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Protecting Economic Liberty: The Essential Freedom



Image by Getty Images via @daylife

“I’m from the government and I’m here to help you” has become a standard punch line. There is no greater joke when public officials limit competition in the name of protecting consumers. Such as Louisiana’s now-defunct casket monopoly.

Professional licensing is routine across America. You want to be a lawyer or hairdresser? You want to be a doctor or manicurist? Get a license — from a government-backed panel dominated by your established competitors.

No one wants to be served by an incompetent, but in most cases, health and safety are not at issue. If a hair stylist gives you a bad haircut, you’ll be embarrassed, nothing more.

Even for services with greater impact the licensing process is designed to protect existing practitioners rather than consumers. Plenty of non-lawyers, such as paralegals and even legal secretaries, are capable of doing work now reserved for attorneys. However, state bar associations fiercely police the “unauthorized practice of law,” which is not the same as the incompetent practice of law.

Doctors similarly create arbitrary barriers against other medical professionals caring for patients. The government should combat fraud and malpractice, not decide which provider can do which procedure.

But casket-making is a far easier case. Obviously, making a substandard coffin isn’t going to hurt the corpse, let alone kill anyone. (Indeed, the state neither sets standards for casket construction nor even requires use of one for burial.) Yet Louisiana only allows licensed funeral directors to sell “funeral merchandise,” including caskets.

It’s not hard to see who benefits from this restriction. It certainly isn’t the dead or the bereaved families of the dead. It’s not the producers of “funeral merchandise.” And it isn’t the public.

In Louisiana the casket typically accounts for nearly a third of the cost of a funeral. It is known in the trade as a “high margin” item. In fact, some people buy coffins from Walmart or even online in order to save money.

The winners from the casket monopoly obviously are the funeral directors.

Everyone paying for a funeral is a victim of Louisiana’s rule. Along with the Saint Joseph Abbey of Saint Benedict, established in 1889.

For years the Benedictine monks made simple caskets for their own members. Over the years they received numerous requests from others to buy similar coffins.

Monks typically support themselves through common trades. Saint Joseph Abbey harvested timber for income, but Hurricane Katrina badly damaged the abbey’s pine forest. Starting in 2007, Saint Joseph’s 36 monks followed the example of monasteries in Illinois, Indiana, Iowa, and Minnesota and started making handcrafted caskets. The coffins are both unique and less expensive than those offered by funeral homes. Moreover, the abbey stored caskets made in advance for free.

No customer complained. But a local competitor, the Mothe Funeral Homes, went to the Board of Embalmers and Funeral Directors. Leonard Dunn, the operator of Serenity Funeral Home, another nearby operation, explained: “They’re cutting into our profit.” So the state board, run by funeral directors, issued a “cease-and-desist” order even before the abbey sold its first casket. The board also employed an investigator to confirm that the monastery did, indeed, do what it claimed to do: sell caskets. The board threatened the monks with fines and imprisonment—up to six months in jail.

The abbey urged the state legislature to change the law, but individual funeral home directors joined with industry lobbyists to defend the coffin cartel. (Not every funeral director was on board. Darin Bordelon of LaVille Funeral Home complained that Saint Joseph's opponents were "making us all look greedy.")

The only way for the monks to avoid punishment was to abandon their religious routine, serve a year as apprentices in a licensed funeral home, and turn their monastery into a formal "funeral establishment" with embalming equipment. Just to make and sell caskets.

So the monks went to court. Taking their case was the [Institute for Justice](#), a public interest legal organization dedicated to defending economic liberty. IJ filed suit contending that Louisiana's casket monopoly violated the 14th Amendment.

The monks had the facts on their side. An earlier Federal Trade Commission investigation found that state-protected monopolies do not protect consumers. The agency specifically criticized states which used licensing to restrict competition in the sale of caskets. Notably, Louisiana made no effort to prevent funeral directors from selling overpriced junk coffins. It just wanted to make sure that *only* funeral directors could sell overpriced junk coffins.

The case also demonstrated the importance of economic liberty. Those who promote individual liberty tend to favor freedom of speech and assembly. These liberties represent freedom of conscience and promote political liberty, and are critical to the development of the human person.

However, economic liberty is no less important. Freedom is indivisible. Freedom of expression and speech is the freedom to buy a printing press, create a website, and build a television studio. Without access to the practical economic tools of liberty it is difficult to exercise the political forms of liberty.

More broadly, economic development helps create an environment and ethos more conducive to the development of democracy. People who no longer have to worry about feeding their families are more likely to acquire the instruments of liberty. They also are more likely to use them.

But there is something even more basic. Economic freedom is about earning a living and supporting oneself and one's family. Few human duties are more important.

Moreover, earning an income enables one to seek life's transcendent values. For the monks, casket-making is a means to an important end. Blocking the means interferes with the end.

Finally, for many people work is a critical aspect of their development and happiness as human beings. Obviously, some individuals allow their job to become an idol, taking over their lives. But the opportunity to freely choose one's vocation is more than just a matter of dollars and cents.

The law doesn't always reflect good policy. But in this case justice triumphed. U.S. District Court Judge Stanwood Duval [ruled for the monks](#), explaining: "The Court finds no rational relationship between the Act and 'public health and safety.' No evidence was presented to demonstrate that requiring the purchase of caskets from licensed funeral directors aids the public welfare."

No evidence was presented because none exists.

The judge added: "Simply put, there is nothing in the licensing procedures that bestows any benefit to the public in the context of the retail sales of caskets. The license has no bearing on the manufacturing and sale of coffins. It appears that the sole reason for these laws is the economic protection of the funeral industry which reason the Court has previously found not to be a valid government interest standing alone to provide a constitutionally valid reason for these provisions."

Unfortunately, the problem of "economic protection" is far broader than just Louisiana's protection of the funeral industry. However, Judge Duval's ruling is a good start. No government should misuse its power to sacrifice everyone's economic freedom for the enrichment of a few.

It doesn't happen often, but in this case someone came from the government and actually did help people. Judge Duval recognized that respecting people's liberty is the best form of assistance. We can only hope that he is not the last government official to do so.