

THE REGULATION OF CAMPAIGN FINANCE IN VERMONT: MORE LOOPHOLE THAN LAW

INTRODUCTION

The regulation of campaign finance presents an intractable dilemma of conforming electoral politics with democratic theory. Money is the lifeblood of politics, and history teaches that he who pays the piper often calls the tunes once the candidate is elected to office.¹ Campaign finance regulation is an enormous challenge, with serious consequences for the health of our democratic society.² The history of such regulation in Vermont indicates a persistent failure to deal effectively with the issues involved. This note will provide a basis for the reform of the present statute, as well as propose alternatives to the private financing of campaigns.

The goals of campaign finance regulation are many: to ensure that sufficient money is available to sustain political debate and communication with the public,³ to equalize the opportunity for individuals to seek political office,⁴ to ensure that the political process is not corrupted by those of great wealth,⁵ and to foster citizen confidence by providing disclosure of sources of political funding.⁶

Vermont has struggled with these goals for a number of years. The present statute⁷ is so fraught with loopholes and inconsistencies that few of the objectives of campaign finance regulation have been achieved. Furthermore, existing requirements are largely un-

1. For a discussion of the role of large contributors in political campaigns and their influence on elected officials, see H. ALEXANDER, *FINANCING POLITICS* 73-90 (1976); G. THAYER, *WHO SHAKES THE MONEY TREE* 125-64 (1973).

2. See Fleishman, *Private Money and Public Elections: Another American Dilemma*, in *CHANGING CAMPAIGN TECHNIQUES* 19-21 (1976); Adamany, *The Source of Money: An Overview*, 425 *ANNALS* 17 (1976).

3. A. HEARD, *THE COSTS OF DEMOCRACY* 430-31 (1960).

4. Fleishman, *Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971*, 51 *N.C. L. REV.* 389, 456 (1973); Rosenthal, *Campaign Financing and the Constitution*, 9 *HARV. J. LEGIS.* 359, 360 (1972).

5. See Biden, *Public Financing of Elections: Legislative Proposals and Constitutional Questions*, 69 *Nw. U.L. REV.* 1, 2-6 (1974).

6. A. HEARD, *supra* note 3, at 462.

7. *VT. STAT. ANN.* tit. 17, §§ 2051-2057 (Supp. 1980).

enforced.⁸ Only through comprehensive reform can the needs of society and our political process be satisfied.

I. HISTORY OF REGULATION

The first Vermont statute to address the issue of candidate expenditures was passed in 1902.⁹ That law required that all expenses incurred for nomination to office be directly incurred and paid for by the candidate.¹⁰ Although expenditures were not limited in amount, they were required to fall within certain categories, such as printing or telephone charges.¹¹ A violation of the provision was subject to a fine of not less than one hundred dollars.¹²

In 1915 the scope of regulation was broadened to require disclosure of all contributions and expenditures by a candidate.¹³ These statements were to be available for public inspection and were to become a part of the public record.¹⁴ The penalties for violation were increased, providing for fines of up to five hundred dollars and imprisonment up to six months.¹⁵

It was not until 1961 that another wave of reform prompted the legislature to reevaluate campaign finances. An expenditure limitation of \$7,500 was imposed upon all primary candidates for state office.¹⁶ The statute also prohibited unauthorized individuals from contributing to a candidate's campaign.¹⁷

A decade later a novel proposal for partial public funding of campaigns was introduced but was not enacted.¹⁸ An "elections

8. See text accompanying notes 66-67, 89-91 *infra*.

9. 1902 Vt. Acts No. 6, §§ 1-4.

10. *Id.* § 2.

11. "Any person may incur and pay, with reference to his own nomination . . . as a candidate for public office, his own personal expenses . . . for stationery and postage, for telegraph, telephone and other regular messenger service . . ." *Id.*

12. *Id.* § 4.

13. 1915 Vt. Acts No. 4, § 22.

14. *Id.*

15. *Id.* § 23.

16. 1961 Vt. Acts No. 178, § 1.

17. "No person, other than a candidate . . . shall pay, contribute or promise any consideration . . . for a candidate . . . without the written consent of the candidate." *Id.* § 2.

18. H. 502, Adj. Sess. (1971).

publicity authority" was proposed to monitor expenditures and allocate funds out of general state revenues for broadcast media.¹⁹ The proposal was dramatically altered, however, and only resulted in new expenditure and contribution limits.²⁰ Individuals were limited to contributions of \$1,000, and expenditure ceilings were imposed on candidates for state office.²¹ Gubernatorial candidates in both primary and general elections were limited to expenditures of \$40,000,²² and candidates for other state offices were limited to \$20,000.²³

A state board of elections was established in 1973 to enforce the statute and promulgate regulations regarding election procedures.²⁴ The board's life was of limited duration—it was dissolved by the legislature in 1977 along with all of its rules and regulations.²⁵ The state's most effective method of enforcing the statute's requirements was thereby removed.

In January of 1976 the United States Supreme Court in *Buckley v. Valeo*²⁶ declared unconstitutional the expenditure limitations imposed on candidates for federal office²⁷ by the Federal Election Campaign Act of 1971.²⁸ The Court held that such limita-

19. *Id.*

20. 1971 Vt. Acts No. 259, § 1 (Adj. Sess.).

21. *Id.*

22. *Id.*

23. *Id.*

24. 1973 Vt. Acts No. 172, § 14 (Adj. Sess.).

25. 1977 Vt. Acts No. 34, §§ 3-4.

26. 424 U.S. 1 (1976) (per curiam).

27. *Id.* at 39-59.

28. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, § 104, 86 Stat. 3, as amended by the Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (repealed 1976).

A political party's candidate for nomination for President could not spend over \$10,000,000 in pursuit of that nomination; the total spent in each state could not exceed twice the expenditure limit for candidates to the Senate in that state. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101(c)(1)(A), 88 Stat. 1264.

In the general election, major party candidates were each limited to expenditures of \$20,000,000. *Id.* § 101(c)(1)(B).

Candidates for nomination to the Senate were limited to spending eight cents multiplied by the state's voting age population or \$100,000, whichever was greater. *Id.* § 101(c)(1)(C)(i)-(ii). Candidates in the general election were limited to spending twelve cents multiplied by the voting age population or \$150,000, whichever was greater. *Id.*

tions violated first amendment free speech guarantees.²⁹ The Court noted, however, that a candidate could voluntarily assume limitations on expenditures and that the payment of public subsidies to a candidate could be premised upon the self-imposed limitation.³⁰

Vermont reacted quickly to the Court's mandate and repealed the expenditure limitations imposed on candidates for state office.³¹ The contribution limits³² and disclosure requirements³³ are the only regulations remaining. As the following discussion indicates, there are significant problems with these statutory provisions.³⁴

II. THE VERMONT APPROACH

A. Contribution Limits

The primary rationale for contribution limits is to prevent corruption of political candidates once they are elected to office.³⁵ If large contributions are prohibited, the potential for quid pro quo arrangements between the contributor and the candidate is significantly diminished.³⁶ Other theories in support of contribution limits have been advanced: 1) as a means to "mute the voices of affluent persons and groups"³⁷ and equalize the influence of all citizens

§ 101(c)(1)(D)(i)-(ii).

The Senate limits were applied to candidates for the House of Representatives from states with only one representative. In other House elections, candidates were limited to expenditures of \$70,000 in the primary and in the general election. *Id.* § 101(c)(1)(E).

29. *Buckley v. Valeo*, 424 U.S. 1, 57-58 (1976) (per curiam).

30. *Id.* at 107-08.

31. 1975 Vt. Acts No. 188, § 7 (Adj. Sess.).

32. VT. STAT. ANN. tit. 17, § 2054 (Supp. 1980).

33. *Id.* §§ 2052-2053.

34. This note does not address the issue of expenditure limitation in detail. For a brief discussion, see text accompanying notes 109-11 *infra*. The issues involved in such regulation have been discussed at great length elsewhere. See, e.g., Barrow, *Regulation of Campaign Funding and Spending for Federal Office*, 5 J.L. REF. 159 (1972); Clagett & Bolton, *Buckley v. Valeo, Its Aftermath, and Its Prospects: The Constitutionality of Government Restraints on Political Campaign Financing*, 29 VAND. L. REV. 1327 (1976); Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U. L. REV. 900, 911-21 (1971).

35. *Buckley v. Valeo*, 424 U.S. 1, 26-29 (1976) (per curiam).

36. *Id.* at 26-27.

37. The *Buckley* Court presented this argument, but found it unnecessary to look beyond the purpose of avoiding corruption to find a constitutionally acceptable justification

in effecting elections,³⁸ and 2) to help slow the skyrocketing costs of elections.³⁹

The Vermont statute⁴⁰ prohibits a candidate⁴¹ from accepting contributions⁴² in excess of \$1,000 from any single source.⁴³ The limitation does not apply to contributions from "political committees" which are defined as any committee of two or more individuals which spends more than \$500 a year in supporting or opposing candidates.⁴⁴ These committees are restricted, however, to receiving contributions of \$1,000 from single sources.⁴⁵ The statute also mandates that all contributions of twenty-five dollars or more be made by check.⁴⁶

The primary and general elections are treated as a single election for contribution purposes.⁴⁷ An individual contributor is thus restricted to direct contributions of \$1,000 per candidate in any election year. There are no restrictions on the amount that an individual or political committee may cumulatively contribute in all election campaigns.

for the limits. *Id.* at 25.

38. *Id.* at 26.

39. *Id.*

40. VT. STAT. ANN. tit. 17, §§ 2051-2057 (Supp. 1980).

41. A candidate is "an individual who has taken affirmative action to become a candidate in a primary, special or general election for a position as a state officer or for a position as a representative or senator in the general assembly." *Id.* § 2051(1).

42. Contribution is defined as a:

payment, distribution, advance, deposit, loan or gift of money or anything of value, paid or promised to be paid to a candidate or political committee for the purpose of supporting or opposing one or more candidates in any election, but shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate or political committee.

Id. § 2051(2).

43. *Id.* § 2054(a).

44. *Id.* § 2051(4). Political parties and their committees are included within the definition.

45. *Id.* § 2054(b).

46. *Id.* § 2054(c).

47. Although not explicitly treated as such in the statute, it has been so construed by the Secretary of State's Office. Interview with Marlene Wallace, Editor of State Papers, Secretary of State's Office, in Montpelier, Vermont (Jan. 14, 1981).

1. Exceptions to Contribution Limits

There are significant constitutionally mandated exceptions to contribution limits. A candidate may contribute unlimited personal funds to his own campaign.⁴⁸ It has been argued that there is no potential corruption of the candidate when it is the candidate who contributes the funds.⁴⁹ There is no doubt, however, that such an exception has the potential for hindering the goals of equalizing access to political office. Wealthy candidates have numerous advantages which derive solely from financial clout.⁵⁰ In light of *Buckley*, limitations on a candidate's personal contributions to his campaign cannot constitutionally be imposed without the voluntary assumption of limits in a scheme of public subsidies.⁵¹ Members of a candidate's family, however, are bound by the contribution limits.⁵² This limitation conceivably diminishes the capacity of some wealthy candidates to expend large amounts of capital, but there is no way to assure such control over expenditures.⁵³

In addition to these constitutionally mandated exceptions, other exceptions are imposed by the Vermont statute. The statutory definition of contribution specifically exempts volunteers' services.⁵⁴ This exception permits individuals to contribute their time without restriction under the statute. Volunteers are, of course, essential to any campaign, but some services provided by volunteers may be extremely valuable and nonetheless they are beyond the control of the statute.⁵⁵ Professional services, such as accounting or

48. The *Buckley* Court held that expenditure limitations upon a candidate's personal and family financial resources are unconstitutional. 424 U.S. 1, 51-54 (1976) (per curiam).

49. *Id.* at 53.

50. Justice Marshall, dissenting from the per curiam opinion in *Buckley*, pointed out that personal wealth gives a candidate a significant headstart in campaigning. The initial advantage might never be overcome by less wealthy competitors. *Id.* at 288 (Marshall, J., dissenting in part).

51. *Id.* at 107-08.

52. The statute prohibits a candidate from accepting more than \$1,000 from a "single source". VT. STAT. ANN. tit. 17, § 2054 (a) (Supp. 1980). That term is not defined in the statute but has been construed to apply to individual members of a candidate's family.

53. Assets could be transferred from a candidate's family to the candidate prior to the election in order to avoid the limitation.

54. VT. STAT. ANN. tit. 17, § 2051 (2) (Supp. 1980).

55. For a thorough discussion of this problem, see *Buckley v. Valeo*, 519 F.2d 821, 915

various fundraising activities, can easily exceed the \$1,000 limit imposed by the statute. This exception presents potential for abuse which the contribution limits seek to curtail.

Another exception to the contribution limits involves contributions made by "political committees."⁵⁶ This exception has been largely unexploited except by the political party committees which have exceeded the \$1,000 contribution limit on many occasions.⁵⁷ The potential for abuse under this exception is nonetheless very significant. While it could be argued that a \$1,000 contribution limit upon individual giving to a committee would dissipate the clout of political committees, the recent experience of political action committees in federal campaigns clearly refutes this thesis.⁵⁸ Political committees, usually the voice of special interest groups, have enormous financial power in campaigns and should be effectively restrained by limitation on their capacity to make contributions to candidates or other political committees.

Finally, there is no limitation on the amount that corporations may contribute to a candidate.⁵⁹ Such an exception has raised fears among legislators that large economic interests could dominate the selection of our political leaders through their aggregated wealth and organizational resources.⁶⁰ Although corporations have not

(D.C. Cir. 1975) (Tamm, J., dissenting).

56. "Political committee" is defined as:

a committee, including a political party, the committees of a political party . . . , legislative district committees and any formal or informal committee composed of two or more individuals, which accepts or spends more than \$500.00 in any one calendar year for the purpose of supporting or opposing one or more candidates.

Vt. STAT. ANN. tit. 17, § 2051 (4) (Supp. 1980).

57. The Republican State Committee contributed \$37,500 to Governor Richard Snelling's 1980 re-election campaign, while the Democratic State Committee made contributions in excess of \$3,000 to state candidates. Reports on file with Marlene Wallace, Editor of State Papers, Secretary of State's Office, in Montpelier, Vermont.

58. See Wertheimer, *The PAC Phenomenon in American Politics* 22 ARIZ. L. REV. 603, 612-16 (1980). But see Bolton, *Constitutional Limitations on Restricting Corporate and Union Political Activity*, *id.* at 373, 413-18.

59. The statute does not explicitly state whether corporations may contribute to candidates, but no restrictions are imposed in the section on contributions. VT. STAT. ANN. tit. 17, § 2054 (Supp. 1980).

60. One of the earliest calls for a prohibition of corporate political contributions came

fully exploited their capacity to influence elections in Vermont,⁶¹ the potential for abuse is present and should be addressed. Allowing corporations a free rein to contribute to candidates may have grave consequences on the quality and effectiveness of individual political activity in the state.⁶²

2. Contribution Loopholes

There is significant potential under the statute for a candidate to evade the contribution limits. Although a candidate is required to pay all campaign expenditures by check from a single checking account,⁶³ there is no requirement that a single committee be set

from Elihu Root in 1894:

The idea is to prevent . . . the great railroad companies, the great insurance companies, the great telephone companies, the great aggregations of wealth from using their corporate funds, directly or indirectly, to send members of the legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public. It strikes at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government. And I believe that the time has come when something ought to be done to put a check to the giving of \$50,000 or \$100,000 by a great corporation toward political purposes upon the understanding that a debt is created from a political party to it.

Quoted in *United States v. UAW-CIO*, 352 U.S. 567, 571 (1957). See, also, Epstein, *Corporations and Labor Unions in Electoral Politics*, 425 ANNALS 33, 34-36 (1976).

61. Corporate contributions totalled approximately \$20,000 in the 1980 state election campaigns. The largest such contribution was \$4,000 made to the successful candidate for Attorney General, John Easton. Reports on file with Marlene Wallace, Editor of *State Papers*, Secretary of State's Office, in Montpelier, Vermont.

62. The constitutional dimensions of prohibitions on corporate and union political spending are by no means clear at this point. The United States Supreme Court has avoided deciding the issue in every case which has been argued before it. *Cort v. Ash*, 422 U.S. 66, 70 (1975); *Pipefitters Local 562 v. United States*, 407 U.S. 385, 400 (1972); *United States v. UAW-CIO*, 352 U.S. 567, 591-92 (1957); *United States v. CIO*, 335 U.S. 106, 109-10 (1948).

First amendment protection extends to corporations as well as natural persons. *First National Bank v. Bellotti*, 435 U.S. 765 (1978) (wherein the Court struck down a Massachusetts statute making it a criminal act for any business corporation to contribute money to influence voters on a referendum issue except on matters materially affecting the business); *Grosjean v. American Press Co.*, 297 U.S. 233, 244 (1936). Future constitutional analysis will likely weigh the governmental interests in preserving the purity of the electoral process from undue corporate influence against the corporation's interest in free expression.

63. VT. STAT. ANN. tit. 17, § 2052(a) (Supp. 1980).

up to accept all contributions for reporting purposes. It is thus conceivable for a candidate to have a number of political committees, with individuals contributing their maximum \$1,000 to each committee. Since individuals have no overall limit on annual contributions, there is no effective check on the potential for evading the candidate's limit of \$1,000 from any single source. A cumulative limit on an individual's contributions would provide a limited check.⁶⁴ The problem is mooted to some extent because supporters may avoid the limitation by making independent expenditures on behalf of a candidate without his consent or cooperation.⁶⁵

Another significant flaw concerning contribution limits in Vermont is the allowance of loans which exceed the \$1,000 contribution limitation. Although loans are included within the definition of "contribution,"⁶⁶ political committees and candidates have been allowed to take out substantial loans far in excess of the limitation.⁶⁷ The rationale for allowing this practice is that these loans, usually taken out with banks, do not have the potential for quid pro quo arrangements. It is highly unlikely that a bank will forgive a loan to a candidate or committee. It is quite possible, however, for someone other than the candidate to pay off the loan and thus introduce the potential for corruption sought to be prevented by the contribution limits. This problem is aggravated by the fact that the loan could be forgiven after the candidate submits his final report. Consequently, the forgiveness of the loan need never be disclosed to the public.

64. The federal law imposes an overall limitation of \$25,000 on aggregate expenditures made by an individual. 2 U.S.C. § 441a(a)(3) (1976).

65. Independent expenditures are those made without the consent or approval of the candidate. The *Buckley* Court opened this rather significant loophole when it struck down the independent expenditure limitations as a violation of the first amendment. 424 U.S. 1, 39-51 (1976) (per curiam).

66. See note 40, *supra* for definition.

67. During the 1980 primary and general elections, candidates for statewide office and political committees reported loans totalling \$148,000. The size of these loans ranged from \$50,000 by the Republican State Committee to \$17,000 by Attorney General John Easton. Reports on file with Marlene Wallace, Editor of State Papers, Secretary of State's Office, in Montpelier, Vermont.

3. Proposed Changes

The proposed contribution regulations included in an appendix to this note seek to satisfy the needs of the campaign process while at the same time ensuring that the process is not corrupted by those of great wealth. The present statute fails in this regard because of the loopholes mentioned above. Only through careful attention to the complexities of campaign financing can the electoral process satisfy the expectations of the public.

Candidates should be required to establish a single campaign committee through which all contributions and expenditures are funnelled. This requirement would assure compliance with the spirit of the statute by exposing all of the sources of a candidate's financial support and ensuring that the individual contribution limits were not exceeded. This committee has been designated the "principal campaign committee" in the proposed statute.⁶⁸

The possibility of evading the individual contribution limitations may be curtailed by imposing an overall limitation on the amount that individuals may contribute to all candidates during an election year. A figure of \$10,000 has been chosen in order to allow a limited, albeit significant, level of individual participation in financing political candidacies.⁶⁹

The unrestrained capacity of political committees to contribute funds to candidates should likewise be limited. There is no logical reason for requiring individuals to abide by contribution limitations, while committees of two or more individuals are allowed unlimited giving power. The proposed statute eliminates this loophole by defining a political committee as a "person,"⁷⁰ thereby restricting it to the \$1,000 limit imposed upon individuals⁷¹ and the \$10,000 overall limit.⁷² The statute also requires political committees registered outside of Vermont to file reports of contributions and expenditures before an in-state committee may accept contri-

68. See Proposed Statute at § 2052 (1) *infra*.

69. *Id.* § 2054(2).

70. *Id.* § 2051(6).

71. *Id.* § 2054(1).

72. *Id.* § 2054(2).

butions from that committee.⁷³ The purpose of this provision is to ensure the public has adequate information on out-of-state organizations that play a role in the election of state officers.

The proposed statute eliminates the possible abuse of the volunteers' services exception to the contribution limits.⁷⁴ When the value of expenditures⁷⁵ incurred by a volunteer exceeds one hundred dollars, those expenditures will be treated as a contribution and reported as such.⁷⁶ The amount of those expenditures will consequently be restricted to the \$1,000 limit imposed upon all individuals and committees. This proposal ensures that the contribution limits will not be evaded by extensive use of volunteered expenditures.

Under the proposal, corporations are not allowed to contribute to any candidates.⁷⁷ A number of states,⁷⁸ as well as the federal government,⁷⁹ have adopted such a provision to control the exercise of corporate financial power. The primary purpose of the proposal is to protect shareholders from forced contributions. A substantial number of corporations have set up affiliated political

73. *Id.* § 2054(4). This provision would codify the Secretary of State's current interpretation of the statute.

74. See text accompanying notes 54-55 *supra*.

75. The proposed statute does not seek to regulate uncompensated services given by an individual, such as routine clerical work. The statute will come into play only when a volunteer expends funds on behalf of a candidate, such as payment for telephone charges or refreshments at fundraising activities.

76. See Proposed Statute at § 2051(3) *infra*.

77. *Id.* § 2054(3).

78. Twenty-one states prohibit contributions made from corporate treasuries: ALA. CODE § 10-2-168 (1977); ARIZ. REV. STAT. ANN. § 16-471 (1975); GA. CODE ANN. § 40-3803.2 (1975) (limited to banks and insurance companies); KAN. STAT. ANN. § 25-1709 (1973) (limited to banks and utilities); KY. REV. STAT. ANN. § 121.025 (Baldwin 1975); MASS. ANN. LAWS ch. 55, § 8 (Michie/Law. Co-op 1978) (limited to banks and utilities); MICH. STAT. ANN. § 4.1701(95) (1977); MINN. STAT. ANN. § 210A.34 (West Supp. 1981); N.J. STAT. ANN. § 19:34-45 (West 1964) (limited to banks and utilities); N.C. GEN. STAT. § 163-278.15 (1976); N.D. CENT. CODE § 16-20-08 (Supp. 1979); OHIO REV. CODE ANN. § 3599.03 (Baldwin 1976); OKLA. STAT. ANN. tit. 26, § 15-110 (West Supp. 1980-1981); PA. STAT. ANN. tit. 25, § 3253 (Purdon Supp. 1980-1981); S.D. CODIFIED LAWS ANN. § 12-25-2 (Supp. 1980); TENN. CODE ANN. § 2-19-132 (1979); TEX. ELEC. CODE ANN. tit. § 14.06(a) (Vernon Supp. 1980-1981); W. VA. CODE § 3-8-8 (1979); WIS. STAT. ANN. § 11.38(1)(a) (West Supp. 1980-1981); WYO. STAT. § 22-25-102(a) (1977).

79. 2 U.S.C. § 441b(a) (1976 and Supp. III 1979).

action committees, however, which receive voluntary contributions. These committees are not barred under the statute.

B. Disclosure

There are several reasons for requiring a candidate to disclose the sources of campaign contributions. Disclosure informs the public of a candidate's support from special interests, and thereby allows the public to make a more educated decision about what candidates to support.⁸⁰ Furthermore, disclosure guards against the covert purchase of political favors by special interests after a candidate is elected to office.⁸¹ It provides the most effective mechanism for monitoring post-election favoritism by the recipient of financial help during the campaign. It also provides the only mechanism to ensure that the contribution limits of the statute are not violated.⁸²

All candidates for state office are required to file periodic reports with the Secretary of State's Office which become part of the public record.⁸³ These records indicate contributions of more than twenty-five dollars⁸⁴ made to the candidate as well as all disbursements made by the campaign committee.⁸⁵ The reports also require a cumulative total of all contributions and expenditures made to and by the candidate's committee.⁸⁶ These reports must be filed periodically prior to the election. The last pre-election report is due ten days prior to the general election.⁸⁷ There is also a final report required ten days following an election.⁸⁸

Under section 2053 of Vermont Statutes Annotated,⁸⁹ political committees⁹⁰ are required to file reports as well. This provision has

80. See Fleishman, *supra* note 4, at 426.

81. *Id.*, Buckley v. Valeo, 424 U.S. 1, 67 (1976) (*per curiam*).

82. 424 U.S. at 67-68.

83. VT. STAT. ANN. tit. 17, § 2053 (Supp. 1980).

84. *Id.* § 2052(b)(1).

85. *Id.* § 2052(b)(3).

86. Although not required by statute, the report requests this information.

87. VT. STAT. ANN. tit. 17, § 2053(a) (Supp. 1980).

88. *Id.*

89. *Id.*

90. See note 56, *supra* for definition.

been construed to apply only to committees registered in the state⁹¹ and has not been consistently enforced. It is now impossible to discern the origin of political committee funding. Committees registered outside the state file no reports in the Secretary's Office. Consequently, a candidate's records cannot be cross-checked with records of the contributing committee to ensure faithful compliance with the statute.

1. Loopholes in Reporting

Individuals who make independent expenditures⁹² on behalf of or in opposition to a candidate are not required to file reports with the state. Political committees are also not required to file reports of such expenditures. Political committees need only report *contributions* which are defined as funds paid directly to a candidate or political committee.⁹³ It is therefore possible for substantial funds to be spent on behalf of a candidate which would never be reported to the state. This loophole could distort the political process and should be closed by requiring all individuals and committees to report independent expenditures.

Another problem with the reporting requirements concerns their timing. Reports are to be filed ten days prior to the primary and general election and ten days following such election. The gap between the ten day pre-election report and election day allows a candidate to accept significant contributions that are disclosed only after the election.⁹⁴ The voter may then have a very limited picture of the interests supporting the candidate prior to election day if the candidate chooses to employ this tactic.

91. Interview with Marlene Wallace, Editor of State Papers, Secretary of State's Office, in Montpelier, Vermont (Jan. 14, 1981). The Secretary of State has since construed the statute to apply to out-of-state committees.

92. See note 65 *supra*.

93. VT. STAT. ANN. tit. 17, § 2051(2) (Supp. 1980).

94. Twenty-one percent of Democratic gubernatorial candidate Jerry Diamond's funds were received in the ten-day period before the general election in 1980. The incumbent Governor, Richard Snelling, received \$24,600 or ten percent of his total contributions during the same period. Reports on file with Marlene Wallace, Editor of State Papers, Secretary of State's Office, in Montpelier, Vermont.

The requirements for the post-election reports are similarly infirm. The ten day post-election report does not require that the committee's finances be resolved. Because this is the only post-election report filed, the public may never be apprised of any financial activity of the candidate's committee which occurs after the filing of the report. Candidates should be required to file periodic reports until the committee's finances are resolved. Furthermore, the statute should provide for the disposition of surplus funds.

2. Proposed Changes

Although the *Buckley* decision opened up the potential for unlimited independent spending by individuals or committees, it did not preclude the disclosure of those expenditures. In fact, federal law now requires that all such expenditures be reported to the Federal Election Commission.⁹⁵ The proposed statute requires that all individuals and political committees which make expenditures for the purpose of influencing the nomination or election of elected officials report those expenditures.⁹⁶

The proposed statute also reschedules the timing of the reports to provide a greater degree of political accountability than now exists.⁹⁷ A candidate is required to report all contributions greater than two hundred and fifty dollars which are received in the final five days of a campaign within twenty-four hours of receipt.⁹⁸ Furthermore, once an election is concluded, all political committees are required to continue reporting until the committee is dissolved or any indebtedness is reduced to less than \$1,000.⁹⁹

III. PUBLIC FINANCING OF CAMPAIGNS

While the previous discussion has focused upon certain as-

95. 2 U.S.C. § 434(a)(6)(a) (Supp. III 1979).

96. See Proposed Statute at § 2053(4) *infra*.

97. *Id.* § 2053(2).

98. *Id.* § 2053(3).

99. *Id.* § 2053(4).

pects of campaign spending regulation, it should be recognized that more fundamental issues are involved in any such regulation. The extent to which the costs of elections are borne by special interests or by the public as a whole has received increasing attention in recent years,¹⁰⁰ leading some to call for the public funding of all campaigns. Arguing that elections serve a variety of public purposes—to educate the electorate on issues of public importance and to present the views of prospective leaders on these issues¹⁰¹—these individuals contend that public financing ensures the integrity of the political process by precluding the influence of powerful special interests on elected candidates.

The strengths and weaknesses of private campaign financing have been discussed at great length elsewhere.¹⁰² Defenders of private financing argue that wealth is merely a factor among many others, none of which are the sole determinant of electoral success. Under this pluralist theory, wealth should not be singled out for public regulation because a candidate's success depends upon whatever mix of available resources may be obtainable, including campaign organization and political skill.¹⁰³

100. See D. ADAMANY & G. AGREE, *POLITICAL MONEY* 175-94 (1975); A. HEARD, *supra* note 3, at 431-45; Fleishman, *Public Financing of Election Campaigns: Constitutional Constraints on Steps Toward Equality of Political Influence of Citizens*, 52 N.C. L. REV. 349 (1973).

101. One leading commentator has recently written:

The citizen's act of voting and the election campaign which is designed to influence it are of central importance in a democracy. The rules governing elections are the primary rules by which we live together in society and by which the governed determine who their governors will be and what policies they will pursue. Elections are democracy's primary means of resolving group competition and of apportioning the cost and benefits of life in society among competing interests. They are the basic mechanism whereby the citizens make value judgments—the final and most authoritative means for democratic choice-making. No democratic process is more important or powerful, and, therefore no point of influence is more attractive to those who would skew post-election policy to their private advantage. In addition, no aspect of democracy is more vulnerable.

Fleishman, *supra* note 4, at 426. See also, S. HESS, *THE PRESIDENTIAL CAMPAIGN* 36 (1974).

102. See FLEISHMAN, *supra*, note 2, at 19-51; A. HEARD, *supra*, note 3, at 431-54; T. SCHWARZ, *PUBLIC FINANCING OF ELECTIONS: A CONSTITUTIONAL DIVISION OF THE WEALTH* (1975); R. WINTER, *MONEY, POLITICS AND THE FIRST AMENDMENT* 52-53 (1971).

103. R. WINTER, *MONEY, POLITICS AND THE FIRST AMENDMENT* 52-53 (1971).

Others have persuasively argued that wealth is distinctively instrumental in electoral success in that it is capable of purchasing all other kinds of resources.¹⁰⁴ These commentators contend that the amount of wealth one commands is entirely irrelevant to a candidate's qualification for office and yet singularly capable of public regulation.

The virtues of public financing are substantial. If candidates are relieved to some extent of the necessity of procuring contributions, both the appearance of and the potential for corruption will likely diminish.¹⁰⁵ Furthermore, individuals of modest financial means and those without access to large political funds will have greater incentive to run for office.¹⁰⁶ By providing a greater potential for political debate than now exists, public financing could bolster the electorate's lagging confidence in the capacity of the system to provide political leadership.¹⁰⁷ The crisis of confidence in our electoral system could be effectively dissipated if private funds were matched with public subsidies.¹⁰⁸

Public financing has attracted some recent supporters because it provides a constitutionally acceptable method for limiting cam-

104. *Fleishman*, *supra* note 2, at 31.

105. D. ADAMANY & G. AGREE, *supra* note 100, at 194.

106. In its report on the Federal Election Campaign Act of 1971, a House report declared that the present system of private campaign financing leads to a closed, insulated, self-perpetuating system, dominated by special interests and unresponsive to the public will . . . which often creates the impression that only the rich can run for public office, and that a candidate can buy an election by spending large amounts of money in a campaign [It] works an inequitable hardship on the candidate who cannot compete with the resources of great wealth, but of even greater significance, it is unfair to the electorate which is entitled to have presented to it for its evaluation and judgment candidates from all walks of life and not just those persons who, because of their wealth, can conduct a campaign which resorts to techniques which are more appropriate to merchandizing a product than to familiarizing the public with a candidate's qualities as a potential public official and his program for the country.

H.R. REP. NO. 92-564, 92d Cong., 1st Sess. 4 (1971).

107. D. ADAMANY & G. AGREE, *supra* note 100, at 187.

108. In a recent Gallup poll, 66 percent of those polled indicated that changes are necessary in the conduct of our electoral campaigns. Fifty-seven percent now favor total public financing of congressional races. The Gallup Poll, Nov. 23, 1980.

paign spending. The argument for expenditure limits is premised upon the belief that a certain amount of political spending is excessive and that these costs must be restrained by public regulation.¹⁰⁹ At the heart of this argument lies a fear that the political process will be tainted by what are perceived to be unnecessary expenses for publicity and other public relations efforts. While it is beyond the scope of this note to explore this important area, it should be pointed out that limitations on campaign spending are essentially limitations on the amount of political discourse that will take place during an election.¹¹⁰ The *Buckley* Court framed the issue in the following terms:

The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government, but the people—individually as citizens and candidates and collectively . . . who must retain control over the quantity and range of debate on public issues in a political campaign.¹¹¹

The goal of public financing should be to provide a spending floor, rather than a ceiling, upon candidate activity which will enable candidates without large funds to effectively participate in campaigns.

Sixteen states,¹¹² the federal government,¹¹³ and Puerto Rico¹¹⁴

109. Any ceiling on expenditures is essentially a moral judgment the enforcement of which depends to a large extent on public opinion. See Lederle, *Political Committee Expenditures and the Hatch Act*, 44 MICH. L. REV. 294 (1945).

110. Professor Alexander objects to spending limits as restricting the American preference for vigorous campaigns:

If the political system is to be open and responsive to challenge, limitations are undesirable because they tend to favor the status quo One key goal of the political system should be intense competition because that helps to make the system more responsive. Limitations tend to reduce opportunities for voters to hear about candidates and issues. Periodic electioneering helps to structure and politicize society—an essential to the functioning of a democracy. Reducing expenditures reduces opportunities for voters to learn that the political season is on, that an election is coming.

H. ALEXANDER, *MONEY IN POLITICS* 233 (1972).

111. *Buckley v. Valeo*, 424 U.S. 57 (1975).

112. HAWAII REV. STAT. §§ 11-217 to 225, 235-1-2.5 (Supp. 1980) (\$2.00 checkoff to general fund for state and local candidates); IDAHO CODE §§ 34-2501 to 2505, 63-3088 (Supp.

have sought to curtail the influence of private money on political campaigns through public subsidy schemes. The laws are varied—funding political parties,¹¹⁵ eligible candidates,¹¹⁶ or both.¹¹⁷ Public funds are derived from voluntary contributions out of state income tax liability,¹¹⁸ voluntary tax surcharges,¹¹⁹ or from general

1980) (\$1.00 checkoff to political party of choice or general fund); IOWA CODE ANN. §§ 56.18-.26 (West Supp. 1980-1981) (\$1.00 checkoff to political party of choice or general fund); KY. REV. STAT. ANN. §§ 141.071-.073 (Baldwin 1977) (\$1.00 to specified political party); ME. REV. STAT. ANN. tit. 36, § 5283 (1964) (\$1.00 surcharge to be paid to specified political party); MD. ANN. CODE art. 33, §§ 31-4, art. 81, §§ 465-567 (1957 and Supp. 1980) (\$2.00 tax surcharge payable to general fund to match contributions of candidates for state office); MASS. ANN. LAWS ch. 55, §§1-12, ch. 62, § 6C, ch. 10, §§ 42-45 (Michie/Law Co-op 1978) (\$1.00 surcharge to general fund for matching candidate contributions up to limit); MICH. STAT. ANN. §§ 4.1701(101)-(105) (1977) (\$2.00 checkoff to general fund to match contributions of gubernatorial candidates); MINN. STAT. ANN. § 10A.30-.33 (West 1977 & Supp. 1981) (\$1.00 checkoff to specified political party or general fund to be distributed to candidates for major state offices); MONT. REV. CODES ANN. §§ 13-37-301 to 308 (1979) (\$1.00 surcharge to general fund for gubernatorial and supreme court candidates); N.J. STAT. ANN. §§ 19:44A-30, 33, 35, 36 (West Supp. 1980) (matching funds for gubernatorial candidates derived from general budget appropriation); N.C. GEN. STAT. § 163-278.41 to .45, 105-159.1 (Michie Supp. 1979) (\$1.00 checkoff to general fund to be distributed to specified candidates through state party); OKLA. STAT. ANN. tit. 26, §§ 18-103 to -113 (West Supp. 1980) (\$1.00 checkoff to general fund for all constitutional offices); R.I. GEN. LAWS § 44-30-2(e) (1980) (\$1.00 checkoff to general fund or specified political party); UTAH CODE ANN. § 59-14A-99 to 100 (Supp. 1979) (\$1.00 checkoff to designated political party, distributed between state and county committees); WIS. STAT. ANN. §§ 11.50, 71.095 (West Supp. 1980-1981) (\$1.00 checkoff to general fund to be distributed to candidates for state offices).

113. The Presidential Election Campaign Fund Act of 1966, Pub. L. No. 89-809, §§ 301-305, 80 Stat. 1587, was the first such provision. This Act initiated the \$1.00 checkoff provision now contained in 26 U.S.C. § 6096 (1976). The Act was suspended, however, by a 1967 provision barring any appropriations until Congress adopted guidelines for the distribution of money from the Fund. Pub. L. No. 90-26, § 5, 80 Stat. 1587 (1967). In 1971 Congress added Subtitle H to the Internal Revenue Code. Pub. L. No. 92-178, 85 Stat. 562 (codified at 26 U.S.C. § 6096 (1976)). Section 802 of the Act provided a checkoff provision for the public financing of general election campaigns for President. Congress later amended the checkoff provision by deleting the taxpayer's option to designate specific parties as recipients of the money. Pub. L. No. 93-53, § 6, 87 Stat. 138 (1973). The 1974 amendments provided for matching funds for presidential primaries. Pub. L. No. 93-443, §§ 403-408, 88 Stat. 1291 (repealed 1976).

114. P.R. LAWS ANN. tit. 16, §§ 3114-3119 (Supp. 1979).

115. See, e.g., ME. REV. STAT. ANN. tit. 36, § 5283 (1964).

116. See, e.g., MASS. ANN. LAWS ch. 55A, §§ 3-8 (Michie/Law Co-op 1978).

117. The federal law provides funding for both presidential candidates and for the nominating conventions of major parties. 26 U.S.C. §§ 9003, 9008 (1976).

118. See, e.g., OKLA. STAT. ANN. tit. 26, § 18-103 (West Supp. 1980-1981).

119. See ME. REV. ANN. tit. 36, § 5283 (1964), MD. ANN. CODE art. 81, § 465 (1980);

budget appropriations.¹²⁰ The programs which finance candidates do so through matching grant systems¹²¹ or exclusively with public funds.¹²²

A. *The Source of Campaign Funds*

The most widely employed subsidy scheme involves a \$1.00 voluntary checkoff on the state income tax return.¹²³ Such a provision creates no additional tax liability and simply directs that \$1.00 of the tax paid be used for campaign purposes. Four states have enacted surcharge provisions,¹²⁴ which allow a taxpayer to direct an additional dollar to the tax paid to be used for campaign purposes. New Jersey law provides for public funding of gubernatorial candidates with funds derived directly from budget appropriations.¹²⁵

The level of taxpayer participation under these various approaches varies significantly. The checkoff programs have attracted much greater participation than the surcharge programs¹²⁶ for reasons that should be apparent. The level of taxpayer participation has remained fairly constant in states that have had public financing programs for several years.¹²⁷

MASS. ANN. LAWS ch. 62, § 6C (Michie/Law. Co-op 1978); MONT. REV. CODES ANN. § 13-37-303 (1979).

120. See N.J. STAT. ANN. §§ 10:44A-30 (West Supp. 1980-1981).

121. See, e.g., MASS. ANN. LAWS ch. 55A, §§ 5, 7 (Michie/Law. Co-op 1978); MICH. STAT. ANN. § 4.1701(103)-(104) (1977).

122. The federal system for the presidential general election campaign is funded entirely with federal dollars. 26 U.S.C. 9003-9004 (1976).

123. See statutes cited in note 112 *supra*.

124. ME. REV. STAT. ANN. tit. 36, § 5283 (1964); MASS. ANN. LAWS ch. 55A, §§ 3-12 (Michie/Law. Co-op 1978); MICH. STAT. ANN. § 4.1701(101)-(105) (1977); MONT. REV. CODES ANN. § 13-37-301 to 308 (1979).

125. N.J. STAT. ANN. §§ 19:44A-33 (West Supp. 1980-1981).

126. Taxpayer participation in states with checkoff provisions generally ranges around 25 percent, while states with surcharge provisions have as little as .5 percent participation. Jones, *State Public Campaign Finance: Implications for Partisan Politics*, 25 AM. J. POL. SCI. 342, 350 (1981).

127. Utah is an exception to this generalization and has had fluctuations between 8 and 24 percent over the period of two years. *Id.* at 350.

B. *The Allocation of Campaign Funds*

One of the most difficult problems in any subsidy scheme is determining to whom the funds are to be allocated. Funds can be paid directly to candidates, to parties, or both. If funds are distributed to candidates, a program must be designed which insures that only serious candidates will be funded. This presents essentially a definitional problem; how to distinguish serious from frivolous candidates without violating the goal of equality of opportunity to run for office. The standards used to make this determination are many,¹²⁸ but all are fraught with some degree of imperfection.

An alternative subsidy scheme provides funds to political parties rather than individual candidates.¹²⁹ Some checkoff schemes allow the taxpayer to designate to which party the funds are to be given,¹³⁰ while others allow a checkoff with funds going into a general fund for later allocation.¹³¹ The former approach alleviates the troubling problem of eligibility criteria and allows the taxpayer to make the sole determination of who is to receive the funds. It does not, however, avoid the potential problem of abuse by party leaders with unbridled control over these disbursements.

A third alternative is to fund candidates via the political parties, but requires the party to spend the funds for designated offices or for specified purposes.¹³² By eliminating the need to devise eligibility criteria for candidates, this approach also allows parties a greater degree of control over the campaign process. Political scientists have cited the trend of candidate independence from the parties in recent years and advocated party subsidies as a way to

128. In order to receive federal matching funds during the presidential primaries, a candidate must have received contributions totalling at least \$5,000 from each of 20 states, with no single contribution exceeding \$250 from one person. 26 U.S.C. § 9033(b) (1976).

Michigan requires that a gubernatorial candidate obtain an amount of qualifying contributions at least equal to 5 percent of the candidate's spending limit. MICH. STAT. ANN. § 4.1701(103) (1977).

129. See, e.g., IOWA CODE ANN. § 56.18-26 (West Supp. 1980-1981).

130. *Id.*, § 56.18.

131. See, e.g., N.C. GEN. STAT. § 105-159.1 (Michie Supp. 1979) (funds to go into general fund unless otherwise designated by taxpayer).

132. *Id.*, § 163.278.42.

reverse the trend.¹³³ If parties are bolstered in this way, it is argued, the candidates will be forced to identify themselves with the party issues and rely less upon personal attributes.¹³⁴

C. Proposed Statute

The first question raised by the proposed statute is whether enough funds could be collected to finance adequately gubernatorial candidacies. The proposal allows a two dollar checkoff on individual tax returns or a four dollar checkoff for joint returns.¹³⁵ Using the most recent statistics on the number of Vermont taxpayers,¹³⁶ the Election Campaign Fund would accumulate \$778,800 if all taxpayers used the checkoff. The level of taxpayer participation in other states with similar public financing provisions ranges around twenty-five percent.¹³⁷ Assuming such a rate of participation in Vermont, the total fund would approximate \$156,000. The proposal does not, however, call for total public financing of gubernatorial candidates. Each private contribution of one hundred dollars or less would be matched dollar for dollar from the check-off funds.¹³⁸ Assuming the 1980 rate of spending in the gubernatorial races remains the same in coming years,¹³⁹ a fund of \$156,000 could substantially meet the needs of a campaign. If the fund did not meet these expectations in the first two years, implementation of the proposal could be postponed several years as has been done in several other states.¹⁴⁰

133. Alexander, *Rethinking Election Reform*, 425 ANNALS 1, 12 (1976).

134. *Id.*

135. See Proposed Statute at § 2057(2) *infra*.

136. In 1979 a total of 194,700 Vermont residents filed state income tax returns. *Vt. Dep't of Taxes, Vt. Tax Statistics*, (1979).

137. See Jones, *supra* note 126, at 350.

138. See Proposed Statute at § 2057(4), (8) *infra*.

139. During the 1980 gubernatorial campaign, three candidates spent \$290,000. Reports on file with Marlene Wallace, Editor of State Papers, Secretary of State's Office, in Montpelier, Vermont.

140. Maryland, for example, enacted its public financing provision in 1977, although it is not to become effective until the 1982 election. MD. ANN. CODE art. 33, § 31-4 (Supp. 1980).

1. Eligibility Criteria

The proposed statute addresses the principal issues without creating unnecessary complexity. The problems raised by eligibility criteria have been resolved by providing an alternative to the strictly monetary index of candidate viability which exists in some statutes.¹⁴¹ Although contributions may provide an adequate index of voter support, such an exclusive criteria may preclude the candidacies of those with support from the less wealthy. Under the proposal, a prospective candidate may raise \$10,000 in contributions of \$100 or less,¹⁴² or may obtain a petition with the names of at least five percent of the registered voters in the state.¹⁴³ The petition alternative, although costly to verify, presents the only viable alternative to an exclusively monetary criterion. Because one of the goals of public financing is to provide access to political office to those without large economic resources, such an alternative is an essential ingredient of any proposal.

2. The Allocation Formula

The Election Campaign Fund has been divided into three components to provide funding for primary candidates for governor, gubernatorial candidates in the general election, and qualifying political parties for use in all general election campaigns.¹⁴⁴ Such a system could provide maximum assistance to candidates without large financial reserves while at the same time maintaining the equilibrium between candidates and parties. While only candidates for governor are eligible for two-thirds of the fund,¹⁴⁵ the amount allocated to qualifying parties may be spent for other state races.¹⁴⁶ Each gubernatorial candidate may receive a maximum of forty percent of available funds in order to prevent a single candidate from depleting the entire fund.¹⁴⁷

141. See note 128 *supra*.

142. See Proposed Statute at § 2057(4) (a), (b) *infra*.

143. *Id.*, § 2057(4) (b).

144. *Id.* at § 2057(5).

145. *Id.* at § 2057(5)(a), (b).

146. *Id.* at § 2057(5)(c).

147. *Id.* at § 2057(6).

Political parties are funded in proportion to the number of votes received for that party's gubernatorial candidate in the previous election.¹⁴⁸ Although basing funding on prior voting in a single election presents some difficulties,¹⁴⁹ it also provides smaller parties with access to these funds. Parties without any prior candidates will not suffer under such a proposal, because five percent of available funds has been allocated to these parties.¹⁵⁰ The wisdom of providing funds to these "new" parties is not a problem since their legitimacy has been tested prior to a campaign through the petition alternative.¹⁵¹

IV. ENFORCEMENT

When the Vermont Board of Elections was dissolved in 1977, the responsibility for enforcement of the current statute was left unclear. While the Secretary of State's office monitors a candidate's compliance with the reporting requirements of the statute, there is no review of the reports to ensure compliance with the contribution limits. These reports are the primary source of information for any investigation undertaken, but the statute places no ongoing responsibility on state officers to review these reports.

The present enforcement scheme suffers from several fatal flaws in that the oversight function has largely been delegated to the public—to members of the press or an individual candidate's political opposition. This approach ensures that the statutory provisions will not be uniformly enforced and that the administration of the statute's requirements may devolve to those with partisan political grievances. This problem is aggravated by endowing elected political officers with ostensible control over the administration of the statute.¹⁵² Consistent and non-partisan administration of the statute cannot be expected under these circumstances.

148. *Id.* at § 2057(7).

149. Prior election results may provide a poor index of current public support.

150. See Proposed Statute at § 2057(7).

151. See § 2057(9).

152. The state's attorney in any county in which a violation is committed has authority to prosecute violations. VT. STAT. ANN. tit. 17, § 2616 (Supp. 1980).

The bi-partisan elections board proposed in this note¹⁵³ insulates the administration of the election laws from these various political pressures. The board has the responsibility to review the campaign reports and institute civil proceedings against violators. Criminal cases would be referred to the Attorney General for prosecution.

CONCLUSION

The time has come for the Vermont Legislature to face the urgent needs of our electoral system through comprehensive reform of the existing campaign finance statute. Equality of political opportunity is an essential ingredient in that reform and should weigh heavily in any decisions made. Public financing presents a viable method for accomplishing these goals and should be initiated as a part of the reform process.

This note proposes a public financing scheme which addresses the many issues of reform. The delicate balance between candidates and party organizations has been maintained through public grants to both. The problem of allocating funds to candidates has been alleviated by providing flexible eligibility criteria which seek to assist serious candidates. Furthermore, the statute provides for an effective enforcement mechanism, an essential element in any attempt at reform.

Through the public financing proposal, and the proposals for closing loopholes, this note has demonstrated the gravity of the need for campaign finance reform. If we are to live up to our democratic ideals, we must insure that our leaders are chosen democratically. The present statute fails in this attempt and must be altered to accomplish these goals.

Wm. David Deiss

153. See Proposed Statute at § 2055.

APPENDIX

CHAPTER 36. CAMPAIGN FINANCE

§ 2051 DEFINITIONS

As used in this chapter:

(1) "Anything of value" means tangible or intangible property, money, commercial interests, or governmental employment. A promise to deliver such property is a thing of value even if the promise is unenforceable or impossible to perform.

(2) "Candidate" means an individual who has taken any affirmative action to become or to help his chances of becoming a candidate for state office. An affirmative action shall include, but is not limited to:

(A) accepting a contribution or making an expenditure either directly or indirectly;

(B) filing the requisite petition for one of the named positions or being nominated by primary or otherwise; or

(C) publicly announcing that he seeks such a position.

(3) "Contribution" means a payment, distribution, advance, deposit, loan or gift of money, anything of value, paid or promised to be paid (whether or not the promise is legally enforceable) to a candidate or political committee for the purpose of supporting or opposing one or more candidates in any election. "Contribution" shall not, however, be construed to include the services provided without compensation by individuals volunteering their time on behalf of a candidate or political committee or the value of expenditures incurred by such volunteer except to the extent that the aggregate of those expenditures exceeds \$100 in any calendar year.

(4) "Expenditure" means a payment, disbursement, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid for the purpose of securing or influencing the nomination or election of one or more candidates, by a candidate, political committee, or any other individual with or without the consent of a candidate.

(5) "Family" means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and any spouses of such persons.

(6) "Person" means any individual, political committee, association, or any other organization acting in concert to support a candidate for office. "Person" shall include the members of a candidate's family.

(7) "Political committee" means any committee, club, association or other group of two or more individuals which receives contributions or makes expenditures of a value of \$200 or more in any calendar year for the purpose of supporting or opposing one or more candidates or affecting the outcome of an election. A "political committee" shall include political parties and their constituent parts or subdivisions.

(8) "Political party" is any group of individuals which has organized and filed its certificate of organization with the Secretary of State, pursuant to chapter 13 of this title. A "major political party" is a political party whose candidate for any state office polled at least five percent of the vote for that office in the previous election. A "minor political party" is any political party which is not a major political party.

(9) "Principal campaign committee" means the committee designated by a candidate under § 2052(1) of this title.

§ 2052 CAMPAIGN REPORTS

(1) Each individual who is a candidate for state office shall designate a single political committee to serve as the candidate's principal campaign committee through which all contributions and expenditures are to be made. No political committee may be designated as the principal campaign committee of more than one candidate.

(2) Prior to accepting contributions or expending funds, each political committee shall file with the Board of Elections a statement of organization that includes the following information:

- (i) the name, address, and purpose of the committee;

(ii) the name and address of the treasurer and any other officers of the committee;

(iii) the names and addresses and relationships of all affiliated committees.

(3) Each principal political committee which makes expenditures totalling \$200 or more or receives any contributions at all shall designate a single checking account and shall deposit all contributions into and pay all expenditures by check from that account.

(4) Each political committee shall name a treasurer who is responsible for maintaining the checking account.

(5) The Board of Elections shall prescribe and provide a uniform reporting form for all campaign reports. The form shall be designed to show:

(i) The names and addresses of each contributor of an aggregate amount of \$50 or more in any year, the amount contributed, and each contributor's aggregate contribution to date.

(ii) The aggregate amount of all contributions of less than \$50.

(iii) Each expenditure listed by date, amount, to whom paid, and for what purpose. Expenditures of less than \$25 may be aggregated as a total on a line for "miscellaneous," provided the total does not exceed five percent of all expenditures.

(iv) Each debt or other obligation, by amount, date incurred, to whom owed, and for what purpose. If a loan is secured or co-signed by a person other than the candidate, the name and address of that person must be reported.

§ 2053 FILING OF CAMPAIGN REPORTS

(1) Any person who makes expenditures which aggregate more than \$100 during a calendar year shall report the amount and nature of those expenditures to the Board of Elections.

(2) Political committees shall file reports with the Board of Elections 35 days before and five days before a primary election. If the activities of the committee do not terminate with the primary elec-

tion, further reports shall be filed 35 days, 20 days, and five days before the general election.

(3) A principal campaign committee which receives a contribution of \$250 or more after filing the report required to be filed five days prior to the primary or general election shall report the contribution to the Board of Election's office within 24 hours after the receipt of the contribution.

(4) Within 15 days after the date of the primary or general election, a principal campaign committee must file an additional report. Reports are thereafter required to be filed on the fifteenth day of January, April, July, and October, or until all contributions and expenditures have been accounted for and any indebtedness has been reduced to less than \$1,000. Each report shall include all contributions and expenditures received or disbursed from the end of the period covered by the last report. Reports shall fully disclose the manner in which any indebtedness is discharged or forgiven.

(5) All reports required to be filed in this section shall be available for public inspection.

§ 2054 LIMITATION ON CONTRIBUTIONS

(1) No person shall make contributions to any one political committee which exceeds \$1,000 during any year. This limitation shall not apply to funds transferred by and between the subdivisions of a political party.

(2) No person shall make contributions to political committees during a year which exceed \$10,000 in the aggregate. This limitation shall not apply to contributions made by a candidate to his principal campaign committee.

(3) No corporation shall make a contribution of money or property to any political committee in connection with any election other than a vote on a ballot issue.

(4) No political committee, other than a political party, shall accept contributions from an out-of-state political committee unless the out-of-state political committee has filed reports with the Secretary of State similar to those required under § 2052 of this

title.

(5) All contributions in excess of \$50 shall be made by check.

§ 2055 ENFORCEMENT

(1) A Board of Elections is hereby created to administer and implement this Act. The Board shall consist of five members appointed by the Governor with the concurrence of the Senate. No member shall hold any political party office, or participate in any political campaign and no member shall be a lobbyist or an employee of the state or its subdivisions.

(2) A member of the Board shall be appointed for a term of office of five years, except that members first appointed shall be appointed for terms of one, two, three, four, and five years respectively. No member shall serve more than a five year term.

(3) The Board shall adopt and carry out provisions of this Act and promulgate regulations toward that end.

(4) Upon the sworn complaint of any individual, or on its own initiative, the Board shall investigate alleged violations of law.

(5) The Board may subpoena witnesses, compel their attendance and testimony, administer oaths, take evidence, and require the production of whatever materials are required for the performance of the Board's duties.

(6) The Board may, on its own initiative or that of any person, issue opinions or interpretations of this chapter. No person, relying on such opinion or interpretation, shall be liable for civil or criminal penalties for so acting.

§ 2056 DISPOSITION OF SURPLUS CAMPAIGN FUNDS

(1) A political committee which has surplus funds after all campaign debts have been paid shall dispose of the surplus in one of the following ways:

- a) deliver the surplus to a political party or committee;
- b) return the surplus to contributors on a pro rata basis;
- c) deliver the surplus to the state general fund; or

d) contribute the surplus to a new campaign committee formed for the candidate's next campaign.

(2) No candidate, and no member of a political committee, shall convert surplus campaign funds to personal use.

(3) The "final report" of a political committee shall indicate the amount of surplus and how it is to be liquidated.

§ 2057 ELECTION CAMPAIGN FUND

(1) There is hereby created and established in the treasury of the State of Vermont a fund to be known as the "Election Campaign Fund." The state treasurer shall administer the fund and invest the money received under this section in accordance with procedures for investing state funds.

(2) Each individual whose income tax liability for the taxable year is at least two dollars (\$2) may designate that \$2.00 to the Election Campaign Fund. In the case of a joint return of husband and wife having an income tax liability of four dollars (\$4) or more, each spouse may designate that \$2.00 shall be paid in the Election Campaign Fund.

(3) The tax designation authorized in this section shall be clearly and unambiguously printed on the first page of the state individual income tax return.

(4) A candidate for nomination to the office of governor in either a primary or general election or both may obtain moneys from the Election Campaign Fund in an amount equal to \$1.00 for each \$1.00 of qualifying contributions if

(a) the candidate raises \$10,000 in qualifying contributions; or

(b) obtains a petition of names of registered voters which totals no less than 1% of all registered voters in the state.

(5) The moneys contributed to the Election Campaign Fund shall be allocated as follows:

(a) No more than 30% of all funds contributed may be disbursed to qualifying candidates for governor in a primary election.

(b) No more than 30% of all funds contributed may be disbursed to qualifying candidates for governor in a general election.

(c) No more than 30% of all funds contributed may be disbursed to qualifying political parties for use in general election campaigns for state office candidates.

(6) No gubernatorial candidate in the primary or general election may receive more than 40% of the funds allocated for that election under subsection 6.

(7) Funds allocated under § 6(c) shall be distributed to qualifying political parties in proportion to the votes received for that party's gubernatorial candidate in the previous election. If the qualifying political party did not have a candidate in the previous gubernatorial campaign, it shall be entitled to 5% of the funds allocated under this section.

(8) For purposes of this section, a "qualifying contribution" is an amount equal to or less than \$100.

(9) For purposes of this section, a "qualifying political party" is any party which has received more than 5% of the popular vote in the previous gubernatorial election, or which has obtained a petition of names of registered voters which totals no less than 5% of all registered voters in the state.

§ 2058 PENALTIES

(1) No certificate of nomination or election shall be granted to a candidate until the candidate files the reports required in §§ 2052-2053 of this title.

(2) A person who violates a provision of this chapter shall be fined not more than \$1,000 or imprisoned more than six months or both.

