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13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA

15 NATIONAL CENTER FOR PUBLIC
16 POLICY RESEARCH,

17 Plaintiff,

18 v.

19 SHIRLEY N. WEBER, in her official
20 capacity as Secretary of State of the State of
21 California,

22 Defendant.

No.

23 **COMPLAINT FOR
24 DECLARATORY AND
25 INJUNCTIVE RELIEF**

26 **INTRODUCTION**

27 1. Since 2020, all publicly held corporations headquartered in California
28 have been required to meet a quota of female board members or face fines. Starting in
2022, these companies will also be required to meet an additional quota of “diverse”
board members based on race and sexual orientation. These diversity quotas apply to
all businesses across every industry in perpetuity, regardless of whether there is any
specific evidence of discrimination. These laws, which dole out benefits and impose
burdens on the basis of race, sex, and sexual orientation, are unconstitutional.

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*Complaint for Declaratory
and Injunctive Relief*

JURISDICTION AND VENUE

2. This action arises under the Fourteenth Amendment to the United States Constitution pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over this federal claim under 28 U.S.C. § 1331 (federal question) and 1343(a) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. § 2201.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1)(2) because Plaintiff owns shares in several publicly held corporations that will be subject to the diversity quotas and whose executive offices are in this District.

PARTIES

4. National Center for Public Policy Research (National Center) is a non-profit 501(c)(3) organization that supports free market solutions to social problems and opposes corporate and shareholder social activism that detracts from the goal of maximizing shareholder returns.

5. To that end, it owns shares in many companies that are traded on the NASDAQ, NYSE, and other large exchanges, including at least fourteen companies that are subject to California's diversity quotas, including Alphabet, Apple, Cisco, Facebook, Intel, Intuit, Levi Strauss, Netflix, PayPal, Pinterest, Salesforce, Tesla, Twitter, and Wells Fargo. National Center will continue to invest in additional companies as resources and opportunities permit.

6. The Center frequently engages at shareholder elections, putting forward shareholder proposals which are intended to return focus to the company's bottom line rather than political pursuits. National Center submits around 25 proposals a year to the SEC. In 2021, National Center's proposals were on the proxy ballot at Alphabet, Cigna, Twitter, and Walmart, and in 2020 they were on the ballot at Amazon, Starbucks, Twitter, Netflix, Chevron, Boeing, Eli Lilly, Walgreens, John Deere & Costco.

1 7. National Center supports diversity of thought and experience on
2 corporate boards and believes that quotas based on immutable characteristics are
3 offensive and contrary to this goal, as well as to the Constitution. It believes that
4 shareholders should vote for board members based on their individual talents,
5 capacities, and other characteristics, and that it should be able to vote free of
6 government compelled discrimination.

7 8. Defendant Shirley N. Weber is the Secretary of State of the State of
8 California. She is a constitutional officer of the State. *See* Cal. Const. art. V, § 11. In
9 her official capacity as Secretary of State, she is charged with administering and
10 enforcing AB 979. She is being sued in her official capacity pursuant to *Ex parte*
11 *Young*, 209 U.S. 123, 189 (1908).

12 FACTUAL ALLEGATIONS

13 Senate Bill 826 (Woman Quota)

14 9. Governor Brown signed SB 826 into law on September 30, 2018. It adds
15 Section 301.3 and Section 2115.5 to the California Corporations Code.

16 10. When Governor Brown signed SB 826 into law, he acknowledged that
17 “[t]here have been numerous objections to this bill and serious legal concerns have
18 been raised.” He further recognized that these “potential flaws . . . may prove fatal to
19 its ultimate implementation.” Despite all of these concerns, he signed the law out of
20 his desire to respond to “recent events in Washington D.C. and beyond.”

21 11. Before SB 826 was enacted, the California State Assembly Judiciary
22 Committee recognized that “SB 826 would likely be challenged on equal protection
23 grounds and the means that the bill uses, which is essentially a quota, could be
24 difficult to defend.” The Assembly floor analysis included the same language.

25 12. Under SB 826, any “publicly held domestic or foreign corporation whose
26 principal executive offices, according to the corporation’s SEC 10-K form, are located
27 in California” must have had “a minimum of one female director on its board” by
28

1 December 31, 2019. By December 31, 2021, a corporation must have a number of
2 female directors corresponding to its size:

- 3 a. A corporation with four or fewer directors must have a minimum of one
4 female director.
- 5 b. A corporation with five directors must have a minimum of two female
6 directors.
- 7 c. A corporation with six or more directors must have a minimum of three
8 female directors.

9 13. A publicly held corporation is defined as a “corporation with outstanding
10 shares listed on a major United States stock exchange.”

11 **Assembly Bill 979 (Race and Sexual Orientation Quota)**

12 14. Governor Gavin Newsom signed AB 979 into law on September 30, 2020.
13 The law amends Section 301.3 and adds Sections 301.4 and Section 2115.6 to the
14 Corporations Code.

15 15. Under AB 979, any “publicly held domestic or foreign corporation whose
16 principal executive offices, according to the corporation’s SEC 10-K form, are located
17 in California” must have “a minimum of one director from an underrepresented
18 community on its board” by December 31, 2021. By December 31, 2022, a corporation
19 must have a number of directors with given characteristics, depending on the board’s
20 size:

- 21 a. A corporation with four or fewer directors must have a minimum of one
22 director from an underrepresented community.
- 23 b. A corporation with more than four and fewer than nine directors must
24 have a minimum of two directors from an underrepresented community.
- 25 c. A corporation with nine or more directors must have a minimum of three
26 directors from an underrepresented community.

1 16. These requirements are separate and supplemental to those imposed by
2 the Woman Quota.

3 17. A publicly held corporation is defined as a “corporation with outstanding
4 shares listed on a major United States stock exchange.”

5 18. A “director from an underrepresented community” is defined as “an
6 individual who self-identifies as Black, African American, Hispanic, Latino, Asian,
7 Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-
8 identifies as gay, lesbian, bisexual, or transgender.”

9 **Enforcement of California’s diversity quotas**

10 19. The Secretary must publish an annual report on the Office’s website
11 listing the number of corporations that (1) were in compliance with the California’s
12 diversity quotas during at least one point of the year; (2) moved their headquarters
13 either to or from California during the year; or (3) stopped being publicly traded over
14 the course of the year.

15 20. Publicly held companies that are headquartered in California must file
16 an annual statement with the Secretary which discloses whether the company
17 complies with the diversity quotas.

18 21. The Secretary is authorized to impose fines for the violation of the
19 diversity quotas.

20 22. A first violation results in a \$100,000 fine. Any subsequent offense is
21 \$300,000. Each seat that must be filled by a woman or a member of an
22 underrepresented community but is not so filled constitutes a separate violation.

23 23. A corporation’s failure to report or to timely report whether it complies
24 with the quotas is subject to a \$100,000 fine.

PLAINTIFF'S INJURY

1
2 24. California's diversity quotas are designed to compel the election of more
3 racial minorities, women, and LGBTQ individuals onto corporate boards of directors.
4 In order to achieve its goal, the law must impact the behavior of shareholders like
5 National Center, who are responsible for electing the board of directors at annual
6 meetings.

7 25. National Center opposes the adoption of quotas for board spots that are
8 based on immutable characteristics such as race, sex, and sexual orientation. In
9 furtherance of this position, National Center has put forward shareholder proposals
10 which would forbid consideration of characteristics such as race, sex, and sexual
11 orientation in the selection of directors.

12 26. Shareholders elect board members. Indeed, the only way that a person
13 can be elected as a director is if shareholders vote in favor at the annual shareholder
14 meeting.

15 27. Many of the impacted companies that National Center invests in, such
16 as Twitter, have adopted a majority voting standard for the election of directors. This
17 policy makes companies particularly responsive to shareholder voting and demands.
18 Companies are increasingly adopting majority voting standards to improve
19 accountability to shareholders. Alphabet, for instance, did so in 2021.

20 28. Individual shareholders or groups of shareholders may also submit
21 names of candidates for election to the board of directors.

22 29. The diversity quotas therefore impose a race, sex, and sexual orientation-
23 based quota directly on shareholders, and seek to force shareholders to perpetuate
24 race, sex, and sexual orientation-based discrimination.

25 30. National Center intends to vote on board member nominees at upcoming
26 annual meetings for the companies that it holds shares in, as well as at subsequent
27 meetings. In the future, the National Center also plans to put forward qualified
28

1 candidates for a company's board of directors who support National Center's vision.

2 31. Prior to the passage of the diversity quotas, shareholders were free to
3 consider nominees for the Board on their merits, without a legal requirement that
4 they consider race, sex, and sexual orientation.

5 32. The diversity quotas injure Plaintiff's right to vote for the candidate of
6 its choice, free of a government-imposed race, sex, and sexual orientation quota.

7 33. The diversity quotas contain race, sex, and sexual orientation-based
8 classifications that harm individual shareholder voting rights directly, separate from
9 any injury to the corporation.

10 34. The diversity quotas directly undermine National Center's efforts to put
11 forward proposals that bar corporations from considering characteristics such as race,
12 sex, and sexual orientation in the selection of directors. Indeed, the diversity quotas
13 impose a state mandated requirement that publicly traded corporations and their
14 shareholders consider race, sex, and sexual orientation in the selection of directors.

15 35. Because many of the companies that National Center invests in do not
16 currently have the requisite number of diverse directors on their boards, these
17 companies will be subject to fines unless the shareholders vote according to the
18 challenged quotas.

19 36. Many of the impacted companies such as Alphabet and Twitter hold their
20 shareholder meetings in the summer, which means that the companies and their
21 shareholders will feel pressure to nominate and elect more racial minorities, women,
22 and LGBTQ individuals months before the diversity quotas ramp up.

23 37. An actual and substantial controversy currently exists between Plaintiff
24 and Defendant as to their respective legal rights and duties. Plaintiff contends that
25 the diversity quotas impose race, sex, and sexual orientation-based classifications that
26 violate the Fourteenth Amendment to the United States Constitution. Defendant
27 disputes that the quotas, or that enforcing the quotas, is unconstitutional.

1 38. A judgment declaring the diversity quotas are unconstitutional and
2 enjoining Defendant from enforcing the laws will restore National Center’s ability to
3 vote free of a government mandated race, sex, and sexual orientation quota as well as
4 reduce a major impediment to National Center’s efforts to advocate that board
5 members should be selected based on merit and not immutable characteristics.

6 **CLAIM FOR RELIEF**
7 **Equal Protection Clause of the Fourteenth Amendment**
8 **and 42 U.S.C. § 1983**

9 39. Under the Fourteenth Amendment to the United States Constitution,
10 “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of
11 the laws.” U.S. Const. amend. XIV, § 1.

12 40. The diversity quotas facially discriminate on the basis of race, sex, and
13 sexual orientation.

14 41. The diversity quotas serve no important nor compelling government
15 interest.

16 42. Defendant does not have specific evidence of discrimination against
17 racial minorities, women, or sexual minorities, sufficient to justify the diversity
18 quotas.

19 43. Defendant may not rely on societal, rather than government sponsored
20 discrimination, to justify a quota based on immutable characteristics.

21 44. Disparity in board membership alone is not sufficient evidence of
22 discrimination.

23 45. Increasing the representation of racial, sex, or sexual minorities for its
24 own sake is not an important nor compelling government interest.

25 46. Any interest Defendant has in enforcing the diversity quotas is
26 undermined by the fact that racial and sexual minorities and women are increasingly
27 being appointed to corporate boards even without a government mandate.

28 47. Even if the diversity quotas served an important or compelling

1 government interest, the mechanism that the diversity quotas use—a rigid and
2 arbitrary quota—is not sufficiently tailored to that interest.

3 48. The diversity quotas are not sufficiently tailored because they apply
4 evenly to every publicly traded company across all industries, regardless of the hiring
5 pool or the company’s historical hiring patterns.

6 49. The diversity quotas are not sufficiently tailored because they impose a
7 race, sex, and sexual orientation quota in perpetuity regardless of changes in
8 representation in future years.

9 50. The diversity quotas discriminate on the basis of race, sex, and sexual
10 orientation in violation of the Equal Protection Clause.

11
12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff prays for judgment from this Court as follows:

14 1. A declaratory judgment, pursuant to the Declaratory Judgment Act, 28
15 U.S.C. § 2201, that California’s diversity quotas discriminate on the basis of race,
16 sex, and sexual orientation and deny individuals equal protection of the laws in
17 violation of the Fourteenth Amendment to the United States Constitution and 42
18 U.S.C. §§ 1981 and 1983.

19 2. A permanent injunction preventing Defendant from enforcing or taking
20 further action to enforce the diversity quotas insofar as they discriminate on the
21 basis of race, sex, and sexual orientation and deny individuals equal protection of
22 the laws in violation of the Fourteenth Amendment to the United States
23 Constitution and 42 U.S.C. §§ 1981 and 1983.

24 3. An award to Plaintiff of nominal damages.

25 4. An award to Plaintiff of reasonable attorneys’ fees and expert fees for
26 bringing and maintaining this action, including under 42 U.S.C. § 1988.

27 5. An award to Plaintiff of costs of suit pursuant to Federal Rule of Civil
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1 Procedure 54(d); and

2 6. An award to Plaintiff of any other further relief that the Court deems
3 just and proper under the circumstances of this case.

4
5 DATED: November 22, 2021.

6 Respectfully submitted,

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