



Tyranny in Utah: Breaking the Rules of Law

Our legislators need a refresher course in Civics

In a tyranny, people are governed according to the dictates of tyrants — the people in power, who arbitrarily create the rules by which people are expected to conduct themselves. No other branches of government protect against abuses of power by the tyrants. The rules can change from day to day, according to the caprice of those who hold power. There are usually no means, except violent overthrow of the leaders, to challenge the rules. What Stalin says goes. Don't argue, don't challenge, and, by all means, don't break the rules. And don't expect to find another source of power or authority in government to protect you.

Our constitutional democracy, with three branches of government providing checks and balances on the exercise of authority by each other, protects us from tyranny — even the tyranny of the majority. Our Constitution protects each of us, even if we are in the minority, from the violation of certain basic rights and liberties. No one, and no branch of government, is permitted to violate those constitutional rights.

An essential component of a democracy is the principle of the rule of law. In a society ruled by law, rather than by whoever happens to be in power at the time, no one is above the law — not the wealthy, not the powerful, not even governmental officials. The law applies to everyone, and everyone is required to comply with the law.

When certain kinds of people attain power, they seek to disregard these fundamental principles of our democracy. When they want something done, or want to prevent something from being done, they treat constitutional protections as mere nuisances. They disdain other branches of government, as well as those who resort to other branches of government for protection from abuses of power. In some instances, they even try, through illegal intimidation or retribution, to prevent the resort to other branches of government.

Such conduct by government officials is tyranny, pure and simple. It is anti-democratic. It is subversive of our system of government that provides the protections — the checks and balances — by the three independent branches of government. And it is exactly what we have seen from many of the members of the Utah State Legislature.

The arrogance that results from a monopoly on political power, as the Republican party in Utah has enjoyed for several years, has led many in our Legislature to drown out opposing viewpoints. They punish those who have the audacity to disagree with them. And heaven help those who ask the courts to examine the lawfulness of what our Legislature does — or the lawfulness of

the conduct of governmental officials who do what the Legislature has requested them to do. Retribution is meted out on a fairly regular basis by our Legislature against those who have a differing point of view, including, on occasion, even our courts.

Consider these issues in the context of the Legacy Highway. (I know that the proponents of this proposed 330-foot-wide superhighway through our precious wetlands have named the highway the



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Legacy "Parkway," but I cannot join in the use of such a massive misnomer.) As the United States Court of Appeals for the Tenth Circuit determined last month, government officials egregiously violated federal laws in obtaining the necessary permits to move forward with the Legacy Highway.

Concerned citizens, advocacy groups and a public official (i.e., me) did what our system of checks and balances anticipate, and what is required of good citizens if we are to hold our governmental officials accountable for their unlawful conduct. We asked the federal courts to determine whether governmental officials violated federal laws. That's what checks and balances is all about.

The majority of legislators did not investigate the claims or express any concern about the possibility of unlawful conduct. Rather, they set their sights on those who were bold enough to challenge the illegal conduct of governmental officials. Characteristically, many of our legislators sought retribution against those who exercised their constitutional rights to ask the courts to rule on the legality of governmental conduct. And

they sought even to cut off recourse to our courts to challenge illegal activities.

First, the Speaker of the House of Representatives proposed, with enthusiastic support from Republicans in the House and Senate, to have the State of Utah renege on the promises made years earlier to repay Salt Lake City more than \$5 million loaned for the construction of Olympic facilities. His proposal was to repay every other municipality in the state, but to penalize Salt Lake City because its mayor had the nerve to challenge in court what governmental officials had done in relation to the Legacy Highway. To his credit, the Speaker decided to pull back his proposal after he and I met to discuss our respective views, and we proceeded in good faith to try to resolve the dispute. Many legislators were angered that the punitive bill was not pushed forward by the Speaker.

Later, the Legislature passed a bill that would impose all costs of construction delay (potentially millions of dollars) on those who challenged a highway project, obtained an injunction from the courts against further construction, then ultimately lost the lawsuit. (Of course, the bill did not propose that damages be paid by governmental officials or entities that violated federal environmental laws!) The penalty would have applied even to plaintiffs who, in good faith, asserted non-frivolous claims. Of course, state legislators cannot lawfully impose such a burden and a threat to plaintiffs (or prospective plaintiffs) on people or organizations who seek recourse in the courts for the enforcement of federal laws. Any first-year law student would know that, and every legislator certainly should know it. Yet, every Republican in the House and Senate, including a number of lawyers, voted for that mean-spirited, punitive legislation.

The bill was vetoed by Governor Leavitt, who said the "little guy" should be able to challenge the acts of government without being faced with such an enormous deterrent. Governor Leavitt was making an important point. Indeed, every person should have access to the courts. And, under the rule of law, every person, including governmental officials, is bound to obey the law.

Were it otherwise — were our Legislature able to effectively deter access to the courts for the vindication of rights and the enforcement of our nation's laws — the rule of law would be eviscerated. We would then be living under a tyranny, where a few people, angered at the cheekiness of citizens who challenge the lawfulness of governmental officials' conduct, can abuse their power with impunity, and without the democratic protections that real patriots hold so dear. ♦

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