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Spirit Of The Law: How To Limit Corporate Greed's Impact On Workers

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My earlier columns (August 1 and 14, 2017) argued that we can reduce corporate greed to societally-optimal levels by amending laws that govern corporate behavior. Re-educating corporate managers' concerning their perceived fiduciary duty to maximize profits would enable lawmakers to minimize the profit motive's downward impact on laborers' wages, rights and well-being. "We the people" chartered corporations into existence to benefit us, and we are empowered to regulate corporate profit-seeking to reverse the imbalances in our legal and political systems that favor employers over workers and enable large corporations rather than individuals to control our government.

Alexander Schmidt.

Labor advocates must, of course, continue opposing "right to work" initiatives and pursuing legislation to strengthen unions, increase wages and otherwise directly promote workers' welfare. But laws that would indirectly improve workers' conditions also should be implemented and enforced. These include:

1. Campaign Spending Full Disclosure Laws. The Supreme Court's 2010 "Citizens United" decision unleashed unbridled corporate spending in elections by holding that corporations are "people" under the First Amendment and that political donations are a form of "free speech." That 5-4 ruling will not be overturned soon now that Neil Gorsuch has replaced Antonin Scalia on the Court and the effort to repeal Citizens United via a constitutional amendment has died.

But the Court's ruling rested on its belief that laws requiring complete disclosure of the sources of campaign spending would blunt the power of moneyed interests. Experience shows that state transparency laws that enable voters to know which candidates corporations support can indeed level the playing field. These laws should be enhanced and rigorously enforced.

2. Holding Corporate Officers Accountable. The New York Times has noted (Dealbook, Oct. 29, 2014 and May 20, 2015; Business Day Feb. 19, 2015) that large companies can become recidivist violators of the law when their "culture prioritizes profits over compliance," especially since senior executives are rarely prosecuted. Prosecuting executives does help. The 2015 "Yates Memo" by then-Deputy Attorney General Sally Yates instructing DOJ attorneys to pursue senior officers noticeably deterred corporate misbehavior. Sarbanes-Oxley, requiring senior executives to certify financial statements, has likewise reduced reporting violations.

States should similarly hold executives accountable when companies repeatedly violate labor, anti-discrimination and workplace safety laws. Executives should be prosecuted where possible under state law, and they should be banned from holding executive positions if companies under their watch are repeat offenders. Lawyers, accountants and doctors can be barred or suspended from practicing if they or their businesses act illegally. Corporate executives should be subject to the same standards.

3. Empowering Attorneys General to Revoke Corporate Charters. Since states create corporations, they shouldn't hesitate to put them out of business for repeated wrongdoing. "Three strikes and you're out" type laws used against individuals should also be invoked against recidivist corporations, no matter how large. Their charters should be revoked and their assets sold. If no economically viable sale can be made without job losses or wage and benefit reductions, the company should be temporarily managed by its employees, with authority to discharge and replace any director or officer.

4. Incentivize Benefit Companies. Thirty-three states have already passed legislation allowing companies to be chartered as "benefit corporations." Benefit corporations are legally permitted to satisfy their fiduciary duties by balancing the interests of all their "stakeholders" – including their employees, customers and communities as well as their shareholders – rather than solely by maximizing profit. While several large privately-held companies have become benefit corporations, there is only one publicly traded benefit company. Exchange-listed entities are reluctant to adopt benefit status for fear of lowering their market valuations (and the net worth of major shareholders and executives).

But institutional investors are starting to recognize that focusing on both the public good and profits is the best means of securing long-term value. Some even believe publicly-held benefit companies will become commonplace. States should encourage this development by providing tax and other job-creation incentives predominantly (or only) to benefit companies.

5. Amend Fiduciary Duty Law. States should also enact statutes that explicitly permit even non-benefit companies to sacrifice shareholders' returns in order to maintain or increase workers' wages. States could even mandate that large employers prove financial hardship or another legitimate business justification for any significant labor force or wage/benefit reduction.

While these reforms are unlikely to occur in the current corporate-dominated political environment, labor advocates should seek to change the environment by promoting the election of officials dedicated to making such reforms.

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