

# Missouri 2006: A Perfect Storm Post-Mortem on the Missouri Stem Cell and Cures Initiative

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## ABSTRACT

Opponents of the 2006 Missouri cloning amendment failed by a narrow margin to defeat it. Rhetorical missteps played a key role in this loss, as did early failures to alter biased ballot language. Traditional pro-life arguments about the dignity of the embryo proved less effective than constitutional objections to the specifics of the proposed amendment. In this article we review the rhetorical strategies used by both sides in the campaign, summarize the election results and aftermath, and make recommendations for future political battles.

*...for the sons of this world are more shrewd in dealing with their own generation than the sons of light. (Luke 16:8)*

**T**HE PRO-LIFE CAUSE SUFFERED a setback in November 2006 when Missouri voters narrowly approved Constitutional Amendment Two. The amendment purports to ban human cloning but actually gives unprecedented protection to the cloning industry.

We believe pro-lifers could have won the election had they adopted different tactics. Pro-life rhetoric during the campaign was not calculated to win the independent and moderate voters who were crucial to the election's outcome. Below we (1) recount some of the deception surrounding Amendment Two, (2) analyze the outcome of the 2006 election, (3) review the main lines of argument used by the pro-life community while noting some missed opportunities, and (4) make recommendations for future fights in Missouri and elsewhere, with

particular attention to the role of patent law.

#### DECEPTION

Amendment Two was placed on the ballot by citizen initiative rather than by legislative proposal. Advocates for cloning research wrote both the 96-word summary (see Appendix A below) and the 2000-word amendment (see Appendix B below) that appeared on the ballot. One significant objection to the amendment was the deception involved in both the text of the amendment and the ballot summary.

Missourians entering the voting booth on November 7, 2006 read a paragraph asking them to approve a constitutional amendment “to allow and set limitations on stem cell research, therapies, and cures,” with the following effects:

- 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.<sup>1</sup>

The last bullet point reveals the main concern of the amendment’s drafters. The proponents of the initiative, fearful that the Missouri legislature would pass a cloning ban or require strict regulation on Embryonic Stem Cell Research (ESCR), wanted to ensure that ESCR could continue to be done without interference from the judicial, the legislative, or the executive authorities of the state of Missouri. In order to accomplish that goal, they proposed an amendment that establishes a pre-eminent right to do ESCR. Thus, anyone who does ESCR will be immune from regulation by any except Federal authority.

While this guarantee against regulation was clearly the intent, the

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<sup>1</sup> See Appendix A for the full Fair Ballot Language summary.

promotion of the amendment did not refer to the absolute immunity that it would establish but emphasized the availability and desirability of the cures that would come from Amendment Two. Proponents engaged in deception in writing, promoting, and summarizing the proposal on the ballot. Examples of this deception follow.

§2(1) of the amendment text states: “No person may clone or attempt to clone a human being.” Later, in §6(2), cloning, and indeed the beginning of human life, are defined as happening at the moment that an embryo is implanted in a uterus. This definition diverges from the most common and intuitive definition of “cloning.” Amendment Two allows for the cloning and killing of a human embryo as long as it is never implanted in a human uterus.

The amendment text also claims in §2(4) to outlaw the selling of eggs or blastocysts for “valuable consideration.” But the definition of “valuable consideration” in §6(17) allows fertility clinics to pay women any amount for human eggs and then be reimbursed by researchers or firms conducting ESCR. Thus, the amendment bans only direct payments from researchers to egg donors, but then explicitly allows payment through the intermediary of a clinic. While frozen embryos may be used for research purposes under the amendment, we believe that its backers are more interested in fresh ova and embryos, which are hardier and better able to produce experimental results.

The amendment ensures that cloning research in Missouri will remain under federal regulation, but this restriction has no teeth, since there are at present no federal laws governing ESCR. There is only an executive order that prohibits using federal funds for ESCR, with the exception of a few already established stem cell lines.

The pattern in the full amendment text is clear. Statements useful for promoting the amendment’s passage are given clearly and simply at the beginning. These statements are then modified dramatically by the definitions given in §6. The proponents correctly assumed that most people would not bother to read the later sections closely. Voters reading just the ballot summary knew even less.

Beneath the rhetoric of “access to lifesaving cures,” the amendment’s true effect was to establish a pre-eminent right to pursue ESCR, thereby effectively exempting such research from all governmental oversight. Such exemption is established in §2(7) and especially in §7 (emphasis

added):

§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 (ii) create disincentives for any person to engage in or otherwise associate with such research or therapies and cures.*

Thus, §7 along with §2(7) establishes the right to do ESCR independently of any other right in the Missouri Constitution. This means that the state government cannot regulate ESCR in any way. Even ordinary business regulations would fall before this new constitutional right, if challenged. Taxing profits from ESCR would “create disincentives” for its continuation, and even allowing individuals who have suffered harm from their therapies to sue researchers or companies that conduct ESCR would “discourage” ESCR, and thus be disallowed.

These scenarios are not as far fetched as they may seem. At the beginning of the ballot proposal the proponents themselves list, as required by state law, the parts of the state constitution that may be changed, repealed, or modified by the amendment.<sup>2</sup> Few if any of these 45 listed changes are referred to in the ballot summary. Among the sections listed for change is §14 of the Missouri Bill of Rights, known as the Open Courts provision:

§14. That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay.<sup>3</sup>

The amendment’s backers acknowledged that their proposal would limit the Open Courts provision, for Missourians’ access to the courts may well be restricted if their case involves ESCR. For example, a woman harmed by the egg-donation process may not be able to bring suit against

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<sup>2</sup> See Appendix B.

<sup>3</sup> Constitution of 1875, Art. II, §10. <http://www.moga.mo.gov/const/A01014.HTM>.

ESCR firms.

The pre-eminent right that has now been written into the Missouri constitution leads to the absurd result that bowling alleys, diners, and grocery stores are more regulated than companies that conduct ESCR. This right, being new, has not yet been put to the test in litigation, where its limits might become apparent. On paper, however, the right looks close to absolute. ESCR in Missouri is now effectively self-regulating.

§5 of the amendment establishes a guarantee of non-decreasing tax funding for ESCR, and a requirement that ESCR not be discriminated against in funding decisions by the state legislature: “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 lawfully conducts stem cell research....”

The many deceptions involved in the framing and promotion of Amendment Two formed an important part of the case that was being made against it, but warnings about these deceptions were often dismissed as products of paranoia and as results of uncharitable interpretation. Initially, the opponents of the amendment concentrated on the fundamental question of whether the embryo was a human person rather than addressing the above objections.

#### ELECTION RESULTS

Amendment Two passed in November 2006 with 51.2% of the vote. Yes votes outnumbered No votes by a margin of 50,800 votes out of more than 2 million votes cast.<sup>4</sup> Momentum was against the amendment, however, for polls showed the No position rising from 24% to 48% in the final eight weeks of the campaign. Some pundits observed that the amendment would have been defeated had the election been held two weeks later.

Exit polling by CNN<sup>5</sup> showed no gender gap: both men and women voted for the amendment by 51% majorities. There was a significant party gap, however. Three-quarters of Democrats voted Yes, while the same

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4 For official election returns, see <http://www.sos.mo.gov/enrweb/ballotissue/results.asp?arc=1&eid=189>.

5 For full exit polling data, see <http://www.cnn.com/ELECTION/2006/pages/results/states/MO/I/01/epolls.0.html>.

proportion of Republicans voted No. The election, then, was decided by independent voters, 55% of whom voted Yes. Pro-lifers lost the independent vote by 10 points, and with it the election. Independents represented one quarter of the electorate, or 530,000 voters. To defeat the amendment, pro-lifers needed to flip 25,400 votes from Yes to No. This represents just 4.8% of the total independent vote.

Exit polls showed an ideology gap even more significant than the party gap. Self-identified liberals supported the amendment by a 81-19 margin, while self-identified conservatives opposed it by a similar 23-77 margin. Self-identified moderates, making up more than 40% of the electorate, supported the amendment, 61-39. The 22-point loss of moderate voters tells the story of the election even more clearly than the 10-point loss of independents. Pro-lifers failed to persuade enough moderate and independent voters to oppose Amendment Two.

#### MAIN RHETORICAL STRATEGIES

The effort to pass Amendment Two was led and largely funded by one group, the Missouri Coalition for Lifesaving Cures (MCLC),<sup>6</sup> which spent more than \$30 million during the campaign.<sup>7</sup> MCLC is a non-profit organization formed by James and Virginia Stowers, founders of the Stowers Institute, located in Kansas City. The money, plus celebrity endorsements by actor Michael J. Fox, cyclist Lance Armstrong, and others, was a big boost to the campaign.

Another important element in the success of Amendment Two was its backers' embrace of the label "Lifesaving Cures." From the name of the main organization backing the amendment to the tagline on innumerable television and print advertisements, "stem-cell research" (SCR) was associated with the words "lifesaving cures." The ultimate effect of this repeated invocation was to neutralize the revulsion that generally pro-life voters felt towards SCR. Simply put, the rhetoric of "lifesaving cures" presented people with the possibility of being pro-life and pro-SCR at the

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6 <http://www.missouricures.com/>

7 The exact amount was \$30,536,244.10. See the "Report Summary" dated December 7, 2006 at <http://www.moethics.mo.gov/Ethics/CampaignFinance/CFCCCommitteeInfo1.aspx?MECID=C051219&Year=2006>.

same time. This change was helped along by the amendment's endorsement from former U.S. Sen. John Danforth, who claimed to be a pro-life stalwart.

Prior to the battle over the amendment, polls showed Missouri voters strongly opposed to human cloning. This majority proved to be misleading, however. Missourians may disapprove of cloning when considering it alone, but when presented with a choice between cloning and "lifesaving cures," many Missourians, ultimately 51.2% of them, chose the latter. One early lesson of the 2006 battle is not to trust opinion polls showing widespread pro-life sentiment. *Credit is due to the amendment's backers for framing the issue in a way that allowed them to appeal to pro-life voters on ostensibly pro-life grounds.*

The central dynamic in the election's outcome was the nature and tone of the messages delivered by each side. The pro-amendment forces had a simple, positive message: they were for lifesaving cures, with promise for the treatment of Alzheimer's, Parkinson's, and other diseases, and for the progress of science unencumbered by religious dogma or ideological meddling.

Opponents of the amendment, on the other hand, had a negative message: defeat Amendment Two. Opponents also faced the task of justifying their rejection of the amendment by explaining the complexities of the biology of Somatic Cell Nuclear Transfer (SCNT) and the subtleties of defining the term "cloning." This task involved getting voters to read and comprehend the definitions in §6 and to understand the way in which the definitions undercut the promises of the amendment's backers.

In brief, the pro-amendment side delivered a simple and positive message, while the opposition argued biological and semantic details. In the media, the battle quickly became lifesaving cures vs. mind-numbing arguments over the mechanics of SCNT. This dynamic dogged pro-life forces throughout the race—they lacked an easily understandable sound bite to balance "lifesaving cures."

This simple vs. complex rhetorical mismatch points to another significant factor in the race: the careful planning and strategic thinking of the amendment's sponsors. Unlike the pro-life forces, who were caught off-guard by the amendment's sudden appearance on the political scene in late 2005, the amendment's backers planned out their campaign years ahead of time. From the copious details of the amendment itself and the

appealing language of the ballot summary to the ingenious branding of “lifesaving cures,” the amendment’s backers approached every aspect of the campaign as professionals. As a colleague of ours observed, they approached the election like businessmen bringing a product to market. They presented the cloning amendment as a blow for science against religious fanaticism and control, as a vehicle for lifesaving cures, as a blow for Missourians’ equality with residents of other states, and as an endorsement of the autonomy of medical research.

Perhaps the most important part of the proponents’ advance planning was their successful anticipation of the pro-life reaction to the proposed amendment. They rightly anticipated that pro-lifers would respond to their claim that the amendment bans cloning with the traditional argument that “the embryo is a human life.” Unfortunately, people outside of the pro-life movement are weary of hearing this phrase and are on guard against it, already having made up their minds on the abortion issue. So, this argument was of little persuasive value except to those who already were in the pro-life fold. As it turned out, appeal to the pro-life base was not enough to win the election.

In addition, to make their case, pro-lifers had to explain the complex details of SCNT and argue for the humanity of this “bundle of cells,” as the proponents called it. This approach worked to rally the pro-life base but not the other groups needed to win a majority in a public election. Pro-lifers gradually diversified their arguments, but not soon enough to garner the necessary backing from voters outside the pro-life camp.

In the legal arena, pro-lifers challenged the ballot summary that had come directly from the proponents and was then approved by the Missouri’s Democratic Secretary of State. The court let stand the Secretary of State’s interpretation. The legal challenge contended that the amendment used a false definition of cloning and that SCNT is universally recognized as a form of cloning. Presented with a dispute over scientific definitions, with qualified experts weighing in on both sides, the judge refused to rule on the correctness of the definition and declared that the voters could decide the definitional question as well. Thus the pro-life case became more complex, and the true issues became more muddled. Lacking enough time to prepare the case carefully, the pro-life group did not object to the broad constitutional privileges given to ESCR firms, none of which was described in the ballot summary. The amendment did

in fact prevent any government agent, including the legislature, the courts, the governor, and their representatives, from preventing, restricting, obstructing, discouraging, or even creating disincentives for anyone doing ESCR.<sup>8</sup> The amendment created an unregulated industry, yet nothing was said in the ballot summary to indicate the extent of its freedom from regulation. Since this observation is legal in nature and based on the amendment itself, we believe that it would have been hard for a judge to ignore. Failure to raise this argument was an unfortunate omission.

Failure to change the ballot summary through the courts gave the amendment credibility in the eyes of the electorate and was crucial to its victory. Had the ballot language been changed by the court, the proponents would have had to start acquiring signatures all over again. Furthermore, such a judicial reversal would have brought more critical scrutiny, perhaps even suspicion, upon the amendment from the general electorate and the press. Given the small margin of victory, it is hard to imagine the amendment passing without the credibility that it got from surviving the court challenge. Then again, MCLC and the Stowers family, having invested \$30 million in the campaign, might have increased their financial commitment still further to overcome such a setback.

Pro-lifers responded to the proposed amendment primarily by arguing for the dignity of embryonic life. This early tactic unfortunately played into the hands of the amendment's backers by allowing them to portray pro-lifers as more concerned with religious dogmas about microscopic clumps of cells than about lifesaving cures. While the dignity of all life from conception forward may be the philosophically purest pro-life argument, it had limited appeal with practically-minded Show Me State voters. The early use of this argument allowed the amendment's backers to identify their opponents with Catholic dogma and with the more extreme fundamentalists on abortion. We believe this tactic was a net loser of votes for the pro-life side.

A second pro-life reaction anticipated by the amendment's sponsors was our attempt to re-appropriate the word "cloning." This was an uphill battle from the start, for it involved disputes over various laboratory techniques, the details of which were difficult to communicate on a large

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<sup>8</sup> See Appendix B, section 7.

scale. Reclaiming the word “cloning” also required pro-lifers to convince the public that the scientists, philanthropists, and politicians backing the amendment were dishonest, mistaken, or misled about the true nature of cloning. Weighed against the presumed authority of research scientists’ opinions, arguments about the true definition of “cloning” had little effect.

Each of these early reactions was anticipated by the backers of the amendment and met by effective counter-arguments. A rhetorical strategy that proved effective late in the campaign was pointing out the constitutional flaws in the amendment’s language and the pre-eminent right that it grants. Pro-lifers came to this line of argument too late, however. The main media narrative of the election had been set. We believe that earlier deployment of these constitutional and legal arguments would have made a significant difference in the outcome. Independent and moderate voters are impatient with religious dogmatism, but they are also jealous guardians of good government. The legal and good government arguments, pushed into the debate earlier, would have resonated with the independent voters who eventually decided the election.

While Senator Jim Talent, an incumbent Republican, did oppose Amendment Two, he did not make this opposition a centerpiece of his campaign and seldom injected the issue into his campaign appearances. Had Sen. Talent articulated the good government case against the amendment and unambiguously committed himself to it in a public setting, we believe the main narrative of the race would have changed dramatically. Although the stem cell amendment was an issue in the campaign, it was never a central issue. Had Sen. Talent chosen to make it central, we believe that he could have drawn a great deal more media attention to the details of the arguments against the amendment. This would have scrambled the pre-set media narrative of cures vs. dogmas, researchers vs. fanatics, or what we call “Albert Schweitzer vs. the hillbillies.” Our experience is that the more a voter learned about the details of the amendment, the more likely that voter was to oppose it. In playing down the significance of the amendment in his bid for re-election, Sen. Talent missed an opportunity to help both himself and the pro-life cause.

Amendment Two passed by a narrow margin in a political environment that we would characterize as a perfect storm. Many factors aligned to facilitate the passage of the amendment and to complicate efforts to

derail it. Pro-lifers, normally a strong force in Missouri politics, were caught flat-footed and unprepared by the suddenness and audacity of the proposed amendment. Pro-amendment forces were lavishly funded from the beginning, but money for anti-amendment advertisements only came late in the campaign. The Stowers family in particular proved a worthy adversary in terms of the planning and execution of the amendment's public relations campaign.

More generally, 2006 was a bad year for Republicans nationally and saw the defeat of pro-life Sen. Talent by a wider margin than the passage of Amendment Two. The Missouri Republican party was divided between business interests in Kansas City and St. Louis, which backed the amendment, and the pro-life grassroots, who opposed it vehemently. Not until late in the summer did the state's Republican party mostly unify against the amendment. The "Yes on 2" campaign received early endorsements from retired Sen. Danforth and current Gov. Matt Blunt, both of whom cited their credentials as pro-life Republicans to boost the amendment's credibility.

Approval of the ballot summary was in the hands of Secretary of State Robin Carnahan, who accepted the backers' proposed language without alteration. Notably, in late 2007 Secretary Carnahan significantly revised the proposed ballot summary for an attempted revision of Amendment Two.<sup>9</sup>

Amending the constitution requires a simple majority of voters, thereby making it relatively easy for well-funded causes to bypass the people's representatives in the legislature. Despite all these advantages, the amendment's backers won by only 50,000 votes, with momentum universally acknowledged to be against them on election day. The perfect storm of Missouri 2006 is unlikely to recur.

#### RECOMMENDATIONS

Our experience in the losing fight against Amendment Two has led us to the following recommendations for future political fights of this nature.

*Make amending state constitutions more difficult.* Amendment Two

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<sup>9</sup> "Initiative Backers Say Carnahan Twisted Stem Cell Measure Language" (Oct. 10, 2007), <http://www.ky3.com/news/political/10440332.html>.

was in part an attempt to bypass the Republican-led Missouri legislature and head off pending legislative restrictions on human cloning. It amounted to legislation by referendum. We believe that the use of constitutional amendments to short-circuit the political process should be curtailed in the aftermath of Amendment Two. The example of Florida is worth attention. In 2006, Florida voters approved Amendment Three, which establishes a 60% super-majority requirement for future constitutional amendments. Previously, a simple majority was required, as in Missouri.<sup>10</sup> Pro-lifers will likely delay such a change in Missouri until Amendment Two is modified.

*Mount strong legal challenges early.* The easiest way to win the Amendment Two fight would have been to prevent its deceptive language from reaching the ballot in the first place. To this end, we recommend that future campaigners make their strongest legal challenges at the beginning of the process. Getting good early legal advice from in-state attorneys and constitutional scholars is crucial. In this instance, lawyers were only given a few weeks to prepare the case, and so early legal efforts neglected to emphasize the proposed amendment's effects on the future authority of the courts. We believe that this line of argument would have carried weight with state judges.

*Scramble the media-set narrative.* In too many ways the public debate over Amendment Two followed a predictable pattern: religion vs. science, dogmatism vs. hope, Rush Limbaugh vs. Michael J. Fox. Pro-lifers had tremendous difficulty getting their arguments into the newspapers. Future efforts by anti-cloning campaigners should break with these patterns, preferably in ways that invite a change in media coverage. One way in which this might have been done in Missouri would have been to focus opposition arguments on the good-government case rather than on the biology of cloning or the metaphysics of personhood. Additional arguments exposing the financial lure of embryonic stem cell research, in contrast to its purely humanitarian justifications, would also have helped rewrite the dominant narrative. This financial lure hinges on the question of patents.

We believe that U.S. patent law will be crucial to future battles over

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10 See the "2006 Election Report" at [www.votesmartflorida.org](http://www.votesmartflorida.org).

human cloning. Current U.S. law permits the issuance of patents on embryonic stem cell lines. Such patents cover the self-sustaining stem cell lines themselves, not merely the method for deriving them. Cell lines derived from adult stem cell research cannot be patented.

The current U.S. patent law is unique in this respect; no other country in the world issues patents on stem cell lines from any source.<sup>11</sup> The general rule is that one may not patent nature. To reiterate, lines resulting from research on adult stem cells are not patentable, perhaps because the living donor of the cells generating the line might retain some residual moral, if not legal, interest in their ownership.

As a result of their unique patentability, embryonic stem cell lines can be valuable assets to their owners. The patent holder possesses exclusive legal rights to the use of the patented line. Established cell lines are easily duplicated, so a patented cell line represents a tremendous income opportunity.

We believe that one ultimate motivation for the relentless pressure to give legal protection to destructive embryonic stem cell research is profit. A laboratory might use embryonic stem cells to generate patented cell lines for various diseases, including Alzheimer's, Muscular Dystrophy, and Parkinson's Disease. These patented cell lines might then be licensed to interested researchers for an upfront fee, typically \$125,000, with \$40,000 annual maintenance fees to retain the license.<sup>12</sup> Research would take place towards treatments or cures for these diseases, but the patent holder would get paid whether the cures were forthcoming or not.

No such licensing is possible with cell lines derived from adult stem cell research, since these lines cannot be patented. We believe that this fact, were it more widely known, would alter the terms of future political debates over embryonic stem cell research. With respect to patents, we make the following recommendations:

*Work to change current U.S. patent policy.* Very few patents have actually been issued under the current policy. Pro-lifers should work to have U.S. patent law brought into harmony with the global consensus that

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<sup>11</sup> *Science* 311/5768 (24 March 2006): 1716-17.

<sup>12</sup> *Ibid.*

human tissue lines are not subject to patent-regulated ownership. Action on this front might take place in Congress or through the power of federal executive agencies. Absent such a policy change, pro-lifers should explore the procedures for challenging any future patent applications for ESCR cell lines.

Where government funding of embryonic stem cell research seems likely, *make such funding contingent on government ownership of any resulting patents*. Even if unsuccessful, the attempt to tie government funding to patent ownership would bring the patent-profit connection to the attention of political observers, including the press. This connection would help to shape the environment in which future battles are fought.

#### POSTSCRIPT

In November 2007, the *New York Times* reported that two teams of scientists have found a way to reprogram adult skin cells to mimic embryonic stem cells.<sup>13</sup> This process promises the benefits of embryonic stem cell research without the destruction of embryos. Although this breakthrough has been hailed by some pro-life observers as bringing a decisive end to the cloning wars, we are not so sanguine, because it is not yet clear whether the cell lines resulting from the new process can be patented. If they cannot, then the new technique will not remove the financial incentive for ESCR.

Proponents of stem cell cures might be persuaded to abandon destructive ESCR by one of two approaches. The first involves allowing patents on the cell lines produced by the new skin cell reprogramming method. This would remove the financial incentive in favor of ESCR. With both lines of research equally profitable, researchers and funding would tend towards the less controversial one.

The second approach involves offering a political deal: the pro-life community would support researchers in searching for lifesaving cures in a morally unobjectionable way. This support would involve increased governmental funding, something that political controversy has effectively blocked up to this point. Such a deal would amount to a formal truce in

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13 “Scientists Bypass Need for Embryo to Get Stem Cells” by Gina Kolata (Nov. 21, 2007), <http://www.nytimes.com/2007/11/21/science/21stem.html>.

the cloning wars.

The Republican-controlled Missouri legislature has been cautious in funding biotechnology initiatives this year, in order to avoid triggering the automatic funding for ESCR required by §5 of the amendment. Pro-life forces have united to fight against any funding for ESCR, and lawmakers are wary of funding any group with such constitutional power as the backers of Amendment Two now hold. The bad blood created by their buying an election has provoked suspicion and distrust of the group within the state. The battle was lost, but the war is not over, and with the advent of newer technologies, it is our hope that their victory will be a Pyrrhic one.

APPENDIX A: THE FAIR BALLOT LANGUAGE SUMMARY FOR AMENDMENT TWO<sup>14</sup>

A “yes” vote will amend the Missouri Constitution 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 any stem cell research;
- impose criminal and civil penalties for any violations; and
- prohibit state or local governments from preventing or discouraging lawful research, therapies and cures.

A “no” vote would not ensure that stem cell research permitted under federal law is allowed to be conducted in Missouri and that Missouri patients have access to stem cell therapies and cures permitted under federal law.

This measure will have no impact on taxes.

APPENDIX B: THE FULL TEXT OF AMENDMENT TWO<sup>15</sup>

Notice: You are advised that the proposed constitutional amendment may change,

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14 <http://www.sos.mo.gov/elections/2006ballot/fbl.asp#amend2>.

15 <http://www.sos.mo.gov/elections/2006petitions/ppStemCell.asp>.

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 of Article XI.

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.