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June 23, 2009

CONFIDENTIAL AND PRIVILEGED
ATTORNEY-CLIENT COMMUNICATION

TO: Americans for Cures Foundation

FROM: Richard D. Martland and Kurt R. Oneto

RE: Little Hoover Commission's Proposed Recommendations

• QUESTION:

Can certain changes proposed by the Little Hoover Commission (LHC) to the governance structure of the California Institute for Regenerative Medicine (CIRM), created by the voters in 2004 through Proposition 71, be enacted by a vote of the Legislature; or, would another vote of the people be required?

• CONCLUSION:

By its own terms, Proposition 71 can only be amended by the Legislature "to enhance the ability of the institute to further the purposes of the grant and loan programs created by the measure," with 70 percent of the membership of both houses concurring. Amendments that do not further the purposes of the grant and loan programs created by Proposition 71 can only be adopted by another vote of the people.

Since none of the proposed changes examined below would further the purpose of Proposition 71's grant and loan programs, they could not be adopted by the Legislature and could only be enacted through a vote of the people.

- ANALYSIS:

1. *Background.*

Proposition 71, the “California Stem Cell Research and Cures Act,”¹ was approved by voters with 59.1 percent of the vote at the 2004 General Election.² The central feature of the measure is a \$3 billion bond measure to be administered by CIRM 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.”³

More specifically, the intent of Proposition 71 was 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.”⁴

Under Proposition 71, CIRM is governed by the Independent Citizen’s Oversight Committee (ICOC), a 29-member body tasked with overseeing the operations of CIRM and making final decisions on grant and loan awards in California.⁵

Section 8 of Proposition 71 states that “the statutory provisions of this measure...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 70 percent of the membership of both houses of the Legislature and signed by the Governor.”

2. *Changes to CIRM’s Governance Structure Proposed by the Little Hoover Commission.*

The Little Hoover Commission’s subcommittee on the California Institute for Regenerative Medicine is apparently in the process of preparing a report that will propose a series of changes to the governance structure of CIRM. While we have not had the opportunity to review the report, we have been notified that it will contain several changes. We have been asked to analyze nine proposed changes that can be grouped into the following four categories: (1) changes to the composition of the ICOC; (2) changes in the operation of the ICOC; (3)

¹ Proposition 71 (2004), Sec. 1. (Uncodified.)

² http://www.sos.ca.gov/elections/sov/2004_general/ssov/formatted_ballot_measures_detail.pdf.

³ Cal. Health & Saf. Code § 125291.30; Cal. Const. Art. XXXV § 2.

⁴ Proposition 71 (2004), Sec. 3. (Uncodified.)

⁵ Cal. Health & Saf. Code § 12590.40.

changes to the duties and compensation of ICOC officers; and (4) changes in the Legislature's ability to amend Proposition 71.

a. *Composition of the Independent Citizen's Oversight Committee (ICOC).*

i. *Reduce the Size of the ICOC from 29 to 15 Members.*

Currently, the ICOC is made up of 29 members representing a broad and diffuse group of scientific and academic experts.⁶ Under the LHC proposal, the size of the ICOC membership would be reduced by 48 percent to 15 members.⁷

ii. *Add Four "Independent" Members (Either Scientists not Affiliated with Grant Applicants or Citizen Members).*

Currently, ICOC is made up of 29 members representing the five UC campuses with research hospitals, other California universities with research hospitals, nonprofit medical research institutions in California, commercial life science research entities located in California, and disease advocacy groups representing individuals with Alzheimer's disease, spinal cord injuries, diabetes, multiple sclerosis, amyotrophic lateral sclerosis, heart disease, cancer, Parkinson's disease, mental health disease, and HIV/AIDS.⁸

Under the LHC proposal, four of the contemplated 15-member ICOC board members would be required to be either scientists not affiliated with stem cell research grant applicants or citizen members representing the public at large.

iii. *Restructure the Appointment of ICOC Members to Provide the Governor with 11 Appointments, the University of California (UC) with Two Appointments, and the Legislature with Two Appointments.*

Currently, ICOC members are appointed as follows: (1) one each by the chancellors of University of California at San Francisco, Davis, San Diego, Los Angeles, and Irvine; (2) five by the Governor, (3) five by the Lieutenant Governor, (4) five by the Treasurer, (5) five by the Controller, (6) one by the Assembly Speaker, (7) one by the Senate President pro Tem, and (8) the ICOC chair and vice-chair are chosen by the other 27 ICOC members.⁹

⁶ Cal. Health & Saf. Code § 12590.20.

⁷ It is unclear whether the LHC proposal would require the 15 members to have specific qualifications in order to be eligible for appointment.

⁸ Cal. Health & Saf. Code § 12590.20(a).

⁹ Cal. Health & Saf. Code § 12590.20(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 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.¹⁰

Under the LHC proposal, the Governor would appoint 11 members of the contemplated 15-member ICOC, the UC would appoint two members, and the Legislature would appoint two members. It is unclear at this point how LHC would propose to apportion the appointments among the specific categories listed in Proposition 71, or whether the LHC proposal would require apportionment of appointments among specific categories at all.

iv. *Reduce the Terms of Office for ICOC Members from 6-8 Years to 4 Years.*

Currently, ICOC members representing disease advocacy groups and those appointed by the UC, the Speaker, and the Senate pro Tem serve for eight year terms. All other ICOC members serve for six year terms.¹¹ No member can serve more than two terms.¹²

Under the LHC proposal, all ICOC members would serve for four year terms.¹³

b. *Operation of the ICOC.*

i. *Reduce the Quorum Threshold to 50 Percent.*

Currently, a quorum of the ICOC requires 65 percent of the membership.¹⁴ Actions of the ICOC may only be taken by a majority vote of a quorum.¹⁵ Under the LHC proposal, the ICOC quorum threshold would be reduced from 65 percent to 50 percent of the membership.

¹⁰ *Id.* See also Calif. Family Bioethics Council, LLC v. Calif. Institute for Regenerative Medicine et al. (1st Dist.2007) 147 Cal.App.4th 1319.

¹¹ Cal. Health & Saf. Code § 12590.20(c).

¹² *Id.*

¹³ We have not been made aware of any proposal to alter the two term maximum.

¹⁴ Cal. Health & Saf. Code § 12592.10(s).

¹⁵ Cal. Health & Saf. Code § 12590.25.

ii. *Elect the ICOC Chair and Vice-Chair from Among the 15 Members, Selected by the Other Members.*

Currently, the Governor, Lieutenant Governor, Treasurer, and Controller each nominate a candidate for the positions of ICOC chair and vice-chair.¹⁶ Nominees must meet specific criteria, including a documented history in stem cell research advocacy, experience with state and federal legislative processes, experience with governmental agencies or institutions, experience with the process of establishing government standards and procedures, direct knowledge of bond financing, and legal experience relating to the exercise of government agency powers.¹⁷

The other 27 ICOC members then vote to elect a chair and vice-chair from among the nominees for each position.¹⁸

Under the LHC proposal, the chair and vice-chair would not be independently nominated from outside of the ICOC. Instead, the ICOC members would select the chair and vice-chair from among the membership of the contemplated 15-member board.

c. *Duties and Compensation of ICOC Officers.*

i. *Eliminate ICOC Chair's Statutory Duties and Specify that the CIRM President Oversees all Day-to-Day Operations.*

Currently, the ICOC chair's responsibilities include managing the ICOC agenda and work flow; supervising all annual reports and public accountability requirements; managing and optimizing CIRM's bond financing plans and funding cash flow plan; interfacing with the state Legislature, U.S. Congress, California health care system, and California public; optimizing all financial leverage opportunities for CIRM; and leading negotiations for intellectual property agreements, policies, and contract terms.¹⁹

Proposition 71 also authorizes the ICOC to hire an individual to serve as the president of CIRM.²⁰ The CIRM president's primary responsibilities include serving as chief executive of CIRM; recruiting high quality scientific and medical talent to serve CIRM; serving on CIRM working groups; developing recommendations on grants, loans, facilities, and standards; directing and supporting the ICOC process of evaluating and acting upon the president's

¹⁶ Cal. Health & Saf. Code § 12590.20(a)(6).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Cal. Health & Saf. Code § 12590.45(b)(1)(A).

²⁰ Cal. Health & Saf. Code § 12590.45(b)(1).

recommendations; implementing decisions of the ICOC; hiring, directing, and managing CIRM staff; developing budgets for CIRM; managing compliance with all rules and regulations, including the performance of all grant recipients; and managing and executing intellectual property agreements pertaining to CIRM.²¹

Under the LHC proposal, all of the ICOC chair's statutory duties would be eliminated. The authority of the CIRM president to oversee all day-to-day operations of CIRM would be expressly specified.

ii. *Preclude ICOC Chair and Vice-Chair from receiving salaries.*

Currently, the ICOC has discretion to set the compensation of the ICOC chair, ICOC vice-chair, the CIRM president, and all other CIRM staff.²² Under the LHC proposal, the ICOC chair and vice-chair would be precluded from receiving a salary.

d. *Legislature's Authority to Amend Proposition 71 (2004).*

i. *Reduce the Legislative Vote Threshold to Amend the Measure to a Simple Majority.*

Currently, the Legislature can only amend the provisions of Proposition 71 by a 70 percent vote in each legislative chamber, and only if the amendment(s) further the purposes of the stem cell research grant and loan programs.²³

Under the LHC proposal, the Legislature would be permitted to amend the provisions of Proposition 71 by a simple majority vote in each legislative chamber.²⁴

3. *Legal Standards for Determining Whether a Legislative Amendment "Further the Purpose" of an Initiative Measure.*

Cal. Const. Art. II § 10(c) provides "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." As noted above, Proposition 71 permits such legislative amendments by a 70 percent vote, but only "to enhance the ability of the institute to further the purposes of

²¹ Cal. Health & Saf. Code § 12590.45(b)(1)(B).

²² Cal. Health & Saf. Code § 12590.45(b)(4).

²³ Proposition 71 (2004), Sec. 8. (Uncodified.)

²⁴ We have not been made aware of any proposal to alter the requirement that any amendment further the purpose of the grant and loan programs.

the grant and loan programs created by the measure.” The authority of voters to enable legislative amendment *subject* to certain conditions attached by the voters has been repeatedly upheld by the courts.²⁵

Since voters clearly have the authority to attach conditions to legislative amendments of initiative measures, as they did in the case of Proposition 71, the remaining question is the standard to be applied in determining whether a legislative amendment does in fact “further the purpose” of an initiative adopted by voters. Three cases involving legislative attempts to amend Proposition 103 (1988) demonstrate how courts evaluate whether a legislative amendment “further the purpose” of an initiative act.

Perhaps the most instructive case is Amwest Surety Insurance Co v. Wilson (1995) 11 Cal.4th 1243. In 1988, the voters approved Proposition 103; an initiative measure entitled the “Insurance Rate Reduction and Reform Act.” (*Id.* at 1247.) Among other provisions, Proposition 103 imposed an insurance rate rollback and required that any subsequent rate increase be approved by the Insurance Commissioner. (*Id.*) Proposition 103 stated that it applied to “all insurance on risks or on operations” within the state, with certain exceptions. Surety insurance was *not* one of the types of insurance that was exempted. (*Id.* at 1248.)

Section 8(b) of Proposition 103 stated “The provisions of this act shall not be amended by the Legislature except to further its purposes by a statute passed in each house by roll call vote...two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate.” (*Id.* at 1249.) Despite the fact that surety insurance had not been exempted under the act, the Legislature unanimously adopted a statute exempting surety insurance from the rate rollback and rate approval requirements. (*Id.* at 1250.) Intervener Voter Revolt, the organization that drafted Proposition 103, challenged the statute as not furthering the purpose of Proposition 103. (*Id.*)

First, the Supreme Court addressed the relevant standard of review in cases dealing with whether a legislative amendment ‘further the purpose’ of an initiative measure. Citing Cal. Const. Art. II § 10(c), the Court noted that the Legislature lacked the authority to amend Proposition 103 except to further its purposes. The Court stated that “Such a limitation upon the power of the Legislature must be *strictly construed*.” (*Id.* at 1255-56, emphasis added.) The opinion cautioned that the deferential standard of review advanced by Amwest “might well have the ironic and unfortunate consequence of causing the drafters of future initiatives to hesitate to grant even a limited authority to the Legislature to amend those initiatives” and that in the absence of judicial review drafters of future initiatives “might feel compelled to withhold

²⁵ Franchise Tax Bd. v. Cory (1978) 80 Cal.App.3d 772, Calif. Common Cause v. Fair Political Practices Com. (1990) 221 Cal.App.3d 647, Huening v. Eu (1991) 231 Cal.App.3d 766.

such legislative authority completely, lest even the most limited grant of authority to amend be used by the Legislature to curtail the scope of the initiative.” (*Id.* at 1256.)

Second, the decision distinguished between permissible *clarifications* and impermissible *alterations* of an initiative measure. Amwest argued that the amendment was merely a clarification whether surety insurance was meant to be included within the ambit of Proposition 103. (*Id.* at 1260.) However, the Court held that the amendment constituted an *alteration* rather than a *clarification* because it was clear beforehand that surety insurance was covered. (*Id.*, emphasis added.) The Court held that “the circumstance that surety insurance differs in material respects from other forms of insurance governed by Proposition 103 is relevant to the question whether surety insurance *should* have been included within the ambit of the initiative...but this circumstance does not render the initiative ambiguous or in need of clarification...” (*Id.*, emphasis in original.) The Court went on to state that “it was clear that...Proposition 103 applied to surety insurance...therefore [it] did not further the purposes of Proposition 103 by *clarifying* whether the proposition applied to surety insurance; instead it *altered* its terms in a significant respect.” (*Id.* at 1261, emphasis added.)

Third, the Amwest opinion explained that the fact that an aspect of an initiative measure in hindsight turns out to be unnecessary or unwise policy is insufficient to justify the Legislature amending it. Amwest claimed that exempting surety insurance from the rate rollback and prior-approval provisions furthered the purpose of Proposition 103 because rates for surety insurance had long been stable and reasonable, so it was unnecessary to apply the new provisions to it. (*Id.*) The Court held that the fact that surety rates have been reasonable and stable did not establish that it was unnecessary for Proposition 103 to apply to surety insurance. (*Id.* at 1263.) The Court responded that “The question before us is not whether exempting surety insurance from some of the provisions of Proposition 103 *furtheres the public good*, but rather whether doing so *furtheres the purposes of Proposition 103*. We hold that it does not.” (*Id.* at 1265, emphasis added.)

In Proposition 103 Enforcement Project v. Quackenbush (1998) 64 Cal.App.4th 1473, the Legislature amended Proposition 103 by the required two-thirds vote in enacting Insurance Code § 769.2. (*Id.* at 1481, 1486.) Pursuant to Proposition 103, insurers were required to reduce their rates by 20 percent, and were further required to refund to policyholders any overpayments that occurred in the transitional year, 1988-89. (*Id.* at 1477.) Prior to the enactment of Section 769.2, insurers were entitled to seek refunds of premium taxes and broker fees attributable to any portion of a premium determined to be excessive and refundable. (*Id.* at 1482.) As such, insurers, brokers, and the State all had to give up their share of excessive premiums paid by policyholders.

However, in 1993 the Legislature enacted Section 769.2, which authorized brokers to deduct any premium taxes or brokerage fees from any excessive amount collected from, and owed to, policyholders. (*Id.*) The effect was to shift the ultimate payment of taxes and commissions on excessive premiums above the allowable amount from the insurers, brokers, and the State on to the policyholder(s). (*Id.* at 1483.)

The decision noted that, despite the fact that a prior Supreme Court ruling²⁶ had held that insurance rates could not be rolled back so far that they became confiscatory, the purpose of Proposition 103 remained the same: to set premiums at the *lowest rate possible* consistent with the prohibition on confiscatory rates, and to return to policyholders the *maximum amount* of premium refunds possible without becoming confiscatory. (*Id.* at 1491, emphasis in original.) The court held that by permitting insurers to deduct taxes and commissions from excessive premium refunds, thereby lowering the overall amount that could be legally repaid to policyholders, Section 769.2 was inconsistent with the purpose of Proposition 103. (*Id.* at 1494.)

In Foundation for Taxpayer and Consumer Rights et al. v. Garamendi (2005) 132 Cal.App.4th 1354, the controversy focused on Insurance Code §1861.02, enacted as part of Proposition 103. Section 1861.02 provided for “Good Driver” automobile insurance discounts if applicants met certain criteria. However, Section 1861.02 expressly stated that “the absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy.” (*Id.* at 1360.) In 2001, the Insurance Commissioner adopted a “persistence” regulation which stated that insurers could consider the length of time a driver had been continuously covered “*with the present insurer’s company*” in offering the good driver discount. (*Id.* at 1361, emphasis in original.) However, by a two-thirds vote in 2003 the Legislature adopted SB 841, which allowed insurers to give “persistence” discounts to drivers previously insured with *any* insurance company. (*Id.* at 1362, emphasis in original.) The practical effect of SB 841 was to allow insurers to take any prior insurance policy with any insurance company into account when offering good driver discounts. In enacting SB 841, the Legislature stated that it “finds and declares that it [SB 841] furthers the purpose of Proposition 103 to encourage competition among carriers so that coverage overall will be priced competitively.”²⁷ (*Id.*)

In an action challenging SB 841 as not furthering the purpose of Proposition 103, the Court of Appeal stated that the power of the Legislature to amend initiative measures to further their purposes “must be strictly construed” because the adoption of a deferential standard could

²⁶ CalFarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805.

²⁷ The opinion stated that the “Legislature’s attempt at undermining Proposition 103 by similarly labeling its amendment to Section 1861.02” as “furthering the purposes of Proposition 103” was “likewise unavailing.” (*Id.* at 1371.)

cause initiative drafters to completely eliminate the possibility of legislative amendments in the future. (*Id.* at 1365, citing *Amwest, supra.*) The court continued that *one of* the fundamental purposes of Proposition 103 was to eliminate discrimination against previously uninsured drivers; and that whereas voters had *prohibited* the use of prior insurance coverage in determining rates, SB 841 *authorized* insurers to use evidence of prior coverage in setting rates. (*Id.* at 1366, emphasis added.)

The defendants argued that no prior case had ever held that eliminating discrimination against the uninsured was a “purpose” of Proposition 103. (*Id.* at 137.) The court responded by noting that the “plain meaning” of Section 1861.02 prohibits insurers from using the absence of prior insurance in determining eligibility for good driver discounts, so Section 1861.02 “itself manifests” voters’ intent to eliminate such discrimination. (*Id.*) The court continued that “by specifically focusing on” eliminating discrimination against the previously uninsured in Section 1861.02, the voters “made clear that a fundamental purpose of Proposition 103” was to prohibit discrimination against the previously uninsured. (*Id.*) Additionally, the court stated that even if an amendment can be shown to further an initiative’s purposes, “it may nonetheless be invalid if it violates specific primary language.” The court held that SB 841 was both contrary to the purposes of Proposition 103 and violated one of the measure’s primary mandates (i.e., to eliminate discrimination against the uninsured). (*Id.* at 1370-71.)

4. *The Aforementioned Changes Proposed by LHC Would Not Further the Purposes of Proposition 71’s Grant and Loan Programs.*

The only remaining question is whether the changes proposed by LHC further the purpose of the grant and loan programs contained within Proposition 71. It is clear that they do not.

The purpose and intent of an initiative measure can be drawn from several sources, including the historical context of the amendment, ballot arguments favoring the measure, and the common meaning of words used.²⁸

In the instant case, the purposes behind Proposition 71 are evident in several places. Obviously, the overarching purpose of Proposition 71 was to “make grants and loans for stem cell research” that will eventually result in the cure of major diseases and injuries.²⁹ However, the voters also made several policy choices regarding precisely how the program would be

²⁸ *Calif. Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 177; *People v. 8,000 Punchboard Devices* (1983) 142 Cal.App.3d 618, 621.

²⁹ Cal. Health & Saf. Code § 125291.30; Cal. Const. Art. XXXV § 2.

constructed and operated. For example, Proposition 71's ballot arguments indicate that insulation from the political process and/or the control of any one political figure was paramount to the measure: "Unfortunately, political squabbling has severely limited funding for the most promising areas of stem cell research."³⁰ The ballot arguments also noted that Proposition 71 was "vitaly needed because stem cell research is being restricted by politics in Washington."³¹ The Legislative Analyst's analysis explicitly pointed out that political control over the ICOC would be limited and dispersed, noting that the Governor, Lieutenant Governor, Treasurer, Controller, Assembly Speaker, Senate President pro Tempore, and certain UC campus chancellors would all make ICOC appointments.³²

Furthermore, the ballot materials emphasized the fact that CIRM and the research grants it makes would be directed by a broad and diffuse group of academic, finance, medical research, disease advocacy, and executive experts, each of whom would bring a unique skill set to the table. As stated in the ballot arguments in support of Proposition 71, "Research grants will be allocated by an Independent Citizen's Oversight Committee, guided by medical experts, representatives of disease groups, and financial experts..."³³ The accompanying Legislative Analyst's analysis of the measure also clearly stated that CIRM would be governed by "a 29-member Independent Citizen's Oversight Committee, 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 advocacy groups."³⁴ More to the point, the purpose and intent section of Proposition 71 itself states that it was the intent of the people of California to "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."³⁵

As noted in Garamendi, *supra*, the purpose of an initiative measure can also be manifested within the text of the measure itself. In the instant case, Proposition 71 clearly states that the functions of ICOC include "develop[ing] annual and long-term strategic research and financial plans" for CIRM and "oversee[ing] the operations of the institute."³⁶ Further, Proposition 71 states that ICOC shall select a chairperson, vice-chairperson, and president "who shall exercise all of the powers delegated to them by the ICOC."³⁷

³⁰ Voter Information Guide, Gen. Elec. (Nov. 2, 2004), Prop. 71 arguments, pg. 72.

³¹ Voter Information Guide, Gen. Elec. (Nov. 2, 2004), Prop. 71 arguments, pg. 73.

³² Voter Information Guide, Gen. Elec. (Nov. 2, 2004), Prop. 71 analysis, pg. 69.

³³ Voter Information Guide, Gen. Elec. (Nov. 2, 2004), Prop. 71 arguments, pg. 72.

³⁴ Voter Information Guide, Gen. Elec. (Nov. 2, 2004), Prop. 71 analysis, pg. 69.

³⁵ Proposition 71 (2004), Sec. 3. (Uncodified.)

³⁶ Cal. Health & Saf. Code § 12590.40, subd. (a) and (b).

³⁷ Cal. Health & Saf. Code § 12590.45(b)(1).

The changes proposed by LHC simply cannot be squared with the existing purposes of Proposition 71.³⁸ Similar to Amwest, these changes are not permissible *clarifications*, but instead constitute impermissible *policy alterations*. Presumably, LHC believes that the changes it has proposed would further the “public good” by increasing the efficiency, accountability, and/or productivity of CIRM. (See Amwest, *supra*, 11 Cal.4th at 1265.) However, as also noted in Amwest, the test is not whether the amendments further the “public good.” Rather, the test is whether the amendments further the purposes of the *initiative in question*, in this case Proposition 71. Proposition 71, as enacted, may contain policy over which others may differ. But that is its policy nonetheless and any legislative amendment thereto must further it: “[L]egislative choices by the electorate are entitled to the same deference by the courts as enactments by the Legislature.” (Consulting Engineers and Land Surveyors of Calif., Inc. v. Professional Engineers in Calif. Government (2007) 42 Cal.4th 578, 588.)

As the ballot materials surrounding Proposition 71 made clear, insulation from political manipulation was an important purpose of the Proposition 71 scheme. Eliminating the appointment power of every elected official except the Governor, and permitting the Governor to appoint 73 percent of ICOC’s members (11 out of 15), effectively puts ICOC at the mercy of one official. This is antithetical to one of the primary purposes of the measure, and has the potential to gravely undermine ICOC and CIRM’s mission should an anti-stem cell research governor be elected in the future. Reducing the legislative vote threshold to amend Proposition 71 from 70 percent to a simple majority would likewise weaken ICOC’s political independence and work against the voters’ intent. These proposals would essentially take the “independence” out of the *Independent Citizen’s Oversight Committee*.

Reducing the terms of office for ICOC members by one-third to one-half (i.e., from 6-8 years to 4 years) would similarly erode the political independence of ICOC by giving the Governor more frequent opportunities to influence the composition of ICOC. Shorter terms and the concomitant higher rate of turnover would also most likely erode ICOC’s capacity to develop “long-term” strategic research and financial plans. Given that research breakthroughs will likely develop gradually over time, long-term planning could be particularly important, so this proposed change could be particularly damaging to Proposition 71’s ultimate goal.

The ICOC chair and vice-chair are currently selected from among nominees put forward by four constitutional officers and must have specific credentials, clearly set out in Proposition

³⁸ The changes proposed by LHC clearly qualify as “amendments” to Proposition 71. (See Assets Reconstruction Corp. v. Munson (1947) 81 Cal.App.2d 363, 368 - stating that an amendment is “a legislative act designed to change some prior or existing law by adding or taking from it some particular provision.”)

71, in order to be nominated. LHC's proposed process of selecting the chair and vice-chair from among the board's [drastically reduced] membership would reduce the political independence of CIRM by eliminating the ability of the Lieutenant Governor, Treasurer, and Controller to propose nominees, thereby reinforcing the control over CIRM that LHC would give to the Governor. Additionally, any process that permitted selection of individuals not possessing the specific credentials set out in the measure would directly contradict the process adopted by voters, as expressed in the "plain meaning" of Proposition 71. (See Garamendi, *supra*, 132 Cal.App.4th at 137.)

Restructuring CIRM's membership would also be contrary to the purposes of Proposition 71. The relevant ballot arguments and Proposition 71's purpose and intent section specifically stated that CIRM would be governed by an "Independent Citizen's Oversight Committee" made up of various medical and financial experts, academics, commercial research institutions, and disease advocacy groups; and, the Legislative Analyst's report specifically called out the fact that ICOC would be a 29-member body. Cutting ICOC's members by nearly *half* and adding four "independent" members from unrelated backgrounds not discussed in the materials available to voters or in the measure itself would do violence to the concept voters' intended.

Lowering the quorum threshold from 65 percent to 50 percent would work against the purpose of Proposition 71 to have decisions made deliberatively by an ICOC comprised of members from a wide array of backgrounds. As stated in the ballot materials and the purpose and intent section, Proposition 71 intended CIRM to be governed by an Independent Citizen's Oversight Committee consisting of 29 experts representing various fields. As currently constituted, it takes 19 ICOC members to form a quorum (65 percent of 29) and 10 members to form a majority of the quorum. Under the LHC proposal, it would take 8 members to form a quorum (a majority of 15), and therefore 5 ICOC members would be able to make binding decisions on behalf of CIRM. The LHC proposal would effectively permit the ICOC decision-making process to be captured by a small minority and would deprive ICOC decisions of the benefit of input from the broad spectrum of views currently represented on the committee. It is inconceivable that voters who approved an organization with 29 members would have imagined that 5 members would ultimately be able to make binding decisions on its behalf.

Elimination of the ICOC chair's statutory duties and a prohibition on the chair and vice-chair from receiving salaries cannot be said to further Proposition 71's purposes, either. Proposition 71 clearly states that ICOC shall elect a chairperson, vice-chairperson, and a president "*who shall exercise all of the powers delegated to them by the ICOC.*" For whatever reason, Proposition 71 created certain potentially overlapping duties for the chair and the president. Whether or not others may disagree with this policy is irrelevant; it is *the* policy of Proposition 71. Like many of the other changes proposed by LHC, stated above, eliminating

the chair's statutory duties would violate "specific primary language" of Proposition 71, which, as stated in Garamendi, renders an amendment contrary to the measure's purpose and therefore invalid. Eliminating the ICOC chair's duties could also limit ICOC's ability to "oversee the operations of the institute." Correspondingly, prohibiting the chair and vice-chair from receiving salaries would obstruct the ability of ICOC to attract and retain the most qualified individuals, which in turn could inhibit Proposition 71's core mission of developing cures "as speedily as possible."³⁹

As explained in Amwest, whether Proposition 71 *should* have been structured the way it was may be debatable. But it is also irrelevant to the question whether an amendment 'furthers the purpose' of the measure. By addressing aspects of how Proposition 71 *should* have been configured, the LHC proposals would effectuate *policy alterations* contrary to the purposes of Proposition 71, regardless of the prudence or wisdom of those purposes. For that reason, the LHC proposed changes could only be adopted by another vote of the people.

RDM/KRO/mc

³⁹ Cal. Const. Art. XXXV § 2(a).