

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

CURES WITHOUT CLONING,)	
)	
LORI BUFFA, M.D., and)	Case No. _____
)	
CHELSEA ZIMMERMAN,)	Division _____
)	
Plaintiffs,)	
)	
vs.)	
)	
ROBIN CARNAHAN, in her official)	
capacity as Missouri Secretary of State, and)	
Serve at:)	
Office of the Secretary of State)	
State Capitol, Room 208)	
Jefferson City, Missouri 65101)	
)	
SUSAN MONTEE, in her official capacity)	
as Missouri State Auditor,)	
Serve at:)	
Office of the State Auditor)	
301 West High Street, Office 880)	
Jefferson City, Missouri 65102)	
)	
Defendants.)	

**PETITION TO CHALLENGE OFFICIAL BALLOT TITLE
AND FISCAL NOTE PURSUANT TO RSMO. §116.190 AND
FOR DECLARATORY AND OTHER RELIEF UNDER
THE MISSOURI AND UNITED STATES CONSTITUTIONS**

Plaintiffs Cures Without Cloning, Lori Buffa, M.D., and Chelsea Zimmerman, for their
Petition, state and allege as follows:

INTRODUCTION

1.This is an action to remedy the recent actions by Missouri Secretary of State Robin
Carnahan and Missouri State Auditor Susan Montee in unlawfully and inaccurately

communicating to Missouri voters about their fellow citizens' initiative to expand the scope of Missouri's constitutional prohibitions regarding human cloning. The summary statement, fiscal note summary, and fiscal note prepared by the Defendants are misleading, insufficient and unfair. They violate Missouri law, the Missouri Constitution, and the United States Constitution. Plaintiffs, who are Missouri registered voters and proponents of the initiative, ask this Court to certify a new, accurate summary statement, fiscal note summary, and fiscal note to the Secretary of State. By so doing, the Court will protect the fundamental rights of Missouri citizens to petition for changes to their constitution and communicate accurately and freely about their political proposals without being weighed down by the stifling and prejudicial influence of state officials.

The Parties

2.Plaintiff Cures Without Cloning (“CWC”) is a committee of Missouri citizens and taxpayers organized to draft, circulate, and advocate for the passage of a constitutional amendment to prohibit cloning of human embryos from the one-cell stage onward, protect lawful stem cell research, and keep taxpayer funds from being used for cloning or for research or experiments on cloned embryos or parts of cloned embryos (hereinafter, the “Cures Without Cloning Amendment”).

3.Plaintiff Lori Buffa, M.D.,(“Dr. Buffa”) is a doctor, a Missouri registered voter, a taxpayer, a proponent of stem cell research that does not involve cloning or destroy human life, a supporter of the Cures Without Cloning Amendment, and the chairman of Cures Without Cloning. She resides at 14641 Pine Orchard Court, St. Charles, MO, 63017.

4.Plaintiff Chelsea Zimmerman is a Missouri registered voter, a taxpayer, a proponent of stem cell research that does not involve cloning or destroy human life, and a supporter of the Cures Without Cloning Amendment. Plaintiff Zimmerman has been paralyzed from the chest down as a result of a spinal cord injury. She resides at 1660 Skyview Drive, Holts Summit, MO, 65043.

5.Defendant Robin Carnahan is, and at all times pertinent herein, was the duly elected, qualified, and acting Secretary of State of the State of Missouri. As such, she is charged by law with implementing the provisions of the Missouri Constitution and Chapter 116, RSMo., relating to initiative petitions. She is charged with upholding and complying with the Missouri Constitution in the discharge of her statutory duties.

6.Defendant Susan Montee is, and at all times pertinent herein, was the duly elected, qualified, and acting Auditor of the State of Missouri. As such, she is charged by law with implementing the provisions of Chapter 116, RSMo., relating to fiscal notes and fiscal note summaries for initiative petitions. She is charged with upholding and complying with the Missouri Constitution in the discharge of her statutory duties.

Jurisdiction and Venue

7.This Court has jurisdiction over this matter, and venue is proper in Cole County, pursuant to RSMo. §116.190.

General Allegations

8.On September 4, 2007, on behalf of Cures Without Cloning and pursuant to RSMo. §116.332, Dr. Buffa submitted to the Secretary of State a sample petition page for the Cures Without Cloning Amendment. The sample petition page includes the form of the petition as it

will actually be circulated to Missouri voters to obtain their signatures. In addition to signature blanks and certain language required by statute, the petition page also includes the actual language sought to be added to the Missouri Constitution. A copy of the sample petition is attached hereto as Exhibit A.

9. After receiving the sample petition page, the Secretary of State transmitted it to Attorney General Jeremiah “Jay” Nixon for review as to form. The Attorney General did review it as to form, approved it, and gave notice of his approval to the Secretary of State. On or about September 17, 2007, the Secretary of State certified the form of the petition for circulation. The amendment as certified by the Secretary of State reads as follows:

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, Article III, Sections 36 and 38(d), Article IV, Sections 23 and 28, and Article X, Sections 1, 2, and 3, of the Missouri Constitution.

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(e) of Article III, to read as follows:

Section 38(e) 1. It shall be unlawful to clone or attempt to clone a human being as that term is defined in subsection 2 of this section. Researchers may conduct stem cell research to discover cures for disease and develop stem cell therapies and cures, provided that the research complies with the limitations of this section and the limitations of Section 38(d). The prohibitions of this section shall be in addition to the prohibitions of Section 38(d).

2. For all purposes within this article, “Clone or attempt to clone a human being” means create or attempt to create a human embryo at any stage, which shall include the one-cell stage onward, by any means other than fertilization of a human egg by a human sperm.

3. No taxpayer dollars shall be expended: (1) to clone or attempt to clone a human being; or (2) to research or experiment using a human embryo, or any part of a human embryo, derived from cloning or attempting to clone a human being.

10. The constitutional amendment itself consists of only 169 words, including articles and citations.

Secretary of State Carnahan Drafts a Summary Statement

11. After certifying the form of the petition, the Secretary of State prepared a summary statement. On September 27, 2007, she transmitted it to the Attorney General for review. A copy of Secretary of State Carnahan's letter is attached hereto as Exhibit B. Missouri law requires the Secretary of State to draft a "concise statement not exceeding one hundred words." RSMo. §116.334. The statement must use language "neither intentionally argumentative nor likely to create prejudice either for or against the proposed measure." Id.

12. On information and belief, the Attorney General approved the legal content and form of the Secretary of State's proposed summary statement.

13. On October 10, 2007, the Secretary of State certified the following 76-word summary statement:

Shall the Missouri Constitution be amended to repeal the current ban on human cloning or attempted cloning and to limit Missouri patients' access to stem cell research, therapies and cures approved by voters in November 2006 by:

- redefining the ban on human cloning or attempted cloning to criminalize and impose civil penalties for some currently allowed research, therapies and cures; and
- prohibiting hospitals or other institutions from using public funds to conduct such research?

Auditor Montee Drafts a Fiscal Note and Fiscal Note Summary

14. On September 5, 2007, the Secretary of State forwarded CWC's sample petition page to State Auditor Montee and requested a fiscal note and fiscal note summary. On or about

September 25, 2007, the statutory deadline for her to act, State Auditor Montee wrote a letter to the Attorney General enclosing a fiscal note and fiscal note summary. A copy of Auditor Montee's letter and enclosed fiscal note are attached hereto as Exhibit C.

15. Auditor Montee's 35-word fiscal note summary stated as follows:

This proposal could have a significant negative fiscal impact on state and local governmental entities due to its prohibition of certain research activities.

However, the total costs to state and local governmental entities are unknown.

See Exhibit B.

16. Additionally, Auditor Montee provided her own 73-word "Description" of the Cures Without Cloning Amendment, which stated as follows:

This proposal would amend Article III of the Constitution of Missouri by adding Section 38(e). This new section makes it unlawful to clone or attempt to clone a human being as defined in the section. In addition, this section prohibits the use of tax payer [sic] dollars for cloning or attempting to clone a human being or to research or experiment using human embryos derived from cloning or attempting to clone a human being.

17. At the close of her fiscal note, Auditor Montee also provided "fiscal impact information" from a "Mr. Brad Ketcher of the Ketcher Law Firm, LLC." The "information" purportedly supplied by Attorney Ketcher consisted of two tables labeled "state impact" and "local govt impact." The tables hypothesize events such as "Loss of Stowers Phase II" and "10% Chilling Effect on R&D" and provide numbers next to each hypothesized event. Nowhere does the "information" from Mr. Ketchum explain how those hypotheses were arrived at or chosen, the probability that they will occur, or how (or for that matter, whether) the numbers next to each hypothesized event were calculated from underlying data or estimates.

18. Upon information and belief, Attorney General Nixon approved the sufficiency of the form of Auditor Montee's fiscal note and fiscal note summary.

19. On or about October 10, 2007, Secretary of State Carnahan certified the summary statement and fiscal note summary, and delivered copies of the official ballot title and fiscal note to Dr. Buffa.

COUNT I

Challenge to Secretary of State Carnahan's Summary Statement RSMo. § 116.190

20. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

21. The summary statement drafted and approved by Secretary Carnahan on October 10, 2007, violates the requirements of Chapter 116, RSMo., and is unlawful. The summary statement is both insufficient as a matter of fact and law. It does not adequately and competently summarize what the initiative does, and fails to give adequate notice to potential signers of CWC's petition and to Missouri voters.

22. Secretary of State Carnahan's statement is also unfair. The language of the statement objectively and patently reflects the Secretary of State's bias and prejudice against the Cures Without Cloning Amendment, and concomitant favoritism toward the proponents of human cloning and stem cell research on human embryos who oppose the Cures Without Cloning Amendment. It is an unlawful and unconscionable interference by the Secretary of State in Missouri citizens' constitutional rights to pass legislation by the initiative process and to communicate with their fellow citizens about the need for political change.

23. The Secretary of State's summary statement is insufficient or unfair in at least the following respects:

- a. It falsely and/or deceptively states that there is a "current ban on human cloning or attempted cloning." Current law (Section 38(d) of the Missouri Constitution, or "Amendment 2") does not ban cloning, allows the cloning and destruction of human embryos, and only prohibits the post-cloning implantation of a cloned embryo in a woman's uterus. The language of Amendment 2 does not purport to "ban human cloning;" those words appear nowhere within Section 38(d) of the Missouri Constitution.
- b. It falsely and/or deceptively states that the Cures Without Cloning Amendment would "repeal" an existing ban on cloning. Even if current law can be considered a "ban on human cloning," the Cures Without Cloning Amendment does not in any legal, factual, or common-sense understanding constitute a "repeal" of the ban; instead, it (among other things) expands the prohibition from the mere implantation of a cloned embryo in a woman's uterus to include additional conduct, the actual creation of cloned embryos. The clear language of the proposed amendment states that "The prohibitions of this section shall be *in addition to* the prohibitions of Section 38(d)." (emphasis added). It also makes clear that stem cell research must comply with the "limitations of this section [the Cures Without Cloning Amendment] *and the limitations of Section 38(d).*" (emphasis and brackets added) The very language of the Cures Without Cloning Amendment contemplates that

whatever prohibitions exist within 38(d) will remain effective. No one can argue in good faith that there has been any “repeal” of the “ban” in Section 38(d).

- c. It falsely, deceptively, and with evident bias and prejudice states that the Cures Without Cloning Amendment will “limit Missouri patients’ access to stem cell research, therapies and cures approved by voters in November 2006.” First, it is false to state or imply that Missouri patients have “access” to any stem cell research, therapies, or cures that were legalized under Amendment 2 and would be prohibited by the Cures Without Cloning Amendment (i.e., research requiring the creation and destruction of cloned human embryos). No such research is being conducted in this state or is on the verge of being conducted. Therapies or cures from such research are even more fictional. It is not true that Missourians currently enjoy “access” to embryonic cloning research because of Amendment 2. Second, it is sheer speculation and highly argumentative to claim that such embryonic cloning research will be conducted anywhere in the United States, that it will lead to therapies and cures, and that Missourians “will have access” to such therapies and cures. Finally, this language unnecessarily includes surplusage regarding “approv[al] by voters in November 2006,” which is not germane to the content of the currently proposed Cures Without Cloning Amendment and is an argumentative attempt to create prejudice and “remind” voters about recent legislation. Taken as a whole, this sentence is false, deceptive, and biased

because rather than summarizing the effect of the language –how and why the Cures Without Cloning Amendment will prohibit the cloning and destruction of human embryos—it makes predictions about “limit[ing] access” to non-existent research, therapies, and cures, and focuses on past voter approval of other measures.

- d. It falsely, deceptively, and with evident bias and prejudice states that the Cures Without Cloning Amendment will “criminalize and impose civil penalties for some currently allowed research, therapies, and cures.” The Cures Without Cloning Amendment only makes research involving embryonic cloning unlawful, it does not create a criminal penalty for that research or any other activity. Further, the Cures Without Cloning Amendment does not make any form of “therapy” or “cure” “unlawful,” let alone criminalize it. The summary blatantly and severely misrepresents the language of the Cures Without Cloning Amendment by arguing that the Amendment would “criminalize” therapies and cures.
- e. It falsely, deceptively, and with evident bias and prejudice claims that the Cures Without Cloning Amendment prohibits “hospitals or other institutions from using public funds to conduct such research.” First, by using the phrase “such research,” it leaves the average reader with the impression that no “stem cell research, therapies, and cures” can receive public funding. In fact, it is only research involving the creation of cloned human embryos, the “harvesting” of these embryos’ stem cells, and the destruction of those human

embryos, that is prohibited. The Cures Without Cloning Amendment allows many other forms of research, therapies, and cures, all of which could be publicly funded. The Secretary of State, however, has purposefully designed the summary statement so that an ordinary citizen would never know this. Further, the Secretary of State used scarce space to discuss the impact of the amendment on “hospitals and other institutions,” embellishments and details that are not necessary to an understanding of the Cures Without Cloning Amendment, not actually stated within the Amendment, and included only to inject emotion and prejudice into her summary.

- f. Each of these specific problems aside, and even if in isolation specific phrases are not deemed deceptive or prejudicial, the statement is certainly prejudicial when the phrases are considered in combination and in total. The summary statement as a whole is inadequate, incomplete, unfair, deceptive, argumentative, and prejudicial because it focuses almost entirely on echoing cloning proponents’ arguments regarding limits on “patients” “access to...research, therapies, and cures,” and prohibitions on “hospitals.” This flaw also makes it internally inconsistent. The statement claims at first that the Amendment is a “repeal” of the cloning ban, but argues in its remaining sentences that this purported “repeal” of a ban affirmatively “limits access” to other types of research. A Missouri petition signer or voter reading this summary statement would never know the crucial and objective fact that the Cures Without Cloning Amendment extends Amendment 2’s “cloning”

prohibitions from a mere ban of the implantation of a cloned human embryo into a mother's womb, to a ban of the procedure that produces a cloned human embryo, from the one-cell stage onward. Tellingly, the words "embryo" or "human embryo" never even appear in Secretary Carnahan's statement. A Missouri petition signer would also be unaware that all other forms of stem cell research, therapies, and cures are left untouched by the Cures Without Cloning Amendment. In sum, the statement adopts wholesale the arguments of one side of the cloning debate, rather than simply and fairly stating the meaning of the proposed amendment.

24. For all of the above reasons, the Secretary of State's summary statement is not the product of a serious and conscientious effort to provide Missouri citizens with an adequate and fair summary of the proposed measure. A Band-Aid cannot fix it. The statement must be rewritten by this Court.

25. The summary statement should be certified by this Court to state as follows:

Shall the Missouri Constitution be amended to:

- Prohibit human cloning that is conducted by creating a human embryo at any stage, from the one-cell stage onward;
- Prohibit expenditure of taxpayer dollars on human cloning, or on research or experimentation using a human embryo or any part of a human embryo derived from human cloning; and
- Allow stem cell research for therapies and cures that complies with these prohibitions and the prohibitions of Section 38(d) of the Constitution?

26. This 80-word summary statement is adequate and accurate; the statement drafted by Secretary of State Carnahan is not. Plaintiffs' proposal is simple and bears a close resemblance to the actual language of the provision. It is neutral. It summarizes the legal effect of the measure without advancing policy arguments or adopting one side's opinion regarding the

perceived effects of the measure on the destruction of innocent human life, patients, or research hospitals. Most importantly, it allows Missouri citizens on both sides of the debate to make their arguments to their fellow citizens without the heavy hand of state officials resting on one side of the scale.

WHEREFORE, Plaintiffs pray for a judgment from this Court:

- A. Finding that the summary statement certified by Secretary of State Carnahan on October 10, 2007, is invalid;
- B. Certifying the following summary statement to the Secretary of State:

Shall the Missouri Constitution be amended to:

- Prohibit human cloning that is conducted by creating a human embryo at any stage, from the one-cell stage onward;
 - Prohibit expenditure of taxpayer dollars on human cloning, or on research or experimentation using a human embryo or any part of a human embryo derived from human cloning; and
 - Allow stem cell research for therapies and cures that complies with these prohibitions and the prohibitions of Section 38(d) of the Constitution?
- C. Granting Plaintiffs all such further and additional relief as is just and proper.

COUNT II

Challenge to Auditor Montee's Fiscal Note Summary RSMo. § 116.190

27. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

28. Auditor Montee's fiscal note summary provides as follows:

This proposal could have a significant negative fiscal impact on state and local governmental entities due to its prohibition of certain research activities. However, the total costs to state and local governmental entities are unknown.

29. Auditor Montee's fiscal note summary violates the provisions of Chapter 116, RSMo., and is unlawful.

30. Auditor Montee's fiscal note summary uses language that is both argumentative and highly likely to create prejudice against the Cures Without Cloning Amendment. Additionally, the fiscal note summary is both insufficient and unfair.

31. Auditor Montee's fiscal note summary is argumentative, highly prejudicial, insufficient, and unfair because it improperly and with absolutely no evidence assumes that *because of the passage of Section 38(d) to the Missouri Constitution, and absent the Cures Without Cloning Amendment*, substantial tax revenue is flowing and will continue to flow through the coffers of state and local governments. It further assumes that the passage of the Cures Without Cloning Amendment will, by itself, shut off this source of revenue in future years, causing a revenue "loss." For this reason alone does the fiscal note claim that the Cures Without Cloning Amendment could have a "significant negative fiscal impact" and that the "total costs" are unknown. However, the public is not apprised of the key assumptions underlying this highly argumentative claim: (1) research allowed by the passage of Section 38(d) is generating or will generate new tax revenues for the state; (2) it is the passage of the Cures Without Cloning Amendment, and not other factors, which will have or have had a negative effect on new tax revenues; and (3) tax revenues from new research will outstrip government spending that would be required under Section 38(d).

32. The Auditor cannot claim with any degree of certainty that the Cures Without Cloning Amendment will cause tax revenues to decrease. She also cannot claim with any degree of certainty that if tax revenues do decrease, it will be due to the Cures Without Cloning

Amendment instead of the open and obvious concern many Missouri legislators and most Missouri citizens have continued to express toward research that creates and destroys human embryos in order to “harvest” human embryonic stem cells for uncertain medical experimentation and research.

33. Further, the Auditor has not undertaken any study of what government outlays will be required to fund embryonic stem cell research under Section 38(d), and how much money will be saved by shutting off these entitlements under the proposed Section 38(e). Without at least including some examination of state and local savings from the public funding ban within the fiscal note, the fiscal note’s argument regarding potentially “significant negative” net costs rings hollow.

34. For all of these reasons, the Auditor cannot claim to have been neutral in stating that the Cures Without Cloning Amendment “could” have a significant negative impact or has “unknown” total costs. This language raises the specter of large, unpredictable losses. Given the facts, the only fair statement the Auditor can make is that the fiscal impact on state and local government is unknown.

WHEREFORE, Plaintiffs pray for a judgment from this Court:

- A. Finding that the fiscal note summary certified by Secretary of State Carnahan on October 10, 2007, is invalid;
- B. Certifying a new and accurate summary statement to the Secretary of State, in a form to be established by proof at trial; and
- C. Granting Plaintiffs all such further and additional relief as is just and proper.

COUNT III

Challenge to Auditor Montee's Fiscal Note

RSMo. § 116.190

35. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

36. Auditor Montee's fiscal note violates the provisions of Chapter 116, RSMo., and is unlawful.

37. Auditor Montee's fiscal note is both argumentative and highly likely to create prejudice against the Cures Without Cloning Amendment. Additionally, the fiscal note is both insufficient and unfair.

38. Every agency or entity that predicted a "negative fiscal impact" to that agency or to the government did so based not on the direct fiscal impact to the government, but on its own projection of the political, psychological, social, or macroeconomic effects of the passage of the Amendment. The reporting agencies attempted to mask their political arguments by interspersing their reports with numbers and calculations, but underlying (if not permeating) each estimate was a political, psychological, social, or macroeconomic judgment which that agency had no expertise, competency, rational basis, or authority to make. Such predictions are several steps removed from the typical fiscal estimate, which usually considers direct costs or revenue streams to the government based on changes in government activities or the state's methods of collecting revenue.

39. Here, four agencies hazarded opinions and guesses based on the complex interaction of market forces, investor and industry psychology, the whims of private foundations and researchers, and a completely new area of state regulation. They are loaded with uninformed

and incompetent editorial statements regarding the motives of opponents of embryonic stem cell research, the purported scientific benefits of cloning, and Missouri politics. For this reason alone, these four estimates are biased, prejudicial, and lack a rational basis. Auditor Montee went far outside her statutory authority by simply dumping such incompetent material into her fiscal note. This Court cannot allow this unlawful practice to continue and should strike each such estimate from the fiscal note. These include the following estimates:

- a. The Department of Economic Development;
- b. The City of Kansas City;
- c. The City of St. Louis;
- d. The University of Missouri.

40. The “fiscal information” provided by one “Mr. Brad Ketcher of the Ketcher Law Firm, LLC” consists of nothing more than a table of results. While the table purports to represent some sort of calculation, it is completely opaque. It evidences no rational or factual basis for the numbers or assumptions from which its purported calculations were derived. For example, the table posits several fragmented hypothetical situations or estimates (“Loss of Stowers Phase II,” “Lose [sic] of Stowers Phase II, (3.8% of GSP),” or “10% Chilling Effect on R%D,”) whose meaning, let alone whose bases, are not explained. With no other explanation, such numbers are inappropriate for inclusion in the fiscal note and should be stricken.

41. Additionally, the fiscal note completely and utterly fails to account for the flip side of its own hypothetical –that embryonic stem cell research is occurring or soon will occur in the state to any substantial degree. If this did occur, then current Section 38(d) would mandate substantial state funding for such research, decreasing funding for other services and possibly

requiring an increase in taxes or cuts for other state services. By banning taxpayer funding for cloning-related research, Section 38(e) would alleviate this fiscal crunch. Yet the fiscal note undertakes no analysis of this effect. It is not even mentioned. Thus, Auditor Montee's fiscal note not only tries to hypothesize an unlikely occurrence (a dramatic increase in embryonic stem cell research due to the passage of Section 38(d)), it magnifies its error by calculating only one half of the effect of that occurrence. This is such a significant mistake and gaping omission that the entire note must be considered insufficient, unfair, and prejudicial.

42. Finally, Auditor Montee included "fiscal impact" statements that do not comply with the requirements of RSMo. §116.175 or comply with the "the standards of the governmental accounting standards board and section 23.140." Id.

43. An accurate, sound, and fair fiscal note will demonstrate no impact on state and local revenue because there is no evidence or rational basis to conclude that the Cures Without Cloning Amendment will decrease embryonic stem cell research in Missouri, which is currently not taking place. There is no evidence or rational basis to conclude that the Cures Without Cloning Amendment will decrease other types of stem cell research that do take place or could take place, and are not (or would not be) prohibited by the Cures Without Cloning Amendment. Finally, there is no evidence or rational basis to conclude that even if any such decrease in research activity did occur, it would have a significant impact on overall life sciences employment, economic activity in this state, or state and local revenue collection.

WHEREFORE, Plaintiffs pray for a judgment from this Court:

A. Finding that the fiscal note prepared by Auditor Montee is invalid;

- B. Certifying a new fiscal note to the Secretary of State, in a form to be established by proof at trial; and
- C. Granting Plaintiffs all such further and additional relief as is just and proper.

COUNT IV

Violations of the Missouri Constitution Article I, § 2; Art. I, § 3; Art. I, §8; Art. I, § 25; Art. 3, § 49

44. Defendants' conduct in drafting, reviewing, approving, certifying, transmitting, and publishing the summary statement, fiscal note summary, and fiscal note violates Plaintiffs' and Missouri voters' rights under the Missouri Constitution, Article I, § 2; Art. I, § 3; Art. I, § 8; Art. I, § 25; and Art. 3, § 49. Defendants have applied the provisions of Chapter 116, RSMo., to Plaintiffs' Cures Without Cloning Amendment in an arbitrary, discriminatory, and unconstitutional manner, as described in this Petition.

Right of the People to Amend the Constitution

45. Article 1, Section 3 of the Missouri Constitution provides that "the people of this state have the inherent, sole and exclusive right to regulate the internal government and police thereof, and to alter and abolish their Constitution and form of government whenever they may deem it necessary." Defendants' conduct in drafting, reviewing, approving, certifying, transmitting, and publishing the summary statement, fiscal note summary, and fiscal note, violates this provision because it frustrates the ability of Plaintiffs to communicate to their supporters and other Missouri citizens regarding their proposal to "alter... their Constitution." For the reasons set forth above, Defendants' summary statement, fiscal note summary, and fiscal note present an inaccurate, incomplete, unfair, prejudicial, and biased argument regarding

Plaintiffs' proposal, but purport to be unbiased and fair and carry the imprimatur of the state. The Defendants' conduct will therefore require Plaintiffs to undertake substantially more expensive and extensive efforts to communicate with their supporters and fellow citizens about their proposal. Because Plaintiffs do not have unlimited resources, the additional burdens imposed by Defendants' unconstitutional conduct will decrease the number of voters Plaintiffs are able to reach and ultimately persuade with their message. This burden is so heavy that it frustrates Plaintiffs' right to alter the Constitution. It also frustrates the rights of Missouri citizens, with whom Plaintiffs would communicate, to alter the Constitution.

Right of the People to Amend the Constitution by Initiative

46. Article 3, Section 49 of the Missouri Constitution provides that “the people reserve power to propose and enact or reject laws and amendments to the Constitution by the Initiative, independent of the General Assembly...” Defendants' conduct in drafting, reviewing, approving, certifying, transmitting, and publishing the summary statement, fiscal note summary, and fiscal note, violates this provision because it frustrates the ability of Plaintiffs to communicate to their supporters and other Missouri citizens regarding their proposal to “enact...amendments to the Constitution by the Initiative...” For the reasons set forth above, Defendants' summary statement, fiscal note summary, and fiscal note present an inaccurate, incomplete, unfair, prejudicial, and biased argument regarding Plaintiffs' proposal, but purport to be unbiased and fair and carry the imprimatur of the state. The Defendants' conduct will therefore require Plaintiffs to undertake substantially more expensive and extensive efforts to communicate with their supporters and fellow citizens about their proposal. Because Plaintiffs do not have unlimited resources, the additional burdens imposed by Defendants' unconstitutional

conduct will decrease the number of voters Plaintiffs are able to reach and ultimately persuade with their message. This burden is so heavy that it frustrates Plaintiffs' right to amend the Constitution by the initiative. It also frustrates the rights of Missouri citizens, with whom Plaintiffs would communicate, to amend the Constitution by initiative.

Right of Free and Open Elections; Right to Vote

47. Article 1, Section 25 of the Missouri Constitution provides that "all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." The right of suffrage applies to ballot measure elections as well as to candidate elections. By frustrating Plaintiff's right to amend the Constitution by the initiative, as set forth in paragraphs 44 and 45 of this Petition, Defendants will deprive Plaintiffs and other Missouri citizens of the right to vote on the Cures Without Cloning Amendment, denying Plaintiffs and other Missouri citizens of their rights under Article I, Section 25.

Freedom of Speech

48. Article 1, Section 8 of the Missouri Constitution provides that "no law shall be passed impairing the freedom of speech, no matter by what means communicated..." This includes the right to engage in political speech and association for purposes of gathering support for legislative and political change. Speaking to one's supporters and the public at large regarding an initiative petition is conduct that lies at the core of the freedom of speech. By using the summary statement, fiscal note summary, and fiscal note to present an inaccurate, incomplete, unfair, prejudicial, and biased argument regarding Plaintiffs' proposal, but purporting to be unbiased and fair and carry the imprimatur of the state, Defendants have unduly burdened Plaintiff's free speech rights without any compelling government interest. They have

made it much more expensive and much more difficult for Plaintiffs to leverage their resources to communicate with their supporters and the Missouri public. Because Plaintiffs do not have unlimited resources, the additional burdens imposed by Defendants' unconstitutional conduct will decrease the number of voters Plaintiffs are able to reach and ultimately persuade with their message. Defendants' conduct violates Plaintiffs' free speech rights.

Right to Equal Protection Under the Law

49. Article 1, Section 2 of the Missouri Constitution provides that "all persons are created equal and are entitled to equal rights and opportunities under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design." For the reasons set forth above, Defendants' summary statement, fiscal note summary, and fiscal note present an inaccurate, incomplete, unfair, prejudicial, and biased argument regarding Plaintiffs' proposal, but purport to be unbiased and fair and carry the imprimatur of the state. Upon information and belief, based on the severe inadequacies and evident bias in Defendants' performance of their duties, Defendants acted with the intent to produce and publish to Missouri voters inaccurate, incomplete, unfair, prejudicial, and biased arguments in an effort to burden and frustrate their fundamental rights to engage in political speech, association, petition the government, and amend the Missouri Constitution. Additionally, Defendants have, upon information and belief, acted against Plaintiffs on the basis of Plaintiffs' political beliefs on the issue of cloning and stem cell research, which are in opposition to the publicly expressed beliefs of Defendants. Defendants have, upon information and belief, given preferential treatment to political allies who share their views on cloning and

stem cell research. Defendants' unequal treatment of Plaintiffs when compared to their treatment of opponents to the Cures Without Cloning Amendment is based on Defendants' political viewpoint and not on any rational basis. Defendants' unequal treatment of Plaintiffs has damaged and will damage them by making it much more expensive and much more difficult for Plaintiffs to leverage their resources to communicate with their supporters and the Missouri public. Defendants' conduct violates Plaintiffs' right to equal protection under the law.

WHEREFORE, Plaintiffs pray for a judgment from this Court:

- A. Finding that Defendants' conduct, summary statement, fiscal note summary, and fiscal note is in violation of Plaintiffs' rights under the Missouri Constitution, Article I, § 2; Art. I, § 3; Art. I, § 8; Art. I, § 25; and Art. 3, § 49.
- B. Finding that Defendants' summary statement, fiscal note, and fiscal note summary are invalid; and
- C. Granting Plaintiffs all such further and additional relief as is just and proper.

COUNT V

Violation of the First and Fourteenth Amendments of the United States Constitution 42 U.S.C. §1983

50. In drafting, reviewing, approving, certifying, transmitting, and publishing the summary statement, fiscal note summary, and fiscal note, Defendants acted under color of state law and in their official capacities.

51. A judgment against Defendants will adequately redress Defendants' violations of Plaintiffs' constitutional rights.

First Amendment

52. The conduct of Defendants as set forth in Paragraph 49 of this Petition violated and, without relief from this Court, will continue to violate and unduly burden Plaintiffs' exercise of their First Amendment rights.

53. Plaintiffs have a First Amendment right to engage with their supporters and with Missouri voters in political speech and association regarding their proposal to amend the Missouri Constitution to prohibit cloning. Speaking to one's supporters and the public at large regarding an initiative petition is conduct that lies at the core of the freedom of speech. By using the summary statement, fiscal note summary, and fiscal note to present an inaccurate, incomplete, unfair, prejudicial, and biased argument regarding Plaintiffs' proposal, but purporting to be unbiased and fair and carry the imprimatur of the state, Defendants have unduly burdened Plaintiff's free speech rights without any compelling government interest. The Defendants' conduct will therefore require Plaintiffs to undertake substantially more expensive and extensive efforts to communicate with their supporters and fellow citizens about their proposal. Because Plaintiffs do not have unlimited resources, the additional burdens imposed by Defendants' unconstitutional conduct will decrease the number of voters Plaintiffs are able to reach and ultimately persuade with their message. Defendants' conduct violates Plaintiffs' free speech rights.

Equal Protection Clause of the Fourteenth Amendment

54. The conduct of Defendants as set forth in Paragraph 49 of this Petition violated and, without relief from this Court, will continue to violate Plaintiffs' right of equal protection

under the law, which is guaranteed against official action by the Fourteenth Amendment of the United States Constitution.

55. For the reasons set forth above, Defendants' summary statement, fiscal note summary, and fiscal note present an inaccurate, incomplete, unfair, prejudicial, and biased argument regarding Plaintiffs' proposal, but purport to be unbiased and fair and carry the imprimatur of the state. Upon information and belief, based on the severe inadequacies and evident bias in Defendants' performance of their duties, Defendants acted with the intent to produce and publish to Missouri voters inaccurate, incomplete, unfair, prejudicial, and biased arguments in an effort to burden and frustrate their fundamental rights to engage in political speech, association, petition the government, and amend the Missouri Constitution. Additionally, Defendants have, upon information and belief, acted against Plaintiffs on the basis of Plaintiffs' political beliefs on the issue of cloning and stem cell research, which are in opposition to the publicly expressed beliefs of Defendants. Defendants have, upon information and belief, given preferential treatment to political allies who share their views on cloning and stem cell research. Defendants' unequal treatment of Plaintiffs when compared to their treatment of opponents to the Cures Without Cloning Amendment is based on Defendants' political viewpoint and not on any rational basis. Defendants' unequal treatment of Plaintiffs has damaged and will damage them by making it much more expensive and much more difficult for Plaintiffs to leverage their resources to communicate with their supporters and the Missouri public. Defendants' conduct violates Plaintiffs' Fourteenth Amendment right to equal protection under the law.

WHEREFORE, Plaintiffs pray for a judgment from this Court:

- A. Finding that Defendants' conduct, summary statement, fiscal note summary, and fiscal note violate the rights of Plaintiffs under the First and Fourteenth Amendments of the United States Constitution;
- B. Finding that Defendants' summary statement, fiscal note, and fiscal note summary are invalid;
- C. Awarding Plaintiffs attorneys' fees as the prevailing party pursuant to 42 U.S.C. §1988; and
- D. Granting Plaintiffs all such further and additional relief as is just and proper.

Respectfully submitted,

By: _____

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