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California State Senate

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July 6, 2009

Daniel W. Hancock, Chairman
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

Dear Chairman Hancock:

As a member of the Little Hoover Commission, I would like to note, for the record, my concerns regarding the Commission's report on the California Institute for Regenerative Medicine (CIRM), which was released on June 26, 2009.

The report makes a series of recommendations to modify CIRM's governance structure and operations. In particular, the report recommends reducing the size of CIRM's governing board from 29 members to 15 members and concentrating the power of appointment in the Governor, who would be responsible for appointing 11 of 15 members. The report also recommends stripping the power of the Lieutenant Governor, the Controller, and the Treasurer to make appointments and to nominate candidates for chair and vice-chair. Finally, the report recommends eliminating the statutory duties of the chair and the vice-chair and the eligibility criteria for those positions.

I have several concerns regarding these recommendations. First, the recommendations, if adopted by the Legislature, would essentially rewrite Proposition 71. In adopting Proposition 71, the voters specified the governance structure they desired and limited the Legislature's ability to amend the law. Under Proposition 71, the Legislature may only amend the law to enhance CIRM's ability to further the purposes of its grant and loan program. The Commission's recommendations appear to be inconsistent with the voters' intent and therefore could only be accomplished by proposing another ballot measure. CIRM provided the Commission with legal memoranda from two prominent law firms concluding that these recommendations would require another vote of the people, yet the Commission barely paused to consider these legal issues. At a minimum, these memoranda raise a serious question about the scope of the Legislature's authority and create the risk of litigation.

Although the report acknowledges this risk, it fails to note that litigation over the Legislature's authority to amend Proposition 71 would interfere with CIRM's ability to carry out its mission and dissuade the proponents of future ballot measure from authorizing legislative amendments. Furthermore, as demonstrated by the recent defeat of Propositions 1D and 1E, which would have amended Propositions 10 and 63, respectively, the voters are not generally supportive of legislative efforts to amend popularly enacted measures. These issues deserved greater attention than the Commission afforded them.

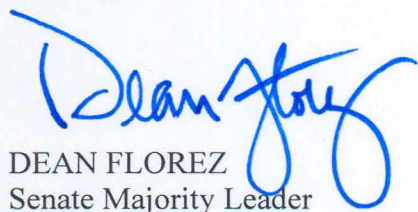
Second, as I stated at the Commission's meeting on July 25th, the Commission's recommendations appear to lack a firm foundation. For example, when I asked why a 15 member board was inherently better than a 29 member board, Commission members responded that an academic expert on non-profit governance had testified that the ideal board size was seven to nine members, but the expert himself stated that he did not have sufficient knowledge of CIRM's operations to opine about the ideal board size for CIRM. It is not clear to me that, given the scientific, financial, commercial, and governmental issues with which CIRM has to deal, a smaller board would be better suited to achieve CIRM's mission. In fact, as the report notes, CIRM has benefitted from a diverse and engaged board.

Third, I am also concerned about the Commission's attempt to shift power over the agency to the Governor. Like the Little Hoover Commission itself, CIRM was designed to be an independent agency. Proposition 71 therefore dispersed appointment authority to the Governor, the Lieutenant Governor, the Controller, the Treasurer, the Legislature, and UC Chancellors. By concentrating appointment authority in the Governor, the Commission would undermine the careful and deliberate balance struck by Proposition 71. In a controversial area like stem cell research, such a change would threaten the independence that CIRM needs to ensure the success of its mission.

Finally, I am concerned about the Commission's apparent rush to conclude its report. As one members said at the meeting, five minutes and a sandwich is not adequate time for Commission members to absorb the information that was presented. While I appreciate the substantial effort that Commission members and staff put into drafting the report, I am concerned that due to its rush to approve the report, the Commission gave disproportionate weight to CIRM's critics and did not consider a broader range of views on the complex issues that are the subject of the report.

Thank you for the opportunity to share my views with you. Please feel free to contact my office at (916) 651-4016 should you have any questions.

Sincerely-



DEAN FLOREZ
Senate Majority Leader
16th District