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Passage of Amendment 1 would hurt 'little guy'

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October 12, 2010 12:00 AM | 732 views | 3 | 11 |

DEAR EDITOR:

Re: Don McKee column on Georgia's proposed constitutional amendments, Monday's MDJ

Mr. McKee suggests we vote in favor of Amendment 1, stating, "It seems clear to me that people should be held to what they agree to, non-competing contracts or whatever. Since the Georgia Constitution prohibits non-compete laws, it needs to be fixed."

I would caution MDJ readers that McKee has been misled (as will be countless Georgia voters) by the language of the amendment. The language is so misleading that it ought be illegal. McKee's column very much underscores that point and importance that the language of these amendments should be required to be clear.

McKee's endorsement summarizes the current rule in Georgia, not the effect of the amendment. The current test is a reasonableness test. If an employer and an employee make a reasonable non-compete agreement, they are held to it. If not, it is rejected. This is a good rule since the employee has little to no negotiating power. This is the same rule that applies to most "take it or leave it" type contract provisions. It encourages both sides to be fair and reasonable. If a fight occurs, the little guy can take a strong position knowing that if he is right, the agreement is tossed. Most of the time, disputes are resolved fairly quickly and without much legal expense.

If the amendment passes, Georgia will adopt the "blue pencil" rule. People will not be held to what they agreed to. The blue pencil rule allows a judge to rewrite the agreement to what a judge (which can vary, judge by judge, county by county) considers fair. This discourages both sides from being fair and reasonable. Big business is going to start including the broadest non-competes possible and forcing employees to sign them. Non-competes will no longer be for sales reps, agents and executives. The rationale is simple. Even if their agreement is ridiculously unfair, the penalty is only a rewrite. In this sense, the little guy has no incentive to fight. He could never "win" and could only achieve a rewrite.

The State Bar of Georgia, most judges and most small business and general practice lawyers oppose this amendment. The driving forces are George Israel, the Georgia Chamber of Commerce and the multimillion dollar law firms that represent big business. That should tell you a lot.

I would encourage the MDJ to use its voice to pressure and demand members of the General Assembly to be specific and accountable when drafting and amending the Georgia Constitution. The current amendment is the equivalent of polling the populace about whether kittens are cute. Who wouldn't want to make Georgia more economically competitive?

If people want to pass an amendment, that is their will. However, they should have a clear idea of what is being proposed, lest we forget it is our Constitution that we are amending. This is not some whim of the General Assembly that we can undo next year when we all collectively realize what we have done.

Justin O'Dell
 Attorney at law
 Marietta

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Mike Norwood | October 27, 2010

Yes, I am afraid the wording of the amendment leads people to believe it's a good thing, when in fact, it will lead to more court cases when courts are already backlogged.

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No and No | October 12, 2010

Mr. Justin O'Dell. Fantastic letter. Very good and informative. The problem with all these amendments is, they are written in such a manner we (the voters) don't understand them. Many times "a no" would actually create something we - the voters - really do not want. But of course, that was the intent from the beginning of our so called legislators (who represent the people). Just listen to them before an election.

[Reply](#)

Acworth1 | October 12, 2010

Thank you for clarifying this horrible amendment to the GA constitution. It destroys contracts. Period. It prevents the employee from working in his/her field for as long as the judge decides in the restated & unagreed-to new deal between the former employer and employee. Imagine being a lawyer or plumber in a (large) firm, the two of you agree that you won't work for a competitor for a reasonable period of time, and a judge comes along at the behest of the former employer to change the period of time to an unreasonable length, and changing the deal to prevent the worker from even working IN THE SAME INDUSTRY. This prevents the worker from working in his/her chosen trained field for ANY company, and stopping that worker from earning a living. This is NOT about unions, it is about YOUR right to earn a living in your chosen field. It is about your former employer keeping you in chains that you did not agree to. VOTE NO!!

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