

Dismantling Democracy in New Mexico

Mark Sardella, February 2002

"I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country...corporations have been enthroned and an era of corruption in high places will follow, and the money of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed. I feel at this moment more anxiety for the safety of my country than ever before, even in the midst of war."

— President Abraham Lincoln, November 21, 1864

New Mexico lawmakers have initiated an effort to make New Mexico businesses exempt from public interest laws. Better read that first sentence again. I had trouble believing it the first time myself. The effort was so well disguised that it didn't even catch the attention of the local newspapers, but if successful, it will have a dramatic impact on the quality of life in New Mexico. To promote this effort, our lawmakers cited a US Supreme Court declaration that "investment-backed expectation" is property that is due compensation under the "takings" clause of the Constitution, and borrowed language from NAFTA's infamous Chapter 11, which pioneered the practice of compensating businesses for the costs of regulatory compliance.¹

Approved by our legislature are Senate Memorial 4 and House Memorial 8, calling for hearings into "the loss of production due to required compliance with regulations enacted for public purposes." If these hearings conclude that public welfare laws and regulations increase the cost of doing business, as everyone knows they sometimes do, then New Mexico may be faced with the choice of repealing these laws or beginning to pay damage claims against them.²

To my knowledge, this is the first effort to extend the regulatory immunity presently enjoyed by NAFTA members to domestic companies. We're not known for cutting-edge lawmaking here, so I suspect this idea came from outside New Mexico. This raises the obvious question of why the architects of this measure, who could just as easily have

introduced this anywhere, decided to launch their effort in the land of enchantment. Are we simply an easy target?

There's nothing quite like the threat of losing all of our health, safety, and welfare laws to get me rereading the Constitution. It turns out I don't have to read very far, because right there in the "We the People" sentence are six stated purposes for the document, one of which is to "promote the general welfare." How then, under this Constitution, can we entitle private businesses to damage awards against citizens who create public welfare laws? Isn't it clear that this entitlement will frustrate, rather than promote, the general welfare? If our founding fathers had believed that corporate welfare should take precedence, wouldn't they have said, "We the Shareholders?"

Originally created for our convenience, corporations managed somehow to obtain the legal status of citizens. Now they seek to rise again, this time out of steerage and into first class, freed at last from concerns for the welfare of the peasantry. Granting corporate equality was a mistake, but granting corporate supremacy would be pure insanity. It must be vigorously opposed.

1) Suits brought under NAFTA's Chapter 11 provisions already total nearly \$4 billion, including a recent \$16 million award paid by the Mexican government to an American company that sought to operate a toxic waste dump but couldn't get a permit due to local opposition.

2) Full text of the bill is located at

<http://www.legis.state.nm.us/Sessions/02%20Regular/memorials/house/HM008.pdf>