

FULLER ROAD: Improbable Focus For A Showdown Over Local Tyranny.

Who would have guessed that the Fuller Road issue would persist and escalate to the point where it would become an ultimate showdown between the sovereignty of the people and local government tyranny? It appears that such a showdown is likely to happen in the near future.

WHY THIS MESSAGE?

Our state and local legislators are not authorized to enact laws that are “repugnant” to the state constitution. Our public officials take an oath of office to uphold the state constitution. Nor may public officials act in violation of state law. This message tells how those wielding governmental power in our region have abused their power and trampled on the people's fundamental rights and liberties, for personal interest and private gain, and at public expense. In doing so, they have seized power from the sovereign people; they have committed acts of tyranny; and they are creating a situation of lawlessness and anarchy. [For the meaning of terms used herein, please refer to box.]

At issue here is the illegal and unconstitutional closing and barricading of the middle section of Fuller Road by the Queensbury Town Board in 1995, for the personal benefit of two private citizens who were building a house near it and simply did not want people traveling past their home.

In order that everyone be aware of the seriousness of the transgressions that have occurred, we will review them here. The reader is asked to decide whether the government, including the judiciary, has, without authorization, seized power from the people and is running amok, i.e., doing whatever it wants to do and operating outside the boundaries set by the people in the state constitution.

The superior right of use to a public highway is a public resource. It is a form of public property and it cannot simply and suddenly be taken away from the people and given to a private party. However, that is what the Queensbury Town Board did in 1995, as a political favor, despite Article VIII Section 1 of our state Constitution, which says, among other things, that no local government shall give any public property to or in aid of any individual. It could hardly be plainer.

Moreover, it is not just a matter of the town deciding to abandon the road. Procedures and rules that pertain to abandoning a highway are spelled out in state highway law. The town board ignored the law, as it did the state constitution. Here is a chronology of the facts:

THE ROAD

FACT: Fuller Road is what is known as a “highway-by-use” as recognized in Section 209 of state highway law. Regardless of who owned the land under the road, the public has had a right-of-way (a superior right of use) to Fuller Road since 1871. There is no dispute about this among the concerned parties; it has been acknowledged by the attorneys involved. Fuller Road is one of the well-traveled routes over West Mountain, linking Queensbury to Lake Luzerne. It appeared in the F.W. Beers 1876 Atlas of Warren County, and was in continuous use by the public and maintained by Queensbury tax payers for 125 years as a town highway. In 1963, town resolution #166 recognized it as being in the “official town highway system” and one of its “public highways pursuant to the provisions of the Highway Law.” In 1989, the Town's Comprehensive Land Use Plan identified Fuller Road as one of only eleven roads with significant historic and scenic value. Section 140 of that law requires town highway superintendents to maintain all town highways.

FACT: Another kind of highway is a “dedicated highway,” which is one laid out by, say, a developer, and given to the town.

PROPERTY RIGHTS OR PROPERTY WRONGS

FACT: In 1994, Marion and Curtis Rowland bought ten acres of land on the lower part of West Mountain. Fuller Road passed right through the middle of it. They chose to build on a site near (but not on) the road, and they wanted to make the road dead-end just after their driveway. This would increase the value of the parcel (at public expense). In short, they wanted to extinguish the public's superior right-of-way and have it transferred to themselves.

FACT: Marion Rowland worked in an office at One Washington Street in Glens Falls - the same address as the attorney whose name leads the masthead of the law firm in that building, and who was a state assemblyman, ran the powerful NYS Office of Court Administration, was Dean of the Albany Law School, and who is arguably the most powerful political figure in Warren County. Paul Dusek, the Queensbury Town attorney asked Marion Rowland to tell him how the town could abandon Fuller Road. On February 17, 1995, Marion Rowland wrote to Dusek and Highway Superintendent Paul Naylor, requesting that the town abandon Fuller Road. She wrote that George Van Dusen, an employee of the County Public Works Department suggested that the Town could use Highway Law Section 171 to abandon the Road.

TOWN BOARD ACTION

FACT: Less than two months later, town board member Nicholas Caimano (who is also a senior manager at the Post-Star) introduced Resolution 252 to “discontinue” Fuller Road because it had become “unnecessary and useless.” The resolution passed unanimously, and the town board, without public notice or public hearing, not only suddenly determined to stop maintaining 1850 feet of Fuller Road, but to have barriers erected and to gift the people's superior right of use of the road to a private party - the Rowlands - who had bought the property at a low price because of the road running through it and now wanted to increase its value at the public's expense.

FACT: A week later, under the “authority” of the resolution, the town highway department blocked the public's use of the road by erecting an earthen berm across the road in front of the Rowland's building site and extending a guide rail across the upper end of the “abandoned” portion. In the meantime, the Rowlands proceeded to build their house next to the “abandoned” section of the road.

FACT: The action by the town board not only violated the state constitution by giving public property to private individuals, but it violated state highway law as well. The town based its closure on Section 171 of the highway law, which does not pertain to highways-by-use. It applies to dedicated highways, an entirely different situation. To abandon a highway-by-use, Section 205 of the highway law must be followed, and it requires conditions that were not met, and could not come close to being met, with regard to Fuller Road. One condition is that the public must first have abandoned the road already (not used the road for 6 years or more). This obviously was not the case with Fuller Road.

FACT: Regular users of the road quickly submitted a petition to the town board questioning the closure of the road and asking that the road be re-opened. The town supervisor, Fred Champagne, expressed shock and dismay, saying, “I didn't know anyone used that highway.” He then said, in effect, “There's no need to take this matter to court. We can reconsider our action. We'll take another look at what we've done. Let's negotiate. We can work this out.” These were empty words. The town board talked and talked and talked with citizen Paul Abess, the spokesman leading the petitioning group, and remained at the “negotiating table” for two years. The Rowlands were represented by attorney Patricia Watkins of Bartlett, Pontiff, Stewart & Rhodes. Finally, Champagne told the group that the board wasn't going to do anything, and if the citizens didn't like it, they could take the matter to court.

THE DAYS IN COURT

FACT: Meanwhile, in October 1995, two citizens, Salvador and Loughrey, filed a “removal from office” lawsuit against highway superintendent Naylor for barricading the public highway without constitutional authority. The court ruled that even if Naylor did act without constitutional authority, that was not sufficient reason to remove him from office. The court did not address the issue of whether Naylor and the town board violated the constitution or the law in closing the road.

FACT: In March 1997, ten other citizens (Abess, Boor Chiasson, Greer, Larson, Lynch, Morrell, Robertson, Schulz and Smith) took the matter to Warren County Supreme Court on grounds that the town board's action (Resolution 252 of 1995) violated the citizens' rights to a town government that derives its power from the consent of the governed, and that the town violated the people's constitutional protection against the giving of public property to a private party. They asked the court to declare the resolution null and void.

FACT: Three months later, Judge Dier dismissed the case on a technicality, saying that someone other than the citizens should have served the papers on the defendants. The citizens immediately re-filed the case, and used a professional process-server to re-serve the papers.

FACT: In New York, there is no statute of limitations for judicial action on constitutional matters, as the logic is that government cannot seize power from the people, no matter how long the people may delay in making a legal complaint about it.

FACT: Yet four months later, in October 1997, Judge Dier dismissed the case again, without addressing the constitutional issue or recognizing that there is no statute of limitations on it. He simply said the citizens should have brought their suit within four months of the barricading of the road, and that the town had a right to discontinue its easement, ignoring the fact that the public owned the easement not “the Town” and that the town based its action on a law that applied to a dedicated highway, not a highway-by-use. The

conditions for abandoning a highway-by-use did not exist for Fuller Road, and the town had no authority to do it.

FACT: The citizens brought up all these points at the Appellate Division. In September 1998, the appeals court decision ignored all the legal points and facts noted above, and, in a split decision, simply agreed with Judge Dier that the suit should have been filed earlier. The appeals court failed in its duty to defend the state constitution, and it failed to uphold state highway law, Section 205, which requires that a highway-by-use must actually be already abandoned by the public before it can be abandoned by the town. No other law gives the town the authority to close the road. The appeals court, therefore, failed to overturn the usurpation of power by the town. In May 1999, the Court of Appeals, the state's highest court, declined to hear the case.

THE CITIZENS TAKE A WALK ON THE ROAD

FACT: In September 1999, eight citizens (Abess, Chaisson, Merry, McDevitt, Morrell, Smith, Trombley and VanPatten) walked around the barriers and took a peaceful stroll down the road. The Rowlands called the sheriff, who arrested the eight for criminal trespass.

FACT: In December, Town Justice Michael Muller dismissed the charges, saying that “There is no dispute nor credible evidence to controvert the defendants' contention that Fuller Road as a ‘highway by use’ could not be closed ...the purported act of closure is without legal effect...Where a local government acts beyond the scope of authority granted to it, its' acts will be considered unconstitutional...An unconstitutional or ultra vires closure of a portion of Fuller Road could not under the circumstances substantiate any basis for the complainant to allege that any of the named defendants trespassed ‘having no right to do so nor any reasonable grounds to believe (s)he had such right.’”

FACT: In spite of Judge Muller's decision, Naylor refused to remove the barriers he erected in 1995, and the Town Board refused to order him to do so. In referring to Judge Muller's decision they said, “This doesn't say we have to take the barriers down, it only says we acted unconstitutionally and outside the limits of our power in erecting them.”

FACT: On December 20, 1999, the Queensbury Town Board actually voted to ignore the judicial finding of unconstitutionality.

FACT: On December 30, 1999, citizen Salvador filed a lawsuit in State Supreme Court asking the Court to declare Fuller Road a public highway by use. The case was assigned to Judge Thomas Moynihan, who sat on it for months before recusing himself from the case. The case was assigned to Judge Sheridan in Saratoga County where it has languished for months.

FACT: Meanwhile, on January 24, 2000, the newly elected Queensbury Town Board decided that they too would not take the required action, thereby violating their oaths of office.

FACT: On February 9, 2000, citizen Schulz wrote to the Queensbury Town Supervisor (now Dennis Brower) and to the Highway Superintendent (now Rick Missita), to demand that they issue the necessary directives to remove the barriers saying, “No more serious charge can be raised against a unit of government than a charge of failing to obey the New York and/or federal constitutions. In this country, under our system of governance, a government act committed outside the limits placed around the power granted to it by the people is an act of tyranny.”

FACT: On February 13, 2000, citizen Schulz, in an Guest Essay in the Post Star under the heading “Leaders ignore ruling on road issue,” said, “The people must now put a collective foot down against the tyrants running the town of Queensbury. The people are not defenseless against governmental tyranny. They have not been disarmed. They must do everything in their power to show their elected officials that the government was created by and belongs to the people. Let's take a stand for good government and against tyranny.”

FACT: On February 13, 2000, the Post Star ran a pro-Rowland, anti-citizen editorial titled, “Sometimes advocates go to far.” What we've seen of Mr. Caimano's influence on the editorial page goes a long way towards explaining the paper's editorial view. After all, it was Mr. Caimano that introduced the Town Resolution in 1995 to close and barricade Fuller Road.

FACT: On February 14, 2000, citizen Schulz and others appeared before the Town Board and pleaded with the Board members to uphold their oaths of office and defend the NY Constitution by ordering the barriers removed. Other citizens attending the Board meeting quietly held up signs that read, “OBEY THE NY CONSTITUTION,” and “FULLER ROAD TODAY, YOUR ROAD TOMORROW,” and “REMOVE BARRIERS NOW,” and “END JUDICIAL CORRUPTION,” and “NO TYRANNY,” and “WE THE PEOPLE ARE SOVEREIGN,” and “STOP LAWLESS GOVERNMENT,” and “POPULAR SOVEREIGNTY.” Judge Muller also appeared before the Town Board that night. Judge Muller confirmed that his choice in the criminal trespassing case was to either convict the eight citizens of trespassing or apply the constitution to the facts of the case, and he chose to apply the constitution.

FACT: The Town Board members were now faced with a dilemma. They all belonged to the same political party that arranged for the closing of the road as a favor to one of their own — a party that had succeeded in getting the civil cases dismissed by their judges, on technicalities, while ignoring the merits of the claims against the Town Board and Naylor.

BACK TO COURT WITH A STRATEGY

FACT: The party did not want to lose face. An acceptable strategy would be one that would involve one more lawsuit and one more ‘fix’ by the local State Supreme Court Justice. The strategy involved a five step process: 1) the three new members of the Town Board would vote to repeal the April 1995 vote of the Town Board to close the Road; 2) the Rowlands would sue the Town; 3) the Town would put up a spirited defense; 4) Judge Moynihan would dismiss the Town's arguments and the case (without citing any authority); and 5) the Town would not appeal on the basis of ‘cost.’

- On February 28, 2000, the Town Board voted 3-2 to rescind the Board's April 1995 road closing resolution.
- On March 10, 2000, the Rowlands sued the Town.
- In May, Jack Liebowitz, the new Town Attorney, submitted a solid and spirited defense on behalf of the Town.
- On June 13, 2000, Judge Moynihan dismissed the Town's arguments without citing any authority. He dismissed the case. The “fix” was in.
- Judge Moynihan's decision was a very appealable decision. However, the Town Board voted unanimously not to appeal to the Appellate Division, closing the case, even though the citizens offered to pay the costs of the Town's appeal. Citizen Salvador then motioned the Appellate Division to hear an appeal by him at his expense. The Rowlands opposed the motion. The Court then denied the motion.

HOW DO WE MOVE AGAINST THIS “PARADE OF TYRANNIES?”

1. Public awareness must be achieved and public ire aroused. Hence this message.
2. The citizen activists should once more walk the road. This will create a dilemma for the Sheriff's office. Judge Muller said they have a right to use the road because it is a public road. If they are not arrested, this right is confirmed.
3. The citizen activists will make one more formal appeal to the governmental power structure.
4. Absent appropriate action by the Town, wouldn't a large group of citizens be justified in taking down the unconstitutional barriers to open up the public road?

The following is a glossary of certain words used in this message.

Anarchy: a state of society where there is no law or supreme power; a state of confusion or disorder. In our system of governance, the sovereign people are the supreme power, and government is limited and restrained by the people's constitution. When tyrants consistently ignore and violate the people's constitution, a state of lawlessness is created leading to a breakdown of society.

Despotism: absolute or arbitrary rule; tyranny.

Sovereignty: status of supreme, original, and independent power in a system of governance. Hence, “popular sovereignty” means a system in which the people are invested with the supreme authority, and the government derives its power from the consent of the people, and that consent is expressed in, and constrained by, their constitution.

Tyranny: government unrestrained by law or constitution; arbitrary or despotic exercise of power; despotism.

Tyrant: a ruler unrestrained by law or constitution; one who rules by exercising arbitrary, unauthorized, or despotic power.

Support your TRT: An act of tyranny anywhere is a threat to freedom everywhere.

We The People Foundation For Constitutional Education, Inc.

2458 Ridge Road, Queensbury, NY 12804 • Telephone: (518) 656-3578 • Fax: (518) 656-9724 • acta@capital.net • www.givemeliberty.org

PERSONAL COMMITMENT TO PARTICIPATE IN NEW YORK'S TYRANNY RESPONSE TEAM

I, _____, in view of my interest in constitutional government carried out in decency and good order, and in protecting, preserving and enhancing my individual liberty, rights and freedoms, especially as expressed in the New York State Constitution, declare and make my personal commitment as follows:

I am at least 18 years of age. It is my understanding that the Foundation intends to establish an Institute headquartered in Albany with field offices located in counties throughout the state, and with staff attorneys and support personnel, for the purpose of educating government officials and the general public about the meaning, effect and significance of each provision of the New York and U.S. Constitutions and the Declaration of Independence. It is my understanding that the Foundation is in the process of developing a statewide “Tyranny Response Team,” to be comprised of ordinary, non-aligned citizen taxpayers by the thousands to fund the Institute and its programs. I desire and intend to be counted as a member of that “Tyranny Response Team.” I hereby pledge to send the Foundation \$ _____ on the 1st of every month, for three years. If, for any reason, I am unable to fulfill this obligation, I will simply notify the Foundation as soon as possible and my membership will not be affected. It is my understanding that any contribution I make to the Foundation will be deductible from federal and state income taxes.

Signature: _____ Address: _____

Telephone: _____ Fax: _____ E-Mail: _____

PAID FOR BY THE “WE THE PEOPLE FOUNDATION FOR CONSTITUTIONAL EDUCATION.”

Clip and Mail