

Last week ended with some promising news on finally stopping the oil spill in the Gulf of Mexico. Unfortunately, the administration still seems to believe that shutting down working oil wells is a higher priority than effectively dealing with the broken one. They are again issuing a moratorium on off-shore drilling, while maintaining a de facto ban on new permits even for shallow water drilling, which they previously stated would be unaffected. The courts have twice declared this unconstitutional, over 70 percent of the people see this as unreasonable, yet the administration seems determined to simply end off-shore drilling, at least for those producers that cannot afford to sit idle for an unknown period of time until the ban is lifted.

Whether or not this latest effort will hold up in court is yet to be seen. Sadly, many smaller oil producers in the Gulf see the writing on the wall, and instead of waiting around and risking their livelihoods on the whims of American politicians and judges, they are leaving for friendlier business climates. What is happening to this country when the Republic of Congo is better for business than the United States? One big factor is regime uncertainty.

Regime uncertainty is the opposite of the rule of law. It is the rule of the whims of the people in charge and what mood they are in on any particular day. It is usually associated with third world dictatorships and plays a major role in why some countries remain poor. When a business cannot predict whether a government will issue a permit, confiscate or nationalize their capital investments, tax them into bankruptcy, or arbitrarily stall their operations, they tend to do business elsewhere. This type of government hostility is not conducive to wealth creation and it is tragic to see it chasing away businesses here when we need the jobs and productivity more than ever.

When the rule of law is respected, it provides business with some measure of predictability so they can plan and operate smoothly. When it is not respected, there are just too many variables, too much risk of loss or waste.

Of course, disregard of the rule of law creates other problems too. For the larger and better-connected businesses, it creates the opportunity of regulatory capture. If the government becomes too unpredictable, one business survival strategy is to become so involved in government and regulatory bodies that they effectively gain control over the very entities that are supposed to keep them in line. In other words, if you can't beat the government, become the government. A business that achieves regulatory capture is also able to write and implement laws and regulations that it can deal with, but its competitors cannot. The eventual outcome is that companies use regulation to drive everyone else out of business

until a monopoly is achieved, putting consumers at its mercy.

Meanwhile, the people develop a false sense of security, assuming that the many regulatory bodies in place are protecting them. Without respect for the rule of law, however, those bodies and their regulations are more likely protecting and enabling big business at the expense of small business and the consumer.

We see this not only with big oil, but big banking, big defense contractors, you name it. This is why, especially in a crisis, we should uphold the Constitution. It is the ultimate consumer protection from crony corporatism