POLICY BRIEF

Innovation and Regulation in Florida:

A Framework for Permissionless Innovation

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Introduction

Florida's economy has changed dramatically over the past 30 years and cities like Gainesville, Orlando, and Miami have become hubs for start-ups and innovation. The rise of technology companies across Florida and the United States has been the direct result of the internet's growth as a commercial platform, marked by a culture of "permissionless innovation."[1] While this growth has vastly improved consumer welfare and created new opportunities for workers, it has also created challenges for policymakers. Take, for example, the advent of ridesharing platforms like Uber and Lyft. They not only disrupted the entire vehicle-for-hire industry but caused policymakers to rethink how ridesharing is regulated and set off a policy conversation that lasted nearly five years.

Debates like the one surrounding ridesharing will only increase in the future. In a few clicks, someone in Fort Myers can seek legal advice from strangers,[2] get medical care from a doctor with no connection to the state,[3] or chat with a therapist they've never met.[4] This presents both opportunities and challenges. And as more and more industries are disrupted by technology it will become more important for policymakers to understand the impacts of how current regulations affect the services available to citizens across the state.

In this policy brief, we provide a framework to help policymakers better understand the impact that choices about regulations will have on Florida's long-term growth and development. We begin with a brief discussion of why innovation is such an important consideration for policymakers. Next, we turn to the relationship between regulation and innovation with a specific focus on the concept of "innovation arbitrage" and why advances in some industries will require reforms in others. Finally, we provide a roadmap for regulatory reform that embraces innovation while ensuring that important public safety concerns are satisfied.

Why technological innovation is important

One of the single most important determinants of long-term economic growth is technological innovation.[5] When most people consider technological innovation, their thoughts turn to information technology. The impacts of innovation, however, span far beyond that. The rapid growth of Silicon Valley startups has dominated conversations about technology, but we should not limit the conversation to simply one type of innovation. Broadly defined, technology and innovation should include any new and better way of doing things.[6] In this way, everything from the vast improvements in how we connect and exchange through online platforms to improvements in the delivery of healthcare to reforms in occupational licensing should be viewed as touching on technology and innovation in Florida. As James Broughel and Adam Thierer explain in recent research on this topic, while the concept of innovation can be difficult to define, it can take three forms: (1) cost reductions, (2) quality improvements, and (3) increases in the variety of goods, services, and methods of production.[7]

In addition, policymakers should be focused keenly on the nature of innovation and the shape that it takes for several reasons. First, innovation extends far beyond the product creation and service offerings to include the social benefits and empowerment that comes with them. Second, it means vast improvements in well-being across the income spectrum.

We typically think of technology and innovation as the latest gadgets, apps, and products to grace store shelves. Innovation, however, should be viewed much broader than that. As professor Sofia Ranchordas has noted:

> Contrary to our common perception of innovation, this phenomenon also occurs outside large research centers, laboratories, and the garages and basements of courageous inventors. Innovation is more than the latest technology; it is a phenomenon that can result in the improvement of living conditions of people and strengthening of communities. Innovation can be technological and social, and the former might assist the latter to empower groups in ways we once thought unimaginable.[8]

But what does this mean in practice? Looking at the growth of the sharing economy, for example, it is very easy to focus on the companies and disrupted industries. However, the impacts it has had on individuals is a more important consideration:

> A cash-strapped homeowner may not have seen her spare bedroom as capital until the Airbnb platform provided a way for her to rent it out to vacationers. A college student with an extra hour between classes may not have viewed his time as a profit opportunity until Instacart and TaskRabbit allowed him to profitably put that time to use for others. A young

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> couple may not have been able to use their couch to connect with other travelers from around the world, but can now do so through Couchsurfing. A retiree with a workbench full of power equipment may not have viewed his tools as a way to supplement his income until 1000 Tools connected him with people in his area wanting to borrow tools. This is the sharing economy.

Even with newly created opportunity, innovation does not come without some cost. As economists Daron Acemoglu and James A. Robinson explain, innovation and economic growth create winners and losers.[9] Every new way of doing something will almost certainly mean the end of some old way of doing it. Perhaps this means the end of a family business, a handful of businesses, or even the end of an entire industry. However painful in the short-run, this is a necessary part of what Joseph Schumpeter called creative destruction.[10] New replaces old by attracting talent, resources, and consumers. This is how economies evolve and grow.

Observing the benefits of innovation and economic growth can be somewhat easy. Measuring it, however, has proven more difficult. Broughel and Thierer, reviewing the literature on innovation and economic growth, point out how measures such as GDP oftentimes fail to capture the full impact.[11] They conclude:

> The lesson here is that the benefits of innovation aren't always obvious, they aren't always easily measurable, and they don't always show up in the growth statistics, especially in the short term. Sometimes innovation even reduces measured growth for a period of time. However, in the long run there can be little doubt about the enormous benefits of technological innovation as society adapts to change and learns to harness and exploit the potential of new technologies.[12]

Innovation arbitrage, driverless cars, and the future of work

Balancing the short-run disruption caused by innovation with the long-run benefits can put policymakers in a difficult position. While it is true that economic growth and development are fueled by the creative destruction outlined above, that may often be an unsatisfying response to those who find themselves put out of business by a new mode of competition. It is understandable that public policymakers would want to regulate and protect against disruptions that may put people out of work, create unemployment, and create economic anxiety.

This fear, however, should be measured against the opportunity cost of protecting the status quo. Discouraging technological innovation to preserve established businesses will not prevent that innovation from happening. Unfortunately, when policies make it more difficult to engage in innovation and experimentation,

entrepreneurs will take their ideas elsewhere. This is what Adam Thierer has called "innovation arbitrage."[13] As Thierer explains,

> [I]nnovators can, and will with increasing regularity, move to those jurisdictions that provide a legal and regulatory environment more hospitable to entrepreneurial activity. Just as capital now fluidly moves around the globe seeking out more friendly regulatory treatment, the same is increasingly true for innovations. And this will also play out domestically as innovators seek to play state and local governments off each other in search of some sort of competitive advantage[14]

Increasingly, policymakers can use this type of competition to their advantage. Take, for example, the current regulatory environment for autonomous vehicles. Florida has become a leader in this space by focusing on a regulatory framework that embraces innovation and experimentation. Additionally, the state has been able to use this to attract companies that are abandoning restrictive states like California.[15] Companies like Voyage are now offering autonomous taxi services in communities like the Villages.[16] This is not only enabling the state to remain a leader in this industry but is providing mobility for elderly residents with limited driving abilities.

It is also important to understand that embracing innovation in one industry will have effects on others. Take, for example, how driverless cars may impact labor markets. What will happen, for example, to the more than 100,000 drivers using Uber once the vehicle-for-hire industry becomes fully automated? How about long-haul trucking and local delivery jobs once those become fully automated?

As a result, workers pushed out of old jobs will seek new ones. Especially in the context of the short-run disruption, occupational licensing reform should be treated as a complement to embracing innovation. Florida has work to do on this front. Florida ranks 25th for the highest number of lower-income occupations licensed and 47th for average burdens of licensing requirements in the Institute for Justice's latest report on occupational licensing.

Why should lower-income occupational licensing be thought of

as a tech issue? These are the very jobs that displaced factory workers, truckers, and taxi drivers will turn to when their jobs are inevitably replaced. Most won't necessarily look at higher-skill jobs, but will likely turn to jobs in construction, security, pipe-laying, and landscaping. Licensing these occupations, then, is really best understood not only as a barrier to entry but an impediment to alternative work in the face of change and disruption.

A roadmap for regulatory reform

There are concrete steps that policymakers can take to create a regulatory system that embraces the type of experimentation necessary for entrepreneurs to create new and better services that are at the heart of technological innovation. Most importantly it requires a level of humility to understand the limits of regulation, both in scope and time. Regulation can only accomplish so many things. Regulations that may have made sense at some previous time may outlive their purpose or effectiveness. In either case, it is important that policymakers recognize when public policies have outlived their usefulness. We provide some processes that can help inform new regulations as well as evaluate existing regulation.

Jerry Ellig, a research professor at The George Washington University Regulatory Studies Center and former chief economist at the Federal Communications Commission, has outlined ten principles that should inform any regulatory effort:[17]

1. Regulation should solve a real, widespread problem rather than addressing anecdotes;
2. Regulation should be accompanied by proof that it is likely to make life better for citizens in a significant and tangible way;
3. Regulators should define how they will know the problem is "solved";
4. Regulators should consider alternatives to regulation and alternative forms of regulation;
5. The regulatory alternative selected should provide the "biggest bang for the buck";
6. Regulation should respect consumers' freedom of choice;
7. Regulation should be technologically neutral;
8. Regulation should be competitively neutral;
9. Regulation should be based on the best available evidence, not merely on assumptions, good intentions, or wishes; and
10. Regulation should acknowledge uncertainty.

Each of these principles is integral to constructing a regulatory framework that embraces experimentation, fosters innovation, and ensures that regulations are narrowly tailored to accomplish their specific goals. Moreover, as Michael Farren, Christopher Koopman, and Matthew Mitchell have outlined, policymakers can engage in a step-by-step process to ensure these principles are put into practice:[18]

1. **Start with a Blank Slate:** Policymakers should approach their task using a fresh perspective, asking themselves: "If I were to design regulations today, what would they look like?"
2. **Define the Nature of the Problem:** Begin by identifying a systemic market failure that the regulation aims to address. This step requires the policymaker to clearly explain how the normal process of market competition is not working and assess the factual basis for this market failure. The desire to simply improve a product or service falls far short of justifying regulatory intervention.
3. **Identify Alternative Solutions:** If a systemic market failure has been identified, the next step is to develop reasonable ways to address it. The list of options should include reducing existing regulations and doing nothing. These options are important to consider because the current set of public policies might be contributing to failure (e.g., through regulatory capture). Ultimately, there may be no need for regulatory intervention if other approaches resolve the problem more effectively than regulation (especially if there is an entrepreneurial incentive to solve the problem privately).
4. **Define the Expected Costs of Each Alternative:** Every available option will require tradeoffs of some sort, and regulators must identify the expected costs— both monetary and nonmonetary—associated with each. Regulators should also explicitly recognize the potential for unintended consequences of regulation (such as regulatory capture) and attempt to include these difficult-to-quantify unknowns in their qualitative analyses.

5. **Define the Expected Benefit of Each Alternative:** The benefits of each alternative need to be identified, defined, and quantified as much as possible. Importantly, maintaining the profitability or continued existence of established firms should not be counted as a benefit of regulation. Such artificial protections of industry come at the expense of consumers, taxpayers, would-be competitors, and future economic growth.
6. **Compare the Costs and Benefits:** Once the benefits and costs of each alternative have been identified, defined, and quantified, the tradeoffs of regulation can be systematically and transparently evaluated. In cases where the benefits and costs cannot be accurately quantified, the subjective nature of these tradeoffs should be explicitly acknowledged and discussed.

Conclusion

Ultimately, to reap the benefits of technological innovation, public policies must have some tolerance for mistakes, failures, and learning through trial and error.[19] Moreover, as Adam Thierer has noted, "Policymakers should avoid basing policy interventions on hypothetical worst-case scenarios or else best-case scenarios will never come about."[20] While Florida has been a leader in fostering a culture of innovation and growth, the future will present both challenges and opportunities. By creating a regulatory framework that empowers innovators and entrepreneurs, and removes barriers as they arise, Florida can continue to be viewed as a home for startups and entrepreneurs from around the world.

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