



Freedom Requires Secure Property Rights

By Dave Roland

Slowly, yet surely, Missourians have given away a significant aspect of their freedom during the last one hundred years. In this state's early days, it was understood that constitutional protections for liberty and property meant you were free to use your land as you saw fit in pursuit of the American dream. People used this freedom to build homes, farms, and businesses, while still maintaining the flexibility to change the ways they used the property as their circumstances demanded. While they could be held liable for any damage they did to their neighbors, property owners were generally at liberty to work toward prosperity on their own initiative, without asking anyone else's permission.

Sadly, Missourians today rarely enjoy the same freedom. Long ago, a significant part of the population decided that a person's freedoms end where they create a critical mass of irritation among their neighbors. Now, even when people hold documents saying they own their property, local governments have crafted an imposing array of laws to tell them how they may and may not use it. Ordinances restrict how land may be used, how tall or how large buildings may be, what they must look like, and how many people or families may live in them. Where owners once had flexibility to change the use of their properties to realize their greatest advantage, they now must gain the approval of others whose interests might be directly contrary to those of the individual property owner.

A case in point is the story of Brad Ferguson, who would like to develop his land on the outskirts of Washington. He believes that people would be interested in owning homes that he would like to build on his land by Holtgrewe Road, so he has been trying to jump through the necessary hoops to profitably develop his property. For the first century of Missouri's statehood, Mr. Ferguson would not have been required to ask anyone before building homes and offering them for sale to willing buyers. Even in this past year, he had a glimmer of an opportunity, thanks to the controversial "village" law that should have allowed him to pursue his dream. But the fear of inconvenience has led Mr. Ferguson's neighbors and elected officials to severely limit his individual liberty and to prevent his constitutionally guaranteed right to "enjoy the gains of [his] own industry" by realizing the

Summary

The property rights of ordinary Missourians have eroded over the years. The founding principles that established our nation held that individual rights must be protected against the majority. This ideal once guided Missouri's Supreme Court, as well. Missouri needs to cultivate a renewed respect for the freedoms of all.

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potential value of his property.

The founders of our nation spoke about circumstances in which the desire of a majority conflicted with the freedoms of the individual. James Madison, well aware that the tendency of governmental power would be to legislate majority preferences to the detriment of those outside the mainstream, cautioned that government must be obliged to control itself. He noted that where a majority was willing to restrict the liberties of some, they necessarily compromised freedom for all within that society.

These same principles once guided the Missouri Supreme Court as well. More than a century ago, the Court held that when a government subjects the property of its citizens to the unlimited control of “even the most democratic depository of power,” it would still be a despotism. The justices further stated that communities were and ought to be powerless to deny individuals the right to use their property as they saw fit, so long as that use did not threaten the health, safety, or welfare of the community. Because the state constitution protected citizens’ liberty and property, cities were not permitted to limit the height, location, or use of buildings on their property unless the government demonstrated that a particular use of property would threaten the neighborhood’s health or safety.

While courts in Missouri and across the nation have in recent years neglected such a simple freedom as the harmless development of one’s own property, this sort of liberty is no less essential today than it was when courts were more zealous in its protection. We, as citizens, should all cultivate respect for the importance of this sort of freedom, and we should remember that our own liberties necessarily depend on our willingness to secure the freedoms of others, like Mr. Ferguson.

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