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How Benefit Corporations Will Effect the Economy

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INTRODUCTION

There is a new corporation starting to pick up speed and media in America. In the age of social entrepreneurship, there is a group that is trying to get larger corporations on board with going over and above your average social responsibility. This new corporation is known as a Benefit Corporation or B Corp for short. According to the official Benefit Corp website, “B Corps are for-profit companies certified by the nonprofit B Lab to meet rigorous standards of social and environmental performance, accountability, and transparency.” Their main tag line is best for the world, instead of best in the world. The publicly stated ideas behind this movement are to eliminate harm and benefit all, encourage dependency, conduct business as if the people and places matter, and be the change sought in the world. The overall theme is to create and maintain a better world for future generations.¹

Benefit Corporations are often associated with Certified Benefit Corporations (Certified B Corps). Although these two ideas have much in common, they are separate notions. So which came first, Benefit Corporations or Certified B-Corps? The answer is Certified B-Corps. B Labs created Certified B-Corps then created benefit corporations to give the organizations legal recognition by the government.² The purpose of this paper is explore the long-term effects Benefit Corporations and their certified counterpart will have on the economy in America.

¹ “B Corporation.” *Welcome | B Corporation*, www.bcorporation.net/

² Storper, Jonathan. “What’s the Difference Between a B Corp and a Benefit Corporation?” *Conscious Company*, 6 Jan. 2017, <https://consciouscompanymedia.com/sustainable-business/whats-the-difference-between-a-b-corp-and-a-benefit-corporation>.

B-CORPS AND CERTIFIED B-CORPS

Benefit Corporations are recognized by the state as legal entities. Certified B Corps are made official by an organization known as B Labs. The purpose of B Labs is to oversee the certification of Benefit Corporations and ensure that all certified corporations maintain the same mission.³ B Labs acts as the recruiters to get more people to incorporate as Benefit Corporations. They are also in charge of mediating what is known as the B Impact Assessment (BIA).³

The B Impact Assessment is the test corporations must take to become a Certified B Corp. A business's score is based on its size, sector, and whether it operates in an emerging market.⁴ The test has four different sections: governance, workers, community, and environment. Questions are meant to test for transparency, corporate perks, diversity, philanthropy, and environmental friendliness. The governance section includes questions like "what portion of your management is evaluated in writing on their performance with regard to corporate social and environmental targets?"⁵ Similarly, workers related questions include: "based on referenced compensation studies, how does your company's compensation structure (excluding executive management) compare with the market?"⁵

In taking the test, the entity applying is compared to the answers of other Certified B Corps and then given a score based on this. The standard set forth on this test is ever evolving with the industries that make up certified B-Corps; thus, certified B-Corps must re-take the test

³ "B Corporation." *Welcome | B Corporation*, www.bcorporation.net/

⁴ Akalp, Nellie. "How Much Does It Cost to Incorporate in Each State?" *Small Business Trends*, 7 June 2016, smallbixtrends.com/2015/04/much-cost-incorporate-state.html.

⁵ "Assess Your Impact." *Step 1. Assess Your Impact | B Impact Assessment*, bimpactassessment.net/how-it-works/assess-your-impact.

every two years. Benefit corporations are not required to take this test. Their performance is self reported according to the instructions set forth by their state of incorporation.⁶

BENEFIT CORPORATIONS

Benefit Corporations must elect a Board of Directors, as all corporations must. Along with shareholder value, the three main pillars for the board to uphold are accountability, transparency, and purpose.⁷ Their directors have the obligation to not only act in the interest of shareholders, but also other factors that are affected by the company such as: the employees, customers, communities, local and global environment, short-term and long-term interests of the benefit corporation, stockholders, and more.⁸ This is referred to as the triple-bottom line.⁹ The exact requirements for directors and their obligations are outlined in each state's benefit corporation statute and vary state by state.

The logistics of a Benefit Corporation vary from that of a C Corporation, LLC, and S Corporation. Since they fall under the same legal family as other corporations, they share many of the same state mandated policies and procedures as C-Corps and S-Corps. However, Benefit Corporations can often times be a slightly adjusted variation of another type of corporation. The following is a chart that compares the similarities and differences of C Corporations, LLC's, S

⁶ "Benefit Corporation." *Benefit Corporation & Certifications & Certified B Corps* | *Benefit Corporation*, benefitcorp.net/business/benefit-corporations-and-certified-b-corps

⁷ Storper, Jonathan. "What's the Difference Between a B Corp and a Benefit Corporation?" *Conscious Company*, 6 Jan. 2017, <https://consciouscompanymedia.com/sustainable-business/whats-the-difference-between-a-b-corp-and-a-benefit-corporation>.

⁸ "Notice Regarding Benefit Corporations." *Massachusetts General Laws Chapter 156E*, <https://www.sec.state.ma.us/cor/corpdf/Notice%20regarding%20Benefit%20Corporations.pdf>

⁹ "Benefit Corporation." *How to Become a Benefit Corporation* | *Benefit Corporation*, benefitcorp.net/businesses/how-to-become-benefit-corporation.

Corporations, and Benefit Corporations. It also indication the basic path each entity must take to become a Certified B-Corp.

	C-Corp	LLC	S-Corp	Benefit Corp
Ownership	Owned by Shareholders. ¹⁰	Owned by the members of the organization. ¹⁰	Owned by shareholders. Maximum 100 shareholders. ¹¹	Ownership depends on if the company elects to operate under S-Corp terms or C-Corp terms. ¹²
Taxation*	Both the owners/shareholders and the business are taxed. ¹⁰	Business profits are passed through to the members and are taxed at the member's personal income tax rates. The business itself is not taxed. Can elect to be taxed as a C-Corp or an S-Corp. ¹⁰	Business profits are passed through to the members and are taxed at the member's personal income tax rates. The business itself is not taxed. ¹⁰	Taxation varies based on whether the company elects to operate under S-Corp terms or C-Corp terms. ¹²
Liability	The company is legally and financially liable. The shareholders cannot be held liable or sued in place of the company unless the court rules negligence. ¹⁰	The members are not liable for the debts and other obligations of the business. ¹⁰	The company is legally and financially liable. The shareholders cannot be held liable or sued in place of the company unless the court rules negligence. ¹⁰	The company is legally and financially liable. The shareholders cannot be held liable or sued in place of the company unless the court rules negligence. ¹²
Requirements	Reserve the name of the business with the office of the Secretary of State. File Articles of Incorporation. Create bylaws. Appoint a board of directors. Issue stock to initial shareholders. Hire an agent to receive all formal business documents. ¹⁰	Reserve the business name with the office of the Secretary of State. File Articles of Incorporation. Register the LLC for an Employer Identification Number (EIN) with the IRS. ¹⁰	Reserve the name of the business with the office of the Secretary of State. File Articles of Incorporation. Send a completed Form 2553 to the IRS. Limited to 100 shareholders maximum and one class of stock. ¹⁰	Reserve the business name with the Secretary of State. File Articles of Incorporation. ¹²

¹⁰ "Assess Your Impact." *Step 1. Assess Your Impact | B Impact Assessment*, bimpactassessment.net/how-it-works/assess-your-impact.

¹¹ "S Corp – Forming an S Corporation | BizFilings - .. 1 – www.bizfilings.com" *Bizfilings*, www.bizfilings.com/starting-your-business/business-types/s-corporation.

¹² "B Corp – Forming an Benefit Corporation | BizFilings - .. 1 – www.bizfilings.com" *Bizfilings*, www.bizfilings.com/starting-your-business/business-types/benefit-corporation.

Filing Fees**	State filing fees vary between \$50-\$310. ¹³	State filing fees vary between \$50-\$520. ¹³	State filing fees vary between \$50-\$310. ¹³	State filing fees vary between \$50-\$310. ¹⁴
Record Keeping	Must hold annual board meetings that keep minutes during the meeting. Any decisions made at the meetings must be made by formal vote. States require business to file an annual report. ¹⁵	Must file a year-end report with the respective state every year. ¹⁵	Must hold annual board meetings that keep minutes during the meeting. Any decisions made at the meetings must be made by formal vote. States require business to file an annual report. ¹⁵	Must file a Benefit Report (annually in most states) that measures the company's performance in terms of public welfare. Must file an end of year report as well. ¹⁴
Who registers?	Mostly used by startups who are looking to go public, large investment companies, or high risk business with a lot of liability. ¹⁵	Good for small business that do not intend to go public and do not need to raise a lot of money. Provides a lot of flexibility for the owners in terms of management and taxation. ¹⁵	Companies that want flexibility in salaries to minimize taxes and flexible accounting methods but still receive the benefits of corporate business type holdings. ¹⁶	Business that want to register as for-profit and conduct business as a social venture. ¹⁴
How to become a Certified B-Corp	The business must score at least 80/200 points on the B Impact Assessment. Legally amend the entity's Articles of Incorporation to read like that of a Benefit Corporation. Sign the B Corp Declaration of Interdependence and Term Sheet. ¹⁷	The business must score at least 80/200 points on the B Impact Assessment. Change state of incorporation from that of an LLC to a Corporation or complete a "due diligence review" (6). Amend governing documents to read like that of a Benefit Corporation. Sign the B Corp Declaration of Interdependence and Term Sheet. ¹⁷	The business must score at least 80/200 points on the B Impact Assessment. Legally amend the entity's Articles of Incorporation to read like that of a Benefit Corporation. Sign the B Corp Declaration of Interdependence and Term Sheet. ¹⁷	The business must score at least 80/200 points on the B Impact Assessment. Sign the B Corp Declaration of Interdependence and Term Sheet. ¹⁷

Table 1. Comparison of C Corporations, LLC's, S Corporations, and Benefit Corporations.

¹³ Akalp, Nellie. "How Much Does It Cost to Incorporate in Each State?" *Small Business Trends*, 7 June 2016, smallbixtrends.com/2015/04/much-cost-incorporate-state.html.

¹⁴ "B Corp – Forming an Benefit Corporation | BizFilings - .. 1 – www.bizfilings.com" *Bizfilings*, www.bizfilings.com/starting-your-business/business-types/benefit-corporation.

¹⁵ Ilaio, Jillian, et al. "LLC vs S Corp vs C Corp: Best Small Business Structure?" *Fit Small Business*, 16 Mar. 2018, fitsmallbusiness.com/llc-vs-s-corp-vs-c-corp.

¹⁶ "S Corp – Forming an S Corporation | BizFilings - .. 1 – www.bizfilings.com" *Bizfilings*, www.bizfilings.com/starting-your-business/business-types/s-corporation.

¹⁷ "B Corporation." *Welcome | B Corporation*, www.bcorporation.net/.

*According to the Benefit Corps website, if your business is taxed like a C or S Corp, changing to a B Corp will not affect how your business is taxed. If you are an LLC, you can switch to an S Corp with a little change to taxes (6).

**Filing Fees are based off of the minimum filing fee available in each state and do not include other any other fees that may be necessary to complete legal incorporation in a state.

Benefit corporations can choose to incorporate in any state that recognizes them. At the time, the only states that legally allow businesses to incorporate as Benefit Corporations are: Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington D.C., and West Virginia.¹⁸ Benefit Corporations can also be found in 32 other countries.¹⁹ While Benefit Corporations can only incorporate in these areas, Certified B-Corps are recognized everywhere. A corporation does not need to be a Benefit Corporation to become a Certified B-Corp. So long as the corporation's articles are amended to read like that of a Benefit Corporation, they can become a Certified B-Corp. States that do not offer benefit corporations to incorporate will not legally recognize a Certified B-Corp as a benefit corporation; the state will instead recognize them as a C-Corp, S-Corp, or any other corporation or LLC they choose to incorporate as. They are, however, recognized by B Lab as a Certified B-Corp and may utilize any benefits that B Lab offers.

Benefit corporations are created under law, while S-Corps and C-Corps are legalized under federal tax election. Benefit Corporations can elect to be taxed and owned under S-Corp regulations or C-Corp regulations.²⁰ Each state has a different legal process to file as or become a benefit corporation. For an S-Corp or C-Corp to become a Benefit Corporation, most of the time

¹⁸ "B Corporation." *Welcome | B Corporation*, www.bcorporation.net/

¹⁹ Storper, Jonathan. "What's the Difference Between a B Corp and a Benefit Corporation?" *Conscious Company*, 6 Jan. 2017, <https://consciouscompanymedia.com/sustainable-business/whats-the-difference-between-a-b-corp-and-a-benefit-corporation>.

²⁰ "B Corp – Forming an Benefit Corporation | BizFilings - .. 1 – www.bizfilings.com" *Bizfilings*, www.bizfilings.com/starting-your-business/business-types/benefit-corporation.

the corporation must file an Articles of Amendment that amends the original Articles of Incorporation to legally alter the company into a Benefit Corporation. The legal jargon that the new Articles of Amendment must contain vary state by state. For example, in the state of Massachusetts, the amended articles must read that “the entity is to be a benefit corporation” or “the corporation shall have the purpose of creating a general public benefit.”²¹ The declaration must then be approved by the board of directors and the shareholders. The existing corporation must also file a Statement of Change of Supplemental Information to instate the elected benefit director.²²

The B-Impact Assessment measures the activities of a company over the past year. So, a business must have been in operation for at least a year before receiving certification from B Lab. B Lab also recognizes that start-up companies do not always have the funding nor the power to effectively compete with the B-Impact Scores of their industry. Thus, they have created a way for start-up companies to join by extending them a temporary certification. This certification lasts 12 months. During those 12 months, the start-up company is expected to act like a Certified B-Corp. They must meet the legal requirements to incorporate as a benefit corporation in their state if that state recognizes benefit corporations. They must also meet performance requirements set forth by B Lab and sign the pending certification term sheet that includes acceptance of limited rights to intellectual property and limited access to B Lab services during the 12-month period. Finally, there is a \$500 pending certification fee.²³

²¹ “B Corporation.” *Make It Official* | B Corporation, <https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/make-it-official>.

²² “Notice Regarding Benefit Corporations.” *Massachusetts General Laws Chapter 156E*, <https://www.sec.state.ma.us/cor/corpdf/Notice%20regarding%20Benefit%20Corporations.pdf>

²³ “B Corporation.” *What Are B Corps?* | B Corporation, www.bcorporation.net/what-are-b-corps.

HOW ECONOMIES GROW

It is no secret that businesses drive economic growth. Economic growth can be thought of as the creation of new wealth, money or things that the population as a whole did not have before. The economy is moved by exchange.²⁴ Without some form of exchange, an economy would become stagnate or dissipate. In an exchange, there is at least one buyer and one seller. The seller acts as the producer. In this case, businesses act as the producers. They are the ones who are delivering a final product to the market for consumption.

Regardless of size, all business types contribute to our economy. While providing goods for consumption is a main driving force behind economic growth, the impact corporations have is much deeper than a product. Driven by profit, corporations strive to find the most efficient allocation of our scarce resources by encouraging investment, bidding up demand on finished products, and innovating final goods and services on the production line.

Investment is one of the key starting points for corporations and other business types. An investor gives money in the present in hopes that it will create more money in the future. For someone to invest in a corporation, whether newly started or decades old, he or she must have some faith that that business will be profitable enough to return the investment, if not more. This trust that the invested money will be returned can come from a confidence in the individual running the business, the business model, or the product itself. Regardless, when business men and women go out to look for investors, they bring with them any literature that would prove legitimacy or reveal the intentions of the business. When an investor's interest and the interest of the business and those running it align, then an investment can be made.

²⁴ Rothbard, Murray N. *Man, Economy, and State with Power and Market*. Ludwig Von Mises Institute, 2009.

These investments allow for entrepreneurs to deliver their products to the market today rather than having to wait and save up enough money to finance the business on their own. Thus, investment speeds up the availability of products on the market. It also gives opportunity to those with a sustainable business idea who would otherwise never be able to afford the initial start-up costs alone. Investment creates a new generation of wealth by redistributing money for a time until more wealth is created and that wealth is redistributed among owners, employees, and the investor. Thus, the corporation generates more wealth into the economy than before.

Corporations also create demand for other goods and services. These goods and services will act as part of the inputs for the corporation's final product. Therefore, a business will enter into the market as a consumer for these goods and services and redirect their allocation to fit their own needs. A corporation only enters into the market when it believes that its final product will be worth more than the inputs used to create it. The corporation also has to be convinced that the new allocation of these goods and services is worth more to the public than the current allotment.²⁵ If the corporation is then successful in obtaining its inputs, then the product created by the corporation at the end of the day leaves more consumers and producers in the market better off than before. Consumers now have a more desirable product, and the input producers are more profitable from the increase in demand by the corporation. We know this to be the case because if consumers or producers were not better off, then the new corporation would fail out of the market. This increase money flow in the economy as consumers all together spend more for this product and input producers make more product.

Corporations do not always have to develop a new product to spur on economic growth. Innovation to existing products or production methods also paves way for new wealth in the

²⁵ Rothbard, Murray N. *Man, Economy, and State with Power and Market*. Ludwig Von Mises Institute, 2009.

economy. Innovation can take place in many forms, some being: finding a cheaper way to create a product and, thereby, lowering the overall cost and putting more product on the market; strengthening the life or quality of a product; or making a product more readily available and easier to use. Regardless of the type of innovation, the change brings about a greater flow of money in the economy because consumers are left more satisfied than they were before. Corporations create these types of occurrences daily. Satisfying human demand is what has driven and continues to grow our economy far beyond what is thought to be possible.

THE BENEFIT CORPORATION AND ECONOMIC GROWTH

While Benefit Corporations encourage respectable business practices, it does not guarantee the best situation for the business. Incorporating as a Benefit Corporation makes an entity extremely vulnerable to outside forces and interpretation. It in essence signs away some of the corporation's rights to B Lab or other systems necessary to ensure that the entity upholds the Benefit Corporation Standard. B Lab argues on their website that a B-Corp Certification will attract investors, but instead the certification adds a new degree of uncertainty and risk.²⁶ It can also weaken the company all together. Incorporating as a Benefit Corporation or obtaining certification status increases a business's expenses, hands over more power to the government and B Lab for interpretation, demands a reallocation of limited resources, and perturbs start up growth and innovation. These alterations in business practices precondition a long term differentiation in the economy.

²⁶ "B Corporation." *Welcome | B Corporation*, www.bcorporation.net/.

It is not any cheaper to file as a Benefit Corporation. In fact, it is often times more expensive in the long run to maintain Benefit Corporation status. Along with the yearly charge of filing the company's end of year report, benefit corporations must also pay a yearly fee to file an end of year benefit report. While B Lab offers a free reporting tool for Benefit Corporations to use to meet their end of year transparency requirements, this is not always in line with the reports required by the state. The yearly costs increase exponentially if an entity chooses to become a Certified B-Corp.

Yearly benefit reports in Massachusetts cost \$75.00 to file in addition to the fee associated with the annual report.²⁷ The annual fee to maintain a B-Corp certification is based on annual sales. For sales less than \$149,999 a year, the annual fee is \$500. From there, the annual fee will grow. Annual sales ranging from \$50,000,000 - \$74,999,999 have an annual fee of \$15,000 a year. Sales over 1 Billion dollars have an annual fee of \$50,000 a year or higher based on the structure of the company.²⁸ If a Certified B-Corp is incorporated in a state that legally recognizes Benefit Corporations, then they must pay any other state associated fees on top of their fees to B Lab. These are the upfront fees that are easy for a business to see before it decided whether or not becoming a Benefit Corporation or becoming certified is worth it. A business would also need to pay someone to fill out the B Impact Assessment every year, keep detailed records of the company's activities for the assessment, and compile and file any additional reports required by its state of incorporation.

These fees revert back to not only an increase in input costs, but also an increase in opportunity costs. The annual fees associated with certification do not take into account a

²⁷ "Notice Regarding Benefit Corporations." *Massachusetts General Laws Chapter 156E*, <https://www.sec.state.ma.us/cor/corpdf/Notice%20regarding%20Benefit%20Corporations.pdf>.

²⁸ "B Corporation." *Make It Official* | B Corporation, <https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/make-it-official>.

company's expenses, only the total dollar amount in sales. Thus, the added expense can cause profits to decline. The increasing fees of certification with increased sales also punishes a business for generating more sales. While the argument can be made that the increased profits offset the increase in fees enough to keep from discouraging the business from making more money, the added fees do not take into account the added expense associated with the increasing sales. If a company was operating at the point with small margins, the added costs could make the increasing sales no longer profitable. Those now lack of sales results in a decrease of money in the economy, fewer jobs, and less product on shelves that would have otherwise been bought.

Furthermore, there are additional operational costs. The business must pay someone to fill out and file the annual benefit report. They would also need someone to keep track of all changes, major or minor, made to the organization and spending to ensure that the corporation remains within the Certified B-Corp or Benefit Corporation guidelines. While this does not necessarily mean hiring a new person, it does call for additional tasks to be assigned within the company. This additional reporting and oversight means less time for previous obligations. Thus, taking the time to store adequate data and file the extra reports is also the opportunity cost of fulfilling other responsibilities necessary to successfully operate the business.

The vague statements in the Articles of Incorporation necessary to legally define a business as a Benefit Corporation open many doors for interpretation. If the corporation is created for purposes other than maximizing profits for shareholders, then it is understandable for the founders of the corporation to come to an agreement in the Article of Incorporation. There, the intentions of the business are laid out and properly understood by the founders, the writers of the intent to incorporate.²⁹ The Articles of Incorporation, therefore, act as a contract for the

²⁹ Fried, Dr. Vance. Personal Interview, 2 Apr. 2018.

parties involved. Corporations can direct their purpose for incorporating to other reasons such as employee well-being, customer satisfaction, and environmental care. Benefit corporations simply give these business types a title. It also gives them a specific purpose for incorporation, one that is not always fully understood by the founders and shareholders.

Since the founders of the business did not originally write the Benefit Corporation's code for Articles of Incorporation, the articles can then legally be left up to interpretation.³⁰ The power of interpretation is not in the hands of owners or shareholders, but B Lab and even the court system. As stated before, each state has their own excerpt that must be found somewhere in the articles in order to be legally recognized as a Benefit Corporation. For example, in both Washington D.C. and New York, a corporation must only state that it "is a Benefit Corporation."³¹ The business's articles may state that their purpose is to make a maximize shareholder profit, but the new add-in makes the corporation now legally bound to the triple-bottom line. As a business, you can't maximize everything.

Dr. Vance Fried describes this case by referring to an article written by Dr. Simons at Harvard Business School. "Dr. Simons has a paper on three basic groups when you are running an organization: employees, owners, and customers. To survive, you have to satisfy all three. You can optimize which ever you prefer after that. You can't max everyone, but you can satisfy them all."³⁰ This leaves open to question what is defined as maximized, satisfied, or neglected. Henry Ford is one of the most infamous examples of a business that focused mostly on satisfying his employees. The company used to pay out hefty shareholder dividends, until Ford decided to take that money and reinvest it into the company to decrease the price of their product. In 1919,

³⁰ Fried, Dr. Vance. Personal Interview, 2 Apr. 2018.

³¹ "Benefit Corporation." *How to Become a Benefit Corporation | Benefit Corporation*, benefitcorp.net/businesses/how-to-become-benefit-corporation.

the Dodge brothers, shareholders in the Ford company, brought up a court case against Henry Ford. They demanded dividends and returned to shareholders and to alter Ford's questionable business decisions. In this case, the court decided that it was the duty of the business to make a profit, but the power to make other business decisions is given to the directors, not the court (20).³² In this case, Ford upheld their bottom line to make a profit. However, this left open ruling for future court cases when there is a triple-bottom line.

A writer at Forbes states, "it is unclear how courts will interpret their mandates to not only seek profits, but also to consider potential benefits to society."³³ The ruling would entirely depend on the judge, and each case would suffer a much different outcome. Thus, Benefit Corporations is a push towards continental law, rule by the court system.³⁴ Incorporating as a Benefit Corporation takes away power and freedom from the corporation and give it to outside forces. These outside have their own interests in mind. There is no guarantee that the interest of the corporation will be put first and for-most because the original business intent is altered under the Benefit Corporations' specific Article of Incorporation.

Due to the change in the bottom-line, B Lab has worked to connect a different type of financial assessment with the BIA to measure business performance for investors. The Global Impact Investing Rating System (GIIR) works with the B Impact Assessment to measure financial performance while taking into account a business's portfolio impact. It allows business to build a tract record and a thesis to prove that they are meeting their company mission.³⁵ All

³² "Dodge v. Ford Motor Co. *Casebriefs Dodge v Ford Motor Co Comments*, www.casebriefs.com/blog/law/corporations-keyed-to-klein/the-nature-of-the-corporation/dodge-v-motor-co/.

³³ Bend, Doug, and Alex King. "Why Consider a Benefit Corporation." *Forbes*, Forbed Magazine, 10 May 2014, www.forbes.com/fdc/welcome_mjx.shtml.

³⁴ Fried, Dr. Vance. Personal Interview, 2 Apr. 2018.

³⁵ *GIIRS Funds | B Analytics*, b-analytics.net/giirs-funds.

Certified B-Corps can use this system to attract investors and utilize the support system of other Certified B-Corps and B Lab.³⁶

The ideas behind Benefit Corporations and Certified B-Corps, such as maintaining sustainability, improving human capital, and creating eco-friendly products that can last, are good to help attract investors. Yet, the impact that the binding contract of the Articles of Confederation will have on the business, the shareholders, and the investors' money is uncertain since the power of interpretation is left in the hands of B Lab and the court system. Incorporating as a Benefit Corporation and/or a Certified B-Corp creates a new level of risk that will take decades to play itself out and uncover the true outcome behind it. The added risk all together can discourage investment in new businesses.

Under new articles, Benefit Corporations are to maximize more than just profit; this calls for a reallocation of resources. Money previously used in one area of the business must be taken and budgeted to a new area to satisfy the new triple-bottom line. This is especially the case when a corporation decides to register as a Certified B-Corp. The certification requires that the business continually pass in the B Impact Assessment. A study done by a group from the Journal of Business Venturing conducted 24 interviews of companies completing the assessment. They found that after completing the BIA, users had access to results that would tell them specifically what business practices they could change in order to improve their score. This information was accompanied by ideas on how to conduct these changes and the exact number impact a success in these changes would have on their score.³⁷

³⁶ Hurren, Kevin, and Tara Hadler. "B Corps: To 'B' or Not To 'B.'" *Network for Business Sustainability*, 14 Apr. 2015, (18) <https://nbs.net/p/b-corps-to-b-or-not-to-b-88321ab9-e8b1-44ae-a7b6-7ec600463089>.

³⁷ Sharma, G., *Journal of Business Venturing* (2017) <https://doi.org/10.1016/j.jbusvent.2017.12.008>.

The necessary changes and information on these changes were set forth by B Lab and other, already certified B-Corps. While each company is only compared to their specific industry, the assessment is still set to make the corporations conform to a predetermined set of ideals. The priorities presumed by B Labs and other Certified B-Corps are not always the best fit for every incoming corporation. The study found that “B-Corp certification was associated with an increase in environment practices, but related to a decrease (and negatively related with an increase) in community practices.”³⁸ Determined by the assessment, corporations wanting to certify would need to take money away from philanthropies in their community and spend it on creating a smaller carbon footprint or purchasing carbon credits. That is not to say that spending money to protect the environment is wrong; it simply takes away the corporations original choice to spend money on what they believed to be more important.

EXAMPLE

One very public example of this is Etsy. Etsy became a certified B-Corp in 2012. Etsy’s CEO at the time focused on employees, environmental impact, and philanthropy. His goal was to create a safe and welcoming environment to with which to work and at which to work. However, this emphasis on things other than profit became an over-emphasis and started to hurt the company. The company went public in 2015. Not long after, their stock was far undervalued. Etsy was operating as a high growth company, but 9-months after going public, the stock had a 75% drop in price. Etsy’s expenses were growing faster than their revenues. Requirements for B-Corp Certifications caused Etsy’s productivity to drag. Etsy used and managed its own data

³⁸ Sharma, G., Journal of Business Venturing (2017) <https://doi.org/10.1016/j.jbusvent.2017.12.008>.

centers instead of outsourcing to more efficient companies like Amazon Web Services. The excess of employee offerings was cluttering inboxes and becoming a distraction from work.³⁹

In 2017, a small hedge fund bought up some of Etsy's stock, and sent in a letter to the board stating that the current revenue growth and expenses was not sustainable. They suggested that the company post up for sale. Not long after, Etsy had to make more than 80 lay offs. The board also voted to replace the CEO with someone who had more of a vision for growth. Josh Silverman took the title of CEO in late 2017. During that time, employee resources and give backs that did not optimize value compared to their costs were dismantled.³⁹ In December 2017, Etsy announced that it will not longer be a Certified B-Corp.⁴⁰

Since the switch from inefficiency brought on by the B-Corp Certification to maximizing value of all resources, Etsy's stock price has more than doubled.⁴¹ During this time, the heart of the company did not change. The previous mission statement was "to reimagine commerce in ways that build a more fulfilling and lasting world." Now the mission statement reads, "Keep commerce human," along with specific goals for economic, social, and environmental impact.³⁹ Etsy did not have to reincorporate or give money to a ruling outside source to continue doing good for the economy. The company found sustainability within their own measures. What works well for some companies does not always work for others. What is best for Etsy is not what their B-Corp Certification required.

An Etsy that prioritizes profitability has much more to give back to society than one that does not. In making money and being self-sufficient, the company can raise employee pay, give

³⁹ Gelles, David. "Inside the Revolution at Etsy." *The New York Times*, The New York Times, 25 Nov. 2017, www.nytimes.com/2017/11/25/business/etsy-josh-silverman.html.

⁴⁰ Murray, Haskell. "Business Law Prof Blog: Etsy to Drop B Corp Certification." *Law Professor Blogs Network*, 1 Dec. 2017, http://lawprofessors.typepad.com/business_law/2017/12/etsy-to-drop-b-corp-certification.html.

⁴¹ "ETSY ; Summary for Etsy, Inc." *Yahoo! Finance*, Yahoo!, 16 Apr. 2018, finance.yahoo.com/quote/ETSY/.

more to charity, or spend additional time and efforts to ensure that all carbon costs are offset. It benefits the public when companies make more money in accordance with an increase in employee activity because employees get paid more because they have more to spend. Wasting money on inefficient programs such as meditation and emotional-sharing centers that do not help to maximize employee production become more of a burden on society than a catalyst for growth. While giving back is important, if the company becomes too focused on giving back and does not prioritize profits, soon they will have nothing to give.

CONCLUSION

While Benefit Corporations and Certified B-Corps sound virtuous on paper, holding the title of B-Corp does not make a company fundamentally good. When a person or business can no longer choose his, her, or its first choice, overall it is worse off than before. The point of freedom to choose is that people get to determine and pursue what is most important to them, mostly doing this by way of spending time, money, and energy on those things. It is these human actions that drive the market to spend and allocate resources in a way that will maximize scarcity to satisfy the market.⁴² When people can no longer choose their first-choice, they are left worse off and less satisfied. The philanthropies that were originally gaining money from the organization are left worse off. Any other areas where money had to be pulled and given to another are left worse off. Each person and entity has an idea of their first best fit allocation of scarce resources. It is the freedom for each person to make those choices of allocation that creates liable demand and allows the market to answer those needs. Now, false demand is created and resources are reallocated, not to most satisfy the market, but to most satisfy the ideals of B Lab.

⁴² Rothbard, Murray N. *Man, Economy, and State with Power and Market*. Ludwig Von Mises Institute, 2009.

The BIA creates a comparison game amongst companies in the same industry. Rests on the assumption that companies in the same industry should operate the same. While often types they will have similar modes of operation, this limits the need for innovation. Benefit Corporations do not need to strive to be their best, they just need to be as good as the other companies in their industry. In fact, considering how the business must comply with the terms for benefit corporation status even if that affects profits negatively – and they might, for example Etsy poured excess amounts of money into a Values-Aligned Business team to oversee the company’s giving and social impact⁴³ – the benefit corporation is unlikely to be as successful, and therefore will not contribute as much to economic growth, as regular business. An interviewee in the Journal of Business Venturing study stated concern that even if a company has similar Certified B-Corps to be compared to, that comparison may not be enough. If that company was at the top of its sector, comparing itself to the companies below it wouldn’t do any good.⁴⁴

The new standard set forth by the B Impact Assessment and B Lab limits drive for innovation to that of the industry. The BIA does not discourage innovation, but it only rewards innovation to that which is already measured. To put a ceiling on innovation is to cap potential economic growth. The idea behind comparing industries is to accurately measure the business’s success and encourage a sense of community among the industry. However, decreasing competition hinders the need to innovate and do better. Instead of large jumps of advancement in the industry, we are likely to see a small, or perhaps even sluggish growth as business lose their motive to improve.

⁴³ Gelles, David. “Inside the Revolution at Etsy.” *The New York Times*, The New York Times, 25 Nov. 2017, www.nytimes.com/2017/11/25/business/etsy-josh-silverman.html.

⁴⁴ Sharma, G., *Journal of Business Venturing* (2017) <https://doi.org/10.1016/j.jbusvent.2017.12.008>.

Incorporating as a Benefit Corporation does not reward a business for doing good. There is no regulatory break that will ease business expenses or lift other limitations. The market can reward the business for going good. Millennial acts have proven that they want to purchase from businesses that give back and are good for the environment.⁴⁵ There is a strong market for business that do more for the economy than just make a profit. However, incorporating as a Benefit Corporation or becoming a certified B-Corp does nothing to add the business or lift regulations for them. In fact, it does just the opposite. It adds fees, rules, and more ruling parties. Business willing to incorporate as a Benefit Corporation are the business that we should not be punishing, but promoting. We should be encouraging good ethical behavior in businesses.

Society benefits when companies perform ethically. So ethical behavior in companies start to increase, the market will naturally be drawn towards this behavior. The increase in market share allows the company to be more profitable; thus, encouraging ethical behavior. However, the increase in taxes and regulations brought on by Benefit Corporations and Certified B-Corps discourages companies from publically doing more good. There is not reason to add on extra fees to a company that wants to spend profits giving back to charity or offsetting carbon footprints. Instead, these companies should be getting less regulation pushed on them. Companies that are proving to put society first should not have as many regulations. They should be allowed to be driven by the market and their proven ethical accords. New generations are demanding philanthropic businesses. Benefit Corporations and Certified B-Corps hurting the market supply.

⁴⁵ Fandos, Nicholas. "Connections to a Cause: The Millennial Way of Charity." *The New York Times*, The New York Times, 3 Nov. 2016, <https://www.nytimes.com/2016/11/06/giving/connections-to-a-cause-the-millennial-way-of-charity.html>.

What B Lab decides to sell on their website is a gimmick. Everywhere on the page is a marketing scheme. The people in charge wish to control corporations and angle business motives to fit their own. They do not encourage business to do better for themselves but instead force businesses to do more good by B Lab's definition. The term "good" is subjective. What B Lab defines as good could be what other people define as harmful. Moving funds from charity to the environment can be seen as beneficial by some and hurtful by others. Giving control to B Lab to decide what is good and what is harmful is giving up one's rights to act on one's own beliefs. Certified B-Corps is a push for one group's opinion as B Lab tries gain hold of more power. This power belongs to the market and to the people.

Market demand should drive where money, capital, and other limited resources are allocated. It is our entrepreneurs that take risks to meet these needs. As demand shifts towards philanthropic or eco-friendly movements, it is up to the entrepreneurs to see and meet these demands. They do not need regulations or rules to supply the market with ethical businesses. If a new business wants to state its purpose of incorporation as something other than just making a profit, it does not need a specific title to do so. If an entrepreneur wants to create a sustainable company that can continue to give back without relying on donations, then there is no reason to add on additional regulations and fees. Benefit Corporations will only cause harm to our economic growth. It will take away the freedom of those who are willing to use their business to improve the lives of others and potentially kill these businesses all together.

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