

MY TURN

Democrats seek to legalize mob rule at State House

Bill inspired by 2011 budget protesters

By EDWARD C. MOSCA

For the Monitor

Incredibly (or perhaps not so incredibly if you were present on March 31, 2011, and watched House Democrats give a standing ovation to an unruly and menacing mob of protesters while they were being evicted from the House gallery), House Democrats are bringing forward legislation that would give their special interest constituencies the legal right to shut down the New Hampshire House and Senate whenever things aren't going their way.

Specifically, Rep. Tim Horrigan is sponsoring a bill that would require a body of the Legislature that closes its gallery while in session to immediately recess and to remain in recess until its gallery is reopened. Let's consider the implications if such a law had been in effect last session.

During the budget bill debate on March 31, 2011, a raucous and apparently pre-planned outburst of shouting from certain Democratic special interest constituencies who had packed the House gallery made it impossible to continue conducting legislative business. The gallery was cleared and closed, and the House was able to resume its business, working through a series of dilatory amendments proposed by Democrats. The gallery was reopened before the final vote, and the budget was passed.

If Horrigan's bill had been law, the House would have had to go into recess and remain in recess until the gallery was reopened. Which means that all the special interest constituencies would

have needed to do to block the budget was to repack the gallery every time it was reopened, renew the protest and force the House back into recess.

This is not democracy; this is mob rule.

Unconstitutional

Horrigan's bill is blatantly unconstitutional. The New Hampshire Constitution gives the House and Senate exclusive authority to set their own rules of proceeding. That means each body gets to decide on its own if to recess and how long to recess.

Horrigan contends that his mob-rule bill is constitutional because it just effectuates what already is required by Part II, Article 8, which provides that "the doors of the galleries, of each house of the legislature, shall be kept open to all persons who behave decently, except when the welfare of the state, in the opinion of either branch, shall require secrecy."

Horrigan confuses the means with the end. The historical record of Part II, Article 8 makes it clear that its purpose was open government, to allow the citizens to be informed by preventing the Legislature from conducting its business in secret. In 1792, physically keeping the doors to the House and Senate open to the public at all times was the only way to achieve open government. Television, radio and internet did not exist.

The House conducted its business after the gallery was closed on March 31, 2011, in a far more open manner than required by a literal reading of Part II, Article 8. The proceedings continued to be live-streamed, and none of the press, television cameras or recording equipment was removed.

To claim, as Horrigan does, that live-streaming does not effectuate the purpose of Part II, Article 8 is equivalent to claiming that the First Amendment and Fourth Amendment apply only to the forms of communication and the types of search technology that existed in the 18th century.

Obsessed with O'Brien

While it was unfortunate that some had to suffer because of the selfish and stupid actions of the protesters during the budget debate in 2011, it simply was not practical to immediately reopen the gallery.

It was eminently reasonable to assume, given the scale of the demonstrations occurring outside the State House and the obviously planned nature of the outburst, that there was a sizable number of additional protesters who would enter the gallery, if it were immediately reopened, in order to renew the disruption. Moreover, there was no efficacious way to prevent most of the expelled protestors from being readmitted to the gallery. While some probably could have been identified because they were especially menacing and vociferous, there were simply too many to have any confidence that security had the capacity to identify and exclude most of them.

Horrigan's mob-rule bill can be understood as a manifestation of O-O-S: O'Brien-Obsession-Syndrome – a visceral reaction against anything that former House speaker Bill O'Brien is for, and a visceral reaction for anything O'Brien is against.

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