



December 18, 2021

Via FedEx to

Corporate Secretary
The Kroger Co.
1014 Vine Street
Cincinnati, Ohio 45202-1100

Dear Corporate Secretary,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Kroger Co. (the "Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as the Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2022 annual meeting of shareholders. A Proof of Ownership letter is forthcoming and will be delivered to the Company.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal January 12, 2022 from 2-5 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at sshepard@nationalcenter.org so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a “no-action” letter should be sent to me at the National Center for Public Policy Research, 20 F Street, NW, Suite 700, Washington, DC 20001 and emailed to sshepard@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Shepard", with a long horizontal flourish extending to the right.

Scott Shepard

Enclosure: Shareholder Proposal

Conversion to Benefit Corporation

RESOLVED: Kroger Co. ('Company') shareholders request that our Board of Directors take the steps necessary to amend our certificate of incorporation and, if necessary, bylaws (including presenting such amendments to the shareholders for approval) to become a benefit corporation in light of its adoption of the Business Roundtable Statement of the Purpose of a Corporation (the "Statement").¹

SUPPORTING STATEMENT: The Company signed the Statement, which proclaims that "we share a fundamental commitment to all of our stakeholders We commit to deliver value to all of them, for the future success of our companies, our communities and our country."²

However, the Company is a conventional Ohio corporation, so that directors' fiduciary duties emphasize the company and its shareholders, but not stakeholders (except to the extent that stakeholder-regarding decisions create value for shareholders over time). Accordingly, when the interests of shareholders and stakeholders such as workers or customers clash, the Company's legal duty runs to shareholders. As one law firm reported to another signatory considering conversion, directors may consider stakeholder interests only if "any decisions made with respect to such stakeholders are in the best interests of the corporation and its stockholders."³

That contradicts the commitment made in the Statement.

In contrast, directors of a benefit must balance the interests of shareholders, stakeholders and specified public benefits,⁴ giving legal status to the Statement's otherwise empty promise. A company required to balance stakeholder interests could prioritize stakeholder interests, even if doing so sacrificed higher returns for shareholders.

A company that opposes conversion to the benefit corporation form, on the other hand, thereby recognizes that the Statement is simply a recital of well-understood old principles that changed nothing, and that leaves the overriding duty to shareholders fully in place. Such a company would reduce reputational and legal risks by withdrawing from a Statement that was aggressively sold to the public as making significant new commitments that cannot be achieved under the Ohio business-corporation form.⁵

¹ <https://opportunity.businessroundtable.org/ourcommitment/>

² *Id.*

³ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2020/harringtonwellsfargo021220-14a8.pdf>

⁴ <https://www.taftlaw.com/news-events/law-bulletins/ohio-enacts-legislation-allowing-benefit-corporations>

⁵ <https://opportunity.businessroundtable.org/ourcommitment/>