

April 6, 2022

Corporate Leadership's Indispensable Role in Promoting Equality

Last Friday, the 2020 [California board diversity statute](#) requiring publicly held domestic or foreign corporations whose principal executive office is located in California to have a minimum of “one director from an underrepresented community” on its board by December 31, 2021 was [struck down](#) by a Los Angeles County Superior Court judge as violating the Equal Protection Clause of the California Constitution. Under the statute: “‘Director from an underrepresented community’ means 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.”

From the inception of California's predecessor [2018 statute](#) that required gender diversity on corporate boards, [many who cared about improving board diversity](#) feared that the statute had state and federal constitutional vulnerabilities, including because California was purporting to regulate corporations that were domiciled outside California and thus intruding on their internal corporate affairs. But the positive effects of California's statute have been [substantial](#) as board diversity from underrepresented communities has [increased markedly](#) since its enactment. It is our hope that corporate America will continue to focus on the need to increase racial, gender and other types of diversity and to capitalize on the full range of talent in our great nation, not just at the boardroom level, but from the ground floor up all the way through to the C-Suite.

To that end, we were proud to spearhead an effort, with the broad support of general counsel of leading companies, former corporate law judges and securities regulators, leading academics, and colleagues at distinguished law firms who are leaders in the corporate and securities laws bar, [in favor of NASDAQ's right as a private actor](#) to encourage diversity in the boardrooms of their voluntarily listed companies. Although a trial judge's ruling is not necessarily the last word on the California statute — given not only the potential for appeal but also the potential for the legislature to adopt a version less susceptible to challenge — it does underscore the vital role that Corporate America must play if our nation is to fulfill its promise of equality.

As shown by NASDAQ and other corporate leaders who are taking positive action, the private sector can play a powerful, and arguably indispensable, role in making sure that the full promise of our nation's ideals, and thus the full promise of our economic potential, can be realized, by including all Americans' diverse talents.

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