

## Cabinet News and Views

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### California's Board Diversity Law Tossed by Judge; Other Board Diversity Efforts Continue



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On April 1, 2022, Judge Terry Green of the Los Angeles Superior Court struck down California's AB 979,<sup>[1]</sup> which required publicly held companies based in California to have at least one board director from an "underrepresented community"<sup>[2]</sup> by the end of 2021 and to set parameters for additional board diversity by the end of 2022. A company's failure to diversify its board could have led to fines totaling hundreds of thousands of dollars.

California had not brought an enforcement action, but AB 979 was challenged under a California law that permits taxpayers to challenge state laws where taxpayer funds have been expended.

Judge Green signaled that he would overturn AB 979 at a March 14, 2022, hearing, where he characterized the law's definition of "underrepresented community" as a "bit arbitrary," as certain other minority groups were not included in its definition, and stated that AB 979's established formula was effectively "a quota by any other name."<sup>[3]</sup>

In his [formal opinion](#), Judge Green found that the law violates the Equal Protection Clause of the California Constitution. The opinion notes that while it is "true that remediating discrimination may be a compelling interest," AB 979 does not "identify a specific arena" where that discrimination occurred. In Judge Green's view, to survive constitutional scrutiny, AB 979 needed to identify and apply only to specific industries or geographic regions with a history of discrimination - not simply corporate boards throughout the entire state.

While AB 979 was struck down, other ongoing efforts at incentivizing board diversity remain in place. New York and Illinois require companies to disclose

certain board diversity statistics. A Nasdaq disclosure rule, which also requires board diversity or an explanation for the failure to diversify, is set to begin implementation later in 2022. And just days after this decision, Goldman Sachs announced that it helped place its 50th diverse director on the board of a client.<sup>[4]</sup>

[1] Cal. Corp. Code § 301.4 (West) (2022).

[2] Under AB 979, “underrepresented community” includes certain racial and ethnic minorities and those who self-identify as LGBT.

[3] Craig Clough, *Law360*, “[Calif. Board Diversity Law Seems ‘Arbitrary,’ Judge Says](#),” Mar. 14, 2022.

[4] Emma Hinchliffe, *Fortune*, “[Goldman Sachs took a stand on board diversity. The bank just placed its 50th diverse director](#),” Apr. 5, 2022.

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