

CORPORATE PURPOSE AND THE BUSINESS ROUNDTABLE

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INTRODUCTION	361
I. AMEND GOVERNING DOCUMENTS.....	365
II. CONVERT TO BENEFIT CORPORATION	366
III. ENGAGE IN MEANINGFUL SOCIAL REPORTING	368
IV. SUPPORT STAKEHOLDER LEGISLATION.....	369
V. PROVIDE STAKEHOLDER REPRESENTATIVES WITH RIGHTS	370
CONCLUSION.....	371

INTRODUCTION

On August 19, 2019, the Business Roundtable (“BRT”) issued a revised statement on corporate purpose signed by 181 influential chief executive officers.¹ Entitled “Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans,’” the statement notes that the BRT is moving away from shareholder primacy²

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¹ *Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans’*, BUSINESS ROUNDTABLE (Aug. 19, 2019) [hereinafter *Business Roundtable Redefines*], <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>.

² The term “shareholder primacy” can be used to address the purpose and/or the governance of corporations. *See, e.g.*, Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. U. L. REV. 547, 549–50 (2003) (“[A]ll of these models are ways of thinking about the means and ends of corporate governance. They strive to answer two basic sets of questions: (1) as to the means of corporate governance, who holds ultimate decisionmaking power? and (2) as to the ends of corporate governance, whose interests should prevail? When the ultimate decisionmaker is presented with a zero-sum game, in which it must prefer the interests of one constituency class over those of all others, which constituency wins?”); Tom C.W. Lin, *Incorporating Social Activism*, 98 B.U. L. REV. 1537, 1599 (2018) (“[S]hareholder primacy holds that the shareholders are of utmost importance in thinking about the aims and governance of a

and toward a multi-stakeholder approach.³ The body of the statement claims that “[e]ach of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country.”⁴ The statement specifically highlights customers, employees, suppliers, communities (including the environment), and long-term value for shareholders as important to firms.⁵ In focusing on a wide range of stakeholders, the BRT’s 2019 Statement departs from the group’s 1997 declaration that “the principal objective of a business enterprise is to generate economic returns to its owners.”⁶

Reaction to the BRT’s 2019 revised statement on corporate purpose has been swift and varied. These reactions could be loosely grouped into one or more of three broad categories--optimistic praise,⁷ supportive

corporation.”). The BRT statement appears to use the term “shareholder primacy” in the first way, addressing the aim of the corporation. While I believe that it is cleaner to use “shareholder primacy” to address who should govern corporations, so that it lines up squarely against Stephen Bainbridge’s “director primacy,” which posits that directors should be in control of the governance of corporations, I will use the term like the BRT does, to address the ends of a corporation.

³ *Business Roundtable Redefines*, *supra* note 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Statement on Corporate Governance*, BUSINESS ROUNDTABLE (Sept. 1997), <http://www.ralphgomory.com/wp-content/uploads/2018/05/Business-Roundtable-1997.pdf>.

⁷ See, e.g., Alan Murray, *America’s CEOs Seek a New Purpose for the Corporation*, FORTUNE (Aug. 19, 2019, 4:30 AM), <https://fortune.com/longform/business-roundtable-ceos-corporations-purpose/> (“[G]iven the immense power large companies exercise in society, the new social consciousness of business surely should be seen as a step in the right direction. At a time when the nation’s political leadership is tied in knots, more interested in fighting partisan battles than in uniting to solve public problems, business leadership is filling the leadership vacuum.”); Steven Pearlstein, *Top CEOs are Reclaiming Legitimacy by Advancing a Vision of What’s Good for America*, WASH. POST (Aug. 19, 2019, 5:00 AM), <https://www.washingtonpost.com/business/2019/08/19/top-ceos-are-reclaiming-legitimacy-by-advancing-vision-whats-good-america/> (“[T]oday’s statement by the Business Roundtable disavowing shareholder primacy is so significant and so welcome. In the Roundtable’s new formulation of corporate purpose, delivering value to customers, investing in employees, dealing fairly and honestly with suppliers, supporting communities and protecting the environment all have equal billing with generating long-term value for shareholders. The statement rejects the whole idea of ‘maximizing’ one value to the exclusion of all the others. Instead, it acknowledges the need for balance and compromise in serving all of a company’s stakeholders.”). Professor Eric Amarante, in his symposium response, suggested a fourth category of “who cares?” I would place most of the commenters who think that the statement will not amount to much, into the second category of “supportive pessimism.” Those who do not think the statement will

pessimism,⁸ and blunt opposition.⁹ This essay primarily addresses the second reaction – those who express support for valuing all stakeholders,

move the needle, but think the statement is wrongheaded, I would place in the third category of “blunt opposition.” Eric Amarante, *Commentary on Professor Murray’s Presentation*, 21 TENN. J. BUS. L. 273, 273 (2020).

⁸ See, e.g., David Gelles & David Yaffe-Bellany, *Shareholder Value Is No Longer Everything, Top C.E.O.s Say*, N.Y. TIMES (Aug. 19, 2019), <https://www.nytimes.com/2019/08/19/business/business-roundtable-ceos-corporations.html> (“There was no mention at the Roundtable of curbing executive compensation, a lightning-rod topic when the highest-paid 100 chief executives make 254 times the salary of an employee receiving the median pay at their company The Business Roundtable did not provide specifics on how it would carry out its newly stated ideals, offering more of a mission statement than a plan of action. . . . ‘If the Business Roundtable is serious, it should tomorrow throw its weight behind legislative proposals that would put the teeth of the law into these boardroom platitudes,’ said Anand Giridharadas.”); Jay Coen Gilbert, Andrew Kassoy, & Bart Houlahan, *Don’t Believe the Business Roundtable has Changed Until Its CEOs’ Actions Match Their Words*, FAST CO. (Aug. 22, 2019), <https://www.fastcompany.com/90393303/dont-believe-the-business-roundtable-has-changed-until-its-ceos-actions-match-their-words> (“It’s time we work together to redesign an economic system for the 21st century that prioritizes the long term over the short term and the creation of value for all stakeholders, not just shareholders. Unless we address the systemic context in which CEOs operate, celebrating their latest announcements about purpose will remain more hope than strategy.”); Katrina vanden Heuvel, *Big Business Is Suddenly Showing a Conscience. But Is That Enough?*, WASH. POST (Aug. 27, 2019, 7:51 AM), <https://www.washingtonpost.com/opinions/2019/08/27/big-business-is-suddenly-showing-conscience-is-that-enough/> (“Worse yet, the Business Roundtable’s statement offers no hint as to how corporations plan to fulfill to their newly enlightened purpose If big corporations want people to believe that profits are not their only concern, they need to start walking the walk.”); Andrew Winston, *Is the Business Roundtable Statement Just Empty Rhetoric?*, HARV. BUS. REV. (Aug. 30, 2019), <https://hbr.org/2019/08/is-the-business-roundtable-statement-just-empty-rhetoric> (“The BRT statement is a nice start. This new discussion of purpose is good, and it mirrors what some big investors are saying. But we need a much bigger pivot to circular, renewable-energy-based business models that value the long-term, protect natural capital, and invest in human development and equality. That level of change is currently light years beyond the BRT statement.”).

⁹ See, e.g., David L. Bahnsen, *Business Roundtable Pretends to Redefine What a Corporation Does*, NAT’L REV. (Aug. 26, 2019, 11:27 AM), <https://www.nationalreview.com/2019/08/business-roundtable-pretends-to-redefine-what-a-corporation-does/> (“If today’s corporate-responsibility police truly want a free and virtuous society, they are better off focusing their efforts on eliminating the crony-capitalist abuses that seek to squash competition.”); Stephen Bainbridge, *A Tweet to the Business Roundtable e the Law of Corporate Purpose*, PROFESSORBAINBRIDGE.COM (Aug. 19, 2019, 1:59 PM), <https://professorbainbridge.com/professorbainbridgecom/2019/08/a-tweet-to-the-business-roundtable-re-the-law-of-corporate-purpose.html> (“Memo to the @BizRoundtable: You don’t get to ‘redefine’ anything. Only the Delaware courts can change the law of corporate

but doubt that the companies represented by the BRT will engage in meaningful change. The pessimism seems to spring from the toothlessness of the BRT's statement¹⁰ and the possible hidden motives, such as quieting activist shareholders¹¹ or heading off more aggressive stakeholder governance proposals like Elizabeth Warren's Accountable Capitalism Act.¹² To address the pervasiveness of the pessimism, this essay suggests

purpose. And, as you ought to know, Delaware comes down square on the side of shareholder wealth maximization.”); The Editorial Board, *The ‘Stakeholder’ CEOs*, WALL ST. J. (Aug. 19, 2019, 5:09 PM), <https://www.wsj.com/articles/the-stakeholder-ceos-11566248641> (“One virtue of the shareholder model is that it focuses the corporate mission on measurable financial results. An ill-defined stakeholder model can quickly become a license for CEOs to waste capital on projects that might make them local or political heroes but ill-serve those same stakeholders if the business falters.”); Steve H. Hanke, *Business Roundtable suffers from economic illiteracy*, USA TODAY (Aug. 28, 2019, 5:24 PM), <https://www.usatoday.com/story/opinion/2019/08/28/business-roundtable-suffers-economic-illiteracy-editorials-debates/2144794001/> (“The Roundtable’s new anti-capitalist mission statement promises to dilute and muffle shareholders’ voices and further politicize corporate governance.”); Nell Minow, *Six Reasons We Don’t Trust the New ‘Stakeholder’ Promise from the Business Roundtable*, HARV. L. SCH. F. CORP. GOVERNANCE (Sept. 2, 2019), <https://corp.gov.law.harvard.edu/2019/09/02/six-reasons-we-dont-trust-the-new-stakeholder-promise-from-the-business-roundtable/> (“I am skeptical about what the CEO signatories to this statement have in mind for six reasons . . . 1. We’ve seen this before . . . 2. It does not really mean anything . . . 3. It is not consistent with the principles of capitalism . . . 4. We are waiting to see CEOs put their money where their mouths are . . . 5. There is a bait and switch element . . . 6. Corporations are not designed for making public policy.”).

¹⁰ See, e.g., Helaine Olen, *CEOs Don’t Want to be Blamed for Inequality — or do Anything About It*, WASH. POST (Aug. 22, 2019, 6:54 PM), <https://www.washingtonpost.com/opinions/2019/08/22/ceos-dont-want-be-blamed-inequality-or-do-anything-about-it/> (“So should we celebrate? Well, not so fast. You might notice that this statement does not include any requests for changes in the law, ironclad promises that they will reduce even further growth of their out-of-control pay (according to the AFL-CIO, the average S&P 500 CEO earned 287 times what the average worker made last year) or, well, anything that would make it legally enforceable.”).

¹¹ Ann Lipton, *Everything Is About Stakeholders*, BUS. L. PROF. BLOG (Aug. 24, 2019), https://lawprofessors.typepad.com/business_law/2019/08/everything-is-about-stakeholders.html (“[A]rguments about managers accommodating corporate stakeholders are frequently code for ‘activist shareholders leave us alone,’ which has little to do with corporate well-being and everything to do with management entrenchment.”).

¹² See Press Release, Warren Introduces Accountable Capitalism Act (Aug. 15, 2018), <https://www.warren.senate.gov/newsroom/press-releases/warren-introduces-accountable-capitalism-act>; Julie Wittes Schlack, *The Business Roundtable Has a Change of Heart? I Think Not*, COGNOSCENTI (Aug. 28, 2019), <https://www.wbur.org/cognoscenti/2019/08/28/the-business-roundtable-corporate-social-responsibility-julie-wittes-schlack> (“Public corporations are just that — public — and must be subject to the same sorts of

five possible governance proposals for corporations who take the BRT's statement seriously and want to take concrete steps beyond pretty platitudes. The five corporate governance proposals, set forth in more detail below, are (1) amend the firm's corporate purpose in its governing documents, (2) convert to a benefit corporation, (3) engage in meaningful social reporting, (4) support legislation that benefits corporate stakeholders, and (5) give stakeholder representatives corporate governance rights, such as the right to vote for directors and bring derivative lawsuits.¹³

I. AMEND GOVERNING DOCUMENTS

Socially serious BRT companies could memorialize a multi-stakeholder corporate purpose statement in their governing documents, namely their articles of incorporation and bylaws. If the firms are nervous about whether this departure from shareholder primacy would be allowed in Delaware, the companies could reincorporate in a more stakeholder friendly state. For example, Texas and Oregon have made unmistakably clear that social purposes are allowed for traditional for-profit

monitoring and controls as other public assets. Elizabeth Warren's legislation, the Accountable Capitalism Act, would require that corporations with more than \$1 billion in revenue be federally chartered as benefit corporations (or b-corps) — companies that recognize that their duties extend beyond maximizing profits for shareholders. Call me cynical, but I suspect that this is precisely what the Business Roundtable is trying to prevent with its laudable but vague pronouncement.”); *see also* The Editorial Board, *supra* note 10 (“There is also more than a whiff of pre-emptive politics here. The executives—the Business Roundtable is led by JPMorgan CEO Jamie Dimon—know they are political targets. They see socialism on the rise, with Senator Elizabeth Warren proposing to redefine corporate governance in law with explicit direction to serve ‘stakeholders.’ Her goal is to redirect corporate capital to serve political goals favored by unions, environmentalists and trial lawyers. The CEOs no doubt want to get out in front of this by showing what splendid corporate citizens they are.”); Martin Lipton & Wachtell Lipton, *Stakeholder Corporate Governance Business Roundtable and Council of Institutional Investors*, HARV. L. SCH. F. CORP. GOVERNANCE (Aug. 21, 2019), <https://corpgov.law.harvard.edu/2019/08/21/stakeholder-corporate-governance-business-roundtable-and-council-of-institutional-investors/> (“The BRT principles are critical to preserving our corporate system which relies on the integrity of managements and boards of directors and on free and open markets. Shareholder primacy was ill-conceived in the first place and has utterly failed to provide for the needs of all stakeholders. The alternative is state corporatism in the form of legislation like Senator Warren’s Accountable Capitalism Act. Not many members of the [Council of Institutional Investors] would prefer that.”).

¹³ Corporations could adopt one or more of these suggestions, and, as noted below, it is understood that many of these proposals would require shareholder approval.

corporations.¹⁴ In addition, a majority of states (though not Delaware) have adopted “other constituency” statutes, which give directors more latitude to consider nonshareholder stakeholders in decision-making.¹⁵ Of course, these changes would require support of shareholders, but the directors could at least put forward the proposals and publicly support these changes, if the directors were seriously interested in carrying out the BRT’s 2019 Statement.

II. CONVERT TO BENEFIT CORPORATION

If the directors wish to stay incorporated in Delaware, they could convert their companies to public benefit corporations (“PBC”).¹⁶ Delaware law requires that PBCs “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 public

¹⁴ TEX. BUS. ORGS. CODE ANN. § 3.007(d) (West 2017) (“[A] for-profit corporation may include one or more social purposes in addition to the purpose or purposes required to be stated in the corporation’s certificate of formation by Section 3.005(a)(3). The corporation may also include in the certificate of formation a provision that the board of directors and officers of the corporation shall consider any social purpose specified in the certificate of formation in discharging the duties of directors or officers under this code or otherwise.”); OR. REV. STAT. ANN. § 60.047(2)(e) (West 2017) (“The articles of incorporation may set forth . . . [a] provision authorizing or directing the corporation to conduct the business of the corporation in a manner that is environmentally and socially responsible”). See generally, Judd F. Sneirson, *Race to the Left: A Legislator’s Guide to Greening a Corporate Code*, 88 OR. L. REV. 491 (2009).

¹⁵ See Mohsen Manesh, *Introducing the Totally Unnecessary Benefit LLC*, 97 N.C. L. REV. 603, 633–34 (2019) (“Although most large corporations choose to organize under Delaware law, all businesses have the option to incorporate elsewhere. Outside of Delaware, thirty-two states have adopted so-called constituency statutes. These statutes explicitly authorize the directors of a corporation to consider a broad range of factors affecting nonshareholding constituencies when discharging their statutory duty to manage the corporation. Some states’ constituency statutes limit a board’s authority to consider nonshareholder concerns to situations involving the sale or takeover of the corporation. Other states’ constituency statutes are broader, allowing a board to consider the impact on nonshareholding constituencies in all matters brought before the board. In either case, states that have adopted constituency statutes have affirmatively rejected the notion that a corporate board of directors must consider and pursue shareholder interests only.” (citations omitted)).

¹⁶ DEL. CODE ANN. tit. 8, §§ 361–368 (West 2020). See generally J. Haskell Murray, *Social Enterprise Innovation: Delaware’s Public Benefit Corporation Law*, 4 HARV. BUS. L. REV. 345 (2014); Alicia Plerhoples, *Delaware Public Benefit Corporations 90 Days Out: Who’s Opting In?*, 14 U.C. DAVIS BUS. L.J. 247 (2014).

benefits identified in its certificate of incorporation.”¹⁷ This statutory requirement to balance the interests of all stakeholders lines up well with the BRT’s 2019 Statement.¹⁸ Benefit corporation statutes, including Delaware’s PBC statute, are far from perfect, and do not provide much in the way of accountability, but the conversion would increase, even if just slightly, the chance of litigation if directors ignored stakeholders.¹⁹ Directors would have to rally support of at least two-thirds of stockholders to convert to a PBC, but again, directors could show their seriousness about the BRT’s 2019 Statement by putting the proposal forward.²⁰

Over thirty states now have some form of a benefit corporation statute, so companies have quite a few options outside of Delaware if they prefer another state or another version of the legislation.²¹ Outside of Delaware, the vast majority of states have followed the Model Benefit

¹⁷ DEL. CODE ANN. tit. 8 § 362(a) (West 2020); *see also* DEL. CODE ANN. tit. 8, § 365(a) (West 2020) (“[D]irectors shall manage or direct the business and affairs of the public benefit corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation’s conduct, and the specific public benefit or public benefits identified in its certificate of incorporation.”).

¹⁸ *Business Roundtable Redefines*, *supra* note 2.

¹⁹ *See* DEL. CODE ANN. tit. 8, § 367 (West 2020) (stating that the PBC limits derivative lawsuits challenging the management of the PBC to stockholders who own at least 2% of the outstanding shares or at least \$2 million in shares of the company. As such, duties to balance the interests of nonshareholder stakeholders may be underenforced unless there are large, socially serious shareholders); Elizabeth Schmidt, *New Legal Structures for Social Enterprises: Designed for One Role but Playing Another*, 43 VT. L. REV. 675, 713–14 (2019) (“The issues with the benefit statute are somewhat paradoxical. On the one hand, there is not enough guidance to protect directors, and on the other, there is so much protection of the directors that the mission is not protected At one level, the purpose statement does provide directors with some certainty because the articles of incorporation, which provide the authority to do business in the state, requires the enterprise to have a ‘material positive impact on society.’ That provides the state’s imprimatur on the stakeholder value doctrine, which is a major shift. But it is largely a symbolic shift because the statute does not provide any other guidance to the board members. We do not know what a ‘material positive impact’ is or how to measure it.” (citations omitted)).

²⁰ *See* DEL. CODE ANN. tit. 8, § 363 (West 2020). (stating that stockholders who do not vote in favor of the conversion may be entitled to appraisal rights; however, if the conversion is favorably received, those stockholders could be paid and easily replaced by additional stockholders).

²¹ SOCIAL ENTERPRISE LAW TRACKER, <https://socentlawtracker.org/#/bcorps> (last visited Sept. 6, 2019).

Corporation Legislation (the “Model”).²² The Model, and states that follow the Model, lists the stakeholders that must be considered in director decision making.²³ The Model’s stakeholder list includes all the stakeholder groups mentioned in the BRT’s 2019 Statement.²⁴ The Model also includes annual benefit reporting requirements, public posting of the reports, and use of an independent third-party standard in the reporting process, while Delaware only requires biennial reporting without mandating public posting of the reports or use of a third-party standard.²⁵

III. ENGAGE IN MEANINGFUL SOCIAL REPORTING

Converting to a benefit corporation would impose some social reporting requirements, but those statutory reporting requirements are incredibly weak.²⁶ Academic articles have shown that less than 10% of benefit corporations actually produce the required reports in the studied states, and most statutes have no express penalties for failing to report.²⁷

²² J. Haskell Murray, *Social Enterprise and Investment Professionals: Sacrificing Financial Interests?*, 40 SEATTLE U.L. REV. 765, 769 (2017).

²³ MODEL BENEFIT CORP. LEGIS. § 301 (2017) [hereinafter MODEL BENEFIT CORP. LEGIS.], https://benefitcorp.net/sites/default/files/Model%20benefit%20corp%20legislation%20_4_17_17.pdf (last visited Sept. 6, 2019).

²⁴ See *id.*; *Business Roundtable Redefines*, *supra* note 2 (showing that, interestingly, neither the BRT’s 2019 Statement nor the Model Benefit Corporation Legislation lists creditors as stakeholders to be considered).

²⁵ Compare MODEL BENEFIT CORP. LEGIS. §§ 401–402, with DEL. CODE ANN. tit. 8, § 366(b). (noting that the Delaware statute does, however, specifically allow PBCs to mandate annual reporting, public posting, and use of a third-party standard in the PBC’s certificate of incorporation or bylaws). See also DEL. CODE ANN. tit. 8, § 366(c).

²⁶ See John Tyler, et al., *Producing Better Mileage: Advancing the Design and Usefulness of Hybrid Vehicles for Social Business Ventures*, 33 QUINNIPIAC L. REV. 235, 264 (2015) (“Although benefit corporations must assess themselves against a third party standard (which may or may not be weak or meaningful) and publish a benefit report, failure to comply with the underlying standards is not actionable legally.” (citing MODEL BENEFIT CORP. LEGIS. § 401 (2013))).

²⁷ See J. Haskell Murray, *An Early Report on Benefit Reports*, 118 W. VA. L. REV. 25, 26, 31–32 (2015) (“Data from early benefit corporations shows an abysmal benefit report compliance rate (below ten percent), drawing into question the claims about heightened transparency Currently, a minority of states require filing the report with a government entity; a majority of states do not. A few states have expressly stated penalties for failing to produce a benefit report, but most states have not stated a specific penalty and may be relying on the broad benefit enforcement proceedings to enforce the reporting requirements.” (citations omitted)); see also J. Haskell Murray, *Examining Tennessee’s for-Profit*

The benefit corporation statutes are also incredibly loose on the reporting requirements, mandating narrative descriptions rather than any specified data or metrics.²⁸

Directors who are serious about benefiting all stakeholders could direct the corporation to engage in more detailed social reporting, looking to the Sustainability Accounting Standards Board (“SASB”), ISO 26000, or another similar framework for guidance.²⁹ Alternatively, or in addition, directors could start by simply supporting existing shareholder proposals that suggest studies and reports on various social issues like human rights abuses within the corporation’s supply chain and the corporation’s contribution to climate change.³⁰

IV. SUPPORT STAKEHOLDER LEGISLATION

Directors may retort that supporting stakeholders at the expense of shareholders could put the company at a competitive disadvantage, torpedoing the entire company and harming all stakeholders in an eventual bankruptcy. As such, directors could, as Lawrence Summers has

Benefit Corporation Law, 19 TENN. J. BUS. L. 325, 340 (2017) (“Of the 134 domestic for-profit benefit corporations in Tennessee, only 30 were formed before May 1, 2016. Of those 30, none had a published or available benefit corporation report.”).

²⁸ MODEL BENEFIT CORP. LEGIS. §§ 401–402.

²⁹ SUSTAINABILITY ACCOUNTING STANDARDS BOARD, <https://www.sasb.org/> (last visited Feb. 15, 2020); *see also* MODEL BENEFIT CORP. LEGIS. § 401(c). *See generally* THE B IMPACT ASSESSMENT, <https://bimpactassessment.net/> (last visited Feb. 15, 2020) (showing that while the Model Benefit Corporation Legislation does require use of a “third party standard” in reporting, it does not require certification, nor does it require any specific data be reported).

³⁰ *See* Ann Lipton, *Everything is About Stakeholders*, BUS. L. PROF. BLOG, (Aug. 24, 2019), https://lawprofessors.typepad.com/business_law/2019/08/everything-is-about-stakeholders.html (“Indeed, the BR is currently fighting to make it harder for shareholders to introduce proposals that would force corporations to focus on – you guessed it – stakeholder interests, so this looks a lot less like an issue of what is best for society than about who should be the decisionmaker.”); *see also* Subodh Mishra, *An Early Look at 2019 US Shareholder Proposals*, HARV. L. SCH. F. CORP. GOVERNANCE (Mar. 5, 2019), <https://corpgov.law.harvard.edu/2019/03/05/an-early-look-at-2019-us-shareholder-proposals/> (“Taking a closer look at the top 10 [shareholder] proposal types by number of filings in 2019, we see many of the same proposals that were part of this list in the previous year, including requests to report on political contributions and lobbying, requests to disclose targets on carbon emissions, and proposals seeking reporting on sustainability and climate change risks.”).

suggested, champion stakeholder-focused legislation.³¹ Supporting such legislation would come with some expense, but could change the competitive landscape and may prevent socially-focused firms from operating at a disadvantage. Many corporations already support lobbyists, and, in fact, the BRT itself is largely a lobbying group.³² If the 181 corporate executives who signed the BRT's 2019 Statement are serious about benefiting all stakeholders, lobbying for laws that benefit those stakeholders would go a long way toward convincing the public that the statement is more than mere happy talk.³³

V. PROVIDE STAKEHOLDER REPRESENTATIVES WITH RIGHTS

Finally, and perhaps most effectively, directors could provide for stakeholder representatives with rights that would give these representatives not just a voice, but also power in the corporation. This proposal is argued in much more detail in my 2017 *American Business Law*

³¹ See Lawrence H. Summers, *If Business Roundtable CEOs Are Serious About Reform, Here's What They Should Do*, WASH. POST (Sept. 2, 2019, 5:57 PM), https://washingtonpost.com/opinions/if-business-roundtable-ceos-are-serious-about-reform-heres-what-they-should-do/2019/09/02/53b05014-cdc0-11e9-8c1c-7c8ee785b855_story.html (“If the Business Roundtable is serious about stakeholder capitalism, and if responsible firms are to flourish and spread their benefits, it will not just decree principles according to which its firms will operate but will also push for laws and regulations that support firms’ ability to stand up for their stakeholders. These might include minimum-wage and benefits requirements and broader mandates to protect companies that want to do right by their workers from those competing companies that are ruthlessly pursuing shareholder interests. Or they might include rigorous restrictions on advertising and promotion practices, so firms who are honest and transparent are not placed at a competitive disadvantage. Or universally high capital standards on financial institutions, so that imprudent willingness to take on risk cannot be a competitive advantage.”).

³² See Donovan Andrews, *5 Ways Companies Can Show Their Commitment to Improving the World*, FORTUNE (Sept. 24, 2019, 5:19 PM), <https://fortune.com/2019/09/24/business-roundtable-corporate-social-responsibility/> (noting that the BRT is a “lobbying group”); see also Ian Rappeport & Thomas Kaplan, *Democrats’ Plans to Tax Wealth Would Reshape U.S. Economy*, N.Y. TIMES (Oct. 1, 2019), <https://www.nytimes.com/2019/10/01/us/politics/sanders-warren-wealth-tax.html> (referring to the BRT as “a lobbying group for large companies”).

³³ See Reuters, *Walmart’s Chief Executive to Chair the Business Roundtable*, N.Y. TIMES (Sept. 19, 2019), <https://www.nytimes.com/2019/09/19/business/18reuters-walmart-mcmillon-business-roundtable.html> (explaining that the BRT has been accused of doing the exact opposite of this proposal and “lobbying *against* social and environmental reform efforts.” (emphasis added)).

Journal article.³⁴ In short, that article does not propose providing all stakeholders with corporate governance rights, as that would be unwieldy. Rather, the article suggests that each corporate stakeholder group could elect a representative to act on its behalf.³⁵ Providing significant corporate governance rights to stakeholder representatives—such as the ability to elect directors or sue derivatively—would require shareholder consent, but directors could engage in consultations with stakeholder representatives immediately. Directors could also provide stakeholder representatives with information rights and could engage in stakeholder update calls, as they currently do for shareholders.

CONCLUSION

Many commentators are rightfully skeptical of the BRT's 2019 revised statement of corporate purpose that moves away from shareholder primacy and toward a multi-stakeholder approach. If, however, the BRT members are actually serious about valuing nonshareholder stakeholders, the BRT members could increase their credibility by attempting to implement some of the corporate governance changes proposed and discussed in this article.

³⁴ See generally J. Haskell Murray, *Adopting Stakeholder Advisory Boards*, 54 AM. BUS. L.J. 61 (2017).

³⁵ *Id.* at 98–105.