



The Under-Sung Story of Deregulation in COVID Relief

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It seemed reopening the economy while government is broke would have been a perfect storm for activists wanting to deregulate or re-privatize sectors of the economy now managed by government overreach.

However, when the question, “Where are all the free marketeers?” was circulated, a common answer was, “There are no free marketeers in a pandemic.” Rather than launching cottage industries, producing and trading for win-wins and growing better together, people were waiting for government checks and waiting for government to form blue-ribbon committees with top-down solutions.

In pleasant contrast, David Boaz, EVP of the Cato Institute, replied to that question with a “thanks for asking” and links to the efforts of some organizations who had enough self-awareness not to see themselves as the end-all-and-be-all for envisioning and imposing their ideas. Instead, true to their free-market missions, these groups were working to make economic activity more accessible to all.

Reading about the behind-the-scenes work of one group in particular was both epiphanal and calming. It showed government really was working for the people, if only to deregulate itself. While news cycles focused on how authoritarians weren’t letting the good COVID-19 crisis go to waste, contributors to the Competitive Enterprise Institute (CEI) had been pivotal lobbying agents, working behind the scenes to remove laws and regulation that stood in the way of connecting the now almost 2 million infected by the virus in this country with treatments that could intervene.

The group targets the president and Congress, and celebrated May 19, when Trump signed an executive order adopting many of their recommendations. In the heat of the crisis, the CEI sustained an ongoing lobbying effort to waive onerous FDA testing required before consenting patients could take a chance on benefiting from critical drugs and medical devices, like test kits

with their antigens, even though those treatments were being used successfully in other countries. They also worked to waive certification rules that allow medical professionals to cross state lines and perform tasks their home state has deemed them qualified to perform, and this allowed telemedicine to be practiced across state lines as well.

Other regulations standing in the way of an effective COVID-19 response were certificate-of-need (CON) laws. These require state authorizations for any medical facility to make major capital investments, including the acquisition of beds and ventilators. A staff report from CEI describes CON laws as, “protectionist measures designed to safeguard the investments made by incumbent providers and facilities [that] restrict access and raise prices.” While some of these regulatory problems were only suspended for the crisis, CEI wants them repealed.

Other legislation that stood in the way of an effective response was an SEC rule, in effect since 1999. It prevented companies from accounting for sales until products were used on a patient, thus serving as a perverse incentive to stockpiling. CEI successfully worked to get flu vaccines exempted during the H1N1 crisis of 2004-2005. Now, seeing what happened without stockpiles of masks and gowns, CEI is working to get “everything exempted.” Hitting even deeper at the root of the problem, CEI is pushing for Congress to order the CDC and FDA to refocus. Before chasing high-dollar grants to evaluate the risks of flavored vaping projects, CEI says these agencies should be focusing on major health threats, like infectious diseases.

Other regulations standing in the way of emergency interventions that CEI worked to remove are as far-reaching as bans on disinfectants, like ethylene oxide, whose health risks were far smaller than potential consequences of not using them; corporate average fuel efficiency (CARE) standards that prevented automobile manufacturers, after converting their facilities for emergency medical production, from recovering costs by making more of their best-selling vehicles instead of meeting quotas for fuel-efficient vehicles; the Jones Act, which limited the shipment of medical supplies between domestic ports to maritime merchant ships built, owned, and operated by domestic agents; and even bans on disposable, and therefore sanitary, plastic bags. Now, as the nation turns its eyes to rebuilding the economy, CEI’s efforts continue on that front as well.

Regulations now adding time and costs to the reopening the economy were put in place by strong lobbies, so they will likely be opposed by the same. However, in the interest of doing the most for the most, CEI is working on deregulation in the energy sector, where pushes for renewable development are crowding out traditional fuel technologies that are affordable for the poor; the financial sector, where regulation stands in the way of entrepreneurship in everything from small-dollar lending to FinTech innovation; the communications sector, where rules for spectrum allocation and infrastructure access stunt lateral entry and innovation; onerous environmental and historical surveys that can hold infrastructure projects up for years; and anti-trust laws that force those in the best positions for leveraging innovation to divert dollars from research and development into rent-seeking.

While the genuineness of the effort was suspect, Russia’s most recent effort to create a free-market economy resulted in oligarchy. Even then, Russian insider Anatoly Sobchak cautioned

rebuilding would take years and need, among other things, government help because nobody else had any money, voluntary cooperation, and a way of convincing people that there were benefits to being responsible for their own successes, leaning into the wind, and taking personal risks. Chaos needs no evil conspiracy to spread, only a failure of individuals to act. For more, visit cei.org or search #NeverNeeded.