Is the Supreme Court Necessary?

By Mel Lavine

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The Supreme Court is not very popular with Americans, according to a recent New York Times and CBS News poll. Just 44 per cent say the court is doing a good job. Three-quarters say the decisions the justices make are “influenced by their personal or political views.” In the late 1980s approval was as high as 66 percent. (Warren Berger and William Rehnquist were the chief justices in that period). By 2000 approval had dropped to nearly 50 percent.

The Times speculates that the decline in the court’s standing may reflect in part the public’s growing skepticism with regard to big business and government. The fall in favor may be due as well to a sense that the court has been notably political since ruling 5-4 in the 2000 presidential election in favor of George W. Bush over Al Gore. The 2010 decision in Citizens United ruled 5-4 that the First Amendment prohibited the government from restricting political expenditures by corporations and unions.

The Citizen United decision changed the rules.

Thanks to that grotesque decision a rising flood of money was uncapped to outside political groups, changing politics as we have known it. Campaigning is longer now and more intense for many races, not just for the presidency. The super PACs, a consequence of Citizens United, are free to mount attack ads that were once the responsibility of candidates. The people in the PACS making the decisions are consultants and wealthy donors with no obligation to report, explain or justify anything they do. In sum, the public interest be damned.

Think about it. Because of Citizens United an increasing number of those mapping campaign strategy – Republican and Democrat — need not be tied to the career or philosophy, of a candidate. They are only answerable to the tycoons who are answerable to no one.

As a Republican consultant put it, “If you’re a top consultant today, you’d much rather have a presidential super PAC than a presidential campaign.” Because of Citizens United super PACs can accept unlimited contributions which are off limits to political parties and candidates.

We expect to hear from the court again, as early as this month. It may move to overturn some or all of the 2010 health care law. The court may also decide the fate of an Arizona immigration law that in part requires police to check the status of immigrants they stop or arrest.

In all this I am reminded of what Theodore Roosevelt once said: Important public questions should not be left up to the Supreme Court but debated by the people and decided in a plebiscite. If we had had such a vote in 2000, we wouldn't have had 8 years of George W. Bush who, we later learned, had lost the election by a majority.

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