

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE JOINT
4 RESOLUTION 1091

By: Lamons

5
6 AS INTRODUCED

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8 A Joint Resolution directing the Secretary of State
9 to refer to the people for their approval or
10 rejection a proposed amendment to the Constitution of
11 the State of Oklahoma by adding a new Section 13 to
12 Article XXIII thereof; creating the Oklahoma Stem
13 Cell Research and Cures Initiative; defining terms;
14 authorizing certain stem cell research; providing
15 limitations and requirements; prohibiting certain
16 acts; providing penalties for violations; authorizing
17 civil actions; providing for civil penalties;
18 requiring certain reports; prohibiting certain
19 governmental actions; providing for construction of
20 governmental acts; making provisions self-executing;
21 providing for severability; providing ballot title;
22 and directing filing.
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17 BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE OF THE
18 2ND SESSION OF THE 51ST OKLAHOMA LEGISLATURE:

19 SECTION 1. The Secretary of State shall refer to the people for
20 their approval or rejection, as and in the manner provided by law,
21 the following proposed amendment to the Constitution of the State of
22 Oklahoma by adding a new Section 13 to Article XXIII thereof, to
23 read as follows:
24

1 Section 13. A. This section shall be known as the "Oklahoma
2 Stem Cell Research and Cures Initiative".

3 B. As used in this section:

4 1. "Blastocyst" means a small mass of cells that results from
5 cell division, caused by somatic cell nuclear transfer, that has not
6 been implanted in a uterus;

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

13 3. "Donated" means donated for use in connection with either
14 scientific or medical research or with medical treatment;

15 4. "Fertilization" means the process whereby an egg of a human
16 female and the sperm of a human male form a zygote, or fertilized
17 egg;

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

23 6. "Permitted under federal law" means, as it relates to stem
24 cell research and stem cell therapies and cures, any research,

1 therapies, and cures that are not prohibited under federal law from
2 being conducted or provided, regardless of whether federal funds are
3 made available for such activities;

4 7. "Person" means any natural person, corporation, association,
5 partnership, public or private institution, or other legal entity;

6 8. "Private or confidential medical, scientific, or other
7 information" means any private or confidential patient, medical, or
8 personnel records or matters, intellectual property or work product,
9 whether patentable or not and including, but not limited to, any
10 scientific or technological innovations in which an entity or person
11 involved in the research has a proprietary interest, prepublication
12 scientific working papers, research, or data;

13 9. "Stem cell" means a cell that can divide multiple times and
14 give rise to specialized cells in the body, and includes, but is not
15 limited to, the stem cells generally referred to as adult stem cells
16 that are found in some body tissues including, but not limited to,
17 adult stem cells derived from adult body tissues and from discarded
18 umbilical cords and placentas;

19 10. "Stem cell clinical trials" means federally regulated
20 clinical trials involving stem cells and human subjects designed to
21 develop, assess or test the efficacy or safety of medical
22 treatments;

1 11. "Stem cell research" means any scientific or medical
2 research involving stem cells. Stem cell research does not include
3 stem cell clinical trials;

4 12. "Stem cell therapies and cures" means any medical treatment
5 that involves or otherwise derives from the use of stem cells, and
6 that is used to treat or cure any disease or injury. "Stem cell
7 therapies and cures" does not include stem cell clinical trials; and

8 13. "Valuable consideration" means financial gain or advantage,
9 but does not include reimbursement for reasonable costs incurred in
10 connection with the removal, processing, disposal, preservation,
11 quality control, storage, transfer, or donation of human tissue or
12 cells used to generate stem cells, including lost wages of the
13 donor. Valuable consideration also does not include the
14 consideration paid to a donor of human tissue or cells used to
15 generate stem cells, as well as any other consideration expressly
16 allowed by federal law.

17 C. To ensure that Oklahoma patients have access to stem cell
18 therapies and cures, that Oklahoma researchers may conduct stem cell
19 research in this state, and that all such research is conducted
20 safely and ethically, any stem cell research permitted under federal
21 law may be conducted in Oklahoma, and any stem cell therapies and
22 cures permitted under federal law may be provided to patients in
23 Oklahoma, subject to the requirements of federal law and only the
24 following additional limitations and requirements:

1 1. No person shall clone or attempt to clone a human being;

2 2. No human blastocyst shall be produced by fertilization
3 solely for the purpose of stem cell research; and

4 3. All stem cell research and all stem cell therapies and cures
5 shall be conducted and provided in accordance with federal, state
6 and local laws of general applicability including, but not limited
7 to, laws concerning scientific and medical practices and patient
8 safety and privacy, to the extent that any such laws do not prevent,
9 restrict, obstruct, or discourage any stem cell research or stem
10 cell therapies and cures that are permitted by the provisions of
11 this section other than this subsection to be conducted or provided,
12 or create disincentives for any person to engage in or otherwise
13 associate with the research or therapies and cures.

14 D. Any person who is convicted of knowingly and willfully
15 violating paragraph 1 of subsection C of this section shall be
16 guilty of a felony punishable by a fine of not more than Two Hundred
17 Fifty Thousand Dollars (\$250,000.00) or by imprisonment for not more
18 than fifteen (15) years, or by both fine and imprisonment. Any
19 person who is convicted of knowingly and willfully violating in this
20 state paragraph 2 or 3 of subsection C of this section shall be
21 guilty of a felony punishable by a fine of not more than One Hundred
22 Thousand Dollars (\$100,000.00) or by imprisonment for not more than
23 ten (10) years, or by both fine and imprisonment. A civil action
24 may be brought against any person who knowingly and willfully

1 violates in this state any of paragraphs 1 through 3 of subsection C
2 of this section, and the state in the action shall be entitled to a
3 judgment recovering a civil penalty of up to Fifty Thousand Dollars
4 (\$50,000.00) per violation, requiring disgorgement of any financial
5 profit derived from the violation, and an injunction against any
6 further violation. The Attorney General shall have the exclusive
7 right to bring a civil action for the violation. Venue for the
8 action shall be in the county in which the alleged violation
9 occurred.

10 E. Each institution, hospital, other entity, or other person
11 conducting stem cell research in this state shall:

12 1. Prepare an annual report stating the nature of the stem
13 cells used in, and the purpose of, the research conducted during the
14 prior calendar year, and certifying compliance with subsection C of
15 this section; and

16 2. No later than June 30 of the subsequent year, make the
17 report available to the public and inform the Secretary of State how
18 the public may obtain copies of or otherwise gain access to the
19 report. The report shall not contain private or confidential
20 medical, scientific, or other information. Individuals conducting
21 research at an institution, hospital, or other entity that prepares
22 and makes available a report pursuant to this subsection concerning
23 the research are not required to prepare and make available a
24 separate report concerning that same research. A civil action may

1 be brought against any institution, hospital, other entity, or other
2 person that fails to prepare or make available the report or inform
3 the Secretary of State how the public may obtain copies or otherwise
4 gain access to the report, and the state in the action shall be
5 entitled as its sole remedy to an affirmative injunction requiring
6 the institution, hospital, other entity, or other person to prepare
7 and make available the report or inform the Secretary of State how
8 the public may obtain or otherwise gain access to the report. The
9 Attorney General shall have the exclusive right to bring a civil
10 action for the violation.

11 F. To ensure that no governmental body or official arbitrarily
12 restricts funds designated for purposes other than stem cell
13 research or stem cell therapies and cures as a means of inhibiting
14 lawful stem cell research or stem cell therapies and cures, no state
15 or local governmental body or official shall eliminate, reduce,
16 deny, or withhold any public funds provided or eligible to be
17 provided to a person that:

18 1. Lawfully conducts stem cell research or provides stem cell
19 therapies and cures, allows for the research or therapies and cures
20 to be conducted or provided on its premises, or is otherwise
21 associated with the research or therapies and cures; but

22 2. Receives or is eligible to receive the public funds for
23 purposes other than the stem-cell-related activities, on account of,
24 or otherwise for the purpose of creating disincentives for any

1 person to engage in or otherwise associate with, or preventing,
2 restricting, obstructing, or discouraging, the stem-cell-related
3 activities.

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

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

19 SECTION 2. The Ballot Title for the proposed Constitutional
20 amendment as set forth in SECTION 1 of this resolution shall be in
21 the following form:

22 BALLOT TITLE

23 Legislative Referendum No. _____ State Question No. _____

24 THE GIST OF THE PROPOSITION IS AS FOLLOWS:

1 This measure amends the Oklahoma Constitution. It adds a new
2 Section 13 to Article 23. This measure ensures Oklahoma
3 patients have access to any therapies and cures, and allows
4 Oklahoma researchers to conduct any research, permitted under
5 federal law. It also bans human cloning or attempted human
6 cloning, and requires expert medical and public oversight and
7 annual reports on the nature and purpose of stem cell research.
8 This measure further imposes criminal and civil penalties for
9 any violations; and prohibits state or local governments from
10 preventing or discouraging lawful stem cell research, therapies,
11 and cures.

12 SHALL THE PROPOSAL BE APPROVED?

13 FOR THE PROPOSAL - YES _____

14 AGAINST THE PROPOSAL - NO _____

15 SECTION 3. The Chief Clerk of the House of Representatives,
16 immediately after the passage of this resolution, shall prepare and
17 file one copy thereof, including the Ballot Title set forth in
18 Section 2 hereof, with the Secretary of State and one copy with the
19 Attorney General.

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