

May 17, 2022

California State Court Declares SB 826 Unconstitutional

California Board Gender Diversity Law Invalidated

On May 13, 2022, after a lengthy non-jury trial in *Crest v. Padilla*, California Superior Court Judge Maureen Duffy-Lewis ruled in favor of the plaintiffs who had challenged SB 826, one of California's two board diversity statutes, as violating the California Constitution. The complaint in *Crest v. Padilla* was filed in 2019 by three California taxpayers who sought to enjoin the California Secretary of State from using taxpayer funds in effectuating or ensuring compliance with SB 826. The California Secretary of State has not yet indicated whether it intends to appeal the Court's order. This verdict follows a similar judgment that struck down AB 979, the other California board diversity statute, last month.

SB 826 and Basis of Challenge. SB 826, signed into law on September 30, 2018, requires publicly held California corporations and publicly held foreign corporations whose principal executive offices are located in California to have a minimum number of female directors on their boards of directors. The current requirement is two female directors if the board has five directors or three female directors if the board has six or more directors. The plaintiffs argued at trial that SB 826 employed suspect classifications based on gender and violated the equal protection clause, Article I, Section 7(a), of the California Constitution, among other arguments. In its decision, the Court agreed with the plaintiffs.

Related Challenge to AB 979. A related lawsuit that asserted similar constitutional challenges to AB 979, also captioned *Crest v. Padilla* and involving the same three plaintiffs, concluded in April, with the California Superior Court Judge in that case granting summary judgment in favor of the plaintiffs and striking down AB 979 as unconstitutional.¹ AB 979 requires publicly held California corporations and publicly held foreign corporations whose principal executive offices are located in California to have a minimum number of

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directors from “underrepresented communities,” which includes racial minorities and members of the LGBTQ community, on their boards.²

Gender Diversity on California Boards Moving Forward. Notwithstanding the invalidation of both AB 826 and AB 979, board diversity continues to be a key area of focus for institutional investors.

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ENDNOTES

- ¹ For a more complete review of *Crest v. Padilla*, see our memorandum of April 5, 2022, entitled [California State Court Declares AB 979 Unconstitutional](#).
- ² For a more complete review of AB 979, see our memorandum of October 1, 2020, entitled [California Expands Board Diversity Requirements](#).

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