

The State of Social Enterprise and the Law

2022–2023

Supported by:
The Tepper Family



NYU | LAW



Grunin Center
for Law and Social
Entrepreneurship
NYU School of Law

The Grunin Center

The Grunin Center for Law and Social Entrepreneurship was founded to create new ways for law to support positive change in the world. Our mission is to enhance the community of lawyers and legal institutions engaged in social entrepreneurship and impact investing and to accelerate their effective participation in these fields. To this end, the Grunin Center publishes *The State of Social Enterprise and the Law* annually.

Contents

About the Authors	2
Introduction	3
Mapping State Legislation	4
Legislating ESG and Social Enterprise	9
Pushback against PBCs and Stakeholder Capitalism	10
Conclusion	12

About the Authors

(As of the 2022–2023 academic year)

Elise van den Hoek— Class of 2025

Elise van den Hoek is interested in social enterprise, international law, and sustainability, with a focus on renewable energy. As a Robertson Scholar, she was jointly enrolled at Duke University and UNC Chapel Hill during her undergraduate career. Duke was her home campus, where she received a BA in public policy and founded a zero-waste food pop-up business on campus called Scoop. As a Russian language speaker, she also has expertise and research experience in US-Russia relations and transatlantic security. She hopes to pursue a legal career that spans these interests, with a focus on international transactions and sustainable development.

Matt Kuhlik— Class of 2024

Matt Kuhlik is interested in social enterprises, emerging companies, and tech law. He attended Emory University, where he majored in business administration. Prior to law school, he worked in management consulting and as an analytics manager at a healthcare-focused tech startup. At NYU, he is a managing editor on the *Annual Survey of American Law*, a student advocate in the Brennan Center Public Policy Advocacy Clinic, and a teaching assistant for the Stern School of Business undergraduate business law course. This summer, he is working as a summer associate at Debevoise & Plimpton in New York.

Walla Elshekh— Class of 2024

Walla Elshekh is interested in social enterprise, emerging companies, and entrepreneurship. She attended Seton Hall University, majoring in political science and minoring in economics. Before law school, she worked at the Center for Court Innovation, supporting community courts' training and technical assistance across the US and for justice practitioners globally. She is a 2021 Sponsors for Equal Opportunity (SEO) Fellow who spent her pre-1L summer at Shearman & Sterling and her 1L summer at Morrison Foerster. At NYU Law, she is a Birnbaum Women's Leadership Fellow, a student attorney in the Entrepreneurship Clinic, a Lawyering teaching assistant, the Private Professional Development co-chair for the Black Allied Law Students Association, and the Symposium chair for the Social Enterprise and Start-Up Law Group. She is returning as a summer associate at Morrison Foerster's New York office this summer.

Introduction

Until recently, the US social enterprise landscape was marked by the regular introduction of state legislation authorizing new forms and amendments to existing forms. However, in the past two years, only three states attempted to enact new social enterprise legislation, and none successfully passed. Furthermore, there has been a significant slowdown in updates to existing legislation.

While legislative interest in enacting new social enterprise forms has slowed, debate around the role of social enterprises and their relation to corporate purpose has grown. Consumers and shareholders alike increasingly are demanding that corporations move “toward a broader stakeholder-driven model.”¹

Owing to these shifting priorities, the 2021 and 2022 proxy seasons saw the first shareholder proposals calling for companies to convert to Delaware’s public benefit corporation (PBC) form. Most company proxy statements opposed conversion, and institutional investors generally have not supported PBC conversion initiatives unless these initiatives are management- and board-led,² which is reflected in the single-digit percentage support received by almost all PBC conversion-related proposals.³ Ultimately, these proxy contests have raised questions around the role of social enterprises and whether they are necessary as an alternative to traditional corporate forms.⁴

This report, the sixth in the series, describes recent trends in social enterprise law. Additionally, the report highlights recent proxy contests related to the social enterprise forms and the ensuing pushback. Finally, the report analyzes the relationship between social enterprise law and broader ESG concerns.

1. Walter Spak and Jessica Lynd, “The Rise of Stakeholder Capitalism,” WHITE & CASE (Sep. 2021), <https://www.whitecase.com/insight-our-thinking/rise-stakeholder-capitalism>

2. See *The State of Social Enterprise and the Law*, GRUNIN CTR. FOR L. & SOC. ENTREPRENEURSHIP, 9 (2022), <https://www.law.nyu.edu/sites/default/files/2025-10/The%20State%20of%20Social%20Enterprise%20and%20the%20Law%202021-22.pdf> [hereinafter 2021-2022 *Tepper Report*].

3. On the other hand, shareholder proposals addressing stakeholder interests, such as those calling for companies to adopt greenhouse gas emissions reduction targets, have garnered between 30 percent and 40 percent support in recent proxy seasons. See discussion *infra* section “Proxy Contests and ‘Purpose Proposals.’”

4. See discussion *infra* section “Pushback against PBCs and Stakeholder Capitalism.”

Mapping State Legislation

Every year the Grunin Center for Law and Social Entrepreneurship at NYU School of Law tracks legislative developments in the social enterprise field throughout the 50 states and the District of Columbia for our Social Enterprise Law Tracker.⁵

The Social Enterprise Law Tracker

This mapping of state legislation is based on findings drawn from the Social Enterprise Law Tracker. Designed as a comprehensive online resource for legal practitioners and researchers, the Social Enterprise Law Tracker compiles relevant legislative actions across the United States.

Using an interactive map, the Social Enterprise Law Tracker aims to make it easy for users to see at a glance which states allow for the various social enterprise legal forms, as well as how social enterprise legislation has spread across the country from 2009 to the present day. The Social Enterprise Law Tracker is the first such tool to provide comprehensive mapping of social enterprise legislation in the United States.



The Social Enterprise Law Tracker was developed a decade ago, in 2013, by Shawn Pelsinger and Robert Esposito, both Jacobson Fellows in Law & Social Enterprise at NYU School of Law. The Social Enterprise Law Tracker is now managed and updated annually by the Grunin Center for Law and Social Entrepreneurship at NYU School of Law.⁶

Overview of Different Forms

The Social Enterprise Law Tracker maps the following social enterprise legal forms: the benefit corporation (including the PBC), the social purpose corporation (SPC), the low-profit limited liability company (L3C), the benefit limited liability company (BLLC), and the statutory public benefit limited partnership (SPBLP).⁷

As the graphic on page eight shows, while several states have authorized more than one form designed to house social entrepreneurial activities, the state that provides for the broadest range of social enterprise forms is Delaware, which has authorized the BLLC, PBC, and SPBLP.⁸

The difference in legislative adoption by states across these various social enterprise forms may simply reflect corporate interest in particular forms over others. It is challenging, however, to make any assumptions about adoption rates by social enterprises of the various forms. Given that the majority of social enterprises are privately held, there is a lack of reliable data on active US social enterprises and the legal forms they have chosen.⁹

5. SOCIAL ENTERPRISE LAW TRACKER, <https://www.law.nyu.edu/centers/grunin-social-entrepreneurship/updated-social-enterprise-law-tracker>

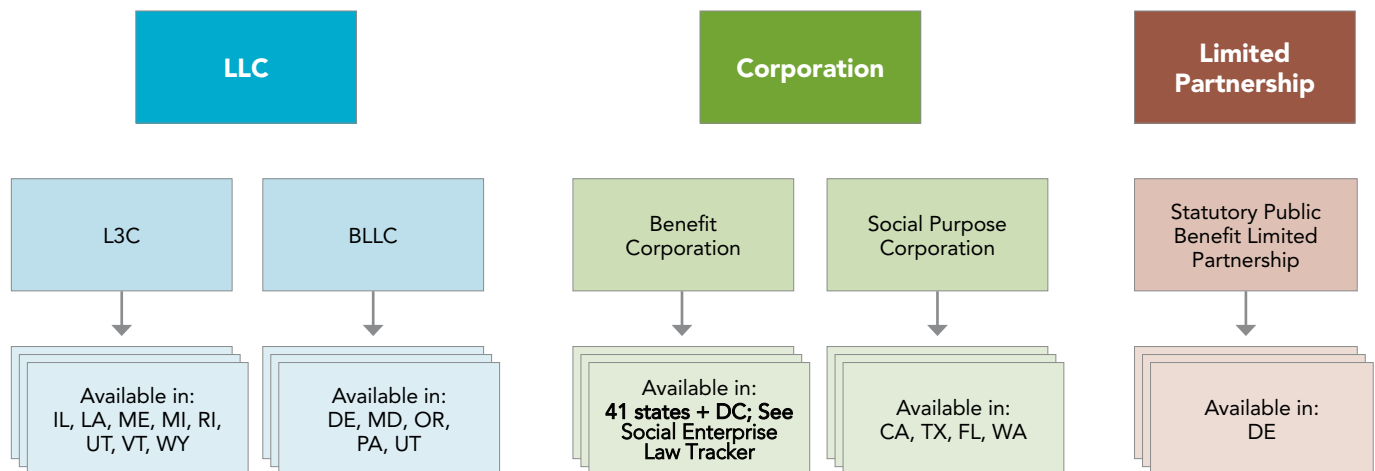
6. GRUNIN CENTER FOR LAW AND SOCIAL ENTREPRENEURSHIP, <https://www.law.nyu.edu/centers/grunin-social-entrepreneurship>

7. For a further description of these forms, see *The State of Social Enterprise and the Law*, GRUNIN CTR. FOR L. & SOC. ENTREPRENEURSHIP, 6 (2021), <https://www.law.nyu.edu/sites/default/files/2025-11/The%20State%20of%20Social%20Enterprise%20and%20the%20Law%20-%202020-2021.pdf>

8. Delaware first passed its benefit corporation legislation in 2013, BLLC (social enterprise LLC form) legislation in 2018, and SPBLP (social enterprise limited partnership form) legislation in 2019. In 2020, Delaware amended its PBC legislation to make it easier for publicly held companies to convert to the PBC form. See *Id.* at 14. As a result, Delaware companies are increasingly converting to PBCs both before and after going public. See 2021-2022 *Tepper Report*, *supra* note 2, at 8.

9. One source estimates that there were slightly more than 2,000 active L3Cs in the US as of February 2022. *Latest L3C Tally*, INTERSECTOR PARTNERS, <https://www.intersectorl3c.com/l3c> (last visited June 20, 2022). To put this in context., this represents a two-fold increase from approximately 1,000 L3Cs in 2014. See Kate Cooney et al., *Benefit Corporation and L3C Adoption: A Survey*, STAN. SOC. INNOVATION REV. (Dec. 5, 2014), https://ssir.org/articles/entry/benefit_corporation_and_l3c_adoption_a_survey

Social Enterprise Forms in the United States¹⁰



For example, data on benefit corporation adoption is sparse, but more transparency may come as more publicly held companies adopt these new legal forms. Although the number of publicly held PBCs incorporated in Delaware grew from three in 2020 to 19 in 2022,¹¹ there is no comprehensive quantification of privately held PBCs incorporated in Delaware.¹²

Social Enterprise Legislation in 2022

Similar to 2021, no states in 2022 successfully enacted legislation authorizing new social enterprise forms. Mississippi was the only state to introduce legislation in 2022 authorizing a new social enterprise form—the benefit corporation—but it failed to pass this benefit corporation legislation for the sixth straight legislative session.

Although legislation relating to the social enterprise forms that are mapped in the Social Enterprise Law Tracker remained static, there was renewed legislative interest in creating social enterprise forms that reflect particular societal goals and provide specific incentives or benefits to companies engaging in advancing those goals.

In California, a proposed bill would “invest in and scale employment social enterprises [ESEs] statewide.”¹³ ESE designation is granted to social purpose corporations or benefit corporations that exhibit a demonstrated commitment to increasing access to employment.¹⁴ Typically, ESEs achieve this by employing population groups, such as formerly incarcerated or homeless individuals, that are experiencing barriers to entering the labor market.¹⁵ The bill would build a network among California’s 200 pre-existing ESEs to finance and promote their efforts through “investment, capacity-building, and public-private partnership.”¹⁶

10. *Id.*

11. Lara Aryani and Jess Gorski, “PBCs and the Pursuit of Corporate Good,” HARV. L. SCH. FORUM ON CORPORATE GOVERNANCE (Dec. 9, 2022), <https://corpgov.law.harvard.edu/2022/12/09/pbcs-and-the-pursuit-of-corporate-good/>

12. One study cites an unverified count of 5,199 active benefit corporations in the US as of July 2018. Ellen Berrey, “Social Enterprise Law in Action: Organizational Characteristics of U.S. Benefit Corporations,” 20 TRANSACTIONS: TENN J. BUS. L. 21, 25 n. 11 (2018).

13. “New CA:RISE Bill Would Scale Employment Social Enterprise to Build a More Inclusive Economy for all Californians,” REDF (Feb. 23, 2022), https://redf.org/wp-content/uploads/CA_RISE-Press-Release-.pdf [hereinafter *CA:RISE Bill Summary*]

14. Cal. Unemp. Insu. Code § 14005(v).

15. *Jobs for All: Employment Social Enterprise and Economic Mobility in the United States*, Georgetown University McDonough School of Business, 6 (Jan. 2021), <https://static1.squarespace.com/static/5f4fbcc039526e668a4a0515/t/616708e95d064068bb558173/1634142456513/Jobs+for+All+-+Employment+Social+Enterprise+and+Economic+Mobility+in+the+United+States-compressed.pdf>

16. “CA:RISE Bill Summary,” *supra* note 13.

Additionally, New Jersey reintroduced a bill in 2022 to create a new category of corporation called the Garden State Corporation, which provides tax credits to manufacturers within the state.¹⁷ Garden State Corporations that are incorporated as benefit corporations would receive nearly double the tax benefit available to companies incorporated in more traditional corporate forms, such as the C-corp.

These legislative initiatives in California and New Jersey indicate that some states are continuing to explore social enterprise legislation covering new areas and linking choices of corporate form and activities to incentives.

There were minimal amendments to existing social enterprise legislation in 2022. Aside from minor technical changes to some state codes, some states that previously authorized benefit corporations have begun to follow Delaware's lead in making it easier to convert to (and from) a benefit corporation. For example, in March 2022, Colorado amended its benefit corporation law to reduce the conversion voting threshold for converting to, or from, a benefit corporation and also to eliminate shareholder appraisal rights.

Summary of 2022 legislative attempts and enacted amendments

State	Corporate Form	Bill Description	Result
California	N/A	Establishes the California Regional Initiative for Social Enterprises Program to provide financial and technical assistance to employment social enterprises for purposes of accelerating economic mobility and inclusion for individuals that experience employment barriers	Referred to Appropriations; no actions since taken
Colorado	Benefit Corporation	Changes voting threshold to convert to, or from, PBC form from a two-thirds requirement to simple majority; eliminates appraisal rights for shareholders objecting to a PBC conversion	Signed into law March 2022
Mississippi	Benefit Corporation	Establishes benefit corporation form	Failed to pass (6th attempt in past six years)
New Jersey	N/A	Reintroduced bill to establish Garden State Corporation form (providing credits against the corporation business tax for Garden State Corporations that are also benefit corporations)	Referred to Commerce; no actions since taken
Pennsylvania	Benefit Corporation	Amends Title 15 to further provide for the standard of conduct for directors, benefit directors, and officers of benefit corporations ¹⁸ ; specifies that the ownership of, or other interest in, the share of a benefit corporation does not by itself create a conflict of interest on the part of the director	Signed into law November 2022 (originally introduced in 2021)

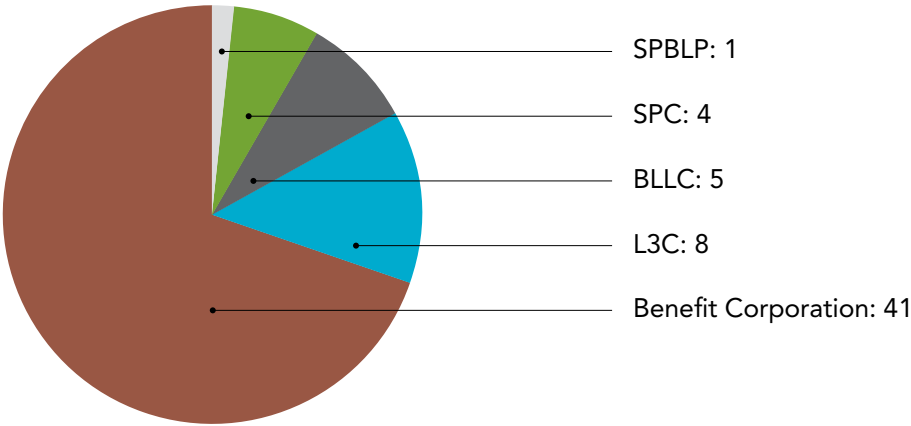
17. For more information on a previous version of this bill, see *2021-2022 Tepper Report*, *supra* note 2, at 10.

18. The bill clarifies that a director's consideration of interests beyond the benefit corporation's shareholders is not subject to general fiduciary duty requirements under Pennsylvania corporate code. The amendment also specifies that directors of benefit corporations cannot be held personally liable in the course of performing their duties, regardless of whether the corporation's bylaws include a provision eliminating personality liability, but provides for an exception if a director's actions constitute willful misconduct or recklessness or involve self-dealing. H.B. 2057, Gen. Assemb. Reg. Sess. (Pa. 2022).

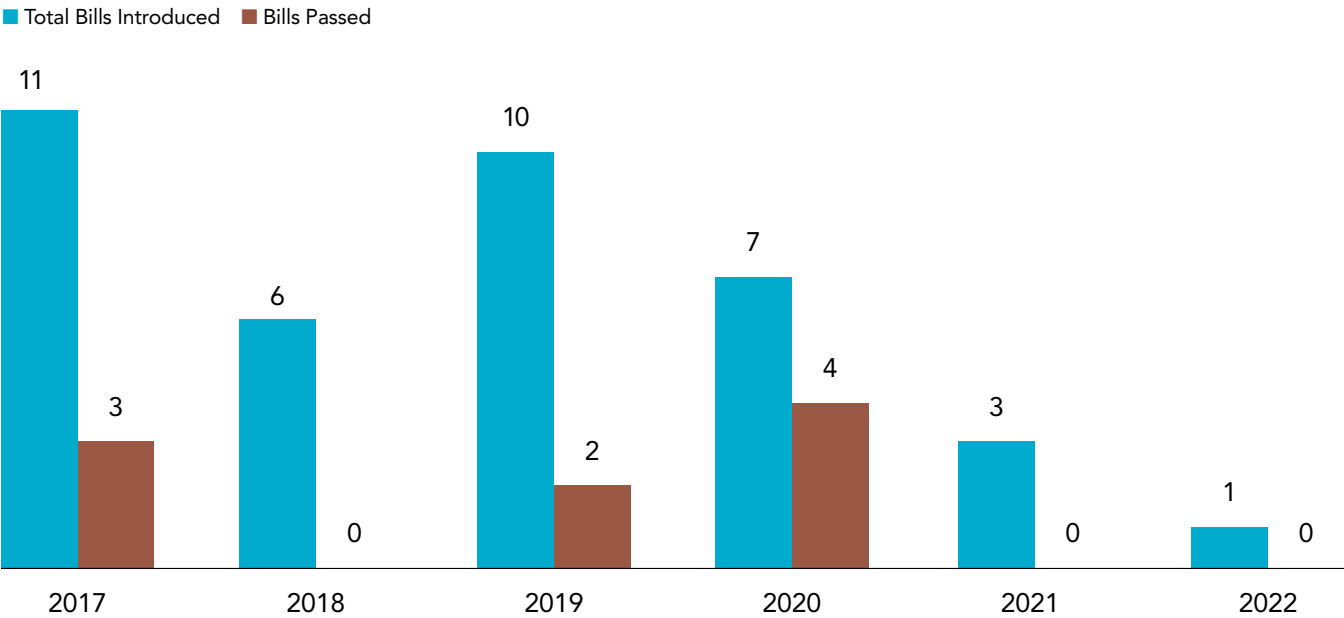
Current Social Enterprise Landscape

2022 Trends

U.S. Social Enterprise Landscape, 2022



Benefit Corporation Bill Passage Rates



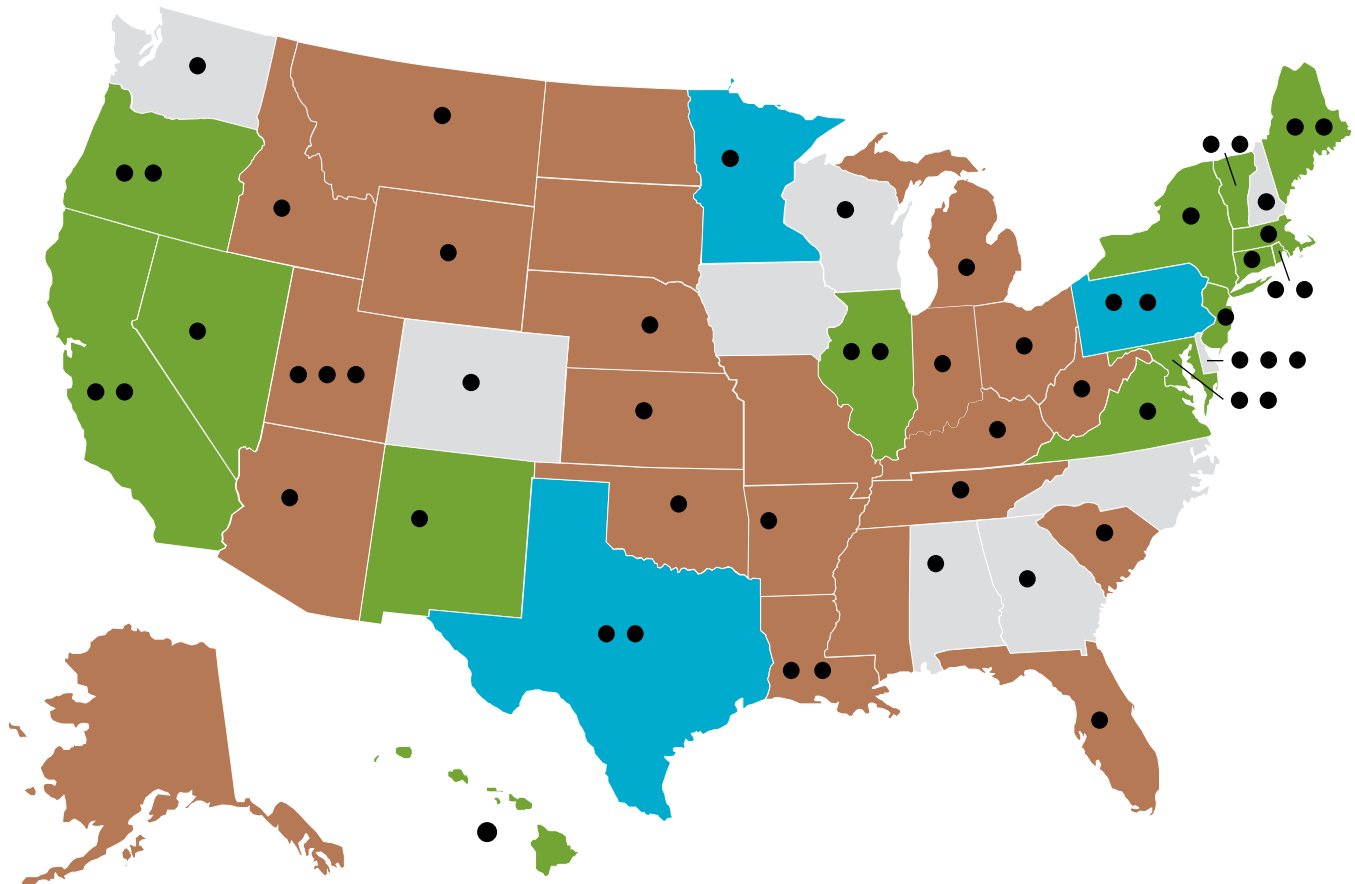
Comparison of State Social Enterprise and ESG Legislation

ESG Posture

Pro Anti Mixed None

Number of Social Enterprise Forms

● One ●● Two ●●● Three



Legislating ESG and Social Enterprise

There has been a growing focus by the public and corporations on environmental, social, and governance (ESG) concerns in recent years.¹⁹ Some state governments have embraced this trend and are implementing policies to promote ESG investing,²⁰ while others have pushed back against it.²¹ Both social enterprise legislation and ESG policy often are associated with the debate around corporate purpose and stakeholder capitalism.²²

To understand the links between state initiatives in advancing social enterprise legislation and state initiatives designed to encourage (or discourage) ESG investing, we analyzed the number of authorized social enterprise forms²³ within “pro-ESG” states, as compared to “anti-ESG” states. We considered “pro-ESG” and “anti-ESG” states as defined by the law firm Ropes & Gray, which has been tracking state-led ESG initiatives.²⁴ We found that pro-ESG states have authorized an average of 1.5 social enterprise forms, anti-ESG states have an average of 1.0 forms, and mixed or no-stance states have an average of 1.1 forms. Additionally, of the four states that have introduced or passed legislation encouraging companies to incorporate under these social enterprise forms,²⁵ three states have pro-ESG postures and one is mixed.

What we don’t know is the actual adoption/conversion rate of corporations into social enterprise forms in these states. We know only how many forms of social enterprises have been authorized by states. With that caveat, our

preliminary analysis demonstrates that there is at least a slight correlation between states with a pro-ESG posture and a greater number of social enterprise forms. Moving forward, pro-ESG states may attempt to enact new social enterprise forms or, more likely, continue to explore legislation that encourages corporations to incorporate under, or convert to, existing social enterprise forms.

On the other hand, it is also possible that anti-ESG states will consider repealing their social enterprise legislation.²⁶ While nearly 80 percent of the anti-ESG states we identified have enacted at least one social enterprise form, most of these states authorized their social enterprise forms in 2015 or earlier,²⁷ prior to the trend in backlash against ESG policies. Therefore, a next step for these states in challenging ESG could be a reevaluation of social enterprise legislation. It will be interesting to see how ESG policies and social enterprise legislation continue to dovetail or diverge in the coming years.

19. See, e.g., Joan Michelson, “ESG Invest is ‘Soaring.’ What Does it Mean?” FORBES (Nov. 18, 2022), <https://www.forbes.com/sites/joanmichelson/2022/11/18/esg-investing-is-soaring-what-does-it-mean>

20. See, e.g., “State legislative approaches supporting ESG investing,” BALLOTPEdia (last updated Mar. 5, 2023), https://ballotpedia.org/State_legislative_approaches_supporting_ESG_investing

21. See, e.g., Christine Ro, “What’s Behind the ESG Investment Backlash,” FORBES (Jan. 29, 2023), <https://www.forbes.com/sites/christinero/2023/01/29/whats-behind-the-esg-investment-backlash>

22. See, e.g., Andrew Droste, “ESG & Stakeholder Capitalism,” BLOOMBERG LAW (Apr. 2020), <https://www.bloomberglaw.com/external/document/X7LSL2G4000000/esg-professional-perspective-esg-stakeholder-capitalism>; “How Social Enterprises Can Help Corporations Meet Their ESG Goals,” Harvard Business Review (Jan. 2021), <https://hbr.org/sponsored/2022/01/how-social-enterprises-can-help-corporations-meet-their-esg-goals>

23. As of the end of 2022, 13 states have enacted two or more social enterprise forms, 30 states have enacted one form, and seven states have no social enterprise forms.

24. State categorization as pro- or anti-ESG is based on “Navigating State Regulation of ESG Investments,” ROPES & GRAY, <https://www.ropesgray.com/en/navigating-state-regulation-of-esg/> “Pro” states include those with announced policies or enacted legislation promoting ESG investing. “Anti” states include those with announced policies or enacted legislation restricting or prohibiting ESG investing. “Mixed” states include those with both pro- and anti-ESG policies or legislation.

25. This includes legislation that attempts to increase awareness of social enterprise forms or provides tax benefits or other financial incentives to social enterprises. The four states with this type of legislation are Hawaii (introduced legislation in 2020 to study potential tax breaks and provide other support to benefit corporations), Maine (enacted legislation in 2021 to promote public awareness of benefit corporations), New Jersey (introduced legislation in 2020 and 2022 to provide tax credits to benefit corporations), and Pennsylvania (introduced legislation in 2021 to provide discounted interest rates on loans to benefit corporations).

26. To date, there has been only one state that has repealed social enterprise legislation: North Carolina repealed their L3C law in 2014.

27. The most recent anti-ESG states to authorize a new social enterprise form are Oklahoma in 2019 and Kentucky in 2017.

Pushback against PBCs and Stakeholder Capitalism

Proxy Contests and 'Purpose Proposals'

Similar to the anti-ESG policies implemented in some states, another area where the role of corporations is under debate is in corporate proxy contests. In 2022, out of 562 total ESG proposals,²⁸ 52 were anti-ESG, double the number from 2021.²⁹ These proposals targeted issues such as company DEI policies, climate resolutions, and corporate transparency. However, anti-ESG proposals received, on average, less than 3 percent support in 2022,³⁰ compared to greater than 30 percent support for pro-ESG proposals.³¹

Unlike ESG proxy proposals, those related to social enterprises have solely involved attempts to convert to the PBC form.³² The 2021 proxy season marked the introduction of PBC conversion proposals.³³ That year, 18 proposals were introduced, and all but one received less than 4 percent support.³⁴ Not by coincidence, most of the PBC conversion proposals were aimed at Delaware companies whose CEOs signed the Business Roundtable Statement on the Purpose of a Corporation,³⁵ such as Apple, Citigroup, and Chevron. The stated purpose of some of these proposals was to hold the companies accountable for the commitments made in the BRT Statement.³⁶ In their statements opposing these proposals, most companies countered that the change in corporate form was unnecessary

because they already consider stakeholder interests in their operations.³⁷ Additionally, many argued that there was too much uncertainty around the PBC model, and that implementing a conversion would be too costly.³⁸

Following the initial enthusiasm for introducing these proposals, 2022 experienced a steep tapering-off in PBC conversion proposals. In this year, more shareholder proposals went to a vote, due in part to new SEC guidance that required more proposals be included by issuers. Pro-ESG volume increased,³⁹ and the number of passing proposals was in line with 2021.⁴⁰ However, only three PBC conversion proposals were filed in 2022.⁴¹ This is likely due to the relative lack of success of PBC conversion proposals in the prior year.

28. Brigid Rosati, et al., "A Look Back at the 2022 Proxy Season," HARV. L. SCH. FORUM ON CORPORATE GOVERNANCE (Oct. 23, 2022), <https://corpgov.law.harvard.edu/2022/10/23/a-look-back-at-the-2022-proxy-season/#6>

29. Clara Hudson, "Conservative Shareholder Proposals Rise Amid Anti-ESG Rumbles," BLOOMBERG LAW (Aug. 31, 2022), <https://news.bloomberglaw.com/securities-law/conservative-shareholder-proposals-rise-amid-anti-esg-rumbles>

30. *Id.*

31. Martha Carter, et al., "ESG and the Bear: What to Make of the 2022 Proxy Season," TENEO (Aug. 15, 2022), <https://www.teneo.com/esg-and-the-bear-what-to-make-of-the-2022-proxy-season/>

32. To date, there have been no proxy proposals to convert an existing PBC back to a traditional corporate form.

33. Tom P. Skulski and Glenn O'Brien, "2022 Proxy Season – Shareholder Proposal Review," HARV. L. SCH. FORUM ON CORPORATE GOVERNANCE (Oct. 3, 2022), <https://corpgov.law.harvard.edu/2022/10/03/2022-proxy-season-shareholder-proposal-review>

34. Yelp received the most support, with nearly 12 percent of votes cast in favor of conversion. Rosati, *supra* note 28.

35. For more information on the BRT and discussion around the purpose of corporations, see *The State of Social Enterprise and the Law*, GRUNIN CTR. FOR L. & SOC. ENTREPRENEURSHIP (2020), <https://live-nyu-law.pantheon.io/sites/default/files/2025-11/The%20State%20of%20Social%20Enterprise%20and%20the%20Law%20-%202020-2021.pdf>

36. See Jill E. Fisch, *Purpose Proposals* (ECGI Working Paper Series in Law, Working Paper No. 638, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4079135

37. "Shareholder Proposals Requesting Conversion to Public Benefit Corporations: A Fleeting Trend or the Future?" JD SUPRA (Aug. 6, 2021), <https://www.jdsupra.com/legalnews/shareholder-proposals-requesting-3263609>

38. *Id.*

39. Skulski and O'Brien, *supra* note 33.

40. Rosati, *supra* note 28.

41. Apple, JPMorgan, and Walgreens.

Due to the limited support for PBC conversion proposals,⁴² some academics have questioned their applicability and predict a shift within proxy battles to focusing on traditional disclosures related to societal or stakeholder issues.⁴³ While these concerns are legitimate, the uncertainty surrounding the PBC model may diminish in the coming years if a growing number of companies go public as PBCs or convert into the form.

PBC Pushback: Meta Litigation

Meta Platforms Inc. (as Facebook) (called here “Meta”) was targeted in the initial wave of PBC conversion shareholder proposals in 2021. The proposal to convert Meta received only 1 percent support,⁴⁴ and there was no renewed proxy push to convert Meta in 2022.

In October 2022, James McRitchie, a stockholder of Meta, filed a class action on behalf of other diversified stockholders against Meta, Mark Zuckerberg, and eight Board directors.⁴⁵ The complaint alleged that Meta’s directors breached their fiduciary duties when they led the company in a manner that prioritized stockholders with highly concentrated investments in Meta while disadvantaging those with diversified portfolios, even though the directors’ actions increased Meta’s share price and bottom line.⁴⁶

In its motion to dismiss, Meta argued that its only fiduciary duties were to stockholders in their capacity as shareholders of Meta, and that it had no responsibility to protect their stockholders’ interests in other companies.⁴⁷ Although this was Meta’s primary defense, Meta went a step further, arguing in effect that because Meta was not incorporated as a PBC under Delaware law, it was not legally obligated to consider the interests of diversified shareholders in other companies.

The PBC argument made by Meta in this ongoing lawsuit seems likely to fuel the worries of those who warned that the development of distinct new corporate forms created to house social entrepreneurial activities and/or respond to broader stakeholder interests might corrode (overly narrow) the purpose of those companies that choose to incorporate or remain incorporated in more conventional corporate forms. This “corrosion critique”⁴⁸ points out that the development of statutes like those authorizing benefit corporations could create a mistaken impression that companies organized in more conventional corporate forms must focus on profit maximization to the exclusion of other broader societal interests. Meta may not be the only company to justify a profit-maximization purpose by referencing its choice of corporate form.

42. Professor Jill Fisch cites the same concerns expressed by companies opposing PBC conversion to explain this lack of support: market uncertainty, legal uncertainty, regulatory uncertainty, and costs of implementation. Fisch, *supra* note 36, at 16.

43. *Id.* at 26.

44. Proxy Monitor, <https://www.proxymonitor.org/Default.aspx>

45. Compl. at 1, *McRitchie v. Zuckerberg, et al.*, No. 2022-0890 (Del. Ch. 2022).

46. *Id.* at 3-4, 9.

47. Mot. to Dismiss at 10, *McRitchie v. Zuckerberg*, No. 2022-0890 (Del. Ch. 2022).

48. Brett McDonnell, of the University of Minnesota Law School, attempts to resolve this as a mistaken impression of social enterprise legislation, commenting, “If benefit corporations are useful, it is because they offer social enterprises a way to brand themselves by committing to the pursuit of stakeholder interests, not because they simply enable companies to consider those interests.” See Brett McDonnell, “The Corrosion Critique of Benefit Corporations,” 101 B.U. L. Rev. 1421 (2021).

Conclusion

The year 2022 was marked by the continued absence of new social enterprise legislation. This trend was accompanied by corporate responses to proxy contests that brought to light questions about the role of social enterprises. These statements echoed the discourse by some academics about the potential harm separate social enterprise forms could inflict on the ‘stakeholder capitalism’ model of traditional corporations. Overall, social enterprise issues are being considered against the backdrop of a broader debate around ESG.

As the number of publicly held PBCs continues to grow, the debate around the purpose social enterprises serve is not likely to dissipate. Traditional companies are also unlikely to suddenly support conversion after consistent opposition during recent proxy seasons. These conflicts raise interesting questions about the future role of social enterprise forms. Does their presence restrain the ability of traditional corporations to consider wider stakeholder interests? Will traditional corporations justify a narrow focus on their own shareholders through board decisions not to convert or incorporate as a PBC? These issues are starting to be considered in litigation like *McRitchie’s Meta* lawsuit.

Additionally, how will state legislators react to the debate around corporate purpose? Will there be an increase in social enterprise legislation in states that support ESG concerns? Or conversely, will those states avoid endorsing separate social enterprise forms due to concerns around the “corrosion critique”? Finally, will those states opposed to ESG investing explore repeals to existing legislation that authorizes social enterprise forms?

Recognition of the Teppper Family

We would like to extend our gratitude to the
Tepper Family for funding this research project,
with particular thanks to Marvin Tepper '58,
Elise Tepper, Jacqueline Tepper '90,
Edward Tepper, and Shelley Tepper.

