

# The Passy Press

## Letter to the Editor

**From:** John Cogswell [johnkogswellaw@undisclosed.com](mailto:johnkogswellaw@undisclosed.com)

**To:** Nick Gardiner [enpg@thepassypress.com](mailto:enpg@thepassypress.com)

**Date:** April 25, 2015

**Subject:** Re: New Essay Expose on Our Federal Government & What to Do About It

Dear Sir,

Haven Pell is to be commended for illustrating a few of the serious problems facing America and suggesting a pledge of common principles as a first step in remedying a failing nation.

I agree with Haven Pell's comments but write to comment on his ambiguous reference to *Citizens United*, which leaves the reader uninformed.

While Pell did not opine on *Citizens United*, he seemed to support the notion that restructuring political contributions would mitigate the problems he outlined. He likely disagreed with *Citizens United* because it "thwarted" that effort. If this is a fair interpretation, then Pell has joined a multitude of others, which, based on unsupportable assumptions, ill-advisedly opposes *Citizens United*, a landmark Supreme Court decision reaffirming fundamental freedoms within the First Amendment. This multitude is not unique in its concern over money in politics and the need for an acceptable solution. The Athenians checked money influence by selecting leaders with a lottery. James Madison concluded there was no solution and that "Destroying the liberty [of some factions is] worse than the disease", a remark cited in *Citizens United*. I support *Citizens United* but believe it should be accompanied by legislation requiring full and prompt disclosure of contributions and expenditures.

Space does not permit an adequate discussion of issues related to *Citizens United* but I can make a few observations. First, this multitude assumes that messages sponsored by the wealthy are not welcome. There is no evidence to support this. In fact, the messages of the wealthy may be exactly what America needs.

Second, the multitude assumes that the average voter will be overwhelmed by messages of the wealthy and be unable to filter out the good ones from the bad. This assumption is contrary to the fundamental premise of our republic that each individual voter is a sovereign individual and knows best how to filter the good from the bad messages. A contrary conclusion does not demand repeal of *Citizens United* but overhaul of our constitutional system.

Third, even if the messages of the rich are correctly deemed to be unwelcome, then the question is who decides what messages are harmful. The multitude assumes that there exists an agency or person who can decide what messages are good or bad and can filter them for the people by controlling whose money is being spent. This assumption wrongfully assumes that such agency or person has wisdom superior to that of the people and will never become a tyrant thereby preserving a status quo the people might later prefer to change. This truth is confirmed by the

efforts of Harvard Professor Lessig who has acknowledged the irony confronted by him in his effort to use *Citizens United* to repeal *Citizens United* and deprive others of the ability to restore it in the same manner.

Fourth, the multitude assumes that a large corporation engaged in the business of printing news or broadcasting messages (known as the media) delivers worthy messages compared to the alleged unworthy messages delivered by private corporations or persons who commit their own funds to compete with the media. There is no evidence that the messages of media corporations are more worthy than the messages of non-media corporations or persons.

Fifth, the multitude assumes that the average aspirant for public office is able to comprehend the unique and complex election rules that currently affect 71 distinct entities, apply separate rules for 33 different types of speech in federal elections containing do's and don'ts, and contain 568 pages of regulations, 1278 pages of explanatory materials and 1,771 advisory opinions. Do we really wish to require our future leaders to risk criminal sanctions by a federal prosecutor who, in his discretion, determines to file charges against those trying to help our country? Does anyone believe these rules will shrink in the days ahead? Does anyone believe every candidate should understand this bureaucratic mishmash?

Lastly, the multitude assumes that equalizing the financial resources of candidates is reason enough to prevent others from exercising their First Amendment rights to spend more. While leveling the playing field sounds like a good thing, such a policy is without justification in conditioning the First Amendment rights of one citizen on the unaccountable judgments of another.

It's time for people to defend *Citizens United* and at the same time seek disclosure laws.

Sincerely yours,

John M. Cogswell  
President, Campaign Constitution

John Cogswell started his education in a one-room schoolhouse and is a trial lawyer living Buena Vista, Colorado.