

Wal-Mart Scores a Victory

By Trevor Bothwell

On July 19, a federal judge in Baltimore struck down a Maryland law that would have required Wal-Mart to spend 8 percent of its payroll on employee health care or hand the difference over to the state. According to the [Baltimore Sun](#), the legislation violated a federal law promoting uniform treatment of employers.

The importance of this decision cannot be overstated, not least because it prevents--for now, anyway--Maryland lawmakers from playing politics with private business. Despite coming to the correct conclusion, U.S. District Judge J. Frederick Motz ruled in favor of Wal-Mart not because such legislative overreaching is an abuse of economic liberty, but because Wal-Mart would have been forced to maintain employee records differently in Maryland than it does in other states.

Wal-Mart may take comfort in the fact that in this instance the federal statute governing payment of employee benefits preempted the Maryland General Assembly's law targeting its business. But what does it say about our current climate when a judge must wade through a sea of federal guidelines in order to uphold the right of businesses to freely contract with their employees?

Maryland Senate President [Thomas V. "Mike" Miller Jr.](#) (D-Calvert County) reacted to the ruling by likening the relationship between Wal-Mart and its employees to a struggle between "good versus evil," proclaiming that "[Maryland Democrats are] not going to let a big Arkansas corporation, protected by their contributions to the Republican party, avoid their basic responsibility to the citizens of Maryland."

I noted this modern liberal "employer vs. employee struggle" mentality in an [article](#) in *The American Enterprise Online* not long after Maryland's legislature pushed this anti-growth bill through the General Assembly back in January, despite a veto from Gov. Robert Ehrlich. The governor drew obligatory contempt from the Wal-Mart bill supporters who accused him of simply trying to protect small business--a very telling posture indeed considering Wal-Mart is anything but a small business operation.

In reality, Maryland's legislature has become remarkably anti-business, and as Sen. Miller's recent remarks indicate, it is all too willing to incite the notion of a class struggle between the so-called "haves" and "have nots," so long as it can score cheap rhetorical points against those who oppose more and more intrusive government mandates. After all, it is low-skill, low-income workers who ultimately pay the greatest price--in wage cuts, shift reductions, layoffs, and even outright termination--when politicians artificially increase the costs of doing business in order to score political points.

Unfortunately, however, lawmakers are much too infrequently held accountable for bad policy, as they are often sheltered from blame by the electorate's short attention span and its failure to recognize that the repercussions occur over time, not necessarily in the short

run. This affords lawmakers like House Speaker Michael E. Busch (D-Anne Arundel County) the opportunity –wrongly-- to assert: "When large employers don't provide health benefits, the rest of us pick up those costs." One might think Mr. Busch doesn't understand that Wal-Mart offers a range of medical coverage options, including life, dental, and short- and long-term disability insurance--not to mention the company's profit sharing and 401(k) plans, training and mentoring programs, and discounts for employees and their families.

Moreover, Speaker Busch reflexively assumes that simply because some Wal-Mart employees may be uninsured--or not insured to the full extent he and other Wal-Mart bill backers prefer--Maryland taxpayers must *ipso facto* pick up the tab. But here is a novel idea for Mr. Messrs. Miller, Busch, and the other supporters of mandating the level of Wal-Mart employee benefits: How about letting Marylanders decide for themselves whether or not a job at Wal-Mart is worth their while? To be sure, it would be peculiar indeed for Wal-Mart to have achieved its status as one of the world's preeminent retailers if it couldn't attract employees who wanted to work for it--as exhibited by the fact that Wal-Mart job applicants often exceed by a factor of ten the number of positions available. Indeed, earlier this year in the Chicago area, Wal-Mart received a record 25,000 applications for 325 positions!

While Judge Motz's recent ruling didn't reach the substance of Wal-Mart's constitutional due process arguments, let's hope it does encourage Marylanders to stop and think about the underlying principle at stake: Absent fraud or force, the freedom of individuals to contract freely with a private business to exchange their labor for wages and benefits that satisfy them. Greater appreciation of that principle will benefit not only all Marylanders who value individual liberty, but even especially those who might be frozen out of a job that otherwise would exist but for the unnecessarily intrusive and costly government interference in the marketplace.

Trevor Bothwell is a research associate at The Free State Foundation. A similar version of this article appeared earlier on the RealClearPolitics website and is reprinted with permission.