Hensarling: Dodd-Frank Results in Less Freedom, Less Opportunity and a Less Dynamic Economy

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WASHINGTON, July 16 -- The House Financial Services Committee issued the following news release:

Financial Services Committee Jeb Hensarling (R-TX) today delivered a speech at a conference sponsored jointly by the Mercatus Center and the CATO Institute on the Dodd-Frank Act. The following is the text of that speech as prepared for delivery:

It's an honor to be here speaking at this event sponsored by two of the nation's most prestigious and highly-regarded free market think tanks: the Mercatus Center and the Cato Institute.

I especially want to thank Dan Butler and Lydia Mashburn with Mercatus, and John Allison and Mark Calabria with Cato, for putting this event together. Rarely does a week go by that the Financial Services Committee does not benefit from the testimony of one their scholars. They appear so often before the committee that my staff has joked about giving them office space in the Rayburn Building.

As Chairman of that committee, I've been asked to speak with you today about what the organizers call the "post-Dodd-Frank world." I appreciate the optimism implicit in the topic's title. I certainly hope to live long enough to see a "post-Dodd-Frank world."

But seeing as how we're approaching the 4th anniversary of Dodd-Frank and there's still so much more red tape to come, I'm not sure when the "post-Dodd-Frank" world actually arrives.

So I apologize if my remarks are somewhat less than completely clairvoyant about this brave new world. But look at it this way: you saved a whole bunch of money by not asking Hillary Clinton to speak!

Speaking of Mrs. Clinton, no doubt you've heard about her recent book and how she writes that she doesn't know if she's running for president - which I find remarkable. I mean, in a country of more than 300 million people, what are the odds that she's the only one who doesn't know she's running for president?

So let me begin to address the topic. Again, I don't know when we arrive to a bold, new post-Dodd-Frank world, but I do know how we navigate our approach: in a phrase, principled leadership.

When I think of principled leadership, a story about Margaret Thatcher always comes to mind. She was attending a Conservative Party policy meeting in the '70s.

Another Conservative - albeit a "wobbly" one - was giving a speech. He argued that Conservatives could win the next election only if they abandoned certain principles and adopted new beliefs. "The Iron Lady" would have none of that. Before the speaker had finished his presentation, she reached into her handbag and pulled out a book. It was Hayek's The Constitution of Liberty. She held it up for all to see. "This," she thundered, "is what we believe," and banged it down on the table.

She did that as a reminder that in challenging times, you must have leaders who stand firmly for the timeless principles and values upon which our Constitutional Republic stands: freedom, free markets, private property and the rule of law. I'll admit, more than once I have wanted to channel Maggie. Many of you know I spent last Congress as Chairman of the House Republican Conference where I presided over Conference meetings. On too many occasions I was subjected to some colleague with a tremble in his voice telling the rest of us what principled positions we must drop or we would risk losing our majority. I daydreamed of banging down on the table my personal copies of Hayek's The Road to Serfdom and Friedman's Capitalism and Freedom and shouting, "This is what we believe!" And then reminding them of a rhetorical question posed by my dear friend and mentor Phil Gramm: "Why would anyone want a fake Democrat when they could have the real thing?"

We can never, ever accept a Dodd-Frank world, nor should we. And the pathway to a post-Dodd-Frank world is emblazoned with the names Hayek and Friedman. This is what we believe.

It has become fashionable for the Left to dismiss those of us who speak of principles as "ideologues." When the Left runs out of logic, facts, proof or persuasion (and that usually doesn't take long), they will typically begin the name-calling. It usually begins with something like "Tea Party ideologue" and ends with them playing the race card. You can almost set your watch by it. But when we principled conservatives say that free enterprise has lifted more people out of poverty than all the government anti-poverty programs combined, the claim is not based on ideology or theory. It is based on history and evidence.

When Adam, a small business owner in Mineola, Texas, sends me an email saying he won't be hiring more workers because - quote - "The complexity of all of the different rules and regulations that the government imposes...creates a climate of incomprehensible confusion and uncertainty," he's not telling me his ideology; he is reporting the ugly reality of Dodd-Frank-like Washington red tape.

When Felicia, a worried mom from Forney, Texas, writes me that she's struggling to care for her son because "every time we turn around the cost of something else increases. Our insurance premiums...our grocery bills, our utility bills, our fuels bills," she's not basing that on economic theory. That's her Dodd-Frank life. That's millions of Americans' lives right now.

When Margaret Thatcher had the opportunity to put Hayek and Friedman to work, she ushered in a new generation of middle class prosperity in Britain. She privatized 50 state-run companies - from Railway to Steel, Telecom to British Air - revitalizing the economy and making lives better.

Before the Thatcher privatization wave, the idea of owning stocks was reserved for the idle rich in the clubby atmosphere of a private box at Wimbledon. Only 3 million Britons were shareholders. By the end of Thatcher's term, stock ownership became as common in Britain as the local pub with more than 12 million Britons owning shares of companies in a growing British economy.

As one British observer noted upon her death, Margaret Thatcher took control of a country that was seemingly in a permanent state of decline and, with a "consistent and clear political philosophy," took the risks that "were necessary to enable people to be free and create wealth and thus change the fortunes of the nation. In effect, she did not want government to continue to try to run Britain, but let the British people have a go again."

The principles of free market conservatism are sound not because they have been brilliantly articulated by Hayek and Friedman. They are sound because generations of experience have proven no other system can lift more ordinary people to extraordinary levels of fulfillment, success, happiness and shared prosperity.

History is the beginning of the path to a post-Dodd-Frank world. But, unfortunately, as we've seen with the Left's narrative of the financial crisis, history doesn't have to be proven to become established - just repeated over and over again. The Left's false narrative of the financial crisis reminds me of a famous Churchill quote: "History will be kind to me, for I intend to write it." We have allowed liberals to write the history of the 2008 financial crisis and it has been kind to them.

In their version of history, an alchemy of Wall Street greed, outsized risk and massive Washington de-regulation almost blew up the planet. This necessitated massive taxpayer bailouts and a functional occupation of our capital markets.

Their narrative is false. First, financial regulation did not decrease in the decade leading up to the crisis - it markedly increased. As the Mercatus Center has noted in some unassailable research: Total regulatory restrictions pertaining to the financial services sector grew every single year between 1999 and 2008.

In fact, the two decades preceding the onset of the financial crisis were a sustained period of legislative activity that gave federal regulators broad new powers over banks, mortgage lenders, and other financial services companies. Let's briefly review some:

The FDIC Improvement Act of 1991...The Home Ownership and Equity Protection Act of 1994...

The 2001 Bank Secrecy Act...The Sarbanes-Oxley Act of 2002...The Fair and Accurate Credit Transactions Act of 2003.

Regardless of their actual benefits, all of this legislation was costly, complex and burdensome. All of this was designed to prevent a crisis. All of this failed.

To make matters worse, in 1988, U.S. banking regulators promulgated a series of regulations under the Basel Capital Accords. Not only were those rules overly complex and costly, but their badly misguided "risk weights" encouraged banks to crowd into subprime mortgage-backed securities and sovereign debt. Think Fannie and Freddie and Greek bonds.

After reviewing the facts, it becomes apparent that the financial crisis resulted not from de-regulation or a lack of regulation, but instead from bad regulation.

In a phrase, one of the great tragedies of the financial crisis was not that Washington failed to prevent the crisis, but instead that Washington helped lead us into it.

Among the bad regulation, by design or execution, that helped set the stage for the financial crisis and made it worse include the following:

One of the most damaging of those misguided policies has been the Community Reinvestment Act. Though small in volume, CRA loan mandates were large in precedent. They inherently required lending institutions to abandon their traditional underwriting standards to comply with this government mandate. CRA implicitly put the government's "Good Housekeeping Seal of Approval" on bad subprime loans.

Next, the credit rating agencies. With the benefit of competitive advantages conferred upon them by the federal government, the rating agency oligopoly freely bestowed triple-A ratings on asset-backed securities comprised of unsustainable subprime mortgages. This inflated the housing bubble and fueled speculative excesses in the financial markets.

Perhaps not forgivable, but it is certainly understandable, that investors placed blind faith in the rating agencies' assessments of default risk given that they also enjoyed a government "Good Housekeeping Seal of Approval."

Washington promoted even more moral hazard by protecting Fannie Mae and Freddie Mac and encouraging them to make bad loans through mandatory "Affordable Housing Goals" put on steroids.

Let's remember that more than 70 percent of subprime and Alt-A mortgages that led to the crisis were backed by Fannie and Freddie, the FHA and other taxpayer-backed programs. If you have to point to a root cause of the financial crisis, this is it.

Despite the inherent dangers in such transactions, Fannie and Freddie's supporters in Congress kept encouraging them to "roll the dice a little bit more." Well, they did - and taxpayers and our economy lost. They lost big. The result was the mother of all bailouts: nearly $200 billion for Fannie and Freddie and the worst financial crisis since the Great Depression.

Finally, the Federal Reserve did its part by maintaining a highly accommodative monetary policy that dramatically lowered interest rates, kept them low and inflated the housing bubble.

Now let's examine another part of the Left's narrative of the financial crisis - the claim regarding "outsized' risks taken by financial institutions. As Hayek explained in The Road to Serfdom, the willingness to bear risks is one of the central ideas upon which society rests. Risk is an essential element of personal liberty and of market prosperity. To take away risk from the financial system is to take away the opportunity for success.

We all know when you go out on a limb, you risk the limb breaking. But unless you risk the journey, you will miss out on the fruit at the end of the limb.

For the same reason, don't we want financial firms to take risks? Not long ago, one of the large investment banks took a risk on Apple when it was floundering. Now Apple is one of the most valuable companies in the world and its products have revolutionized our lives and economy.

Without financial risk, we lose innovation. But even more fundamentally and profoundly, if we lose our ability to fail in America, then one day we may just lose our ability to succeed.

For those who want Washington to be the final arbiter of acceptable risk in society, they should first consider whether Washington is even competent to manage risk. A review of the federal government's track record in this area does not inspire confidence.

The National Flood Insurance Program is $24 billion underwater - yes, pun intended. The Pension Benefit Guaranty Corporation is running a total asset deficit of approximately $34 billion. And the Federal Housing Administration recently received an infusion of funds from the Treasury despite repeated assurances from the Obama Administration that the agency was in no danger of needing a government bailout. And, again, regulators encouraged banks to load up on sovereign debt and agency MBS by requiring little or no capital to be reserved against them.

Again, it was the government's misguided and risky affordable-housing mandate that principally loosened prudent underwriting standards in the first place. Government not only did not mitigate the risk, it created the risk.

Let's now turn to greed. It is an article of faith on the Left that Wall Street greed caused the crisis. My question to them is when hasn't there been greed on Wall Street? How was that the determining factor?

In the same way, there has always been greed in Washington. Perhaps a different kind of greed, but greed just the same. It is the enduring specter of Washington greed....the lust for control over others; the greed of bureaucrats for more power over an ever increasing share of our economy, our lives, and our liberty. Dodd-Frank is the absolute epitome of Washington greed.

In medicine, the wrong diagnosis inevitably leads to the wrong remedy. The same has proven true of the financial crisis. Since Washington got the cause of the crisis wrong, it prescribed Dodd-Frank, an act that is best captured by Rahm Emanuel's infamous adage: "Never let a good crisis go to waste."

With all due respect to its authors and admirers, Dodd-Frank stands as a monument to the arrogance and hubris of man in that its answer to incomprehensible complexity is yet more incomprehensible complexity.

The 400-plus regulations required by Dodd-Frank generally fall into two categories: those that create economic uncertainty and those that create certain economic harm.

Dodd-Frank is every bit as far-reaching in its harmful consequences for the American economy as Obamacare. Dodd-Frank grants sweeping powers to regulators more appropriate for a Soviet-style command-and-control economy than a system of free enterprise.

No doubt Dodd-Frank's ultimate purpose is to render effective control of our capital markets to the state; to turn large money-center banks into functional utilities, so that the state can allocate credit within our economy to politically favored classes.

This should be a frightening proposition for any freedom-loving American.

I know you have heard of them all day, but permit me to mention just a few of the ways Dodd-Frank assaults our freedom and prosperity.

One of the most glaring examples is the creation of the Orwellian-named "Consumer Financial Protection Bureau" - Orwellian because the CFPB represents an assault on the fundamental economic liberties of the American consumer. Arguably, it is the most powerful and least accountable government agency in the history of our Republic.

Consumers want and deserve control over their economic decision-making. They want more choices for themselves and their families.

Yet when it comes to their credit cards, auto loans and mortgages, the CFPB director has unbridled, unilateral and unprecedented discretionary power not only to make them less available and more expensive, but to absolutely take them away.

There is only one way to protect consumers, and that is to foster transparent, competitive and innovative markets and then vigorously police them for force, fraud and deception.

Ironically, while officials in the Obama Administration habitually cite the purported dangers to financial stability posed by the "shadow banking system," they ignore those presented by the "shadow regulatory system." The unaccountable CFPB is part of that shadowy system, as is another Dodd-Frank creation - the Financial Stability Oversight Council - FSOC.

FSOC can designate practically any large financial firm as a Systemically Important Financial Institution -- a SIFI -- and thus render effective control over it. Thus, it has the ability to render great damage to our economy and set back the dreams of tens of millions of unemployed and underemployed Americans who are counting on their capital markets to work for them.

Recently, Douglas Holtz-Eakin, the former director of CBO, estimated that designating asset managers as SIFIs could cost investors as much as 25 percent of the return on their investments over the long term, or approximately $108,000 per investor.

In other words, as it operates in the shadows, FSOC can take away the seed capital necessary to launch a small business or send a child to college.

Next Dodd-Frank presents us with the 932-page confounding, confusing and convoluted Volcker Rule. Like the rest of Dodd-Frank, the Volcker Rule is aimed at Wall Street, hits Main Street, and regrettably lower and moderate income Americans have become collateral damage.

The Volcker Rule is a solution in search of a problem. Of the 450 financial institutions that failed during or as a result of the financial crisis, not one failed because of proprietary trading. In fact, financial institutions that varied their revenue streams were better able to weather the storm, keep lending and support job growth.

I am unaware of any economist or regulator who has been able to quantify precisely the Volcker Rule's supposed benefits.

But evidence mounts that its costs will be enormous. Research out of Washington University, for example, estimates that Volcker will take $800 billion out of our economy - the equivalent of $6,900 out of every American household's paycheck.

Never before in my lifetime do I remember a time when the challenges of upward mobility and economic opportunity have been greater. Not surprisingly, I also do not ever recall in my lifetime when the regulatory, red tape burdens on our job creators and capital markets have been greater. Undoubtedly there is a clear, direct causal link between the two. And Exhibit #1 is Dodd-Frank.

Dodd-Frank is not only harmful for what it does; it is harmful for what it doesn't do. Clearly, Dodd-Frank does not end Too Big to Fail or taxpayer bailouts. Not even Tim Geithner believed his talking points on that. Instead, Dodd-Frank actually codifies bailouts into law.

Dodd-Frank designates an entire category of Too Big to Fail Wall Street firms and then creates a taxpayer-financed bailout fund for their use.

Not long after the financial crisis, we heard the cry from the Left "Occupy Wall Street." But most Americans have never wanted to occupy Wall Street; they just want to quit bailing it out.

So what are the ultimate results of Dodd-Frank? Sadly, less freedom, less opportunity and a less dynamic economy.

Thanks to the Dodd-Frank's CFPB Qualified Mortgage rule, it is now harder for low and moderate-income Americans to buy a home.

Thanks to Dodd-Frank's crushing regulatory burden, there are fewer community banks serving the needs of small businesses and families.

Thanks to the "end user" margin requirements imposed by Dodd-Frank, Main Street businesses and farmers across America face higher costs in managing their risk and producing their products, costs which are passed through to their customers and felt directly by every American at the kitchen table.

Thanks to Dodd-Frank's Volcker rule, U.S. capital markets are far less liquid than before, making it more expensive for U.S. companies to raise working capital and harming Americans saving for retirement or their children's educations.

Thanks to Dodd-Frank's FSOC, U.S. insurance companies that pose no discernible systemic risk to the U.S. economy are being subjected to intrusive, unnecessary regulation, drying up capital for infrastructure projects and harming investors and policy-holders.

Thanks to Dodd-Frank's Durbin amendment, services that bank customers once took for granted like free checking are being curtailed or eliminated.

Dodd-Frank is one of the linchpins of an Obama economic strategy that has brought America the slowest, weakest non-recovery recovery since the Great Depression, and our people continue to suffer.

Each dollar that Washington forces job creators to spend on harmful red tape devised by a vast, largely unaccountable bureaucracy is one less dollar that can be spent to expand, innovate, and hire workers.

The numbers help tell the Dodd-Frank story: more than 16 million Americans unemployed or underemployed; a labor force participation rate of just 62.8% -- the lowest in three decades -- and small business start-ups at the lowest level in nearly 20 years.

The harmful consequences aren't theoretical, not for people like my fellow Texan Joseph of Mabank, who wrote to me: "I am a disabled veteran and have been without work for over a year...all I want is to have a good-paying job and let the rest happen as it comes." Or people like Claudia of Mineola, who shared with me that she was laid off for 9 months before she finally found a job - but it pays her 25 percent less than her old job and adds 60 miles to her daily commute. She told me: "I don't have the American taxpayers bailing me out..."

If Washington truly cares about helping the Josephs and the Claudias of our land, it's time to start the process of repealing laws like Dodd-Frank that harm them.

Ladies and gentlemen, it is free enterprise - not government industrial policy or crony capitalism - that has made America the fairest, most prosperous, most creative, most generous and most compassionate society the world has ever known.

No other economic system allows people to earn their success. No other system generates greater shared prosperity. Only free enterprise is moral. Only free enterprise is based on merit.

Free enterprise. Not Dodd-Frank. Not Obamacare. Not the IRS. Not the EPA. Not the stimulus. Not the national debt. And certainly not the President's pen and phone. Only economic freedom empowers the poor, the unemployed and the under-employed. Only free enterprise can lift them from poverty to prosperity.

As that world famous economist, U-2's lead singer Bono, has stated: "In dealing with poverty here and around the world, welfare and foreign aid are a Band-Aid. Free enterprise is a cure."

Again, anyone searching for an antidote to Dodd-Frank should look no further than Hayek and Friedman...and perhaps Bono.

At the House Financial Services Committee, "This is what we believe." And this is what we have done.

First, our Committee has guided more than 20 regulatory relief bills to House passage so far. Everything from bipartisan legislation to relieve Dodd-Frank burdens that make it harder to invest in small companies; to bipartisan legislation that streamlines regulations so small business owners can sell their enterprises rather than close them when they retire; to another bipartisan bill ensuring the SEC and CFTC work together on swap transaction rules so our international competitiveness isn't harmed. Regulatory relief is our bread and butter at the Committee.

Importantly, we have also passed a sweeping, market-oriented housing finance reform bill, the PATH Act, which will create a truly sustainable housing finance system for the American people - one that provides consumers with more choices when it comes to buying a home they can

actually afford to keep - not to mention one that takes us off the destructive government-induced boom, bust and bailout cycle.

Next, I'm announcing that soon our committee will mark up the first legislative proposal that is part of our Federal Reserve Centennial Oversight Project - a bill that begins to reinvigorate the Fed with the type of accountability to the Congress and to the people that the Founders expected of all federal agencies when they drafted the Constitution.

Our Committee will also soon take legislative action to end Dodd-Frank's bailout fund and bring to an end the reign of those that are to Too Big to Fail.

To summarize our activities, by the end of this Congress our Committee then would have repealed Dodd-Frank's greatest sin of omission - its failure to do anything about housing finance reform - and its greatest sin of commission - enshrining bailouts into law. And day-in and day-out, you can rest assured we will continue working to relieve our economy from the burden of growth-choking and job-killing red tape.

To close, our movement cares about Claudia and Joseph and all of our underemployed and struggling citizens. Because we care, we believe in Hayek and Friedman. Yes, "This is what we believe."

And we will not rest until all our citizens have freedom, opportunity and prosperity. Thank you.