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Federal judge rules UDOT curbed marchers' free speech rights

He says agency went too far requiring \$1M in insurance for climate-change marchers.

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A federal judge has ruled that the Utah Department of Transportation's permit requirements violated free-speech rights of two groups who wanted to stage marches on State Street to raise awareness about climate change.

U.S. District Judge Robert J. Shelby said UDOT went too far when it required iMatter Utah and Positive Change Utah to get insurance coverage of at least \$1 million and indemnify the department and the state in order to get permits to use the public roadway, finding the requirements "suppress more speech than is permissible under the narrowly tailored test."

UDOT had argued that its restrictions were aimed at public safety and were constitutionally sound since groups who could not afford a permit could move their events to the sidewalk or adjacent streets.

But Shelby noted neither sidewalks nor other roads carry the "deep historical and political significance" of State Street, which passes the State Capitol, the U.S. Federal Building, the state courthouse and the Salt Lake City and County Building.

"It is unlikely that a street march on an adjacent roadway would be as symbolic or as effective as a march down State Street," Shelby said in his decision.

The insurance requirement may be uniformly applied to all permit applicants, but the burden is greater on groups with controversial messages since insurers may base rates on the content of the group's speech, Shelby said. UDOT's regulation also is too open-ended because it fails to specify what types of incidents the policy had to cover.

Shelby said decisions in many other courts — in cases ranging from the Ku Klux Klan to nuclear freeze advocates — have found financial and insurance requirements that overly burden First Amendment rights to be unconstitutional.

The ACLU of Utah and the Utah Legal Clinic represented both groups, which tried in 2011 to stage marches along State Street. UDOT maintains the roadway.

"The court's ruling sends a strong signal that the First Amendment is alive and well, and government agencies must take great care in burdening free-speech activities," said John Mejia, legal director for the ACLU of Utah.

Stewart Gollan, of the Utah Legal Clinic, said UDOT's insurance requirement created a two-tiered system for speakers.

"Those who could afford insurance could march on the street," he said. "And those without the means to pay were relegated to the sidewalk."

Now, he added, "everyone can make their voice heard on State Street, regardless of income."

iMatter Utah sued UDOT after it declined to approve its request for a permit for a May 7, 2011, "marade" — march and parade — about climate change. The group planned to have participants walk from the federal courthouse at 125 S. State St. to the Live Green Salt Lake City Festival at Library Square.

But UDOT refused to issue a permit unless the group got an insurance policy and signed liability waivers from each participant, something it said is required of all groups. In its subsequent lawsuit, iMatter said it could not afford a policy, estimated to cost at least \$2,500.

After failing to get a temporary restraining order allowing it to use the street, iMatter staged its march on the public sidewalk.

In September 2011, iMatter held a second march — this time walking from the State Capitol to the City and County Building — and again stayed on sidewalks after UDOT denied its request for a permit. By then, UDOT had revised its policy to require organizers to



Robert Shelby was confirmed by the U.S. Senate on Saturday as the newest judge on the federal bench in Utah. He was nominated for the vacancy last December. Courtesy image.

indemnify the department and state.

Months later, Alex Mateus, of Positive Change Utah, ran into the same obstacle. Mateus tried to organize a march for Oct. 8, 2011, that would have begun with a rally at the Utah Capitol. Participants then would have proceeded down State Street to the City and County Building at 451 S. State, where a second rally was planned.

Mateus received a free expression permit from Salt Lake City in August but was told he also needed a permit from UDOT.

UDOT then told Mateus he would need insurance coverage for the event, which, according to the lawsuit Mateus later filed, would have cost from \$300 to \$500. It also wanted a signed release indemnifying the department and state. Mateus, who was unemployed and unable to pay for insurance, cancelled the event.

The groups claimed that in addition to violating free-speech rights, UDOT's policy breached due process rights because it did not include alternatives for organizations that couldn't afford to pay for insurance.

Shelby said UDOT's policy failed to taken into account the wide variation in events — from political rallies to marathons — that might need a permit and thus insurance. It also provides no avenues to obtain a waiver of the insurance requirement. In addition, event organizers have “no way to determine how much liability she is exposing her organization to by signing the indemnification form,” which could deter some groups from exercising free-speech rights.

The judge also pointed out that it was unclear why the state has a greater need to protect itself from liability than Salt Lake City does, which does not require march organizers to get insurance.

“If the state is concerned about its financial risk from free-speech events, there is no reason that the state could not purchase its own insurance policy,” Shelby said in his decision.

John Gleason, spokesman for UDOT, said the department is reviewing the decision.

“Our primary concern is protecting both motorists and those applying for a permit,” Gleason said. “At the same time, we want to make sure that we are fair. We will continue to review the court's decision and determine where to go from here.”

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