

**SB 826 (JACKSON) CORPORATIONS: BOARD OF DIRECTORS  
OPPOSE**



May 29, 2018

TO: Members, California State Senate

FROM: California Chamber of Commerce  
 Biocom  
 Brea Chamber of Commerce  
 California Ambulance Association  
 California Association of Winegrape Growers  
 California Business Properties Association  
 California Grocers Association  
 California Manufacturers and Technology Association  
 California Restaurant Association  
 California Trucking Association  
 Camarillo Chamber of Commerce  
 Cerritos Chamber of Commerce  
 Construction Employers' Association

Garden Grove Chamber of Commerce  
Gateway Chambers Alliance  
Greater Coachella Valley Chamber of Commerce  
Greater Riverside Chambers of Commerce  
Lodi Chamber of Commerce  
Long Beach Area Chamber of Commerce  
Murrieta Chamber of Commerce  
North Orange County Chamber  
Official Police Garages of Los Angeles  
Personal Insurance Federation of California  
Rancho Cordova Chamber of Commerce  
Redondo Beach Chamber of Commerce  
Santa Maria Valley Chamber of Commerce  
Simi Valley Chamber of Commerce  
South Bay Association of Chambers of Commerce  
Vacaville Chamber of Commerce  
Wildomar Chamber of Commerce

**SUBJECT: SB 826 (JACKSON) CORPORATIONS: BOARD OF DIRECTORS  
OPPOSE – AS AMENDED MAY 25, 2018**

The California Chamber of Commerce and the organizations listed above respectfully **OPPOSE SB 826**, as amended May 25, 2018, as it requires a publicly held corporation with its principal executive offices in California to: (1) promote an individual to the Board of Directors simply on the basis of gender; (2) displace an existing member of the Board of Directors solely on the basis of gender; and (3) place gender as the main criteria of diversity over any other protected classification. It also likely violates the United States Constitution, California Constitution, and California's Civil Rights Act, which places California companies in a legal predicament.

We agree with you as to the intent of the bill, which is to create more diversity on boards of directors. However, we disagree with the manner in which **SB 826** seeks to accomplish this goal.

**SB 826 Only Considers One Element of Diversity:**

Gender is an important aspect of diversity, as are the other protected classifications recognized under our laws. We are concerned that the mandate under **SB 826** that focuses only on gender potentially elevates it as a priority over other aspects of diversity.

Many of our companies are making significant efforts to address and improve diversity in the workforce by focusing on their hiring practices, training, promotion, retention, etc. Our companies are not focused on only one particular classification, but rather all classifications. We believe this comprehensive approach is more productive in addressing diversity than a mandated quota that only focuses on one aspect of diversity.

**SB 826 Violates the U.S. Constitution, California Constitution, and Civil Rights Law:**

**SB 826** places a phased-in, mandatory requirement regarding the number of female directors that must be on a board, with the threat of significant financial penalties if the company fails to achieve this number. This means that if there are two qualified candidates for a director position, one male and one female, **SB 826** would require the company to choose the female candidate and deny the male candidate the position, based on gender. It further means that, if there are no vacancies on the board and the shareholders of the company do not approve of additional positions as **SB 826** contemplates, the company will have to displace an existing board member, solely based upon gender.

California's Civil Code, Unruh Civil Rights, Section 51 explicitly states:

*"All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and*

*equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”*

The California Constitution, Article I, Section 8 states:

*“A person may not be disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin.”*

The United States Constitution states:

*“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”*

The U.S. Constitution, California Constitution, and California Civil Rights law all prohibit a business from engaging in the type of consideration **SB 826** mandates. This places California corporations with executive offices in a legal predicament between satisfying the mandate of **SB 826** without offending the U.S. Constitution, California Constitution, and Civil Rights law.

#### **SB 826 Conflicts with Corporations Code Section 2116 – Internal Affairs Doctrine:**

“Corporations Code Section 2116 codifies the modern view of the common law doctrine, whereby a court will entertain an action involving the internal affairs of a foreign corporation. With certain exceptions, the law of the state of incorporation applies.” *Vaughn v. LJ Intern., Inc.*, 174 Cal.App.4th 213, 226-227 (2009) (citations omitted)

“Uniform treatment of directors, officers and shareholders is an important objective which can only be attained by having the rights and liabilities of those persons with respect to the corporation governed by a single law. To the extent that they think about the matter, these persons would usually expect that their rights and duties with respect to the corporation would be determined by the local law of the state of incorporation. This state is also easy to identify, and thus the value of ease of application is attained when the local law of this state is applied.” *Vaughn*, 174 Cal.App.4th at 226-227; *See also State Farm Mut. Auto. Ins. Co. v. Superior Court*, 114 Cal.App.4th 434 (2003)(explaining internal affairs doctrine and application).

**SB 826** seeks to manage the directors of publicly traded corporations that have its principal executive offices in California yet are incorporated in another state. The internal affairs doctrine appears to dictate that the laws of the state where the company is incorporated apply for these issues, not the law of where the principal executive offices are located, such as California. Such confusion and ambiguity will only lead to costly fines as proposed under the bill and potential litigation.

We are committed to workplace diversity, but for the reasons stated, we respectfully **OPPOSE SB 826**.

cc: The Honorable Hannah-Beth Jackson  
Tom Dyer, Office of the Governor  
Eileen Newhall, Senate Committee on Banking and Financial Institutions  
Tim Conaghan, Senate Republican Caucus  
District Offices, Members, California State Senate