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## Quiet Libertarian Victories

By [Jeremy Lott](#)

The last several years have not been easy for libertarians to stomach. The U.S. government, which had bloated under President George W. Bush and a Republican Congress - the annual budget had climbed from \$2 to \$3 trillion under Bush and that didn't count much off-budget military spending - has grown even more under President Barack Obama and his Democrats.

The U.S. now has nationalized industries, out-of-control deficits, and a looming entitlement crunch to deal with. And that's before we factor in Obama's calls for even more stimulus and new programs. America, the joke goes, doesn't have the change to afford hope any more. So why are so many libertarians smiling?

It's not merely a matter of I-told-you-so. They have real cause to be happy. At the same time as government has grown so much, there have been several quiet libertarian victories that expand American freedoms and that may work to put the brakes on more government intrusions in the future. Those victories were engineered or assisted by libertarians who have decided to press their case not just in the political arena but through the courts.

I first began to see the full scope of these victories last month when I had lunch with a serious libertarian historian of campaign finance law. It was the eve of the *Citizens United* decision, which would effectively scrap most restrictions on independent campaign spending by individuals, groups, and corporations. He told me that if the ruling came down as expected -- and it did -- then he might have to find himself a different line of work. Mission accomplished.

The lawsuit that tore down most of our restrictive campaign finance laws was brought by a conservative filmmaker with an ax to grind against Hillary Clinton. The basis of arguing against that law was laid out by libertarian legal scholars who pointed out that the free speech clause of the First Amendment ("Congress shall make no law...") is clear. Libertarians argued that the case against prohibiting corporations from taking part in campaigns was specious. It didn't matter if it was an individual speaking or people speaking corporately. The real rub was whether the government can silence speech.

And they painted the argument that money isn't speech as a bit of liberal naivete. After all, money makes the mass exercise of speech possible. Wendy Kaminer wrote in *The Atlantic* that "as a practical matter, money is speech" and, the clincher, "Few reproductive choice advocates would insist that money isn't choice."

As with the First Amendment, so with the Second. The 2008 *Heller* decision, which finally and unambiguously stated that law abiding U.S. citizens have a "right to keep and bear arms," was the result of several lawsuits, included one launched by scholars associated with the Cato Institute, a libertarian think tank, and argued by libertarian lawyer Alan Gura. Cato thought its role in the case so important that it commissioned the book *Gun Control on Trial*.

Most of last year featured furious argument over Obama's cap-and-trade scheme. The chief opposition to the complicated tax and rationing scheme was not congressional Republicans but the Competitive Enterprise Institute (CEI), another D.C.-based libertarian think tank. Led by former Environmental Protection Agency policy analyst Fred Smith, CEI has proved willing not only to argue against policies it disagrees with but to sue.

Last week CEI filed suit in federal appeals court challenging the EPA's forthcoming regulation of greenhouse gasses under the Clean Air Act. This came on the tail of a petition filed by CEI and a few other groups asking the EPA to reconsider its rule in light of the recent Climategate scandal. The idea isn't so much to win in court - though they would take a win, they assure me - but to gum up the works long enough for Alaska Senator Lisa Murkowski to get a resolution of disapproval through the Senate, which will then be used to force the EPA to back down.

Finally, libertarian-leaning groups such as the Marijuana Policy Project and NORML have worked to advocate medical marijuana laws with great success. They have used lawsuits and publicity over police crackdowns to push for public support and policies to make it much easier to legally grow, buy, and consume marijuana. The federal government is starting to back off and medical weed is popping up in all kinds of places where that would have been inconceivable in the past, including the District of Columbia.

Your humble analyst had been skeptical of the success of such tactics in the past. But when the most recent Iowa Poll showed two-thirds of that state's otherwise reserved residents are in favor of medicinal pot, I finally realized that those NORML folks weren't half-baked after all.

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