

THE FREEMAN

IDEAS ON LIBERTY

December 1, 2008

The Right to Earn a Living Under Attack

By Bob Ewing

In Louisiana it is illegal to sell and arrange flowers without permission from the government. Aspiring florists must pass a subjective licensing exam that is graded by existing florists, who have a direct incentive to keep new competitors from entering the market. Thus the failure rate is higher than that of the Louisiana bar, which results in hundreds of well-qualified would-be entrepreneurs being denied the ability to work in their chosen profession.

No one can honestly believe that Louisiana's flower cartel is necessary to protect consumers from renegade flower sellers. Rather, it is a classic case of protecting favored groups at the expense of consumers and entry-level entrepreneurs.

Such is the state of economic liberty in America today. Across the nation, the basic right to earn an honest living is under attack. Legislators and bureaucrats are teaming up with entrenched special interests to create needless obstacles to countless entrepreneurs' pursuit of the American Dream. In the past few decades there has been a nationwide explosion of protectionist regulations—while there were about 80 occupations with such barriers to entry in 1981, today there are over 1,000.

An Institute for Justice (IJ) case that recently attracted international media attention vividly illustrates the uncontrolled growth of occupational licensing and the outrageous lengths that a cartel will go to protect all facets of its business from the most harmless of trades.

Mercedes Clemens was threatened with thousands of dollars in fines and criminal prosecution unless she stopped . . . massaging horses. In Maryland two powerful groups decided to monopolize the growing field of animal massage by requiring all practitioners to spend four years in veterinary school—where massage is not even taught.

Suggesting that only people with veterinary degrees are capable of massaging animals is like suggesting that only people with medical degrees are capable of massaging humans. Preventing Clemens—who is a licensed human-massage therapist and certified in equine massage—from working in her chosen trade has absolutely nothing to do with consumer or animal safety and everything to do with the financial interests of the veterinary cartel.

In 2004 the Tenth U.S. Circuit Court of Appeals wrote in *Powers v. Harris*, “[W]hile baseball may be the national pastime of the citizenry, dishing out special economic benefits to certain in-state industries remains the favored pastime of state and local governments.” And for decades, following the instructions of the U.S. Supreme Court, federal and state courts have stood by while legislators engage in this “favored pastime” at the expense of consumers and entrepreneurs.

Government Protects Special Interests

In the absence of meaningful judicial supervision, politicians have gone to almost any imaginable length to protect special interests. When a powerful lobby demands protection from competitors, governments have been all too willing to invent—and courts all too willing to accept—patently ludicrous excuses for shutting down entrepreneurs. A court upheld Louisiana's florist-licensing scheme, for example, because requiring florists to take a test, which would be graded largely on the subjective beauty of their floral arrangements, might help protect the public from “infected dirt.”

The true victims of this new “favored pastime” are people like Clemens and countless other Americans, honest individuals whose lives have been turned upside down solely to protect the politically powerful. Such examples are seemingly endless.

In Texas, all computer-repair technicians must now become private investigators. “If you're investigating or analyzing data, then you should need a little more credentials than someone who just repairs computers,” the legislative sponsor said. The PI license requires a criminal-justice degree—or a three-year apprenticeship under a licensed private investigator. If a consumer knowingly takes his computer to get repaired by an unlicensed specialist, he faces thousands of dollars in fines and a year in jail. This law no doubt benefits special interests, but those benefits come directly at the expense of ordinary repair technicians and their customers.

A new law in Philadelphia will make it a crime in the coming weeks to talk about the Liberty Bell for money without the government's permission. Unlicensed tour guides will be subject to hundreds of dollars in fines for talking about the place where the Declaration of Independence was written. Perhaps the most well-organized cartelization effort underway in the United States today is in the interior-design industry. A powerful faction of insiders has already put thousands of its competitors, mainly middle-aged and elderly women, out of work.

The American Society of Interior Designers (ASID) represents less than 3 percent of all designers, but its members have designated themselves as spokespeople for the entire industry. In over 30 years of lobbying, ASID has never presented a single shred of evidence to support its extraordinary claim that literally “every decision an interior designer makes affects life safety and quality of life.”

ASID has been relentless in teaming up with legislatures coast to coast in its strategy for total cartelization. IJ has documented these efforts in a study titled *Designing Cartels*.

Such laws exist today for one reason: Our nation's judicial system fails to protect the right to earn a living. Courts have decided that this fundamental right—economic liberty—is simply not as important as other rights, and less-important rights are thus not subject to meaningful judicial scrutiny and rarely are afforded protection under the law. If the government can simply dream up a conceivable reason for violating economic liberties, even if that reason is based on no facts, the regulations are generally upheld. Amazingly, courts will even help by inventing their own hypothetical rationales for economic protectionism. This system does not just stack the deck—it gives the politically powerful a hand full of jokers.

Thankfully, entrepreneurs are fighting back. Taxicab drivers, African hair-braiders, sign-hangers, waste haulers, casket sellers, and others have battled the odds (with help from IJ) to strike down occupational-licensing schemes.

Mercedes Clemens's lawsuit has already caused one of the licensing boards to backpedal. The Philadelphia tour guides, now represented by IJ, had a hearing in federal court on October 6. In Texas, computer-repair technicians and interior designers are standing up for their constitutional rights.

F.A. Hayek famously wrote that “the great aim of the struggle for liberty has been equality before the law.” That is precisely what the fight for economic liberty is all about.

Bob Ewing is the assistant director of communications for the Institute for Justice.