PRINTER-FRIENDLY FORMAT
SPONSORED BY Congress.org

One in a Million

June 30, 2008
By Matthew Murray
Roll Call Staff

The Supreme Court's decision last week to throw out the "Millionaires' Amendment" of campaign finance law is leaving dozens of campaigns involving wealthy House candidates wondering what the ruling means not just for their campaign coffers, but for their fundraising strategies.

In a 5-4 decision Thursday, the Supreme Court sided with wealthy House candidate Jack Davis (D), whose lawyers argued that the law trampled his First Amendment rights. The Buffalo-area factory owner, who spent millions of dollars taking on Rep. Tom Reynolds (R-N.Y.) twice, filed court papers two years ago challenging the law, which tripled individual contribution limits to $6,900 in House races and lifted caps on party cash when candidates spent more than $350,000 out-of-pocket.

The case now goes back to a lower court and to the Federal Election Commission, whose recently confirmed nominees must agree on what the ruling means for campaigns.

But with the elections regulator at a standstill until the five new commissioners are sworn in — and career agency employees likely staying mum on the subject until then — wealthy candidates and their opponents are left blazing their own trail in the interim.

In the wake of the Supreme Court decision, FEC spokesman George Smaragdis declined in an e-mail to provide specifics on how in the agency may act, other than to say that "the commission will review the court's ruling and take the steps necessary to comply with the decision."

Neil Reiff, whose Democratic election law practice at Sandler, Reiff & Young helped make Davis' arguments before the high court, said the decision leaves a handful of questions unanswered for House and Senate candidates.

First and foremost: What should opponents of wealthy candidates do with the money they raised under increased contribution limits?

Reiff said candidates would be wise to put that money in an escrow account until the FEC and lower court make their next moves and discontinue raising money under the increased limits.

The "lower court process could take 60 days," Reiff said. "What do [candidates] do in the meantime? I don't think any candidate who was taking benefit of the Millionaires' Amendment should continue to raise funds … even if there may not be any order by the FEC" to stop.

Another gray area in the recent ruling, Reiff said, is whether it applies to Senate races. Senate candidates were governed by the millionaires' provision in the Bipartisan Campaign Reform Act, but were not addressed directly by the justices.

"The way the decision was written, it's pretty clear that the Senate provision also is unconstitutional," Reiff said. "They could've parsed their decision and made it very specific to the facts of the House provision, but the decision was written in such a way that just as a matter of constitutional law says you can't write a statute like this."

Long considered a ripe target for the high court, the now-banned provision was a “pact with the devil” made during the drafting of the 2002 campaign finance law, according to Republican election law lawyer Jan Baran. In exchange for support by “Old Bulls” such as retiring Sen. Pete Domenici (R-N.M.), Baran said the measure’s authors assured skeptical lawmakers they would “take care of those scary millionaires” in exchange for banning soft-money gifts to party committees.

First among the rich political bogeymen: former Sen. Jon Corzine (D-N.J.), who had spent $60 million to win his Senate seat in 2000.

“Anyone who has money scares” incumbents, Baran said.

Baran said the original court challenge to BCRA half a decade ago questioned the Millionaires’ Amendment. But without a candidate like Davis who had been adversely affected by the law, Baran said, the earlier legal challenge was essentially academic.

And with the legality of the provision now settled, campaigns involving one or more wealthy candidates appeared mixed on how the decision would affect their strategy heading into November. Paul Sloca, a spokesman for wealthy former Missouri state tourism director Blaine Luetkemeyer (R), responded “absolutely not” as to whether the decision would affect his candidate’s approach. Luetkemeyer is locked in a close primary battle with wealthy state Rep. Bob Onder (R) to replace Rep. Kenny Hulshof (R-Mo.), who is running for governor.

“There are a lot factors that go into winning elections other than money,” Sloca said. “The candidate with the most money doesn’t always win.”

But high school teacher Larry Kissell’s campaign took a decidedly different approach following the ruling. Kissell, who is challenging wealthy Rep. Robin Hayes (R-N.C.) again this cycle, made the issue front and center in a fundraising pitch Friday titled “It’s a Great Day to Be a Millionaire.”

“I know I don’t have to spell out the ramifications of this Supreme Court decision and what a multi-millionaire incumbent will do with he and his campaign on the defensive,” Kissell wrote in his e-mail pitch. “I’m going to need your support now more than ever.”

2009 © Roll Call Inc. All rights reserved.