

MEMORANDUM

TO: Honorable Members of the Missouri Senate
Honorable Members of the Missouri House of Representatives

FROM: Gerard Nieters, J.D., Legislative Director
Pam Fichter, President

DATE: April 2, 2009

RE: Department of Economic Development Appropriation Bill (HB 7),
And Other Legislation Dealing with Human Life Sciences Research
In Light of Judge Richard Callahan's Order Dated 1/15/09

After a thorough review of Judge Richard Callahan's decision in Missouri Roundtable for Life v. Sarah Steelman, case #08AC-CC00517, Missouri Right to Life (MRL) publishes its position as it relates to future appropriation bills to be introduced by the Missouri Legislature.

In 2003, the Missouri legislature created the Life Sciences Research Board to administer funds the state was to receive from the tobacco company settlement. In creating the Board, the legislature wanted to make sure that those funds were not used to support abortion, cloning or prohibited human research. RSMo Section 196.1127(3). Every year since its passage, the legislature has incorporated Sections 196.1100 – 1130, by reference, in its appropriation bills to preserve the funding restrictions.

Before passage of Amendment 2 in 2006, the consensus of MRL and the pro-life community as a whole was that passage of Amendment 2 could result in the possible expenditure of Missouri public funds on unethical embryonic stem cell research because Constitutional Amendment 2 would trump Statute Section 196.1127 restrictions. In three different sections (subsecs, 2(7), 5 and 7), Amendment 2 (Mo. Const., Art. III, Sec. 38(d)) prohibits the restriction of funds to those engaged in embryonic stem cell research. Article III, Section 38(d)(5) of Missouri's Constitution reads, "no state or local government body or official shall eliminate, reduce, deny or withhold public funds . . . to a person that (i) lawfully conducts stem cell research. . . ." Thus, any appropriation to Missouri Technology Corp. or the Life Science Research Board or any other appropriation for human life sciences research, with or without language restricting funding of unethical stem cell research, had to be opposed. Based upon this analysis, MRL has opposed every appropriations bill after passage of Amendment 2 that provided for any funding of any human life science research, with or without restrictive language, for fear that the funds would be used for cloning and unethical embryonic stem cell research. MRL has remained consistent in its position concerning the effect of Amendment 2 post-passage.

Then along came Judge Callahan and his 1/15/09 opinion in Missouri Roundtable for Life v. Sarah Steelman. Judge Callahan reached a perplexing conclusion in his analysis of the effect of Amendment 2 on appropriation bills (specifically HB2007) and the prohibition of funds to entities that conduct unethical embryonic stem cell research.

First, Judge Callahan cited Missouri Constitution Article IV, Section 23 (1875) which specifies, “every appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law,” and determined that HB2007 with its life science research funding prohibition via reference and incorporation of Section 196.1127 was constitutional, valid and enforceable. Thus, the limiting restrictions of Section 196.1127 do not effect any appropriations bills the legislature will ever pass. While Judge Callahan was not so bold as to declare Section 196.1127 unconstitutional, he certainly declared it a nullity in so far as its power to bind the legislature in its future appropriations. While the legislature is not bound in its appropriations by the language of Section 196.1127, it is also not precluded from including the funding prohibitions of 196.1127 by reference and incorporation in any appropriations bill it introduces.

Judge Callahan also reconciles in his decision HB2007 with Article III, Section 38(d)(5), finding that 38(d)(5) does not require the legislature to fund any stem cell activities. He states that it only “prohibits the legislature from eliminating, reducing, denying or withholding from a person who is lawfully engaged in stem cell related activities, funds that the person would otherwise be entitled to receive for non stem cell activities, for the purpose of creating disincentives for that person to engage in the lawful stem cell activities.”

Judge Callahan fails to address, however, the interplay of Missouri Constitution Article IV Section 23 with Article III Section 38(d)(5), both of which are constitutional provisions. Certainly Article III Section 38(d)(5) limits or controls the legislature’s appropriation power granted in Article IV Section 23. Query: Can a constitutional amendment be unconstitutional? MRL points out that Judge Callahan’s decision has been appealed. It is possible that his decision will be overruled.

Nevertheless, there are no other Court decisions related to this matter at this time. Judge Callahan’s decision is the only court authority or opinion and he states that the legislature can prohibit, limit and restrict funding for abortions, cloning and prohibited human research. Given that decision and the lack of any other legal authority at this time, MRL encourages the legislature to continue to prohibit, limit and restrict funding for abortions, cloning and prohibited human research because failure to do so could result in such funding. Further, any bill introduced without the language prohibiting, limiting and restricting funding for abortions, cloning and prohibited human research will be considered a bad bill.

MRL recommends that the legislature detail specifically what is a permitted expenditure and what is a prohibited expenditure on any Department of Economic Development appropriation bill. MRL also recommends an auditing provision in any such bill to insure that the funds are being used in the manner specified in the bill.

MRL recommends the following language on any bill or appropriation bill that deals with human life sciences:

It shall be unlawful to expend, pay, or grant any public funds for abortion services, human cloning, or prohibited human research, as such terms were defined by the 92nd Missouri general assembly in 2003, in Revised Statutes of Missouri Section 196.1127, L.2003, H.B. 688. An independent audit shall be conducted every other year to ensure compliance with this section. If the organization performs human life sciences research or is an affiliate of an organization which performs life sciences research, the

independent audit shall be conducted at least annually. The audit shall be conducted by either an independent auditing firm retained by the department of economic development or by an independent auditing firm approved by the department and retained by an organization receiving these funds.

MRL recommends this language for two reasons. First, this language clearly states the legislature's intent for appropriated monies and it requires accountability of anyone who receives state monies for human life sciences research to assure adherence to the restrictive language of 196.1127 as stated above. With the above language on legislation, MRL will become neutral on appropriation bills and other legislation (2009 forward) that includes these limits and auditing requirements.

If the appropriations bill includes the language prohibiting, limiting and restricting funding for abortions, cloning and prohibited human research, MRL will take a neutral position on the bill because it includes the funding of so many other items in which Missouri Right to Life has no position supporting or opposing those other items. Of course, a proposed amendment to a bill to include the restricting language to take a bad bill to a neutral bill will be considered a good vote by MRL.

Because MRL is not convinced by Judge Callahan's analysis that his opinion is correct and his decision is on appeal, MRL will continue to monitor matters very closely. You should be aware that our support/neutral/oppose positions on the appropriations bills may change as more legal decisions are published by the Courts

MRL is aware that the legislators have questions about how MRL will treat past votes on the Missouri Technology Corporation and Life Sciences Research Board. MRL will continue to monitor decisions of the various courts on the issue and will reserve its judgment on the counting of those votes at this time.

Without any other legal authority at this time, however, MRL is taking a position of neutrality on any appropriations bill that restricts funding of abortions, cloning, embryonic stem cell research and any other unethical research.

Conversely, MRL will continue to oppose appropriations bills and other legislation dealing with human life sciences, biomedical research, and pharmaceuticals that do not contain these limits because the funds could still be used to fund abortions, cloning, embryonic stem cell research and any other unethical research.

As always, MRL continues to seek positions in compliance with Missouri law and the Missouri Constitution in our efforts to protect innocent human life. We know that legislators from both parties share our commitment, and like us, are struggling to determine the true impact of Amendment 2 on our ability to provide that protection. MRL would welcome the opportunity to meet with legislators to discuss this issue.