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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SACRAMENTO
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10 CALIFORNIA FAMILY BIOETHICS)	Case no. 05AS02927
COUNCIL, LLC,)	
11)	AMENDED COMPLAINT TO
Plaintiff,)	INVALIDATE ACTIONS, BONDS
12)	AND FINANCING, INTERIM AND
vs.)	PERMANENT, AND FOR
13)	DECLARATORY AND INJUNCTIVE
14 CALIFORNIA INSTITUTE FOR)	RELIEF
REGENERATIVE MEDICINE,)	
a California public agency,)	
15 the STATE OF CALIFORNIA,)	
THE CALIFORNIA STEM CELL)	
16 RESEARCH AND CURES FINANCE)	
COMMITTEE [DOE 1],)	
17 DOES 2-100, and ALL PERSONS)	
18 INTERESTED IN THE MATTER OF)	
THE LEGALITY OF PROPOSITION)	
19 71 AND VALIDITY OF ACTIONS,)	
BONDS AND FINANCING OF CIRM,)	
20)	
Defendants.)	
21 _____)	

22 Plaintiff alleges:
23 1. Plaintiff CALIFORNIA FAMILY BIOETHICS COUNCIL, LLC, a California
24 limited liability company, is a project of the California Family Council, a California nonprofit
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1 corporation. Plaintiff represents the interests of citizens, residents and taxpayers of the
2 State of California concerned about public funding, accountability and ethical standards in
3 stem cell research, and specifically the legality and implementation of Proposition 71,
4 adopted in the November 2004 general election, including conflicts of interest and other
5 constitutional and legal defects in Proposition 71 and in the authority, actions, and
6 proposed bonds and other financing for the operations and programs of the public entities
7 created by the initiative.

8 2. Defendant CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE
9 ("CIRM") was formed as a public agency of the State of California by Proposition 71. The
10 governing body of the CIRM is the Independent Citizen=s Oversight Committee ("ICOC").

11 3. Defendant STATE OF CALIFORNIA, through its departments and agencies,
12 including the offices of the Treasurer and the Controller, is authorized by Proposition 71
13 and has been requested by the ICOC to provide state financing, interim and permanent,
14 and to issue, sell and obtain the proceeds of state general obligation bonds, bond
15 anticipation notes and other forms of financing and evidences of indebtedness, for the
16 benefit of the CIRM, which are debts and obligations to be secured by and to be repaid
17 from the taxes of the people of the State of California.

18 4. Defendant THE CALIFORNIA STEM CELL RESEARCH AND CURES
19 FINANCE COMMITTEE (previously designated by amendment to the complaint in this
20 action as DOE 1) is an entity of the government of the State of California formed pursuant
21 to the California Stem Cell Research and Cures Bond Act of 2004 adopted as part of
22 Proposition 71, to exercise the powers granted under the Bond Act for the purpose of
23 authorizing and providing funding for the CIRM through the sale of state bonds and other
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1 forms of state financing.

2 5. The names and capacities of the Defendants sued herein as DOES 2-100
3 are unknown to Plaintiffs, who therefore have identified them by these fictitious names.
4 Plaintiffs are informed and believe that the fictitiously named Defendants are legally
5 responsible for the activities of the CIRM as alleged in this action or are necessary parties
6 to give effect to the orders of this Court.

7 6. Defendants ALL PERSONS INTERESTED IN THE MATTER OF THE
8 LEGALITY OF PROPOSITION 71 AND VALIDITY OF ACTIONS, BONDS AND
9 FINANCING OF CIRM are named pursuant to Code of Civil Procedure ' 861.1.

10 7. Venue is proper in Sacramento County, (a) pursuant to Code of Civil
11 Procedure ' 393, because the actions of the public officers, including the Department of
12 the Treasury, the office of the Controller and related officials and agencies of the State of
13 California to authorize and issue bonds and other forms of interim and permanent financing
14 for the CIRM are actions which have been performed and are to be performed in whole or
15 in part in Sacramento; (b) pursuant to Code of Civil Procedure ' 860, ' 863 and
16 Government Code ' 17700, because validation actions are to be filed in Sacramento
17 County and reverse validation actions also may be filed in Sacramento County; and (c)
18 pursuant to Government Code ' 955 and Code of Civil Procedure ' 401, because the
19 Attorney General may move to transfer this action to Sacramento County and, therefore,
20 the action may be commenced and tried in any county in which the Attorney General has an
21 office, including Sacramento County.
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23 **INCORPORATION OF ALLEGATIONS**

24 8. All of the allegations in this Complaint are hereby incorporated into each
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1 cause of action to the extent necessary or useful to clarify and complete each stated cause
2 of action, to avoid repetition and redundancy.

3 FIRST CAUSE OF ACTION

4 TO INVALIDATE BONDS, INTERIM AND PERMANENT FINANCING

5 9. This (reverse) validation action is brought pursuant to Code of Civil
6 Procedure ' 863 and applicable statutory and common law.

7 10. The actions of the Defendants, specifically including acts (a) to accept
8 charitable donations, (b) to authorize, issue or sell general obligation bonds, bond
9 anticipation notes or other bonds, instruments or evidences of indebtedness, (c) to
10 authorize, issue, finance or sell any and all forms of interim, bridge or permanent bonds or
11 other financing, (d) to use the proceeds of private loans or donations, or (e) to use the
12 proceeds of taxes, loans, credit, facilities or instrumentalities of the State of California, for
13 the benefit of or to finance the activities of the CIRM or ICOC violate the California
14 Constitution and California statutory and common law.

15 11. On May 9, 2005, pursuant to Proposition 71 and the California Stem Cells
16 Research and Cures Bond Act (ABond Act@), The California Stem Cell Research and
17 Cures Finance Committee ("Finance Committee") met at the California State Treasurer's
18 office in Sacramento and considered three resolutions for funding the CIRM:

19 11.1 "Resolution I, under the California Stem Cell Research and Cures
20 Bond Act of 2004, authorizing the issuance of State of California Stem Cell Research and
21 Cures Bonds or Commercial Paper Notes in the Aggregate Principal Amount Not to
22 Exceed \$3,000,000,000. (Including provisions authorizing the agency to obtain loans from
23 the Pooled Money Investment Account or the General Fund)."
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1 11.2 "Resolution II, under the California Stem Cell Research and Cures
2 Bond Act of 2004, authorizing the issuance of State of California Stem Cell Research and
3 Cures Refunding Bonds in the Aggregate Principal Amount Not to Exceed
4 \$3,000,000,000."

5 11.3 "Resolution III, under the California Stem Cell Research and Cures
6 Bond Act of 2004, authorizing the issuance of State of California Stem Cell Research and
7 Cures Bond Anticipation Notes in the Aggregate Principal Amount Not to Exceed
8 \$3,000,000,000."

9 12. The Finance Committee reportedly approved all three of these Resolutions,
10 thereby authorizing the issuance, sale, and repayment of bonds and other financial
11 instruments of the State of California and the obtaining of funding for the CIRM and its
12 related entities from the proceeds of bonds, commercial paper, refunding bonds, bond
13 anticipation notes, funds in the Pooled Money Investment Account and the proceeds of
14 taxes and other funds in the General Fund of the State of California.
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16 13. The Resolutions and funding actions of the Defendants, including the
17 Finance Committee, violate California constitutional, statutory and common law as alleged
18 in this Complaint.

19 14. This action challenges Proposition 71 on the grounds that the initiative as a
20 whole and various constitutional and statutory provisions of the initiative are
21 unconstitutional and unlawful, in whole and in part, on their face and as applied, that the
22 existence and operation of the CIRM and the ICOC are unconstitutional and unlawful, and
23 that all funding and financing authority under Proposition 71 is unconstitutional and unlawful,
24 specifically including all authority to issue bonds, bond anticipation notes and all other
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1 financial instruments, or to receive loans, grants, charitable donations, government
2 appropriations and all forms of interim and permanent financing for the use or benefit of the
3 CIRM or the ICOC or any other person or entity under the authority of Proposition 71.

4 CONFLICTS OF INTEREST

5 15. The CIRM, the ICOC and Proposition 71, on its face and as applied, violate
6 California constitutional, common law and statutory prohibitions against conflicts of interest
7 of public officials. Proposition 71 not only permits but mandates that the members of the
8 ICOC violate applicable legal standards for conflicts of interest, and the conflicting personal
9 and professional interests of the members of the ICOC violate the duty of absolute,
10 undivided loyalty of state officials to the public interest.

11 16. Proposition 71 requires ICOC members to be appointed from advocacy,
12 commercial, research and academic organizations that, for their own private purposes and
13 conflicting public purposes, are keenly interested in controlling public policy, practice and
14 expenditures regarding stem cell research, receiving or influencing contracts, loans and
15 grants, and benefiting directly and indirectly from managing the public assets of the CIRM,
16 directing its research, controlling exploitation of any resulting scientific processes,
17 therapies, cures, intellectual property and other rights, and benefiting from the prestige of
18 public office and the contacts that membership in the ICOC provides.

19 17. No "good faith" exception exists to the conflicts of interest standards for
20 public officials under California law, so even conscientious efforts by ICOC members to act
21 in what they may sincerely believe to be in the best interests of the State and to ignore their
22 conflicting personal and professional positions, interests and commitments cannot exempt
23 Proposition 71, the ICOC or the ICOC members from violation of conflicts of interest law
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1 and ethical standards. The voluntary conflicts of interest standards adopted by the ICOC
2 do not address and cannot satisfy the requirements of the law.

3 18. The conflicts of interest of the members of the ICOC and its working groups
4 render all contracts, grants and loans approved by the ICOC void or voidable (a) for
5 violation of the public policy that public officers owe a duty of absolute, uncompromised
6 loyalty to the public interest and (b) for violation of Civil Code ' 1667, which declares
7 unlawful all contracts in violation of public policy, whether or not the public policy violation is
8 specifically enforced by statute. This statute was not revised by Proposition 71.

9 19. The conflicts of interest of the ICOC members violate the civil and
10 constitutional rights of all people who deal with the ICOC -- whether concerning contracts,
11 grants, loans, project proposals or government activities, standards and regulations -- to
12 fair and impartial hearings before disinterested public officials.

13 20. The chairperson and vice chairperson of the ICOC are in violation of the
14 conflicts of interest prohibitions of Government Code ' 53227 and are ineligible to serve as
15 employees of the CIRM or ICOC.

16 UNLAWFUL REVISION OF CONFLICTS OF INTEREST STATUTES

17 21. Proposition 71 unlawfully revised various conflicts of interest and other
18 statutes without notice to the voters and without providing in the ballot materials the text of
19 the provisions of the conflicts of interest and other statutes to be revised by the measure, in
20 violation of Government Code ' 88001(b), ' 88002(e), ' 88005.5; Elections Code ' 9080,
21 ' 9084(b). The statutes unlawfully revised by Proposition 71 include (1) the Bagley-Keene
22 Open Meeting Act, Government Code ' 11120 et seq., and ' 11125.4, revised by Health
23 and Safety Code ' 125290.30(d); (2) the California Public Records Act, Government Code
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1 ' 6250 et seq., revised by Health and Safety Code ' 125290.30(e); (3) the Public Contracts
2 Code, including the bidding procedures at ' 10500 et seq., revised by Health and Safety
3 Code ' 125290.30(f), revisions that also invade the special constitutional authority of the
4 Regents of the University of California; (4) the Political Reform Act, Government Code
5 ' 81000 et seq., Government Code ' 1090, ' 19990, Public Contracts Code ' 10516,
6 ' 10517, revised by Health and Safety Code ' 125290.30(g) and ' 125290.50(e), including
7 revisions that invade the special constitutional authority of the Regents of the University of
8 California.

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10 22. Proposition 71 also unlawfully revised the conflicts of interest statute
11 Government Code ' 1126 without notice to the voters, without including its text in the ballot
12 materials, without providing analysis of its impact by the Legislative Analyst, and without
13 even citing the statute anywhere in the text of the initiative, by the exculpatory declaration of
14 exemption from conflicts of interest in Health and Safety Code ' 125290.30(g)(2).

15 23. The Legislative Analyst statement in the ballot materials violated Government
16 Code ' 88003, ' 88005.5 and Elections Code ' 9091, by failing to require the inclusion of
17 the text of the statutes to be revised by Proposition 71 and by failing advise the voters of
18 the "effect . . . on existing law" of the revision of the conflicts of interest and other statutes
19 by Proposition 71.

20 SPECIAL PRIVILEGES AND IMMUNITIES, PRIVATE INFLUENCE

21 24. Proposition 71 violates Article 1, ' 7(a), Article 1, ' 7(b), and Article 4, ' 16,
22 of the California Constitution requiring equal protection of the law and prohibiting special
23 legal privileges and immunities for certain classes of people. Proposition 71 (a) restricts
24 eligibility for membership in the powerful ICOC to representative advocates for only 10
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1 named, specially privileged diseases and conditions, from the more than 70 categories of
2 diseases and conditions admitted in Proposition 71 to be proper candidates for stem cell
3 research; (b) restricts eligibility for the chairperson and vice-chairperson of the ICOC to
4 people with unreasonably narrow qualifications, including mandatory membership in an
5 organization representing one of the 10 specially privileged disease advocacy categories;
6 (c) restricts eligibility for the four positions on the ICOC from a "California life science
7 commercial entity" to companies that are "not actively engaged in researching or
8 developing therapies with pluripotent or progenitor stem cells," thereby excluding only
9 people most likely to be experts in the initiative's primary field of research; (d) restricts the
10 remaining membership in the ICOC to certain University of California representatives and
11 other narrowly identified nonprofit organizations; (e) permits appointed members to
12 participate through self-appointed surrogates; (f) has no members of the general public, no
13 members who are elected public officials, no members from ethnic, religious or other
14 minority groups, and no provision for removal of members; and (g) purports to grant special
15 immunities to these public officials in the form of exemptions from the conflicts of interest
16 laws that govern all other public officials in the state.

18 25. Proposition 71 violates Article 2, ' 12, of the California Constitution
19 prohibiting an initiative from identifying any private entity to perform any function or to have
20 any government power. Proposition 71 specifically mandates that ten (10) ICOC board
21 members must be representatives of certain private disease advocacy organizations
22 identified exclusively with ten (10) named diseases or conditions.

23 LACK OF EXCLUSIVE STATE MANAGEMENT AND CONTROL

24 26. Proposition 71 violates Article 16, ' 3 of the California Constitution because
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1 the CIRM and the ICOC operate outside effective state government control. Due to (a)
2 conflicts of interest; (b) purported exemptions from conflicts of interest laws; (c) defective
3 appointment procedures for ICOC members and members of its various operating
4 committees, including requiring certain ICOC members first to be members of certain
5 private disease advocacy organizations, private nonprofit entities or private commercial
6 businesses before being eligible for appointment; (d) participation of unappointed
7 "surrogate" members in ICOC functions; (e) lack of standards or procedures for removal
8 from office by elected public officials or the public itself; (f) delegation of legislative and
9 administrative powers; and (g) absence of any external legal standards or governmental
10 controls for creating policies, practices or procedures, (h) for managing and spending state
11 funds and assets, specifically including discretion to sell, compromise, give away or
12 otherwise dispose of the potential and actual intellectual property and intellectual property
13 rights of the state, including scientific information, processes, trade secrets and other
14 assets funded by the state through grants, loans, contracts and bond proceeds, or (i) for
15 representing the state in negotiations with other government entities (Health and Safety
16 Code ' 125292.10(u)), neither the CIRM nor the ICOC act under the exclusive management
17 and control of the State, and this independent, absolute discretion to act on behalf of the
18 State, to bind the State to legal commitments and to expend the resources of the State
19 cannot be rectified by legislation because of the restrictive provisions of Proposition 71
20 and state statutory and constitutional law concerning initiatives.

22 UNLAWFUL CONSTITUTIONAL REVISION

23 27. Proposition 71 violates Article 18, ' 3 of the California Constitution, on its
24 face and as applied, because it legislates an unlawful revision of the California Constitution
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1 and the State's form of government. No public agency can exist under the representative
2 form of government provided in the California Constitution when its governing officials are
3 legally authorized to represent personal, professional and business interests that
4 compromise their commitment to the public interest, to enter into contracts with, or receive
5 grants from, their own agency, to appropriate funds in the hopes of benefiting members of
6 their own families, or to act outside the management and control of the State.

7 SINGLE SUBJECT RULE

8 28. Proposition 71 violates Article 2, ' 8 of the California Constitution, which
9 bans an initiative from having any effect if its provisions contain more than one subject, the
10 "single subject" rule. Proposition 71 contains multiple subjects. In addition to the subject of
11 public funding for stem cell research (the single subject officially designated by the title and
12 summary of the initiative, as determined by the California Attorney General), Proposition
13 71 legislates (a) laws and regulations concerning conflicts of interest of public officials,
14 particularly the members of the ICOC and its operating committees; (b) laws and
15 regulations concerning conflicts of interest standards for faculty and administrators of the
16 University of California; (c) funding, laws and regulations for research and projects
17 unrelated to stem cell research, designated in the initiative as unspecified "vital research
18 opportunities"; (d) executive and administrative authority for the ICOC to negotiate,
19 execute, perform and manage contracts to sell the intellectual property rights of the state for
20 commercial exploitation; and (e) executive, legislative and administrative authority of the
21 ICOC to act as the agent of the state of California "to negotiate standards with federal and
22 state governments and research institutions."
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24 VIOLATION OF ELECTION LAWS CONCERNING INITIATIVES

1 29. Proposition 71 violated California statutory and constitutional requirements
2 concerning initiative elections, including failure to provide the voters with required ballot
3 materials; failure to disclose to the voters the effects of the initiative concerning conflicts of
4 interest, revisions of existing laws, lack of state control over the CIRM, the ICOC and
5 taxpayer funds and bond proceeds, and related issues; use of false, misleading and
6 ambiguous language for the purpose of concealing from the voters the highly speculative,
7 irresponsible, "blue sky" financial projections of revenues and savings to the State;
8 manipulation of the hopes of suffering people and the goodwill of the voters and taxpayers
9 through misrepresentations and false promises to focus on the most hopeful forms of stem
10 cell research, those most likely to lead to more medical therapies and cures like those
11 presented as already being used for medical treatments, while actually prioritizing the least
12 promising form of stem cell research, which shown little evidence of medical success; and
13 misleading use of selectively inconsistent, overly specific and technical terminology to
14 appear to ban human cloning by banning the narrowly defined practice of "human
15 reproductive cloning" while disguising the fact that Proposition 71 actually authorizes and
16 funds human cloning and makes human cloning a state constitutional right, using not the
17 understandable term "cloning," which is familiar to the voters and which was used when
18 stating the narrow ban on one form of human "cloning," but rather the obscure scientific
19 terminology of "somatic cell nuclear transfer," which is not a term known to the public, and
20 not defined in Proposition 71. These actions violated state elections laws and caused
21 voter confusion.
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23 AUTONOMY OF THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

24 30. Proposition 71 violates Article 9, ' 9 of the California Constitution because it
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1 unlawfully invades the authority of, and delegates authority to, the Regents of the University
2 of California.

3 BOND LAW

4 31. Proposition 71 and its proposed bond financing program violate state and
5 federal bond and tax laws.

6 SECOND CAUSE OF ACTION

7 DECLARATORY AND INJUNCTIVE RELIEF

8 32. Proposition 71 and the actions of the Defendants, as alleged in this
9 Complaint, are proper subjects for declaratory judgment and for preliminary and permanent
10 injunctive relief, to enjoin enforcement of unconstitutional and illegal laws and to enjoin
11 unlawful actions of public officials.

12 WHEREFORE, Plaintiff requests the following judgment:

13 FIRST CAUSE OF ACTION

14 1. A order of this court (a) declaring that the actions of the Defendants to
15 implement Proposition 71 and to fund and operate the Defendant California Institute for
16 Regenerative Medicine (CIRM), the Independent Citizen's Oversight Committee (ICOC),
17 and all other activities and actions undertaken pursuant to Proposition 71, are without
18 lawful authority and invalid, and (b) enjoining the Defendants and each of them, and all
19 persons acting in concert with the Defendants, from (1) accepting charitable donations, (2)
20 authorizing, issuing or selling general obligation bonds, bond anticipation notes or other
21 bonds, instruments or evidences of indebtedness, (3) authorizing, issuing, financing or
22 selling any and all forms of interim, bridge or permanent bonds or other financing, (4) using
23 the proceeds of private loans or donations, or (5) using the proceeds of taxes, loans,
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1 credit, facilities or instrumentalities of the State of California, for the benefit of or to finance
2 the activities of the CIRM or ICOC.

3 SECOND CAUSE OF ACTION

4 2. A declaration that (a) the Defendant California Institute for Regenerative
5 Medicine (CIRM), the Independent Citizen's Oversight Committee (ICOC) and Proposition
6 71, on its face and as applied, violate California constitutional, statutory and common law;
7 (b) that the unlawful and unconstitutional provisions of Proposition 71 are not severable
8 from the initiative as a whole and cannot lawfully be revised by judicial intervention; (c) that
9 the existence and operation of the CIRM and the ICOC are unlawful and unconstitutional;
10 and (d) that the members of the ICOC are disqualified from holding public office on the
11 ICOC board and that the chairperson and vice chairperson are disqualified to be
12 employees of the CIRM;

13 3. For preliminary and permanent injunctive relief (a) enjoining the State of
14 California and its officials from implementing Proposition 71 and (b) enjoining the CIRM,
15 the ICOC and its officers and members from all operations, actions and exercise of legal
16 authority under Proposition 71 or the laws and constitutional provisions adopted by
17 Proposition 71 and from exercising any authority on behalf of the State of California.

18 ALL CAUSES OF ACTION

19 4. For reasonable attorney fees;

20 5. For costs of suit

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6. For any other relief the Court deems proper.

July 8, 2005

DAVID L. LLEWELLYN, JR.
Llewellyn Spann
Attorneys for Plaintiff

VERIFICATION

I, David L. Llewellyn, Jr., declare:

I am the attorney and an authorized agent of the Plaintiff in the above-entitled action, whose officers and offices are not in the county in which I have my law office. I make this verification pursuant to Code of Civil Procedure ' 446. I have read the foregoing AMENDED COMPLAINT TO INVALIDATE ACTIONS, BONDS AND FINANCING, INTERIM AND PERMANENT, AND FOR DECLARATORY AND INJUNCTIVE RELIEF. Its contents are true to the best of my knowledge and belief, and those matters which are alleged on information or belief I believe to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

July 8, 2005

DAVID L. LLEWELLYN, JR.