

Richard J. Pierce, Jr.

*Small is not Beautiful: The Case Against Special Regulatory Treatment of Small Firms*

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Abstract by Richard G. Rose

Pierce argues the cultural value that small is good and big is bad is deeply rooted in the culture of the United States and has affected our legal system since the time of the Founders. A recent reflection of this cultural value is the Small Business Regulatory Enforcement Fairness Act (SBREFA). This Act is designed to confer special treatment on small firms. Pierce argues special regulatory treatment of small businesses is unjustified and socially destructive and presents a critical analysis of the justifications for special treatment of small firms. In particular, Pierce critiques the notions that small businesses have a positive effect on the political environment, that small firms face disproportionately large compliance costs, that small firms account for a disproportionately large share of innovation, and that small firms contribute more to the overall health of the economy and creation of new jobs. In fact, Pierce contends that small businesses are a massively disproportionate source of social problems because small firms expose employees to greater risk of occupational injury and racial discrimination, produce a disproportionately large share of pollution, and provide employees comparatively limited access to healthcare benefits.

Moreover, Pierce argues small firms have little incentive to behave in socially desirable ways due to de jure special treatment, de facto special treatment, and market forces. For instance, the sheer number of small businesses ensures that regulations will not be uniformly enforced. And, because small firms face higher compliance costs, small firms have a greater incentive not to comply with regulations. Unlike larger, newsworthy corporations, small firms do not run the risk of reputational costs of non-compliance or other negative publicity because they are largely ignored by politicians and media. Tort law is less effective as a deterrent for small firms because small firms are less likely defendants in class action litigation and actions seeking large punitive damages due to the smaller net worth of small firms and the limits of insurance coverage carried by small firms. Lastly, Pierce suggests ways in which institutions can reduce the damage caused by special treatment of small businesses. First, journalists and politicians are encouraged to refrain from furthering the myth that small is good and big is bad. Second, agencies and courts should use their discretion to interpret laws like SBREFA to limit the special regulatory treatment of small business. Lawyers and lobbyists for big business should realize it is in their best interest to vigorously oppose special benefits for small businesses.