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Cutting the price tag off free speech

By Eric Wang
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Campaign spending limits mean only media have unfettered First Amendment rights

In recent weeks, NBC and CNN have announced upcoming documentaries about presumptive 2016 presidential candidate Hillary Rodham Clinton. Meanwhile, billionaire Jeff Bezos spent $250 million to purchase The Washington Post, which he can use to speak about any politician he wishes, as much as he likes. These developments may become significant in October, when the Supreme Court considers a case that some have billed as the next Citizens United.

To see why, let's rewind to five years ago, when a small nonprofit organization was legally prohibited from airing a documentary about Mrs. Clinton. At about the same time, the Federal Election Commission fined a billboard company owner more than $100,000 for not telling the government he was promoting George W. Bush's re-election with his signs — a requirement Mr. Bezos need not worry about.

Why this disparity in the law's regulation of political speech? The answer lies in the campaign finance laws, which exempt media corporations from most of the rules that apply to everyone else's political activities. Instead of imposing more restraints on the media, however, or going to the opposite extreme by subsidizing marginalized speakers, what we need is simply to give everyone the same legal rights to unfettered free speech.

The Supreme Court took the first step with its Citizens United decision, for which it was subject to endless derision, demagoguery and distortions. The court said simply that private citizens may organize themselves in whatever form they wish, and need not buy a media outlet in order to enjoy the same rights as "the press." In fact, Citizens United was a grass-roots nonprofit that simply wanted to make a documentary about Mrs. Clinton.

The Supreme Court's upcoming case, McCutcheon v. FEC, raises similar issues of irrational regulation. Ever since modern-day campaign finance laws were enacted in

1974, individuals have faced some form of limit not only on how much they may contribute to any federal candidate's campaign, but also on how much they may contribute in total for federal elections.

These limits have always been justified on the grounds of preventing "quid pro quo" corruption, which is the only justification the Supreme Court has consistently upheld for contribution limits. Specifically, the concern is that if an individual gives too much to a politician, that politician will be inclined to take official actions that benefit the contributor. However, the quid pro quo concern is already addressed by a base limit that prohibits a contributor from giving more than $2,600 to any one politician per election. The aggregate limits — set at a total of $123,200 every two years, including $48,600 for contributions to all candidates and $74,600 to all parties and PACs — sit on top of the base restrictions and effectively limit the total number of politicians, PACs and party committees to which individuals may give.

The government argues in McCutcheon that the aggregate limits prevent contributors from circumventing the base limits by using other candidates, PACs and parties to channel their contributions to their preferred candidates. However, other laws prohibit this type of earmarking, making this justification far-fetched on its face.

When we look through justification upon justification for these limits upon limits, we see that the aggregate limits at issue in McCutcheon can rest only on an undue influence rationale. That is to say, the aggregate limits prevent any one individual from "buying" too much influence. However, this rationale makes little sense when one considers the unlimited influence of media outlets like The Washington Post, which prides itself on its role in everything from bringing down President Nixon to exposing the National Security Agency's phone monitoring program.

The unfair advantage for media corporations goes far beyond cases affecting the political rights of millionaires and billionaires. In upstate New York, the Center for Competitive Politics recently sued the town of Manlius because it prohibits homeowners from displaying political yard signs. In Colorado, the Center for Competitive Politics is representing the Coalition for Secular Government, which distributed a 34-page policy paper that incidentally urged Coloradans to vote against a ballot initiative to establish personhood rights at conception. The state demanded that the group register with the government and regularly file burdensome reports.

The Washington Post need not worry about any legal encumbrances on its ability to endorse candidates or requirements to report to government agencies when it criticizes ballot initiatives, and Mr. Bezos faced no limits on how much he could pay for the paper. If, in the McCutcheon case, the Supreme Court overturns the law that attempts to limit the undue political influence of some but not others, it will establish yet another precedent that all of us have the same political speech rights

as powerful media corporations.

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