The State of Social Enterprise and the Law

2025–2026

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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, impact investing, and sustainable development 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.

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(As of the 2025–2026 academic year)

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Morgan Duffield earned her undergraduate degree in legal studies from UC Berkeley and performed research at the Berkeley Center for Law & Technology at Berkeley Law. It was during this time that she was first introduced to the concept of social entrepreneurship. After graduating, she moved to New York City to work as a legal and compliance analyst at Blackstone, gaining exposure to the world of complex institutional investing. Her background in business and her interest in the social impact space inform her work at the intersection of law and innovation. She spent her 1L summer interning as a legal scholar in the Trial Unit of the US Securities and Exchange Commission's Division of Enforcement.

Introduction

Continuing a trend observed in the past several reports, the US social enterprise legislative landscape in 2025 appears to have reached a plateau. Only three bills related to social enterprise forms were observed this year, two of which have been unsuccessfully introduced in the past. One effort, in Indiana, succeeded in establishing the "employment social enterprise." While the legislative landscape in 2025 has provided few surprises, this report contains novel preliminary research into the actual adoption of social enterprise forms throughout the country.

This research has been facilitated by prior work and ongoing collaboration with Andrew Verstein of UCLA School of Law. His Corporate Census database, described in the Benefit Entity Form Analysis section of this report, has helped cut through some of the challenges in aggregating and analyzing data on social enterprises. An initial comparison of the number of forms and the number of entities in a given jurisdiction has begun to yield valuable insights. We expect that more detailed comparisons in the future will yield further insights, such as whether the legislative slowdown observed over the past five years is due to successful market saturation or a decrease in interest among legislators and businesses.

We conclude our report with a follow-up to last year's case study on OpenAI, including its successful conversion into a Delaware public benefit corporation, as well as developments in the litigation involving Elon Musk.

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.[1]

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 adoption of 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 a comprehensive mapping of social enterprise legislation in the United States.

The Social Enterprise Law Tracker was developed in 2013 by Shawn Pelsinger and Robert Esposito, both then 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.[2]

Overview of Different Forms

The Social Enterprise Law Tracker maps the following social enterprise legal forms: the benefit corporation (including the public benefit corporation [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).[3] While often conflated, the benefit corporation is an entity type recognized by state law, whereas a "Certified B Corporation" or "B Corp" is any entity (which may or may not be a benefit corporation) that has received a certification issued by the nonprofit B Lab to confirm that the entity meets specified social and environmental performance standards.[4]

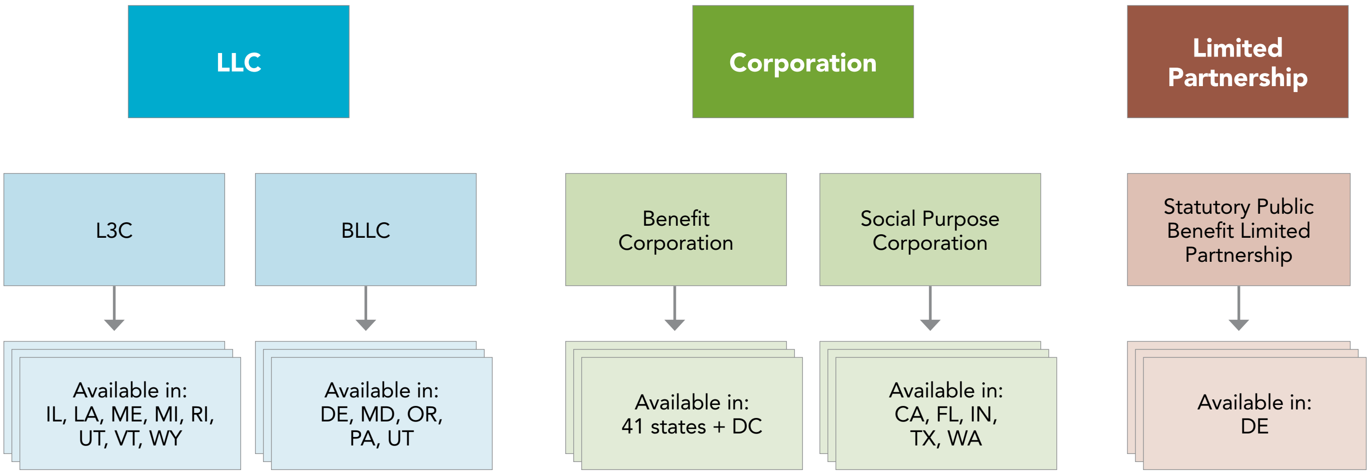
1. Social Enterprise Law Tracker, https://grunincenter.github.io/GruninCenterSELTMapSpring2026/.

2. Grunin Center for Law and Social Entrepreneurship, https://www.law.nyu.edu/centers/grunin-social-entrepreneurship.

3. For a further description of these forms, see The State of Social Enterprise and the Law: 2020–2021, Grunin Ctr. for L. & Soc. Entrepreneurship 6 (2021), https://www.law.nyu.edu/centers/grunin-social-entrepreneurship/resources/publications.

4. *Behind the B*, B Lab U.S. & Can., https://usca.bcorporation.net/about-b-corps.

Social Enterprise Forms in the United States



As the above graphic shows, while several states have authorized more than one form designed to house social entrepreneurial activities, the states that provide the broadest range of social enterprise forms are Delaware and Utah, each of which has authorized three active forms.

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 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. To address this challenge, this report utilizes novel preliminary research facilitated by prior work and an ongoing engagement with the Corporate Census database, which represents one of the few efforts to systematically count the number of benefit entities. Later in this report, we examine available state-level data on benefit corporations and benefit LLCs across all 50 states to better understand the extent to which these statutory forms are being used in practice.

Social Enterprise Legislation in 2025

While legislative activity regarding social enterprise forms in 2025 continued a recent pattern of modest introductions—with Mississippi and Indiana bringing forth bills to expand available structures—2025 was also the first year since 2020 that saw any such legislation successfully pass.

Mississippi's attempt to pass social enterprise legislation failed for the ninth consecutive year.[5] Indiana succeeded in establishing the "employment social enterprise," which is a nonprofit or for-profit organization that provides employment, social support, and training to individuals with a barrier to employment. The bill was enacted in March 2025.[6]

In contrast, Rhode Island introduced legislation to repeal its existing L3C form, which was introduced in May 2025 but made no further progress.[7] In 2024, similar legislation passed the lower chamber but failed to advance further, mirroring a similar failed effort in 2023.[8] This legislation is part of an overall review of the legislation authorizing LLCs, of which the L3C is a more narrow form.

5. *See* H.B. 342, 2025 Reg. Sess. (Miss. 2025).
6. *See* H.B. 1289, 2025 Reg. Sess. (I.A. 2025).
7. *See* H.B. 6344, 2025 Reg. Sess. (R.I. 2025).
8. *Id.*

State	Corporate Form	Bill Description	Result
Mississippi	Benefit Corporation	Establishes benefit corporation form	Died in committee; MS has introduced this legilation every year since 2017.
Indiana	Social Purpose Corporation	Establishing "employment social enterprise"	Enacted in March 2025
Rhode Island	Low-Profit LLC	Repealing low-profit LLC form	Introduced in May 2025; no action since

While some states have experimented with amendments to existing social enterprise statutes in prior years, 2024 and 2025 saw no relevant revisions enacted to current laws.

This stagnation in social enterprise legislation coincides with broader trends in how states are approaching environmental, social, and governance (ESG) issues. In 2025, lawmakers enacted or adopted 27 anti-ESG bills[9] and four pro-ESG bills,[10] compared to 29 and nine, respectively, in 2024.[11]

The four pro-ESG measures were enacted in California, Illinois, Massachusetts, and Oregon. These measures reflected a continued shift in some jurisdictions toward embedding climate and nonfinancial considerations into corporate accountability, public contracting, licensing, and state finance decisions.[12]

In contrast, anti-ESG bills enacted in 2025 were more numerous and clustered around three main approaches: restricting diversity, equity, and inclusion (DEI) practices; limiting ESG or nonpecuniary considerations in public investing; and prohibiting perceived discrimination or boycotts against certain industries. Arkansas was especially active, enacting seven measures, such as the Farmer Protection Act; restrictions on DEI in local government and education; and anti-ESG amendments governing ESG scores and institutional fund management.[13] Other notable examples included Kentucky's and West Virginia's DEI restrictions; Missouri's, North Carolina's, Ohio's, Oklahoma's, Utah's, and Wyoming's fiduciary or "pecuniary factors" laws; and anti-boycott or industry-protection measures in Florida, Oklahoma, and West Virginia targeting entities that boycott Israel, firearms, or other protected industries.[14]

9. *Environmental, Social, and Governance Legislation Tracker*, BALLOTPEDIA, https://legislation.ballotpedia.org/esg/search.

10. *Id.*

11. For purposes of this report, "enacted or adopted" includes bills listed by Ballotpedia with a final status of "Enacted/Adopted" and excludes bills that were introduced, pending, failed, or vetoed. The 2024 figures used here differ from those reported in the 2024 Tepper Report because the 2024 report relied on Ropes & Gray's state ESG tracking, because no Ropes & Gray state ESG tracking was available for 2025. While this year's report relies on Ballotpedia's tracker; the two sources may use different inclusion criteria, status categories, and classification methods.

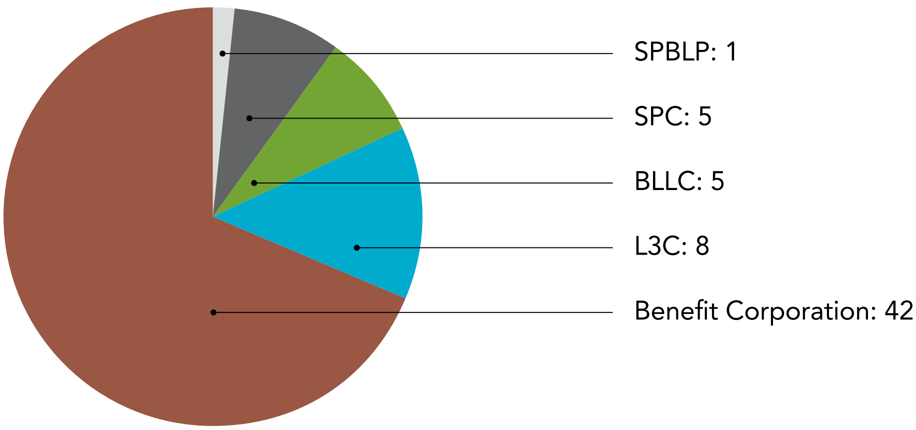
12. *Id.*

13. Arkansas State Legislature—95th General Assembly—Regular Session, 2025. https://arkleg.state.ar.us/Bills?ddBienniumSession=2025%2F2025R.

14. Ballotpedia, https://legislation.ballotpedia.org/esg/search.

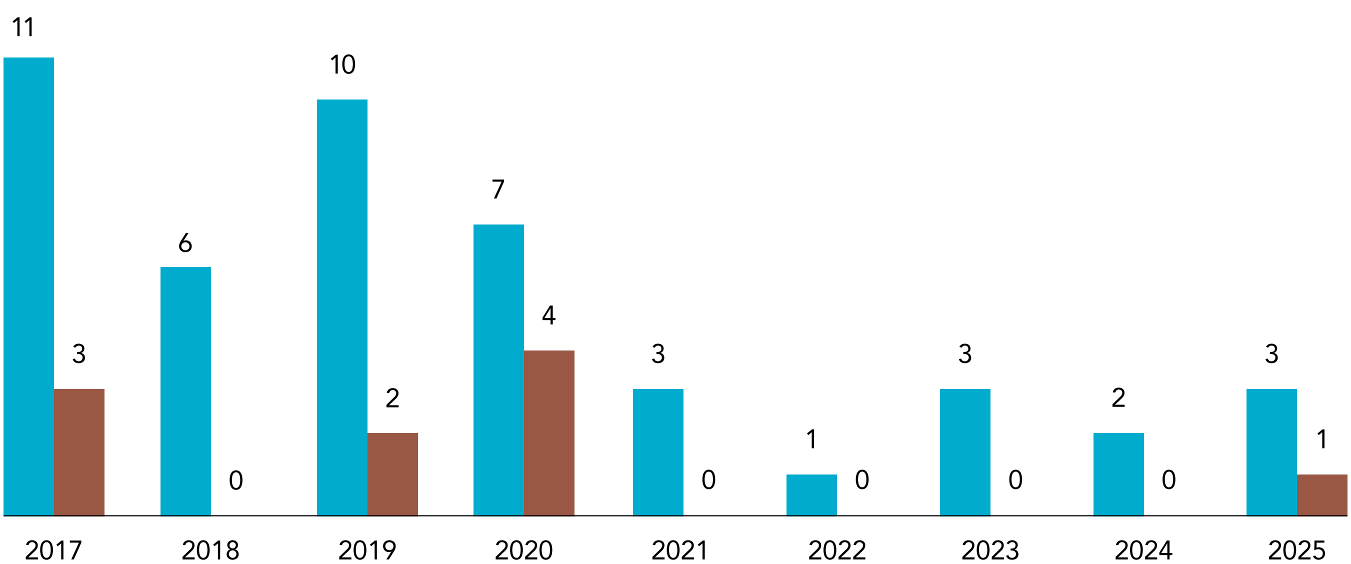
Current Social Enterprise Landscape

US Social Enterprise Landscape, 2025



Counts reflect states only. The District of Columbia also authories the benefit corporation form (42 states + DC).

Social Enterprise Bill Passage Rates



Benefit Entity Form Analysis

Overview of the Corporate Census Data

Our analysis begins with an empirical contribution by Andrew Verstein of UCLA School of Law, titled "The Corporate Census" and last revised in January 2026.[15] In that paper, Verstein presents what he describes as the first database of almost all entity formations in the United States, approximately 100 million formations.[16] Much prior empirical work has relied on narrow slices of the market, especially large public corporations, rather than the full universe of business entities, so the Corporate Census project addresses a long-standing empirical gap and supports further research.[17]

The Corporate Census provides an important reference point for this report because it offers a unique, national-scale baseline for measuring the number of benefit entities across all 50 states. In that system, a benefit corporation is classified as *C3: Benefit Corporation*, and a benefit LLC is classified as *K3: Benefit LLC*. The dataset also separately identifies some related entity types, including *K4: Low-Profit LLC* and *L3: Low-Profit Limited Partnership*. Our analysis uses the Corporate Census most directly where its categories align with our own classification framework and where the data capture the two most widely adopted statutory forms: benefit corporations and benefit LLCs, collectively referred to here as "benefit entities."

Using the Corporate Census as a reference, our team has undertaken our own comprehensive effort to count benefit entities nationwide and to test how far those numbers can be independently verified through publicly available state records. This effort creates a foundation on which future researchers, including future Tepper Fellows, can build through deeper state-by-state verification and analysis.

Benefit Corporations

Our independent review agreed with the Corporate Census's identification of several states with no listed benefit corporations. These include Alaska, Michigan, Mississippi, Missouri, North Carolina, North Dakota, South Dakota, and Wyoming. This is consistent with our review because these states have not enacted benefit corporation legislation and therefore would not be expected to have domestic benefit corporations. We also identified one state, Alabama, where the Corporate Census's list of existing benefit corporations matched the results of our review. The Corporate Census's data for other states is under continuing review.

In most states, there is no single, public, easily accessible dataset that identifies all benefit corporations and benefit LLCs. We were able to verify public data in 13 jurisdictions, however, and based on the records we have been able to confirm, there are close to 7,000 benefit corporations in the United States, with the largest concentrations in Colorado (more than 3,000)[18] and New York (more than 2,000).[19]

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15. Andrew Verstein, *The Corporate Census* (Feb. 25, 2025). Available at SSRN: https://ssrn.com/abstract=5154952 or http://dx.doi.org/10.2139/ssrn.5154952. The online appendix including the panel data and codebook can be found here: https://www.andrewverstein.com/corporate-census.

16. *Id.* at 1, 4.

17. *Id.* at 4.

18. *Business Entities in Colorado*, https://data.colorado.gov/Business/Business-Entities-in-Colorado/4ykn-tg5h/about_data. As of April 2026, approximately 1,000 of these were shown as being in good standing.

19. *Corporations and Other Entities: All Filings*, https://data.ny.gov/Economic-Development/Corporations-and-Other-Entities-All-Filings-Addres/2tms-hftb/about_data.

Beyond those leading examples, the picture becomes much less uniform. Some jurisdictions, such as Arkansas, Connecticut, Georgia, Indiana, Minnesota, Montana, Nebraska, Vermont, Washington, West Virginia, and the District of Columbia make the relevant information available through the business registries maintained by the relevant secretary of state or equivalent. However, these functions do not always make clear whether an entity is domestic or foreign, or active or inactive, and may not tag benefit entities as such.

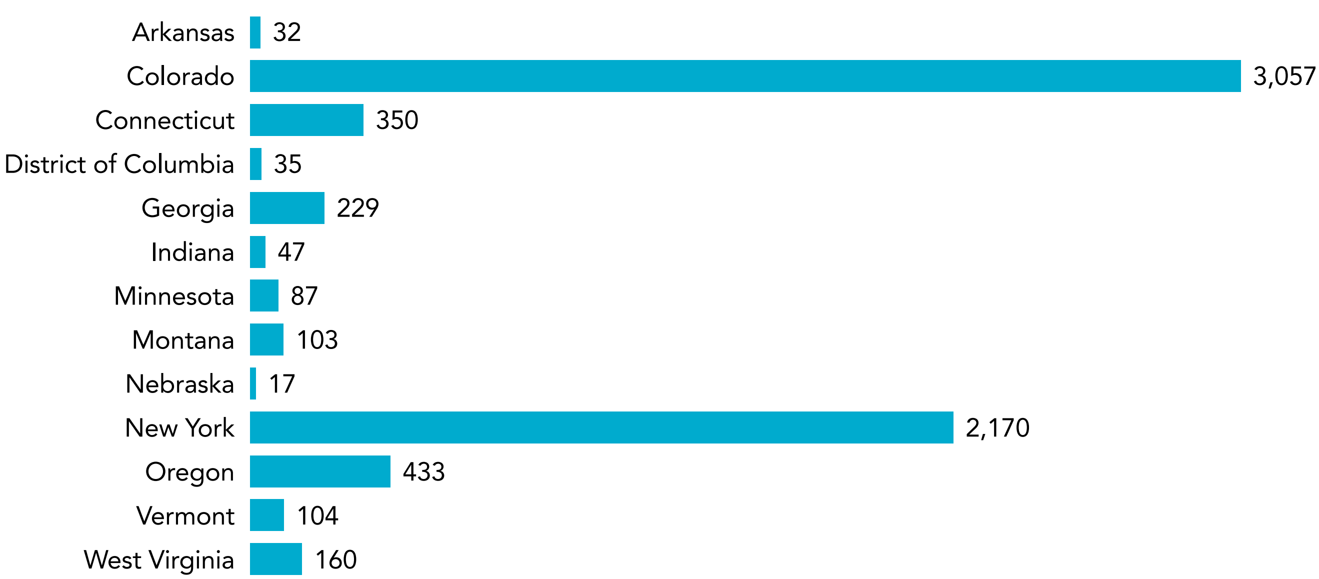
In sixteen states—Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Maine, Maryland, Nevada, New Mexico, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and Wisconsin—our research identified several individual benefit entities in each state, which suggests that active benefit corporations likely do exist there. Yet we were unable to locate a comprehensive public list of such entities. In some states, the relevant data must be purchased. Other states have business registries with limited search functionality or do not appear to publish such data at all. This is the case in Delaware, which is especially significant as we expect that it is one of the country's principal hubs for benefit corporations.

Benefit LLCs

Our team has undertaken a preliminary review of data relating to use of the benefit LLC form in the seven states that have enacted legislation authorizing that form: Delaware, Kansas, Maryland, Oklahoma, Oregon, Pennsylvania, and Utah. Generally speaking, benefit LLC data remain difficult to verify across most states because state business registries often do not make entity type searchable, do not distinguish benefit LLCs from other LLCs, or require name-by-name searches to confirm whether an entity is active, inactive, domestic, or organized as a benefit LLC.

Oregon is the biggest exception to the general rule. Its public database is updated regularly and makes benefit LLC records easy to identify, showing over 3,000 domestic LLCs that are "designated as benefit companies"[20]—a much larger number of benefit LLCs than we were able to identify elsewhere. This raises an interesting question for future research about whether Oregon's unusually high number reflects better transparency, a more attractive statutory framework, stronger adoption by local businesses, or some other factor or combination of factors.

Benefit Corporation Counts in States with Verifiable Public Data



20. State of Oregon—Active Benefit Companies, https://catalog.data.gov/dataset/active-benefit-companies.

For the remaining six states reviewed, verification required the use of more manual methods. In Maryland, we cross-checked a government PDF listing benefit LLCs against the state business registry and found that many listed entities were inactive. In Pennsylvania and Kansas, entity type was not readily searchable, so we relied on keyword searches and manual review of business names and records, which confirmed that at least some benefit LLCs are active. Utah's registry allowed us to identify both active and inactive benefit LLCs through targeted searching. As noted above, Delaware's business registry has limited search functionality. We did not identify any benefit LLCs through Delaware's business registry but did identify examples through general online searches for benefit LLCs. The state's high volume of entity formations would suggest that many more benefit LLCs have been formed in Delaware. Lastly, in Oklahoma, the secretary of state's business registry identified several active and inactive benefit LLCs.

Conclusion

At present, public reporting on benefit entities remains too inconsistent to support reliable state-by-state comparison without significant manual verification. States that authorize benefit entities should consider publishing searchable, regularly updated datasets, so that researchers, policymakers, and the public can meaningfully assess adoption and impact.

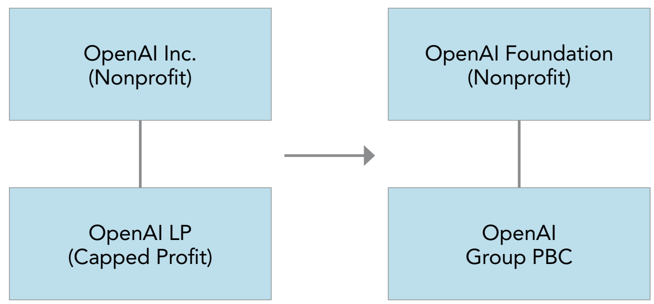
This report, together with the baseline established by the Corporate Census, represents an important step toward filling that gap. This work creates a foundation for future Tepper Fellows and other researchers to continue refining the data, testing state-level trends, and developing a more complete picture of how benefit entities are being used across the United States. Such future work may yield insights such as whether the legislative slowdown observed over the past five years is due to successful market saturation or a decrease in interest among legislators and businesses.

OpenAI Case Study Follow-Up

In a case study on OpenAI, the 2024 report highlighted the increasing role that PBCs are playing in the artificial intelligence (AI) space. This report continues the analysis from last year's publication. First, it will walk through OpenAI's completed transition to a PBC, highlighting the role that the California and Delaware state attorneys general played in the transition. Next, it will provide an update on OpenAI's ongoing litigation with Elon Musk. Lastly, it will close with broader questions about whether the PBC framework is equipped to define the AI industry.

OpenAI Recapitalization

At the end of 2024, OpenAI announced that it was transforming to a PBC.[21] That restructuring or recapitalization is now complete, with OpenAI's for-profit LLC (general partner of OpenAI, LP, OpenAI's "capped-profit" arm responsible for funding) converting into a PBC called OpenAI[21] Group PBC.[22, 23, 24, 25] OpenAI has represented that OpenAI Group PBC continues to be controlled by the nonprofit entity, now the OpenAI Foundation (formerly OpenAI, Inc.).[26, 27, 28, 29] The mission of both entities is to ensure that artificial general intelligence "benefits all of humanity," and both entities must use the principles described in the OpenAI Charter to pursue this mission.[30]



For so long as the OpenAI Foundation holds a certain class of common stock (Class N shares) of OpenAI Group PBC, and the relevant terms of the organizational documents otherwise remain unchanged, the OpenAI Foundation appoints all members of OpenAI Group PBC board of directors; and, as of the closing of the recapitalization, holds a 26% equity stake in OpenAI Group PBC (in addition to certain warrants).[31, 32, 33] The old capped-profit structure

21. *Why OpenAI's Structure Must Evolve to Advance Our Mission*, OpenAI, https://openai.com/index/why-our-structure-must-evolve-to-advance-our-mission/ (Dec. 27, 2024).

22. *OpenAI LP*, OpenAI, https://openai.com/index/openai-lp/ (Mar. 11, 2019).

23. *Our Structure*, OpenAI, https://openai.com/our-structure/.

24. *Re: OpenAI, Inc.'s Corporate Restructuring*, Kathleen Jennings, https://news.delaware.gov/files/2025/10/2025-10-28-OpenAI-DEAG-Statement-of-Nonobjection.pdf (Oct. 28, 2025).

25. *Final Executed MOU Between OpenAI and California AG re Notice of Conditions of Non-Objection*, https://oag.ca.gov/system/files/attachments/press-docs/Final%20Executed%20MOU%20Between%20OpenAI%20and%20California%20AG%20re%20Notice%20of%20Conditions%20of%20Non-Objection%20%2810.27.2025%29%20%28Signed%20by%20OpenAI%29%20%28Signed%20by%20CA%20DOJ%29.pdf (Oct. 27, 2025).

26. *Supra* note 25.

27. *Supra* note 26.

28. *Supra* note 27.

29. *Supra* note 28.

30. *OpenAI Charter*, OpenAI, https://openai.com/charter/.

31. *Supra* note 26.

32. *Supra* note 28.

33. Microsoft also holds a 27% equity stake, as of the closing of the recapitalization. Together, Microsoft and OpenAI Foundation hold a majority stake in OpenAI Group PBC. *The Next Chapter of the Microsoft-OpenAI Partnership*, Microsoft, https://blogs.microsoft.com/blog/2025/10/28/the-next-chapter-of-the-microsoft-openai-partnership/ (Oct. 28, 2025).

risked chilling investment, since returns would max out after hitting a certain multiple, dissuading investors seeking substantial upside.[34] The new structure removes this constraint, expanding the pool of capital available to OpenAI Group PBC.[35, 36] Given the expected growth of generative AI, with some sources estimating that the worldwide AI market will "exhibit a steady annual growth rate (CAGR 2026–2032) of 25.38%,"[37] as well as an aggressive need for capital by OpenAI, the expansion in capital available to OpenAI could be significant. Critics fear that the PBC structure, like the capped-profit model before it, lacks enforceable mechanisms to guarantee adherence to the charter's core commitments (broad distribution of AI benefits, long-term safety, frontier leadership, and cooperation with others in the space), and that the removal of the return cap will only intensify, commercial pressures that push against those goals.[38, 39, 40]

As previewed in last year's report, questions around how to regulate AI companies operating within the PBC framework were addressed this year during the recapitalization. The referees stepping into this space have been state attorneys general. The California and Delaware attorneys general published a memorandum of understanding and a conditional statement of non-objection, respectively, which impose constraints on how the new PBC structure will operate.[41, 42]

OpenAI has agreed that the for-profit arm will publish "fully public reports at least annually that demonstrate its progress toward its Mission."[43, 44] However, absent from this commitment are any stipulations as to which metrics must be reported, any methodology for picking those metrics, and any external benchmark against which OpenAI Group PBC's work should be measured. Additionally, each state attorney general is entitled to check-ins on the status of the OpenAI Foundation's "operations and progress towards its mission."[45, 46] The agreements also grant the attorneys general advance notice before OpenAI Foundation consents to certain key changes:

> [The entity that is now OpenAI Foundation] will provide at least 21 days' prior written notice to the Attorney General before consenting to: (a) a change of control of the [OpenAI Group] PBC; (b) any change to the OpenAI Group PBC mission as set out in the [OpenAI Group] PBC Charter; and (c) any amendment to the [OpenAI Group] PBC Charter that would remove the [entity that is now OpenAI Foundation]'s sole right, as holder of the Class N shares, to appoint [OpenAI Group] PBC directors or otherwise reduces in any material respect the rights of the Class N shares.[47, 48]

34. *Supra* note 25.

35. Bret Taylor, *Update on the OpenAI Foundation*, https://openaifoundation.org/news/update-on-the-openai-foundation (Mar. 24, 2026).

36, *Restructuring Concerns*, The OpenAI Files, https://www.openaifiles.org/restructuring.

37. *Artificial Intelligence - Worldwide*, https://www.statista.com/outlook/tmo/artificial-intelligence/worldwide?srsltid=AfmBOoprNxdju8XiP53CEghquZEsgE7-ClsZ503ebj7-mBLkaeD4bmO_#market-size.

38. *Supra* note 33.

39. *Supra* note 38.

40. *Statement on OpenAI's Restructuring*, Not for Private Gain, https://notforprivategain.org/november-update (Nov. 3, 2025).

41. *Supra* note 27.

42. *Supra* note 28.

43. *Supra* note 27.

44. *Supra* note 28.

45. *Supra* note 27.

46. *Supra* note 28.

47. *Supra* note 27.

48. *Supra* note 28.

This notice requirement presents another layer of public accountability over who ultimately controls the company's direction. The authority of attorneys general to take action in response to such notice would be determined by California and Delaware law.

Attorneys general are the principal regulators of nonprofits and other charitable entities.[49] The increased exercise of this function will likely trend upward, particularly as other high-profile AI companies like Anthropic operating under the PBC structure grow in size and influence. That

said, this level of scrutiny and the terms agreed by the attorneys general are likely a function of OpenAI's size and visibility as much as any systemic enforcement mechanism. This case study also suggests that there may be an accountability gap for smaller companies that drift from their social missions, because they are unlikely to attract the same referees, and also highlights the importance of civil society contributing to oversight through their own empirical studies.

Musk-Altman Litigation[50]

In 2024, when OpenAI announced that it was transforming into a PBC, Elon Musk, an early investor and former co-chair, sharply criticized the move as a deviation from OpenAI's nonprofit aims and initiated a lawsuit to prevent the recapitalization.[51, 52] In March 2025, Musk requested that the court issue a preliminary injunction to block the transition, which was denied.[53] Several months later, Musk's breach of contract claim was dismissed, but the judge allowed his unjust enrichment and fraud claims to proceed to an eventual trial.[54] OpenAI responded with a countersuit,[55] while the discovery process unearthed a potentially damaging piece of evidence: handwritten diary entries from OpenAI President Greg Brockman that appeared to hint at long-standing intentions to pursue a for-profit model.[56] The most notable update since 2025, though, is the recent development in the remedies Musk is seeking.

On April 7, 2026, Musk filed an amendment seeking five new forms of equitable relief, rather than a $100 billion payout:[57]

1. "a permanent injunction requiring both the OpenAI nonprofit and any for-profit subsidiary or successor to honor the original charter commitments on which the charity was founded"
2. "an order removing [Sam] Altman as a director from the OpenAI nonprofit board and removing both Altman and Brockman as officers of the OpenAI for-profit"
3. "disgorge[ment] to the OpenAI charity [of] all equity and other personal financial benefits they obtained as a result of OpenAI's for-profit operations"
4. "disgorgement of all ill-gotten gains flowing from OpenAI's unauthorized for-profit conversion and operations"
5. "an order unwinding the for-profit conversion and restructuring as a purported public benefit corporation, restoring OpenAI to the role of a bona fide public charity"

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49. *Charities Regulation 101*, National Association of Attorneys General, https://www.naag.org/issues/charities/charities-regulation-101/.

50. Given that the litigation is ongoing, this report's analysis reflects developments through the trial's start date of May 12, 2026.

51. Elon Musk (@elonmusk), X (Oct. 10, 2025, 10:17 PM), https://x.com/elonmusk/status/1976774208031220212.

52. Elon Musk (@elonmusk), X (Oct. 10, 2025, 11:06 PM), https://x.com/elonmusk/status/1976786548139196464.

53. Matt O'Brien, Barbara Ortutay, *Judge Denies Elon Musk's Request to Block OpenAI For-Profit Conversion but Welcomes Trial,* Associated Press News, https://apnews.com/article/elon-musk-openai-lawsuit-f5724e7ab07b5bed8292a1e8aa2ef695 (Mar. 5, 2025).

54. *Musk v. OpenAI, Inc.*, No. 4:24-cv-04722-YGR, slip op. (N.D. Cal. May 1, 2025).

55. Jordan Novet, *OpenAI Says Musk Has Run "Unlawful Campaign of Harassment" Against Company in Lawsuit*, CNBC, https://www.cnbc.com/2025/04/09/openai-says-musk-has-run-unlawful-campaign-of-harassment-in-lawsuit.html (Apr. 10, 2025).

56. *The Truth Elon Left Out*, OpenAI, https://openai.com/index/the-truth-elon-left-out/ (Jan. 16, 2026).

57. Plaintiff's Amended Notice of Remedies, *Musk v. Altman*, No. 4:24-cv-04722-YGR (N.D. Cal. Apr. 7, 2026).

The filing states that Musk "does not and will not seek these funds for himself. He seeks their return to the charitable trust that was breached."[58] Whether a clever litigation tactic to make his underlying claims to a jury more sympathetic or a genuine wish to uphold the goals of OpenAI as the nonprofit he once knew, this recent development highlights what can be at stake in the selection of a corporate form. If Musk prevails, OpenAI's management and investors (into OpenAI Group PBC, formerly OpenAI LP) will not only suffer financial loss but may also have to relinquish control. This should incentivize entrepreneurs to take seriously the choice of legal form or the formal inclusion of a social mission into their company's purpose, especially if they think they may want to transform into a more profit-oriented venture in the future.

To close with a through line connecting the two topics discussed thus far, OpenAI has reportedly asked the California attorney general to intervene in response to Musk's recent amendments.[59] That the same attorney general who approved OpenAI's recapitalization is now being asked to intervene on its behalf in litigation underscores just how central state oversight has become to the governance of high-profile PBCs. Whether and how the attorney general will actually intervene remain open questions, but the request itself is a reminder that, as regulator of nonprofits, the attorney general's role will be central to the governance of PBC AI companies going forward.

AI and the Benefit Corporation Framework

Last year's report concluded by leaving a question to future Tepper Fellows: Does the adoption of the benefit corporation form by companies in so-called controversial industries undermine or support the underlying goals of the benefit corporation as a legal form? The report applied the label *controversial* to AI cautiously, but OpenAI's recent deal with the US Department of War can help shed light on the answer. When the Pentagon presented Anthropic and OpenAI, two highly influential benefit corporations operating in the same industry and providing nearly identical services, with a military contract granting the Department of War significant discretion over its use of the products in question, the two organizations responded in opposite ways. Anthropic refused and was designated a national security supply chain risk as a result.[60] OpenAI agreed, albeit with an additional red-line term.[61]

After Anthropic's deal with the Department of War collapsed over disagreements about what Anthropic saw as protections against the use of AI for mass domestic surveillance and fully autonomous weapons, OpenAI stepped in and signed a deal of its own.[62, 63] OpenAI maintains that its version of the contract contains stronger guardrails than any previous classified AI deployment agreement, including the one Anthropic was negotiating.[64] When asked why it chose to sign, OpenAI stated that a good future requires deep collaboration between AI labs and the government, which fits nicely within the stated goals

58. *Id.*

59. Ashley Capoot & Kate Rooney, *OpenAI Asks California, Delaware to Investigate Musk's "Anti-Competitive Behavior" Ahead of April Trial*, CNBC, https://www.cnbc.com/2026/04/06/openai-asks-california-ag-to-probe-musks-anti-competitive-behavior-.html (Apr. 6, 2026).

60. *Statements on the Comments from Secretary of War Pete Hegseth*, Anthropic, https://www.anthropic.com/news/statement-comments-secretary-war (Feb. 27, 2026).

61. *Our agreement with the Department of War,* OpenAI, https://openai.com/index/our-agreement-with-the-department-of-war/ (Feb. 28, 2026).

62. *Supra* note 62.

63. *Supra* note 63.

64. *Id.*

of its charter.[65] The charter's commitment to "broadly distributed benefits" could be read to encompass society broadly, including its military and governmental institutions, not just civilian use, and its "cooperative orientation" tenet could be read to support engagement with government rather than refusal.[66]

The Anthropic and OpenAI comparison offers only a partial answer to the 2024 report's question (i.e., whether AI companies' adoption of the benefit corporation form undermines or supports the underlying goals of the benefit corporation as a legal form). That two benefit corporations in the same industry, confronted with substantially similar contracts, arrived at such different outcomes suggests that controversial positions taken on questions fundamental to the future of the AI industry do not disqualify companies from using the benefit corporation form. By itself, the comparison does not, however, establish that there is *no* controversial action that a traditional corporation could freely take but that a benefit corporation, because of its form, could not take. In the immediate days after it was announced, the deal triggered a 295% surge in ChatGPT uninstalls on the iOS App Store, a flood of negative reviews in the app's ratings, and Anthropic's Claude shooting to the number one most downloaded AI app, pointing to the fact that the deal was unpopular with society.[67, 68] What this suggests, at a minimum, is that the benefit corporation form itself did not function as a governance constraint in this case. Should it have?

65. *Id.*

66. *Supra* note 33.

67. Sarah Perez, *ChatGPT Uninstalls Surged by 295% After DoD Deal*, TechCrunch, https://techcrunch.com/2026/03/02/chatgpt-uninstalls-surged-by-295-after-dod-deal/ (Mar. 2, 2026).

68. Amanda Silberling, *The Biggest AI Stories of the Year (So Far)*, TechCrunch, https://techcrunch.com/2026/03/13/the-biggest-ai-stories-of-the-year-so-far/ (Mar. 13, 2026).

Conclusion

The year 2025 has further underscored a slowdown in the adoption of social enterprise forms across the country. Legislative activity around traditional social enterprise forms remained modest, while the broader ESG landscape continued to polarize state policymaking around ESG. At the same time, our preliminary research into benefit corporations and benefit LLCs shows that the legal availability of these forms tells only part of the story. Without reliable, searchable, and regularly updated state datasets, it remains difficult to determine how widely these forms are actually being used, whether adoption is growing, and which statutory designs are most effective in attracting social enterprises.

This year's OpenAI case study follow-up adds a second, more governance-focused lesson. OpenAI's completed recapitalization into a Delaware PBC, the involvement of the California and Delaware attorneys general, the ongoing Musk litigation, and the contrast between OpenAI's and Anthropic's responses to Department of War contracting all suggest that the effectiveness of the PBC form depends heavily on the drafting of each entity's charter. At the same time, attorney general oversight is capacity-constrained, and without robust reporting requirements, civil society lacks the data needed to monitor whether smaller PBCs are living up to their charters. This latter point highlights the need for research like Verstein's Corporate Census and the research put forth by the Grunin Center for Law and Social Entrepreneurship.

A potential next step for social enterprise law should be deepening our understanding of how existing forms operate in practice. For states, that means improving public entity data with benefit entity documentation so adoption can be measured and compared. For companies and lawmakers, it means asking whether benefit-entity statutes should require more specific public benefit commitments, clearer reporting standards, and stronger oversight mechanisms.

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