

a method of taxation takes cognizance of trailer mobility<sup>66</sup> and will provide adequate revenue for local government without imposing an unfair burden on trailer-park owners.

<sup>66</sup> According to Mobile Homes Manufacturers Ass'n, *Homes for the Mobile Population* (1954), the average trailer dweller changes his location about once each year. Since this figure includes long-term occupancies it is probable that a majority of trailers move about with much greater frequency than the average figure indicates.

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### CUMULATIVE VOTING—REMOVAL, REDUCTION AND CLASSIFICATION OF CORPORATE BOARDS

Notions of corporate democracy, particularly strong in the late nineteenth century, led to the introduction of cumulative voting as a means of securing representation on boards of directors to significant minorities.<sup>1</sup> The intention was to prevent a faction controlling a simple majority of the voting shares from electing the entire board through the prior "straight-voting" method.<sup>2</sup>

There are two types of cumulative voting provisions—"mandatory" and "permissive."<sup>3</sup> Permissive statutes leave the corporation free to ignore cumulative voting.<sup>4</sup> Wherever the provisions are made mandatory by constitution or statute, however, the policy behind cumulative-voting legislation casts suspicion on several techniques which majorities have employed to dilute or eliminate its effect: especially, the removal of a director, reduction of the number of directors, and classification of the board. The conflict between such techniques and the policy embodied in mandatory cumulative-voting provisions forms the subject matter of this comment.<sup>5</sup>

Mr. Joseph Medill, chief proponent of the Illinois constitutional cumulative-voting provision, stated:

The object of the section is simply to protect the rights of stockholders in incorporated companies—to protect the right of every stockholder, and to prevent the

<sup>1</sup> For a comprehensive study of voting consult Williams, *Cumulative Voting for Directors* (1951). "Cumulative voting is the privilege, where several directors are to be voted for at the same time, of casting votes for the whole number of shares held, multiplied by the number of directors to be elected, for one candidate, or distributing the votes among part of the vacancies to be filled. . . ." Ballantine, *Corporations* § 177 (Rev. ed., 1946). The formula for determining the number of shares needed to elect a given number of directors under cumulative voting is: the number of voting shares at the meeting times the number of directors desired to elect, divided by the total number of directors to be elected plus one.

<sup>2</sup> If nine directors are to be elected, the majority group under straight voting will cast its votes, one vote per share, for each of nine men, and these men will be elected.

<sup>3</sup> For a list and discussion of both the permissive and mandatory states, consult Williams, *op. cit. supra* note 1, at 7-9.

<sup>4</sup> *Maddock v. Vorclone Corporation*, 17 Del. Ch. 39, 147 Atl. 255 (1929).

<sup>5</sup> The most important mandatory states are: Ill. Const. Art. XI, § 3; Mo. Const. Art. 11, § 6; Pa. Const. Art. 16, § 4; Cal. Corp. Code Ann. (1953) § 2235; Mich. Stat. Ann. (1951) c. 195, § 21.32 and c. 197, § 21.301; Ohio Rev. Code (Baldwin, 1953) § 1701.58.

formation of rings to control absolutely, to abuse and plunder the property of the minority of every incorporated company. The object of this section is not to take away any rights of the majority of the company, but to protect the minority.<sup>6</sup>

He continued by saying that without cumulative voting, minority "stockholders are in the dark"<sup>7</sup> because those who gain control are able to "elect the entire board."<sup>8</sup> Thus it is clear that this new legislation was intended to provide a means whereby, notwithstanding majority opposition, the minority shareholders could have representation on the corporate board in order to act as a type of "watch dog" over majority action and to make possible the use of their views in shaping corporate policy.

Some of the means used by management to lessen the effectiveness of cumulative voting are beyond the scope of this comment: replacing the board meetings with informal discussions between friendly members; use of committees on which minority directors are not appointed; and "in small companies, or where management is strong-willed, [complete management assumption of] the policy making function . . . with virtual disuse of the board members except for legally necessary action such as declaration of dividends."<sup>9</sup> These means do not eliminate minority directors' opportunity to serve, but they do frustrate their purpose considerably.

A method exists for depriving the minority of its voice on the board even after it has elected its representative if the majority has the power to remove without cause.<sup>10</sup> The necessity or desirability of such power seems doubtful,<sup>11</sup> but it has been observed that

In most states, either by express legislation or statutory silence on the subject of removal, the various corporations have the power to specify in their articles of incorporation or by-laws that directors may be removed *without cause* by a vote of the stockholders or, in some cases by the directors.<sup>12</sup>

<sup>6</sup> 2 Debates and Proceedings of the Constitutional Convention (1869-1870) of the State of Illinois 1666 (1870). "At present, under the ordinary method of electing directors, stockholders holding five hundred and one shares [of 1,000 shares] elect the entire board, and those holding four hundred and ninety shares cannot elect a man to represent their interests. . . . On the plan here proposed the holders of . . . [490 shares] by clubbing their votes together could elect four of the ten directors, and if . . . [100 shares] were held by one stockholder he could elect one director to protect his interests, without the power to do which he may be wiped out, being left at the mercy of the ring of speculators who run the institution." *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> Williams, *op. cit. supra* note 1, at 60.

<sup>10</sup> "There is little evidence that the removal power has been frequently used. It is strong medicine, certain to promote intense bitterness." Williams, *op. cit. supra* note 1, at 57.

<sup>11</sup> "[W]here the cumulative voting privilege is conferred by constitution, statutes pertaining to removal of directors might properly be held subordinate to the purpose underlying the provision of the constitution and, therefore, inapplicable to minority interest directors who are innocent of official misconduct." Bowes and De Bow, *Cumulative Voting at Elections of Directors of Corporation*, 21 Minn. L. Rev. 351, 367 (1937).

<sup>12</sup> Williams, *op. cit. supra* note 1, at 56 (italics supplied). 2 Fletcher, *Cyclopedia of the Law of Private Corporations* § 352 (Rev. ed., 1954). Consult Power of Directors of Private

To cope with this problem some states have enacted removal statutes which provide that a director cannot be removed if there are enough votes against his removal cumulatively to elect one director.<sup>13</sup> Even in jurisdictions which do not have such legislation, the courts could interpret corporate removal provisions so as to uphold the purpose of cumulative-voting legislation. Removal without cause should be limited to the right of the majority group to remove one of their representatives—not one of the minority directors. The courts would thus be carrying out the intended purpose of the cumulative-voting provisions and at the same time avoid imputing to the framers of the removal statutes a desire to vitiate that purpose.

*Laughlin v. Geer*<sup>14</sup> substantiates the desirability of preventing the exercise of the removal power against minority representatives. The court held void a by-law pursuant to which a minority director was removed by the other directors. A statute permitting the removal of officers was declared inapplicable. The court reasoned that the directors could not do with a by-law that which they had no privilege to do without it, for

the board of directors may not nullify the constitutional right of a stockholder to choose whomsoever he may think proper to represent him on the board of directors. If a board of directors could legally remove a member either with or without a by-law . . . a power most dangerous to the minority stockholders would be lodged with the majority stockholders which would enable them . . . to reconstitute the entire directory of a corporation as completely as if they owned every share of the stock.<sup>15</sup>

The same reasoning applies to attempts by majority shareholders to remove a minority director.

Attempts to dilute the effectiveness of cumulative voting are not limited to actions that can be taken after the minority has secured its representation. The majority can also attempt to create a situation in which the minority votes, even if cumulated, will not gain them representation on the board of directors. Two methods can be employed to produce this result: (1) reduction in the number of directors and (2) classification of the board.

In many jurisdictions an opportunity to reduce the number of directors is readily available to the majority group. Indeed, such a means of restricting

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Corporation To Remove Officers or Fellow Directors, 63 A.L.R. 776 (1929), and Removal by Court of Director or Officer of Private Corporation, 124 A.L.R. 364 (1940).

<sup>13</sup> Cal. Corp. Code (1953) § 810; Mich. Stat. Ann. (1951) c. 195, § 2113; 15 Pa. Stat. Ann. (Purdon, 1954) § 2852-405.

<sup>14</sup> 121 Ill. App. 534 (1905).

<sup>15</sup> *Ibid.*, at 538. In New York, one of the permissive jurisdictions, it was held that the adoption of a charter amendment providing for cumulative voting repealed by implication that part of a by-law which permitted removal of directors by a majority vote of the stockholders without cause, since the by-law provision would otherwise permit a majority to nullify the purpose of the cumulative-voting amendment. In *re Rogers Imports, Inc.*, 116 N.Y.S. 2d 106 (S.Ct., 1952), noted in 27 St. John's L. Rev. 357 (1953), 51 Mich. L. Rev. 744 (1953), 66 Harv. L. Rev. 531 (1953).

minority representation is authorized in one state which has mandatory cumulative voting by constitutional provision.<sup>16</sup> The motive behind a reduction of the number of directors may be perfectly legitimate. Sometimes it becomes necessary to reduce the number to increase the efficiency of the board. The majority, however, may reduce the number of directors to a point where a relatively small minority is no longer able to elect a representative to the board, thus diluting the minority's right to cumulate its votes. While there can be little doubt that the authors of cumulative-voting legislation did not wish to prohibit all change in the size of corporate boards, they would certainly be opposed to any abuse of the reduction power. Some states, by statutes similar to those directed against removal without cause, have provided a means of preventing a majority from reducing the number of directors to the detriment of minority groups.<sup>17</sup> Such legislation would be useful in all mandatory cumulative-voting jurisdictions.

A classified board of directors is one in which only a part (usually one-third) of the directors are elected annually.<sup>18</sup> Since more shares are required under cumulative voting to elect one director to a three-man board than to a board of nine members, majority groups have, in a significant number of cases,<sup>19</sup> used board classification to forestall minority representation.<sup>20</sup>

<sup>16</sup> Illinois provides for cumulative voting in its constitution. Ill. Const. Art. XI, § 3. Ill. Rev. Stat. (1953) c. 32, § 157.34 reads in part: "The number of directors may be increased or decreased from time to time by amendment to the by-laws." And the board of directors of an Illinois corporation has "[t]he power to make, alter, amend, or repeal the by-laws of the corporation. . . ." Ill. Rev. Stat. (1953) c. 32, § 157.25. Consult Mo. Const. Art. 11, § 6, and Mo. Stat. Ann. (Vernon, 1952) §§ 351.245, 351.085.

<sup>17</sup> "Provided, that the by-laws of any such corporation shall not be so amended as to reduce the number of directors of such corporation in case the votes of a sufficient number of shares are recorded against such proposed amendment, which if cumulatively voted as herein provided, would elect 1 or more directors, where the same number of shares if cumulatively voted would not be sufficient to elect the same number of directors of the reduced board." Mich. Stat. Ann. (Supp., 1951) c. 197, § 21.301. Does such a statute tend to force incorporators to establish small boards at the outset? If this were the tendency then the benefit of a large board would be lost in many instances. However, it is unlikely that incorporators would fix a small board in anticipation of the difficulty which would arise should an unfriendly minority seek membership.

<sup>18</sup> "Ordinarily this is accomplished by providing a board of three, or a multiple of three, and by providing at the outset that there shall be three classes of directors, equal in number—the first class holding one year; the second class, two years; and the third class, three years; thereafter, in each year, the places of the directors whose terms expire will be filled at the annual meeting by successors elected for a three-year term." 2 Fletcher, *Cyclopedia of the Law of Private Corporations* § 334.1 (Rev. ed., 1954). E.g., Ill. Rev. Stat. (1953) c. 32, § 157.35; Mich. Stat. Ann. (1951) c. 195, § 21.13(4); Mo. Stat. Ann. (Vernon, 1954) § 351.315; 15 Pa. Stat. Ann. (Purdon, Supp., 1954) § 2852-403.

<sup>19</sup> Williams, *op. cit. supra* note 1, at 53.

<sup>20</sup> State statutes have authorized this practice. The first Illinois classification act, Ill. L. (1871-72) p. 297, § 3, following the adoption of the Illinois constitutional cumulative-voting provision, did not restrict classification to boards of nine members or more and require that each class consist of at least three directors as set forth in the present act. Conceivably, under the first Illinois act classes of one director would have been available to majority groups. An

In a number of states the mandatory cumulative-voting provisions, both constitutional and statutory, are similar to the Illinois constitutional provision which provides as follows:

[E]very stockholder shall have the right to vote, in person or proxy . . . for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.<sup>21</sup>

The constitutionality of classification of corporate boards has been questioned because of alleged conflict with the policy of cumulative voting.<sup>22</sup> The defenders of classification argue that the words "to be elected" clearly indicate that less than all of the directors may be on the slate at any election. The opposing view is that these words merely indicate that the number of directors varies as between corporations; and that in order to fulfill the intended purpose of cumulative voting, all directors of a corporation must be voted upon in one balloting, since permitting a fraction of the board to be voted upon annually may dilute the voting power of a minority to the point where they are unable to gain board representation.<sup>23</sup>

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annual election of one director, however, should not be countenanced, since this would make a nullity of the framer's efforts in drafting mandatory cumulative-voting legislation. Even with an annual election of as few directors as two, a minority of 34 per cent can by cumulating its votes gain representation on the corporate board. Consult Ill. Bus. Corp. Act Ann. (2d ed., 1947), note at § 35.

<sup>21</sup> Ill. Const. Art. XI, § 3. It has been suggested that "to be elected" in the Illinois provision refers only to the first half of the provision. If such was the intention of the legislature, the opponents of classification could argue that the method of cumulating votes by multiplying the "number of directors" by the number of shares held indicates that the "number of directors" are to be voted upon in the same ballot. This clean division of the provision was probably not the intention of the framers. But see *People v. Emmerson*, 302 Ill. 300, 134 N.E. 707 (1922). The language of other mandatory cumulative-voting provisions varies somewhat: Cal. Corp. Code Ann. (1953) § 2235; Mich. Stat. Ann. (1951) c. 195, § 21.32 and c. 197, § 21.301; Mo. Const. Art. 11, § 6, Mo. Stat. Ann. (Vernon, 1954), § 351.245; Ohio Rev. Code (Baldwin, 1953) § 1701.58; Pa. Const. Art. 16, § 4.

<sup>22</sup> For an excellent discussion of the mechanics of the problem consult Note, *Classification of Directors and Its Effect upon Cumulative Voting in Corporate Elections*, 56 Dick. L. Rev. 330 (1952). It is interesting to note that when three directors are annually elected 25 per cent of the shares cast plus one share will elect one director each year for a term of three years to a board of nine members until ultimately three directors are put into office, whereas if all were elected each year only two could be elected, with no possibility of increase at a subsequent election. But note that 23 per cent of the shares will elect no directors to the board if only three members are annually elected and that two could be elected if nine directors were to be voted upon each year.

<sup>23</sup> Classified boards delay a new majority of the shareholders from taking over control of the board because only a fraction of the directors is to be elected each year. In a few of the mandatory cumulative-voting states there is no requirement that the board of directors be annually elected. E.g., 15 Pa. Stat. Ann. (Purdon, Supp., 1954) § 2852-402. Conceivably a corporation with nine directors could pass a by-law providing for corporate elections every three years. In such event, the majority could not only not gain control of the board for three

In *Wolfson v. Avery*,<sup>24</sup> the Illinois Supreme Court declared a classification statute to be in violation of the Illinois cumulative-voting provision. The defendant corporation, Montgomery Ward & Co., pursuant to the classification statute had a by-law which provided for staggered terms for its nine directors (three to be elected annually). The court held that "the general purpose of the provision, as disclosed in the debates of the constitutional convention and in contemporaneous comments and explanations in the press, was to afford a minority protection in proportion to its voting strength."<sup>25</sup> If minority representation in proportion to voting strength was the desire of the framers of the provision, all directors must be voted upon at the same time. It is not clear that such was their intention. Cumulative voting may have been intended only to alleviate the harshness of the older straight voting method by affording representation on the corporate board to significant minorities.

In *Wright v. Central California Water Co.*,<sup>26</sup> a resolution requiring that each of the seven board vacancies be filled by separate ballot was declared void. The court held that all the directors must be elected at one time, for if directors were voted upon one at a time, "it would be in the power of the majority of the stockholders to virtually cancel the votes of the minority and deprive them of their rights to representation on the board of directors."<sup>27</sup> Although the court did not have the question of classification before it, the decision illustrates court intervention to preserve a mode of corporate election procedure necessary to effectuate the cumulative-voting provisions.<sup>28</sup> Had the court held otherwise, the

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years, but would be unable to obtain any representation on the board for that period. On the other hand, a new controlling interest would not be forced to go through three expensive proxy battles to assert its rights.

<sup>24</sup> Illinois Supreme Court, Dkt. No. 33563 (April 16, 1955).

<sup>25</sup> *Ibid.*

<sup>26</sup> 67 Cal. 532, 8 Pac. 70 (1885).

<sup>27</sup> *Ibid.*, at 536, 73. Compare *Commonwealth v. Gutman*, 10 Pa. Dist. & Co. 606 (1928), with *State v. DuBrul*, 100 Ohio St. 272, 126 N.E. 87 (1919). Consult *Wright v. Commonwealth*, 109 Pa. 560, 1 Atl. 794 (1885).

<sup>28</sup> By cumulative voting "a minority of the stockholders would be enabled to secure representation upon the board of directors by electing one or more of the directors. Such doubtless was the object of the provision. . . ." *Wright v. Central California Water Co.*, 67 Cal. 532, 8 Pac. 70 (1885). This mode of voting is protected by the courts when in danger of being canceled. *State v. McGann*, 64 Mo. App. 225 (1895) (stockholder has the right to change his vote to cumulative while the election of directors is still in progress); *Tomlin v. Farmers and Merchants Bank*, 52 Mo. App. 430 (1893) (by-law negating the right to vote cumulatively held invalid and acquiescence in its passage does not deprive a shareholder of his right to cumulate his votes); *Peoples' Home Sav. Bank v. Superior Court*, 104 Cal. 649, 38 Pac. 452 (1894) (by-law restricting the right to vote by proxy held invalid); *Centrifugal Nat'l Concentrator Co. v. Eccleston*, 122 Cal. App. 698, 10 P. 2d 1033 (1932) (corporation commissioner has no power to deny a shareholder his right to vote all his stock); *People v. Cohn*, 339 Ill. 121, 171 N.E. 159 (1930) (statute allowing board vacancies to be filled by vote of the directors held unconstitutional), but consult *Mich. Stat. Ann. (Supp., 1951) c. 195, § 21.13*; *Durkee v. People*, 155 Ill. 354, 40 N.E. 626 (1895) (by-law allowing bondholders to vote for directors held void); *People v. Emmerson*, 302 Ill. 300, 134 N.E. 707 (1922) (by-law providing for non-

election would have produced the same result as the straight voting method, thus prohibiting minority representation.<sup>29</sup> Classification, however, does not prohibit minority representation, even though it dilutes the potential proportional representation that cumulative voting affords. But forbidding the nullification of cumulative voting is not the same as finding that each share is to have maximum voting strength. It need not follow that because there is a cumulative-voting provision, there is a constitutional requirement that all the directors be voted upon at one time in order to assure the nearest possible approach to proportional representation.<sup>30</sup> Classification existed in Illinois before its cumulative-voting provision was enacted. If the framers of the cumulative-voting provision had intended to prevent classification, they could have expressly required that all the directors be elected at one time.<sup>31</sup>

The effect of classification on cumulative voting was considered in the adoption of the Kentucky constitutional cumulative-voting provision and apparently was found to be in harmony with the desire to protect minority interests.<sup>32</sup> In the fear that only one director might be elected at a time under the proposed cumulative-voting provision, thereby defeating its intended purpose, it was moved that language be used requiring that all the directors be voted upon at

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voting preferred stock held invalid because every stockholder has the right to vote). *Contra*: *State v. Swanger*, 190 Mo. 561, 89 S.W. 872 (1905).

<sup>29</sup> By the former straight voting method, even if a minority controlled 49 per cent of the votes cast, they would be precluded from any representation.

<sup>30</sup> One of the early corporation writers states: "It is thus possible for a minority of the stockholders to elect such a portion of the directors as their proportion of stock in the corporation entitles them to." Haveland, *Law of Corporations* 199 (1890). If this were what the legislators had desired, then the entire board would, of necessity, have to be voted upon at one time. However, the language of most of the writers which reads most strongly against classification does not go this far. E.g., "The purpose of the system of cumulative voting is to enable a minority in interest of the stockholders to elect a minority of the directors. . . ." 2 Purdy, *Private Corporations* 1023 (1905). "It is a device by which, when permitted, the minority may always secure and keep a representation on the board of directors." Clephane, *The Organization and Management of Business Corporations* 182 (2d ed., 1913).

<sup>31</sup> A large minimum requirement on the number of directors might also have been fixed. In some jurisdictions advance notice of the intention to vote cumulatively is not necessary. *Pierce v. Commonwealth*, 104 Pa. 150 (1883); *Zachary v. Milin*, 294 Mich. 622, 293 N.W. 770 (1940). On occasion, this has given rise to the anomalous situation where a minority of the votes cast at a corporate election has elected a majority of the directors. Consult Note, *Classification of Directors and Its Effect upon Cumulative Voting in Corporate Elections*, 56 Dick. L. Rev. 330, 331 (1952). Yet the courts are not moved by the disproportionate representation on the board. This substantiates the proposition that the cumulative-voting provisions were intended to give a minority group a manner of voting its shares which would enable it, if sufficiently strong, to elect at least one director—for if a complete balance of proportional interests were desired, a minority group would never be permitted to retain control of the board. Some states now have statutes requiring notice to be given of the intention to vote cumulatively. E.g., Ohio Rev. Code (Baldwin, 1953) § 1701.58. Some states allow a corporation to have an even number of directors on its board. Under such circumstances, a strong minority may be able to prevent the majority from electing a majority of the board.

<sup>32</sup> 3 Proceedings and Debates in the Convention, Kentucky 3732, 3734 (1890).

one time. Because a delegate thought this requirement would prevent continuity in corporate management, the mover offered to change his proposal to a requirement that at least one-half of the board be voted upon at one time. Nevertheless, the Kentucky Constitution as finally adopted contains no requirement that all or at least a certain percentage of the directors be elected annually.<sup>33</sup> The delegates seem to have felt that minority shareholders would be adequately protected even with a classified board, although classification increases the number of shares necessary to elect a director.<sup>34</sup> This view is consistent with the Illinois debates since classification does not enable a simple majority faction to "elect the entire board" which was the undesirable feature of straight voting.<sup>35</sup>

There are few precedents concerning classification. Arguments for or against it have therefore turned to an evenly balanced area—policy considerations. The argument against classification is that it perpetuates unrepresentative and perhaps unwise management by preventing a new majority from gaining immediate control. The customary defense of staggered terms is that they promote continuity in corporate management through the retention of experienced personnel. Sometimes all shareholders are better served by a classified board than if there were a right to an annual election of all the directors: for example, in situations where a new group attempts to capture control of the corporation with a windfall gain as the objective,<sup>36</sup> or a group intends to gain control of the corporation for a captive source of supply or market.<sup>37</sup> The desirability of classified boards is further evidenced by their existence in many states in which the shareholder has no right to cumulate his votes.<sup>38</sup>

But reference to the desirability of classified boards is not a legitimate argument for or against declaring classification unconstitutional because of a cumulative-voting provision. Constitutionality depends on whether or not classification violates the principles embodied in the cumulative-voting provisions, not on whether classification itself is beneficial. Cumulative-voting provisions

<sup>33</sup> Ky. Const. § 207.

<sup>34</sup> Ky. Acts (1891-93) c. 243, § 1, which followed the adoption of the Kentucky constitution, provided that "The affairs of the corporation shall be managed by a board of not less than three directors" and allowed classification of directors.

<sup>35</sup> Note that Ill. L. 1871-72, 625 et seq., §§ 8 and 25 provided respectively for mandatory classification of and cumulative voting for directors of railroad corporations.

<sup>36</sup> Control-seekers may be drawn to a corporation with hopes of distributing liquid assets which are not reflected in the market price of the stock.

<sup>37</sup> Large corporations may buy the necessary number of shares of a smaller corporation in order to gain control of it. A change in the business policies of the smaller corporation beneficial only to the new controlling interest is then possible.

<sup>38</sup> E.g., 8 Del. Code Ann. (1954) § 214 (permissive cumulative voting); Del. Code Ann. (1954) tit. 8, § 141 (classification). The Model Business Corporation Act §§ 28, 31 provides for mandatory cumulative voting and permissive classification of directors. 9 U.L.A. 52 et seq. (1953).

opened the way for minorities to gain representation on corporate boards; this opportunity is available to them notwithstanding classification. Judicial refusal to dilute this opportunity on constitutional grounds intimates that a minority of a given size has a right to representation. But there is no implication in the cumulative-voting provision that minorities of a particular size are to be protected. The proper size within reasonable limits is for the legislature and not the courts to determine.

If majority harassment of a minority through the use of classified boards is to be prevented, corrective legislation can be passed. Some states have made classification impossible by requiring an annual election of all the corporate directors.<sup>39</sup> If this step is undesirable because of the possible benefits of classification, a statute limiting classification to "business purposes" could be a step forward. Such a statute would permit staggered terms; but if a complainant proved that the classification was solely a tactical maneuver, it would be prohibited.<sup>40</sup> A current or approaching battle for representation or control would be a good indication that the classification was for a non-business purpose. If there is to be a change concerning classification, however, the task is for the legislature, not the courts.

<sup>39</sup> Cal. Corp. Code Ann. (1953) §§ 805, 2201; Wyo. Comp. Stat. (Supp., 1953) § 44-109; 10 Ala. Code (Supp., 1953) § 23.

<sup>40</sup> Such a statute would introduce a subjective standard into a field normally occupied by objective rules. The resulting uncertainty might discourage potential incorporators. But little danger to management would be involved so long as the burden of proof remains on the complainant.