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2016 Constitution Day Essay Contest: 3rd Place

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Constitution Day, created in 2004 by an act of Congress, mandates that all publicly funded schools provide educational programming on the history of the U.S. Constitution, which was adopted by delegates to the Constitutional Convention on Sept. 17, 1787. This year's Constitution Day at UK is Monday, September 19th (see <http://www.uky.edu/UGE/constitution-day-2016>). Under direction from the Office of the President and the Provost, the Division of Student and Academic Life will lead a cross-campus gathering of support for offering Constitution Day activities at the University of Kentucky. Staff and faculty work with many different student organizations and units on campus to develop a campus-wide approach to the celebration of our rights and responsibilities as citizens of the U.S. and to develop habits of citizenship in a new generation of Americans. The general thematic topic this year is focusing on "Freedom of Expression, Identity and the U.S. Constitution."

An essay contest for undergraduates is sponsored by the UK Scripps Howard First Amendment Center, the Office of the President and the Provost's Division of Student and Academic Life. The essays are blind-judged by former UK journalism students who are lawyers, UK professors and media law professors at other universities. The entries are scored on the following criteria: historical and legal accuracy of the content, the strength and logic of the argument, the original ideas presented, the organization of the argument, including the thesis, and the quality of the writing. The winners are announced the First Amendment Celebration, 7:00 p.m. Tuesday, Sept. 27, in the Kincaid Auditorium of the Gatton College of Business and Economics.

The essay, which cannot exceed 750 words, addressed this writing prompt:

During the Republican National Convention in Cleveland in July, protesters tried to burn a flag of the United States. Although such an act offends many people, the Supreme Court ruled in 1898 and again in 1990 that burning the flag is expressive conduct – an act of speech – and protected by the First Amendment. In another First Amendment decision, the Supreme Court ruled unconstitutional the attempt by Congress to regulate the spending of money during political campaigns. In the *Citizens United* decision in 2010, the majority said campaign contributions are also protected speech. That means businesses, unions, and organized groups can spend as much money as they choose for ads supporting or opposing candidates as long as they don't coordinate such spending with the candidates' campaigns.

Essays must address this question: Should Congress propose an amendment to the Constitution that would allow the federal government and states to make it a crime to burn the United States flag and another amendment to allow legislatures to place limits on the amount of money flowing into political campaigns?

Third Place – James A. “Drew” Burke

[No Title]

The First Amendment may be the most oft-used constitutional provision as foundation for political argument. In its 1983 decision in *Perry Education Association v. Perry Local Educators Association*, the United States Supreme Court said that regulation of free speech guaranteed by the First Amendment is only allowable if it serves a compelling governmental interest and must be narrowly tailored to achieve that interest. Congress should not propose an amendment to limit free speech in regards to national symbols or campaign finance. However, the basis is not the same.

The First Amendment protects our right to criticize our government. The United States Flag Code states that “the flag, when it is in such condition that it is no longer a fitting emblem... should be destroyed in a dignified way, preferably by burning.” This can be interpreted to mean no longer representing the freedoms on which our nation was built. To disallow such protest would threaten one of our most basic liberties guaranteed by the First Amendment and would set precedent for future unconstitutional restrictions; there is no compelling governmental interest for this. Further, a Constitutional amendment limiting free speech through protest would threaten legitimacy of those we protest.

With regards to campaign finance, the argument is more complex. Thanks in part to the presidential run of Senator Bernie Sanders, corruption via campaign finance is now at the forefront of American political conversation. Senator Sanders roused young persons all over the nation via his platform of campaign finance reform to make the voice of all Americans heard. The late Justice Antonin Scalia stated in the oral re-argument of *Citizens United v. Federal Election Commission* (2010) that Congress has an obvious self-interest and that there was “doubt that one can expect a body of incumbents to draw election restrictions.” Today, corporate money is diluting the voices of constituents, overruling concerns of citizens as they petition their legislators for change. With that in mind, it is not a Constitutional amendment that can solve this issue, but a Supreme Court case to overturn *Citizens United* and uphold the First Amendment. Chief Justice John Roberts, in his concurring opinion of *Citizens United*, asserted that the court must sometimes overrule *stare decisis*, the principle that the Court must abide by principles set in past decisions, in order to overturn past decisions as concerns of the American people change over time—segregation, minimum wage, wiretapping—campaign finance must be next.

In his dissent of *Citizens United*, Justice Stevens said, “simply put, corporations are not human beings. In the context of an election to public office, the distinction... is significant.” Corporations are not endowed by their Creator with unalienable rights. Thus, corporations should not be protected by the First Amendment. Even if corporations maintain personhood, it only extends to certain legal rights and responsibilities; the required narrow tailoring of a government decision to limit free speech could easily be applied to campaign finance without overreach. If the Supreme Court were to reject the notion that corporate personhood should be dissolved, there are still two compelling interests by which the Supreme Court could limit expenditures.

First is shareholder interest. Corporations may create political action committees, known as PACs, in order to make limited campaign contributions. The argument has been made that corporations are protected by the First Amendment under the right to peaceful assembly; however, in Justice Stevens's dissent in *Citizens United*, he recognizes that the Supreme Court had concluded in a long line of cases that PACs are constitutionally sufficient assembly and also protect dissenting shareholders, as participation is voluntary. Outside PACs, shareholders' money may be being funneled into candidates they do not wish to support; this violates free speech on the part of the shareholder. Under *Citizens United*, this is legal; this cannot stand.

The second is quid pro quo corruption interest, that is, corporations buying candidates. In *McConnell v. FEC* (2003), the Court recognized material presented in the Bipartisan Campaign Reform Act (2002) that exposed corruption in campaign expenditures. Further, BCRA suggests the dissolution of the distinction between campaign contributions and expenditures. Thus, BCRA provided the information necessary to both constitute a compelling governmental interest in preventing corruption and dissolve the dichotomy of contributions and expenditures.

The American people have lost faith in their government; they believe that their voices are being drowned out by corporate campaign contributors. It is only through manifested acknowledgement of these interests via Supreme Court decision that public confidence in our electoral process and representative democracy can be revitalized.

