

West Virginia Supreme Court Keeps Us Poor

Sometimes, when we speak about policies and regulations that have an impact upon the business climate within West Virginia, the influence is pretty easy to observe. Clearly, our unfriendly business climate keeps businesses from operating within our borders. High taxes and needless regulation push companies that wish to serve our citizens immediately beyond our state borders. Economic reasoning predicts this result, satellite imagery confirms it, and our state's economic well being is a daily reminder. Fortunately, this reality is now commonly understood; to doubt now that a poor business climate is the driving factor behind West Virginia's economic doldrums is akin to questioning that gravity is the reason why we all don't drift out into space.

Other factors, however, are not as clear cut; the impact of the judicial system upon an economy is a good example. To be certain, America's judicial system is preferable to many others worldwide. By and large, all Americans receive just and fair trials concerning violations of a clearly defined legal code; compared to lesser regimes, where arbitrary jailings followed by baseless prosecutions are commonplace, we've got it pretty good. Stories concerning judicial shortcomings here in the U.S. are surprising not only by their nature—and there are gross miscarriages of justice that put a black eye on the entire system—but also by their frequency, or lack thereof. Considering the volume of cases handled, the appalling examples are, while not to diminish their impact on those affected, a drop in the collective legal bucket.

It is the overall soundness of the American judicial system that is a crucial ingredient to our prosperity. Without a stable, reliable legal environment that shields us from harm and our property from takings, individuals must devote more resources to defending themselves and their possessions, or devote time and effort to moving themselves into jurisdictions that will protect what they own. And while the overall structure of the American judicial system is sound, there exist discrepancies between the individual states' legal structures that have real economic effects.

States with poorer judicial systems encourage “bad” entrepreneurship; that is, instead of competing through the market system for the betterment of society, individuals and corporations instead lobby for transfer payments and regulatory favoritism. This negative competition diverts resources away from the productive process into the political process, and by doing so, reduces the well-being generated by the economy.

The Institute for Legal Reform ranks each state's liability system in an effort to gauge the propensity for legal misuse within each jurisdiction. Not surprisingly, those states at or near the bottom in income per capita—Alabama, Mississippi, West Virginia—are the same states with the worst legal environment.

Recently, a ruling by the West Virginia Supreme Court highlights exactly the impact of our state's weak judicial system upon our state's economic growth. Chesapeake Energy scrapped its plans to build a \$30 million headquarters in Charleston after having its request for appeal over a case concerning gas rights unanimously denied by the five

member, partisan-elected panel. Mind you, this ruling is not a decision upheld—it is an exclusion from the appeal process. Feeling no voice in the judicial system of West Virginia, it is not surprising that Chesapeake decided to forego their construction plans.

Many consumer protection outfits have claimed this ruling as a victory for the “little guy,” but make no mistake—when poor judicial system discourage companies from locating within West Virginia, it is the “little guy” that takes the worst hit. When businesses do not operate within the state, it is every day workers who would fill these companies’ employment rolls that suffer most. Moreover, these same groups that will champion the cause of the “little guy” will similarly pursue ill-conceived social policies that further harm him; welfare schemes that emphasize large scale redistribution will retard the economic growth needed to actually help the “little guy.” Perhaps if these groups stopped looking after the “little guy,” he might have a fighting chance.

The poorest legal systems in the country allow for takings in place of competition; West Virginia’s is the not-so-shining example. While our state could use significant improvement in many areas to extricate itself from the bottom of the country, judicial reform should highlight the list of must-have policy changes.

Matt E. Ryan is the Charles G. Koch Doctoral Fellow at West Virginia University and an associate fellow for the Public Policy Foundation of West Virginia. He is an editor of "Unleashing Capitalism: Why Prosperity Stops at the West Virginia Border and How to Fix It." He can be reached at matt.ryan@mail.wvu.edu.