



December 5, 2007

Honorable Members of the Texas Legislature,

The Legislature has no business refereeing the commercial dispute between the NFL and cable television. Government's role in settling disputes is limited to settling differences surrounding contracts, or doing justice when laws have been broken. Even then such action falls to the courts, not legislative bodies.

Should the Legislature intervene in this dispute, precedent would be set for intrusion in every market transaction. No dispute between commercial actors will be outside the realm of legislative scrutiny and interference, including those involving the private businesses of all legislators. The chilling effect on the economy will be incalculable simply because the Texas Legislature is not charged with this level of economic micro-management.

That the NFL has chosen to bring their complaint to your ears does not necessitate any legislative solution. Put bluntly, the hearing of the House Regulated Industries Committee scheduled for December 10, 2007, is at best a distraction from the important issues faced by Texans, like property taxes, and at worst a first step toward an unwarranted and highly inappropriate intrusion by state government in the marketplace.

Legislative bodies are like the rule-making commissions in sports, providing the general landscape under which the players act. The courts serve as the line-judges and referees. But in no case is the government empowered to call the plays; that privilege rests with the market-players alone.

As we all learned in Econ 101, every free-market transaction requires a willing buyer and a willing seller. When the sale is complete, all sides walk away from the transaction happy; each knowing they got what they wanted.

Should a legislative body insert itself in the transaction and compel activity, the freedom of the economy is damaged and most of us are left paying hefty prices to the benefit of a wealthy, politically-connected few.

If there was overwhelming demand for the NFL Network, consumers would have flocked to the market-actors, such as satellite companies, providing it. They have not yet, but

might still. Similarly, if there were significant market demand one can safely assume the cable companies would fall all over themselves in an effort to provide the service.

Like the NFL owners, cable companies engage in their business to make a profit. And a profit is made only by providing a product or service someone is willing to purchase. The NFL's solution is to impose a product on unwilling buyers.

It is laughable these football teams are charging exorbitant prices for seats most fans cannot afford and hundreds for replica jersey's, while still raking in billions in network television fees, yet can make claims of commercial injury with a straight face. It is ludicrous for the NFL to argue they need extra leverage from the Legislature in these private negotiations, when they already enjoy federal anti-trust protection.

The most appropriate place for this dispute is in the marketplace, not the Legislature. Let consumers, acting through the choice-mechanisms offered by the market, decide what they want to pay for NFL programming.

If the Legislature involves itself in forcing cable companies to carry this programming, will they also force NFL owners to provide a wider variety of beverages in the stadium? And perhaps at lower costs than those charged today? Would the Legislature be justified in regulating ticket-sales, requiring teams to set aside blocks of prime seats for the economically (or athletically) disadvantaged? And what of the bar across town that refuses to use its television to show the big national game?

There is no end to the economic meddling that could occur, and the damage it would do to the future of our state. It would set a perilous precedent for eroding the free market policies and traditions that have provided the foundation for Texas' prosperity.

I trust that after the celebrity millionaires make their impassioned speeches on behalf of "the fans" and the corporate lobbyists offer their defenses, you will let this game be played out on the field of the marketplace and not in the halls of the Capitol.

Respectfully,

A handwritten signature in blue ink, appearing to read "M. Q. Sullivan", with a long, sweeping flourish extending to the right.

Michael Quinn Sullivan