n80 Id.

n81 Id. Kahan provides several examples of the utility of "expressive overdetermination" in public health regulation. For example, he argues that world-view conflicts had inhibited the development of sound anti-pollution policies in the 1970s and 1980s. To critics of the anti-nuclear power movement of those decades, "it became obvious . . . that the perception of nuclear risks was a product of 'cultural bias' on the part of egalitarian collectivists whose 'sectarian' worldview would be affirmed by the gutting of the nuclear industry." But similar biases were easily seen to be animating any given proponent of nuclear power since "risk dismissiveness suited the needs of the 'market individualist,' whose reverence for private orderings predisposed him [or her] to a belief in the resilience of nature and the evolutionary wisdom of markets." Id. at 140. However, widespread support for emissions regulation was finally engendered in the 1990s because of the "expressive overdetermination" of innovative reforms like tradable emissions legislation. Such laws "simultaneously affirmed egalitarians' commitment to environmental protection and individualists' commitment to markets as a means of attaining societal ends." Id. at 146.

n82 Douglas Kysar, The Consultants' Republic, 121 HARV. L. REV. 2041, 2073 (2008) (book review) (interpreting Kahan).

n83 Kahan, supra note 45, at 145.

n84 I have previously critiqued "expressive overdetermination" for its "unwarranted agnosticism" regarding the content of world-views and have urged policymakers to focus instead on repudiating cognitive frameworks, such as "dispositionism," that we know to be false, even if they are intuitively appealing. See David G.Yosifon, Legal Theoretic Inadequacy and Obesity Epidemic Analysis, 15 GEO. MASON L. REV. 681, 724-33 (2008). Here I am concerned with pursuing the ways in which Kahan's model might usefully be employed by corporations in their external and internal speech.

n85 Professor Lyman Johnson's call to authorize religious language in the boardroom might provide a practical adjunct to the project of expressive-overdetermination in board governance. Lyman Johnson, Faith and Faithfulness in Corporate Theory, 56 CATH. U. L. REV. 1 (2007). Johnson laments what he sees as the impoverished quality of discourse in the corporate boardroom. Pursuing a richer conception of what constitutes "good faith" conduct on the part of corporate directors, Johnson argues that the hyper-secular nature of boardroom discourse norms precludes directors from drawing on the rich reservoirs of "good faith"-like language from their spiritual or religious traditions when they talk about what is required of themselves and their fellow board members. Because language abhors a vacuum, this prohibition leads to board-room discussions that are denuded of all the qualities of language that make grappling with hard questions manageable in other areas of life. Licensing a wider range of "good faith" vocabulary might be of practical benefit to a board deliberating on multiple stakeholder interests in an expressively over-deterministic fashion. Johnson has in mind mostly the stories, metaphors, psalms, epigrams, and proverbs that are part of the world's various religious traditions. Id. at 31-34.

n86 I do not suggest that so dramatic an expansion of fiduciary obligations could be accomplished through judicial innovation alone. Legislative action at the state or federal level would be required. The detailed specification of what statutory language would be necessary to institutionalize multi-stakeholder corporate governance is beyond the scope of this article. My primary concern here has been with demonstrating, first, that such a standard is necessary, and second, that such a standard can be accomplished by altering the discourse norms that underlie corporate speech to and about its various stakeholders. Nevertheless, something as straightforward as the following would suffice to begin to shift corporate law dynamics in the desired direction if it were incorporated into state corporate law: "The board of directors shall manage the firm in the best interests of the corporation's shareholders, workers, and consumers." This kind of broad legislative innovation could then be fleshed out through corporate law's traditional reliance on the courts to develop workable rules for particular circumstances and recurring problems, perhaps in ways suggested by this Article. Because states compete against each other for corporate chartering fees, and because shareholders benefit from the presently dominant shareholder primacy regime, legislative reform in any one state (e.g., Delaware) calling for multiple-stakeholder governance is unlikely to be effective, as firms would simply reincorporate in a different state that seeks to benefit from chartering fees by continuing to offer shareholder primacy in its corporate law. Such a "race to the bottom" (from the perspective of non-shareholding stakeholders) may require a move towards federal chartering of corporations. The federalization of corporate law has already been underway in piecemeal fashion, though departure from shareholder primacy has not yet been on the menu. See generally Stephen Bainbridge, The Creeping Federalization of Corporate Law, 26 REG. 26 (2003) (arguing that the Sarbanes-Oxley legislation was the most dramatic expansion of federal regulatory power).