BACKGROUNDER

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Permissionless Innovation:
A Pro-Growth Policy Vision and Plan for Florida

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Florida has the ingredients and appetite to be a leader in technology and innovation. We have a reasonable tax system and well-managed government. We have a large population of high-skilled workers. Our natural beauty is unparalleled, and our university system is world-class. To leverage these assets and best position the Sunshine State to attract more investment and talent, legislators should embrace a policy position of "permissionless innovation."

Policymakers can undertake one of two polar approaches when it comes to technology policy. They can either hew to the "precautionary principle," which requires entrepreneurs to seek approval from a government board before being allowed to experiment with new ways of doing things. Or they can create an environment of permissionless innovation, which allows tinkerers to learn and build free from onerous regulations by default.

If you welcome innovation, you will get more of it. If you make it harder to innovate, progress will stagnate. Florida policymakers who wish to welcome growth and dynamism would be wise to review our policy environment to determine what kind of culture we have and make smart reforms to bring forth the pro-innovation state we desire.[1]

This policy brief will explain what permissionless innovation is and the concrete steps that Florida policymakers can take to embrace it. Specific issue areas for reforms will be discussed. Finally, we will explore general regulatory reform tools that can protect a pro-innovation code.

What is permissionless innovation?

Technology policy debates, whatever the specific industry or application under consideration, at core boil down to a single question: "Must the creators of new technologies seek the blessing of public officials before they develop and deploy their innovations?"

The technologist Adam Thierer, in his book *Permissionless Innovation: The Continuing Case for Comprehensive Technological Freedom*, notes that policymakers can respond to this question in one of two ways.[2]

In the affirmative, lawmakers can embrace the precautionary principle and prevent new ways of doing things until makers can prove to a government body that they are acceptably "safe" by some predetermined criteria. Whether done in the name of culture, industry, privacy, security, decency, the environment—or yes: "the children"—precautionary regulations erect barriers to innovation and therefore make it that much harder to grow and thrive. One economic study of regulation found that the cumulative effect of regulation in the United States from 1977 to 2012 reduced the average annual GDP growth rate by 0.8 percent—a loss in production worth $4 trillion.[3]

Legislators may, on the other hand, reject the precautionary principle. Under a regime of permissionless innovation, technologies are mostly "born free." As Thierer explains, unless a strong case can be made that a technology is uniquely or existentially harmful—such as in the case of a "doomsday device" of science fiction—innovation should be allowed to continue with minimal preemptive restrictions.

This approach does not imply or suggest anarchy. Regulators arguably have a *more* proactive role in an environment of permissionless innovation. Rather than relying on the brittle, costly, and passive old methods of applications, checkboxes, and reporting, regulators are empowered to proactively dialogue with innovators so they may more deeply understand technological workings and implications. Joined by academics and civic groups, they leverage multistakeholder arrangements to identify problems ahead of time and develop surgical policy reforms to address them.[4] Not only does this afford a better environment for innovation, but it may also foster better regulations since policymakers have more intimate and active understandings of technological contexts and operations.

The first step is to foster a culture and spirit of permissionless innovation among policymakers. One way to do this is to develop a vision statement and guidance document for the future of technology policy in the state.

Florida could consider the example of the federal government. It is no accident that Silicon Valley was born in the United States rather than one of the many other well-educated and wealthy nations of the world.

While the policies of other governments stifled new developments in internet applications due to overbearance or neglect, the United States put forth a strong statement of permissionless innovation in the form of the 1997 *Framework for Global Electronic Commerce*.[5] It laid out five basic principles to govern online commercial activity:

1. The private sector should lead;
2. Governments should avoid undue restrictions on electronic commerce;
3. Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce;
4. Governments should recognize the unique qualities of the internet; and
5. Electronic commerce over the internet should be facilitated on a global basis.

No wonder most of the world's most successful internet companies were born in America. Further legislative developments such as Section 230 of the Communications Decency Act cemented the development of the current structure of the internet as we know it. These policies gave innovators the green light to experiment with abandon in the United States. Today, internet technology is virtually synonymous with America because of these policies.

Although the *Framework* focused on e-commerce, there is no reason that Florida should limit permissionless innovation to this domain. Indeed, the recent history of emerging technologies shows that the lines between the "world of bits" of the internet and the "world of atoms" of the physical world have already blurred.[6]

Transportation and delivery technologies such as drones, driverless cars, and sharing economy platforms employ software and spectrum to improve processes in the physical world. Machine learning and big data help healthcare workers to better diagnose and treat patients. "Internet of Things" applications improve manufacturing and logistics.

The list goes on. The point is "technology" is not limited to consumer gadgets and social media. As software eats the world,[7] our laws that were intended for technology or traditional industries end up affecting so much more than was anticipated. The poor effects of a precautionary environment are therefore so much more potentially far-reaching. An effective embrace of permissionless innovation will not be limited to one small sector or technology; it must be both broad and comprehensive.

Sources of friction in Florida

A strong vision and guidance statement of permissionless innovation will provide clear direction to policymakers looking to address new technologies as they arise. There is also a need for regulatory review. After all, our current policies employ some combination of previous permissionless and precautionary thinking. To the extent that the rules on the books impose precautionary barriers without a commensurate need or benefit, policymakers should consider reform measures.

Quantifying our regulatory picture

The state of Florida boasts a highly competitive fiscal environment: the Mercatus Center at George Mason University ranks the Sunshine State fourth in the nation for fiscal health,[8] while the ALEC-Laffer State Economic Competitiveness Index, "Rich States, Poor States," ranks Florida the second best-positioned in terms of economic outlook.[9] Yet Florida can improve its regulatory posture to be even more competitive.

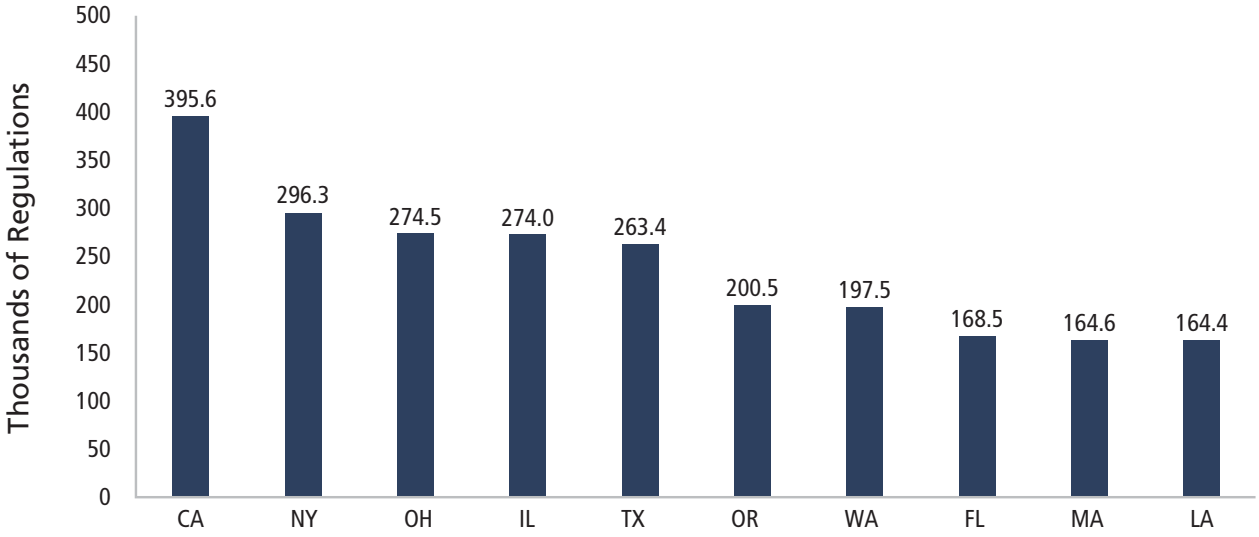
As of 2020, Florida's state code contained roughly 11 million words that impose 170,890 restrictions on individuals and organizations.[10] This is according to the Mercatus Center's QuantGov project which analyzes and quantifies government regulations. The project employs data analytics to scan regulatory codes and determine how restrictive they are based on the number of textual restrictions—words like "shall," "must," "may not," "prohibited" and "required."

A glance at the national QuantGov heatmap of regulatory concentration suggests that Florida is one of the more relatively regulated states.[11] It is not quite as bad as the dark blue of big government California, but it is among the more regulated states in the relatively unimpeded South.[12]

The most regulated states tend to be the most populated: California, New York, Illinois, Ohio, Texas, and Florida make the top ten.

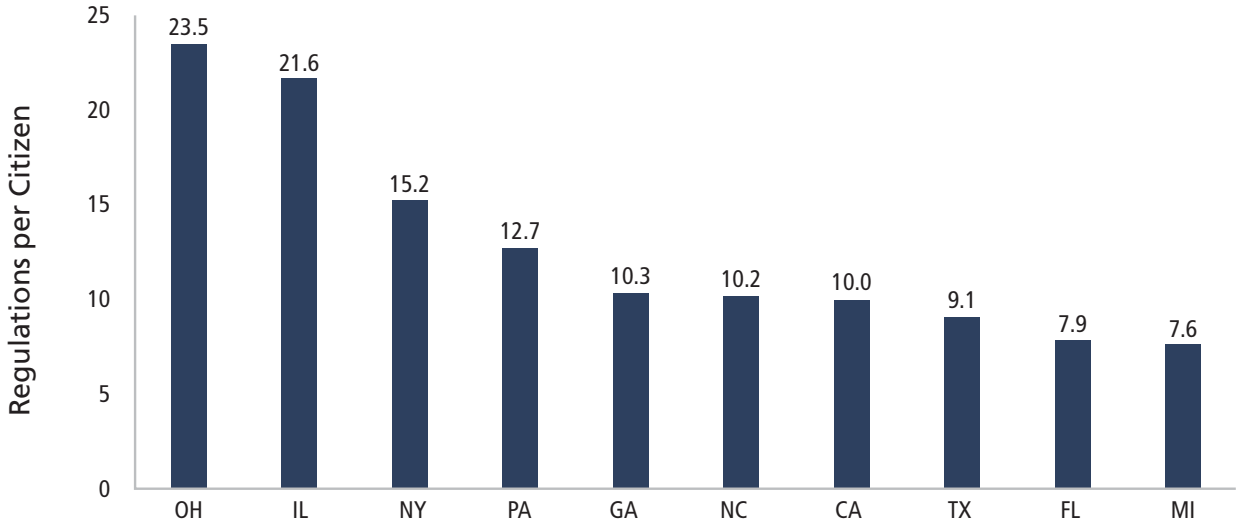
The Mercatus Center produced an in-depth dive into Florida's regulatory code in 2017[13]. It reports that it

Fig. 1: Top ten most regulated states by total number of regulations



Date source: James Broughel and Patrick McLaughlin, "Quantifying Regulation in US States with State RegData 2.0," Mercatus Center at George Mason University. August 31, 2020. https://www.mercatus.org/publications/regulation/quantifying-regulation-us-states-state-regdata-20.

Fig. 2: Top ten most regulated states by per capita regulations



Date sources: Population data from US Census. Regulation data from: James Broughel and Patrick McLaughlin, "Quantifying Regulation in US States wth State RegData 2.0," Mercatus Center at George Mason University, August 31, 2020. https://www.mercatus.org/publications/regulation/quantifying-regulation-us-states-state-regdata-20.

would take a person some 15 weeks to read the entire *Florida Administrative Code* (FAC). Florida businesses must navigate these rules every day, in addition to the 1.08 million additional restrictions in the federal regulatory code.

Florida's regulatory picture has changed little since the Mercatus Center released their updated figures in 2020. Due to methodology changes, there is great variation in the top regulated industries. For Florida and some of the states collected a few years ago, a different version of the industry classifier was used (version 2.2 in 2017 and version 3.0 in 2020). The newer algorithm is more accurate, but different enough that it may cause some major discrepancies between the two years of data. In addition, the unit of analysis was changed (i.e. the documents being analyzed) in Florida from "department-division-chapter-rule" in 2017 to "department-division-chapter" in 2020 (this caused the analysis to cre-

Fig. 3: Top ten most regulated industries in Florida by number of regulations, 2020

Date source: James Broughel and Patrick McLaughlin, "Quantifying Regulation in US States wth State RegData 2.0," Mercatus Center at George Mason University, August 31, 2020. https://www.mercatus.org/publications/regulation/quantifying-regulation-us-states-state-regdata-20.

ate fewer but larger documents, which is better for the accuracy of the industry classifier), which likely also changed the overall industry composition.

For instance, now "religious, grantmaking, civic, professional, and similar organizations" top the list of most regulated industries in Florida. Mercatus researchers believe that this unusual industry is the "most regulated" in the data because state governments often write rules that constrain itself. These "regulations" would therefore in fact be good governance restraints.

Beyond that, many of the top regulated industries were also those that were the most regulated in 2017, especially those concerning the environment, agriculture, food sales, and science and technology.

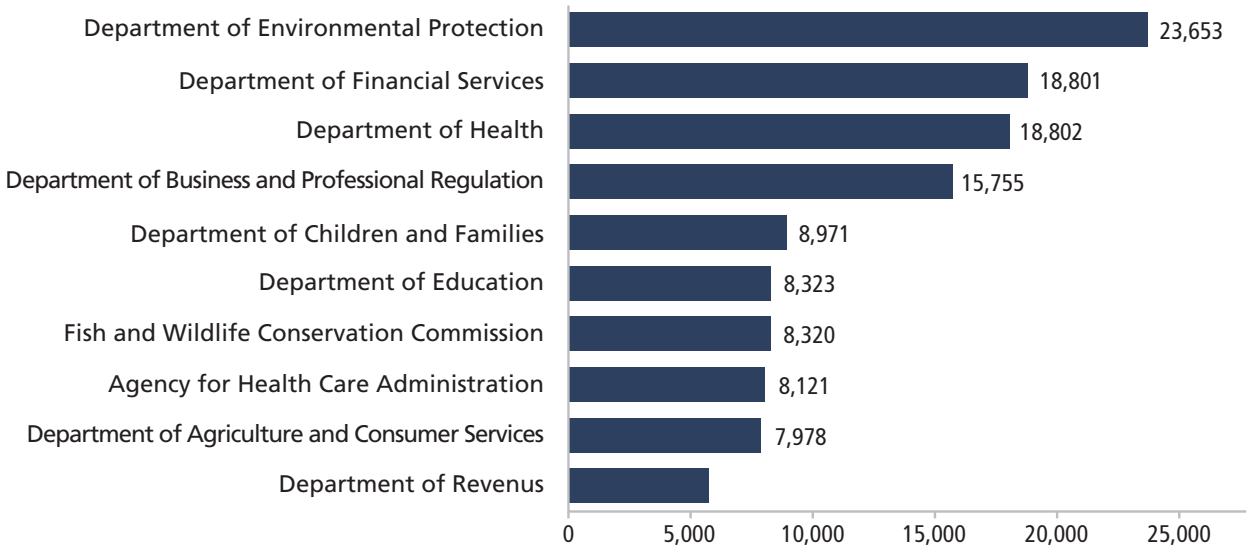
Some industries are more regulated than others. In Florida, the top 10 most regulated industries are (as of 2020):

1. Religious, grantmaking, civic, professional, and similar organizations (16,048 restrictions)
2. Waste management and remediation services (8,799 restrictions)
3. Administration and support services (7,582 restrictions)
4. Professional, scientific, and technical services (7,238 restrictions)
5. Animal production and aquaculture (5,951 restrictions)
6. Food and beverage stores (4,773 restrictions)
7. Educational services (4,187 restrictions)
8. Crop production (4,048 restrictions)
9. Broadcasting (except internet) (3,565 restrictions)
10. Petroleum and coal products manufacturing (3,533 restrictions)

The FAC can also be analyzed by regulatory body. In Florida, the top ten regulatory agencies (by number of restrictions as of 2020) are:

1. Department of Environmental Protection (23,653 restrictions)
2. Department of Financial Services (18,801 restrictions)
3. Department of Health (18,082 restrictions)
4. Department of Business and Professional Regulation (15,755 restrictions)
5. Department of Children and Families (8,971 restrictions)
6. Department of Education (8,142 restrictions)
7. Fish and Wildlife Conservation Commission (8,320 restrictions)
8. Agency for Health Care Administration (8,121 restrictions)
9. Department of Agriculture and Consumer Services (7,978 restrictions)
10. Department of Revenue (5,838 restrictions)

Fig. 4: Top ten regulatory bodies in Florida by number of regulations, 2017



Date source: James Broughel and Patrick McLaughlin, "Quantifying Regulation in US States wth State RegData 2.0," Mercatus Center at George Mason University, August 31, 2020. https://www.mercatus.org/publications/regulation/quantifying-regulation-us-states-state-regdata-20.

It is not surprising that regulations involving things like chemical manufacturing, food production, and aquaculture—largely promulgated by bodies like the Department of Environmental Protection—top the list. Florida is a tourist state, and our natural beauty is not only a key draw, but also a blessing we enjoy. Such activities may produce industrial waste products that negatively impact our environment. It makes sense that our state should seek to protect our environment.

Yet more regulations do not necessarily correlate with better outcomes. Obviously, too many regulations (or vague regulations) can do little to achieve intended goals while placing considerable impediments on industry and innovation. And when the regulations are openly precautionary—that is, when they proactively ban or limit specified activities—growth and development are forestalled.

Regulatory reform case study: certificate of need laws

We don't need to entertain hypotheticals to understand the benefits of smart regulatory reform in our state. Florida leads the nation in certificate-of-need (CON) law reform.[14] CON laws exist in many states and require healthcare providers to obtain permission from a government board before being allowed to expand facilities or services.[15]

The intent of CON laws was ostensibly to control costs by preventing redundancy in healthcare investments. Yet the opposite has resulted: states that have more onerous CON law requirements have less supply of healthcare stock and therefore higher prices and lower access.[16] CON laws are an excellent illustration of the pitfalls of precautionary thinking. Not only are consumers clearly worse off, as they have to pay more money for inferior and scarcer products, but innovative alternatives are snuffed out by government boards. It is hard to know what works better if you are not allowed to try.

Gov. Ron DeSantis's approval of HB 21 in 2019 dramatically slashed Florida CON laws, thereby unleashing the potential for expanded healthcare access and innovation in our state. The reforms removed CON requirements that hospitals, complex rehabilitation beds, and tertiary hospital services (such as pediatric, obstetric, and gynecological services provided at a hospital facility) receive approval from the Agency for Health Care Administration (ACHA) starting on July 1, 2019.[17] (CON laws for specialty hospitals are slated to expire in 2021). These changes mean that new healthcare services in these areas need not seek CON approval before building—they must only obtain the standard AHCA operating license.

Although Florida's post-CON experience has been brief, the reforms are already paying dividends. Before the reforms, ACHA had only fully approved around half of the 318 CON applications received between 2014 and 2018.[18] Now that many of the CON requirements have been waived, such new healthcare services can much more easily expand in our state.

For example, BayCare Health System is investing $200 million in a new hospital facility that is close to the already-existing AdventHealth Hospital in Wesley Chapel.[19] BayCare had purchased land for the hospital back in 2006, but building was stalled due to the fact that ACHA had already awarded a CON to AdventHealth. ACHA determined that the area simply already had enough hospital beds. But with the dissolution of the CON requirement, now denizens of Wesley Chapel can enjoy more healthcare options with the new BayCare hospital facility.

Florida is fortunate that it undertook these needed CON reforms to liberate much of our healthcare supply from precautionary regulations before the COVID-19 pandemic struck. By not requiring providers to seek permission before rolling out certain new services, Florida has been much better able to handle the shocks to our healthcare system.

Similar reforms aimed at encouraging more telemedicine services in Florida have likewise alleviated the new challenges we have faced.[20] In the meantime, Florida can build on these successes by considering reforms to overcome our growing shortage of healthcare providers[21] by allowing the roles of licensed and non-licensed health personnel to expand in scope.[22]

In each case, our policies have moved or should move from a more precautionary environment to one that is closer to an environment of permissionless innovation.

Finding more regulatory "CONs"

CON laws provide one excellent case study of how a precautionary regulatory environment can prevent access, growth, and innovation. By moving to a more permissionless (but far from unregulated) system, Florida has allowed more options and opportunities for healthcare services in our state. There is still more work to be done: remaining CON laws on things like eldercare facilities should likewise be scrutinized for reform.

When it comes to technology, oftentimes, innovation gets unintentionally caught in a regulatory web in ways that policymakers did not intend. This is an illustration of what's called the "pacing problem," or the tendency for technology to develop exponentially while laws and regulations proceed only linearly at best.[23] Laws simply cannot keep up with the fast pace of innovation. So, entrepreneurs may find themselves lacking certainty about how existing rules apply to their new developments. They understandably worry that the letter of old laws may put them on the hook for their otherwise legally unaddressed applications and services.

As such, some of the rules on the books serve to stifle innovation in technology in ways that the original policymakers either did not intend or could not have foreseen. Here are just a few examples in the areas of cryptocurrency, drones, and telemedicine.

Money transmission and cryptocurrency

Cryptocurrency provides one great example. These peer-to-peer technologies allow individuals to send money and data anywhere in the world without having to rely on any trusted central party to move or secure funds. This is an innovation that affords new financial opportunities for underserved communities that lack access to traditional financial services as well as people who merely want to maintain full control of their finances.

Yet the current state of Florida law generates much regulatory uncertainty for the use of cryptocurrency in our state. Money transmission regulations, for instance, require central trusted parties to obtain a license, pay fees, and submit to audit and recording requirements to legally be allowed to hold and transfer customer funds in our state.[24] The justification is to protect consumers from irresponsible or malicious stewards.

Cryptocurrency users and businesses that do not hold funds on another party's behalf clearly should not be subject to money transmission regulations intended to protect consumers since, in this case, there is no consumer to protect. Yet lacking a regulatory update that clearly exempts non-custodial cryptocurrency applications, this industry has been largely stalled in our state. Other states, such as Wyoming, that have made these commonsense updates to money transmission laws have been rewarded in the form of attracting a booming cryptocurrency industry.[25] Florida can and should do the same.

Drones

Drones, or unmanned aerial vehicles (UAVs), are a technology holding promise for a wide range of industries, many of which are important to Florida's economy. Agriculture, for instance, stands to gain from observation and delivery functions that drones can generate. There are health applications: seniors can quickly receive deliveries of pharmaceuticals safely from their own home. And retail sellers show obvious interest in the use of drones for deliveries of all kinds.

Unfortunately, Florida's laws must be updated before drones can really take flight in our state. A study from the Mercatus Center ranks all of the states for their policy readiness for drone applications.[26] Florida clocks in at a less-than-desirable #41.

The report provides simple recommendations for Florida to improve its drone policies. For instance, expressly specifying air rights for property owners could lower the litigation risks for drone operators by limiting the threat of punitive lawsuits. One good place to start would be to create an "aviation advisory committee" composed of industry and academic experts to specify tweaks to established law that would encourage the development of a state drone industry. Such policies could expand our 5.6 drone-related jobs per 100,000 Floridians into a larger share that reflects our large and future-focused economy.

Health technology

It is especially important that a state with a large elderly population such as Florida get its regulations around healthcare and health technology correct. According to the evidence, however, Florida has much to improve on this dimension.

According to the Mercatus Center's Healthcare

Openness and Access Project, Florida ranks 47th in the nation in terms of access to care among the states.[27] While the ranking considers all policies that might affect healthcare access, which includes non-technological factors such as labor regulations on things like scope of practice and continuing education, many of the regulations do impact the possibility frontier for cutting-edge medical technology.

For example, telemedicine has proven to be a promising means to deliver more quality healthcare to more people without congesting physical offices. This is particularly important during the time of a pandemic, as vulnerable populations may seek to cut down on the risk of physical exposure.

Gov. Ron DeSantis made great progress in welcoming more telemedicine options in Florida with the signature of the HB23 telehealth bill.[28] It established standards of practice for telehealth, authorized limited telepharmaceutical activities, and established a process for out-of-state providers to offer telehealth services in Florida. Yet as the Mercatus report points out, there are simple reforms that Florida could undertake to expand telehealth access; for example, by loosening telepharmacy location laws and reimbursing Medicaid providers at parity for remote monitoring and store-and-forward telemedicine services.

How to establish and protect a pro-innovation code

Just as Ulysses tied himself to his ship so he did not succumb to the irresistible song of the sirens as he approached their craggy banks, so too do prudent governments bind themselves to the mast of good governance. Legislators seeking to update and streamline our regulatory code to allow more space for growth and innovation would do well to consider institutional reforms to tie themselves to the mast of reform. This will ensure that reform extends beyond one-off deregulatory pieces of legislation to create a system of governance oriented towards constant regulatory improvement.

There are two approaches to institutional regulatory reform. Policymakers could institute reforms that are backwards-looking, and seek to prune the code of outdated, unnecessary, or overly burdensome rules. Or they could implement forward-looking reforms that create mechanisms to encourage parsimonious regulations in the future. Or they could choose to pursue both, as they complement each other.

To start, Florida should improve upon backwards-looking reforms such as our established regulatory review commission so we can work from a cleaner slate. To cement a regulatory environment that is conducive to growth and innovation, the state should also consider forward-looking reforms that encourage a more nimble and appropriate regulatory framework. There are many methods to achieve these ends, which we will consider below.

How to build on previous efforts

Florida is no stranger to regulatory reform.[29] In 1991, Florida attempted to tackle the growth of occupational regulation through the Sunrise Act.[30] This Act required that the legislature must project the economic impact of new occupational licensing proposals before passing legislation. Yet this was limited to one small category of regulation, and only concerned new regulations that passed the legislature, rather than those promulgated by regulatory agencies.[31]

More recently, then newly-elected Gov. Rick Scott made regulatory streamlining a key element of his administration. His inaugural address followed up on campaign promises to rein in regulations and implement regulatory lookback policies to prune the code of job-killing red tape. He followed through with Executive Order 11-01,[32] which temporarily suspended the issuance of all new regulations and created the Office of Fiscal Accountability and Regulatory Reform (OFARR) to serve as an administrative coordinator of the cross-government deregulatory efforts.

EO 11-01 was not without controversy. Legal challenges regarding the boundaries of executive authority

ensued. Gov. Scott followed up with a watered-down Executive Order 11-72 that accomplished similar ends while avoiding legal controversy.[33] After the Supreme Court ruled that the governor had overstepped his authority, he issued Executive Order 11-211, which eschewed regulatory freezes altogether and instead outlined the role and duties of OFARR in providing regulatory analysis and review.[34] EO 11-72 and EO 11-211 later received legislative support through HB 7055, which reaffirmed their legal soundness.[35]

Gov. DeSantis issued a directive to all regulatory agencies in November of 2019 that further clarified OFARR processes and directed all agencies to review and report any rules due for reform by September 1, 2020.[36] The directive notably implemented a mandatory sunset provision of no longer than five years unless otherwise indicated in law.[37]

EO 11-211 authorizes the OFARR to "review proposed and existing agency rules and regulations" to ensure they do not restrict entry into a profession, adversely affect the availability of services to the public, unreasonably affect job markets, place unreasonable restrictions on job seekers, impose unjustified costs on business, impose an overall unjust economic impact, or contravene statutory rulemaking directives. OFARR may engage in retrospective review of agency analyses, identify regulations that are good candidates for repeal, and make recommendations for how to change such policies.

Most notably in terms of administration, OFARR requires rulemaking agencies to submit reports projecting the economic impact of proposed rules. If an agency wishes to submit a new regulation, it must first issue a rulemaking notification form to OFARR at least one week prior to publication. If that rule will significantly impact economic activity, the agency must file what's called a Statement of Estimated Regulatory Costs (SERC) form which projects the extent to which the rule will harm income or employment.

Although the creation of OFARR was unfortunately mired in legal controversy, its formation was actually quite innovative. Most states have some entity to project the costs and benefits of proposed legislation. Regulations also have great economic impact but, until fairly recently, few states had created any kind of regulatory review body.[38]

In contrast, the federal government has engaged in regulatory review procedures since 1980 with the creation of the Office of Information and Regulatory Affairs (OIRA).[39] Just as the Congressional Budget Office will offer a "score" of proposed legislation that projects future costs and benefits, OIRA analyzes proposed regulations that may have significant economic impact. This gives policymakers a clearer picture of what their rule changes might do and provides opportunities for reform when the costs are found to exceed the benefits. OIRA review is not perfect,[40] but has improved over time, and at least provides a starting point for conversation about what the unintended consequences of regulation may be.

OFARR is a kind of OIRA for the state of Florida and can be a great tool for continued regulatory improvement. The politics surrounding the creation of OFARR are well behind us. Despite the momentary uncertainty, these regulatory review efforts were not without success.[41] According to then-Gov. Scott's office, these deregulatory efforts were responsible for eliminating some 4,200 regulations.[42] However, regulatory scholars have noted that the main outcome of Florida's early deregulatory efforts has been the publication of reports that indicate which regulations can be cut without consistent measurements of progress.[43] Furthermore, these regulations can sometimes be counted more than once, which leads to an inflation of numbers.

Still, the creation of OFARR was a forward-looking and promising step to a more permissionless regulatory code. After all, many states lack any formal regulatory review body at all. Lawmakers should look to strengthen and focus OFARR as we work to further improve our rules and rulemaking.

One easy change that OFARR could make is to explicitly consider whether a rule is precautionary or permissionless along with its effects on jobs and income. This would help to focus lawmakers on the overall regulatory culture and consider alternatives to precautionary regulations.

Retrospective regulatory review

Legislators should consider the path put forward by the Mercatus Center's step-by-step guide to reduce state regulation levels.[44] Several states have applied elements of these regulation reduction plans to great impact: Rhode Island eliminated one third of its rule pages,[45] Virginia implemented a regulatory budgeting system,[46] and Idaho repealed its entire regulatory code to start over with a more appropriate code.[47]

The steps are as follows:

1. Define the regulatory burden and establish a baseline: To reduce something, you have to know what that "thing" is. Quantifying state regulations is the first step to reduction. In Florida's case, that quantification has already been done in the form of the state RegData project. As we discussed earlier, Florida's top-most regulated industries include waste management and remediation services and administration and support services.[48] Top regulators include the Department of Environmental Protection, the Department of Financial Services, and the Department of Health. Those are obvious areas for initial review.
2. Set a target reduction goal and a deadline: These must be concrete. Legislators should decide how much they wish to reduce the regulatory burden and by when. Clearly defining this will increase the chances for successful reform. These goals need not be crude; they can be tailored to the particulars of a given industry or agency. For instance, an agency that has a larger regulatory footprint may be tasked to reduce more regulations than an agency with comparatively fewer regulations.
3. Designate an oversight mechanism: Unfortunately, politicians do not always have the best incentives to cut regulations, even when they may agree with the goal. Incumbent firms often benefit from strict but unnecessary regulations that hamstring their competition. So, politicians may avoid reforms that risk angering powerful interests. OFARR is a natural choice to lead new regulatory reform efforts enhanced by the granular quantification of the RegData project.
4. Ensure regulator buy-in: Regulatory reform efforts have the best chance of success when regulators feel that they are part of the effort. As mentioned earlier, the 2011 regulatory reform effort was unfortunately marked by politics and controversy. While the resulting institutions give reform-minded lawmakers much to work with, the lack of agency buy-in likely stymied success. Agencies have much to bring to the cause of regulatory reform as subject matter experts. They know their rules and industries better than an analyst in OFARR might. If regulators are bought in and incentivized towards success, reform efforts will face that much less resistance.

So, simply stated, the state should 1) identify and prioritize regulatory problems, 2) set measurable goals and deadlines, 3) empower the proper body to oversee these efforts, and 4) empower regulators to harness their expertise to best prune their rules. Along each step, reformers must keep in mind the general vision to allow the greatest space for innovation by minimizing the number of activities for which government permission will be required.

It is important that a non-legislative, expert body (such as OFARR working with regulatory agencies) be empowered to lead this deregulatory effort. The reason comes from insights from the economic field of public choice. This academic study of government decision-making emphasizes the incentives facing public actors. Politicians have a strong incentive to promote policies that benefit their constituents and increase their chances of winning reelection. Therefore, elected legislators may find it difficult to vote for deregulatory policies that might remove a beneficial barrier to entry for his or her constituents.

This was the problem facing the federal government in the 1980s and 1990s as it sought to scale back expenditures on domestic military bases.[49] Multiple analyses had demonstrated that the government's spending on bases was inefficient and that certain bases should be closed down. Yet no politician wanted to be the one to return to his or her constituents and explain why their base (and resulting spending and jobs) was allowed to be closed down. To overcome this public choice limitation, the government created independent Base Realignment and Closing (BRAC) commissions to issue reports and binding recommendations for which bases should be closed regardless of political considerations. Not only did this help the government to make evidence-based decisions for which bases should be closed, it removed potential political backlash from legislators who otherwise supported reform efforts.

Regulatory review commissions like OFARR can therefore serve as a kind of "regulatory BRAC commission." Not only does such a specialized independent body encourage expert analysis, but it also better aligns the incentives to increase the odds of successful reform.

Florida has already implemented this kind of regulatory review for occupational licensing. In 2019, Governor DeSantis announced his intentions to pare back

these employment regulations in a "Deregathon" with the cooperation of the Department of Business and Professional Regulation (DBPR).[50] One and a half years later, this effort yielded dividends in the form of the "Occupational Freedom and Opportunity Act" which removed barriers to employment that were identified through efforts like the Deregathon.[51] Because the DBPR was brought in from the beginning, regulators had first-hand knowledge and buy-in for the resulting reforms. Such a model can be expanded to affect other regulations that may impede economic growth that are identified in the QuantGov project.

Prospective regulatory process reform

It is not enough to clean up Florida's old regulatory code. As the regulatory economists Patrick McLaughlin and Tyler Richards have observed, "A crash diet alone is never enough to lose weight if just as quickly old eating habits set back in."[52] For lasting success, the state should also implement forward-looking processes that encourage good regulatory governance into the future. There are many ways to do this, but some particularly promising ones are below.

Regulatory budgeting: Most state governments have some kind of balanced budget amendments; these serve both as a credible commitment to fiscal management and a convenient excuse to make necessary but unpopular decisions.

Regulatory codes get less attention, but they can be just as (if not more) impactful on citizens' lives as state budgets. An appropriate regulatory code will protect consumers and innovation. A burdensome regulatory code will hinder growth and welfare with little corresponding benefit.

Despite the great impact of regulations on quality of life, fewer governments have traditionally codified "regulatory budget" reforms. This was partly due to relative legibility; it is simply easier to quantify and reduce the number of dollars spent than the impact of regulations.[53] Many governments did not even know how many regulations they had. You can point to the number of pages but, depending on the content, a regulatory code may be more or less burdensome.

As mentioned, the state of Florida and OFARR can benefit greatly from the quantified RegData project, which can help legislators to craft meaningful regulatory budget policies that encourage regulatory parsimony. Not only does RegData amass and tabulate state regulations, but it also assigns a complexity score to each rule so that policymakers can sift through higher and lower priority rules for reform. In other words, targeting one complex and burdensome rule can yield greater dividends than slashing several rules that don't have great negative impacts anyway.

In implementing regulatory budgeting policies, Florida should consider the example of British Columbia.[54] In 2001, the BC government set out to slash its accumulated regulations by one third, as measured by "regulatory requirements"—a measure similar to RegData's quantification of terms such as "shall," "must," and "prohibit."[55] Once the deadwood was cleared out, policymakers maintained this level of regulation through a "one-in, one-out" regulatory requirement budget. That is, for every new regulation that is implemented, an agency would have to slash an old regulation.

British Columbia was handsomely rewarded for this wise regulatory reform: its economy moved from one of the slowest-growing economic provinces to one of the most prosperous, all with no negative impact on safety and environmental outcomes.[56]

Florida should consider such simple regulatory budgeting rules to encourage regulatory parsimony and keep our state on a good legal diet.

Robust economic analysis: The state of Florida should consider reforms to strengthen the quality of our economic analysis of regulations.[57] Although our state has been fairly forward-looking in terms of regulatory analysis when compared to other states, we can take a page from the federal government's OIRA processes as well as examples from other countries.

As mentioned, the state of Florida conducts some form of economic analysis of regulations under the watch of OFARR. Regulatory agencies that wish to implement economically significant regulations must complete a SERC form and file it with OFARR. The form asks the agency to consider questions such as "Is the rule likely to reduce personal income?" or "Is the rule likely to reduce visitors to Florida?" Agencies are then asked to project the initial and recurring costs that the regulation will impose on various groups. Then the agencies are asked to report whether they had received any "good faith alternatives" to regulation, whether they had accepted or rejected those proposals, and why or why not.

That Florida requires its agencies to consider such questions is a great start. But there are ways to enhance the current level of economic analysis.

First, Florida should improve the transparency surrounding OFARR and agency economic analysis. Right now, an interested citizen would have a hard time finding the completed SERC forms for proposed regulations. The OFARR website only offers blank templates for the SERC forms as well as years-old catalogues of rulemaking notices,[58] not a publicly-accessible repository of all proposed regulations and the SERC forms on file. Not only is this less than ideal in terms of good governance, but it also makes it harder for independent economists and citizen groups to weigh in on proposed regulations and offer the "good faith alternatives" that the SERC form invites. Furthermore, posting all regulatory impact analyses online could help to encourage long-term accountability. Perhaps a regulation ends up being more onerous than originally anticipated. Researchers and interested citizens could compare the actual effects to the original projections to identify regulations in need of tweaking.

Next, Florida could consider hiring staff economists or independent analysts to consistently or periodically audit agency SERC submissions. There are some reasons that you might want an agency to perform its own analyses. They may be subject matter experts and could have a closer eye to the dynamics of an industry than a generalist economist would. Yet the downside is that an agency analyst may have a tendency to underestimate the costs of their preferred regulations. Hiring neutral economists or outside analysts to double-check such economic analyses could provide a much needed second set of eyes to improve the quality of analysis and hopefully limit the final cost of regulations.

Finally, Florida should ensure that regulatory analysis fundamentally embodies the proven principles of good regulation. Specifically, regulations should:

1. Solve a real, widespread problem;
2. Be compared to multiple alternative regulations (and alternatives to regulation);
3. Provide the most benefits for the least cost; and
4. Not unfairly benefit some groups or technologies at the expense of others[59]

When considering regulations that will impact technology and innovation, agencies should take particular note of the second and fourth principles. They both relate to the question of whether a proposed regulation is premised on the precautionary principle or permissionless innovation. Florida could consider asking agencies to explicitly state whether or not a proposed regulation will be precautionary or permissionless. When a regulation is deemed to be precautionary, regulators could explain why those precautions are necessary, and whether any alternatives are viable. Such an exercise could help agencies better fine-tune new rules to allow the greatest possible space for innovation and growth.

Automatic provisions: Oftentimes, government regulations persist for far longer than is necessary not because of any ill-intent on the part of regulators, but that they just stay on the books because no one has revisited them. This kind of "regulation on autopilot" can be prevented with a few simple automatic regulatory provisions.[60]

One example is automatic sunset provisions, which require that regulations be retired within a certain amount of time unless the regulators can make a case that the rule is socially beneficial.[61] One review of state regulatory reforms found that automatic sunset provisions were the single most important factor that separated successful reforms from unsuccessful ones.[62]

Florida recently established that regulations must in most cases have an automatic sunset period of no longer than five years.[63] This is a fantastic development for regulatory parsimony. The state could consider shortening the sunset period to two or three years, in light of the fact that technology is fast-moving, and regulations may therefore require more frequent reevaluation.

Sandboxes: One of the reasons that regulations kill innovation is that new market entrants often cannot shoulder legal burdens in the way incumbents can. This prevents the next big startup from rolling out developments that could revolutionize industries and change people's lives for the better. Yet full scale regulatory reform is often difficult to achieve in the short-term.

One solution to this problem is the "regulatory sandbox." These innovative governance strategies create a space for new innovators to provide cutting-edge products and services with a more stripped-down regulatory regime. For instance, licensing requirements may be waived for new businesses that do a certain level of commerce. Regulators still have oversight of sandbox companies, yet they are afforded the space to grow without the often-stifling burdens of precautionary regulation.

Florida is no stranger to regulatory sandboxes. In 2020, Gov. DeSantis signed a regulatory sandbox for financial technology, or "fintech," companies into law.[64]

This forward-looking law allows new entrants into banking and financial services to operate without expensive licensing and reporting requirements. This will allow innovative companies to grow and serve customers where they otherwise might have been stymied. Once they outgrow the sandbox, they will be subject to the established regulatory regime, albeit now in a much stronger position to withstand it.

Florida could consider sandboxes for other industries and technologies. For example, Utah has greenlit an innovative regulatory sandbox for new legal services intended to overcome the "access-to-justice gap."[65] Vermont opened a regulatory sandbox for innovative insurance arrangements.[66] For every promising and innovative industry, there is a good case to be made for a regulatory sandbox.[67]

Florida could go one step further and create an industry-agnostic sandbox. This was the approach offered by Tennessee's proposed "Licensing Innovation Act."[68] Rather than creating a specific regulatory sandbox for each industry, the Tennessee law would allow any business to submit a general regulatory waiver request to a commission who would review the requests and grant them to businesses which proved great consumer benefit.

Putting it all together

As the US experience with technology policy demonstrates, embracing a posture of permissionless innovation is a key determinant of technological development and growth. At the other extreme, the European experience shows that implementing precautionary barriers to innovation in policy will stymie growth and leadership in cutting-edge industries.

The same principles apply on the state level. As states like California and New York continue to implement hostile precautionary measures that prompt firms to reevaluate their positions, Florida has a great opportunity to enshrine permissionless innovation policies in vision and law.

Florida has all the right ingredients to create long-lasting regulatory processes that can deliver a welcoming space for growth and innovation far into the future. We have a fiscally responsible legislature and reasonable regulatory environment. We have a regulatory review office, OFARR, that already implements the research-tested analyses that encourage effective and parsimonious regulation. And we have forward-looking leadership that has rolled out cutting-edge governance models such as regulatory sandboxes and cost benefit analyses that other states have yet to even consider.

The release of the new state QuantGov data from the Mercatus Center provides lawmakers with an even more fine-toothed comb to understand our regulatory friction points and target those most inimical to growth.

With these tools, the state of Florida should implement the following policies to secure a long-lasting pro-innovation environment:

1. Adopt a vision statement outlining the state's embrace of permissionless innovation;
2. Empower agencies to engage in robust cost-benefit analyses with a specific focus on whether proposed regulations are precautionary on new technologies;
3. Encourage regulatory agencies to view permissionless innovation as a key consideration in regulatory decisions;
4. Enact legislative reforms to sunset all regulations without supporting justification after three years;
5. Encourage OFARR and all regulatory bodies to be more transparent with SERCs so that the public and expert analysts can review proposed regulations and offer comment;
6. Create a task force to review the Mercatus QuantGov dataset to identify regulatory friction points that should be alleviated through reforms;
7. Enact a legislative reform for additional regulatory sandboxes, including an industry-neutral sandbox;
8. Require agencies to adopt a "regulatory budget";
9. Create a "regulatory BRAC commission" to independently evaluate existing rules and recommend which should be cut;
10. Build a government culture where innovators are presumed to be free to experiment unless there is a compelling and concrete reason to intervene.

Florida already has a reasonable regulatory state and an exceptional record of fiscal management. These simple policies can cement Florida's governance successes for generations to come and ensure that the Sunshine State radiates a welcoming environment for dreamers and innovators.

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