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TEXT OF PROPOSITION 71

Proposition 71

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure expressly amends the California Constitution by adding an article thereto; and amends a section of the Government Code, and adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

CALIFORNIA STEM CELL RESEARCH AND CURES INITIATIVE

SECTION 1. Title

This measure shall be known as the "California Stem Cell Research and Cures Act."

SEC. 2. Findings and Declarations

The people of California find and declare the following:

Millions of children and adults suffer from devastating diseases or injuries that are currently incurable, including cancer, diabetes, heart disease, Alzheimer's, Parkinson's, spinal cord injuries, blindness, Lou Gehrig's disease, HIV/AIDS, mental health disorders, multiple sclerosis, Huntington's disease, and more than 70 other diseases and injuries.

Recently medical science has discovered a new way to attack chronic diseases and injuries. The cure and treatment of these diseases can potentially be accomplished through the use of new regenerative medical therapies including a special type of human cells, called stem cells. These life-saving medical breakthroughs can only happen if adequate funding is made available to advance stem cell research, develop therapies, and conduct clinical trials.

About half of California's families have a child or adult who has suffered or will suffer from a serious, often critical or terminal, medical condition that could potentially be treated or cured with stem cell therapies. In these cases of chronic illness or when patients face a medical crisis, the health care system may simply not be able to meet the needs of patients or control spiraling costs, unless therapy focus switches away from maintenance and toward prevention and cures.

Unfortunately, the federal government is not providing adequate funding necessary for the urgent research and facilities needed to develop stem cell therapies to treat and cure diseases and serious injuries. This critical funding gap currently prevents the rapid advancement of research that could benefit millions of Californians.

The California Stem Cell Research and Cures Act will close this funding gap by establishing an institute which will issue bonds to support stem cell research, emphasizing pluripotent stem cell and progenitor cell research and other vital medical technologies, for the development of life-saving regenerative medical treatments and cures.

SEC. 3. Purpose and Intent

It is the intent of the people of California in enacting this measure to:

Authorize an average of $295 million per year in bonds over a 10-year period to fund stem cell research and dedicated facilities for scientists at California's universities and other advanced medical research facilities throughout the state.

Maximize the use of research funds by giving priority to stem cell research that has the greatest potential for therapies and cures, specifically focused on pluripotent stem cell and progenitor cell research among other vital research opportunities that cannot, or are unlikely to, receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. Research shall be subject to accepted patient disclosure and patient consent standards.

Assure that the research is conducted safely and ethically by including provisions to require compliance with standards based on national models that protect patient safety, patient rights, and patient privacy.

Prohibit the use of bond proceeds of this initiative for funding for human reproductive cloning.

Improve the California health care system and reduce the long-term health care cost burden on California through the development of therapies that treat diseases and injuries with the ultimate goal to cure them.

Require strict fiscal and public accountability through mandatory independent audits, open meetings, public hearings, and annual reports to the public. Create an Independent Citizen's Oversight Committee composed of representatives of the University of California campuses with medical schools; other California universities and California medical research institutions; California disease advocacy groups; and California experts in the development of medical therapies.

Protect and benefit the California budget: by postponing general fund payments on the bonds for the first five years; by funding scientific and medical research that will significantly reduce state health care costs in the future; and by providing an opportunity for the state to benefit from royalties, patents, and licensing fees that result from the research.

Benefit the California economy by creating projects, jobs, and therapies that will generate millions of dollars in new tax revenues in our state.

Advance the biotech industry in California to world leadership, as an economic engine for California's future.

SEC. 4. Article XXXV is added to the California Constitution, to read:

Article XXXV. Medical Research

SECTION 1. There is hereby established the California Institute for Regenerative Medicine.

SEC. 2. The institute shall have the following purposes:

(a) To make grants and loans for stem cell research, for research facilities, and for other vital research opportunities to realize therapies, protocols, and/or medical procedures that will result in, as speedily as possible, the cure for, and/or substantial mitigation of, major diseases, injuries, and orphan diseases.

(b) To support all stages of the process of developing cures, from laboratory research through successful clinical trials.

(c) To establish the appropriate regulatory standards and oversight bodies for research and facilities development.

SEC. 3. No funds authorized for, or made available to, the institute shall be used for research involving human reproductive cloning.

SEC. 4. Funds authorized for, or made available to, the institute shall be continuously appropriated without regard to fiscal year, be available and used only for the purposes provided in this article, and shall not be subject to appropriation or transfer by the Legislature or the Governor for any other purpose.

SEC. 5. There is hereby established a right to conduct stem cell research which includes research involving adult stem cells, cord blood stem cells, pluripotent stem cells, and/or progenitor cells. Pluripotent stem cells are cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types. Pluripotent stem cells may be derived from somatic cell nuclear transfer or from surplus products of in vitro fertilization treatments when such products are donated under appropriate informed consent procedures. Progenitor cells are multipotent or precursor cells that are partially differentiated, but retain the ability to divide and give rise to differentiated cells.

SEC. 6. Notwithstanding any other provision of this Constitution or any law, the institute, which is established in state government, may utilize state issued tax-exempt and taxable bonds to fund its operations, medical and scientific research, including therapy development through clinical trials, and facilities.

SEC. 7. Notwithstanding any other provision of this Constitution, including Article VII, or any law, the institute and its employees are exempt from civil service.

SEC. 5. Chapter 3 (commencing with Section 125290.10) is added to Part 5 of Division 106 of the Health and Safety Code, to read:

CHAPTER 3. CALIFORNIA STEM CELL RESEARCH AND CURES BOND ACT

Article 1. California Stem Cell Research and Cures Act

125290.10. General—Independent Citizen's Oversight Committee (ICOC)

This chapter implements Article XXXV of the California Constitution, which established the California Institute for Regenerative Medicine (institute).

125290.15. Creation of the ICOC

There is hereby created the Independent Citizen's Oversight Committee, hereinafter, the ICOC, which shall govern the institute and is hereby vested with full power, authority, and jurisdiction over the institute.

125290.20. ICOC Membership; Appointments; Terms of Office

(a) ICOC Membership

The ICOC shall have 29 members, appointed as follows:

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(1) The Chancellors of the University of California at San Francisco, Davis, San Diego, Los Angeles, and Irvine, shall each appoint an executive officer from his or her campus.

(2) The Governor, the Lieutenant Governor, the Treasurer, and the Controller shall each appoint an executive officer from the following three categories:

(A) A California university, excluding the five campuses of the University of California described in paragraph (1), that has demonstrated success and leadership in stem cell research, and that has:

(i) A nationally ranked research hospital and medical school; this criteria will apply to only two of the four appointments.

(ii) A recent proven history of administering scientific and/or medical research grants and contracts in an average annual range exceeding one hundred million dollars ($100,000,000).

(iii) A ranking, within the past five years, in the top 10 United States universities with the highest number of life science patents or that has research or clinical faculty who are members of the National Academy of Sciences.

(B) A California nonprofit academic and research institution that is not a part of the University of California, that has demonstrated success and leadership in stem cell research, and that has:

(i) A nationally ranked research hospital or that has research or clinical faculty who are members of the National Academy of Sciences.

(ii) A proven history in the last five years of managing a research budget in the life sciences exceeding twenty million dollars ($20,000,000).

(C) A California life science commercial entity that is not actively engaged in researching or developing therapies with pluripotent or progenitor stem cells, that has a background in implementing successful experimental medical therapies, and that has not been awarded, or applied for, funding by the institute at the time of appointment. A board member of that entity with a successful history of developing innovative medical therapies may be appointed in lieu of an executive officer.

(D) Only one member shall be appointed from a single university, institution, or entity. The executive officer of a California university, a nonprofit research institution or life science commercial entity who is appointed as a member, may from time to time delegate those duties to an executive officer of the entity or to the dean of the medical school, if applicable.

(3) The Governor, the Lieutenant Governor, the Treasurer, and the Controller shall appoint members from among California representatives of California regional, state, or national disease advocacy groups, as follows:

(A) The Governor shall appoint two members, one from each of the following disease advocacy groups: spinal cord injury and Alzheimer's disease.

(B) The Lieutenant Governor shall appoint two members, one from each of the following disease advocacy groups: type II diabetes and multiple sclerosis or amyotrophic lateral sclerosis.

(C) The Treasurer shall appoint two members, one from each of the following disease groups: type I diabetes and heart disease.

(D) The Controller shall appoint two members, one from each of the following disease groups: cancer and Parkinson's disease.

(4) The Speaker of the Assembly shall appoint a member from among California representatives of a California regional, state, or national mental health disease advocacy group.

(5) The President pro Tempore of the Senate shall appoint a member from among California representatives of a California regional, state, or national HIV/AIDS disease advocacy group.

(6) A chairperson and vice chairperson who shall be elected by the ICOC members. Within 40 days of the effective date of this act, each constitutional officer shall nominate a candidate for chairperson and another candidate for vice chairperson. The chairperson and vice chairperson shall each be elected for a term of six years. The chairperson and vice chairperson of ICOC shall be full or part time employees of the institute and shall meet the following criteria:

(A) Mandatory Chairperson Criteria

(i) Documented history in successful stem cell research advocacy.

(ii) Experience with state and federal legislative processes that must include some experience with medical legislative approvals of standards and/or funding.

(iii) Qualified for appointment pursuant to paragraph (3), (4), or (5) of subdivision (a).

(iv) Cannot be concurrently employed by or on leave from any prospective grant or loan recipient institutions in California.

(B) Additional Criteria for Consideration:

(i) Experience with governmental agencies or institutions (either executive or board position).

(ii) Experience with the process of establishing government standards and procedures.

(iii) Legal experience with the legal review of proper governmental authority for the exercise of government agency or government institutional powers.

(iv) Direct knowledge and experience in bond financing.

The vice chairperson shall satisfy clauses (i), (iii), and (iv) of subparagraph (A). The vice chairperson shall be selected from among individuals who have attributes and experience complementary to those of the chairperson, preferably covering the criteria not represented by the chairperson's credentials and experience.

(b) Appointment of ICOC Members

(1) All appointments shall be made within 40 days of the effective date of this act. In the event that any of the appointments are not completed within the permitted timeframe, the ICOC shall proceed to operate with the appointments that are in place, provided that at least 60 percent of the appointments have been made.

(2) Forty-five days after the effective date of the measure adding this chapter, the State Controller and the Treasurer, or if only one is available within 45 days, the other shall convene a meeting of the appointed members of the ICOC to elect a chairperson and vice chairperson from among the individuals nominated by the constitutional officers pursuant to paragraph (6) of subdivision (a).

(c) ICOC Member Terms of Office

(1) The members appointed pursuant to paragraphs (1), (3), (4), and (5) of subdivision (a) shall serve eight-year terms, and all other members shall serve six-year terms. Members shall serve a maximum of two terms.

(2) If a vacancy occurs within a term, the appointing authority shall appoint a replacement member within 30 days to serve the remainder of the term.

(3) When a term expires, the appointing authority shall appoint a member within 30 days. ICOC members shall continue to serve until their replacements are appointed.

125290.25. Majority Vote of Quorum

Actions of the ICOC may be taken only by a majority vote of a quorum of the ICOC.

125290.30. Public and Financial Accountability Standards

(a) Annual Public Report

The institute shall issue an annual report to the public which sets forth its activities, grants awarded, grants in progress, research accomplishments, and future program directions. Each annual report shall include, but not be limited to, the following: the number and dollar amounts of research and facilities grants; the grantees for the prior year; the institute's administrative expenses; an assessment of the availability of funding for stem cell research from sources other than the institute; a summary of research findings, including promising new research areas; an assessment of the relationship between the institute's grants and the overall strategy of its research program; and a report of the institute's strategic research and financial plans.

(b) Independent Financial Audit for Review by State Controller

The institute shall annually commission an independent financial audit of its activities from a certified public accounting firm, which shall be provided to the State Controller, who shall review the audit and annually issue a public report of that review.

(c) Citizen's Financial Accountability Oversight Committee

There shall be a Citizen's Financial Accountability Oversight Committee chaired by the State Controller. This committee shall review the annual financial audit, the State Controller's report and evaluation of that audit, and the financial practices of the institute. The State Controller, the State Treasurer, the President pro Tempore of the Senate, the Speaker of the Assembly, and the Chairperson of the ICOC shall each appoint a public member of the committee. Committee members

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shall have medical backgrounds and knowledge of relevant financial matters. The committee shall provide recommendations on the institute's financial practices and performance. The State Controller shall provide staff support. The committee shall hold a public meeting, with appropriate notice, and with a formal public comment period. The committee shall evaluate public comments and include appropriate summaries in its annual report. The ICOC shall provide funds for the per diem expenses of the committee members and for publication of the annual report.

(d) Public Meeting Laws

(1) The ICOC shall hold at least two public meetings per year, one of which will be designated as the institute's annual meeting. The ICOC may hold additional meetings as it determines are necessary or appropriate.

(2) The Bagley-Keene Open Meeting Act, Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, shall apply to all meetings of the ICOC, except as otherwise provided in this section. The ICOC shall award all grants, loans, and contracts in public meetings and shall adopt all governance, scientific, medical, and regulatory standards in public meetings.

(3) The ICOC may conduct closed sessions as permitted by the Bagley-Keene Open Meeting Act, under Section 11126 of the Government Code. In addition, the ICOC may conduct closed sessions when it meets to consider or discuss:

(A) Matters involving information relating to patients or medical subjects, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(B) Matters involving confidential intellectual property or work product, whether patentable or not, including, but not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know it or use it.

(C) Matters involving prepublication, confidential scientific research or data.

(D) Matters concerning the appointment, employment, performance, compensation, or dismissal of institute officers and employees. Action on compensation of the institute's officers and employees shall only be taken in open session.

(4) The meeting required by paragraph (2) of subdivision (b) of Section 125290.20 shall be deemed to be a special meeting for the purposes of Section 11125.4 of the Government Code.

(e) Public Records

(1) The California Public Records Act, Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code, shall apply to all records of the institute, except as otherwise provided in this section.

(2) Nothing in this section shall be construed to require disclosure of any records that are any of the following:

(A) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(B) Records containing or reflecting confidential intellectual property or work product, whether patentable or not, including, but not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know it or use it.

(C) Prepublication scientific working papers or research data.

(f) Competitive Bidding

(1) The institute shall, except as otherwise provided in this section, be governed by the competitive bidding requirements applicable to the University of California, as set forth in Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code.

(2) For all institute contracts, the ICOC shall follow the procedures required of the Regents by Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code with respect to contracts let by the University of California.

(3) The requirements of this section shall not be applicable to grants or loans approved by the ICOC.

(4) Except as provided in this section, the Public Contract Code shall not apply to contracts let by the institute.

(g) Conflicts of Interest

(1) The Political Reform Act, Title 9 (commencing with Section 81000) of the Government Code, shall apply to the institute and to the ICOC, except as provided in this section and in subdivision (e) of Section 125290.50.

(A) No member of the ICOC shall make, participate in making, or in any way attempt to use his or her official position to influence a decision to approve or award a grant, loan, or contract to his or her employer, but a member may participate in a decision to approve or award a grant, loan, or contract to a nonprofit entity in the same field as his or her employer.

(B) A member of the ICOC may participate in a decision to approve or award a grant, loan, or contract to an entity for the purpose of research involving a disease from which a member or his or her immediate family suffers or in which the member has an interest as a representative of a disease advocacy organization.

(C) The adoption of standards is not a decision subject to this section.

(2) Service as a member of the ICOC by a member of the faculty or administration of any system of the University of California shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a member of the faculty or administration of any system of the University of California and shall not result in the automatic vacation of either such office. Service as a member of the ICOC by a representative or employee of a disease advocacy organization, a nonprofit academic and research institution, or a life science commercial entity shall not be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a representative or employee of that organization, institution, or entity.

(3) Section 1090 of the Government Code shall not apply to any grant, loan, or contract made by the ICOC except where both of the following conditions are met:

(A) The grant, loan, or contract directly relates to services to be provided by any member of the ICOC or the entity the member represents or financially benefits the member or the entity he or she represents.

(B) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant loan or contract.

(h) Patent Royalties and License Revenues Paid to the State of California

The ICOC shall establish standards that require that all grants and loan awards be subject to intellectual property agreements that balance the opportunity of the State of California to benefit from the patents, royalties, and licenses that result from basic research, therapy development, and clinical trials with the need to assure that essential medical research is not unreasonably hindered by the intellectual property agreements.

(i) Preference for California Suppliers

The ICOC shall establish standards to ensure that grantees purchase goods and services from California suppliers to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from California suppliers.

125290.35. Medical and Scientific Accountability Standards

(a) Medical Standards

In order to avoid duplication or conflicts in technical standards for scientific and medical research, with alternative state programs, the institute will develop its own scientific and medical standards to carry out the specific controls and intent of the act, notwithstanding subdivision (b) of Section 125300, Sections 125320, 125118, 125118.5, 125119, 125119.3 and 125119.5, or any other current or future state laws or regulations dealing with the study and research of pluripotent stem cells and/or progenitor cells, or other vital research opportunities, except Section 125315. The ICOC, its working committees, and its grantees shall be governed solely by the provisions of this act in the establishment of standards, the award of grants, and the conduct of grants awarded pursuant to this act.

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(b) The ICOC shall establish standards as follows:

(1) Informed Consent

Standards for obtaining the informed consent of research donors, patients, or participants, which initially shall be generally based on the standards in place on January 1, 2003, for all research funded by the National Institutes of Health, with modifications to adapt to the mission and objectives of the institute.

(2) Controls on Research Involving Humans

Standards for the review of research involving human subjects which initially shall be generally based on the Institutional Review Board standards promulgated by the National Institutes of Health and in effect on January 1, 2003, with modifications to adapt to the mission and objectives of the institute.

(3) Prohibition on Compensation

Standards prohibiting compensation to research donors or participants, while permitting reimbursement of expenses.

(4) Patient Privacy Laws

Standards to assure compliance with state and federal patient privacy laws.

(5) Limitations on Payments for Cells

Standards limiting payments for the purchase of stem cells or stem cell lines to reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transplantation, or implantation or legal transaction or other administrative costs associated with these medical procedures and specifically including any required payments for medical or scientific technologies, products, or processes for royalties, patent, or licensing fees or other costs for intellectual property.

(6) Time Limits for Obtaining Cells

Standards setting a limit on the time during which cells may be extracted from blastocysts, which shall initially be 8 to 12 days after cell division begins, not counting any time during which the blastocysts and/or cells have been stored frozen.

125290.40. ICOC Functions

The ICOC shall perform the following functions:

(a) Oversee the operations of the institute.

(b) Develop annual and long-term strategic research and financial plans for the institute.

(c) Make final decisions on research standards and grant awards in California.

(d) Ensure the completion of an annual financial audit of the institute's operations.

(e) Issue public reports on the activities of the institute.

(f) Establish policies regarding intellectual property rights arising from research funded by the institute.

(g) Establish rules and guidelines for the operation of the ICOC and its working groups.

(h) Perform all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction over the institute.

(i) Select members of the working groups.

(j) Adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this chapter, and to govern the procedures of the ICOC. Except as provided in subdivision (k), these rules and regulations shall be adopted in accordance with the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5, Sections 11371 et seq.).

(k) Notwithstanding the Administrative Procedure Act (APA), and in order to facilitate the immediate commencement of research covered by this chapter, the ICOC may adopt interim regulations without compliance with the procedures set forth in the APA. The interim regulations shall remain in effect for 270 days unless earlier superseded by regulations adopted pursuant to the APA.

(l) Request the issuance of bonds from the California Stem Cell Research and Cures Finance Committee and loans from the Pooled Money Investment Board.

(m) May annually modify its funding and finance programs to optimize the institute's ability to achieve the objective that its activities be revenue-positive for the State of California during its first five years of operation without jeopardizing the progress of its core medical and scientific research program.

(n) Notwithstanding Section 11005 of the Government Code, accept additional revenue and real and personal property, including, but not limited to, gifts, royalties, interest, and appropriations that may be used to supplement annual research grant funding and the operations of the institute.

125290.45. ICOC Operations

(a) Legal Actions and Liability

(1) The institute may sue and be sued.

(2) Based upon ICOC standards, institute grantees shall indemnify or insure and hold the institute harmless against any and all losses, claims, damages, expenses, or liabilities, including attorneys' fees, arising from research conducted by the grantee pursuant to the grant, and/or, in the alternative, grantees shall name the institute as an additional insured and submit proof of such insurance.

(3) Given the scientific, medical, and technical nature of the issues facing the ICOC, and notwithstanding Section 11042 of the Government Code, the institute is authorized to retain outside counsel when the ICOC determines that the institute requires specialized services not provided by the Attorney General's office.

(4) The institute may enter into any contracts or obligations which are authorized or permitted by law.

(b) Personnel

(1) The ICOC shall from time to time determine the total number of authorized employees for the institute, up to a maximum of 50 employees, excluding members of the working groups, who shall not be considered institute employees. The ICOC shall select a chairperson, vice chairperson and president who shall exercise all of the powers delegated to them by the ICOC. The following functions apply to the chairperson, vice chairperson, and president:

(A) The chairperson's primary responsibilities are to manage the ICOC agenda and work flow including all evaluations and approvals of scientific and medical working group grants, loans, facilities, and standards evaluations, and to supervise all annual reports and public accountability requirements; to manage and optimize the institute's bond financing plans and funding cash flow plan; to interface with the California Legislature, the United States Congress, the California health care system, and the California public; to optimize all financial leverage opportunities for the institute; and to lead negotiations for intellectual property agreements, policies, and contract terms. The chairperson shall also serve as a member of the Scientific and Medical Accountability Standards Working Group and the Scientific and Medical Research Facilities Working Group and as an ex-officio member of the Scientific and Medical Research Funding Working Group. The vice chairperson's primary responsibilities are to support the chairperson in all duties and to carry out those duties in the chairperson's absence.

(B) The president's primary responsibilities are to serve as the chief executive of the institute; to recruit the highest scientific and medical talent in the United States to serve the institute on its working groups; to serve the institute on its working groups; to direct ICOC staff and participate in the process of supporting all working group requirements to develop recommendations on grants, loans, facilities, and standards as well as to direct and support the ICOC process of evaluating and acting on those recommendations, the implementation of all decisions on these and general matters of the ICOC; to hire, direct, and manage the staff of the institute; to develop the budgets and cost control programs of the institute; to manage compliance with all rules and regulations on the ICOC, including the performance of all grant recipients; and to manage and execute all intellectual property agreements and any other contracts pertaining to the institute or research it funds.

(2) Each member of the ICOC except, the chairperson, vice chairperson, and president, shall receive a per diem of one hundred dollars ($100) per day (adjusted annually for cost of living) for each day actually spent in the discharge of the member's duties, plus reasonable and necessary travel and other expenses incurred in the performance of the member's duties.

(3) The ICOC shall establish daily consulting rates and expense reimbursement standards for the non-ICOC members of all of its working groups.

(4) Notwithstanding Section 19825 of the Government Code, the ICOC shall set compensation for the chairperson, vice chairperson, and president and other officers, and for the scientific, medical, technical, and administrative staff of the institute within the range of compensation levels for executive officers and scientific, medical, technical,

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and administrative staff of medical schools within the University of California system and the nonprofit academic and research institutions described in paragraph (2) of subdivision (a) of Section 125290.20.

125290.50. Scientific and Medical Working Groups-General

(a) The institute shall have, and there is hereby established, three separate scientific and medical working groups as follows:

(1) Scientific and Medical Research Funding Working Group.

(2) Scientific and Medical Accountability Standards Working Group.

(3) Scientific and Medical Research Facilities Working Group.

(b) Working Group Members

Appointments of scientific and medical working group members shall be made by a majority vote of a quorum of the ICOC, within 30 days of the election and appointment of the initial ICOC members. The working group members' terms shall be six years except that, after the first six-year terms, the members' terms will be staggered so that one-third of the members shall be elected for a term that expires two years later, one-third of the members shall be elected for a term that expires four years later, and one-third of the members shall be elected for a term that expires six years later. Subsequent terms are for six years. Working group members may serve a maximum of two consecutive terms.

(c) Working Group Meetings

Each scientific and medical working group shall hold at least four meetings per year, one of which shall be designated as its annual meeting.

(d) Working Group Recommendations to the ICOC

Recommendations of each of the working groups may be forwarded to the ICOC only by a vote of a majority of a quorum of the members of each working group. If 35 percent of the members of any working group join together in a minority position, a minority report may be submitted to the ICOC. The ICOC shall consider the recommendations of the working groups in making its decisions on applications for research and facility grants and loan awards and in adopting regulatory standards. Each working group shall recommend to ICOC rules, procedures, and practices for that working group.

(e) Conflict of Interest

(1) The ICOC shall adopt conflict of interest rules, based on standards applicable to members of scientific review committees of the National Institutes of Health, to govern the participation of non-ICOC working group members.

(2) The ICOC shall appoint an ethics officer from among the staff of the institute.

(3) Because the working groups are purely advisory and have no final decisionmaking authority, members of the working groups shall not be considered public officials, employees, or consultants for purposes of the Political Reform Act (Title 9 (commencing with Section 81000) of the Government Code), Sections 1090 and 19990 of the Government Code, and Sections 10516 and 10517 of the Public Contract Code.

(f) Working Group Records

All records of the working groups submitted as part of the working groups' recommendations to the ICOC for approval shall be subject to the Public Records Act. Except as provided in this subdivision, the working groups shall not be subject to the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, or Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code.

125290.55. Scientific and Medical Accountability Standards Working Group

(a) Membership

The Scientific and Medical Accountability Standards Working Group shall have 19 members as follows:

(1) Five ICOC members from the 10 groups that focus on disease-specific areas described in paragraphs (3), (4), and (5) of subdivision (a) of Section 125290.20.

(2) Nine scientists and clinicians nationally recognized in the field of pluripotent and progenitor cell research.

(3) Four medical ethicists.

(4) The Chairperson of the ICOC.

(b) Functions

The Scientific and Medical Accountability Standards Working Group shall have the following functions:

(1) To recommend to the ICOC scientific, medical, and ethical standards.

(2) To recommend to the ICOC standards for all medical, socioeconomic, and financial aspects of clinical trials and therapy delivery to patients, including, among others, standards for safe and ethical procedures for obtaining materials and cells for research and clinical efforts for the appropriate treatment of human subjects in medical research consistent with paragraph (2) of subdivision (b) of Section 125290.35, and to ensure compliance with patient privacy laws.

(3) To recommend to the ICOC modification of the standards described in paragraphs (1) and (2) as needed.

(4) To make recommendations to the ICOC on the oversight of funded research to ensure compliance with the standards described in paragraphs (1) and (2).

(5) To advise the ICOC, the Scientific and Medical Research Funding Working Group, and the Scientific and Medical Research Facilities Working Group, on an ongoing basis, on relevant ethical and regulatory issues.

125290.60. Scientific and Medical Research Funding Working Group

(a) Membership

The Scientific and Medical Research Funding Working Group shall have 23 members as follows:

(1) Seven ICOC members from the 10 disease advocacy group members described in paragraphs (3), (4), and (5) of subdivision (a) of Section 125290.20.

(2) Fifteen scientists nationally recognized in the field of stem cell research.

(3) The Chairperson of the ICOC.

(b) Functions

The Scientific and Medical Research Funding Working Group shall perform the following functions:

(1) Recommend to the ICOC interim and final criteria, standards, and requirements for considering funding applications and for awarding research grants and loans.

(2) Recommend to the ICOC standards for the scientific and medical oversight of awards.

(3) Recommend to the ICOC any modifications of the criteria, standards, and requirements described in paragraphs (1) and (2) above as needed.

(4) Review grant and loan applications based on the criteria, requirements, and standards adopted by the ICOC and make recommendations to the ICOC for the award of research, therapy development, and clinical trial grants and loans.

(5) Conduct peer group progress oversight reviews of grantees to ensure compliance with the terms of the award, and report to the ICOC any recommendations for subsequent action.

(6) Recommend to the ICOC standards for the evaluation of grantees to ensure that they comply with all applicable requirements. Such standards shall mandate periodic reporting by grantees and shall authorize the Scientific and Medical Research Funding Working Group to audit a grantee and forward any recommendations for action to the ICOC.

(7) Recommend its first grant awards within 60 days of the issuance of the interim standards.

(c) Recommendations for Awards

Award recommendations shall be based upon a competitive evaluation as follows:

(1) Only the 15 scientist members of the Scientific and Medical Research Funding Working Group shall score grant and loan award applications for scientific merit. Such scoring shall be based on scientific merit in three separate classifications—research, therapy development, and clinical trials, on criteria including the following:

(A) A demonstrated record of achievement in the areas of pluripotent stem cell and progenitor cell biology and medicine, unless the research is determined to be a vital research opportunity.

(B) The quality of the research proposal, the potential for achieving significant research, or clinical results, the timetable for realizing such significant results, the importance of the research objectives, and the innovativeness of the proposed research.

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(C) In order to ensure that institute funding does not duplicate or supplant existing funding, a high priority shall be placed on funding pluripotent stem cell and progenitor cell research that cannot, or is unlikely to, receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. In this regard, other research categories funded by the National Institutes of Health shall not be funded by the institute.

(D) Notwithstanding subparagraph (C), other scientific and medical research and technologies and/or any stem cell research proposal not actually funded by the institute under subparagraph (C) may be funded by the institute if at least two-thirds of a quorum of the members of the Scientific and Medical Research Funding Working Group recommend to the ICOC that such a research proposal is a vital research opportunity.

125290.65. Scientific and Medical Facilities Working Group

(a) Membership

The Scientific and Medical Research Facilities Working Group shall have 11 members as follows:

(1) Six members of the Scientific and Medical Research Funding Working Group.

(2) Four real estate specialists. To be eligible to serve on the Scientific and Medical Research Facilities Working Group, a real estate specialist shall be a resident of California, shall be prohibited from receiving compensation from any construction or development entity providing specialized services for medical research facilities, and shall not provide real estate facilities brokerage services for any applicant for, or any funding by the Scientific and Medical Research Facilities Working Group and shall not receive compensation from any recipient of institute funding grants.

(3) The Chairperson of the ICOC.

(b) Functions

The Scientific and Medical Research Facilities Working Group shall perform the following functions:

(1) Make recommendations to the ICOC on interim and final criteria, requirements, and standards for applications for, and the awarding of, grants and loans for buildings, building leases, and capital equipment; those standards and requirements shall include, among others:

(A) Facility milestones and timetables for achieving such milestones.

(B) Priority for applications that provide for facilities that will be available for research no more than two years after the grant award.

(C) The requirement that all funded facilities and equipment be located solely within California.

(D) The requirement that grantees comply with reimbursable building cost standards, competitive building leasing standards, capital equipment cost standards, and reimbursement standards and terms recommended by the Scientific and Medical Facilities Funding Working Group, and adopted by the ICOC.

(E) The requirement that grantees shall pay all workers employed on construction or modification of the facility funded by facilities grants or loans of the institute, the general prevailing rate of per diem wages for work of a similar character in the locality in which work on the facility is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(F) The requirement that grantees be not-for-profit entities.

(G) The requirement that awards be made on a competitive basis, with the following minimum requirements:

(i) That the grantee secure matching funds from sources other than the institute equal to at least 20 percent of the award. Applications of equivalent merit, as determined by the Scientific and Medical Research Funding Working Group, considering research opportunities to be conducted in the proposed research facility, shall receive priority to the extent that they provide higher matching fund amounts. The Scientific and Medical Research Facilities Working Group may recommend waiving the matching fund requirement in extraordinary cases of high merit or urgency.

(ii) That capital equipment costs and capital equipment loans be allocated when equipment costs can be recovered in part by the grantee from other users of the equipment.

(2) Make recommendations to the ICOC on oversight procedures to ensure grantees' compliance with the terms of an award.

125290.70. Appropriation and Allocation of Funding

(a) Moneys in the California Stem Cell Research and Cures Fund shall be allocated as follows:

(1) (A) No less than 97 percent of the proceeds of the bonds authorized pursuant to Section 125291.30, after allocation of bond proceeds to purposes described in paragraphs (4) and (5) of subdivision (a) of Section 125291.20, shall be used for grants and grant oversight as provided in this chapter.

(B) Not less than 90 percent of the amount used for grants shall be used for research grants, with no more than the following amounts as stipulated below to be committed during the first 10 years of grant making by the institute, with each year's commitments to be advanced over a period of one to seven years, except that any such funds that are not committed may be carried over to one or more following years. The maximum amount of research funding to be allocated annually as follows: Year 1, 5.6 percent; Year 2, 9.4 percent; Year 3, 9.4 percent; Year 4, 11.3 percent; Year 5, 11.3 percent; Year 6, 11.3 percent; Year 7, 11.3 percent; Year 8, 11.3 percent; Year 9, 11.3 percent; and Year 10, 7.5 percent.

(C) Not more than 3 percent of the proceeds of bonds authorized by Section 125291.30 may be used by the institute for research and research facilities implementation costs, including the development, administration, and oversight of the grant making process and the operations of the working groups.

(2) Not more than 3 percent of the proceeds of the bonds authorized pursuant to Section 125291.30 shall be used for the costs of general administration of the institute.

(3) In any single year any new research funding to any single grantee for any program year is limited to no more than 2 percent of the total bond authorization under this chapter. This limitation shall be considered separately for each new proposal without aggregating any prior year approvals that may fund research activities. This requirement shall be determinative, unless 65 percent of a quorum of the ICOC approves a higher limit for that grantee.

(4) Recognizing the priority of immediately building facilities that ensure the independence of the scientific and medical research of the institute, up to 10 percent of the proceeds of the bonds authorized pursuant to Section 125291.30, net of costs described in paragraphs (2), (4), and (5) of subdivision (a) of Section 125291.20 shall be allocated for grants to build scientific and medical research facilities of nonprofit entities which are intended to be constructed in the first five years.

(5) The institute shall limit indirect costs to 25 percent of a research award, excluding amounts included in a facilities award, except that the indirect cost limitation may be increased by that amount by which the grantee provides matching funds in excess of 20 percent of the grant amount.

(b) To enable the institute to commence operating during the first six months following the adoption of the measure adding this chapter, there is hereby appropriated from the General Fund as a temporary start-up loan to the institute three million dollars ($3,000,000) for initial administrative and implementation costs. All loans to the institute pursuant to this appropriation shall be repaid to the General Fund within 12 months of each loan draw from the proceeds of bonds sold pursuant to Section 125291.30.

(c) The institute's funding schedule is designed to create a positive tax revenue stream for the State of California during the institute's first five calendar years of operations, without drawing funds from the General Fund for principal and interest payments for those first five calendar years.

Article 2. California Stem Cell Research and Cures Bond Act of 2004

125291.10. This article shall be known, and may be cited, as the California Stem Cell Research and Cures Bond Act of 2004.

125291.15. As used in this article, the following terms have the following meaning:

(a) "Act" means the California Stem Cell Research and Cures Bond Act constituting Chapter 3 (commencing with Section 125290.10) of Part 5 of Division 106.

(b) "Board" or "institute" means the California Institute for Regenerative Medicine designated in accordance with subdivision (b) of Section 125291.40.

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(c) "Committee" means the California Stem Cell Research and Cures Finance Committee created pursuant to subdivision (a) of Section 125291.40.

(d) "Fund" means the California Stem Cell Research and Cures Fund created pursuant to Section 125291.25.

(e) "Interim debt" means any interim loans pursuant to subdivision (b) of Section 125290.70, and Sections 125291.60 and 125291.65, bond anticipation notes or commercial paper notes issued to make deposits into the fund and which will be paid from the proceeds of bonds issued pursuant to this article.

125291.20. (a) Notwithstanding Section 13340 of the Government Code or any other provision of law, moneys in the fund are appropriated without regard to fiscal years to the institute for the purpose of (1) making grants or loans to fund research and construct facilities for research, all as described in and pursuant to the act, (2) paying general administrative costs of the institute (not to exceed 3 percent of the net proceeds of each sale of bonds), (3) paying the annual administration costs of the interim debt or bonds after December 31 of the fifth full calendar year after this article takes effect, (4) paying the costs of issuing interim debt, paying the annual administration costs of the interim debt until and including December 31 of the fifth full calendar year after this article takes effect, and paying interest on interim debt, if such interim debt is incurred or issued on or prior to December 31 of the fifth full calendar year after this article takes effect, and (5) paying the costs of issuing bonds, paying the annual administration costs of the bonds until and including December 31 of the fifth full calendar year after this article takes effect, and paying interest on bonds that accrues on or prior to December 31 of the fifth full calendar year after this article takes effect (except that such limitation does not apply to premium and accrued interest as provided in Section 125291.70). In addition, moneys in the fund or other proceeds of the sale of bonds authorized by this article may be used to pay principal of or redemption premium on any interim debt issued prior to the issuance of bonds authorized by this article. Moneys deposited in the fund from the proceeds of interim debt may be used to pay general administrative costs of the institute without regard to the 3 percent limit set forth in (2) above, so long as such 3 percent limit is satisfied for each issue of bonds.

(b) Repayment of principal and interest on any loans made by the institute pursuant to this article shall be deposited in the fund and used to make additional grants and loans for the purposes of this act or for paying continuing costs of the annual administration of outstanding bonds.

125291.25. The proceeds of interim debt and bonds issued and sold pursuant to this article shall be deposited in the State Treasury to the credit of the California Stem Cell Research and Cures Fund, which is hereby created in the State Treasury, except to the extent that proceeds of the issuance of bonds are used directly to repay interim debt.

125291.30. Bonds in the total amount of three billion dollars ($3,000,000,000), not including the amount of any refunding bonds issued in accordance with Section 125291.75, or as much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this article and to be used and sold for carrying out the purposes of Section 125291.20 and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. The bonds, when sold, shall be and shall constitute a valid and binding obligation of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both the principal of, and interest on, the bonds as the principal and interest become due and payable.

125291.35. The bonds authorized by this article shall be prepared, executed, issued, sold, paid, and redeemed as provided in the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), and all of the provisions of that law except Section 16727 apply to the bonds and to this article and are hereby incorporated in this article as though set forth in full in this article.

125291.40. (a) Solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds and interim debt authorized by this article, the California Stem Cell Research and Cures Finance Committee is hereby created. For purposes of this article, the California Stem Cell Research and Cures Finance Committee is "the committee" as that term is used in the State General Obligation Bond Law. The committee consists of the Treasurer, the Controller, the Director of Finance, the Chairperson of the California Institute for Regenerative Medicine, and two other members of the Independent Citizens Oversight Committee (as created by the act) chosen by the Chairperson of the California Institute for Regenerative Medicine, or their designated representatives. The Treasurer shall serve as chairperson of the committee. A majority of the committee may act for the committee.

(b) For purposes of the State General Obligation Bond Law, the California Institute for Regenerative Medicine is designated the "board."

125291.45. (a) The committee shall determine whether or not it is necessary or desirable to issue bonds authorized pursuant to this article in order to carry out the actions specified in this article and, if so, the amount of bonds to be issued and sold. Successive issues of bonds may be authorized and sold to carry out those actions progressively, and it is not necessary that all of the bonds authorized to be issued be sold at any one time. The bonds may bear interest which is includable in gross income for federal income tax purposes if the committee determines that such treatment is necessary in order to provide funds for the purposes of the act.

(b) The total amount of the bonds authorized by Section 125291.30 which may be issued in any calendar year, commencing in 2005, shall not exceed three hundred fifty million dollars ($350,000,000). If less than this amount of bonds is issued in any year, the remaining permitted amount may be carried over to one or more subsequent years.

(c) An interest-only floating rate bond structure will be implemented for interim debt and bonds until at least December 31 of the fifth full calendar year after this article takes effect, with all interest to be paid from proceeds from the sale of interim debt or bonds, to minimize debt service payable from the General Fund during the initial period of basic research and therapy development, if the committee determines, with the advice of the Treasurer, that this structure will result in the lowest achievable borrowing costs for the state during that five-year period considering the objective of avoiding any bond debt service payments, by the General Fund, during that period. Upon such initial determination, the committee may delegate, by resolution, to the Treasurer such authority in connection with issuance of bonds as it may determine, including, but not limited to, the authority to implement and continue this bond financing structure (including during any time following the initial five-year period) and to determine that an alternate financing plan would result in significant lower borrowing costs for the state consistent with the objectives related to the General Fund and to implement such alternate financing plan.

125291.50. There shall be collected each year and in the same manner and at the same time as other state revenue is collected, in addition to the ordinary revenues of the state, a sum in an amount required to pay the principal of, and interest on, the bonds maturing each year. It is the duty of all officers charged by law with any duty in regard to the collection of the revenue to do and perform each and every act that is necessary to collect that additional sum.

125291.55. Notwithstanding Section 13340 of the Government Code, there is hereby appropriated from the General Fund in the State Treasury, for the purposes of this article, an amount that will equal the total of the following:

(a) The sum annually necessary to pay the principal of, and interest on, bonds issued and sold pursuant to this article, as the principal and interest become due and payable.

(b) The sum necessary to carry out Section 125291.60 appropriated without regard to fiscal years.

125291.60. The Director of Finance may authorize the withdrawal from the General Fund of an amount or amounts, not to exceed the amount of the unsold bonds that have been authorized by the committee, to be sold for the purpose of carrying out this article. Any amount withdrawn shall be deposited in the fund. Any money made available under this section shall be returned to the General Fund, plus an amount equal to the interest that the money would have earned in the Pooled Money Investment Account, from money received from the sale of bonds for the purpose of carrying out this article.

125291.65. The institute may request the Pooled Money Investment Board to make a loan from the Pooled Money Investment Account in accordance with Section 16312 of the Government Code for the purposes of carrying out this article. The amount of the request shall not exceed the amount of the unsold bonds that the committee, by resolution, has authorized to be sold for the purpose of carrying out this article. The institute shall execute any documents required by the Pooled Money Investment Board to obtain and repay the loan. Any amounts loaned shall be deposited in the fund to be allocated by the institute in accordance with this article.

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125291.70. All money deposited in the fund that is derived from premium and accrued interest on bonds sold shall be reserved in the fund and shall be available for transfer to the General Fund as a credit to expenditures for bond interest.

125291.75. The bonds may be refunded in accordance with Article 6 (commencing with Section 16780) of Chapter 4 of Part 3 of Division 4 of Title 2 of the Government Code, which is a part of the State General Obligation Bond Law. Approval by the voters of the state for the issuance of the bonds described in this article includes the approval of the issuance of any bonds issued to refund any bonds originally issued under this article or any previously issued refunding bonds.

125291.80. Notwithstanding any provision of this article or the State General Obligation Bond Law, if the Treasurer sells bonds pursuant to this article that include a bond counsel opinion to the effect that the interest on the bonds is excluded from gross income for federal tax purposes, subject to designated conditions, the Treasurer may maintain separate accounts for the investment of bond proceeds and the investment earnings on those proceeds. The Treasurer may use or direct the use of those proceeds or earnings to pay any rebate, penalty, or other payment required under federal law or to take any other action with respect to the investment and use of bond proceeds required or desirable under federal law to maintain the tax-exempt status of those bonds and to obtain any other advantage under federal law on behalf of the funds of this state.

125291.85. Inasmuch as the proceeds from the sale of bonds authorized by this article are not "proceeds of taxes" as that term is used in Article XIII B of the California Constitution, the disbursement of these proceeds is not subject to the limitations imposed by that article.

Article 3. Definitions

125292.10. As used in this chapter and in Article XXXV of the California Constitution, the following terms have the following meanings:

(a) "Act" means the California Stem Cell Research and Cures Bond Act constituting Chapter 3 (commencing with Section 125290.10) of Part 5 of Division 106 of the Health and Safety Code.

(b) "Adult stem cell" means an undifferentiated cell found in a differentiated tissue in an adult organism that can renew itself and may, with certain limitations, differentiate to yield all the specialized cell types of the tissue from which it originated.

(c) "Capitalized interest" means interest funded by bond proceeds.

(d) "Committee" means the California Stem Cell Research and Cures Finance Committee created pursuant to subdivision (a) of Section 125291.40.

(e) "Constitutional officers" means the Governor, Lieutenant Governor, Treasurer, and Controller of California.

(f) "Facilities" means buildings, building leases, or capital equipment.

(g) "Floating-rate bonds" means bonds which do not bear a fixed rate of interest until their final maturity date, including commercial paper notes.

(h) "Fund" means the California Stem Cell Research and Disease Cures Fund created pursuant to Section 125291.25.

(i) "Grant" means a grant, loan, or guarantee.

(j) "Grantee" means a recipient of a grant from the institute. All University of California grantee institutions shall be considered as separate and individual grantee institutions.

(k) "Human reproductive cloning" means the practice of creating or attempting to create a human being by transferring the nucleus from a human cell into an egg cell from which the nucleus has been removed for the purpose of implanting the resulting product in a uterus to initiate a pregnancy.

(l) "Indirect costs" mean the recipient's costs in the administration, accounting, general overhead, and general support costs for implementing a grant or loan of the institute. NIH definitions of indirect costs will be utilized as one of the bases by the Scientific and Medical Research Standards Working Group to create a guideline for recipients on this definition, with modifications to reflect guidance by the ICOC and this act.

(m) "Institute" means the California Institute for Regenerative Medicine.

(n) "Interim standards" means temporary standards that perform the same function as "emergency regulations" under the Administrative Procedure Act (Government Code, Title 2, Division 3, Part 1, Chapter 4.5, Sections 11371 et seq.) except that in order to provide greater opportunity for public comment on the permanent regulations, remain in force for 270 days rather than 180 days.

(o) "Life science commercial entity" means a firm or organization, headquartered in California, whose business model includes biomedical or biotechnology product development and commercialization.

(p) "Medical ethicist" means an individual with advanced training in ethics who holds a Ph.D., MA, or equivalent training and who spends or has spent substantial time (1) researching and writing on ethical issues related to medicine, and (2) administering ethical safeguards during the clinical trial process, particularly through service on institutional review boards.

(q) "Pluripotent cells" means cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types. Pluripotent stem cells may be derived from somatic cell nuclear transfer or from surplus products of in vitro fertilization treatments when such products are donated under appropriate informed consent procedures. These excess cells from in vitro fertilization treatments would otherwise be intended to be discarded if not utilized for medical research.

(r) "Progenitor cells" means multipotent or precursor cells that are partially differentiated but retain the ability to divide and give rise to differentiated cells.

(s) "Quorum" means at least 65 percent of the members who are eligible to vote.

(t) "Research donor" means a human who donates biological materials for research purposes after full disclosure and consent.

(u) "Research funding" includes interdisciplinary scientific and medical funding for basic research, therapy development, and the development of pharmacologies and treatments through clinical trials. When a facility's grant or loan has not been provided to house all elements of the research, therapy development, and/or clinical trials, research funding shall include an allowance for a market lease rate of reimbursement for the facility. In all cases, operating costs of the facility, including, but not limited to, library and communication services, utilities, maintenance, janitorial, and security, shall be included as direct research funding costs. Legal costs of the institute incurred in order to negotiate standards with federal and state governments and research institutions; to implement standards or regulations; to resolve disputes; and/or to carry out all other actions necessary to defend and/or advance the institute's mission shall be considered direct research funding costs.

(v) "Research participant" means a human enrolled with full disclosure and consent, and participating in clinical trials.

(w) "Revenue positive" means all state tax revenues generated directly and indirectly by the research and facilities of the institute are greater than the debt service on the state bonds actually paid by the General Fund in the same year.

(x) "Stem cells" mean nonspecialized cells that have the capacity to divide in culture and to differentiate into more mature cells with specialized functions.

(y) "Vital research opportunity" means scientific and medical research and technologies and/or any stem cell research not actually funded by the institute under subparagraph (C) of paragraph (1) of subdivision (c) of Section 125290.60 which provides a substantially superior research opportunity vital to advance medical science as determined by at least a two-thirds vote of a quorum of the members of the Scientific and Medical Research Funding Working Group and recommended as such by that working group to the ICOC. Human reproductive cloning shall not be a vital research opportunity.

SEC. 6. Section 20069 of the Government Code is amended to read:

(a) "State service" means service rendered as an employee or officer (employed, appointed or elected) of the state, *the California Institute for Regenerative Medicine and the officers and employees of its governing body,* the university, a school employer, or a contracting agency, for compensation, and only while he or she is receiving compensation from that employer therefor, except as provided in Article 4 (commencing with Section 20990) of Chapter 11.

Proposition 71 (cont.)

(b) "State service," solely for purposes of qualification for benefits and retirement allowances under this system, shall also include service rendered as an officer or employee of a county if the salary for the service constitutes compensation earnable by a member of this system under Section 20638.

SEC. 7. Severability

If any provision of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions of this act are severable.

SEC. 8. Amendments

The statutory provisions of this measure, except the bond provisions, may be amended to enhance the ability of the institute to further the purposes of the grant and loan programs created by the measure, by a bill introduced and passed no earlier than the third full calendar year following adoption, by 70 percent of the membership of both houses of the Legislature and signed by the Governor, provided that at least 14 days prior to passage in each house, copies of the bill in final form shall be made available by the clerk of each house to the public and news media.

Proposition 72

This law proposed by Senate Bill 2 of the 2003–2004 Regular Session (Chapter 673, Statutes of 2003) is submitted to the people as a referendum in accordance with the provisions of Section 9 of Article II of the California Constitution.

This proposed law amends and adds sections to various codes; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. The Legislature finds and declares all of the following:

(a) The Legislature finds and declares that working Californians and their families should have health insurance coverage.

(b) The Legislature further finds and declares that most working Californians obtain their health insurance coverage through their employment.

(c) The Legislature finds and declares that in 2001, more than 6,000,000 Californians lacked health insurance coverage at some time and 3,600,000 Californians had no health insurance coverage at any time.

(d) The Legislature finds and declares that more than 80 percent of Californians without health insurance coverage are working people or their families. Most of these working Californians without health insurance coverage work for employers who do not offer health benefits.

(e) The Legislature finds and declares that employment-based health insurance coverage provides access for millions of Californians to the latest advances in medical science, including diagnostic procedures, surgical interventions, and pharmaceutical therapies.

(f) The Legislature finds and declares that people who are covered by health insurance have better health outcomes than those who lack coverage. Persons without health insurance are more likely to be in poor health, more likely to have missed needed medications and treatment, and more likely to have chronic conditions that are not properly managed.

(g) The Legislature finds and declares that persons without health insurance are at risk of financial ruin and that medical debt is the second most common cause of personal bankruptcy in the United States.

(h) The Legislature further finds and declares that the State of California provides health insurance to low- and moderate-income working parents and their children through the Medi-Cal and Healthy Families programs and pays the cost of coverage for those working people who are not provided health coverage through employment. The Legislature further finds and declares that the State of California and local governments fund county hospitals and clinics, community clinics, and other safety net providers that provide care to those working people whose employers fail to provide affordable health coverage to workers and their families as well as to other uninsured persons.

(i) The Legislature further finds and declares that controlling health care costs can be more readily achieved if a greater share of working people and their families have health benefits so that cost shifting is minimized.

(j) The Legislature finds and declares that the social and economic burden created by the lack of health coverage for some workers and their dependents creates a burden on other employers, the State of California, affected workers, and the families of affected workers who suffer ill health and risk financial ruin.

(k) It is therefore the intent of the Legislature to assure that working Californians and their families have health benefits and that employers pay a user fee to the State of California so that the state may serve as a purchasing agent to pool those fees to purchase coverage for all working Californians and their families that is not tied to employment with an individual employer. However, consistent with this act, if the employer voluntarily provides proof of health care coverage, that employer is to be exempted from payment of the fee.

(l) It is further the intent of the Legislature that workers who work on a seasonal basis, for multiple employers, or who work multiple jobs for the same employer should be afforded the opportunity to have health coverage in the same manner as those who work full-time for a single employer.

(m) The Legislature recognizes the vital role played by the health care safety net and the potential impact this act may have on the resources available to county hospital systems and clinics, including physicians or networks of physicians that refer patients to such hospitals and clinics, as well as community clinics and other safety net providers. It is the intent of the Legislature to preserve the viability of this important health care resource.

(n) Nothing in this act shall be construed to diminish or otherwise change existing protections in law for persons eligible for public programs including, but not limited to, Medi-Cal, Healthy Families, California Children's Services, Genetically Handicapped Persons Program, county mental health programs, programs administered by the Department of Alcohol and Drug Programs, or programs administered by local education agencies. It is further the intent of the Legislature to preserve benefits available to the recipients of these programs, including dental, vision, and mental health benefits.

SEC. 2. Part 8.7 (commencing with Section 2120) is added to Division 2 of the Labor Code, to read:

PART 8.7. EMPLOYEE HEALTH INSURANCE

CHAPTER 1. TITLE AND PURPOSE

2120. This part shall be known and may be cited as the Health Insurance Act of 2003.

2120.1. (a) Large employers, as defined in Section 2122.3, shall comply with the provisions of this part applicable to large employers commencing on January 1, 2006.

(b) Medium employers, as defined in Section 2122.4, shall comply with the provisions of this part applicable to medium employers commencing on January 1, 2007, except that those employers with at least 20 employees but no more than 49 employees are not required to comply with the provisions of this part unless a tax credit is enacted that is available to those employers with at least 20 employees but no more than 49 employees. The tax credit shall be 20 percent of net cost to the employer of the fee owed under Chapter 4 (commencing with Section 2140). "Net cost" means the dollar amount of the employer fee or the credit consistent with Section 2160.1 reduced by the employee share of that fee or credit and further reduced by the value of state and federal tax deductions.

2120.2. It is the purpose of this part to ensure that working Californians and their families are provided health care coverage.

2120.3. This part shall not be construed to diminish any protection already provided pursuant to collective bargaining agreements or employer-sponsored plans that are more favorable to the employees than the health care coverage required by this part.

2

ICOC BYLAWS

BYLAWS

INDEPENDENT CITIZEN'S OVERSIGHT COMMITTEE (CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE)

ARTICLE I: AUTHORITY

Section 1. The California Institute for Regenerative Medicine (the "Institute") was established by the California Constitution. (California Constitution, article XXXV, section 1.)

Section 2. The Independent Citizen's Oversight Committee (the "ICOC") for the Institute was created by the California Stem Cell Research and Cures Act (the "Act"). (Health & Safety Code section 125290.10 to section 125290.70.)

ARTICLE II: PURPOSES

Section 1. The purposes of the Institute are the following:

(a) To make grants and loans for stem cell research, for research facilities, and for other vital research opportunities to realize therapies, protocols, and/or medical procedures that will result in, as speedily as possible, the cure for, and/or substantial mitigation of, major diseases, injuries, and orphan diseases.

(b) To support all stages of the process of developing cures, from laboratory research through successful clinical trials.

(c) To establish the appropriate regulatory standards and oversight bodies for research and facilities development.

(California Constitution, article XXXV, section 2.)

Section 2. The purpose of the ICOC is to govern the Institute. (Health & Safety Code section 125290.15.)

ARTICLE III: FUNCTIONS

The ICOC shall perform the following functions:

(a) Oversee the operations of the institute.

(b) Develop annual and long-term strategic research and financial plans for the institute.

(c) Make final decisions on research standards and grant awards in California.

(d) Ensure the completion of an annual financial audit of the institute's operations.

(e) Issue public reports on the activities of the institute.

(f) Establish policies regarding intellectual property rights arising from research funded by the institute.

(g) Establish rules and guidelines for the operation of the ICOC and its working groups.

(h) Perform all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction over the institute.

(i) Select members of the working groups.

(j) Adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this chapter, and to govern the procedures of the ICOC.

(k) Request the issuance of bonds from the California Stem Cell Research and Cures Finance Committee and loans from the Pooled Money Investment Board.

(m) Modify as it sees appropriate its funding and finance programs to optimize the institute's ability to achieve the objective that its activities be revenue-positive for the State of California during its first five years of operation without jeopardizing the progress of its core medical and scientific research program.

(n) Accept additional revenue and real and personal property, including, but not limited to, gifts, royalties, interest, and appropriations that may be used to supplement annual research grant funding and the operations of the institute.

(Health & Safety Code section 125290.40.)

ARTICLE IV: MEMBERS

Section 1. (Appointment) The ICOC shall have 29 members appointed as set forth in the Act. (Health & Safety Code section125290.20, subdivision (a).). A short summary of persons making appointments, nominations and elections and the respective appointees is attached as Exhibit A to these Bylaws for reference.

Section 2. (Delegation of Authority) Any ICOC member who is an executive officer of a California university, a nonprofit research institution or life science commercial entity may from time to time delegate those duties to an executive officer of the entity or to the dean of the medical school, as applicable (an "alternate"). (Health & Safety Code section 125290.20(a), subdivision (2)(D).) An ICOC member may not have more than one alternate at any one time.

Section 3. (Oath of Allegiance) Each ICOC member and alternate shall take the oath of allegiance required by the California Constitution. (California Constitution, article XX, section 3)

Section 4. (Conflict of Interest Code) The Act provides that the California Political Reform Act (the "PRA"; Government Code section 81000 through section 91014) shall apply to the Institute and to the ICOC except as provided in section 125290.30 of the Act and in subdivision (e) of section 125290.50 of the Act. (Health & Safety Code section 125290.30, subdivision (g).) The PRA requires state and local governmental agencies to adopt and promulgate conflict of interest codes. Each ICOC member and alternate shall file a statement of economic interest as required by any conflict of interest code adopted by the ICOC pursuant to the PRA.

Section 6. (Conflict of Interest Policy) Each ICOC member shall abide by the "Conflict of Interest Policy" adopted by the ICOC and attached as Exhibit B to these Bylaws.

Section 5. (Vacancies) If a vacancy occurs within a term and has not been filled in accordance with the Act, the ICOC shall proceed to operate with the remaining members, provided that at

least 60 percent of the members have been appointed. (Health & Safety Code section 125290.20(b), subdivision (1).)

Section 6. (Expiration of Term) ICOC members whose terms have expired shall continue to serve until their replacements are appointed. (Health & Safety Code section 125290.20(b), subdivision (3).)

Section 7. (Compensation and Expenses) As required in the Act, each member and alternate of the ICOC, except the Chairperson and Vice Chairperson, shall receive a per diem of one hundred dollars ($100) per day for each day actually spent in the discharge of the member's or alternate's duties, plus reasonable and necessary travel and other expenses incurred in the performance of the member's or alternate's duties. (Health & Safety Code section 125290.45, subdivision (b)(2).) Therefore, each member and alternate shall be paid $100 for the following:

(a) Any day on which a member attends a meeting of the full ICOC, an ICOC subcommittee or an ICOC working group to which the member is appointed or performs an activity which has been pre-determined by the Chairperson as a discharge of the member's duties..

(b) Any day in which the member is engaged in additional activities that have been approved in advance by the Chairman to be a discharge of the members' duties.

Furthermore, each member and alternate shall be paid $12.50 per hour for time spent in preparation for a meeting of the full ICOC, an ICOC subcommittee, or an ICOC working group to which the member or alternate is appointed.

These dollar amounts shall be adjusted annually by multiplying them by a fraction, the denominator of which is the 2004 Annual Average, California Consumer Price Index - California, All Items (Los Angeles-Riverside-Orange County, San Francisco-Oakland-San Jose, San Diego (1982-84=100)) (the "Annual Index") as prepared by the Division of Labor Statistics and Research in the California Department of Industrial Relations and the numerator of which is the Annual Index published for each subsequent year in which the adjustment is to be computed and made. The resulting daily and hourly figures will be carried two decimal places and rounded up or down to the next whole dollar (.50 and above will be rounded up; less than .50 will be rounded down). In no instance will the computation for an hourly activity exceed the amount available for a daily meeting. The new daily and hourly per diems will become effective in the month following the month in which the Annual Index is published.

ARTICLE V MEETINGS

Section 1. (Regular Meetings) The ICOC shall hold at least two public meetings per year, one of which will be designated as the Institute's annual meeting. The ICOC may hold additional meetings as it determines are necessary or appropriate. (Health & Safety Code section 125290.30, subdivision (d)(1).) Regular meetings shall be attended in person by ICOC members or by their alternates.

Section 2. (Open and Closed Meetings) (a) All meetings of the ICOC, except those closed sessions described below or otherwise permitted by law, shall be open and public and in conformance with law. (Health & Safety Code section 125290.30(d).) In particular, all open meetings shall conform to the Bagley-Keene Open Meeting Act, including requirements for notice of meetings, preparation and distribution of agendas and written materials, inspection of

public records, closed sessions and emergency meetings, maintenance of records, and disruption of a public meeting. The public shall be invited to comment upon each item on the agenda and each individual speaker so commenting may be required to limit their comments to as few as three minutes.

(b) The ICOC shall award all grants, loans, and contracts in public meetings and shall adopt all governance, scientific, medical, and regulatory standards in public meetings. (Health & Safety Code section 125290.30, subdivision (d)(3).)

(c) The ICOC may conduct closed sessions as permitted by the Bagley-Keene Open Meeting Act. (Government Code section 11126.) In addition, the ICOC may conduct closed sessions when it meets to consider or discuss:

(1) Matters involving information relating to patients or medical subjects, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(2) Matters involving confidential intellectual property or work product, whether patentable or not, including, but not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know it or use it.

(3) Matters involving prepublication, confidential scientific research or data.

(4) Matters concerning the appointment, employment, performance, compensation, or dismissal of institute officers and employees; however, action on compensation of the institute's officers and employees shall only be taken in open session.

Section 3. (Teleconference Meetings) Teleconference meetings shall be held for the benefit of the ICOC and the public as determined by the Chairperson or the chair of a subcommittee where applicable. Generally, teleconference meetings shall be attended from locations within the State of California. The Chairperson or the chair of a subcommittee where applicable may make exceptions to this rule for ICOC members traveling out of state who have a particularly important connection to an issue under discussion. Such exceptions shall be discouraged, however, because of the positive benefits to the ICOC and the public of conducting in-person meetings for final approval of ICOC decisions.

Section 4. (Notice of Meetings) At least 10 days in advance of each regular meeting of the ICOC, notice of the meeting shall be given to any person or organization who requests that notice in writing and also made available on the Internet. The notice shall include the name, address, and telephone number of any person who can provide further information prior to the meeting and a specific agenda for the meeting, containing a brief description of the items of business to be transacted or discussed in either open or closed session. The written notice shall additionally include the address of the Internet site where notices required by this article are made available and otherwise comply with the Bagley-Keene Open Meeting Act. If the agenda for any meeting includes consideration of any amendment to the "policy enhancements" adopted by the ICOC at its July 12, 2005, and August 5, 2005, meetings, notice of the meeting shall also

be given to the President pro Tempore of the California Senate and the Speaker of the California Assembly at least 10 days in advance of the meeting.

Section 5. (Special and Emergency Meetings) Special and emergency meetings may be called by the Chair if compliance with the 10-day notice would impose a substantial hardship on the ICOC or if immediate action is required to protect the public interest. These meetings shall conform to the requirements of the Bagley-Keene Open Meeting Act (Government Code section 11120 through section 11132) applicable to special and emergency meetings.

Section 6. (Quorum) A quorum of the ICOC shall be at least sixty five percent (65%) of the ICOC members who are eligible to vote. (Health & Safety Code section 125292.10, subdivision (s).)

Section 7. (Voting) All actions of the ICOC shall be taken at properly called meetings at which there is a quorum. Unless a greater number is required by the Act or these Bylaws, the ICOC shall act by a majority vote of all members present. Amendments to pending motions may be made with the concurrence of the maker of the motion and the second, unless a member of the ICOC requests a vote on the proposed amendment, in which case, action on the proposed amendment shall be taken by a majority vote of all members present before the vote on the pending motion. Amendments to the "policy enhancements" adopted by the ICOC at its July 12, 2005, and August 5, 2005, meetings shall only be made by a vote of seventy percent (70%) of all members present.

Section 8. (Rules of Order) Debate and proceedings before the ICOC shall be conducted in accordance with Robert's Rules of Order Newly Revised (10th Edition) except to the extent in conflict with the Act, these Bylaws, other rules of the ICOC or other statutory requirements.

ARTICLE VI SUBCOMMITTEES

Section 1. (Establishment) The ICOC may establish subcommittees to facilitate the work of the board. The ICOC shall determine the size, mission, and jurisdiction of each subcommittee, including whether it exercises advisory or delegated power. The chairperson of a subcommittee may expand the size of the subcommittee, with the concurrence of the Chairperson of the ICOC, in order to obtain specific expertise that is not otherwise represented on the subcommittee, subject to the right of the ICOC thereafter to expand or reduce the size of the subcommittee.

Section 2. (Members) For each subcommittee (other than the Governance Subcommittee), the ICOC shall appoint the chairperson of the subcommittee based upon the recommendations of the members of the ICOC. The chairperson of the subcommittee shall then appoint the other members of the subcommittee with the concurrence of the Chairperson. Members of the ICOC may volunteer for service on subcommittees. If the ICOC reduces the size of a subcommittee, the ICOC shall determine the membership of the subcommittee.

Section 3. (Compensation and Expenses) Members of subcommittees shall receive a per diem of one hundred dollars ($100) per day (adjusted annually as set forth in Article IV, Section 7 above) for each day actually spent in the discharge of the member's duties, plus reasonable and necessary travel and other expenses incurred in the performance of the member's duties.

Section 4. (Governance Subcommittee) (a) The Governance Subcommittee reviews language and makes comments upon policies related to management of the ICOC and the Institute. The Subcommittee's corporate governance responsibilities involve (i) making recommendations on

the Institute's mission statement and core principles, organizational chart and strategic plan, organizational budget, compensation policy and contracting policies; (ii) working with the President to establish goals for the management of the Institute; and (iii) monitoring the achievement of these goals in order to optimize performance. The Governance Subcommittee's recommendations shall be considered by the board at regular ICOC meetings. The Governance Subcommittee shall make regular reports back to the ICOC, as appropriate.

(b) The Governance Subcommittee shall be composed of the Chairperson, a chairperson chosen by the ICOC and 3 to 12 other ICOC members chosen by such chairperson based on nominations by the Chairperson and self-nomination by ICOC members. The Subcommittee shall be comprised of ICOC members with experience and/or demonstrated interest in organizational management and expertise in human resources and financial oversight.

(c) The Governance Subcommittee shall meet at least 3 times per year.

Section 5. (Legislative Subcommittee) (a) The Legislative Subcommittee shall review proposed state and federal legislation and major public policy issues relating to stem cell research and the operations of the Institute and make recommendations to the ICOC on positions on policies and legislation to be considered at regular ICOC meetings.

(b) The Legislative Subcommittee shall be composed of a chairperson chosen by the ICOC and 8 to 13 other ICOC members chosen by such chairman based on nominations by the Chairperson and self-nomination by ICOC members. The Subcommittee shall be comprised of ICOC members with experience and/or demonstrated interest in public policy.

(c) The Legislative Subcommittee shall recommend to the ICOC positions on stem cell research-related policies.

(d) The Legislative Subcommittee shall meet not less than 3 times per year.

ARTICLE VII WORKING GROUPS

Section 1. (Establishment) The Institute has the following three separate scientific and medical working groups. (Health & Safety Code section 125290.50):

(a) Scientific and Medical Research Funding Working Group.

(b) Scientific and Medical Accountability Standards Working Group.

(c) Scientific and Medical Research Facilities Working Group.

Section 2. (Appointment of Members) (a) The ICOC shall appoint members of each working group by a majority vote of all members present. (Health & Safety Code section 125290.50, subdivision (b).)

(b) The Scientific and Medical Accountability Standards Working Group shall have 19 members as follows:

(i) Five ICOC members from the 10 disease advocacy group members described in paragraphs (3), (4), and (5) of subdivision (a) of section 125290.20 of the Health & Safety Code.

(ii) Nine scientists and clinicians nationally recognized in the field of pluripotent and progenitor cell research.

(iii) Four medical ethicists.

(iv) The Chairperson of the ICOC.

(Health & Safety Code section 125290.55, subdivision (a).)

(c) The Scientific and Medical Research Funding Working Group shall have 23 members as follows:

(i) Seven ICOC members from the 10 disease advocacy group members described in paragraphs (3), (4), and (5) of subdivision (a) of section 125290.20 of the Health & Safety Code.

(ii) Fifteen scientists nationally recognized in the field of stem cell research.

(iii) The Chairperson of the ICOC.

(Health & Safety Code section 125290.60, subdivision (a).)

(d) The Scientific and Medical Research Facilities Working Group shall have 11 members as follows:

(i) Six members of the Scientific and Medical Research Funding Working Group.

(ii) Four real estate specialists. To be eligible to serve on the Scientific and Medical Research Facilities Working Group, a real estate specialist shall be a resident of California, shall be prohibited from receiving compensation from any construction or development entity providing specialized services for medical research facilities, and shall not provide real estate facilities brokerage services for any applicant for, or any funding by the Scientific and Medical Research Facilities Working Group and shall not receive compensation from any recipient of institute funding grants.

(iii) The Chairperson of the ICOC.

(Health & Safety Code section 125290.65, subdivision (a).)

Section 2. (Function) (a) The Scientific and Medical Research Funding Working Group shall have and perform the following functions:

(i) Recommend to the ICOC interim and final criteria, standards, and requirements for considering funding applications and for awarding research grants and loans.

(ii) Recommend to the ICOC standards for the scientific and medical oversight of awards.

(iii) Recommend to the ICOC any modifications of the criteria, standards, and requirements described in paragraphs (1) and (2) above as needed.

(iv) Review grant and loan applications based on the criteria, requirements, and standards adopted by the ICOC and make recommendations to the ICOC for the award of research, therapy development, and clinical trial grants and loans.

(v) Conduct peer group progress oversight reviews of grantees to ensure compliance with the terms of the award, and report to the ICOC any recommendations for subsequent action.

(vi) Recommend to the ICOC standards for the evaluation of grantees to ensure that they comply with all applicable requirements. Such standards shall mandate periodic reporting by grantees and shall authorize the Scientific and Medical Research Funding Working Group to audit a grantee and forward any recommendations for action to the ICOC.

(Health & Safety Code section 125290.60, subdivision (b).)

(b) The Scientific and Medical Accountability Standards Working Group shall have and perform following functions:

(i) Recommend to the ICOC scientific, medical, and ethical standards.

(ii) Recommend to the ICOC standards for all medical, socioeconomic, and financial aspects of clinical trials and therapy delivery to patients, including, among others, standards for safe and ethical procedures for obtaining materials and cells for research and clinical efforts for the appropriate treatment of human subjects in medical research consistent with paragraph (2) of subdivision (b) of Section 125290.35 of the Act, and to ensure compliance with patient privacy laws.

(iii) Recommend to the ICOC modification of the standards described in paragraphs (1) and (2) as needed.

(iv) Make recommendations to the ICOC on the oversight of funded research to ensure compliance with the standards described in paragraphs (1) and (2).

(v) Advise the ICOC, the Scientific and Medical Research Funding Working Group, and the Scientific and Medical Research Facilities Working Group, on an ongoing basis, on relevant ethical and regulatory issues.

(Health & Safety Code section 125290.55, subdivision (b).)

(c) The Scientific and Medical Research Facilities Working Group shall have and perform the following functions:

(i) Make recommendations to the ICOC on interim and final criteria, requirements, and standards for applications for, and the awarding of, grants and loans for buildings, building leases, and capital equipment; those standards and requirements shall include, among others:

(A) Facility milestones and timetables for achieving such milestones.

(B) Priority for applications that provide for facilities that will be available for research no more than two years after the grant award.

(C) The requirement that all funded facilities and equipment be located solely within California.

(D) The requirement that grantees comply with reimbursable building cost standards, competitive building leasing standards, capital equipment cost standards, and reimbursement standards and terms recommended by the Scientific and Medical Facilities Funding Working Group, and adopted by the ICOC.

(E) The requirement that grantees shall pay all workers employed on construction or modification of the facility funded by facilities grants or loans of the institute, the

general prevailing rate of per diem wages for work of a similar character in the locality in which work on the facility is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(F) The requirement that grantees be not-for-profit entities.

(G) The requirement that awards be made on a competitive basis, with the following minimum requirements:

(I) That the grantee secure matching funds from sources other than the institute equal to at least 20 percent of the award. Applications of equivalent merit, as determined by the Scientific and Medical Research Funding Working Group, considering research opportunities to be conducted in the proposed research facility, shall receive priority to the extent that they provide higher matching fund amounts. The Scientific and Medical Research Facilities Working Group may recommend waiving the matching fund requirement in extraordinary cases of high merit or urgency.

(II) That capital equipment costs and capital equipment loans be allocated when equipment costs can be recovered in part by the grantee from other users of the equipment.

(ii) Make recommendations to the ICOC on oversight procedures to ensure grantees' compliance with the terms of an award.

(Health & Safety Code section 125290.65, subdivision (b).)

Section 3. (Meetings) The ICOC shall adopt rules, procedures and practices for each working group based on recommendations made by that working group. (Health & Safety Code section 125290.50, subdivision (d).)

Section 4. (Reimbursement) The ICOC shall establish daily consulting rates and expense reimbursement standards for the non-ICOC members of its working groups. (Health & Safety Code section 125290.45, subdivision (b)(3).)

Section 5. (Grounds for Removal of Members) Any member of the Scientific and Medical Accountability Standards Working Group, the Scientific and Medical Research Funding Working Group, and Scientific and Medical Facilities Working Group may be removed by the ICOC for cause. The grounds for removal are as follows:

(a) An intentional violation or violations of the Working Group conflict of interest policy applicable to the member;

(b) Two or more grossly negligent violations of the Working Group conflict of interest policy applicable to the member;

(c) Consistent failure to perform the assigned duties of the Working Group member or unexcused absence from three consecutive Working Group meetings;

(d) Violation of medical or ethical standards by the member in his or her professional capacity as determined by the appropriate research institution or the appropriate professional group;

(e) In the case of a member of the Medical Research Funding Working Group, employment by an institution located in the State of California;

(f) In the case of a member of the Medical Facilities Working Group, acceptance of a contract in his or her professional capacity that would create a conflict of interest under the Act and that cannot be avoided through the procedures and policies preventing actual conflict of interest at the Working Group;

(g) The conviction of a felony or act involving serious moral turpitude.

Section 6. (Procedure for Suspension of Members) The President of the CIRM may suspend a member of a Working Group based on any of the grounds enumerated above by giving the member written notice of his or her suspension, including the grounds for the suspension. The suspension shall remain in effect until it is terminated by the President, the member resigns from the Working Group, or the ICOC has considered the permanent removal of the member pursuant to Section 7.

Section 7. (Procedure for Removal of Members) The President of CIRM may recommend to the ICOC the removal of a Working Group member based on any of the grounds enumerated above. The President must inform the member in writing that he has requested that the ICOC consider removal of the member at least 10 days prior to the ICOC's consideration of the matter. The notice must include the grounds for the recommendation. The member may address the ICOC in writing or in person during the meeting of the ICOC at which the removal of the member is considered.

Section 8. (Procedure for Temporary Leave of Absence) The President of CIRM or the chairperson of a Working Group shall consider and may, at his or her discretion, grant requests, from working group members for temporary leaves of absence, not to exceed six months, due to family or personal illness, death of a loved one, or other extenuating circumstances.

ARTICLE VIII OFFICERS AND DUTIES

Section 1. (Officers) The officers of the ICOC shall be the Chairperson and Vice Chairperson.

Section 2. (Selection) Whenever the office of the Chairperson or Vice Chairperson is vacant, the ICOC shall elect a Chairperson or Vice Chairperson, as the case may be, from the nominees made by the Constitutional Officers (described on the attached Exhibit A). The Chairperson and Vice Chairperson shall each serve a term of six years and may be compensated as full or part time employees. (Health & Safety Code section 125290.20, subdivision (A)(6).)

Section 3. (Duties) (a) The Chairperson and Vice Chairperson shall perform the duties of their respective offices as set forth in the Act and such other duties as may be approved by the ICOC.

(b) The following are the Chairperson's and Vice Chairperson's primary responsibilities:

(i) to manage the ICOC agenda and work flow including all evaluations and approvals of scientific and medical working group grants, loans, facilities, and standards evaluations;

(ii) To supervise all annual reports and public accountability requirements;

(iii) To manage and optimize the institute's bond financing plans and funding cash flow plan;

(iv) To interface with the California Legislature, the United States Congress, the California health care system, and the California public;

(v) To optimize all financial leverage opportunities for the institute; and to lead negotiations for intellectual property agreements, policies, and contract terms;

(vi) To serve as a member of the Scientific and Medical Accountability Standards Working Group and the Scientific and Medical Research Facilities Working Group and as an ex-officio member of the Scientific and Medical Research Funding Working Group.

(Health & Safety Code section 125290.45, subdivision (b)(1)(A).)

(c) The Vice Chairperson's primary responsibilities are to support the Chairperson in all of the above duties and to carry out those duties in the Chairperson's absence. (Health & Safety Code section 125290.45, subdivision (b)(1)(A).)

(d) The Chairperson shall preside over the meetings of the ICOC.

Section 4. (Compensation) The ICOC shall set compensation for the Chairperson and Vice Chairperson within the range of compensation levels for executive officers and scientific, medical, technical, and administrative staff of medical schools within the University of California system and the nonprofit academic and research institutions described in paragraph (2) of subdivision (a) of section 125290.20 of the Health & Safety Code. (Health & Safety Code section 125290.45, subdivision (b)(4).)

Section 5. (Citizen's Financial Accountability Oversight Committee) The Act establishes a Citizens' Financial Accountability Oversight Committee (the "Oversight Committee") chaired by the State Controller to review the annual financial audit, the State Controller's report and evaluation of that audit, and the financial practices of the Institute. (Health & Safety Code section 125290.30 (c).). The Chairperson shall appoint a public member of the committee who shall serve at the pleasure of the Chairperson. (Government Code section 1301.)

Section 6. (California Stem Cell Research and Cures Finance Committee) The California Stem Cell Research and Cures Bond Act of 2004 (the "Bond Act";Health & Safety Code section 125291.10 through section 125290.85) creates the California Stem Cell Research and Cures Finance Committee (the "Finance Committee") solely for the purpose of authorizing the issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds and interim debt authorized by the Bond Act. (Health & Safety Code section 125291.40, subdivision (a).) The Chairperson shall serve on the Finance Committee and shall appoint two members of the ICOC or their alternates to serve on the Finance Committee who shall serve at the pleasure of the Chairperson. (Government Code section 1301.)

ARTICLE IX ORGANIZATION OF INSTITUTE

Section 1. (President) The President shall serve as Chief Executive of the Institute and shall perform the duties of his or her office as set forth in the Act and such other duties as may be approved by the ICOC. The President's primary responsibilities are set forth in Health & Safety Code section 125290.45, subdivision (b)(1)(B). The President shall be elected by the ICOC and serve as an ex-officio member of each of the Institute's working groups.

Section 2. (Administrative Structure) The President with the concurrence of the Chairperson shall recommend to the ICOC for its approval the organizational structure of the staff of the Institute.

Section 3. (Employee Compensation) The President shall make employee compensation recommendations to the ICOC. The ICOC shall set compensation for the president and other Institute officers, and for the scientific, medical, technical, and administrative staff of the Institute, within the range of compensation levels for executive officers and scientific, medical, technical, and administrative staff of medical schools within the University of California system and the nonprofit academic and research institutions described in paragraph (2) of subdivision (a) of section 125290.20 of the Health & Safety Code. (Health & Safety Code section 125290.45, subdivision (b)(4).)

ARTICLE X DEFINITIONS

As used in these Bylaws, and otherwise by the ICOC, the following terms have the following meanings:

"Eligible to vote" means the member has been appointed and has not been restricted from voting by recusal, conflict of interest or other legal reason as determined by legal counsel for the ICOC.

"Ex-officio member" means a person who is a member by virtue of his or her office. Such member may attend and participate in meetings but such member may not make motions or vote. Such member shall not be counted in determining the number of members required for a quorum or whether a quorum is present at a meeting.

ARTICLE X AMENDMENTS

These Bylaws may be amended or repealed by the ICOC at any duly-noticed regular or special meeting by a majority vote of all members present.

EXHIBIT A
Appointment, Nomination and Election of ICOC Members

Person Making Appointment	Appointee Criteria	Subtotal
Chancellor of the University of California at: San Francisco Davis San Diego Los Angeles Irvine	Appoints one executive officer from the respective campus.	5
Constitutional Officer Governor Lieutenant Governor Treasurer Controller	Each appoints one executive officer from each of the following categories: - A California university that is not one of five campuses of the University of California listed above - A California nonprofit academic and research institution that is not a part of the University of California - A California life science commercial entity	12
	Each appoints one representative from each of two California regional, state, or national disease advocacy groups.	8
	Each nominates one person for Chairperson and one person for Vice Chairman of the ICOC, each person meeting the criteria of the Act. (Health & Safety Code section 125290.20(a)(6)(A).).	
Speaker of the Assembly	Appoints one representative of a California regional, state, or national mental health disease advocacy group.	1
President Pro Tem	Appoints one representative of a California regional, state, or national HIV/AIDS disease advocacy group.	1
ICOC Members	Elect the Chairperson and Vice Chairperson of ICOC from the nominees made by the Constitutional Officers.	2
Total Members		**29**

EXHIBIT B

CONFLICT OF INTEREST POLICY FOR MEMBERS OF THE INDEPENDENT CITIZENS' OVERSIGHT COMMITTEE

In order to ensure that members of the Independent Citizens' Oversight Committee ("ICOC") act pursuant to the highest ethical standards and to avoid potential conflicts of interest, the ICOC hereby adopts the following Conflict of Interest Policy for members, including alternates, of the ICOC:

1. Members of the ICOC shall not apply for or receive salary support through grants, loans or contracts from the ICOC, nor shall they act as a Principal Investigator.[1]

2. Members of the ICOC shall not make, participate in making, or in any way attempt to use their official position to influence a decision regarding a grant, loan, or contract with their employer.

3. Members of the ICOC shall not make, participate in making or in any way attempt to use their official position to influence a decision regarding a grant, loan, or contract that financially benefits the member or the entity he or she represents.

4. Members of the ICOC shall not make, participate in making or in any way attempt to use their official position to influence a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the member or his or her immediate family, or on one of the member's financial interests as defined in the Political Reform Act.

5. When a member of the ICOC is precluded from participating in a decision because he or she has a conflict of interest, the member shall recuse himself or herself from discussing and voting on the matter.

6. Members of the ICOC shall not receive or accept any gift from any person or entity who is doing business with, or seeking to do business with, the California Institute for Regenerative Medicine ("CIRM") under circumstances from which it reasonably could be substantiated that the gift was intended to influence the member's future official actions or to reward the member for past ones.

7. Members of the ICOC shall not receive or accept, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from a lobbyist who is registered to lobby the ICOC or CIRM.

8. Nothing in this Statement is intended to modify the express authorization in Health and Safety Code section 125290.30(g) (1) (B), which provides: "A member of the ICOC may

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[1] Senior Academic officers (including, but not limited to, chancellors, presidents of institutions, deans, chairs of departments, executive officers of research institutions, and other similar positions), who, as part of their responsibilities, oversee and advise researchers in their institution or who sign off on grants, loans or contracts shall not be deemed to have a conflict of interest under this provision. Recusal, however, is required in this situation, under Proposition 71 and points 2, 3, 4 and 5.

participate in a decision to approve or award a grant, loan or contract to an entity for the purpose of research involving a disease from which a member of his or her immediate family suffers or in which the member has an interest as a representative of a disease advocacy organization."

I have read and understand the Conflict of Interest Policy for Members of the ICOC and I certify that I will abide by it as long as I am a member of the ICOC.

Signature _____ Date_____

3

GRANTS WORKING GROUP BYLAWS

Bylaws of the Scientific and Medical Research Funding Working Group

Originally adopted by the ICOC on
09/09/05; amended on 3/15/07; and
amended on 06/27/08.

ARTICLE 1. Authority.

The Scientific and Medical Research Funding Working Group ("Grants Working Group or GWG") of the Independent Citizen's Oversight Committee ("ICOC") to the California Institute for Regenerative Medicine ("Institute") is established by Part 5, Division 106, Chapter 3, section 125290.50 and section 125290.60 of the Health & Safety Code, also known as the California Stem Cell Research and Cures Bond Act ("Act").

ARTICLE II. Purpose.

The GWG is created for the purpose of recommending standards, criteria and grant and loan awards to the ICOC. This purpose will be accomplished through the review of grants and loan applications, based on standards and criteria adopted by the ICOC, in order to make recommendations to the ICOC for the award of training, research, therapy development, and clinical trial grants and loans. Finally, this purpose will be accomplished through oversight reviews of grantees to ensure compliance with the terms and conditions of the award in order to fulfill the mission of the Act, and to make recommendations for subsequent actions to the ICOC.

ARTICLE III. Functions.

The duties of the GWG shall include the following:

(A) Recommend to the ICOC interim and final criteria, standards and requirements for considering funding applications and for awarding grants and loans;

(B) Recommend to the ICOC standards for the scientific and medical oversight of awards;

(C) Recommend to the ICOC any modifications of the criteria, standards and requirements described in sections (A) and (B) above as needed;

(D) Review grant and loan applications based on the criteria, requirements and standards adopted by the ICOC and make recommendations to the ICOC for the award of grants and loans to promote training, research, therapy development, and clinical trials;

(E) Oversee peer-group reviews of grantees to ensure compliance with the terms of the award, and report to the ICOC any recommendations for subsequent action;

(F) Recommend to the ICOC standards for the evaluation of grantees to ensure that they comply with all applicable requirements. Such standards shall mandate periodic

reporting by grantees and shall authorize the GWG to audit a grantee and forward any recommendations for action to the ICOC.

ARTICLE IV. Membership, Selection, and Terms of Service

Section 1 (Method of Appointment) Members of the GWG shall be appointed by the ICOC.

Section 2 (Appointment) The GWG shall have 23 members composed of: (1) seven ICOC members from the ten (10) disease advocacy group members ("Patient Advocate Members") described in paragraphs (3), (4), and (5) of subdivision (a) of Section 125290.20 of the Act; (2) fifteen (15) scientists ("Scientist Members") nationally recognized in the field of stem cell research who are not California residents and who are not employed in the State of California, and; (3) the Chairperson of the ICOC.

Section 3 (Term of Service) GWG members shall normally serve for six (6) years except that after the first six-year term the members' terms will be staggered so that one-third of the members shall be appointed for a term that expires two years later, one-third of the members shall be appointed for a term that expires four years later, and one-third of the members shall be appointed for a term that expires six years later. Subsequent terms are for six years. In the event that a GWG member resigns prior to completing his or her term of service, incoming members appointed by the ICOC shall be invited to serve for a term of two (2), four (4), or six (6) years. GWG members may serve a maximum of two consecutive terms.

Section 4 (Expiration of Term) When a member's term expires, the ICOC shall appoint a new member within 30 days. GWG members shall continue to serve until their replacements are appointed.

Section 5 (Alternate Patient Advocate Members) In the event that a Patient Advocate Member of the GWG cannot attend all or a portion of a meeting of the GWG, that Patient Advocate Member may designate an alternate from among any of the patient advocates who are members of the ICOC to serve as an Alternate Patient Advocate Member in the absence of the appointed Patient Advocate Member.

Section 6 (Alternate Scientist Members) Individuals with strong scientific expertise in stem cell research may be appointed by the ICOC to serve as Alternate Scientist Members of the GWG. Alternate Scientist Members may serve in place of a Scientist Member of the GWG who is unavailable to attend a meeting. Alternate Scientist Members have voting privileges in the GWG and their presence is counted towards a quorum. In the event that a Scientist Member resigns from the GWG, an Alternate Scientist Member may be confirmed by the ICOC as a replacement.

Section 7 (Ad Hoc Members) Individuals with strong scientific expertise in stem cell research or on a particular issue may be appointed by the ICOC to serve as Ad Hoc Members of the GWG and may occasionally attend meetings of the GWG when a Scientist Member is unavailable to attend a meeting. Ad Hoc Members have voting privileges and their presence is counted towards a quorum.

Section 8 (Specialists) Individuals with scientific expertise on a particular issue may occasionally be invited to attend meetings of the GWG for the purpose of providing evaluation or expertise with respect to specific grant(s) or research fields. Specialists do not have voting privileges and their presence is not counted towards a quorum.

Section 9 (Chair of the GWG)

(A) (Appointment) The ICOC shall appoint a Scientist Member of the GWG to serve as Chair of the GWG.

(B) (Duties) The Chair of the GWG shall preside over the scientific evaluation of grants described herewith in Article VI, Section 2(A).

(C) (Alternate Chair) In the event that the Chair of the GWG cannot attend all or a portion of a scientific review meeting, the Chair may designate a Scientist Member or an Alternate Scientist Member to serve as the alternate Chair in the Chair's absence

Section 10 (Vice-Chair of the GWG)

(A) (Appointment) The ICOC shall appoint as Vice-Chair of the GWG a Patient Advocate member of the ICOC.

(B) (Duties) The Vice-Chair of the GWG shall preside over the grant and loan recommendation procedures described herewith in Article VI, Section 2(B).

(C) (Alternate Vice-Chair) In the event that the Vice-Chair of the GWG cannot attend all or a portion of a programmatic review meeting, the Vice-Chair may designate a Patient Advocate Member of the GWG to serve as the alternate Vice-Chair in the Vice-Chair's absence.

Section 11 (Compensation and Expenses of GWG Members).

(A) ICOC Members – Each member of the GWG who is also an ICOC member, except the chairperson, shall receive a per diem of one hundred dollars ($100) per day (adjusted annually for cost of living) for each day the member attends a GWG meeting, plus reasonable and necessary travel and other expenses incurred in the performance of the member's duties. In addition, compensation in the amount of $12.50 per hour shall be paid to ICOC members of the GWG for time spent in preparation for a meeting of the GWG.

(B) Non-ICOC Members – Non-ICOC members of the GWG shall be entitled to a daily consulting rate and reimbursement for expenses, as established by the ICOC.

Section 12 (Conflict of Interest). All non-ICOC members of the GWG (including Scientist Members, Alternate Scientist Members, Ad Hoc Members and Specialists) shall be governed

by conflict of interest rules and economic disclosure requirements adopted by the ICOC. ICOC members shall be governed by California conflict of interest laws, as set forth in Health and Safety Code section 125290.30(g) and the conflict of interest policy for ICOC members adopted by the ICOC.

Section 13. (Grounds for Removal of Members) Any non-ICOC member of the GWG may be removed by the ICOC for cause. The grounds for removal are as follows:

(A) An intentional violation or violations of the conflict of interest policy applicable to the member;

(B) Two or more grossly negligent violations of the conflict of interest policy applicable to the member;

(C) Consistent failure to perform the assigned duties of the member or unexcused absence from three consecutive GWG meetings;

(D) Violation of medical or ethical standards by the member in his or her professional capacity as determined by the appropriate research institution or the appropriate professional group;

(E) Residency or employment by an institution located in the State of California;

(F) The conviction of a felony or act involving serious moral turpitude.

Section 14. (Procedure for Suspension of Members) The President of the CIRM may suspend a non-ICOC member of the GWG based on any of the grounds enumerated above by giving the member written notice of his or her suspension, including the grounds for the suspension. The suspension shall remain in effect until it is terminated by the President, the member resigns from the GWG, or the ICOC has considered the permanent removal of the member pursuant to Section 15.

Section 15. (Procedure for Removal of Members) The President of CIRM may recommend to the ICOC the removal of a non-ICOC member of the GWG based on any of the grounds enumerated above. The President must inform the member in writing that he has requested that the ICOC consider removal of the member at least 10 days prior to the ICOC's consideration of the matter. The notice must include the grounds for the recommendation. The member may address the ICOC in writing or in person during the meeting of the ICOC at which the removal of the member is considered.

Section 16. (Procedure for Temporary Leave of Absence) The President of CIRM or the chairperson of a Working Group shall consider and may, at his or her discretion, grant requests, from non-ICOC working group members for temporary leaves of absence, not to exceed six months, due to family or personal illness, death of a loved one, or other extenuating circumstances.

ARTICLE V. Duties of GWG Members.

Section 1 (Scientist Members). The fifteen (15) Scientist Members of the GWG are responsible for evaluating and scoring grant and loan applications for scientific merit, and for recommending, along with the other members of the GWG, grant and loan funding awards to the ICOC.

Section 2 (Patient Advocate Members). The seven (7) Patient Advocate members of the GWG, together with the Scientist Members, are responsible for recommending grant and loan funding awards to the ICOC.

Section 3 (Alternate Scientist Members). At the discretion of staff, Alternate Scientist Members may serve as substitutes for GWG Scientist Members when a Scientist Member cannot attend a GWG meeting. Alternate Scientist Members shall perform the same duties as Scientist Members.

Section 4 (Ad Hoc Members) Ad Hoc members are responsible for attending meetings of the GWG for the purpose of providing scientific expertise on a particular issue(s), area or field and, at the discretion of the staff, may serve as a substitute for a GWG Scientist Member when a Scientist Member cannot attend a GWG meeting. Ad Hoc members shall perform the same duties as Scientist Members.

Section 5 (Specialists). Specialists may be invited by the staff to participate in meetings of the GWG for the purpose of providing scientific expertise on a particular issue(s), area, or field and/or for a specific grant application.

ARTICLE VI. Meetings.

Section 1 (Regular Meetings). The GWG shall hold at least four meetings per year, one of which will be designated as its annual meeting. The GWG may hold additional meetings as the CIRM determines are necessary or appropriate. The annual meeting shall be attended **in person** by GWG members, any Alternate Members, and any Specialist/Ad Hoc Members.

Section 2 (Teleconference Meetings). At the discretion of staff, members of the GWG may participate in meetings of the GWG, with the exception of the annual meeting, by teleconference, provided that the public has the opportunity to participate in public sessions of the GWG that are conducted by teleconference. Significant medical needs of members of the GWG will be given a high priority in arranging teleconference meetings.

Section 3 (Open Meetings). The GWG shall meet in public session except for discussions related to evaluation of grant applications and recommendation of applications to the ICOC, discussions related to appeals of GWG recommendations, discussions related to the review of a grantee's compliance with the terms of the award, and discussions of other matters that may be considered in closed session under the Bagley-Keene Open Meeting Act or under Health &

Safety Code section 125290.30. The GWG may recommend additional exceptions to the ICOC as necessary to carry out the mission of the GWG.

Section 4 (Special and Emergency Meetings). Special and emergency meetings may be called by the Chair of the GWG if necessary.

ARTICLE VII. Procedure for Recommending Grant and Loan Applications.

Section 1 (Quorum). Sixty-five percent of the GWG members who are eligible to vote shall constitute a quorum of the GWG.

Section 2 (Recommendation Procedures).

(A) Unless excused due to conflicts, both ICOC and non-ICOC members of the GWG shall be present in-person or via teleconference during the entire GWG meeting, and may participate in all discussions.

(B) Scientific Evaluation and Scoring

1. The Chair of the GWG shall preside over the scientific evaluation and scoring process.

2. The fifteen (15) Scientist Members of the GWG shall evaluate each grant and loan application for scientific merit and assign a numerical value to each grant based on standards and criteria adopted by the ICOC. The criteria and standards for evaluation are hereby incorporated by reference into these Bylaws.

3. The average numerical score for each grant will be calculated and recorded as its scientific score.

(C) Funding Recommendations

1. Once grant and loan applications have been assigned a scientific score, all voting members of the GWG shall place each grant and loan application into one of three categories by separate or by *en bloc* vote as appropriate:

    a. **Recommended for Funding (Tier 1)** – Highly meritorious grant and loan applications that are recommended for funding to the ICOC.

    b. **Provisionally Recommended for Funding (Tier 2)** – Meritorious grant and loan applications that require further consideration by the ICOC. The GWG may change the Tier 2 designation as needed to reflect the appropriate communication to the ICOC regarding the merit of the applications in Tier 2.

c. **Not Recommended for Funding (Tier 3)** – Grant and loan applications that are not sufficiently meritorious to be recommended for funding to the ICOC.

2. The GWG may recommend partial funding of an application, if it determines that parts of an application are not sufficiently meritorious to be recommended for funding to the ICOC.

Section 3 (Recommendations and Minority Reports). Recommendations of the GWG to the ICOC shall be made by a majority vote of a quorum of the members of the GWG, except for recommendations involving "vital research opportunities," which require a two-thirds vote of a quorum of the members of the GWG pursuant to Health & Safety Code section 125290.60(c)(1)(D). If thirty-five percent (35%) of the members of the GWG join together in a minority position, a minority report may be submitted to the ICOC.

Section 4 (Priority for Funding).

(A) The GWG shall give priority to applications involving pluripotent stem cell and progenitor cell research that cannot, or is unlikely to receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. Applications involving research categories funded by the National Institutes of Health shall not be recommended for funding pursuant to this subdivision.

(B) Notwithstanding subdivision (A), the GWG may recommend funding for vital research opportunities. A "vital research opportunity" means scientific and medical research and technologies and/or any stem cell research that is not recommended for funding pursuant to (A) of this section but which provides a substantially superior research opportunity vital to advance medical science as determined by at least a two-thirds vote of a quorum of the members of the GWG. Human reproductive cloning shall not be considered a vital research opportunity.

ARTICLE VIII. Rules of Order.

Debate and proceedings in the GWG shall be conducted in accordance with Robert's Rules of Order (Newly Revised) when not in conflict with rules of the GWG or other statutory requirements.

ARTICLE IX. Amendments.

These Bylaws may be amended or repealed by the ICOC at any regular or special meeting by a majority vote of a quorum of the ICOC. The GWG may recommend amendments to these bylaws to the ICOC for its consideration.

4

STANDARDS WORKING GROUP BYLAWS

Bylaws of the
Scientific and Medical Accountability Standards Working Group

ARTICLE 1. Authority.

The Scientific and Medical Accountability Standards Working Group ("SWG") of the Independent Citizens' Oversight Committee ("ICOC") to the California Institute for Regenerative Medicine ("Institute") is established by Chapter 3, Article 1, section 125290.50 and section 125290.55 of the Health & Safety Code, also known as the California Stem Cell Research and Cures Act ("Act").

ARTICLE II. Purpose.

The SWG is created for the purpose of recommending scientific, medical, and ethical standards to the ICOC. This purpose will be accomplished by: (1) recommending standards for all medical, socioeconomic, diversity, and financial aspects of clinical trials and therapy development and delivery to patients, including equitable access to therapies; (2) recommending standards for the oversight of funded research; and (3) advising the ICOC on relevant ethical and regulatory issues.

ARTICLE III. Functions.

The duties of the SWG shall include the following:

(A) Recommend to the ICOC scientific, medical and ethical standards;

(B) Recommend to the ICOC standards for all medical, socioeconomic, diversity, and financial aspects of clinical trials and therapy development and delivery to patients, including among others, standards for equitable access to therapies and safe and ethical procedures for obtaining materials and cells for research and clinical efforts for the appropriate treatment of human subjects in medical research consistent with paragraph (2) of subdivision (b) of Section 125290.35, and to ensure compliance with patient privacy laws.

(C) Recommend to the ICOC modifications of the standards described in paragraphs (A) and (B) above, as needed;

(D) Make recommendations to the ICOC on the oversight of funded research to ensure compliance with the standards described in paragraphs (A) and (B) above;

(E) Regularly advise the ICOC, the Scientific and Medical Research Funding Working Group, and the Scientific and Medical Research Facilities Working Group on relevant ethical and regulatory issues.

ARTICLE IV. SWG Membership, Selection, and Terms of Service

Section 1 (Method of Appointment). Members of the SWG shall be appointed by the ICOC.

Section 2 (Appointment). The SWG shall have 19 members, as follows: (1) five ICOC members from the ten (10)disease advocacy group members ("Patient Advocate Members") described in paragraphs (3), (4), and (5) of subdivision (a) of Section 125290.20 of the Act; (2) nine scientists and clinicians ("Scientist/Clinician Members") nationally recognized in the field of pluripotent and progenitor cell research; (3) four medical ethicists; and (4) the Chair of the ICOC.

Section 3 (Term of Service). SWG members shall serve for six (6) years except that, after the first six-year term, the members' terms will be staggered so that one-third of the members shall be appointed for a term that expires two years later, one-third of the members shall be appointed for a term that expires four years later, and one-third of the members shall be appointed for a term that expires six years later. Subsequent terms are for six years. In the event that an SWG member resigns prior to completing his or her term of service, incoming members appointed by the ICOC shall be invited to serve for a term of two (2), four (4), or six (6) years. SWG members may serve a maximum of two consecutive terms.

Section 4 (Expiration of Term). When a member's term expires, the ICOC shall appoint a new member within 60 days. SWG members shall continue to serve until their replacements are appointed.

Section 5 (Co-Chairs of SWG).

(A) (Appointment) The ICOC shall appoint a Patient Advocate Member of the SWG to serve as Co-Chair of the SWG. In addition, the ICOC shall appoint a Scientist/Clinician Member or an Ethicist Member of the SWG to serve as Co-Chair.

(B) (Duties) The Co-Chairs of the SWG shall preside over meetings of the SWG and shall work with CIRM staff to coordinate the work of the SWG.

(C) (Substitute Co-Chairs) In the event that the Patient Advocate Co-Chair must be absent from a meeting of the SWG, he or she may ask another Patient Advocate member of the SWG to serve as co-chair at that meeting. In the event that the

Scientist/Clinician/Ethicist Co-Chair must be absent from a meeting of the SWG, he or she may ask another Scientist/Clinician/Ethicist member of the SWG to serve as co-chair at that meeting.

Section 6 (Compensation and Expenses of SWG Members).

(A) **ICOC Members** – Each member of the SWG who is also an ICOC member, except the chairperson, shall receive a per diem of one hundred dollars ($100) per day (adjusted annually for cost of living) for each day the member attends a SWG meeting, plus reasonable and necessary travel and other expenses incurred in the performance of the member's duties. In addition, compensation in the amount of $12.50 per hour shall be paid to ICOC members of the SWG for time spent in preparation for a meeting of the SWG.

(B) **Non-ICOC Members** – Non-ICOC members of the SWG shall be entitled to a daily consulting rate and reimbursement for expenses, as established by the ICOC.

Section 7 (Conflict of Interest). Non-ICOC members of the SWG members shall be governed by conflict of interest rules and economic disclosure requirements adopted by the ICOC. ICOC members of the SWG shall be governed by California conflict of interest laws, as set forth in Health and Safety Code section 125290.30(g) and the conflict of interest policy for ICOC members adopted by the ICOC.

ARTICLE V. Meetings.

Section 1 (Regular Meetings). The SWG shall hold at least four meetings per year, one of which will be designated as its annual meeting. The SWG may hold additional meetings as the CIRM determines are necessary or appropriate. The annual meeting shall be attended **in person** by SWG members.

Section 2 (Teleconference Meetings). At the discretion of CIRM staff, SWG members may participate in meetings of the SWG, with the exception of the annual meeting, by teleconference, provided that the public has the opportunity to participate in public sessions of the SWG that are conducted by teleconference. The significant medical needs of members of the SWG will be given a high priority in arranging teleconference meetings.

Section 3 (Open Meetings). As provided in its Meeting Procedures, which are incorporated herein by this reference, the SWG shall meet in public session except for discussions related to matters involving patient privacy or the review of a complaint regarding an investigator's or institution's compliance with medical or ethical standards adopted by the ICOC, and discussions of other matters that may be considered in closed session under the Bagley-Keene Open Meeting Act or under Health & Safety Code

section 125290.30. The SWG may recommend additional exceptions to the ICOC as necessary to carry out the mission of the SWG.

Section 4 (Special and Emergency Meetings). Special and emergency meetings may be called by the Co-Chairs if necessary.

ARTICLE VI. SWG Procedure for Recommending Scientific, Medical, and Ethical Standards.

Section 1 (Quorum). Sixty-five percent of the SWG members who are eligible to vote shall constitute a quorum of the SWG. All actions of the SWG shall be taken by a majority vote of a quorum of members.

Section 2 (Voting Procedures).

(A) Unless excused due to conflicts, both ICOC and non-ICOC members of the SWG shall be present in-person or via teleconference during the entire SWG meeting.

(B) The Co-Chairs of the SWG shall preside over the discussion and recommendation process, and all members of the SWG, except for those who are excused due to conflicts, shall participate in the discussion and vote on standards.

(C) All motions, including motions to recommend standards to the ICOC, shall be made by a majority vote of a quorum of the members of the SWG. Amendments to pending motions may be made with the concurrence of the maker of the motion and the second, unless a member of the ICOC requests a vote on the proposed amendment, in which case, action on the proposed amendment shall be taken by a majority vote of a quorum, before the vote on the pending motion.

Section 3 (Minority Reports). If thirty-five percent (35%) of the members of the SWG join together in a minority position, a minority report may be submitted to the ICOC.

ARTICLE VII. Rules of Order.

Debate and proceedings in the SWG shall be conducted in accordance with Robert's Rules of Order (Newly Revised) when not in conflict with rules of the SMASWG or other statutory requirements.

ARTICLE VIII. Amendments.

These Bylaws may be amended or repealed by the ICOC at any regular or special meeting by a majority vote of a quorum of the ICOC.

5

FACILITIES WORKING GROUP BYLAWS

CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

Bylaws

THE SCIENTIFIC AND MEDICAL RESEARCH FACILITIES WORKING GROUP

Approved by the ICOC 10/11/06

Bylaws of the Scientific and Medical Facilities Working Group

ARTICLE 1. Authority.

The Scientific and Medical Facilities Working Group ("Facilities WG") of the Independent Citizen's Oversight Committee ("ICOC") to the California Institute for Regenerative Medicine ("Institute") is established by Division 106, Part 5, Chapter 3, section 125290.50 and section 125290.65 of the Health & Safety Code, also known as the California Stem Cell Research and Cures Bond Act ("Act").

ARTICLE II. Purpose.

The Facilities Working Group is created for the purpose of recommending to the ICOC interim and final criteria, requirements and standards for applications for grants and loans for buildings, building leases, and capital equipment. The Facilities Working Group will also recommend oversight procedures to ensure grantees' compliance with the terms of the award to the ICOC.

ARTICLE III. Functions.

The duties of the Facilities Working Group shall include the following:

(A) Recommend to the ICOC interim and final criteria, standards and requirements for applications for, and the awarding of, grants and loans for buildings, building leases, and capital equipment, including the following standards and requirements, among others:

1. Facility milestones and timetables for achieving such milestones;

2. Priority for applications that provide for facilities that will be available for research no more than two years after the grant award;

3. The requirement that all funded facilities and equipment be located solely within California

4. The requirement that grantees comply with reimbursable building cost standards, competitive building leasing standards, capital equipment cost standards, and reimbursement standards and terms recommended by the Facilities Working Group and adopted by the ICOC;

5. The requirement that grantees shall pay all workers employed on construction or modification of the facility funded by facilities grants or loans of the institute, the general prevailing rate of per-diem wages for

work of similar character in the locality in which work on the facility is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code;

6. The requirement that grantees be not-for-profit entities;

7. The requirement that awards be made on a competitive basis, with the following minimum requirements:

    a. That the grantee secure matching funds from sources other than the institute equal to at least 20 percent of the award. Applications of equivalent merit, as determined by the Facilities Working Group, considering research opportunities to be conducted in the proposed research facility, shall receive priority to the extent that they provide higher matching funds amounts. The Facilities Working Group may recommend waiving the matching fund requirement in extraordinary cases of high merit or urgency;

    b. That capital equipment costs and capital equipment loans be allocated when equipment costs can be recovered in part by the grantee from other users of the equipment.

(B) Recommend oversight procedures to the ICOC to ensure grantees' compliance with the terms of the award.

ARTICLE IV. Facilities Working Group Membership, Selection, and Terms of Service

Section 1 (Method of Appointment) Members of the Facilities Working Group shall be appointed by the ICOC.

Section 2 (Appointment). The Facilities Working Group shall have 11 members as follows: (a) six (6) disease advocacy group members of the Scientific and Medical Research Funding Working Group ("SMRFWG"); (b) four (4) real estate specialists ("Real Estate members"); (c) the Chair of the ICOC.

Section 3 (Term of Service). Facilities Working Group members shall normally serve for six (6) years except that, after the first six-year term, the members' terms will be staggered so that one-third of the members shall be appointed for a term that expires two years later, one-third of the members shall be appointed for a term that expires four years later, and one-third of the members shall be appointed for a term that expires six years later. Subsequent terms are for six years. In the event that a Facilities Working Group

member resigns prior to completing his or her term of service, incoming members appointed by the ICOC shall be invited to serve for a term of two (2), four (4), or six (6) years. Facilities Working Group members may serve a maximum of two consecutive terms.

Section 4 (Expiration of Term). When a member's term expires, the ICOC shall appoint a new member within 30 days. Facilities Working Group members shall continue to serve until their replacements are appointed.

Section 5 (Real Estate Specialist Qualifications). To be eligible to serve on the Scientific and Medical Research Facilities Working Group, a real estate specialist shall be a resident of California, shall be prohibited from receiving compensation from any construction or development entity providing specialized services for medical research facilities, and shall not provide real estate facilities brokerage services for any applicant for, or any funding by the Facilities Working Group and shall not receive compensation from any recipient of institute funding grants.

Section 6 (Alternate Real Estate Members). Individuals with expertise in real estate may be appointed by the ICOC to serve as Alternate Real Estate members of the Facilities Working Group. At the discretion of staff, Alternate Real Estate members may serve in place of a Real Estate member who is unavailable to attend a meeting of the Facilities Working Group. Alternate Real Estate members have voting privileges on the Facilities Working Group and their presence is counted towards a quorum. Alternate Real Estate members may also be appointed to serve as Real Estate members of the Facilities Working Group in the event that an existing Real Estate member of the Facilities Working Group resigns. Alternates shall be subject to the same qualifications as Real Estate Specialist as specified in Section 5.

Section 7 (Ad Hoc). – Individuals with expertise in real estate may be appointed by the ICOC to serve as Ad Hoc Members of the Facilities Working Group. Ad Hoc Members may be invited to attend Facilities Working Group meetings to provide specialized real estate and/or equipment expertise on a specific issue, but are not eligible to vote.

Section 8 (Chair of Facilities Working Group).

(A) (Appointment) The ICOC shall appoint a Real Estate Specialist member of the Facilities Working Group to serve as Chair of the Facilities Working Group.

(B) (Duties) The Chair of the Facilities Working Group shall preside over evaluation of the merits of each application and the assignment of a score for each application, under the guidelines described in Article VII, Section 2(B) herein.

Section 9 (Vice-Chair of Facilities Working Group).

(A) (Appointment) The ICOC shall appoint a Patient Advocate member of the SMRFWG to serve as Vice-Chair of the Facilities Working Group.

(B) (Duties) The Vice-Chair of the Facilities Working Group shall preside over the grant and loan recommendation process described in Article VII, Section 2(C) herein.

Section 10 (Compensation and Expenses of GRWG Members).

(A) ICOC Members – Each member of the Facilities Working Group who is also an ICOC member, except the chairperson, shall receive a per diem of one hundred dollars ($104) per day (adjusted annually for cost of living) for each day the member attends a Facilities Working Group meeting, plus reasonable and necessary travel and other expenses incurred in the performance of the member's duties. In addition, compensation in the amount of $13.00 per hour shall be paid to ICOC members of the Facilities Working Group for time spent in preparation for a meeting of the Facilities Working Group.

(B) Non-ICOC Members – Non-ICOC members of the Facilities Working Group shall be entitled to a daily consulting rate and reimbursement for expenses, as established by the ICOC.

Section 11 (Conflict of Interest). All non-ICOC members of the Facilities Working Group shall be governed by conflict of interest rules and economic disclosure requirements adopted by the ICOC. ICOC members of the Facilities Working Group shall be governed by California conflict of interest laws, as set forth in Health & Safety Code section 125290.30(g) and the conflict of interest policy for ICOC members adopted by the ICOC.

ARTICLE V. Duties of Facilities Working Group Members.

Section 1 (Real Estate Members). The four (4) Real Estate members of the Facilities Working Group are responsible for providing technical expertise in the evaluation of facilities grant and loan applications, and for evaluating and recommending, with other members, grant and loan funding awards to the ICOC.

Section 2 (Patient Advocate Members and ICOC Chair). The six (6) Patient Advocate members of the Facilities Working Group, together with the ICOC Chair and the Real Estate members, are responsible for evaluating and recommending grant and loan funding awards to the ICOC.

Section 3 (Alternate Real Estate Members). At the discretion of staff, Alternate Real Estate members may serve as substitutes for Real Estate members when a Real Estate member cannot attend a Facilities Working Group meeting. Alternate Real Estate members shall perform the same duties as Real Estate members.

Section 4 (Ad Hoc Members). Ad Hoc members are responsible for attending meetings of the Facilities Working Group, when requested, to provide specialized real estate and/or equipment expertise on specific issues, but are not eligible to vote.

ARTICLE VI. Meetings.

Section 1 (Regular Meetings). The Facilities Working Group shall hold at least four meetings per year, one of which will be designated as its annual meeting. The GRWG may hold additional meetings as the CIRM determines are necessary or appropriate. The annual meeting shall be attended **in-person** by Facilities Working Group members. Additional meetings may be attended via teleconference.

Section 2 (Teleconference Meetings). At the discretion of staff, members of the Facilities Working Group may participate in Facilities Working Group meetings, with the exception of the annual meeting, by teleconference, provided that the public has the opportunity to participate in the public sessions of Facilities Working Group meetings that are conducted by teleconference. Significant medical needs of members of the Facilities Working Group will be given priority in arranging teleconference meetings.

Section 3 (Open Meetings). The Facilities Working Group shall meet in public session, except when the Facilities Working Group meets to discuss: (1) confidential land negotiations; (2) confidential construction contract negotiations; (3) confidential input from the Scientific and Medical Research Funding Working Group regarding the scientific portions of proposals; (4) confidential input from the Scientific and Medical Research Funding Working Group regarding the strength of stem cell research programs at applicant institutions and their ability to execute the scope of the proposed research; (5) the identity of donors who wish to have their donations kept confidential; (6) confidential financial information about an institution or an application; (7) other matters that may be considered in closed session under the Bagley-Keene Open Meeting Act or under Health & Safety Code section 125290.30. The Facilities Working Group may recommend additional exceptions to the ICOC as necessary to carry out the mission of the Facilities Working Group.

Section 4 (Special and Emergency Meetings). Special and emergency meetings may be called by the Chair if necessary.

ARTICLE VII. Facilities Working Group Procedure for Recommending Grant and Loan Applications.

Section 1 (Quorum). Sixty-five percent of the Facilities Working Group members who are eligible to vote shall constitute a quorum of the Facilities Working Group.

Section 2 (Facilities Working Group Recommendation Procedures).

(A) Unless excused due to conflicts, both ICOC members and non-ICOC members of the Facilities Working Group shall be present in-person or via teleconference during the entire Facilities Working Group meeting, and may participate in all discussions.

(B) Merit Review and Scoring

1. The Chair of the Facilities Working Group shall preside over the evaluation and scoring process.

2. The voting members of the Facilities Working Group shall evaluate each grant and loan application and assign a numerical score to each grant based on standards and criteria adopted by the ICOC. The criteria and standards for evaluation are hereby incorporated by reference into these Bylaws.

3. The average numerical score for each grant or loan will be calculated and recorded for use in the funding recommendations process.

(C) Funding Recommendations

1. The Vice-Chair of the Facilities Working Group shall preside over the funding recommendations process.

2. Once grant and loan applications have been assigned a score, the voting members of the Facilities Working Group shall place each grant and loan application into one of three categories by separate or by en bloc vote as appropriate:

   a. Recommended for Funding (Tier 1) – Highly meritorious grant and loan applications that are recommended for funding to the ICOC.

   b. Recommended for Funding Pending Available Funds (Tier 2) – Meritorious grant and loan applications that are recommended for funding to the ICOC pending available funds.

c. Not recommended for Funding (Tier 3) - Grant or loan applications that are not recommended for funding *at this time*.

3. The Facilities Working Group may recommend partial funding of an application, if it determines that parts of an application are not sufficiently meritorious to be recommended for funding to the ICOC.

(D) The recommendations of the Facilities Working Group to the ICOC shall include the following information: (1) the title of the application; (2) a summary of the proposal written by the applicant that includes a description of how the proposal could benefit the State of California; (3) a brief summary of the scientific evaluation, facility evaluation, and the reasons for recommendation, along with any minority report, as applicable.

Section 3 (Recommendations and Minority Reports). Recommendations of the Facilities Working Group to the ICOC shall be made by a majority vote of a quorum of the members of the Facilities Working Group. If thirty-five percent (35%) of the members of the Facilities Working Group join together in a minority position, a minority report may be submitted to the ICOC.

Section 4 (Communications with Applicants). Members of the Facilities Working Group shall not communicate with an applicant about an application to CIRM.

ARTICLE VIII. Rules of Order.

Debate and proceedings in the Facilities Working Group shall be conducted in accordance with Robert's Rules of Order (Newly Revised) when not in conflict with rules of the Facilities Working Group or other statutory requirements.

ARTICLE IX. Amendments.

These Bylaws may be amended or repealed by the ICOC at any regular or special meeting by a majority vote of a quorum of the ICOC. The Facilities Working Group may recommend amendments to these bylaws to the ICOC for its consideration.

6

CIRM INTERNAL GOVERNANCE POLICY AND ORGANIZATIONAL CHART

CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

INTERNAL GOVERNANCE POLICY

CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

INTERNAL GOVERNANCE POLICY
THE CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

The California Institute for Regenerative Medicine (the Institute) was established by the California Constitution (California Constitution, article XXXV, Section 1).

The purposes of the Institute are as follows:

(a) To make grants and loans for stem cell research, for research facilities, and for other vital research opportunities to realize therapies, protocols, and/or medical procedures that will result in, as speedily as possible, the cure for, and/or substantial mitigation of, major diseases, injuries, and orphan diseases.

(b) To support all stages of the process of developing cures, from laboratory research through successful clinical trials.

(c) To establish the appropriate regulatory standards and oversight bodies for research and facilities development.

(Cal. Const., art. XXXV, § 2.)

Organization of the Institute:

Section 1. (The Independent Citizens' Oversight Committee) The Institute shall be governed by its board, the Independent Citizens' Oversight Committee (ICOC). (Health & Safety Code, §§ 125290.15 & 125290.40.)

(a) The Chairperson of the ICOC's primary responsibilities are:

(i) To manage the ICOC's agenda and work flow, including all evaluations and approvals of scientific and medical Working Group grants, loans, facilities, and standards evaluations;

(ii) To supervise the annual report and the annual financial plan[1] of the Institute, the public accountability requirements for the ICOC and its subcommittees, including compliance with public meeting and conflict of interest requirements, and the legal and financial accountability of the ICOC;

(iii) To provide oversight for the annual audit of the Institute and for the legal and financial accountability of the Institute;

(iv) To manage and optimize the Institute's bond financing plans and funding cash flow plans;

(v) To optimize all financial leverage opportunities for the Institute; and

(vi) To provide oversight of, and establish the policies for, the Institute with respect to legislation through the ICOC and the Legislative Subcommittee and, consistent with these policies, to assist in carrying them out by interfacing with the California Legislature, the United States Congress, the California healthcare system, and the California public.

(b) The Vice-Chairperson of the ICOC's primary responsibilities are:

(i) To assist the Chairperson in carrying out his or her duties; and

(ii) To lead negotiations for intellectual property agreements, policies and contract terms.

Section 2. (President) The President shall serve as Chief Executive of the Institute and shall perform the duties of his or her office as set forth in the Act and such other duties as may be approved by the ICOC. The President's primary responsibilities are:

(a) To recruit the highest scientific and medical talent in the United States to serve the Institute on its Working Groups;

(b) To direct the staff of the Institute's Working Groups ;

(c) To direct ICOC staff and participate in the process of supporting all working group requirements to develop recommendations on grants, loans, facilities, and standards as well as to direct and support the ICOC process of evaluating and acting on those recommendations, the implementation of all decisions on these and general matters of the ICOC;

[1] The "annual financial plan" is not the annual budget or the scientific strategic plan. Rather, the annual financial plan involves the Institute's bond financing and funding cash flow plans and financial leverage opportunities. (Health & Saf. Code, § 125290.45(b)(1)(A).)

(d) To hire, direct and manage the staff of the Institute;

(e) To develop the budgets and cost control programs of the Institute;

(f) To manage compliance with all rules and regulations of the ICOC, including the performance of all grant recipients;

(g) To manage and execute all intellectual property agreements and any other contracts pertaining to the Institute or research it funds;

(h) Supervise and direct the Policy Office of the Institute and implement the policies established by the ICOC and the Legislative Subcommittee with respect to legislation.

Section 3. (Organization and Administrative Structure)

(a) The President shall recommend to the Governance Subcommittee for its consideration the organizational structure of the Institute. The ICOC shall approve the organizational structure of the Institute based on the recommendation of the Governance Subcommittee.

(b) The staff of the Institute, other than the President, shall be organized into the following offices as depicted in Exhibit A:

Office of the President, which is responsible for support of the President in the performance of his or her duties, and for support of the Standards Working Group.

Office of the Chair, which is responsible for support of the Chairperson and Vice-Chairperson of the ICOC in the performance of their respective duties and for support of the ICOC and its subcommittees. The Director, Finance, Legal and Governmental Affairs, the Deputy to the Chair for Finance, Policy, and Outreach, the Director, Governmental Affairs, the Executive Director of the ICOC Board, the Deputy to the Vice-Chair, the Associate Legal Counsel to the Vice-Chair, and the Senior Administrative Coordinator are within the Office of the Chair.

Office of the Chief Scientific Officer, which is responsible for scientific programs, scientific review (including support for the Grants Working Group) and for grants administration and grants management systems. The Directors of Scientific Activities and Medical and Ethical Standards, and their staffs, are within the Office of the Chief Scientific Officer.

Office of the Chief Operating Officer, which will be responsible for administration, operational finance, legal, communications, personnel and facilities and for support of the Facilities Working Group. The Directors of Finance and Communications and the General Counsel, and their staffs, are within the Office of the Chief Operating Officer.[2]

The Senior Officers of the Institute will be the Chief Scientific Officer and the Chief Operating Officer. All Senior Officers will report directly to the President who is responsible for hiring, directing and supporting them.

The organization of the Offices and their reporting relationships are shown in the accompanying Organization Chart.

(c) The Office of the Chair shall be limited to no more than six (6) employees whose primary duties are to support the Chairperson and two (2) employees whose primary duties are to support the Vice-Chairperson. The President may assign additional CIRM staff to assist the Chairperson or Vice-Chairperson as necessary, consistent with the priorities of the Institute. The Governance Subcommittee may review these staff allocations on a periodic basis and recommend any adjustments to the ICOC.

(d) All employees shall report to the President, either directly or through one of the Senior Officers of the Institute, except for the Chair, the Vice-Chair, employees of the Office of the Chair, and the Office of Finance, Legal, and Governmental Affairs, who shall report to the Chair and Vice-Chair, and through them, to the President. The Chair and Vice-Chair and each Senior Officer shall be responsible to the President for management of those personnel who report to them. The Chair and the Vice-Chair and each Senior Officer are responsible for managing the internal affairs of his or her office, including its organization, reporting relationships within the office, assignment of duties, allocation of time, employee evaluations, and recommendations for hiring, firing, salary, promotion and merit increases. The President shall have final responsibility for hiring, firing, and personnel management of Institute employees, except the Chairperson and Vice-Chairperson of the ICOC. All employees of the Institute, except the Chairperson and Vice-Chairperson of the ICOC, are subject to personnel policies of the Institute whose execution is the responsibility of the President. These policies include, but are not limited to, compensation policy as established by the ICOC, merit increases, office assignment, approval for travel, parking privileges and policies in the Personnel

[2] The hiring of the General Counsel will be subject to the concurrence of the Chairperson of the ICOC. The General Counsel's duties will include coordinating with the Chairperson in financing and litigation matters.

Handbook. The Office of the Chair shall be responsible for approving travel for the Chair and Vice-Chair and employees of the Office of the Chair and the Office of Finance, Legal, and Governmental Affairs. When the ICOC and Office of the Chair travel requests exceed the pre-approved budget, the decision authority on such requests rests with the President or the Governance Subcommittee.

(e) The President shall be responsible for setting the salary for all employees, except the Chairperson and Vice-Chairperson of the ICOC, within the range for each salary level established and approved by the ICOC pursuant to section 125290.45(b)(4) of the Health and Safety Code, with two exceptions: (1) for new employees hired into levels 6 through 10 and for current employees in positions newly reclassified into levels 6 through 10, the President shall obtain the approval of the Governance Subcommittee in order to set the salary in an amount that is 80 percent or higher than the minimum salary for that level; and (2) for employees in all levels, the President will obtain the approval of the ICOC in order to set the salary in an amount that would exceed the maximum salary for that level.

The President shall have the discretion to make job classification changes. This may include:

- Reclassifying positions between salary ranges (either higher or lower) based on significant job responsibility changes.
- Once reclassified the salary shall be set based on available salary survey data.

(f) Each office of the Institute is responsible for supporting the President, the Chairperson of the ICOC, and the Vice-Chairperson of the ICOC in the performance of their duties as described herein.

Section 4. (Leadership and Management Committees)

(a) The President and any Senior Officers he wishes to attend will be available on a regular basis for an executive committee meeting of the ICOC. The ICOC Executive Committee will meet on all board matters. The Chairperson of the ICOC shall set the agenda, chair the meeting, invite members of the Office of the Chair, and prepare the minutes for the meeting.

(b) There shall be an "Executive Committee" of the Institute, comprised of the President of the Institute, the Chairperson of the ICOC, and the Vice-Chairperson of the ICOC, the Chief Scientific Officer, the Chief Operating Officer, the General Counsel, other staff whom the President wishes to include, and staff whom the President, Chairperson, and Vice-Chairperson unanimously agree should be included. Two members of the Chairperson's staff of his or her choosing may attend as staff to the Chair.

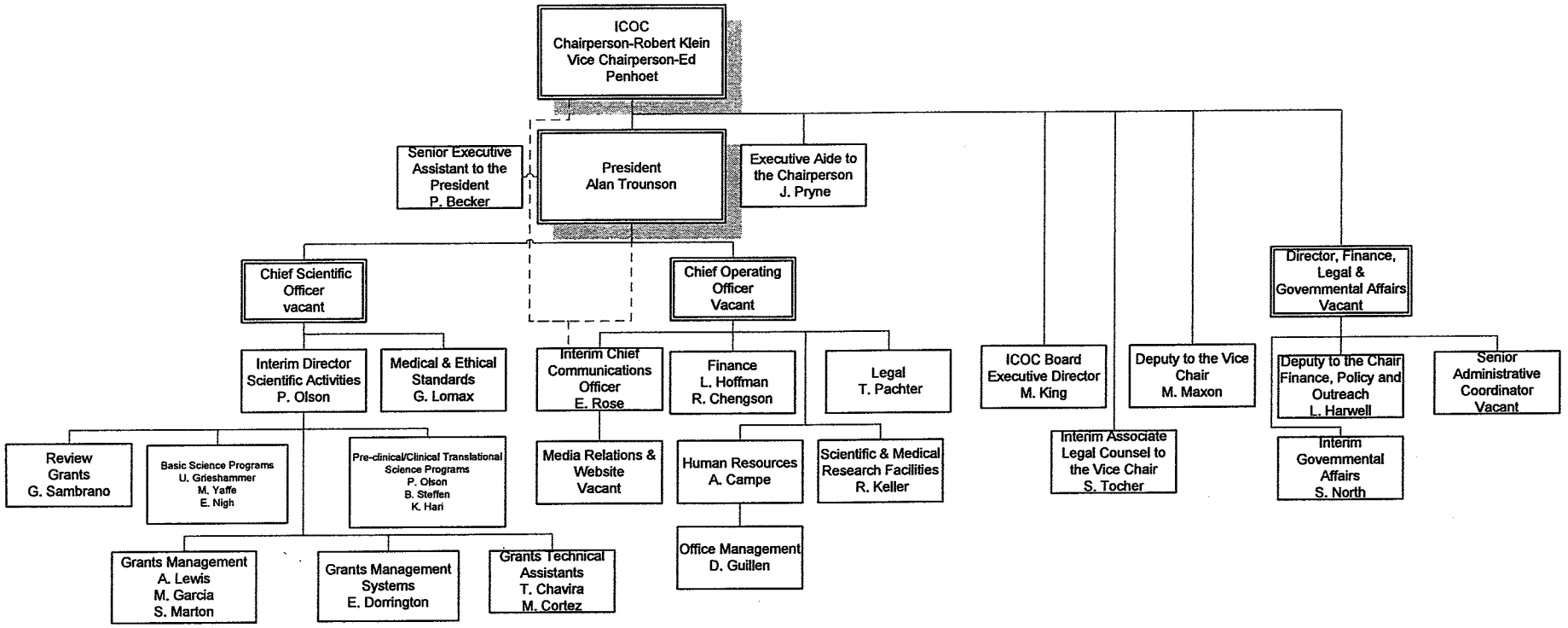
The Executive Committee will hold regular meetings. The President will chair the Executive Committee and shall be responsible for preparing the agenda for, and the minutes of, its meetings.

(c) There shall be a "Senior Management Committee," comprised of the President, the Senior Officers, and other staff members whom the President wishes to include. The President will chair the meetings of the Senior Management Committee and will be responsible for preparing the agenda for, and the minutes of, its meetings.

Section 5. (Budget)

(a) The President, with the assistance of the Chief Operating Officer shall develop the budgets and cost controls of the Institute. Where possible, budget decisions will be made by consensus within the Executive Committee, but all final budget decisions will be made by the President.

(b) Annual budgets will be prepared for the approval of the ICOC. The President has the responsibility to implement the approved budget and to report on any significant changes in a timely manner to the ICOC for approval.



*Personnel in the Office of the Chair will report to the Chairperson and Vice Chairperson and through them to the President.

7

WORKING GROUP CONFLICT OF INTEREST REGULATIONS

Adopt 17 Cal. Code of Regs. section 100500 to read:

§ 100000. Conflict of Interest Code - CIRM.

(a) The terms of 2 Cal. Code of Regs. section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission except as set forth in chapter 3, article 1, subdivision (g), of Proposition 71, which was approved by the voters on November 2, 2004, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the California Institute for Regenerative Medicine.

(b) The Board Members and the President of the Independent Citizens Oversight Committee shall file statements of economic interests with the California Institute for Regenerative Medicine, which shall make and retain a copy and forward the original to the Fair Political Practices Commission, which shall be the filing officer.

(c) All other designated employees shall file statements of economic interests with the California Institute for Regenerative Medicine, which shall be the filing officer.

Note: Authority cited: California Constitution, article XXXV; Section 125290.40, subd.(j), Health and Safety Code; Government Code Section 87300.

Reference: Government Code section 87300; Health and Safety Code section 125290.40.

Adopt 17 Cal. Code of Regs. section 100001 to read:

§ 100001. Definitions for Working Group Conflict of Interest Provisions.

The following definitions apply to the conflict of interest regulations contained in this Chapter:

(a) "Applicant" includes investigators, the project director(s) and the applicant entity or entities. Each campus of a statewide university is considered to be a separate institution.

(b) "CIRM" is the California Institute for Regenerative Medicine.

(c) "Facilities Working Group" refers to the Scientific and Medical Facilities Working Group.

(d) "Grant" means a grant, loan or guarantee.

(e) "Grantee" means a recipient of a grant from the institute. Each campus of a statewide university shall be considered as a separate and individual grantee institution.

(f) "Grants Review Working Group" refers to the Scientific and Medical Research Funding Working Group.

(g) "Member" is a non-ICOC individual appointed to serve as a voting member on a working group.

(h) "Principal Investigator" is an individual designated by the grantee to direct the project or activity being supported by the grant.

(i) "Project Director" is an individual designated by the grantee to direct the project or activity being supported by the grant.

(j) "Standards Working Group" refers to the Scientific and Medical Accountability Standards Working Group

(k). "Working Group" means any of three advisory bodies to the Independent Citizens' Oversight Committee ("ICOC"), the governing body of the CIRM.

Note: Authority cited: California Constitution, article XXXV; Section 125290.40, subd.(j), Health and Safety Code.

Reference: Sections 125290.50, 125290.55, 125290.60, 125290.65, 125292.10, subds. (i) and (j), Health and Safety Code.

Adopt 17 Cal. Code of Regs. section 100002 to read:

§ 100002. Conflicts of Interest – Non-ICOC Members of the Scientific and Medical Accountability Standards Working Group.

(a) Prohibitions: Non-ICOC Members of the Standards Working Group are precluded from deriving direct financial benefit from the CIRM through grants, loans or contracts and from acting as a Principal Investigator on any CIRM-funded grant. Senior academic officers (including, but not limited to, chancellors, presidents of institutions, deans, chairs of departments, executive officers of research institutions, and other similar positions), who, as part of their responsibilities, oversee and advise researchers in their institution or who sign off on grants, loans or contracts shall not be deemed to have a conflict of interest under this regulation.

(b) Disclosure: A non-ICOC working group member has a financial interest in and must disclose confidentially and under penalty of perjury the following:

(1) All California-based academic or non-profit research institutions from which Standard Working Group members, their spouses, or others with whom a member has a common financial interest, receive current income of $5,000 or more;

(2) All biotechnology and pharmaceutical companies from which members, their spouses, or others with whom a member has a common financial interest, receive current income or other benefit or investments of $5,000 or more; and

(3) All real property interests in California of $5,000 or more (including real estate interests and interests in intellectual property such as patents and copyrights) held by members, their spouses, or others with whom a member has a common financial interest.

(c) Disqualification: A conflict of interest exists when there is a financial or other interest that significantly impairs the individual's objectivity or that creates an unfair advantage

for any person, institution or company. A non-ICOC member has a conflict of interest when any financial interest identified in subdivision (b) of this regulation is the subject of a decision before the working group. A member of the Working Group who has a real or apparent conflict of interest with respect to a decision may not participate in the decision and must leave the room when that decision is discussed. In exceptional cases, the President of the CIRM may decide that the need for special expertise of a member outweighs any possible bias posed by a real or apparent conflict of interest. Under these circumstances, the CIRM staff shall publicly disclose the working group member's interest before the meeting and the working group member shall be permitted to participate in the discussion but will not be permitted to vote on the matter.

(d) Record-Keeping: All financial disclosure documents shall be kept confidential by the CIRM staff and preserved for purposes of review by the State Auditor or another independent auditor and any other audit as required by law. Records of the working group indicating those members who participated in or voted on particular recommendations shall be maintained by the CIRM staff. If the CIRM or an auditor discovers a violation of these conflict of interest provisions, a report will be made to the Legislature along with a review of corrective actions taken by the CIRM to prevent future occurrences.

Note: Authority cited: California Constitution, article XXXV; Section 125290.40, subd.(j), Health and Safety Code.

Reference: Sections 125290.50, subd (e), 125290.55, Health and Safety Code.

Adopt 17 Cal. Code of Regs. section 100003 to read:

§ 100003. Conflicts of Interest – Non-ICOC Members of the Scientific and Medical Research Funding Working Group.

(a) Prohibition: Except as provided otherwise in this regulation, a Grants Review Working Group member may not participate in a decision of the working group in which the individual has a conflict of interest. A conflict of interest exists when a non-ICOC Grants Review Working Group member has a real or apparent interest in the outcome of an application such that the member is in a position to gain financially, professionally or personally from either a positive or negative evaluation of the grant proposal.

(b) "Financial: Conflict of Interest - Defined: A non-ICOC member has a financial conflict of interest if:

(1) The member, his or her spouse, or any other person with whom the member has a common financial interest, is an employee of either the institution or the Principal Investigator on an application.

(2) The member, his or her spouse, or any other person with whom the member has a common financial interest, is under active consideration for a faculty or administrative position at an applicant institution.

(3) A member, his or her spouse, or any other person with whom the member has a common financial interest, stands to receive a financial benefit of any amount from an application under review.

(4) A member, his or her spouse, or any other person with whom the member has a common financial interest, has received or could receive a financial benefit of any type from an

applicant institution or organization unrelated to the proposal, of over $5,000 per year. This total includes honoraria, fees, stock and other benefits. It also includes current stock holdings, equity interest, intellectual property or real property interest, but does not include diversified mutual funds.

(c) "Professional" Conflict of Interest - Defined: A non-ICOC member has a professional conflict of interest if:

(1) A person listed on the grant application as Principal Investigator or someone who receives salary from the grant is a professional associate, such as a former student or post-doctoral fellow, or someone with whom the member has co-authored a publication within the last three years.

(2) The member and a primary member of the applicant's research team are engaged in, or are planning to be engaged in, collaboration.

(3) An applicant is someone with whom the member has had long-standing scientific differences or disagreements that are known to the professional community and could be perceived as affecting the member's objectivity.

(d) "Personal" Conflict of Interest - Defined: A non-ICOC member has a personal conflict of interest if:

(1) A close family member or close personal friend is an applicant.

(2) An applicant is someone with whom the member has had long-standing personal differences.

(e) Disclosure: A non-ICOC working group member shall disclose confidentially and under penalty of perjury the following financial interests:

(1) All California-based academic or non profit research institutions from which members, their spouses, or others with whom the member has a common financial interest, receive income or other benefit of $5,000 or more.

(2) All publicly-held biotechnology and pharmaceutical companies from which members, their spouses, or others with whom a member has a common financial interest, receive current income or other benefit, or hold an investment, of $5,000 or more.

(3) All privately held biotechnology companies in which reviewers, their spouses, or others with whom a member has a common financial interest, have an equity interest.

(4) Real property interests in California held by members, their spouses, or others with whom a member has a common financial interest.

(f) Disqualification: A non-ICOC member is required to report to the CIRM staff any conflict of interest of which he or she is aware, including, but not limited to, those described in subdivisions (b) through (e) of this regulation. Any member of the Grants Review Working Group who has a real or apparent conflict of interest with respect to an application may not review or vote on the application and must leave the room when that application is discussed. In exceptional cases, the President of the CIRM may decide that the need for special expertise of the reviewer outweighs any possible bias posed by a real or apparent conflict of interest. Under these circumstances, the CIRM staff shall publicly disclose the working group member's interest before the meeting and the working group member shall be permitted to participate in the discussion but will not be permitted to vote on the application or participate in the scientific scoring.

(g) All non-ICOC members must sign a pre-review statement indicating any possible conflicts of interest that they have, and must also sign a post-review statement that they did not participate in the discussion or review of any application for which they might have a conflict of interest, or shall indicate permission to participate was granted by the President pursuant to subdivision (f) of this regulation.

(h) Record-Keeping: All financial disclosure documents shall be kept confidential by the CIRM staff and preserved for purposes of review by the State Auditor or another independent auditor and any other audit as required by law. Records of the working group indicating those members who participated in or voted on particular recommendations shall be maintained by the CIRM staff. If the CIRM or an auditor discovers a violation of these conflict of interest provisions, a report will be made to the Legislature along with a review of corrective actions taken by the CIRM to prevent future occurrences.

Note: Authority cited: California Constitution, article XXXV; Section 125290.40, subd.(j), Health and Safety Code.

Reference: Sections 125290.50, subd. (e), 125290.60, Health and Safety Code.

Adopt 17 Cal. Code of Regs. section 100004 to read:

§ 100004. Conflicts of Interest – Non-ICOC Members of the Scientific and Medical Facilities Working Group.

(a) Prohibitions: Except as provided otherwise in this regulation, a Facilities Working Group member may not participate in a decision of the working group in which the individual has a conflict of interest. Non-ICOC members serving on the Facilities Working Group may not receive compensation from any construction or development entity providing specialized services for medical research facilities. Non-ICOC members may not provide real estate facilities brokerage services for any applicant for a facilities grant, or for any entity that receives funding from the Facilities Working Group, and shall not receive compensation from any recipient of CIRM funding grants.

(b) Conflict of Interest Protections: A conflict of interest exists when a non-ICOC Working Group member has a real or apparent interest in the outcome of an application such that the member is in a position to gain financially or professionally from either a positive or negative evaluation of the grant proposal.

(c) "Financial" Conflict of Interest - Defined: A non-ICOC member has a financial conflict of interest if:

(1) The member, his or her spouse, or any other person with whom the member has a common financial interest, is an employee of any construction, real estate or development entity on an application.

(2) The member, his or her spouse, or any other person with whom the member has a common financial interest, is under active consideration for employment at an applicant entity.

(3) A member, his or her spouse, or any other person with whom the member has a common financial interest, stands to receive a financial benefit of any amount from an application under review.

(4) A member, his or her spouse, or any other person with whom the member has a common financial interest, has received or could receive a financial benefit of any type from an applicant institution or organization unrelated to the proposal, of over $5,000 per year. This total includes honoraria, fees, stock and other benefits. It also includes current stock holdings, equity interest, intellectual property or real property interest, but does not include diversified mutual funds.

(d) "Professional" Conflict of Interest - Defined: A non-ICOC member has a professional conflict of interest if the reviewer and a project director or manager of an application are engaged in, or are planning to be engaged in, a joint project.

(e) Disclosure: A non-ICOC working group member shall disclose confidentially and under penalty of perjury the following financial interests:

(1) All California-based academic or non-profit research institutions from which members, their spouses, or others with whom a member has a common financial interest, receive current income or other benefit of $5,000 or more.

(2) All construction, real estate or development firms from which members, their spouses, or others with whom a member has a common financial interest, receive current income or other benefit, or hold an investment, of $5,000 or more.

(3) All real property interests in California held by members, their spouses, or others with whom a member has a common financial interest.

(f) Disqualification: A non-ICOC member is required to report to the CIRM staff member any conflict of interest of which he or she is aware, including, but not limited to, those described in subdivisions (c) through (e) of this regulation. Any member of the Facilities Working Group who has a real or apparent conflict of interest with respect to an application may not review or vote on the application and must leave the room when that application is discussed. In exceptional cases, the President of the CIRM may decide that the need for special expertise of the reviewer outweighs any possible bias posed by a real or apparent conflict of interest. Under these circumstances, the CIRM staff shall publicly disclose the working group member's interest before the meeting and the working group member shall be permitted to participate in the discussion but will not be permitted to vote on the application.

(g) All members reviewing grants must sign a pre-review statement indicating any possible conflicts of interest that they have, and must also sign a post-review statement that they did not participate in the discussion or review of any application for which they might have a conflict of interest, or shall indicate permission to participate was granted by the President pursuant to subdivision (f) of this regulation.

(h) Record-Keeping: All financial disclosure documents shall be kept confidential by the CIRM staff and preserved for purposes of audit as provided for in Health and Safety code Section 125290.30 and any other audit as required by law. Records of the working group indicating those members who participated in or voted on particular recommendations shall be maintained by the CIRM staff. If the CIRM or an auditor discovers a violation of these conflict of interest provisions, a report will be made to the Legislature along with a review of corrective actions taken by the CIRM to prevent future occurrences.

Note: Authority cited: California Constitution, article XXXV; Section 125290.40, subd.(j), Health and Safety Code.

Reference: Sections 125290.50, subd. (e), 125290.65, Health and Safety Code.

8

ICOC CONFLICT OF INTEREST POLICY

CONFLICT OF INTEREST POLICY FOR MEMBERS OF THE INDEPENDENT CITIZENS' OVERSIGHT COMMITTEE

In order to ensure that members of the Independent Citizens' Oversight Committee ("ICOC") act pursuant to the highest ethical standards and to avoid potential conflicts of interest, the ICOC hereby adopts the following Conflict of Interest Policy for members, including alternates, of the ICOC:

1. Members of the ICOC shall not apply for or receive salary support through grants, loans or contracts from the ICOC, nor shall they act as a Principal Investigator.[1]

2. Members of the ICOC shall not make, participate in making, or in any way attempt to use their official position to influence a decision regarding a grant, loan, or contract with their employer.

3. Members of the ICOC shall not make, participate in making or in any way attempt to use their official position to influence a decision regarding a grant, loan, or contract that financially benefits the member or the entity he or she represents.

4. Members of the ICOC shall not make, participate in making or in any way attempt to use their official position to influence a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the member or his or her immediate family, or on one of the member's financial interests as defined in the Political Reform Act.

5. When a member of the ICOC is precluded from participating in a decision because he or she has a conflict of interest, the member shall recuse himself or herself from discussing and voting on the matter.

6. Members of the ICOC shall not receive or accept any gift from any person or entity who is doing business with, or seeking to do business with, the California Institute for Regenerative Medicine ("CIRM") under circumstances from which it

[1] Senior Academic officers (including, but not limited to, chancellors, presidents of institutions, deans, chairs of departments, executive officers of research institutions, and other similar positions), who, as part of their responsibilities, oversee and advise researchers in their institution or who sign off on grants, loans or contracts shall not be deemed to have a conflict of interest under this provision. Recusal, however, is required in this situation, under Proposition 71 and points 2, 3, 4 and 5.

reasonably could be substantiated that the gift was intended to influence the member's future official actions or to reward the member for past ones.

7. Members of the ICOC shall not receive or accept, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from a lobbyist who is registered to lobby the ICOC or CIRM.

8. Nothing in this Statement is intended to modify the express authorization in Health and Safety Code section 125290.30(g) (1) (B), which provides: "A member of the ICOC may participate in a decision to approve or award a grant, loan or contract to an entity for the purpose of research involving a disease from which a member of his or her immediate family suffers or in which the member has an interest as a representative of a disease advocacy organization."

I have read and understand the Conflict of Interest Policy for Members of the ICOC and I certify that I will abide by it as long as I am a member of the ICOC.

Signature _____ Date_____

9

CIRM CONFLICT OF INTEREST POLICY

CONFLICT OF INTEREST POLICY for CIRM EMPLOYEES

To be successful, the CIRM research program, which is funded by the taxpayers of California, must conduct its activities in a way that is perceived to be open, fair and free from bias. This is particularly relevant for those employees who are involved in grants or facilities review. Consistent with this aim, CIRM employees must be free from both real and apparent conflicts of interest. The CIRM is strongly committed to effective conflict of interest policies.

A conflict of interest exists when a CIRM employee has a financial or other interest that significantly impairs the employee's ability to carry out his or her duties in an objective manner that is free from bias or that creates an unfair advantage for any person, institution or company.

To insure that employees are free from financial or other conflicts of interest, above and beyond those described in the Incompatible Activities Statement and the Conflict of Interest Code, CIRM has adopted the following policies.

1. CIRM employees may not participate in a review of a contract or application for a research or facilities grant from, nor may they participate in monitoring a contract or grant awarded to, any institution in which either the CIRM employee, or a close family member (parent, spouse, sibling, child, domestic partner) is an employee either of the institution or of the Principal Investigator.
2. CIRM employees may not participate in review of a contract or application for a research or facilities grant from which the CIRM employee or a close family member could receive financial benefit.
3. CIRM employees may not participate review of a contract or application for a research or facilities grant from someone who is, or has been, a professional associate of the CIRM employee, such as a student, pre-or post-doctoral advisor, or who has been a collaborator within the last three years.
4. CIRM employees may not participate in the preparation of a contract or an application for a research or facilities grant except to provide information to the applicant.
5. CIRM employees may not have financial or property interests in any organization that applies for funding from the CIRM or in any organization with substantial interests in stem cell therapy. A company with a substantial interest in stem cell therapy is defined as one in which more than 5% of the research budget is known to be devoted to stem cell therapy. If such a conflict arises, the CIRM employee must initiate divestiture within 90 days or place the interests in a blind trust and may not participate in any part of the review of the application. Financial investments include stocks, bonds and other financial instruments and investments exceeding $10,000, but do not include diversified mutual funds. Property interests include real estate and other property interests as well as intellectual property interests, including patents and copyrights. To the extent that CIRM employees

have an investment of less than $10,000, they shall be governed by the disqualification provisions of the Political Reform Act.

6. CIRM employees may not engage in compensated or uncompensated employment (including consulting, teaching or advisory board service) for any institution engaged in stem cell research funded by the ICOC in the State of California. This does not preclude giving a single lecture or talk.

I have read and understand the Conflict of Interest Policy for CIRM Employees and I certify that I will abide by it as long as I am an employee of CIRM.

Signature _____ Date _____

10

CALIFORNIA FAMILY BIOETHICS COUNCIL V. CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

California Family Bioethics Council v. California Institute for Regenerative Medicine
Cal.App. 1 Dist.,2007.

Court of Appeal, First District, Division 3, California.
CALIFORNIA FAMILY BIOETHICS COUNCIL, Plaintiff and Appellant,
v.
CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE et al., Defendants and Respondents.
People's Advocate et al., Plaintiffs and Appellants,
v.
Independent Citizen's Oversight Committee et al., Defendants and Respondents.
Nos. A114195, A114282.

Feb. 26, 2007.

Background: Advocacy groups filed two actions challenging constitutionality of the California Stem Cell Research and Cures Act enacted by Proposition 71, and those actions were consolidated. The Superior Court, Alameda County, Nos. HG05 206766, HG05 235177,Bonnie Lewman Sabraw, J., ruled that the Act was constitutional. Advocacy groups appealed.

Holdings: The Court of Appeal, Pollak, J., held that:

(1) the Act did not violate the single-subject rule;

(2) the legislative analysis in ballot materials submitted to voters was not so false or misleading as to violate due process;

(3) the Act did not violate the constitutional prohibition against public funding of entities outside of the state's exclusive management and control;

(4) conflict of interest rules built into the Act were consistent with state law and public policy, and thus did not render the Act invalid; and

(5) any error in exclusion of evidence of correspondence among university employees represented in independent citizen's oversight committee (ICOC) authorized by Act was not prejudicial.

Affirmed.

West Headnotes

[1] Evidence 157 ⚿43(4)

157 Evidence
157I Judicial Notice
157k43 Judicial Proceedings and Records
157k43(4) k. Proceedings in Other Courts. Most Cited Cases

On appeal from trial court's rejection of advocacy groups' challenge to constitutionality of California Stem Cell Research and Cures Act enacted by Proposition 71, Court of Appeal would grant appellants' request that it take judicial notice of documents filed in mandamus action that appellants had previously filed in state Supreme Court.

[2] Appeal and Error 30 ⚿893(1)

30 Appeal and Error
30XVI Review
30XVI(F) Trial De Novo
30k892 Trial De Novo
30k893 Cases Triable in Appellate Court
30k893(1) k. In General. Most Cited Cases

Constitutional issues are questions of law reviewed de novo.

[3] Constitutional Law 92 ⚿47

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k47 k. Scope of Inquiry in General. Most Cited Cases

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Constitutional Law 92 ⚷70.1(2)

92 Constitutional Law
92III Distribution of Governmental Powers and Functions
92III(B) Judicial Powers and Functions
92k70 Encroachment on Legislature
92k70.1 In General
92k70.1(2) k. Making, Interpretation, and Application of Laws. Most Cited Cases

Constitutional Law 92 ⚷70.3(4)

92 Constitutional Law
92III Distribution of Governmental Powers and Functions
92III(B) Judicial Powers and Functions
92k70 Encroachment on Legislature
92k70.3 Inquiry Into Motive, Policy, Wisdom, or Justice of Legislation
92k70.3(4) k. Wisdom. Most Cited Cases
When evaluating the constitutionality of initiative measures, the Court of Appeal does not consider or weigh the economic or social wisdom or general propriety of the initiative, but evaluates constitutionality in the context of established constitutional standards.

[4] Statutes 361 ⚷301

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases
The initiative power must be liberally construed to promote the democratic process.

[5] Statutes 361 ⚷301

361 Statutes
361IX Initiative
361k301 k. Initiative in General. Most Cited Cases
Courts must jealously guard the precious initiative power and resolve any reasonable doubts in favor of its exercise.

[6] Constitutional Law 92 ⚷48(1)

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k48 Presumptions and Construction in Favor of Constitutionality
92k48(1) k. In General. Most Cited Cases
All presumptions favor the validity of initiative measures; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.

[7] Constitutional Law 92 ⚷47

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k44 Determination of Constitutional Questions
92k47 k. Scope of Inquiry in General. Most Cited Cases

Municipal Corporations 268 ⚷121

268 Municipal Corporations
268IV Proceedings of Council or Other Governing Body
268IV(B) Ordinances and By-Laws in General
268k121 k. Proceedings to Determine Validity of Ordinances. Most Cited Cases
Facial challenge to constitutional validity of statute or ordinance considers only text of measure itself, not its application to particular circumstances of individual.

[8] Constitutional Law 92 ⚷38

92 Constitutional Law
92II Construction, Operation, and Enforcement of Constitutional Provisions
92k37 Validity of Statutory Provisions
92k38 k. In General. Most Cited Cases
"As applied" challenge to constitutionality of statute seeks relief from specific application of facially valid statute to individual or class of individuals, or seeks to enjoin future application of statute in allegedly impermissible manner in which is it shown to have been

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applied in past.

[9] Statutes 361 ⚿105(1)

361 Statutes
361III Subjects and Titles of Acts
361k105 Constitutional Requirements and Restrictions
361k105(1) k. In General. Most Cited Cases
The single-subject rule is designed to avoid confusion of either voters or petition signers and to prevent subversion of the electorate's will. West's Ann.Cal. Const. Art. 2, § 8(d).

[10] Statutes 361 ⚿308

361 Statutes
361IX Initiative
361k308 k. Title and Text of Proposed Act and Other Information. Most Cited Cases
An initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, all of its parts are reasonably germane to each other, and to the general purpose or object of the initiative. West's Ann.Cal. Const. Art. 2, § 8(d).

[11] Health 198H ⚿105

198H Health
198HI Regulation in General
198HI(A) In General
198Hk102 Constitutional and Statutory Provisions
198Hk105 k. Validity. Most Cited Cases

Statutes 361 ⚿325

361 Statutes
361IX Initiative
361k325 k. Constructions, Operation and Effect of Initiated Acts. Most Cited Cases
California Stem Cell Research and Cures Act enacted by Proposition 71 did not violate the single-subject rule; provisions authorizing "other vital research," and specifying conflict of interest rules for members of independent citizen's oversight committee (ICOC), which was authorized by Act to govern institute established to effectuate Act, were functionally related and reasonably germane to overarching subject of stem cell research and funding. West's Ann.Cal. Const. Art. 2, § 8(d); Art. 35, § 2; West's Ann.Cal.Health & Safety Code §§ 125290.10 et seq., 125291.10 et seq.
See 7 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 133.

[12] Constitutional Law 92 ⚿274.2(1)

92 Constitutional Law
92XII Due Process of Law
92k274.2 Political Rights and Deprivation Thereof
92k274.2(1) k. In General. Most Cited Cases

Statutes 361 ⚿320

361 Statutes
361IX Initiative
361k320 k. Ballot Title, Description of Proposed Act, Arguments Pro and Con. Most Cited Cases
Legislative analysis provided for voters in ballot materials for initiative establishing California Stem Cell Research and Cures Act was not so false and misleading as to violate due process; there were no misleading financial projections, as any representations of benefits to state budget were couched in conditional terms, and analysis adequately explained widely publicized scientific terms relevant to stem cell research and Act's conflict of interest provisions for members of the independent citizen's oversight committee (ICOC), which was authorized by the Act to govern the institute established by a new state constitutional provision. U.S.C.A. Const.Amend. 14; West's Ann.Cal. Const. Art. 35, § 2; West's Ann.Cal.Health & Safety Code §§ 125290.10 et seq., 125291.10 et seq.

[13] States 360 ⚿119

360 States
360IV Fiscal Management, Public Debt, and Securities
360k119 k. Limitation of Use of Funds or Credit. Most Cited Cases
California Stem Cell Research and Cures Act enacted by Proposition 71 did not violate constitutional prohibition against public funding of entities outside of

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the state's exclusive management and control; elected officials of both legislative and executive branches of government appointed or nominated majority of members of independent citizen's oversight committee (ICOC), which was authorized by Act to govern institute established by new constitutional provision, institute was subject to significant public and financial accountability standards, and there were strict limits on funding built into Act. West's Ann.Cal. Const. Art. 16, § 3; Art. 35, § 2; West's Ann.Cal.Gov.Code § 12410; West's Ann.Cal.Health & Safety Code §§ 125290.10 et seq., 125291.10 et seq.
See Cal. Jur. 3d, State of California, § 89.

[14] Health 198H 105

198H Health
198HI Regulation in General
198HI(A) In General
198Hk102 Constitutional and Statutory Provisions
198Hk105 k. Validity. Most Cited Cases

Conflict of interest rules built into California Stem Cell Research and Cures Act enacted by Proposition 71, which rules applied to members of independent citizen's oversight committee (ICOC) that was authorized by Act to govern institute established by new state constitutional provision, were consistent with state law and public policy, and thus did not render the Act invalid; Act expressly prohibited members of ICOC from participating in decisions involving grant applications submitted by institutions with which they were affiliated, and Act incorporated not only its own specific conflict of interest restrictions, but also those imposed by Political Reform Act. West's Ann.Cal. Const. Art. 35, § 2; West's Ann.Cal.Gov.Code § 81000 et seq.; West's Ann.Cal.Health & Safety Code §§ 125290.10 et seq., 125290.30(g), 125291.10 et seq.

[15] Appeal and Error 30 1056.1(3)

30 Appeal and Error
30XVI Review
30XVI(J) Harmless Error
30XVI(J)11 Exclusion of Evidence
30k1056 Prejudicial Effect
30k1056.1 In General
30k1056.1(3) k. Particular Evidence. Most Cited Cases

Any error in exclusion of evidence of correspondence among university employees represented in independent citizen's oversight committee (ICOC) created by California Stem Cell Research and Cures Act enacted by Proposition 71, in action by advocacy groups challenging constitutionality of Act, was not prejudicial; even if considered, evidence established that faculty and administration at universities were working together cooperatively at times to further interests of both institute established by Act and universities, while remaining mindful of potential for actual and perceived conflicts of interest, and thus admission of evidence would not have affected trial court's rejection of groups' constitutional challenges to Act. West's Ann.Cal. Const. Art. 35, § 2; West's Ann.Cal.Health & Safety Code §§ 125290.10 et seq., 125291.10 et seq.

Llewellyn † Spann, David L. Llewellyn, Jr., Citrus Heights, for plaintiff and appellant California Family Bioethics Council.
Life Legal Defense Foundation, Dana Cody, Catherine W. Short, Robert M. Taylor, San Clemente, Terry L. Thompson, for plaintiffs and appellants People's Advocate, National Tax Limitation Foundation.
Bill Lockyer, Attorney General, Robert Anderson, Chief Deputy Attorney General, Tom Greene, James M. Humes, Chief Assistant Attorneys General, Leslie Lopez, Tamar Pachter, Deputy Attorneys General, for defendants and respondents.
Munger, Tolles & Olson LLP, O'Malley M. Miller, Michael R. Doyen, Mark H. Epstein, Paul J. Watford, Los Angeles, for amicus curiae for California Institute of Technology, Keck Graduate Institute, The Board of Trustees of the Leland Stanford Junior University, University of Southern California, Burnham Institute for Medical Research, Children's Hospital Los Angeles, Oakland, Cedars-Sinai Medical Center, City of Hope, Salk Institute for Biological Studies, Alliance for Aging Research, Alliance for Stem Cell Research, ALS Association, Alzheimer's Association California Council, Cancer Research & Prevention Foundation, Christopher Reeve Foundation, Cystic Fibrosis Research, Inc., Elizabeth Glaser Pediatric AIDS Foundation, Juvenile Diabetes Research Foundation,

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The Leukemia & Lymphoma Society, Michael J. Fox Foundation for Parkinson's Research, National Brain Tumor Foundation, National Multiple Sclerosis Society, Parkinson's Action Network, San Francisco AIDS Foundation, Southern California Biomedical Council, Dr. Paul Berg, Nobel Laureate on behalf of defendant and respondent.

POLLAK, J.

1330** Before us is an appeal from two consolidated actions challenging the validity of Proposition 71, the stem cell research initiative approved by a substantial majority of the voters at the General Election on November 2, 2004. Relying in significant part on the reasoning of *California Assn. of Retail Tobacconists v. State of California* (2003) 109 Cal.App.4th 792, 135 Cal.Rptr.2d 224 (*CART*),[FN1] the trial court rejected*276** the diverse challenges that appellants have directed to Proposition 71 and to the method of its enactment. We agree with the conclusions reached in the comprehensive opinion of the trial court [FN2] AND SHALL AFFIRM ITS judgment.

FN1. *CART* upheld against similar challenges the validity of an initiative enacting the California Children and Families Act of 1998 (Health & Saf.Code, § 130100 et seq.; Rev. & Tax.Code, § 30131 et seq.), increasing the tobacco excise tax, creating the California Children and Families Commission, and funding early childhood development and antismoking programs. (*CART, supra*, 109 Cal.App.4th 792, 135 Cal.Rptr.2d 224.)

FN2. Appellants have not renewed all of their arguments that were rejected by the trial court. We of course consider only those that are raised on appeal.

Factual and Procedural History

A. Summary of Proposition 71

Although section 1 of the proposition states that the entire measure shall be known as the California Stem Cell Research and Cures Act,[FN3] Proposition 71 in fact adds an amendment to the California Constitution, two separate acts to the Health and Safety Code, and expands the Government Code definition of "state service."

FN3. The same title is used in the measure in two ways. Section 1 of the proposition states, "This measure shall be known as the 'California Stem Cell Research and Cures Act.' " Section 5 of the proposition adds to part 5 of division 106 of the Health and Safety Code a new chapter, chapter 3, which is entitled "California Stem Cell Research and Cures Bond Act." Article 1 of the new chapter (Health & Saf.Code, § 125290.10 et seq.), like the proposition itself, is entitled "California Stem Cell Research and Cures Act." Article 2 (Health & Saf.Code, § 125291.10 et seq.) is entitled "California Stem Cell Research and Cures Bond Act of 2004."

Section 4 of the proposition adds to the Constitution article XXXV, establishing the California Institute for Regenerative Medicine (CIRM or the institute). The purpose of the institute, according to the constitutional amendment, is "(a) To make grants and loans for stem cell research, for research facilities, and for other vital research opportunities to realize therapies, protocols, and/or medical procedures that will result in, as speedily as ***1331** possible, the cure for, and/or substantial mitigation of, major diseases, injuries, and orphan diseases. [¶] (b) To support all stages of the process of developing cures, from laboratory research through successful clinical trials. [And][¶] (c) To establish the appropriate regulatory standards and oversight bodies for research and facilities development." (Cal. Const., art. XXXV, § 2.) [FN4]

FN4. Section 3 of Proposition 71, which describes the purpose and intent of the proposition, provides, "It is the intent of the people of California in enacting this measure to: [¶] Authorize an average of $295 million per year in bonds over a 10-year period to fund stem cell research and dedicated facilities

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for scientists at California's universities and other advanced medical research facilities throughout the state. [¶] Maximize the use of research funds by giving priority to stem cell research that has the greatest potential for therapies and cures, specifically focused on pluripotent stem cell and progenitor cell research among other vital research opportunities that cannot, or are unlikely to, receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. Research shall be subject to accepted patient disclosure and patient consent standards. [¶] Assure that the research is conducted safely and ethically by including provisions to require compliance with standards based on national models that protect patient safety, patient rights, and patient privacy. [¶] Prohibit the use of bond proceeds of this initiative for funding for human reproductive cloning. [¶] Improve the California health care system and reduce the long-term health care cost burden on California through the development of therapies that treat diseases and injuries with the ultimate goal to cure them. [¶] Require strict fiscal and public accountability through mandatory independent audits, open meetings, public hearings, and annual reports to the public. Create an Independent Citizen's Oversight Committee composed of representatives of the University of California campuses with medical schools; other California universities and California medical research institutions; California disease advocacy groups; and California experts in the development of medical therapies. [¶] Protect and benefit the California budget: by postponing general fund payments on the bonds for the first five years; by funding scientific and medical research that will significantly reduce state health care costs in the future; and by providing an opportunity for the state to benefit from royalties, patents, and licensing fees that result from there search. [¶] Benefit the California economy by creating projects, jobs, and therapies that will generate millions of dollars in new tax revenues in our state. [¶] Advance the biotech industry in California to world leadership, as an economic engine for California's future."

**277 Article XXXV further establishes "a right to conduct stem cell research which includes research involving adult stem cells, cord blood stem cells, pluripotent stem cells, and/or progenitor cells." (*Id.*, § 5.) [FN5] No funds of the institute, however, may be used for "research involving *1332 human reproductive cloning." (*Id.*, § 3.) [FN6] The constitutional provision provides further, "Notwithstanding any other provision of this Constitution or any law, the institute, which is established in state government, may utilize state issued tax-exempt and taxable bonds to fund its operations, medical and scientific research, including therapy development through clinical trials, and facilities." (*Id.*, § 6.) [FN7] The final section of the constitutional provision provides that the institute and its employees are exempt from civil service. (*Id.*, § 7.)

FN5. This provision goes on to provide the following definitions: "Pluripotent stem cells are cells that are capable of self-renewal, and have broad potential to differentiate into multiple adult cell types. Pluripotent stem cells may be derived from somatic cell nuclear transfer or from surplus products of in vitro fertilization treatments when such products are donated under appropriate informed consent procedures. Progenitor cells are multipotent or precursor cells that are partially differentiated, but retain the ability to divide and give rise to differentiated cells." (Cal. Const., art. XXXV, § 5.) Health and Safety Code section 1644.9 provides, "For purposes of this section, the phrase 'somatic cell nuclear transfer' means the process in which the nucleus of a somatic cell of an organism is transferred into an enucleated oocyte."

FN6. "Human reproductive cloning" is defined as "the practice of creating or attempting to create a human being by transferring the nucleus from a human cell

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into an egg cell from which the nucleus has been removed for the purpose of implanting the resulting product in a uterus to initiate a pregnancy." (Health & Saf.Code, § 125292.10, subd. (k).)

FN7. A separate section of the constitutional amendment provides, "Funds authorized for, or made available to, the institute shall be continuously appropriated without regard to fiscal year, be available and used only for the purposes provided in this article, and shall not be subject to appropriation or transfer by the Legislature or the Governor for any other purpose." (Cal. Const., art. XXXV, § 4.)

To implement the goals of the constitutional provision, Proposition 71 adds to the Health and Safety Code [FN8] the California Stem Cell Research and Cures Act (§ 125290.10 et seq., hereafter the Cures Act or the Act) and the California Stem Cell Research and Cures Bond Act of 2004 (§ 125291.10 et seq., hereafter the Bond Act).[FN9]

FN8. All further statutory references are to the Health and Safety Code unless otherwise indicated.

FN9. The proposition also expands the definition of "state service" in Government Code section 20069 to include service for "the California Institute for Regenerative Medicine and the officers and employees of its governing body." (Prop.71, § 6.) Section 7 of the proposition contains a severability provision. Section 8 provides that as of November 2007, the Legislature may amend all but the bond provisions of the initiative "to enhance the ability of the institute to further the purposes of the grant and loan programs created by the measure," by a bill approved by 70 percent of the membership of both houses and signed by the Governor, provided that copies of the bill in final form are made publicly available at least 14 days prior to passage in each house.

To govern the institute, the Cures Act creates an Independent Citizen's Oversight ****278** Committee (ICOC), which is "vested with full power, authority, and jurisdiction over the institute." (§ 125290.15.) The ICOC consists of 29 members, 20 of whom are appointed by the Governor, the Lieutenant Governor, the Treasurer, or the Controller. Five are appointed by the chancellors of the five University of California campuses with medical schools. The Speaker of the Assembly and the President Pro Tempore of the Senate each appoints one member and the final two, a chairperson and vice-chairperson, are elected by the other ICOC members from persons nominated by the four constitutional officers. (§ 125290.20, subd. (a).) There are stringent qualifications for appointment designed to ensure that all members possess appropriate experience and expertise and that persons knowledgeable in the various ***1333** disease groups that may benefit from the research are represented. In general, the members must be executive officers of California academic or research institutions with an established ability to conduct stem cell research, executive officers of a qualified life science commercial entity, or representatives of disease advocacy groups.[FN10] Members are appointed for terms of either six or eight years, and may serve no more than two terms. (*Id.*, subd. (c)(1).)

FN10. Five of the 29 members of the ICOC must be executive officers of specified University of California campuses, each of which has a medical school. (§ 12590.20, subd. (a)(1).) Four others must be executive officers from other California universities that have "demonstrated success and leadership in stem cell research" and have a nationally ranked research hospital and medical school, a recent proven history of administering sizable scientific and/or medical research grants and contracts, or a recent ranking among the top 10 United States universities with the highest number of life science patents or who have research or clinical faculty who are members of the National Academy of Sciences. (*Id.*, subd. (a)(2)(A).) Four others

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> must be executive officers from a California nonprofit academic and research institution not part of the University of California that has demonstrated success and leadership in stem cell research, that has a nationally ranked research hospital or research or clinical faculty who are members of the National Academy of Sciences and a proven history in the preceding five years of managing a research budget in the life sciences exceeding $20,000,000. (*Id.*, subd. (a)(2)(B).) Four others must be executive officers or board member from a California life science commercial entity with a background in implementing successful experimental medical therapies, not engaged in researching therapies with pluripotent or progenitor stem cells, and not having been awarded or applied for funding from the institute. (*Id.*, subd. (a)(2)(C).) All of these executive officers are authorized to delegate their duties to another executive officer of the entity with which they are affiliated or, if applicable, to the dean of the medical school. Only one member may be appointed from a single university, institution or entity. (*Id.*, subd. (a)(2)(D).) The remaining members must be representatives from a disease advocacy group concerned with specified diseases. (*Id.*, subd. (a)(2)(B), (a)(5).) Still more stringent qualifications and additional criteria for consideration are specified for the chairperson and vice chairperson. (*Id.*, subd. (a)(6).)

The ICOC is responsible for "oversee[ing] the operations of the institute." (§ 125290.40, subd. (a).) The statute provides a long list of the ICOC's functions, which include developing annual and long-term strategic research and financial plans for the institute, making final decisions on research standards and grant awards in California, ensuring the completion of an annual financial audit of the institute's operations, issuing public reports on the activities of the institute, establishing policies regarding intellectual property rights arising from research funded by the institute, establishing rules and guidelines for the operation of the ICOC and its working groups, selecting members of the working groups, adopting, amending, and rescinding rules and regulations to carry out the purposes and provisions of the Cures Act ****279** and the Bond Act and to govern the procedures of the ICOC, requesting the issuance of bonds from the California Stem Cell Research and Cures Finance Committee and loans from the Pooled Money Investment ***1334** Board (*id.*, subds. (b)-(g), (i)-(n)), and "perform[ing] all other acts necessary or appropriate in the exercise of its power, authority, and jurisdiction over the institute" (*id.*, subd. (h)).

The Cures Act also provides for the creation of three scientific and medical working groups to advise the ICOC regarding research funding, accountability standards and facilities. Members of the working groups are appointed by a majority vote of a quorum of the ICOC. (§ 125290.50, subds.(a), (b).) Different qualifications are specified for membership in each of the working groups to ensure the appropriate expertise in each group. (§§ 125290.55, 125290.60, 125290.65.) [FN11] The Cures Act also creates a "Citizen's Financial Accountability Oversight Committee" to review the annual financial audit, the State Controller's report and the financial practices of the institute. This committee is chaired by the State Controller and includes public members who "shall have medical backgrounds and knowledge of relevant financial matters" and who are appointed by the State Controller, State Treasurer, President Pro Tempore of the Senate, Speaker of the Assembly and chairperson of the ICOC. (§ 125290.30, subd. (c).)

> FN11. Members of the 19-member Scientific and Medical Accountability Standards Working Group must include five ICOC members from groups focusing on specified disease-specific areas, nine "scientists and clinicians nationally recognized in the field of pluripotent and progenitor cell research," and four "medical ethicists." (§ 125290.55, subd. (a).) Members of the 23-member Scientific and Medical Research Funding Working Group must include seven ICOC members from groups focusing on specified disease-specific areas and 15 "scientists

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> nationally recognized in the field of stem cell research." (§ 125290.60, subd. (a).) Members of the 11-member Scientific and Medical Facilities Working Group must include six members of the Scientific and Medical Research Funding Working Group and four "real estate specialists." (§ 125290.65, subd. (a).) The chairperson of the ICOC is a member of each of the working groups.

Members of the ICOC and of the working groups are subject to conflict-of-interest rules, but the generally applicable Government Code provisions are qualified by standards set out in the Cures Act or authorized to be adopted by the ICOC for non-ICOC working group members. (§§ 125290.30, subd. (g), 125290.50, subd. (e); see also pp. 306-07, *post.*) Meetings of the ICOC must be held in compliance with the Bagley-Keene Open Meeting Act (Gov.Code, § 11120 et seq.) and the award of all grants, loans and contracts, and the adoption of all standards must occur in public meetings. (§ 125290.30, subd. (d).) The California Public Records Act (Gov.Code, § 6250 et seq.) is, with certain exceptions, applicable to all records of the institute (§ 125290.30, subd. (e)). Except for grants and loans approved by the ICOC, all institute contracts must be entered in accordance with the competitive bidding requirements applicable to the University of California. (Pub. Contract Code, § 10500 et seq.) The rules and regulations that the ICOC adopts (other than interim regulations that were authorized for no more than 270 days) must be adopted ***1335** in accordance with the Administrative Procedure Act (Gov.Code, § 11371 et seq.). (§ 125290.40, subd. (j).)

The Cures Act requires the ICOC to adopt standards applicable to all phases of its work, including "scientific and medical standards to carry out the specific controls and intent of the act" that shall govern the ****280** ICOC, its working committees and its grantees (§ 125290.35, subd. (a)), standards for obtaining the informed consent of research donors, patients or participants (*id.*, subd. (b)(1)), standards for the review of research involving human subjects (*id.*, subd. (b)(2)), standards prohibiting compensation to research donors or participants (*id.*, subd. (b)(3)), standards to assure compliance with state and federal patient privacy laws (*id.*, subd. (b)(4)), standards limiting payments for the purchase of stem cells or stem cell lines (*id.*, subd. (b)(5)), and standards setting a limit on the time during which cells may be extracted from blastocysts (*id.*, subd. (b)(6)). While the ICOC has been granted broad discretion in these areas, the Cures Act places numerous limitations on the exercise of that discretion. The medical and scientific standards, for example, must comply with Government Code section 125315, concerning the information and options that must be provided to fertility treatment patients (§ 125290.35, subd. (a)) and the standards concerning privacy must comply with state and federal privacy laws (*id.*, subd. (b)(4)). Some of the standards must initially be generally based on standards of the National Institutes of Health, "with modifications to adapt to the mission and objectives of the institute." (*Id.*, subd. (b)(1), (2).) Other standards must comply with more specific criteria set out in the statute. (*Id.*, subd. (b)(3), (5), (6).) As discussed more fully below (see pp. 303-04 & fn. 28, *post.*), the criteria that the Scientific and Medical Research Funding Working Group must use in evaluating grant and loan applications are specified in the statute (§ 125290.60, subd. (c)). The Act also provides guidelines and priorities for the appropriation and allocation of institute funding (§ 125290.70; see pp. 298-99, *post*). In addition, the institute is subject to financial and public accountability provisions, including the requirements that the institute issue an annual public report of its activities that must contain specified information, and commission an annual independent financial audit that must be reviewed by the State Controller and by the Citizen's Financial Accountability Oversight Committee. (§ 125290.30.)

The Bond Act contains the statutory authorization and framework for issuing bonds, obtaining interim financing, and managing funds for the operation of the institute.[FN12] Under section 125291.30, "[b]onds in the total ***1336** amount of three billion dollars ($3,000,000,000) ... or as much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this article...." The total amount of bonds that may be issued in a calendar year may not exceed $350,000,000, plus remaining permitted amounts from prior years. (§

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125291.45, subd. (b).) The California Stem Cell Research and Cures Finance Committee (Finance Committee), which is chaired by the State Treasurer and also includes the State Controller, Director of Finance, the CIRM chairperson and two additional ICOC members, is created "[s]olely for the purpose of authorizing the **281 issuance and sale, pursuant to the State General Obligation Bond Law, of the bonds and interim debt authorized by this article...." (§ 125291.40.)

FN12. Section 125290.40, subdivision (n) of the Cures Act also authorizes the ICOC to accept additional revenue and property, including gifts, royalties, interest and appropriations, that may be used to supplement annual research grant funding and the operations of the institute. Section 125290.70 appropriates from the State General Fund $3 million "as a temporary start-up loan" for "internal administrative and implementation costs." During the pendency of this litigation, which has precluded the issuance of the bonds authorized by the Bond Act, CIRM has received interim financing in the form of a loan from the General Fund and the sale of bond anticipation notes to private individuals and philanthropic foundations.

B. The Litigation

[1] On April 6, 2005, plaintiffs People's Advocate and National Tax Limitation Foundation (collectively, People's Advocate) filed an action in the Alameda County Superior Court against the ICOC and individual defendants Robert Klein, as chairperson and interim president of the ICOC, Arnold Schwarzenegger, as Governor of the State of California, Cruz Bustamante, as Lieutenant Governor, Phil Angelides, as Treasurer, and Steve Westley as Controller. FN13 The action seeks a declaratory judgment that the statutory components of Proposition 71 violate article XVI, section 3 of the California Constitution, which prohibits the state from disbursing state funds to entities not under the exclusive management and control of the state. People's Advocate asserts that the ICOC, which is empowered to disburse state funds through research grants and loans, is a private entity not under the exclusive management and control of the state. The statute, the complaint alleges, "delegates the disbursal of huge sums of public money to the unfettered discretion of an institution whose governing board and working groups are unaccountable to the public."

FN13. The filing of the complaint followed the denial without prejudice of a petition for a writ of mandate that People's Advocate originally filed in the California Supreme Court. Defendants' request for judicial notice of the writ documents is granted. People's Advocate later filed an amended complaint adding defendant Zach Hall, as interim president of the ICOC, and dismissing Governor Schwarzenegger and Lieutenant Governor Bustamante.

On July 8, 2005, after the Finance Committee had authorized $3 billion in general obligation bonds, plaintiff California Family Bioethics Council, LLC (the Council) filed a complaint in the Sacramento County Superior Court against the institute, the Finance Committee and "all persons interested in the matter of the legality of Proposition 71 and validity of actions, bonds and financing of CIRM." This reverse validation action under *1337Code of Civil Procedure section 863 challenges the constitutionality of Proposition 71 and the validity of the proposed state general obligation bonds. The Council contends that Proposition 71 violates the single-subject rule; that " Proposition 71 violated electoral due process by concealing from the voters the true scope and meaning of the initiative and its true costs"; and that conflicts of interest inherent in the Cures Act "violate fundamental principles of representative government, public policy and constitutional due process of law, represent an unconstitutional award of privileges and immunities to the ICOC members and their institutions, and violate existing conflicts of interest statutes and the common law." The Council also made the contention advanced by People's Advocate that the statutory provisions violate article XVI, section 3 of the California Constitution.

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On August 4, 2005, the Alameda County Superior Court transferred the Council's action to Alameda County and consolidated it with the action filed by People's Advocate. The consolidated cases were tried before the court in February and March of 2006. The court received extensive documentary evidence, pre- and posttrial briefs from all parties, and the testimony of four witnesses. On May 12, the court issued a thorough statement of decision and entered judgment in favor of the defendants, finding that "plaintiffs failed to show that Proposition 71, the California Stem Cell ****282** Research and Cures Initiative, is clearly, positively and unmistakably unconstitutional; that Proposition 71 and the bonds issued thereunder are valid; and that plaintiffs did not meet their burden to obtain any of the declaratory and injunctive relief sought in their complaints." People's Advocate and the Council filed timely notices of appeal.

Discussion

Between the two appeals, appellants challenge both the validity of the initiative process by which Proposition 71 was adopted, and the substantive validity of the provisions that were thereby enacted. Appellants disclaim any intention to question "the merits or faults of stem cell research" and we too shall avoid such considerations. (See *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 219, 149 Cal.Rptr. 239, 583 P.2d 1281 (*Amador*) ["We do not consider or weigh the economic or social wisdom or general propriety of the initiative. Rather, our sole function is to evaluate [it] legally in light of established constitutional standards."].) After briefly reviewing the applicable standard of review, we shall consider first whether Proposition 71 violated the so-called single-subject rule and whether the ballot materials that accompanied the proposition ***1338** were misleading and invalidated the results of the election. We shall then turn to the several reasons for which appellants contend that the statutory components of the measure violate either the California Constitution or other provisions of law. Finally, we shall consider appellants' objections to the exclusion of certain evidence at trial.

A. Standard of Review

People's Advocate seeks a declaration that the Cures Act is unconstitutional and an order enjoining "efforts to organize or operate the ICOC" and prohibiting the named defendants "from spending or releasing any public funds for any purpose connected with or relating to, the ICOC." It also seeks to enjoin these defendants "from issuing, or causing to be issued, any bonds" under the Bond Act. The Council similarly seeks a declaration that Proposition 71 is unlawful and an order enjoining its enforcement.[FN14]

> FN14. The Council requests an order declaring that CIRM, the ICOC, and Proposition 71 "on its face and as applied, violate California Constitutional, statutory and common law; that the unlawful and unconstitutional provisions of Proposition 71 are not severable from the initiative as a whole"; that the "existence and operation of the CIRM and the ICOC are unlawful and unconstitutional; ... that the members of the ICOC are disqualified from holding public office on the ICOC board and that the chairperson and vice-chairperson are disqualified to be employees of the CIRM" and that "actions of the defendants to implement Proposition 71 and to fund and operate the [CIRM and ICOC] ... are without lawful authority and invalid." The Council also seeks an order enjoining the defendants from "implementing Proposition 71," enjoining "the CIRM, the ICOC and its officers and members from all operations, actions and exercise of legal authority under Proposition 71," and enjoining defendants from raising or using any funds "for the benefit of or to finance the activities of the CIRM or ICOC."

[2][3][4][5][6] Appellants' challenges to the validity of the proposition and to the statutes enacted by the proposition present questions of law that are reviewed de novo. (*CART, supra*, 109 Cal.App.4th at p. 807, 135 Cal.Rptr.2d 224.) "This reviewing court therefore

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exercises its independent judgment, without deference to the trial court's ruling. [Citation.] [¶] We are guided by established principles for evaluating the constitutionality of initiative measures. We do not consider or weigh the economic or social wisdom or general ****283** propriety of the initiative, but rather evaluate its constitutionality in the context of established constitutional standards. [Citation.] [¶] 'Although the legislative power under our state Constitution is vested in the Legislature, "the people reserve to themselves the powers of initiative and referendum." [Citation.] Accordingly, the initiative power must be liberally construed to promote the democratic process. [Citation.] Indeed, it is our solemn duty to jealously guard the precious initiative power, and to resolve any reasonable doubts in favor of its exercise. [Citation.] As with statutes adopted by the Legislature, all presumptions favor the validity of initiative measures and mere doubts as to validity ***1339** are insufficient; such measures must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.' " (*Id.* at pp. 807-808, 135 Cal.Rptr.2d 224.)

[7] The Council asserts that it is challenging Proposition 71 both facially and "as applied." "A facial challenge to the constitutional validity of a statute or ordinance considers only the text of the measure itself, not its application to the particular circumstances of an individual. [Citation] ' "To support a determination of facial unconstitutionality, voiding the statute as a whole, petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute.... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." ' " (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084, 40 Cal.Rptr.2d 402, 892 P.2d 1145, italics omitted.)

[8] An "as applied" challenge seeks "relief from a specific application of a facially valid statute ... to an individual or class of individuals" or seeks to enjoin the "future application of the statute ... in the allegedly impermissible manner it is shown to have been applied in the past." (*Tobe v. City of Santa Ana, supra*, 9 Cal.4th at p. 1084, 40 Cal.Rptr.2d 402, 892 P.2d 1145.) The result of a successful as-applied challenge to a particular statute is not the invalidation of the statute as a whole, but rather an order enjoining specific unlawful application of the statute. (*Id.* at pp. 1084-1086, 40 Cal.Rptr.2d 402, 892 P.2d 1145.) In general, a complaint that seeks to "enjoin *any* application of the ordinance to *any* person in *any* circumstance" constitutes a facial attack on the statute. (*Id.* at p. 1087, 40 Cal.Rptr.2d 402, 892 P.2d 1145.) Here, the Council challenges the validity of the entire proposition and People's Advocate challenges the validity of the Cures Act. Neither complaint identifies a specific application of any provision that it seeks to enjoin. Accordingly, as the trial court concluded, both complaints should be considered as presenting facial challenges, either to the proposition or to the included Act.

Insofar as the trial court considered evidence with regard to the implementation of Proposition 71, including evidence of appointees' qualifications and the process by which training grants were awarded, that evidence will be considered as providing context for the analysis of the challenged statutory provisions. To the extent that the trial court made findings that the Cures Act has thus far been implemented in conformity with the statute, those findings are subject to substantial evidence review. (See *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1127-1129, 61 Cal.Rptr.2d 207; *City and County of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1313, 92 Cal.Rptr.2d 418.) However, appellants do not challenge the sufficiency of the evidence to support the findings and have not requested any form ****284** of relief ***1340** short of invalidating either the entire proposition or the Cures Act. Therefore, the primary focus of this court's review remains the facial validity of these measures.

B. The Adoption of Proposition 71

1. *The Single-subject Rule*

[9][10] The Council first argues that the proposition is invalid because it was enacted by a ballot measure that

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did not comply with the provision of the California Constitution limiting initiatives to a single subject matter. "An initiative measure embracing more than one subject may not be submitted to the electors or have any effect." (Cal. Const., art. II, § 8, subd. (d).) This single-subject rule is designed "to avoid confusion of either voters or petition signers and to prevent subversion of the electorate's will." (*Senate of the State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1156, 90 Cal.Rptr.2d 810, 988 P.2d 1089 (*Jones*); *CART, supra,* 109 Cal.App.4th at p. 809, 135 Cal.Rptr.2d 224.) " ' " 'An initiative measure does not violate the single-subject requirement if, despite its varied collateral effects, all of its parts are "reasonably germane" to each other,' and to the general purpose or object of the initiative." ' [Citation.] As we recently have explained, 'the single-subject provision does not require that each of the provisions of a measure effectively interlock in a functional relationship. [Citation.] It is enough that the various provisions are reasonably related to a common theme or purpose.' [Citation.] Accordingly, we have upheld initiative measures ' "which fairly disclose a reasonable and common sense relationship among their various components in furtherance of a common purpose." ' " (*Jones, supra,* 21 Cal.4th at p. 1157, 90 Cal.Rptr.2d 810, 988 P.2d 1089, italics omitted.)

"[T]he initiative process occupies an important and favored status in the California constitutional scheme and the single-subject requirement should not be interpreted in an unduly narrow or restrictive fashion that would preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern." (*Jones, supra,* 21 Cal.4th at p. 1157, 90 Cal.Rptr.2d 810, 988 P.2d 1089.) In evaluating a single-subject challenge to a measure the court should not attempt "to predict whether each section actually will further the initiative's purpose. Instead, we inquire only whether the provisions are 'reasonably germane' to the general purpose or objective of the initiative." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 841-842, 258 Cal.Rptr. 161, 771 P.2d 1247.)

1341** The Council relies heavily on two Court of Appeal decisions that held initiative measures violated the single-subject rule: *California Trial Lawyers Assn. v. Eu* (1988) 200 Cal.App.3d 351, 245 Cal.Rptr. 916 (*CTLA*) and *Chemical Specialties Manufacturers Assn., Inc. v. Deukmejian* (1991) 227 Cal.App.3d 663, 278 Cal.Rptr. 128 (*Chemical*). In *CTLA* the court addressed a ballot measure that was predominately aimed at controlling the cost of insurance. One provision of the measure, however, would have protected insurance companies from laws regulating campaign contributions. The Court of Appeal held that the inclusion of this provision ran afoul of the single-subject rule. "First, the express purpose of the initiative is to control the cost of insurance, not generally to regulate the practices of the insurance industry. Second, we cannot accept the implied premise of [the insurers'] analysis, i.e., that any two provisions, no matter how functionally unrelated, nevertheless comply with the constitution's single-subject requirement so long as they have in common an effect on any aspect of the business*285** of insurance. Contemporary society is structured in such a way that the need for and provision of insurance against hazards and losses pervades virtually every aspect of life. [The insurers'] approach would permit the joining of enactments so disparate as to render the constitutional single-subject limitation nugatory." (*CTLA, supra,* at p. 360, 245 Cal.Rptr. 916.) The court also took issue with the fact that the provision regarding campaign contributions was "located ... near the middle of a 120-page document, and consists of two brief paragraphs which bear no connection to what precedes or follows," calling it "a paradigm of the potentially deceptive combination of unrelated provisions at which the constitutional limitation on the scope of initiatives is aimed." (*Ibid.*)

In *Chemical,* the ballot measure was directed at public disclosure of information concerning household toxic products, seniors' health insurance, nursing homes, statewide initiative or referendum campaigns, and sales of stock or securities for corporations doing business with South Africa. The Court of Appeal rejected the contention that the measure was aimed at "providing the public with accurate information in advertising," finding this articulation of the subject matter to be "so broad that a virtually unlimited array of provisions could be considered germane thereto and joined in this

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proposition, essentially obliterating the constitutional requirement. [¶] In actuality, the measure seeks to reduce toxic pollution, protect seniors from fraud and deceit in the issuance of insurance policies, raise the health and safety standards in nursing homes, preserve the integrity of the election process, and fight apartheid; well-intentioned objectives but not reasonably related to one another for purposes of the single-subject rule." (*Chemical, supra,* 227 Cal.App.3d at p. 671, 278 Cal.Rptr. 128.)

[11] The Council argues that "Proposition 71 violates the single-subject rule by authorizing not only stem cell research but also (a) authorizing research and ***1342** regulation concerning unspecified 'other vital research opportunities,' (b) revising conflicts of interest laws and legislating conflicts of interest exemptions, and (c) granting exclusive, executive, financial and regulatory powers beyond the scope of stem cell research." In rejecting this contention, the trial court correctly observed, "The over-arching subject of Proposition 71 is stem cell research and funding. The initiative's purpose and intent includes funding stem cell research; setting standards for such research; and reducing the long-term health care cost in California through the development of therapies that treat diseases with the ultimate goal to cure them. In addition, the initiative's intent is to benefit the California economy by creating jobs and advancing the biotech industry through such research. The ICOC oversees the research, with representatives of [the University of California (U.C.)] and other California universities with medical research institutions, disease advocacy groups, and experts in the development of medical therapies." The trial court concluded that "the subjects [the Council] argues violate the single subject rule are reasonably interrelated and do not violate the rule," aptly citing *Amador, supra,* 22 Cal.3d at page 231, 149 Cal.Rptr. 239, 583 P.2d 1281.[FN15]

FN15. In that case, our Supreme Court upheld the validity of Proposition 13 on the June 1978 ballot, also known as the "Jarvis-Gann Property Tax initiative," which added article XIII A to the California Constitution. The court rejected the contention that the four major elements of the provision (a real property tax rate limitation, a real property assessment limitation, a restriction on state taxes, and a restriction on local taxes) constitute separate subjects, reasoning that "each of them is reasonably interrelated and interdependent, forming an interlocking 'package' deemed necessary by the initiative's framers to assure effective real property tax relief." (*Amador, supra,* 22 Cal.3d at p. 231, 149 Cal.Rptr. 239, 583 P.2d 1281.)

****286** Turning to the specific reasons for which the Council asserts that Proposition 71 covers more than one subject matter, the Council first points to the provision authorizing the institute to "make grants and loans for stem cell research, for research facilities, *and for other vital research opportunities* to realize therapies, protocols, and/or medical procedures that will result in, as speedily as possible, the cure for, and/or substantial mitigation of, major diseases, injuries, and orphan diseases."[FN16] (Cal. Const., art. XXXV, § 2, italics added.) The Council argues that by allowing for broadly defined "other vital research," the Cures Act covers not only stem cell research but other research that is not aimed at regenerative technologies.

FN16. Article XXXV, section 2 of the California Constitution is quoted in full on page 276, *ante.* Section 125292.10, subdivision (y) of the Cures Act defines a "vital research opportunity" as "scientific and medical research and technologies and/or any stem cell research not actually funded by the institute under subparagraph (C) of paragraph (1) of subdivision (c) of Section 125290.60 which provides a substantially superior research opportunity vital to advance medical science as determined by at least a two-thirds vote of a quorum of the members of the Scientific and Medical Research Funding Working Group and recommended as such by that working group to the ICOC. Human reproductive cloning shall not be a vital research opportunity."

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***1343** The trial court concluded that funding "other vital research opportunities" is "germane and related to the other provisions of the [Cures] Act in that it is limited to funding only those opportunities 'that will result in' the types of cures sought by the Act." (Quoting Cal. Const., art. XXXV, § 2, subd. (a).) The Council argues that this analysis impermissibly redefines the subject of Proposition 71 in general terms of scientific or medical research, rather than its professed subject of stem cell research. However, we agree with the Attorney General that the terminology in the measure to which the Council refers does not permit research "over anything and everything that the ICOC decides may 'advance medical science.' " The measure is plainly directed to research for which "the federal government is not providing adequate funding necessary for the urgent research and facilities needed to develop stem cell therapies to treat and cure diseases and serious injuries." (Prop.71, § 2.) In order to ensure that institute funding does not duplicate or supplant existing funding, "a high priority shall be placed on funding pluripotent stem cell and progenitor cell research that cannot, or is unlikely to, receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. In this regard, other research categories funded by the National Institutes of Health shall not be funded by the institute." (§ 125290.60, subd. (c)(1)(C).) Other "vital research opportunities" are sanctioned, as the definition of that phrase clarifies (see fn. 16, *ante*), to permit the ICOC nonetheless to authorize, upon approval of a supermajority of the Scientific and Medical Research Funding Working Group, research that may also be federally funded if within the stated purposes of the initiative.[FN17]

> FN17. Section 125290.60, subdivision (c)(1)(D) identically provides that notwithstanding subdivision (c)(1)(C), "other scientific and medical research and technologies and/or any stem cell research proposal not actually funded by the institute under subparagraph (C) may be funded by the institute if at least two-thirds of a quorum of the members of the Scientific and Medical Research Funding Working Group recommend to the ICOC that such a research proposal is a vital research opportunity."

****287** Research into stem cell therapy is in its infancy. As the understanding of the biology and biochemistry of stem cells expands it is to be expected that research will draw upon and overlap with studies in related fields of medicine, science, and technology. The authors of Proposition 71 understandably did not wish to create artificial barriers and limitations to the research that can be pursued in developing treatments and cures arising from the stem cell research. Research into related fields of medicine, science, and technology that will increase the understanding and facilitate the use of stem cell therapies quite clearly is both functionally related and reasonably germane to the stem cell research itself, whether or not additional federal funding becomes available. Far from creating a scattered and varied agenda united only by a vague and broad generalization, as was the measure in ***1344***Chemical, supra,* 227 Cal.App.3d 663, 278 Cal.Rptr. 128, Proposition 71 authorizes research that is as specific as the circumstances permit and is reasonably limited to a single subject.

Moreover, the findings and declarations that appear in the opening provisions of Proposition 71 state that the Cures Act "will close [the federal] funding gap by establishing an institute which will issue bonds to support stem cell research, emphasizing pluripotent stem cell and progenitor cell research *and other vital medical technologies,* for the development of life-saving regenerative medical treatments and cures." (Prop. 71, § 2, italics added.) The analysis by the Legislative Analyst included in the November 2, 2004 Voter Information Guide explained, under the heading "How Funding Would Be Spent," that "[p]riority for research grant funding would be given to stem cell research that met the institute's criteria and was unlikely to receive federal funding. *In some cases funding could also be provided for other types of research that were determined to cure or provide new types of treatment of diseases and injuries.*" (Italics added.) Rather than being hidden from the eye of the average voter, as was the objectionable provision in *CTLA, supra,* 200 Cal.App.3d 351, 245 Cal.Rptr. 916, the inclusion of research into related medical technologies was

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explicitly addressed in the summary presented to the voters. This disclosure "dilute[s] the risk of voter confusion or deception," one fundamental purpose of the single subject rule, and further militates in support of the validity of the measure. (*Amador, supra,* 22 Cal.3d at p. 231, 149 Cal.Rptr. 239, 583 P.2d 1281; *Shea Homes Limited Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246, 1257, 2 Cal.Rptr.3d 739.)

The Council next argues that the provisions added to the Health and Safety Code by Proposition 71 run afoul of the single-subject rule because the Cures Act "revises the application of conflicts of interest laws and specifically seeks to exempt the members of the ICOC from their conflicts of interest." The manner in which the Act qualifies and clarifies conflict of interest restrictions for members of the ICOC is described at pages 306-07, *post.* As indicated above, the Act also imposes rigorous qualifications for those who may serve on the ICOC and its working groups. The obvious intent is to require that those responsible for participating in the decisionmaking process and allocating research funds be knowledgeable in the applicable fields of science and medicine. Given the objective of delegating to persons knowledgeable in the relevant fields the advisory and decisionmaking responsibilities for the highly technical work of the institute, and ****288** the demanding qualifications for membership in the various arms of the institute, it is readily apparent why the conflict of interest provisions are both functionally related and reasonably germane to the single subject of the research authorized to be funded by Proposition 71. Persons qualified to serve in the various positions created by the measure are likely affiliated in some manner with institutions that directly or indirectly will participate in or be affected by research ***1345** underwritten by the institute. The need to adapt, or at least to clarify, conflict of interest rules that otherwise might disqualify or be perceived to disqualify many of the people on whose expertise the functioning of the institute will depend provides ample justification directly related to the objectives of the institute for the conflict provisions. Broadening the pool of qualified candidates from which the ICOC may draw unquestionably is functionally related to the single purpose of the stem cell research and cures initiative.

Again relying on *CTLA, supra,* 200 Cal.App.3d 351, 245 Cal.Rptr. 916, the Council argues, "An insurance initiative that contained a single-sentence statutory exemption from only one conflicts of interest law violated the single-subject rule and was held unconstitutional...." The court's objection to the insurance measure in *CTLA*, however, was not the fact that the initiative contained a conflict waiver. The court objected to the fact that the conflict of interest provision was hidden in the middle of a lengthy initiative and dealt not with the regulation of insurance rates as the rest of the measure did, but with exempting insurers and others from laws regulating campaign contributions, a subject unrelated but for the fact that both pertained to insurance carriers. *CTLA* did not disturb the basic proposition that a measure does not violate the single-subject rule if its provisions are "either functionally related to one another or ... reasonably germane to one another or the objects of the enactments" (*Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1100, 240 Cal.Rptr. 569, 742 P.2d 1290), as the conflict provisions in this measure plainly are.[FN18]

> FN18. The Council also argues, without citation to authority, that "Waiver of conflicts of interest can only be argued to be germane to Proposition 71 if supported by evidence that without waiving conflicts of interest it would not be reasonably possible to appoint qualified board members of the ICOC." However, there is no need for such evidence to establish a logical nexus between the conflict of interest provisions and the purpose of the Act. Moreover, the very next argument in the Council's brief-that ICOC members are subject to conflicts of interest under other provisions of California law-confirms the functional importance of the provisions in the Act qualifying those other provisions.

Finally, the Council argues that the proposition "violates the single-subject rule by the extensive range of subjects over which the ICOC is granted exclusive state authority." The Council points to the fact that provisions of the measure relate to the regulation of medical research, technical and funding standards,

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conflicts of interest, privacy rights of women and other related ethical questions, bond financing, and licensing of intellectual property rights. In particular, the Council quotes section 125290.35, subdivision (a), which provides, "In order to avoid duplication or conflicts in technical standards for scientific and medical research, with alternative state programs, *the institute will develop its own scientific and medical standards* to carry out the specific controls and intent of the act, *notwithstanding* subdivision (b) of section 125300, sections 125320, 125118, 125118.5, ***1346** 125119, 125119.3 and 125119.5, or *any other current or future state laws or regulations* dealing with the study and research of pluripotent stem ****289** cells and/or progenitor cells, *or other vital research opportunities,* except Section 125315. *The ICOC, its working committees, and its grantees shall be governed solely by the provisions of this act* in the establishment of standards, the award of grants, and the conduct of grants awarded pursuant to this act." (Italics added by the Council's brief.)

As in the trial court, the Council fails to explain how or why these provisions violate the single-subject rule. On their face, all appear directly germane to the single research mission of the institute created by the proposition. Medical and ethical standards clearly are appropriate, if not indispensable, for this new and sensitive area of research, which has given rise to intense moral concerns among a portion of the public and has led to the federal restrictions that this measure seeks to overcome. Protecting the privacy rights of stem cell donors unquestionably is within the same purview. As just noted, particularized conflict of interest standards for those members of the medical and scientific community who will authorize and oversee the research projects are designed to advance the research mission of the institute. Bond financing is the means provided by the measure to raise the funds necessary to implement the institute's mission. And appropriate licensing and regulation of the intellectual property that is anticipated from the work of the institute is similarly germane and functionally related to the conduct of the research. There is undoubtedly " ' "a reasonable and common sense relationship among [the] various components in furtherance of a common purpose" ' " of all of the provisions that make up Proposition 71. (*Jones, supra,* 21 Cal.4th at p. 1157, 90 Cal.Rptr.2d 810, 988 P.2d 1089, italics omitted; see also *Manduley v. Superior Court* (2002) 27 Cal.4th 537, 576-579, 117 Cal.Rptr.2d 168, 41 P.3d 3 [initiative amending statutes regarding gang-related crime, sentencing of repeat offenders, and juvenile justice system did not violate single-subject requirement. Challenged provisions regarding repeat offenders bore "both a topical and a functional relationship to provisions regarding juvenile crime"].)

In short, as the trial court concluded, the Council "has not demonstrated that Proposition 71 violates the constitutional provision that an initiative must be limited to a single subject."

2. *The Proposition 71 Ballot Materials Were Not Misleading*

[12] The Council argues that "Proposition 71 contains material omissions and misrepresentations that caused its adoption in the November 2004 election to violate due process of law." The Council contends that the analysis provided in the ballot materials by the Legislative Analyst was misleading because it misstated the interest costs on the bonds that were authorized, falsely ***1347** promised new revenues from medical therapies to be developed, and failed to define the terms "somatic cell nuclear transfer," "products of in vitro fertilization treatments," and "cloning." The Council also argues that the analysis "fails to explain that the initiative is establishing a state public agency whose members are being exempted from conflicts of interest laws."

At the outset, the Council's challenge must be distinguished from a pre-election challenge based on violation of election laws. Except for challenges alleging misconduct rising to the level of a constitutional violation, "the court's authority to invalidate an election is limited to the bases for contest specified in Elections Code section 16100 and that section is exclusive." ****290**(*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 192, 105 Cal.Rptr.2d 214, 19 P.3d 567 (*Friends of Sierra Madre*).) Quoting *Horwath v. City of East Palo Alto*

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(1989) 212 Cal.App.3d 766, 777, 261 Cal.Rptr. 108 (*Horwath*), the Council argues that the alleged flaws it identifies in the ballot materials rendered "the information provided to the voters ... 'inaccurate or misleading as to prevent the voters from making informed choices.' " The misleading information, the Council reasons, amounts to a denial of due process.

Horwath held that "Determination of how much process is due in a local, direct decisionmaking context-where the complained-of irregularities consist of omissions, inaccuracies or misleading statements in the ballot materials-will depend on whether the materials, in light of other circumstances of the election, were so inaccurate or misleading as to prevent the voters from making informed choices. In conducting this inquiry courts should examine the extent of preelection publicity, canvassing and other informational activities, as well as the substance or content of such efforts. The ready availability of the text of the ordinance, or the official dissemination and content of other related materials, such as arguments for or against the measure, will also bear on whether the statutory noncompliance rendered the election unfair. Finally, courts should take into account the materiality of the ommission [*sic*] or other informational deficiency. Flaws striking at the very nature and purpose of the legislation are more serious than other, more ancillary matters." (*Horwath, supra,* 212 Cal.App.3d at pp. 777-778, 261 Cal.Rptr. 108.)

In *People ex rel. Kerr v. County of Orange* (2003) 106 Cal.App.4th 914, 131 Cal.Rptr.2d 274 (*Kerr*) the court addressed a challenge to an election adopting a county charter, which was similar to the challenge made here. The plaintiffs argued that "the alleged deficiencies in the impartial analysis here are a violation of constitutional guarantees of due process. As they put it in their brief, the right to vote is 'fundamental in a democratic society' and the impartial analysis, 'by conveying false and misleading information' abridged that right by preventing 'voters from making an ***1348** informed decision....' " (*Id.* at p. 933, 131 Cal.Rptr.2d 274.) The court responded that "plaintiffs' logic sweeps too broadly. Election losers frequently claim that their message 'didn't get out' or that they were the victims of 'false and misleading information.' Simply as a matter of general principle, the idea that by 'constitutionalizing' deficiencies in voter summaries you can undo an election is really quite antithetical to the democratic process." (*Ibid.*) The court concluded that the plaintiffs were attempting to circumvent the statutory requirement that challenges to an impartial analysis be brought before the election is held. "[T]he need to mount any challenges to an impartial analysis before an election takes place and not after it cannot be so easily sidestepped as plaintiffs here would have us imagine. A litigant cannot simply intone the words 'due process' and make the problem go away. Here, substantively, plaintiffs have really mounted only an election challenge, not a constitutional challenge (at least insofar as they attack the impartial analysis). [¶] We need only add that in light of the fact that the Legislature has determined in the Election Code that an election cannot be undone on the basis of alleged deficiencies in an impartial analysis, trying to achieve the same result under the rubric of constitutional due process, as was unsuccessfully attempted in *Horwath*, requires a showing that the impartial analysis profoundly misled the electorate, not just that it didn't educate the electorate as to all the legal nuances of ****291** the measure. We perceive in *Friends of Sierra Madre* and *Horwath*, when read together, that the bar is very high indeed for a litigant to successfully mount a post-election challenge to a ballot measure using a due process rationale based on defects in a county counsel's impartial analysis." (*Id.* at pp. 933-934, 131 Cal.Rptr.2d 274.)

Like the plaintiffs in *Kerr*, the Council not only does not clear this bar, it "barely even get[s] off the ground." (*Kerr, supra,* 106 Cal.App.4th at p. 934, 131 Cal.Rptr.2d 274.) The Council first argues that the ballot materials represented that the interest costs for repayment of the bonds would be $3 billion, while "[i]n fact the State Treasurer estimates that the true cost of the interest on the Proposition 71 bonds will be an additional $423 million." The Legislative Analyst's summary predicted a "[s]tate cost of about $6 billion over 30 years to pay off both the principal ($3 billion) and interest ($3 billion) on the bonds." The October 26, 2005 letter from the State Treasurer to the president of the CIRM, on which the Council relies, points out that the measure authorizes both taxable and

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tax-exempt bonds, which "gives the Institute the flexibility to design a research strategy to meet its objectives at the lowest cost to the taxpayers and in ways that comply with any federal restrictions on the use of tax-exempt bonds." The letter explains that, although the state may not be able use tax-exempt bonds to finance research projects in which the state would benefit by receiving royalties from the fruits of the research, the matter is far from settled law and that the financing options should be further explored. The Treasurer further stated that in some circumstances it might be ***1349** more beneficial to the state to use taxable bonds since the royalties could exceed the additional costs of these bonds. "My staff estimates that the interest rate difference between issuing taxable and tax-exempt 30-year general obligation bonds is currently about 0.75 percentage points. Even in the worst-case scenario-where, to obtain royalties, the State must sell only taxable bonds to fund the Institute's entire research grant program-my staff estimates that the added interest cost to the State over the 30-year term of the bonds would be $423 million. By contrast, the economic study released by the Proposition 71 campaign last year estimated that the Institute could reasonably expect to receive as much as $1.1 billion in licensing fees and royalties over the next three decades. If that is the case, even the maximum use of taxable bonds would result in $677 million more in net revenues to the State and its taxpayers than if the Institute uses only tax-exempt financing and forgoes any royalties."

The trial court concluded that there was "no evidence of misleading financial projections." The trial court is correct. There is nothing in the Treasurer's letter that contradicts the Legislative Analyst's estimate. First, the Treasurer's figure is based on the assumption that the state will sell only taxable bonds. The state may sell tax-free bonds, taxable bonds, or a combination of both. The Treasurer's letter adeptly outlines the considerations for each option but does not establish that the state will pay more than was estimated in the ballot materials for the bonds. Moreover, the $3 billion figure provided in the ballot materials is explicitly an estimate, not a firm figure. The analysis states, "*If* the $3 billion in bonds authorized by this measure were repaid over a 30-year period at an average interest rate of 5.25 percent, the cost to the General Fund would be approximately $6 billion to pay off both the principal ($3 billion) and interest ($3 billion)." (Italics added.) This statement cannot reasonably be read to mean that this would be the exact cost of ****292** repayment, since interest rates fluctuate and the state might choose to sell bonds with a different term for repayment. The Council does not suggest that the state cannot exercise its right under the Cures Act to sell both tax-free and taxable bonds, which of course would change the cost of the bonds. The trial court was correct that the Treasurer's "letter indicates that over the life of the bonds at issue the interest cost of taxable bonds would be $423 million more than the cost of tax-free bonds, but says nothing whatsoever about the Legislative Analyst's projection of $3 billion in interest costs."

The Council next argues that Proposition 71 falsely "represented to the voters that the initiative would 'Protect and benefit the California budget ... by funding scientific and medical research that *will significantly reduce state health care costs in the future.*' " (Italics in the Council's brief.) The Council argues that this is misleading because "[t]here is no way to know whether or not any Proposition 71 funded research will ever result in any revenues or any health care cost savings to the State." The Council also complains that ***1350** any royalty payments to the state from technology developed under the auspices of the institute are speculative. The trial court concluded that the statement to which the Council objects was not a promise but "is an aspiration on the part of the people of the state to '[p]rotect and benefit the state budget.' "

As the Attorney General observes, the ballot materials repeatedly stressed the speculative nature of any savings from research or earnings to the state from licensing royalties under the Cures Act. The summary of the Legislative Analyst's estimate of fiscal impact, which appeared in the voter information guide before the full analysis, referred to "Unknown potential state and local revenue gains and cost savings to the extent that the research projects funded by this measure result in additional economic activity and reduced public health care costs." In the fuller discussion of fiscal effects, under the heading "Other Potential Fiscal Effects," the analysis stated: "If the measure were to

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result in economic or other benefits that would not otherwise have occurred, it could produce unknown indirect state and local revenue gains and cost savings. Such effects could result, for example, if the added research activity and associated investments due to the measure generate net gains in jobs and taxable income, or if funded projects reduce the costs of health care to government employees and recipients of state services. *The likelihood and magnitude of these and other potential indirect fiscal effects are unknown.*" (Italics added.) Such speculation, phrased in conditional language as this was, is not misleading, let alone misleading to the degree that would "prevent the voters from making informed choices." (*Horwath, supra,* 212 Cal.App.3d at p. 777, 261 Cal.Rptr. 108.) [FN19]

> FN19. The Council also argues that the ballot measure violated state law governing the offering of securities, citing Corporations Code section 25401, because it "would work 'a fraud upon the electors through securing their votes for the approval of these bond issues upon terms and conditions which will not be kept.' " As indicated above, nothing in the analysis constituted a promise, let alone a term or condition for return on sale of the bonds.

The Council also argues that the analysis failed "to explain the meanings of critical scientific terms used but *not defined* in Proposition 71, 'somatic cell nuclear transfer,' 'products of in vitro fertilization treatments' and 'cloning' that is authorized under Proposition 71, as contrasted to 'human reproductive cloning,' which is ****293** banned...." (Original italics.) In considering whether these omissions materially misled voters, the court considers not only the text of the measure and the analysis but also "the extent of preelection publicity, canvassing and other informational activities, as well as the substance or content of such efforts." (*Horwath, supra,* 212 Cal.App.3d at p. 777, 261 Cal.Rptr. 108.)

***1351** The court in *Amador, supra,* 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281 considered a similar challenge to a ballot summary by the Attorney General.[FN20] The court noted "that the title and summary need not contain a complete catalogue or index of all of the measure's provisions ..." and that "[a]s a general rule, the title and summary prepared by the Attorney General are presumed accurate, and substantial compliance with the 'chief purpose and points' provision is sufficient." (*Id.* at p. 243, 149 Cal.Rptr. 239, 583 P.2d 1281.) In that case the plaintiffs complained that the title and summary omitted the fact that a two-thirds majority vote was required for local entities to impose the "special taxes" authorized by the measure. The court held that "[t]he summary's omission of any reference to the two-thirds vote requirement was not critical for, as we noted above, the initiative measure was extensively publicized and debated, in all of its several aspects, and a corrected summary was contained in the voters pamphlet which was mailed to all voters. We repeat our observation of some time ago that we ordinarily should assume that the voters who approved a constitutional amendment '... have voted intelligently upon an amendment to their organic law, the whole text of which was supplied each of them prior to the election and which they must be assumed to have duly considered.' " (*Id.* at pp. 243-244, 149 Cal.Rptr. 239, 583 P.2d 1281.)

> FN20. Although *Amador* dealt with the Attorney General's title and summary, the same principles are applied in reviewing the Legislative Analyst's analysis. (See *Horneff v. City & County of San Francisco* (2003) 110 Cal.App.4th 814, 820, 2 Cal.Rptr.3d 79, fn. 4 (*Horneff*).)

To say that the issues surrounding Proposition 71 and the issues surrounding stem cell research generally were well-aired prior to the election undoubtedly would be an understatement.[FN21] Though many voters probably do not understand the science underlying somatic cell nuclear transfer, therapeutic cloning, and in vitro fertilization, they are not required to grasp the intricacies of this research frontier to intelligently decide whether to support a measure providing funding for such research. The ballot materials included a box entitled "Stem Cells and Stem Cell Research" that provided objective nontechnical answers to three questions: "What Are Stem Cells?," "What are

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Embryonic and Adult Stem Cells?," and "Why do Researchers Want to Study Stem Cells?" No more was required to permit voters to vote intelligently. (See **294*Kerr, supra*, 106 Cal.App.4th at p. 934, 131 Cal.Rptr.2d 274 [unnecessary "to educate the *1352 electorate as to all the legal nuances of the measure"]; Elec.Code, § 9087 [analysis by Legislative Analyst "shall avoid the use of technical terms wherever possible"].)

> FN21. (See, e.g., Silfen, *How Will California's Funding of Stem Cell Research Impact Innovation?* (2005) 18 Harv. J. of Law & Technology 459, 468-469 ["Stem cell research has generated enormous controversy over the past decade. Some believe stem cells hold promise for developing therapies and cures for spinal cord injuries and conditions such as Alzheimer's disease, Parkinson's disease, and diabetes. For others, however, the idea of generating embryonic clones only to harvest them is troubling, evoking hot-button issues like reproductive cloning and abortion. Political pressures have prevented stem cell research from receiving federal funding for any work in which a human embryo is destroyed. The issue has featured prominently in the past two presidential elections, with candidates and activists causing political uproar by applying pro-life rhetoric to the stem cell debate"], fn. omitted.)

Finally, the Council again broaches the subject of conflict of interest, arguing that voters were materially misled because the analysis "fails to explain that the initiative is establishing a state public agency whose members are being exempted from conflicts of interest laws." However, without explicitly discussing the subject of conflicts of interest, the analysis of the Legislative Analyst in the ballot pamphlet pointed out that the ICOC would be "comprised of representatives of specified UC campuses, another public or private California university, nonprofit academic and medical research institutions, companies with expertise in developing medical therapies, and disease research advocacy groups." Elections Code section 9087 provides that "The Legislative Analyst shall prepare an impartial analysis of the measure describing the measure and including a fiscal analysis of the measure showing the amount of any increase or decrease in revenue or cost to state or local government," that the analysis "be written in clear and concise terms, so as to be easily understood by the average voter ..." and that it "generally set forth in an impartial manner the information the average voter needs to adequately understand the measure." "The test is not whether the digest is complete, but rather whether it contains 'a statement of the major objectives or "chief purposes and points" of the measure.' [Citation.] It need not refer to ' "auxiliary or subsidiary" ' matters, nor need it ' "contain a summary or index of all of the measure's provisions.... Moreover, ' "substantial compliance" is sufficient, and if reasonable minds may differ as to the sufficiency of the summary, it should be held sufficient.' " (*Horneff, supra*, 110 Cal.App.4th at p. 820, 2 Cal.Rptr.3d 79.) As in *Kerr* and *Horneff*, the impartial statement here set forth the major features of the proposition and substantially complied with the statutory requirements. For those voters seeking to ascertain all of the details of the measure, the voter information guide contains the complete text of the proposition. Requiring the Legislative Analyst to include every facet of a complex measure such as Proposition 71 would have the paradoxical effect of rendering the analysis nearly as impenetrable to the average voter as the text of the proposition itself.

In short, the Council attacks the analysis on grounds all of which were available prior to the election. Here, as in *Kerr* and the cases upon which it relies, the Council has "really mounted only an election challenge, not a constitutional challenge (at least insofar as they attack the impartial analysis)." (*Kerr, supra*, 106 Cal.App.4th at p. 934, 131 Cal.Rptr.2d 274.) The ballot materials neither misled nor denied anyone due process nor do they provide any basis for invalidating Proposition 71.

*1353 C. The Content of Proposition 71

1. *The Cures Act Does Not Violate the Constitutional Prohibition of Public Funding of Entities Outside of the State's Exclusive Management and Control.*

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[13] Article XVI, section 3 of the California Constitution provides: "No money shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution...." This constitutional prohibition was designed "to prevent the appropriation of the moneys of the state for any purpose other ****295** than that which pertains to the state." (*County of Sacramento v. Chambers* (1917) 33 Cal.App. 142, 146, 164 P. 613.) However, it was "not intended to unduly restrict the state in the expenditure of public funds for legitimate state purposes." (*People v. Honig* (1996) 48 Cal.App.4th 289, 352, 55 Cal.Rptr.2d 555.) "[A]rticle XVI, section 3 has been interpreted not to prohibit legislative authorization for some degree of autonomy in a government agency or innovation in the manner in which a government agency operates, but rather to prevent the appropriation of funds from the state fisc for a purpose foreign to the interests of the state and outside of its control." (*CART, supra*, 109 Cal.App.4th at p. 816, 135 Cal.Rptr.2d 224.)

As indicated above, CIRM is an entity created by the Constitution itself. In this respect it differs from the statutorily created entities that were the subject of scrutiny in *CART*, in *Howard Jarvis Taxpayers' Assn. v. Fresno Metropolitan Projects Authority* (1995) 40 Cal.App.4th 1359, 48 Cal.Rptr.2d 269 (*Jarvis*), and in all of the cases that have considered the meaning of article XVI, section 3. People's Advocate recognizes that CIRM is "a creature of the Constitution and established in state government." It states unequivocally, "People's Advocate makes no challenge to the constitutional legitimacy of the CIRM, nor its power to use bonds to fund its operations." It contends, however, that "CIRM's role is basically ministerial," that the significant decisions to make grants and loans are made by the ICOC, and that the authority conferred by the Cures Act on the ICOC contravenes article XVI, section 3 because the ICOC is empowered to disburse state funds without being under the exclusive management and control of the state. But, as the trial court correctly observed, the ICOC "is not a discrete entity, separate and apart from CIRM, but rather its governing body." [FN22] The actions approved by the ICOC are the actions of CIRM. Thus, ***1354** People's Advocate is plainly wrong in arguing that "[t]o the extent that there is any state management and control over CIRM, it has no significance to the constitutional question raised here."

> FN22. This type of organizational structure is not unique. (See Health & Saf.Code, § 51614, subd. (a) [Cal. Housing Finance Agency "vested with full power, authority, and jurisdiction" over Cal. Housing Loan Insurance Fund]; Ins.Code, § 11781 ["The board of directors is hereby vested with full power, authority and jurisdiction over the State Compensation Insurance Fund"]; see also *People v. San Joaquin etc. Assoc.* (1907) 151 Cal. 797, 801, 91 P. 740 [legislation "declaring the state agricultural society to be a state institution, organizing the state board of agriculture and charging it with the exclusive management and control of the state agricultural society as a state institution" is constitutional].)

Whether viewed as management and control over CIRM or over the ICOC, and without considering whether as a constitutionally created organ of state government CIRM necessarily provides state management and control (cf. *Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1135, 89 Cal.Rptr.2d 745), the limits that the Cures Act places on the operations of the institute are consistent with the requirements of article XVI, section 3. "Whether an entity is under the exclusive management and control of the state is determined through a case-specific evaluation of the applicable executive and legislative controls. [Citations.] However, the required exclusive control permits the Legislature or the electorate to fund entities that are provided a degree of flexibility and operational independence that encourages the development of innovative practices through experimentation with the objective of satisfying the underlying ****296** state purpose. [Citation.] It appears that exclusive management and control by the state

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means the existence of sufficient controls over the commissions by the executive and legislative branches of the state government to assure that state funds are used to further state purposes without unduly inhibiting innovative programs that serve those purposes." (*CART, supra,* 109 Cal.App.4th at pp. 816-817, 135 Cal.Rptr.2d 224.)

The trial court correctly found that sufficient state controls exist within the statutory framework. First, elected officials of both the legislative and executive branches of government appoint or nominate 24 of the 29 members of the ICOC, and five are appointed by the chancellors of University of California campuses. This method of selection by public officials who are themselves accountable to the public is a significant assurance of state accountability. (*CART, supra,* 109 Cal.App.4th at pp. 817, 820-821, 135 Cal.Rptr.2d 224; *Board of Directors v. Nye* (1908) 8 Cal.App. 527, 532-533, 97 P. 208.) We do not read article XVI, section 3, or *CART*, or any other decision to require that *all* members of the governing board be appointed by an elected official in order to pass constitutional muster. And the fact that there is no power of removal by the appointing officials does not diminish the sufficiency of the state's control. In *CART*, the court rejected a claim that the requisite accountability was absent because, as here, the appointing officers have no power of removal and the appointees serve fixed terms and not at the pleasure of the appointing authority. The court pointed ***1355** out, " This feature is not unique. Commissioners of other state agencies do not serve at the pleasure of their appointing authority. (See, e.g., California Medical Assistance Commission [Welf. & Inst.Code, § 14165.2], State Commission on Teacher Credentialing [Ed.Code, § 44213], Student Aid Commission [Ed.Code, § 69511], and Fair Employment and Housing Commission [Gov.Code, § 12903].) Moreover, the Attorney General can initiate an action to remove a ... member for failing to discharge his or her duties, incapacity, or conviction of a felony. (Code Civ. Proc., § 803; Gov.Code §§ 1770, 3000.)" (*CART, supra,* 109 Cal.App.4th at p. 822, fn. 14, 135 Cal.Rptr.2d 224.) [FN23]

FN23. It may well be, as People's Advocate argues, that removal from office cannot be obtained under Code of Civil Procedure section 803 because a member votes for an expenditure that is not authorized by the statute. We believe the more important point, however, is that other forms of judicial relief are available to prevent CIRM from making unauthorized expenditures. (See pp. 300-01, *post.*)

The method of selecting members of the ICOC stands in stark contrast to the process in *Jarvis, supra,* 40 Cal.App.4th 1359, 48 Cal.Rptr.2d 269, on which People's Advocate places heavy reliance. In that case legislation delegating authority to levy a tax to a unique local entity was held to violate article XI, section 11, subdivision (a) of the California Constitution, which prohibits the Legislature from delegating the power to levy taxes to a private body. The *Jarvis* court explained, "Herein lies the fundamental distinction between the Authority and a public body. With the exception of 2 of the 13 directors, the remaining 11 are chosen by private entities who have no public accountability.[FN24] The ****297** electorate cannot remove those who are chosen as directors of the Authority and *the electorate cannot remove those who choose.* But the electorate must bear the consequences of the decisions of those who compose the Authority. And part of that consequence is public taxation and distribution of public taxes as determined by the Authority-unaccountable except to entities which have no public accountability." (*Id.* at p. 1388, 48 Cal.Rptr.2d 269, italics added.) As we have seen, no private person or entity is given the authority to appoint a member to the ICOC, and most of its members are appointed by publicly elected officials.

FN24. The 13 members of the board at issue in *Jarvis* were selected as follows: "(1) One representative of the Board of Supervisors of Fresno County. [¶] (2) One representative of the Fresno City Council. [¶] (3) One representative of the Eleventh District of the Parent Teachers' Association. [¶] (4) One representative of an ad hoc committee of retired judges from Fresno County's local and

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> state benches. [¶] (5) One representative of the Fresno City and County Chamber of Commerce. [¶] (6) One representative of the Older Americans Association of Fresno County. [¶] (7) One representative of an ad hoc committee of representatives of the Taxpayers Association of Fresno County and the San Joaquin Taxpayers Association. [¶] (8) One representative of the Citizens for Community Enrichment. [¶] (9) One representative of the Fresno County Farm Bureau. [¶] (10) One representative of the Fresno-Madera Central Labor Council. [¶] (11) One representative of the League of Mexican-American Women. [¶] (12) One representative of the West Fresno Ministerial Alliance. [¶] (13) One representative of the California Retired Teachers Association, Fresno County Division." (*Jarvis, supra*, 40 Cal.App.4th at p. 1384, 48 Cal.Rptr.2d 269.)

***1356** People's Advocate argues that even if the majority of the ICOC members are appointed by public officials, the ICOC remains a "private" entity because its members are "chosen as representatives of particular institutions and interests." As the trial court explained, however, "[t]he Act sets up the ICOC as a panel of experts, whose members are appointed on the basis of their qualifications as they relate to matters within the ICOC's responsibility." Except for the executive officers from the five University of California campuses with medical schools, the criteria for selection do not focus on the institutions with which appointees are affiliated, but upon factors indicating that the appointees possess sufficient experience and expertise to perform the responsibilities of the position. (See fn. 10, *ante*.) Ten appointees must be "California representatives of California regional, state, or national disease advocacy groups" (§ 125290.20, subd. (a) (3, 4, 5)), but they need not be selected from any particular organization.[FN25] PEOPLE'S ADVOCATE Makes mucH of the use of the word " representatives" in section 125290.20 but its emphasis is misplaced. Proposition 71 was intended to "[c]reate an Independent Citizen's Oversight Committee composed of representatives of the University of California campuses with medical schools; other California universities and California medical research institutions; California disease ****298** advocacy groups; and California experts in the development of medical therapies." (Prop.71, § 3.) In context, the word "representative" does not mean that each appointee represents the particular interests of the group from which he or she was selected, much less that he or she does so to the exclusion of the more general public interest. An ICOC member may be a representative of a particular institution or of a disease advocacy group and still make decisions that are in the best interests of the state. (Cf. *Consumers Union of U.S., Inc. v. California Milk Producers Advisory Bd.* (1978) 82 Cal.App.3d 433, 448, 147 Cal.Rptr. 265.) As one witness testified at trial, members "are drawn from those institutions based upon very specific criteria, documenting expertise and level of responsibility and knowledge of stem cell research. But they come and have an oath of ***1357** office, they represent the State of California on our board. They do not come to represent those institutions."

> FN25. Section 125290.20, subdivision (a), provides that "(3) The Governor, the Lieutenant Governor, the Treasurer, and the Controller shall appoint members from among California representatives of California regional, state, or national disease advocacy groups, as follows: [¶] (A) The Governor shall appoint two members, one from each of the following disease advocacy groups: spinal cord injury and Alzheimer's disease. [¶] (B) The Lieutenant Governor shall appoint two members, one from each of the following disease advocacy groups: type II diabetes and multiple sclerosis or amyotrophic lateral sclerosis. [¶] (C) The Treasurer shall appoint two members, one from each of the following disease groups: type I diabetes and heart disease. [¶] (D) The Controller shall appoint two members, one from each of the following disease groups: cancer and Parkinson's disease. [¶] (4) The Speaker of the Assembly shall appoint a member from among California representatives of a California regional, state, or national mental health

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> disease advocacy group. [¶] (5) The President pro Tempore of the Senate shall appoint a member from among California representatives of a California regional, state, or national HIV/AIDS disease advocacy group."

The second aspect of state management and control over the operations of CIRM and the ICOC is the fact that the Cures Act places strict requirements on how the ICOC is to allocate moneys in the California Stem Cell Research and Cures Fund. (§ 125290.70.) Implicit is the requirement that all funds be expended to accomplish the purposes specified in the purpose and intent section of the initiative (Prop. 71, § 3; see fn. 4, *ante*) and in the text of the constitutional amendment (Art. XXXV, § 2; see p. 276, *ante*). The Cures Act specifies criteria by which grant and loan applications are to be evaluated. (§ 125290.60, subd. (c); see p. 304, *post.*) No less than 97 percent of the bond proceeds, net of costs, must be used to fund grants and grant oversight and at least 90 percent of the amounts used for grants must be used for research grants on a specific annual schedule. (§ 125290.70, subd. (a).) "Not more than 3 percent of the proceeds of bonds ... may be used by the institute for research and research facilities implementation costs, including development, administration, and oversight of the grant making process and operations of the working groups." (*Id.*, subd. (a)(1)(C).) The Cures Act sets as a priority "immediately building facilities that ensure the independence of the scientific and medical research" and allocates up to 10 percent of the bond proceeds, net of costs, to building research facilities for nonprofit entities within the institute's first five years. (*Id.*, subd. (a)(4).) The ICOC "[m]ay annually modify its funding and finance programs to optimize the institute's ability to achieve the objective that its activities be revenue-positive for the State of California during its first five years of operation without jeopardizing the progress of its core medical and scientific research program." (§ 125290.40, subd. (m).) Beginning in November 2007, the Act is subject to amendment by a 70 percent vote of the Legislature and approval by the Governor. (Prop.71, § 8.)

Finally, there are significant public and financial accountability standards to which the institute is subject. (§ 125290.30.) The institute is required to publish an annual report "which sets forth its activities, grants awarded, grants in progress, research accomplishments, and future program directions." (*Id.*, subd. (a).) Annually it must obtain and disclose an independent financial audit conducted by a certified public accounting firm. (*Id.*, subd. (b).) The Cures Act requires the State Controller to review the financial audit and issue a public report of that review. (*Ibid.*) Still further, the Act creates a Citizen's Financial Accountability Oversight Committee chaired by the State Controller and made up of members primarily appointed by elected officials, which is charged with ****299** reviewing the independent audit, the Controllers' report and the financial practices of the institute. (*Id.*, subd. (c).) The oversight committee is required to "hold ... public meetings, with appropriate notice, and with a formal public comment ***1358** period." (*Ibid.*) The public accountability section of the Cures Act also requires that the members conduct business subject to the Bagley-Keene Open Meetings Act and comply with the Public Records Act. (*Id.*, subds. (d), (e).)

People's Advocate acknowledges that the Cures Act "provides for audits, open meetings, public records, annual reports and a Financial Accountability Committee," but argues that "none of these requirements in any way provides for legislative or executive management and control over the [ICOC], or its all-important award granting function." People's Advocate contends, "Whatever controls may exist on the tiny fraction of public money spent on the peripheral administrative functions performed by the CIRM by arms of the executive branch, they in no way affect, much less control, the disbursal of funds by the Independent Committee in grants and loans. The Act does not permit the State Auditor, or the State Controller, or the Treasurer, or the head of the Department of Finance, nor anyone else in state government to modify or rescind a grant awarded by the Independent Committee. If the Independent Committee awards a grant, the grantee gets the money."

This argument misapprehends the nature of the state management and control that is required by article XVI, section 3 of the California Constitution. The

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constitutional provision has been interpreted "to prevent the appropriation of funds from the state fisc for a purpose foreign to the interests of the state and outside of its control." (*CART, supra*, 109 Cal.App.4th at p. 816, 135 Cal.Rptr.2d 224.) Appellants do not question that the research funding authorized by the Cures Act serves legitimate public purposes of fighting disease and promoting the state economy. The state control that is mandated by article XVI, section 3 is the ability to define the public purposes for which public funds are expended and to ensure that the funds are used for their intended public purposes. "It appears that exclusive management and control by the state means the existence of sufficient controls over the commissions by the executive and legislative branches of the state government to assure that state funds are used to further state purposes without unduly inhibiting innovative programs that serve those purposes." (*CART, supra*, at p. 817, 135 Cal.Rptr.2d 224.) The constitutional provision does not mean that the executive or the legislative branches must have the right to second-guess the ICOC as to the wisdom of particular research or research grants. As in *Wilson v. State Bd. of Education, supra*, 75 Cal.App.4th at page 1146, 89 Cal.Rptr.2d 745, "appellants misunderstand the legislative function. 'Essentials of the legislative function include the determination and formulation of legislative policy. "Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others." ' " In approving Proposition 71 the voters determined that grants and loans should be awarded by the experts who comprise the ICOC, chosen in the manner specified in the Act. So long as there are mechanisms in place to ensure that the grants and loans are being ***1359** made for the specified public purposes and in accordance with all other legal requirements, article XVI, section 3 is satisfied.

In *CART*, the court held that county commissions are under the control and management of the state in part because the relevant statute establishes parameters****300** on how the tobacco tax revenue is to be spent. (*CART, supra*, 109 Cal.App.4th at pp. 823-824, 135 Cal.Rptr.2d 224.) The statute being scrutinized in that case identifies diverse programs on which the California Children and Families Commission (CCFC) is to use 20 percent of the tax revenue, such as mass media communications regarding early child development, prevention of tobacco use by pregnant women and detrimental effects of second hand smoke on early child development, parental education training, child care programs, and research and development of standards for early child development programs. The remaining 80 percent of the revenue is distributed to county commissions to be expended "only for the purposes authorized by the Act" and in accordance with strategic plans consistent with guidelines to be adopted by the CCFC. The guidelines must address a wide range of subjects specified in the statute, such as parental education and support services related to informed and healthy parenting and avoidance of tobacco, drugs and alcohol during pregnancy, the provision of high quality, accessible and affordable child care, and the provision of health care services emphasizing prevention and treatment not covered by other programs. (*Ibid.*) The court explained, "although county commissions are conferred significant independence and discretion in adopting their strategic plans and programs to promote local decisionmaking, the commissions cannot expend tobacco tax revenue on programs inconsistent with the [statutory] guidelines and the purposes of the Act. This limitation on spending provides the necessary specificity to implement the electorate's policy decision to delegate to the county commissions the responsibility of tailoring their programs to address the needs of their respective counties." (*CART, supra*, at p. 824, 135 Cal.Rptr.2d 224.) State management was not lacking because no higher authority was authorized to review the content of the educational programs or media distributions. (*Ibid.*; see also *Wilson v. State Bd. of Education, supra*, 75 Cal.App.4th at p. 1146, 89 Cal.Rptr.2d 745.)

Likewise, in the present case, the ICOC's discretion is limited by the purposes of the Cures Act and the statutory spending guidelines and priorities, but nonetheless permits the experts to use their independent judgment to determine which research grants and loans will best accomplish CIRM's constitutionally declared mission. Should the ICOC approve expenditures for purposes other than those specified in article XXXV, the State Controller has the authority to intervene.

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"Government Code section 12410 authorizes the State Controller to audit any disbursement of state funds for correctness, legality and the availability of funds to support the payment.... The Controller's duty to audit 'includes the duty to ensure that expenditures are authorized by law.' " ***1360**(*CART, supra,* 109 Cal.App.4th at p. 825, 135 Cal.Rptr.2d 224.) The trial testimony confirmed that prior to issuing a warrant to fund a CIRM grant, the Controller would "look to see whether those grants were authorized by Proposition 71." If the Controller is concerned about "the circumstances associated with a particular payment" he can request a field audit of the payment request. While People's Advocate is correct that the Controller's duty "does not include the power to review and approve or reject decisions of a department vested by the Legislature with authority over expenditures" (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335, 26 Cal.Rptr.2d 666), such authority is unnecessary to provide constitutionally sufficient management and control. It is not for the Controller any more than the Legislature to determine the wisdom of a particular ****301** grant or loan. It is sufficient that the Controller can refuse to issue a warrant that is not authorized by law. (*Id.* at p. 1328, 26 Cal.Rptr.2d 666.) [FN26] Finally, as a last resort, injunctive relief is available to prevent unauthorized expenditures. (See *Ahlgren v. Carr* (1962) 209 Cal.App.2d 248, 252, 25 Cal.Rptr. 887 [taxpayer may bring action to enjoin alleged illegal expenditure of public moneys by a state official].)

FN26. In *CART*, the court also recognized that the State Auditor, the Department of Finance and the State Treasurer also have significant authority to monitor the expenditure of bond revenue. "The Department of Finance is authorized by Government Code section 13070 to investigate all financial and business matters of the state and investigate state agencies that receive state funds. Under Government Code section 13030, it is a misdemeanor to fail or neglect to file with the Department of Finance any report required by the Government Code, to fail or neglect to follow its directions in keeping the accounts of an agency, or to refuse to permit or interfere with the examination of or access to an agency's records and books. Finally, under Government Code section 8545.2, subdivision (a), the State Auditor is authorized 'to examine and [reproduce] any and all books, accounts, reports ... and other records, bank accounts, and money or other property, of any agency of the state, whether created by the California Constitution or otherwise, and any public entity, including any city, county, and school or special district for any audit or investigative audit.' The State Auditor may also conduct financial and performance audits of any state agency, which includes every 'state office, officer, department, division, bureau, board, and commission' (Gov.Code, § 11000).... At the request of the Joint Legislative Audit Committee, the State Auditor shall audit a state or local governmental agency or any other publicly created entity. The State Auditor is authorized to audit any contract involving more than $10,000 of public funds at the request of any state or local public entity that is a party to the contract or is undergoing an audit by the State Auditor. (Gov.Code, § 8546.7.) Further, under the state whistleblower statute, the State Auditor is authorized to conduct an investigative audit on receiving specific information that any employee or state agency is engaged in any improper governmental activity. (Gov.Code, § 8547.5.) If the State Auditor discovers evidence of wrongdoing, this information must be conveyed to the employing agency and, if appropriate, the Attorney General, the appropriate legislative policy committees and any other authority that the State Auditor determines appropriate. (Gov.Code, § 8547.7.)" (*CART, supra,* 109 Cal.App.4th at pp. 825-826, 135 Cal.Rptr.2d 224, fns: omitted.)

The ICOC's structured discretion is far more comparable to the scheme utilized and approved in *CART* than to the statutory design that was disapproved in *Bayside Timber Co. v. Board of Supervisors* (1971)

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20 Cal.App.3d 1, 97 Cal.Rptr. 431, relied upon by People's Advocate. In that case, private timber owners were given unlimited discretion to formulate forest practice ***1361** rules with a direct financial impact on themselves, without legislative guidelines or standards to prevent an abuse of discretion. (*Id.* at pp. 9-10, 14, 97 Cal.Rptr. 431.)

People's Advocate contends that the training grants that the ICOC has already awarded with interim financing are beyond the authorized purpose of funding stem cell research and illustrate the deficiency in the controls provided by the Act. Even if People's Advocate were correct that the grants were improperly awarded, the violation would not necessarily demonstrate the invalidity of the Cures Act, since as just indicated other forms of corrective relief are available. However, the trial court concluded that the training grants are both consistent with the purposes of the Act and involve sufficient research-based activities to meet the statutory criteria. The evidence received at trial fully supports this conclusion. The ICOC approved grants "to nonprofit academic and research institutions to foster training at the level of pre-doctoral students, post-****302** doctoral students and clinical fellows.... All training programs must offer one or more classes in stem cell biology and medicine, and a required course in the social, legal and ethical implications of stem cell research...." The ICOC determined that there is a scarcity of scientists trained in stem cell research and that "it was an early and important need in order to fulfill our mission of developing this research to train the investigators who were going to carry it out, both basic science and clinical investigators...." There was testimony that training grants are research grants because in the field of stem cell research training is conducted through research. The grants approved research fellowships for "170 of the best and brightest people in the nation who were pre-doctoral, post-doctoral or clinical.... And these fellowships will do real time research in the labs with mentors, some of the best people in the country who are all in California.... [T]hey're going to be doing cutting edge research with an accompanying education program with ethics and law and in advanced technology.... [T]hese research grants rebuilt the intellectual infrastructure for the state in this area and allowed to ramp up for the next level of research grants." Rather than demonstrating unauthorized expenditures, the training grants illustrate the reason for which the ICOC has been vested with the discretion to determine the appropriate use of the funds to accomplish the public purposes endorsed by Proposition 71. These grants certainly do not suggest that the ICOC has been given free reign to spend bond proceeds in any manner it wishes.

Finally, People's Advocate contends that any state control over the ICOC is "so attenuated as to be effectively non-existent" because it is diluted by the ability of certain members of the ICOC to delegate their duties to nonappointed representatives and by the use of working groups to make initial recommendations regarding the award of grants. Neither feature of the Cures Act, however, undermines the necessary degree of state control.

***1362** Section 125290.20, subdivision (a)(2)(D) provides in pertinent part, "The executive officer of a California university, a nonprofit research institution or life science commercial entity who is appointed as a member, may from time to time delegate those duties to an executive officer of the entity or to the dean of the medical school, if applicable." Delegates are subject to the same qualifications as the members who appoint them, they must take the same oath of office and file the same disclosure forms, and they serve at the pleasure of the appointed member. In light of the stringent qualifications for ICOC membership and the likely time constraints of individuals who meet these qualifications, it is not unreasonable to anticipate, as one trial witness testified, that these members will be unable to attend all of the many meetings held by ICOC during the year. The delegation provision accommodates this reality without sacrificing the level of expertise required of ICOC members. The requirement that delegates come from the same institution as the member was designed to ensure that the ICOC have "the benefit of the expertise of alternates who share the same qualifications as members, when members of the ICOC are unavailable." We agree with the trial court that the use of alternates provides "a permissible degree of flexibility and operational independence needed to further the public purposes of the Act, and thus does not cause the ICOC

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to be in violation of article XVI, section 3."

Similarly, we see no basis for the argument that the role of working groups to identify potentially meritorious grant and loan applications renders the ultimate decision regarding the disbursement of public ****303** funds outside of the state's control. The Cures Act establishes three working groups: a Scientific and Medical Research Funding Working Group, a Scientific and Medical Accountability Standards Working Group and a Scientific and Medical Research Facilities Working Group. (§ 125290.50, subd. (a).) Members of the working groups are appointed by a majority of a quorum of the ICOC and serve fixed six-year terms. (*Id.*, subd. (b).) The qualifications for membership on the three scientific and medical working groups are defined to include, for example, ICOC members from groups focusing on disease-specific areas, "scientists and clinicians nationally recognized in the field of pluripotent and progenitor cell research," "medical ethicists," and "scientists nationally recognized in the field of stem cell research." (§§ 125290.55, subd. (a), 12590.60, subd. (a), 125290.65, subd. (a).) Working group members who are not bound by the conflict of interest rules applicable to ICOC members are subject to conflict of interest rules adopted by the ICOC. (§ 125290.50, subd. (e).) The working groups are "purely advisory and have no final decision making authority." (*Id.*, subd. (e)(3).) "Recommendations of each of the working groups may be forwarded to the ICOC only by a vote of a majority of a quorum of the members of each working group. If 35 percent of the members of any working group join together in a minority position, a minority report ***1363** may be submitted to the ICOC. The ICOC shall consider the recommendations of the working groups in making its decisions on applications for research and facility grants and loan awards and in adopting regulatory standards. Each working group shall recommend to ICOC rules, procedures, and practices for that working group." (*Id.*, subd. (d).)

People's Advocate is particularly concerned with the Scientific and Medical Funding Working Group (grants working group), which it asserts "is empowered to perform functions that are paramount in the operation of the Institute [citation], i.e., recommending the standards and requirements for awarding research grants, and reviewing grant applications and making recommendations to the [ICOC] for the award of grants." The grants working group has 23 members; 7 of whom are ICOC members from disease advocacy groups, 15 are scientists nationally recognized in the field of stem cell research and the last is the chairperson of the ICOC. (§ 125290.60, subd. (a).) [FN27] In addition to the statutory qualifications, relying on the recommendations of the National Academy of Science, the ICOC added the additional requirement that the 15 scientist members be drawn from outside of California. This working group is required, among other things, to "[r]ecommend to the ICOC ... criteria, standards, and requirements for considering funding applications and for awarding research grants and loans" and "standards for the scientific and medical oversight of awards" and "[r]eview grant and loan applications based on the criteria, requirements, and standards adopted by the ICOC and make recommendations to the ICOC for the award of research, therapy development, and clinical trial grants and loans." (*Id.*, subd. (b).) The working ****304** group's recommendations with regard to grant and loan applications are to be based on a competitive peer review of the scientific merit of the applications performed by the 15 scientist members of the group. The scientist members are required to score the applications based on scientific merit in three separate classifications-research, therapy development, and clinical trials.[FN28] (*Id.*, subd. (c).) All of the members of the working group review the applications and as a group make a ***1364** recommendation to the ICOC. The ICOC reviews and votes on all applications, including those not recommended for funding by the working group.

FN27. The evidence at trial indicated that alternates to the grants working group, satisfying the same qualifications as the 15 scientist members, have been appointed by the ICOC, and that these alternates serve at the direction of institute staff when a working group member is unable to attend a meeting or has a conflict of interest, and that no more than 15 scientist members participate in reviewing any one grant or loan application. Although the Act does not expressly provide

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for alternates to the working group members, we see nothing in the Act that precludes the use of such alternates.

FN28. Section 125290.60, subdivision (c) provides additional criteria for consideration in each of those classifications including, "(A) A demonstrated record of achievement in the areas of pluripotent stem cell and progenitor cell biology and medicine, unless the research is determined to be a vital research opportunity. [¶] (B) The quality of the research proposal, the potential for achieving significant research, or clinical results, the timetable for realizing such significant results, the importance of the research objectives, and the innovativeness of the proposed research.[¶] (C) In order to ensure that institute funding does not duplicate or supplant existing funding, a high priority shall be placed on funding pluripotent stem cell and progenitor cell research that cannot, or is unlikely to, receive timely or sufficient federal funding, unencumbered by limitations that would impede the research. In this regard, other research categories funded by the National Institutes of Health shall not be funded by the institute. [¶] (D) Notwithstanding subparagraph (C), other scientific and medical research and technologies and/or any stem cell research proposal not actually funded by the institute under subparagraph (C) may be funded by the institute if at least two-thirds of a quorum of the members of the Scientific and Medical Research Funding Working Group recommend to the ICOC that such a research proposal is a vital research opportunity."

People's Advocate acknowledges that "[a]s a group the [ICOC] does not have the scientific acumen in stem cell technology that is possessed by the [grants working group]" and that "[i]t only makes sense that the [ICOC] would rely so heavily on the [grants working group] because the [grants working group] invests so much more effort into the evaluation." [FN29] Nonetheless, they argue that the ICOC's reliance on working groups renders the Cures Act beyond the limits of state control required by article XVI, section 3. We disagree. The use of a working group consisting of highly qualified experts to evaluate and make recommendations regarding grant and loan applications is both reasonable and falls within the range of constitutionally acceptable operational procedures. One trial witness explained, "The 15 scientist and physician scientists on the grants working group are there to bring a broad range of expertise to the peer review of scientific and medical grant proposals that have the potential to advance our knowledge and understanding of stem cell research...." Both the statute itself and the evidence at trial make clear that the final decision regarding any grant application is to be made, and in fact is being made, by the ICOC. The activities of the working group are transparent to the public through application of the Public Records Act and to the ICOC through its eight representatives in the group. The evidence at trial established that while the ICOC has generally followed the recommendations of the working groups, it has often made changes to the recommendations before awarding grants. There is no basis under either the terms of the statute or the evidence concerning practices that have been adopted to conclude that the ultimate decisions regarding disbursement ****305** of taxpayer funds are not made by the ICOC.

FN29. Trial testimony established that the primary review of an average proposal takes between four and five days and a complex application may take up to seven days.

Indeed, the trial court also found, and substantial evidence supports the finding, that "the application of the Act has been in compliance with the statutory framework.... Each ICOC member, and each alternate, has taken the oath of office and publicly filed Form 700, the standard form California ***1365** public officials file to disclose financial holdings. The ICOC developed and adopted incompatible activities statements, the conflict of interest code required by the Political Reform Act, and conflict of interest policies for ICOC members, CIRM staff, and members of each of the ICOC advisory groups. Between January 2005 and the date of trial, the ICOC, its subcommittees, and

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its working groups held over 40 noticed, public meetings in cities across the state, held pursuant to the Bagley-Keene Open Meeting Act. CIRM has responded to numerous Public Records Act requests. The selection of the site for CIRM's facilities was run by the Department of General Services, as required of state agencies, which department also executed the lease. The required independent audit is in process and is to be reviewed by the Citizen's Financial Oversight Committee. In addition, testimony was presented that CIRM is subject to audit by the Controller and the Department of Finance, and that the Controller has met with the ICOC to discuss the types of practices he expected the ICOC to follow. [¶] There was also evidence that the State Treasurer, Controller, and Director of Finance, through their membership on the Finance Committee, exercised their authority to make sure that bonds are only issued for purposes permitted by the Act. Further, there was evidence that the State Legislature has already held several public oversight hearings looking into CIRM's budget, policies, and standards, which is pertinent not only because it shows on-going oversight by the Legislature, but because the Act expressly provides that the Legislature can amend the Act 'to enhance the ability of the institute to further the purposes of the grant and loan programs' after a three-year start-up period."

In short, we conclude, as did the court in *CART*, that the Cures Act here "is replete with controls, including the manner of appointment of members [of both the ICOC and its working groups], the specificity regarding how [bond] revenues must be spent, and the annual audit and reporting requirements." (*CART, supra*, 109 Cal.App.4th at p. 820, 135 Cal.Rptr.2d 224.) The Act does not violate article XVI, section 3 of the California Constitution.

2. *The Conflict of Interest Provisions of the Cures Act Are Not Unlawful.*

[14] The Council contends that the conflict of interest rules applicable to the ICOC and to working group members "violate California law and public policy" and render Proposition 71 invalid. The Council asserts that "Proposition 71 is replete with conflicts of interest among the members of the ICOC, because the structure of the ICOC under the initiative mandates ***1366** appointment of board members who have personal, professional and institutional interests that conflict with the public interest." These arguments can be dismissed rather summarily.[FN30]

FN30. Initially, we note that the Council's presentation of its arguments fails in large part to meet the most basic standards for acceptable appellate briefing. Most notably, the Council fails to cite authority for most of its arguments, including the claim that the Proposition 71 conflict of interest rules are unconstitutional. Although the Council's bare allegations of constitutional infirmity do "not reflect the substantial effort required when a party mounts a constitutional challenge," we decline the Attorney General's suggestion that we deem the argument waived without further discussion. (*Calderon v. Kane* (1995) 36 Cal.App.4th 1663, 1668-1669, 43 Cal.Rptr.2d 480.)

****306** The Council first suggests that the trial court "erroneously dismisses the conflicts of interest of the ICOC member, including the making of grants of millions of dollars to their own members' institutions as legally and ethically permissible." This statement, however, mischaracterizes both the trial court's decision and the statutory provisions. Members of the ICOC are expressly prohibited from participating in decisions involving grant applications submitted by the institutions with which they are affiliated. (§ 125290.30, subd. (g).) Section 125290.30, subdivision (g) specifies that the provisions of the Political Reform Act (Gov.Code, § 81000 et seq.) apply to the institute and the ICOC except as otherwise specified in the Cures Act. Subdivision (g)(1) provides that while no member of the ICOC may participate in a decision to award a grant, loan or contract to his or her employer, "a member may participate in a decision to approve or award a grant, loan, or contract to a nonprofit entity in the same field as his or her employer" or "to an entity for the purpose of research involving a disease from which a member of his or her immediate family suffers

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or in which the member has an interest as a representative of a disease advocacy organization." Subdivision (g)(2) provides that "Service as a member of the ICOC by a member of the faculty or administration of any system of the University of California shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a member of the faculty or administration of any system of the University of California and shall not result in the automatic vacation of either such office. Service as a member of the ICOC by a representative or employee of a disease advocacy organization, a nonprofit academic and research institution, or a life science commercial entity shall not be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a representative or employee of that organization, institution or entity." Subdivision (g)(3) limits the circumstances under which Government Code section 1090, which prohibits public officers and employees from being financially interested in contracts made by agencies on which they serve, ***1367** applies to any grant, loan or contract made by the ICOC.[FN31] Other provisions relating to potential conflicts of interest of ICOC members and working group members appear elsewhere throughout the Cures Act. (E.g., §§ 125290.20, subd. (a)(2)(C), [FN32] 125290.50, SUBD. (E).[FN33])

FN31. Subdivision (g)(3) of section 125290.30 provides that Government Code section 1090 does not apply to such transactions unless both of the following conditions apply: "(A) The grant, loan, or contract directly relates to services to be provided by any member of the ICOC or the entity the member represents or financially benefits the member or the entity he or she represents [and] (B) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant, loan or contract."

FN32. Subdivision (a)(2)(c) of section 125290.20 limits executive officers of life science commercial entities appointed to the ICOC to those who are not actively engaged in researching or developing therapies with pluripotent or progenitor stem cells, and have not been awarded, or applied for, funding by the institute at the time of appointment. However, the subdivision provides, "A board member of that entity with a successful history of developing innovative medical therapies may be appointed in lieu of an executive officer."

FN33. See text at page 307, *post.*

****307** It is unnecessary to consider whether membership on the ICOC by those who are qualified to serve would violate conflict of interest restrictions that would apply in the absence of the provisions included in the Cures Act. To the extent these provisions conflict with other statutory or common law rules regarding the regulation of conflicts of interest, the more specific and later enacted provisions of the Act govern. (See *Woods v. Young* (1991) 53 Cal.3d 315, 324-325, 279 Cal.Rptr. 613, 807 P.2d 455; *People v. Tanner* (1979) 24 Cal.3d 514, 521, 156 Cal.Rptr. 450, 596 P.2d 328.) The Council's suggestion that section 125290.30 be reconciled with more general conflict of interest laws "by appointing ICOC members who do not have conflicts of interest and ... by prohibiting the ICOC from awarding grants to the institutions represented by the members of the ICOC" would both rewrite the Act and defeat the very purpose of the qualifications for appointment to the ICOC. The trial court concluded, correctly we believe, that these "specific and limited" conflicts of interest provisions are necessary "in order to allow individuals with the necessary expertise from academic and commercial entities that do have financial interests in the subject of stem cell research to serve on the ICOC."

The Council contends that if the more general statutory and common law conflict of interest provisions are not applicable to the ICOC members, they should nonetheless apply to members of the grants working group. This argument is based on the incorrect assertion that the grants working group is a

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decisionmaking rather than an advisory body. However, section 125290.50, subdivision (e)(3) provides that "[b]ecause the working groups are purely advisory and have no final decisionmaking authority, members of the working ***1368** groups shall not be considered public officials, employees or consultants for purposes of the Political Reform Act" and other conflict of interest statutes. Subdivision (e)(1) requires the ICOC to adopt conflict of interest rules for non-ICOC working group members based on standards applicable to members of scientific review committees of the National Institutes of Health and subdivision (e)(2) requires the ICOC to appoint an ethics officer. And, as noted above, the rules adopted by the ICOC require all scientist members of the grants working group to come from institutions outside of California, which institutions are not eligible for grants or loans from CIRM. A trial witness explained that the ICOC wanted to have "the strongest conflict provisions" and that "if you have a Californian scientist on the working group and that scientist [was] able to apply for the grant, they would certainly have an inside advantage which [the ICOC] [does] not want to permit."

The Council contends that the refinements made by section 125290.30, subdivision (g) to more general conflict of interest provisions violate public policy or are somehow inherently unethical. These concerns are misplaced. (See *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 214 Cal.App.3d 1348, 1365-1366, 263 Cal.Rptr. 214 ["A statute is not subject to objection on the ground it contravenes public policy because, as a legislative enactment, it becomes public policy"].) The regulation of conflicts of interest often requires balancing competing interests. It is not for the courts to strike a different balance than has been made by the Legislature or the people. (See *Friends of La Vina v. County of Los Angeles* (1991) 232 Cal.App.3d 1446, 1456, 284 Cal.Rptr. 171, disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 570, 38 Cal.Rptr.2d 139, 888 P.2d 1268, fn. 2 ["Except where the law clearly provides rules for identification****308** and rectification of what might be termed conflicts of interest, that is a legislative not a judicial function"]; cf., e.g., *Woodland Hills Residents Assn., Inc. v. City Council* (1980) 26 Cal.3d 938, 946-947, 164 Cal.Rptr. 255, 609 P.2d 1029.) In this case, by approving Proposition 71 the voters have determined that the advantages of permitting particularly knowledgeable persons to decide which research projects to fund outweigh any concerns that these decisions may be influenced by the personal or professional interests of those members, so long as the members do not participate in any decision to award grants to themselves or their employer.

The Council argues, "It is a violation of due process of law for applicants for grants to the ICOC to have their grant applications voted on by ICOC members whose own institutions have competing grant applications before the ICOC.... Even though the members do not vote directly on their own institution's grant application, they have the information and opportunity to favor the ICOC member institutions and their fellow members on the ICOC...." Section 125290.30, subdivision (g)(1)(a), however, prohibits ICOC members not only from making or participating in making grants to ***1369** their employers, but also from "in any way attempt[ing] to use his or her official position to influence a decision to approve or award a grant, loan, or contract to his or her employer." We have no reason to believe, and certainly will not presume, that ICOC members will not comply with this prohibition.

The Council also argues that "the grants of conflicts of interest exemptions to the ICOC members and their institutions represent unconstitutional privileges and immunities." [FN34] The Council suggests, "The ability to engage in such self-serving grantmaking ... represents an unconstitutional privilege, privileged access to state funds, and an unconstitutional immunity, immunity from liability for conflicts of interest." The Cures Act, however, does not grant any personal privilege, entitlement or immunity to the members of the ICOC. Any loosening of conflicts rules that might otherwise apply merely permits the individual to serve on the ICOC while employed by an entity that may be interested in or affected by the work of CIRM. Such statutory qualifications or exemptions from conflict of interest regulations are commonplace. For example, there are several statutory exemptions to Government Code section 1090, which prohibits public officials from being "financially interested in any contract made

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by them in their official capacity, or by any body or board of which they are members." Exceptions are made for the subdivision of land owned by a public official (Gov.Code, § 1091.1), for a "contract or grant made by local workforce investment boards" (Gov.Code, § 1091.2) and for a "contract or grant made by a county children and families commission" (Gov.Code, § 1091.3). These exemptions are remarkably similar to those made under section 125290.30.[FN35]

> FN34. The privileges and immunities clause of the California Constitution provides in pertinent part, "A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens...." (Cal. Const., art. I, § 7, subd. (b).)
>
> FN35. Section 1091.1 provides: "The prohibition against an interest in contracts provided by this article or any other provision of law shall not be deemed to prohibit any public officer or member of any public board or commission from subdividing lands owned by him or in which he has an interest and which subdivision of lands is effected under the provisions of Division 2 (commencing with Section 66410) of Title 7 of the Government Code or any local ordinance concerning subdivisions; provided, that (a) said officer or member of such board or commission shall first fully disclose the nature of his interest in any such lands to the legislative body having jurisdiction over the subdivision thereof, and (b) said officer or member of such board or commission shall not cast his vote upon any matter or contract concerning said subdivision in any manner whatever." Section 1091.3 provides: "Section 1090 shall not apply to any contract or grant made by a county children and families commission ... except where both of the following conditions are met: [¶] (a) The contract or grant directly relates to services to be provided by any member of a county children and families commission or the entity the member represents or financially benefits the member or the entity he or she represents. [¶] (b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants."

****309 *1370** In *Consumers Union of U.S., Inc. v. California Milk Producers Advisory Bd., supra,* 82 Cal.App.3d 433, 147 Cal.Rptr. 265, this court upheld the validity of a regulation permitting industry members to serve on a board regulating that industry so long as they did not participate in decisions affecting their own interests in a manner different from the interests of other members of the industry. The court pointed to a survey by the Fair Political Practices Commission indicating that in California there are approximately 92 state boards, as well as numerous local boards, which include such members. (*Id.* at p. 438, 147 Cal.Rptr. 265.) The court upheld the regulation as applied to the Milk Advisory Board, pointing out that, much like the situation under the Cures Act, the board was required to adopt a conflict of interest code and that board members were required to disclose potential conflicts, file periodic statements disclosing their income, investments and assets, and disqualify themselves if a decision would have a material effect on their personal financial interest. (*Id.* at p. 448, 147 Cal.Rptr. 265.) Tellingly, the court observed: "Merely because a board member derives income from within a given industry, he or she does not lose the ability to be objective. Nor does that person lose the capacity to make decisions beneficial to the public's interest." (*Ibid.*)

The Council's reliance on the training grants awarded by the ICOC to illustrate problematic conflicts of interest is unavailing. The trial evidence establishes that the ICOC awarded sixteen training grants for a total of $38,912,252, eight of which, totaling $20,867,547, were awarded to U.C. campuses.[FN36] An additional approximately $12 million was awarded to five institutions with representatives on the ICOC. Approximately $6 million was awarded to entities with no representative on the ICOC. This evidence, without any additional information suggesting improper

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self-dealing, fails to demonstrate any impropriety, much less illegality, in the training grants. Indeed, the data might just as well be viewed as confirming the successful inclusion on the ICOC of members from a broad range of institutions with expertise in the field of stem cell research. Moreover, as the trial court noted, "Neither the original complaint filed by [the Council] nor its amended complaint challenges the validity of specific awards made by the ICOC. The amended complaint was filed in July 2005, months before any such awards ****310** were made, and [the Council] did not seek to amend it after that time."

> FN36. The Council's contention that all ICOC members affiliated with a U.C. campus were required to recuse themselves from voting on grant applications involving any U.C. campus is simply wrong. Nothing in section 125290.30, or any other provision of the Act, requires that the five U.C. campuses be treated as a single institution or employer for purposes of regulating conflicts of interest. The fact that the University of California is considered a "unitary system" in other contexts is irrelevant. The trial testimony established that the five U.C. campuses operate individually with regard to both research and grant applications.

***1371** Insofar as the Council contends that specific ICOC members have disqualifying conflicts of interest, those arguments are not relevant to the validity of the Cures Act. To the extent that the trial court considered the Council's evidence regarding individual members as relevant to the Council's second cause of action, seeking a declaration that those members, including the chair and vice-chair, are disqualified from serving on the ICOC, we review the findings under the substantial evidence test. The court found that the Council failed to make a showing that any specific ICOC member " 'has reason to believe or expect that he will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason on his official activity.' " (Quoting Gov.Code, § 8921, emphasis omitted.) The court explained, " Plaintiff simply points to disclosure forms and biographies showing that some of the members have ownership interests in various biotech companies, and some are employees of companies or academic institutions of potential grantees-but presents no evidence that any committee member will accrue a direct monetary gain or loss from service on the ICOC." Under the express terms of section 125290.30, an ICOC member's affiliation with a particular institution that may seek funding from CIRM is insufficient to establish a disqualifying conflict of interest.

Thus, we conclude, as did the trial court, that the conflict of interest provisions of the Cures Act violate no constitutional restriction, and that there has been no showing that any member serving on the ICOC has violated the governing conflict provisions.

D. The Exclusion of Correspondence Between Employees of the Five University of California Campuses Represented in the ICOC, if Error, Was Not Prejudicial.

[15] People's Advocate contends that due to a series of rulings by the trial court relating to the scope and duration of discovery and the admissibility of evidence, correspondence between employees of the five University of California (U.C.) campuses represented on the ICOC was erroneously excluded at trial, and that the exclusion of this evidence was prejudicial because the evidence would have established that these members of the ICOC were in fact "representatives" of their university and that the ICOC was a private entity not under the exclusive control of the state.[FN37] People's Advocate asserts that the correspondence shows both that the ICOC members from the University of California ***1372** would put the interests of the university before that of the state and also that there was "coordination, cooperation, and central control of the nine University of California representatives on the [ICOC]."

> FN37. People's Advocate also states that it "had no fair chance to take any meaningful discovery about these documents or the activities they recorded" because many of these documents were assertedly produced late

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> in the discovery period. However, People's Advocate has not raised a specific challenge to any particular discovery or in limine ruling. It contends only that the effect of the trial court's rulings as a whole was to deny it a full and fair trial on the merits, a proposition that is thoroughly dispelled by a review of the record.

It is unnecessary to detail each of the trial court rulings that led to exclusion of this evidence because it is clear that even if any of the disputed correspondence should have been admitted, any error was not prejudicial. Even if considered, this correspondence does not establish that the **311 institute or the ICOC was outside the management and control of the state.[FN38] Rather, the evidence establishes that the faculty and administration at the U.C. campuses were working together cooperatively at times to further the interests of both the institute and the campuses, while at the same time remaining mindful of the potential for actual and perceived conflicts of interests. Dr. Klein testified that the five U.C. campuses were "chosen because they house the five medical schools in the U.C. system. And they have tremendous repository of medical and scientific expertise. And they have strong histories in stem cell research, so that those five campuses are part of a core of the State of California university medical system and scientific research system ... that looks at this new frontier." Dr. Klein stated that "each of [the campuses] is very highly competitive with the other, so that they each have something individual to bring to the table." For example, in an e-mail in which it was suggested that Dr. Kessler be appointed to represent the U.C. campus in San Francisco (UCSF), the author explains his recommendation as follows: "UCSF has a statutory role on the *1373 Independent Citizens' Oversight Committee, yet members must recuse themselves from decisions involving their employers. Depending on how 'employer' is interpreted, that could take five people out of each decision on a U.C. grant.... With that in mind, our representative may have more of a role as an overall policy influencer and potentially public advocate for science than strictly a decision-maker or a grant-making body. [¶] ... I think we are better served by having a representative who can be a strong advocate for sound science-and whose public visibility may be important to steer the debate...." Nothing in this letter demonstrates that the interests of UCSF representatives are contrary to the interests of the state or that the ICOC members compromise the interests of the state in favor their individual interests. Likewise, in an e-mail containing the draft intellectual property model, the author advises, "please be mindful of the rule requiring ICOC members to avoid un-noticed 'serial meetings,' which means that **312 members should avoid discussing ICOC business with other members in such a way that the discussion (whether live, by phone, or by email) might wind up including more than a quorum of members." These letters provide no basis on which to conclude that the ICOC was outside the management and control of the state.[FN39] Their admission would not have affected the conclusions reached in the trial court and in this court.

> FN38. People's Advocate quotes selectively from five excluded e-mails or memoranda that it asserts support its claim. In one excluded email it is suggested that Dr. David Kessler serve as the UCSF representative to the ICOC because he has "the public recognition that can help position UCSF best, especially in comparison to other California institutions." In a subsequent email, the UCSF Assistant News Director states that she is "not sure that it is in UCSF's interest to have [Dr. Kessler] serve as an academic spokesperson to the [San Francisco Chronicle] editorial board on the ICOC/CIRM process ... when UCSF is going to be one of the key applicants for major funding from CIRM." She adds that Dr. Kessler should "continue to do his part on the board ... but not to create a high profile for himself as a defender of/explainer of the ICOC/CIRM process.... The goal of this strategy would be to diminish the possible perception of a conflict of interest in his two roles." People's Advocate also cites an e-mail from an employee of the U.C. Office of the President seeking "input regarding faculty we should nominate for ICOC membership." A second e-mail circulates an internal draft proposing considerations for developing a

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Proposition 71 intellectual property model among the U.C.'s ICOC representatives. Finally, a memo was excluded in which the author, apparently a U.C. Chancellor, objects to plans to ask all U.C. campuses to submit their proposals for Proposition 71 funding to the U.C. Office of the President for approval. He argues that the "requirement seems a considerable intrusion on campus prerogative" and that it would be a "tactical error." He explains, "I expect that there will be a natural tendency on the part of the [ICOC] to spread the wealth around, and that there will be a resistance to 'overendowing' U.C. Anything that detracts from the image of each campus as an independent agent seems likely to add to the sensitivities about U.C. as the gorilla on the scene."

FN39. People's Advocate also contends that the trial court erred in excluding a letter written by an ICOC appointee from the University of Southern California (USC) in which he stated that he was working to be named to the ICOC " 'so that the Keck School's and USC's concerns can be well represented from the initial stages of this important endeavor.' " For the same reasons, the exclusion of this evidence, if error, was not prejudicial because the appointee's expressed desire to have the concerns of his university heard is not necessarily inconsistent with the goals and purposes of the ICOC. The conflict of interest rules ensure that a member does not participate in any decisions directly affecting the university at which the member is employed.

Conclusion

As we indicated at the outset, our review of the various constitutional and other objections appellants have addressed to the stem cell initiative involves no normative evaluation of the merit of the measure. Nonetheless, the objective of the proposition is to find, "as speedily as possible," therapies for the treatment and cure of major diseases and injuries, an aim the legitimacy of which no one disputes. The very pendency of this litigation, however, has interfered with implementation for more than two years. After careful consideration of all of appellants' legal objections, we have no hesitation in concluding, in the exercise of " 'our solemn duty to jealously guard the precious initiative power' " (*CART, supra*, 109 Cal.App.4th at p. 808, 135 Cal.Rptr.2d 224), that Proposition 71 suffers from no constitutional or other legal infirmity.

Accordingly, we shall affirm the well-reasoned decision of the trial court upholding the validity of the initiative.

***1374 Disposition**

The judgment is affirmed.

We concur: PARRILLI, Acting P.J., and SIGGINS, J.
Cal.App. 1 Dist.,2007.
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147 Cal.App.4th 1319, 55 Cal.Rptr.3d 272, 07 Cal. Daily Op. Serv. 2075

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