

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 15 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MARY SCOTT DOE, a human)
embryo born in the United States)
(and subsequently frozen in which)
state of cryo-preservation her life is)
presently suspended), individually)
and on behalf of all other frozen)
human embryos similarly situated;)
NATIONAL ASSOCIATION FOR)
THE ADVANCEMENT OF)
PREBORN CHILDREN (NAAPC);)
PETER MURRAY; SUZANNE)
MURRAY; COURTNEY ATNIP;)
TIM ATNIP; KATE ELIZABETH)
JOHNSON; STEVEN B. JOHNSON;)
CARA VEST; GREGORY VEST,)

Plaintiffs-Appellants,)

v.)

ROBERT KLEIN, Chairman, in)
their official capacities as members)
of the Independent Citizen's)
Oversight Committee, the governing)
body for the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
EDWARD PENHOET, Ph.D, Vice)

No. 06-55387

D.C. No. CV-05-00438-RSWL

MEMORANDUM*

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Chairman, in their official capacities)
as members of the Independent)
Citizen’s Oversight Committee, the)
governing body for the California)
Institute for Regenerative medicine,)
an agency of the California state)
government; DAVID BALTIMORE,)
Ph.D, in their official capacity as)
members of the Independent Citizen’s)
Oversight Committee, the governing)
body for the California Institute for)
Regenerative medicine, an agency of)
the California state government;)
ROBERT BIRGENEAU, Ph.D, in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
KEITH L. BLACK, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
SUSAN V. BRYANT, Ph.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
MICHAEL A. FRIEDMAN, M.D., in)
their official capacities as members of)
the California Stem Cell Research and)

Cures Finance Committee;)
MICHAEL GOLDBERG, in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
BRIAN E. HENDERSON, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
EDWARD W. HOLMES, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
DAVID A. KESSLER, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
SHERRY LANSING, in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
GERALD S. LEVEY, M.D., in)

their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
TED W. LOVE, M.D., in)
their official capacities as members of)
the California Stem Cell Research)
and Cures Finance Committee;)
RICHARD A. MURPHY, Ph.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
TINA S. NOVA, Ph.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
PHILLIP A. PIZZO, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
CLAIRE POMEROY, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)

the California state government;)
PHYLLIS PRECIADO, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
FRANCISCO J. PRIETO, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
JOHN C. REED, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
JOAN SAMUELSON, in)
the official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
DAVID SERRANO SEWELL, in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
JEFF SHEEHY, in)

their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
JONATHAN SHESTACK, in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
OSWALD STEWARD, Ph.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
LEON J. THAL, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
GAYLE WILSON, in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
JANET S. WRIGHT, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)

Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
PHILLIP ANGELIDES, State)
Treasurer; TOM CAMPBELL,)
Director of Finance; MICHAEL A.)
FRIEDMAN, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
ZACH W. HALL, in his official)
capacity as the interim president of)
the California Institute for)
Regenerative Medicine; ROBERT)
KLEIN, II, in his official capacity as)
a member of the California Stem Cell)
Research and Cures Finance)
Committee; TED W. LOVE, M.D., in)
their official capacities as members of)
the Independent Citizen’s Oversight)
Committee, the governing body for)
the California Institute for)
Regenerative Medicine, an agency of)
the California state government;)
STEVE WESTLY, State Controller,)
)
Defendants-Appellees.)
_____)

Appeal from the United States District Court
for the Central District of California
Ronald S.W. Lew, District Judge, Presiding

Argued and Submitted October 16, 2007
Pasadena, California

Before: FERNANDEZ and WARDLAW, Circuit Judges, and COLLINS,**
District Judge.

Mary Scott Doe,¹ the National Association for the Advancement of Preborn Children (NAAPC), Suzanne and Peter Murray, Courtney and Tim Atnip, Kate Elizabeth and Steven B. Johnson, and Cara and Gregory Vest appeal the district court's dismissal of their action against a number of individuals,² who were sued in their official capacities and who hold positions created by the passage of California Proposition 71, which created state agencies related to stem cell research. The district court determined that venue was not proper in the United States District Court for the Central District of California ("Central District"), and

**The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

¹Mary Scott Doe is a fictitious frozen embryo somewhere in the United States.

²One group of individuals consists of the president of the California Institute for Regenerative Medicine ("CIRM") and each member of the Independent Citizen's Oversight Committee ("ICOC"), the governing board of CIRM. Doe's suggestions notwithstanding, ICOC is not an entity separate from CIRM. See Cal. Family Bioethics Council v. Cal. Inst. for Regenerative Med., 147 Cal. App. 4th 1319, 1353-54, 55 Cal. Rptr. 272, 295 (2007). Hereafter, this group is collectively referred to as "CIRM parties." The other group consists of all of the members of the California Stem Cell Research and Cures Finance Committee. This group is collectively referred to as the "Finance Committee parties."

dismissed the action. We affirm.

We have, as we must, reviewed the question of venue de novo,³ and have determined that the district court did not err when it dismissed this action, without prejudice, for lack of venue.⁴ There is neither evidence to show that any of the CIRM or Finance Committee parties reside in the Central District of California,⁵ nor evidence to show that any substantial events, within the meaning of venue law, took place in that district.⁶

AFFIRMED.

³See Myers v. Bennett Law Offices, 238 F.3d 1068, 1071 (9th Cir. 2001).

⁴See 28 U.S.C. § 1391(b).

⁵See id. §1391(b)(1); see also Arley v. United Pac. Ins. Co., 379 F.2d 183, 185 n.1 (9th Cir. 1967); Stacher v. United States, 258 F.2d 112, 116–19 (9th Cir. 1958).

⁶See 28 U.S.C. § 1391(b)(2); see also Myers, 238 F.3d at 1075–76; Dist. No. 1, Pac. Coast Dist., M.E.B.A. v. Alaska, 682 F.2d 797, 798–99 (9th Cir. 1982).