A groundbreaking California law to address workplace diversity was overturned. What happens now?

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Key Points

A California judge struck down a law mandating corporate diversity, a measure many believed was necessary to increase the numbers of underrepresented people in boardrooms.

Experts say companies need to examine recruitment policies, create governance committees and include members of underrepresented communities at the investor level in venture capital.

Board membership impacts everything about a company including who raises through the ranks to senior corporate roles, which offer the highest salaries and benefits.

Corporate America has always had a diversity problem.

What's less clear is how to fix it.

A California judge Friday struck down the first law in the nation mandating diversity on corporate boards, a measure many workplace diversity experts had heralded as transformative and necessary.

"Change seems to be occurring but the pace is quite slow," said Colleen Ammerman, director of the gender initiative at Harvard Business School in Cambridge, Massachusetts. "Most board seats, whether at private or public companies, are still filled through networks, and the networks of current directors tend to be filled with people who look like them."

The 2020 California law required corporate boards to have a member from certain racial, ethnic or LGBTQ groups. The judge did not explain his decision.

Conservatives have long held that any policy to include underrepresented groups based on their gender, race, sexuality or creed are discriminatory.
Judicial Watch, a conservative activist group in Washington, D.C., that files Freedom of Information Act lawsuits to investigate alleged government misconduct, had sought a permanent injunction against the measure, resulting in the judge's decision to overturn the effort.

“This historic California court decision declared unconstitutional one of the most blatant and significant attacks in the modern era on constitutional prohibitions against discrimination,” said Judicial Watch president Tom Fitton in a statement. “The court upheld the core American value of equal protection under the law.”

Still, proponents of legislative directives as a way to increase diversity said such measures yield results. In 2018, California also passed a law that required corporate boards to have at least one woman. Companies that failed to comply were fined.

Jennifer Chatman, associate dean for academic affairs at the University of California, Berkeley, Haas School of Business, said the number of women on boards doubled since the law went into effect.

"Even though people are well-intentioned and express a desire to increase gender, race, and sexual orientation equity on boards, there's no substitute in generating action for having a law that needs to be followed, with consequences for non-compliance," Chatman said.

When Gov. Gavin Newsom signed the bill, he heralded it as an important measure to protect marginalized people.

"When we talk about racial justice, we talk about empowerment, we talk about power, and we need to talk about seats at the table," Newsom said at the time.

Federal data shows boardrooms and executive suites remain largely white, male and straight, while employees of color are overrepresented in the nation's blue-collar workforce. Analysts say companies need to examine recruitment policies, create governance committees and include members of underrepresented communities at the investor level in venture capital.

A recent USA TODAY analysis of 54 firms in the Standard & Poor's 100, a group of the most highly valued companies in the stock market, found that while white men make up about a third of U.S. workers, they held half or more board seats at 33 of the 54 companies. Previously, a study by USA TODAY found that less than 2% of top executives at the 50 largest companies are Black.
Board membership shapes companies, including who raises through the ranks to senior corporate roles, which offer the highest salaries and benefits.

Lack of career opportunities increases the yawning wealth gap that has resulted in the average white family having eight times the wealth of a Black family and five times the wealth of a Latino family.

One of the biggest challenges is that companies often default to inviting a sitting or former CEO to join the board, which can be a problem when C-suites are also very homogenous, said Lori Nishiura MacKenzie, lead strategist for diversity, equity and inclusion at Stanford Graduate School of Business in California.

"Companies looking to diversify their boards should critically examine how candidates are recruited to the board, take an inclusive view on how board needs are defined," said Nishiura MacKenzie.

Others are calling for companies to add roles or committees at the board level that are solely focused on diversity, equity and inclusion initiatives.

"These topics often get subsumed under the ‘governance’ committee of boards, but it may be time to elevate these roles since these are increasingly critical for companies," said Sarah Soule, professor of organizational behavior and senior associate dean of academic Affairs at Stanford Graduate School of Business.

For Erica Duignan Minnihan, general partner at Reign Ventures in New York, the answer to how to diversify the top begins at the investor level.

"When we have more inclusive investment firms, we will likely have more diverse founding teams, who will hire more diverse management teams," said Duignan Minnihan. "These are the people who determine the board composition, so that is where we need to look to address the problem."

However, some organizational psychologists warn that companies have to focus not only on diversifying their boards but on making sure that they manage for, mentor, promote, incentivize and engage a diverse workforce, and create different onramps and pathways for success.

"We are still, largely, at an earlier stage where the focus is on how diversity presents itself, rather than the value it adds," said Natalia Martinez-Kalinina, organizational psychologist.
and founder of the Miami-based NMK Group, which advises startups and companies. "But it is woefully incomplete."