

MEETING THE CHALLENGES OF THE MAIN STREET PLAZA CONTROVERSY

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Boston organized-crime boss Gennaro Anguilo once said, "When a man assumes leadership, he forfeits the right to mercy." Before the Main Street Plaza controversy, I would never have believed that statement, except perhaps in the world of mobsters. I viewed people as generally kind and compassionate, especially when others were doing their good-faith best to resolve problems.

I would still like to believe that is true. However, from my recent experience, I fear that Gennaro Anguilo's observation is all too accurate—at least when, together, religion and government are at the core of a community dispute. The Main Street Plaza dispute has, sadly, brought to the surface a divisiveness and mean-spiritedness that we must confront and resolve. On many occasions, there have been vicious attacks against me personally as I worked to bring the issue to rest in a way that respects the interests of all concerned, while recognizing the promises and agreements that were made before I was elected.

My predecessor, Deedee Corradini, agreed—with City Council support—to sell a block of Salt Lake City's Main Street to The Church of Jesus Christ of Latter-day Saints. (For ease of reference, and pursuant to the general protocol of The Church of Jesus Christ of Latter-day Saints, that organization will be referred to hereafter as "The Church.") That block is between Temple Square, the most sacred place for The Church, and one of its office buildings, the Joseph Smith Memorial Building.

The specific terms of that agreement were not disclosed until just before the City Council voted to close the block of Main Street. The final agreement, in the form of a "Special Warranty Deed" signed by former-Mayor Corradini and a representative of The Church, provided for 1) the retention by the City of an easement for the purposes of pedestrian access and passage only and 2) authority by The Church to deny access to those who engage in certain activities, including "loitering," "assem-

bling,” “partying,” “demonstrating,” “picketing,” “distributing literature,” “soliciting,” “sunbathing,” and “carrying firearms,” as well as those who engage in “offensive,” “indecent,” “obscene,” “vulgar,” or “disorderly speech, dress or conduct.”

Several people and organizations represented by the American Civil Liberties Union—an organization dedicated to the preservation and vindication of rights guaranteed under the United States Constitution—filed a lawsuit against the City in federal court, claiming the transaction violated the Establishment Clause and the Freedom of Expression Clause of the First Amendment to the Constitution.

The matter was decided by the United States Court of Appeals for the Tenth Circuit after I became mayor. The Court of Appeals held that the First Amendment does not permit the City to retain the easement and, at the same time, to permit vast restrictions on conduct and other expressive activities. Those two provisions of the agreement are, according to the Court of Appeals, constitutionally incompatible.

With that opinion, I was faced with an immense dilemma. The parties agreed to one term that was crucial to The Church (which paid \$8.2 million for the land) and another term that was crucial to the City—yet they could not both constitutionally be given effect. Either the restrictions or the easement had to go.

Shortly after I perused the Court’s opinion on the day it was issued, I was asked by a reporter if I was happy with the decision. (I suppose the reporter was led to this question because of my general support of the mission of the ACLU.) As reported in *The Salt Lake Tribune* (October 10, 2002), I replied:

I’m not happy about it, because a deal was entered into in good faith between two parties and one of those parties didn’t get what they bargained for. It would have been far better for the parties to understand the constitutional prohibitions against what they tried to accomplish.

My view always has been that we should endeavor to honor the essential terms of the agreement to the extent constitutionally possible. People and institutions should, to the extent possible, abide by their agreements. A group of advisors—including former City Council members (one of whom voted in favor of the Main Street closure and one of whom voted against it), ethicists, a constitutional law expert, a lawyer with real property expertise, and a variety of religious leaders—agreed

that we should pursue a resolution that most closely gives effect to the promises that were made by then-Mayor Corradini and The Church. However, the sticking point was—and continues to be—that the essential terms of the agreement cannot constitutionally co-exist.

After weeks of research, consultations, and drafting and re-drafting of documents, I proposed that we resolve the matter by defining the City's easement as being located on about 10% of the Plaza, along the sidewalk furthest from Temple Square. With that proposal, The Church would have sole control of 90% of the Plaza, in the same way any private property owner has control over its property. Also, "time, place, and manner" restrictions would be imposed on the City's easement that would govern disruptions and, in most areas, prohibit demonstrations. (That proposal can be found at www.slcgov.com.)

That proposal would have required minor compromises on both sides, with the City retaining an easement and most of the restrictions on disruptive conduct being enforced across the Plaza. However, it appeared, almost immediately, that the proposal was not acceptable to The Church. Several members of the City Council seemed unsupportive. Also, although the ACLU had earlier expressed support for the proposal, one of its lawyers later stated that the City might be sued if we did not allow small protests across the entire length of the Plaza.

Faced with growing divisiveness each day, I knew we must reach some resolution in a timely manner. Otherwise, legal battles would continue at a high cost to taxpayers; political maneuvering would go on, even after I am no longer in office; and any legal guarantee of perpetual public access would be far from secure. Perhaps more importantly, without a resolution of this conflict, the Plaza would serve as a constant wedge between many members of our community.

Although I had been adamant that the City's easement must be retained, it was apparent to me that no resolution was possible as long as the easement existed because First Amendment rights applying to any such easement would permit disruptions and offensive conduct that everyone involved in the initial deal intended to prohibit.

The earlier words of Reverend Tom Goldsmith of the First Unitarian Church echoed in my mind—and heart: "If we can't find a solution to this problem, how can we expect peace to be reached in Jerusalem?" Day and night, I contemplated how we could reach a resolution that was fair and which would benefit our community and individual lives for many years in the future. How could we give effect to the conduct restrictions

to which the City, through my predecessor, had agreed, while obtaining something of great value for our City?

Although I favor the earlier proposal defining the physical dimensions of the City's easement and applying constitutional time, place and manner restrictions to it, I have developed another proposal that appears to have a better chance of acceptance by The Church and the City Council. My responsibility was to find a solution, even if it meant that my earlier demands that the City retain an easement were not met.

The second proposal (which can also be found at www.slcgov.com), supported by the Alliance for Unity, The Church, and Jim Sorenson (who has generously pledged \$1 million toward the proposed project), provides that the City would exchange the easement for 1) land owned by The Church near the Sorenson Center in the Glendale area and 2) a pledge by the Alliance for Unity to raise \$5 million for the construction of a community center adjacent to or near the Sorenson Center. Jon Huntsman (with whom I co-convened the Alliance for Unity) has been immensely supportive of this proposal, generously joining with the George S. and Dolores Doré Eccles Foundation to contribute a total of \$1 million toward the project.

Although the second proposal will not continue the legally-enforceable guarantee of pedestrian access, representatives of The Church have previously stated that access will be allowed. Also, opportunities for free expression abound on all of the public sidewalks near the Plaza, Temple Square, and the Conference Center.

This has been a difficult, complicated challenge. But, as a community, we will be stronger and more unified if we can kindly and compassionately confront our differences and identify a solution that will bring peace to our City. We can bring about positive results, while recognizing that, under the circumstances, the exact terms comprising the earlier unconstitutional agreement cannot be given effect.

Leadership is about more than choosing sides or stubbornly advocating for a position. Leadership must bring different sides together—and find solutions. With greater understanding of the facts leading to this dispute—and to the solutions I have proposed—this community can now come together in greater peace and harmony, more respectful of our diversity and of each other.

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