

# Law Profs Bebchuk, Johnson Float Poison Pill Preemption Tactic

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Two legal academics say it is time for a close examination of a 45-year-old federal statute that they believe could be employed to preempt state laws that allow so-called poison pill defenses against unwanted corporate takeovers.

In a paper entitled, "[Toward a Constitutional Review of the Poison Pill](#)," Harvard Law School professor Lucian Bebchuk, who directs the school's corporate governance program, and Robert Jackson Jr., an associate professor of law at Columbia Law School, write that the potential of the law in question, the Williams Act, to trump poison pills has been largely ignored since its passage in 1968.

"Poison pill" is the term used to describe the provision in a corporate charter that allows a company to significantly dilute the value of its outstanding shares in order to repel an unsolicited tender offer and making the target less attractive to a suitor. It is the provision that [many corporate governance gurus, Bebchuk among them](#), love to hate.

Bebchuk and Jackson note in their paper that various courts, including the Supreme Court, have relied on the Williams Act, which regulates the terms of unsolicited tender offers, to preempt state antitakeover laws.

The pair write that they have researched poison pill rules, and that they are often more strict than state laws of the same ilk that have in the past been preempted by the federal Williams Act. As a result, Bebchuk and Jackson argue, "preemption challenges to these poison-pill rules could well result in their invalidation by the federal courts."

In conclusion, the authors write: "Federal courts and commentators have paid little attention to the possibility that the state-law rules authorizing the use of poison pills—the most powerful impediment to outside buyers of shares—are also preempted. There is a substantial basis for questioning the continued validity of current state-law rules authorizing the use of poison pills."

We can't wait to hear what founding [Wachtell Lipton Rosen & Katz partner—and poison pill godfather—Martin Lipton](#) has to say.