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Court of Appeal Holds that a Non-Shareholder has Standing to Challenge the Election of Corporate Directors

As is also the case with political elections, the outcome of corporate elections can be challenged by the losers. In California, shareholders have a statutory right to obtain a quick hearing on an election's outcome. This right is clearly available to shareholders, but what about others? In a recent decision, the Court of Appeal has held that someone who has entered into an agreement to take shares may also use this statutory procedure.

California's statute applies to foreign corporations when the election or appointment of a director occurs in California.

Under California Corporations Code Section 709, a shareholder who wants to contest the validity of the election or appointment of a director may file suit in the Superior Court. After the complaint has been filed and before any further proceedings are had, the court must fix a date for a hearing. The hearing date must be within five days unless for good cause a later date is fixed. The court is empowered to determine who is entitled to the office and it may order a new election. The court can also determine related questions, including the validity, effectiveness and construction of voting agreements and voting trusts, the validity of the issuance of shares and the right of persons to vote.

Section 709 is available to "shareholders" – a term that is defined as someone who is a shareholder of record. In

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Haah v. Kim, 2009 DJDAR 9071 (June 22, 2009), two individuals entered into agreements to acquire shares but they were not actually issued shares. Later they brought an action seeking to invalidate an election of directors under Section 709. Not surprisingly, the defendants argued that the plaintiffs lacked standing to bring the action because they were not shareholders. The trial court found that they had sufficient standing because of the agreements. The court of appeal agreed – noting that Section 709 by its terms is also available to "any person who claims to have been denied the right to vote."

By eschewing a narrow reading of Section 709, the Court of Appeal has ensured that a mechanism is available for quickly challenging and resolving corporate elections. The Court of Appeal's decision is also important for non-California corporations because Section 709 applies to any foreign corporation if the election or appointment was held in California.

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