

# PROSOCIAL CORPORATE PURPOSE IN PRACTICE

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*The debate over corporate purpose – whether corporations ought to exist solely to maximise shareholder value, serve broader societal interests or pursue both – has persisted throughout the history of corporate law. Despite its significance, the United States legal framework offers little clarity. The United States Constitution is silent on corporations, corporate law is primarily state-based and case law on corporate purpose remains limited. Despite this debate and the lack of clarity on what corporations ought to do, as a practical matter, the business judgement rule grants corporate directors and officers broad discretion to adopt a prosocial or stakeholder-oriented corporate purpose. Still, the mechanisms for implementing such an approach remain unclear.*

*This article shifts focus from the normative to the practical and asks: what corporate governance tools and strategies can companies use to operationalise a prosocial corporate purpose? It examines a range of strategies, including voluntary statements; private ordering mechanisms such as shareholder proposals; governance reforms like public interest board members and stakeholder-driven executive compensation; and legal structures such as public benefit corporations (PBCs). These tools vary in both enforceability and impact. Voluntary commitments often lack accountability but can catalyse more substantive reforms. The Delaware PBC provides a legally enforceable mandate to balance stakeholder interests, though only shareholders may enforce it. Board composition and incentive structures remain underutilised and debated.*

*While no single reform is a panacea or appropriate for all corporations, they represent a flexible and evolving toolkit for embedding prosocial goals into corporate governance.*

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## I INTRODUCTION

In the United States, whether a corporation's purpose should be prosocial and serve not just shareholders, but also society, has been debated since the very inception of the corporate form.<sup>1</sup> This debate is complicated by the fact that the United States Constitution does not explicitly address corporations, corporate law is primarily governed by state law, and there is surprisingly little case law providing guidance on corporate purpose.<sup>2</sup> As a result, there is a lack of consensus on whether a corporation *may*, *should* or *must* consider stakeholder interests. Instead, there are competing theories of corporate purpose.

On one end of the spectrum, there is purely profit-driven shareholder primacy, a theory reflected in Milton Friedman's infamous quote: "there is one and only one social responsibility of business: ... to increase its profits", although his own views were admittedly more nuanced than this.<sup>3</sup> On the other end is purely stakeholder-focused corporate purpose.<sup>4</sup> Between these two extremes lies the middle ground of "enlightened shareholder value",<sup>5</sup> where most companies likely operate. This view posits that sustainable long-term profits require corporations to consider the impact of their actions on stakeholders. Enlightened shareholder value is espoused by asset managers; as Larry Fink, the CEO of BlackRock, has emphasised "... a company cannot achieve long-term profits without embracing

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- 1 For a historical account of this debate, see generally AA Berle Jr "Corporate Powers as Powers in Trust" (1931) 44 Harv L Rev 1049; E Merrick Dodd Jr "For Whom Are Corporate Managers Trustees?" (1932) 45 Harv L Rev 1145; and AA Berle Jr "For Whom Corporate Managers *Are* Trustees: A Note" (1932) 45 Harv L Rev 1365. For more contemporary views, see generally Michal Barzuza, Quinn Curtis and David H Webber "Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance" (2020) 93 S Cal L Rev 1243; Lucian A Bebchuk and Roberto Tallarita "The Illusory Promise of Stakeholder Governance" (2020) 106 Cornell L Rev 91 at 94; Jill E Fisch and Steven Davidoff Solomon "Should Corporations Have a Purpose?" (2021) 99 Tex L Rev 1309 at 1314–15; Stavros Gadinis and Amelia Miazad "Corporate Law and Social Risk" (2020) 73 Vand L Rev 1401; Dorothy S Lund "Corporate Finance for Social Good" (2021) 121 Colum L Rev 1617; Edward B Rock "For Whom Is the Corporation Managed in 2020? The Debate over Corporate Purpose" (2021) 76 Bus Law 363; and Leo E Strine Jr "Restoration: The Role Stakeholder Governance Must Play in Recreating a Fair and Sustainable American Economy: A Reply to Professor Rock" (2021) 76 Bus Law 397.
  - 2 See Fisch and Solomon, above n 1, at 1324–25, arguing Delaware corporate law does not contain a broad requirement of shareholder primacy and provides little guidance for day-to-day operational decisions.
  - 3 Milton Friedman "A Friedman doctrine—The Social Responsibility of Business Is to Increase Its Profits" *The New York Times* (New York City, 13 September 1970). For contemporary views on the Friedman doctrine, see generally Martin Lipton "The Friedman Essay and the True Purpose of the Business Corporation" (17 September 2020) Harvard Law School Forum on Corporate Governance <[www.corpgov.law.harvard.edu](http://www.corpgov.law.harvard.edu)>; and Amy Merrick "Is the Friedman Doctrine Still Relevant in the 21st Century?" (24 May 2021) Chicago Booth Review <[www.chicagobooth.edu](http://www.chicagobooth.edu)>.
  - 4 For an example of this view in practice, see generally Ann Lipton "Not Everything Is About Investors: The Case for Mandatory Stakeholder Disclosure" (2021) 37 Yale J on Reg 499.
  - 5 David Millon "Enlightened Shareholder Value, Social Responsibility, and the Redefinition of Corporate Purpose Without Law" (Washington & Lee Public Legal Studies Research Paper 2010-11, 16 June 2010).

purpose and considering the needs of a broad range of stakeholders. ... Ultimately, purpose is the engine of long-term profitability".<sup>6</sup>

The purpose of the corporation is obviously an important issue, which is why it continues to consume both scholarly and policy debate. However, this debate can get bogged down in the normative questions centred around motives, which are notoriously hard to ascertain and measure. This article shifts focus from the "why" of corporate purpose, to the equally important "how". The central question it asks is: in practice, what corporate governance strategies do corporations adopt to hold directors and managers accountable to a prosocial corporate purpose? These strategies are complex and multifaceted, and the aim of this article is not to explore them in detail, but rather to highlight some of the ways in which corporations can begin to implement a prosocial corporate purpose.

## **II CORPORATE PURPOSE STATEMENTS: FROM SOFT LAW TO CORPORATE CHARTERS**

As Professors Dorothy Lund and Elizabeth Pollman have argued, "one of the oldest and most important characteristics of the corporation is the ability of its organizers to craft its specific purpose".<sup>7</sup> Therefore, corporate law is broadly permissive and enabling. As long as the board is not violating its fiduciary duties or engaging in corporate waste, there is wide latitude to adopt a prosocial purpose.<sup>8</sup> But it is unclear precisely how corporations should identify, communicate and enforce their corporate purpose. In this part, I examine the role of voluntary statements, which, while largely unenforceable at the outset, can provide a powerful first step towards a prosocial corporate purpose.

### **A Soft Law: Voluntary Statements**

In 2019, the Business Roundtable (BRT), a United States-based association of CEOs, revised its statement on the purpose of the corporation, declaring: "While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders".<sup>9</sup> This was poles apart from the BRT's 1997 *Statement on Corporate Governance*, which emphasised a narrow, shareholder profit-maximising corporate purpose and stated: "... the principal objective of a

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6 Letter from Larry Fink (Chairman and Chief Executive Officer of BlackRock) to Chief Executive Officers (14 January 2020). There are many other prominent theories of corporate purpose, from team production theory to concession theory, which add complexity. For different theories of corporate purpose, see generally David Millon "Theories of the Corporation" [1990] Duke LJ 201.

7 Dorothy S Lund and Elizabeth Pollman "Corporate Purpose" in Jeffrey N Gordon and Wolf-Georg Ringe (eds) *Oxford Handbook of Corporate Law and Governance* (2nd ed, Oxford University Press, Oxford) (forthcoming) at 2–3.

8 At 2.

9 See Business Roundtable *Statement on the Purpose of a Corporation* (19 August 2019), signed by 181 company CEOs.

business enterprise is to generate economic returns to its owners".<sup>10</sup> Some celebrated the new statement as an acknowledgement that the era of shareholder profit maximisation had ended.<sup>11</sup> Within the scholarly community, however, the reaction was overwhelmingly critical. Some argued that it was a veiled attempt to forestall regulatory interventions, while others claimed that it harmed shareholders and stakeholders by insulating management from scrutiny.<sup>12</sup> An empirical study found that "almost none of the majority of BRT Companies that updated their governance guidelines after the BRT Statement made any changes to the language describing their corporate purpose" and led to the conclusion that the statement was "mostly for show".<sup>13</sup>

Admittedly, the enforceability of the BRT Statement remains weak. After all, it is nothing more than a statement of corporate purpose signed by CEOs, who lack authority to unilaterally amend a corporation's purpose. Moreover, it remains unclear whether boards of directors, the only governing body with the power to act on behalf of the corporation, had even discussed, let alone approved the CEOs' decision to sign the BRT Statement.<sup>14</sup> Although the BRT Statement is far from a vehicle for enacting corporate purpose, its value has been underappreciated. The statement reflected a broader shift in the business and investment community that was questioning the norm of shareholder primacy. Other notable examples include BlackRock CEO Larry Fink's 2018 letter articulating that corporations should "serve a social purpose"<sup>15</sup> and the World Economic Forum's 2020 "Davos Manifesto", which also adopted a stakeholder-oriented view of corporate purpose.<sup>16</sup> Like all voluntary commitments, these pronouncements have been critiqued for lacking any enforceability or accountability. While that is true, voluntary commitments often trigger a series of (albeit incremental) actions by shareholders and stakeholders, paving the way for stronger accountability measures. These

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10 Business Roundtable *Statement on Corporate Governance* (September 1997).

11 Claudine Gartenberg and George Serafeim "181 Top CEOs Have Realized Companies Need a Purpose Beyond Profit" *Harvard Business Review* (online ed, United States, 20 August 2019). See also Andrew Edgecliffe-Johnson "Companies Under Pressure to Declare 'Social Purpose'" *Financial Times* (online ed, London, 22 August 2019).

12 Bebchuk and Tallarita, above n 1, at 176–177; Lucian A Bebchuk, Kobi Kastiel and Roberto Tallarita "For Whom Corporate Leaders Bargain" (2021) 94 S Cal L Rev 1467 at 1467–1468; Lucian A Bebchuk and Roberto Tallarita "Will Corporations Deliver Value to All Stakeholders?" (2022) 75 Vand L Rev 1031 at 1031–1033; and Rock, above n 1, at 363–367.

13 Bebchuk and Tallarita "Will Corporations Deliver Value to All Stakeholders?", above n 12, at 1036.

14 Robert G Eccles "The Statement of Purpose and What You Need To Do" (23 August 2019) <[www.robteccles.com](http://www.robteccles.com)>.

15 Larry Fink "A Sense of Purpose" (17 January 2018) Harvard Law School Forum on Corporate Governance <[www.corpgov.law.harvard.edu](http://www.corpgov.law.harvard.edu)>.

16 Klaus Schwab "Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution" (2 December 2019) World Economic Forum <[www.weforum.org](http://www.weforum.org)>.

include formal statements of purpose signed by boards of directors, amendments to corporate charters, and changes in corporate form such as the public benefit corporation.

### ***B Private Ordering***

While most corporate law in the United States is state-based, federal securities law plays an important role through corporate disclosure. The Securities and Exchange Commission (SEC) r 14a-8 governs shareholder proposals. These proposals are non-binding but offer a way for shareholders to express their views to management on issues from executive compensation to board diversity.<sup>17</sup> The shareholder proposal process also provides a forum for garnering support from other shareholders. While rare, successful campaigns with sufficient shareholder support can influence corporate boards to make changes.<sup>18</sup> As Professor Jill Fisch has argued, the BRT Statement prompted shareholders to introduce "purpose proposals", a type of shareholder proposal that asks the company to formalise its commitment to a prosocial corporate purpose.<sup>19</sup> These proposals are wide-ranging; some ask for disclosure about how the corporation is currently taking stakeholders into account, while others ask the corporation to convert its corporate form to a public benefit corporation.

The first purpose proposal was filed in 2019 by a shareholder in Wells Fargo Corporation. It requested that the company commission a study and prepare a report on the feasibility of converting its corporate form or amending its charter to adopt a prosocial or stakeholder-oriented corporate purpose.<sup>20</sup> After a failed attempt to exclude the proposal, Wells Fargo's board commissioned a report which ultimately found that such reforms would not be in the best interest of the corporation, but its board issued a statement emphasising its commitment to all its stakeholders, and describing how its current corporate governance structures fulfil this commitment.<sup>21</sup> At first glance, this might appear to be a minor achievement, but purpose proposals offer an important platform for shareholders to communicate with directors and officers about purpose. Stated simply, these proposals put purpose on the board's agenda. Although corporate governance reforms may happen incrementally and can be hard to observe, the key value of purpose proposals is their ability to create an opportunity for dialogue between corporate decision-makers, shareholders and the board. Although this dialogue is important, a more robust example of implementing corporate purpose is amending the charter to specify a prosocial corporate purpose, which we turn to next.

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17 Code of Federal Regulations 17 CFR § 240.14a-8.

18 See generally James D Cox and Randall S Thomas "The SEC's Shareholder Proposal Rule: Creating a Corporate Public Square" (2021) 3 Colum Bus L Rev 1147 at 1163.

19 Jill E Fisch "Purpose Proposals" (2022) 1 U Chi Bus L Rev 113 at 116. Fisch also argues that "agreement on the shareholder primacy norm has evaporated" in light of the 2019 BRT Statement: at 114.

20 At 128.

21 Wells Fargo "Response of Wells Fargo & Company" (30 January 2020), as discussed in Fisch, above n 19, at 129.

### *C New Corporate Forms*

In the early days of incorporation in the United States, a corporation's charter was required to specify a narrow and public-serving purpose, such as operating a railroad or a farm.<sup>22</sup> If a corporation operated outside of its chartered purpose, it would be held liable under the ultra vires doctrine.<sup>23</sup> We have evolved well beyond special or public chartering – today, most corporations are incorporated for "any lawful purpose".<sup>24</sup> This latitude is reflected in general corporation statutes, including Delaware's, which provides that "A corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes".<sup>25</sup> Crucially, as Professors Lund and Pollman have argued, this latitude does not "require that corporations adopt shareholder value maximization – or anything else – as part of the corporation's purpose".<sup>26</sup> To the contrary, corporate law is broadly enabling and allows corporate directors, officers and shareholders to adopt any purpose whatsoever, with the law providing the only guardrails.

This combination of broadly permissive corporate governance codes and the deference provided by the business judgement rule means that, in practice, directors and officers may consider stakeholders. This reality is reflected in the fact that most corporations invest a great deal in non-shareholder stakeholders including employees, communities, and the environment. While there remains some question about whether directors can make trade-offs between shareholders and stakeholders, in practice, these cases rarely arise. Most corporate decisions can be couched in terms of long-term risk-adjusted returns, or enlightened shareholder value. The few cases that exist are not conclusive on this point either – scholars continue to debate whether cases such as *Revlon* should be read as a broad legal requirement of value maximisation in corporate law, or if it applies only in the narrow context of corporate takeovers when the sale of the corporation is inevitable.<sup>27</sup> Therefore, the extent to which directors must maximise shareholder profit remains hotly debated.<sup>28</sup>

The new corporate forms address this legal uncertainty but raise new questions too. Unlike traditional corporations, directors of public benefit corporations (PBCs) have fiduciary duties to

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22 See generally Elizabeth Pollman "The History and Revival of the Corporate Purpose Clause" (2021) 99 Tex L Rev 1423 at 1426.

23 Kent Greenfield "Ultra Vires Lives! A Stakeholder Analysis of Corporate Illegality (With Notes on How Corporate Law Could Reinforce International Law Norms)" (2001) 87 Va L Rev 1279 at 1302–1313.

24 James D Cox and Thomas Lee Hazen *Treatise on the Law of Corporations* (3rd ed, Thomson West, St Paul, 2010) vol 1 at § 4:1.

25 Del Code Ann, title 8 § 101(b) (2022).

26 Lund and Pollman, above n 7, at 4.

27 At 5. The case at issue is *Revlon Inc v MacAndrews & Forbes Holdings Inc* 506 A 2d 173 (Del 1986).

28 See for example Fisch and Solomon, above n 1, at 1323–1326 and 1332: "We believe that reading these cases to incorporate a broad requirement of shareholder primacy in corporate law goes too far".

balance the interests of shareholders with a specific public benefit. For example, in 2017, Vital Farms, originally incorporated in Texas, converted to a Delaware PBC. Vital Farm's 10-K provides:<sup>29</sup>

As a public benefit corporation, we are required to balance the financial interests of our stockholders with the best interests of those stakeholders materially affected by our conduct, including particularly those affected by the specific benefit purposes set forth in our amended and restated certificate of incorporation.

...

As a public benefit corporation, our duty to balance a variety of interests may result in actions that do not maximize stockholder value.

Consistent with corporate law's deference to private ordering, PBCs have discretion to articulate their own unique public benefit, as the following comparison demonstrates:

#### Allbirds<sup>30</sup>

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations, including public benefit corporations, may be organized under the DGCL. The Company shall be a public benefit corporation as contemplated by subchapter XV of the DGCL, or any successor provisions, that it is intended to operate in a responsible and sustainable manner and to produce a public benefit or benefits, and is to be managed in a manner that balances the stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct and the public benefit or benefits identified in this certificate of incorporation. If the DGCL is amended to alter or further define the management and operation of public benefit corporations, then the Company shall be managed and operated in accordance with the DGCL as so amended. In addition, the Company will promote the following public benefit: environmental conservation.

#### Vital Farms<sup>31</sup>

The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which corporations, including Public Benefit Corporations, may be organized under the General Corporation Law of the State of Delaware ("DGCL"), including without limitation the following public benefits: (i) bringing ethically produced food to the table; (ii) bringing joy to our customers through products and services; (iii) allowing crew members to thrive in an empowering, fun environment; (iv) fostering lasting partnerships with our farmers and suppliers; (v) forging an enduring profitable business; and (vi) being stewards of our animals, land, air and water, and being supportive of our community.

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29 Vital Farms Inc *Annual Report (Form 10-K)* (7 March 2024) at 38.

30 Allbirds Inc *Ninth Amended and Restated Certificate of Incorporation* (SEC Exhibit 3.1, 5 November 2021).

31 Vital Farms Inc *Amended and Restated Certificate of Incorporation* (SEC Exhibit 3.2, 31 March 2020).

PBCs are no silver bullet, but they clarify one important point: the board of directors must balance the interests of stakeholders, shareholders, and the public benefit. In doing so, it may make trade-offs between shareholder profit and public purpose. Crucially, PBCs acknowledge that this feature is a potential risk to investors. Vital Farms' financial disclosures provide:<sup>32</sup>

As a public benefit corporation, we may be subject to increased derivative litigation concerning our duty to balance stockholder and public benefit interests, the occurrence of which may have an adverse impact on our financial condition and results of operations.

PBCs are a relatively new corporate form, and it remains unclear whether they will ultimately deliver on their promise of a legally enforceable prosocial public purpose. However, by incorporating a prosocial purpose into their articles of incorporation, PBCs represent the most legally enforceable example of holding directors and officers accountable to a prosocial corporate purpose. Still, there are shortcomings. For one thing, the Delaware PBC only gives shareholders the right to bring a cause of action against the board. This is indeed odd, because though the board owes fiduciary duties to non-stakeholder shareholders and society, shareholders alone are given the right to hold the directors accountable to that public benefit.

Although a corporation's charter and articles of incorporation are obviously foundational, day-to-day decisions are made by the board of directors. Even in PBCs, the board is granted broad discretion since courts have extended business judgement rule deference to directors' decisions. Although there is no case law on PBCs, it is unlikely that a court will intervene unless there is evidence of gross misconduct or failure to act in good faith. Given this reality, many proponents of prosocial corporate purpose advocate for incorporating broader societal interests by electing public interest board members whose fiduciary duties extend beyond profit. For example, the *Model Benefit Corporation Legislation*, which has been enacted in numerous states, provides an option for appointing a "benefit director" on the board.<sup>33</sup> In some states, such as Connecticut, publicly traded benefit corporations must appoint a benefit director.<sup>34</sup> But electing prosocial board members does not require a change in corporate form, and even shareholders in traditional corporations can elect directors who represent stakeholder groups – such as labour – or who advocate for specific causes, like environmental conservation. The next part will examine the role of such directors in operationalising corporate purpose.

### ***III BOARD COMPOSITION, THE PUBLIC PURPOSE DIRECTOR***

Periods of political and economic turbulence often usher in corporate governance reforms. The 1970s marked one such inflection point – as the public's confidence in corporate America plummeted,

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<sup>32</sup> See Vital Farms Inc, above n 29, at 39.

<sup>33</sup> B Lab *Model Benefit Corp Legislation*, § 302(c) (17 April 2017).

<sup>34</sup> Conn Gen Stat § 33-1359(a).



its demands for corporate accountability increased. Progressive reformers vowed to "tame the giant corporation" by advocating for reforms that would increase the oversight and accountability of directors and officers.<sup>35</sup> The most robust reforms sought to introduce public accountability into the boardroom through the composition of the board itself. Proposals ranged widely. Some advocated for constituency board members, who are elected by and represent a specific stakeholder group, such as labour, mirroring the "co-determination" model implemented with varying success in other countries from Germany to Japan.<sup>36</sup> Perhaps the most radical proposal argued that corporate boards should include at least one "public director", or public officials who are elected by the citizens as opposed to shareholders.<sup>37</sup>

Though these ideas remained fringe, they reflect a recurring theme in corporate governance debates. Today, as public trust in corporations is again at a low point, there is renewed interest in stakeholder representation on boards.<sup>38</sup> As Professor Brett McDonnell has aptly summed up, "robust stakeholder governance should entail governance of the stakeholders, by the stakeholders, and for the stakeholders".<sup>39</sup> He argues for stakeholder advisory boards which include representatives from all major corporate stakeholder groups.<sup>40</sup> Others have gone a step further and proposed that stakeholder representatives should be given the power to nominate or elect directors.<sup>41</sup> And there are even

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35 See generally Ralph Nader, Mark Green and Joel Seligman *Taming the Giant Corporation* (WW Norton & Co, New York, 1977).

36 See generally Krister Rasmussen "Industrial Democracy Today: An Examination of European Codetermination" (MS thesis, Paris Sciences et Lettres University, 2021), providing a comprehensive historical and theoretical survey of the practice of co-determination, as applied across a variety of European jurisdictions.

37 See generally Thomas M Jones and Leonard D Goldberg "Governing the Large Corporation: More Arguments for Public Directors" (1982) 7 *Academy of Management Review* 603, arguing that government-appointed public directors could be the answer to making corporations answerable to the wants and needs of the general public.

38 See Jeffrey M Jones "Confidence in US Institutions Down; Average at New Low" (5 July 2022) Gallup <[www.news.gallup.com](http://www.news.gallup.com)>; and Sandra J Sucher, Peter Tufano and Debora L Spar "People Trust Business, But Expect CEOs to Drive Social Change" (21 October 2022) Harvard Business School <[www.library.hbs.edu](http://www.library.hbs.edu)>, finding that respondents manifest a strong distrust of business, with only 47 per cent trusting business.

39 Brett H McDonnell "Stakeholder Governance as Governance by Stakeholders" (2024) 47 *Seattle UL Rev* 511 at 512–513.

40 At 513.

41 Justin Blout "Creating a Stakeholder Democracy Under Existing Corporate Law" (2016) 18 *U Pa J Bus L* 365 at 366–367.

examples (though rare) of corporations that have placed "nature" itself on the board, through a board member representing the interests of nature.<sup>42</sup>

There are, of course, limitations to how much influence an individual director can have. After all, boards must act through a quorum, and it is challenging for one director, or even a small group, to effectuate significant reforms. ExxonMobil illustrates this point. At its 2021 annual meeting, climate-conscious shareholders elected three new board members. Yet, just three years later, ExxonMobil remains even more resistant to shareholder demands for climate risk disclosure. In fact, the company has gone so far as to sue its own shareholders for filing a climate risk proposal.<sup>43</sup>

Incentives matter, and they motivate corporate executives' actions. Therefore, one concrete way that corporate boards can integrate stakeholder impacts into executive decision-making is through executive compensation. Incentives linked to stakeholder impacts are crucial because, although corporate law is generally flexible, many executives focus on short-term goals, often driven by quarterly financial performance. To address this short-termism, there has been a growing effort to incorporate long-term, prosocial goals into executive pay.<sup>44</sup> Examples include tying compensation to objectives like emissions reduction and board diversity, which align executive interests with broader social and environmental outcomes. Yet, there is cynicism about how robust these executive compensation metrics are when applied in practice.<sup>45</sup>

#### ***IV FEDERALISING CORPORATE LAW, THE ACCOUNTABLE CAPITALISM ACT***

Senator Elizabeth Warren has proposed legislation to federalise corporate law for certain corporations.<sup>46</sup> While unlikely to be enacted, particularly in a Republican-controlled Congress, the proposed Accountable Capitalism Act offers a roadmap for the prosocial corporation. The Act would require companies with more than \$1 billion in revenue to obtain a federal charter and require the

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42 See for example Wesley J Smith "Corporation Names 'Nature' to the Board of Directors" (8 November 2023) National Review <[www.nationalreview.com](http://www.nationalreview.com)>, reporting on the decision of interior design company House of Hackney to name "Nature", represented in person by environmentalist lawyer Brontie Ansell, to its board.

43 See Timothy Smith "ExxonMobil's Lawsuit Against its Shareholders: A Cautionary Tale" (12 June 2024) Harvard Law School Forum on Corporate Governance <[www.corpgov.law.harvard.edu](http://www.corpgov.law.harvard.edu)>.

44 Matthew Bell "Why ESG performance is growing in importance for investors" (9 March 2021) EY <[www.ey.com](http://www.ey.com)>.

45 See David I Walker "The Economic (In)significance of Executive Pay ESG Incentives" (2022) 27 Stan J L Bus Fin 318; and Lucian A Bebchuk and Roberto Tallarita "The Perils and Questionable Promise of ESG-Based Compensation" (2022) 48 J Corp L 37.

46 Accountable Capitalism Bill 2018 (S 3348).

company's directors to consider stakeholders in their decision-making process.<sup>47</sup> It would also give employees the power to elect at least 40 per cent of the company's board members. Companies would also be prohibited from making political expenditures without 75 per cent approval by both the board and shareholders.

Outside of the United States, another example of incorporating stakeholder interests into corporate decision-making is the United Kingdom's s 172 statement. The Companies Act 2006 (UK) provides that directors have a duty to act in a way that promotes the success of the company.<sup>48</sup> Importantly, this duty is owed to the company, not directly to shareholders, and not at all to stakeholders. But the law recognises that long-term shareholder value depends on assessing the impacts that the company is having on stakeholders, including employees, suppliers, customers, the community and the environment. While this duty has existed since 2006, it has been rather anaemic. In 2018, the Act was amended to include a reporting requirement, which means that directors of a company must disclose how they are accounting for stakeholders.<sup>49</sup> Although these reporting requirements are relatively new, requiring such disclosure increases the board's awareness of, and engagement with, non-shareholder stakeholders.

## **V CONCLUSION**

This article has explored various tools for putting a prosocial corporate purpose into practice. Voluntary statements, like the Business Roundtable's 2019 declaration and shareholder proposals, are sometimes superficial and lack accountability, but they can also lay the groundwork for stronger actions. At the other end of the spectrum, legal structures such as public benefit corporations (PBCs) offer a stronger framework for balancing profit with social impact, though they still face challenges around accountability and enforcement. Corporate governance reforms, including public interest directors, provide additional ways to integrate purpose into board-level decision-making. Executive compensation tied to goals like environmental impact and diversity can also motivate purpose-driven behaviour, but these efforts are still in the early stages.

Each of these tools shows promise, but they also face limitations that may hinder their full potential. Moreover, these challenges are subject to the shifting political landscape, especially in the United States, where prosocial corporate purpose is under intense scrutiny. Although their future remains uncertain, this article has examined the myriad ways that corporations can embed a prosocial purpose in corporate governance.

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47 Sections 4 and 5(c)(1)(B)(i), respectively. Entities that would be subject to these requirements are defined in § 2(2).

48 Companies Act 2006 (UK), s 172.

49 Section 414CZA.

