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End the Piece Meal Defense of Property Rights

During the 2017 Texas legislative session, protecting property rights from violations by local governments was a recurring subject and the source of great controversy. Legislators introduced bills to rescind local ordinances pertaining to plastic bag bans, tree removal, short-term rentals, and more. Gov. Gregg Abbott called a special session largely for the explicit purpose of addressing property rights issues.

While these efforts at protecting property rights are admirable and worthy of our support, they amount to stomping on smoldering embers while a forest fire rages. Local governments will continue to pass ordinances that violate property rights faster than state lawmakers can override them.

State legislators have three options moving forward:

1. Legislators can turn a blind eye to these ordinances, allowing local governments to enact ordinances that they believe reflect the desires of the citizenry. This will encourage more rights-violating ordinances.
2. Legislators can continue with the piece-meal approach, but this distracts them from other issues. Local government officials will continue to dream up more ordinances that will require a growing amount of the legislature's attention.
3. Or, the legislature can address the issue in a more comprehensive and principled manner.

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The first option is an abrogation of the legislature's primary responsibility—protecting individual rights, including property rights. To ignore the threat posed by local governments is to encourage a plethora of mini-tyrannies across the state. Local governments have repeatedly shown a willingness to trample on property rights at the behest of pressure groups.

The second option promises to provoke an extended battle between the state and local governments. Fifty local governments passed tree ordinances, ten passed bans on plastic bags, and three have severely restricted short-term rentals. When we consider other issues relating to property rights, such as annexation, regulations on ride sharing companies, and property taxes, as well as the fact that the legislature meets every two years, local governments will have the state continually playing catch up.

The third option will largely stop local governments in their tracks. This option would establish a principle that would address any ordinances that local governments pass now or in the future. There would be no need to introduce and debate multiple bills during each legislative session. One bill could put an end to the trend of local governments violating property rights with impunity.

Ideally, the state would pass a bill that would rescind all ordinances that violate property rights. Politically, this is not reasonable at this time. But what can be done is expose the costs of these

violations and motivate local governments to begin the process of repeal.

The costs of property rights violations are typically borne primarily by the property owner. In those cases where a “taking” occurs, the owner receives some compensation. But proving that a “taking” has occurred is a laborious and expensive endeavor, and so, many property owners give up and abandon the process.

The legislature can make the process easier—much easier—to prove a “taking.” Any regulation, ordinance or law that restricts the use of property is a taking—it deprives the owner of his freedom to use his property as he chooses. Whether the economic costs are large or small is irrelevant. A taking is a taking. If a criminal takes an individual’s property, he is usually required to compensate the owner for his loss. The principle should not differ merely because the government is doing the taking.

Most regulations and ordinance are enacted for the stated purpose of benefiting the public. As a matter of justice, the beneficiary—the public—should pay for the benefits it receives. In short, property owners should be compensated for any costs associated with property regulations, whether those costs take the form of diminished property value or additional expenses imposed by the regulations.

If local governments had to compensate property owners for violating their rights, the costs of those violations would be exposed. Local governments would have to justify the costs of their “feel good” ordinances. Taxpayers would have to confront the costs of their votes and political support. And property owners would extract some measure of justice.

As an example, Pima, Arizona, enacted a zoning ordinance that restricted the location of fast-food restaurants in an effort to combat obesity in the city. But Arizona’s Proposition 207 allows property owners to be compensated for the loss in value of property due to regulations. When the affected property owners threatened to pursue compensation, the city dropped its obesity zoning proposal.

Admittedly, compensating property owners will not stop all property rights violations. Some local governments and taxpayers may be willing to bear the costs. But when the costs are exposed and must be justified, it is reasonable to conclude that most will prefer to repeal the regulations rather than pay the costs. And the state legislature will not be forced to deal with the ever increasing property rights violations on the local level.

This policy proposal provides a comprehensive solution to whatever regulations and ordinances local governments dream up in the future. The legislature will put local governments on notice: Do what you wish, but you will pay the price. The legislature will not have to address each new scheme or politically popular trend.

A piece-meal approach is doomed to ultimate failure. Local statisticians can and will dream up more ways to violate property rights than state legislators can stay ahead of. What is needed is a comprehensive and principled approach.

There is no moral justification for violating property rights. But politically, it is not possible to repeal all such violations. What we can do is expose the cost and make the advocates of property rights violations realize and confront the costs of their policies. We can shift those costs from the victims to the victimizers. If the public wants benefits from the owners of private property, then the public should be willing to pay for those benefits. If the public isn’t willing to bear those costs, it shouldn’t expect private property owners to do so. That is a matter of justice.



The Texas Institute for Property Rights provides analysis, training, and resources for legislators, businesses, organizations, and property owners.

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