

**L3CS AND B CORPS: NEW CORPORATE FORMS  
FERTILIZING THE FIELD BETWEEN TRADITIONAL  
FOR-PROFIT AND NONPROFIT CORPORATIONS**

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I.

INTRODUCTION

As a nation, America faces a multitude of incredible challenges as it progresses into the twenty-first century after the 2008 economic recession. Today, its income inequality is “higher than any other year since 1917 and even surpasses 1928, the peak of stock market bubble in the ‘roaring’ 1920s.”<sup>1</sup> Poverty, which the American government defines as an annual income of under \$22,314 for a family of four and \$11,139 for an individual, has increased to 15.1 percent or 46.2 million people.<sup>2</sup> Around one in three American adults (33.8 percent)

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1. Emmanuel Saez, *Striking it Richer: The Evolution of Top Incomes in the United States*, Pathways, Winter 2008, at 6, *available at* [http://www.stanford.edu/group/scspi/\\_media/pdf/pathways/winter\\_2008/Saez.pdf](http://www.stanford.edu/group/scspi/_media/pdf/pathways/winter_2008/Saez.pdf). In 2007, the top 0.01 percent of Americans took home 6 percent of the total U.S. wages and the top decile took home 49.7 percent. While the bottom 99 percent of incomes “grew at a solid pace of 2.7 percent per year from 1994-2000, these incomes grew less than 1 percent per year from 2002-2005,” the period in which the top 1 percent “captured almost three-quarters of income growth.” *Id.* at 6-7.

2. Annalyn Censky, *Poverty rate rises in America*, CNNMONEY (Sept. 13, 2011) [http://money.cnn.com/2011/09/13/news/economy/poverty\\_rate\\_](http://money.cnn.com/2011/09/13/news/economy/poverty_rate_)

are obese<sup>3</sup>; almost a tenth are unemployed<sup>4</sup> (9.1 percent); access to healthcare is declining (16.8 percent of Americans are uninsured, a rise from previous years) while health systems' efficiency remains low<sup>5</sup>; and in education, American students rank 25th in math and 21st in science compared to students in 30 industrialized countries and 68 percent of 8th graders cannot read at their grade level.<sup>6</sup> These statistics do not portray the difficult to measure challenges of climate change; air and water pollution; the destruction of wetlands and marine wildlife; lack of access to nutritious and healthy foods; increased levels of depression and alienation; and reasons for catastrophic increases in incarceration despite lack of similar increases in crime over the last three decades.<sup>7</sup> The irony of the American condition is that while collective social and economic indicators deteriorate, corporate compensation and big bonuses continue to "rival those of the boom years. . .run[ning] into many billions of dollars."<sup>8</sup>

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income/ind ex.htm. For children under 18, 1 in 5 (22 percent) live in poverty; and for people of color, the numbers are significantly higher (27.4 percent for African Americans, 26.5 percent for Latinos, and 12.1 percent for Asians) compared to non-Latino whites (9.9 percent). *Id.*

3. Adult Obesity, CENTERS FOR DISEASE CONTROL AND PREVENTION (July 19, 2011), <http://www.cdc.gov/obesity/data/adult.html>.

4. Employment Situation Summary, BUREAU OF LABOR STATISTICS (Oct. 7, 2011), <http://www.bls.gov/news.release/empstat.nr0.htm>.

5. *Id.*; Why Not the Best? Results from the National Scorecard on U.S. Health System Performance, COMMONWEALTH FUND COMMISSION ON A HIGH PERFORMANCE HEALTH SYSTEM, 29 (July 17, 2008), [http://www.commonwealthfund.org/~media/Files/Publications/Fund%20Report/2008/Jul/Why%20Not%20the%20Best%20Results%20from%20the%20National%20Scorecard%20on%20U%20S%20Health%20System%20Performance%202008/Why\\_Not\\_the\\_Best\\_national\\_scorecard\\_2008%20pdf.pdf](http://www.commonwealthfund.org/~media/Files/Publications/Fund%20Report/2008/Jul/Why%20Not%20the%20Best%20Results%20from%20the%20National%20Scorecard%20on%20U%20S%20Health%20System%20Performance%202008/Why_Not_the_Best_national_scorecard_2008%20pdf.pdf).

6. Statistics on American K-12 Public Education, ELI AND EDYTH BROAD FOUNDATION, [http://broadeducation.org/about/crisis\\_stats.html](http://broadeducation.org/about/crisis_stats.html) (last visited Oct. 23, 2011).

7. *See, e.g.*, America's Climate Choices, NATIONAL RESEARCH COUNCIL (2011); Judith Bell & Marion Standish, Building Healthy Communities Through Equitable Food Access, 5 COM. DEV. INVESTMENT REV., no. 3, 2010, at 75, available at [http://www.frbsf.org/publications/community/review/vol5\\_issue3/bell\\_standish.pdf](http://www.frbsf.org/publications/community/review/vol5_issue3/bell_standish.pdf); Incarceration and Crime: A Complex Relationship, THE SENTENCING PROJECT 1-2 (2005), [http://www.sentencingproject.org/doc/publications/inc\\_iandc\\_complex.pdf](http://www.sentencingproject.org/doc/publications/inc_iandc_complex.pdf).

8. Louise Story & Eric Dash, Banks Prepare for Big Bonuses, and Public Wrath, N.Y. TIMES (Jan. 9, 2010), <http://www.nytimes.com/2010/01/10/>

Historically, legal structures that have tackled such collective action problems have come in two broad flavors: for-profit and nonprofit corporations. The former have included the large plants for steel and other forms of industrial materials, producers of consumer products such as Kraft Foods and Microsoft, distributors of such products to customers such as Walmart and Costco, service-oriented multi-national corporations such as large investment banks, and other producers, promoters, and distributors in the supply chain of consumer markets; they have also included small and medium sized firms such as restaurants, grocery stores, boutiques, furniture stores, and other forms of businesses where a commodity, product, or service is exchanged for money. Businesses have been the bedrock to providing people with jobs and therefore income, which they then use to fulfill their basic needs (such as food, healthcare and education) and wants (consumer products and entertainment) from established markets.

Nonprofit corporations, on the other hand, have played the separate and equally important role of philanthropy, social organization, and social advocacy. On the larger front, nonprofit structures were the legal instruments used to create various social transformations including equal treatment of people irrespective of gender, color, or ability and demanding and securing working wage and humane treatment of labor. For example, the National Association for the Advancement of Colored People (NAACP), the National Woman Suffrage Association (NWSA), the American Indian College Fund (AICF) and the American Federation of Labor (AFL) began their movement work after registering themselves as charities. On the smaller front, smaller charities have traditionally provided for immediate needs of people, animals and the environment based on the moral values of compassion and giving. These comprise a range of various organizations (notably Jayne Adam's Hull House and the Red Cross) that provide shelter, food, education, skills, moral empowerment and other forms of services to the less fortunate.

American corporate law is the primary reason for the strict demarcation between for-profit and nonprofit corpora-

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business/10pay.html; see also Louise Story, *Executive Pay*, N.Y. TIMES (Mar. 3, 2011), [http://topics.nytimes.com/top/reference/timestopics/subjects/e/executive\\_pay/index.html](http://topics.nytimes.com/top/reference/timestopics/subjects/e/executive_pay/index.html).

tions. This is because state and federal corporate statutes enable individuals, whether strict business entrepreneurs or social activists, to create legally recognized vehicles for their vision for collective action. Under the predominant legal structures, this is done in one of two ways: for profit businesses or nonprofit organizations committed to benefiting a cause or a charitable class. The law gives both corporate structures a variety of forms. For example, among other forms, one can establish a for-profit corporation as a sole proprietorship, a partnership, an S corporation or a limited liability corporation, and a nonprofit corporation as a public charity, a private foundation, a social advocacy organization, a labor union, or political action committee. However, an entrepreneur is required to select his entity's purpose as either monetary profits or what the tax regulations call a non-taxable or charitable purpose. These purposes have been especially restrictive for social entrepreneurs; these are individuals and entities whose bottom line is to maximize some form of social impact, unlike shareholder wealth or direct services to a class of people, by addressing an urgent need that is currently being mishandled, overlooked, or ignored by other institutions.<sup>9</sup>

With the rise of communications and information technology in the last two decades, the interconnectivity and interdependence of the for-profit and nonprofit sectors has become obvious to entrepreneurs, policymakers, social activists, and the larger public. For example, the Nonprofit Finance Fund (NFF)'s recent study that surveyed nearly 2,000 nonprofit organizations reported that 87 percent of their respondent organizations' operations were negatively affected by the current economic recession.<sup>10</sup> This makes sense from two angles. On one hand, with increased unemployment and diminishing standards of living (as indicated by the aforementioned reported statistics) there is a greater demand for social services. This is buttressed by NFF's finding that 85 percent of the organizations surveyed anticipated that the demand for their

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9. DAVID BORNSTEIN & SUSAN DAVIS, *SOCIAL ENTREPRENEURSHIP* 30 (2010).

10. 2011 State of the Sector Survey, *NONPROFIT FINANCE FUND* (2011), [http://nonprofitfinancefund.org/files/docs/2011/2011survey\\_brochure.pdf](http://nonprofitfinancefund.org/files/docs/2011/2011survey_brochure.pdf); see also *The Nonprofit Research Collaborative: November 2010 Fundraising Survey*, *GUIDESTAR* (2011) <http://www2.guidestar.org/ViewCmsFile.aspx?ContentID=3117>.

services will continue to increase in 2011.<sup>11</sup> This problem was exacerbated by the economic downturn and various Wall Street frauds, including investments led by Bernard L. Madoff, that bankrupted many investment funds, philanthropists' personal accounts, charities and foundations, thereby severely limiting their ability to contribute funds to nonprofits.<sup>12</sup> This recent experience has been the most salient exposition of the interdependence of the two sectors necessitating the need for innovation and creativity within the realm of legal structures.

While American corporate law has not provided business entrepreneurs and social activists with a legal vehicle with which to simultaneously do social good and earn profits, for decades social entrepreneurs have been organizing blended business models, hybrid structures, and mixing and matching subsidiaries and partnership to have social returns, while legally registered as a for-profit or a nonprofit.<sup>13</sup> For example, Sweet Beginnings, LLC, is a for-profit entity that makes a variety of beeline products, including honey and honey-infused body care products.<sup>14</sup> These products can be found in health stores and Whole Foods across the country, but what is unique about the company is that it combines its commercial purpose with social purposes of reducing barriers to employment for former convicts. It does that by offering full-time transitional jobs for former convicts in order to provide them with marketable skills and experiences, give them a steady source of income, and to reduce their rate of recidivism.<sup>15</sup> Sweet Beginnings employees' recidivism rate is under 4 percent compared to the national average of 65 percent.<sup>16</sup>

On the other hand, the Vera Institute of Justice is a registered nonprofit that has since its founding in 1961 incubated

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11. 2011 State of the Sector Survey, NONPROFIT FINANCE FUND (2011), [http://nonprofitfinancefund.org/files/docs/2011/2011survey\\_brochure.pdf](http://nonprofitfinancefund.org/files/docs/2011/2011survey_brochure.pdf).

12. See Stephanie Strom, *Wall Street Fraud Leave Charities Reeling*, N.Y. Times, Dec. 15, 2008, <http://www.nytimes.com/2008/12/16/business/16charity.html?pagewanted=all>.

13. Michael D. Gottesman, *From Cobblestones to Pavement: The Legal Road for the Creation of Hybrid Social Organizations*, 27 Yale L. & Pol'y Rev. 345, 345 (2007).

14. About Us, SWEET BEGINNINGS, (2011), <http://www.sweetbeginningsllc.com/about-us>.

15. *Id.*

16. *Id.*

and spun-off over 17 new nonprofits and government agencies worldwide, including the idea of “release on recognizance” in criminal procedure, through cutting-edge research and technical assistance to governments and nonprofits.<sup>17</sup> These spinoffs now have combined annual revenue of over \$200 million.<sup>18</sup> Vera operates like large for-profit consultancy and technology incubator –such as McKinsey & Company and Y Combinator –that provide research, expertise, and technical assistance to various public and private actors, the difference being that it aims to have a state or nationwide social impact by making justice systems fairer and more effective through research an innovation.<sup>19</sup>

Conversely to both Sweet Beginnings and Vera, the Omidyar Network is a “philanthropic investment firm dedicated to harnessing the power of markets to create opportunity for people to improve their lives. . . [by] invest[ing] in and help[ing] scale innovative organizations to catalyze economic, social and political change.”<sup>20</sup> With a total investment of \$448 million, the network is structured as a nonprofit and a for-profit hybrid, i.e. it has a 501(c)(3) and a Limited Liability Company (LLC) branch that share a common purpose, and that has invested over \$209 million in for-profit companies and more than \$239 million in nonprofits through traditional grants.<sup>21</sup>

Legally, the aforesaid organizations are a for-profit, nonprofit and a for-profit/nonprofit hybrid. However, in contemporary parlance their engagement in hybrid activities through raising equity and having a social impact makes them “social enterprises” and a part of the emerging and growing “fourth sector.”<sup>22</sup> Enthusiasts argue that this emerging sector is meant to transform the way public services are provided because they

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17. Vera Institute of Justice, *50 Years of Innovation: 1961-2011 Report 6* (2011), available at <http://www.vera.org/content/50-years-of-innovation>.

18. *Id.*

19. *Id.*

20. About Us, OMIDYAR NETWORK (2011), [http://omidyar.net/about\\_us](http://omidyar.net/about_us).

21. Frequently Asked Questions, OMIDYAR NETWORK (2011), [http://omidyar.net/sites/default/files/file/ON\\_FAQs\\_063011.pdf](http://omidyar.net/sites/default/files/file/ON_FAQs_063011.pdf).

22. See *Social Innovation: Let's Hear Those Ideas*, THE ECONOMIST, Aug. 14, 2010, available at <http://www.economist.com/node/16789766> [hereinafter ECONOMIST's *Let's Hear Those Ideas*]; Thomas Kelley, *Law and Choice of Entity on the Social Enterprise Frontier*, 84 TUL. L. REV. 337, 341 (2009).

tap into the ingenuity of people across the public and private sectors, especially social entrepreneurs.<sup>23</sup> This process is advanced dramatically by the increase in social investing and greater awareness of social entrepreneurship. For example, some estimate that socially conscious investments account for ten percent of all assets under management in the United States or \$2.71 trillion.<sup>24</sup> Moreover, this emerging movement to break away from traditional boundaries of for-profit and nonprofit divisions is becoming increasingly more apparent as social entrepreneurship conferences are the best attended events at leading business schools;<sup>25</sup> there is at least \$120 billion of immediate investment capital waiting for a socially productive and profitable home;<sup>26</sup> leading institutions like Harvard, New York University, Oxford, Stanford and Massachusetts Institute of Technology have introduced specializations in social entrepreneurship<sup>27</sup>; and social businesses like Civic Ventures, Do Something, Teach For America, Mercy Corps, Acumen Fund, KickStarter, Hopelab, The Body Shop, BRAC USA, Grameen Bank, and The Academy of Urban School Leadership are transforming the way America does business and social good at the same time.

Despite the ability of existing organizations to ameliorate seemingly hopeless social troubles such as reducing recidivism or facilitating at-risk youth to graduate from college, these organizations face the intransigent problems of speed, scale, and subsidies.<sup>28</sup> Successful innovations spread slowly, if at all. In business, entrepreneurial firms that do well grow fast; but social entrepreneurship does not yet have a Microsoft or a Google, and is thereby unable to take advantage of available capital.<sup>29</sup> Furthermore, the enormity of social problems and structural inconsistencies within corporate compensation plans have frustrated reformers and activists demanding more

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23. ECONOMIST's *Let's Hear Those Ideas*, *supra* note 23.

24. Janet E. Kerr, *A New Era of Responsibility: A Modern American Mandate for Corporate Social Responsibility*, 78 UMKC L. REV. 327, 362 (2009).

25. ECONOMIST's *Let's Hear Those Ideas*, *supra* note 23. *Id.*

26. Jonathan Weber, *Impact Investing Teeters on Edge of Explosive Growth*, N.Y. TIMES, Oct. 10, 2010, available at <http://www.nytimes.com/2010/10/10/us/10bcweber.html>.

27. BORNSTEIN AND DAVIS, *supra* note 10, at 86-7.

28. BORNSTEIN AND DAVIS, *supra* note 10, at 48-67.

29. ECONOMIST's *Let's Hear Those Ideas*, *supra* note 23.

ethical means to conduct business. The “biggest obstacle” is the “bureaucratic, rule-bound public sector” or the existing legal binary of for-profit and nonprofit that fails to accommodate the needs of socially minded entrepreneurs and organizations.<sup>30</sup> Pressure has thus mounted upon state and federal governments to recognize alternative legal structures to facilitate the growth of the fourth sector.<sup>31</sup>

Since April 2008, heavy lobbying efforts complimented with the economic downturn have induced many states to recognize two alternative corporate forms: the Low-Profit Limited Liability Corporation (L3C) and the Benefit Corporation (B Corp). These new entities have begun to fertilize the fields between traditional nonprofits and for-profits. As of October 2011, nine states and two American Indian Tribes have enacted legislation to recognize L3Cs<sup>32</sup> and six states have passed Benefit Corporation Legislation.<sup>33</sup> As their popularity grows, they will shape not only the way businesses and charities operate, but also the way law regulates them. This paper is the first of its kind to compare these new legal forms and describe the structural innovations they offer social advocates, business entrepreneurs and social entrepreneurs.

The paper will be organized as follows: Part I will explain why traditional for-profit and nonprofit legal forms fail to meet the demands of social entrepreneurs and socially conscious activists and investors. Part II will summarize the distinct features of L3Cs and B Corps, which set them apart from traditional corporate forms. It will also identify some unresolved questions and concerns these new forms create. Part III will offer concluding remarks.

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30. *Id.*

31. *Id.*

32. These include: Illinois (805 ILCS 180), Louisiana (HB1421 / Act 417), Maine (H-819), Michigan (Sec. 450.4101 et seq.); North Carolina (H769 / SB308), Rhode Island (H5279), Utah (Tit. 48, Ch. 02c), Vermont (Tit. 11, Ch. 21), Wyoming (Tit. 17, Ch. 15), The Oglala Sioux Tribe, and The Crow Indian Nation of Montana. Americans for Community Development, Laws, *available at* <http://americansforcommunitydevelopment.org/laws.php>.

33. These include: California (AB361), Hawaii (SB 298), Virginia (HB2358), Maryland (SB690/HB1009), Vermont (S.263), and New Jersey (S2170). B Corporation, Benefit Corporation Legislation, *available at* <http://www.bcorporation.net/publicpolicy>.

## II.

### PART I: WHY NOT FOR-PROFIT OR NONPROFIT?

This section outlines the features of traditional corporate forms that thwart hybrid activities. It hopes to highlight why social entrepreneurs have sought alternate legal forms by stressing the weaknesses of traditional for-profits and nonprofits.

#### A. *Traditional For-Profit Form*

For social entrepreneurs, the predominant obstacle for-profits create is their inability to commit themselves to achieving social goals.<sup>34</sup> Corporate law, broadly defined, is derived from three sources: internal requirements set forth in the firm's charter and bylaws, state statutory requirements, and decisional law interpreting statutory provisions and addressing additional issues on which statutes are silent.<sup>35</sup> While specific requirements vary by state, the first problem with for-profits is the long dominant model of the firm, which posits that corporate managers must always act to maximize profits for their shareholder and consideration of other interests violates that obligation.<sup>36</sup> This was stated clearly in *Dodge v. Ford*, which held:

There should be no confusion. . . A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of the directors is to be exercised in the choice of means to attend that end, and does not extend. . . to other purposes.<sup>37</sup>

This decision has shaped the widespread understanding of corporate fiduciary duties which require directors to further their shareholders' interests by maximizing corporate profits while complying with independent legal constraints.<sup>38</sup> This

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34. Gottesman, *supra* note 14, at 350.

35. Judd F. Sneirson, *Green Is Good: Sustainability, Profitability, and a New Paradigm for Corporate Governance*, 94 Iowa L. Rev. 987, 995 (2009).

36. Celia R. Taylor, *Carpe Crisis: Capitalizing on the Breakdown of Capitalism to Consider the Creation of Social Business*, 54 N.Y.L. SCH. L. REV. 743, 747 (2010).

37. *Id.* (citing *Dodge v. Ford*, 170 N.W. 668, 684 (Mich. 1919)).

38. Taylor, *supra* note 37, at 747.

profit-maximizing, shareholder-primacy model leaves little room to promote social good.<sup>39</sup> While 33 states have adopted “constituency” statutes authorizing corporate decision makers to consider more than just shareholders in determining what decisions are in the firm’s best interest, a third of such provisions are limited to takeover contexts.<sup>40</sup> For the remaining two-thirds, shareholder suits against directors and officers for breach of fiduciary duty remains a possibility unless the state’s courts have decided on the issue. In those instances, unless the corporation is strongly committed to a social mission and is willing to risk shareholder suits on principle, corporate decision makers are hesitant to consider social goals. Thus, when the goals of maximizing profit and maximizing public benefit are in tension, directors are more likely to believe that they have a legal obligation to choose shareholder’ profit over public benefit.<sup>41</sup>

The second challenge facing for-profits is that in situations where a public company is soliciting buyout bids, the company must accept the highest offer and cannot justify its actions according to its long-term strategy.<sup>42</sup> While a company can simply refuse to put itself up for sale, hostile bids can still bypass management and go directly to shareholders.<sup>43</sup> This is exactly what happened to Ben & Jerry’s in April 2000. Ben Cohen and Jerry Greenfield founded the company in 1978 with a mission to create top-quality ice cream and give back to the community.<sup>44</sup> “They donated 7.5 percent of their pretax profits to charity and partnered with non-profits to open shops in inner-city neighborhoods to employ low-income residents.”<sup>45</sup>

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39. *Id.*

40. Sneirson, *supra* note 36, at 998.

41. See Gottesman, *supra* note 14, at 350 (2007).

42. See *Revlon v. MacAndrews & Forbes Holdings*, 506 A.2d 173, 185 (Del. 1986) (holding that the business judgment rule did not protect the defendant board of director’s actions).

43. Hannah Clark, *A New Kind of Company: A “B” Corporation*, INC. MAGAZINE (July 1, 2007), <http://www.inc.com/magazine/20070701/priority-a-new-kind-of-company.html>.

44. Jenny Kassan, *Protecting Your Mission: Legal Tools to Keep Your Company on the Righteous Path*, EAST BAY EXPRESS (Feb. 24, 2010), <http://www.eastbayexpress.com/ebx/protecting-your-mission/Content?oid=1623624>; see also Anthony Page and Robert A. Katz, *Freezing Out Ben & Jerry: Corporate Law and the Sale of a Social Enterprise Icon*, 35 Vt. L. Rev. 211, 211 (2010).

45. *Id.*

The company's feel-good image attracted the interest of multinational corporations, and in 2000, British-Dutch conglomerate Unilever acquired Ben & Jerry's for \$326 million in a hostile takeover.<sup>46</sup> "Even though Ben and Jerry did not want to sell out, they had little choice."<sup>47</sup> "The board could not risk accepting a lower competing offer without exposing itself to litigation from shareholders asserting their right to the highest possible return at the expense of all other considerations."<sup>48</sup> Ben & Jerry's no longer donates to nonprofits and many shops employing low-income residents have closed, results that still haunt many entrepreneurs wanting to do good with their businesses.<sup>49</sup>

The third problem is that "the tax code creates incentives for corporations to limit their charitable contributions."<sup>50</sup> Whereas an individual may deduct a charitable gift up to either 30 percent or 50 percent of her taxpayer contribution base, a corporation may deduct gifts only up to 10 percent of its taxable income.<sup>51</sup>

The fourth and last major problem with for-profits is that "they cannot signal their social commitments clearly."<sup>52</sup> They may promote themselves as "green," "fair trade," and "doing good"—as many do—but "there is no standardized way to certify companies' assertion or to compare practices across companies."<sup>53</sup> Thus, a consumer rarely knows how to weigh a for-profit company's claim, which itself thwarts its legitimacy as a social enterprise. For these four primary reasons, for-profit corporations narrow the possibility of establishing and carrying out businesses that have a social purpose for social entrepreneurs.

### B. *Traditional Non-Profit Form*

There are two broad categories of nonprofit organizations: "service organizations that spend money in support of

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46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Gottesman, *supra* note 14, at 350-51.

51. *Id.* at 351 n.23; *see also* I.R.C. § 170(b)(1)(A)-(B), (b)(2) (2000).

52. Gottesman, at 351.

53. *Id.*

social goals”, and “grant-making foundations that raise money and distribute it to service organizations.”<sup>54</sup> The “law treats these two types of nonprofits differently, and each type faces different obstacles when attempting to engage in hybrid activity.”<sup>55</sup> Service organizations “worry most about regulations governing how they can get money,” whereas “foundations worry most about regulations governing how they can spend money.”<sup>56</sup> Under the Internal Revenue Code, “all 501(c) organizations enjoy income tax exemption, but § 501(c)(3) service organizations (or operating charities) and most § 509 private foundations benefit also from a tax deduction for their donors.”<sup>57</sup>

Any charitable and social impact work that a service organization desires to undertake requires “capital,” and raising capital is the first and the most critical problem facing these organizations. To acquire tax-exempt status, a nonprofit “must be both organized and operated *exclusively* for one or more exempt purposes.”<sup>58</sup> Within this definition, pursuing “public benefit” is an exempt purpose, but pursuing profits is not.<sup>59</sup> As a result, unlike for-profits, nonprofits “cannot raise equity capital.”<sup>60</sup> This is because under the “nondistribution constraint” and the “no private inurement” rules of federal tax law, the purpose of nonprofits is solely to further an exempt purpose and not to attract investors or “produce income.”<sup>61</sup> Such constraints have historically provided service organizations with two options to access capital. First, they rely on private foundation and government grants. In securing these grants, however, they risk the ability to remain loyal to their “mission” because the donor often places comprehensive restrictions on

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54. *Id.*, at 347.

55. *Id.*

56. *Id.*

57. Barbara K. Bucholtz, *Doing well by Doing Good and Vice Versa: Self-Sustaining NGO/Nonprofit Organizations*, 17 J.L. & POL'Y 403, 410 (2009).

58. Gottesman, at 348; *see also* 26 U.S.C. § 501(c)(3).

59. Gottesman, at 348.

60. *Id.*

61. Treas. Reg. §§1.501(c)(3)-1(d)(1), (2) (as amended in 2008). Unlike for-profit corporations, insiders in nonprofit organizations cannot “profit” from income generated by charities. While charities may be profitable, the profit after accounting for expenses of running the charity must inure to the benefit of the charitable mission. *See* I.R.C. § 4958 (2006); I.R.C. § 6033(b)(12) (2006).

the expenditure of the grants, which inevitably causes “mission drift” by ineluctably introducing a “mission shift.”<sup>62</sup> Second, many service organizations create their own innovative income-generating activities. However, the Internal Revenue Service and Treasury regulations mandate that such activities must be an “insubstantial part of its operations,”<sup>63</sup> and if “substantial,” it must be “in furtherance” of one of the organization’s exempt purposes.<sup>64</sup> If a nonprofit desires to protect its exempt status, these legal requirements limit their income generating opportunities.<sup>65</sup>

A second problem facing nonprofits is that they are prohibited from political campaigning and limited to “insubstantial part of their activities” in lobbying government actors to influence legislation.<sup>66</sup> Such restrictions impede nonprofit organizations in pursuing social issues that are inextricably linked to politics, e.g., environmental pollution, animal rights and human trafficking.

Finally, grant-making foundations, which are essential players in financing and thereby furthering the work of nonprofit organizations, face restrictions on “how they can spend money to achieve their social mission.”<sup>67</sup> “Broadly, the law requires that foundations can only invest in nonprofit organizations.”<sup>68</sup> Congress, however, “created an exception to this rule” by permitting foundations to make program-related investments (PRIs) in the form of low-interest loans to for-profits that help accomplish the foundation’s charitable goals.<sup>69</sup> For example, under this regime, “a foundation that aims to expand affordable housing may provide loans to a housing development company.”<sup>70</sup> The problem, however, “is that in prac-

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62. Bucholtz, at 431.

63. See Bucholtz, *supra* note 58, at 415; see also 26 C.F.R. § 1.501(c)(3)-1(b)(1)(i) (2009).

64. See Bucholtz, *supra* note 58, at 415.

65. See *id.* at 414.

66. 26 C.F.R. § 1.501(c)(3)-1(c)(3) (2009). Charities can protect themselves from the vagaries of the “no substantial part” language by making a § 1.501(h) election to determine a permissible level of lobbying activity or by channeling lobbying efforts through a § 1.501(c)(4) affiliate. 26 C.F.R. § 1.501(h)(1)-(2) (2009).

67. Gottesman, *supra* note 14, at 349.

68. *Id.*

69. *Id.* at 349-50.

70. *Id.*

tice nonprofit foundations rarely make PRIs.”<sup>71</sup> This is because they “fear that they would incur excise taxes for making an investment in a for-profit organization that the IRS later deems not to further the foundation’s goals.”<sup>72</sup> The foundation may obtain a private letter ruling before making such an investment, but the costs and perceived risks of seeking or failing to seek private letter rulings “deter some foundations from making PRIs” altogether.<sup>73</sup> Furthermore, Treasury rules<sup>74</sup> mandate that foundations ensure that the money they loan to private companies is not used for for-profit purposes, under the stringent “expenditure responsibility” test.<sup>75</sup> This serves as a further deterrence for potential hybrid collaboration.

These three structural defects in the nonprofit corporation prevent social entrepreneurs from using the form to effectively address urgent social problems while also sustaining itself as an organization.

### III.

#### PART II: L3CS & B CORPS – NOVEL CORPORATE FORMS RECOGNIZED BY STATE LAWS

This part summarizes the major structural innovations of L3Cs and B Corps, and the advantages they offer social entrepreneurs over the traditional corporate forms. It also identifies some important concerns they raise that should be resolved as these forms acquire greater popularity.

##### A. L3Cs

Renewable Social Benefit Funds (RSBF) is an alternative energy company focused exclusively on bringing solar power to governmental and tax-exempt entities such as hospitals, schools, low-income housing projects, water districts, universi-

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71. *Id.* at 350. See also Sue Woodrow & Steve Davis, *The L3C: A New Business Model for Socially Responsible Investing*, BRIDGES (The St. Louis Federal Reserve Bank), Winter 2009-10, available at [http://stlouisfed.org/publications/pub\\_assets/pdf/br/2009/br\\_win\\_09.pdf](http://stlouisfed.org/publications/pub_assets/pdf/br/2009/br_win_09.pdf).

72. Gottesman, *supra* note 14, at 350.

73. Woodrow & Davis, *supra* note 72, at 7.

74. See Treas. Reg. § 53.4945-5(b)-(c) (1973).

75. James Hines Jr. et al., *The Attack on Nonprofit Status: A Charitable Assessment*, 108 MICH. L. REV. 1179, 1188 (2010).

ties, and airports.<sup>76</sup> Women's News Network (WNN) is a media network that provides in-depth international women's news not found in the current public media stream to educate the world about global women's issues.<sup>77</sup> Maine's Own Organic Milk Company (MOO Milk Co.) aims to preserve and increase the number of Maine organic milk producers by educating the public on the intrinsic worth of preserving local family farms through offering premium quality milk products.<sup>78</sup> RSBF, WNN, and Moo Milk Co. are just three of hundreds of businesses nationwide have recently chosen to operate as low-profit limited liability company (L3C).

The idea behind L3Cs as an alternative corporate model grew out of a 2006 meeting convened by the Aspen Institute's Nonprofit Sector and Philanthropy Program, where legal, financial and other experts gathered to discuss the myriad of issues facing the emerging "fourth sector."<sup>79</sup> The L3C form was proposed as a vehicle for "hybrid social ventures" to do social good while operating a business.<sup>80</sup>

L3C legislation has been enacted in nine states and two Indian nations as an amendment to the general limited liability company (LLC) act of those jurisdictions rather than as a separate act.<sup>81</sup> This was meant to allow L3Cs to take advantage of the flexibility of the LLC format and the exiting body of law regarding their governance.<sup>82</sup> L3Cs are organized in the same way as an ordinary LLC, but have the following additional statutory requirements: (1) the company must "significantly further the accomplishment of one or more charitable or educational purposes," as laid out in the tax code, and it would not have been formed but for its relationship to the accomplish-

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76. *Renewable Social Benefit Funds, L3C, About Us*, <http://rsbfunds.com/about> (last visited Oct. 21, 2011).

77. *See Women's News Network (WNN), Reporting on Women – Educating the World*, <http://womennewsnetwork.net/about-2> (last visited Oct. 21, 2011).

78. *Maine's Own Organic Milk Co., Vision/Mission Statement*, <http://www.moomilkco.com/moo-milk-our-story> (last visited Oct. 21, 2011).

79. Woodrow & Davis, *supra* note 70, at 5-6.

80. *See Kelley, supra* note 23, at 371.

81. *Americans for Community Development, Laws*, <http://americansforcommunitydevelopment.org/laws.php> (last visited Oct. 24, 2011).

82. *Id.*

ment of such purposes;<sup>83</sup> (2) “no significant purpose of the company is the production of income or the appreciation of property,” though the company is permitted to earn a profit;<sup>84</sup> (3) the company must not be organized to “accomplish any political or legislative objectives”;<sup>85</sup> and (4) these requirements along with the company’s self-designation as an L3C must appear in its name and its articles of incorporation.<sup>86</sup>

These four requirements come with the underpinning understanding that the primary purpose of an L3C is to achieve a socially beneficial objective, with profit as a secondary goal.<sup>87</sup> As a result, L3Cs are almost equivalent to nonprofits since they are organized and operated for the “significant,” as opposed to “exclusive,” accomplishment of a charitable goal. They are prohibited from political campaigning and they are placed under strict lobbying restrictions. Furthermore, they cannot have income generation and distribution of dividends as their “significant purpose.”<sup>88</sup> Hence, these entities are *low-profit* limited liability companies.

The basic impetus behind this model was to allow socially minded hybrids to have access to different classes of investors, especially foundations.<sup>89</sup> As registered “low-profit” businesses, L3Cs can access business equity, but advocates specifically created the L3C structure to bypass the legal administration of PRIs, which they found significantly underutilized.<sup>90</sup> Of the nearly 80,000 private foundations operating in the U.S., only 5 percent make PRIs and these are primarily loans to charity.<sup>91</sup> L3C advocates believe that foundations typically do not engage in PRIs because of the perceived need to seek prior approval

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83. See VT. STAT. ANN. tit. 11, § 3005 (2011); MICH. COMP. LAWS § 450.4204 (2011); UTAH CODE ANN. § 48-2c-412 (2012); 805 ILL. COMP. STAT. 180 / 1-26 (2011).

84. *Id.*

85. *Id.*

86. See, e.g., VT. STAT. ANN. TIT. 11, § 3005 (2009); MICH. COMP. LAWS § 450.4204 (2010); Utah Code. Ann. § 48-2c-412 (2010); 805 ILL. COMP. STAT. 180/1-26 (2010).

87. See Taylor, *supra* note 37, at 761.

88. See *supra* note 82.

89. See *Americans for Community Development, the Concept of the L3C*, <http://americansforcommunitydevelopment.org/concept.php> (last visited Oct. 19, 2011).

90. See *id.* See also Woodrow & Davis, *supra* note 70, at 7.

91. See Woodrow & Davis, *supra* note 70, at 7.

from the IRS, in the form of a private letter ruling, to ensure compliance.<sup>92</sup> Currently, PRIs account for a very small percentage of all grants made by American foundations. For example, in a January 2011 Foundation Giving Forecast Survey of 1200 independent, corporate, and community foundations, only 168 foundations engage in some form of mission investing through program-related investments.<sup>93</sup> L3C enthusiasts, however, hope that with the increased popularity and acceptance of L3Cs, foundations will be more willing to make PRIs to such forms and the IRS will be pressured to permit easier flows of capital to L3Cs.

For activists and those inclined to work in the social sector, L3Cs create several additional benefits. First, greater efficiency and focus on the organization's primary mission; this is because the management can spend the time that would otherwise be spent on organizing board meetings and event planning committees in a nonprofit on furthering organization's objectives.<sup>94</sup> Second, in a time of recession organizations like WNN can sell products, such as advertising, in order to raise funds that are otherwise harder to come by.<sup>95</sup> Lastly, while open to foundation funds through PRIs, unlike nonprofit organizations, L3Cs do not have to exist solely at the behest of foundation funding and laborious reporting requirements which often creates mission drift and inefficient allocation of precious human resources. The financial independence of L3Cs gives entrepreneurs and activists greater opportunity for independence and innovation.

With that said, there is no case law on how state and federal courts will treat L3Cs. Advocates assume that L3Cs will benefit from existing law on LLCs, but no courts provided a

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92. *Id.*

93. See Marco Navarro & Peter Goodwin, "Program Related Investments," Robert Wood Johnson Foundation Anthology, To Improve Health and Health Care, Volume V (2002), available at: <http://www.rwjf.org/files/research/anthology2002chapter10.pdf> (last visited October 31, 2011); Steven Lawrence & Reina Mukai, "Key Facts on Mission Investing," Foundation Center, October 2011, available at: [http://foundationcenter.org/gainknowledge/research/pdf/keyfacts\\_missioninvesting2011.pdf](http://foundationcenter.org/gainknowledge/research/pdf/keyfacts_missioninvesting2011.pdf) (last visited October 31, 2011).

94. See Interview with Lys Anzia, Founder/Editor-at-Large, Women's News Network (WNN), Jan 13, 2011, <http://www.businesspundit.com/interview-social-entrepreneurs-and-the-l3c>.

95. *Id.*

decision on this issue. Furthermore, the success of this corporate form depends on the IRS or federal legislators to recognize this corporate form and provide guidance on how it will be treated legally. This raises many unanswered questions. How will L3C advocates urge the IRS to pass a ruling on this new form? What would such a ruling look like considering the bureaucratic complexity of corporate and charities laws? Furthermore, what agency would regulate and monitor L3Cs to ensure they significantly promote a charitable purpose? How would “significantly” be defined? If foundations were to increase PRIs, would that create a negative impact on tax-exempt organizations that compete for funds from the same pool of money? Is that a desirable social goal? And is it worth it for companies to lose their lobbying and political campaigning privileges to gain access to PRIs? These questions require serious consideration from advocates to assure prospective social entrepreneurs that the L3C form provides them with greater flexibility to do business and promote social good.

While these questions remain unanswered, eleven jurisdictions across the country are becoming familiar with the new corporate form and as social entrepreneurs choose to incorporate their social enterprise as an L3C, some of the aforementioned questions will have to be answered. Currently, at least sixteen other jurisdictions are considering some form of legislation to enact L3Cs.<sup>96</sup> These legislative acts make the L3C a living reality for the law in many parts of the nation and despite the many unanswered questions, as RBSF, WNN, and MOO Milk Co. illustrate, they will serve as an important corporate form for many social entrepreneurs in the future.

### B. *B Corps*

In 2010, Seventh Generation earned annual revenues of \$150 million;<sup>97</sup> it is a leading producer of natural household

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96. Some of these states include: Arkansas, Colorado, Kentucky, Maryland, Massachusetts, Missouri, Montana, New York, North Dakota, Tennessee, and Virginia. See Emily Chan, *The L3C – 3 Years Later*, Nonprofit Law Blog, Aug. 5, 2011, <http://www.nonprofitlawblog.com/home/2011/08/the-l3c-3-years-later.html>.

97. *Seventh Generation names John Replogle to serve as CEO and President*, Vermontbiz Feb. 3, 2011, <http://www.marketwire.com/press-release/seventh-generation-names-john-replogle-to-serve-as-ceo-and-president-1393156.htm>.

and personal care products that aims to inspire conscious consumption and inform retail partners about the impact of the products they sell.<sup>98</sup> With millions of members in over 230 countries and territories, CouchSurfing is blazing the trail towards a better, friendlier world where people who are different from one another can find their similarities; it does that by creating a free-online platform where travelers can meet locals from the countries and communities they are visiting to learn about their culture and build cross-border friendships.<sup>99</sup> The Redwoods Group provides property and casualty insurance underwriting and risk and claims management services to leading nonprofits with the social mission of “serving others” through significant employee volunteerism and contributing a minimum of 10 percent of pre-tax income to charities.<sup>100</sup> These three companies are a few examples of over 431 businesses in 54 industries nationwide with annual revenue of \$2.18 billion that call themselves Benefit Corporations or B Corp.<sup>101</sup>

Like L3Cs, the idea of B Corp was launched in 2006 with the founding of Pennsylvania-based nonprofit B Lab.<sup>102</sup> B Corps are business organizations that elect to obtain a certification from B Lab as being purpose driven and creating benefit for all stakeholders, not just shareholders.<sup>103</sup> They prescribe to the philosophy of triple-bottom line, i.e. people, planet and then profits, in conducting all business affairs.<sup>104</sup> In order to

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98. Seventh Generation, Mission, <http://www.seventhgeneration.com/seventh-generation-mission> (last visited on Oct. 14, 2011).

99. Couchsurfing, About Us, <http://www.couchsurfing.org/about.html>, (last visited on Oct. 14, 2011).

100. See Redwoods Group, Our Company, <http://www.redwoodsgroup.com/Corporate/OurCompany.asp>, (last visited on Oct. 14, 2011).

101. Certified B Corporation, <http://www.bcorporation.net> (last visited Oct. 24, 2011).

102. See Tina Rosenberg, “A Scorecard for Companies with a Conscience,” N.Y. TIMES, April 11, 2011, available at <http://opinionator.blogs.nytimes.com/2011/04/11/a-scorecard-for-companies-with-a-conscience> (last visited Oct. 31, 2011).

103. See Robert R. Keatings, “LLCs and Nonprofit Organizations – For-Profits, Nonprofits, and Hybrids,” 42 SUFFOLK U. L. REV. 553, 579 (2009).

104. Rakhi I. Patel, *Facilitating Stakeholder-Interest Maximization: Accommodating Beneficial Corporations in the Model Business Corporations Act*, 23 ST. THOMAS L. REV. 135 (2010).

obtain certification, the company must take three steps.<sup>105</sup> First, it must fill out a comprehensive social and environmental performance standards survey and achieve a minimum score of 80 out of a possible 200 on the B Rating system, an assessment tool created by B Lab to measure companies' social and environmental performance.<sup>106</sup> Second, it must agree to make legal changes to its corporate charter to expand responsibilities of the company to include consideration of stakeholder interests.<sup>107</sup> These include: the interests of employees, the community, and the environment.<sup>108</sup> In states that do not currently permit companies to make such commitments without being exposed to lawsuits, B Lab does not require them to add such language in their governing documents.<sup>109</sup> However, it requires them to adopt a resolution that they will adopt the B Corp language if the law governing their company is amended to permit it.<sup>110</sup> And last, the company must pay B Lab an annual licensing fee for its brand.<sup>111</sup>

B Corps are no different from for-profits, except that they are cooperatively regulated by being committed to the social and environmental standards established by B Lab. B Lab requires recertification of all B Corps every two years, and ten percent of all companies are randomly audited every year to ensure each company's B Rating Score's accuracy.<sup>112</sup> As a certified B Corp, a company can use the B Corp brand to promote their business as a socially beneficial corporation; it receives discounted tools and services from B Corp partners; and it becomes member of a larger community that is promoting

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105. B Corp Certification Overview, <http://www.bcorporation.net/index.cfm/fuseaction/content.page/nodeID/08c9dc4d-6064-48cb-af04-4fd9d4ced055/externalURL/> (last visited Oct. 23, 2011).

106. *Id.*

107. *See id.*

108. Certified B Corporation, The Legal Framework, *available at* <http://www.bcorporation.net/become/legal> (last visited Oct. 31, 2011).

109. *See* Jenny Kassan, *Protecting Your Mission: Legal Tools to Keep Your Company on the Righteous Path*, EAST BAY EXPRESS, Feb. 24, 2010, at SB 8.

110. *See id.*

111. Certified B Corporation, Make it Official and sign B Corp. documents, *available at*: <http://www.bcorporation.net/become/official> (last visited Oct. 31, 2011).

112. *See id.*

socially responsible business and lobbying for special B Corp status with local, state, and federal governments.<sup>113</sup>

The B Corp movement creates an alternative legal form for businesses that are driven by more than maximizing shareholder value. It signals to investors about the company's triple-bottom line mission, and they must look elsewhere if they solely desire to maximize profits.<sup>114</sup> Furthermore, it creates an environment for a new type of business where social and environmental missions are baked into a corporation's DNA, to prevent dilution or abandonment of such missions in the future.<sup>115</sup> The brand also shields the company from hostile takeovers like Ben & Jerry's since shareholders are aware that the company's mission, as written in its charter, is more than maximizing profits.<sup>116</sup>

Since its inception, B Lab has certified 454 companies in 54 industries worldwide (431 in the United States) that generate \$2.1 billion in revenue annually.<sup>117</sup> With that said, while the public acknowledges these businesses' socially and environmentally conscious mission, these private entities may still be vulnerable to lawsuits. Thus, B Corp has begun to lobby governments at all level to recognize "Benefit Corporations" to protect B Lab certified companies and their shareholders and to regulate these companies to ensure they are keeping their promises. In 2010, Maryland and Vermont became the first states to legally recognize Benefit Corporations as distinct entities. Four other states—California, Hawaii, New Jersey and Virginia—followed suit in 2011, and the bill is currently being debated or on the floor of five other jurisdictions, including Colorado, North Carolina, Michigan, Pennsylvania, and New

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113. Certified B Corporation, Why Become a B Corp?, *available at*: <http://www.bcorporation.net/index.cfm/fuseaction/content.page/nodeID/7fa80905-ea57-4381-8a54-aae2c6f70769> (last visited October 31, 2011); *see also* Stephanie Lacey, UpStarts: B Corporations are Maximizing Long-Term Social Good While Making a Profit, *Think Progress* (Jun 3, 2011), *available at*: <http://thinkprogress.org/romm/2011/06/03/236321/upstarts-b-corporations-are-maximizing-long-term-social-good-while-making-a-profit/> (last visited October 31, 2011).

114. *See* Jay Hancock, *Kinder Corporations Pose Different Profits*, *BALT. SUN*, Apr. 7, 2010, at 3A.

115. *See id.*

116. *See* Sneirson, *supra* note 36, at 1017-19.

117. B Corp., *Community*, <http://www.bcorporation.net/community> (last visited Oct. 18, 2011).

York, where it has been passed unanimously by the legislature and currently awaiting the Governor's signature.<sup>118</sup> The statutes create conditions that permit companies to incorporate as B Corps or elect to become B Corps. The most important conditions include: (1) the charter must designate the company as a "benefit corporation";<sup>119</sup> (2) the company must have a "material positive impact on society *and* the environment as measured by a third-party standard, through activities that promote some combination of specific public benefits";<sup>120</sup> and (3) the company's mission is protected at the time of merger or share exchange.<sup>121</sup>

These conditions protect companies that elect to become Benefit Corporations from a Ben & Jerry type demise.<sup>122</sup> However, they also raise a structural weakness that is at the root of its form: are the current "third party evaluations" rigorous enough? Are self-evaluations of companies the best method to reduce negative social and environmental impact of the member companies? While B Lab's initial evaluation survey is 26-pages, currently there is not a site-specific fact-checking process to ensure that companies actually do as they preach. Does this practice pose risks of dishonesty?

Furthermore, the form relies on B Lab, an independent non-profit unaffiliated with the government, to create robust instruments and fact-checking mechanisms to monitor the operations and affairs of the registered B Corps. This makes B Lab analogous to professional organizations that have internally established processes and procedures of operations and due process. However, it raises questions as to how effectively such obligations and responsibilities are being fulfilled. More-

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118. See B Corp. Legislation, Public Policy, <http://www.bcorporation.net/publicpolicy> (last visited Oct. 18, 2011).

119. See *e.g.*, VT. STAT. ANN. TIT. 11A § 21.03(a)(1) (2011); MD. CODE ANN., CORPS. & ASS'NS § 5-6C-03(a) (2011).

120. See *e.g.*, VT. STAT. ANN. TIT. 11A § 21.08(a) (2011) (stating each benefit corporation shall have the purpose of creating a general public benefit); § 21.03(a)(4) (defining general public benefit); MD. CODE ANN., CORPS. & ASS'NS § 5-6C-06(a)(1) (2011) (stating each benefit corporation shall have the purpose of creating a general public benefit); MD. CODE ANN., CORPS. & ASS'NS § 5-6C-01(c) (2011) (defining general public benefit).

121. See *e.g.*, VT. STAT. ANN. TIT. 11A § 21.06 (2011).

122. See Jenny Kassan, *Protecting Your Mission: Legal Tools to Keep Your Company on the Righteous Path*, E. BAY EXPRESS, Feb. 24, 2010, <http://www.eastbayexpress.com/ebx/protecting-your-mission/Content?oid=1623624>.

over, under B Lab's policies, 10 percent of the certified corporations are randomly audited annually. Is such a number sufficient? Can the monitoring body and the other members of the network impose damages to a party that breaches their commitment to B Corp principles? How will the laws of states that recognize B Corps penalize such corporations? What legal remedies will be available and to which stakeholders? For example, will an environmental advocacy group be able to sue a B Corp for failing meet the standards? Would lying on the evaluation forms be considered perjury by the state laws? Will there be an enforcement mechanism in place to ensure that certified corporations practice what they preach?

While these questions remain unanswered, B Lab and associates are lobbying municipalities to bring special tax treatment to B Corps. In December 2009, Philadelphia became the first city to grant tax breaks to certified sustainable businesses (such as B Corps), and Portland, Oregon, and Washington, D.C., are rumored to soon follow.<sup>123</sup> These political accomplishments alongside the popularity of the brand among well-known social entrepreneurs, such as CouchSurfing and Seventh Generation, indicate that B-Corps too are here to stay. Meanwhile, time and developing case law will provide answers to skepticism and the concerns raised above.

#### IV.

##### PART III: CONCLUDING REMARKS

With pressing demand for socially responsible businesses, new corporate forms will be instrumental in meeting the needs of new types of entrepreneurs who seek not only profits but also measurable social results. L3Cs and B Corps have created space in the fertile ground between traditional for-profit and nonprofit for alternative corporate vehicles that are more amenable to the social and business missions of rising idealistic entrepreneurs. While imperfect, they provide solutions to problems that hybrid charities and businesses faced historically. For example, while remaining neutral on political affairs yet having access to capital traditionally siphoned off to nonprofits, L3Cs may be a better suited form for small businesses

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123. B Corp. Legislation, Public Policy, <http://www.bcorporation.net/public-policy> (last visited Oct. 18, 2011).

such as local fair trade coffee shops or for micro-finance institutions, affordable housing for low-income and/or elderly residents, or for community-based newspapers and schools. Similarly, B Corps gives various green businesses the opportunity to remain committed to their triple-bottom line mission while also earning a profit for their socially conscious investors. With that said, organizations like Sweet Beginning and the Vera Institute of Justice may choose to keep their for-profit and non-profit structures, respectively, because they may find that those forms provide them with the maximum utility to effectively accomplish their missions; for the former, lobbying Congress and raising capital and donating it to non-profits, and for the latter, providing assistance to governments, but not being taxed on their income since it is significantly related to the organization's mission.

In conclusion, these two new corporate forms open up new possibilities and bring entrepreneurs more choices to solve the challenges that await America in this century. Not having been tested by the courts, it is inevitable that these forms will attract litigation. But, as with the traditional for-profit and nonprofit forms, experience will hone these forms and perhaps even promote the need for other innovative structures yet to be realized. While it may be too early to predict their long-term success, it is clear that the legal recognition of L3C and B Corp forms are an important signifier of the changing landscape of business and charity, forecasting exciting developments in the field of social entrepreneurship in the future.