

NATIONAL REVIEW

Elizabeth Warren's Misleading Argument for a Dangerous Idea

Ramesh Ponnuru

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Both *Slate* and the Cato Institute [blog](#) examine the senator's proposal that corporate executives have criminal liability for negligent behavior. As *Slate*'s authors put it, "Negligence is an incredibly low standard for criminal punishment. A person who is acting negligently does not know that what she is doing (or failing to do) is wrong or risky."

They continue:

[Warren] says, "Even when in-house lawyers flag conduct that skirts the law, there's little reason for executives to listen. The executives know that, at worst, the company will get hit with a fine—and the money will come out of their shareholders' pockets, not their own." But her example is not of an executive acting negligently. The whole point of Warren's example—and what makes the executives so blameworthy—is that they are *aware* of the risk that they are breaking the law. The executives in her example are not guilty of negligence, but recklessness or "willful blindness"—mental states that are both more serious and more difficult to prove than the negligence standard she proposes.

The difficulty of proving the standard is why Warren wants a lower one. That's a dangerous road to go down, as both of the links above elaborate.