

# Court Holds No "Continuous Director" Status Required Under Nonprofit Law

Allen Matkins  
CHALLENGE. OPPORTUNITY. SUCCESS.

Article By

[Keith Paul Bishop](#)

[Allen Matkins Leck Gamble Mallory & Natsis LLP](#)

[California Corporate and Securities Law](#)

- [Administrative & Regulatory](#)
- [Corporate & Business Organizations](#)
- [Litigation / Trial Practice](#)
  
- [California](#)

Tuesday, April 16, 2019

The California Supreme Court has imposed a continuous ownership requirement for shareholder derivative suits under California Corporations Code Section 800. *Grosset v. Wenaas*, 42 Cal. 4th 1100 (2008). Thus, a shareholder must maintain continuous share ownership throughout the litigation of a derivative action. The Nonprofit Public Benefit Corporation Law includes several provisions authorizing suits by a director (Cal. Corp. Code §§ 5223, 5233 & 5142). If a director files a lawsuit under one of these statutes and then leaves the board, does that director lose "standing"? In other words, do these statutes impose an analogous "continuous directorship" requirement?

According to the Second District Court of Appeal, the answer is "no". *Summers v. Colette*, 2019 Cal. App. LEXIS 347. In reaching this conclusion, the Court noted that Section 800 includes the phrase "instituted or maintained" while Sections 5233 and 5142 do not. The Court further noted that eschewing a continuous directorship requirement was consistent with the purposes of the statutes because a former director continues to be in the best position to bring breaches of trust to a court's attention. In addition, the risk of harassment is not high because potential plaintiffs under the statute are "few in number".

The Court of Appeal's opinion concludes that the erstwhile director continued to have "standing" under Sections 5223, 5233 & 5142 after being removed from office. The Court's reference to "standing". The reference to "standing" should not be confused with federal constitutional standing. Article III of the federal Constitution

imposes a "case-or-controversy" limitation on federal court jurisdiction. The California Constitution has no similar limitation.

© 2010-2019 Allen Matkins Leck Gamble Mallory & Natsis LLP

**Source URL:** <https://www.natlawreview.com/article/court-holds-no-continuous-director-status-required-under-nonprofit-law>