

Rebuilding America Requires Freedom

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As Americans struggle with the effects of the coronavirus pandemic and the government's response, one thing is becoming clearer by the day: the economic costs will be staggering. Soon we will all know someone who is unemployed, or we will face that hardship ourselves. Our favorite small businesses may be unable to reopen. And we will be left to rebuild our futures with diminished personal savings and massive public debt.

Government has an important but limited role to play in a pandemic. It possesses the power only to coerce and restrain: it can impose quarantines and order businesses to shut down. But it cannot produce the medical supplies, technology, hospitals, drugs, and know-how needed to emerge from the pandemic and restore the unparalleled standard of living that modern Americans have come to regard as normal. Government can send us checks, but redistributing money will not restart the economy.

We are a nation of creators, inventors, builders, and entrepreneurs. The only way to recover from this crisis is to unleash our productive energy.

To do that, government must get out of the way.

For more than four decades, Pacific Legal Foundation has defended the individual rights and legal principles that make a free and prosperous nation possible. We fight nationwide for property rights, economic freedom, free speech, equality before the law, and the constitution's separation of powers.

During that time, PLF has challenged scores of senseless laws that restrain innovation and production throughout the economy. These include many of the laws that prevent the private health care industry from reacting quickly to a pandemic. Among them are state "certificate of need" laws that limit the supply of things like hospital beds and medical devices, licensing laws that create barriers to entry into the health care sector, and FDA regulations.

But health care regulations represent only a small portion of the laws that impede innovation and production in America. If we want to emerge from this crisis as quickly and completely as possible, we need to empower entrepreneurs, businesses, and workers to rebuild. We need, in short, a renewed commitment to the principles of limited government, the pursuit of



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happiness, and freedom. Everyone—including governments at all levels—can help in this effort by identifying laws that can be simplified or eliminated.

Here are PLF’s recommendations for getting started, which we plan to pursue in legislatures, courts of law, and the court of public opinion. This list will certainly evolve over time.



1. Liberate health care

Americans are rightly applauding the heroic efforts of doctors, nurses, and other health care workers on whose knowledge and hard work we depend for our very lives. However, the health care industry consists not only of frontline health care workers but also of a network of supporting businesses, scientists, and institutions—companies that own and operate hospitals, clinics, and labs; manufacturers of medical devices and supplies; and drug and ambulance companies, to name just a few. To function, each must be free to make decisions quickly, adapt to new conditions and changing demand, and shift resources as circumstances change. High-priority reforms should include:

- **Ending Certificate of Need Laws.** In 38 states, there are laws that prohibit health care providers from increasing the supply of medical services—hospital beds, medical equipment, new facilities—without government permission. These laws are based on the false notion that government should dictate how much health care is necessary. A shortage of medical services has crippled our response to COVID-19. Every state with certificate of need laws should repeal them as soon as possible.

- **Easing or Eliminating Restrictions on Health Care Professionals Working Across State Lines.** Some states, like Utah and Arizona, recognize the occupational licenses of other states, increasing the number of workers who can provide services to their residents. In the current crisis, this acceptance of out-of-state licenses has made it easier for workers to pitch in where they are needed and has enabled telemedicine to fill the gaps. More states should follow suit.

- **Reforming Licensing Laws for Health Care Workers.** All states require health care workers—doctors, nurses, pharmacists, and workers in many positions that require less training—to obtain an occupational license from the state as a condition of their jobs. Study after study has shown that occupational licensing erects barriers to entry into these professions, limiting supply and increasing cost without providing corresponding benefits to public safety. Many states also have highly restrictive “scope of practice” laws requiring doctors to perform tasks that nurses could be trained to do and requiring nurses to perform tasks that less skilled health care workers could do. Placing responsibility for scope-of-practice decisions with hospitals, labs, or pharmacies that employ medical professionals would expand the supply of those professionals and allow institutions to adapt more readily in times of crisis and surging demand.



2. Embrace entrepreneurs and the right to earn a living

In the coming weeks and months, millions of Americans will have to find new work—either by changing employers or creating new businesses. It is imperative that existing laws and regulations do not create needless barriers to new opportunities.

■ ***Reduce or Repeal Occupational Licensing Requirements.*** Occupational licensing laws frustrate the ability of individuals to earn a living in the job of their choice, especially individuals on the first rung of the economic ladder. To take just two examples: 37 states require licenses for travel guides, and all 50 states impose licensing requirements on cosmetologists. In both cases, obtaining a license requires anywhere from six months to a year of education and training, which can cost thousands of dollars. There are many more senseless occupational licensing laws, most of which fall hardest on those who need to change jobs quickly. Governments in every state should review and rescind needless licensure requirements and streamline those necessary for public health and safety.

■ ***Make Life Easier for Freelancers and Gig Workers.***

Millions of people have been relying on gig workers to deliver food while the rest of us shelter in place, and freelance workers of all kinds were well positioned to work from home as offices began closing. Unfortunately, in recent years, states and localities have moved to stifle this sector of the economy. For example, in Assembly Bill 5, the California legislature barred many individuals from working as independent contractors. This action destroyed many jobs and will deprive many individuals who have lost their jobs of additional ways to earn a living. A crisis requires flexibility, creativity, and adaptation—values undermined by one-size-fits-all labor laws.

■ ***Lift Restrictions on Home-based Businesses.*** If this crisis has proven anything, it's the importance of being able to work effectively from home. Unfortunately, many local governments restrict or limit home-based businesses through economic regulation and zoning laws. Nashville, for example, does not allow entrepreneurs to serve clients at home, which means that hairstylists and music producers, among others, cannot conduct business from their residence. The benefits of working from home that we have experienced during this difficult period should be an impetus to reconsider prohibitions against home-based enterprises.



3. Expand opportunity by protecting property rights

In the coming months, many businesses will close. Hotels will fail; office parks, and retail spaces will become vacant—and recovery depends on adapting property to new uses. Moreover, large numbers of Americans will need lower-cost housing or will find it necessary to take boarders and short-term renters into their homes to make ends meet.

In recent decades, restrictive land use regulations have accumulated that often require years of costly legal process to convert property from one use to another. In many cities, it is illegal to put a spare room to use as a short-term rental or to build safe and comfortable kinds of housing—studio apartments, single-room occupancy hotels, apartments with shared kitchens—that lower-income people can call home.

State and local government should simplify or eliminate land use regulation when there is no real threat to public health or safety and no nuisance. Good ideas include:

- Making it easy to build a backyard cottage or to add a granny flat to existing homes, as California has done;
- Shortening the time within which planning officials must review applications to convert or redevelop property, granting permits automatically if the process drags on too long;
- Allowing development to occur by right, without unnecessary layers of permission;
- Reducing exaction fees that drive up the cost of new housing;
- Eliminating occupancy restrictions in cities that prohibit more than a few unrelated people from cohabitating in a single-family home; and
- Streamlining the process of getting a short-term rental permit and making it legal where it is now prohibited.

The notion that the bureaucracy will simply get out of the way during a crisis is a fantasy.

Nevertheless, there are already calls for more government control of our lives—which would mean still more of the lumbering bureaucracy that led to the testing fiasco. Instead, we should be moving in the opposite direction—increasing the freedom, control, and responsibility that individuals exercise in their own lives. To move in that direction, we must take two crucial steps.

First, we must be willing to question the assumption that individuals are incapable of making informed decisions about important aspects of their lives, including their health care. We must challenge the belief that people cannot be trusted to consult with qualified professionals, that pharmaceutical and medical device manufacturers want to harm their customers, and that the real experts are federal bureaucrats rather than the thousands of health care professionals on which we are now relying in this crisis. These beliefs must be challenged in all contexts, not just in health care.

Second, we must take the principle of separation of powers seriously. Our federal constitution creates a government of enumerated powers that it divides among three branches—legislative, executive, and judicial. This division ensures that government operates according to the rule of law rather than the rule of bureaucrats and that it remains accountable and responsive to the people on whose consent the authority of government rests. It also means that control over and responsibility for our lives should be returned to each of us as individuals.

The key to restoring America's health and prosperity is greater freedom. We invite you to join PLF in advocating the principles of individual rights, economic liberty, and a rule of law under which America can rapidly and proudly rebuild.

4. Get the bureaucrats out of the way

Perhaps the single biggest failure of government so far during this pandemic is the FDA and CDC testing fiasco. By all accounts, the nation fell at least a month behind on testing for COVID-19 as the CDC tried to create its own test and failed. The FDA then delayed approvals or restricted private and state-run labs from performing the tests.

Many people have blamed the President for this failure; others have focused their ire on bureaucrats at the FDA and CDC. Some of these complaints are valid, but they miss an important point: our vast, sprawling administrative state is simply not capable of responding quickly and effectively to anything, much less to a crisis of pandemic proportions. Indeed, it is more accurate to say that the administrative state is designed to achieve the opposite of speed and efficiency. By its nature, the administrative state takes decisions out of the hands of the millions of individuals, professionals, and businesses who bear the costs and benefits of those decisions and transfers the decisions to bureaucrats.

Increasingly, we live in a society in which some of the most important decisions in our lives are made not by right but by permission.