Andrew Jackson

Mountainland Association of Governments

I am not an attorney and I am not giving any legal advice. I have advanced degrees including Public Administration and have taught graduate level government classes at BYU

I am not trying to change any opinions or ask you to vote in a certain way.

In my 25 years of doing this work I have been asked numerous times about the constitutionality of various government actions, from zoning, to health dept inspections, to transportation facilities. I'd like to offer some answers.

First, I'd like to quote from the US Constitution:

Article 4 Section 4 of the US Constitution also known as the Guarantee Clause states among other things:

The United States shall guarantee to every State in this Union a Republican Form of Government....

According to Robert G. Natelson, a Senior Fellow in Constitutional Jurisprudence at the Independence Institute, in his article on the Heritage Foundation website he states:

"Participants in the Constitutional debate of 1787–1788 expressed varying views over exactly what constituted the "Republican Form" of government. However, there was a consensus as to three criteria of republicanism, the lack of any of which would render a government un-republican."

"The first of these criteria was popular rule. The Founders believed that for government to be republican, political decisions had to be made by a majority (or in some cases, a plurality) of voting citizens. The citizenry might act either directly or through elected representatives. Either way, republican government was government accountable to the citizenry. ... [A] republic was very much...—the people's affair."

"The second required element of republican government was that there be no monarch."

"The third criterion for a republic was the rule of law. Ex post facto laws, bills of attainder, extreme debtor-relief measures—most kinds of retroactive legislation, for example, were deemed inconsistent with the rule of law, and therefore un-republican."

"Only one species of democracy was deemed inconsistent with republicanism. This was "pure democracy" or "simple and perfect democracy," a theoretical constitution identified by Aristotle and mentioned by John Adams and James Madison, among others. A pure democracy had no magistrates, because the "mob" made all decisions, including all executive and judicial decisions.

The Founders saw this kind of democracy as inconsistent with republicanism, because it did not honor the rule of law."[1]

I would like to speak to the 1st and 3rd criteria for a republican state government.

The 1st criteria is popular rule.

Dr W. Cleon Skousen in his book "The 5,000 year leap" identifies 28 major principles on which the American Founders established the first free people in modern times.

Principle 20 is that "Efficiency and Dispatch require government to operate according to the Will of the Majority, but constitutional provisions must be made to protect the rights of the minority"[2]

In 1984, Provo and Orem voters (by 60% and 57%, respectively) passed a ballot measure to enact the transit tax commonly referred to as the 1st quarter. From 1989 to 2010, voters in most of the other communities passed similar ballot measures by between 58% and 78% margin. By 2010, over 99% of the tax base and 18 of the 24 cities and towns in the county had enacted the tax. The enactment was completed in the remainder of the county on June 7, 2011. This 1st quarter can only be used for transit and will ultimately pay for BRT.

At the General Election in November of 2006, nearly 69% (or over 57,000 voters) voted in favor of the County Opinion Question to raise a 1/4 cent sales tax for transportation. The opinion question on the ballot split the funding 87% for commuter rail, 5% for other transit (including BRT) and 8% for roads. It can not be spent in any other way without going back to an opinion question of the public.

On September 4, 2014 we had 22 voting members in attendance at the MPO meeting, with 18 yes, 3 no and 1 abstained on the issue of BRT. Of those in attendance 82% voted in favor of the financing plan for BRT. Those voting yes were nearly 60% of the total voting membership. Previous to this vote we had had several votes to continue looking at BRT and funding, hiring bond counsel and paying for advanced design as well as making application for the BRT grant.

Last week someone mentioned a resolution passed by the Utah County Republican Party Central Committee. I was at the meeting. A quick look at the party website identifies that the Central Committee is a subset of the entire county delegate pool. It is represented by the chair and vice-chair of each precinct. Precincts vary in size, some have up to 10 county delegates while others have as few as 2 county delegates, however at the central committee each precinct has only two members. There are 1,512 county delegates, but only 538 central committee members, 295 were in attendance at the meeting, if 2/3rd of those in attendance voted for the resolution (which had limited debate) it would less than 200 people or less than 13 percent of the total county delegates.

Over 57,000 people voted in favor of the 2nd quarter cent, less than 200 people voted in favor of the resolution opposing BRT.

In Dr Skousen's book he talks of majority and minority points of view, he quotes Alexander

Hamilton in the Federalist Papers: "To give a minority a negative upon the majority is, in its tendency, to subject the sense of the greater number to that of the lesser number...the majority in order that something may be done must conform to the views of the minority; and thus the sense of the smaller number will overrule that of the greater...Hence, [you'll have] tedious delays, continual negotiation and intrigue, [and] contemptible compromise of the public good."[3]

The 3rd requirement of a republican state government is the rule of law.

Dr Skousen's 22nd Principle is that "A free people should be governed by law and not by the whims of men."[4]

He continues "The law was designed to give society a stable frame of reference so the people could feel secure in making plans for the future. As John Locke said: "Freedom of men under government is to have a standing rule to live by, common to everyone of the society, and made by the legislative power erected in it."[5]

The US Bill of Rights, Amendment 10 states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The 21st principle in Dr Skousen's book is "Strong local self-government is the keystone to preserving human freedom"[6]

Dr Skousen quotes James Madison, again in the Federalist Papers as such: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."[7]

The federalist doctrine dictates that there be limited federal government and a strong state government. In turn, the states have enabling legislation in Title 10 for cities and towns and Title 17 for counties that give them powers. Thus we are the United States of America, but not the united counties of Utah. The power resides in State Law and with the majority of the people.

The funding and process for BRT as well as other transportation is rooted in State and Federal Law. Specifically, Sections 59-12-2213, 59-12-2216 and 59-12-2218 of the Utah Code Annotated. I have spent extensive amount of time in these sections of state code and can assure you that the decision in favor of BRT and the financing plan comply with state code.

While I am working with legislators and I agree with members of our federal delegation that we should not have to ask the federal government how to spend our own tax dollars that they take from us, until there is a change in federal law, we must make the best out of the situation that we are in.

Thank you for your time

Endnotes:

---

1. http://www.heritage.org/constitution/#!/articles/4/essays/128/guarantee-clause

2. W. Cleon Skousen, *The 5,000 Year Leap*, 1981, p 229

3. Ibid p 231

4. Ibid p 243

5. Ibid pp 243-244

6. Ibid p 234

7. Ibid p 239