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# Could corporations become a vehicle for social change?

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# Could corporations become a vehicle for social change?

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The United States Supreme Court Building, Washington, DC.

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The for-profit tide is changing.

The rising number of business owners using the corporate form to achieve goals other than profits raises an interesting question: Are we entering a new post-profit era for corporations?

Take Kickstarter as an example. Technology company Kickstarter announced last month that it had re-incorporated as a "public benefit corporation" (PBC).

The company decided to make the change to ensure it could stay true to its mission of helping to "bring creative projects to life." As a PBC, Kickstarter's executives explained, the company can include making a "positive impact on society" as a "legally defined goal" even if it impacts profitability. Kickstarter's chief executive even declared, "We don't ever want to sell or go public."

Instead of the plans being a target for shareholder litigation, Kickstarter's shareholders unanimously voted for the reincorporation, and the company received favorable reactions from investors and the public.

Another example of this trend is craft store Hobby Lobby. Like Kickstarter, Hobby Lobby's shareholders are not entirely focused on maximizing profits.

Hobby Lobby is closely held, and its shareholder owners are Pentecostal Christians with strongly held religious beliefs. Hobby Lobby stores nationwide are closed on Sundays, and it also sued over the Affordable Care Act, arguing that compliance with the mandate to provide certain contraception to employees violated the religious beliefs of the corporation and its owners.

The U.S. Supreme Court held in June 2014 that Hobby Lobby could claim a religious exemption under the Religious Freedom Restoration Act to avoid compliance with the Affordable Care Act's contraceptive mandate.

The Hobby Lobby v. Burwell case held for the first time that a for-profit corporation could have legally recognized religious beliefs.

We are clearly entering an expansive era for the law of corporate purpose. Make no mistake: Corporate focus on profits is unlikely to recede anytime soon.

The Supreme Court's opinion is noteworthy for its reconception of corporate law. To allow the religious beliefs of Hobby Lobby's shareholders to be imputed to the corporation, the Supreme Court undercut the traditional legal view that a corporation is a "separate entity." The Court instead defined a corporation as "simply a form of organization used by humans to achieve desired ends."

State laws generally allow corporations to incorporate for "any lawful purpose," but the Hobby Lobby opinion called into question the long-recognized doctrine

that maximizing shareholder wealth should be the top priority of a corporation. The Supreme Court declared that the idea that corporations exist just to make money "flies in the face of modern corporate law."

The Hobby Lobby court noted with approval that many American corporations support charitable causes and other "worthy objectives."

For Hobby Lobby, that worthy objective is the exercise of its shareholders' religious beliefs. For Kickstarter, that objective is enabling creative projects to be funded.

In each case, the corporation's owners believe their objectives should be valued over profitability alone. These companies chose different paths, but arrived in a similar place: Prioritizing goals other than profits.

In the wake of the Hobby Lobby decision, other corporations are following suit. For example, Hercules Industries Inc., a Colorado corporation manufacturing and distributing heating, ventilation and air conditioning equipment, recently amended its articles of incorporation to signify the central role of religion in its corporate governance.

Hercules Industries' articles of incorporation now allow its board of directors to prioritize "religious, ethical or moral standards" even when it results in lower profitability. After Hobby Lobby, Hercules successfully sued to obtain a preliminary injunction enabling the corporation to avoid compliance with the ACA's contraceptive mandate.

If you are a corporate director wishing to use the corporate form to accomplish a goal other than profits, the Hobby Lobby opinion's reasoning could arguably be used to protect you against the resulting shareholder lawsuits. Or reincorporation as a public benefit corporation is now a viable option for socially conscious business owners.

Similarly, if you are a shareholder activist seeking to use the corporate form to prompt social or environmental change, the Hobby Lobby decision provides an opening for you to argue that even traditional corporations can focus on something other than profits.

Perhaps our innovative era will be notable for allowing directors, officers and shareholders to use the corporate form as a new vehicle for social change.