

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.4th 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.4th 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,

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

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

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

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

22 Defendant claimed three compelling state interests:

- 23 (1) S.B. 826 was passed to eliminate and remedy discrimination in the
24 director selection process for publicly held corporate boards in California.
- 25 (2) S.B. 826 was passed to increase gender diversity on the boards of
26 publicly held corporations to benefit the public and the state economy.
- 27 (3) S.B. 826 was passed to increase gender diversity on publicly held
28 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, line10; 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.

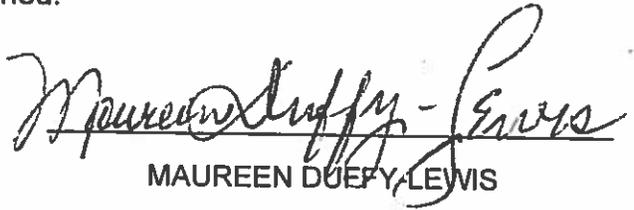
26 Further, Defendant did not sufficiently prove that S.B. 826's use of a gender-
27 based classification was actually remedial. There is insufficient showing that S.B.
28 826 was designed as nearly as possible to restore the victims of specific, purposeful

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. ¹

17
18 Dated: 5-13-22


MAUREEN DUFFEY-LEWIS
JUDGE OF THE SUPERIOR COURT

27
28 ¹ 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.