

# The Superior Court Has The Authority To Determine The Validity Of Board Elections, But What About Recalls?

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Section 709 of the California Corporations Code provides a mechanism for "any shareholder" or "any person who claims to have been denied the right to vote" to obtain a determination by the Superior Court of the validity of any election or appointment of any director of any domestic corporation, or of any foreign corporation if the election was held or the appointment was made in California. The statute does not directly authorize the Superior Court to determine the validity of a vote to remove a director.

In *Lake Lindero Homeowners Association, Inc. v. Barrone*, 2023 WL 2259359 (certified for publication 3/27/23), the respondent argued that the analogous provision in the Nonprofit Mutual Benefit Corporation Law, Section 7616, authorizes the validation of an election but not a recall. Neither the trial court nor the Court of Appeal agreed. While acknowledging that the statute was silent on recalls, the Court of Appeal found that the statutory text evidences a clear legislative intent to confer broad authority on the trial court in determining the validity of a board election. If an election follows a vote on removal as it did in this case, it is difficult to see how a court could decide the validity of the election without first determining whether there had been a removal of director(s).

Liz Dunshee at Proxy Season Blog kindly enough [mentioned](#) my post on adjournments. In *Lake Lindero*, there was an insufficient quorum at the initial meeting of members and there was a vote to adjourn by the members.

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