Now It's Strine Taking Aim at Bebchuk Over Governance

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By Hilary Johnson
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Delaware Supreme Court Chief Justice Leo Strine has challenged Harvard Law School professor Lucian Bebchuk to rethink his focus on unfettered shareholder democracy.

Calling Bebchuk a “dear friend and colleague,” Strine nonetheless rejects the "insulation advocate" label the academic has applied to him. Instead, according to a Financial Times report, Strine suggests tamping down the influence of activist shareholders in concrete ways that include requiring that shareholders pay the cost of board campaigns and eliminating annual votes on executive compensation.

Strine makes his arguments and takes aim at Bebchuk in a recent Columbia Law Journal article titled, “Can We Do Better By Ordinary Investors? A Pragmatic Reaction To The Dueling Ideological Mythologists Of Corporate Law.” [PDF] In the article, he calls for a broad “rollback of shareholder powers to prevent a ‘deluge’ of corporate governance votes that he says are distracting managements and costing companies a small fortune,” according to the FT.

According to Strine's essay, the crux of his disagreement with Bebchuk is the unequal treatment that boards get compared to shareholders, not all of whom necessarily have long-term value at heart themselves.

“Ideology can be blinding,” writes Strine, referring to colleagues who wish to allow shareholders to always more directly influence boards, “even apparently when one’s secular faith involves the simple creed that those who own stocks are presumptively selfless while those who manage corporations are presumptively selfish and untrustworthy.”

Should Bebchuk reject what Strine views as fairly moderate checks on shareholders’ influence and power, “then my distinguished friend should admit that he will not be satisfied until American corporations are in fact direct democracies in which fiduciary accountability only operates against corporations, but not money managers.”

Adds Strine: “Until he broadens his lens to make sure that all who wield power using the funds of American investors are accountable, Bebchuk is himself fairly labeled an insulation advocate.”