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### INTRODUCTION

Corporate tax cuts have long been on the wish list of American businesses, which have rightly argued that both the rates and structure of the U.S. corporate tax code hurt America's ability to compete globally. U.S. companies are now on track to see dramatic reductions in their tax rates, thanks to the $1.5 trillion tax cut package just passed by the GOP-led Congress and signed by President Donald Trump.

Trump and GOP Congressional leaders claim this relief will spur economic growth through new jobs and higher wages. As proof, they point to a series of commitments by companies such as Boeing and AT&T to provide their workers with bonuses and more worker training.[1]

Unfortunately, it's far more likely that shareholders, not U.S. workers, will reap the biggest benefits from the Trump tax cuts. According to *Bloomberg*, for example, many major corporations reportedly told investors in earnings calls this fall that they plan to "turn over most gains from proposed corporate tax cuts to their shareholders" through share buybacks or higher dividends.[2] The *Washington Post* reported in December that, among America's 20 biggest companies, just two explicitly promised to hire more workers – and no one committed to raising wages.[3]

It did not occur to President Trump and GOP Congressional leaders to ask what U.S. companies should do for their country and their workers in return for such dramatic tax relief

– or to ensure that the companies promising to share their windfalls with their workers will follow through on their pledges.

But it's not too late. In particular, Congress should "tier" the corporate tax rate so the new lowest rate – 21 percent – is reserved for the companies that most "deserve" it – i.e., the ones that do best by their workforce. Companies can earn this rate by offering decent wages and benefits and investing in the training and skills that can help Americans better weather the ups and downs of a changing economy. Less committed companies would still get tax relief, just not quite as much.

Over the coming months, Congress will be tackling dozens of large and small "fixes" to the recent bill – the inevitable result of an overly rushed legislative process aimed at a political win over true reform. It would not be a stretch to add some strings for companies that want to maximize their tax benefits. Moreover, the addition of such conditions would even help the administration make good on its claims of what the corporate tax cuts would achieve, by ensuring the proceeds do, in fact, go toward jobs and wages rather than going straight to shareholders' pockets.

Congress has long asked too little of the nation's most powerful "citizens." American companies hold the lion's share of national wealth, boast an outsized voice in national policy and enjoy many of the rights and privileges enjoyed by their human counterparts – including, as the Supreme Court made abundantly clear in *Citizens United*, free speech. But, when so much of the politics around government "giveaways" centers on who is "deserving," companies somehow always get a pass.

This needs to change, especially when U.S. companies are falling short of their potential as the stewards of middle class economic stability. Even as the stock market has reached record-breaking highs and corporate profits have grown by four percentage points since 1992 as a share of GDP,[4] workers' wages have stayed flat. And, though the latest Census figures show an increase in real median household incomes over the past year,[5] long-term trends still show persistent wage stagnation except at the very top.

In part, this trend reflects a slowdown in productivity growth. Yet too many companies are failing to share the fruits of their prosperity with their workers, both in the form of higher wages and better benefits but also in the amount of investment they're putting into upgrading the skills of their workers so they can advance in their careers. One survey of more than 600 employers by *Training* magazine found that companies with 10,000 employees or more spent just $379 per worker trainee in 2016 – down from $903 per trainee in 2014.[6] It's doubtful the new tax cuts by themselves will reverse these trends without an additional push.

So, as much as companies see their pending tax cuts as a chance to get what they want from Congress, Congress still has a chance to get from companies what workers need: a renewed commitment to their economic well-being and upward mobility.

The firms eligible for the lowest tax rates should meet one of two criteria: (1) that they meet specified standards for investment in their workers; or (2) that they are legally organized as "benefit corporations" – a new type of legal structure intended to encourage so-called "double bottom line" companies – and provide good evidence of their practices.

Over the past several years, a growing number of states have passed "benefit corporation" legislation, which allows companies to balance their pursuit of profit with other goals, such as the betterment of their workers and environmental sustainability, without fear of shareholder reprisal. In 2013, the concept got a major boost when the state of Delaware – the nation's premier legal home ("domicile") for U.S. companies – passed "public benefit corporation" legislation under the leadership of former Gov. Jack Markell.[7] Since 2010, 32 states and the District of Columbia have passed benefit corporation statutes,[8] and thousands of companies now claim benefit corporation status, including more than 1,000 in Delaware.[9]

The companies that have taken the step of putting their people on par with their profits deserve recognition. And, if their treatment of workers is as good as their commitment, they deserve to be rewarded. Elevating the companies that do right by their workers would encourage more companies to do the same. And it could help undo what has become an especially destructive force in American corporate culture – the belief that shareholder profits trump all other concerns – by scrambling the conventional calculus that investing in employees is always a blow to the bottom line.

While it's certainly the case that more regulation could also help improve workers' lot, by mandating better minimum standards such as fairer wages and benefits, too prescriptive an approach can invite both evasion and resistance. It could also fail to create the kind of durable change that will benefit workers in the long run. Rather, companies should be encouraged to reform themselves as well. The result could be a newly vibrant corporate culture that realigns company interests with that of their workers, creates good jobs to support the middle class and even strengthens the ability of companies to compete in a global marketplace by virtue of a loyal and talented workforce.

The Trump tax cuts need not be a $1.5 trillion wasted opportunity. If this administration and Congress are, in fact, serious about their commitment to U.S. workers, it should ensure that U.S. companies share that commitment too.

**The Plan:**

- Reward companies that balance shareholder profits with worker well-being.
- Reserve the new lowest corporate tax rate for the companies that reinvest their gains in their workers or in legally organized "benefit corporations" that also meet new standards for fair worker treatment and investment.

## SHAREHOLDERS FIRST AND THE PLAGUE OF CORPORATE "SHORT-TERMISM"

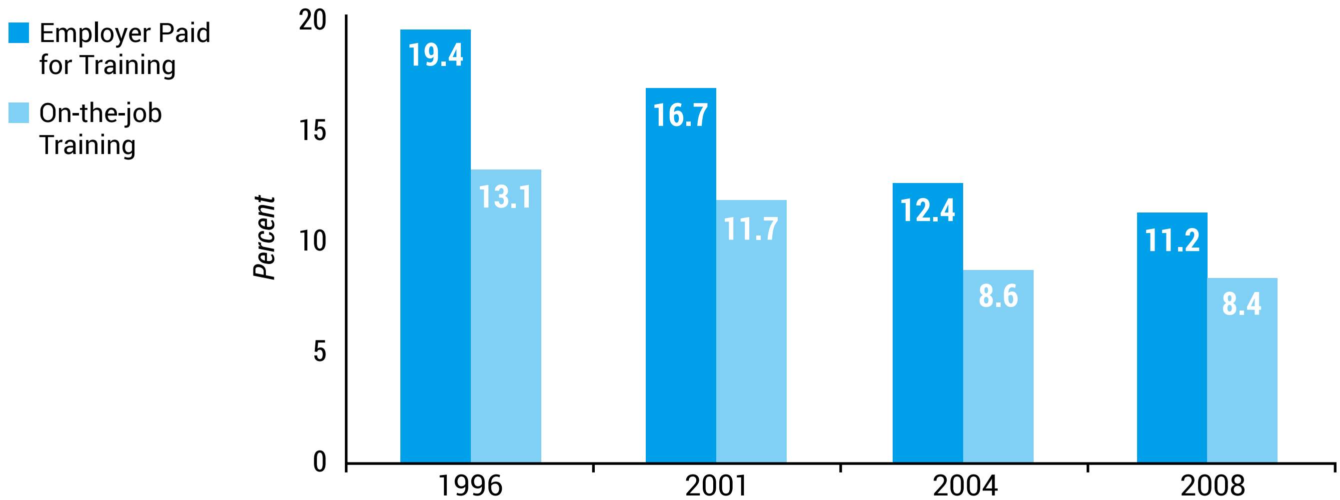
What corporate tax reform should have achieved – and still can – is to help stop the cycle of companies disinvesting in their workers in favor of returning more and more profits to shareholders.

Since at least the 1980s[10] – the era of corporate raiders, leveraged buyouts and aggressive, cost-cutting CEOs – the idea of "shareholder primacy" has maintained an increasingly pernicious grip on how companies do business – often at workers' expense.[11]

While businesses report double-digit gains in corporate profits[12] and their best earnings in 13 years,[13] labor's share of national income has continued to decline – from 64.5 percent in 1974 to 56.87 percent in the first quarter of 2017.[14] Real wages for the middle quintile of workers grew by just 3.41 percent between 1979 and 2016, according to the Brookings Institution, and *fell* by 0.98 percent for the bottom fifth.[15]

Benefits such as retirement and health insurance have also become less generous; the Kaiser Family Foundation's 2016 survey of employers, for instance, finds that the share of firms offering health insurance dropped from 66 percent in 1999 to 56 percent in 2016.[16] Companies are moreover investing less in employee training, with the biggest drops among the biggest firms, according to research by University of Nevada Las Vegas researcher C. Jeffrey Waddoups.[17] The 2015 Annual Economic Report of the President, for example, found that just 8.4 percent of workers received on-the-job training in 2008, compared to 13.1 percent of workers in 1996.[18] Employer-paid training also fell, with 11.2 percent of workers getting access to such a benefit in 2008, compared to 19.4 percent in 1996.

FIGURE 2: Percent of Workers Receiving Employer-sponsored or On-the-job Training, 1996-2008




*Source: 2015 Economic Report of the President*

Scholars typically credit (or blame) economist Milton Friedman, godfather of the Chicago School of Economics, for popularizing the shareholders-first ideology that has contributed to the relative demotion of workers' welfare. In a 1970 *New York Times Magazine* article titled "The Social Responsibility of Business Is to Increase Its Profits," Friedman "made clear his view that maximizing shareholder value was a company's *sole* responsibility,"[19] as Darrell West writes for the Brookings Institution. CEOs such as General Electric's "Neutron Jack" Welch took that advice to heart in the 1980s, with ruthless cost-cutting, plant closings and mass layoffs. As "the relentless executive willing to mow down any employees standing between him and a brighter bottom line," as the *New York Times* put it, Welch laid off 100,000 employees during his tenure – or more than a fourth of the company's workforce.[20]

Prominent legal scholars such as Cornell University's Lynn Stout and Lyman Johnson of Washington and Lee University argue that Friedman's shareholder dictum is sheer ideological fiction. As Stout wrote in a brief for the Brookings Institution, "Shareholder value ideology… is not supported by the traditional rules of American corporate law; it is not consistent with the real economic structure of business corporations; and is not supported by the bulk of empirical evidence on what makes corporations and economies work."[21]

Nevertheless, the primacy of shareholders remains deeply entrenched in American business beliefs and practices.[22] And, while there is nothing inherently wrong with the pursuit of profit, companies are now on a path to self-destruction as they put shareholders' needs above their own long-term fortunes, as well as the well-being of their workers. Brookings scholars Bill Galston and Elaine Kamarck, for example, point to four trends fueling growing "short-termist" behavior among firms, including CEO pay packages that lean heavily on stock; "activist" shareholders demanding immediate returns; the growing use of stock buybacks to boost share prices; and what Galston and Kamarck call the "tyranny of the quarterly report."[23] In one notable 2005 study cited by Galston and Kamarck, a survey of 401 CFOs found that 80 percent would "decrease discretionary spending on R&D, advertising and maintenance … to meet an earnings target" and 55 percent would "delay starting a new project" even if it meant sacrificing long-term value.[24]

The recently passed corporate tax cuts could, in fact, make matters worse, by putting pressure on companies to pass along the gains to shareholders instead of holding back some of the benefits for workers or for investment. With no way to put on the brakes, companies risk getting caught in a death-spiral of short-termism, to the ultimate detriment of American workers and the broader economy.

## PUTTING PEOPLE ON PAR WITH PROFITS

When companies are insulated from shareholder demands, however, more firms could end up behaving like the convenience store chain QuikTrip, a perhaps surprising example of a model employer.

Like its competitors, the Tulsa-based company sells frozen slushies ("Freezonis"), deli sandwiches, gasoline and gallons upon gallons of coffee to weary commuters in 11 states, mostly in the Midwest. But, unlike many of its rivals, QuikTrip treats its employees exceptionally well, even earning a top ranking in *Fortune* magazine's "100 best places to work" for millennials.[25]

Contrary to the reputation of convenience store jobs as poorly paid drudgery, QuikTrip's night assistant managers make an average of $47,414, while store managers make an average of $77,705, not including bonuses.[26] (In contrast, the average salary for "first-line supervisors" in retail is $43,910 nationwide.[27]) QuikTrip workers also get a 50 percent match on their 401(k) retirement account contributions up to 6 percent of their salary; subsidized health insurance, even for part-timers; 10 days' paid sick leave for workers with one year on the job;[28] and plenty of opportunities for training and education, including $2,200 in tuition assistance per semester.[29] As a final fillip, the company's website promises, workers also get "all the fountain drinks they can consume."[30]

A big reason Quiktrip can afford to be magnanimous is because there are no voracious shareholders demanding quick profits and healthy quarterly returns: QuikTrip is privately held. "It's one of the reasons we remain private – to do the things we do," said company spokesperson Mike Thornbrugh. "If we went public, it's not clear the stockholders would approve."

Unfortunately, it's impractical for every company that wants to follow QuikTrip's lead to be or become privately held as QuikTrip is. Ending the tyranny of shareholder dominance requires a fundamental shift in prevailing norms of business culture and practice. Ultimately, it's up to enlightened CEOs to lead their companies to the high road.

Public policy can also help.

One way is to encourage the growth of so-called "benefit corporations" that are conscientious objectors to the "shareholders first" view. In the 33 jurisdictions that have passed benefit corporation laws, beginning with the State of Maryland in 2010, companies can organize themselves as "benefit corporations" with the purpose of "creating general public benefit." It's essentially a legalized opt-out from the expectations of shareholder primacy.

Many of the growing number of companies opting to become benefit corporations are also opting to become "certified B Corps" that meet a third-party set of standards for governance, worker treatment, environmental sustainability and other practices established by B Lab, a nonprofit that has been advocating the benefit corporation approach. These "certified B Corps" include hundreds of startups and smaller firms, as well as big names such as eyeglass maker Warby Parker, outdoor gear manufacturer Patagonia and cheesemaker Cabot Creamery.[31] Among the considerations taken into account for certification are the share of workers who get formal training, both on core job skills as well as "soft skills" and "life skills" such as financial literacy; rates of employee retention and internal promotion; the share of workers receiving tuition reimbursement or similar benefits for training and education; and the extent to which "worker voice" plays a role in the company's governance.[32]

The burgeoning benefit corporation movement provides both an ideal framework and leverage point for nudging American companies back from the brink of short-termism and toward a philosophy of responsible corporate citizenship.

First, benefit corporation laws offer legal shelter to the companies that want to balance shareholders' needs for profit with other concerns. These laws explicitly repudiate shareholder primacy as a legal matter and require the consideration of other stakeholders. Delaware's statute, for example, provides that a public benefit corporation "*shall* be managed in a manner that balances the stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the public benefit or public benefits identified in its certificate of incorporation (emphasis added)."[33] The practical benefit is protection from shareholder liability if a company forgoes a chance to profit in favor of other interests.

Second – and more significantly – providing legal recognition to the companies that do the right thing could jump start a culture shift in business norms, particularly if it's coupled with the kind of standards for behavior promoted by organizations like B Lab. One result, for instance, could be to help build the growing market for "socially conscious investment," which has now come to include powerful institutional investors with trillions of dollars at their command.

According to research by S&P Global, large investors are increasingly interested in "sustainable investments," with the estimated global demand as high as $22.9 trillion in 2016, up from $18.3 trillion in 2014. In fact, the demand is now sufficiently robust that companies such as S&P Global are devising indices that score companies based on environmental, social and governance (ESG) factors, including labor practices, worker retention rates and other metrics in human capital investment.[34] Benefit corporation status, argues B Lab's legal policy director Frederick Alexander, is like a homing beacon for this growing group of socially conscious investors. "If you are a benefit corporation, you're signaling to the market that you have a long-term horizon," Alexander said. "You can cultivate a better class of shareholder."

"In the liberal tradition of incremental, achievable reform rather than radical renovation, the benefit corporation is a modest evolution that builds on the American tradition of corporate law," writes Delaware Supreme Court Chief Justice Leo Strine in the *Harvard Business Law Review*. But, as Strine continues, "that evolution is potentially important because, if it gains broader market acceptance, the benefit corporation model puts some actual power behind the idea that corporations should be governed not simply for the best interests of stockholders, but also for the best interests of the corporation's employees, consumers, and communities and society generally."[35]

## GREASING THE ON-RAMP TO THE HIGH ROAD

Congress should build on its recent tax bill to reward the companies that buck the trend of short-termism and balance the pursuit of profits with an enlightened view of the contributions of workers to company and societal success. In particular, Congress should encourage the spread of benefit corporations as a counterweight to the dangers of shareholder primacy and as an exemplar of responsible corporate citizenship.

One way to do this is to modify the new corporate tax rate to establish a preferential "public benefit corporation" rate for businesses that meet "high-road" requirements. Only the most deserving companies should qualify for the new 21 percent[36] corporate tax rate; all others should pay a rate that is two to three percentage points higher.

To be entitled to these benefits, companies should meet one of two requirements: (1) that they be legally organized as "public benefit corporations" in their state and can provide good evidence of how they are fulfilling that mission;[37] or (2) they must meet a minimum set of standards for worker treatment and investment, to be promulgated by a new standards-setting body authorized by Congress (effectively behaving like benefit corporations without the formality of legal status). To set the required standards, Congress could establish an inter-agency "workers' council," including representatives from labor and business, to establish guidelines for public benefit corporation rate eligibility (though enforcement would be left to the IRS). Companies would apply for a discounted tax rate in the same way that charities and nonprofits apply to the IRS for tax-exempt status, with the proviso that companies must also report annually on their performance, either in their public filings or in separate submissions to the IRS.

As far as specific standards for behavior, the worker treatment standards used by organizations such as B Lab provide an excellent starting point, although Congress should especially weight the amount of opportunities companies provide to their lowest-skilled and least-educated employees. It's far less important for a company's top management to get "executive coaching" than it is for the lowest-level workers to get the training they need to move ahead.

Among the numerous variables Congress could consider in creating a minimum standard for worker treatment:

- The share of lowest-paid workers receiving tuition assistance or other education benefits;
- The share of employees receiving formal in-house training;
- Median wages and the distance in dollars between the highest and lowest-paid workers;
- The pace of wage growth for the lowest-paid employees;
- Access to an employee stock ownership plan;
- Retention and turnover rates;
- The availability of paid leave, flexible scheduling and other family friendly benefits;
- Access to benefits such as health insurance and retirement savings; and
- Third-party certifications and analyses based on ESG factors.

## ELEVATING WALL STREET TO THE HIGH ROAD

As journalist Rick Wartzman chronicles in his book, *The End of Loyalty: The Rise and Fall of Good Jobs in America,* American companies – including such iconic firms as General Electric, Kodak, GM and Coke – were formerly far more apt to tie their fortunes to that of their workers and to feel the tug of obligation to their employees.[38] "In our human relations between employees and employers, there must be justice and sympathy," quotes Wartzman of Gerard Swope, one of General Electric's first CEOs.[39] Companies like GE and GM pioneered the once-robust corporate safety net, including pensions and employer-paid health insurance, which is falling to rags today.

While it's unrealistic to expect a return to the heady days of the corporate welfare state, companies should nonetheless be encouraged to arrest the troubling trend toward worker disinvestment. In particular, corporations owe a civic duty – as America's most powerful "citizens" – to ameliorate the consequences of globalization and technological change for their fellow Americans. So long as U.S. companies enjoy the rights and privileges of their citizenship, they should also shoulder its obligations.

With the right public policies, companies could take up those duties willingly.

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