

The Passy Press

Letter to the Editor

From: R. Trevor Tait robinparis@undisclosed.com

To: Nick Gardiner enpg@thepassypress.com

Date: May 6, 2015

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

Dear Sir,

Haven Pell's article on the "K Street" lobbying barons with its suggested remedy that a voluntary code should be agreed by politicians and then respected in order to deprive K Street of the use of unlimited funds, from corporations, unions and other often non-disclosed wealthy persons and special interest sources, is wishful thinking. The big money including via Super pacs would simply continue as now to fund attack ads and promote "causes" favouring compliant candidates. Politicians who refuse such indirect funding would be seriously if not fatally disadvantaged.

Any legally enforceable solution to control the new flood of funds would seem to have little chance ever since John McCain's bi-partisan law to restrict campaign finance (formerly upheld by the previous Supreme Court) has been effectively reversed, gutted and subverted by the *Citizen's United* decision of the bare majority of the five (out of nine) judges appointed by Republican Presidents. That case and subsequent decisions hold that Congress and State legislatures have no legislative power to control campaign finance or even appearances of corruption except in cases of specific bribery, and that corporations and others (which can have non disclosed and foreign funders), not citizens, have the "free speech" right of citizens to fund politicians and party politics.

The authorization of unlimited funding in politics has been legally justified as an exercise of the First Amendment right of "free speech", although that right is not absolute. It is limited for instance when it creates a "clear and present danger" (as shouting "fire" in a theatre stampeding the crowd). Such a danger is now created by the "dark money" flood, exploding since *Citizens United*, distorting the process and fairness of our elections, which are the basic guarantee of our democracy.

In these circumstances the need for a practicable enforceable remedy is urgent, but to change the law by an amendment to our Constitution, which already has been started by various states, may take many years, and to replace one or more of the five judges who have emasculated congressional power requires waiting for a vacancy. Any attempt of purposeful replacement would seem uncertain, bearing in mind that no specific case question or promise is acceptable in the nomination or confirmation hearing process. Even if the next presidential candidates promise to choose replacement judges only from those who appear ready to overturn *Citizens United*, the future of such a promise, subject to the usual party politics, would make fulfilment of such promise speculative.

Acceleration of the occurrence of vacancies by way of a maximum age for retirement (possible and practiced in many states and for most federal judges) cannot be applied to judges of the Supreme Court. This because the accepted interpretation of the Constitution text, that such judges shall serve during “good behavior”, means until death or voluntary retirement.

Thus amendment of our Constitution may well be necessary, and might be practicable if leading enlightened politicians in both parties can be persuaded, as Haven Pell proposes, to make common cause to control political campaign finance which has become an overwhelming burden for all, predicted to more than double in amounts for the next election.

Such a bipartisan leadership initiative could include a proposal that all politicians and parties should agree to disclose all funds received, directly or indirectly, thus embarrassing any failures to do so, thereby arousing public awareness of the facts and dangers of the massive funding now influencing both domestic and foreign policy decisions for our republic.

An accelerated constitutional convention procedure could be voted by a two-thirds majority in both houses of Congress. It should be limited specifically to the one amendment proposed, and require ratification by public referendums in all states (since current opinion polls show a great majority of citizens strongly in favour), thus avoiding local party politics.

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