

**Testimony before the  
Senate Business and Transportation  
in Support of  
HB 2296-A (Read and Bailey) Oregon Benefit Company Legislation  
Presented by Bill Campbell, Equilibrium Capital Group  
May 16, 2013**

Chair Beyer and Members of the Committee,

My name is Bill Campbell. I am a principal at and founder of Equilibrium Capital Group, and an “emeritus” partner at Ater Wynne LLP. I’m also a native, and lifelong, Oregonian.

If you look at our company documents, you would see that we promise ourselves, and our investors, that we will run the company with an eye to the interests and well being of every person, and every community, our work touches.

I don’t think that’s unusual, actually. I think it’s normal; usually it goes unstated. All of you recite on your own websites your small business backgrounds – well, except Senator Monroe, who has not admitted to his own inner entrepreneurial streak in public just yet. You know, as every single small business owner I’ve ever discussed this with knows, that if you do not run your business according to something very like the golden rule, you won’t have a business long. Business grows based on trust, respect, and choice. Take care of those you touch – and they will take care of you.

Your capital providers are part of that network. Banks earn interest; shareholders earn profit; it’s all in return for the capital needed for your business. They are part of your business’ commercial ecosystem, like the suppliers of Senator Girod’s X-ray film, or the working men and women who pick Senator Thomsen’s orchards. They need to be paid fairly and on time, and treated with respect, else you don’t get to go on doing business with them. But so do your employees, neighbors, local governments, and others you affect and who affect you.

In the last 50 years or so, courts have spent a lot of time talking about “fiduciary duty.” In the course of that conversation, something has gotten lost. Boards of directors who made decisions they thought

were good for everyone, found themselves losing court cases in Delaware, because their decisions did not maximize shareholder profit.

The results have, to an old-line small business guy and long-time business lawyer, gotten quite strange – for example, it is now considered unlawful, in Delaware, for the board of directors to contract to sell a company for a fixed price, subject only to shareholder approval. Instead the contract has to be written so that if a better offer comes along, the board has the freedom to break the first contract.

This elevates the principle that one must deal honorably with one's capital providers to a level above one's duty to deal honorably with everyone else. And it has unfortunate consequences.

When we started Equilibrium, we were aware of the Delaware cases, which Oregon's courts usually follow. So we were happy to find the work that B-Labs has done in developing the idea of a benefit company. Originally a benefit company just says: "We define fiduciary duty more broadly – we will think about the interests of ALL our stakeholders, not just our shareholders, when we make a decision." And we put it in our articles of incorporation. Oregon law permits any business to include any provisions for governance in its documents it finds appropriate, so that's what we did.

We probably would not have bothered even with that much if we did not plan to be raising capital from shareholders who were not active in the business. But we were, so we wanted that protection. And because just putting it in our Articles of Incorporation was easy and direct, I did not think originally that this law was needed.

But then the Delaware courts went further. They said: "Even though the management and a majority of shareholders want to make a decision that results in less profit in order to run the company in a way that generates more other forms of good, and have done so with all due formality, *they are not allowed to do so.*" That was a case that involved the two internet companies, Craigslist and eBay. Because Oregon courts follow Delaware law, today I am concerned that this precedent will wind up affecting every small business with a minority shareholder in this state – perhaps including yours – whether or not you want it to. I do not want my choice of business entity to deprive me of commercial freedom. I want to be free to run my business the way I set out to do.

So I joined a process with many Oregon lawyers of excellent standing and long experience to conserve Oregon's traditions. We worked very closely with businesses of all sizes all over the state to come up with something that people are happy with across the board, which is before you today.

It has been in many ways a humbling process to realize again the complexity of even our relatively small Oregon business community, and also a process that makes me proud to be part of that community. I have a great deal of gratitude for all the lawyers and business leaders who gave so much time to making this work, including particularly the staffs inside some of Oregon's most prominent companies who worked literally from their vacations to make sure we were all on the same page.

What is before you is a first rate bill. Oregon is not the only state to be looking at legislation like this. Before this spring, twelve states I believe have already adopted something like it; Colorado adopted theirs yesterday; Delaware is taking votes in its senate on it today. But thanks to our uniquely Oregon process, I am confident in saying the bill before you is the simplest, lowest cost (no public cost), most straightforward, and most respectful of business itself, way of doing this in the country.

We are honored to have gotten the support of the House in this process, and trust that the work before you will have earned your support as well.

I will be happy to respond to questions, now or at your convenience at any other time.

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