The Benefit Corporation in 2019: From Theory to Adoption
The Benefit Corporation Model: Clarity and Commitment

Sustainable companies thrive by integrating stakeholder interests into their business model.

Under traditional corporate law, sustainability performance alone is not enough, because fiduciary obligation is solely to shareholders, creating an ever-present threat to company mission.

Benefit corporation governance enables full integration of mission by allowing genuine commitment to all stakeholders.

Stakeholders, including employees, customers & shareholders will know the commitment is real, and not contingent on next year’s profit.
Mission Enabling Concepts: Legal Tools

Benefit Corporation Status Expands:

- Corporate Purpose
- Business Judgment Rule
- Liability Protection for Directors
- Flexibility in Change in Control Situations
Director Duties: Delaware Statute

Duties:

- Must balance interests of additional stakeholders, but can determine what weight and priority to give these interests. § 365(a).
- Decisions are to be treated with similar deference to that afforded other business judgments under current law. § 365(b).

Impact of new duties on boardroom decisions:

- Consider broader impact of decisions
- Review progress through periodic production of a benefit report
Director Protections: Delaware Statute

- No suits by third parties.
- Balancing decisions protected by business judgment rule.
- Exclude liability for monetary damages for balancing decisions, even if “irrational.”
- 2% / $2M stockholding requirement for legal challenge.
Certified B Corporation

A certification conferred by the nonprofit B Lab

A company that meets a high level of social and environmental performance and transparency AND makes a legal commitment to consider all stakeholders

Any for-profit company in any country can pursue certification (including LLCs, benefit corporations, COOPS, professional corporations)

PBC

A traditional corporation with modified obligations committing it to higher standards of purpose, accountability and transparency

No different tax treatment (taxed as S or C corps)

Business judgment rule expanded to allow broad stakeholder accountability

Available in 34 states in the U.S., Puerto Rico, Italy and Colombia
8000+ Benefit Corporations

320 are Certified B Corps
Concerns:

Valuation, market acceptance and trading

Shareholder litigation, especially in public markets

The following slides provide a small set of encouraging data in public and pre-public markets

No lawsuits filed under benefit corporation law to date

Lawsuits filed under “constituency statutes” (benefit corporation 1.0) demonstrate proof of concept

Statute itself resolves unclear issues that face traditional corporations in environment where shareholders call for responsible corporate action
Case Studies: Conversion Catches Up to Company Mindset at a Delaware PBC

change.org

Total raised = $72M; $30M post-conversion

“We have a large investor base of more than 50 individual investors, and so the legal conversion required alignment amongst a wide diversity of people. When we had closed our most recent financing and went back to our existing investors, we found a real willingness for the conversion. I think there’s a deep understanding amongst our stakeholders that we already act in a way consistent with the mentality and requirements of benefit corporation governance, and that it is legally enshrining an existing practice of behavior. And in fact, the previous structure was inconsistent with the way we talk about our work and the way we act internally and externally.” Ben Rattray, CEO
Case Studies: Traditional Venture Markets Invest in Delaware PBCs

Total raised = $32.7 Million

AltSchool’s benefit corporation legal status allows the team to think beyond short-term profits and focus on fundamentally improving the education system for many decades to come. – Founders Fund

Total raised = $173 Million

I knew it would be incredible for recruiting, for centering our board of directors around our mission, for setting the public tone, because we report against our mission publicly. For this type of business, it’s perfect. – Bret Hurt, CEO
Case Studies: Venture Capital and $100M+ Investments in Delaware PBCs

Total raised = $110 Million

Euclidean Capital  
khosla ventures

Total raised = $180 Million

Goldman Sachs  
COLLABORATIVE Fund

SEQUOIA  
General Catalyst Partners

THRIVE CAPITAL
Case Studies: Unicorn Valuation of Delaware PBC

allbirds

Total raised = $77 Million at $1.5B valuation

We founded Allbirds as a Public Benefit Corporation. This injection of capital will help us bring our sustainable products to more people...demonstrating that comfort, design and sustainability don’t have to live exclusive of each other.” - Joey Zwillinger, Co-founder
Case Study: IPO of Laureate Education, a Delaware PBC

**Sponsor**

KKR made decision to convert this portfolio company before IPO exit.

**Profile**

$4.2 billion 2016 revenue

70 campuses/online schools

Operations in 25 countries

**Bankers**

Credit Suisse; Morgan Stanley; Barclays; J.P. Morgan; Macquarie; BMO Capital Markets; Citigroup; Goldman Sachs & Co.

**Funding**

Pre-IPO round: $400 million

IPO: Raised $490M; priced at $14.00 February 1, 2017

**Lawyers**

DLA Piper

Simpson Thacher
Case Study: Public Investors in Laureate
Case Study: Reduced Cost of Capital for Certified B Corp

Multinational Danone has certified many of its subsidiaries, including Danone North America, the world's largest Delaware PBC.

Danone partnered with 12 leading global banks on a €2B syndicated credit facility linking the margin payable to ESG performance data, including B Corp certification.

Margin adjustment reviewed at least once a year, based on ESG criteria:
  - Scores granted by two ESG agencies, Sustainalytics and Vigeo Eiris
  - Percentage of consolidated sales of Danone covered by B Corp certifications.

Syndicate led by BNP Paribas; includes Société Générale, Credit Agricole, Natixis, HSBC, Citibank, JPMorgan, Barclays, ING, NatWest, MUFG, and Santander.
PBC status signals a long-term perspective

“We had activists come into our stock. ... they wanted to force us into a sale. ... Boy oh boy oh boy, did I wish we were a B Corp. ... I would have loved to have tested the idea of shareholder activists versus the legal form of a benefit corporation.”

- John Mackey, CEO of Whole Foods

Public companies are subject to short-term pressures not experienced by private companies (e.g. Etsy, Whole Foods and Unilever)

PBC governance is a way to address this issue directly, without affecting shareholder rights. PBC status communicates that directors will make decisions based on building shared and durable value for all stakeholders, rather than just trying to increase the current share price.

This may attract shareholders with a longer term perspective, and provide management with credibility when it does make decisions that favor the long term over immediate share price.
Globally, the question about how business is done (and profits are earned and should be distributed or redistributed) vis a vis how we exist and interact with each other as a society has risen to the forefront. This inquiry is more than just political. In the United States, we daily live the with debate about how: (1) we pay for health care, (2) we deal with the loss of jobs caused by innovation, (3) we grapple with regulation on business in order to combat climate change, and (4) we govern and tax ourselves in order to pay for the goods and services that are delivered to us by our federal, state, and local governments. These questions are front and center almost daily given the current political climate in the United States. While elected or would be elected officials debate these issues, the average American citizen – either a worker or business owner/investor (or anyone in between) -- grapples with how to earn money to pay for everything from basic human needs to luxury items to retirement. The production of income either through active activities (goods or services delivered in exchange for compensation) or passive activities (the investment of capital into the income earning activities of others with an expectation of a return of the capital investment plus profit) occupies brain space in every citizen of the United States who works for a living, interacts with the world through social media, consumes goods and services, depends on entitlements, or is saving or living for or through retirement. So, whether they know it or not, both United States law makers and average citizens grapple with the role and place profit making businesses play in both the personal and private lives of everyone.

Presumably in response to these questions, in August 2018, now presidential candidate Senator Elizabeth Warren introduced the Accountable Capitalism Act (see attached proposed Accountable Capitalism Act), which requires very large corporations to adopt a federal charter that requires those corporations to consider the interests of not just their shareholders, but also other corporate stakeholders, including employees, customers, the environment, and the community. The other key provision requires that employees elect at least 40% of the board of directors.

This Accountable Capitalism Act is rooted in several legal developments. The requirement to consider the interests of stakeholders draws directly from benefit corporation statutes that have been passed in thirty-four states. The employee director requirement draws from codetermination statutes that are common in Europe, most famously Germany. The Accountable Capitalism Act also reflects the corporate responsibility populist wave that is affecting both political parties.

Despite this populist wave, the prospects for requiring all corporations with revenues over $1 billion to comply with other stakeholder considerations, as the Accountable Capitalism Act does, seems a political longshot. Given current political landscape described above, one can imagine that some version of the Accountable Capitalism Act might appeal to many across the political spectrum and draw much less resistance from businesses and their owners.
Most business people and lawyers believe that corporate leaders are legally obliged to maximize the economic value of corporations for their equity holders. This belief is often referred to as shareholder primacy. With this basic premise in mind, corporate leaders can only consider the interests of other stakeholders when doing so helps shareholders. This perceived legal rule helps shape the “rules” corporate leaders follow. Many argue that society benefits when business enterprises focus on maximizing shareholder value. Others argue that everyone is better off when corporate leaders care about how their decisions affect employees and the world impacted (in whatever way) by the “actions” of business enterprises.

At the demand of entrepreneurs who desire to combat the norm of shareholder primacy, over the past decade or so many states have adopted benefit corporation statutes. The directors and officers of companies that choose to be benefit corporations are legally obliged to consider the interests of a wide range of corporate stakeholders. Many doubt whether the commitment to adopt benefit corporation status is meaningful. Many critics state that benefit corporations are merely creatures of puffery appealing to consumers who are hungry for feel good products.

The same weakness of benefit corporations face threatens the Accountable Capitalism Act. The mandatory nature of the Accountable Capitalism Act may, paradoxically, further limit its practical effect on shaping norms. If corporate leaders feel the Accountable Capitalism Act is an illegitimate external imposition, they will ignore it, or comply formalistically but not in spirit.

One key element of the Accountable Capitalism Act is the obligation to have employee representation on the board of directors. What about giving employees the right to elect directors? This requirement might be a more powerful change. It transforms the allocation of power, which is likely to affect corporate governance much more than just telling business enterprises to be good. An employee voice or two among corporate leaders might change the decisions a business enterprise makes in the favor of workers and not just owners. In addition, some argue that employees often know better than investors what business enterprises need to function better, so it could make companies more efficient as well. Many European countries have variants of employee representation, and their companies often do well. But employee directors come with risks. Employee directors may clash with investor directors and push for employee interests at the expense of others. The evidence from European companies is mixed and disputed.

Even though the Accountable Capitalism Act has been proposed by a proclaimed left-leaning Democrat, some version of an Accountable Capitalism Act is not out of the question. As United States’ citizens grapple with election interference cause by data privacy issues or extreme workforce and consumer changes exacerbated (or eviscerated) by business enterprises like Facebook and/or Amazon, the need to temper shareholder primacy with some sort of accountability to other stakeholders such as employees may be in order.
While it is highly unlikely that the Accountable Capitalism Act will pass at the federal level, a similar business enterprise obligation or entity could be enacted at the state level; a version of the benefit corporation statutes with higher obligations.
To establish the obligations of certain large business entities in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES
AUGUST 15, 2018
Ms. WARREN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL
To establish the obligations of certain large business entities in the United States, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Accountable Capitalism Act”.

SEC. 2. DEFINITIONS.
In this Act:

(1) DIRECTOR.—The term “Director” means the Director of the Office.

(2) LARGE ENTITY.—
(A) IN GENERAL.—The term “large entity” means an entity that—

(i) is organized under the laws of a State as a corporation, body corporate, body politic, joint stock company, or limited liability company;

(ii) engages in interstate commerce;

and

(iii) in a taxable year, according to information provided by the entity to the Internal Revenue Service, has more than $1,000,000,000 in gross receipts.

(B) AGGREGATION RULES.—All entities treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986, or subsection (m) or (o) of section 414 of such Code, shall be treated as 1 entity for the purposes of subparagraph (A).

(3) OFFICE.—The term “Office” means the Office of United States Corporations established under section 3.

(4) OFFICER.—The term “officer” means, with respect to a United States corporation—

(A) the president of the United States corporation;
(B) the principal operating officer of the United States corporation;

(C) the principal accounting officer of the United States corporation or, if the United States corporation does not have such an accounting officer, the controller of the United States corporation; and

(D) any vice president in charge of a principal business unit, division, or function of the United States corporation.

(5) STATE.—The term “State” means—

(A) each of the several States of the United States;

(B) the District of Columbia;

(C) the Commonwealth of Puerto Rico;

(D) Guam;

(E) the United States Virgin Islands;

(F) American Samoa; and

(G) the Commonwealth of the Northern Mariana Islands.

(6) UNITED STATES CORPORATION.—The term “United States corporation” means a large entity with respect to which the Office has granted a charter under section 3.
SEC. 3. OFFICE OF UNITED STATES CORPORATIONS.

(a) ESTABLISHMENT.—There is established within the Department of Commerce the Office of United States Corporations.

(b) DIRECTOR.—

(1) ESTABLISHMENT OF POSITION.—There is established the position of Director of the Office, who shall be the head of the Office.

(2) APPOINTMENT; TERM.—

(A) APPOINTMENT.—Except as provided in subparagraph (E), the Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States.

(B) TERM.—The Director shall be appointed for a term of 4 years, unless removed before the end of that term by the President.

(C) VACANCY.—A vacancy in the position of Director that occurs before the expiration of the term for which a Director was appointed shall be filled in the manner established under subparagraph (A), and the Director appointed to fill that vacancy shall be appointed only for the remainder of that term.

(D) SERVICE AFTER END OF TERM.—An individual may serve as the Director after the
expiration of the term for which the individual
was appointed until a successor has been ap-
pointed.

(E) INITIAL DIRECTOR.—The Secretary of
Commerce shall appoint an individual to serve
as the Director until an individual is appointed
to serve as the Director in accordance with sub-
paragraph (A).

(c) DUTIES.—The Office shall—

(1) review and grant charter applications for
large entities;

(2) monitor whether large entities have ob-
tained a charter in accordance with this Act;

(3) except as provided in paragraph (4)(B),
refer any violation of this Act to the appropriate
Federal agency for enforcement with respect to that
violation; and

(4) when appropriate—

(A) rescind the charters of United States
corporations under section 4(b);

(B) revoke the charters of United States
corporations under sections 6(c)(2)(B)(ii),
8(c)(2), and 9; and
(C) issue rules to prevent entities from taking action to intentionally avoid qualifying as large entities.

(d) Disclosure of Taxpayer Identity Information for Use by Office.—

(1) IN GENERAL.—Section 6103(m) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(8) OFFICE OF UNITED STATES CORPORATIONS.—Upon written request by the Director of the Office of United States Corporations, the Secretary shall disclose taxpayer identity information to officers and employees of the Office of United States Corporations solely for purposes of identifying any taxpayer that satisfies the requirement under section 2(2)(A)(iii) or 4(b) of the Accountable Capitalism Act for the most recent taxable year for which information is available.”.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the date of enactment of this Act.

SEC. 4. REQUIREMENT FOR LARGE ENTITIES TO OBTAIN CHARTERS.

(a) LARGE ENTITIES.—
(1) IN GENERAL.—An entity that is organized as a corporation, body corporate, body politic, joint stock company, or limited liability company in a State shall obtain a charter from the Office as follows:

(A) If the entity is a large entity with respect to the most recently completed taxable year of the entity before the date of enactment of this Act, the entity shall obtain the charter not later than 2 years after the date of enactment of this Act.

(B) If the entity is a large entity with respect to any taxable year of the entity that begins after the date of enactment of this Act, the entity shall obtain the charter not later than 1 year after the last day of that taxable year.

(2) FAILURE TO OBTAIN CHARTER.—An entity to which paragraph (1) applies and that fails to obtain a charter from the Office as required under that paragraph shall not be treated as a corporation, body corporate, body politic, joint-stock company, or limited liability company, as applicable, for the purposes of Federal law during the period beginning on the date on which the entity is required to obtain a
charter under that paragraph and ending on the
date on which the entity obtains the charter.

(b) Rescissions.—

(1) In general.—An entity that has obtained
a charter as a United States corporation and, with
respect to a subsequent taxable year of the entity,
is not a large entity may file a petition with the Of-

cice to rescind the charter of the United States cor-

poration.

(2) Determination.—Not later than 180 days
after the date on which the Office receives a petition
that an entity files under paragraph (1), the Office
shall grant the petition if the Office determines that
the entity, with respect to the most recently com-
pleted taxable year of the entity preceding the date
on which the petition was filed, was not a large enti-

ty.

SEC. 5. RESPONSIBILITIES OF UNITED STATES CORPORATIONS.

(a) Definitions.—In this section:

(1) General public benefit.—The term
“general public benefit” means a material positive
impact on society resulting from the business and
operations of a United States corporation, when
taken as a whole.
(2) **Subsidiary.**—The term “subsidiary” means, with respect to a person, an entity in which the person owns beneficially or of record not less than 50 percent of the outstanding equity interests of the entity, calculated as if all outstanding rights to acquire equity interests in the entity had been exercised.

(b) **Charter Requirements.**—

(1) **In general.**—The charter of a large entity that is filed with the Office shall state that the entity is a United States corporation.

(2) **Corporate purposes.**—A United States corporation shall have the purpose of creating a general public benefit, which shall be—

(A) identified in the charter of the United States corporation; and

(B) in addition to the purpose of the United States corporation under the articles of incorporation in the State in which the United States corporation is incorporated, if applicable.

(c) **Standard of Conduct for Directors and Officers.**—

(1) **Consideration of interests.**—In discharging the duties of their respective positions, and in considering the best interests of a United States
corporation, the board of directors, committees of
the board of directors, and individual directors of a
United States corporation—

(A) shall manage or direct the business
and affairs of the United States corporation in
a manner that—

(i) seeks to create a general public
benefit; and

(ii) balances the pecuniary interests of
the shareholders of the United States cor-
poration with the best interests of persons
that are materially affected by the conduct
of the United States corporation; and

(B) in carrying out subparagraph (A)—

(i) shall consider the effects of any ac-
tion or inaction on—

(I) the shareholders of the
United States corporation;

(II) the employees and workforce
of—

(aa) the United States cor-
poration;

(bb) the subsidiaries of the
United States corporation; and
(cc) the suppliers of the United States corporation;

(III) the interests of customers and subsidiaries of the United States corporation as beneficiaries of the general public benefit purpose of the United States corporation;

(IV) community and societal factors, including those of each community in which offices or facilities of the United States corporation, subsidiaries of the United States corporation, or suppliers of the United States corporation are located;

(V) the local and global environment;

(VI) the short-term and long-term interests of the United States corporation, including—

(aa) benefits that may accrue to the United States corporation from the long-term plans of the United States corporation; and
(bb) the possibility that those interests may be best served by the continued independence of the United States corporation; and

(VII) the ability of the United States corporation to accomplish the general public benefit purpose of the United States corporation;

(ii) may consider—

(I) other pertinent factors; or

(II) the interests of any other group that are identified in the articles of incorporation in the State in which the United States corporation is incorporated, if applicable; and

(iii) shall not be required to give priority to a particular interest or factor described in clause (i) or (ii) over any other interest or factor.

(2) STANDARD OF CONDUCT FOR OFFICERS.—Each officer of a United States corporation shall balance and consider the interests and factors described in paragraph (1)(B)(i) in the manner described in paragraph (1)(B)(iii) if—
(A) the officer has discretion to act with respect to a matter; and

(B) it reasonably appears to the officer that the matter may have a material effect on the creation by the United States corporation of a general public benefit identified in the charter of the United States corporation.

(3) Exoneration from personal liability.—Except as provided in the charter of a United States corporation, neither a director nor an officer of a United States corporation may be held personally liable for monetary damages for—

(A) any action or inaction in the course of performing the duties of a director under paragraph (1) or an officer under paragraph (2), as applicable, if the director or officer was not interested with respect to the action or inaction; or

(B) the failure of the United States corporation to pursue or create a general public benefit.

(4) Limitation on standing.—Neither a director nor an officer of a United States corporation shall have any duty to a person that is a beneficiary of the general public benefit purpose of the United
States corporation because of the status of the person as such a beneficiary.

(5) Business judgments.—A director or an officer of a United States corporation who makes a business judgment in good faith shall be deemed to have fulfilled the duty of the director under paragraph (1) or the officer under paragraph (2), as applicable, if the director or officer—

(A) is not interested in the subject of the business judgment;

(B) is informed with respect to the subject of the business judgment to an extent that the director reasonably believes to be appropriate under the circumstances; and

(C) rationally believes that the business judgment is in the best interests of the United States corporation.

(d) Right of action.—

(1) Limitation on liability of corporation.—A United States corporation shall not be liable for monetary damages under this section for any failure of the United States corporation to pursue or create a general public benefit.
(2) STANDING.—A proceeding to enforce the requirements of this section may be commenced or maintained only—

(A) directly by the United States corporation to which the proceeding applies; or

(B) derivatively, under the laws of the State in which the United States corporation is organized, by a person, or a group of persons, that own—

(i) beneficially or of record not less than 2 percent of the total number of shares of a class or series outstanding at the time of the act or omission that is the subject of the proceeding; or

(ii) beneficially or of record not less than 5 percent of the outstanding equity interests in an entity of which the United States corporation is a subsidiary at the time of the act or omission that is the subject of the proceeding.

(3) RULE OF CONSTRUCTION REGARDING BENEFICIAL OWNERSHIP.—For the purposes of this subsection, a person shall be construed to be the beneficial owner of shares or equity interests if the
shares or equity interests are held in a voting trust
or by a nominee on behalf of the person.

(c) Application.—

(1) Rule of construction regarding general corporate law.—Nothing in this section
may be construed to affect any provision of law that
is applicable to a corporation, body corporate, body
politic, joint stock company, or limited liability com-
pany, as applicable, that is not a United States cor-
poration.

(2) Applicability of other laws.—

(A) State law.—Except as otherwise pro-
vided in this section, the law of the State in
which a United States corporation is organized
shall apply with respect to the United States
corporation.

(B) Federal law.—If any provision of
Federal law is inconsistent with the require-
ments of this section with respect to a United
States corporation, the requirements of this sec-
tion shall supersede that provision.

(3) Organic records.—A provision of the ar-
ticles of incorporation in the State in which a United
States corporation is incorporated, if applicable, or
in the bylaws of a United States corporation may
SEC. 6. BOARD REPRESENTATION.

(a) Rulemaking.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission, in consultation with the National Labor Relations Board, shall issue rules to ensure that director elections at United States corporations are fair and democratic.

(b) United States Corporation Elections.—

(1) In general.—Not less than 2/5 of the directors of a United States corporation shall be elected by the employees of the United States corporation using an election process that complies with the requirements of the rules issued under subsection (a).

(2) Effective date.—Paragraph (1) shall take effect on the date that is 1 year after the date on which the Securities and Exchange Commission issues the rules required under subsection (a).

(c) Enforcement.—

(1) Securities and Exchange Commission.—The Securities and Exchange Commission, in consultation with the National Labor Relations Board, shall ensure that the elections described in
subsection (b)(1) comply with the requirements of the rules issued by the Commission under subsection (a).

(2) Department of Labor.—

(A) In general.—The Secretary of Labor shall coordinate with the Office to ensure that the representation of the boards of directors of United States corporations comply with the requirements under subsection (b).

(B) Penalties.—If the representation with respect to the board of directors of a United States corporation fails to comply with the requirements under subsection (b) for a period that is not less than 180 consecutive days—

(i) the Secretary of Labor—

(I) shall assess a civil money penalty against the United States corporation in an amount that is not less than $50,000 and not more than $100,000 for each day that such representation is not in compliance with those requirements, including for each day during that 180-day period; and
(II) may collect the penalty described in subclause (I) beginning on the day after the date on which that 180-day period ends; and

(ii) the Office may revoke the charter of the United States corporation.

SEC. 7. EXECUTIVE COMPENSATION.

(a) Definitions.—In this section:

(1) Covered person.—The term “covered person” means an officer or a director of a United States corporation.

(2) Equity security.—The term “equity security” has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(3) Rule 10b–18 purchase.—The term “Rule 10b–18 purchase” has the meaning given the term in section 240.10b–18(a) of title 17, Code of Federal Regulations, as in effect on the date of enactment of this Act.

(4) Subject security.—The term “subject security” means any—

(A) equity security of a United States corporation; or
(B) security, the value of which is derived from, or that otherwise relates to, an equity security described in subparagraph (A).

(b) Sale of Subject Securities.—

(1) Prohibitions.—Subject to paragraph (2), no covered person with respect to a United States corporation may—

(A) during the 5-year period that begins on the date on which the covered person first owns or beneficially owns a subject security with respect to that United States corporation (or an affiliate of that United States corporation), sell, transfer, pledge, assign, alienate, or hypothecate, in exchange for value, that subject security, other than—

(i) in connection with the sale of the United States corporation or the affiliate, as applicable; or

(ii) through—

(I) a will; or

(II) the laws of descent or distribution; or

(B) during the 3-year period that begins on the date on which that United States corporation, or an affiliate of that United States corporation,
corporation, effects a Rule 10b–18 purchase, sell any subject security with respect to that United States corporation.

(2) APPLICATION.—The prohibition under paragraph (1) shall not apply with respect to any subject security that a covered person owns or beneficially owns on the day before the date of enactment of this Act.

(e) ENFORCEMENT.—The Securities and Exchange Commission may impose on any covered person that violates subsection (b) a civil penalty in an amount that is—

(1) not less than the fair market value of the subject securities of which the covered person disposes in violation of that subsection, as measured on the date on which the covered person makes the disposition; and

(2) not more than the amount that is 3 times the fair market value of the subject securities of which the covered person disposes in violation of that subsection, as measured on the date on which the covered person makes the disposition.

(d) RULE OF CONSTRUCTION.—For the purposes of this section, a subject security is beneficially owned by a covered person if—
(1) the subject security is held in the name of a bank, broker, or nominee for the account of the covered person;

(2) the subject security is held as a joint tenant, tenant in common, or tenant by the entirety or as community property by the covered person; or

(3) the covered person has a pecuniary interest, by reason of any contract, understanding, or relationship, including an immediate family relationship or arrangement, in subject securities held in the name of another person.

SEC. 8. POLITICAL SPENDING.

(a) DEFINITIONS.—In this section:

(1) ELECTIONEERING COMMUNICATION.—The term “electioneering communication” has the meaning given the term in section 304(f)(3) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30104(f)(3)), except that the term “any public communication” shall be substituted for “any broadcast, cable, or satellite communication” in the matter preceding subclause (I) of subparagraph (A)(i) of such section 304(f)(3).

(2) INDEPENDENT EXPENDITURE.—The term “independent expenditure” means an expenditure, as that term is defined in section 301 of the Federal
Election Campaign Act of 1971 (52 U.S.C. 30101), by a person that expressly advocates the election or defeat of a clearly identified candidate, or is the functional equivalent of express advocacy because, when taken as a whole, the expenditure can be interpreted by a reasonable person only as advocating the election or defeat of a candidate, taking into account whether the communication involved—

(A) mentions a candidacy, a political party, or a challenger to a candidate; or

(B) takes a position on character, qualifications, or fitness for office of a candidate.

(3) Political expenditure in support of or in opposition to any candidate for Federal, State, or local public office.—The term “political expenditure in support of or in opposition to any candidate for Federal, State, or local public office” means an expenditure or series of expenditures totaling more than $10,000 for any single candidate during any single election that—

(A)(i) is an independent expenditure; or

(ii) with respect to a candidate for State or local public office, would be treated as an independent expenditure if the candidate were a candidate for Federal public office;
(B)(i) is an electioneering communication;

or

(ii) with respect to a candidate for State or local public office, would be treated as an electioneering communication if the candidate were a candidate for Federal public office; or

(C) are dues or other payments, disbursements, or transfers to any other person that—

(i) are, or could reasonably be anticipated to be, used or transferred to another association or organization for the purposes described in subparagraph (A) or (B); and

(ii) are not investments or payments, disbursements, or transfers made in commercial transactions in the ordinary course of any trade or business.

(b) SHAREHOLDER AND DIRECTOR APPROVAL.—A United States corporation may not make a political expenditure in support of or in opposition to any candidate for Federal, State, or local public office unless—

(1) not less than 75 percent of the shareholders of the corporation and not less than 75 percent of the directors of the corporation approve of the expenditure; and
(2) the approvals required under paragraph (1) occur—

(A) before the date on which the expenditure is made or obligated; and

(B) after the date on which the shareholders and directors described in that paragraph have been informed regarding the precise nature of the proposed expenditure, including—

(i) the amount of the proposed expenditure; and

(ii) the candidate and election to which the proposed expenditure relates.

(c) ENFORCEMENT.—

(1) SHAREHOLDER SUIT.—A shareholder of a United States corporation may bring a civil action in an appropriate district court of the United States to enjoin a United States corporation from making a political expenditure in support of or in opposition to any candidate for Federal, State, or local public office that violates the requirements under subsection (b).

(2) REVOCATION OF CHARTER.—The Office may revoke the charter of a United States corporation that knowingly or repeatedly violates the requirements under subsection (b).
SEC. 9. PETITION FOR REVOCATION OF CHARTER.

(a) FILING OF REVOCATION PETITION.—The attorney general of a State may file a petition with the Office to revoke the charter of a United States corporation that is organized in that State or that does business in that State.

(b) TIMING OF RESPONSE AND DECISION.—If a revocation petition is filed under subsection (a) with respect to a United States corporation—

(1) not later than 180 days after the date on which the petition is filed, the United States corporation may file a response that explains why revoking the charter of the United States corporation is not justified in consideration of the factors described in subsection (c)(2); and

(2) the Director shall issue a ruling with respect to the petition not later than 180 days after the earlier of the date that is—

(A) 180 days after the date on which the petition is filed; or

(B) the date on which the corporation files a response under paragraph (1).

(c) GRANTING REVOCATION PETITION.—

(1) IN GENERAL.—The Director, with the approval of the Secretary of Commerce, and after consideration of the factors described in paragraph (2),
may grant a revocation petition that is filed under subsection (a).

(2) FACTORS.—In determining whether to grant a revocation petition under paragraph (1) with respect to a United States corporation, the Director shall consider whether the United States corporation—

(A) has engaged in repeated, egregious, and illegal misconduct that has caused significant harm to—

(i) the customers, employees, shareholders, or business partners of the United States corporation; or

(ii) the communities in which the United States corporation operates; and

(B) has not undertaken measures to address the causes of the misconduct described in subparagraph (A), such as terminating the employment of any officer or executive of the United States corporation who oversaw that misconduct.

(3) REVIEW OF GRANTING OF PETITION.—A decision by the Director to grant a revocation petition under this subsection—
(A) shall be subject to judicial review under section 706 of title 5, United States Code; and

(B) shall not be subject to the procedure for congressional disapproval under section 802 of title 5, United States Code.

(d) Revocation of Charter.—If the Director grants a revocation petition under subsection (c) with respect to a United States corporation, the Office shall revoke the charter of that corporation, which shall be effective beginning on the date that is 1 year after the date on which the Director grants the petition.

(e) Rulemaking.—The Director may issue any rules that are necessary to carry out this section.

SEC. 10. SEVERABILITY.

If any provision of this Act, or any application of that provision to any person or circumstance, is held to be invalid, the remainder of the provisions of this Act and the application of any such provision to any other person or circumstance shall not be affected.