

COMMUNITY VOICE

Tom Yamachika: Court Ruling Affirms the Power of the People

In matters of taxing, spending, redistricting and so much more, it's clear that "the people" and "the boss" are, in fact, one and the same.

JULY 26, 2015 • By Tom Yamachika 

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In November of last year, I wrote about a Colorado case that was before the U.S. Supreme Court. Colorado voters had limited the power of its legislature to enact taxing and spending bills, and some of its legislators sued, saying that the power of the legislature was being throttled unconstitutionally. The federal district court and the Tenth Circuit allowed the suit to go forward, and the governor appealed.

At the time, I said that the underlying question was: Who's the boss? Does the government exist to serve the people, or do the people exist to serve the government? The Supreme Court has now weighed in on the issue. To explain what happened I'll need to review another case in Arizona.

In Arizona, the question was how to draw representative district boundaries. Over the years, the legislature had drawn the districts several times, lawsuits were filed claiming irregularities including Voting Rights Act violations, and the courts had to redraw the districts several times.

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Detail of the preamble to the United States Constitution.

Finally the voters were fed up and added a provision to the Arizona Constitution cutting the legislature out of the process entirely and leaving the process of district drawing to an independent commission. Not surprisingly, the legislature filed suit alleging that tasking the commission with redistricting was unconstitutional. On June 29, the U.S. Supreme Court upheld Arizona's process by a 5-4 decision.

The court's majority opinion written by Justice Ginsburg quoted James Madison saying, "The genius of republican liberty seems to demand ... not only that all power should be derived from the people, but that those entrusted with it should be kept in dependence on the people."

She next invoked John Locke, who stated in 1690: (T)he Legislative being only a Fiduciary Power to act for certain ends, there remains still in the People a Supreme Power to remove or alter the Legislative, when they find the Legislative act contrary to the trust reposed in them. For all Power given with trust for the attaining an end, being limited by that end, whenever that end is manifestly neglected, or opposed, the trust must necessarily be forfeited, and the Power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security.

Justice Ginsburg then observed that the Declaration of Independence drew from Locke in stating: "Governments are instituted among Men, deriving their just powers from the consent of the governed." And that the U.S. Constitution derives its authority from "We the People."

In other words: We the People are the boss. We the People give power to the legislature.

We the People can take that power back or move it elsewhere if we don't trust the legislature to use it correctly. You, the legislature, can't come crying to the courts if We the People have clipped your wings.

Going back to our original Colorado case, the Supreme Court issued an order June 30 voiding the Tenth Circuit's decision and instructed it to reconsider the case in light of the Arizona decision the Supreme Court just issued. It's probably fair to say that the Supreme Court expects the reconsidered decision to come out differently from the one that was appealed from.

So it looks like we can chalk up another victory for We the People.

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About the Author



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Arvid Youngquist

Tom Yamachika, keep up writing about our basic rights. They are the basis for our liberty. Mahalo nui loa.

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Robert Manning · Church College of Hawaii

How come we can't do this over here in Hawaii?

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Rick Tubania · University of Hawaii at Manoa

the colorado suit is stupid. how can the legislature carry out the business of governing if they are hampered in raising revenue and expending funds. in the end, the people will suffer if there are insufficient revenues and services.

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Rick Tubania · University of Hawaii at Manoa

Curtis Kropar - yep too bad government employees are way more intelligent than those who are not, especially, psuedo advocates for homeless, who only complain but fails to do anything.

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Patricia Blair · University of Nebraska-Lincoln

A great article. I am always for "we the people " prevailing.

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Roy Kamisato · University of Hawaii at Manoa

Rick Tubania is correct, the Colorado situation is stupid. Voters have basicly restrained legislators from taxing and spending but retain their right to complain to legislators about a lack of government services. The Arizona case is completely different and never should have been included in this op-ed. The Arizona Republican controlled legislature over the years has been gerrymandering districts to give Republicans an advantage during elections. Arizona voters fed up with this nonsense voted to create an independent commission to set up fair districts. The Republican Arizona governor ruled against the voters. The Republican controlled Supreme Court surprising used the U.S. Constitution as their guide and decided Arizona voters had the right to fair districting.

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Roy Kamisato · University of Hawaii at Manoa

I'm hurt Curtis that you haven't been following my remarks on Hawaii's democratically controlled legislature. A large number of Democrats have been infected with the cancerous form of capitalism called Reaganism. They believe cutting taxes (mostly for the rich) will defy the laws of economics and stimulate the economy. They believe raising the minimum wage will hurt business despite the evidence it actually stimulates the economy. So yea...yea...yea it's about reinvigorating the middle class something republicans, conservatives, libertarians as well as tea party types abhor

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Howard Michaels · Honolulu, Hawaii



Not perfect with the Demo's, way worse with the Repub's. Your BS has been dropped.

Like · Reply · Jul 29, 2015 12:38pm



Toni Auld Yardley · Works at Lanikini Productions, Kanakamaoli Religious Institute

The CATCH to this power is to "use it". If you do not object - it is assumed - you consent.

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Vernal Stevens

We, as citizens of Hawaii, need to be rid of a government that has been in favor of big money, excessive spending, and creating new laws that replace existing laws with laws that give them powers to do whatever they please in a communist type of government, where the people have absolutely no say. The government in power here today, does not work for the people as it should be. Instead it's the people who work for the government.

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