# US Supreme Court rejects “Millionaire’s Amendment” to campaign finance law

**By Kate Randall**
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In a 5-4 vote on Thursday, the US Supreme Court struck down a campaign financing provision that allows candidates to accept larger-than-normal contributions if their opponents use their own wealth to finance their campaigns.

The “Millionaire’s Amendment”—a provision of the 2002 Bipartisan Campaign Reform Act, better known as the McCain-Feingold Act—allows a candidate for US Congress to collect larger contributions from both supporters and political parties if an opponent spends $350,000 or more of his or her own money on the campaign.

The “Millionaire’s Amendment,” despite its nickname, does not limit in any way the activities of millionaire, self-funding candidates. They can spend as much of their personal fortune as they please. The measure simply loosens the fund-raising restrictions on candidates who must compete with a millionaire opponent. But even this very meager effort at offsetting the power of great wealth was too much for the court majority.

The case was brought by New York businessman Jack Davis, a Democrat, who spent $3.5 million of his own money in unsuccessful bids in 2004 and 2006 for a Buffalo-area congressional seat. The high court agreed with Davis that provisions of the “Millionaire’s Amendment” were unconstitutional and violated both his First and Fifth Amendment rights.

The Court’s opinion regards the provision’s attempt to limit the disparity in spending between candidates as unconstitutional. Writing for the majority, Justice Samuel Alito states that the law “requires a candidate to choose between the First Amendment right to engage in unfettered political speech and subjection to discriminatory fundraising limitations.”

Alito was joined by conservatives Chief Justice John Roberts and Justices Antonin Scalia, Clarence Thomas and Anthony Kennedy. The more liberal wing of the court, comprising Justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer, dissented on the key points of the case.

The decision basically views a candidate’s ability to buy a political office with a private fortune as a freedom of speech question, equating the unrestricted spending of money with the exercise of First Amendment rights. Alito wrote that the provision was unconstitutional because it “imposes an unprecedented penalty on any candidate who robustly exercises” these rights.

Under the law, opponents of Congressional candidates spending more than $350,000 of their own funds can receive increased donations from individual donors—$6,900 apiece instead of the usual $2,300. The $40,900 limit a political party can spend on individual US House campaigns is also waived. Both of these increased spending allowances are suspended when the candidate’s total expenditures equal those of the self-financed candidate.

The self-financed candidate is also required to submit additional periodic financial statements, and may incur financial penalties for failure to do so. The majority ruling objects to the disparities between reporting requirements for competing candidates as well as the differences in donation limits: “We have never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other,” writes Alito.

In a dissenting opinion, Justice John Paul Stevens writes: “We have long recognized the strength of an independent government interest in reducing both the influence of wealth on the outcomes of elections, and the appearance that wealth alone dictates those results.”

It is precisely this influence of wealth on the political system that the majority opinion defends. Alito writes: “Different candidates have different strengths. Some are wealthy; others have wealthy supporters who are willing to make large contributions. Some are celebrities.... Leveling electoral opportunities means making and implementing judgments about which strengths should be permitted to contribute to the outcome of an election.”

Alito equates legislative efforts to somewhat equalize the amounts of money spent by Congressional candidates as an affront to the democratic rights of voters, adding: “The Constitution confers upon voters, not Congress, the power to choose the members of the House of Representatives.”

Jack Davis and his attorney Stanley M. Brand contend that the “Millionaire’s Amendment” discriminates against candidates who finance their own campaigns, who do so “to convey a message of independence from lobbyists, large donors and other political ‘insiders.’” In reality, these candidates in many cases spend millions of their own dollars, outspending their opponents in an attempt to buy their way into office. Substantial sections of the ruling elite object to any restrictions on this process.

The US District Court for the District of Columbia last year rejected Davis’s challenge and granted summary judgment in favor of the Federal Election Commission (FEC). The lower court held that the amendment “places no restriction on a candidate’s ability to spend unlimited amounts of his personal wealth to communicate his message to voters, nor does it reduce the amount of money he is able to raise from contributors.”

The Supreme Court judgment overturns this ruling and follows a 2007 decision that loosened part of the McCain-Feingold campaign finance law regarding corporate and union financing of advertising. This latest decision points to an effort by the right-wing majority on the Court to chip away at any provisions of campaign finance that place restrictions on the use of private wealth in the US election process.

The Supreme Court majority in the Davis case claims that the “Millionaire’s Amendment” violates the Court’s 1976 decision in *Buckley v. Valeo*, which upheld limits on campaign contributions but said candidates could not be restricted in spending their own money.

Representing the FEC and Congress before the high court in the Davis case, Solicitor General Paul D. Clement said in his brief that the amendment represents “a modest and constitutionally appropriate attempt to counteract the perception that a candidate who is wealthy enough can buy a seat in Congress.”

For good reason, such perceptions are widespread among the US population. According to opensource.org, the average personal wealth of a US Senator is more than $10 million, while the average member of the House of Representatives has about $5 million.

Over the past 25 years, the amounts of money required to compete effectively for federal office have risen astronomically. The 2004 election was the first $3 billion election, when all campaign funds for presidential and congressional candidates are combined. The 2008 election is likely to exceed $4 billion in spending, with the Democratic Party, for the first time in recent history, enjoying a pronounced financial advantage.