



Protecting Property Rights and Civil Justice Reform

House Bill 2536 Puts Property Owners at a Disadvantage

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Since the U.S. Supreme Court's decision in *Kelo v New London* in 2005, the Texas Legislature has made significant strides in restoring private property rights through eminent domain reform. For even longer, major tort reforms, including addressing problems relating to venue, have put justice back into Texas' civil justice system. HB 2536 represents a setback in both of these areas.

Current law requires that "a party initiating a condemnation proceeding in a county in which there is one or more county courts at law with jurisdiction shall file the petition with any clerk authorized to handle such filings for that court or courts" (Sec. 21.013, Property Code). Where they exist, then, county courts at law have primary jurisdiction over eminent domain cases. This would change under HB 2536, but only for eminent domain lawsuits in Harris County. The bill would allow—though not require—a condemnor to file "a petition with the district [court] clerk when the amount in controversy exceeds" \$200,000. In other words, under HB 2536 condemnors at their discretion would be able to move condemnation cases from county courts at law to district courts.

Few legitimate government actions are more harmful to the rights of citizens than eminent domain. This makes it vital that the eminent domain process be focused on protecting property rights. Where they exist—which is in most counties, county courts of law in Texas have had primary jurisdiction over eminent domain proceedings for years. This has allowed county courts at law to develop the expertise and the resources to fairly adjudicate disputes over the exercise of emi-

nent domain by governments and private entities. In Harris County, these cases are handled by the county courts at law in a timely fashion with few backlogs or unnecessary delays. There are no significant issues that need to be addressed that would support the changes proposed in HB 2536.

By giving condemnors the exclusive right to determine whether a case over \$200,000 is filed in either a county court at law or a district court, HB 2536 allows condemnors to engage in forum shopping in which they can seek the court most beneficial to their case. The choice of a friendly forum for a lawsuit often predetermines the outcome, and forum shopping became one of the leading abuses in the Texas civil justice system. The Legislature in 1995 and in 2003 passed reforms to address this problem. Absent any compelling reason for allowing districts courts to hear eminent domain cases, now is not the time to reverse direction on this issue. Particularly, plaintiffs—in this case condemnors—should not be granted sole discretion to choose the venue with no ability by property owners to play a role or challenge the decision. Doing so would put property owners at a disadvantage in protecting their private property.

HB 2536 appears to be a solution to a problem that doesn't exist. Not surprisingly then, it creates a new problem that puts property owners at a disadvantage. The protection of property rights and the maintenance of fairness in our civil justice system would be better off without HB 2536. ★

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