

**FILED**  
Superior Court of California  
County of Los Angeles

**MAY 13 2022**

Sherril R. Carter, Executive Officer/Clerk  
By E. Garcia Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

ROBIN CREST, EARL DE VRIES, and  
JUDY DE VRIES,

Plaintiffs,

vs.

ALEX PADILLA, in his official capacity as  
Secretary of State of the State of California.

Defendant.

Case No. 19STCV27561

VERDICT

This case presents two facial challenges to Senate Bill (S.B.) 826. The Plaintiffs allege that S.B. 826 violates Equal Protection under Article I, Section 7 (aka Equal Protection Clause) and violates Equal Protection under Article I, Section 31 (the prohibition on discrimination based on sex in public employment, education or contracting) of the California Constitution.

Both claims are brought under Code of Civil Procedure Section 526a which states, "An action to obtain a judgment, restraining and preventing any illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency, may be maintained against any officer thereof, or any agent, or other person, acting in its behalf, either by a resident therein, or by a corporation, who is assessed for and is liable to pay, or, within one year before the commencement of

05/16/2022

1 the action, has paid, a tax that funds the defendant local agency, including, but not  
 2 limited to, the following: (1) An income tax. (2) A sale and use tax or transaction  
 3 and use tax initially paid by a consumer to a retailer. (3) A property tax, including a  
 4 property tax paid by a tenant or lessee to a landlord of lessor pursuant to the terms  
 5 of a written lease. (4) A business license tax." This section allows a taxpayer to  
 6 enjoin an actual or threatened expenditure of taxpayer funds by a state official  
 7 where the expenditure is illegal.

8 The above provision has been held to apply to both state and local officials  
 9 for more than 50 years. (Serrano v. Priest (1971) 5 Cal. 3d 584, 619 n.38 ["[I]t has  
 10 been held that state officers too may be sued under section 526a."]; Blair v.  
 11 Pitchess (1971) 5 Cal. 3d 258, 268, ["[I]t has been held that taxpayers may sue  
 12 state officials to enjoin such officials from illegally expending state funds."].),  
 13 Stanson v. Mott (1976) 17 Cal.3d 206, 222-23; Vasquez v. State (2003) 105  
 14 Cal.App.4<sup>th</sup> 849, 854; Farley v. Cory (1978) 78 Cal.App.3d 583,589; Los Altos  
 15 Property Owners Ass'n v. Hutcheson (1977) 69 Cal.App.3d 22, 26-30; Ahlgren v.  
 16 Carr (1962) 209 Cal.App.3d 248, 254 ["[T]he great weight of authority supports the  
 17 right of a taxpayer to bring an action to enjoin the alleged illegal expenditure of  
 18 public moneys by a state official."].) In addition, Connerly v. State Personnel Bd.  
 19 (2001) 92 Cal.App.4<sup>th</sup> 16, a taxpayer action brought against the state under Section  
 20 526, held that state officers may be sued.

21 The Court considered but was not persuaded by Defendant's argument that  
 22 Serrano v. Priest (supra) was the result of a ruling "without any real analysis". The  
 23 Defendant cited Rutgard v. City of Los Angeles (2020) 52 Cal App. 5th P. 815, 830,  
 24 (among others).

25 The Court finds that **PLAINTIFFS ARE TAXPAYERS** and have standing for  
 26 purpose of challenging a statutory scheme enacted by Legislature for application  
 27 throughout the state. The Court finds that Plaintiff's Judy De Vries, Earl De Vries,  
 28 and Robin Crest paid taxes to the State in the year prior to filing this lawsuit or were

1 assessed and liable for such taxes.

2 The Court finds the Plaintiffs cause of action as 'a Taxpayer was Ripe. The  
3 Plaintiff's evidence is compelling. The Court relied on the following Plaintiff's  
4 testimony and all the admitted evidence to support this finding including: Exhibits  
5 44, 45, and 47; Judy DeVries (Dec. 1), Pg. 62, line 25 through Pg. 70, line 1; Pg.  
6 89, line 14 through Pg. 80, line 7 Earl De Vries (Dec. 1), Pg. 81, line 7 through Pg.  
7 85, line 6. (Dec. 2), Pg. 5, line 28 through Pg. 6, line 14 Exhibit 46; Robin Crest  
8 (Dec. 1), Pg. 86, line 17 through Pg. 88, line 17. The Defendant argued that the  
9 claim is not ripe or justiciable because "the Government has not promulgated  
10 regulations implementing penalties and or there is no evidence to indicate future,  
11 threatened prosecution". Defense offered citations to Mahler v. Judicial Council of  
12 California (2021) 67 Cal. App. 5th, P. 111, Ohio Forestry Assn, Inc. v. Sierra Club  
13 (1998) 523 U.S. P. 726, 733-34. On this issue the Court finds for the Plaintiff.

14 The Court was most persuaded by Plaintiff's evidence including the following  
15 exhibits and testimony to show the **ILLEGALITY OF ACTIVITY** as challenged  
16 including; Exhibits 43, 213, 216, and 220; Senator Hannah-Beth Jackson (Jan. 27),  
17 Pg. 37, line 15 through Pg. 39, line 23; Pg. 40, line 10 through Pg. 41, line 13; Pg.  
18 60, line 21 through Pg. 62, line 16. Exhibits 2, 3, 8, and 9; Betsy Bogart (Dec. 2),  
19 Pg. 22, line 11 through Pg. 24, line 21; Pg. 52, line 25 through Pg. 53, line 15,  
20 Exhibits 4 and 5; Bogart (Dec. 2), Pg. 20, line 2 through Pg. 23, line 10; Pg. 25, line  
21 22 through pg. 29, line 12, Exhibits 6 and 7; Bogart (Dec. 2), Pg. 29, line 20 through  
22 Pg. 32, line 24, Exhibits 10 and 11; Bogart (Dec. 2), Pg. 38, line 4 through Pg. 39,  
23 line 9, Bogart (Dec. 2), Pg. 8, line 27 through Pg. 1, line 19; Pg. 12, lines 3-15,  
24 Bogart (Dec. 2) Pg. 29, line 26 through Pg. 30, line 23; Pg. 33, lines 26 through Pg.  
25 34, line 27, Bogart (Dec. 2), Pg. 88, lines 15 through Pg. 89, line 11, Bogart (Dec.  
26 2), Pg. 2, lines 3-23, Bogart (Dec. 2), Pg. 40, line 2 through Pg. 41, line 17.

27 Defendant argued unpersuasively that the governmental conduct is legal and  
28 a "taxpayer suit will not lie where the challenged governmental conduct is legal".

1 Defendants cited to Coshov v. City of Escondido (2005) 132 Cal. App. 4 P. 687,  
2 714-15, Humane Society of the United States v. State Board of Equalization (2007)  
3 152 Cal App. 4th, 349, 355. Lyons v. Santa Barbara County Sheriff's Office (2014)  
4 231 Cal. App. 4th p. 1499, 1503.

5 The Court notes that a claim under CCP§526a requires an **EXPENDITURE**  
6 **OF PUBLIC FUNDS**. The use of taxpayer funds to implement or carry out an  
7 allegedly unconstitutional law is illegal and satisfies the requirement. The  
8 expenditure can be actual or even threatened, and the size of the expenditure is  
9 immaterial. (Blair v. Pitchess, (1971) 5 Cal. 3d at 258; Wirin v. Parker, (1957) 48  
10 Cal. 2d 890, 894.) Employees of a public entity implementing or carrying out an  
11 allegedly unconstitutional law likely satisfies the requirement. (Blair v. Pitchess, 5  
12 Cal. 3d at 258; Wirin v. Harrell, (1948) 85 Cal. App. 2d 497, 504-05; Citizens for  
13 Uniform Laws v. County of Contra Costa, (1991) 233 Cal. App. 3d 1468, 1472-76.)

14 The Court finds Plaintiffs proved Defendant Secretary of State was an officer  
15 of the State via Judicial Notice of that fact. Further, the Plaintiffs carried their burden  
16 to prove an actual or threatened substantial expenditure of taxpayer funds or  
17 taxpayer-financed resources by Defendant by promulgating regulations and  
18 implementation of fines for enforcement of S.B. 826. -

19 The Court considered all Plaintiffs and Defendant testimony and admitted  
20 evidence. The Court was not persuaded by Defendant's argument that the "Plaintiff  
21 failed to show a threatened or actual illegal expenditure..." Defendants argued  
22 vigorously that the implementation of and regulating the issue of monetary fines in  
23 the challenged S.B. 826, was discretionary. Further, it was testified that the  
24 Secretary had no plans to and has not taken any steps to issue the regulations  
25 necessary to impose fines. Susan Lapsley offered testimony on 12-13-21 at p. 14,  
26 line 12-26 that no regulations were planned. Lapsley is the Deputy Secretary of  
27 State. She reviews, advises and makes recommendations on every regulatory  
28 package and she was not aware of any efforts or discussions regarding

1 implementation of or imposing monetary fines for a violation of S.B. 826. On 12-2-  
 2 21 Betsy Bogart, whose division implements S.B. 826, testified and averred she is  
 3 similarly not aware of any plans to implement regulations or monetary fines. It was  
 4 apparent to the court through defense testimony that the collection of information  
 5 and analysis of S.B. 826, by the State of California, and its importance to the  
 6 anticipated increase in tax revenues, once S.B. 826 was implemented, was  
 7 purposeful and significant. Ongoing and or anticipated expenditures indicated  
 8 implementation planning was occurring and in its beginning state. Fines to compel  
 9 compliance was anticipated and expected by S.B. 826.

10 The Court then analyzed the **COUNT 1 VIOLATION OF EQUAL**  
 11 **PROTECTION CLAUSE OF Cal. Const. art, I, § 7** "A person may not be... denied  
 12 equal protection of the laws." (*Cal. Const., art I, § 7(a).*) Under California law,  
 13 classifications based on gender have long been considered "suspect" for purposes  
 14 of an equal protection analysis. (*Woods v. Horton (2008) 167 Cal. App. 4th 658,*  
 15 *674 (citing Sail'er Inn, Inc. v. Kirby (1971) 5 Cal.3d 17-20).*)

16 The first prerequisite to a meritorious claim under the equal protection clause  
 17 is a showing that the state has adopted a classification that affects two or more  
 18 "similarly situated" groups in an unequal manner. (*Woods, 167 Cal.App.4th a 670.*)  
 19 The Court does not ask whether persons in the groups are similarly situated  
 20 for all purposes, but only whether they are similarly situated for purposes of the  
 21 laws in question such that some level of scrutiny is required to determine whether  
 22 the distinction is justified. (*Taking Offense v. State of California (2021) 66*  
 23 *Cal.App.5th 696, 724; Woods, supra, at 670.*) In addition, a Court does not ask  
 24 whether a group is "historically more likely to experience discrimination" than  
 25 another group when determining whether the two groups are similarly situated.  
 26 (*Taking Offense, 66 Cal.App.5th at 725.*)

27 When a statute makes express use of a suspect classification, a plaintiff  
 28 challenging the statute meets their initial and ultimate burden simply by

1 pointing out the classification. (Woods, 167 Cal. App. 4th at 674.) The statute is  
2 presumed to be unconstitutional, and the government bears the burden of  
3 demonstrating otherwise. (D'Amico v. Board of Medical Examiners (1974) 11 Cal.  
4 3d 1, 17; Woods, 167 Cal. App. 4th at 674; Connerly v. State Personnel Bd. (2001)  
5 92 Cal. App. 4th 16, 36 & 43.)

6 The Court considered all Plaintiffs' and Defendants' evidence including:  
7 Exhibit 236 (Section 2(b) of S.B. 826 which requires that, by December 31, 2021,  
8 publicly held corporations in California have at least 1 female director if the number  
9 of directors is 4 or fewer, at least 2 female directors if the number of directors is 5,  
10 and at least 3 female directors if the number of directors is 6 or more.  
11 The court found instructive the depositions and or testimony of: Sen. Hanna  
12 Beth Jackson (Feb. 1), Pg. 65, line 28 through Pg. 66, line 13, (S.B. 826 requires a  
13 specific number of female directors be added to corporate boards depending on  
14 board size), Pg. 74, line 28 through Pg. 75, line 5, (corporations must now consider  
15 women to comply with S.B. 826). Susanne Meline (Jan. 28), Pg. 111, lines 10-15  
16 (Corporations must take gender into account to comply with S.B. 826); Alison  
17 Konrad (Dec. 12), Pg. 103, line 28 through 104, line 28, (Defendant's expert admits  
18 describing S.B. 826's gender-based classifications a quota) Exhibit 16/217, Pg. 4,  
19 (Assembly Floor analysis reports, "the use of quota-like system, as proposed by this  
20 bill, remedy past discrimination and differences in opportunity may be difficult to  
21 defend.") Exhibit 17/219, Pg. 7, (Assembly Judiciary Committee analysis describes  
22 S.B. 826 as "essentially a quota system for private corporate boards. Should this bill  
23 be challenged, the State would confront a difficult challenge in showing a  
24 compelling government interest in requiring a gender-based quota system for a  
25 private corporation.")

26 In support of the Court finding, the Court considered all relevant admitted  
27 evidence including: Meline, Jan. 28, Pg. 54, line 12 through Pg. 56, line 8 (board  
28 selection process is the same for men and women); Betsy Berkhemer-Credaire,

Dec. 13, Pg. 43, lines 16-22 (describing board selection process generally, which does not differentiate between men and women), Dec. 10, Pg. 95, line 23 through Pg. 96 line 1 (same), Dec. 10, Pg. 81, lines 18-22 (being appointed to a board is a difficult process for men and women), Dec. 14, Pg. 67, lines 9-19 (men and women vie for the same, few open board seats each year); Schipani, Dec. 9, Pg. 3, line 7 through Pg. 7, line 9 (describing how boards come into existence and the general board selection process, which does not differentiate between men and women), Jan. 11, Pg. 112, lines 15-22 (both highly qualified men and women have not been selected and do not serve on boards)

The Court finds Plaintiffs carried their burden to prove that men and women are similarly situated for purposes of S.B. 826's gender-based quota. As Plaintiffs have demonstrated that S.B. 826 is presumptively unconstitutional, the **BURDEN SHIFTS TO DEFENDANT** to prove that S.B. 826 satisfies strict scrutiny.

To meet the **STRICT SCRUTINY TEST**, Defendant must show (1) a compelling state interest, (2) that S.B. 826 is necessary and (3) that S.B. 826 is narrowly tailored. The strict scrutiny standard applies even if a law is claimed to be remedial. (Connerly, 92 Cal.App.4th at 35, 37-38.)

It is without question that the government must demonstrate a (1) **COMPELLING STATE INTEREST** and show that was in fact the Legislature's actual purpose, not a post hoc re-imagining of that purpose. (Connerly, 92 Cal.App.4th at 38-39.)

Defendant claimed three compelling state interests:

- (1) S.B. 826 was passed to eliminate and remedy discrimination in the director selection process for publicly held corporate boards in California.
- (2) S.B. 826 was passed to increase gender diversity on the boards of publicly held corporations to benefit the public and the state economy.
- (3) S.B. 826 was passed to increase gender diversity on publicly held corporations headquartered in California to benefit and protect California

1 ,  
2 taxpayers, public employees and retirees.

3 The law informs the Court that there is no compelling governmental interest  
4 in remedying societal discrimination. (Hiatt v. City of Berkeley (1982), 130  
5 Cal.App.3d at 311-14.) There also is no compelling governmental interest in  
6 remedying generalized, non-specific allegations of discrimination. (Connerly, 92  
7 Cal.App.4th at 38.)

8 The State must have a strong basis in evidence to conclude that remedial  
9 action is necessary before it embarks on a program to remedy discrimination, and  
10 the discrimination cannot merely be conceded. Generalized assertions of  
11 discrimination in a particular region or industry are insufficient to give rise to a  
12 compelling governmental interest, as are mere statistical anomalies, and the  
13 discrimination must be identified with specificity. (Ibid.) The state also must show  
14 purposeful or intentional, unlawful discrimination by the entity employing the  
15 suspect classification to assert a compelling governmental interest in remedying  
16 discrimination. (Hiatt, 130 Cal.App.3d at 311; Coral Constr. v. City of San Jose  
17 (2000) 24 Cal.4th 537, 568).

18 The use of a suspect classification to remedy purported discrimination has  
19 not been upheld absent judicial, legislative, or administrative findings of  
20 constitutional or statutory violations. (Hiatt, 130 Cal.App.3d at 311 [citing Bakke,  
21 438 U.S. at 307 (Powell, J., concurring).]) "Without such findings of constitutional or  
22 statutory violations, it cannot be said that the government has any greater interest in  
23 helping one individual than in refraining from harming another." (Ibid. citing Bakke,  
24 438 U.S. at 308-09.)

25 The State also must show that when using a suspect classification to redress  
26 specific discrimination the use of the classification is remedial. (Connerly, 92  
27 Cal.App.4th at 38.) Connerly instructs that the remedy must be designed as nearly  
28 as possible to restore the victims of specific, purposeful, or intentional, unlawful

1 discrimination to the position they would have occupied in the absence of the  
2 discrimination. (Id. At 39.) The lack of any effort to limit the remedial scheme to  
3 those who suffered such discrimination is fatal to the scheme.

4 S.B. 826's goal was to achieve gender equity or parity; its goal was not to  
5 boost California's economy, not to improve opportunities for women in the  
6 workplace nor not to protect California's taxpayers, public employees, pensions and  
7 retirees. In determining that fact, the Court was persuaded by the following  
8 evidence: Exhibit 236 (text of S.B. 826 reference parity) Exhibit 351, Pg. 2, line 5  
9 through Pg. 3, line 8 (Assembly Member Gonzalez Fletcher stating on the Assembly  
10 Floor that the bill would "provide greater gender diversity" and "take a big step  
11 towards closing this gender gap"); Jackson (Jan. 18), Pg. 78, lines 23-25 ("pretty  
12 solidly clear that we were seeking gender parity"), Jackson (Feb. 1), Pg. 66, line 17  
13 through Pg. 68, line 1 (S.B. 826 seeks to create gender equity within the board),  
14 Jackson (Feb. 1), Pg. 124, lines 5-6 (the goal of the legislation was to achieve  
15 gender equality'), Jackson (Feb. 2), Pg. 18, line 14 through Pg. 19, line 12  
16 (referencing achieving gender parity); Berkhemer-Credaire (Dec. 14), Pg. 74, lines  
17 3-25 (goal is to reach parity).

18 A related goal of S.B. 826 was to get more women on boards; Jackson  
19 (Jan. 18), Pg. 102, lines 21-28 (ultimate goal is "getting more women onto boards");  
20 Pg. 37, lines 11-14 (proactive approach requiring more women on boards) Jackson,  
21 (Feb. 1), Pg. 76; lines 7-12 ("This is a bill that addresses the need to add women on  
22 boards"), Jackson (Feb. 15), Pg. 39, line 24 ("The issue is getting more women on  
23 boards")

24 The Court considered all evidence but concluded a Compelling State Interest  
25 is lacking. Specifically, the Court noted: Exhibit 236 (nothing in the text of S.B. 826  
26 quantifies the expected boost to California's economy, the improvement in work  
27 opportunities for women, or the protection of California taxpayers, public  
28 employees, and retirees); Jay Chamberlain (Dec. 16), Pg. 82, lines 1-27 (there was

1 testimony that generally 10% of California's general fund revenues derive from all  
2 corporate income tax proceeds, of which S.B. 826 corporations contribute an  
3 unspecified portion of those proceeds); Chamberlain (Dec. 16), Pg. 84, lines 5-18  
4 (California Department of Finance was not contacted during S.B. 826's legislative  
5 process; the Department did not forecast a percentage increase expected in  
6 general fund revenues because of S.B. 826; and the Department did not testify  
7 before the legislature concerning S.B. 826), Chamberlain (Dec. 16), Pg. 83, line 21  
8 through Pg. 84, line 4 (could not quantify how much a corporation's net income or  
9 its profitability increases with female board members), Nzima (Dec. 15), Pg. 41, line  
10 3 through Pg. 42, line 2 (S.B. 826 corporations only make up 5.7% of CalPERS's  
11 portfolio), (\$22.4 billion out of \$392.5 billion)); Jackson (Feb. 1), Pg. 48, lines 21-26  
12 ("there are so many items that can go into whether we pay more or less in taxes");  
13 Jackson (Feb. 1), Pg. 63, lines 21-28 (did not know the percentage of California tax  
14 revenue that derives from publicly held companies headquartered in the state and  
15 does not believe that this information was provided to the legislature during S.B.  
16 826's legislative process).

17 Defendant failed to sufficiently prove that S.B. 826's use of a gender-based  
18 classification **(2) WAS NECESSARY** to boost California's economy, improve  
19 opportunities for women in the workplace, and protect California taxpayers, public  
20 employees, pensions, and retirees.

21 Neither Plaintiffs nor Defendant have identified any case in which boosting  
22 the economy, improving work opportunities for women, protecting taxpayers, public  
23 employees and retirees, or even improving corporate performance or corporate  
24 governance, was found to be a Compelling Governmental Interest that justified the  
25 use of a suspect classification.

26 The Court found the following evidence persuasive: Testimony of Jackson  
27 (Feb. 1), Pg. 52, lines 26-27 ("There are always a number of ways to boost an  
28 economy"), Jackson (Feb. 1), Pg. 53, lines 6-15 (witness acknowledged "a number

1 of different approaches" to protect taxpayers, shareholders, and retirees), Jackson  
2 (Feb. 1) Pg. 54, line 25 through Pg. 55, line 4; Chamberlain acknowledged that  
3 there were any number of ways to improve corporate profitability and boost the  
4 economy without using a gender-based classification, Chamberlain (Dec. 16), Pg.  
5 86, line 25 through Pg. 87, line 4 (acknowledging alternative ways to improve  
6 corporate profitability).

7 Further, the studies cited in S.B. 826 failed to sufficiently show a causal  
8 connection between women on corporate boards and corporate governance and did  
9 not otherwise provide reliable conclusions, negating claims that S.B. 826's use of a  
10 gender-based classification is necessary to boost California's economy, improve  
11 opportunities for women in the workplace, or protect California taxpayers, public  
12 employees, pensions, and retirees.

13 The Court considered: Exhibit 236 (text of S.B. 826 citing studies), Exhibit  
14 244, Pgs. 3, 6, and 15 ("As with the previous study, a causal link was not  
15 established."); Jonathan Klick, Ph.D., J.D. (Jan. 13), Pg. 18, line 28 through Pg. 30,  
16 line 6, Pg. 84, line 20 through Pg. 85, line 17; Jackson (Feb. 1), Pg. 31, lines 9-18,  
17 Exhibit 245, Pgs. 4, 16, 18, and 21 ("While our statistical findings suggest that  
18 diversity does coincide with better corporate financial performance and higher stock  
19 market valuations, we acknowledge that we are not able to answer the causality  
20 question, and this is an important caveat to the observations below in the report.");  
21 Klick (Jan. 13), Pg. 30, line 8 through Pg. 40, line 16, Pg. 84, line 20 through Pg. 85,  
22 line 17, Exhibit 246, Pg. 4 ("Given limited data access and sources, we were unable  
23 to conduct regressions to determine causality. Furthermore, there are many  
24 additional variables that must be controlled for in a regression, which we were  
25 unable to collect for the entire sample."); Klick (Jan. 13), Pg. 40, line 18 through Pg.  
26 48, line 11, Pg. 84, line 20 through Pg. 85, line 17; Jackson (Feb. 1), Pg. 32, line 17  
27 through Pg. 33, line 3-5 through Pg. 34, line 1. Exhibit 47, Pgs. 6, 15, and 17 Klick  
28 (Jan. 13), Pg. 48, line 12 through Pg. 54, line 10; Pg. 56, line 7 through Pg. 60, line

1 9, Pg. 84, line 20 through Pg. 85, line 17; see also, Jackson (Feb. 1) Pg. 34, line 2  
2 through Pg. 36, line 3, Exhibit 248; Klick (Jan. 13), Pg. 60, line 10 through Pg. 62,  
3 line 11, Pg. 84, line 20 through Pg. 85, line 17, Exhibit 249, Pg. 9 ("Some research  
4 has found that gender diverse boards may have a positive impact on a company's  
5 financial performance, but other research has not. These mixed results depend in  
6 part on difference in how financial performance was defined and what  
7 methodologies were used."); Klick (Jan. 13), Pg. 62, line 12 through Pg. 70, line 9,  
8 Pg. 84, line 20 through Pg. 85, line 17; see also Jackson (Feb. 1) Pg. 36, line 4  
9 through Pg. 37, line 2, Exhibit 250; Klick (Jan. 13), Pg. 70, line 10 through Pg. 71,  
10 line 11, Pg. 73, lines 15-23, Pg. 84, line 20 through Pg. 85, line 17, Exhibit 227; Klick  
11 (Jan. 13), Pg. 71, line 12 through Pg. 73, line 14, Pg. 84, line 20 through Pg. 85, line  
12 17, Exhibit 251; Klick (Jan. 13), Pg. 76, line 8 through Pg. 78, line 6, Page 79, line  
13 26 through Pg. 82, line 23, Pg. 84, line 20 through Pg. 85, line 17, Exhibit 252; Klick  
14 (Jan. 13), Pg. 78, line 12 through Pg. 79, line 25, Pg. 84, line 20 through Pg. 85, line  
15 17, Exhibit 29, Pg. 4 ("While correlation does not prove causality, we have also  
16 found that a diversity of leadership styles can contribute to more effective decision  
17 making and that the leadership behaviors women typically display can have a  
18 positive impact on many dimensions of an organization's performance and health.");  
19 Klick (Jan. 13), Pg. 82, line 24 through Pg. 84, line 12, Pg. 84, line 20 through Pg.  
20 85, line 17; see also Jackson (Feb. 1) Pg. 38, lines 11-28.

21 Legislative analysis of S.B. 826 found that connections between women on  
22 corporate boards and improved corporate performance and corporate governance  
23 are inconclusive.

24 The court was persuaded by the following evidence: Exhibit 217, Pg. 3  
25 ("[T]he Economist article, though not empirical suggests that quotas have not been  
26 successful in generating additional benefits beyond more diverse boards. Empirical  
27 research has been inconclusive in showing positive benefits related to company  
28 performance, corporate decision-making, or beneficial effects on the representation

1 of women in senior management."); Jackson (Jan. 27), Pg. 47, lines 18-28, Exhibit  
2 218, Pg. 4, Exhibit 229, Pg. 29 ("The value of such data on business performance  
3 has been questioned by many. The researchers themselves openly state that these  
4 statistically significant correlations do not prove causality. Others have noted that  
5 while there are many well-established benefits to gender-diverse boards, "the  
6 overall impact...of diversity on corporate performance has yet to be established."  
7 Some are simply skeptical or unconvinced."); Jackson (Jan. 27) Pg. 21, lines 2-25.

8 The Court noted from testimony that high quality academic studies that use  
9 sophisticated econometric methodologies and the most current statistical analyses  
10 were unavailable to the Legislature when it enacted S.B. 826. It was noted that  
11 when the above methodologies and statistical information were utilized, they do not  
12 support the existence of a causal relationship between women on boards and  
13 improved corporate performance and corporate governance. The Court considered  
14 all testimony and evidence, but was persuaded on this issue by the following  
15 admitted evidence/testimony: Klick (Jan. 13), Pg. 85, lines 2-25, Pg. 91, line 23  
16 through Pg. 92, line 3, Pg. 100, line 27 through Pg. 101, line 20, Pg. 102, line 11  
17 through Pg. 103, line 18, Pg. 107, line 22 through Pg. 109, line 22, Pg. 127, line 23  
18 through Pg. 130, line 24.

19 A Norwegian academic study for gender-based quota, which S.B. 826  
20 specifically references, do not show positive outcomes for the Norwegian  
21 businesses subject to the law and were ignored by the Legislatures and  
22 Defendant's experts. The Court considered the testimony of Dr. Klick, (Jan. 13), Pg.  
23 104, line 1 through Pg. 109, line 2, Pg. 109, line 26 through Pg. 111, line 10.

24 The studies relied on by Defendant's experts who did not employ persuasive  
25 econometric methodologies and current statistical analyses mechanisms available.  
26 The admitted evidence in this regard include: Exhibit 257; Klick (Jan. 13) Page 85,  
27 line 26 through Pg. 89, line 24 Exhibit 259; Klick (Jan. 13), Page 89, line 25 through  
28 Pg. 96, line 23, Exhibit 260; Klick (Jan. 13), Pg. 97, line 1 through 98, line 18, Pg.

1 99, line 11 through Pg. 100, line 10, Klick (Jan. 13), Pg. 100, line 15 through Pg.  
2 101, line 16, Pg. 127, line 23 through Pg. 130, line 24, Klick (Jan. 12) Pg. 92, line 8  
3 through Pg. 93, line 8 (panel data in and of itself is insufficient to make any causal  
4 inference); Klick (Jan. 13) Pg. 3, line 19 through Pg. 5, line 28 (panel data makes  
5 the assumption that unobservable variables are constant over time, and therefore  
6 cannot reliably demonstrate causality), Klick (Jan. 13), Pg. 101, line 21 through Pg.  
7 104, line 15, Pg. 106, line 8 through Pg. 109, line 22, Pg. 127, line 23 through Pg.  
8 130, line 24, Klick (Jan. 13), Pg. 109, lines 8 through 22, Pg. 119, line 28 through  
9 120, line 25, Pg. 129, line 4 through Pg. 130, line 17

10 The Court finds that studies cited in S.B. 826 do not sufficiently address  
11 discrimination and or causality nor utilize the most sophisticated, econometric  
12 methodologies and current statistical analysis available and thus were in this Courts  
13 view, unreliable. The Court found persuasive the following: Konrad (Dec. 7), Pg.  
14 132, line 18 through Pg. 135, line 8. Further the Court considered the admitted  
15 evidence including: Exhibit 257; Klick (Jan. 13) Page 85, line 26 through Pg. 89, line  
16 24 Exhibit 259; Klick (Jan. 13), Page 89, line 25 through Pg. 96, line 23, Exhibit 260;  
17 Klick (Jan. 13), Pg. 97, line 1 through 98, line 18, Pg.99, line 11 through Pg. 100,  
18 line 10, Klick (Jan. 13), Pg. 100, line 15 through Pg.101, line 16, Pg. 127, line 23  
19 through Pg. 130, line 24, Klick (Jan. 12) Pg. 92, line 8 through Pg. 93, line 8 (panel  
20 data in and of itself is insufficient to make any causal inference); Klick (Jan. 13) Pg.  
21 3, line 19 through Pg. 5, line 28 (panel data makes the assumption that  
22 unobservable variables are constant over time, and therefore cannot reliably  
23 demonstrate causality), Klick (Jan. 13), Pg. 101, line 21 through Pg.104, line 15, Pg.  
24 106, line 8 through Pg. 109, line 22, Pg. 127, line 23 through Pg.130, line 24, Klick  
25 (Jan. 13), Pg. 109, lines 8 through 22, Pg. 119, line 28 through 120, line 25, Pg.  
26 129, line 4 through Pg. 130, line 17.

27 The Court found persuasive the following: Konrad (Dec. 7), Pg. 132, line 18  
28 through Pg. 135, line 8 none of the studies cited in S.B. 826 identify specific

1 instances of discrimination in the board selection process, Jackson (Feb. 1), Pg. 45,  
2 lines 15-24.

3 The Court found the evidence offered by defense tended to support gender  
4 parity and proactively putting more women on boards demonstrated that the  
5 Legislature's actual purpose was gender-balancing, not remedying discrimination.

6 The Court noted the following evidence: Exhibit 236 (noting in section 1(A) "it  
7 will take 40 or 50 years to achieve gender parity, if something is not done  
8 proactively." Also noting in section 1(F) "if measures are not taken to proactively  
9 increase the number of women serving on corporate boards, studies have shown  
10 that it will take decades, as many as 40 or 50 years, to achieve gender parity  
11 amount directors"), Jackson (Jan. 18), Pg. 37, lines 11-14 Jackson (Jan. 18), Pg.  
12 78, lines 23-25 ("pretty solidly clear that we were seeking gender parity"), Jackson  
13 (Jan. 18), Pg. 79, lines 22-28 (S.B. 826 is a "proactive step []" to "achieve gender  
14 parity"), Jackson (Jan. 18), Pg. 80, lines 25-28 ("the primary purpose of the bill is to  
15 promote equitable and diverse gender representation on California's publicly traded  
16 corporate boards headquartered in the state"), Jackson (Jan. 18), Pg. 88, lines  
17 18-25 (without S.B. 826, "we'd be waiting another 40 or 50 years to get to gender  
18 parity, and that taking proactive steps was necessary to achieve gender parity"),  
19 Jackson (Jan. 18), Pg. 102, lines 21-28, Jackson (Jan. 18) Pg. 103, lines 12-23,  
20 Jackson (Jan. 25), Pg. 101, lines 2-7, Jackson (Jan. 27), Pg. 11, line 10 through Pg.  
21 14, line 27, (Jan. 27), Pg. 95, line 10 through Pg. 96, line 8, Jackson (Feb. 1), Pg.  
22 76, lines 7-12, Jackson (Feb. 15), Pg. 39, line 24, Jackson (Feb. 1), Pg. 124, lines  
23 5-20, Berkhemer-Credaire (Dec. 14), Pg. 74, lines 3-25 (indicating the hope is reach  
24 parity" in 10 years).

25 The Court considered all evidence and specifically that S.B. 826's text does  
26 not reference discrimination nor remedying discrimination. Of the evidence  
27 presented, the Court was persuaded by the following: Exhibit 236 (text of S.B. 826  
28 does not reference discrimination or remedying discrimination), Exhibit 205 (does

1 not reference discrimination or remedying discrimination), Exhibit 209 (does not  
2 reference discrimination or remedying discrimination), Exhibit 351 (does not  
3 reference discrimination or remedying discrimination), Exhibit 212 (the  
4 bill does not reference discrimination or remedying discrimination, The bill's author  
5 was advised to add specific instances of past or present discrimination to try to  
6 satisfy strict scrutiny); see also Jackson (Jan. 27), Pg. 33, line 1 through Pg. 35, line  
7 7, Exhibit 215, does not reference discrimination or remedying discrimination,  
8 Exhibit 216, does not reference discrimination or remedying discrimination, Exhibit  
9 217 (analysis contains only one reference to remedying discrimination: "The use of  
10 quota-like system, as proposed by this bill, to remedy past discrimination and  
11 difference in opportunities may be difficult to defend."), Exhibit 218 (stated purpose  
12 of the bill does not reference discrimination or remedying discrimination;), Exhibit  
13 220, Exhibit 229. Pgs. 389 to 390 (providing background information for S.B. 826  
14 does not reference discrimination in response to the question "What is the problem  
15 or deficiency in current law which this bill seeks to remedy?"); see also Jackson  
16 (Jan. 27) Pg. 23, line 23 through Pg. 25, line 3.

17 Further the Court notes that the law's focus on "critical mass" refutes  
18 Defendant's claim that the actual purpose of the law is remedying discrimination  
19 because having a "critical mass" of women on boards is unrelated to remedying any  
20 injury that an actual victim of discrimination may have suffered. The court relied on  
21 Exhibit 236, wherein section 1(g) noted that "studies have concluded that having  
22 three women on the board, rather than just one or none, increases the effectiveness  
23 of boards".

24 The Court noted Senator Hannah Beth Jackson's own summary of S.B 826  
25 in her letter to Governor Brown, requesting his signature on S.B. 826 legislation,  
26 described the legislations intent, "the issue of S.B. 826 seeks to address is classic  
27 gender discrimination...that happens at the highest ranks of corporate America."  
28 (Ex. 231). It was further expressed by Jackson and others how gender bias and

1 stereotypes are barriers to women becoming board members.

2 In support of women in the board room, the Defense offered the testimony of  
3 stereotypical virtues of women such as "consensus builders" and "less risky  
4 behavior in investments".

5 Such argument was also offered through a 2012 University of California,  
6 Berkeley Study which opined that companies with more women on their boards are  
7 more likely to create a "sustainable future", including implementing a strong  
8 governance structure with a high level of transparency. A 2012 Credit Suisse study  
9 offered that with women on the board business performance for key metrics would  
10 improve, including stock performance, carrying less debt and price to book  
11 value would benefit along with better net income growth (Ex 236-002: 244-006; 245.  
12 247). The Governor on signing S.B. 826 furthered offered "we need greater equity".  
13 The Court is unpersuaded by this offer of stereotypes for a justification of  
14 S.B. 826.

15 Neither Plaintiffs nor Defendant have identified any case holding that the  
16 government has a compelling interest in remedying societal discrimination or even  
17 specific, private-sector discrimination that justified the use of a suspect  
18 classification.

19 There is no Compelling Governmental Interest in remedying discrimination in  
20 the board selection process because neither the Legislature nor Defendant could  
21 identify any specific, purposeful, intentional and unlawful discrimination to be  
22 remedied. Jackson (Feb. 1), Pg. 46, lines 2-4, Jackson (Feb. 1), Pg. 68, lines 7-13,  
23 Konrad (Dec. 7), Pg. 107, lines 8-16, Schipani (Dec. 9), Pg. 116, line 15 through Pg.  
24 117, line 3; Cindy Schipani (Dec. 9), Pg. 40, line 17 through Pg. 41, line 17, Jones  
25 (Jan. 24), Pg. 107, lines 12-22, Meline (Jan. 28) Pg. 111, line 21 through Pg. 112,  
26 line 6.

27 As an alternative and or in addition to the "finding of a Compelling State  
28 Interest" the Defense argues that where it benefits or protects the public retirees

1 and the public pension, one could find a compelling state interest. McGlynn v. State  
2 of California (2018) 21 Cal App. 5th 548, 564-65. The court does not find this  
3 argument persuasive nor sufficiently based on the law.

4 During trial the Court found that Defendant was unable to present specific  
5 evidence of actual, unlawful discrimination against any specific woman by any  
6 specific corporation subject to S.B. 826.

7 Discrimination experts, Konrad, and Schipani, could not identify specific  
8 instance of specific woman being discriminated against by a specific corporation in  
9 the corporation's board process. Legislature cited only statistics about the number  
10 of women on corporate boards as compared to men, not any specific discrimination.  
11 Court once again referred to Exhibit 326 (citing statistics in section 1(e)).

12 Defendant offered after-the-fact supplementation to the Legislature's  
13 statistics with claims of societal and structural discrimination and general social  
14 phenomena of "like stereotyping", "affinity bias," "like picking like" and "gender  
15 matching". These are not unique to nor associated with any particular, publicly held  
16 corporations headquartered in California.

17 The Court refers directly to the following testimony: Jackson (Dec. 15), Pg.  
18 99, lines 26-27, Jackson (Jan. 27), Pg. 64, line 22 through Pg. 65, line 9, Jackson  
19 (Jan. 27), Pg. 98, line 10 through Pg. 99, line 3, Berkhemer-Credaire (Dec. 13), Pg.  
20 70, lines 10-1, Berkhemer-Credaire (Dec. 13), Pg. 91, lines 10-17, Berkhermer-  
21 Credaire (Dec. 14), Pg. 70, line 13-16, Jones (Jan. 4), Pg. 61, line 21 through Pg.  
22 62, line 12, asserted that "like picking like" is not unique to corporate boards and is  
23 "probably true across a variety of different categories and enterprises". Konrad  
24 (Dec. 6), Pg. 49, line 21 through Pg. 50, line 17, Konrad (Dec. 7), Pg. 29, lines  
25 19-28. Schipani (Dec. 8), Pg. 38, line 22 through 39, line 1 (testified essentially that  
26 Literature tells us that people tend to prefer people like themselves. And with  
27 respect to boards, there are studies that say that there is gender matching, so when  
28 there is an open position on the board, it tends to be filled by a person of the same

1 gender as the person who has left.") see also Schipani (Dec. 8), Pg. 40, line 25  
2 through Pg. 41, line 6, Schipani (Dec. 8), Pg. 43, line 10 through Pg. 44, line 3,  
3 Schipani (Dec. 8), Pg. 66, line 17 through Pg. 67, line 2, Schipani (Dec. 9), Pg. 41,  
4 line 21 through 44, line 12, where in, witness offered women, as well as men,  
5 critique women leaders more harshly, such that women leaders who speak too  
6 softly are perceived as "not being leaders" while women leaders who do give orders  
7 face "backlash".

8 The Court finds that Defendant's witnesses, including Jackson, Berkhemer-  
9 Credaire, and Grounds, attributed the differences in the numbers of men and  
10 women on corporate boards to reasons other than actual discrimination, including  
11 the lack of open board seats, women's networking issues, board propensity to  
12 select persons that they already know, and boards preference for choosing CEOs to  
13 fill open board positions. Supporting evidence for the courts' view is: Jackson (Dec.  
14 15), Pg. 100, lines 4-7, Berkhemer-Credaire (Dec. 10), Pg. 114, line 22 through Pg.  
15 115, line 5, Berkhemer-Credaire (Dec. 10), Pg. 108, lines 23-28, Berkhemer-  
16 Credaire (Dec. 13), Pg. 84, line 25 through Pg. 85, line 18, Berkhemer-Credaire  
17 (Dec. 14), Pg. 71, lines 15-17, Meline (Jan. 28), Pg. 38, line 26 through Pg. 39,  
18 line1.

19 It was argued that Corporations prefer directors with CEO experience, and  
20 CEO's have tended to be men. Jackson (Jan. 25), Pg. 35, line 19 through Pg. 36,  
21 line 6. Grounds (Jan. 11), Pg. 76, lines 14-26, Schipani (Dec. 8), Pg. 43, lines 1—  
22 17. Berkhemer-Credaire gave testimony on (Dec. 10), Pg. 80, lines 15-23, that  
23 women need to "network like men do, in order to seek and win a corporate board  
24 seat". Berkhemer-Credaire (Dec. 10), Pg. 82, lines 2-7, Berkhemer-Credaire (Dec.  
25 10), Pg. 105, line 22 through Pg. 106, line 14, Jackson (Dec. 16), Pg. 44, lines 9-14,  
26 Berkhemer-Credaire (Dec. 10), Pg. 95, lines 13-20, Berkhemer-Credaire (Dec. 13),  
27 Pg. 70, lines 9-24 (in summary testimony offered that board members want to bring  
28 on CEOs and others they know but those individuals " tend to be Anglo men"); see.

1 also id. At Pg. 91, lines 3-9, Berkhemer-Credaire (Dec. 13), Pg. 79, lines 18-24,  
2 Berkhemer-Credaire (Dec. 14), Pg. 30, lines 16-26, Berkhemer-Credaire (Dec. 14),  
3 Pg. 71, line 23 through Pg. 72, line 11, Jones (Dec. 10), Pg. 42, lines 19-28, Jones  
4 (Jan. 24), Pg. 38, lines 8-14, offered that "boards tend to recruit and hire people  
5 onto their boards within the same social and economic circles as existing  
6 members." Meline (Jan. 28), Pg. 49, line 26 through Page 50, line 5, Meline (Jan  
7 28), Pg. 81, lines 4-21, offered that boards rely on the traditional process of looking  
8 to their personal networks to fill board seats, commonly say they don't know any  
9 women, and do not utilize resources like registries. Konrad (Dec. 7), Pg. 54, line 26  
10 through Page 55, line 5, Grounds (Dec. 17), Pg. 111, lines 22-27, noting that a  
11 primary barrier to women on boards is that "a lot of corporations do not look outside  
12 their own networks". Witness, Cindy Schipani further opined regarding networking  
13 on (Dec. 9), Pg. 5, lines 22-25, that in general, boards tend to select men  
14 based on who they think is available and who would be best for the company.  
15 Schipani (Dec. 9), Pg. 15, line 17 through Pg. 16, line 6. Schipani (Dec. 9), Pg. 28,  
16 lines 11-28.

17 The Court noted that Defendant's experts and expert opinions on  
18 discrimination, were not before the Legislature when it enacted S.B. 826. The court  
19 relied upon and was persuaded (not exclusively) by the following: Konrad (Dec. 7),  
20 Pg. 103, lines 18-27, Konrad (Dec. 7) Pg. 5, line 28 through Pg. 7, line 3, Konrad  
21 (Dec. 7), Pg. 27, line 15 through Pg. 28, line 1.

22 The Court noted that there was an absence of testimony by the witness  
23 Konrad and others to show that publicly held corporations headquartered in  
24 California engage in purposeful and intentional, unlawful discrimination against  
25 women in their board selection processes, but only offered more generally that the  
26 "board selection process" in the United States, including in California, is  
27 "significantly affected by anti-female gender discrimination."); Konrad (Dec. 7), Pg.  
28 28, lines 19-26. Konrad (Dec. 7), Pg. 109, lines 16-24; Pg. 111, lines 9-11 (The

1 witness did not distinguish between the terms "bias" and "discrimination" and used  
2 the terms interchangeably); Konrad (Dec. 7), Pg. 18, lines 15-23 also used the  
3 words discrimination and bias interchangeably Konrad (Dec. 7), Pg. 19, line 18  
4 through Pg. 20, line 14 testified discrimination studies on which she for her opinion  
5 are "different" from panel studies relied on by Konrad (Dec. 7), Pg. 56, lines 7-12  
6 testimony that no factor other than discrimination can explain the lack of women on  
7 corporate boards were contradicted by testimony of Berkhemer-Credaire, who  
8 testified that "lack of open seats" is the problem. Berkhemer-Credaire (Dec. 14) Pg.  
9 71, lines 15-17.

10 The Court notes the witness Alison Konrad Ph.D. (Dec. 7), Pg. 112, lines 7-20  
11 and Pg. 114, lines 15-27 based her opinion about discrimination in the board  
12 selection process on five studies, two of the five do not concern board selection  
13 itself but instead concern mentoring new board members (McDonald and  
14 Westphal); Konrad (Dec. 7), Pg. 21, lines 21 through Pg. 22, line 6, Pg. 118, line 10  
15 through Pg. 119, line 19, Pg. 120, lines 2-21, Pg. 135, line 9 through Pg. 136, line 1.

16 The witness Schipani (Dec. 9), Pg. 40, line 17 through Pg. 31, line 17  
17 testified clearly, offering her opinion regarding discrimination, which appears to  
18 arise from statistics about the numbers of women on boards and vague assertions  
19 about social phenomena, like gender-incongruent behaviors. The witness failed to  
20 specifically offer convincing testimony that publicly held corporations headquartered  
21 in California engaged in purposeful and intentional, unlawful discrimination against  
22 women in their board selection processes.

23 The singular study Schipani specifically identifies as having relied on for her  
24 opinion on discrimination is a 2020 article which was published in the MIT Sloan  
25 Management Review, well after S.B. 826's enactment. The Court relied on Exhibit  
26 257; Klick (Jan. 13), Pg. 86, line 2 through Pg. 89, line 24. It is noted that Exhibit  
27 257 is a version of research for non-specialists and is not an actual academic study;  
28 it provides basic descriptive statistics and findings from survey responses and there

1 was insufficient testimony regarding statistically significant reliable research.

2 The Court noted all parties agreed that confidentiality is a necessary feature  
3 of the board selection process and is not evidence that remedial action is  
4 necessary. Testimony by Berkhemer-Credaire supported this view (Dec. 10), Pg.  
5 80, lines 25-26, Berkhemer-Credaire (Dec. 13), Pg. 50, lines 5-27, Berkhemer-  
6 Credaire (Dec. 13), Pg. 29, lines 12-23.

7 The evidence shows a natural progression towards adding more women to  
8 the boards of private sector corporation over time: Berkhemer-Credaire (Dec. 14),  
9 Pg. 52, line 26 through Pg. 54, line 4; Exhibit 279, Pg. 6, Berkhemer-Credaire (Dec.  
10 14), Pg. 78, line 6 through Pg. 81, line 6; Exhibit 48, Pg. 7, Berkhemer-Credaire  
11 (Dec. 14), Pg. 101, line 13 through Pg. 102, line 8, Exhibit 280, Pg. 6, Berkhemer-  
12 Credaire (Dec. 14), Pg. 102, lines 10-22, Exhibit 48, Pg. 7.

13 The Defendant did not carry the burden to show that the legislation was (3)  
14 **NARROWLY TAILORED.** Defendant failed to show the Legislature considered  
15 gender-neutral alternatives to remedy specific purposeful or intentional, unlawful  
16 discrimination against women by private-sector corporations in the selection of  
17 board members or that gender-neutral alternatives were not available.

18 The Legislature did not consider amending existing anti-discrimination laws  
19 or enacting a new anti-discrimination law focusing on the board selection process  
20 before enacting S.B. 826: Jackson (Feb. 1), Pg. 68, line 23 through Pg. 71, line 3,  
21 Jackson (Feb. 15), Pg. 67, line 21 through Pg. 71, line 14.

22 Defendant did not sufficiently prove that S.B. 826's use of a gender-based  
23 classification was limited in scope and duration to that which is necessary to  
24 remedy specific, unlawful discrimination against women in the selection of board  
25 members.

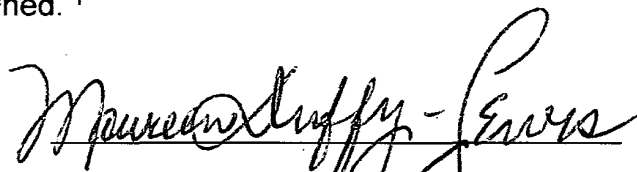
26 Further, Defendant did not sufficiently prove that S.B. 826's use of a gender-  
27 based classification was actually remedial. There is insufficient showing that S.B.  
28 826 was designed as nearly as possible to restore the victims of specific, purposeful

1 or intentional, unlawful discrimination to the positions the victims would have  
2 occupied in the absence of discrimination.

3 Exhibit 236, which is the text of S.B. 826, does not identify any purposeful or  
4 intentional, unlawful discrimination it sought to remedy. The court further noted the  
5 following testimony: Konrad (Dec. 7), Pg. 132, line 18 through Pg. 135, line 8,  
6 wherein S.B. 826 does not identify specific instances of discrimination in the board  
7 selection process. Jackson (Feb. 1), Pg. 45, line 15-19 Jackson (Feb. 1), Pg. 45,  
8 line 20 through Pg. 46, line 9 (Legislature was not provided evidence of any specific  
9 instances of discrimination in the board selection process), Jackson (Feb. 1), Pg.  
10 66, line 17 through Pg. 68, line 1, averred that adding a woman board member  
11 "doesn't necessarily cure" discrimination.

12 As to the claimed interest that S.B. 826 was passed to remedy  
13 discrimination, defendant has not met its burden to show that this is necessary nor  
14 narrowly tailored. Therefore, for all the above stated reasons and analysis the  
15 Court determines that S.B. 826 violates the Equal Protection Clause of the  
16 California Constitution and is thus enjoined.<sup>1</sup>

17  
18 Dated: 5-13-22



MAUREEN DUFFY-LEWIS

JUDGE OF THE SUPERIOR COURT

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28  
<sup>1</sup> As the Court has found that S.B. 826 is unconstitutional under the Article I, Section 7, it need not make any determination  
as to plaintiffs' second count under Article I, Section 31.