

MEMORANDUM

TO: Honorable Members of the Missouri State Senate

FROM: Pam Fichter, President
Jim Cole, General Counsel

DATE: February 8, 2007

RE: SCS SB389

Yesterday, the Senate Education Committee voted to recommend passage of SCS SB 389, which contains a section that authorizes the sale of MOHELA assets. The section in question, sec. 173.475, was changed by the Committee to exclude certain named projects from receiving funds from the proceeds of MOHELA sale. Other projects of the "Revised Lewis and Clark Discovery Initiative" would still be funded from the MOHELA sale proceeds.

Missouri Right to Life is opposed to SCS SB 389 for several reasons. First and most important, the Committee Substitute attempts to impose a limit on funding that Amendment 2 (now Art. III, sec. 38(d) of the Missouri Constitution) forbids the General Assembly from doing. The limitation is thus void and unenforceable. As you may recall, subsec. 5 of Amendment 2 provides as follows:

[N]o 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.

The Committee cut out certain projects from the funding otherwise available to public institutions from the MOHELA sale because those projects could facilitate unethical stem cell experimentation. This is precisely what is forbidden by the above language of the Missouri Constitution. Moreover, as reported several times in 2006 in newspapers (including the Kansas City Star), the University of Missouri already engages in experimentation involving human embryonic stem cells. The University even claims a patent on a method of cloning human beings. (U.S. Patent No. 6,211,429, April 3, 2001.) The University clearly "conducts stem cell research" within the meaning of the foregoing language, and it could be the first to file a lawsuit to overturn the Committee Substitute's restriction on the use of the MOHELA funds. No doubt, other public institutions which are to receive MOHELA money would join in such a lawsuit. They all receive state money as required under subdivision (ii) of subsec. 5 above and some of them, if not all, would "allow for such [stem cell] research" to be performed in the laboratories and buildings that are to be built with MOHELA money, as described in subdivision (i) of subsec. 5 above.

In short, the exceptions written into the Committee Substitute are a dead letter from the outset because of subsec. 5 of Art. III, sec. 38(d) of the Missouri Constitution. And just to be sure the courts get the point, Amendment 2 wrote similar restrictions in two other places of sec. 38(d). It forbade any law or official state action that would "discourage" stem cell research or "create disincentives" to any person in engaging in it. See subsec. 2(7) and subsec. 7, Art. III, sec. 38(d). The restrictions of the Committee Substitute are thrice forbidden and thrice killed by Amendment 2.

Missouri Right to Life has additional serious concerns about the language of SCS SB 389, but they need not be spelled out here as long as Amendment 2 governs the issue. MRL will provide those reasons to any interested Senator.

Because the central goal of the Revised Lewis and Clark Discovery Initiative is to provide capital to build life science labs and buildings, and because the Missouri Constitution forbids the Legislature from enacting any restriction on using the proceeds of the MOHELA sale to facilitate cloning and unethical experimentation in connection with such labs and buildings, Missouri Right to Life remains firmly opposed to SCS SB 389.