



enterprise to that list, I agree wholeheartedly with Friedman's observation that economic freedom is a necessary prerequisite to political freedom.² Indeed, let me illustrate the point with a personal story that explains why I feel so passionately about these issues.

In 1984, my mother and I took a trip behind the Iron Curtain to explore our ancestral roots. I distinctly recall the portion of our trip that involved traveling from West Germany into East Germany by bus. In West Germany, the fences were sturdy and straight, the fields immaculate, and the tractors well maintained. Just over the border in East Germany, however, the fences were either rickety or missing entirely, the fields were full of weeds, and the tractors rusty. Given the shared history of these two countries, it was quite clear that the problem was not with the East German farmers, their equipment, or their land. Instead, it was with East German economic policies that confiscated the fruits of their labor, altering their incentives in a way that over time dramatically reduced both economic output and cons

Soviet Union at the age of 14 was transformational. This experience, and growing up under Reagan, prompted me to pursue a career fighting for free markets and limited government.

Ironically, as Brazil is moving away from socialism, interest in socialism is on the rise in the U.S., despite the grim examples set previously in the USSR and Eastern Europe and continued today in Cuba, Venezuela, and North Korea. Indeed, a Gallup Poll earlier this year found that 43 percent of Americans say socialism would be a good thing for the country, up from 25 percent in 1942.³

It amazes me that people are willing to ignore the vast evidence demonstrating the benefits for consumers in market economies, particularly when compared with outcomes in command and control economies.

Perhaps it's simply the audacity of hope – in this case, hope over hard evidence. But as a lawyer, I look for hard evidence. And we'll talk today about what that evidence shows.

II. FREE ENTERPRISE

In the United States, we have long been committed to individual

Regulation can also appear indirectly, particularly through distortions in the tax code that alter the incentives companies face. President Trump has acted here, too, reducing corporate taxes and freeing businesses large and small to invest and innovate as they see fit. Many businesses used the tax cut to increase wages,¹⁵ which may explain why unemployment has hit a record fifty-year low,¹⁶ wages for American workers have risen sharply in the past two years,¹⁷ and the stock market has hit all-time highs.

In Brazil, I understand the Bolsonaro Administration is also introducing new initiatives to cut red tape for small businesses and start-ups. One important measure I've heard about is the Economic Freedom Bill.¹⁸ When it was announced, the Ministry of Economy said it was delivering on the promise of “getting the state off of people’s backs.” And that is a goal with which I can always agree.

I am particularly heartened by six freedoms that will allow small businesses to operate more freely here in Brazil.¹⁹ These are:

Freedom from bureaucracy: Small businesses in low risk fields outside food, health, and security will be able to launch businesses with fewer delays;

Freedom for businesses to decide their own work schedules and days of operation;

Freedom for businesses to set their own prices without interference from the government;

¹⁵ Juanita Duggan, *The Tax Cuts Are Working for America’s Small Businesses – Here’s Proof*, FOXBUSINESS.COM, Oct. 3, 2019, [_____](#)

Freedom from judicial interference: The judiciary will no longer be able to intervene in the specifics of business agreements they view as disadvantaging one of the parties, increasing legal certainty;

Freedom to innovate: Companies no longer will need to get permits or licenses to test new products or services that don't pose a health or safety risk; and

Freedom from burdensome economic regulation: I understand that regulations in Brazil are complex and sometimes contradictory, which can make it hard to launch or expand a business. Now, outdated regulations must be removed, and the impact of new rules must be carefully considered before they are enacted.

These efforts are, first of all, incredibly logical. Of course a business should be able to choose its own hours of operation and set its own prices. And second, these reforms are sorely needed. As the Ministry of the Economy recently noted, the Heritage Foundation ranks Brazil's economy as less free than fellow BRIC countries Russia, India, and China.²⁰

Burdensome regulations can have enormous and often unintended costs.²¹ In one famous example, Mother Theresa was unable to open a homeless shelter in New York because the city's building code called for an elevator that her group would not use and could not afford.²² And I have recently talked to farmers in the U.S. struggling to earn a living while complying with

²⁰ *Id.*

²¹ See, e.g., Howard Beales et al., The Regulatory Transparency Project of the Federalist Society, The Proper Role of Rules in a Gloriously Unruly Economy, Aug. 28, 2019, <https://regproject.org/wp-content/uploads/Regulatory-Process-The-Role-of-Rules..pdf>.

²² See Sam Roberts, *Metro Matters: Fight City Hall? Nope, Not Even Mother Teresa*, N.Y. TIMES, Sept. 17, 1990, <https://www.nytimes.com/1990/09/17/nyregion/metro-matters-fight-city-hall-nope-not-even-mother-teresa.html>; see also Peter Passell, *Economic Scene: Understanding the Running Amok of Regulation in America*, N.Y. TIMES, Feb. 23, 1995, <https://www.nytimes.com/1995/02/23/business/economic-scene-understanding-the-running-amok-of-regulation-in-america.html> (using the anecdote as an example of the costs of regulation).

regulations designed for massive factory farming operations but that also apply to small family farms.²³

Unfortunately, economically inefficient regulations are not a new problem. In the U.S., we developed massive regulatory regimes for railroads, airlines, and other transportation industries in the U.S. that made it hard for businesses to operate efficiently. To give you the 30-second version, railroad and airline regulatory frameworks initially were intended to promote “fairness” and avoid “discrimination” among customers. But they were eventually used to prohibit discounting, prevent competitive entry, and inhibit innovation — all to the detriment of consumers.²⁴

For example, in the 1950s and 1960s U.S. railroads introduced several innovations, like new kinds of train cars, that reduced their operating costs significantly. And so the railroads wanted to reduce their prices to reflect their lower costs. But the railroads couldn’t set their own prices, so they had to petition their regulator, the Interstate Commerce Commission (ICC), for approval. In several famous cases, the ICC denied the attempts of the railroads to reduce their prices.²⁵

The rationale? The ICC was attempting to protect a competing but less efficient form of transportation – barges.²⁶ But protecting rival companies meant that the customers of the railroads (shippers) were being hurt. This outcome is particularly ironic because the regulations were initially enacted to protect shippers in the first place!

²³ See, e.g., JOEL SALATIN, *EVERYTHING I WANT TO DO IS ILLEGAL* (2007).

²⁴ See Christine S. Wilson, *Remembering Regulatory Misadventures: Taking a Page from Edmund Burke to Inform Our Approach to Big Tech*, Address at the British Institute of International and Comparative Law, London, UK, June 28, 2019, available at https://www.ftc.gov/system/files/documents/public_statements/1531816/wilson_remarks_biicl_6-28-19.pdf.

²⁵ *Id.* at 9 (discussing the *Big John* and *Ingot Molds* cases).

²⁶ *Id.*

The airline regulator was at least as bad.

\$6 billion to \$20 billion per year.³⁰ I'll give you an example of these consumer benefits — the cost of a flight from New York to Los Angeles fell in inflation-adjusted terms, from \$1,442 to \$268.³¹ Suddenly everybody could afford to fly.

And we have seen similar benefits in other deregulated industries.³²

IV. FREE PEOPLE

We've discussed free enterprise and free markets. Now, let me turn to free people.

As countless repressive socialist regimes have shown, you cannot have free people without free enterprise and free markets. Not in the Soviet Union, not even in Bernie Sanders' dreams. Not in Cuba. Not in Venezuela. And certainly not in North Korea.

As I mentioned at the beginning of our discussion, the famous economist Milton Friedman gave a talk called *Free Markets for Free Men* thirty-five years ago this month.³³ As he explained then, free markets and free enterprise help ensure a free citizenry. Or, as Former U.S. Representative Jack Kemp said, “there's no limit to what free men and free women in a free market with free enterprise can accomplish when people are free to follow their dream.”

And the corollary is also true: “Unfree markets destroy freedom” by dictating how a person spends his time, his money, and his effort. Alexander Solzhenitsyn, who spent time in a

³⁰ Steven A. Morrison & Clifford Winston, *The Dynamics of Airline Pricing and Competition*, 80 AM. ECON. REV. 389, 390 (1990) (“On average, deregulated fares are lower than regulated fares by 18 percent, amounting to an average annual savings to travelers of roughly \$6 billion (1988 dollars).”).

³¹ See Stephen Breyer, *Airline Deregulation, Revisited*, BLOOMBERG, Jan. 20, 2011, *available at*

Nobody knew this better than Solzhenitsyn, who saw the incredible cruelty of the Soviet system from the inside. And he put it best when he cautioned that “modern society is hypnotized by socialism,” which causes us to lose “all sense of danger” and make
