

THE MILLIONAIRES' AMENDMENT

BY

JENNIFER A. STEEN

ASSISTANT PROFESSOR
POLITICAL SCIENCE DEPARTMENT
BOSTON COLLEGE

to appear in

Life After Reform: When The Bipartisan Campaign Reform Act Meets Politics

Michael J. Malbin, ed.

Rowman & Littlefield Publishers, Inc., September 2003

Author's final version, submitted January 23, 2003

ABSTRACT

The Bipartisan Campaign Reform Act of 2002 included a "Millionaires' Amendment" intended to reduce the electoral advantage of those wealthy candidates who spend lavishly on their own campaigns. The Millionaires' Amendment attacks the "rich candidate problem" on two fronts: increased contribution limits triggered by certain levels of self-financing make it easier for self-financers' opponents to raise money, and restrictions on post-election repayment of self-loans discourages self-financers by making it harder for them to recoup their campaign investments. This chapter considers how the provisions of the Millionaires' Amendment might have altered the dynamics of congressional elections had they been in effect in the 2000 election cycle. Campaign finance data from the Federal Election Commission suggests that the Millionaires' Amendment would have had a very limited impact on election outcomes. In most cases, increased contribution limits would either aid candidates who did not need them to defeat self-financers, or would go unexploited by candidates who did not have a base of maxed-out contributors to resolicit. The repayment limitation would only have deterred about one-third of the affected candidates from self-lending, since two-thirds gave indications that they would not seek repayment anyway. And even where the Millionaires' Amendment would have deterred self-lending, election outcomes would not likely have been affected much.

INTRODUCTION

At all levels of American government many candidates provide substantial amounts of personal money to their own campaigns. In the 2000 election cycle, candidates for the U.S. House and Senate loaned and contributed more than \$175 million in campaign funds (17% of all receipts) to their own campaigns, and 41 candidates self-financed more than \$500,000. The most famous of the self-financers of 2000 was Jon Corzine (D-New Jersey), who self-financed more than \$60 million in his successful Senate campaign. Corzine's victory notwithstanding, self-financed candidates have posted a spectacularly unimpressive track record on Election Day. In 2000, self-financers' best season since 1992, less than a quarter of the \$500,000 candidates (10 of the 41) won seats in the Congress. Despite their losing tendencies, self-financed candidates have been labeled a scourge of democracy by editorial writers, political commentators and, naturally, the candidates who have faced them.

The Millionaires' Amendment attacks the "rich candidate problem" (as *Washington Post* editorial writers once dubbed it) on two fronts, making it easier for self-financers' opponents to raise money and harder for self-financers to recoup their campaign investments after an election. The law establishes "trigger" amounts of self-financing; if those amounts are exceeded, a self-financer's opponent (or opponents) can raise three or six times the normal limit from individuals, depending on the circumstances. In some cases, self-financing also enables unlimited coordinated expenditures by the opposing party. The Millionaires' Amendment also prohibits self-financers from repaying more than \$250,000 in campaign self-loans after the date of an election. (See page ___ for a more detailed description of the provisions of the Millionaires' Amendment.)

This chapter considers the potential impact of the Millionaires' Amendment -- how the provisions of the Millionaires' Amendment might have altered the dynamics of certain elections, had they been in effect in the 2000 election cycle. (I analyze the 2000 elections because the raw data for 2002 is not yet available.) I begin with a brief review the political issues surrounding self-financing and legislative history. I then evaluate the new law's restrictions on the

repayment of self-loans. Using the Federal Election Commission’s data on individual candidates’ campaign finance activity, I identify the self-financers who appear most and least likely to be deterred by the limit on self-repayment. Turning to the potential impact of increased contribution limits, the analysis proceeds with three basic steps: (1) identifying candidates whose “opposition personal funds” exceeded the trigger amounts, (2) counting those candidates’ “maxed-out” contributors (individuals who contributed the maximum allowable amount), and (3) calculating revised fundraising totals. This calculation suggests the extent to which the Millionaires’ Amendment might restore parity to those lopsided contests in which a self-financer vastly outspends his opponent or opponents, assuming that all other factors remained the same. Finally, I consider potential “ripple effects,” the Millionaires’ Amendment’s likely affect on strategic decisions like whether to run and how much to self-finance.

There is no way to know exactly how the Millionaires’ Amendment would have changed the course of the 2000 elections, given the number of strategic decisions that would likely have been affected and our uncertainty about how any one of them would have been decided. Even tallying the amounts of increased contributions and party expenditures is no straightforward task. Under certain conditions, limits on party expenditures are eliminated entirely – how is an observer to divine the amount parties would spend in the absence of legal limits? Similarly, how does one know how much more maxed-out contributors would donate? Some might have donated the maximum amount because that was exactly how much they preferred to give, regardless of legal limits, while others might be delighted to give the increased amount allowed under the loosened rules. Because of these uncertainties, this chapter is necessarily exploratory. I avoid making precise assertions; rather, I suggest a range of plausible alternatives. Still, the analysis strongly suggests that the Millionaires’

Amendment would not have significantly altered the political landscape in the 2000 congressional elections.

THE POLITICS OF SELF-FINANCING

Self-Financing and Democracy

The central issue in the debate on self-financing is political equality. If personal wealth confers a political advantage, citizens who cannot bankroll their campaigns do not have an equal opportunity to serve in representative government, regardless of their qualifications or political views. Without limits on personal spending, Senator John Pastore (D-Rhode Island) warned during hearings on the original Federal Election Campaign Act, “only the wealthy or those who are able to obtain large contributions from limited sources will be able to seek elective office. Neither situation is desirable and both are inimicable [sic] to the American system” (U.S. Senate 1971, 152).

Political equality is important not only because it maintains the principles of equal opportunity and fair play, deeply ingrained American political values, but also because it gives meaning to the electoral decision. As Stone et al. note, “The representative nature of the [American] system works best when two or more strong candidates compete for the support of their fellow citizens. . . . If citizens are to exercise the franchise in a meaningful way, the electorate must be offered a choice between or among candidates, and the flow of information to the electorate from the candidates or parties competing for the office must be roughly balanced” (1998, 1). When one candidate enjoys a large advantage over the other(s) the absence of competition strips the vote choice of its meaning. In other words, a tremendous financial advantage (whether it results from personal wealth, an incumbent’s war chest or any other source) can make an election so uncompetitive that it does not truly conduct citizens’ preferences, nor is it an exercise in accountability.

There is a silver lining to self-financing, one that is usually overlooked: it may very well level the playing field for challengers seeking to overcome the considerable advantages enjoyed by incumbent House members and Senators. As one political consultant has commented, “[A] challenger who cannot jump-start his own campaign might as well forget it” (Van Biema 1994, 35). Consider, for example, that only three incumbents were defeated in the 1998 Senate elections, two of whom lost to self-financers. In 2000, two of the six successful Senate challengers were heavily self-financed. Of course, this is no silver lining at all to incumbents and raises the possibility that the Millionaires’ Amendment is an incumbent-protection measure. Indeed, during the floor debate on the Millionaires Amendment several members of Congress (whose re-election rates typically exceed 90%) spoke of their personal experiences facing wealthy opponents using terms like “unfair” and “level playing field,” without a hint of irony.

Self-Financing and Campaign Finance Law

The Federal Election Campaign Act Amendments of 1974 (Public Law 93-443) capped self-contributions at \$25,000 for House candidates, \$35,000 for Senate candidates and \$50,000 for presidential candidates. FECA’s supporters argued that these limits would reduce inequality among candidates, but the limits were invalidated in 1976 by the Supreme Court in *Buckley v. Valeo*. The *per curiam* opinion held:

The ceiling on personal expenditures by candidates on their own behalf . . . imposes a substantial restraint on the ability of persons to engage in protected First Amendment expression. . . . [The governmental] interest in equalizing the relative financial resources of candidates competing for elective office . . . is clearly not sufficient to justify the provision's infringement of fundamental First Amendment rights. (424 U.S. 1 at 51, 54 (1976)).

Twenty-six years later, Congress devised the Millionaires’ Amendment (Public Law 107-155, sections 304 and 319) as a creative way to undermine the advantage to self-financing

without running afoul of the First Amendment and *Buckley*. Ironically, the plaintiffs’ brief in *McConnell v. FEC* (the legal challenge to the BCRA) argues that the Millionaires’ Amendment provisions, which were intended to *reduce* inequality among candidates, “discriminate among similarly situated federal candidates and thereby violate the equal protection component of the Fifth Amendment.”¹ The law defines “opposition personal funds,” an opponent’s expenditures from personal funds (including self-contributions and self-loans) less a candidate’s own expenditures from personal funds (in House races this amount is offset by 50% of the difference between the candidates’ “war chests,” or off-year receipts), and establishes threshold self-financing levels which, when crossed, trigger increased contribution limits for individuals. If opposition personal funds exceed the single threshold for House elections or the highest of three triggers in Senate elections, limits on coordinated expenditure by parties are eliminated. These provisions enable self-financers’ opponents to be more competitive without restricting a wealthy candidate’s ability to self-finance political expression.

The other component of the Millionaires’ Amendment, a \$250,000 limit on repayment of self-loans after an election, discourages the most popular form of self-financing without hard limits. This provision was not challenged by the plaintiffs in *McConnell v. FEC*. The loan-repayment restriction may have been inspired by a California state law, adopted in 2000, that limited candidate self-loans to \$100,000 but left self-contributions unregulated. The loan provisions in both laws make self-financing less attractive to wealthy candidates: if a candidate can lend his campaign \$1 million and possibly repay himself after he gets elected, he should be more willing to self-finance \$1 million than he would be if all sales were final.

¹ Consolidated Brief for Plaintiffs in Support of Motion for Judgment at 73.

The Direct Impact of the Millionaires’ Amendment

Self-Lending

Under the terms of the BCRA, no more than \$250,000 in candidate loans can be repaid after the date of an election. Would self-financed candidates have been more reluctant to invest in their own campaigns, given the restrictions on loan repayment?

Candidates’ financial self-help can take two forms, contributions from personal funds and loans made or guaranteed by the candidate personally. There is only one substantive difference between self-loans and self-contributions: a self-loan can be repaid, but a self-contribution cannot be refunded to the candidate. The Federal Election Commission has suggested that a refund of candidate self-contribution would constitute a “conver[sion of] excess campaign funds to the personal use of the candidate,” prohibited under the Federal Election Campaign Act (FEC 1998). The distinction has allowed candidates to use their wealth as political leverage – candidates can spend personal funds to help their campaigns, then later solicit contributions to repay themselves.

Indeed, most self-financing candidates exercise this option. Candidates who self-finance almost always do so with personal loans instead of contributions (Jacobson 1997, Steen 2000, Wilcox 1988). In 2000, House and Senate candidates (leaving Jon Corzine aside) loaned their campaigns \$87.3 million and contributed about one-quarter as much, \$22.9 million. (The \$22.9 million does not include \$1.8 million in candidate contributions that were used to forgive previous self-loans.) House self-financers elected from 1992 through 1996 had repaid \$8.1 million of \$15.4 million loaned, or 53%, by the end of 1998 (Steen 2000, 105).

To evaluate the potential impact of the limitation on self-repayment, I begin by identifying candidates who had more than \$250,000 in outstanding loans to their campaigns on Election Day. In the 2000 congressional elections they numbered 56. In House primaries, 21 campaign committees owed more than \$250,000 to the candidate after the election, \$17.5

million of which exceeded \$250,000 per candidate. In Senate primaries there were eight candidates who would have forfeited some self-loans under the BCRA; the total amount forfeited would have equaled \$6.6 million. In general elections, 20 House candidates and 7 Senate candidates were owed more than \$250,000 by their campaigns, with the excess totaling \$23.1 million and \$67.8 million, respectively. It is important to note that 89% of the Senate total was owed to a single candidate, Jon Corzine. Because Corzine’s activity dwarfs all other candidates’ combined, I will treat him separately in the remaining analysis and exclude him from aggregate figures reported in the text.

Which of the 56 candidates with loans exceeding \$250,000 would have been discouraged from self-lending by the Millionaires’ Amendment? Of course one cannot know for sure, but there are important clues one can use to make reasonable distinctions among the candidates. Surely some candidates did not intend to seek repayment of self-loans and, therefore, would not have been deterred by the repayment restriction. Consider, as an illustration, the population of 29 candidates who won elections (or re-elections) in 1992 through 1998 and who reported new self-loans of at least \$250,000 outstanding after the election. In this group of 29 winners, 15 subsequently repaid part or all of their self-loans, while 14 did not. The winners who *did* seek repayment were quite successful, recouping \$8.3 million of \$15.7 million in self-loans. House winners reclaimed a slightly larger proportion of self-loans (57%) than did Senate winners (47%).

Fundraising, as Hubert Humphrey once said, is a “disgusting, demeaning and degrading experience” (Adamany and Agree 1975, 8). That candidates undertook the unpleasant task of raising contributions to repay self-debt indicates that they put a high value on reclaiming their personal funds. Under BCRA’s repayment limit they would have recouped only \$2.9 million, forfeiting 65% of loan amounts *actually* repaid. One can thus infer that the restrictions of the Millionaires’ Amendment would have made these candidates

reconsider the magnitude of their self-loans. In contrast, their colleagues who did *not* seek repayment would not have been affected by the repayment limits, so would likely *not* have been deterred from self-lending.

For election losers it is impractical to use actual repayment as an indicator of the desire for repayment because attracting campaign contributions is an extremely challenging task for someone who is neither a candidate for nor a holder of public office. However, there is, significantly, variation among losers in the continuing maintenance of campaign committees. I assume that losing candidates who walked away, folding their campaign committees by the end of the election year, were not terribly concerned with recouping self-loans. If they had been, they could have kept their committees alive into the 2001-02 cycle. Losing candidates who *did* maintain their committees are deemed “repayment seeking,” although some of them had other debts that required a continuing committee and thus may not have truly sought self-repayment.

In the 2000 congressional elections, only two-thirds of the candidates with funds “at risk” of forfeiture under BCRA appear to be repayment seekers. Among the 56 candidates with self-loans exceeding \$250,000, 33 sought repayment and 16 did not. An additional seven candidates maintained committees in 2002 but were repeat candidates in that cycle, so the extension of campaign activity cannot be attributed to loan retirement. (At this writing it is too early to tell whether any of them will maintain their committees into the 2004 cycle.) As expected, the losing repayment-seekers were not very successful at reclaiming their personal investments, reporting only \$596,147 in loan repayments against \$37.9 million in outstanding loans. Nevertheless, maintaining their campaign committees indicates that they preferred *not* to forfeit their self-loans and would have been more reluctant to self-finance in the face of the BCRA’s restriction on loan-repayment.

To be clear, I am not suggesting that the repayment-seeking candidates would have been totally unwilling to risk losing their money, i.e., that they would *not* have self-lended had the Millionaires’ Amendment governed their campaigns. Clearly, some *were* willing to assume some risk – they ran despite long odds of winning and had to realize that losing would seriously proscribe their ability to reclaim self-loans. But under the BCRA they would have had more to lose, as the repayment possibilities would have been sharply curtailed.

One should remember that discouraging self-loans is not the final goal of the Millionaires’ Amendment but a means to an end. Its purpose to help non-wealthy candidates compete with self-financers. As such, the impact of the Millionaires’ Amendment is not particularly relevant to elections in which (a) the self-financer is the weaker candidate, or (b) the self-financer’s opponent would be weak against *any* competitor. In such elections even if the Millionaires’ Amendment *did* deter self-lending, the election outcome would not likely change. One should thus concentrate on dissuadable self-lenders (i.e., repayment seekers) who won in close elections. There are but a handful of them. Among the repayment-seeking self-lenders, only two won primaries with margins of less than 10 percent of the vote, Tim Johnson in Illinois-15 and John Kelly in New Mexico-1, and two were in close general elections, Johnson again and Maria Cantwell in the Washington Senate race. There is thus a grand total of *three* self-financers in 2000 who would likely be deterred from self-lending and who might then have lost an election. This is a very limited impact by anyone’s standards (except, of course, the opponents of these three candidates!).

Increased Individual Contribution Limits

The Millionaires’ Amendment establishes “threshold amounts” of self-financing (see p. ___ for the trigger amounts and corresponding contribution limits). Once a candidate exceeds the threshold in a given election, his or her opponent enjoys increased contribution limits. If this provision had taken effect in the 2000 election, how much would self-financers’

opponents have raised from their maxed-out contributors? As suggested earlier, one cannot simply assume that any contributor who gave the initial maximum would triple (or sextuple) their contribution if so allowed. Some thousand-dollar donors contribute \$1,000 not because it is the most they are permitted to give, but because it is the most they *want* to give. It is therefore impossible to calculate a precise estimate of the additional fundraising for each candidate in the 2000 election cycle that would have resulted from the Millionaires’ Amendment triggers. One can, however, approximate the upper bound of marginal fundraising by counting the number of maxed-out contributors, since no contributor would have been able to give more than the increased limits. One can then consider the limiting case, in which a candidate raises this maximum, and whether it seems likely that the election outcome would have been affected.

In the 2000 cycle there were 35 elections, 15 primaries and 20 general elections, in which contribution limits would have been lifted for at least one major-party candidate had the Millionaires’ Amendment been operating. The general election candidates are listed in Table x-1 and the elections are grouped into four categories. In the first category, a self-financer won the election but it is conceivable that increased fundraising under the Millionaires’ Amendment could have changed the outcome. This group includes three Senate elections and three House elections, all general election match-ups. In each case the loser’s receipts would have increased by as much as 25% and the loser’s party would have been allowed to make unlimited coordinated expenditures. In five of the six the margin of victory was less than five percent, and in one election (the 15th district of Illinois) the margin was under seven percent.

Two of these elections are especially notable, one for the closeness of the margin and the other for the loser’s significant base of maxed-out contributors. In Washington state, Democratic challenger Maria Cantwell self-financed \$10.3 million against incumbent

Senator Slade Gorton. Under the Millionaires’ Amendment, Gorton would have been eligible to resolicit 601 of his contributors, potentially adding \$3 million to his total receipts of \$6.4 million. The Republican party, which made the maximum allowable coordinated expenditures for Gorton, would have been released from coordinated spending limits. Given the razor-thin margin in this election (one-tenth of one percent), the boost Gorton would have enjoyed under the Millionaires’ Amendment could very well have put him over the top.

In the open Senate election in New Jersey, Democrat Jon Corzine self-financed \$60 million, an amount that would have increased the individual contribution limit for his opponent, Republican Congressman Bob Franks, by a factor of six and freed the Republican party from limits on coordinated expenditures. Franks enjoyed the maximum contribution from 1,825 supporters in the general election, and had he resolicited them his own receipts could have increased by as much as 140%, from \$6.5 million to \$15.5 million. One cannot know whether such an increase would have enabled Franks to overcome the four-point deficit in the vote tally, but it is certainly possible.

The second group of elections are contests in which a self-financer won and the opponent’s vote tally and/or base of maxed-out contributors was very small. This category includes the Democratic Senate primaries in Minnesota, New Jersey and Washington; House primaries in California-48 (Republican), Georgia-7 (Democratic), Tennessee-4 (Democratic) and West Virginia-2 (Democratic); the general election for Senate in Wisconsin; and the general elections for House in Alabama-2, California-48, Idaho-1 and Indiana-2. (The primary elections are not depicted in Table x-1.) In all 12 of these elections the self-financer’s margin of victory exceeded 10 percent and in ten of them it exceeded 15 percent. The opponents were so comparatively weak that any boost they would have received from increased fundraising under the Millionaires’ Amendment would not likely have made a substantial difference.

In the third group the self-financer lost the election, so the likely impact of the Millionaires’ Amendment would only have been to roll up the margin for the winner. The 15 elections in this category include the Democratic primary for Senator from Pennsylvania; House primaries in California-15 (Democratic), Illinois-10 (Republican), Oklahoma 2 (Republican), Texas 7 (Republican) and Virginia-1 (Republican); the general election for Senate in Nevada; and general elections for House in Indiana-3, Maryland-8, North Carolina-3, New Hampshire-1, Tennessee-4, Texas-25, Utah-2 and West Virginia-2.

The fourth category, not listed in Table x-1, includes only the Republican primary in Pennsylvania’s 19th district, in which the self-financer did not win, but the Millionaires’ Amendment still might have changed the outcome. Candidate Richard Stewart self-financed \$425,000, which would have triggered increased contribution limits for his four opponents. Stewart placed third in the balloting behind Todd Platts (33% of the vote) and Alfred Masland (29%). Platts only had 44 maxed-out contributors to resolicit, while Masland had 152. Masland therefore could have enjoyed a much bigger boost from the increased limits than Platts, potentially adding nearly four times as much to his fundraising total. It is thus conceivable that under the Millionaires’ Amendment, Stewart’s self-financing could have cost Platts the nomination.

The Democratic primary for Senator from Pennsylvania illustrates a related possibility, although I classified it as an election in which the Millionaires’ Amendment would not likely have changed the outcome. Bob Rovner only received 4% of the vote but self-financed enough to trigger tripled limits for the other candidates, including congressman Ron Klink and state senator Allyson Schwartz. Klink had more individual max-out contributors (596) than Schwartz (375), so he would have had more funds available in a resolicitation. However, because there are diminishing marginal returns to campaign spending, it is possible that Schwartz’ increased fundraising, although less than Klink’s,

could have helped her more than Klink’s helped him. Klink was already a well-known congressman, so his rate of return on spending likely started off much lower than Schwartz’s.

Self-Financing and Incumbents

Although self-financing is often criticized for undermining political equality, it can, as I noted at the beginning of this chapter, actually enhance political equality by giving challengers the means to combat strong, well-funded incumbents. For this reason, the Millionaires’ Amendment has been viewed in some quarters as something of a wolf in sheep’s clothing – an incumbent-protection measure in the guise of an equalizer. Table 1 reveals that there is some foundation to this notion: the Millionaires’ Amendment would have benefitted an incumbent member of Congress in 40% of all general elections in which it was relevant in the 2000 elections.

Eleven of the elections listed involved incumbents seeking re-election. Three of the incumbents, Senator Herb Kohl (D-Wisc.), Rep. Don Sherwood (R-Penn.) and Rep. Terry Everett (R-Alabama), self-financed enough to trigger increased contribution limits for their challengers. The other incumbents all stood to benefit from the Millionaires’ Amendment, especially Senators Rod Grams (R-Minn.) and Slade Gorton (R-Wash.), both of whom were defeated by lavish self-financers. Six more incumbents held off challenges, two (Rep. Connie Morella, R-Md., and Rep. Tim Roemer, D-Ind.) by somewhat close margins.

The Ripples: Strategic Decisions

My analysis of the Millionaires’ Amendments direct effects assumed a static context. In other words, the only changes induced were increased fundraising, as a consequence of enhanced contribution limits, and decreased self-financing, resulting from the loan-repayment restrictions. In reality, myriad contextual factors will likely respond to the Millionaires’ Amendment. Some self-financers might deliberately avoid spending enough to trigger increased contribution limits for their opponents. Wealthy candidates might self-finance even more to

counteract their opponents’ increased fundraising. Strategic campaign contributors (such as PAC directors) might see the self-financers’ opponents as better bets, given their enhanced fundraising capacity, and increase their own financial support. Some potential candidates might be emboldened to run only if they expect to be able to tap some contributors for three or six times the regular contribution limit.

It is impossible to imagine the full range of possible scenarios, let alone point to one as the most likely, that could arise if we could turn back the clock and run the 2000 election again, this time with the Millionaires’ Amendment in effect. Nonetheless, I would like to explore the potential implications for two kinds of strategic decision, candidate emergence and avoiding (or compensating for) the self-financing trigger amounts.

Candidate emergence

Under the Millionaires’ Amendment, would the field in each election have been the same, or would some candidates who sat out the 2000 cycle have joined the race? Consider, for example, the 2000 U.S. Senate election in New Jersey. When U.S. Representative Frank Pallone opted out of the Democratic primary, he attributed his decision to the “huge financial advantage of Jon S. Corzine, a political neophyte whose wealth has made him a formidable challenger” (Gray 1999, B2). On the day he withdrew from the Senate campaign, Pallone already had 116 thousand-dollar contributors; would the knowledge that he could return to each of these strong supporters for more help have brought him to the same conclusion about running for Senate?

Self-financing has had a chilling effect on candidate emergence in congressional elections (Steen 2000, chapter 3). Potential candidates are strategic actors who weigh the costs and benefits of running for Congress (e.g., Stone and Maisel et al. 1998), and the costs can be significantly higher when one faces a wealthy self-financer. This may be partly due to self-financers’ ability to use personal funds as seed money in the critical early stages of a

campaign, when campaign funds are maximally effective (Biersack, Herrnson and Wilcox 1993). As one political consultant reports, “We tell our clients to put their own money in, and put it in as soon as possible, *to scare other candidates*” (quoted in Milligan 1999 at A1, emphasis added).

The fact that potential candidates *are* deterred by self-financing suggests that they do perform some kind of strategic calculation. Therefore, one should expect them to factor the Millionaires’ Amendment into their decisions. To borrow the consultant’s language, \$1 million in opposition personal funds is a lot less “scary” when it comes with increased contribution limits than when it does not. The chilling effect should thus be muted by the increased contribution limits allowed by the Millionaires’ Amendment.

Avoiding or compensating for the trigger

Would each candidate have self-financed the same amount, or would some self-financers have kept under the trigger amounts while others self-financed even more to counter the increased fundraising ability of their opponents? Prior to the Millionaires’ Amendment, the marginal expected “return” on a self-financed dollar – that is to say, the net amount by which self-financing increases a candidate’s position in the final vote tally – was determined largely by the campaign activity personal funds pay for. Under the provisions of the Millionaires’ Amendment, the net return is potentially undermined by the triggered contribution limit increases.

Consider, for example, a candidate whose personal expenditures are one dollar below a trigger amount. If that candidate self-finances an additional \$100,000, he will certainly be able to pay for an additional \$100,000 in campaign activity, but he will also enable his opponent to raise additional sums from the opponent’s strongest supporters. Triggering the higher contribution limits for an opponent may be too high a price to pay for the extra \$100,000 in campaign spending. The Millionaires’ Amendment thus creates pressure on

certain candidates – those planning to self-finance more than the trigger, but not much more -
- to either stay below the trigger or to exceed it by a substantial amount.

In the population of actual self-financers in 2000 congressional elections, there appear to be few candidates who self-financed in the sensitive range, above the trigger but not by much. Rather, when candidates exceeded the trigger amounts they usually did so by a wide margin. In Senate primaries, there were 10 candidates who would have been eligible for increased contribution limits. For none of them were “opposition personal funds,” as defined under the BCRA, within 15% of a trigger amount. In general elections for U.S. Senate five major-party candidates would have been eligible for increased contributions, but *all* of their opponents exceeded the triggers by more than 15%. In House primaries, there were 32 candidates who qualified for increased limits and in only one case did opposition funds fall less than 15% above the \$350,000 trigger. There were 14 candidates in House general elections eligible for increased fundraising; opposition funds were within 15% of the trigger for only two of them.

The pattern of self-financing in 2000 elections indicates that the vast majority of self-financers who *do* exceed trigger amounts do so by such a wide margin that they would seem unlikely to scale back personal funding enough to avoid increased contribution limits for their opponents. Rather, they seem more likely to respond to the Millionaires’ Amendment by spending even more, to counteract their opponents’ increased fundraising.

Conclusion

The preceding analysis has illustrated that the Millionaires’ Amendment would have had a limited impact on the 2000 election cycle, assuming that the basic parameters of elections (candidates in the race, amounts self-financed, contributions from sources other than maxed-out individuals) remained constant. The most notable aspect of this study is that

it suggests that the Millionaires’ Amendment would have influenced a very small number of elections.

The prohibition on loan repayments can only deter self-financing by candidates who seek loan repayment. In 2000, only 20 self-lenders with loans exceeding \$250,000 sought to recoup their personal loans, suggesting that the deterrent effect of the Millionaires’ Amendment will be quite limited. Even where the Millionaires’ Amendment would constrain self-lending, it is unlikely to affect many election outcomes, as only three of the repayment-seeking candidates were involved in close elections.

Similarly, increased contribution limits triggered by self-financing do not promise to affect many races. Of the 35 elections in which one candidate’s self-financing would have tripped a trigger, only six could plausibly have been swayed by increased fundraising. However, those six elections included the three most extreme examples of self-financing in the 2000 cycle (the Senate races in Minnesota, New Jersey and Washington), which are exactly the kinds of races the Millionaires’ Amendment was intended to target. In every other election increased fundraising would not have changed the outcome, either because it would have rolled up a winner’s margin or because it would not likely have made up enough ground to overcome a self-financer’s overwhelming vote tally.

As I noted previously, the assumption of a static context is a shaky one, as the new rules of the game are likely to affect a number of strategic decisions. The biggest question remaining is whether the Millionaires’ Amendment will have a significant effect on candidate emergence. I have suggested that it should have *some* effect, but it is impossible to forecast the magnitude with any precision. But this is an important question – the contours of the candidate field are one of the most significant determinants of election outcomes (Jacobson and Kernell 1983). Consider again the Democratic primary for U.S. Senate in New Jersey, in which Jon Corzine self-financed \$60 million to defeat former Governor Jim Florio,

while Congressman Frank Pallone sat on the sidelines. If Pallone had decided to brave Corzine’s millions, he may very well have been the Gray Davis of 2000. In 1998, Davis was in a sense the last man standing after self-financers Al Checchi and Jane Harman savaged each other in California’s Democratic gubernatorial primary.

Different patterns of candidate emergence could also enhance the potency of the “equalizing” provision of the Millionaires’ Amendment. As noted above, more than one-third of the elections in which increased contribution limits were triggered were uncompetitive contests, with the self-financer either winning by a wide margin or defeating a candidate who did not have many maxed-out supporters. High-quality candidates who are enticed into contests against self-financers by the promise of increased limits will be better equipped to convert increased limits into increased contributions.

In some sense, the effect of the Millionaires’ Amendment on strategic decisions of potential candidates may be of greater consequence than the direct impact on fundraising or self-lending. Of course, at this juncture I offer this as an educated guess. Observers, myself included, will be able to evaluate my propositions more rigorously after the 2004 election has run its course and provided the first set of data in the post-BCRA era.

Table 1 is located at <http://www2.bc.edu/~steenje/CFITable1.xls>

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