

[Securities Regulation Daily Wrap Up, TOP STORY—E.D. Cal.: Shareholder lacked standing to challenge California board-diversity law, \(Apr. 21, 2020\)](#)

Securities Regulation Daily Wrap Up

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By [Anne Sherry, J.D.](#)

The shareholder's argument that California's board-diversity law violates his Fourteenth Amendment rights by requiring him to discriminate against male directors failed because the statute imposes no requirements on shareholders, only on corporations.

A shareholder of a California corporation lost his Constitutional challenge to the state's requirement that each public corporation have at least one female director. The plaintiff suffered no injury in fact because the California law imposes requirements and penalties only on corporations and does not prevent the shareholder from voting for a male director nominee. That dynamic also meant that the plaintiff could not be injured independently from the corporation ([Meland v. Padilla](#), April 20, 2020, Mendez, J.).

California enacted [S.B. 826](#) in 2018 to require all public corporation headquartered in the state to have at least one female director by the end of 2019, with greater thresholds in subsequent years based on the total number of board seats. The law also requires the secretary of state to publish reports and authorizes (but does not require) the secretary to adopt implementing regulations and impose fines for violations.

The plaintiff, a shareholder of OSI Systems, Inc., brought suit in the Eastern District of California alleging that the law violates his rights under the Equal Protection Clause. According to the plaintiff, S.B. 826 "coerces shareholders into voting for a minimum number of female board members." This governmental requirement that the plaintiff "discriminate by ethnicity or sex" confers standing to challenge that requirement, the plaintiff argued. (N.B.: the "ethnicity or sex" language is quoted from a 1997 Ninth Circuit opinion; S.B. 826 expressly defines a female person as "an individual who self-identifies her gender as a woman, without regard to the individual's designated sex at birth.").

No Article III standing. The district court disagreed with this argument, distinguishing the Ninth Circuit case, which involved a state requirement that general contractors subcontract some work to subcontractors owned by minorities, women, and disabled veterans. That statute imposed requirements and penalties on general contractors, and the plaintiff was a general contractor. In contrast, S.B. 826 imposes requirements and a potential penalty on public corporations, and the plaintiff is not a corporation but a shareholder.

Furthermore, even if the plaintiff had established an invasion of his legally protected interests, he could not establish that this injury is actual or imminent. The court took judicial notice of portions of OSI's website and SEC filings showing that the company has had a female director since December 2019. As a result, OSI will not be fined (and it may not have been fined anyway, as the statute authorizes but does not mandate penalties).

No prudential standing. In addition to rejecting Article III standing, the court rejected the notion that the plaintiff had prudential standing. Under this doctrine, the court must consider whether the plaintiff is asserting his own rights or those of a third party. To have prudential standing, the shareholder must have been injured directly and independently from the corporation. As with the Article III analysis, the plaintiff was not injured directly and independently by S.B. 826 because the law imposes no requirements upon him. Any influence on how the plaintiff votes at future shareholder meetings is incidental to the injury caused to the corporation. Under either California or Delaware law, the plaintiff's claim is derivative of OSI's and he lacks shareholder standing to sue.

The case is [No. 19-cv-02288](#).

Attorneys: Anastasia P. Boden (Pacific Legal Foundation) for Creighton Meland. Lara Haddad, California Department of Justice, for Alex Padilla.

Companies: OSI Systems, Inc.

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