



Pro-Business Agenda Threatens Consumer Legal Funding

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In 1776, the world's greatest experiment in political and economic liberty was set into motion. That year, colonies that would become the United States declared their independence from the British Empire, and Adam Smith wrote what many consider the foundation of modern economics — *An Inquiry in the Nature and Causes of the Wealth of Nations* — laying the foundation for free market theory. These two events led to the creation of America as we know it today, an incredibly prosperous society where the standard of living of an average American is so high that it would be unrecognizable to the wealthiest person on earth in 1776.



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But, our continued progress is threatened by anti-market protectionism. Some of that protectionism comes from political opponents of capitalism. However, much of it comes directly from the business community, even the [U.S. Chamber of Commerce](#), and takes aim at major industries and those outside the spotlight alike.

In the last few decades, adopting the mantle of “pro-business politician” has gained political value because the voting public believes in the power of small businesses and the markets to grow our economy. And yet history teaches us that there's a fundamental difference between being a cheerleader for free markets and rooting for those businesses that operate within them.

To understand why, we need only remember that free markets are comprised of both buyers and sellers, so consumers are a pivotal part of the equation. In a free market, consumers have all the power because businesses only make money to the extent that they find a way to creatively provide the things that consumers want the most. Adam Smith understood that, just as he understood that businesses would resent their lack of power and try to conspire against consumers.

Which is why, whenever possible, businesses run to government with proposals for new “pro-business” policies that restrict consumer choice. A pro-market politician would reject these proposals, knowing that free market competition not only advances the cause of human flourishing, but also rewards those businesses that innovate smartly and seek out new and better ways to satisfy consumers. Unfortunately, we have far more pro-business representatives in government, and they are all-too willing to throw up protectionist barriers.

Protectionism takes some obvious forms — tariffs, subsidies, import quotas and even onerous licensure requirements — but it also includes more obscure forms, such as current attempts to ban financial services in the litigation sphere. In every case where governments bow to the pro-business anti-market pressure, competition declines, consumer power falls and business interests dominate. Whether politicians understand the economics well enough to know that they are hurting consumers with their efforts to “protect” businesses is unclear, but the results cannot be denied.

For example, when steel manufacturers convinced President George W. Bush to enact steel tariffs in 2002, steel manufacturers were better off in the short term, but it is estimated that 200,000 Americans lost their jobs, one-fourth of which were in industries that needed to purchase the now-more-expensive steel. The American economy lost approximately \$4 billion lost wages in less than a year.

Government regularly prefers business interests to the integrity of markets, both in international trade — with tariffs, import quotas and export subsidies — and in domestic policy. Domestically, state governments regularly impose absurd licensure requirements in order to “protect” consumers from cheap teeth whitening, hair braiding, interior design and even mail-order coffins. In every case, consumers and society lose while politicians of both parties continue to voice support for these harmful “protections.”

A lesser-known example of pro-business policies masquerading as pro-markets is the current push by the U.S. Chamber of Commerce to effectively ban a practice that benefits consumers but harms the chamber’s powerful insurance company members. That practice is called consumer legal funding, and it consists of providing funds to those who have been injured and want to exercise their right to seek redress, but face difficulties in meeting basic needs like housing, food and medical care. A funder provides the victim with money to pay bills and takes nothing in return, unless and until the plaintiff is successful in obtaining a settlement.

These funding arrangements help consumers hold the insurance industry accountable. It is understandable that insurance companies prefer not to go through the hassle of litigation, but accountability for injuries inflicted is an important market mechanism. It is difficult, if not impossible, for victims to hold insurance companies accountable when victims must accept an insufficient settlement offer in order to avoid starvation, eviction or inability to obtain medical care. As in so many other areas of our lives, financial intermediaries have arisen to correct this market imperfection.

The chamber dislikes this market solution and has been pushing state legislatures to effectively regulate consumer legal funding to death, arguing that doing so is a pro-market tort-reform measure. The chamber argues that consumer legal funding increases the total amount of litigation, but there is no empirical evidence to back up their claim. To the contrary, my research indicates that consumer legal funding should increase litigation only to the extent that real people with valid legal claims have been denied justice because they couldn't afford it.[1]

If there is a general problem with frivolous litigation — and I believe there is — the chamber should direct its efforts there, or on the many other critical tort-reform issues such as class action abuse and attempts to turn our judicial system into a mechanism for redistribution of wealth. These would be worthwhile pro-market endeavors, rather than pursuing the pro-business effort to deprive plaintiffs of access to financial services.

Every consumer and every voter should demand pro-market reforms and should be wary of politicians who tout their pro-business credentials as if that were an unequivocal virtue. Voters should reject “protectionist” tariffs that threaten our economic growth and innovation, and they should reject the chamber’s anti-market, anti-consumer legal funding proposals.

If we want our experiment in human liberty to continue, we must reject protectionism in all its forms and embrace real free markets.

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[1] Modeling the Likely Effects of Litigation Financing, Loyola Chicago Law Journal, Vol. 47, No. 4, 2016, available at SSRN: <https://ssrn.com/abstract=2674252>.