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### Proposition 29: Protect the Lives of Dialysis Patients Act

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**Proposition 29:  
Protect the Lives of Dialysis Patients Act**

Initiative Statute

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## I. EXECUTIVE SUMMARY

Proposition 29, or the Protect the Lives of Dialysis Patients Act, is a statutory ballot initiative Californians will vote on in the 2022 November election. This ballot initiative will add provisions to the California Health and Safety Code in order to regulate kidney dialysis clinics. Kidney dialysis is a blood cleaning treatment needed when a person’s kidneys fail. The key provisions of this proposition require a physician, nurse practitioner, or physician assistant to be on site during treatment; mandate clinic disclosure of physicians with five percent or more ownership to patients and the state; and prohibit clinic closure without state approval.<sup>1</sup> Additionally, the Act will require clinics to report infection data and allow the California Department of Public Health to issue penalties to clinics for failing to adequately report.<sup>2</sup>

A “YES” vote will impose new regulations which include on-site licensed medical professionals at kidney dialysis clinics, prohibit clinic closure without state approval, and physician-clinic ownership disclosures among other things.

A “NO” vote will not impose any new regulations on kidney dialysis clinic operations, and would maintain the existing regulatory system.<sup>3</sup>

## II. THE LAW

### A. Existing Law

Currently, kidney dialysis clinics in California are regulated by the federal, state and local governments. At the federal government level, regulations are promulgated by departments and agencies in accordance with statutes created by the Congress.<sup>4</sup> Similarly, departments and agencies in the state of California may regulate with authority granted by the State Legislature. Local governments then exercise their authority over dialysis clinics within the confines defined by statutes and regulations at both the federal and state level.

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<sup>1</sup> Cal. Proposition 29, <https://oag.ca.gov/system/files/initiatives/pdfs/21-0013%20%28Dialysis%20%29.pdf> (last visited Oct. 14, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> Cal. Legis. Analyst’s Office, *Proposition 29 Protect the Lives of Dialysis Patients Act. Initiative Statute*. (November 8, 2022), <https://lao.ca.gov/ballot/2022/Prop29-110822.pdf> (last visited Oct. 14, 2022).

<sup>4</sup> *J.W. Hampton, Jr., & Co. v. U.S.*, 276 U.S. 394, 409 (1928).

## 1. Federal Law

Federal regulations regarding the operations of kidney dialysis clinics are usually issued by the Department of Health and Human Services, or the Centers for Medicare and Medicaid Services.<sup>5</sup> These regulations can be found in Title 42 of the Code of Federal Regulations which encompass public health policy.<sup>6</sup> Included in these regulations are requirements for dialysis clinics to have at minimum one board-certified medical director on staff, but does not impose a set amount of time the director must spend at the clinic.<sup>7</sup> Kidney Dialysis clinics are also required to report dialysis-related infection data to the National Healthcare Safety Network at the federal Centers for Disease Control and Prevention.<sup>8</sup>

## 2. State Law

Under California law, the California Department of Public Health (CDPH) is responsible for regulating the dialysis industry.<sup>9</sup> Such oversight includes licensing clinics to operate, and certifying clinics on behalf of the federal government.<sup>10</sup> A certification by the California Department of Public Health enables clinics to receive payment from Medicare and Medi-Cal for treatment.<sup>11</sup> The statutes which govern state licensing for dialysis clinics can be found in the California Health and Safety Code.<sup>12</sup>

California Health & Safety Code § 1200 et seq. contains a variety of licensing requirements for kidney dialysis clinics. Within the article, the term kidney dialysis clinics is not used but rather they are referred to as “chronic dialysis clinics.” Those eligible for state licensing are “clinics that provide less than 24-hour care for the treatment of patients with end-stage renal disease (kidney failure), including renal dialysis services.”<sup>13</sup> The statute mainly contains language which resembles the medical director hiring requirement by the federal government;<sup>14</sup> but also establishes fees for clinics applying for such licensing.<sup>15</sup> The state mainly relies on existing federal regulations for direction in exercising authority over dialysis clinics.

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<sup>5</sup> Certification of Certain Health Facilities, 42 C.F.R. § 491.1.

<sup>6</sup> *Id.*

<sup>7</sup> Cal. Legis. Analyst’s Office, *Proposition 29 Protect the Lives of Dialysis Patients Act. Initiative Statute*. (November 8, 2022), <https://lao.ca.gov/ballot/2022/Prop29-110822.pdf> (last visited Oct. 14, 2022).

<sup>8</sup> Certification of Certain Health Facilities, *supra* note 5 at § 491.8

<sup>9</sup> Cal. Health & Safety Code § 1204 (2022).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Cal. Health & Safety Code § 1212.

<sup>15</sup> Cal. Health & Safety Code § 1266.

### 3. *Local Governments*

Local government entities have the least amount of authority in regulating kidney dialysis clinics. State law allows cities and counties to open their own hospitals,<sup>16</sup> which in turn may offer dialysis treatment. Kidney dialysis clinics tend to be operated by private companies and nonprofits; a list of licensed clinics by county can be found on the California Department of Public Health website.<sup>17</sup>

#### B. Proposed Statutory Initiative

Proposition 29 is a statutory initiative, this means that the initiative aims to amend a statute via a ballot vote instead of through the Legislature and the Governor. Statutes are traditionally enacted by going through the state Assembly, then the Senate, and finally they are signed by the Governor. A statutory initiative, on the other hand, is a tool by which electors can propose statutes through petitions, present them to the Attorney General and the Secretary of State, and then directly vote on the proposed law.<sup>18</sup> This ballot initiative will add provisions to California Health and Safety Code § 1200, creating § 1226.7, 1226.8, 1226.9, 1226.10, and § 1266.3.<sup>19</sup>

#### 1. *Quality of Care Provision*

The statutory amendments begin with § 1226.7, which prohibits kidney dialysis clinics or their governing entity from refusing services to patients based on their payment method.<sup>20</sup> The traditional payment methods for dialysis treatment are individuals, private entities, insurance companies, medicare and medicaid. Included in this section is a definition section which maintains consistency with existing definitions in Cal. Health & Safety Code § 1204.<sup>21</sup> The purpose of this section is to ensure chronic dialysis providers do not exclude potential patients based on their method of insurance payment. Currently, for-profit and nonprofit dialysis clinics may choose which payment plans to accept.

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<sup>16</sup> Cal. Health & Safety Code § 1441.

<sup>17</sup> Cal. Dept. of Public Health, *Certified Hemodialysis Training Programs*, <https://www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/Certified-Hemodialysis-Training-Programs.aspx> (Aug. 8, 2022).

<sup>18</sup> CAL. CONST., art. II, § 8.

<sup>19</sup> Cal. Proposition 29, <https://oag.ca.gov/system/files/initiatives/pdfs/21-0013%20%28Dialysis%20%29.pdf> (last visited Oct. 14, 2022).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

## 2. *Clinic Requirements*

The most notable additions to the health code are the staffing requirements the initiative seeks to impose. Proposed § 1226.8(a) is where the bulk of the statutory changes occur and this section would make substantial alterations to the existing staffing requirements for clinics. This provision would require kidney dialysis clinics to have at minimum one licensed physician (nephrologist), nurse practitioner, or physician assistant present on-site while patients are being treated.<sup>22</sup> Further required by this section is that the medical professional(s) on site have at minimum six months of relevant work experience.<sup>23</sup> Within this portion of the initiative is an exemption for the staffing requirements which allows clinics to seek a waiver. Clinics may obtain waivers, with Department of Public Health approval, to these staffing requirements if it can be shown in good faith that there are not enough available medical professionals to fill open positions.<sup>24</sup>

Additionally, § 1226.8(b) and § 1226.8(c) of Proposition 29 seek to increase transparency in the chronic dialysis industry. Part (b) would require clinics to report health care associated infections, meaning infections that occur related to a patient's treatment, to the state Department of Public Health (Department) for data collection and website publishing.<sup>25</sup> Part (c) mandates that dialysis clinics disclose to their patients when they start treatment, the identity of any physician who may have five percent or more ownership of that clinic.<sup>26</sup> Furthermore, clinics must also disclose that same information to the Department of Public Health so that the information can be published on the Department's website.<sup>27</sup>

## 3. *Increase in Department of Public Health Authority*

This proposition also gives more adjudicatory powers to the Department of Public Health. Adjudications are agency proceedings that either grant benefits or statutory consequences to entities.<sup>28</sup> There are two ways that the ballot initiative does this. First, Proposition 29 requires kidney dialysis clinics to obtain Department approval prior to

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<sup>22</sup> Cal. Proposition 29, *supra* note, 19.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Bijal Shah, *Uncovering Coordinated Interagency Adjudication*, 128 Harv. L. Rev. 805. (2015)

closing, and second, it allows the Department to issue fines for non-compliance with the initiative.<sup>29</sup>

Proposed statute Cal. Health & Safety Code § 1226.9 explicitly prohibits dialysis clinics from closing or substantially reducing services without prior approval by the Department of Public Health.<sup>30</sup> The Department then has the ability to grant, grant-in-part, or deny a clinic's request within given criteria.<sup>31</sup> If a dialysis clinic does not like the Department's determination, § 1226.10 grants an appeal hearing by a clinic to the Department within ten days after the initial decision.<sup>32</sup> Failure to comply with any of the disclosure and reporting requirements in this initiative would allow the state to issue a fine of up to \$100,000.<sup>33</sup>

Finally, Proposition 29 includes a provision which states how the Department of Public Health should fund implementation of the initiative. The initiative does not aim to use taxpayer dollars, but rather delegates to the Department to budget for implementation within existing structures.<sup>34</sup> This section would be added to Cal. Health Code § 1266, not §1226 like the other provisions, and this allows the department to pass on costs and fees in implementing this initiative to the clinics.<sup>35</sup>

### III. DRAFTING ISSUES

#### A. Process to the Ballot

##### 1. *Title and Summary*

On August 24th, 2021, the proponents of the measure submitted to the California Attorney General's office the proposed statutory initiative for title and summary.<sup>36</sup> The official title of the initiative is: **REQUIRES ON-SITE LICENSED MEDICAL PROFESSIONAL AT KIDNEY DIALYSIS CLINICS AND ESTABLISHES OTHER STATE REQUIREMENTS. INITIATIVE STATUTE.**<sup>37</sup>

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<sup>29</sup> Cal. Proposition 29, <https://oag.ca.gov/system/files/initiatives/pdfs/21-0013%20%28Dialysis%20%29.pdf> (last visited Oct. 14, 2022).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> California General Election November 8, 2022, *Official Voter Information Guide*, Prop. 29, <https://voterguide.sos.ca.gov/propositions/29/title-summary.htm> (last visited Oct. 14, 2022).

The summary as prepared by the Attorney General's office is:

Requires physician, nurse practitioner, or physician assistant, with six months' relevant experience, on site during treatment at outpatient kidney dialysis clinics; authorizes exemption for staffing shortage if qualified medical professional is available through telehealth. Requires clinics to disclose to patients all physicians with clinic ownership interests of five percent or more. Requires clinics to report dialysis-related infection data to the state. Prohibits clinics from closing or substantially reducing services without state approval. Prohibits clinics from refusing to treat patients based on source of payment.<sup>38</sup>

## 2. *Signature Gathering*

When a citizen, or other entities, are interested in proposing a law without the legislature, they can begin the ballot initiative process by gathering signatures. The proponents create the proposed statute, present it to the Attorney General for title and summary, and finally the signature gatherers circulate the title and summary to the public.<sup>39</sup> To place a statutory initiative on the ballot, the petition must have gathered signatures that equal at least five percent of the total number of votes from the most recent gubernatorial election.<sup>40</sup> Those signatures must be verified by the Secretary of State's office before the petitioning period ends.<sup>41</sup>

The signature number minimum that proponents of a statutory initiative had to meet in 2022 was 623,212.<sup>42</sup> It is estimated that the cost per signature to place this petition on the ballot was \$21.46.<sup>43</sup> This estimated \$21.46 per signature makes Proposition 29 the second highest cost-per signature initiative in California for the 2022 election cycle.<sup>44</sup> The United State's Supreme Court has held that signature gathers are allowed to be paid since it is a tool by proponents to exercise their free speech.<sup>45</sup>

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<sup>38</sup> Official Voter Information Guide, Prop. 29, *supra* note, 37.

<sup>39</sup> Cal. Elec. Code § 9001 (2022).

<sup>40</sup> CAL. CONST., art. II, § 8.

<sup>41</sup> *Id.*

<sup>42</sup> *California ballot initiative petition signature costs*, Ballotpedia, [https://ballotpedia.org/California\\_ballot\\_initiative\\_petition\\_signature\\_costs](https://ballotpedia.org/California_ballot_initiative_petition_signature_costs) (last visited Oct. 14, 2022).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Meyer v. Grant*, 484 U.S. 1024 (1988).



## B. Prior Initiatives

If Proposition 29, the Protect the Lives of Dialysis Patients Act, looks familiar, it is because California voters have seen dialysis initiatives before in the last two elections.

### 1. *Proposition 23 (2020)*

On the 2020 election ballot, Californians voted on the exact same initiative as Proposition 29. At that time, the kidney dialysis initiative was known as Proposition 23, and it contained the same title, and summary as it does this year.<sup>46</sup> The proponents of Proposition 23 in 2020 and Proposition 29 this year is the labor union Service Employees International Union-United Healthcare Workers West (SEIU-UHW West).<sup>47</sup> To qualify that proposition for the ballot, the sponsors needed at least 623,212 valid signatures, and the cost per signature was \$8.86.<sup>48</sup> So, the cost of qualifying the same initiative two years later was substantially more for the proponents. In 2020, Proposition 23 was defeated with 63% of voters rejecting the proposed statutory change.<sup>49</sup>

### 2. *Proposition 8 (2018)*

In 2018, California voters also considered a kidney dialysis proposition; however, the 2018 initiative was substantively different from Proposition 23 in 2020 and Proposition 29 this year. Proposition 8, the Limits on Dialysis Clinics' Revenue and Required Refunds, aimed to cap kidney dialysis clinic profits of more than 115% the cost of care, and treatment improvements; and required refunds to patients by clinics who exceeded that profit margin.<sup>50</sup> SEIU-UHW West was a sponsor of the initiative in 2018, as well.<sup>51</sup> To qualify this proposition, the sponsors needed at least 365,880 valid

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<sup>46</sup> *Proposition 23*, Ballotpedia, [https://ballotpedia.org/California\\_Proposition\\_23,\\_Dialysis\\_Clinic\\_Requirements\\_Initiative\\_\(2020\)](https://ballotpedia.org/California_Proposition_23,_Dialysis_Clinic_Requirements_Initiative_(2020)) (last visited Oct. 14, 2022).

<sup>47</sup> *Id.*

<sup>48</sup> *California ballot initiative petition signature costs*, Ballotpedia, [https://ballotpedia.org/California\\_ballot\\_initiative\\_petition\\_signature\\_costs](https://ballotpedia.org/California_ballot_initiative_petition_signature_costs) (last visited Oct. 14, 2022).

<sup>49</sup> *Id.*

<sup>50</sup> *Proposition 8*, Ballotpedia, [https://ballotpedia.org/California\\_Proposition\\_8,\\_Limits\\_on\\_Dialysis\\_Clinics%27\\_Revenue\\_and\\_Required\\_Refunds\\_Initiative\\_\(2018\)](https://ballotpedia.org/California_Proposition_8,_Limits_on_Dialysis_Clinics%27_Revenue_and_Required_Refunds_Initiative_(2018)) (last visited Oct. 14, 2022).

<sup>51</sup> *Id.*

signatures, and the cost per signature was \$4.51.<sup>52</sup> The electorate in California also rejected this proposition, but this time with 59% of the vote.<sup>53</sup>

### C. Campaign Finance

The proponents of this proposition are organized as a committee called “Californians for Kidney Dialysis Patient Protection.” This group is leading the “Kidney Patients Deserve Better campaign.” The yes on 29 campaign is primarily funded by its sponsors SEIU-UHW West, a labor union, contributing \$7.97 million.<sup>54</sup>

Those in opposition of the initiative are the “Stop Yet Another Dangerous Dialysis Proposition” coalition. This political action committee has reported over \$36.70 million in contributions, mainly from DaVita Inc. and Fresenius Medical Care– the largest for-profit kidney dialysis clinics in California.<sup>55</sup>

## IV. CONSTITUTIONAL ISSUES

It is unlikely that there is a constitutional concern with this measure or that an issue with the proposed statutory text will arise. Statutes in California regulating nursing homes already contain similar requirements to the ones that are proposed in Proposition 29 and those provisions have been upheld by courts against constitutional and drafting challenges.<sup>56</sup>

## V. STATUTORY ISSUES

### A. Effective Date

The California Constitution provides that an initiative takes effect the fifth day after the Secretary of State files the statement of the vote for the election.<sup>57</sup> Additionally, the state constitution allows an initiative to become operative after its effective date should it be in the text.<sup>58</sup> From the moment the polls close, the Secretary of State has 38

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<sup>52</sup> *California ballot initiative petition signature costs*, Ballotpedia, [https://ballotpedia.org/California\\_ballot\\_initiative\\_petition\\_signature\\_costs](https://ballotpedia.org/California_ballot_initiative_petition_signature_costs) (last visited Oct. 14, 2022).

<sup>53</sup> *Proposition 8*, Ballotpedia, [https://ballotpedia.org/California\\_Proposition\\_8,\\_Limits\\_on\\_Dialysis\\_Clinics%27\\_Revenue\\_and\\_Required\\_Refunds\\_Initiative\\_\(2018\)](https://ballotpedia.org/California_Proposition_8,_Limits_on_Dialysis_Clinics%27_Revenue_and_Required_Refunds_Initiative_(2018)) (last visited Oct. 14, 2022).

<sup>54</sup> *Proposition 29*, Ballotpedia, [https://ballotpedia.org/California\\_Proposition\\_29,\\_Dialysis\\_Clinic\\_Requirements\\_Initiative\\_\(2022\)](https://ballotpedia.org/California_Proposition_29,_Dialysis_Clinic_Requirements_Initiative_(2022)) (last visited Oct. 14, 2022).

<sup>55</sup> *Id.*

<sup>56</sup> Cal. Health & Safety Code § 128734.1.

<sup>57</sup> Cal Const, Art. II § 10.

<sup>58</sup> *Id.*

days to count the vote,<sup>59</sup> on the 43rd day after the election Proposition 29 would become effective should it pass. Notably, Proposition 29 contains a portion which would require the agency to implement the regulatory changes within one year of the statute's effective date.<sup>60</sup>

### B. Future Amendments

Included in the initiative is a clause allowing amendments and repeals to the provision in a manner consistent with the California Constitution.<sup>61</sup> The state constitution provides the following language: “The Legislature 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 the electors’ approval.”<sup>62</sup> Proposition 29 allows the Legislature to make amendments to the statute as long as they are consistent with the statute’s intent, a simple majority vote can suffice this requirement, otherwise it can only be changed through another statutory initiative.<sup>63</sup>

### C. Severability

Proposition 29 includes a severability provision at the end of the proposed law change. The severability provision would allow courts to remove invalid parts of the text or its implementation without undoing the entire initiative.<sup>64</sup> Severability looks at the feasibility and propriety of enforcing the remaining portions of a statute after other textually identifiable portions have been deemed constitutionally invalid.<sup>65</sup>

Courts however, have already determined a test for determining whether a portion of an initiative statute is severable. The three criteria for severability of an initiative require that the invalid provision must be grammatically, functionally, and volitionally separable.<sup>66</sup> This is the same test that is used to sever portions of statutes passed by the Legislature found constitutionally invalid.<sup>67</sup> Severance of a California initiative must be

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<sup>59</sup> Election and Voter Information, *The Official Canvass of the Vote*, <https://www.sos.ca.gov/elections/official-canvass> (last visited Oct. 14, 2022).

<sup>60</sup> Cal. Proposition 29, <https://oag.ca.gov/system/files/initiatives/pdfs/21-0013%20%28Dialysis%20%29.pdf> (last visited Oct. 14, 2022).

<sup>61</sup> *Id.*

<sup>62</sup> CAL. CONST., art. II, § 10.

<sup>63</sup> Cal. Proposition 29, <https://oag.ca.gov/system/files/initiatives/pdfs/21-0013%20%28Dialysis%20%29.pdf> (last visited Oct. 14, 2022).

<sup>64</sup> Cal. Proposition 29, <https://oag.ca.gov/system/files/initiatives/pdfs/21-0013%20%28Dialysis%20%29.pdf> (last visited Oct. 14, 2022).

<sup>65</sup> Richard H. Fallon, Jr, *Fact and Fiction About Facial Challenges*, 99 Calif. L. Rev. 915 (2011)

<sup>66</sup> *Raven v. Deukmejian*, 52 Cal. 3d 336, 355 (1990).

<sup>67</sup> *Id.*

done by a state court.<sup>68</sup> Therefore, should portions of Proposition 29 be found to be invalid, a court would consider if the remaining provisions of the initiative are still grammatically, functionally, and volitionally feasible without the invalid provision.

## VI. POLICY CONSIDERATION

### A. Proponents

#### 1. *Arguments*

The proponents of the initiative assert that this statute is necessary to provide kidney dialysis patients with a higher quality of care. The Yes on 29 fact sheet hones in on the importance of the initiative to improving transparency, guaranteeing equal treatment, strengthening patient safety, and ensuring access to care.<sup>69</sup> Proponents claim that the new reporting requirements will ensure patients and their families are informed about unsafe clinic conditions.<sup>70</sup> Supporters of this ballot initiative argue that dialysis companies make large profits, and are able to improve the dialysis treatment experience but choose not to.<sup>71</sup> One kidney dialysis patient described the safety issues from low clinic staff, such as no one being available if patients get infections or faint.<sup>72</sup> The sponsors focus on the initiative as being a tool both for patients to receive the care they deserve, and the state of California to hold such clinics accountable when they lack adequate experienced staff and care.

#### 2. *Endorsements*

CalMatters reports only four endorsements in favor of Proposition 29; these are the Yes on 29 Committee, SEIU-UHW West, California Labor Federation, and the California Democratic Party.<sup>73</sup> The ballot signers for the voter guide which is sent out by the Secretary of State's office are Emanuel Gonzales, Dialysis Patient Care Technician;

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<sup>68</sup> *Id.*

<sup>69</sup> Yes on 29, *Prop 29 Factsheet*, <https://www.yeson29.com/#home> (last visited Oct. 14, 2022).

<sup>70</sup> *Id.*

<sup>71</sup> CalMatters, *Prop. 29 Impose New Rules on Dialysis Clinics*, <https://calmatters.org/california-voter-guide-2022/propositions/prop-29-kidney-dialysis/> (last visited Oct. 14, 2022).

<sup>72</sup> San Diego Tribune, *Yes on California Proposition 29: This measure would protect dialysis patients' lives*, <https://www.sandiegouniontribune.com/opinion/story/2022-08-24/yes-on-california-proposition-29-carmen-cartagena>.

<sup>73</sup> *Id.*

Reverend Kisheen W. Tulloss, President of Baptist Ministers Conference of Los Angeles; Cecilia Gomez-Gonzalez, Dialysis Patient Advocate; Shama Aslam, Former Dialysis Patient; Richard Elliott, Dialysis Patient; and Ruben Tadeo, Dialysis Patient.<sup>74</sup>

## B. Opponents

### 1. *Arguments*

The opponent of Proposition 29, the No on 29 committee, say this is a move by special interests to regulate an industry that is operating efficiently as is. Additionally, opponents believe that these new requirements could result in negative externalities such as increased costs for clinics, or disincentivizing entities from offering dialysis with burdensome regulations.<sup>75</sup> The opponents of this proposition also focus their attention on the existing laws, arguing that the current structure allows for clinics to operate steadily. Often cited in opposition to the initiative is the Legislative Analyst's Office's report confirming that clinics will spend hundred thousand dollars every year to meet the on-site medically licensed personnel requirement.<sup>76</sup> Some dialysis patients also worry that the increased costs may lead clinics to stop their operations, risking their health if dialysis is not readily obtainable.<sup>77</sup>

Finally, opponents make a point of the fact that this is SEIU-UHW West's third attempt to regulate kidney dialysis clinics, abusing the purpose of ballot initiatives in the process.<sup>78</sup>

### 2. *Endorsements*

The No on 29 website lists a 63 member coalition of healthcare providers, organizations, and interest groups that oppose the initiative.<sup>79</sup> Among them are DaVita, Inc., Fresenius Medical Care, American Academy of Nephrology PAs, American Nurses Association, California Medical Association, California Chamber of Commerce, and the California Republican Party.<sup>80</sup> Joining the opponents of this proposition are also five

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<sup>74</sup> California General Election November 8, 2022, *Official Voter Information Guide*, Prop. 29, <https://voterguide.sos.ca.gov/propositions/29/arguments-rebuttals.htm> (last visited Oct. 14, 2022).

<sup>75</sup> CalMatters, *supra* note 70.

<sup>76</sup> The San Francisco Chronicle, *California Election 2022: What to know about November's ballot propositions*, <https://www.sfchronicle.com/bayarea/article/california-election-2022-propositions-17476178.php> (last visited Oct. 14, 2022).

<sup>77</sup> No on 29, *Get the Facts*, <https://noprop29.com/get-the-facts/> (last visited Oct. 14, 2022).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> CalMatters, *supra* note 70.

major news editorial boards across the state.<sup>81</sup> The argument and rebuttal signers for this proposition are dialysis patients Anthony Hicks, Angelic Nicole Gant, Margarita Mendoza and Gregory Ridgeway; joined by Marketa Houskova, DNP, RN, Executive Director for California Nurses Association, and Robert E. Wailes, M.D., President, California Medical Association.<sup>82</sup>

### C. Legislative Analyst's Office

The Legislative Analyst's Office, the nonpartisan entity that advises the Legislature, published an analysis of Proposition 29 which acknowledges the likelihood of increased costs to Californians. Staff at the Legislative Analyst's Office assume that the staffing requirements will increase the costs to dialysis clinics by several hundred thousand dollars annually. The clinics will likely shift costs to patients and their health care providers.<sup>83</sup> Being that kidney dialysis is covered by medicare and medicaid, they also speculate that this statute would increase costs to state and local governments.<sup>84</sup> The fiscal effect portions of this analysis are currently found on the Secretary of State's voter guide which goes out to voters.<sup>85</sup>

## VII. CONCLUSION

Proposition 29 is not unfamiliar to California voters, nor is the reach for dialysis clinic reform. This proposition, like its predecessor in 2020, seeks to add staffing and training requirements, as well as reporting criteria for kidney dialysis clinics across the state. The proponents of this initiative think these new requirements would improve patient care. The opponents of the measure say the dialysis clinic currently operates under an effective method and such amendments to the health code are unnecessary. When deciding this issue, voters will determine if dialysis clinics need more regulations to provide patients quality care.

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<sup>81</sup> *Proposition 29*, Ballotpedia, [https://ballotpedia.org/California Proposition 29, Dialysis Clinic Requirements Initiative \(2022\)](https://ballotpedia.org/California_Proposition_29,_Dialysis_Clinic_Requirements_Initiative_(2022)) (last visited Oct. 14, 2022).

<sup>82</sup> California General Election November 8, 2022, *Official Voter Information Guide*, Prop. 29, <https://voterguide.sos.ca.gov/propositions/29/arguments-rebuttals.htm> (last visited Oct. 14, 2022).

<sup>83</sup> Cal. Legis. Analyst's Office, *Proposition 29 Protect the Lives of Dialysis Patients Act. Initiative Statute*. (November 8, 2022), <https://lao.ca.gov/ballot/2022/Prop29-110822.pdf> (last visited Oct. 14, 2022).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*