

Take the Money and Run: Supreme Court Strikes Down Millionaires' Amendment

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Winding down its 2007-2008 term last month, the Supreme Court issued an opinion invalidating the so-called "Millionaires' Amendment," a provision in the Bipartisan Campaign Reform Act (BCRA) of 2002 that allowed candidates to accept increased contribution limits from individuals if they faced a major self-financing opponent. Under the specific provision before the Court, a House candidate could potentially have begun accepting contributions at three times the legal limit—*i.e.*, \$6,900—from individuals once an opposing candidate contributed more than \$350,000 to his/her campaign. (The actual threshold for accepting the increased contribution limits—as well as the ability of a national party to make unlimited coordinated party expenditures on the candidate's behalf—depended on a complex formula that took into account the non-self-financing candidate's fundraising totals.)

The legal challenge was brought by Jack Davis, a Democratic Congressional candidate from New York in 2004 and 2006, who infused his House campaigns with nearly \$3.5 million in personal contributions. By a 5-4 vote, the Supreme Court found that the Millionaires' Amendment imposed "an unprecedented penalty on any candidate who robustly exercises" his or her First Amendment right to expend personal funds on his/her own election. According to the court, the provision's imposition of different contribution limits for self-financing and non-self-financing candidates was not justified by the government's interest in preventing corruption or in "equalizing the relative financial resources of candidates competing for elective office." The court also invalidated the disclosure provisions of the Millionaires' Amendment, which required all candidates to make certain initial disclosures within 15 days of entering the race and also

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subsequent disclosures for self-financing candidates who had to file reports once they exceeded certain personal contribution thresholds.

Although the challenge focused specifically on the provisions affecting House candidates, the opinion's broad language likely renders the entire law—which also applies to Senate candidates—unconstitutional. Importantly, the opinion left a number of other issues to be resolved by the district court and the Federal Election Commission, including whether non-self-financing candidates who had already raised contributions at the increased limits this cycle would be required to return the additional funds.