



Written by [Michael Tennant](#) on May 17, 2022

California Judge Tosses State Gender Quotas for Corporate Boards

A California judge has determined that a state law mandating gender quotas for corporate boards violates the California constitution's equal-protection clause.

California Superior Court Judge Maureen Duffy-Lewis [ruled](#) Friday that the 2018 law, which requires private corporations to have a certain number of women (or, more accurately, people who "self-identif[y]" as women) on their boards of directors, is unconstitutional because it attempts "to achieve gender equity or parity," not to remedy actual discrimination.



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Judicial Watch brought the case in 2019 on behalf of three Golden State taxpayers. A month ago, in a lawsuit brought by the same parties, another California judge [struck down](#) a state law imposing racial, ethnic, and LGBT quotas on corporate boards

In her decision, Duffy-Lewis noted that, when challenged, any statute that "makes express use of a suspect classification" such as gender "is presumed to be unconstitutional, and the government bears the burden of demonstrating otherwise" — something it utterly failed to do in this instance.

The state claimed that the law, known as [Senate Bill 826](#), was necessary "to eliminate and remedy discrimination in the director selection process for publicly held corporate boards in California" and "to increase gender diversity" on corporate boards in order to improve the economy and "to benefit and protect California taxpayers, public employees and retirees," Duffy-Lewis wrote.

The biggest hurdle for the state to overcome was the legislative history of S.B. 826, which made clear both that the law had nothing to do with remedying discrimination and that lawmakers were aware that it was on shaky legal ground. The text of the law, observed Duffy-Lewis, "does not reference discrimination nor remedying discrimination." Instead, it mentions "achiev[ing] gender parity" and attaining a "critical mass" of women on corporate boards. The Assembly Judiciary Committee wrote that S.B. 826 is "essentially a quota system for private corporate boards. Should this bill be challenged, the State would confront a difficult challenge in showing a compelling government interest in requiring a gender-based quota system for a private corporation." Even then-Governor Jerry Brown, when signing the bill into law, warned of "serious legal concerns" about it.

Even if the law had claimed to be about remedying discrimination, it would still have been a hard sell to Duffy-Lewis, who opined:

The State must have a strong basis in evidence to conclude that remedial action is necessary before it embarks on a program to remedy discrimination, and the discrimination cannot merely be conceded. Generalized assertions of discrimination in a particular region or industry are insufficient to give rise to a compelling governmental interest, as are mere



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statistical anomalies, and the discrimination must be identified with specificity....

The State also must show that when using a suspect classification to redress specific discrimination the use of the classification is remedial.... The remedy must be designed as nearly as possible to restore the victims of specific, purposeful, or intentional, unlawful discrimination to the position they would have occupied in the absence of the discrimination.

The state failed to demonstrate to Duffy-Lewis that S.B. 826 met these requirements. The government, she wrote, “was unable to present specific evidence of actual, unlawful discrimination against any specific woman by any specific corporation.”

As to the supposed benefits to the economy and taxpayers of having more women on corporate boards, Duffy-Lewis was skeptical. She pointed out that defense witnesses testified that there were many ways to achieve these objectives besides gender quotas and that studies, including those cited in S.B. 826, “do not support the existence of a causal relationship between women on boards and improved corporate performance and corporate governance.”

In addition, she found some of the state’s arguments in favor of mandating women on corporate boards to be rather condescending, relying on stereotypes about women such as that they are “consensus builders” or more risk-averse than men.

“S.B. 826,” she declared, “violates the Equal Protection Clause of the California Constitution and is thus enjoined.”

“The Court eviscerated California’s unconstitutional gender quota mandate.... The radical Left’s unprecedented attacks on anti-discrimination law has [sic] suffered another stinging defeat,” Judicial Watch president Tom Fitton said in a [statement](#). “Thankfully, California courts have upheld the core American value of equal protection under the law.”



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