ROBIN CARNAHAN, in Her Capacity as)
Secretary of State of the State)
Of Missouri,)
State Capitol, Room 208)
Jefferson City, MO 65101)

Case No. _____

and)
)
 CLAIRE MCCASKILL, in Her Capacity as)
 State Auditor of the State)
 Of Missouri,)
 State Capitol, Room 224)
 Jefferson City, MO 65101)
)
 Defendants.)

**PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION AND
 DECLARATORY JUDGMENT**

PARTIES

1. Plaintiff Missourians Against Human Cloning is a Missouri not-for-profit corporation organized and existing under the laws of Missouri and as such is a citizen of the State of Missouri with its principal and registered office at 600 Clark Avenue, Jefferson City, Cole County, Missouri 65101.
2. Plaintiff David W. Mason is a citizen of the State of Missouri and a resident of St. Joseph, Buchanan County, Missouri.
3. Plaintiff Sarah E. Mason is a citizen of the State of Missouri and a resident of St. Joseph, Buchanan County, Missouri. Sarah E. Mason has Spina Bifida.
4. Plaintiff William P. Biermann is a citizen of the State of Missouri and a resident of Barnhart, Jefferson County, Missouri. William P. Biermann's son has Atypical Hemolytic Uremic Syndrome.
5. Plaintiff Tammy M. Coleman is a citizen of the State of Missouri and a resident of Raytown, Jackson County, Missouri. Tammy M. Coleman was involved in a car accident in 1987. As a result of this accident, she suffered severe head trauma. Tammy M. Coleman has a speech impediment and has difficulty with her balance.

6. Plaintiff Mary S. Weber is a citizen of the State of Missouri and a resident of Mokane, Callaway County, Missouri. Mary S. Weber's registered address for purposes of voting is a post office box.
7. Defendant Robin Carnahan is and at all times hereinafter mentioned was the Secretary of State of the State of Missouri, and, pursuant to Article IV, Section 14, Constitution of Missouri and Chapter 116, RSMo, is charged with the conduct of elections and implementing the provisions of the laws relating to certification of initiative petitions proposing amendments to the Missouri Constitution, and is a party defendant as provided by Chapter 116, RSMo.
8. Defendant Claire McCaskill is and at all times hereinafter mentioned was the State Auditor of the State of Missouri, and is a party defendant as provided by Section 116.190, RSMo.

JURISDICTION AND VENUE

9. Plaintiff citizens bring this action in the Circuit Court of Cole County, Missouri pursuant to the provisions of Chapter 116, RSMo; Chapter 527, RSMo; and Supreme Court Rule 87 for the purpose of securing a declaratory judgment that the hereinafter mentioned Proposed Constitutional Amendment (Proposed Amendment) is violative of the Constitution and laws of the State of Missouri and an injunction to prohibit the Secretary of State from placing the same on the General Election ballot of November 7, 2006 and for such other relief as the Court may deem just and proper.

GENERAL ALLEGATIONS

10. On or about October 11, 2005, the "Missouri Coalition for Lifesaving Cures" presented Defendant Carnahan with the Proposed Amendment and an initiative petition in support thereof.
11. A true and correct copy of the initiative petition and Proposed Amendment is attached hereto, made part hereof and marked Plaintiffs' Exhibit 1.
12. Plaintiffs' Exhibit 1 are the documents proposed to be used by the "Missouri Coalition for Lifesaving Cures" and others for the purpose of attempting to secure signatures of registered voters of the State of Missouri for the purpose of placing the Proposed Amendment on the General Election ballot of November 7, 2006.
13. On October 31, 2005, Defendant McCaskill prepared and submitted a fiscal note for the Proposed Amendment, indicating an estimated fiscal impact on state and local governments of \$0 - \$68,916. A true and correct copy of the fiscal note is attached hereto, made part hereof, and marked Plaintiffs' Exhibit 2.
14. On November 14, 2005 Defendant Carnahan certified the Proposed Amendment pursuant to Section 116.180, RSMo, as legally sufficient for submission to the voters at the November 7, 2006 General Election. A true and correct copy of Defendant Carnahan's certification is attached hereto, made part hereof, and marked as Plaintiffs' Exhibit 3.
15. Unless restrained and enjoined by the Court from doing so, Defendant Carnahan will cause the Proposed Amendment to be placed on the General Election ballot on November 7, 2006.
16. Any signatures of Missouri registered voters to the initiative petition circulated in connection with the Proposed Amendment would be obtained under false, misleading and deceptive pretenses, and therefore would not be a free and voluntary act on the part of the signatory.

17. This action is brought within ten (10) days after certification by the Secretary of State as provided in Sections 116.190 and 116.200, RSMo.
18. Plaintiffs have no adequate remedy at law, and unless Defendants are enjoined from taking further action, allowing signatures to be obtained on initiative petitions in connection with the Proposed Amendment, verifying such signatures, placing the Proposed Amendment on the November 7, 2006 General Election ballot, or in leaving it on that ballot, Plaintiffs will suffer irreparable injury.

THE BALLOT TITLE

19. The ballot title for the Proposed Amendment is set forth in Plaintiffs' Exhibit 3, and is a true and correct statement of the ballot title as the same will appear, unless this Court enjoins such action, on the November 7, 2006 General Election ballot.
20. The ballot title is illegal, insufficient, unfair and deceptive and does not give fair notice of the subject of the Proposed Amendment nor the effect of the Proposed Amendment in the following respects, to-wit:
 - (a) Said title misleads and deceives the voters of this state regarding the true purpose and intention of the Proposed Amendment, by stating to the voters that the Proposed Amendment would "ban human cloning or attempted cloning", while the text of the Proposed Amendment in fact allows human cloning as the term "cloning" is popularly understood and understood within the scientific community; and specifically allows a cloning procedure known as "somatic cell nuclear transfer" by virtue of the provisions of the Proposed Amendment that define "clone or attempt to clone a human being" as meaning "to implant in a uterus or attempt to implant in a uterus anything other than the product of fertilization of an egg or a human female by a sperm of a human male for the

purpose of initiating a pregnancy that could result in the creation of a human fetus, or the birth of a human being”; while the term “cloning” is popularly and scientifically understood as meaning “asexual reproduction of human beings” and established science holds that the initial product of the cloning procedure known as somatic cell nuclear transfer is a living human being at the embryonic stage of life, a cloned human embryo.

- (b) Said title misleads and deceives the voters of this state regarding the true purpose and intention of the Proposed Amendment by stating to the voters that the Proposed Amendment allows and regulates “stem cell research”, while failing to disclose to the voters that by allowing research on tissue derived from “in vitro blastocysts”, “somatic cell nuclear transfer” and “body tissues” as provided by the Proposed Amendment, the Proposed Amendment in fact allows for research on human subjects, specifically human beings at the embryonic and fetal stage of life, e.g., human embryos derived from both in vitro fertilization (union of sperm and egg) and human cloning (somatic cell nuclear transfer).
- (c) Said title fails to inform the voters of this state that the Proposed Amendment would limit the ability of the General Assembly and other government officials and entities to “eliminate, reduce, deny or withhold” appropriations for certain research, in perpetuity, and that said appropriations shall have a higher priority than other appropriations of the State of Missouri and other governmental entities.
- (d) Said title is further insufficient, unfair and deceptive in that, taken as a whole, it does not give notice of the intent and effect of the Proposed Amendment; conceals from the voter numerous changes and additions that would be put into effect; and is structured in such a way so as to deceive voters into believing that

the purpose of the Proposed Amendment is to ban human cloning when in truth and fact the Proposed Amendment protects and expressly allows human cloning to occur; that to deceive voters into believing research is allowed only on certain cells when in fact, the Proposed Amendment allows research that destroys human subjects, specifically human beings at the embryonic and fetal stage of life, e.g., human embryos derived from both in vitro fertilization (union of sperm and egg) and human cloning (somatic cell nuclear transfer); and to deceive voters by failing to mention that appropriations of public funds for certain research is afforded a greatly enhanced priority than are appropriations for other purposes and uses of public funds.

21. An alternative ballot title for the Proposed Amendment is impossible to draft in that any attempt to construct a ballot title that would inform the voters of all the context of the Proposed Amendment would necessitate hundreds and hundreds of words. A ballot title limited to one hundred words, as that proposed, would be a fraud on the citizens of the State of Missouri.

THE FISCAL NOTE

22. The fiscal note for the Proposed Amendment is insufficient and inaccurately and unfairly depicts the anticipated costs of the Proposed Amendment to state and local governmental entities, in that the Proposed Amendment does not allow such governmental entities to “eliminate, reduce, deny, or withhold any public funds” provided or eligible to be provided to persons conducting certain research and human cloning-related activities, allowing for such activities to be conducted or provided on its premises, or otherwise associated with such research, that receives or is eligible to receive public funds for purposes other than in connection with such activities, on account of, or for the purpose

of creating disincentives for any person to engage in, associate with, or preventing, restricting, obstructing, or discouraging such activities.

23. The provisions of Section 38(d).5, as well as Section 38(d).2(7) and Section 38(d).7 and other provisions of the Proposed Amendment, restrict the ability of the General Assembly, the governor of Missouri, and other state and local government officials and entities from at any time eliminating, reducing, denying or withholding any public funds appropriated, or subject to appropriation, in connection with destructive human embryo research on human embryos derived from both in vitro fertilization and the human cloning described in the Proposed Amendment, without providing new revenues created and provided for by said Proposed Amendment.

THE PETITION FORM

24. The form of the initiative petition relating to the Proposed Amendment approved for circulation by Defendant Carnahan provides that, with respect to the addresses of the signatories of the petition, that the signatory provide his or her “Street” address, and states that “No PO Boxes” can be provided as a voter’s address.
25. The petition form prohibits the inclusion of post office boxes as the registered voting address despite the fact that the registered voting address of some Missouri voters is a post office box.
26. The prohibition against providing a post office box as the registered voter’s address is not based on law and is not found in statute.
27. The form of initiative petition approved for circulation with respect to the Proposed Amendment conflicts with a line of precedent established by the Missouri Attorney General that initiative petitions proposing changes in the Missouri Constitution or law

must allow registered voters to provide a post office box as their registered address. *See*, Missouri Attorney General's Opinions 150-99, 183-99, 184-99, 185-99 and 196-99.

28. The form of initiative petition approved for circulation with respect to the Proposed Amendment precludes registered voters with post office boxes as their registered voting address from fully participating in the election process with respect to the Proposed Amendment.

WHEREFORE, Plaintiffs pray:

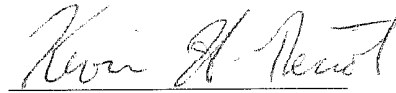
1. That this Court issue its preliminary and permanent injunctions enjoining and restraining Defendant Carnahan, her agents, servants, employees and all those acting under her direction or control from performing any further act toward submitting to the voters the deceptive Proposed Amendment and ballot title, the petition form, and fiscal note; directing her to reverse her decision and to take all steps necessary to remove the same Proposed Amendment, ballot title and fiscal note from the November 7, 2006 ballot, including enjoining her, her agents, servants, employees, all officers, and all those acting under her direction or control, from including the Proposed Amendment, the ballot title and fiscal note on the ballot.
2. That this Court issue a declaration of rights and responsibilities of Defendant Carnahan with respect to the Proposed Amendment including an order that the petition form, ballot title and fiscal note for the Proposed Amendment are legally insufficient and ineffective and directing Defendant Carnahan to take any and all steps necessary to prevent the ballot title and fiscal note for the Proposed Amendment from appearing on the ballot of the November 7, 2006 General Election.

3. That this Court void all signatures obtained on the initiative petitions in connection with the Proposed Amendment made prior to the Court's order, and enjoin Defendant Carnahan from counting, considering or verifying any such signatures.
4. That this Court shall further order any other relief it deems just and proper.

Respectfully submitted this 23rd day of November, 2005.

Nikolas T. Nikas+
Bioethics Defense Fund
Arizona Bar # 011025
6811 East Voltaire Ave.
Scottsdale, Arizona
(480) 483-3597
(480) 483-3658 fax

Dorinda C. Bordlee+
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Kevin H. Theriot
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Missouri Bar # 55733
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Missouri Bar # 56583
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5660 W. 135th St.
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(480) 444-0028
The Alliance Defense Fund

- + Motion for Pro Hac Vice will be submitted.
- * Of counsel, not admitted in this jurisdiction.

MISSOURI COALITION | for
Lifesaving Cures

P.O. BOX 221300
KIRKWOOD, MO 63122
PH 314.968.2600

RECEIVED
2005 OCT 11 AM 8:18

Robin Carnahan
SEC. OF STATE

October 11, 2005

VIA HAND-DELIVERY

Honorable Robin Carnahan
Secretary of State
600 West Main Street
Jefferson City, MO 65109

Re: Proposed Constitutional Amendment Petition –
Missouri Stem Cell Research and Cures Initiative

Dear Ms. Carnahan:

We submit herewith pursuant to Section 116.332, RSMo, a proposed constitutional amendment initiative petition referred to as the Missouri Stem Cell Research and Cures Initiative for approval prior to circulation of the petition.

The petition form will be printed on the front and back of a single page. A space has been left, as indicated, in which the official ballot title supplied by your office will be placed.

Also enclosed is a Memorandum setting forth the rationale for inclusion of the "Notice" language at the top of the first page of the actual text of the proposed amendment.

For purposes of Section 116.332, RSMo, the name and address of the person designated to receive notices is –

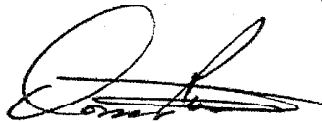
Donn Rubin, Chairman
Missouri Coalition for Lifesaving Cures
P.O. Box 221300
Kirkwood, MO 63122
Telephone: (314) 968-2600

Courtesy copies of this letter and the enclosures are also being transmitted to the Honorable Claire McCaskill, State Auditor, and the Honorable Jeremiah W. (Jay) Nixon, Attorney General, for information.

Honorable Robin Carnahan
October 11, 2005
Page 2

If there are any questions, please let me know. Thank you for your consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read "Donn Rubin", written over a horizontal line.

Donn Rubin
Chairman

Enclosures

cc: Honorable Claire McCaskill (w/enclosures)
Honorable Jeremiah W. (Jay) Nixon (w/enclosures)

It is a class A misdemeanor punishable, notwithstanding the provisions of section 560.021, RSMo, to the contrary, for a term of imprisonment not to exceed one year in the county jail or a fine not to exceed ten thousand dollars or both, for anyone to sign any initiative petition with any name other than his or her own, or knowingly to sign his or her name more than once for the same measure for the same election, or to sign a petition when such person knows he or she is not a registered voter.

INITIATIVE PETITION

To the Honorable Robin Carnahan, Secretary of State for the state of Missouri:

We, the undersigned, registered voters of the state of Missouri and _____ County (or city of St. Louis), respectfully order that the following proposed amendment to the constitution shall be submitted to the voters of the state of Missouri, for their approval or rejection, at the general election to be held on the 7th day of November, 2006, or at a special election called by the governor prior thereto, and each for himself or herself says: I have personally signed this petition; I am a registered voter of the state of Missouri and _____ County (or city of St. Louis); my registered voting address and the name of the city, town or village in which I live are correctly written after my name.

[OFFICIAL BALLOT TITLE PROVIDED BY THE SECRETARY OF STATE TO BE PLACED HERE]

CIRCULATOR'S AFFIDAVIT STATE OF MISSOURI, COUNTY OF _____
I, _____, being first duly sworn, say (print or type names of signers)

1.	NAME (Signature)	Date Signed	REGISTERED VOTING ADDRESS		Zip Code	Cong. Dist.	NAME (Printed or Typed)
			(Street, No PO Boxes)	(City, Town or Village)			
2.		/ /					
3.		/ /					
4.		/ /					
5.		/ /					
6.		/ /					
7.		/ /					
8.		/ /					
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12.		/ /					
13.		/ /					
14.		/ /					
15.		/ /					

signed this page of the foregoing petition, and each of them signed his or her name thereto in my presence; I believe that each has stated his or her name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and _____ County.

Signature of Affiant
(Person obtaining signatures)

Address of Affiant

Subscribed and sworn to before me this _____ day of _____, A.D. _____.

Signature of Notary
Address of Notary: _____

Notary Public (Seal)

My commission expires _____

NOTICE: You are advised that the proposed constitutional amendment may change, repeal, or modify by implication or may be construed by some persons to change, repeal or modify by implication, the following provisions of the Constitution of Missouri – Sections 2, 10, 14, and 32 of Article I; Section 1 of Article II; Sections 1, 21, 22, 23, 28, 36, 39, 40, 41, and 42 of Article III; Sections 1, 14, 36(a), 37, 37(a), 39, and 52 of Article IV; Sections 5, 14, 17, 18, and 23, and subsection 17 of Section 27 of Article V; Sections 18(b), 18(c), 18(d), 18(k), 18(m), 19(a), 20, 31, 32(a), and 32(b) of Article VI; Section 9(a) of Article IX; Sections 1, 6, 11(a), 11(d), and 11(f) of Article X; and Section 3 or Article XI.

THE PROPOSED AMENDMENT

Be it resolved by the people of the State of Missouri that the Constitution be amended:

One new section is adopted by adding one new section to be known as section 38(d) of Article III to read as follows:

Section 38(d). 1. This section shall be known as the "Missouri Stem Cell Research and Cures Initiative."

2. To ensure that Missouri patients have access to stem cell therapies and cures, that Missouri researchers can conduct stem cell research in the state, and that all such research is conducted safely and ethically, any stem cell research permitted under federal law may be conducted in Missouri, and any stem cell therapies and cures permitted under federal law may be provided to patients in Missouri, subject to the requirements of federal law and only the following additional limitations and requirements:

- (1) No person may clone or attempt to clone a human being.
- (2) No human blastocyst may be produced by fertilization solely for the purpose of stem cell research.
- (3) No stem cells may be taken from a human blastocyst more than fourteen days after cell division begins; provided, however, that time during which a blastocyst is frozen does not count against the fourteen-day limit.
- (4) No person may, for valuable consideration, purchase or sell human blastocysts or eggs for stem cell research or stem cell therapies and cures.
- (5) Human blastocysts and eggs obtained for stem cell research or stem cell therapies and cures must have been donated with voluntary and informed consent, documented in writing.
- (6) Human embryonic stem cell research may be conducted only by persons that, within 180 days of the effective date of this section or otherwise prior to commencement of such research, whichever is later, have
 - (a) provided oversight responsibility and approval authority for such research to an embryonic stem cell research oversight committee whose membership includes representatives of the public and medical and scientific experts;
 - (b) adopted ethical standards for such research that comply with the requirements of this section; and
 - (c) obtained a determination from an Institutional Review Board that the research complies with all applicable federal statutes and regulations that the Institutional Review Board is responsible for administering.
- (7) All stem cell research and all stem cell therapies and cures must be conducted and provided in accordance with state and local laws of general applicability, including but not limited to laws concerning scientific and medical practices and patient safety and privacy, to the extent that any such laws do not (i) prevent, restrict, obstruct, or discourage any stem cell research or stem cell therapies and cures that are permitted by the provisions of this section other than this subdivision (7) to be conducted or provided, or (ii) create disincentives for any person to engage in or otherwise associate with such research or therapies and cures.

3. Any person who knowingly and willfully violates in this state subdivision (1) of subsection 2 of this section commits a crime and shall be punished by imprisonment for a period of up to fifteen years or by the imposition of a fine of up to two hundred fifty thousand dollars, or by both. Any person who knowingly and willfully violates in this state subdivisions (2) or (3) of subsection 2 of this section commits a crime and shall be punished by imprisonment for a period of up to ten years or by the imposition of a fine of up to one hundred thousand dollars, or by both. A civil action may be brought against any person who knowingly and willfully violates in this state any of subdivisions (1) through (6) of subsection 2 of this section, and the state in such action shall be entitled to a judgment recovering a civil penalty of up to fifty thousand dollars per violation, requiring disgorgement of any financial profit derived from such violation, and/or enjoining any further such violation. The attorney general shall have the exclusive right to bring a civil action for such violation. Venue for such action shall be the county in which the alleged violation occurred.

4. Each institution, hospital, other entity, or other person conducting human embryonic stem cell research in the state shall (i) prepare an annual report stating the nature of the human embryonic stem cells used in, and the purpose of, the research conducted during the prior calendar year, and certifying compliance with subdivision (6) of subsection 2 of this section; and (ii) no later than June 30 of the subsequent year, make such report available to the public and inform the Secretary of State how the public may obtain copies of or otherwise gain access to the report. The report shall not contain private or confidential medical, scientific, or other information. Individuals conducting research at an institution, hospital, or other entity that prepares and makes available a report pursuant to this subsection 4 concerning such research are not required to prepare and make available a separate report concerning that same research. A civil action may be brought against any institution, hospital, other entity, or other person that fails to prepare or make available the report or inform the Secretary of State how the public may obtain copies of or otherwise gain access to the report, and the state in such action shall be entitled as its sole remedy to an affirmative injunction requiring such institution, hospital, other entity, or other person to prepare and make available the report or inform the Secretary of State how the public may obtain or otherwise gain access to the report. The attorney general shall have the exclusive right to bring a civil action for such violation.

5. To ensure that no governmental body or official arbitrarily restricts funds designated for purposes other than stem cell research or stem cell therapies and cures as a means of inhibiting lawful stem cell research or stem cell therapies and cures, no state or local governmental body or official shall eliminate, reduce, deny, or withhold any public funds provided or eligible to be provided to a person that (i) lawfully conducts stem cell research or provides stem cell therapies and cures, allows for such research or therapies and cures to be conducted or provided on its premises, or is otherwise associated with such research or therapies and cures, but (ii) receives or is eligible to receive such public funds for purposes other than such stem cell-related activities, on account of, or otherwise for the purpose of creating disincentives for any person to engage in or otherwise associate with, or preventing, restricting, obstructing, or discouraging, such stem cell-related activities.

6. As used in this section, the following terms have the following meanings:

(1) "Blastocyst" means a small mass of cells that results from cell division, caused either by fertilization or somatic cell nuclear transfer, that has not been implanted in a uterus.

(2) "Clone or attempt to clone a human being" means to implant in a uterus or attempt to implant in a uterus anything other than the product of fertilization of an egg of a human female by a sperm of a human male for the purpose of initiating a pregnancy that could result in the creation of a human fetus, or the birth of a human being.

(3) "Donated" means donated for use in connection either with scientific or medical research or with medical treatment.

(4) "Fertilization" means the process whereby an egg of a human female and the sperm of a human male form a zygote (i.e., fertilized egg).

(5) "Human embryonic stem cell research," also referred to as "early stem cell research," means any scientific or medical research involving human stem cells derived from in vitro fertilization blastocysts or from somatic cell nuclear transfer. For purposes of this section, human embryonic stem cell research does not include stem cell clinical trials.

(6) "In vitro fertilization" means fertilization of an egg with a sperm outside the body.

(7) "Institutional Review Board" means a specially constituted review board established and operating in accordance with federal law as set forth in 42 U.S.C. 289, 45 C.F.R. Part 46, and any other applicable federal statutes and regulations, as amended from time to time.

(8) "Permitted under federal law" means, as it relates to stem cell research and stem cell therapies and cures, any such research, therapies, and cures that are not prohibited under federal law from being conducted or provided, regardless of whether federal funds are made available for such activities.

(9) "Person" means any natural person, corporation, association, partnership, public or private institution, or other legal entity.

(10) "Private or confidential medical, scientific, or other information" means any private or confidential patient, medical, or personnel records or matters, intellectual property or work product, whether patentable or not and including but not limited to any scientific or technological innovations in which an entity or person involved in the research has a proprietary interest, prepublication scientific working papers, research, or data, and any other matter excepted from disclosure under Chapter 610, RSMo, as amended from time to time.

(11) "Solely for the purpose of stem cell research" means producing human blastocysts using in vitro fertilization exclusively for stem cell research, but does not include producing any number of human blastocysts for the purpose of treating human infertility.

(12) "Sperm" means mature spermatozoa or precursor cells such as spermatids and spermatocytes.

(13) "Stem cell" means a cell that can divide multiple times and give rise to specialized cells in the body, and includes but is not limited to the stem cells generally referred to as (i) adult stem cells that are found in some body tissues (including but not limited to adult stem cells derived from adult body tissues and from discarded umbilical cords and placentas), and (ii) embryonic stem cells (including but not limited to stem cells derived from in vitro fertilization blastocysts and from cell reprogramming techniques such as somatic cell nuclear transfer).

(14) "Stem cell clinical trials" means federally regulated clinical trials involving stem cells and human subjects designed to develop, or assess or test the efficacy or safety of, medical treatments.

(15) "Stem cell research" means any scientific or medical research involving stem cells. For purposes of this section, stem cell research does not include stem cell clinical trials.

(16) "Stem cell therapies and cures" means any medical treatment that involves or otherwise derives from the use of stem cells, and that is used to treat or cure any disease or injury. For purposes of this section, stem cell therapies and cures does include stem cell clinical trials.

(17) "Valuable consideration" means financial gain or advantage, but does not include reimbursement for reasonable costs incurred in connection with the removal, processing, disposal, preservation, quality control, storage, transfer, or donation of human eggs, sperm, or blastocysts, including lost wages of the donor. Valuable consideration also does not include the consideration paid to a donor of human eggs or sperm by a fertilization clinic or sperm bank, as well as any other consideration expressly allowed by federal law.

7. The provisions of this section and of all state and local laws, regulations, rules, charters, ordinances, and other governmental actions shall be construed in favor of the conduct of stem cell research and the provision of stem cell therapies and cures. No state or local law, regulation, rule, charter, ordinance, or other governmental action shall (i) prevent, restrict, obstruct, or discourage any stem cell research or stem cell therapies and cures that are permitted by this section to be conducted or provided, or (ii) create disincentives for any person to engage in or otherwise associate with such research or therapies and cures.

8. The provisions of this section are self-executing. All of the provisions of this section are severable. If any provision of this section is found by a court of competent jurisdiction to be unconstitutional or unconstitutionally enacted, the remaining provisions of this section shall be and remain valid.

October 11, 2005

Memorandum re “Notice” on the Missouri Stem Cell Research and Cures Initiative

This Memorandum is submitted to explain the rationale for placing “Notice” language at the top of the first page of the actual text of the proposed constitutional amendment known as the Missouri Stem Cell Research and Cures Initiative.

It is believed that the “Notice” language at the top of the first page of the actual text of the proposed amendment is proper, and under the rationale of *Moore v. Brown*, 165 S.W.2d 657 (Mo. banc 1942), may actually be required. In that case, at page 662, the Court discusses initiative proposals amending the Constitution by repealing directly or by implication certain existing provisions. The case then refers to the three methods of proposing constitutional amendments – by a Constitutional Convention, by the General Assembly or the initiative, and at first reasons broadly (which is limited later in its Opinion, as noted below):

“And while amendments proposed in *any* of the three authorized ways must be submitted to popular vote, yet only with respect to amendments by the initiative is the requirement that the *full text* be disclosed before it is submitted, including cognate constitutional provisions which will be amended or repealed by implication. . . .” (emphasis added with respect to “disclosed”) 165 S.W.2d at 662.

The Court in *Brown* then concludes that constitutional amendments submitted by the initiative can amend or repeal constitutional provisions “by implication”:

“We have just indicated the view that existing constitutional provisions may be repealed by implication through an initiative amendment.” 165 S.W.2d at 657.

But then the Court proceeds to limit the requirement of having the “full text” provisions that are repealed by the initiative proposal to only provisions that are directly repealed:

“Time alone can ferret out all the consequential and remote conflicts between statutes or constitutional provisions in all their implications. We therefore think the requirement in the *Halliburton* case, that the proposed amendment disclose the constitutional provisions it seeks to change, refers only to cognate provisions which are in direct conflict. . . .” (emphasis added). 165 S.W.2d at 657.

A conclusion which can be drawn from *Brown* is that with respect to constitutional amendments which are submitted by the initiative, those provisions of the existing Constitution which are to be directly repealed must be disclosed in the initiative proposal by the text of the

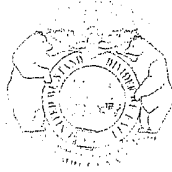
repealed provisions being shown. With respect to those provisions of the Constitution which may be affected or repealed by implication by the proposed initiative petition, *Brown* may therefore be read as requiring disclosure, but not requiring that the full text be set forth.

Consequently, the “safe harbor” practice for over 25 years has been to include such a “Notice” of sections of the Constitution that may be affected or repealed by implication. Consequently, a “Notice” on the first page of the text of the proposed amendment is in accordance with the “safe harbor” practice and was approved by the Missouri Supreme Court in *Buchanan v. Kirkpatrick*, 615 S.W.2d 6 (Mo. banc 1981), upholding the Hancock Amendment. See discussion under Part II of the Opinion in *Buchanan*, 615 S.W.2d at p. 20, approving the practice.

Similar “notices” have appeared in other constitutional amendments which have been proposed and adopted. There was such a “Notice” in the pari-mutuel horse racing initiative petition to amend the Constitution, with that petition being upheld in *Payne v. Kirkpatrick*, 685 S.W.2d 891 (Mo. App. 1984). It is to be noted that such a “Notice” must be inserted before to the enacting clause of the proposed constitutional amendment or the “Notice” itself will be adopted as a part of the Constitution. See, Section 39(e) of Article III of the Missouri Constitution which actually contains the text of such a “Notice” as a part of the constitutional amendment adopted.

Consequently, we believe a “Notice” provision is proper, that it provides a “safe harbor” under the rationale of *Brown* and that the practice has been approved in *Buchanan*.

In formulating the “Notice” provision, we have attempted to include existing sections of the Constitution that some persons may construe to be changed, repealed or modified by implication. By listing a section of the Constitution in the “Notice,” the supporters of the proposed initiative do not assert the section is in fact changed, repealed or modified by implication.



CLAIRE C. McCASKILL
Missouri State Auditor

October 31, 2005

COPY

The Honorable Jeremiah Nixon
Attorney General
Supreme Court Building
Jefferson City, Missouri 65101

Dear Attorney General Nixon:

The attached initiative petition was received by our office on October 11, 2005. Pursuant to §116.175, RSMo, we are forwarding the following fiscal note summary for your review and approval as to legal content and form:

The proposed constitutional amendment would have an estimated annual fiscal impact on state and local governments of \$0 - \$68,916.

A copy of the fiscal note for the initiative petition is also attached. Thank you for your immediate attention to this matter. Your office should return the approved fiscal note summary to our office within 10 days, pursuant to §116.175.4, RSMo. If you have any questions or comments, please contact me at (573) 751-4213.

Sincerely,

A handwritten signature in cursive script that reads "Claire C. McCaskill".

Claire C. McCaskill
State Auditor

Enclosures

cc: Alana Barragan-Scott/James R Layton
Leslye Winslow

**MISSOURI STATE AUDITOR'S OFFICE
FISCAL NOTE (05-07)**

Subject

Initiative petition for constitutional amendment from the Missouri Coalition for Lifesaving Cures concerning stem cell research. (Received October 11, 2005)

Date

October 31, 2005

Description

This initiative petition would amend the Missouri Constitution by adding Section 38(d) to Article III. The initiative petition ensures that Missouri patients have access to stem cell therapies and cures, that Missouri researchers can conduct stem cell research in the state, and that all such research is conducted safely and ethically, any stem cell research permitted under federal law may be conducted in Missouri. Any stem cell therapies and cures permitted under federal law may be provided to patients in Missouri, subject to the requirements of federal law.

The initiative petition also implements several limitations and requirements. No person may clone or attempt to clone a human being. Any person who knowingly and willfully violates this shall be punished by imprisonment for a period of up to fifteen years or by the imposition of a fine of up to two hundred fifty thousand dollars, or by both. A civil action may also be filed.

No human blastocyst may be produced by fertilization solely for the purpose of stem cell research. No stem cells may be taken from a human blastocyst more than fourteen days after cell division begins; provided, however, that time during which a blastocyst is frozen does not count against the fourteen-day limit. Any person who knowingly or willfully violates either limitation commits a crime and shall be punished by imprisonment for a period of up to ten years or by the imposition of a fine of up to one hundred thousand dollars, or by both. A civil action may also be filed.

No person may, for valuable consideration, purchase or sell human blastocysts or eggs for stem cell research or stem cell therapies and cures. A civil action may be brought against any person who knowingly and willfully violates this limitation.

Human blastocysts and eggs obtained for stem cell research or stem cell therapies and cures must have been donated with voluntary and informed consent, documented in writing. A civil action may be brought against any person who knowingly and willfully violates this limitation.

Human embryonic stem cell research may be conducted only by persons that have provided oversight responsibility and approval authority for such research to an

embryonic stem cell research oversight committee, adopted ethical standards for such research that comply with the requirements of this section, and obtained a determination from an Institutional Review Board that the research complies with all applicable federal statutes and regulations that the Institutional Review Board is responsible for administering. A civil action may be brought against any person who knowingly and willfully violates this limitation.

All stem cell research and all stem cell therapies and cures must be conducted and provided in accordance with state and local laws of general applicability.

The amendment is to be voted on in November, 2006, or at a special election called by the governor.

Public comments and other input

The State Auditor's Office received input from the Secretary of State's Office, the Attorney General's Office, the Department of Social Services, the Department of Economic Development's Division of Professional Registration, the Department of Health and Senior Services, the State Public Defender's Office, the Office of the State Courts Administrator, the Department of Higher Education, the Department of Corrections, and the University of Missouri – Columbia. The Missouri Coalition for Lifesaving Cures submitted comments as a proponent of the initiative petition.

Assumptions

Officials from the Department of Social Services, the Department of Economic Development - Division of Professional Registration, the Department of Health and Senior Services, the State Public Defender's Office, and the Department of Corrections indicated the proposed amendment would have very little or no fiscal impact on their offices.

The University of Missouri - Columbia is unable to determine the potential costs regarding the proposed constitutional amendment.

Officials from the Attorney General's Office indicated that the proposed amendment would require civil actions for violations of provisions regulating safety and the ethics of stem cell research, as well as provisions requiring an annual report from entities that conduct stem cell research. The Attorney General's Office assumes that it would need one Assistant Attorney General to investigate and bring the causes of actions authorized in the provisions, at a cost of \$55,780, \$67,140, and \$68,916 for fiscal year 2006, fiscal year 2007, and fiscal year 2008, respectively.

Officials from the Department of Higher Education (DHE) indicated the fiscal impact of the proposed initiative petition would be unknown. The initiative petition would not affect the DHE unless the department would be required to coordinate the required research reports from the state's public institutions. Costs for coordination of the reports are unknown. The potential change may provide for a more collaborative posture among

the institutions of higher education in research that supports statewide economic development opportunities.

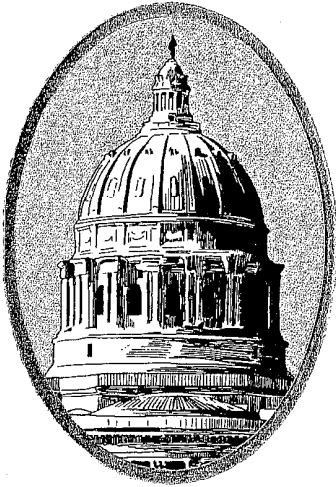
Officials from the Department of Corrections (DOC) indicated although they do not anticipate a need for capital improvements at this time, it must be noted that the cumulative effect of various new legislation, if passed into law, could result in the need for additional capital improvements funding, if the total number of new offenders exceeds current planned capacity. Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in the proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of the legislation, the DOC will incur a corresponding increase in operational costs through supervision provided by the Board of Probation and Parole (FY03 average of \$3.15 per offender, per day or an annual cost of \$1,150 per offender). The DOC assumes the impact of the legislation would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the Secretary of State's office indicated costs associated with the proposed legislation are minimal and they would not request funding to comply should the petition be approved by voters.

Fiscal Note Summary

The proposed constitutional amendment would have an estimated annual fiscal impact on state and local governments of \$0 - \$68,916.



STATE OF MISSOURI

Office of Secretary of State

CERTIFICATION OF OFFICIAL BALLOT TITLE

I, Robin Carnahan, Secretary of State, in compliance with Section 116.180, RSMo, do hereby certify the following language as the official ballot title for the initiative petition for a proposed constitutional amendment concerning Stem Cell Research submitted by Donn Rubin on October 11, 2005. The official ballot title shall read as follows:

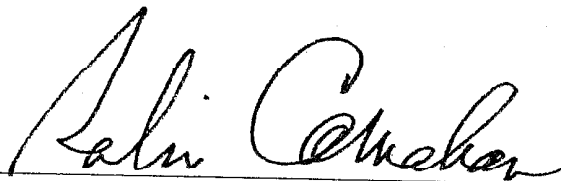
Shall the Missouri Constitution be amended to allow and set limitations on stem cell research, therapies, and cures which will:

- ensure Missouri patients have access to any therapies and cures, and allow Missouri researchers to conduct any research, permitted under federal law;
- ban human cloning or attempted cloning;
- require expert medical and public oversight and annual reports on the nature and purpose of stem cell research;
- impose criminal and civil penalties for any violations; and
- prohibit state or local governments from preventing or discouraging lawful stem cell research, therapies and cures?

The proposed constitutional amendment would have an estimated annual fiscal impact on state and local governments of \$0-\$68,916.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of my office in the City of Jefferson, State of Missouri, on this 14th day of November, 2005.




Secretary of State