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The Benefits Of Benefit LLCs

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by

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INTRODUCTION

Benefit Companies and Social Enterprise

In recent years many U.S. states, including all northeastern states except Maine, have modified their business entity statutes to permit the formation of benefit companies, and it is currently under consideration in several others.[1] Benefit companies are for-profit businesses and subject to the same tax treatment and organizational structure as other for-profit businesses. The difference is that benefit companies formally declare that their business purposes include both profits and pursuing some benefit to society. The term benefit company includes benefit corporations (Benefit Corporations), benefit limited liability companies (Benefit LLCs) and other comparable entities.[2] The benefit company structure is intended for use by companies seeking to engage in social enterprise.[3]

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The first state to permit benefit companies was Maryland in 2010 and since then the movement has spread steadily throughout the country. As of December 31, 2016, 30 states and the District of Columbia permit Benefit Corporations, but only two of them, Oregon and Maryland, allow Benefit LLCs. Despite the growing interest in Benefit Corporations, there has not been the same interest in also allowing Benefit LLCs. One major proponent of Benefit Corporations expressed the opinion that Benefit LLCs were unnecessary because the flexibility in organizing and operating LLCs makes Benefit LLCs unnecessary to achieve the goals of social entrepreneurs.[4] A list of states permitting various kinds of benefit companies is included in Appendix A.

This paper seeks to provide some basis for deciding whether states should permit Benefit LLCs. Answering this question requires some understanding of the basics of business entity formation, and also the distinctions between Benefit Corporations and Benefit LLCs, both in terms of formation and with regard to how each type of entity is actually being used. The analysis contained in this paper focuses on data for Benefit Corporations in Connecticut and Oregon, and Benefit LLCs in Oregon. Oregon's data was much more easily accessible than that of Maryland, the only other state which permits Benefit LLCs. Also, Connecticut and Oregon provide business entity data in similar formats, which allows for useful comparisons. Statistical analysis was performed on the available data, both overall numbers for each type of entity and information on business activity and whether they are actually achieving the goals of social enterprise.

The research discussed here is of value to parties interested in social enterprise and also to policymakers who are considering what steps to take to promote social enterprise. The specific question addressed is whether Connecticut should permit Benefit LLCs. A proposal to allow Benefit LLCs is currently before the Connecticut General Assembly, and the same question is likely being considered in other states. While other research has focused on the anticipated future utility of benefit entities in promoting social enterprise, this paper looks at available data from actual activity for the two different entity types. Although benefit companies are still a relatively new phenomenon, there is now sufficient history to provide some evidence of the benefits and drawbacks of the different entity forms. This research will not only benefit both business decision makers who may be contemplating the use of a benefit entity, but also persons involved in state government policy making with regard to how the law on benefit entities should work to achieve policy goals, and more specifically on whether states interested in promoting social enterprise should permit the formation of Benefit LLCs.

This paper is divided into three sections: Social Enterprise and Social Entrepreneurship: Theory and Practice, Analysis, and Conclusions and Proposals. The first section contains a discussion of the important topics and concepts. The Analysis section describes the steps taken to identify and assemble relevant information and how it was analyzed to produce relevant information. Finally, the Conclusions and Proposals section provides a summary of the conclusions to be drawn from the data analysis in light of the overall purpose of this paper, as well as proposals for policymakers and other stakeholders to consider when adopting or modifying benefit company legislation.

SOCIAL ENTERPRISE AND SOCIAL ENTREPRENEURSHIP: THEORY AND PRACTICE

The creation and use of benefit company entity forms arises from the concepts of “social enterprise” and “social entrepreneurship.” Many authors have noted that there still no widespread agreement on how to define these terms.[5] However, one broad definition is that "The defining characteristic of social enterprises is that they aim both to make a profit, though perhaps a reduced profit, for equity investors and also to do some social good."[6] This is generally considered to be a more ethical way of doing business. Studies have shown that consumers, investors and entrepreneurs all have a growing interest and occasional preference for social enterprise.[7] Other reports have shown that potential employees want to work for companies that are concerned about society.[8] In addition, social enterprise businesses have the ability to attract investors for whom social causes are a concern, who engage in what is referred to as "socially responsible investing" or SRI. [9]

Conflict with the Profit Maximization Model

While entrepreneurs, investors, customers and potential workers may express an interest in social enterprise, it contains an inherent conflict with one of the bedrock principles of American corporate law, the goal of profit maximization. American courts have typically emphasized the goal of profit maximization as being the primary purpose of engaging in business through a business entity. Well known cases such as *Dodge v. Ford*, *Revlon* and *Unocal* have entrenched this principle.[10] Leo E. Strine Jr., Chief Justice of the Delaware Supreme Court, ridiculed the idea of Benefit Corporations, claiming that they live in a "fictional land where you can take other people's money, use it as you wish, and ignore the best interest of those with the only right to vote."[11] Despite, or perhaps because of, the fundamental principle of profit maximization, people interested in social enterprise have persisted in trying to make the concept work. One of the main ways they have done so is through benefit companies.

Lessons from Other Movements

The growth of social enterprise and benefit companies has been compared to the business and human rights movement (BHR) and the environmental movement.[12] They are similar in that all seek to encourage businesses to consider the interests of other stakeholders. There are also some major differences between the movements. BHR is more closely associated with the actions of larger businesses, especially highly publicized incidents such as the explosion at a Union Carbide plant in Bhopal, India, child labor scandals involving companies such as Nike and working conditions in manufacturing plants in Asia.[13] By comparison, the benefit company movement still consists mostly of newly-formed small or mid-sized businesses, although promoters of benefit companies are trying to make it spread to multinational or publicly traded companies.[14]

One of the lessons that the social enterprise movement has learned is to try to avoid the social enterprise version of "greenwashing." Greenwashing refers to efforts by businesses to get the marketing benefits associated with environmentalism, without actually doing much for the environment.[15] To prevent something similar from happening with benefit companies, the legislation has been drafted to require benefit reports and the use of third party standards, as discussed below.[16]

Arguments Against Benefit Companies

While benefit companies have generally been greeted positively, some have argued that benefit company legislation is unnecessary because companies can engage in social enterprise using traditional corporation or LLC statutory schemes.[17] As is discussed below, there are many corporations and LLCs which have been recognized as social enterprises without being Benefit Corporations or Benefit LLCs. It has even been argued that benefit company statutes are harmful because of the risks of greenwashing and also that consumers may wrongly assume that businesses which have not formally registered with the state as Benefit Corporations or Benefit LLCs cannot be social enterprises.[18] Some argue that while corporate law uses profit maximization as a default rule, it is flexible enough to allow social enterprise as a matter of contract law.[19] Others have focused on the special concerns that benefit company status creates for business managers who have to make decisions that balance both profit and social benefits.[20]

The Low-Profit Limited Liability Company

Another form of social enterprise business entity which has been created in recent years is the Low-Profit Limited Liability Company, also known as L3Cs. However, there are limitations on the business operations of L3Cs which makes this form not usable for the typical social enterprise.[21] The statutes creating L3Cs were specifically designed for use by nonprofit foundations that wish to obtain some kind of return on their contributions.[22] Private foundations are required by the IRS to distribute at least 5% of their assets for charitable purposes, which can include "program related investments." Such investments can include distributions to entities whose corporate purpose is not primarily to produce profits.[23] L3C enabling legislation is carefully drafted to adhere to the tax code limitations.

The limitations imposed on L3Cs has muted interest in this form of business entity. As of March 2016, only eight states allow L3Cs (not including North Carolina which permitted them in 2010, but then repealed its law in 2014).[24]

Concerns have also been expressed that L3Cs will divert funding from charities.[25]

reSET

The idea for this paper arose from a request for research into these topics by reSET Social Enterprise Trust, a Hartford based non-profit organization that promotes entrepreneurship, especially in the social enterprise sector. reSET was founded in 2007 by Kate Emery. Ms. Emery was the CEO of The Walker Group, Inc., a successful technology services firm that she had founded in 1985. Ms. Emery wanted to restructure The Walker Group's business purpose from the traditional profit maximization model to a model that sought to maximize social contribution.[26] The Walker Group's organizational documents now require that profits must be split equally among employees, the community and shareholders. Out of that experience, Ms. Emery then went on to found reSET.[27] reSET was one of the primary advocates for getting Connecticut to adopt legislation permitting Benefit Corporations and is also advocating for Benefit LLCs. James Woulfe, reSET's former Director of Advocacy & External Affairs worked closely with the Connecticut Bar Association on this effort.

Although the management and owners of The Walker Group, like any business, could demonstrate a commitment to social enterprise using traditional corporate law if there was sufficient support for that, Ms. Emery wanted the commitment to social enterprise to be more firmly entrenched in the company's organizational documents so that future managers or owners could not abandon this commitment. Much of the literature on benefit companies discusses the experiences of profitable businesses that were founded with some type of social enterprise mission, but were later acquired by companies that did not share that mission. Mayer (2014) and others have discussed the examples of the Ben & Jerry's ice cream business, craigslist and other companies that were founded as what would now be called social enterprises, but then struggled to maintain that identity as the business grew or was later acquired by another company.[28]

B Lab

Much of the data for this analysis came from B Lab Company, a Pennsylvania non-profit company and 501(c)(3) charity better known as B Lab. B Lab's sees its mission promoting social enterprise and benefit companies as a "force for good" in the world with goals including "systemic change" and "shared and durable prosperity" by helping stakeholders "Measure What Matters."[29]

B Lab certifies companies as "B Corporations" (commonly abbreviated to "B Corps") if they apply for certification and meet B Lab's standards. Currently B Lab is the only third party certifying benefit companies on a large scale.[30] Thus, data from B Lab's certification process is the only source of sizable data on the actual efforts and practices of benefit companies. It must be noted that B Lab uses the term "B Corp" to specifically refer to companies which it has certified. B Corp certification is not limited to any specific type of business entity. B Corps can be corporations or LLCs as well as other entity types like professional corporations.[31] Furthermore, B Corp certification does not require that the entity is a Benefit Corporation or a Benefit LLC before certification, but benefit company status must be adopted within a few years if it is available in the company's state of formation.[32]

Overview of business entity formation in the United States

Benefit Corporations and Benefit LLCs are formed pursuant to the laws of a particular state, and it is important to keep in mind the state law basis for business formation. Except for a relative handful of organizations created by the US Congress like the Federal Reserve, Red Cross and Boy Scouts, business formation in the United States occurs at the state level. The procedures required to form a business entity vary slightly from state to state. Although most companies are formed in the state where they actually conduct business, entrepreneurs are free to organize in another state if there is some advantage to doing so, such as ease of formation or the availability of a state legal system considered to me more desirable. There is a lively debate in academia about the ways that states compete to attract business formation registrations, with particular focus on Delaware which has succeeded in establishing itself as the most popular state for forming corporations.[33] Some have referred to this as a "race to the bottom" among states to make their corporate laws overly business friendly, or a "race to the top" to implement best practices.[34]

States are able to experiment with various forms of business entity types and different laws on business formation. Over time, states can learn from the experiences of sister states in deciding whether or not to adopt similar changes. The major recent example of this was the limited liability company (LLC) form itself, which was first allowed in Wyoming in 1977. Wyoming's first law on LLCs, Wyoming Statutes § 17-294, was adopted in 1977, although it has been superseded by the current Wyoming Limited Liability Company Act.[35] The other states later adopted statutes permitting LLCs, with some variation form state to state.

The National Conference of Commissioners on Uniform State Law (Uniform Law Commission) is a nonprofit association of commissioners from throughout the U.S. and its territories. Throughout its history the Uniform Law Commission has sought to bring some level of uniformity to state legislation on topics such as business formation. When significant differences exist in certain areas of the law, the Uniform Law Commission typically drafts model uniform acts for consideration by the states. The Uniform Law Commission adopted a Uniform Limited Liability Company Act in 1996, since amended, and all states now allow LLCs.[36]

The experience with benefit companies has had some similarities in terms of expansion to other states. Although the Uniform Law Commission has not yet adopted a model act for benefit companies, B Lab produced a Model Benefit Corporation Legislation and works with state legislators and other interested parties to pursue adoption of benefit company legislation throughout the country.[37]

However, there is no comparable model legislation for Benefit LLCs. The statutes in Oregon and Maryland which allow for benefit LLCs are very different. Oregon adopted a single statutory scheme for Benefit Companies which includes both Benefit Corporations and benefit LLCs.[38] Maryland adopted separate statutory schemes for Benefit Corporations and Benefit LLCs.[39] The lack of consistency and model legislation could be a problem in the future as other states decide whether to allow Benefit LLCs.

Connecticut statutory scheme

Connecticut adopted the Connecticut Benefit Corporation Act in 2014.[40] This was modeled on B Lab's Model Benefit Corporation Legislation but with one significant difference. Unique to Connecticut is the optional "Legacy preservation provision" contained in C.G.S. § 33-1355 *et seq* which is discussed below. Like other states that have followed B Lab's model legislation, Connecticut's law addresses the following main points.

Preliminary Provisions: Includes defined terms and the processes for adoption and termination of Benefit Corporation status. This is also where Connecticut introduces its legacy preservation provision.[41]

Corporate Purposes: Covers the requirements for providing a general public benefit and the option of also requiring a specific public benefit.[42]

Accountability*:* Provides guidance on how corporate directors and officers can demonstrate that they have complied with the obligations to create general or specific public benefits. This is done by considering the effects of decisions on shareholder, employees, customers, community and societal factors, the environment, the short-term and long-term interests of the corporation, and other pertinent factors. The statute clearly references the traditional "business judgment rule" which shields corporate decision makers from liability for the possible detrimental outcome of decisions provided that the decision-maker was reasonable informed, acted in good faith and did so without any conflict of interest.[43]

Enforcement: The Accountability section is also where the statutes describes the "benefit enforcement proceeding" which is the sole means by which some action can be taken if a Benefit Corporation fails to achieve public or private benefits as required or otherwise violates the act. Standing to bring such a proceeding is limited to shareholders holding at least 5% of any class of the Benefit Corporation (2% in the B Lab model legislation), or 10% of all shares of a corporate parent of a Benefit Corporation (5% in the B Lab model legislation), or other persons permitted to do so in the corporation's organizational documents. The act is clear that no one else has standing to bring such a suit. Furthermore, Benefit Corporations cannot be liable for monetary damages for a failure to pursue or create a general or specific public benefit.[44]

Transparency: This portion of the act deals with the adoption of a third-party standard for assessing the corporation's pursuit of general and specific public benefit, and the preparation and availability of a benefit report. B Lab is the best known entity providing this role of the third party standard, and the criteria that the third-party standard is required to evaluate corresponds to the areas assessed by B Lab in its "B Impact Reports," namely Environment, Workers, Customers, Community and Governance.[45]

Benefit Corporations are also required to produce an annual report on its efforts to achieve general and specific public benefits, along with other information such as compensation of directors. The statute specifies that the report does not need to be audited or certified. Benefit Corporations are required to provide the benefit report to shareholders and to post it publicly on the corporation's website if it has one. If it does not have a website, it should be provided free of charge to anyone who requests it. However, there does not appear to be any way for a non-shareholder to do anything about a Benefit Corporation's failure to pursue or achieve public benefits, or to make its benefit report available.[46]

Connecticut's Legacy Preservation Provision: All benefit company legislation, including Connecticut's Benefit Corporation Act, and B Lab's model legislation, emphasize that benefit companies are fundamentally for-profit corporations or LLCs that have chosen to adopt the additional optional status and obligations of being a benefit company.[47]

Subject to shareholder voting requirements, they are also free to terminate benefit company status and to continue as standard corporations or LLCs without any tax event, liquidation or major organizational change. Connecticut, following B Lab's model legislation, requires the affirmative vote of two-thirds of the shares of each class, even nonvoting shares.[48]

Kate Emery, the CEO of The Walker Group, Inc., and other early proponents of Benefit Corporations in Connecticut were concerned about the ability of Benefit Corporations to revoke their status. In response to this concern, Connecticut included an optional legacy preservation provision which can be adopted by a unanimous vote of the shareholders (including holders of nonvoting shares).[49] Any Connecticut Benefit Corporation which adopts a legacy preservation provision has limits on its ability to merge with an entity other than a Benefit Corporation subject to a legacy preservation provision, or to liquidate and distribute its assets except to a charitable organization or another Benefit Corporation that is subject to a legacy preservation provision.[50] The statute prohibits the adoption of a legacy preservation provision prior to 24 months after becoming a Benefit Corporation. Since the Connecticut Benefit Corporation Act became effective just a little over two years prior to this report, data on how many companies will adopt a legacy preservation provision is not yet available.

Election of Benefit Corporation status in Connecticut: Following adoption of the Connecticut Benefit Corporation Act, the Connecticut Secretary of the State of Connecticut modified its Form CIS-1-1.0, the standard form to create a for-profit business corporation, to include a Section 5 which contains a box that can be checked by the organizers.

Currently, the Connecticut Certificate of Amendment form does not contain any specific place where a Benefit

Corporation could indicate its adoption of a legacy preservation provision, but this could be inserted in Section 3 of the form where the text of any amendments is to be described.

Oregon statutory scheme

The Oregon Benefit Companies Act applies to both Benefit Corporations and Benefit LLCs.[51] With the exception of changes necessary for a statute that covers both corporations and LLCs (i.e. references to "governors" which includes both corporate directors and LLC managers), the statute is largely similar to the B Lab model legislation, including comparable sections on the Preliminary Provisions, Corporate Purposes, Accountability and Transparency as discussed above. Oregon benefit companies have similar obligations regarding general and specific public benefits, third-party standard certification, preparation and availability of annual benefit reports, shareholder rights to bring a benefit enforcement action, and protections against monetary liability and claims by non-shareholders for failing to pursue public benefit.

Election of Benefit Corporation status in Oregon: Similar to the formation of a Benefit Corporation in Connecticut, Oregon modified its existing forms of Articles of Incorporation for corporations and Articles of Organization for LLCs to include a checkable box to indicate benefit company status:

In the standard form for Oregon Articles of Incorporation, Section 7 Optional Provisions includes checkable boxes for options relating to the adoption of benefit company status, indemnification of directors, officers, etc. and another one to indicate that something else is attached. Similarly, the standard form for Oregon Articles of Organization contains a Section 9 Optional Provisions with a box that can be checked to indicate the adoption of Benefit LLC status.

By integrating the adoption of benefit company status directly into the standard forms with a check-the-box system Oregon, like Connecticut, has made it extremely easy for a newly formed company to identify itself as a benefit company. Companies which were not founded as benefit companies can adopt this status by amending their Articles of Incorporation or Articles of Organization.

ANALYSIS

Data Collection

The research below focuses on Oregon because it is the only state that permits both Benefit Corporations and Benefit LLCs and which also has accessible data. Other researchers in this area, notably Murray (2016) have commented on the difficulty they experienced in trying to obtain data on benefit companies. The websites for the Oregon Secretary of the State (http://sos.oregon.gov/business/Pages/find.aspx), and Oregon Open Data Portal (data.oregon.gov) provided very accessible data on benefit companies. Maryland is the only other state that permits both Benefit Corporations and Benefit LLCs. However, the websites for the Maryland State Department of Assessments and Taxation, which is the agency where business entity documents are filed, and the Maryland Open Data Portal (data.maryland.gov), did not provide easily accessible information on Maryland benefit companies. The data available from Oregon covers items such as date of formation, entity form (primarily corporations and limited liability companies but small numbers of other types as well, such as professional corporations), date of adoption of benefit company status, and in some cases a self-reported description of business activity.

Information available from B Lab was also analyzed. B Lab is an independent non-profit which seeks to promote social enterprise. B Lab is perhaps the best known actor promoting Benefit company legislation and Benefit companies generally. Importantly for this research, B Lab provides certification reports for companies which document and evaluate their efforts to achieve social enterprise. Benefit company statutes require that companies obtain third party certification of their social benefits. B Lab is the best known entity that provides this service. It is important to note that B Lab certification has not require that the company formally adopted "benefit company" status before obtaining B Lab certification, but certification is contingent upon adopting benefit company status within a few years of formation if it is available in the relevant state.

Analytic Framework

As described above, there are two substantive differences between the statutory schemes and entity formation processes for benefit companies in Oregon and Connecticut, (1) Connecticut's legacy preservation provision which has not yet really come into practical effect yet, and (2) Oregon's allowance of both Benefit Corporations and Benefit LLCs.

Before getting into the data analysis, it is important to note that much of the literature and research on benefit companies has focused on larger companies or how benefit company status can be used in marketing efforts or to attract investors.[52] [53] However, this emphasis on large, profitable and more established companies is not representative of benefit companies as a group. Most businesses in the U.S., even corporations and LLCs, are quite small. According to the U.S. Census, there were a total of 5,775,055 firms in the U.S. in

2013, and 4,567,571 (79%) had fewer than 20 workers. Only 103,900 (1.8%) had over 100 workers.[54] Benefit companies should not be expected to be any different.

It is very difficult to obtain useful data on small businesses, especially those that are relatively new.[55] In December 2014, it was estimated that there were only approximately 1,000 benefit corporations in existence.[56] While the number has grown since then and is changing daily, it is safe to assume that there are at most only a few thousand benefit companies in the entire U.S. By comparison, in 2014 over 169,000 business entities were formed just in the State of Delaware.[57]

Although information provided by businesses in their filings with state governments is generally available, these forms do not require disclosure of very much information. The forms of certificates of incorporation and organization to form corporations and LLCs in Connecticut and Oregon do not require disclosure of business websites or even phone numbers. This is particularly important here because the "Accountability" and "Transparency" requirements of the benefit company statutory scheme relies upon preparation of benefit reports which are not required to be filed with any state government office, but rather are supposed to be available on business websites "if any."[58]

In conducting this research, an attempt was made to identify websites for randomly selected group of non-B Lab certified benefit companies, but the results were so low and unreliable that they are not included in this paper. It is important to keep these facts in mind when analyzing the measurable impacts of the typical benefit company. The absence of references to non-B Lab benefit companies in internet search results is to be expected. The same would be true of similar searches for information on traditional corporations and LLCs founded within the last few years.

As stated above, the purpose of this research was to see if there was available data that would be useful to Connecticut policymakers who are considering the promotion of a bill to allow Benefit LLCs in Connecticut. Only two states, Oregon and Maryland, permit Benefit LLCs and thus provide possible sources for relevant information on the impact that allowing Benefit LLCs would be expected to have in Connecticut. In examining the available relevant data from Oregon and Maryland, it was clear that Oregon had more relevant and reliable data available on the topic, so it was decided to focus specifically on Oregon. Furthermore, recent research shows that although Maryland's Benefit LLC law has been in effect since 2010, as of October 27, 2015 there were only 33 Benefit Corporations and 50 Benefit LLCs in Maryland.[59] The comparable numbers in Connecticut and Oregon, discussed below, are significantly higher considering the time period since legislative adoption.

The following data was assembled from information available through the Connecticut Open Data Portal and the Oregon Open Data Portal respectively, along with information available on B Lab's website for B Lab-certified B Corps.

Descriptive Data: The following charts provide some benchmarks by which to compare Oregon and Connecticut in terms of physical area, population, and business activity.

Comparison of Connecticut and Oregon demographics, active businesses and Benefit Companies as of December 31, 2016.

	CONNECTICUT	OREGON	NOTES
Population	3,576,452	4,093,465	OR is +

			14.5%
Area, sq. mi.	5,543	93,381	OR is 16X CT
Total Domestic business entities	433,614	225,751	Excludes DBAs* and Non-Profits
New Domestic Business Entities 1/1/10 – 12/31/16	153,688	125,644	Excludes DBAs and Non-Profits
Date that benefit entity law took effect	October 1, 2014 27 months	January 1, 2014 36 months	
Number of Benefit Corps at 12/31/16	82	220	OR had 117 at 27 months
Number of Benefit LLCs	0	849	OR had 506 at 27 months
Total Benefit entities	82	1,069	OR had 623 at 27 months

[60]

* DBAs are trade names used either by legal business entities instead of the formal name, or unincorporated businesses which are conducting business under an assumed name. These

are commonly described as "doing business as." In Connecticut, such a business only files a certificate with the local town government. In Oregon, a certificate is filed with the secretary of the state and identified as an ABN for "Assumed Business Name."

Comparison of Oregon and Connecticut for Domestic For-Profit Business Entities in Existence and Business Creation Activity during the period January 1, 2010 to December 31, 2016

Oregon Data: The following information was obtained from the search function on the Oregon Open Data Portal, data.oregon.gov. For comparison purposes, Assumed Business Name (DBA) entries, as well as foreign business registrations, non-profits and duplicate filings were deleted. Note that in this context "foreign" means formed in another U.S. state.

Oregon Total Number of Domestic, For-Profit, Non-DBA Businesses in Existence on December 31, 2016 was 225,751:

Type	**TOTAL**
Cooperatives	284
Business Corporation	57,770
Business Trust	40
Limited Liability Company	160,022
Limited Liability Partnership	471
Limited Partnership	1,559
Professional Corporation	5,605
	225,751

Oregon New Businesses Formed between January 1, 2010 and December 31, 2016:

Type	**TOTAL**
Cooperatives	48
Business Corporation	17,016

Business Trust	27
Limited Liability Company	106,606
Limited Liability Partnership	158
Limited Partnership	302
Professional Corporation	1,487
	125,644

Oregon Benefit Companies and B Lab Certification: As of December 31, 2016, Oregon had 1,069 Benefit Companies, and 77 B Lab certified companies. However, not all B Lab certified companies are Benefit Companies. Only 24 companies were both Benefit Companies and B Lab certified.

Oregon Benefit Companies in Existence on December 31, 2016: Oregon permitted benefit companies starting January 1, 2014. Within three years a significant number were formed.

Type	**B LAB**	**NOT B Lab**	**TOTAL**
Business Corporation	13	200	213
Limited Liability Company	9	840	849
Professional Corporation	2	5	7
	24	**1,045**	**1,069**

98% of Oregon Benefit Companies are NOT B Lab certified. 79% are LLCs.

Oregon B Lab Certified Companies:

Type	**BENEFIT**	**NOT Benefit**	**TOTAL**
Business Corporation	13	28	41
Limited Liability Company	9	23	32
Non-Profit*		1	1

Professional Corporation	2		2
Individual		1	1
	24	**53**	**77**

*This company appears to be a subsidiary of a non-profits and is classified as such for the purposes of this paper.
69% of Oregon B Lab certified companies are NOT benefit entities.

Out of 77 B Lab certified companies:

- 8 (10%) were formed AFTER the benefit company law came into effect (1/1/14).
- 69 (90%) were created BEFORE the benefit company law.

Of the 8 B Lab certified companies created AFTER benefit company law took effect:

- 2 are benefit companies. 6 are NOT benefit companies.
- 6 are LLCs (including the 2 benefit companies)
- 1 is a professional corporation
- 1 is a DBA for an individual

Connecticut Data: The following data was obtained from the Connecticut Secretary of the State website, Business Starts and Stops Index, and the Connecticut Open Data portal, https://data.ct.gov/portal.[61]

Connecticut Total Number of Domestic, For-Profit, Non-DBA Businesses in Existence on December 31, 2016 was 433,614:

SUBTYPE	COUNT
Corporation	136,694
Domestic Limited Partnership	9,162
Domestic Limited Liability Company	285,149
Domestic Limited Liability Partnership	1,118

General Partnership	231
Domestic Statutory Trust	1,191
Other	69
	433,614

Connecticut New Businesses Formed Between January 1, 2010 and December 31, 2016:
(Domestic, For-Profit, excluding Trade Name registrations).

Type	**TOTAL**
All entity types	**153,688**

Connecticut Benefit Companies and B Lab Certification: As of December 31, 2016, Connecticut has 82 Benefit Companies, and 2 B Lab certified companies. Both of these B Lab certified companies are domestic LLCs that were formed prior to 2014. Thus, neither is a Benefit Company.

Connecticut Benefit Corporations in Existence on December 31, 2016: Connecticut's Benefit Corporation Law took effect on October 1, 2014. By December 31, 2016, the following number of Benefit Corporations were formed.

Type	**B LAB**	**NOT B Lab**	**TOTAL**
Business Corporation	0	80	80
Limited Liability Company	0	0	0
Professional Corporation	0	2	2
	0	**82**	**82**

100% of Connecticut Benefit Companies are NOT B Lab certified.

Connecticut B Lab Certified Companies:

Type	BENEFIT	NOT Benefit	TOTAL
Business Corporation	0	0	0
Limited Liability Company	0	2	2
Non-Profit	0	0	0
Professional Corporation	0	0	0
Individual	0	0	0
	0	**2**	**2**

100% of Connecticut B Lab certified companies are NOT benefit entities. 100% are LLCs.

Comparison of Data from Oregon B Lab Certified B Corps, both Corporations and LLCs: B Lab provides a numerical rating system for companies that seek certification, in the areas of Environment, Worker, Customers, Community, and Governance as well as an Overall score. This data provided criteria by which B Lab certified entities could be compared by reference to entity type (corporation vs. LLC as well as benefit company vs. non-benefit company), business activity and states of formation.

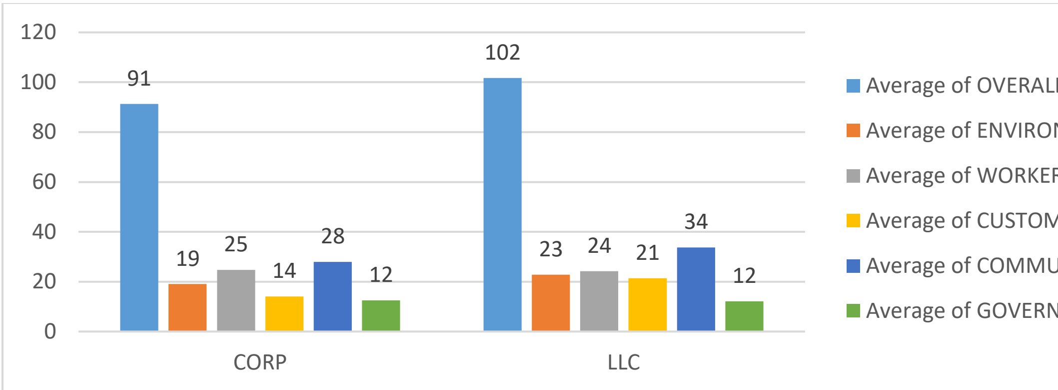
Business entity statutes and regulations do not consistently mandate public disclosure of information beyond basic data such as names, addresses, identification of agents for service of process, and stock issuance numbers. Websites, telephone numbers or even descriptions of business activity are not typically available from business filings accessible through state government websites, especially for recently formed companies. In some instances additional information can be obtained from reports filed later in an entity's existence. Since benefit company status did not become available in Oregon and Connecticut in 2014, there is very little information of that kind that is publicly available in an easily accessible format. For non-B Lab certified benefit companies, an attempt was made to obtain information on business activity and public benefits by trying to locate and then examine company websites. However, this produced very little data to assess the group as a whole.

As of December 31, 2016, there were a total of 77 B Lab certified B Corps in Oregon. Of that number, 41 were Corporations and 30 were LLCs. The remainder were a variety of other types, including an individual, affiliates of a non-profit and one professional corporation. Fifty-three of these entities were not benefit companies and 24 were. There were a total of 1,069 benefit entities, 220 were Benefit Corporations and 849 were Benefit LLCs. Thus, most Oregon benefit companies were not certified by B Lab, and most were LLCs. Of the ones that were certified by B Lab, there were more corporations than LLCs.

This data was supplemented by examining the certification reports issued by B Lab for the B Lab certified Oregon B Corps, both corporations and LLCs. This data was then analyzed using standard PivotChart functions in Excel and showed the following.

Comparison of LLCs and Corporations among Oregon B Lab certified B Corps: Comparing the performance of corporations and LLCs among Oregon B Corps showed the following:

B Lab certification scores for Oregon B Corps, both benefit companies and not benefit companies:



LLCs scored <u>higher</u> (102) than corporations (91).

Results:

Statistical analysis of Oregon's experience with Benefit Corporations and Benefit LLCs clearly shows that allowing Benefit LLCs in Connecticut can be expected to result in (a) a dramatic increase in the number of benefit companies, most of which would be Benefit LLCs, and (b) that these new Benefit LLCs are more likely than Benefit Corporations to actually produce the social benefits that are the goal of social enterprise and the reason why benefit companies exist.

CONCLUSIONS AND PROPOSALS

Conclusions

Benefit companies are still a relatively new phenomenon and a significant number of U.S. states still do not permit them. While there is a growing body of research on the topic, there is still a lack of useful data on most benefit companies. This is due to the short time that most of these companies have been in existence, and the general difficulty in obtaining information from small, privately held companies.

This research was done to specifically address the issue of whether Connecticut should join Maryland and Oregon in permitting Benefit LLCs, in addition to Benefit Corporations. Due to the lack of data available concerning most companies, the best available data came from certification reports issued by B Lab, which is the most prominent company involved in the entire benefit company movement.

Fortunately, enough B Lab certification reports were available for Oregon B Corps to compare corporations and LLCs. While the number of companies examined is relatively small, it did provide some basis for comparison. The data clearly shows that on the major Overall B Lab certification report scale, LLCs score higher on average that corporations.

Perhaps the most striking thing about the data is the very large number of Benefit LLCs in Oregon. At similar time periods following adoption of benefit company legislation (27 months after adoption), the total number of Benefit Corporations in Oregon (117) was comparable to the number of Benefit Corporations in Connecticut (82). However, at that same point in time Oregon had an additional 506 Benefit LLCs. If the creation of benefit companies is seen as desirable, then this data alone supports allowing Benefit LLCs since it has been shown to lead to a vastly increased total number of benefit companies.

Beyond just the relatively large number of benefit companies in Oregon, the data analysis above shows that among Oregon B Corps, the average Overall scores for LLCs (102) was significantly higher than that for corporations (91). While the data sets are limited and further research is needed, the best currently available data shows that LLCs are more effective than corporations in achieving the types of social enterprise benchmarks that are measured by B Lab.

Thus, a statistically supported argument can be made that Benefit LLCs are better than Benefit Corporations in actually achieving social enterprise as measured by B Lab. In short, this research shows that there is a benefit to having Benefit LLCs since LLCs have been shown to surpass Benefit Corporations in actually achieving the public benefits that these entities were intended to promote. For perhaps the first time, this provides data and analysis to support the effort by reSET and others in Connecticut to pursue a modification of Connecticut law to permit Benefit LLCs.

Proposals

The data collection difficulty will continue to be a major impediment to research in this field.[62] There is a relatively simple solution for this. Benefit Company legislation requires benefit companies to post their benefit reports on their websites. However, most states do not require business entities to identify their websites in any filings with the government. If the forms to create business entities and the periodic report forms were modified to include a space to list the company's website, even if this was not legally mandated, voluntary compliance with this would provide a very effective means for researchers to be able to examine the behavior of benefit companies, with no cost to the state other than modification of the form.

As was repeatedly noted throughout this paper, benefit companies are a new and growing field. More companies are being formed all the time, and presumably more companies are seeking B Lab certification all the time. Thus, this paper should be considered a very early analysis of a topic that will require further development.

Appendix A

States that permit Benefit Companies

State	Benefit Law Effective Date	Benefit Corporations?	Benefit LLCs?
Arizona	2014	YES	
Arkansas	2014	YES	
California	2012	YES	
Colorado	2014	YES	
Connecticut	2014	YES	
Delaware	2013	YES	
District of Columbia	2013	YES	
Florida	2014	YES	
Hawaii	2011	YES	
Idaho	2015	YES	
Illinois	2013	YES	
Indiana	2015	YES	
Louisiana	2012	YES	
Maine	Allowed L3Cs in 2011		
Maryland	2010	YES	YES
Massachusetts	2012	YES	
Michigan	Allowed L3Cs in 2009		
Minnesota	2015	YES	
Montana	2015	YES	
Nebraska	2014	YES	
Nevada	2014	YES	
New Hampshire	2015	YES	
New Jersey	2011	YES	
New York	2012	YES	
North Carolina	Allowed L3Cs 2010-2014		
Oregon	2014	YES	YES
Pennsylvania	2013	YES	
Rhode Island	2014	YES	
South Carolina	2012	YES	
Tennessee	2016	YES	
Utah	2014	YES	
Vermont	2011	YES	
Virginia	2011	YES	
West Virginia	2014	YES	

States that have not permitted benefit companies or similar entities:

Alabama, Alaska, Georgia, Iowa, Kansas, Kentucky, Mississippi, Missouri, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Washington, Wisconsin, Wyoming.

ENDNOTES

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[40] Connecticut General Statutes sections 33-1350 – 33-1999 (CGS §§1350-1999).
[41] C.G.S. §§ 33-1351 – 1356.
[42] C.G.S. § 1357.
[43] C.G.S. §§ 1358 – 1361.
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[61] The author wishes to specifically acknowledge the assistance of Attorney Seth Klaskin of the Office of The Secretary of the State of Connecticut for his assistance in obtaining this information.

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