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TESTIMONY OF
ANDREW GREENBLATT
ON HB-5490 (JUDICIARY)
BEFORE THE
CONNECTICUT JOINT COMMITTEE ON JUDICIARY

March 16, 2012

Members of the Committee:

Good morning. My name is Andrew Greenblatt and I appreciate this opportunity to provide testimony in support of HB-5490 regarding benefit corporations.

I am the Assistant Director of Policy for B Lab, a national non-profit working to support businesses that promote environmental and social sustainability. Our work includes helping to create the infrastructure needed to nurture this new segment of the economy by encouraging passage of legislation that enables the creation of benefit corporations. Our organization is responsible for drafting the model legislation that led to the passage of benefit corporation bills in seven states including New York, New Jersey, and California and was used as a launching point for the bill before you today.

Similar legislation has been introduced in several others including Pennsylvania, South Carolina, Illinois, and Michigan. The legislation was drafted with the oversight of *William H. Clark, Jr.*, a noted expert on corporate form and a partner at the law firm Drinker Biddle and Reath LLP. Bill has served for a number of years as the draftsman for the Title 15/ Business Associations Committee of the Pennsylvania Bar Association and in that capacity was the author of the 1988 Pennsylvania Business Corporation Law. Over the past several months years Bill Clark and our organization have had the opportunity to meet with different bar association corporation law drafting committees in around the country including Colorado, Maryland, Pennsylvania, Vermont, New York, and Washington.

I would first thank the committee for taking up this issue. There is a great need for the creation of this new corporate form. Over 50,000 businesses in the U.S. identify themselves as existing to create public benefit, not simply shareholder wealth. They strive to create great jobs and local living communities. But they struggle with a capital market and corporate structures built for an old way of doing business. Currently, individuals and groups in Connecticut seeking to establish organizations with a public mission can either organize themselves as not-for-profit corporations, or use a traditional for-profit corporate form. In the case of non-profits, there are numerous restrictions on the nature of the activities of such organizations, and non-profits are thus extremely limited in their ability to attract capital to allow them to achieve their mission at scale or create broad employment. In the case of for profit corporations, such businesses are generally required under the current statutory and case law to be conducted for the benefit of the shareholders to whom the directors owe a fiduciary duty to maximize shareholder value, thus limiting their ability to consider the interests of their employees, communities, or the environment.

This legislation would create a new category of corporate entity known as the Benefit Corporation which would be expressly organized with a public mission or to confer a public benefit, and not solely for the purpose of maximizing financial profit. Although such corporations would be expected to earn a financial return for their shareholders, this would not be the sole purpose of the corporation. Therefore, failure to earn a maximum rate of return would not be the standard by which the determination of whether the directors have satisfactorily discharged their fiduciary duties would be made; rather, such benefit corporations would be evaluated by reference to the achievement of their stated general and specific public purposes as well as their financial return.

Corporations in this new sector of the economy are looking to incorporate in states that offer the appropriate market infrastructure to grow and thrive. On the first day in which Maryland allowed for corporations to file as benefit corporations, 11 companies did so. In California it was 12 (including Patagonia), and in a ceremony with the New York Secretary of State 13 corporations incorporated on day one. The passage of this legislation can reasonably be expected to lead to the organization and incorporation of many more such

entities in the state of Connecticut, which in turn would result in more public benefits being conferred, more jobs being created, and more economic activity taking place.

The fact that this bill is harmonized with a growing national trend helps in two ways. First, it creates a clear and easy path for large social investment funds. The bill was carefully crafted with input from social investors to ensure that they can invest in companies that have a clear mission, have systems of accountability to hold Officers and Directors to that mission, and a system of transparency to make sure the mission is being met. For example, investors told us they needed clear standards to measure impact. To accommodate this need we designed an annual report in which companies assess how well they are doing based on standards created by a clearly defined independent third party. Investors can choose the third party standards they like and then search across the country seeking to invest in companies that use that standard and achieve a certain score. And because all of the states are adopting a common system the costs of diligence and crafting agreements to invest in these companies goes way down.

Second, by joining a national movement Connecticut consumers will be able to show for brands that stand for something they can understand. In just two years Benefit Corporation legislation has become the law of the land in states representing over 30% of the gross national product of the United States. States representing another 20%+ are now considering legislation as well. By joining these states Connecticut consumers will be able to buy products and services from companies that share their values and companies will be able to connect with those consumers. Consumers can be sure they are shopping with the values by reading the annual benefit reports on company web sites.

This bill achieves these goals in a way that creates no new regulations or burdens on existing companies, no special tax breaks or incentives, and at no cost to the state. It is a truly distinct corporate entity built for a new way of doing business, narrowly tailored to avoid unintended consequences.

This session you are also be asked to consider HB5466, the Social Enterprise Business bill. This bill shares some traits with the Benefit Corporation Bill, but ultimately serves a very different purpose. In my written testimony I attach a copy of my testimony on that bill as Appendix A.

I will use the rest of this testimony to explain the workings of the Benefit Corporation Bill:

Being a benefit corporation is purely voluntary. An existing business corporation may elect to become a benefit corporation by a two-thirds vote of its shareholders. Terminating benefit corporation status or changing the type of public benefit to be created by the corporation similarly requires a two-thirds vote. HB-5490 will not have any effect on the law that applies to business corporations that do not elect to become benefit corporations.

Every benefit corporation has the corporate purpose of creating a material positive impact on society and the environment when the operations of the business are looked at as a whole. A benefit corporation may also identify specific public benefits that it is the purpose of the corporation to create. It is important for me to emphasize that benefit corporations are for-profit businesses. In particular, passage of HB-5490 will have no effect on the taxation of benefit corporations, and a business corporation that elects to become a benefit corporation will continue to be taxed as any other for-profit business corporation.

The directors of a benefit corporation are required to consider the following interests and factors when making decisions:

- the ability of the benefit corporation to accomplish its public benefit purpose;
- the shareholders of the benefit corporation;
- the employees and workforce of the benefit corporation and its subsidiaries and suppliers;
- the interests of customers as beneficiaries of the general or specific public benefit purposes of the benefit corporation;
- community and societal considerations, including those of any community in which offices or facilities of the benefit corporation or its subsidiaries or suppliers are located;
- the local and global environment; and
- the short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation.

An officer of a benefit corporation must also consider those interests and factors when an officer has discretion to act with respect to a matter and it reasonably appears to the officer that the matter may have a material effect on the creation of public benefit or one of the listed factors or interests.

Each year the benefit corporation must prepare and distribute to its shareholders a report describing its efforts to create public benefit during the preceding year. The report, minus any trade secrets, must be posted on any public website maintained by the corporation so consumers and potential investors have access to it.

Thank you for your attention. I would be pleased to answer any questions the Committee may have.