

House Bill 1960: Interfering with the Right to Contract

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Background

Private property rights can be viewed as foundational to all other rights of a free people. John Locke asserted that the preservation of property was the “chief end of government,” and this concept became a cornerstone of American political philosophy. The “Father of the Constitution” James Madison wrote that, “Government is instituted to protect property of every sort.” Thomas Jefferson stated, “all power is inherent in the people ... they are entitled to freedom of person, freedom of religion, freedom of property, and freedom of press.” Thomas Paine cited property as chief among inherent individual rights.

The law has often described the collection of rights in property as a “bundle of sticks.” For example, a landowner has the right to use his property, exclude others from it, convey it upon death or through voluntary transaction, and so forth. Each one of those rights are “sticks” in the “bundle” that is the full ownership of property. To own property is to possess not only the physical real estate, but also all the uses that can be made of that estate.

One way for people to benefit from their property and its use is through contracts. Contracts allow individuals to convey property or some use of property for some consideration, often in the future. Contracts allow individuals to make these conveyances (and the resulting considerations) in ways that others can rely on and to establish reasonable expectations for future actions. In other words, contracts help to protect the utility of private property. This is important, because it is utility that gives property its value.

This is why the freedom to contract is so important. Without the freedom of parties to contract, the ability to use one’s property is harmed, and the value of one’s property is subsequently reduced. Thus interference by the government in contracts between private parties is essentially a procurement by the government of some of those uses, or “sticks,” associated with private property.

House Bill 1960

House Bill 1960 (HB 1960) directly interferes with Texans’ ability to freely contract with each other, creating binding restrictions on contract negotiations between boat dealers and boat manufac-

turers or distributors. Specifically, the bill regulates the length of allowable contracting agreements—mandating a minimum term for contracts of three years. It also determines that contracts must be based and evaluated on “performance standards”—which the bill also defines, and increases evaluation, record keeping, and reporting requirements that will ultimately drive up costs to consumers.

HB 1960 also promotes monopoly, reduces competition, and creates barriers of entry into the market by requiring boat manufacturer’s to contract with only one dealer in a given “dealer’s territory,” even defining what a “territory” is for purposes of the contractual agreement between parties. Once a dealer is determined for a particular territory, no other dealer can carry the boats from that manufacturer.

Finally, the bill mandates default and renewal provisions that are generally decided between the two parties that freely enter into contract with each other. This bill significantly reduces the ability of manufacturers and dealers to preserve and defend the utility of their respective private property.

Conclusion

Contracts insure that agreements between parties last longer than their changeable states of mind and serve as a mechanism by which those parties can stabilize the future. Parties’ ability to freely contract with each other is essential to a free market and has been used to create efficiencies and lower costs to property owners, tenants, and consumers.

Government should not interfere in contractual agreements between two private parties in a market economy. Statutorily limiting parties’ ability to contract in their own interests has an adverse effect on the courts, taxpayers, and consumers in Texas. It would be bad business, and bad for the Texas economy, for the Texas Legislature to make the changes proposed in HB 1960. The unintended consequences of government intervention into the fundamental right of freedom of contract could have long-lasting negative ramifications. ★