

Senator Claxton, Representative Matlack, Members of the Subcommittee on Discontinued Roads

My name is David Manter, and I have lived on Young Road in Fayette for 50 years. In order for you to understand the havoc our current discontinuance laws are creating, I'd like to take you through an abbreviated history of what I have been through on this road. There are many in this state whose experiences have been similar.

When I served in the military, I swore to uphold the Constitution. I buried 57 soldiers who gave their lives to defend that Constitution. I have had my Constitutional rights violated in this state for fifty years. This state has known since 1970 that a public road with no public maintenance would result in destruction of access, which would be *unconstitutional unless accompanied by both due process and just compensation*. Yet my access gets damaged by public use constantly, and I get no compensation or due process for this repeated taking because it's an "unfettered" public easement. I don't want to put up with this for one more day.

In 1945, the Town of Fayette petitioned the County to "discontinue" Young Road, but to "retain the right of way as it now exists." (What existed was a County way that had not been maintained since at least 1904.) At that time, when a road was discontinued it ceased to exist as a road. But the wording of the petition seems to mean that the Town wanted the County to give up the County's responsibility to the road, but that the Town would continue to hold the road as it existed. No one who saw the petition to discontinue would have understood the road would remain a public road but that abutting landowners would become responsible for providing all of the maintenance of that public road at private expense. That was *Unconstitutional failure of due process, and resulted in Unconstitutional involuntary servitude*.

Instead of taking the action requested in the petition, the County Commissioners ordered the road "closed, to be retained as a private way subject to gates and bars." At the time, a private way was a dead end road laid out by a town or county at the request of an owner of improved land, to provide access to his private property. The County had jurisdiction to establish a private way ONLY upon appeal by the owner of the improved land, and then only if his petition to the Town for layout of the way had been unreasonably refused. Numerous cases show that failure to establish any ONE of those points left the County without jurisdiction to act, making any action they took void from the outset. So in 1945 the County could discontinue Young Road, but not establish it as a private way. It wasn't until 1965 that the discontinuance law was changed to

provide for the retention of a “private way” when a road was discontinued. Yet the Courts now say that when a town or county retained a “private way” on a road they discontinued before that date, that the decision stands because the period for appeals has expired. That makes the 1965 change in the law an “*ex post facto*” law, and therefore *Unconstitutional*.

In 1968, the Limited Used Highway law was passed, (23 MRS 2068,) allowing a town to cease maintenance of little used roads while keeping them open to public use. In 1970, the Maine Supreme Court declared in *Jordan v Canton* that the Limited User Highway law was *Unconstitutional because a public road with no public maintenance would inevitably be destroyed, and that destruction of (or damage to) property access is a “taking,” requiring both due process and just compensation*. So when I moved here in 1971, the Limited User Highway law had already been repealed. It wasn’t until 1976 that 23 MRS 3021 became law, declaring that “private ways” laid out pursuant to statutes passed in 1954 were actually “public easements.” This is *ex post facto* law, which is *Unconstitutional*. In 1987, the Maine Supreme Court applied this definition to a road that was declared a private way in 1945 without following the requirements of *any* law existing at that time.

Also in 1976, 23 MRS 3022 declared that public easements were open to public use by foot or motor vehicle. But with no requirement for public maintenance, this made them *essentially the same thing as the Unconstitutional “Limited User Highway.”* Prior to that, “private ways” were dead ends, laid out at the request of the owner of improved property to which they would provide access. Now, private ways are often through roads, and take on that status as the result of a vote of the townspeople to discontinue public maintenance of the road.

Also in 1976, the Abandonment statute, 23 MRS 3028, came into existence. It allowed a road to become a public easement with no notice, hearing, or just compensation for those who will be compelled to keep the road passable for public use at their own expense in order not to lose access to their own property. An amended version of section 3028 will go into effect shortly, but it still will not address the ongoing damage to property access due to public use. *This is an Unconstitutional taking of private property (gravel etc.) for public use without due process or just compensation.*

In 1984, the Maine Supreme Court declared in *Brown v Warchalowski* that it is *Unconstitutional* to lay out a public easement unless there is public exigency for establishment of

the way. Yet under the abandonment law, a road becomes a public easement after it has been proven that the public has had *no* need for the road for thirty or more consecutive years. *This creates a public easement where there is no public exigency, which is Unconstitutional.*

When I bought my property in 1971, I could possibly have understood that the Town had asked the County to relinquish its responsibility for the road to the Town, or I could possibly have understood that the road had ceased to exist in 1945 when it was discontinued. How was I supposed to have known in 1971 that in 1984, the Town would use the 1976 law to claim that the road was Abandoned, and therefore a public easement? How could I have known in 1971 that in 1987, the Court would use a 1976 law to redefine what the county granted in 1945, allowing the Town to regain a public easement over the road I had rebuilt, and that I would be compelled to continue to keep it passable for the public's use at my own expense?

The Commissioners had the authority in 1945 to take "an alternative action," which the Court used to justify retaining a private way instead of discontinuing the road. But the words "alternative action" were intended to give the County the right to choose between alternatives presented to them in a petition. Those words could not give them the authority to take an action alternative to what was asked for in the petition, nor alternative to what the law gave them the power to do. To do so would be *Unconstitutional in that it would violate due process*, because the public (including the abutters) would have had no advance notice of the action to be taken. The petition was to discontinue the County way and for the Town to retain the right of way, not to create a road which the abutters would have to maintain for the public's use.

To make matters worse, the Court declared that a public easement gives the public an "unfettered right of access." Since then that has been taken to mean that these roads are subject not only to use by foot or motor vehicle, but also to everything from ATV's to log skidders.

These Unconstitutional laws and the precedent set by our case in 1987 have been used to victimize others all across this state, forcing them to maintain public roads at private expense. The bill we proposed to this Legislature (before the Revisor of Statutes revised it) would have required that if a Town holds a public easement over a discontinued road on which there is a resident, then the Town must provide sufficient maintenance to provide access for residential purposes. We proposed that 23 MRS sections 3651 and 3652 could be used to enforce such maintenance.

I have been subjected to ex post facto laws, involuntary servitude, and the repeated taking of my private property access without due process or just compensation for fifty years.

I don't care how you do it, but this needs to stop, for me and for others across the state. You need to assure that the Constitution is upheld, and that public rights are accompanied by public responsibility.

Thank you.

David Manter