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## When economic liberty is at risk

**BYLINE:** By Roger Lott SPECIAL TO THE WASHINGTON TIMES

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In "The Right to Earn a Living," Timothy Sandefur, a lawyer and adjunct scholar at the **Cato Institute**, argues that the government has no business infringing on economic activities unless it has compelling health or safety reasons for doing so. Mr. Sandefur shows that when the government does have to explain its anti-competitive regulations in court, the justifications it provides tend to be nothing short of absurd.

For instance, when the Louisiana state Legislature was recently taken to court for a regulation stating that one has to have a florist's license to sell flowers, it argued that the law was necessary because an exposed pick, broken wire or trace amounts of dirt on the flowers could injure customers. The court ruled in the government's favor, saying that, "a floral-licensing examination is rationally related to the state's desire that floral arrangements will be assembled properly in a manner least likely to cause injury to a consumer."

If people need a license to sell flowers, what other activities could they possibly need one for? As Mr. Sandefur says, "the whole point of freedom of speech, press or religion is that one does not have to ask permission to exercise one's rights." Indeed, these days one often has to do a lot more than simply ask for permission.

The problem with the current legal system, Mr. Sandefur argues, is that the burden of proof rests with the wrong party. The individual or company whose economic liberties are being restricted is the one that has to show there are no rational health or safety reasons for enacting the law. According to one federal judge, this "can hardly be termed scrutiny at all."

"Rather, it is a standard which invites us to cup our hands over our eyes and then imagine if there could be anything right with the statute."

The book kicks off with a discussion of taxi licenses known, as medallions, which are supposedly needed to keep the number of taxis on the streets at appropriate levels. The reality, however, as Mr. Sandefur understands, is that the free market doesn't allow the supply of taxis, or anything else, to grow out of proportion relative to consumer demand. If there really were "too many" taxis, drivers would inevitably be forced out of business because they'd be unable to find customers.

These expensive medallions, which in New York City can cost as much as \$600,000, are in fact designed to reduce competition with cab companies. One retired 80-year-old taxi driver who decided to give New Yorkers free rides had

his old cab impounded after companies complained. Long gone are the days when anyone could get a car and write "Taxi" on it.

In the 1990s, JoAnne Cornwell started a business that braided people's hair without any cutting or chemical treatment. Yet according to California law, if she was to operate such a business, she had to have a license that required spending 1,600 hours at a state-approved cosmetology school, where she would have learned hairstyling techniques with absolutely no relevance to her business and that used chemicals she didn't believe in using.

Ms. Cornwell won the lawsuit, but, according to Mr. Sandefur, victories such as this one have hardly stopped the flow of absurd licensing requirements, such as the one for florists in Louisiana. The reality - and one that Mr. Sandefur understands - is that we don't need licensing to keep bad florists or hairstylists out of their respective industries, because they'd quickly go out of business anyway.

Mr. Sandefur says it's ridiculous to attempt to make a legal distinction between noncommercial and "commercial speech." The Founding Fathers never made such a differentiation, and as Mr. Sandefur points out, the First Amendment doesn't say anything about freedom of the press not applying to expression relating to commerce. Today, a company can be sued for being "deceptive," even on matters of public debate.

In a 2002 case, Nike was sued for being "misleading" and "unfair" in a report it issued in response to claims that it mistreated workers in Third World countries. The California Supreme Court found that the company's comments constituted less-protected speech "[b]ecause in the statements at issue here, Nike was acting as a commercial speaker," and Nike settled before the U.S. Supreme Court could review the case.

The government doesn't just tell businesses what they can't say. One government program required fruit farmers to pay for generic promotions of nectarines and peaches. A group of farmers, however, wanted to advertise under their own brand names, but in 1997 the Supreme Court found that, "since all of the respondents are engaged in the business of marketing California nectarines, plums and peaches, it is fair to presume that they agree with the central message of the speech that is generated by the generic program."

As Mr. Sandefur points out, this was obviously not true or the farmers wouldn't have brought the case in the first place. Four years later, the court overturned another government program forcing mushroom farmers to pay for generic advertisement, but the requirement for the fruit farmers was supposedly different because it "was ancillary to a more comprehensive program restricting market autonomy." Such a distinction, says Mr. Sandefur correctly, "is simply bizarre."

While the government makes regulations that prevent competition, it also makes restrictions that it imagines are necessary to prevent companies from gaining too much control over an industry. For example, when in 2003 Nestle wanted to buy Dreyer's ice cream company, federal antitrust lawyers claimed allowing the purchase would lead to a monopoly in high-butterfat ice cream. Nestle was only allowed to go ahead after selling part of its company. By looking at market

activities on a very small scope, the government can perceive monopolies everywhere it looks.

"The Right to Earn a Living" does a superlative job of documenting government infringements on our economic liberties and the immense difficulty citizens encounter when attempting to defend their rights. Readers will be astonished to learn of the countless ways in which, for no good reason at all, the government gets in the way of our economic prosperity.

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THE RIGHT TO EARN A LIVING: ECONOMIC FREEDOM AND THE LAW

By Timothy Sandefur

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