

Bebchuk Fires Back at Lipton in Williams Act Debate

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A contentious debate over the validity of the so-called poison pill defense against unsolicited corporate takeover continued to simmer Monday, after [Harvard Law School professor Lucian Bebchuk parried Wachtell Lipton Rosen & Katz founding partner Martin Lipton's](#) scathing response to a recent paper coauthored by Bebchuk that suggests the 45-year-old federal law known as the Williams Act is the best weapon for defeating such a takeover defense.

“Given that Wachtell Lipton prides itself for creating the poison pill,” Bebchuk wrote in a post published on Harvard Law School's forum on corporate governance and financial regulation, “we understand why an article raising doubt about the validity of the state-law rules authorizing the use of poison pills touches a sensitive nerve at the Firm.”

Continued Bebchuk: “Wachtell’s response, however, fails to dispel those doubts—and, indeed, shows why there are serious questions about the constitutionality of state-law poison-pill rules today.”

Following Lipton into the weeds on the matter, Bebchuk said the validity of the Williams Act in an M&A context depends on what case law one chooses to emphasize. “Wachtell’s view (1) is not established by Supreme Court precedent; (2) gives undue weight to two lower federal court opinions; and (3) discounts or ignores opinions of other lower federal courts that have expressed views that differ from Wachtell’s,” he noted.

Last week, in “A Response to Bebchuk and Jackson’s Toward a Constitutional Review of the Poison Pill,” Lipton, who created the poison pill, which allows for the dissolution of shares in the event of a hostile takeover attempt, wrote, “Professors Lucian Bebchuk and Robert Jackson have extended Professor Bebchuk’s extreme and eccentric campaign against director-centric governance into a new realm—that of the Constitution of the United States.” (Lipton’s response was also published on the Harvard Law School forum on corporate governance and financial regulation.)

Lipton and his coauthors—and fellow Wachtell partners—Theodore Mirvis, George Conway III, Jeffrey Wintner, and William Savitt, also wrote: “Bebchuk and Jackson’s paper is tendentious and misleading—and, in material respects, simply wrong. It is not a work of serious scholarship. It is an attempt at advocacy, but fails even at that.”

As law.com has previously reported, Bebchuk, a Harvard Law School professor who directs the school’s corporate governance program, and Jackson, an associate professor of law at Columbia Law School, wrote in the paper that drew Lipton’s ire that the potential of the law in question, the Williams Act, to trump poison pills has been largely ignored since its passage in 1968.