Finding the Benefit in a New Administration: A Uniform B Corporation Legislation

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I. INTRODUCTION: B CORPORATION LEGISLATION GOING FORWARD

The benefit corporation form is likely to become an increasingly important entity choice as the Trump administration continues to roll back regulations on companies.[1] As

1. Steven Overly, *Donald Trump tells Detroit auto CEOs that environmental regulations are 'out of control'*, WASH. POST (Jan. 24, 2017), https://www.washingtonpost.com/news/innovations/wp/2017/01/24/donald-trump-tells-detroit-auto-ceos-environmental-regulations-are-out-of-control/.

the Federal Government takes its hands off of businesses, intending to eliminate inhospitable restrictions, corporations will have greater freedom than they have had since the Reagan administration.[2] While "many business groups are thrilled" with this new-found flexibility, corporations with social-minded goals may be wary of how this freedom could jeopardize their ability to safeguard social interests, which were previously protected by federal regulations, if the companies simply continue to operate under the traditional corporate form.[3]

In light of the potential desirability of an entity form that allows companies to re-impose standards that serve social interests, this Note addresses the different options states have if they do not already have benefit corporation legislation and they choose to adopt their own laws: the Model statute, the Colorado statute, and the Delaware statute. This Note is intended to compare and contrast the current legislation governing B corporations. It begins with an exploration of the development of B corporations from their beginnings with B Lab's Model statute, to Delaware's version of the legislation, and finally Colorado's hybrid law. Part II will address the current shareholder and corporation relationship and address how this current interaction is reflected in the various legislation. This Note will then conclude that a uniform statute modeled after the hybrid laws should be available for states that have not yet adopted B corporation laws in order to create the best communication between shareholders and corporations and ultimately provide a medium for both liberal and conservative entrepreneurs to safeguard social goals without direct government regulation.

II. BACKGROUND: DEVELOPMENT OF B CORPORATIONS

Despite the dicta in *Dodge v. Ford Motor Co.*, which misleadingly implies that for-profit corporations are meant to be aimed at "maximizing the financial returns to shareholders," businesses may actually be created for any legal purpose.[4] Within this legal framework, businesses are free to take on any social and environmental responsibilities they can shoulder as long these additional responsibilities do not create a conflict between shareholders and directors.[5] The director of a company must prioritize the business's fiduciary duties to its stockholders before considering any alternative goals.[6]

In 1983, "constituency statutes" were created to combat the inflexible fiduciary duties of directors to their shareholders to "defend against a hostile takeover" of directors by a new wave of shareholders.[7] The purpose of these statues was to give directors a degree of discretion regarding what interests they wanted to prioritize.[8] Constituency statutes anticipated the need for statutory frameworks that would protect interests inconsistent with

2. Juliet Eilperin, *Trump undertakes most ambitious regulatory rollback since Reagan*, WASH. POST. (Feb. 12, 2017), https://www.washingtonpost.com/politics/trump-undertakes-most-ambitious-regulatory-rollback-since-reagan/2017/02/12/0337b1f0-efb4-11e6-9662-6eedf1627882_story.html?tid=test_hp_curation&utm_term=.02bbdd74c833.

3. *Id.*

4. *Benefit Corporation: FAQ*, BENEFIT CORP., http://benefitcorp.net/faq (last visited Nov. 5, 2017).

5. *Id.*

6. *Id.*

7. JAMES D. COX & THOMAS LEE HAZEN, TREATISE ON THE LAW OF CORPORATIONS § 2:14 (3d ed. 2016).

8. Nathan E. Standley, *Lessons Learned from the Capitulation of the Constituency Statute*, 4 ELON L. REV. 209, 209–10 (2012).

shareholder desires.[9]

A well-publicized example where director fiduciary duties trumped social goals of a corporation is the Ben & Jerry's conflict in 2000.[10] Ben & Jerry's, an ice cream making company, partnered with Greyston, a socially-conscious bakery in Yonkers, New York, that hired "without respect to [its employees'] work histories."[11] Because of its hiring policy, Greyston gave jobs to people from "tough backgrounds—homelessness, poverty or worse" and put a portion of its profits towards "eradicat[ing] poverty in southwest Yonkers."[12]

In 2000, investors led by Ben & Jerry's founders, Ben Cohen and Jerry Greenfield, wanted to buy Ben & Jerry's and run the company so that it could maintain relationships with businesses like Greyston.[13] The investors were beat out by a higher offer from another company.[14] The directors of Ben & Jerry's were forced to sell the company to a buyer who did not intend to keep up associations with civic-minded companies because shareholders wanted the highest paying deal.[15] As a result, the social-minded goals of Ben & Jerry's had to be put aside in favor of the aims of profit-minded shareholders.[16]

It is not only entrepreneurs, like Ben & Jerry's, that have become dissatisfied with the focus on profit-maximizing to the exclusion of social interests.[17] Consumers and investors have also taken issue with corporations having to put finances first.[18] Social and environmental concerns are on the minds of "[a]pproximately 68 million U.S. consumers" who are conscientious of the interests the corporations they purchase from serve.[19] On the other hand, consumers are also wary of "greenwashing," the marketing scheme that uses conscientious language and advertisements without the promised payout to environmental and social interests that they promise.[20] Consumers, therefore, have started to demand businesses that not only serve social purposes but are also strictly held to serving those purposes.[21]

Investors are similarly aligning themselves with socially-minded businesses.[22] Some investors, for example, avoid companies that produce environmentally unsafe products while rewarding businesses who sell a greener product.[23] Like the issue consumers face when attempting to select social-minded businesses to purchase from, investors have to

9. *Id.* at 210.

10. Matt Sledge, *Benefit Corporations Aim to Help Capitalism Save Itself*, HUFFINGTON POST (Aug. 20, 2012), http://www.huffingtonpost.com/2012/06/27/benefit-corporations-patagonia-greyston-bakery_n_1632318.html.

11. *Id.*

12. *Id.*

13. *Id.*

14. Sledge, *supra* note 10. The other company was Unilever.

15. *Id.*

16. *Id.*

17. James Perry, *Are B Corporations the Future of Capitalism,* GREAT BUS. DEBATE (Apr. 14, 2015), http://www.greatbusinessdebate.co.uk/opinion/james-perry-b-corporations-future-of-capitalism/; William H. Clark Jr. & Elizabeth K. Babson, *How Benefit Corporations are Redefining the Purpose of Business Corporations,* 38 WM. MITCHELL L. REV. 817, 837–38 (2012).

18. Clark & Babson, *supra* note 17, at 819–23.

19. *Id.* at 819–20.

20. *Id.* at 820–21.

21. *Id.* at 821.

22. *See id.* at 822 (discussing the SRI (socially responsible investment) movement).

23. Clark Jr. & Babson, *supra* note 17, at 822.

distinguish companies who claim to protect social interests from those that are actually socially responsible.[24] It is important to entrepreneurs, consumers, and investors alike that businesses have the opportunity to prioritize social goals and be held accountable for serving those interests.[25]

A. The Birth of B Lab

"Benefit," "B corporations," or "Public Benefit corporations" were created as a way to meet the demands of socially conscientious consumers, investors, and, particularly, entrepreneurs.[26] B corporations are a product of B lab, a nonprofit company created in 2006 and aimed at organizing businesses to profit social and environmental interests.[27] Two of B Lab's co-founders, Jay Coen Gilbert and Bart Houlahan, worked as co-founder and president for And1, a basketball shoe retail company, before teaming up with Wall Street investor Andrew Kassoy to create B lab.[28] And1 was created as a socially responsible business to benefit its employees and the community.[29] Inside the office, employees were given extensive benefits and liberal parental leave (as well the use of an in-office basketball court).[30] In the community, And1 provided five percent of its profits to developing urban education and leadership programs.[31]

By 2001, And1 was the second-most successful shoe brand in the United States behind Nike.[32] Despite the company's success, a shift in the industry pressured Gilbert and Houlahan to sell.[33] After the sale, the duo watched the community and employee-centric purposes of their company disappear.[34] What came next for Gilbert, Houlahan, and Kassoy, was B lab.[35] The goal after And1 was to do "the most good for as many people for as long as possible."[36] With this purpose in mind, the co-founders ruled out creating a single social enterprise, and even starting up an investment fund to build multiple social enterprises, as too small-scale.[37] Instead, they decided to build a legal framework that would safeguard the purposes of social enterprises.[38] B corporations emerged as the legal structure through which businesses wanting to positively impact society and the environment could operate.[39] The specific purpose of providing a "general public benefit," distinguishes B corporations from the more ambiguous, and consequently less successful, constituency

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24. *Id.* at 823.
25. *See id.* at 819–23 (discussing the interests protected by B corporations).
26. *See generally* COX & HAZEN, *supra* note 7 (discussing the beneficiaries of the interest protected by B corporations).
27. Ryan Honeyman, *A Look at the History of the B Corp Movement,* TRIPLE PUNDIT (Aug. 19, 2014), http://www.triplepundit.com/2014/08/fascinating-look-history-b-corp-movement/.
28. *Our Team*, B LAB, https://www.bcorporation.net/what-are-b-corps/the-non-profit-behind-b-corps/our-team (last visited Oct. 9, 2017).
29. Honeyman, *supra* note 27.
30. *Id.*
31. *Id.*
32. *Id.*
33. *Id.*
34. Honeyman, *supra* note 27.
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. COX & HAZEN, *supra* note 7.

statutes that were available in the 1980s.[40]

B. B Lab Develops Model Legislation

B Lab and Bill Clark, an attorney at Drinker Biddle & Reath, drafted the model legislation for B corporations.[41] The Model Legislation governs only B corporations and does not affect other types of businesses.[42] The organization of B corporations under the proposed statute "offers entrepreneurs and investors the option to build, and invest in, a business that operates with a corporate purpose broader than maximizing shareholder value."[43] The Model Legislation proposes a company's preliminary provisions, describes the purpose of B corporations, and provides measures for accountability and transparency.[44]

1. Creation and Purpose

The first subchapter of the Model Legislation establishes the incorporation and termination processes for B corporations.[45] A business must make clear that the corporation is a benefit corporation by stating so in the articles of incorporation[46] or by amending existing articles of incorporation to include the benefit corporation requirements.[47] When transitioning from a general corporation to a benefit corporation, the amendment to the articles of incorporation "must be adopted by at least the minimum status vote."[48] As defined in Section 102, the "minimum status vote" requires a two-thirds affirmative vote by the shareholders of the class.[49]

The second subchapter defines the purposes of B corporations. The Model Legislation augments the objective of a state's current corporate law with the purpose of creating "general public benefit."[50] The statute defines general benefits as "positive impact on society and the environment taken as a whole," including "society and the environment."[51] Specifically, in Section 301(a), the Model Legislation contemplates specific interests that a corporation can consider including those of the: "shareholders," "employees," and "customers," as well as "community and societal factors," "local and global environment" factors, "the short-term and long-term interests of the benefit corporation," and "the ability

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40. Standley, *supra* note 8, at 232.

41. *The Model Legislation,* BENEFIT CORP., http://benefitcorp.net/attorneys/model-legislation (last visited Sept. 16, 2016).

42. MODEL BENEFIT CORP. LEGIS. § 101(b) (BENEFIT CORP. 2016). An updated, 2017 version of the Model Legislation is now published. The differences between the Model Legislation, citing to the 2016 version in this Note, and the legislations discussed later in this Note are not affected by the updates, which serve primarily to clarify rather than make substantive changes. The updated version of the Model Legislation can be found online at http://benefitcorp.net/sites/default/files/Model%20benefit%20corp%20legislation%20_4_17_17.pdf.

43. *Id.* § 101.

44. *Id.*

45. *Id.* § 103–105.

46. *Id.* § 103.

47. MODEL BENEFIT CORP. LEGIS. § 104 (BENEFIT CORP. 2016). The corporation may, similarly, terminate its status as a B corporation by amending its articles of incorporation.

48. *Id.*

49. *Id.* § 102.

50. *Id.* § 201(a).

51. *Id.* § 102.

of the benefit corporation to accomplish its general public benefit purpose."[52]

In addition to providing for the general public benefit, Section 201(b) of the Model Legislation gives a corporation the option of defining its own specific public benefit purpose.[53] Although a B corporation "may consider" a specific interest, it is not a requirement.[54] Unless the business has expressed otherwise in its articles of incorporation, no single benefit takes priority in the director's decision making process; rather the Model Legislation highlights that benefit corporations are for "general public benefit purpose[s]."[55] The Model Legislation, by making certain general "considerations mandatory . . . provide a framework for corporate responsibility that is both clear and lasting."[56]

2. Accountability

Subchapter three of the Model Legislation addresses accountability.[57] B corporation directors must consider the interests of the general public benefit.[58] This standard of conduct is far more flexible than the standard of conduct required for directors of non-B corporations.[59] While traditional corporations are limited to acting with their shareholders' interests in mind, the directors of B corporations have multiple factors, including shareholder interest and the public benefit, that they must weigh when considering business decisions.[60] Shareholders have the right to elect the directors, and thus this is their "main policing mechanism for the performance of directors" who otherwise hold a great deal of flexibility in their decision making authority.[61]

The Model Legislation makes clear that directors are not personally liable for failing to "pursue or create general public benefit or specific public benefit."[62] The Model Legislation also clarifies that although the director is acting for the general benefit rather than only the shareholders' financial benefit, that this does not extend standing to all potential beneficiaries of B corporation action.[63] A director who uses his discretion to act by weighing the interest of the general benefit and who acts in "good faith[,] fulfills the duty" of his decision-making role as long as he: (1) is "not interested in the subject of the business judgment," (2) "is informed with respect to the business judgment" so that he "reasonably believes" his actions "to be appropriate under the circumstances," and (3) "rationally believes that the business judgment is in the best interest of the benefit corporation."[64]

52. MODEL BENEFIT CORP. LEGIS. § 301(a) (BENEFIT CORP. 2016).
53. *Id.* § 201(b).
54. *Id.* § 301(a)(2).
55. *Id*. § 201; *see id.* § 301(2) (regarding standard conduct for directors).
56. Clark Jr. & Babson, *supra* note 17, at 840.
57. MODEL BENEFIT CORP. LEGIS. subch. 3. (BENEFIT CORP. 2016).
58. *Id.* § 301.
59. Clark Jr. & Babson, *supra* note 17, at 850.
60. *Id.*
61. *Id.*
62. MODEL BENEFIT CORP. LEGIS. § 301(c) (BENEFIT CORP. 2016).
63. *Id.* § 301(c), (d).
64. *Id.* § 301(e).

3. Transparency

Subchapter four of the Model Legislation discusses transparency.[65] Transparency is also a requirement of traditional corporations; the corporation must report its financial activities to its shareholders.[66] Because traditional corporations only have one primary interest being pursued, namely that of their shareholders, their method of reporting is much simpler than the method for reporting the multiple interests set out in the Model Legislation for B corporations.[67] It is important that a business's effectiveness in pursuing general benefit interests is reported in order to protect the significance of choosing the B corporation form as opposed to a traditional corporation.[68] Reporting is also intended to "reduce greenwashing" by holding B corporations accountable to both the public and their shareholders for following through with the interests they claim to pursue.[69]

Benefit corporations must prepare an annual report including a "narrative description of: the ways in which the benefit corporation pursued general public benefit," and "the ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state."[70] The report must also include a description of any "circumstances that have hindered" the B corporation in pursuing general benefit interests during the year.[71] The standard for reporting is not set by the Model Legislation.[72] Rather, the Model allows the B corporation to select a third-party whose standards it will adopt for the purposes of the report.[73] B Lab and The Global Reporting Initiative both offer suggestions for third-parties that B corporations can use for their reporting.[74]

The "third-party standard" must be "comprehensive" in "assess[ing] the effects of the business" in pursing general public benefits.[75] The standard selected by the corporation will be deemed "credible" as long as: (1) the third-party has the "necessary expertise to assess overall corporate social and environmental performance," (2) the standard is developed using a "multistakeholder approach," and (3) there is a "reasonable public comment period" to address any issues with the standard.[76] The criteria the third-party uses in their assessment and the process for developing and changing that standard must also be made available to the public.[77]

4. Adoption of the Model Legislation

The Model Legislation provides a framework that states can adopt to protect entrepreneurs, consumers, and investors who are looking for businesses that can serve

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65. *Id.* § 401.
66. Clark Jr. & Babson, *supra* note 17, at 840.
67. *Id.* at 842–43 (setting out the method of reporting for benefit corporations under the Model Legislation).
68. MODEL BENEFIT CORP. LEGIS. § 102 cmt. (BENEFIT CORP. 2016).
69. *Id.*
70. *Id.* § 401.
71. *Id.* § 401(a)(1)(iii).
72. Clark Jr. & Babson, *supra* note 17, at 842.
73. *Id.* at 843.
74. *Id.* at 846 ("In addition to the examples listed above, more than 100 'raters' of corporate sustainability practices are listed in the free 'Rate the Raters' report published by the research and consulting firm SustainAbility.").
75. MODEL BENEFIT CORP. LEGIS. § 102 (BENEFIT CORP. 2016).
76. *Id.*
77. *Id.*

interests beyond those of the shareholders.[78] Maryland was the first state to sign the Model Legislation into law.[79] The legislation passed the Senate 44–0 and 135–5 in the Assembly.[80] B Lab co-founder, Jay Coen, described Maryland passing the legislation as "an inflection point in the evolution of capitalism."[81] Maryland Senator Jamie Raskin reflected that the legislation was "giving companies a way to do good and do well at the same time . . . t[ying] public and private purposes together."[82] Today 33 states and Washington D.C. have passed B corporation legislation and 6 more have legislation pending.[83]

C. Alternative Legislation: Delaware Model

Delaware introduced B corporation legislation on April 18, 2013.[84] States that adopted B corporation statutes prior to Delaware largely accepted the Model Legislation with minor changes to fit each state.[85] Delaware deviated from the Model Legislation and created an alternative version of the B corporation statue that states can now look to adopt or use when drafting their current legislation.[86] B corporation legislation in Delaware is especially significant because "about two-thirds of the Fortune 500" companies are incorporated in Delaware and the state's corporate law is looked-to by other states.[87]

1. Creation and Purpose

Delaware legislation requires that a public benefit corporation indicate that it is such in its articles of incorporation and in the business's name, denoted, for example, by PBC at the end of the title.[88] A new benefit corporation is formed relatively easily by incorporating under subchapter XV, but transitioning a general corporation to a benefit corporation requires a 66% affirmative vote of each class of stock.[89] Delaware legislation

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78. *See generally* Clark & Babson, *supra* note 17 (discussing the Model Legislation for B corporations).

79. *Maryland First State in Union to Pass Benefit Corporation Legislation*, CSRWIRE (Apr. 14, 2010, 10:57AM), http://www.csrwire.com/press_releases/29332-Maryland-First-State-in-Union-to-Pass-Benefit-Corporation-Legislation [hereinafter *Maryland*].

80. *Id.*

81. *Id.*

82. *Id.*

83. *See State by State Status of Legislation*, BENEFIT CORP. http://benefitcorp.net/policymakers/state-by-state-status?state=delaware#chosen-state (last visited Nov. 5, 2017). (The states that have passed legislation include: Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Tennessee, Utah, Vermont, Virginia, Washington, D.C., and West Virginia).

84. An Act to Amend Title 8 of the Delaware Code Relating to the General Corporation Law, S.B. 47, 147th General Assemb. (Del. 2013), http://www.legis.delaware.gov/BillDetail?LegislationId=22350.

85. *Benefit Corporation Laws: Delaware vs. California*, TRIPLE PUNDIT (Jan. 15, 2015), http://www.triplepundit.com/2015/01/benefit-corporation-laws-delaware-vs-california/.

86. *Id.*

87. Francesca Rheannon, *Delaware Set to Consider Major New Choice in Corporate Structure*, CSRWIRE: TALKBACK (Apr. 18, 2013), http://www.csrwire.com/blog/posts/809-delaware-set-to-consider-major-new-choice-in-corporate-structure.

88. DEL. CODE ANN. tit. 8, § 362 (2015).

89. DEL. CODE ANN. tit. 8, § 363(a) (2015). Although the transition to a benefit corporation status requires the higher 90% affirmative vote, the termination of benefit status only requires two-thirds vote. This termination process aligns with the Model Legislation.

protects new companies from "being forced into an entity with a different governance architecture" than the traditional, default law.[90] If a business wanting to transition to a benefit corporation does not anticipate being able to gain an affirmative vote from 90% of the class of stock, then an option is to buy-back the stock in order to achieve the voting requirement.[91]

As public benefit businesses, the mission of Delaware benefit corporations is "to produce a public benefit . . . and to operate in a responsible and sustainable manner."[92] The purpose of the benefit corporation imposes a "tri-partite balancing requirement" on public benefit corporation directors who must weigh: (1) the stockholder's pecuniary interests, (2) "the best interests of those materially affected by [the corporation's] conduct," and (3) "the specific public benefit or public benefits identified in the corporation's certificate of incorporation."[93] A "specific public benefit" (or specific benefits) are required to appear on the certificate of incorporation.[94] The specific benefit that the corporation adopts must be shared with the stockholders in a statement every two years.[95]

2. Accountability

The directors of public benefit corporations under the Delaware legislation must manage the business according to the financial interests of its stockholders as well as for the "best interests of those materially affected by the corporation's conduct and the specific public benefit . . . ."[96] Directors are largely protected from liability for interests other than those of the stockholders; they are insulated from liability for claims by interested beneficiaries named under the articles of incorporation.[97] Directors fulfill their fiduciary duties to stockholders as long as their decisions contemplate the tripartite interests, are disinterested, and of reasonable judgment.[98] Shareholders may sue derivatively to hold directors accountable for their duties.[99] The Delaware legislation does not "preclude monetary damages for a breach of PBC duties."[100]

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90. Dirk Sampselle, *An Examination of the Delaware Public Benefit Corporation Legislation*, STOUT ADVISORY (Sept. 1, 2014), https://www.stoutadvisory.com/insights/article/examination-delaware-public-benefit-corporation-legislation.

91. *Id.* (explaining that the buy-back scheme for achieving a 90% vote can become complicated if the capital structure of the business has shifted over time).

92. DEL. CODE ANN. tit. 8, § 362(a) (2015).

93. DEL. CODE ANN. tit. 8, § 365(a) (2015).

94. DEL. CODE ANN. tit. 8, § 362(a) (2015).

95. DEL. CODE ANN. tit. 8, § 366(b) (2015).

96. DEL. CODE ANN. tit. 8, § 365 (2015).

97. An Act to Amend Title 8 of the Delaware Code Relating to the General Corporation Law, S.B. 47, 147th Gen. Assemb. (Del. 2013), http://www.legis.delaware.gov/BillDetail?LegislationId=22350.

98. *Id.*

99. *Id.* (Shareholders can sue "only if at the time suit is filed those stockholders individually or collectively own (i) at least two percent of the corporation's outstanding shares, or (ii) as to corporations with shares listed on a national securities exchange, the lesser of two percent of the outstanding shares or shares with a market value of at least two million dollars."); Sampselle, *supra* note 90 ("Delaware can apply its well-developed body of law regarding procedure and substance for [derivative action] claims rather than conjuring a whole new body of procedural law to handle them.").

100. Sampselle, *supra* note 90.

3. Transparency

The specific benefits that a public benefit corporation puts forth in its articles of incorporation must be stated to stockholders every two years.[101] This statement must include:

> (1) The objectives the board of directors has established to promote such public benefit . . . (2) The standards the board of directors has adopted to measure the corporation's progress in promoting such public benefit . . . (3) Objective factual information based on those standards regarding the corporation's success in meeting the objectives . . . and (4) An assessment of the corporation's success in meeting the objectives and promoting such public benefit or public benefits and interests.[102]

This requirement can be augmented at the corporation's discretion with requirements that give stockholders a greater ability to assess the company's achievement of its purposes.[103] For example, corporations, at their own discretion, may require more frequent statements to shareholders.[104] Corporations may also mandate that the statement required for shareholders must also be made available to the public.[105] Finally, a corporation can require the use of a third-party standard to assess the corporation's effectiveness in pursuing the interest of its shareholders and of those "materially affected" by the business's actions under its defined benefit interest.[106]

D. Hybrid Legislation: Colorado Model

Colorado has since adopted what seems like a hybrid of the Delaware and Model version of the benefit corporation legislation.[107]

1. Creation and Purpose

Under Colorado legislation, public benefit corporations are organized to "operate in a responsible and sustainable manner," balancing the interests of shareholders and of beneficiaries of the "specific public benefit" that the corporation is required to set forth in its articles of incorporation.[108] The articles of incorporation and business's name must make clear that the corporation is for public benefit by the designation, PBC.[109] If a corporation is to transition from a general corporation to a public benefit corporation, a two-thirds affirmative vote is required by the shares of each class.[110]

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101. DEL. CODE ANN. tit. 8, § 366(b) (2015).
102. *Id.*
103. DEL. CODE ANN. tit. 8, § 366(c) (2015).
104. *Id.*
105. *Id.*
106. DEL. CODE ANN. tit. 8, § 366(c) (2015).
107. COLO. REV. STAT. § 7-101-501–09 (2017).
108. COLO. REV. STAT. § 7-101-503 (2017).
109. *Id.*
110. COLO. REV. STAT. § 7-101-504 (2017). A two-thirds majority vote is also necessary under the Colorado legislation to amend articles of incorporation to terminate status as a benefit corporation. *Id.*

2. Accountability

The director's fiduciary duties will be fulfilled if his decisions balance the interests of shareholders and those materially benefited, and if they are disinterested and reasonable.[111] The specific benefit defined in the articles of incorporation does not create a duty by the director towards the beneficiaries of such interest or to those materially affected by the pursuit of those interests.[112] The Colorado legislation provides shareholders with the use of derivative suits to compel a director to conform to the requirements set forth in the statute.[113]

3. Transparency

A Colorado public benefit corporation must submit reports describing the corporation's effectiveness in pursuing the specific public benefits set forth in its articles of incorporation. The report must include "[a] narrative description of: [t]he ways in which the public benefit corporation promoted the public benefit identified in the articles of the incorporation."[114] The description must also include "circumstances that have hindered" the pursuit of those interests.[115] The overall assessment of the corporation's performance uses a third-party standard, which can be selected by the corporation as long as inconsistencies in the standard are rationalized in the report.[116] This report must be sent to the shareholders and be posted on a website for public viewing.[117]

E. The Legislation Being Adopted Today

Of the states that have adopted B corporation legislation, only Colorado and Delaware have mandated that a specific public benefit be designated in the corporation's articles of incorporation.[118] The accountability of directors varies in the manner in which states require their B corporations to weigh certain interests.[119] In the event that a director is not believed to be fulfilling his fiduciary duties, states also vary on who can bring suits and what kinds of enforcement proceedings can be brought against directors; for example, Maryland and New York are silent on the issue.[120] States also vary on the details and timing of the annual benefit reports B corporations must submit either to the shareholders or to

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111. COLO. REV. STAT. § 7-101-506(2)(b) (2017).

112. COLO. REV. STAT. § 7-101-506(2)(a) (2017).

113. COLO. REV. STAT. § 7-101-508 (2017) (Similar to the Delaware statute, the shareholders wishing to "institute[e] a derivative suit" must own "at least two percent of the corporation's outstanding shares; or in the case of a corporation with shares listed on a National Securities Exchange, the lesser of two percent of the corporation's outstanding shares or shares of at least two million dollars in market value.").

114. COLO. REV. STAT. § 7-101-507(a)(I) (2017).

115. COLO. REV. STAT. § 7-101-507(a)(II) (2017).

116. COLO. REV. STAT. § 7-101-507(1)(b) (2017).

117. COLO. REV. STAT. § 7-101-507(3–5).

118. Corporate Laws Committee, *Benefit Corporation White Paper*, 68 BUS. LAW. 1083, 1098 (2013) [hereinafter *Benefit Corporation White Paper*].

119. *Id.* at 1099–1100.

120. *Id.* at 1107 ("Hawaii permits the shareholders and directors to bring direct or derivative claims to enforce the corporate purposes, but it does not specify that other persons could bring derivative litigation if provided in the bylaws. Louisiana permits the shareholders or the benefit director to commence derivative benefit enforcement proceedings and the corporation to initiate such proceedings directly") (internal quotations omitted).

the shareholders and the public.[121] States differ in their use of the "third-party standard" as well.[122] Most states initially adopted many of the provisions of the Model Legislation when developing their own B corporation statutes.[123] As Colorado and Delaware developed different statutes, states have more alternatives for creating their own legislation but they also have a more complicated decision about what elements of each statute to include in their own.[124]

III. ANALYSIS: CURRENT SHAREHOLDER-CORPORATION RELATIONSHIPS IN NEED OF A HYBRID LEGISLATION

Most of the literature about B corporations is focused on the aims of the corporation.[125] The origin stories of B Lab and the Model Legislation, for example, focus on the aims of the entrepreneur.[126] Put another way, B corporation literature depicts the corporate entity as the protagonist and shareholders, with their stigmatic goal of maximizing profits, as antagonistic. While this depiction may accurately express the motivations that led the founders of B Lab to create B corporation legislation, it is not the end of the story nor the only point of view that should be explored.

Corporate legislation based solely on the interests of corporations, without considerable attention given to shareholder interests, will not lead to successful legislation; shareholders are equally important players in the corporate scheme. All current versions of B corporation legislation[127] acknowledge, to some degree, the importance of shareholders—contrary to the emphasis B corporation literature puts on the entrepreneurs' perspective. In drafting new model legislation, it is important to keep the interests of today's shareholders at the forefront with particularly careful attention given to where their interests intersect with entrepreneurial and corporate interests.

A. The Corporation-Shareholder Relationship

While in some instances shareholder and entrepreneur interests may be at odds, B corporation literature, especially when describing the origins of B corporation legislation, portrays the shareholder-entrepreneur relationship as entirely adversarial. The Ben & Jerry's situation and the And1 dilemma, described in Part I, depict shareholder interests as being purely in profits and at odds with the diverse interests of certain corporate entrepreneurs.

There are several aspects of the shareholder-corporation relationship, as it is depicted in B corporation literature, which do not accurately reflect the actual relationship of

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121. *Id.* at 1102–03.

122. *Id.* at 1103–04.

123. *See generally Benefit Corporation White Paper*, *supra* note 118 (describing differing state benefit corporation legislation).

124. *Id.*

125. *See supra* Part I (discussing the interests of corporate founders and some of the interests of shareholders and consumers).

126. As discussed in Part II, B Lab founders were interested in protecting the interests of entrepreneurs, like themselves, from having to yield to the profit-maximizing interests of shareholders when these interests did not align with their own.

127. These versions include those discussed in Part I: Model Legislation, Delaware Legislation, and the Colorado Legislation.

shareholders and corporations or entrepreneurs as they exist today. First, not all shareholders are interested, first and foremost, in profit-maximization.[128] As Millennials begin to invest, many are looking at *how* a company makes money and not just *if* a corporation makes profits.[129] Second, corporate law does not limit corporations to act for the purpose of maximizing profits to the detriment of other interests as long as the corporation ultimately benefits.[130] Corporate litigation grants greater deference to corporations in making their own decisions than the literature suggests.[131] Finally, the lack of actual antagonism between shareholders and legitimate B corporations gives them a shared interest in accurately reporting the interests that are being served in an open, comprehensive, and correct manner.[132] Therefore, the legislation that maximizes transparency and accuracy is in the best interests of both the investors and entrepreneurs.

1. Interests of Millennial Investors

One way that millennials are starting to change the stock market is by putting their money where their interests lie. Millennials look to invest in corporations that they identify with. The generation born in the 1980s through the 2000s is more focused on acquiring experiences rather than goods; they would rather spend their money on travel or entertainment, for example, as opposed to acquiring material things.[133] For this reason, "[l]eisure and travel-related stocks, including pubs, airlines and pizza restaurants, have trumped retailers since consumer confidence picked up following the financial crisis."[134] Generation Y is also particularly concerned with brand.[135] Often, this means that millennials are investing in popular brand companies,[136] but it also means that they are investing in companies with brands they recognize as sharing their goals—such as

128. *See, e.g.*, *Millennial Investors More Socially Responsible With Investment Choices*, SPECTREM GROUP, http://spectrem.com/Content/Millennial-Investors-Have-Greater-Concern-Over-Social-Responsibility.aspx (last visited Nov. 5, 2017) (discussing how millennials are looking to do something more than make money with their investments).

129. *Id*.

130. Lynn Stout, *Corporations Don't Have to Maximize Profits*, N.Y. TIMES (Apr. 16, 2015, 6:46 AM), http://www.nytimes.com/roomfordebate/2015/04/16/what-are-corporations-obligations-to-shareholders/corporations-dont-have-to-maximize-profits.

131. *See* Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919) (refusing to hold that expansion was an inappropriate business decision, given that the courts are not expert businessmen).

132. *See* Stout, *supra* note 130 (discussing how entrepreneurial motivations are varied).

133. *See* Sofia Horta E Costa, *Millennials Are Starting to Change the Stock Market*, BLOOMBERG (Jan. 31, 2016, 6:00 PM), http://www.bloomberg.com/news/articles/2016-02-01/millennial-splurge-on-lifegoals-giving-leisure-stocks-a-boost (discussing anecdotal and survey evidence that supports a theory that millennials are primarily interested in experiences, which determines how they spend or invest their money. "A survey by market-research firm Harris Poll and Eventbrite Inc., an online marketplace for ticket sales, showed 78% of millennials would rather pay for an experience than material goods. That compares with 59% for baby boomers. Some 82% of millennials said they went to a live event in the past year—concerts and festivals—and 72% said they plan to increase spending on such outings.").

134. *Id.*

135. *See* Joanne Cleaver, *Millenials Put Stock in the Future: How the Generations Invest*, U.S. NEWS (June 25, 2015, 9:00 AM), http://money.usnews.com/money/personal-finance/mutual-funds/articles/2015/06/25/millennials-put-stock-in-the-future-how-the-generations-invest ("'[Millennials] skew a little more to individual stocks,' says Nicole Sherrod, managing director of the trader group at TD Ameritrade. 'They are pickers. They're tremendously conscious when it comes to brand.'").

136. *See id.* (discussing how millennials' "favorite investing brands [is] Apple, with 13 percent holding the technology stock in some form").

benefiting local communities and the environment.[137] This strategy, dubbed "impact investing,"[138] suggests that millennials are setting a trend of using investments to address a variety of their interests besides getting a large dollar return.

This new trend aligns with the types of concerns that drove entrepreneurs to safeguard their ability to provide a public benefit, as discussed in Part I, in addition to satisfying shareholder aims. The Millennial trend in investing shows that the antagonistic relationship between shareholders and entrepreneurs, which is portrayed in much of the B corporation literature as being at odds, mischaracterizes the ability of B corporation legislation to simultaneously ensure the protection of mutual shareholder and corporate interests.

The Colorado and Model Legislation provide the most comprehensive and transparent reporting, reflecting the shared interests of corporations and shareholders in knowing how beneficial the corporation is effectively being. In Colorado, the shareholder reports are tailored to the specific benefit that the corporation has selected.[139] The Colorado and Model versions both require corporations to select a third-party whose standard they will use to assess the company's effectiveness.[140] Conversely, in Delaware, the accuracy of reporting does not seem as essential to the B corporation legislation; looser standards do not reflect the same value for accurate reporting that the other legislation does.[141] However, if a corporation decides to adhere to stricter reporting procedures, the corporation is able, within the Delaware framework, to meet the same level of transparency as the Colorado and Model Legislation.[142]

2. Business Judgement

In *Dodge v. Ford Motor Co.*, the Michigan Supreme Court found that the shareholders' primary interests were in dividends paid out of excess profit. The court found that the corporation, in this case, had to honor those interests and that Ford could not reinvest the surplus profits it had earned in growing the business.[143] Diverting excess profits in this way, the court found, was contrary to stockholder interests in having those profits distributed to them as dividends.[144]

Dodge v Ford, while seeming to solidify an understanding of corporate law that requires profits to be primary, actually left the door open for businesses to use their own expertise to decide how to best serve their shareholders' interests.[145] The Michigan court refused to hold that Ford's decision to expand the corporation (as opposed to his decision not to pass along excess profits he had on-hand as dividends) was contrary to shareholder

137. *On Wall Street, Millennials Want Their Investing to Make a Difference*, NASDAQ, http://www.nasdaq.com/article/millennials-want-their-investing-to-make-a-difference-cm635756 (last visited Nov. 5, 2017) ("According to a recent U.S [sic] Trust study, millennials are prioritizing social, environmental issues and the greater good when choosing an investing strategy.").

138. *Id.*

139. COLO. REV. STAT. § 7-101-507(a)(I) (2017)

140. COLO. REV. STAT. § 7-101-507(1)(b) (2017); MODEL BENEFIT CORP. LEGIS. § 102 (BENEFIT CORP. 2016).

141. DEL. CODE ANN. tit. 8, § 366(c) (2015).

142. *Id.*

143. Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919).

144. *Id.*

145. *Id.*

interests.[146] This second part of the court's decision is essential to understanding the court's deference to a corporation's business judgement and the implications this deference has on a corporation's ability to serve shareholder interests today.[147] Today, the business judgement rule gives powerful deference to corporations; as the law stands, a corporation can determine its own lawful purpose and then use its own judgement, absent fraud, illegality, conflict of interest, or gross negligence, to benefit the corporation.[148]

The law, as opposed to the literature, suggests that corporations do not need a drastic new layer of protection against shareholders who claim their interests are not being served. Instead, an understanding of the business judgement rule makes it clear that all corporations, including B corporations, are relatively free to decide how the corporation's interests will be served. In some cases, this can even mean making charitable donations or taking measures to protect the environment.[149] In this light, B corporation legislation should simply augment the corporation's protection from shareholder litigation, alleviate any remaining pressure on directors to make decisions contrary to the business interests set out in the articles of incorporation, and connect shareholders and corporations that want to benefit the same interests in their corporate ventures.

3. Shared Interest in Transparent Reporting

Greenwashing issues arise when corporations start branding themselves as benefiting the public.[150] One depiction of the greenwashing issue takes the viewpoint that this Note suggests is not entirely accurate: that shareholders and corporations act antagonistically towards each other. A Colorado attorney highlighted this problem by writing, "To the extent a 'benefit corporation' election is intended to confer special branding status in the marketplace, . . . the possibility of greenwashing for-profit activities under the benefit corporation label. . . is a significant problem."[151] Similarly, another article discussing Colorado B corporation legislation suggests that "Under the B Lab model act, the original Colorado bill proposal, and the other acts that have been adopted nationally, there is little

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146. *Id.* Because of a past practice of distributing surplus profits and because Ford testified that his interest in using that money was directly converse to shareholder interest, the court made a distinction between using those profits in this case and expanding in the future. *Id.*

147. *Dodge*, 170 N.W. at 684; *see also* Burwell v. Hobby Lobby Stores*,* Inc., 134 S.Ct. 2751, 2771 (2014) (finding that the religious mission of Hobby Lobby was a legitimate business purpose even though it was not aimed at maximizing profits).

148. Shlensky v. Wrigley, 237 N.E.2d 776, 780 (Ill. App. Ct. 1968) (holding that a derivative action by minority shareholders was properly dismissed because there was no evidence of "fraud, illegality or conflict of interest," and the decision was therefore protected by the business judgement rule); Smith v. Van Gorkom, 488 A.2d 858, 873 (Del. 1985) (holding that gross negligence by the directors can also eliminate the application of the business judgement rule); *but see* Gantler v. Stephens, 965 A.2d 695, 712–13 (Del. 2009) (holding that the ratification process—where a majority shareholder approval of director decisions is not legally required—does not require shareholders to be fully informed to avoid gross negligence and a breach of duty of care by the directors making the delegation doctrine inapplicable).

149. *See*, *e.g.*, A.P. Smith Mfg. Co. v. Barlow, 98 A.2d 581, 590 (N.J. 1953) (allowing donations for goodwill of community as benefiting the corporation).

150. Although much of the B corporation literature, especially when discussing the creation of B corporations, focuses on entrepreneurs' interests in benefitting the public, when the literature does describe the perspective of the shareholders, it is commonly to discuss the issue of greenwashing.

151. J. William Callison, *Putting New Sheets on a Procrustean Bed: How Benefit Corporations Address Fiduciary Duties, the Dangers Created, and Suggestions for Change*, 2 AM. U. BUS. L. REV. 85, 109 (2012).

required of a benefit corporation . . . to avoid greenwashing."[152] As these authors suggest, none of the options for legislation that can be easily adopted today present a suitable solution to greenwashing.[153] Until there is a uniform standard that can accurately assess and report the actual benefit to the public that a corporation claims to produce, there will be a call for holding directors personally accountable for any misrepresentations.

The *Van Gorkom* decision in 1985 put directors on edge because the Supreme Court of Delaware held that a director was personally liable for the grossly negligent decision-making of the board of directors.[154] Many states responded by passing legislation protecting directors from personal liability.[155] Had states not passed these laws, the best candidates to act as directors for a corporation could be discouraged from becoming directors for fear of personal liability. The best interests of corporations and shareholders would be adversely affected if the most capable directors shied away from the job.[156] B corporation legislation seems to restrict director liability in a similar way. However, the combination of inconsistent reporting mechanisms and the limitation on director liability resulting from this legislation leaves B corporations and their shareholders without a consistent and accurate means of assuring that the corporation is accountable for the benefits it purports to serve.

Not only will better reporting mechanisms allow shareholders to hold corporations accountable, they will also allow corporations to attract the type of investors whose interests align with their own. A system where shareholders are able to seek out corporations that verifiably serve the same publicly beneficial interests that they hold can also help eliminate the fear that shareholder interests could conflict with the interests of the entrepreneur.

Drafting new legislation that emphasizes the ways in which shareholder and entrepreneurial interests overlap, will provide a more developed model than the current Model drafted by B Lab. A new model should propose a more uniform standard for reporting and mandate a clear expression of interests that will be served and reported on.

IV. RECOMMENDATION: A UNIFORM B CORPORATION LAW

The Uniform Law Commission (ULC) should draft a uniform version of B corporation legislation addressing the major concerns of corporate organization—creation and purpose, accountability, and transparency—with the three versions of B corporation legislation in mind.[157] The ULC is in a good position to draft a cohesive law that can apply uniformly to the states. States are able to participate in the drafting process by appointing commissioners to the ULC and will be able to use the expertise of the commission to

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152. Herrick K. Kidstone Jr., *The Long and Winding Road to Public Benefit Corporations in Colorado*, BURNS FIGA & WILL 20 (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2266654.

153. "Under the B Lab model act, the original Colorado bill proposal, and the other acts that have been adopted nationally, there is little required of a benefit corporation (or in Colorado's and Delaware's case, a PBC) to avoid greenwashing." *Id.*

154. Smith v. Van Gorkom, 488 A.2d 858, 893 (Del. 1985).

155. DEL. CODE ANN. tit. 8, § 102 (2015).

156. *See id.* (limiting the personal liability of directors for breaches of duty of care); *see Van Gorkom*, 488 A.2d at 893 (holding director personally liable for grossly negligent decision making).

157. *See generally About the ULC*, UNIFORM L. COMMISSION, http://www.uniformlaws.org/Narrative.aspx?title=About%20the%20ULC (last visited Sept. 7, 2017).

evaluate and integrate the advantages of the three existing B corporation laws.[158] Absent regulations in many of the areas where the government had its hands on business prior to the Trump Administration, a central and uniform legislation can mimic the uniformity of a federal regulation while still giving states and individual companies flexibility and autonomy to guard their own interests.[159]

A. Creation and Purpose

The ULC should propose a B corporation law that requires a corporation to express a specific benefit that it intends to pursue. As required by the Delaware and Colorado legislations, a corporation should be required to state a specific public benefit in its articles of incorporation.[160] If, as the Model Legislation allows, corporations merely purport to benefit the public in general and therefore provide inconsistent or sporadic benefits, shareholders ability to hold the company accountable for serving public interests will be limited.

B. Accountability

A uniform B corporation law should continue to insulate directors from suits by beneficiaries.[161] Just as general corporate law does not protect the interests of beneficiaries of a corporation, beneficiary suits are unnecessary for B corporations as well because those interests are already enforceable through shareholder suits. A new law that continues to allow derivative shareholder suits is consistent with corporate law in general and is sufficient to protect the beneficiary's interests insofar as the beneficiary's interests are the interests that shareholders want the company to protect.[162]

C. Transparency

A uniform law, in addition to requiring corporations to specify the benefit they will pursue, should create consistent methods for corporations to report their service to the specific benefit. Consistent and accurate methods of reporting will allow shareholders to compare corporations and assess their effectiveness in serving their specific purposes. As

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158. *See id.* (explaining that the states appoint bar members to the ULC). "[The] ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate." *Id.*

159. *See* Overly, *supra* note 1 (discussing how the Trump Administration is rolling back regulations and giving businesses more freedom).

160. *See* COLO. REV. STAT. § 7-101-503 (2017) (requiring that Colorado B corporations express a specific public benefit in the corporation's articles of incorporation); DEL. CODE ANN. tit. 8, § 362(a) (2015) (requiring that Delaware B corporations express a specific public benefit in the corporation's articles of incorporation).

161. *See* MODEL BENEFIT CORP. LEGIS. § 301(c)-(d) (BENEFIT CORP. 2016) (providing that potential beneficiaries do not have standing to bring suit against directors); DEL. CODE ANN. tit. 8, § 325(b) (1998) (providing that beneficiaries do not have standing to bring suit against directors in Delaware); H.B. 13–1138 §7–101–506(2)(a), 69th Gen. Assemb., Reg. Sess. (Colo. 2013) (providing that beneficiaries do not have standing to bring suit against directors in Colorado).

162. *See id.* § 301(c) (providing shareholders with the use of derivative action against directors to compel the corporation to a benefit the public); *see* DEL. CODE ANN. tit. 8, § 367 (2013) (providing shareholders with the use of derivative action against directors to compel the corporation to serve a specific public benefit in Delaware); *see* H.B. 13–1138 § 7–101–508, 69th Gen. Assemb., Reg. Sess. (2017) (providing shareholders with the use of derivative action against directors to compel the corporation to serve a specific public benefit in Colorado).

it stands, the various laws differ about the method of reporting. If each corporation or even each state is allowed to choose how B corporations will report, shareholders will be unable to contextualize the actual benefit company's produce. Just as corporations cannot differ in how they report financial information to their shareholders,[163] they should not be able to differ as to how they report information about the benefit they provide.

The Model Legislation does not set a standard for reporting, but it allows corporations to select standards created by a third party as its guide.[164] Although the Model has certain criteria for what the third-party standards must include and recommends certain third parties whose standards comply,[165] this reporting scheme is prone to inconsistency. While each reporting method may be based on a company's good faith and intention to report accurately, the disparity between potential methods impedes the ability of shareholders to understand the benefit one corporation provides versus another under different reporting schemes. Colorado law also supports using a third-party standard selected by the corporation.[166]

Delaware law does not require a third-party standard but allows a corporation the option of making its own assessment.[167] Allowing a corporation to assess its own success in promoting specific public benefits has the potential to create even more inconsistency than using a third-party standard. It is unlikely that corporations will be able to objectively assess their own service; a company will either impose high standards on itself, wanting to assure that the public purpose has been satisfied, or it will be overly lenient if the corporation wants to make itself look especially beneficial to its shareholders.[168]

Like the Colorado and Model versions of B corporation legislation, a uniform law should require a third party standard. The third-party standard a company uses, however, should make it relatively easy for shareholders to compare the effectiveness of different corporations in serving their purported benefits. Therefore, the number of third-party standards available for corporations to use should be limited.

When socially minded shareholders are choosing which company they want to invest with, they are making their decision based on the benefit they wish to pursue. For example, shareholders wanting to benefit the environment are probably going to want to compare companies who hold themselves out as benefiting the environment and then determine which corporation serves that benefit the best. Using a single third-party standard preselected in the statute will provide both consistency and accuracy in reporting.

As another example, if a shareholder is interested in serving both the environment and her neighborhood community, the shareholder is going to want to be able to understand how successfully different corporations serve both benefits. However, the third party that is best able to create a standard for service to the environment may not be able to create a good standard for reporting service to the community. Allowing each benefit to have its own third-party standard will provide consistency among each specific benefit, but allow different third parties with different expertise to set the standards for each.

In order to allow the third parties setting the standards flexibility in altering and formulating the standards in accordance with the most recent scientific or social data, the

163. Clark Jr. & Babson, *supra* note 17, at 840 (discussing multiple state statutes).

164. MODEL BENEFIT CORP. LEGIS. § 102 (BENEFIT CORP. 2016).

165. *Id.*

166. COLO. REV. STAT. § 7-101-507(1)(b) (2017).

167. DEL. CODE ANN. tit. 8, § 366(b) (2017).

168. This is the problem of greenwashing.

uniform law should not codify the standards for reporting. Instead, the uniform law should create a system where corporations purporting to serve a specific benefit can vote, along with companies serving the same benefit, on what third-party's standards are best to use. This process will allow companies to democratically control who sets the standard for reporting each benefit, while allowing the third party to change over time based on the organization or individual best able to contemplate a standard. This system will also ensure consistency in how corporations report their success in any given year.

V. CONCLUSION: ADOPTING A UNIFORM B CORPORATION LAW

Going forward, states should be able to adopt the uniform B corporation law without having to balance the pros and cons of the Model, Colorado, and Delaware laws. The states that have already adopted B corporation laws should consider adopting the reporting standard of the uniform law. Having a completely uniform reporting system across all states will make it easier for corporations to compare themselves with other public benefit companies and will allow shareholders to make better informed decisions about their investments.