



## **Objecting to the Declaration of Independence?**

**By Bradley A. Smith**

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[Over at The New Yorker](#), Jeffrey Toobin is worked up today about *McCutcheon v. Federal Election Commission*, a case on the Supreme Court's docket this coming term.

Under the Federal Election Campaign Act, an individual can contribute up to \$2,600 to a candidate's campaign, but only up to a total of \$48,600. This means an individual who, for example, wants to help every Republican in a competitive House race with a maximum contribution can't do it — he'll be able to support just 18 candidates to the legal max.

Plaintiff Shaun McCutcheon is trying to figure out why this is so. If the first 18 candidates aren't corrupted by his contribution, what is so different about candidate No. 19? Or 20? or 100? He thinks the First Amendment ought to allow him to associate with as many candidates as he likes, and to spread his message as far as he can.

The Republican party, another plaintiff in the case, raises the same issue about party committees: The law limits an individual to contributing \$32,400 to a national political party committee and \$5,000 to a PAC, but also imposes an overall limit of \$74,600 on all such contributions. So an individual can give the maximum legal contribution to the RNC, and to the Republican Senatorial Committee, but if he does so, he can't give the otherwise legal maximum to the Republican Congressional Committee. I guess that's okay if you think it's more important that Republicans win the Senate than that they keep the House.

That part of the case dealing with limits on giving to individual candidates ought to be a slam dunk. The party issue is tougher, because the Court has, in the past, expressed concern that donors could give large, unearmarked contributions to parties that then might pass them on to candidates in accordance with the donor's wishes, thus creating large, "corrupting" contributions to the candidate. The Court has never quite explained how the donor can assure that an unearmarked contribution is given to the candidate he wants to corrupt, but nonetheless, it has so held.

Of course, if the members of Congress were smart (and here we mean Democrats, since Republicans would do this), they would raise the limits on giving to parties generally. If

limits on giving to party committees had kept pace with inflation since they were first enacted in 1974, they'd be over \$90,000 today, not \$32,400. That explains in large part why super PACs, which can raise and spend without limit, are starting to take over functions once handled by the parties. Members of Congress, and the political parties with which they are affiliated, essentially labor under a self-inflicted wound.

But what struck me about Toobin's argument (he thinks a positive result for the plaintiffs would be the worst thing since the Lone Ranger hit the big screen) is that it would allow too much speech by "wealthy people." True, as a journalist Toobin has no financial limit on his speech, beyond what *The New Yorker* and its readers are willing to tolerate, and true, most Americans can't afford to give \$32,400 to a political party, let alone to more than one.

But I wonder if Toobin objects to the Declaration of Independence. You know, the part where the Founders pledged their "lives, fortunes, and sacred honor" to the project. Fortunes? Not only did they pledge them, they meant it. Just a few months after signing the declaration, and with the Continental Army hunkered down at Valley Forge, Robert Morris gave the federal government \$10,000 — certainly the equivalent of over \$5 million today — to pay its bills. He also personally financed much of the fledgling U.S. Navy and merchant fleet. Carter Braxton, another signer, gave the fledgling government 10,000 pounds sterling for its operations, as well as financing shipping and privateers at a considerable loss. Lewis Morris lost his entire fortune supporting the revolution. George Clymer, Thomas Nelson, and numerous other signers made major financial contributions and suffered major losses.

I wonder if Toobin is critical of our laws that have allowed Jon Stryker to fund gay advocacy, George Soros to fund campaign-finance "reform" efforts, or any number of the causes, conservative or liberal, to which persons have devoted their fortunes.

Toobin criticizes Justice Anthony Kennedy for writing, in *Citizens United* (a decision Toobin hates), "political speech cannot be limited based on a speaker's wealth." But what does the First Amendment mean if not that the government does not decide who has spoken enough, and needs to be stopped? Toobin may not have a lot of monetary wealth, but he has a lot of what we might call "media wealth." I wonder if it ever occurred to Toobin where he might rank on the list of "persons who have spoken too much" if the "wrong" people came to power, and had the power to limit speech?

A win for McCutcheon and the RNC would be a big blow for a sane campaign-finance system, and more important, for our fundamental freedoms.

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