



California Corporate & Securities Law

CalPERS and Cumulative Voting

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California has a strong historical bias in favor of cumulative voting in the election of directors. In fact, California's 1879 Constitution enshrined cumulative voting as a constitutional right. Cal. Const. of 1879, Art. XII, § 12 (repealed). The 1931 California General Corporation Law continued mandatory cumulative voting. When the current California General Corporation Law was introduced, it allowed corporations to opt out of cumulative voting. However, the law as finally enacted continued mandatory cumulative voting. It wasn't until 1989 that California finally relaxed its cumulative voting mandate by allowing "listed corporations" to opt out. Cal. Corp. Code § 301.5. (Interestingly, Arizona's Constitution continues to mandate cumulative voting. Ariz. Const. Art. XIV, § 10).

The California Legislature is so strongly attached to cumulative voting that it has even ordered state agencies to vote for it. Government Code § 6900 provides in relevant part (emphasis added):

Whenever any governmental body is a shareholder of any corporation, and a resolution is before the shareholders which will permit or authorize cumulative voting for directors, such governmental body shall vote its shares to permit or authorize cumulative voting.

With this as background, I was surprised to see that the California Public Employees Retirement System (CalPERS) issued a [press release](#) earlier this week stating that "will abstain on a proposal to remove cumulative voting" that is being voted on at a special meeting of stockholders of Massey Energy Company.

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