

# The State of Social Enterprise and the Law

**2023–2024**

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# The Grunin Center

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

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# About the Authors

(As of the 2023-2024 academic year)

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Andy was born and raised in Beijing, China, and attended the University of Washington, where he majored in finance and philosophy. Andy is interested in social impact entrepreneurship, and he co-founded a start-up incubator called ProSeed that aimed to provide underprivileged students with access to start-up resources and mentorship. ProSeed held hackathons, incubation camps, start-up case competitions, and incubated two social-impact-driven start-up projects. The best thing about operating a start-up incubator, Andy said, was to experience growth together with the founders and learn from the brilliant people around him. In Andy's future law school studies, he will keep exploring the intersections between law and social entrepreneurship.

## **Christelle Mazloum '25**

Christelle Mazloum is passionate about using investment and enterprise as tools for addressing social inequality. She majored in business management and accounting at the University of Edinburgh, where she undertook a project that examined the adoption of ethical and sustainable practices by textile companies in Gujarat, India. At NYU Law, she co-chairs the Rising Tide Capital Project. This initiative connects students with attorneys to provide entrepreneurs in underserved communities with legal support in areas like business formation, taxation, and intellectual property rights.

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Matt Kuhlik is interested in social enterprises, emerging companies, and tech law. He attended Emory University, where he majored in business administration. Prior to law school, he worked in management consulting and as an analytics manager at a health care-focused tech start-up. At NYU Law, he is a managing editor on the *Annual Survey of American Law*, a student advocate in the Brennan Center Public Policy Advocacy Clinic, and a teaching assistant for the Stern School of Business undergraduate business law course. Upon graduation, he will be working at Debevoise & Plimpton's New York office within the firm's corporate practice group.

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Walla Elshekh is interested in social enterprise, emerging companies, and entrepreneurship. She attended Seton Hall University, majoring in political science and minoring in economics. Before law school, she worked at the Center for Justice Innovation, supporting community courts' training and technical assistance across the United States and for justice practitioners globally. She is a 2021 Sponsors for Equal Opportunity (SEO) Fellow who spent her pre-1L summer at Shearman & Sterling and her 1L and 2L summer at Morrison Foerster. Walla is pursuing her JD/MBA degree at NYU Law and Stern School of Business, where she is a Birnbaum Women's Leadership Fellow and a teaching assistant for Negotiating Complex Transactions. Walla was also a former student attorney at the Entrepreneurship Clinic. She is working as a summer associate at Morrison Foerster's New York office this summer.

# Introduction

The US social enterprise legislative landscape in 2023 saw a continuing shift among states from amending existing social enterprise legislation to incentivizing use of these forms. The minimal legislative interest in adopting new forms and amending existing forms has resulted in stability in the legal framework governing social enterprises. Meanwhile, some states increased their efforts to implement financial incentives for benefit corporations, and therefore advance certain societal goals in the state.

The legislative activity in 2023 reflects a broader discussion around the purposes of benefit corporations. Some commentators argue that benefit corporations offer differentiated structures and duties as compared to traditional corporations, demonstrating a need to promote different social enterprise forms and incentivize their adoption. Others see less value in the proliferation of these forms since the early 2010s and consider the whole legal framework to be unnecessary and potentially harmful.<sup>1</sup> A common argument that supports this latter view is that social and purpose-driven missions can be pursued using traditional corporate forms. This view is reflected in one state's attempt to simplify its LLC code by repealing the L3C legislation and the growing volume of legal literature critiquing social enterprise statutes.

Between these extremes is the view that, while social enterprise forms are valuable for specific businesses and entrepreneurs, they may not apply widely to all businesses with social missions. Our case study of Jibu explores one entrepreneur's reasons for rejecting a social enterprise form in favor of a traditional one.

This report, the sixth in the series, explores the latest legislative trends in US social enterprise law. It provides a deep dive on two recent bills in Oregon and Massachusetts and examines what these bills suggest about the purpose of social enterprises. Additionally, the report presents a reprise of a 2018 social enterprise case study. It concludes with a preview of a forthcoming legal literature review surveying the social enterprise and impact investing fields.

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1. See, e.g., Mohsen Manesh, *Introducing the Totally Unnecessary Benefit LLC*, 97 N.C. L. Rev. 603 (2019).

# 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.<sup>2</sup>

## The Social Enterprise Law Tracker

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

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



The Social Enterprise Law Tracker was developed a decade ago, in 2013, by Shawn Pelsinger and Robert Esposito, both Jacobson Fellows in Law & Social Enterprise at NYU School of Law. The Social Enterprise Law Tracker is now managed and updated annually by the Grunin Center for Law and Social Entrepreneurship at NYU Law.<sup>3</sup>

## 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).<sup>4,5</sup>

As the graphic on page five shows, while several states have authorized more than one form designed to house social entrepreneurial activities, the state that provides for the broadest range of social enterprise forms is Delaware, which has authorized the BLLC, PBC, and SPBLP.<sup>6</sup>

The difference in legislative adoption by states across these various social enterprise forms may simply reflect corporate interest in particular forms over others. It is challenging, however, to make any assumptions about adoption rates by social enterprises of the various forms. Given that the majority of social enterprises are privately held, there is a lack of reliable data on active US social enterprises and the legal forms they have chosen. Currently, data on benefit corporation adoption is sparse, with one academic estimating that there are more than 10,000

2. SOCIAL ENTERPRISE LAW TRACKER, <https://socontentlawtracker.org/>

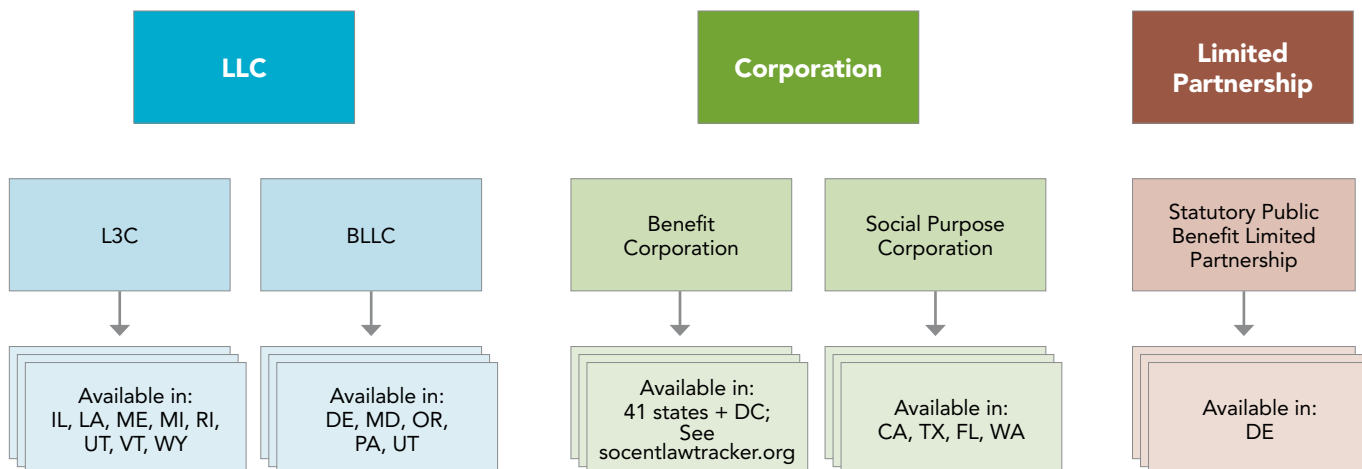
3. GRUNIN CENTER FOR LAW AND SOCIAL ENTREPRENEURSHIP, <https://www.law.nyu.edu/centers/grunin-social-entrepreneurship>.

4. For a further description of these forms, see *The State of Social Enterprise and the Law*, GRUNIN CTR. FOR L. & SOC. ENTREPRENEURSHIP, 6 (2021), [https://socontentlawtracker.org/wp-content/uploads/2022/04/2020-2021\\_Grunin\\_Tepper\\_Report.pdf](https://socontentlawtracker.org/wp-content/uploads/2022/04/2020-2021_Grunin_Tepper_Report.pdf).

5. *Id.*

6. Delaware first passed its benefit corporation legislation in 2013, BLLC (social enterprise LLC form) legislation in 2018, and SPBLP (social enterprise limited partnership form) legislation in 2019. In 2020, Delaware amended its PBC legislation to make it easier for publicly held companies to convert to the PBC form. See *Id.* at 14. As a result, Delaware companies are increasingly converting to PBCs both before and after going public. See *The State of Social Enterprise and the Law*, GRUNIN CTR. FOR L. & SOC. ENTREPRENEURSHIP, 8 (2022), [https://socontentlawtracker.org/wp-content/uploads/2022/08/2021-2022\\_Grunin\\_Tepper\\_Report.pdf](https://socontentlawtracker.org/wp-content/uploads/2022/08/2021-2022_Grunin_Tepper_Report.pdf) [hereinafter 2021–2022 *Tepper Report*].

## Social Enterprise Forms in the United States



benefit corporations operating in the United States as of 2023.<sup>7</sup> This is approximately a two-fold increase from the slightly more than 5,000 benefit corporations that were operating in the United States in 2018.<sup>8</sup>

As more publicly held corporations adopt these new forms, primarily the benefit corporation form, data on the use of these forms should become more readily available, given the disclosure requirements imposed on publicly held corporations. For example, as of August 2023, there were 20 publicly held PBCs incorporated in Delaware,<sup>9</sup> a nearly seven-fold increase from three in 2020.

### Social Enterprise Legislation in 2023

Continuing the trend of the last three years, no states in 2023 successfully enacted legislation authorizing new social enterprise forms. However, there was a slight uptick in states introducing benefit corporation legislation. Three states—Mississippi, Michigan, and Wyoming—considered a benefit corporation bill, an increase from one in 2022.

Each of these states had previously attempted and failed to enact benefit corporation legislation. Mississippi, for example, introduced a bill for the seventh consecutive year. These bills have been introduced with little to no changes each year. It is therefore unsurprising that these bills have failed again to make it out of committee.<sup>10</sup>

Additionally, Rhode Island introduced legislation to repeal the L3C form.<sup>11</sup> This is the first time since 2014 that a state has attempted to repeal enacted social enterprise legislation.

There has been continued legislative interest in programs that would provide financial benefit and incentives to benefit corporations. While there were attempts to enact tax credits and preferential loan terms for social enterprises in recent years, none were signed into law.<sup>12</sup> This year, Massachusetts introduced legislation that would provide a preferential tax rate to benefit corporations, while Oregon successfully enacted legislation permitting procurement preferences for benefit corporations.<sup>13</sup>

7. MICHAEL B. DORFF, BECOMING A PUBLIC BENEFIT CORPORATION (2023).

8. Ellen Berrey, "Social Enterprise Law in Action: Organizational Characteristics of U.S. Benefit Corporations," 20 TRANSACTIONS: TENN J. BUS. L. 21, 25 n. 11 (2018) (citing an unverified count of 5,199 active benefit corporation in the US as of July 2018).

9. IPO Breaks Drought for New Publicly Traded Public Benefit Corporations, DEAL POINT DATA (Aug 31, 2023), [https://www.dealpointdata.com/res/dpd\\_ipo\\_breaks\\_drought\\_for\\_pbc\\_20230831.pdf](https://www.dealpointdata.com/res/dpd_ipo_breaks_drought_for_pbc_20230831.pdf).

10. See H.B. 207, 2023 Reg. Sess. (Miss. 2023); H.B. 5387, 102nd Leg., Reg. Sess. (Mich. 2023); H.B. 85, Gen. Sess. (Wyo. 2023).

11. See discussion *infra* section "Rhode Island L3C Repeal."

12. For more information on these bills, see 2021–2022 *Tepper Report*, *supra* note 6, at 10.

13. See discussion *infra* section "The Benefits of Being a Benefit Corporation" for more detail on these bills.

In March 2023, Hawaii introduced legislation intended to promote “purpose-driven” and “for-benefit” organizations.<sup>14</sup> The bill would require the Department of Commerce and Consumer Affairs to convene a “Fourth Sector Working Group.” The group, composed of local university faculty, members of the legislature, and representatives from the “fourth sector” in Hawaii, would develop a strategic plan to advance “sustainable and equitable development” in the state.<sup>15</sup> In recent years, Hawaii has been a leader in promoting social enterprises.<sup>16</sup> The founder of a social enterprise accelerator program in the state believes that social enterprises can thrive in the state because of Native Hawaiians’ concern for the environment and strong ties to local communities.<sup>17</sup> Given these unique state dynamics,

it will be interesting to see if other states follow Hawaii’s lead in increasing awareness of and resources available to social enterprises.

There were no other amendments to existing social enterprise legislation in 2023. This represents a departure from recent years, where states reworked elements of their legislation such as lowering conversion voting thresholds or eliminating appraisal rights. The lack of interest in amending enacted legislation may indicate that we are entering a “steady state” within existing social enterprise forms, with legislative attention turning instead to incentivizing and promoting the adoption of these forms.

## Summary of 2023 legislative attempts and enacted amendments

State	Corporate Form	Bill Description	Result
Hawaii	Benefit Corporation	Resolution to recognize the importance of “purpose driven” and “for-benefit” organizations, and establish a “Fourth Sector Working Group”	Measure deferred by committee
Massachusetts	Benefit Corporation	Establishes a preferential tax rate for benefit corporations that offer specified employee benefits	Referred to Committee on Revenue; no actions since taken
Michigan	Benefit Corporation	Establishes benefit corporation form	Referred to Judiciary; no actions since taken
Mississippi	Benefit Corporation	Establishes benefit corporation form	Failed to pass (seventh attempt in past seven years)
Oregon	Benefit Corporation	Permits contracting agencies to give preferences to benefit corporations in procurement of goods or services for public use	Passed and signed by governor
Rhode Island	L3C	Repeals the existing LLC Act and replaces it with a new code that does not include the L3C form	Held for further study
Wyoming	Benefit Corporation	Establishes benefit corporation form	Failed to pass (second attempt in last three years)

14. S.R. 121, 32nd Leg., Reg. Sess. (Haw. 2023).

15. *Hearing on S.R. 121 Before the S. Comm. on Energy, Econ. Dev., and Tourism*, 32nd Leg., Reg. Sess. (Haw. 2023) (testimony of Lisa Kleissner, Bd. Chair, Haw. Inv. Ready).

16. For more information on these bills, see *2021–2022 Tepper Report*, *supra* note 6, at 6; *The State of Social Enterprise and the Law*, GRUNIN CTR. FOR L. & SOC. ENTREPRENEURSHIP, 9 n.25 (2023), [https://scentlawtracker.org/wp-content/uploads/2023/09/2022\\_2023\\_Grunin\\_Tepper\\_Report.pdf](https://scentlawtracker.org/wp-content/uploads/2023/09/2022_2023_Grunin_Tepper_Report.pdf).

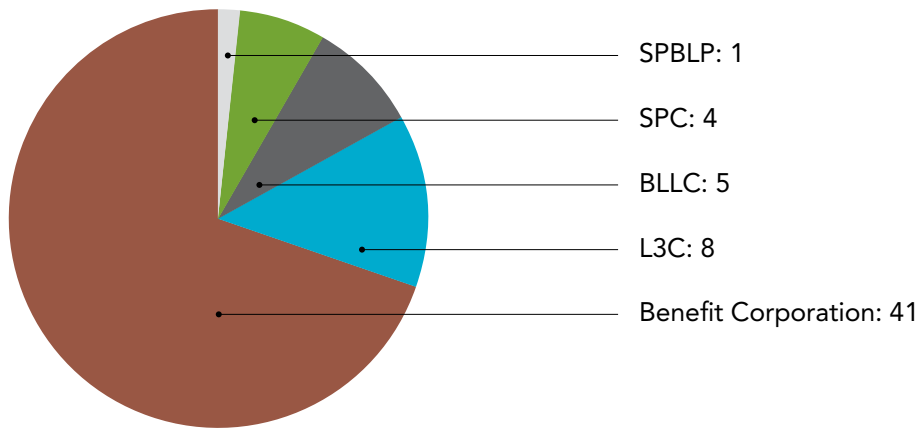
17. Cheryle Tsutsumi, *Supporting Kānaka Maoli Social Enterprises From the Continent*, KA WAI OLA (Dec. 1, 2023), <https://kawaiola.news/on-the-continent/supporting-kanaka-maoli-social-enterprises-from-the-continent/>.



## Current Social Enterprise Landscape

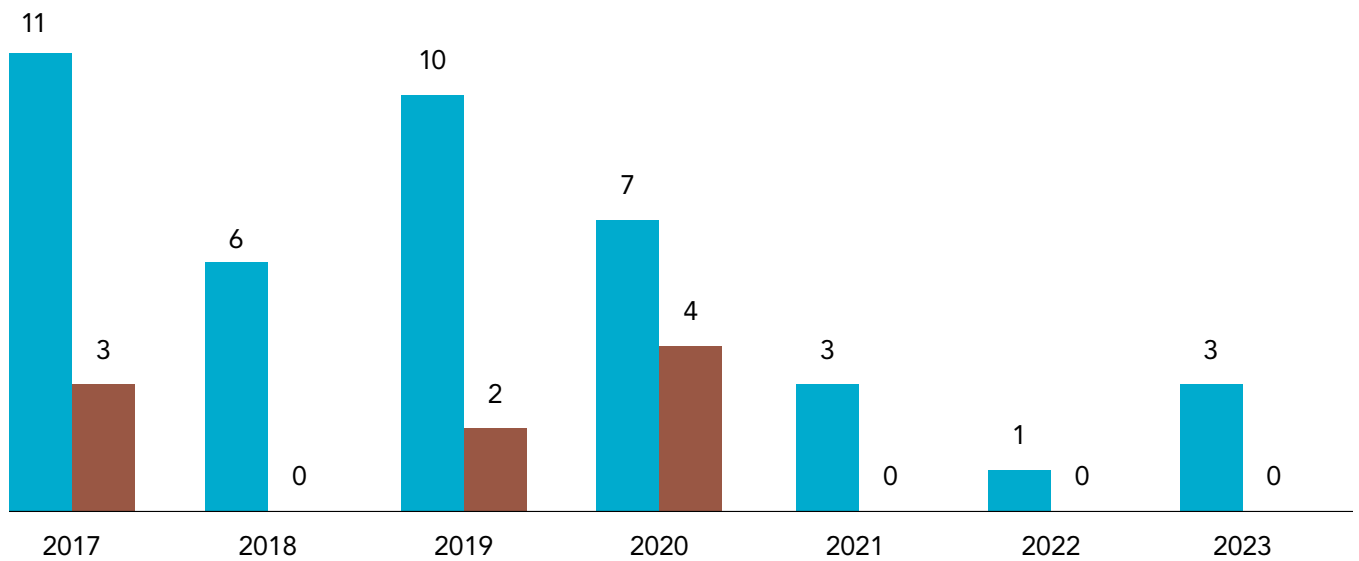
### 2023 Trends

US Social Enterprise Landscape, 2023



### Benefit Corporation Bill Passage Rates

■ Total Bills Introduced ■ Bills Passed



# The Benefits of Being a Benefit Corporation

## A Comparative Overview of Benefit Corporation Legislation: Oregon's Enactment and Massachusetts's Proposal

Both Oregon's HB3572 and Massachusetts's H4016 grant preferential treatments to benefit corporations. This section of the report gives a comparative overview of the two bills and outlines the different approaches taken by Oregon and Massachusetts.

### Oregon – HB 3572<sup>18</sup>

Oregon's HB 3572 was enacted on September 24, 2023. The bill encourages contracting agencies (that utilize public funds for acquiring goods and services for a public use) to grant preference to procuring public use goods and services by a benefit corporation, where the majority of its regular and full-time workforce operates in Oregon at the time of bidding. This legislative measure allows for a consideration of up to a 5 percent higher cost in bids from benefit corporations compared to those from non-benefit corporations. This means that if a benefit corporation's bid for a contract does not exceed the lowest bid from a non-benefit corporation by more than 5 percent, contracting agencies can then exercise their discretion to award the contract to the benefit corporation.

### Massachusetts – H4016<sup>19</sup>

Massachusetts introduced a bill on July 26, 2023, providing for a corporate tax reduction of 1.5 percent to benefit corporations that offer a set of employee-focused benefits. Specifically, to qualify for this tax incentive, benefit corporations must implement at least four out of the following six benefits: (1) providing a living wage; (2) offering paid parental leave; (3) establishing flexible spending accounts for employees; (4) maintaining a maximum wage disparity of 25:1 between the highest executives and the

lowest-paid employees; (5) operating under an employee cooperative model as outlined in chapter 157A; and (6) returning a minimum of 10 percent of the corporation's profits to its employees.<sup>20</sup>

## Strategic Incentives: State Legislation and the Advancement of Societal Goals Through Benefit Corporations

### Oregon – HB 3572

The contracting preference provided to benefit corporations under Oregon's HB 3572 would apply to any Oregon benefit corporation (where the majority of their regular and full-time workforce operates in Oregon), as long as it is incorporated as such. This bill demonstrates Oregon's efforts to encourage more companies to incorporate and operate in Oregon as benefit corporations and signals Oregon's commitment to social and environmental responsibility of benefit corporations. Under Oregon's benefit corporation bill (HB 2296), a benefit corporation is defined as a corporation or limited liability company that considers its impact on society and the environment in addition to earning a profit.<sup>21</sup> Benefit corporations are required to<sup>22</sup> (1) report to the public the "general public benefits" generated from their business operations; (2) report their performance and receive an independent third-party assessment of their performance on an annual basis, and (3) have their directors, officers, and managers consider the impact of their decisions on multiple constituencies other than the shareholders.

In practice, however, many reports have identified shortcomings in holding benefit corporations accountable, including the vagueness of the definition of "general public benefit," the challenge of balancing the interests of shareholders and other stakeholders, and the lack

18. H.B. 3572, 82nd Leg. Assemb., Reg. Sess. (Or. 2023).

19. H.B. 4016, 193rd General Court, Reg. Sess. (Mass. 2023).

20. *Id.*

21. S. COMM. ON LAB. AND BUS., STAFF MEASURE SUMMARY, H.B. 3572, 82nd Leg. Assemb., Reg. Sess. (Or. 2023).

22. BENEFIT COMPANY, OREGON SECRETARY OF STATE, <https://sos.oregon.gov/business/Pages/benefit-company.aspx> (last visited June 18, 2024).

of robust enforcement mechanisms to ensure ongoing compliance with their stated public benefit goals and reporting obligations. There are concerns expressed that the lack of rigorous oversight and enforcement raises the risk of “greenwashing,” where companies may claim the benefit corporation label without actually changing their behaviors or creating meaningful positive impacts.<sup>23</sup> The analysis notes that shareholders of Oregon benefit corporations only have a limited private right of action to ensure compliance without the ability to seek monetary damages, which may not be a sufficient deterrent.<sup>24</sup>

Given the potential difficulty in enforcing Oregon benefit corporations to meet the unique requirements of its corporate form, as well as no additional requirements imposed to receive preferential benefits, one challenge of HB 3572 could be that some benefit corporations may receive preferential benefits just by being incorporated as benefit corporations even if they act no differently than those incorporated under other forms.

### **Massachusetts – H4016**

Massachusetts’s H4016 represents Massachusetts’ legislative effort to address societal inequalities issues through operational reforms within corporations. Unlike Oregon’s HB 3572, which emphasizes transparency and third-party verification, H4016 focuses on direct interventions to promote opportunity, address income disparities, and reduce poverty in the state. At the heart of this statute is the establishment of a legislative commission dedicated to identifying strategies for economic and social improvement.

A key provision of H4016 is the advocacy for a living wage, ensuring that full-time workers can afford basic necessities and improve their living standards. This approach to poverty alleviation is complemented by initiatives aimed at increasing democratic governance within corporations and encouraging employee involvement in decision-making processes.<sup>25</sup> Furthermore, the statute supports the Equal PayMA initiative, targeting wage gaps and fostering pay equity across genders and minorities in Massachusetts.<sup>26</sup>

In order to receive the tax benefits specified in H4016, an entity has to be (1) incorporated as a benefit corporation in Massachusetts and (2) offer its employees at least four of the six employee benefits specifically outlined in the bill. It is not enough that an entity is legally designated as a benefit corporation under Massachusetts law.

The divergent approaches between Massachusetts and Oregon highlight the varying ways in which policymakers can incentivize and regulate benefit corporations. The emphasis on operational practices of benefit corporations in H4016 suggests a more prescriptive model, where the preferential treatment is directly tied to the corporation’s adherence to certain operational practices. This contrasts with Oregon’s approach, where the preferential treatment hinges only on electing to incorporate as a benefit corporation and maintaining a majority of its full-time workforce in Oregon.

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23. BENEFIT COMPANY LABEL MARRED BY CONFUSION AND LAX REPORTING PRACTICES, OREGON BUSINESS (June 10, 2020), <https://oregonbusiness.com/18511-benefit-company-label-marred-by-confusion-and-lax-reporting-practices/> (last visited June 18, 2024).

24. *Id.*

25. H.B. 4016, 193rd General Court, Reg. Sess. (Mass. 2023).

26. *EqualPayMA: Closing the Wage Gap in Massachusetts*, MASS. OFF. OF ECON. EMPOWERMENT, <https://www.mass.gov/equalpayma-closing-the-wage-gap-in-massachusetts> (last visited Apr. 7, 2024).

# Opting Out of Social Enterprise Forms

## Rhode Island L3C Repeal

The L3C was the first specialized social enterprise legal form available in the United States, with Vermont being the first state to introduce the form via an L3C statute in 2008.<sup>27</sup> The L3C spread quickly, and, by 2011, Rhode Island became the ninth state to enact legislation authorizing the form.<sup>28</sup> However, with the rising popularity of other social enterprise forms, the L3C lost traction among state legislatures, and no new L3C legislation has been enacted as of 2012.<sup>29</sup>

In 2023, Rhode Island senator Dawn M. Eurer introduced a revised version of the state's LLC Act, which notably included the repeal of the L3C form.<sup>30</sup> Prior to Rhode Island's attempted repeal, North Carolina had also eliminated the L3C form in 2014, just four years after introducing it. The state allowed existing L3Cs to maintain their designation, but the repeal underscored a growing sentiment that the L3C structure was, in some respects, redundant or unnecessary. Warren Kean, the chair of the North Carolina Bar Association Joint Task Force that drafted the LLC Act abolishing the L3C, described the form as "deadwood".<sup>31</sup>

According to the summary of the bill that introduced the 2023 Rhode Island repeal, the primary objectives were to streamline the legal framework governing LLCs, enhance clarity in the management and operation of LLCs, and align the state's laws with contemporary practices for business entities.<sup>32</sup> Revisions to the new LLC code are largely technical, focusing on updating language and making other minor revisions rather than implementing substantial alterations to the rights or responsibilities

of LLCs. There appears to be no public commentary or news coverage on the repeal of the L3C form. There is no explicit mention of the incorporation of social enterprise governance ideas into the new code.

## Jibu Case Study

Not only are states repealing their L3C legislation, but companies are also rethinking the utility of the L3C corporate form. In 2020, Jibu Inc. (Jibu) reincorporated as a C-Corporation (C-Corp) in Delaware after operating for approximately eight years as an L3C in North Carolina. This was not the first time that Jibu had to grapple with determining the most appropriate corporate form for its social franchise network.<sup>33</sup>

In 2012, Galen and Randy Welsch embarked on a mission with the founding of Jibu, aiming to provide affordable drinking water to East Africans while simultaneously equipping local entrepreneurs with the leadership skills needed to establish and manage their own water businesses.<sup>34</sup> The founders chose to incorporate the company in the state of North Carolina as an L3C.<sup>35</sup>

They made this decision after evaluating various legal structures, including those newly recognized under social enterprise statutes. Although they initially contemplated forming an LLC that would explicitly state its charitable intentions within its operating agreement, they sought a legal form that would overtly communicate to both potential investors and the public Jibu's dual commitment to social and financial goals.<sup>36</sup>

27. See *Mapping the State of Social Enterprise and the Law*, GRUNIN CTR. FOR L. & SOC. ENTREPRENEURSHIP, 4 (2018), [https://socentlawtracker.org/wp-content/uploads/2022/04/2017-2018\\_Grunin\\_Tepper\\_Report.pdf](https://socentlawtracker.org/wp-content/uploads/2022/04/2017-2018_Grunin_Tepper_Report.pdf) [hereinafter *2017–2018 Tepper Report*].

28. Stoel Rives LLP, *Rhode Island Becomes the Newest State to Authorize Low-Profit LLCs - What's Going on Here?*, LEXOLOGY (Sep. 12, 2011), <https://www.lexology.com/library/detail.aspx?g=ea1f51ed-1ba4-4a14-874a-70ec4becb9e2>.

29. See *Mapping the State of Social Enterprise and the Law*, GRUNIN CTR. FOR L. & SOC. ENTREPRENEURSHIP, 9–10 (2019), [https://socentlawtracker.org/wp-content/uploads/2019/05/Grunin-Tepper-Report\\_5\\_30\\_B.pdf](https://socentlawtracker.org/wp-content/uploads/2019/05/Grunin-Tepper-Report_5_30_B.pdf).

30. S.B. 916, 2023 Gen. Assemb., Reg. Sess. (R.I. 2023).

31. Anne Field, *North Carolina Officially Abolishes the L3C*, FORBES (Jan. 11, 2014), <https://www.forbes.com/sites/annefield/2014/01/11/north-carolina-officially-abolishes-the-l3c/?sh=2d5dfa613d7f>.

32. For a summary of S.B. 916, see SB 916, FASTDEMOCRACY, <https://fastdemocracy.com/bill-search/ri/2023/bills/RIB00026189/> (last visited May 27, 2024).

33. For more information on the prior case study, see *2017–2018 Tepper Report*, *supra* note 31, at 2–7.

34. About, JIBU, <https://jibuco.com/about/> (last visited Apr. 7, 2024).

35. E-mail from Galen Welsch, co-founder and CEO, Jibu, to Alice Thai, student, NYU School of Law (Mar. 11, 2018, 11:37 AM) (on file with author).

36. *Id.*

Jibu's founders also believed that the L3C offered greater flexibility compared to another emergent form of social enterprise, the benefit corporation.<sup>37</sup> Whereas the requirement for the social purpose of an L3C is that it acts in furtherance of a "charitable or educational purpose,"<sup>38</sup> the benefit corporation must intend to have a "material, positive impact on society and the environment."<sup>39</sup> Furthermore, the benefit corporation must "consider the interests of a broad variety of stakeholders, including, but not limited to, the community, employees, and consumers."<sup>40</sup> Consequently, in 2012, they opted to incorporate Jibu as an L3C in North Carolina, one of nine states that authorized the form at the time.<sup>41</sup>

Shortly after Jibu's establishment as an L3C, North Carolina's legislature, responding to escalating debates over the efficacy of L3Cs,<sup>42</sup> repealed its L3C statute, effective January 1, 2014.<sup>43</sup> While this form would no longer be available to new companies to incorporate in North Carolina, as an existing L3C, Jibu was permitted to continue to operate in North Carolina as an L3C, and it continued to do so for six more years.

### **From L3C to C-Corp: The Evolution of Jibu**

In 2020, Jibu embarked on a significant transformation as the company opted to reincorporate in Delaware as a C-Corp and build its charitable mission directly into its governing documents.

The transition from an L3C, however, was not a response to North Carolina's repeal of the L3C form. Instead, the decision was heavily influenced by the need to better account for larger funders and to facilitate international transactions. By transitioning out of the L3C form,

Jibu would be able to address the evolving needs of investors as the company grew. One of the lead investors during a final funding round insisted on Jibu's reincorporation in Delaware as a condition for its investment. This requirement prompted Jibu's management to explore the feasibility of changing its corporate structure without compromising its mission.

Jibu had already been facing more burdens than benefits by being an L3C, as the L3C form was frustrating potential investors. For foreign investors, the tax implications of an LLC/L3C structure posed significant hurdles to Jibu's capital raises, necessitating the creation of a separate "blocker" corporation to facilitate investments. This process was cumbersome and inefficient. But despite previous grievances voiced by foreign investors about the complexities of investing in an LLC/L3C structure, Jibu had not considered changing its legal form since these investors ultimately proceeded with their investments. It was not until Jibu faced the threat of an investor withholding capital that Jibu began seriously considering the transition to a different form of legal entity.<sup>44</sup>

By the time that North Carolina decided to phase out the L3C form, Galen had already observed that there were no functional benefits or advantages to being an L3C over an LLC or a C-Corp. For US investors, operating as an L3C proved less tax-efficient than a C-Corp. C-Corps offer several tax benefits, including the possibility for Small Business Stock designation, which can significantly reduce or even eliminate capital gains tax, an advantage not available to LLCs and L3Cs.

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37. E-mail from Galen Welsch, co-founder and CEO, Jibu, to Alice Thai, student, NYU School of Law (Mar. 11, 2018, 11:37 AM) (on file with author).

38. Mystica M. Alexander, *Benefit Corporations—The Latest Development in the Evolution of Social Enterprise: Are They Worthy of a Taxpayer Subsidy?*, 38 SETON HALL LEGIS. J. 219, 237 (2014).

39. *Id.* at 243.

40. *Id.*

41. L3Cs, SOCIAL ENTERPRISE LAW TRACKER, <https://socentlawtracker.org/#/l3cs>.

42. For the original Senate Bill, see S.B. 439, Gen. Assemb., Reg. Sess. (N.C. 2013). For commentary on its repeal, see Field, *supra* note 35.

43. S.B. 439, Gen. Assemb., Reg. Sess. (N.C. 2013).

44. A similar decision was made by DIIME in Michigan when it learned that a funder would only invest in it if it changed from an L3C into a C-Corp. See *Maternal Health Start-up Makes History as First 'Do-It-Yourself' Benefit Corporation in Michigan*, FORBES (May 28, 2013), <https://www.forbes.com/sites/ashoka/2013/05/28/maternal-health-startup-makes-history-as-first-do-it-yourself-benefit-corporation-in-michigan/?sh=747e3e5d38e4>.

When incorporating Jibu for the first time, the primary objective for choosing an L3C form was to publicly commit to its charitable mission over profit-making objectives. This outward display of its social enterprise identity from the outset was particularly reassuring for foundations, even without the safe harbor of ensuring that their investments into an L3C like Jibu would qualify as PRIs. Incorporating as an L3C promoted a sense of confidence in Jibu’s commitment to a social focus.

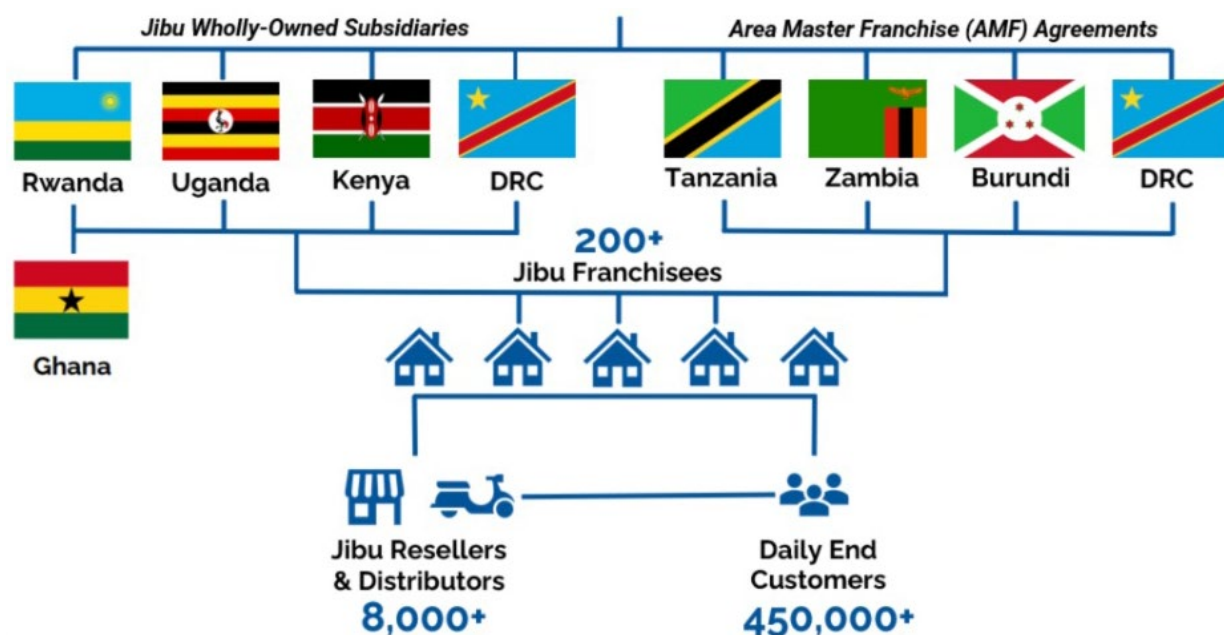
In its transition from an L3C, Jibu weighed the options of becoming either a Delaware PBC or a Delaware C-Corp. The founders ultimately decided to adopt the C-Corp framework for reasons described below.

The Jibu network includes the founding franchisor, Jibu, Inc. (incorporated as a Delaware C-Corp), Jibu Wholly-Owned Subsidiaries (incorporated in five African countries), and also Jibu’s contractual relationships with Jibu Area Master Franchisors (AMFs) and Jibu Franchisees.<sup>45</sup>

As of 2024, Jibu has 128 franchisees spread across Burundi, Rwanda, Uganda, Zambia, Tanzania, Kenya, Ghana, and the Democratic Republic of Congo.<sup>46</sup> While there are no regulations mandating PBCs to report on their subsidiaries or franchisees, companies like Jibu, which are US entities with foreign operations, would likely need to devise a method to measure and report the activities of their 128 franchisees to accurately depict their progress and success in promoting their stated public benefit in their benefit report. According to Galen, complying with such reporting requirements would entail additional costs for Jibu.

Moreover, the franchise structure of Jibu’s business already adds a layer of complexity to Jibu’s business model, requiring further explanation to investors. Jibu was inclined to select a corporate form like a C-Corp that did not create still more complexities to explain to investors. Another reason Jibu did not opt for the PBC structure was the perceived rigidity and added costs of the impact reporting

## Jibu Network (2023)



45. E-mail from Galen Welsch, co-founder and CEO, Jibu, to Walla Elshekh, student, NYU School of Law (May 12, 2024, 12:11) (on file with author).

46. *Id.*

requirements imposed on PBCs. As a C-Corp, Jibu had the flexibility to establish its own impact reporting framework in agreement with its stakeholders. According to Galen, the state-determined and audited impact reporting for PBCs was a drawback, leading to additional legal costs beyond those of an internally created framework.<sup>47</sup>

Once the founders determined that a C-Corp made more sense for Jibu than a PBC, the next challenge was ensuring that they would not sacrifice their social mission work for a new entity type. Although Galen emphasized that it was the business model that drives impact and not the entity type or the content of the company's governing documents, he still wanted to use Jibu's charter to reinforce the company's business mission and create an extra "buffer" in negotiations with potential investors.<sup>48</sup>

Working with its attorneys, Jibu incorporated its mission and purpose into the bylaws. Jibu's founders were initially concerned that they would receive pushback from the Delaware registrar for incorporating their social purpose language into their charter; however, they received no such pushback. Galen thinks this is due in part to the movement advocating for companies to move beyond the shareholder primacy model.<sup>49</sup> Jibu's articles incorporating their mission and purpose were accepted by the State of Delaware.

Under Delaware law, PBCs are generally formed in the same manner as a traditional corporation. However, the certificate of incorporation must explicitly state that it is a PBC within the heading and identify one or more specific public benefits.<sup>50</sup> Public benefits refer to "a positive effect (or a reduction of negative effects) on one or more categories of persons, entities, communities, or interests (including, but not limited to, artistic, charitable, cultural, economic, educational, environmental, medical, religious, literary, scientific, or technological interests)."<sup>51</sup> Additionally, Delaware does not impose any special rules or regulations pertaining to PBC bylaws, allowing them to follow the same guidelines as traditional corporations. Below are two examples of how C-Corps and PBCs organize their charter language, including how Jibu structured itself.

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47. E-mail from Galen Welsch, co-founder and CEO, Jibu, to Walla Elshekh, student, NYU School of Law (May 18, 2024, 3:26 AM) (on file with author).

48. For an example of how the charter operates as a "buffer," see the discussion *infra* section "Benefits of Blurring Forms."

49. In *McRitchie v. Zuckerberg* (2024), the Delaware Court of Chancery dismissed Meta shareholder lawsuit claiming that directors' obligations extend beyond the interest of Meta and Meta alone. Given that Meta's certificate of incorporation does not specify a narrow statement of corporate purpose to serve the interests of diversified stockholders, the court ruled that Meta's directors did not breach their fiduciary duties to its diversified stockholders by seeking to generate "firm-specific" value without considering the impact on other companies or the economy as a whole. Although this case supports Meta's efforts to maintain the traditional shareholder primacy model, it also offers dicta supporting private ordering options. For instance, as Jibu did, companies can incorporate limited-purpose clauses in their corporate charters if they wish to pursue broader stakeholder interests and value-maximizing options.

50. Del. Code Ann. tit. 8, § 362(a).

51. Del. Code Ann. tit. 8, § 362(b).

	C-Corp	PBC	Jibu, Inc.
<b>Certificate of Incorporation: Purpose</b>	“The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.”	“The specific public benefit purpose of the corporation is to (insert benefit purpose).”	<p>“The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized and incorporated under the DGCL. Subject to the foregoing, the Corporation’s purposes and objectives shall include, but not be limited to:</p> <ul style="list-style-type: none"> <li>A. generating thriving wellness in communities served via provision of essential services including but not limited to drinking water, energy, nutrition, health care, education, and capital;</li> <li>B. creating meaningful business ownership opportunity for co-invested emerging market entrepreneurs; and</li> <li>C. transforming emerging markets with a globally replicable business model that equitably generates wealth and wellness, without compromising either.</li> </ul> <p>The Corporation shall be managed to balance financial profitability and charitable objectives which work in concert to support the vitality and longevity of the Corporation.</p>
<b>Bylaws</b>	No specific language; however, under 8 Del. C. §109, cannot contain a provision that is contrary to law or the corporation’s certificate of incorporation.	No specific language; apply the same rules as C-Corp.	<p>ARTICLE VII: CORE CHARITABLE MISSION &amp; PURPOSE</p> <p>Section 1: The Company’s Purposes are Built on the Following Principal Assumptions:</p> <ul style="list-style-type: none"> <li>a. Billions of people across the globe do not have ready access to safe water and a range of other essential products and services that enable life in all its fullness.</li> <li>b. Sole reliance on the current system of donor-funded aid has proven to be largely ineffective and unsustainable.</li> <li>c. A systemic and sustainable solution must engage the latent energy of the very beneficiaries this aid is designed to help, enabling them to better control their own destinies and create a virtuous cycle of wealth for themselves and their communities.</li> <li>d. Western business concepts, capital and talent, when contextualized properly in emerging markets can create new partnerships that can radically change the paradigm of aid dependency.</li> <li>e. Developing a network of self-sustaining, scalable, for-profit enterprises with charitable purpose could better address the pervasive, complex, systemic needs in emerging markets.</li> </ul>



	C-Corp	PBC	Jibu, Inc.
			<p>Section 2. Purposes:</p> <ul style="list-style-type: none"> <li>a. Ensure that every emerging market citizen has sustainable access to a range of essential products and services that serve the most basic human needs such as safe water, proper nutrition, better energy solutions, health care, education, access to capital, and more that enables life in all its fullness.</li> <li>b. Make drinking water safe, accessible, and affordable to every person by marshaling capital in a way that self-propagates, offering alternatives to aid dependency.</li> <li>c. Do good and do well. Establish a business in which profit, although of subordinate importance to our primary charitable purpose, is a key enabler of our ultimate mission to provide self-propagating solutions for those who most need it.</li> <li>d. Identify, train, empower, and partner with trusted leaders in emerging markets to create geometrically scalable, for-profit enterprises that provide for these most basic human needs by means of mission-driven, ethical business ownership and fair-paying jobs that also jumpstart a virtuous economic cycle in their communities.</li> <li>e. Via ethical business ownership experience, provide opportunity for these leaders to gain exemplary values, life skills, and business acumen with the expectation that they will reproduce other leaders with the highest levels of character and competence.</li> </ul>

## Benefits of Blurring Forms

Jibu’s commitment to its social mission, evident throughout its charter, serves as a clear signal to the public, particularly potential investors, that its social purpose is deeply ingrained in the DNA of the company and not merely a brand or empty rhetoric. Galen emphasizes that embedding this language within Jibu’s governing documents and legal framework is instrumental in safeguarding against mission drift. It ensures that investors align closely with Jibu’s mission, contributing to its long-term sustainability and impact.

For Galen, the language in the charter ensures mission alignment with investors not only at the investment stage, but throughout the life of the company. As ownership of the company increasingly shifts to investors who are not directly involved in management, maintaining alignment becomes even more crucial. These investors may eventually influence on-the-ground activities, making mission alignment imperative to steer the company in the right direction.

Jibu’s journey illustrates how companies can navigate the complexities of corporate forms, particularly when existing corporate structures do not fully align with their needs and objectives. While each form has its own set of regulations, there exists flexibility for companies to tailor and essentially “DIY” the corporate structure to better suit their needs. In the case of Jibu, the founders sought a form that would minimize additional costly reporting burdens, integrate their social mission, and facilitate investor engagement. As a result, Jibu devised a hybrid model that exists between a PBC and a C-Corp to achieve the right fit. Jibu’s story raises intriguing questions about the future of traditional corporate forms. Will other companies, like Jibu, consider blurring corporate forms to retain a social mission while avoiding onerous and potentially changing reporting requirements imposed on PBCs?

# Legal Literature Review Initial Findings

As of May 2024, this year's cohort of Tepper Fellows, under the leadership of Professor Anne Tucker of George State University College of Law, were in the process of conducting a legal literature review of the field of social entrepreneurship and impact investing. This project serves as an update to a prior legal literature review covering articles published in US law review journals between 2007 and 2017.<sup>52</sup> Although this research is still in process, we can present a few initial findings and implications.

The prior literature review identified approximately 250 articles relevant to the fields of social entrepreneurship and impact investing published over a 10-year period. Our initial research suggests that the pace of publishing relevant articles has increased over the period between 2018 and 2023. In the first review, there was a high prevalence of articles analyzing social enterprise statutes, reflecting the relatively high level of legislative activity in this area during the 2010s.<sup>53</sup> Unsurprisingly to readers of this report, which has highlighted a slowing of legislative activity in creating new social enterprise forms, the number of articles focused on a discussion of social enterprise forms other than the public benefit corporation has dropped in the updated literature review.<sup>54</sup> The number of articles discussing the public benefit corporation increased from the first review.

In addition, our research has identified a growing number of critiques of social enterprise forms in the academic literature. Topics range from the lack of adoption by companies to weaknesses in the enabling legislation. A common claim is that social enterprise aims can be accomplished under traditional corporate forms. In response to these critiques, some academics have advocated for more stringent requirements to organize and operate as a social enterprise, while others have called for abolishing one or more of the social enterprise forms entirely.

Another theme in the recent legal literature is a focus on lawyering in connection with social enterprises. Our initial research identified articles related to the unique challenges social enterprise clients face and how to advise social entrepreneurs. For example, one article explores the new role of “social enterprise lawyers,” who both advise social enterprises and incorporate a “social change ethos” into their practice.<sup>55</sup> Now that the legal framework is better established and the number of social enterprises continues to grow,<sup>56</sup> these articles reflect the need for effective corporate lawyering in the space.

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52. Deborah Burand & Anne Tucker, *Legal Literature Review of Social Entrepreneurship and Impact Investing (2007–2017): Doing Good by Doing Business*, 11 WM. & MARY BUS. L. REV. 1 (2019). For a description of the work by the Grunin Center, see 2017–2018 Tepper Report, *supra* note 31, at 19–22.

53. 2017–2018 Tepper Report, *supra* note 31, at 22. During the period 2007–2017, the benefit corporation was discussed in 156 articles, the L3C was discussed in 117, the public benefit corporation in 51, and the flexible purpose and social purpose corporation in 51.

54. Our initial research identified that during the period 2018–2023, the benefit corporation was discussed in 97 articles, the L3C was discussed in 39, the public benefit corporation in 63, and the flexible purpose and social purpose corporation in 28. These numbers are subject to change based on the completed project.

55. Alina S. Ball, *Social Enterprise Lawyering*, 88 UMKC L. REV. 803 (2020).

56. See discussion *supra* section “Overview of Different Forms.”

# Conclusion

The year 2023 reflected a nuanced and evolving understanding of social enterprise forms. Legislative efforts in states like Oregon and Massachusetts demonstrate a continued interest in promoting benefit corporations through specific incentives. However, the stagnation or rollback of such forms in other states like Rhode Island raises critical questions about the future direction of social enterprise legislation.

Jibu's transition from an L3C to a Delaware C-Corp exemplifies the practical challenges and considerations for social enterprises. The move was driven by the need for better investor alignment and operational efficiency, highlighting that traditional corporate forms can be adapted to support social missions effectively. Jibu's experience underscores the option of embedding social goals in governing documents, rather than relying solely on the legal form to signal commitment to social impact.

Additionally, initial findings from our ongoing legal literature review indicate a growing skepticism towards specialized social enterprise forms. Scholars argue that traditional corporate structures can achieve social goals without the added regulatory burdens of social enterprise forms. The increasing focus on operational practices over legal forms suggests a shift in academic discourse towards understanding how companies and their investors drive social impact through their actions and policies.

The above 2023 legislative analysis, Jibu's case study, and early findings from the legal literature review raise interesting questions about the future of social enterprise forms. Are legislative attempts to direct incentives to enterprises that incorporate in a particular form (such as benefit corporations) likely to continue? If they do, how will these legislative initiatives deal with companies like Jibu who refuse to incorporate under one of the new legal forms, yet impose social mission goals in their governing documents such as charters and bylaws? Similarly, will legal scholarship continue to shift to how companies operate and focus less on legal form? Finally, to what extent will legal scholarship focus increasingly on how investors shape operational decisions rather than legislative frameworks?

# Recognition of the Tepper Family

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

