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Testimony of Jeffrey R. Wahl
Chairman of the Benefit Corporation Subcommittee of the
Corporation Law Committee of the Ohio State Bar Association, before the
Senate Judiciary Committee of the 133rd General Assembly
Proponent of Senate Bill 21
February 20, 2019

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and Members of the Committee:

I am Jeff Wahl, a lawyer with Squire Patton Boggs, the former chair of the OSBA Corporate Law Committee and the current chair of its Benefit Corporation Subcommittee. I am pleased to testify in support of Senate Bill 21 on behalf of the Ohio State Bar Association. The bill contains proposed amendments to the Ohio General Corporation Law to provide for a new form of for-profit corporation, known as a “benefit corporation.”

Overview and Rationale

A “benefit corporation” is a for-profit corporation that is authorized by specific provision in its organizational documents to pursue one or more beneficial purposes in addition to the other legal purposes for which for-profit corporations may be formed. Benefit corporations do not receive any special government incentives to operate for a beneficial purpose (e.g., special tax treatment) and are subject to all the other requirements and limitations imposed by Ohio law on for-profit corporations. Benefit corporations can be of any size and operate in any business. A “beneficial purpose” can be any purpose that has beneficial effects on persons, entities, communities, or interests, other than shareholders in their capacity as shareholders, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature. Under these amendments, benefit corporations and their directors are protected from liability to beneficiaries of a beneficial purpose and claims that they owe duties to those beneficiaries.

Approximately 33 states have adopted amendments to their respective corporation laws to provide for the creation of “benefit corporations.”

Ohio’s proposed legislation differs from that adopted in some other states due to its flexibility. Some state laws require each “benefit corporation” to produce an annual “public” benefit report prepared against a third-party standard that describes how and to what extent the corporation has accomplished its beneficial purpose. Ohio’s legislation gives shareholders the flexibility to determine what, if any, public reporting would be required. For example, the owners of a corner grocery store that operates for a profit may also approve cancer research as a beneficial purpose without being required to report their efforts publicly. However, a company wishing to attract investors who make investment decisions based on a beneficial purpose can provide for public

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reporting and auditing of the report. In either circumstance, benefit corporations would still be required to produce annual financial statements (as required by O.R.C. §1701.38) for shareholders, and shareholders would still be entitled to examine the books and records of the corporation (as provided for in §1701.37(C)).

Conclusion

In conclusion, Senate Bill 21 provides a thoughtful, flexible option for owners of Ohio corporations and those wishing to form Ohio corporations that allows them to designate one or more customized, beneficial purposes for their business, without creating rigid rules about what constitutes a beneficial purpose or burdensome publication requirements. We are grateful for Senator Dolan's work on this bill and I am pleased to appear on behalf of the Ohio State Bar Association to give testimony in support. I would be glad to answer any questions any member of the Committee might have.