

OPINION

Daniel Popeo: 'Profit' and 'entrepreneurship' aren't dirty words

Daniel Popeo, The Examiner
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WASHINGTON - Let's get this straight — a paralyzed federal government that ignores our border security laws for 12 million illegal aliens (and counting), somehow has the resources and a relentless obsession to criminalize what's left of America's free enterprise system?

Honest business owners and employees face a network of government prosecutors and bureaucrats who draft, interpret and enforce mind-numbingly complex rules. This drastic expansion of federal control over our lives has spawned more than 11,000 regulations that can be criminally enforced against any legitimate commercial activity. On top of that, add the laws and regulations of 50 states, plus countless plaintiffs' lawyers eager to pile on with multi-million dollar lawsuits.

Big profits from America's capitalism enrich all our lives, whether they come through the United Way or from the exceptional corporate philanthropy of Warren Buffett. Even though everyone benefits from legitimate economic activity, our government's regulators and prosecutors are increasingly hostile to successful businessmen. Abuse of prosecutorial discretion and coercive government policies continue to fuel a powerful, intimidating campaign to criminalize honest business conduct.

Unfortunately, all this goes on as legal scholars and America's leaders debate over the rights of terrorists who have murdered innocent American civilians and seek to destroy our economic system. Yet, little outrage is displayed for the disregard of the civil liberties of honest Americans who are the backbone of our country's prosperity.

For example, consider the plight of John Rapanos, a small Michigan developer who dared to improve his property that the feds claimed was a wetland that required U.S. Army Corps of Engineers permits.

After a dozen years of costly legal battles initiated by regulators and prosecutors, the U.S. Supreme Court rejected the feds' novel theory of jurisdiction over isolated wetlands not connected to navigable waters. Under the government's theory, even dry patches of land could be regulated as wetlands.

But what should have been, at best, an administrative dispute over ambiguous regulations quickly turned into an abusive felony criminal prosecution. Unbelievably, the Justice Department demanded that the judge send Mr. Rapanos to prison for five years, a substantial term that was six times longer than what prosecutors wanted the same judge to impose on a drug dealer who was also an illegal alien.

When the judge pointed out that Rapanos had put only clean sand on his own property, prosecutors countered with the outlandish argument that "sand is more toxic and destructive" to wetlands than toxic chemicals. Luckily, Mr. Rapanos was given probation.

But others are not so lucky. In Alabama, two small hard-working seafood importers were criminally prosecuted and sent to prison for eight years under the draconian sentencing guidelines because they violated an obscure administrative regulation that frozen seafood should be shipped in cardboard boxes instead of plastic bags. They would have received less prison time if they were smuggling drugs into our country.

Then we have the sorry spectacle of the EPA sending an armed “SWAT” team into a small Massachusetts plant searching for evidence of a technical “crime” about a manufacturing process that involved no actual environmental harm, while gun-toting EPA agents harassed employees at their homes at night, pressuring them to turn against their bosses on trumped-up charges.

Legitimate charges or not, all too often targeted companies are told that if they “cooperate,” such as by waiving their attorney-client privilege or refusing to pay employees’ legal fees, they may get lenient treatment. Prosecutors don’t seem bothered that these tactics discourage pro-active corporate compliance and violate employees’ constitutional right to counsel.

At least one federal judge has found DOJ’s “cooperation” pressure tactics to be unconstitutional. And some in Congress are beginning to question these prosecutorial policies.

Sadly, most stand idly by, fearful of being unfairly brandished by the media as soft on corporate crime. Meanwhile, unrestrained U.S. Attorneys continue bringing novel charges, such as the recent attempt to criminalize the promotion of life-saving medicines by certain drug companies.

“Wealth,” “profit,” “entrepreneurship,” and “economic growth” aren’t and shouldn’t be dirty or illegal words, but it’s clearly time for a national discussion on what it costs each of us when our government criminalizes free enterprise.

And we urge government officials, regulators, prosecutors, and the ACLU and other lawyer activists to admit that we must do a better job of protecting business civil liberties.

Make no mistake, our free enterprise system still defines Americans’ freedom to become as successful as capitalism and hard work can make them. America’s illegal immigrants seem to understand that better than our own government does.

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