

It's Not About Federalism #9: Conservatives Preempting State Power over Corporate Crime

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With a name like the Securities Fraud Deterrence and Investor Restitution Act of 2003, given the Orwellian labelling of bills by the conservatives in the House, you know that H.R. 2179 approved by a House panel is bad news. See <http://tinyurl.com/gnik> for the New York Times story.

The federalism hypocrisy of conservatives just marches on with this bill. The core of the bill is a mandate that the Securities and Exchange Commission, rather than possessing concurrent enforcement powers with states to defend consumers from investment fraud by brokerage firms, would now have monopoly rulemaking power. Essentially, if the Bush administration wants to leave the analysts who lied to investors about Enron alone, the states would be powerless to defend against fraud. All of the work that New York Attorney General Elliot Spitzer did in uncovering fraud by Wall Street investment banks would have impossible with this bill in effect.

Even worse, what the bill also says is that if Wall Street passes a rule policing itself through the New York Stock Exchange, and the federal SEC has not passed a contrary rule, no state can enforce a tougher rule on behalf of consumer protection.

Essentially, this is preemption of state power by private dealmaking among corporations.

It's Not About Federalism, It's about Protecting Corporate Crime