

Judge Rules That Race and LGBT Quotas for Corporate Board Members Violate the California Constitution

Article By:

Timothy Long

Rana Ayazi

A Los Angeles Superior Court judge recently ruled that a California law (Assembly Bill 979) requiring California corporations to implement race and LGBT quotas for their board of directors is unconstitutional.

The History of AB 979

On Sept. 30, 2020, California Gov. Gavin Newsom signed into law AB 979, which required publicly held corporations with a principal executive office in California to diversify their boards of directors with directors from “underrepresented communities.” AB 979 required corporations with nine or more directors to have at least three directors from an underrepresented community; corporations with five to eight directors to have at least two directors from an underrepresented community; and corporations with four or fewer directors to have at least one director from an underrepresented community.

The law defined “director from an underrepresented community” as “an individual who self-identifies as Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual, or transgender.”

Litigation of AB 979

The same day AB 979 was signed into law, Judicial Watch, a conservative activist group, sued the secretary of state on behalf of California taxpayers to prevent the state from enforcing AB 979. *Robin Crest, et al. v. Alex Padilla* (No.20ST-CV-37513). Both parties subsequently filed cross motions for summary judgment.

Judicial Watch argued the law violated the equal protection clause of California’s Constitution by treating similarly situated individuals differently based on race, sexual orientation, and gender identity. Judicial Watch further argued there was no compelling government interest justifying the law (i.e., there was no actual proof of discrimination in the selection of board members) and that the law was not narrowly tailored because imposing such requirements on corporations was not the least

restrictive means to accomplish the purported goal.

The state countered that the law would remedy discrimination in corporate board selection. The state provided anecdotal evidence in the form of testimony from individuals who allegedly had observed discrimination in corporate board selection. In support of its arguments, the state also presented national and local data sets and a California study that used 10-K filings to identify board directors' racial and ethnic identity. At oral argument, the state offered two other types of evidence. First, the state came forward with "evidence that the 'C-Suite' executive jobs that are the most common 'feeders' for board positions belong disproportionately to straight, cisgender white males." Second, the state offered evidence to show the board selection process was "secretive, exclusive, and dependent on the personal networks of those already holding board positions."

Finally, the state argued corporations would benefit from having a diverse board of directors, contending that diverse boards lead to better decision-making and higher profits.

The Court's Decision

On April 1, 2022, Los Angeles Superior Court Judge Terry Green decided in favor of Judicial Watch. He held that the state did not provide convincing evidence of discrimination in corporate board selection, explaining that anecdotal evidence cannot be convincing by *itself* and it "needs the support of either (1) a properly established statistical disparity or (2) a properly traced statistical history showing that, from a time of formal discrimination until now, the composition of boards has remained unchanged"—neither of which were established. Judge Green explained that the national and local data sets were too broad or too narrow to take into consideration, the one California study failed to show the required statistical disparity between actual directors and the set of people qualified to be directors, and proof of discrimination in selection of C-Suite executives is not proof of discrimination in board selection. As for the evidence concerning the board selection process, the court commented that while this might be proof of a structural problem that could be traced to discrimination, the argument relied on an assumption that was too broad: that past California corporations discriminated against every group identified as an underrepresented individual by the statute.

Judge Green further held that while the argument that corporations would benefit from diverse boards made intuitive sense, the state's generic interest in healthy business is not sufficient to permit the use of classifications. Judge Green emphasized: "Equal treatment and opportunity, of and for all individuals regardless of how they look or identify, is one of this state's basic commitments. ... Only in very particular cases should discrimination be remedied by more discrimination."

Practical Implications

For now, California corporations are not required to comply with the race or LGBT quotas when selecting board members. The state may appeal Judge Green's decision.

Keep an Eye Out: SB 826

AB 979 is not the only legislation affecting the make-up of the boards of California corporation. On Sept. 20, 2018, Gov. Newsom signed Senate Bill 826, which requires publicly held corporations with a principal executive office in California to have at least one female director on their boards by Dec. 31, 2019, and requires corporations with six or more directors to have at least three female directors; corporations with five directors to have at least two female directors; and corporations with four or

fewer directors to have at least one female director by Dec. 31, 2021. A female is an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth. Judicial Watch is currently challenging SB 826 in a case presided over by Los Angeles Superior Court Judge Maureen Duffy-Lewis. Closing arguments came on Feb. 16, 2022, after a 27-day trial, and the parties are waiting on a ruling.

©2025 Greenberg Traurig, LLP. All rights reserved.

National Law Review, Volume XII, Number 110

Source URL: <https://natlawreview.com/article/judge-rules-race-and-lgbt-quotas-corporate-board-members-violate-california>