

# California Courts Strike Down Laws Requiring More Women and Diversity on Boards

Article By:

Betsy Johnson

Zachary V. Zagger

---

The California courts have cast doubt on the legality of laws mandating the number of women and individuals from “underrepresented communities” on the boards of directors of publicly traded corporations based in California. Two recent court decisions struck down two laws that sought to require representation from those groups on the grounds the laws violate the Equal Protection Clause of the California Constitution.

On May 13, 2022, the Los Angeles Superior Court following a bench trial before Judge Maureen Duffy-Lewis struck down Senate Bill (SB) 826. In *Crest v. Padilla*, Case No. 19STCV27561, the court held that companies headquartered in California must have female directors on their boards. The ruling came just over one month after a different judge in the Los Angeles Superior Court in *Crest v. Padilla*, Case No. 20STCV37513, or *Crest II*, granted summary judgment on similar grounds to challengers of Assembly Bill (AB) 979, a law that mandates racial, ethnic, and LGBTQ representation on boards of directors.

## Background

On September 30, 2018, former California Governor Jerry Brown [signed SB 826](#) mandating that each publicly-held company headquartered in the state have at least one woman on its board of directors by the end of 2019. The purpose of the law was to address the lack of female representation on corporate boards. The law cited statistics suggesting that more than one quarter of companies in California did not have female representation on their boards.

SB 826 required that, by the end of 2021, corporations with six or more directors have a minimum of three female directors and a minimum of two female directors for companies with five total directors on their boards. The law further authorizes fines of \$100,000 for a first violation and \$300,000 for subsequent violations.

Two years later, on September 30, 2020, California Governor Gavin Newsom [signed AB 979 into law](#) with the purpose of correcting a lack of representation from minority groups on corporate boards. AB 979 required that, by the end of 2021, companies have a minimum of one director from an

---

“underrepresented community” on their boards. The law states that these positions may be filled by 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.”

By the end of 2022, AB 979 requires boards with nine or more directors to have a minimum of three directors from underrepresented communities and a minimum of two or more for boards between four and eight directors. The law further directs the California Secretary of State to annually report on the number of corporations in compliance with these requirements and authorizes the secretary to impose fines for violations of the law’s provisions.

The legal advocacy group Judicial Watch filed lawsuits challenging both SB 826 and AB 979 on behalf of California taxpayers, alleging the laws treat “similarly situated” individuals unequally in violation of the state’s Equal Protection Clause.

The state justified both laws by claiming that requiring diverse board representation addresses discrimination concerns. Moreover, the state argued that diversity on board benefits boards generally. In *Crest II*, the state argued that diverse boards tend to be more profitable and have better corporate integrity and oversight. Thus, the state argued, diversity on boards has a long-term effect of economically benefitting the state.

## **Court Findings**

The courts in both *Crest I* and *Crest II*, ruled that California had failed to show there was a compelling state interest in stopping the alleged discrimination against women and individuals from underrepresented communities, that the laws were necessary, or that they were narrowly tailored to address the issue.

Notably, in *Crest I*, Judge Duffy-Lewis cited evidence presented at trial that showed the true goal of SB 826 was to “achieve greater gender equity or parity” and “not to boost California’s economy” or “improve opportunities for women in the workplace” as the state had argued. Judge Duffy-Lewis held that a law “remedying generalized, non-specific allegations of discrimination” does not present a “compelling state interest” that warrants upholding SB 826.

In *Crest II*, in granting summary judgment, Judge Terry Green found that while remediating discrimination can be a compelling interest, the legislature failed to identify discrimination in a specific industry or region, noting that the list of companies covered could include everything from tech companies in Silicon Valley to entertainment companies in Hollywood to agriculture or lumber companies from the Central Valley or the North Coast. As such, Judge Green held that there was insufficient evidence to withstand the constitutional challenge to AB 979.

Both courts were skeptical that such laws are even necessary to remedy discrimination. Judge Duffy-Lewis in *Crest I* said that “neither the Legislature nor [the state] could identify any specific, purposeful, intentional[,] and unlawful discrimination to be remedied.” The judge noted that the state’s own witnesses attributed the numerical difference in men and women in board seats to “reasons other than actual discrimination, including the lack of open board seats, women’s networking issues, board propensity to select persons that they already know, and board’s preference for choosing CEOs to fill open board positions.”

Similarly, in *Crest II*, Judge Green found that “[n]o one in the record appear[ed] to have made any

effort to identify, define, or survey the qualified talent pool for director positions.” The “state’s generic interest in healthy businesses” is not sufficient to “permit the use of suspect classifications,” the judge said.

Similarly, both courts cast doubt on whether quota-like rules mandating representation could be narrowly tailored to address the alleged discrimination. The judges in both *Crest I* and *Crest II* noted that there was little evidence that the California legislature considered alternative gender-neutral or race-neutral measures.

## Key Takeaways

Despite a broader societal push to for greater representation from historically underrepresented groups in high-level corporate positions and other positions of influence, the rulings demonstrate that courts, at least in California, may not be convinced that laws and policies mandating quota-like measures can withstand scrutiny under constitutional equal protection provisions.

Still, diversity on corporate boards will continue to be an issue with investors and other stakeholders. The Nasdaq stock exchange’s [new Board Diversity Rule](#), which was approved by the U.S. Securities and Exchange Commission in 2021, is set to require certain Nasdaq-listed companies to disclose board-level diversity statistics and explain why they do not have at least two diverse directors beginning August 2022.

Given this climate, corporate boards may want to consider updating and reinforcing diversity and inclusion strategies, including unconscious bias and cultural awareness training for board members.

© 2025, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

---

National Law Review, Volume XII, Number 153

Source URL:<https://natlawreview.com/article/california-courts-strike-down-laws-requiring-more-women-and-diversity-boards>