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SOCIAL ENTERPRISE: REAFFIRMING PUBLIC PURPOSE GOVERNANCE THROUGH SHARED VALUE

Mark S. Blodgett, Linda J. Melconian,** and Jason H. Peterson****

"There is no inherent contradiction between improving competitive context and making a sincere commitment to bettering society."[1]

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[1] Michael Porter & Mark Kramer, *The Competitive Advantage of Corporate Philanthropy*, 80 HARV. BUS. REV. 12-16 (2002).

I. INTRODUCTION

For more than a century, state-chartered for-profit and nonprofit organizations have existed as two distinct sectors, each one with unique purposes—shareholder profit and societal mission. Today, various state legislatures, as "laboratories of democracy,"[2] have created Benefit Corporations, L3Cs and other forms of social enterprise through "stakeholder statutes." [3] These statutes specifically allow social enterprise to blend the shareholder for-profit objective and the nonprofit public purpose mission. Furthermore, these stakeholder statutes *explicitly* allow and encourage Director consideration of non-shareholder interests.[4] This *explicit* consideration of stakeholders differs from traditional for-profit Corporate Social Responsibility (CSR), philanthropy, and shared value where the public purpose is voluntary. Shared value, as heralded by Michael Porter, is a "new view of capitalism," which emphasizes innovation, creativity, core competencies, and sustainability to advance both business and social objectives and thereby ethically seek profits.[5] Social enterprise reinforces this shared value approach, but does so through blending the entity's dual expressed objectives of social mission and profits; therefore, social enterprise

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[2] *See* New State Ice Co. v. Liebmann, 285 U.S. 262, 386-87 (1932) (Brandeis, J., dissenting). To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. *Id.*

[3] These are commonly referred to as "constituency" or "non-shareholder" statutes. *See, e.g.*, Dana Brakman Reiser, *Benefit Corporations—A Sustainable Form of Organization?*, 46 WAKE FOREST L. REV. 453(2011); *See also* Jaclyn Cherry, *Charitable Organizations and Commercial Activity: A New Era - Will the Social Entrepreneurship Movement Force Change?*, 5/2 J. BUS. ENTREPRENEURSHIP L. 345, 346-371 (2012); *see also* Ashley Schoenjahn, *New Faces of Corporate Responsibility: Will New Entity Forms Allow Businesses to Do Good?*, 37/2 J. CORP. L. 591(2012).

[4] *See* Lisa .M. Fairfax, *Doing Well While Doing Good: Re-assessing the Score of Directors' Fiduciary Obligations in For-Profit Corporations with Non-Shareholder Beneficiaries*, 59 WASH. & LEE L. REV., 409, 436, 449-51 (2002); L.N. Mulligan, *What's Good of the Goose Is Not Good For the Gander: Sarbanes-Oxley-style Nonprofit Reforms*, 105 MICH. L. REV. 1981, 2004-07 (2007).

[5] *See* Porter, *supra* note **Error! Bookmark not defined.** and accompanying text.

requires shared value. By promoting the dynamism of social enterprise, states are expanding their historic oversight of the corporate entity and requiring new forms of governance that reaffirms public purpose.[6] Consequently, the state-created social enterprise requires a shift in corporate governance values and fiduciary obligations.[7]

The governance consequences for social enterprise, what some call a "new sector" of the economy, are unclear.[8] They place the fundamental ethical values of corporate governance at a crossroads and require new policies to balance the blended objectives and fiduciary duties of shareholder for-profit objectives and nonprofit social mission.[9] This article reviews social enterprise within the context of the blended objectives and fiduciary duties of Benefit Corporations (B-Corps) and L3Cs. It examines for-profits and their separate corporate philanthropic nonprofit foundations. In doing so, the authors not only recognize the conflicting fiduciary duty and implications as current literature articulates, but are also requiring that a new fiduciary stand should be established. Perhaps, through sector blurring, a *shared value* fiduciary duty has already evolved within the traditional two sectors, which finds more clear expression as social enterprise.

The authors propose five recommendations to enhance the governance framework of social enterprise and to empower social entrepreneurs in their quest to balance the governance of both social mission and profits: 1) designate L3Cs as qualified Program Related Investments (PRI) recipients; 2) require state Attorney General oversight of social enterprise; 3) reduce state statutory ambiguities; 4) adopt Sarbanes-Oxley Act (SOX)-like ethical principles of transparency, disclosure and accountability; and 5) establish and clarify fiduciary duty as shared value for both a corporate governance and legislative standard. Social enterprise, the burgeoning potential fourth sector of the economy, demands balanced governance values now.

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[6] Bill Gates, Address at Harvard Commencement (June 7, 2007), *available at* https://perma.cc/96KR-469S.

[7] Heerad Sabeti, *The For-Benefit Enterprise*, 89/11 HARVARD BUS. REV. 98 (2011).

[8] *Id.* and accompanying text.

[9] John A. Pearce II & Jamie Patrick Hopkins, *Regulation of L3Cs for Social Entrepreneurship: A Prerequisite to Increased Utilization*, 92 NEB. L. REV. 259, 270 (2013).

II. CORPORATE FORM

The public purpose of a corporate form enjoys a long history. Early in the nineteenth century, the court in *Dartmouth* first reaffirmed the requirement that business corporations serve a public purpose, although it recognized them as private since their assets came from private sources.[10] In the mid-nineteenth century, collaboration between private corporations and the public sector occurred as states used corporate business charters to raise revenue from public services.[11] Thus, this state-created corporate form, while making a profit, contributed to societal good by facilitating the construction of canals, roads and bridges, and later engaged in banking, insurance, and manufacturing.[12] As demand for corporate charters increased, state legislatures passed corporation statutes requiring new governance standards.[13]

Business corporations continued, yet their public purpose was subordinated to profits, and public purpose eventually died out; thus, nonprofits remained the sole guardian of public purpose.[14] The nation entered an unregulated era of the "robber barons."[15] During this period, a fiduciary concept evolved. Its purpose was not to preclude public purpose; rather, its purpose was to prevent Directors and Officers from engaging in conflicts of interests, such as self-dealing. This fiduciary obligation set a moral tone of ethical and financial accountability, perhaps as an attempt to reestablish the "sacred trust" in corporate governance, a value originally articulated by Leonard Bacon.[16]

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[10] *See* Pauline Maier, *The Revolutionary Origins of the American Corporation*, 50 WILLIAM & MARY Q. 51, 65 (1993).

[11] DAVID FRIEDMAN, THE MACHINERY OF FREEDOM: GUIDE TO A RADICAL CAPITALISM 450-51 (1st ed. 1973); PETER D. HALL, A HISTORY OF NONPROFIT BOARDS IN THE UNITED STATES, BOARDSOURCE E-BOOK SERIES (2003), *available at* https://perma.cc/CR4D-57HG.

[12] *See* Maier, *supra* note 10, at 52-53.

[13] *Id.*

[14] *Id.*; James Surowiecki, *Companies With Benefits*, NEW YORKER, Aug. 4, 2014, *available at* https://perma.cc/XCH7-EMAJ.

[15] A robber baron is "an American capitalist of the latter part of the 19th century who became wealthy through exploitation (as of natural resources, governmental influence, or low wage scales)." "robber baron." *Merriam-Webster Dictionary*, *available at* https://perma.cc/9X9V-K475.

[16] Leonard Bacon, *Responsibility in the Management of Societies*, 5 THE NEW ENGLANDER 28, 29, 32, 33 (1847). Bacon set the ethical and moral tone for nonprofit associations to receive continued public support, noting that nonprofit

These developments opened the door to a new governance standard: the *Dodge* shareholder primacy doctrine. It stated that "[a] business corporation is organized and carried on primarily for the profit of the stockholders" and that the "discretion of the directors…does not extend…to the reduction of profits, or to the non-distribution of profits among stockholders in order to devote them to other purposes."[17] This doctrine established a corporate governance norm that is commonly referred to as "profit maximization" and was strengthened by Milton Friedman in the mid-twentieth century. It asserts that maximizing shareholder wealth is the business corporation's central objective since "a corporation's only social responsibility is to maximize profits for its shareholders…without deception or fraud."[18] As "profit maximization" solidified, business corporations dismissed early CSR initiatives as diverging from profit maximization.[19] The nonprofit form became the guardian on public purpose mission. However, the subsequent stakeholder theory of Edward Freeman in the 1980's reclaimed historic American capitalism rooted in a public purpose that has sustained CSR.[20]

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governance must reflect trust in a higher sense of ethics and morality to assure public support "as a security against mismanagement and gradual perversion of the trust." Mark S. Blodgett, Linda J. Melconian & Jason H. Peterson, 7 *Evolving Corporate Governance Standards for Healthcare Nonprofits: Is Board of Director Compensation a Breach of Fiduciary Duty? Brooklyn J. Corp. Fin. Comm. L.* 443, 443 (2013). Yale professor, Leonard Bacon, studied nonprofit governance and published an article on fiduciary accountability to the public. He asserted that Board members, as fiduciaries, are accountable to a higher power of morality and that they must disclose their activities. This fiduciary responsibility was thus also an individual responsibility as the manager of others' property. This high standard of fiduciary accountability was necessary to prevent public hostility.

Id. at 443 n.1.

[17] Dodge v. Ford Motor Co. 170 N.W. 668, 684-85 (Mich. 1919).

[18] Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, NEW YORK TIMES MAGAZINE, Sept. 13, 1970 at 17 (quoting MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133 (University of Chicago Press) (2002)).

[19] Archie B. Carroll & Kareem M. Shabana, *The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice*, INT'L J. MGMT. REV., Dec. 1, 2010, at 85.

[20] *See e.g.*, Edward Freeman, *The Politics of Stakeholder Theory: Some Future Directors*, 4 BUS. ETHICS Q., 1994, at 409, (arguing that a corporation owes a fiduciary duty to not just its owners but to other parties, including the community, customers, and employees).. Henry Mintzberg, Robert Simons & Kuna Basu, *Beyond Selfishness*, 44 MIT SLOAN MGMT. REV. at 67, 69 (Fall

Today, business corporations commonly recognize CSR and view stakeholders as existing beyond shareholders to the extent that some expressly attribute a fiduciary duty to the stakeholder community at large.[21] The flexibility of the Business Judgment Rule has allowed Directors to consider other stakeholders and engage in CSR without express authority under corporate law.[22] Furthermore, CSR encompasses both philanthropic initiatives and the business case or strategy, such as "making profits while doing good."[23] The CSR of business strategy is further refined by the innovation and sustainability of shared value.[24]

2002)("Corporations used to exist, or so we once believed, to serve society. Indeed, that was the reason they were originally granted charters – and why those charters could be revoked. Corporations are economic entities, to be sure, but they are also social institutions that must justify their existence by their overall contribution to society. Specifically, they must serve a balanced set of stakeholders. That, at least, was the prevalent view until perhaps ten years ago. Now, one group of these stakeholders – the shareholders – has muscled out all the others.").

[21] *See e.g.*, Bradley R. Agle, Thomas Donaldson, R. Edward Freeman, Michael C. Jensen, Ronald K. Mitchell & Donna J. Wood, *Dialogue: Towards Superior Stakeholder Theory*, BUS. ETHICS Q., April 2008, at 153; Susan C. Atherton, Charles A. Atherton & Mark S. Blodgett, *Fiduciary Principles: Corporate Responsibilities to Stakeholders*," 2 J. RELIGION & BUS. ETHICS 1 (2011).

[22] *See* Grobow v. Perot, 539 A.2d 180, 187-88 (Del. 1988). The Business Judgment Rule is a rule designed by courts to protect directors of a corporation. *Id.* According to the Rule, a court will assume that directors acted in the corporation's best interest, unless plaintiffs can prove that the Rule should not apply, by alleging the following: that the directors did not act in good faith, in the best interests of the corporation, on an uninformed basis, and that they were wasteful and acting in their own self-interest. *Id.* If plaintiffs can prove this, the court will set aside the Business Judgment Rule and require the directors to show that they acted in good faith. *Id.*

[23] Archie B. Carroll & Kareem M. Shabana, *The Business Case for Corporate Social Responsibility: A Review of Concepts, Research and Practice*, 12 INT'L J. MGMT. REV. 85, (2010). Michael E. Porter, Mark R. Kramer, *The Link Between Competitive Advantage and Corporate Social Responsibility*, HARV. BUS. REV. 78, (2006)("If, instead, corporations were to analyze their prospects for social responsibility using the same frameworks that guide their core business choices, they would discover that CSR can be much more than a cost, a constraint, or a charitable deed – it can be a source of opportunity, innovation, and competitive advantage.")

[24] *See* Porter, *supra* note **Error! Bookmark not defined.** and accompanying text; Michael E. Porter & Mark R Kramer, *The Big Idea: Creating Shared Value*, HARV. BUS. REV., Jan.-Feb. 2011, at 62-77 ("Regulation that discourages shared value looks very different. It forces compliance with particular practices,

Recent federal statutes, such as the Sarbanes Oxley and the Dodd-Frank Acts, have strived to shore up traditional corporate fiduciary duties in the midst of corporate irregularities and malfeasance.[25] Additionally, in response to a number of nonprofit scandals, Congress initiated a governance study of the nonprofit sector. Its purpose was to galvanize ethical nonprofit leadership to enhance the values of accountability, disclosure and transparency, which support the fiduciary duty to nonprofit mission.[26] Moreover, current CSR business strategy,

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rather than focusing on measurable social improvement."); *See also* Jed Emerson & Sheila Bonini, *Maximizing Blended Value-Building Beyond the Blended Value Map to Sustainable Investing, Philanthropy and Organizations*, Jan. 2005, at 4, *available at* https://perma.cc/C4MH-R5ZE. It is clear, however, that nonprofit organizations create economic value and for-profit companies have social impact and worth. Consider, for example, the economic value of 170 million boxes of Girl Scout cookies sales or the social impact of Wal-Mart providing employment for 1.4 million people. While not the primary purpose of these organizations, a growing group of practitioners, investors and philanthropists are advancing strategies that intentionally blend social, environmental and economic value. Organizations operating in this middle ground of commercial and social enterprise (regardless of their legal status) have differing aspects of both social and commercial value creation. *Id*. at 4.

[25] Christyne J. Vachon, *Blurring. Not Fading. Looking at the Duties of Care and Loyalty as Nonprofits Move into Commercialism*, 12 TENN. J. BUS. L. 37, 42-43 (2011). Mark Blodgett, Linda Melconian & Jason Peterson, *State Oversight of Nonprofit Governance: Confronting the Challenge of Mission Adherence Within A Multi-Dimensional Standard*, 32 J. L. & COMM., 81, 108 (2013).Well-known and egregious scandals such as Enron and World-Com in the for-profit sector have resulted in enhanced Federal scrutiny and reform efforts culminating in Congress' enactment of the Sarbanes-Oxley Act. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745. Its purpose is to strengthen the standard of fiduciary duty by improving corporate governance through financial controls and audits for business corporations…Although Congress generally excluded nonprofits from SOX, many advocate that they should fall under or comply with the principles of SOX; albeit this challenge may be limited to nonprofits in the largest asset class.

Id. at n.109 (citing Mark Blodgett & Linda Melconian, *Health-Care Nonprofits: Enhancing Governance And Public Trust*, 117/2 BUS. & SOC. REV. 197, 201-12(2012)).

[26] Panel on the Nonprofit Sector, Strengthening Transparency, Governance, and Accountability of Charitable Organizations: A Final Report to Congress and the Nonprofit Sector (June 2005), available at https://perma.cc/S5L6-RX55. Several newsworthy controversies led to the changes. *See also Adelphi University v. Board of Regents of the State of New York*, 229 A.D. 2d 36 (1997) (finding high salary of President indicated that Board failed to achieve its educational mission

philanthropy, shared value, regulation, and nonprofit ethical leadership initiatives (such as the Report to Congress), have all helped to strengthen stakeholder sustainability and corporate governance values.

These efforts hold corporate directors to a higher standard of care, a public purpose standard, thus enhancing fiduciary governance in both the for-profit and nonprofit sectors. Perhaps the development of social enterprise is an inevitable reaction to corporate malfeasance in both sectors and the controversies on Wall Street.[27] It may prove to be a powerful catalyst for enhancing corporate ethical behavior. Such behavior complements the objectives of social enterprise as it expressly includes multiple stakeholders other than shareholders.[28] Corporate philanthropic foundations are an important link in this ethical approach and many for-profit corporations create and fund nonprofit foundations.

III. CORPORATE FOUNDATIONS

Corporate Foundations are nonprofit entities that facilitate both CSR initiatives and philanthropy and are committed to ensuring a healthy community in reciprocity with their parent company.[29] Several corporate foundations facilitate their CSR by contributing billions of dollars to "doing good," and include such familiar parent company names as Coca-Cola, Wal-Mart, Exxon, and Ford.[30] Corporate Foundations are driven by mission rather than profits through the collaboration with for-profits to obtain capital resources that support their social missions. "By tying corporate philanthropy to its business and strategy, a company can create even greater social value in improving grantee performance than other donors. Its specialized assets and expertise, after all, will be most useful

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and breached fiduciary duties); Karen Donnelly, *United Way, Good Governance: Has the IRS Usurped the Best Judgment of Tax Exempt Organizations in the Name of Transparency and Accountability*, 79 UMKC L. REV. 163, 173–74 (2010) (discussing nonprofit scandals including *Aramony v. United Way* involving excessive executive compensation, mismanagement, and misuse of organization's donated funds); Keith Epstein, *Case Study: American Red Cross*, CONTRIBUTE (2009) (discussing Red Cross's failure to disclose withholding of $200 million from 9/11 donations for administrative costs). *See also* Blodgett & Melconian, *supra* note 25.

[27] Jamie Raskin, *Plan B for Corporations*, THE NATION, June 27, 2011, at 14. *See also* Miriam F. Weismann, Jason H. Peterson & Christopher A. Buscaglia, *The New Macroprudential Reform Paradigm: Can It Work*? 16 U. Pa. J. Bus. L. 1029 (2014).

[28] David G. Mandelbaum, *Corporate Sustainability Strategies*, 26 TEMPLE J. SCI., TECH. & ENV'T. L. 27 (2007).

in addressing problems related to its particular field."[31] Such "context focused philanthropy" requires a different view of competition—one that focuses on core competencies and shared value.[32] Perhaps not surprisingly, anecdotal evidence suggests "that firms will not substantially invest in corporate giving unless it adds economic value."[33]

The Corporate Foundation continues to evolve as an effective form for sustaining philanthropic initiatives.[34] It communicates commitment to CSR and creates a stakeholder reputation.[35] Furthermore, parent companies access the Corporate Foundation form not only for image but also for good and effective governance.[36] Aside from facilitating CSR and stakeholder dialogue, the Corporate Foundation can benefit the parent company by clarifying and strengthening core competencies and by establishing new markets and brands.[37] "There is no inherent contradiction between improving competitive context and making a sincere commitment to bettering society."[38] Such views of corporate philanthropy signal the new fourth sector of social enterprise where the shared values of public purpose and profits are expressly blended in one form.

IV. SOCIAL ENTERPRISE: BLENDED OBJECTIVES

Social enterprise takes on many roles; yet no single definition prevails.[39] Currently it exists as a business model for social objectives

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[29] Posting of What is Corporate Philanthropy?, http://truist.com/what-is-corporate-philanthropy (August 6, 2013) (on file with Authors).
[30] *Id*.
[31] *See* Porter, *supra* note **Error! Bookmark not defined.**.
[32] *Id*.
[33] Baruch Lev, Christine Petrovits & Suresh Radhakrishnan, *Is Doing Good Good for You? How Corporate Charitable Contributions Enhance Revenue Growth*, 31 STRATEGIC MGMT. J. 198 (2010).
[34] *The Evolving Role of Foundations in Corporate Philanthropy*, (March 25, 2013), TRUIST BLOG, https://perma.cc/87JV-67GE) (on file with Authors).
[35] Martina Westhues & Sabine Einwiller, *Corporate Foundations: Their Role for Corporate Social Responsibility*, 9 CORP. REPUTATION REV., 144, 149 (2006).
[36] *See* Evolving Role of Foundations *supra* note 34 and accompanying text. *See also* Lev et al., *supra* note 33, at 198.
[37] *See* Westhues, *supra* note 35, at 148.
[38] *See* Porter, *supra* note **Error! Bookmark not defined.**, at 16.
[39] *See* Hans Rawhouser et al., *Benefit Corporation Legislation and the Emergence of a Social Hybrid Category*, 57 CAL. MGMT. REV. 13, 15 (2015). ("These new legal forms do not alleviate all the tensions stemming from

and potentially suggests a new or fourth sector of the U.S. economy.[40] Some herald it as a new era of entrepreneurial capitalism where for-profits serve society.[41] Furthermore, it embraces a stakeholder governance model that pursues both financial and non-financial return on investment.[42] Thus, it rejects maximization of shareholder wealth as the sole driver of business decisions.[43] For purposes of this article, the authors address the social enterprise entities of Benefit Corporations and L3Cs which exhibit both nonprofit mission and for-profit characteristics. For example, a Benefit Corporation can "engage in any legitimate business activity" and "accept debt and equity investments" in addition to pursuing its social objective.[44] Such blended objectives are the hallmark of social enterprise.

Advocates view social enterprise as superior to traditional for-profit and nonprofit entities because they perceive them as having greater

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organizational hybridity, but they do provide initial steps in the ongoing negotiation of a more widely accepted space for social hybrids.") (*Id.*).

[40] *See* Diane Holt & David Littlewood, *Identifying, Mapping and Monitoring the Impact of Hybrid Firms*, 57 CAL. MGMT. REV. 107 (2015) (juxtaposing social primacy requiring a shared value compared to shareholder primacy).

[41] *See* Gregory Dees & Beth Battle Anderson, *For-Profit Social Ventures*, 2 SOCIAL ENTREPRENEURSHIP, 1 (2003); *See* Porter, *supra* note 23, at 98-104.

[42] Filipe Santos et al., *Making Hybrids Work: Aligning Business Models and Organizational Design for Social Enterprises*, 57 CAL. MGMT. REV 36, 36-37 (2015). However, at some point, difficult decisions may emerge for which business leaders need to weigh the value capture for the company against value creation for society. One approach is to treat these goals as a trade-off and make a choice between profit and societal impact, looking at societal demands as constraints on how the business should operate. Another approach is to treat these societal demands as signs of the future and fundamentally re-think the business model of the company---the way activities are organized and how stakeholders are engaged—so that the trade-offs can potentially become win-win situations. Developing innovative ways of doing business that align profit and societal impact is a key challenge for corporate leaders in the 21st century. *Id.* at 36-37.

[43] *See* Alicia E. Plerhoples, *Can an Old Dog Learn New Tricks? Applying Traditional Corporate Law Principles to New Social Enterprise Legislation*, 13 TRANSACTIONS: TENN. J. BUS. L. 221, 228-29 (2012).

[44] Briana Cummings, *Benefit Corporations: How to Enforce a Mandate to Promote the Public Interest,* 112 COLUMBIA L. REV. 578, 579 n. 1 (2012) (quoting material from Alissa Mickels, Note, *Beyond Corporate Social Responsibility: Reconciling the Ideals of a For-Benefit Corporation with Director Fiduciary Duties in the U.S. and Europe*, 32 HASTINGS INT'L & COMP. L. REV. 271, 281 (2009)).

sustainable impact on the environment and society.[45] Social entrepreneurs begin with their desire to blend their profit-making and social missions in a single entity. They believe in the unique ability of social enterprise to solve social problems and return profits to owners *as explicit blended governance values*.[46]

Traditionally, nonprofits have engaged in profit-making commercial activities to help subsidize their charitable purposes; but these activities are generally incidental to their primary mission of social benefit and are regulated by the Internal Revenue Service (IRS).[47] Likewise, for-profit corporations, despite the recent trend towards creating social value, traditionally have engaged in CSR as incidental to their main stockholder profit-making purpose.[48] However, social enterprise consists of expressly legislated governance values blended in one form in contrast to these dual forms of traditional for-profit and nonprofit entities. The following describes two prominent business entities of social enterprise, the Benefit Corporation and the L3C.

A. *Benefit Corporation*

The B-Corp is a state-oriented legal status that is driven by its blended form of social mission and shareholder return. Among various social enterprise forms, it is the most similar to the traditional corporation because its legal structure is a standard corporate form; however, it is dissimilar because it requires both a general and specific public benefit.[49] This combination allows the Board of Directors to make profit-sacrificing decisions.

B-Corps originated in Vermont in 2006; (since then?) more than 30 states have enacted "stakeholder statutes" to create B-Corps that possess some unique advantages over traditional for-profit

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[45] *See* Santos *supra* note 42 and accompanying text.
[46] Dana Brakman Reiser, *Theorizing Forms for Social Enterprise*, 62 EMORY L. REV. 681, 683-84 (2013)(emphasis added).
[47] Dana Brakman Reiser, *Blended Enterprise and the Dual Mission Dilemma*, 35 VT. L REV. 1, 105 (2010). It is becoming more challenging to distinguish between sector practices since the for-profit and nonprofit relationship is stronger than ever. Judith Bosscher, *Commercialization in Nonprofits: Tainted Value?* 5 SPNA REV. 1 (2009).
[48] John Tyler, *Negating the Legal Problem of Having "Two Masters": A Framework for L3C Fiduciary Duties and Accountability*, 16 VT. L. REV. 117, 132-37 (2010) (recognizing that state constituency statutes have not changed the traditional notions of fiduciary duties).
[49] VT. STAT. ANN. tit. 11A §§ 21.08(a)-(e) (2015).

corporations.[50] Ben and Jerry's Ice Cream Corporation provides an example of a Vermont B-Corp whose owners prioritized social causes above profits.[51] Moreover, these statutes require corporate Directors and Officers to consider non-shareholder interests as part of doing business. This *express authority* to serve stakeholders is a key organizational and governance departure from traditional for-profit governance. It places stakeholders on at least equal footing with shareholders, thus deviating significantly from the doctrine of shareholder primacy.[52] It provides B-Corps with an apparent equal double bottom line thus "achieving and governing truly blended enterprise."[53] Consequently, these state statutes may insulate Directors from liability under the Business Judgment Rule.[54] Additionally, the state statutes create a new private right of action for shareholders to enforce the public benefit mandate.[55] While these requirements may attempt to provide effective public purpose governance tools, the ability to maintain that "delicate balance" between protections for Directors and shareholders is an inherent challenge of "consistently serving two masters."[56]

Some obvious disadvantages exist for B-Corps. A major challenge for B-Corps is attracting investors for lower returns since they discard shareholder primacy.[57] Moreover, B-Corps cannot apply for the federal 501(c)(3) tax-exempt status on income which nonprofits enjoy.[58]

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[50] Tit. 11A §§ 21.08(a)-(e) (2015). For example, B-Corps must meet statutory requirements that include purpose, accountability and transparency. *Id.*

[51] *See* Schoenjahn, *supra* note 3, at 490.

[52] *See* Holt & Littlewood *supra* note 40 and accompanying text.

[53] *See* Brakman Reiser, *supra* note 47, at 105.

[54] *See* Janet E. Kerr, *Sustainability Meets Profitability: The Convenient Truth of How the Business Judgment Rule Protects a Board's Decision to Engage in Social Entrepreneurship*, 29 CARDOZO L. REV. 623, 635-39(2007).

[55] Tit. 11A §§ 21.08(a)-(e) (2015). *See also* Santos, *supra* note 42, at 36. [There is a] debate taking place with regard to the potential for creating a new 'hybrid' legal structure which would be neither for-profit nor nonprofit, but have aspects of each.Such a structure, sometimes called a 'for-benefit' organization, would have the benefit of providing clarity for investors and enabling the development of new financial instruments.

Id. at 36-37.

[56] *See* Schoenjahn, *supra* note 3; *see also* Kerr, *supra* note 54.

[57] *Id.*

[58] *L3Cs and B Corporations: Blurring the Line Between Nonprofits and For-Profits*, L'ECONOMIE, July 17, 2013, *available at* http://www.economie-avenir.com/entrepreneuriat-social/l3cs-and-b-corporations-blurring-the-line-between-nonprofits-and-for-profits. Unlike these nonprofit entities, however, B-Corps do not face the same restrictions on fundraising.

A nonprofit cannot become a B-Corp; however, it may create a B-Corp as a vehicle for conducting and scaling the earned income or activities of the nonprofit.[59] Additionally, no clarification exists of priority or emphasis between the general and specific public purpose benefits. Also, their public purpose mandate requires accountability and transparency through certification from a non-governmental, independent nonprofit (B-lab), which gives a certified B-Corp "a high standard of overall social and environmental performance."[60] Not in the source "B Corp Certification is the next chapter for socially responsible businesses."[61] Currently, state statutes do not require B-lab certification or provide any identifiable state oversight of the certification process. The state requires only a modest requirement of disclosure through annual reports.[62]

The L3C is a low-profit limited liability business model for charitable education purposes.[63] It originated in Vermont in 2008 two years after Vermont adopted the B-Corp statute. The L3C must meet three requirements: 1) "significantly" pursue a charitable educational purpose, 2) not "significantly" pursue profits and 3) have no political purpose.[64] Thus in significantly pursuing a charitable or social mission, L3Cs operate like nonprofits. However, while these entities place mission before significant profits, they still attract investors and not charitable donors. This is in stark contrast to the traditional nonprofit model where mission adherence and donor support for accomplishment of mission are paramount.[65]

Since 2008, at least nine states have created L3Cs which have unique and conflicting advantages and disadvantages. Since L3Cs have equity owners rather than shareholders, one perceived advantage is that they can generate revenues and offer financial returns to their equity owners. However, a potential disadvantage in providing these returns is possible competition with traditional nonprofits for foundation dollars.[66] Another perceived advantage is the state requirement that L3Cs pursue

[59] *See* Schoenjahn, *supra* note 3, at 490.
[60] B Lab, *Why B Corps Matter*, *available at* http://www.bcorporation.net/what-are-b-corps/why-b-corps-matter.
[61] Ben and Jerry's, *About Us*, https://perma.cc/D2D4-W2LG.
[62] Certification occurs through B-lab, which has certified over 1000 B corps operating through 60 industries in 30 countries. Currently, no state oversight of the B-lab certification process exists. Annual Report B Lab, 2014, *available at* https://perma.cc/Y6K6-8668.
[63] VT. STAT. ANN. tit. 11A § 3001 (27)(A)(i) (2015).
[64] *Id.*
[65] *See* Blodgett et al., *supra* note 25 (noting nonprofits cannot become L3Cs).
[66] *See* Schoenjahn, *supra* note 3.

significant social purpose rather than the less significant purpose of generating profits. Thus, parties who invest in L3Cs knowingly assume the risk of its social purpose as paramount to profits.[67] Moreover, since no Federal tax exists on *any* profits generated by an L3C, its profitability is not regulated.[68] Consequently, this blended objective could result in a serious disadvantage of tax evasion and jeopardize the tax consequences of other investors, particularly the nonprofit foundation and its own social mission purpose.[69]

Another conflicting, yet perhaps more significant advantage, is the statutory intent that L3Cs be recipients of the unique "Program Related Investment" (PRI) recipients; thus, attracting foundations and other investors. PRIs are the main financial tool used by nonprofit charitable foundations to make high risk investments of billions of dollars to IRS qualified PRI recipient-organizations. In 1972, Congress created a tax exception for PRIs. This Federal IRS tax exemption provides flexibility to a nonprofit tax-exempt foundation to make funding investments to for-profit companies whose program activities help the foundation accomplish its social mission.[70] This flexibility enables private foundations to offer "loans or investments . . . . for charitable or education projects," despite the fact that for-profit entities exercise control over funding and accomplishment of these public purpose projects.[71] Furthermore, this permissive flexibility in the foundation's use of PRI loans and investments creates "an exception to the general rule that foundations can invest only in nonprofits."[72] While L3Cs were created to enjoy these advantages, certain ambiguities create disadvantages, as L3Cs do not yet qualify for PRI recipient designation from the IRS. Thus, they can pursue social good, but without regulatory guidance or express IRS directives.

This summary of two prominent social enterprise entities reflects a fresh concept of doing business. Social enterprise is winning enthusiastic and passionate adherents, and some advocates perceive these

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[67] *Id.*

[68] *But see* Santos, *supra* note 42, at 36 ("[G]overnmental regulations, policies, and tax code have a significant (perhaps primary) effect upon the degree to which market forces are allowed to work to create blended value.")

[69] *Id.*

[70] Michael D. Gottesman, *From Cobblestones to Pavement: The Legal Road Forward for the Creation of Hybrid Social Organizations*, 26 YALE L. & POLICY REV. 345, 348-49 (2007). *See also* Reiser, *supra* note 46, at682.

[71] *See* L'Economie, *supra* note 58 and accompanying text.

[72] *See* Pearce, *supra* note 9, at 270.

dynamic and robust entities as filling a gap in traditional capitalism. Yet, the regulatory and ethical environment will require legislative clarification and regulatory guidance for more effective governance.[73] Blended objectives create concerns; however, we must recall that Congress initiated The Sarbanes-Oxley Act and the Nonprofit Report to Congress not only to address malfeasance and impropriety, but also to instill more effective and sustainable traditional for-profit and nonprofit corporate governance through ethical leadership--integrity beyond compliance.[74] Similar legislative and best practices are in order to sustain the future of social enterprise.

V. ANALYSIS

Attaining a shared value fiduciary governance standard is realistic since shared value is not a new concept. A brief review of the governance values of for profits and their nonprofit corporate foundations illustrates this concept. A sample of the top fifty Fortune 500 corporations reveals that 62% (31) articulate CSR, philanthropy, and shared value. Further, sixty-six percent have philanthropic foundations. Corporations articulate shared value that emphasizes core competencies and public purpose. They may also include statements of initiatives that include philanthropic CSR. A selection of fifteen Fortune 500 corporations, through their non-profit philanthropic foundations, reveals that 100% (15) of the nonprofit philanthropic foundations articulate shared value.

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[73] *See* Porter, *supra* note 23 and accompanying text. at 98-104; Sabeti, *supra* note 7 and accompanying text; *see also* Reiser, *supra* note 46 and accompanying text.

[74] Linda K. Trevino, Michael Brown & Laura P. Hartman, *A Qualitative Investigation of Perceived Executive Ethical Leadership: Perceptions From Inside and Outside the Executive Suite*, 56 HUMAN RELATIONS 5, 19 (2003).

Table A

Sector Governance Values			
Sector	For Profit*	Nonprofit Foundations	Social Enterprise
Governance Values	Profits & Stakeholders	Stakeholder Mission	Blended Stakeholder Mission & Profits
	CSR, Philanthropy & Shared Value	Philanthropy & Shared Value	Shared Value

*62% (or 31) of the top 50 Fortune 500 Companies engage in CSR, Philanthropy & Shared Value

*66% (or 33) of the same sample have Corporate Philanthropic Nonprofit Foundations

A further examination of the examples of corporate shared value statements as expressed through corporate philanthropic foundations is illustrative. Whether the priority is profits or social benefit, these examples manifest shared value.

Table B

Corporate Expressions of CSR, Philanthropy, and Shared Value
"We also invest in efforts to improve disaster preparedness in

communities. Walmart and the Walmart Foundation work together in complementary ways to contribute business and philanthropic assets to the field, including logistics and operations expertise, use of physical assets such as buildings and trucks, and cash and in-kind donations."[75]

"We support a range of programs that allow community partners to test, deliver and scale innovative approaches that provide consumers with the tools and support they need to achieve their financial goals, transforming financial knowledge into effective action. These investments, including financial coaching and counseling programs, enable consumers to implement financial plans, make payments, increase their savings, reduce debt and build their credit."[76]

"Freddie Mac strongly supports the benefit of credit education and building sound financial literacy skills among consumers. Well-informed and well-prepared homebuyers are on the best path to enjoying successful and sustainable homeownership."[77]

"Nonprofit organizations that focus on providing affordable housing are partnered with local Home Depot stores to receive donated materials. The nonprofits then use those products to repair, refurbish, and rebuild nearby homes and facilities benefitting deserving families and individuals."[78]

"Microsoft is proud to work with more than 50,000 nonprofits around the world every year to provide them with affordable access to the technology they need to support their work in local communities, and to leverage technology to help them be more efficient, effective and innovative in doing their important work. Whether it is through our software donations, technology solutions for nonprofit problems, or Office 365 for Nonprofits, we strive to help nonprofits do more good."[79]

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[75] Walmart Community Giving, "Special Interests," https://perma.cc/5CJ3-9LU5.

[76] Citi Foundation, *Our Strategy*, https://perma.cc/8AJX-H8M4.

[77] Freddie Mac, "CreditSmart®," https://perma.cc/4XWK-HSFN.

[78] Home Depot, "Framing Hope, a Material Difference," https://perma.cc/FE9J-Q4JB (last visited April 22, 2016).

[79] World Vision, "World Vision will benefit from Microsoft software donation to impact more than 2 million in Latin America," https://perma.cc/DY79-DZNE (last visited April 22, 2016).

While social enterprise has often been portrayed as an overly optimistic attempt at revising capitalism for societal purposes,[80] shared value now appears to be a corporate governance norm as the traditional for-profit sector also asserts shared value applications. In fact, a for-profit may have a B-Corp for a subsidiary, such as Ben & Jerry's.[81] Thus, the for-profit sector currently reinforces B-Corp objectives with statements of shared value that reaffirm public purpose governance.

Among traditional corporations, their nonprofit philanthropic foundations, and the newly created social enterprise entities that earn profits and benefit society, all affirm public purpose governance. However, within social enterprise, the B-Corp and the L3C accomplish this objective with express legislative intent; while in the traditional for-profit and nonprofit sectors, these activities cause a blurring within these sectors --beyond the scope of their primary business or social objectives. "The blurring of the boundary between successful for-profits and nonprofits is one of the strong signs that creating shared value is possible."[82] This blurring accommodates public purpose in for-profits and commercial activities within nonprofits, yet maintains the separate boundaries of their respective legal forms. In contrast, the new social enterprise has blended objectives and unresolved fiduciary duties that call for a resolution. We propose a shared value "adaptation" as an evolving fiduciary standard.[83] Perhaps social enterprise is an outgrowth

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[80] Surowiecki,
supra note 14 ("It's easy to be skeptical of the mushy rhetoric surrounding B corps. Yet the desire to balance profit and purpose is arguably a return to the model that many American companies once followed.").

[81] *See* Interview by Rob Michalek, They're a B-Corp? Ben & Jerry's, *available at* https://perma.cc/D2GZ-KBD4. In 1988, Ben & Jerry's was one of the first companies in the world to place a social mission in equal importance to its product and economic missions. Since then, the movement has grown and now has a unifying set of principles and criteria on which to evaluate socially responsible businesses. It's called the "B Corp" movement (or Benefit Corporation movement). Certified B Corps satisfy a rigorous set of standards to achieve certification. True to our pioneering spirit, we became the first-ever wholly-owned subsidiary to gain B Corp Certification.
Ben and Jerry's Joins the B-Corp Movement, BEN & JERRY'S, https://perma.cc/67U9-79LB.

[82] Michael E. Porter & Mark R. Kramer, *Creating Shared Values: How to Reinvent Capitalism-and Unleash a Wave of Innovation and Growth*, HARV. BUS. REV. 1, 7 (2011).

[83] *See* Tyler, *supra* note 48, at 118 ("recognizing that the L3C is a hybrid and that its conceptions of fiduciary duty evolve from more traditional forms").

of this blurring phenomenon where public purpose governance values are reaffirmed as fundamental to doing business.

The overall sustainability of the B-Corp and L3C must be the next concern for social enterprise. The federal government, through the IRS, is limited to regulating the tax consequences of these entities. Therefore, primary regulation of B-Corps and L3Cs is reserved to the states that created them. We propose five recommendations for improving the governance of social enterprise within this federal-state regulatory framework.

VI. FIVE SOCIAL ENTERPRISE POLICY RECOMMENDATIONS

A. Designate L3Cs as Qualified PRI Recipients

One obvious disadvantage, in the absence of PRI recipient designation, is that foundations may view L3Cs as less attractive investment opportunities than traditional nonprofits.[84] Furthermore, foundation assumption of L3C investment risks appears to be a pre-requisite to encourage other investors to pursue L3C investments. Yet, too much uncertainty exists for potential L3C investors without clear and effective federal or state regulation. For example, state statutes permit wide discretion for the Directors of L3Cs to choose social good; yet, they provide no general guidance or specific qualitative or quantitative standards to determine the extent to which the pursuit of social good over business purpose is allowable. The only state limits on profits are the ambiguous standard of "something less than significant."[85] Likewise, there is no IRS prioritization between pursuing profit and pursuing public purpose.

Congress must enact legislation or the IRS must promulgate regulations which permit L3Cs to be designated as qualified "Program Related Investment" (PRI) recipients. Such designation would alleviate the risk of nonprofit foundations facing tax consequences or penalties for making investments and loans to an L3C. Since the L3C is a new entity, it requires clarification of its current ambiguous PRI recipient status.[86]

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[84] *See* Schoenjahn, *supra* note 3.
[85] Tit. 11A § 3001 (27)(A)(i) (2015).
[86] *See* L3C Part 2: Defining Characteristics of An L3C *available at* https://perma.cc/K4UX-6F4W (last visited August 2, 2010) The double bottom line of social mission and financial returns could increases access to funding not necessarily available to social entrepreneurs especially the broader and highly attractive PRI investments. *Id*. However, the IRS, as the federal taxpayers'

Legislative proposals to accomplish this purpose were pending in the 113th Congress, but failed when the Congressional term expired.[87] However, the IRS possesses the power to issue a ruling immediately, at the request of either an individual foundation or an L3C, to determine whether an investment qualifies as a PRI. As of this writing, the IRS is still undergoing a process to determine the tax consequences of foundation investments in L3Cs and whether or not L3Cs qualify as PRI recipients. These state statutes provide the essential requirement for L3C's to receive PRI investments. However, foundations which are financially courted by L3Cs assume too much risk and potential adverse tax consequences absent a qualified PRI recipient ruling. The IRS needs to promulgate rulings that reduce these ambiguities and designate L3Cs as qualified PRI recipients.

B. Require State Attorney General Oversight of Social Enterprise

State attorneys general already bear the responsibility to provide oversight, enforcement and accountability of both nonprofits and for-profit entities. One missing ingredient is state authority over the B-lab certification process of B-Corps. There is an obvious disconnect between the B-lab certification and the Secretary of State's certification. The state attorneys general must exercise oversight over the B-Corp certification process and require additional protections to help promote investor confidence in the business success of these blended entities. Currently, only a modest disclosure requirement exists through annual reports of the general public benefits without any formal state attorney general oversight of the certification process. These annual reports must be filed with the attorney general in the states where stakeholder statutes have

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watchdog agency has not provided formal notification that L3Cs will receive any preferential designation as presumptive PRI qualified organizations. *Id.*

[87] *The Program-Related Investment Promotion Act of 2008*, *available at* http://www.charitableplanning.com/cpc_1818089-1.pdf; Philanthrophic Facilitation Act, H.R. 2832 (Introduced July 25, 2013). The most promising appears to be the Philanthropic Facilitation Act of 2010 (PFA), which proposes a voluntary procedure similar to the process for recognizing 501(3) tax-exempt organization. *Id*. Either one of the entities, the foundation or L3C, could ask the IRS for a ruling on whether or not an investment qualifies as a PRI. *Id*. New 2012 IRS Proposed Guidelines have emerged which provide nine examples of qualified PRI recipients.*Id*. However, these guidelines do not modify appropriately the existing regulations that control PRI's to include L3Cs. *Id.* Therefore, no automatic PRI recipient status for L3Cs yet exists. *Id.*

been adopted. Furthermore, the Attorney General's office should adopt regulatory standards of measurements by which to accept or reject the B-Corp certification process. Finally, the attorney general, in fulfilling the state oversight responsibility, may require more detailed disclosure on the specific public purpose as well. State legislatures should require state attorneys general oversight of social enterprise entities.

C. Reduce State Statutory Ambiguities

States must resolve the ambiguous statutory language of "not significant" profits and use of tranche investing opportunities to sustain L3Cs. The current statutory language is subject to problems of interpretation and provides no specific protection to multiple and multi-tiered L3C investors. For example, the current state statutory flexibility enables L3Cs to use different rates of return for different investors thus allowing for a multi-tiered investment strategy known as tranche investing. Generally, this kind of investment can spread the risk and provide better return for investors more interested in the financial return than in the social benefits created. However, for L3Cs, the ambiguous "not significant" profits language in the state stakeholder statutes restricts this opportunity. No objective qualitative or quantitative standard yet exists to qualify the "not significant" language.[88] Such a subjective standard could create misunderstandings among multi-tiered investors and the L3C.[89] The states must reduce these statutory ambiguities.

D. Adopt SOX-like Ethical Principles of Transparency, Disclosure, Accountability

Both L3Cs and B-Corps should adopt timely disclosure of financial statements to investors and the public with SOX-like principles and best practices on financial reporting and auditing. These entities may be deficient in an ethical culture without a code of ethics as required by

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[88] Tit.11A § 3001 (27)(A)(i) (2015).

[89] Carter G. Bishop, *The Low-Profit LLC (L3C): Program Related Investment by Proxy or Perversion?* 63 ARK. L. REV. 245, 251 (2010). Perhaps investors L3Cs would be more sustainable if they focused on broader funding sources. *Id*. They could attract investors from for-profits who invest for more return and those from other nonprofits who invest for a social return, especially those who find PRI investments too risky. *Id*. However, this quest for broader funding sources creates competition with traditional for-profits and nonprofits. *Id*.

SOX. Furthermore, L3Cs face a potential ethical dilemma of receiving nonprofit tax benefits from PRI investments while they pursue for-profit commercialization. Such lack of ethical governance could create inappropriate competition with traditional for-profit and nonprofit entities. These state stakeholder statutes must authorize the attorney general the ability to hold these social enterprise entities accountable for financial disclosure statements and audits. Some states, including Vermont, are beginning to provide this monitoring.[90] The provisions of SOX, enacted by the Congress in response to the serious for-profit ethical breaches of the 1990's, require strict for-profit corporate compliance on financial matters. Likewise, many large nonprofits, though generally not covered by its provisions, have adopted SOX-like principles in light of recent nonprofit ethical scandals.[91] Although greater financial disclosure requires more regulation, it builds public and investor confidence in these social enterprise entities.

E. Establish and Clarify Fiduciary Duty as Shared Value for Both a Corporate Governance and Legislative Standard

State created social enterprises such as B-Corps and L3Cs mandate social objectives as well as profits---one form with blended governance values. They can even allow investors to emphasize social mission, not profits, and to be supported in that social mission by foundation grants.[92] However, these new entities appear to obfuscate fiduciary duty distinctions without any regulatory guidance or well-established legal precedent.[93] These entities of blended objectives present fiduciary governance conflicts which require immediate attention in order to achieve their full potential of public purpose governance. Therefore, a legislatively created balance of governance values is necessary; one that is rooted in shared value.

State legislatures should authorize attorneys general the power to implement new governance norms. Currently, it is unclear as to what

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[90] *See* Pearce, *supra* note 9, at 270.

[91] Mark Blodgett & L. Melconian, *Health-care Nonprofits: Enhancing Governance and Public Trust*, 117 BUS & SOC. REV. 197 (2012).

[92] Stephanie Strom, *Hybrid Model for Nonprofits Hits Snags*, NEW YORK TIMES, Oct. 25, 2010, *available at* http://www.nytimes.com/2010/10/26/business/26hybrid.html?pagewanted=all.

[93] *See also* Reiser, *supra* note 46.*See* Pearce, *supra* note 9, at 279. The fiduciary duties owed are not clear in L3Cs.

fiduciary duties apply to B-Corps and L3Cs. Traditional connotations of fiduciary duties of care and loyalty for both for-profits and nonprofits, and the additional nonprofit duty of obedience to mission, may be irrelevant or unsuited to apparent conflicts of interest in these social enterprise entities. For example, stakeholder statutes provide the B-Corp with an equal double bottom line creating the appearance of a governance standard that consistently serves two masters. They also create the L3C entity subject to ambiguous requirements to "significantly" pursue a charitable educational purpose and "not significantly" to pursue profits. Thus L3Cs operate like nonprofits in significantly pursuing a charitable or social mission. However, while they place mission before significant profits, they still attract investors and not charitable donors. Perhaps one way to avoid this conflict is to require specific fiduciary duty language in their governance that clearly identifies social and profit objectives. The language should expressly state a fiduciary responsibility that carefully balances social mission and financial returns to investors. In other words, a fiduciary standard that expressly articulates a duty of shared value.[94] This would provide investors with standard L3C fiduciary responsibility. State legislatures should clarify fiduciary norms for social enterprise governance.

VII. CONCLUSION

Social enterprise strives to accomplish both social and business objectives. It is a bold and new way of doing business that *requires* shared value. Yet, its continued success will necessitate careful legislative attention to potential conflicts of interest inherent in blended social and business objectives. Consistent with the spirit and substance of legislative reforms and ethical initiatives for traditional for-profits and nonprofits, social enterprise should also create an appropriate ethical balance of governance norms with a fiduciary standard of shared value. Social enterprise can strengthen its blended and shared objectives through proposals that envision broad and dynamic public purpose governance within a new and express corporate form.

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[94] Matthew Lee & Jason Jay, *Strategic Responses to Hybrid Social Ventures*, 57 CAL. MGMT. REV. 126, 129 (2015) (discussing relevance of sustainability as a result of hybrid social ventures).

The enthusiastic response of social enterprise and its blended objectives can hardly be in error, since shared value is also found across the for-profit and nonprofit sectors. The success of shared value initiatives across sectors demonstrates the validity of social enterprise's fundamental approach. Now is the time to assert ethical leadership for what may emerge formally as "the fourth sector" of our economy, a sector that reaffirms public purpose governance through shared value.