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Regulation therapy

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Do you believe the benefits of government regulation should exceed their costs? Of course you do. Yet almost every day we can pick up our newspapers and find examples of foolish, silly and just plain stupid regulations unjustified on any reasonable cost-benefit basis.

For instance, banks and other financial institutions must file currency transactions reports on anybody who deposits or withdraws more than \$10,000 in cash at one time. Millions of these reports are filed each year, on what even the government admits are almost always totally innocent people.

Yet at the same time, very few criminals are nabbed as a result of the reports, because the bad guys know the rules and how to get around them -- which is easy to do. Meanwhile, millions of innocent people have their privacy invaded at great cost to the banking institutions (and much of this cost is passed on to their customers) for almost no benefit.

Thousands of equally foolish regulations exist. The result is every year hundreds of billions of dollars are wasted, and citizens unnecessarily harassed because of poorly thought out and mismanaged regulations. These costs make all Americans poorer and less free, yet the problem has gone on for decades.

The problem of excessive regulation has been long recognized. A presidential commission told Franklin D. Roosevelt back in 1937 that all the new regulatory agencies he had created under the New Deal constituted, "a headless fourth branch of government, a haphazard deposit of irresponsible agencies and uncoordinated powers."

The problem has spread far beyond the agencies referred to in the report to Roosevelt. Now, countless departments within the government have acquired from Congress the ability to promulgate and enforce regulations.

Over the years, there have been attempts to reign in the regulatory octopus, but the results have been limited. The Office of Regulatory Affairs at the Office of Management and Budget has stopped some of the worst rule proposals. But its mandate is limited to "major regulations" costing \$100 million or more. Many departments, such as the IRS, are exempt.

Too few government regulations are subjected to rigorous cost-benefit tests, even when required. Many government agencies do not take the requirement seriously, act in good faith or present accurate data. The regulators have a strong incentive to underestimate the true costs of their regulations.

As Congress has increasingly delegated its lawmaking power to government agencies, the previously established checks and balances have broken down. Even when the intent of a regulation is desirable, administrative agencies have little incentive to design it to be as cost-effective as possible.

Fortunately, there is a solution. In recent years, Congress has established the right of "private course of action," whereby individuals can sue an agency not adequately enforcing some civil rights or environmental laws. The courts have been empowered to compensate lawyers who prevail in these suits for the fees and associated litigation expenses in order to encourage private enforcement of these laws.

Congress should expand the right of "private course of action" to allow any individual or group to sue an agency for issuing a regulation the benefits of which do not exceed the costs. If the private party is able to prove, by a reasonable standard, that a regulation is not cost-effective, that party would be entitled to normal legal fees plus the fees of professionals who did the necessary technical work.

The agency issuing the faulty regulation should be required to pay the awarded fees out of its own budget. In addition, the agency would be required to withdraw the regulation or reissue it to operate in a cost-effective manner.

If the above proposal were adopted, regulatory agencies would have strong incentives to be more careful both in the number and content of regulations issued. It is unlikely the provision of "private course of action" would be greatly abused, because those bringing suit against the regulatory agency would not be reimbursed unless they could prove the regulation does not meet a reasonable cost-benefit test.

I am no fan of our litigious society, but I would much prefer the trial lawyers be employed reducing the deadweight loss from government actions rather than adding deadweight costs to the private sector.

In sum, the above proposal offers a market solution to an existing lack of adequate checks and balances within the government regulatory agencies. It would empower the citizen to stop the excesses of government.

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