

The Passy Press

Letter to the Editor

From: John MacMurray john.macmurray@undisclosed.com
To: Nick Gardiner enpg@thepassypress.com
Date: May 2, 2015
Subject: Re: New Essay Expose on Our Federal Government & What to Do About It

Dear Sir,

Haven Pell has written a provocative article, as promised by its title.

His underlying case for K Street being the culprit responsible for Federal government dysfunction leans heavily on two views.

One, that money primes conscience, when it comes time for a politician to get reelected. Second, that self-interested greed of the K Streeter in perpetuating impasse prevents cross aisle comity in the legislative process. This latter, because, K Streeters, once involved, acquire a whammy influence on legislation outcomes (based on a politician's worry that important future reelection funding will dry up if he doesn't deliver).

Thus, we have Mr. Pell's parallel with the "greed "maddened Wall Streeters. Thus, the source of dysfunction.

The remedy: Get all office holders and candidates for office to sign a pledge to uphold the Constitution and, presumably, not to become puppets of K Streeters. Then, let peer pressure and public opinion enforce compliance.

Good luck.

If the Occupy Wall Streeters did pick the wrong address, I doubt that moving on to K Street will bring them home—because I think it lies elsewhere.

I find that the focus on K Street, in relation to the constitutional tension between First Amendment protection of free speech and the ways and means that capital sources can in present times be mobilized toward producing election results, falls into the category of “kill the messenger”. I view K Streeters as agents, not principals, and think they are hardly exempt from market place dynamics affecting their services and incomes. I doubt they have a free pass to feed at the trough indefinitely, without producing results.

In other words, it is likely that the K Street clients will not continue to pay K Streeters unless they produce. The K Streeter's self interest in stone walling the resolution of an issue would thus be subject to the same restraint as any negotiation strategy, and the market place can be relied upon to smoke out the service providers that put their own interests above the interests of their

client.

Mr. Pell's proposed remedy to address the underlying problem is telling. He, by looking to reform a politician's behavior, has conceded the ground that would instead focus on the principals that engage lobbyists (especially) and the rest of the K Streeters that Mr. Pell includes in that "industry".

Presumably, his choice is based on the present state of the law that affords First Amendment protection to K Street activities on behalf of their clients. Were that not the case, the easy solution would focus on the K Streeter and his client— banning the knockout combination of allowing recourse to politicians for the purpose of influencing legislation, while at the same time permitting the "concerned citizen" to dangle (i.e., a maneuver short of outright bribery or violation of direct campaign funding laws) the prospect of reelection funding.

Isn't that where the real problem lies?

Of course, that would entail a retesting of the Citizens United vs FEC case, whose legs would stand (or try to) on the ground of asserting a greater interest in protecting the integrity of the election process over an individual's (including corporations and labor unions) current First Amendment right to apply financial asserts in support of political objectives. For me, re-plumbing the merits of that position is the really interesting question presented by K Street. Personally, I don't think the answer is either easy or obvious,

I would not, therefore, look for a remedy that solves problems arising from protected First Amendment activities that does not challenge the premise of that protection in the first place. Otherwise, it's fielder's choice as to whether those activities are in fact good or bad — assuming that the state of the law bears on that judgment.

Always your very happy participant, and with my compliments to Haven Pell for an excellent and stimulating article.

John C. MacMurray

John MacMurray is a retired lawyer, and a graduate of Princeton University and Columbia Law School. He has worked as a teacher, served on supervising boards of several schools and is a member of the advisory board of Legal Outreach, New York, NY. He resides in East Chatham, NY.