

A BRIEF HISTORY OF CAMPAIGN FINANCE LEGISLATION IN VERMONT

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INTRODUCTION

[T]he proponents of Act 64 never doubted its unconstitutionality under Buckley and enacted it for the explicit purpose of creating a vehicle for litigation to overturn Buckley.¹

This article reviews the history of campaign finance legislation in Vermont in order to place Act 64—Vermont's 1997 Campaign Finance Reform Act—in the context of the legislature's longstanding efforts to regulate campaign spending.² The Vermont Legislature first recognized the need for some direct and mandatory campaign expenditure limits in the early 1960s with the enactment of a fixed limit on what a candidate could spend in an election,³ but even that early attempt to regulate campaign spending corresponds to previous legislation enacted during World War I that first attempted to regulate campaign spending through reporting requirements.⁴ This article, however, will primarily explore the series of attempts made by the Vermont Legislature to regulate campaign finance before and after the U.S. Supreme Court's watershed *Buckley v. Valeo* decision.⁵ Following the wake of *Buckley* and its constitutional limits on

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1. *Landell v. Sorrell*, No. 00-9159dis., slip op. at 3 (2d Cir. Aug. 7, 2002), *withdrawn*, 300 F.3d 129 (2d Cir. 2002) (Winter, J., dissenting), available at <http://vermont-elections.org/elections/campaignfinance.html> (last visited Feb. 21, 2003). Judge Winter's formidable dissent to the Second Circuit's opinion has since been withdrawn with the majority opinion pending further proceedings and possible amendment by the panel. *Id.* Ironically, Judge Winter was plaintiffs' chief counsel in *Buckley*, which may go some way in explaining his defensiveness toward any legislation that attacks or appears to attack the decision. Ralph K. Winter, *The History and Theory of Buckley v. Valeo*, 6 J.L. & POL'Y 93, 93 n.**, 108 (1997) ("Joel and I represented those democratic values in *Buckley* and are proud of it.").

2. Campaign Finance Reform Act, 1997, No. 64, 1997 Vt. Acts & Resolves 490, 490-517 (codified as amended at VT. STAT. ANN. tit. 17, § 2801-2883 (2002)).

3. Act of Jun. 21, 1961, No. 178, 1961 Vt. Acts & Resolves 203 (limiting the amount that may be spent by and for a candidate in a primary election for state office).

4. Act of Jan. 27, 1915, No. 4, 1915 Vt. Acts & Resolves 58 (providing for reporting of contributions in primary elections); Act of Mar. 14, 1917, No. 4, 1916 Vt. Acts & Resolves 4 (amending section 6 of the 1915 primary election act).

5. *Buckley v. Valeo*, 424 U.S. 1 (1976). *Buckley* has effectively limited legislatures from controlling or limiting campaign expenditures by ruling that such controls can constitute a violation of free speech. Since *Buckley* was a federal case dealing with a federal law, it was arguable that the Supreme Court would decide differently in a state action. See Winter, *supra* note 1, at 102-04. This question was put to rest in *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377 (2000), where the Court explicitly extended the rule of *Buckley* to include state regulation of campaign expenditures. *Id.* at 381. It is important to note that Vermont's Act 64 pre-dates *Nixon* by three years. See *supra* note 2.

campaign finance reform, the Vermont Legislature has attempted through several different methods to impose campaign expenditure limits, first on a voluntary basis, and then on a conditional basis. Ultimately, with Act 64, the Legislature has returned full circle to the "universal," direct, mandatory limitations on campaign expenditures that once blossomed in the 1960s as a way of correcting spiraling campaign expenditures that have risen despite the General Assembly's best efforts.

Other provisions of campaign finance legislation, such as unreasonably low contribution limits or restrictions on out-of-state contributions, have constitutional implications and may also be said to "challenge" the *Buckley* holding.⁶ However, this article focuses only on campaign expenditure limitations, a central and highly controversial feature of Vermont's current campaign finance legislation.

While Act 64 may well offer a challenge to the holding of *Buckley* (depending on how one reads that holding),⁷ the history of the Vermont Legislature's campaign finance reform efforts would indicate that Act 64 is, and was, intended to be considerably more than just a "vehicle for litigation to overturn *Buckley*"⁸ (if indeed it is even that). Rather, Act 64 is the result of over forty years of consistent legislative efforts to devise effective campaign spending limits in Vermont.

I. PRE-BUCKLEY: MANDATORY CAMPAIGN EXPENDITURE LIMITS

While Act 64 of 1997 was a comprehensive overhaul of Vermont's campaign finance laws,⁹ it represents a return to the state's policy established almost forty years before of directly limiting campaign expenditures for certain state offices.¹⁰ In 1961, the General Assembly

Following *Nixon*, every state legislature has had to consider the power of *Buckley* over any campaign reform proposals. For the remainder of this article, the focus will be primarily on *Buckley* since it is that decision that has really controlled local and national discussions over the control of campaign expenditures.

6. WILLIAM N. ESKRIDGE, JR. ET AL., *CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY* 235, 248 (3d ed. 2001).

7. The State argued that the constitutionality of Act 64's expenditure limits does not require overruling *Buckley*, but rather that it is *within* and *in accord with* the holding of *Buckley*, as *Buckley* is to be read to allow such limits if and when justified by significant and legitimate state interests, meeting strict scrutiny tests, which the state claims it has met. *Landell*, No. 00-9159, slip op. at 25; see *infra* Part IV (discussing the legislative findings and conclusions incorporated into Act 64). Judge Winter, on the other hand, appears to read *Buckley* as imposing from the outset a *per se* rule under which no campaign expenditure limits may be justified for any reason. *Landell*, No. 00-9159dis., slip op. at 7-9 (Winter, J., dissenting).

8. *Landell*, 00-9159dis., slip op. at 3 (2d Cir. 2002) (Winter, J., dissenting).

9. 1997 Vt. Acts & Resolves 490.

10. Prior to World War I, the Vermont Legislature enacted campaign reporting requirements in

enacted Act 178 that set out a limitation on expenditures for primary candidates—the only contested races at that time—in these terms:

Section 1. *Limitation on expenses*

A primary candidate for state office shall not directly or indirectly pay or authorize anyone to pay or contribute consideration in his behalf for any purpose affecting his candidacy in a primary election to the extent that the total amount so paid or contributed by or for him exceeds \$7,500.00.¹¹

In 1972, eleven years later, these limits on campaign expenditures for the office of governor and other statewide officers were revised, increased, and extended to general elections. The legislature enacted these changes in Act 259 of 1972.¹² The changes were laid out in the following terms:

§ 2055. *Limitation on expenses*

(a) Notwithstanding section 493 of this title, a primary candidate for governor for state office shall not directly or indirectly pay or authorize anyone to pay or contribute consideration cumulatively totalling [sic] more than \$40,000.00 in his behalf for any purpose affecting his candidacy in a primary election. Notwithstanding section 493 of this title, a primary candidate for state office other than the governor shall not directly or indirectly pay or authorize anyone to pay or contribute consideration cumulatively totalling [sic] more than \$20,000.00 in his behalf for any purpose affecting his candidacy in a primary election.

(b) A candidate for the office of governor in the general election shall not directly or indirectly pay or authorize anyone to pay or contribute consideration cumulatively totalling [sic] more than \$40,000.00 in his behalf for any purpose affecting his candidacy in a general election. A primary candidate for state office other than governor in a general election shall not directly or indirectly pay or authorize anyone to pay or contribute consideration cumulatively totalling [sic] more than \$20,000.00 in his behalf for any purpose affecting his candidacy in a general election.

an Act of Jan. 27, 1915, No. 4, 1915 Vt. Acts & Resolves 58 (providing for reporting of contributions in primary elections), and in an Act of Mar. 14, 1917, Providing for Primary Elections, No. 4, 1916 Vt. Acts & Resolves 4 (amending section 6 of the 1915 primary election act); but without expenditure limitations.

11. Act of Jun. 21, 1961, No. 178, 1961 Vt. Acts & Resolves 203 (limiting the amount that may be spent by and for a candidate in a primary election for state office).

12. Act of Apr. 11, 1972, No. 259, 1972 Vt. Acts & Resolves 540 (relating to limitations on election expenses in primary and general elections).

- (c) No candidate shall expend more than half of his allowable expenditures in joint expenditure with other candidates.¹³

Act 259 took effect from passage on April 11, 1972 and affected the 1972 and 1974 campaign cycles.¹⁴

With these antecedents on the books, mandatory campaign spending limits were not only well-established and followed in Vermont before the *Buckley* decision, but were enacted more than ten years before the Watergate scandal in 1974. Watergate is an important event for campaign finance because it is largely credited with goading the U.S. Congress to enact campaign finance reforms including mandatory expenditure limits,¹⁵ which of course precipitated the Court's 1976 *Buckley* decision.¹⁶

II. BUCKLEY AND THE INITIAL RESPONSE: REPORTING AND CONTRIBUTION LIMITS

The current constitutional framework of campaign finance reform emanates from the Supreme Court's decision in *Buckley v. Valeo*.¹⁷ At issue in *Buckley* were provisions of the Federal Election Campaign Act of 1971 (FECA), as amended in 1974.¹⁸ The federal law limited both campaign contributions and expenditures, established disclosure requirements, and created a public financing system for presidential campaigns.¹⁹

13. *Id.* at 542.

14. *Id.* In those election years, the \$40,000 spending limits were adhered to by candidates for governor. In the 1972 gubernatorial election, Thomas Salmon spent \$43,643 and his opponent Luther Hackett spent \$76,890. In 1974 Thomas Salmon spent \$47,543 against Walter Kennedy who spent \$60,785. See Office of the Vermont Secretary of State, Vermont State Archives, Vermont Historical Campaign Finance Database: Elections for Governor 1972, 1974, at <http://vermont-elections.org/elections1/campaignfinance.html> (last visited May 26, 2003). Although spending less, Governor Salmon won both elections. General Election Results: Governor 1789–2002, Office of the Vermont Secretary of State, Vermont State Archives, General Election, available at <http://vermont-archives.org/govinfo/elect/stoff1.htm> (last visited Feb. 17, 2003).

15. Robert F. Bauer, *The Demise of Reform: Buckley v. Valeo, the Courts, and the "Corruption Rationale"*, 10 STAN. L. & POL'Y REV. 11, 11 (1998); see Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93–443, 88 Stat. 1263, § 101(c) (prescribing limits on campaign expenditures for candidates seeking both the nomination and the election to the offices of president, senator, and representative).

16. ESKRIDGE, *supra* note 6, at 228.

17. *Buckley v. Valeo*, 424 U.S. 1 (1976). One commentator recently noted, "Since *Buckley*, the Court has provided little guidance regarding the constitutionality of campaign finance reform. Until the Court overturns or redefines *Buckley*, this case remains the rule by which all restriction on campaign finance must abide." Kristen Kay Sheils, Note, *Landell Bodes Well for Campaign Finance Reform: A Compelling Case for Limiting Campaign Expenditures*, 26 VT. L. REV. 471, 479–80 (2002).

18. *Buckley*, 424 U.S. at 6.

19. *Id.* at 7.

The Court's holding that FECA's limits on expenditures violated the First Amendment,²⁰ however, has been the source of continuing debate.²¹

Plaintiffs in *Buckley* consisted of a diverse group that "included a candidate for the Presidency of the United States, a United States Senator who [was] a candidate for re-election, a potential contributor," and various special interest groups.²² Plaintiffs argued, in part, that "limiting the use of money for political purposes constitutes a restriction on communication violative of the First Amendment."²³ In support of FECA, the government argued that the limits on contributions and expenditures were "justified by three governmental interests": (1) "the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions,"²⁴ (2) equalizing "the relative ability of all citizens to affect the outcome of elections,"²⁵ and (3) "reducing the . . . skyrocketing costs of political campaigns."²⁶

In assessing the arguments, the Court ultimately upheld the limitations on contributions,²⁷ but struck down the limits on expenditures.²⁸ In upholding the limits on contributions, the Court held that the government's interest in limiting "the actuality and appearance of corruption" was compelling.²⁹ In ruling on the expenditure limits, however, the Court held that none of the government's asserted interests were sufficiently compelling to justify FECA's limitations.³⁰ In so holding, the Court distinguished contributions and expenditures. The Court further equated the expenditure of money as speech, noting "virtually every means of communicating ideas . . . requires the expenditure of money."³¹ Thus, in

20. *Id.* at 56-58.

21. See, e.g., J. Skelly Wright, *Politics and the Constitution: Is Money Speech?*, 85 YALE L.J. 1001 (1976) (arguing, in part, that money is not speech).

22. *Buckley*, 424 U.S. at 7-8.

23. *Id.* at 11.

24. *Id.* at 25.

25. *Id.* at 26.

26. *Id.* at 57.

27. *Id.* at 58.

28. *Id.* at 58-59.

29. *Id.* at 26, 29.

30. *Id.* at 55.

31. *Id.* at 19. The idea that "money is speech," emerged from this portion of the Court's decision. Wright, *supra* note 21, at 1005. More than twenty years later, Justice Stevens agreed with Judge Wright (who, as one of the judges on the Court of Appeals for the District of Columbia, initially upheld the limitations on expenditures in *Buckley*), when he stated: "Money is property; it is not speech." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 398 (2000) (Stevens, J., concurring). The distinction is important for determining the level of scrutiny with which the Court will assess the constitutionality of any limitations on expenditures. Generally, the Court, as it did in *Buckley*, applies the highest level of scrutiny to pure speech. *Buckley*, 424 U.S. at 16. Under this approach, "restrictions must be 'narrowly tailored to serve a compelling state interest' to survive constitutional challenge."

the Court's view, any limitation on expenditures directly affects the expression of ideas.³² "By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication."³³ Thus, in distinguishing between contributions and expenditures the Court imposed significant barriers on the ability to limit campaign expenditures.

Although *Buckley* was a federal case involving a new federal law, the decision was initially perceived to invalidate *any* limitations on campaign expenditures.³⁴ The Vermont Legislature's first response was to strictly conform its campaign finance laws to that initial interpretation of the *Buckley* decision.³⁵ Thus, in the 1976 legislative session, the General Assembly enacted Act 188, which repealed the limitations on expenditures enacted in 1972.³⁶ In their place, Act 188 created new campaign reporting requirements, extended those requirements and other existing provisions of the campaign finance laws to candidates for the general assembly, and established a board of elections.³⁷

In 1982, the legislature made extensive revisions to these 1976 contribution limitations and reporting requirements.³⁸ In 1988, the

Sheils, *supra* note 17, at 483 (quoting *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 657 (1990)). Thus, whether a provision regulates conduct or whether it directly regulates speech is arguably critical to the outcome of the Court's analysis under the First Amendment. *Buckley*, 424 U.S. at 16. However, in *Buckley* the Court noted that the expenditure limits there would have also failed the less stringent test used for the constitutionality of regulations of conduct that have an incidental effect on speech. *Id.* at 16.

32. *Buckley*, 424 U.S. at 19. The expression of ideas is at the core of the First Amendment. "The First Amendment affords the broadest protection to such political expression in order 'to assure (the) unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *Id.* at 14 (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

33. *Id.* at 20.

34. Bauer, *supra* note 15, at 11-12.

35. See Act of Mar. 27, 1976, No. 188, 1975 Vt. Acts & Resolves 186 (amending previous statutory limitations placed on campaign expenditures).

36. *Id.*

37. *Id.*

38. Act of Apr. 22, 1982, No. 197, 1982 Vt. Acts & Resolves 287 (relating to campaign financing). The Legislature revised the campaign finance laws to (1) require reports from candidates for county or local office who have accepted contributions or made expenditures of more than \$500.00; (2) require reports from candidates for the legislature only after the \$500.00 expenditure threshold has been met; (3) revise the schedule of reporting deadlines; (4) require reporting of the identity and address of contributors of more than \$50.00 rather than \$25.00; (5) require payment by check of contributions in excess of \$50.00 rather than \$25.00; (6) limit contributions that a candidate or political committee of a candidate may accept from a single source to \$1,000.00 for any election; (7) limit contributions that a candidate or political committee of a candidate may accept from a political committee (PAC) to \$5,000.00 for any election; (8) require reports to be filed by political committees (PACs) for the purpose

Legislature enacted further amendments relating to campaign contributions and reporting.³⁹ Yet, throughout the decade of the 1980s, no attempt was made in the Vermont General Assembly to reenact and restore campaign expenditure limitations as they existed prior to 1976.

As evidenced by the actions subsequently taken by the Vermont state legislature, *Buckley* has had significant impacts on the regulation of campaign finance. At the federal level, Congress has passed "[v]ery few laws" that significantly reform campaign finance regulation.⁴⁰ At the same time the costs of federal and state elections have continued to rise at an alarming rate.⁴¹ In contrast, states since *Buckley* have enacted significant measures to regulate campaign finance.⁴² However, state laws generally do not regulate expenditures, but rather focus, in part, on limiting campaign contributions.⁴³ Among legal scholars, the debate rages on in regard to whether the Court correctly decided *Buckley*.⁴⁴ One commentator noted that "many academics have put [*Buckley*] on their list of the ten worst decisions of this century."⁴⁵ At a pragmatic level, *Buckley* thrust the Court into the issue and the underlying electoral process.⁴⁶ Notwithstanding the

of affecting elections on public questions; (9) exclude personal loans to candidates from lending institutions as "contributions"; (10) prohibit conversion of surplus campaign funds to personal use; and (11) adjust campaign finance reporting dates. *Id.*

39. Act of Jun. 21, 1988, No. 263, 1988 Vt. Acts & Resolves 454 (relating to campaign financing limitations and reports). The legislature made revisions to (1) expand the campaign finance reporting laws to political committees as well as candidates; (2) limit the amount that a candidate or political committee of a candidate for state office may accept from a candidate for federal office; (3) reduce the amount that candidate may accept from a political committee (PAC) from \$5,000 to \$3,000; (4) clarify that contribution limitations apply to each election; (5) increase the threshold for reporting and identifying contributors to contributors of amounts in excess of \$100; and (6) establish procedures for closing out and opening campaign accounts. *Id.*

40. ESKRIDGE, *supra* note 6, at 245. Congress, however, has recently enacted a sweeping set of federal election reforms through the McCain-Feingold Act. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (2002). It is yet to be determined how the courts will receive this new law and more importantly, it is yet to be seen how effective the law will be. See Anne Geraran, *Supreme Court Leaves Campaign Finance Law in Place for Now*, S.F. CHRON., May 23, 2003, at www.sfgate.com/chronicle (last visited May 26, 2003) (reporting that the Supreme Court would not lift the law's restrictions for interest groups until the case is heard by the Court on its merits).

41. Sheils, *supra* note 17, at 471 (detailing the increasing costs of federal elections); John C. Bonifaz et al., *Challenging Buckley v. Valeo: A Legal Strategy*, 33 AKRON L. REV. 39-40 (1999) (detailing the increasing costs of both federal and state elections).

42. ESKRIDGE, *supra* note 6, at 252.

43. *Id.*

44. Compare Joel M. Gora, *Buckley v. Valeo: A Landmark of Political Freedom*, 33 AKRON L. REV. 7, 7 (1999) (arguing that *Buckley* was correctly decided and stands for "a landmark of political freedom"), with Bonifaz et al., *supra* note 41, at 39-40 (arguing that the Court must reevaluate its holding striking down limits on campaign expenditures in light of increasing election costs and the resulting "threat to our democratic process").

45. Gora, *supra* note 44, at 7.

46. For example, on this point the introductory note for a symposium conducted by the Akron

escalating costs of campaigns and revisionist thinking about the Court's decision, *Buckley* does remain the primary measure for testing the constitutionality of campaign finance reform and in light of the Court's decision in *Nixon v. Shrink Missouri Government PAC* will continue to weigh heavily on any legislative action.⁴⁷

III. THE POST-BUCKLEY LANDSCAPE

A. Voluntary Expenditure Limits

In the 1990s, Vermont's legislative efforts and attention returned to overall limitations on campaign spending. The first step was taken in 1992 to cap total campaign spending through a program of voluntary expenditure limitations.⁴⁸ Act 156 of 1992, entitled "An Act Relating to Voluntary Limitations on Campaign Expenditures" established these voluntary limits:⁴⁹

(b) Total expenditures by an incumbent candidate who voluntarily agrees to limit campaign expenditures as provided in section 2841 of this title shall not exceed the amounts established by this subsection. In an election without an incumbent candidate, these amounts shall apply to all candidates who so voluntarily agree to limit campaign expenditures.

(1) For governor, \$400,000.00.

(2) For lieutenant-governor, \$100,000.00.

(3) For attorney general, \$50,000.00.

(4) For treasurer, secretary of state, and auditor of accounts, \$40,000.00.

(5) For state senator, \$4,000.00 + ((the number of senators to be elected in the district - 1) x \$2,500.00).

(6) For state representative, \$2,000.00 in a single member district and \$3,000.00 in a two-member district.

(c) Total expenditures by a challenger candidate who voluntarily agrees to limit campaign expenditures as provided in

Law Review notes that the "articles [discussing *Buckley*] underscore the reality that the Court is a political institution that not only often decides issues of constitutional liberty, but one that also controls in a very direct way the practical operation of the electoral process." Christopher P. Banks & John C. Green, *A Symposium: The Legal and Political Implications of Buckley v. Valeo* (1976), 33 AKRON L. REV. 1, 6 (1999).

47. *Nixon v. Shrink Mo. Gov't PAC*, 578 U.S. 377 (2000) (expanding the rule of *Buckley* to explicitly include state regulation of campaign expenditures); see *supra* note 5.

48. Act of Apr. 29, 1992, No. 156, 1992 Vt. Acts & Resolves 80 (adding 17 V.S.A. chapter 59, subchapter 5 of Chapter 59, entitled "Voluntary Limitations").

49. *Id.*

section 2841 of this title shall not exceed 110 percent of the amounts provided in subsection (b) of this section.⁵⁰

These limits were to be established through a process of publicly securing and proclaiming agreements of candidates to limit campaign expenditures, and contained a fine for violators.⁵¹ Reports from the office of the Secretary of State for the 1994 election, however, show little utilization of these voluntary expenditure limits in any seriously contested

50. *Id.* at 80–81 (codified at VT. STAT. ANN. tit. 17, § 2842, repealed by 1997 Vt. Acts & Resolves 490).

51. From the “Voluntary Limitations” of Act 156, subchapter 5, the relevant sections read as follows:

§ 2841. LIMITATIONS ON CAMPAIGN EXPENDITURES

(a) Any candidate for governor, lieutenant-governor, treasurer, secretary of state, auditor of accounts, attorney general or member of the general assembly may voluntarily agree to limit the candidate’s campaign expenditures and campaign expenditures made under the candidate’s direction or control by filing an affidavit declaring such agreement. The secretary of state shall prepare affidavit forms and make them readily available to candidates.

(b) The affidavit shall state that the candidate is aware of the voluntary expenditure limitation applying to the office the candidate seeks and that he or she voluntarily agrees to limit his or her expenditures and campaign expenditures made on the candidate’s behalf to the amount established under section 2842 of this title or to a lower amount as agreed upon by the candidates for the same office. The affidavit shall further state that the candidate will not approve or solicit any independent expenditures made on behalf of the candidacy. The affidavit shall be sworn and subscribed to by the candidate.

(c) A candidate whose name is placed on a primary election ballot under chapter 49 of this title shall file the affidavit not later than August 1 after becoming a primary election candidate. A candidate whose name is not placed on a primary election ballot shall file the affidavit not later than the filing deadline established in section 2386 of this title. The secretary of state shall prepare a list of the candidates who have and have not voluntarily agreed to the campaign expenditure limitations established under this chapter not later than two weeks after the filing deadline established in section 2386 of this title.

Id. (VT. STAT. ANN. tit. 17, § 2841 (repealed 1997));

§ 2808. PREPARATION OF LIST OF CAMPAIGN EXPENDITURES

Not later than five days after receipt of campaign finance reports under this chapter, the secretary of state shall prepare a list of the accumulated amount of expenditures reported by each candidate.

Id. (VT. STAT. ANN. tit. 17, § 2808 (2002));

§ 2806. PENALTIES

(c) A candidate who voluntarily agrees to limit campaign expenditures and who exceeds any of the limitations established in section 2842 of this title shall remit the amount of the excess expenditure to the secretary of state for deposit in the general fund within 90 days after the election, or be subject to a fine equaling 10 percent of the applicable amount established under section 2842 of this title.

Id. (VT. STAT. ANN. tit. 17, § 2806 (1991) (amended 1997)).

election.⁵² By 1996, voluntary expenditure limits had even fewer takers,⁵³ and the provisions were not adhered to thereafter.

B. Conditional Expenditure Limits

Because of the limited use and effectiveness of Act 156's voluntary spending limitation provisions, the Vermont General Assembly sought another approach to restoring campaign expenditure limits in the mid-1990s. Under this new approach, expenditure limits were to be conditional; that is, they were to be imposed on a candidate as a condition of receiving public campaign finance grants.⁵⁴ As such, they would remain "voluntary" but be substantially enticed by the carrot of public campaign subsidies.

Two identical bills, H. 240 and S. 190, were introduced in the 1995 Session to provide for campaign expenditure limits.⁵⁵ The proposed conditions read as follows:

Subchapter 6. Limitations on Campaign Expenditures

§ 2851. LIMITATIONS ON CAMPAIGN EXPENDITURES

(a) The expenditure limits imposed by this subchapter shall apply only to candidates who agree to be bound by the limits as a condition of receiving a public subsidy for their campaigns in the form of an allocation of money from the state election campaign fund established by subchapter 5 of this chapter.

(b) In a year in which an election is held for an office sought by a candidate, no expenditures shall be made by the candidate or the candidate's political committee, nor any approved expenditures made on behalf of that candidate which expenditures and approved expenditures result in an aggregate amount in excess of the following:

52. See Office of the Secretary of State, Vermont State Archives, Vermont Historical Campaign Finance Database: Election Year 1994, at http://vermont-elections.org/elections1/campaign_finance.html (last visited May 26, 2003) (listing information on every statewide candidate).

53. *Id.* (Election Year 1996).

54. See H. 240, Biennial Sess. (Vt. 1995), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003).

55. H. 240 was introduced by Representatives Hollowell of Burlington and Deen of Westminster on February 9, 1995, to provide public financing on a one-on-one matching basis with private contributions and to establish campaign expenditure limits for candidates accepting public financing. H. 240, Biennial Sess. (Vt. 1995), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003). S. 190 was introduced on February 24, 1995 by Senators Shumlin of Windham County and Spaulding of Washington County with the same provisions and purpose as H. 240. S. 190, Biennial Sess. (Vt. 1995), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003).

- (1) For governor, 65 cents per capita of the state or \$400,000.00, whichever is greater.
- (2) For lieutenant-governor, attorney general, secretary of state, state treasurer or state auditor, separately, 15 cents per capita of the state or \$100,000.00, whichever is greater.
- (3) For state senator or state representative, 20 cents per capita of the senatorial or representative district multiplied by the number of senators or representatives to be elected in the district.
- (c) The most recent decennial census figures shall be used to make the calculations required by this section.
- (d) The limits established in this section shall be rounded off to the nearest \$100.00.⁵⁶

A variation on this approach was also introduced in the House in 1995 to provide for an expandable limit on spending and an expandable amount of public finance grants and subsidies.⁵⁷ In H. 264 of 1995, a campaign spending limit was to be imposed for each office as a condition of accepting a public grant in the same amount for that office.⁵⁸ However, if a candidate accepting a public grant was outspent by a privately financed opponent (one not accepting public funding or the associated spending limit), then both the amount of the grant and the spending limit of the publicly-funded candidate would be increased to match the spending of the opponent.⁵⁹

Other bills introduced in the 1995–1996 Legislative session encouraged adherence to voluntary spending limitations not with a carrot, but with a stick. Certain additional campaign finance requirements would be imposed only upon those candidates who did *not* agree to adhere to voluntary spending limits. H. 777, for example, would have reduced the maximum amount of individual contributions that might be accepted by a candidate from various sources if the candidate did not agree to “voluntary” expenditure limitations to the amounts set for that particular office.⁶⁰

56. H. 240, Biennial Sess. (Vt. 1995), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003); S. 190, Biennial Sess. (Vt. 1995), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003).

57. H. 264, Biennial Sess. (Vt. 1995), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 17, 2003). In 1995, H. 264 was introduced by Representatives Bouricius of Burlington, Alberico of Rutland City, Corren of Burlington, Crocker of Woodstock, Kehler of Pomfret, and Stafford of Brighton to establish public financing for a participating candidate but allow supplementary grants if expenditure limits are exceeded by an opposing non-participating candidate. *Id.*

58. *Id.*

59. *Id.* sec. 2, § 2869.

60. H. 777 was introduced on February 1, 1996 by Representatives Freidin of New Haven and Westman of Cambridge for the purpose of “reduc[ing] the contribution limitations for candidates who choose not to abide by expenditure limitations.” H. 777, Adj. Sess. (Vt. 1996), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003). Section 3 of the bill

Candidates who did agree to these spending limits would have been free to accept larger contributions from these sources.⁶¹

Still other bills combined these two approaches and provided both a carrot and a stick to secure adherence to "voluntary" campaign spending limits. Both H. 786 and S. 323 of the 1996 session joined public financing subsidies and limitations on expenditures by publicly financed candidates with additional contribution limits and reporting requirements on candidates not accepting public subsidies and their associated expenditure limits.⁶² One of these proposals, H. 786, passed the House on April 10, 1996,⁶³ but the Senate took no action on it before adjournment of the 1996 Session.⁶⁴ Thus, despite active debate and a large consensus on the need for reform, no campaign finance law revisions were enacted in that biennium.

IV. ACT 64: RESTORING UNIVERSAL EXPENDITURE LIMITS

The General Assembly's active interest in campaign finance regulation, particularly its search for a means to limit overall campaign spending, carried over to the beginning of the 1997 Session. In January, the legislature's attention focused primarily on two proposals: H. 28,⁶⁵ a House bill which was to be the vehicle that became Act 64; and S. 69,⁶⁶ a Senate bill

provided:

§ 2843. CANDIDATES WHO DO NOT SIGN AFFIDAVIT; CONTRIBUTION LIMITATIONS

Notwithstanding the provisions of section 2805 of this title, the following contribution limitations shall apply to a candidate who does not elect to voluntarily limit campaign expenditures by signing an affidavit under section 2841 of this title:

(1) Contributions totaling more than \$500.00 shall not be accepted from a single source for the primary and general elections combined.

(2) Contributions totaling more than \$1,000.00 shall not be accepted from a political committee for the primary and general elections combined.

Id.

61. *Id.*

62. S. 323 was introduced by Senators Rivers of Windsor County, McCormack of Windsor County, and Ready of Addison County on January 3, 1996 and referred to the Senate Committee on Government Operations. S. 323, Adj. Sess. (Vt. 1996), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003). H. 786 was introduced by the House Committee on General, Housing and Military Affairs on February 21, 1996. H. 786, Adj. Sess. (Vt. 1996), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003).

63. JOURNAL OF THE VERMONT HOUSE 1020-24 (1996).

64. JOURNAL OF THE VERMONT SENATE 720 (1996).

65. H. 28, Biennial Sess. (Vt. 1997), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003). H. 28 was introduced by Representatives Kitzmiller of Montpelier and Milne of Washington on January 9, 1997. *Id.*

66. S. 69, Biennial Sess. (Vt. 1997), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003). S. 69 was introduced in the Senate on January 31, 1997 by

which contained the substantive provisions pertaining to campaign spending limits which were enacted in Act 64.⁶⁷

Senate Bill 69 was the first legislation introduced in Vermont that sought to impose unconditional spending limits on all candidates. The Bill provided for public subsidies of election campaigns, but it also imposed overall limitations on campaign spending amounts "whether or not a candidate has accepted public financing."⁶⁸ In contrast, H. 28, as introduced, reflected the position that the House adopted at the end of the

Senators Ankeney, Backus, Barry, Bartlett, Bloomer, Chard, Costes, Cummings, Hooker, Illuzzi, Kittell, MacDonald, Mazza, McCormack, Ptashnik, Ready, Rivers, Sears, Shumlin, and Spaulding. *Id.*

67. Also introduced in 1997 was H. 65 by three members of the Progressive Party from Burlington: Representatives Bouricius, Corren, and Zuckerman. H. 65, Biennial Sess. (Vt. 1997), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003). As with H. 264 of the 1995 session, H. 65 would provide for "expandable" campaign spending limits and public grants. *Id.* If a privately financed ("nonparticipating") candidate's expenditures reached or exceeded the publicly financed ("participating") candidate's grant amount, the participating candidate would be eligible to receive additional public campaign funds to match the nonparticipating candidate's increased expenditures. *Id.* Upon introduction, H. 65 was referred to the House Committee on Local Government but received no further action in the 1997-1998 biennium. JOURNAL OF THE VERMONT HOUSE 41 (1997).

68. S. 69, Biennial Sess. (Vt. 1997), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003) (emphasis added). Section 2 of S. 69, as introduced, would add new VT. STAT. ANN. tit. 17, § 2852:

§ 2852. CAMPAIGN EXPENDITURE LIMITATIONS

(a) The following campaign expenditure limitations shall apply to all candidates for statewide office and the general assembly, for all primary and general elections, whether or not a candidate has accepted public financing under this subchapter.

(1) A candidate for governor shall limit campaign expenditures to no more than \$83,000.00 in any primary election period, and to no more than \$167,000.00 in any general election period.

(2) A candidate for lieutenant governor shall limit campaign expenditures to no more than \$33,000.00 in any primary election period, and to no more than \$67,000.00 in any general election period.

(3) A candidate for secretary of state, state treasurer, auditor of accounts, or attorney general shall limit campaign expenditures to no more than \$20,000.00 in any primary election period, and to no more than \$40,000.00 in any general election period.

(4) A candidate for state senator shall limit campaign expenditures in any primary election period to no more than \$1,333.00 plus an additional \$833.00 for each additional seat in the senate district; and in any general election period to no more than \$2,667.00 plus an additional \$1,667.00 for each additional seat in the senate district.

(5) A candidate for the state house of representatives in a single-member district shall limit campaign expenditures to no more than \$500.00 in any primary election period and to no more than \$1,500.00 in any general election period, and in a two-member district to no more than \$750.00 in a primary election period and to no more than \$2,250.00 in a general election period.

Id.

1996 Session in that it provided for voluntary and conditional expenditure limits to be imposed *only* on candidates agreeing to accept public financing.⁶⁹

Of the two houses, the House began the debate on campaign finance at the beginning of the session and introduced its bill twenty-two days before the Senate's version.⁷⁰ Upon introduction, H. 28 was referred to the House Committee on Local Government⁷¹ where the bill's provisions on spending limitations were changed significantly from voluntary and conditional to universal and mandatory, thus matching those of the Senate Bill, S. 69.⁷² In its written report to the House on H. 28, the Committee on Local Government recommended these maximum spending limit provisions:

§ 2852. CAMPAIGN EXPENDITURE LIMITATIONS;
AMOUNTS

The following campaign expenditure limitations shall apply to all candidates for statewide office and the general assembly, for all primary and general elections, whether or not a candidate accepts public financing under this subchapter, is financing his or her campaign from private contributions, or from the candidate's own resources or that of his or her immediate family.

69. Section 2 of H. 28, as introduced, would add new VT. STAT. ANN. tit. 17, §2856 to provide:
§ 2856. ACCEPTANCE OF PUBLIC FINANCING; TOTAL SPENDING LIMITATIONS

As a condition of accepting public financing:

- (1) A candidate for governor shall agree to limit total campaign expenditures to no more than \$140,000.00 in any primary election period, and to no more than \$260,000.00 in any general election period.
- (2) A candidate for lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general shall agree to limit campaign expenditures to no more than \$35,000.00 in any primary election period, and to no more than \$65,000.00 in any general election period.
- (3) A candidate for state senator shall agree to limit campaign expenditures in any primary election period to no more than \$1,400.00 plus an additional \$500.00 for each additional seat in the senate district; and in any general election period to no more than \$2,600.00 plus an additional \$2,000.00 for each additional seat in the senate district.

H. 28, Biennial Sess. (Vt. 1997), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003).

70. See *supra* notes 65, 66. Perhaps this was because of the Senate's unity on the issue reflected in the two-thirds, bi-partisan majority that sponsored S. 69, making its passage all but assured.

71. JOURNAL OF THE VERMONT HOUSE 26 (1997).

72. Compare H. 28, § 2856, Biennial Sess. (Vt. 1997), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003), with JOURNAL OF THE VERMONT HOUSE 587-88 (1997), and S. 69, § 2852, Biennial Sess. (Vt. 1997), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003) (changing "[candidates] shall agree to limit total campaign expenditures" to "campaign expenditure limitations shall apply to all candidates . . . whether or not a candidate has accepted public financing").

(1) A candidate for governor shall limit campaign expenditures to no more than \$300,000.00 in any primary election period and general election period combined.

(2) A candidate for lieutenant governor shall limit campaign expenditures to no more than \$100,000.00 in any primary election period and general election period combined.

(3) A candidate for secretary of state, state treasurer, auditor of accounts, or attorney general shall limit campaign expenditures to no more than \$45,000.00 in any primary election period and general election period combined.

(4) A candidate for state senator shall limit campaign expenditures to no more than \$5,000.00 plus an additional \$2,000.00 for each additional seat in the senate district in any primary election period and general election period combined.

(5) A candidate for state representative in a single-member district shall limit campaign expenditures to no more than \$2,000.00 in any primary election period and general election period combined, and in a two-member district to no more than \$3,000.00 in a primary election period and a general election period combined.⁷³

This legislative policy of “universal” spending limitations was not to change throughout the remainder of the House deliberations on H. 28 in the 1997 Legislative Session.⁷⁴ In fact, most of the specific applications of this policy to the various state and legislative offices remained throughout the House deliberations as recommended by the Committee on Local Government and Elections.⁷⁵

In its progress through the Legislature in 1997, several additional provisions were added to H. 28 to explain and justify the legislature’s proposed policy of mandatory and universal campaign spending limits. The Legislature’s recitation of its “Findings and Legislative Purpose” was

73. JOURNAL OF THE VERMONT HOUSE 587–88 (1997).

74. In the House, H. 28 was reported favorably by the House Local Government Committee on February 25, 1997 and referred on that date to the House Committee on Ways and Means. JOURNAL OF THE VERMONT HOUSE 234 (1997). H. 28 was reported favorably from the House Ways and Means Committee on April 2, 1997 and referred on that date to the House Committee on Appropriations. *Id.* at 539. H. 28 was then reported from the Committee on Appropriations and read the second time (debated) in the House on April 9, 1997. *Id.* at 635. H. 28 passed to third reading on a roll call vote of 87 to 59 on April 9, 1997, *id.* at 644–46, and final passage on April 10, 1997. *Id.* at 674–82.

75. The limits to be imposed in H. 28 on campaign expenditures for the office of senator was increased on the recommendations of the Committees on Ways and Means and Appropriations from \$5,000.00 plus an additional \$2,000.00 for each additional seat in the Senate district to \$6,000.00 plus \$3,000.00 for each additional seat in the Senate district. *Id.* at 604. This increase was passed by the House on April 10, 1997. *Id.* at 674–82.

substantially augmented. As introduced, with only conditional and voluntary spending limits, the legislative justification offered by the sponsors was expressed generally and briefly as: "The general assembly finds that the election campaigns for statewide and state legislative offices have become inordinately lengthy and expensive. As a result, most Vermonters are financially unable to seek election to public office and the electoral process is increasingly dominated by narrowly based special interest groups."⁷⁶

To support its policy conversion from voluntary and conditional to universal and mandatory spending limits, the House sought to explain its intentions with a more concrete and detailed justification. In the version of H. 28 as adopted by the House, universal and mandatory spending limits were called for because:

(1) Candidates and elected officials are spending inordinate amounts of time raising funds for campaigns;

(2) Some candidates and elected officials, particularly when time is limited, preferentially respond, and give access, to large contributors over small contributors or noncontributors;

.....
(4) Robust debate of issues, candidate interaction with the electorate, and public involvement and confidence in the electoral process have decreased as campaign expenditures have increased;

(5) Increasing campaign expenditures require candidates to seek and rely on a smaller number of larger contributors, often outside the state, rather than a large number of small contributors;

.....
(7) In the context of Vermont, candidates can raise sufficient monies to fund effective campaigns from contributions no larger than \$200.00;

(8) Limiting large contributions, particularly from out of state, and *limiting campaign expenditures* will encourage direct and small group contact between candidates and the electorate and will encourage the personal involvement of a large number of citizens in campaigns, both of which are crucial to public confidence and the robust debate of issues;

(9) Large contributions and large expenditures by persons or committees, other than the candidate and particularly from out of state, reduce public confidence in the electoral process and

76. H. 28, § 1(a), Findings and Legislative Purpose, Biennial Sess. (Vt. 1997), available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Feb. 16, 2003).

increase the appearance that candidates and elected officials will not act in the best interests of Vermont citizens;
 (10) Citizen interest, participation and confidence in the electoral process is lessened by excessively long and expensive campaigns⁷⁷

The Senate accepted and adopted all of the House's justifications for spending limitations and added to them a restatement of the sponsor's original justification set out in the original H. 28 as introduced. The Senate found that "[e]lection campaigns for statewide and state legislative offices are becoming too expensive and as a result many Vermonters are financially unable to seek election to public office."⁷⁸ Both the House and Senate findings and justifications were incorporated into the final version of Act 64.⁷⁹

Other modifications to H. 28's spending limitations included a recommendation from the House Committee on Appropriations. This recommendation took the form of a "wish" that Vermont candidates for U.S. Congressional seats also limit campaign expenditures in amounts corresponding to limitations on candidates for the office of governor.⁸⁰ Moreover, with a bit more effectiveness than a wish, a "challengers" amendment was offered and adopted by the House on the third reading of H. 28.⁸¹ This addition reduced campaign expenditure limits for all incumbents to a percentage of the limits otherwise established for each respective office.⁸² This limitation on incumbent campaign spending provided:

77. H. 28, § 1, Legislative Findings and Intent, as passed by the House on April 9, 1997. JOURNAL OF THE VERMONT HOUSE 585-87 (1997) (emphasis added).

78. Senate proposal of amendment to H. 28, § 1(a)(1), JOURNAL OF THE VERMONT SENATE 1116 (1997).

79. Campaign Finance Reform Act, No. 64, § 1, Legislative Findings and Intent, 1997 Vt. Acts & Resolves 490 (codified as amended at VT. STAT. ANN. tit. 17, §§ 2801-2883 (Supp. 2002)).

80. Subsection (b) was added to § 2805a to read:

(b) Recognizing the jurisdiction of the Congress of the United States to enact expenditure limitations and campaign finance reforms for candidates for federal office, the general assembly of the state of Vermont expects candidates for the United States House of Representatives and Senate to observe the contribution and expenditure limitations that apply to candidates for the office of governor.

VT. STAT. ANN. tit. 17, § 2805a(b) (Supp. 2002).

81. The amendment was offered by Representatives Dunne of Hartland and Yarnell of Colchester, agreed to on a Division vote of eighty-one to forty-two. JOURNAL OF THE VERMONT HOUSE 680 (1997).

82. *Id.*

(c) In any election campaign in which a candidate for state-wide office is an incumbent of the office being sought, the candidate shall be permitted to expend only 85 percent of the amount allowed for that office under this section. In any election campaign in which a candidate for the general assembly is an incumbent of the office being sought, the candidate shall be permitted to expend only 90 percent of the amount allowed for that office under this section.⁸³

Meanwhile, corresponding activities were occurring in the Senate in the 1997 Session. S. 69, introduced January 31, 1997, was referred to the Senate Committee on Government Operations, which held hearings on the bill as introduced.⁸⁴ In an effort to expedite passage of campaign finance legislation within the 1997 session, the Senate Committee on Government Operations also met with House committees for the purpose of joint public hearings on all campaign finance proposals, H. 28 as well as S. 69.⁸⁵

The Senate was therefore prepared to act expeditiously on H. 28 upon receiving it from the House on April 11, 1997. In the Senate, H. 28 was considered by the Senate Committees on Government Operations, Finance and Appropriations, and was passed by the Senate with amendments on May 29, 1997.⁸⁶ The Senate proposals of amendment to H. 28 included the House-passed provisions limiting campaign expenditures.⁸⁷ A Committee of Conference reconciled these differences between the House and Senate versions of H. 28,⁸⁸ and recommended passage with no significant changes to provisions limiting overall campaign expenditures.⁸⁹ Both the House and

83. *Id.* (adding subsection (c) to § 2852 of Title 17).

84. JOURNAL OF THE VERMONT SENATE 110 (1997).

85. The House Local Government Committee and Senate Government Operations Committee held two joint hearings on February 13 and February 19, 1997. Vermont Legislative Bill Tracking System, Legislative Hearings Where a Specific Bill Was Considered: 1997-98 Legislative Session, at <http://www.leg.state.vt.us/database/database2.cfm> (last visited Mar. 19, 2003) [hereinafter Bill Tracking]. Overall, five different House and Senate committees held a total of forty-eight hearings on H. 28 and S. 69. *Id.*

86. JOURNAL OF THE VERMONT SENATE 1116-38 (1997). H. 28 was read the third time and passed by vote of nineteen to six. *Id.* at 1154-55.

87. Section 6 of the Senate's proposed amendment to H. 28 would add VT. STAT. ANN. tit. 17, § 2805a. It retained all House passed expenditure limits for each office, except the Senate. For the Senate, the amounts allowed to be expended were reduced from \$5,000.00 per seat plus \$3,000.00 per additional seat back to \$4,000.00 and \$2,000.00. The amendment also imposed spending limits for "two-year election cycles" rather than for "primary election periods and general election periods" as adopted by the House. JOURNAL OF THE VERMONT SENATE 1125-26 (1997).

88. The Conference Committee on H. 28 appointed on May 29, 1997 consisted of Senators Doyle, Ptashnik, and Spaulding, and Representatives Bohi, Heath, and Milne. *Id.* at 1176-77.

89. Again, the only modifications to the expenditure limitations were adjustments to those affecting state Senate candidates. Here the differences between the House and Senate proposals were

Senate adopted the conference report on June 6, 1997, and sent it to the Governor on June 20, 1997, who signed on June 26, 1997.⁹⁰ As finally enacted, the campaign spending limits of Act 64 provided:

§ 2805a. CAMPAIGN EXPENDITURE LIMITATIONS;
AMOUNTS

(a) *The following campaign expenditure limitations shall apply to all candidates, for all primary, general and local elections, whether or not a candidate accepts Vermont campaign finance grants under subchapter 6 of this chapter, is financing his or her campaign from private contributions, or from the candidate's own resources or that of his or her immediate family.*

(1) A candidate for governor shall limit campaign expenditures to no more than \$300,000.00 in any two-year general election cycle.

(2) A candidate for lieutenant governor shall limit campaign expenditures to no more than \$100,000.00 in any two-year general election cycle.

(3) A candidate for secretary of state, state treasurer, auditor of accounts or attorney general shall limit campaign expenditures to no more than \$45,000.00 in any two-year general election cycle.

(4) A candidate for state senator or county office shall limit campaign expenditures to no more than \$4,000.00 plus, in the case of state senator, an additional \$2,500.00 for each additional seat in the senate district, in any two-year general election cycle.

(5) A candidate for state representative in a single-member district shall limit campaign expenditures to no more than \$2,000.00, and in a two-member district to no more than \$3,000.00, in any two-year general election cycle.

(b) Recognizing the jurisdiction of the Congress of the United States to enact expenditure limitations and campaign finance reforms for candidates for federal office, the general assembly of the state of Vermont expects candidates for the United States House of Representatives and Senate to observe the contribution and expenditure limitations that apply to candidates for the office of governor.

(c) If a candidate for the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts or attorney general is an incumbent of the office being sought, the candidate shall be permitted to expend only 85 percent of the

compromised to provide a limit on expenditures of \$4,000.00 for each Senate seat plus an additional \$2,500.00 for each additional seat in the Senate district. VT. STAT. ANN. tit. 17, § 2805a(a)(4) (2002).

90. Campaign Finance Reform Act, 1997, No. 64, 1997 Vt. Acts & Resolves 490, 490-507, available at <http://www.leg.state.vt.us/database/database2.cfm> (last visited May 26, 2003).

amount allowed for that office under this section. If a candidate for the general assembly is an incumbent of the office being sought, the candidate shall be permitted to expend only 90 percent of the amount allowed for that office under this section.

(d) For purposes of this section, the term "candidate" includes the candidate's political committee.⁹¹

Act 64 was then set to become effective for the beginning of the 2000 general election cycle.⁹²

CONCLUSION

Limiting the amount of money candidates spend on election campaigns in Vermont has been a goal of campaign finance reformers in the General Assembly for at least forty years. Attempts to control the costs of election campaigns began with the enactment of simple, unconditional spending limits for some state offices. When those attempts were judicially questioned, the legislature responded with a simple program of publicly announced, voluntary spending limits. When it found that adherence to the voluntary limits required more incentives than mere public recognition, the legislature encouraged candidates with various carrots and sticks, including the award of significant amounts of campaign grants and subsidies. When that also proved to be insufficient to slow the burgeoning costs of Vermont election campaigns, the Legislature returned to mandatory spending limits with Act 64. This time the Legislature imposed mandatory spending limits universally on all candidates for state offices and legislative seats. More importantly, the Legislature supported these limits with findings and purposes in order to justify and clarify the state's interest of ensuring that "all elections ought to be free and without corruption" as declared by the Vermont Constitution.⁹³ Whether or not the Second Circuit Court of

91. 1997 Vt. Acts & Resolves 490, 498 (codified at VT. STAT. ANN. tit. 17, § 2805a (Supp. 2002)) (emphasis added).

92. *Id.* at 506. Section 27 of Act 64 provides:

EFFECTIVE DATES

The provisions of this act shall take effect as follows:

-
- (3) On the day after the 1998 General Election, Sec. 2, except that part of Sec. 2 which adds 17 V.S.A. § 2856 creating a Vermont campaign fund (Vermont campaign finance option), Sec. 5 (definitions), Sec. 6 (contribution limitations), Sec. 7 (expenditure limitations), Sec. 8 (related expenditures), Sec. 9 (information publication; on-line database), Secs. 11 through 15 (campaign finance reports) and Sec. 20 (repeal).

Id.

93. VT. CONST. ch.1, art. 8.

Appeals or a higher bench eventually concludes that Act 64 is constitutional and allows its regulation of campaign spending, it is clear that the principles, theories, and policies behind and powering the Act come from a deeper need within Vermont politics. This need to keep elections “free and without corruption” is ultimately what has driven the General Assembly each time it comes to the table to consider campaign finance and should not be so quickly dismissed by scholars or the courts.

