

Immigration, alcohol and rule of law

By James C. Ho and Prerak Shah

Many Texans oppose President Barack Obama's recent executive order that purports to grant legal status to millions of undocumented immigrants. As the state's lawsuit against Obama's order explains, the opposition is not simply about immigration — it is about the rule of law.

In a society governed by the rule of law, government officials should enforce the law faithfully — as it is written — not rewrite it without legislative approval. And they should enforce the law equally, against everyone — not twist it to reward those who disregard the law, while victimizing those who respect it.

Officials in Washington have been accused of violating these basic rule of law principles. But they aren't the only ones.

Texas has a rule of law problem right here at home. In fact, one example is currently pending before the Texas Supreme Court — a lawsuit that raises serious rule of law concerns at the Texas Alcoholic Beverage Commission.

Texas liquor laws forbid any one person or entity from controlling or influencing more than one tier of the alcoholic beverage industry — manufacturing, wholesale distribution and retail sales. These laws are designed to combat monopolization and other social ills in the alcoholic beverage industry.

As the commission's own past practice and agency guidelines make clear, however, these statutes are triggered only if a person or entity actually influences or controls business operations across more than one tier.

But the Texas Alcoholic Beverage Commission has recently adopted a peculiar new theory. The commission now says that merely owning "one share of stock" in two companies engaged in different tiers of the alcohol industry violates Texas law.

This theory cannot be right. Virtually every business currently engaged in the alcoholic beverage industry would violate the commission's "single share" theory — a fact that the commission does not even bother to deny.

For example, many mutual funds purchase stock in multiple companies that do business in different tiers. Under the commission's view, however, each of those companies now violates Texas law.

Similarly, many Texas businesses are engaged in one tier of the alcoholic beverage industry but also provide retirement funds for their employees that invest in businesses in another tier. Those companies likewise violate the commission's theory of Texas law.

In short, if the commission is serious about its theory of law, it is essentially bringing Prohibition back to Texas. What's more, it is doing so without even the hint of securing the approval of such a policy by our elected legislators.

Of course, the commission is not restoring Prohibition to the state of Texas. But what it is actually doing is far worse for those who believe in the rule of law. The commission is selectively enforcing its theory of law against just a small handful of companies. What's more, it is enforcing its theory only against those companies that fully disclose their corporate structure to the commission — while blindly ignoring numerous other companies that also violate its theory of law, by asking them to disclose only limited information about their corporate structure. This turns the rule of law upside down.

Fortunately, the Texas Supreme Court asked the commission last week to respond to these objections. The commission should take this opportunity to publicly repudiate its absurd and selectively enforced single share of stock theory. If the commission fails to do so, the Texas Supreme Court should step in, declare the commission's single share theory invalid and restore the rule of law.

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