

Study B-601

April 11, 1996

**Second Supplement to Memorandum 96-24****Business Judgment Rule: Comments of Professor Friedman**

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Attached as Exhibit pages 1-2 is a letter from Professor C. Hugh Friedman of University of San Diego School of Law. Professor Friedman agrees with the State Bar Corporations Committee that existing case law establishing the business judgment rule is not causing significant problems in practice, and codification is likely to create new uncertainties and limit the judicial flexibility needed to resolve complicated situations. He notes that in his numerous contacts over the years with California's corporate lawyers and trial and appellate judges, he has not heard the desire expressed for legislative clarification or codification of the rule.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary



University of San Diego

Law Revision Commission  
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School of Law

Professor C. Hugh Friedman

April 9, 1996

Mr. Nathaniel Sterling  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road  
Palo Alto, CA 94303-4739

**Re: Codification of the Business Judgment Rule**

Dear Mr. Sterling:

As you know from our previous telephone discussion, I have been following with interest the study by the California Law Revision Commission (the "CLRC") of possible "codification" of the business judgment rule in California, and have expressed my reservations about such an undertaking.

I have had an opportunity to review your staff Memorandum 96-24 of March 15, 1996, tentatively recommending the codification of the business judgment rule based upon the ALI Principles of Corporate Governance formulation, and the comments thereon from Diane Holt Frankle on behalf of the State Bar Corporations Committee dated April 4, 1994.

This is to state my opposition to such codification, for the reasons set forth in the Corporations Committee comments.

I do not believe existing case law establishing the business judgment rule in California is causing any significant problems in practice. In my numerous contacts over the years with California's corporate lawyers and trial and appellate judges, I have never heard the desire expressed for legislative clarification or codification of the rule.

Furthermore, as pointed out in the Corporations Committee comments, the proposed effort to codify the law will undoubtedly cause more problems than now exist by creating new uncertainties, and may result in curtailing judicial flexibility where it is most needed to resolve complicated situations.

If the Commission is intent upon proceeding with this project, I would urge it to do so cautiously, giving careful consideration to the various specific concerns raised by the Corporations Committee.

Yours very truly,

A handwritten signature in cursive script, appearing to read "C. Hugh Friedman".

C. Hugh Friedman  
Professor of Law