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Driving the Conversation:

## Why do so many fierce opponents of government regulation so ardently support government regulation when it comes to (trial) lawyers and their clients?

12:30 POLITICO-Brookings livechat, [defense and technology](#)

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**Fred Barbash**, Moderator:

Walter makes a solid point from the purist point of view. But tort reform, whether one favors it or not, is still government messing around with the behavior of private persons. And I thought the practice of law was a business, a part of the private economy. Wouldn't it be heavily impacted by 'tort reform,' and during a recession yet. And aren't patients private persons, even when they're aggrieved and choose to file suit?

Plus, I seem to remember howls of protest from the banking industry--and many conservatives--at the intrusion represented by cramdown legislation which would limit the remedies available to the lending industry. Why, in principle, is limiting remedies to aggrieved patients different?

In some cases, such as patent, copyright and trademark infringement suits and breach of contract, the availability of the courts is considered essential to the functioning of our free-market economy. In others, somehow, it's not so essential.

There is a libertarian critique of tort reform based on principles of Federalism rather than free markets, by the way, as summarized in [this 2004 paper](#) from the Cato Institute:

*Critics of federal tort reform have usually come from the political left and its allies among the trial lawyers, who favor a state-based system that can be exploited to redistribute income from deep-pocketed corporations to "deserving" individuals. We offer a totally different criticism--constitutional in origin--that embraces the need for reform but reaffirms this principle: The existence of a problem, however serious, does not justify federal remedies outside the scope of Congress's enumerated powers.*

*We begin with the Commerce Clause but find that interstate trade does not, by itself, justify federalizing tort law. On the basis of examples involving fast food, guns, and medical malpractice, we argue that substantive federal reforms are neither necessary nor proper. If states persist in imposing unjust rules on out-of-state defendants, federal procedural remedies are available.*

So perhaps I should amend my question: Why do so many fierce opponents of government regulation (and of Federal intrusion on the states) so ardently support government regulation (and intrusion on Federalism) when it comes to (trial) lawyers and their clients?

It seems to me that definitions of "free markets" are highly selective. For example, big defenders of free markets often target trade unions for the contracts they negotiate in their capacities as players in the free market of labor as if, somehow, employees, once they organize, forfeit their claims as private seekers of wealth.

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