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Shutting the door on environmental debate

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Whether or not one agrees that Tim DeChristopher was legally or morally justified in his civil disobedience as “bidder 70” in Bureau of Land Management oil and gas leases, virtually everyone asks why he did it.

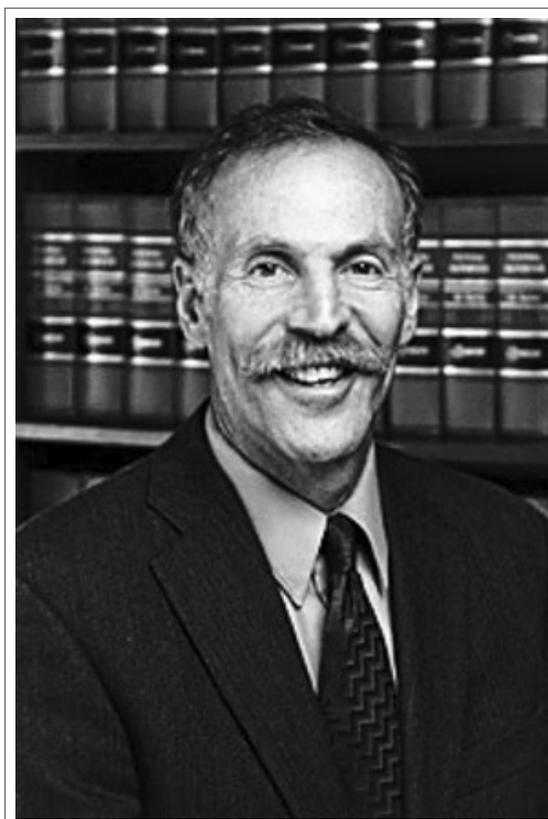
I do not presume to speak for him. But one possible reason was surely his frustration about what he perceived as the ineffectiveness of other avenues to influence public decisions that affect his health and the quality of his environment.

It is ironic, therefore, that at the very time Mr. DeChristopher and his attorneys have been fighting to highlight this frustration, multiple levels of Utah’s state government have been working to systematically shut the door to other citizens who want to raise — through entirely lawful means — important questions about the quality of our air and water, the use of our public lands and resources, and the nature of the world we will leave to our children. Here are just a few examples:

The state’s Department of Natural Resources recently awarded leases that would allow massive expansion of mineral development on public, sovereign lands of Great Salt Lake. Citizens who use those lands for hunting, boating, wildlife viewing and other uses sought to challenge those leases, first through the regular administrative process and later in state court.

The state’s official position, thus far upheld but still under legal review in state court, has been that only the leaseholders are “parties” to these leasing decisions. Therefore, the state asserts, others who use and benefit from this public resource have no legal right to challenge the leases. Presumably, they must stand outside the legal process with signs in hand.

Similarly, the Utah Department of Environmental Quality issues permits under the federal Clean Water Act for discharges of pollutants into Great Salt Lake. Groups who believe that those permits allow potentially harmful levels of pollution filed administrative challenges to the permits. The agency is now deciding (on various technical grounds) whether those challenges can even proceed. The groups are waiting to see whether they will



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have a legitimate seat at the table, or whether they, too, will have to stand outside the door in silent but legally meaningless protest.

Perhaps most disturbing have been efforts in this year's session of the Legislature to systematically shut the door to legal opportunities for citizens to voice concerns about a range of environmental issues. One bill, which the Legislature's own counsel have advised is probably unconstitutional, singles out plaintiffs in environmental lawsuits for onerous requirements to post expensive bonds and provisions imposing automatic damages if they ultimately do not prevail. No similar automatic requirements apply to others who seek lawful relief in state court.

Another bill adds two more agricultural industry representatives to the state's water quality board while eliminating the only representative of environmental interests and the only representative of the public at large.

In opening arguments during the DeChristopher trial, federal prosecutors argued that the proper place for him to express his objections was outside the door, futilely protesting on the street while industry representatives participated directly in the auction. Fortunately, federal law allowed concerned citizens an independent opportunity to challenge the leasing process in court. They won, and a federal judge in Washington, D.C., halted the process until the BLM complied with applicable environmental laws and regulations.

Here in Utah, it is inconsistent to argue that advocates for a cleaner, safer world should limit themselves to lawful means of challenge while simultaneous efforts are underway to restrict or eliminate those very processes. Those who benefit economically from environmental approvals have a cushy seat at the table, while those who raise questions must stand outside in the cold and protest in vain.

If we, as an open society, want to channel legitimate discourse about difficult environmental disputes into lawful rather than unlawful means of expression, we should be opening doors to public participation rather than slamming them shut.

Likewise, we should leave the courthouse doors wide open so that disagreements can be resolved in an orderly and objective way, and so the judicial branch can provide the checks and balances on decisions made by the political branches that the founders of our system of government intended.

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