UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2000

(Argued: May 7, 2001 Decided: August 7, 2002)

Docket Nos. 00-9159(L), 00-9180(Con), 00-9231(xap), 00-9139(xap), and 00-9240(xap)

MARCELLA LANDELL,

Plaintiff-Appellee,

DONALD R. BRUNELLE, VERMONT RIGHT TO LIFE COMMITTEE, INC., POLITICAL COMMITTEE, NEIL RANDALL, GEORGE KUUSELA, STEVE HOWARD, JEFFREY A. NELSON, JOHN PATCH, VERMONT LIBERTARIAN PARTY, VERMONT REPUBLICAN STATE COMMITTEE and VERMONT RIGHT TO LIFE COMMITTEE-FUND FOR INDEPENDENT POLITICAL EXPENDITURES,

Plaintiffs-Appellees-Cross-Appellants,

—v.—

VERMONT PUBLIC INTEREST RESEARCH GROUP, LEAGUE OF WOMEN VOTERS OF VERMONT, RURAL VERMONT, VERMONT OLDER WOMEN'S LEAGUE, VERMONT ALLIANCE OF CONSERVATION VOTERS, MIKE FIORILLO, MARION GREY, PHIL HOFF, FRANK HUARD, KAREN KITZMILLER, MARION MILNE, DARYL PILLSBURY, ELIZABETH READY, NANCY RICE, CHERYL RIVERS and MARIA THOMPSON,

Intervenors-Defendants-Appellants-Cross-Appellees,

WILLIAM H. SORRELL, JOHN T. QUINN, WILLIAM WRIGHT, DALE O. GRAY, LAUREN BOWERMAN, VINCENT ILLUZZI, JAMES HUGHES, GEORGE E. RICE, JOEL W. PAGE, JAMES D. MCNIGHT, KEITH W. FLYNN, JAMES P. MONGEON, TERRY TRONO, DAN DAVIS, ROBERT L. SAND and DEBORAH L.

MARKOWITZ,

Defendants-Appellants-Cross-Appellees.

B e f o r e :

WINTER, STRAUB, and POOLER, *Circuit Judges*.

Appeal from the entry of a judgment by the United States District Court for the District of Vermont (William K. Sessions, III, *Judge*), reviewing the constitutionality of Vermont's Act 64, which imposes expenditure and contribution limitations on campaigns for state office. We hold that Vermont's expenditure and contribution limits are constitutional, but that Vermont's attempt to limit contributions from out-of-state sources is unconstitutional. We also remand for further proceedings on Act 64's effects on political action committees that do not contribute to candidates and its effects on money transfers between a political party's national and local affiliates.

The District Court judgment is affirmed in part, vacated in part, and remanded for further proceedings.

Judge Winter dissents in part in a separate opinion.

TIMOTHY B. TOMASI, Assistant Attorney General, Montpelier, VT, (Richard A. Johnson, Jr., Christopher G. Jernigan, Assistant Attorneys General, Office of the Attorney General, William H. Sorrell, Attorney General, Montpelier, VT, of counsel), for *Defendants-Appellants-Cross-Appellees William H. Sorrell, John T. Quinn, William Wright, Dale O. Gray, Lauren Bowerman, Vincent Illuzzi, James Hughes, George E. Rice, Joel W. Page, James D. McNight, Keith W. Flynn, James P. Mongeon, Terry Trono. Dan Davis, Robert L. Sand, and Deborah Markowitz* .

BRENDA WRIGHT, National Voting Rights Institute, Boston, MA, (Bonita Tenneriello, John C. Bonifaz, Gregory G. Luke, National Voting Rights Institute, Boston, MA; Peter F. Welch, Welch, Graham & Mamby, Burlington, VT; of counsel), for *Intervenors-Defendants-Appellants-Cross-Appellees Vermont Public Interest Research Group, the League of Women Voters of Vermont, Rural Vermont, Vermont Older Women's League, Vermont Alliance of Conservation Voters, Mike Fiorillo, Marion Grey, Phil Hoff, Frank Huard, Karen Kitzmiller, Marion Milne, Daryl Pillsbury, Elizabeth Ready, Nancy Rice, Cheryl Rivers, and Maria Thompson.*

MITCHELL L. PEARL, Langrock Sperry & Wool, LLP, Middlebury, VT (Peter F. Langrock, Langrock Sperry & Wool, LLP, Middlebury, VT; Joshua R. Diamon, Diamond & Robinson, Montpelier, VT; David Putter, Montpelier, VT; Mark J. Lopez, American Civil Liberties Union, New York, NY; American Civil Liberties Foundation of Vermont; of counsel), for *Plaintiffs-Appellees-Cross-Appellants Neil Randall, George Kuusela, Steve Howard, Jeffrey A. Nelson, John Patch, and Vermont Libertarian Party.*

JAMES BOPP, JR., Bopp, Coleson & Bostrom, Terre Haute, IN, (James R. Mason, III, Eric R. Bohnet, Aaron Kirkpatrick, Bopp, Coleson & Bostrom, Terre Haute, IN, of counsel), for *Plaintiffs-Appellees-Cross-Appellants Donald R. Brunelle, Vermont Right to Life Committee, Inc., Vermont Republican State Committee, Vermont Right to Life Committee-Fund for Independent Political Expenditures, and Marcella Landell.*

JANE R. ROSENBERG, Assistant Attorney General, Hartford, CT, (Eliot D. Prescott, Assistant Attorney General, Richard Blumentahal, Attorney General, Hartford, CT, of counsel), for *Amici States of Colorado, Connecticut, Maryland, New York, and Oklahoma*.

GILLIAN E. METZGER, Brennan Center for Justice at New York University School of Law, New York, NY, (Nancy Northup, Brennan Center for Justice at New York University School of Law, New York, NY, of counsel), for *Amicus Brennan Center for Justice at New York University School of Law*.

STRAUB, *Circuit Judge*:

During his 1997 inaugural address, Vermont Governor Howard Dean offered the Vermont General Assembly a moment of telling candor: "As I've said before, money does buy access and we're kidding ourselves and Vermonters if we deny it. Let us do away with the current system." The General Assembly responded by promulgating Act 64, a comprehensive campaign finance reform package. The testimony and statements made during the General Assembly's debate demonstrated that Vermont lawmakers were concerned with more than just the quid pro quo corruption that preoccupies much of campaign finance reform. Typically, this fear of corruption has involved the danger that politicians will sell their votes for campaign funds. The Vermont discussion highlighted something else that public officials can, and apparently do, offer in exchange for funds: time and access. The General Assembly, together with the State's chief executive, concluded that Vermont needed limitations governing its campaigns for state office with respect to expenditures as well as contributions.

This appeal arises from a consolidated suit which brings a First Amendment challenge to key sections of Act 64. The plaintiffs have argued that Vermont's reform violates the United States Constitution's First Amendment, which guarantees that citizens will be free to speak and associate in the political realm. At the conclusion of a bench trial, the United States District Court for the District of Vermont enjoined the enforcement of Act 64's limitations on expenditures, limitations on gifts by non-resident contributors, and limitations on contributions by political parties to candidates. The District Court upheld all other contribution limitations, including limits of between $200 and $400 on contributions to candidates by individuals and political action committees, limits of $2000 on contributions that political parties and political

action committees may accept, and regulations treating coordinated expenditures as contributions.

All parties have appealed that decision. We are therefore asked to determine whether the First Amendment rights of free speech and political association forbid each of the challenged provisions, including Vermont's campaign expenditure limitations, the contribution limits as applied to candidates, political parties and political associations, the limit on contributions by non-residents, and the regulation of coordinated expenditures by political parties.

For the reasons set forth, we affirm in part, and vacate and remand in part.

Regarding the expenditure limitations, we hold that Vermont has established that such limitations serve a sufficiently strong government interest and are narrowly tailored to permit effective campaigns. In particular, Act 64's expenditure limitations serve to safeguard Vermont's democratic process from the corrupting influence of excessive and unbridled fundraising. The evidence considered by the District Court and the Vermont legislature demonstrates that, absent expenditure limitations, the fundraising practices in Vermont will continue to impair the accessibility which is essential to any democratic political system. The race for campaign funds has compelled public officials to give preferred access to contributors, selling their time in order to raise campaign funds. We therefore vacate the District Court's injunction and remand for further proceedings.

Regarding the contribution limitations, we hold that all of Vermont's provisions limiting the size of contributions survive exacting scrutiny, including the treatment of a third party's related expenditures as contributions and the application of contribution limitations to political party donations to candidates. We thus affirm the District Court on this issue in part, but vacate

and remand for further proceedings insofar as the District Court's injunction prohibits enforcement of the political party limit. We also vacate the judgment and remand for further proceedings on Act 64's regulation of plaintiff Vermont Republican Right to Life Committee and its regulation of funds transfers from national to state and local political party entities.

Finally, we affirm the District Court's holding that the First Amendment forbids Vermont's attempt to limit campaign contributions by non-residents to no more than 25 percent of the total contributions received. Vermont has asserted no government interest sufficient to justify such a rule.

BACKGROUND

In 1997, Vermont passed a comprehensive campaign reform act known as Act 64. 1997 Vermont Campaign Finance Reform Act, codified at Vt. Stat. Ann. tit. 17, §§ 2801-2883 ("Act 64" or "the Act"). Among other things, the Act controls the flow of money into and out of political campaigns and regulates the receipt of money by political organizations and candidates. A number of Act 64's most significant provisions have been challenged in this appeal. Act 64 establishes contribution and expenditure limits for those running for state offices. It also caps the size of contributions which political parties and political action committees may accept. Additionally, the Act requires that all state candidates, political parties, and political action committees ("PACs") receive no more than 25 percent of their funds from non-Vermont sources.

As enacted, Act 64 is a comprehensive campaign finance reform package, regulating contributions, expenditures, and disclosures related to candidates for state office in Vermont and political organizations that participate in Vermont elections. Section 2805a limits the

expenditures that a candidate for office may make during a two-year election cycle. Candidates for statewide office are restricted to varying amounts depending on the position sought, with a candidate for governor limited to $300,000, for lieutenant governor to $100,000, and other statewide offices to $45,000. *See id.* at §§ 2805a(a)(1)–(3). Candidates for state senator and county office are limited to $4000, with state senators permitted an additional $2500 per seat in multi-seat districts. *See id.* at § 2805a(a)(4). Candidates for state representative in single member districts can spend no more than $2000, and those in two member districts no more than $3000. *See id.* at § 2805a(a)(5). Incumbent candidates may spend only 85 percent of the permitted amounts, except for incumbents of the General Assembly who may spend 90 percent. *See id.* at § 2805a(c).

The Act also limits the size of contributions which candidates, political committees, and political parties may receive from a single source during a two-year election cycle. Candidates for state representative or local office may accept no more than $200 from a single source, political party, or political action committee. *See id.* at § 2805(a). Slightly higher limits apply to candidates for state senate or county office ($300) and to candidates for statewide office ($400). *See id.* Political action committees and political parties may accept no contribution greater than $2000. *See id.* For the purpose of all of these contributions limits, a political party's state, county, and local affiliates count as a single unit. *See id.* at § 2801(5).

The Act further imposes limits on the source of such contributions. Although candidates, political parties, and political action committees may accept contributions from out-of-state residents and political organizations, the sum of such amounts may not exceed 25 percent of the total contributions received. *See id.* at § 2805(c).

Finally, the Act treats coordinated expenditures by third parties as both contributions to a candidate (subject to the applicable contribution limits) and expenditures by the candidate (counted against the candidate's permissible budget). *See id.* at §§ 2809(a)–(b). The Act creates a rebuttable presumption that expenditures made by political parties or political action committees that recruit or endorse candidates are related expenditures if they primarily benefit six or fewer candidates. *See id.* at § 2809(d).

In this appeal, we are asked to assess the constitutionality of each provision. The current suit was consolidated from three separate civil actions. On May 18, 1999, Marcella Landell, Donald R. Brunelle, and the Vermont Right to Life Committee, Inc., sued the Vermont Attorney General and Vermont's fourteen state's attorneys ("Vermont"). On August 13, 1999, Neil Randall, George Kuusela, Steve Howard, Jeffrey A. Nelson, John Patch, and the Vermont Libertarian Party, and then on February 15, 2000, the Vermont Republican State Committee, brought two separate suits. The remaining defendants, including the Vermont Public Interest Research Group, the League of Women Voters of Vermont, and numerous members of Vermont's General Assembly (collectively "Defendant-Intervenors"), successfully intervened in the consolidated action.[1]

The plaintiffs in this case have challenged these provisions of Act 64.[2] They argue that

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[1] The defendants include a large number of individuals, including the Vermont Attorney General, the Vermont State's Attorneys, and the Vermont Secretary of State (collectively "Vermont"). A number of interested parties, including the Vermont Public Interest Research Group and the League of Women Voters of Vermont, successfully intervened.

[2] Plaintiff Neil Randall is an incumbent representative in the Vermont legislature. Plaintiff George Kuusela is chairman of the Windham County Republican Party and has run for state legislative office. Plaintiff John Patch is chair of the Chittenden County Democratic Party and has plans to run for State Senate. Plaintiff Steven Howard was previously a candidate for State Auditor and a former state representative. Plaintiff Libertarian Party, a political party, is a "third-party" in Vermont and ran 44 candidates for office in 1998. Plaintiff Jeffrey Nelson is a longtime resident of Vermont and a financial supporter of the Republican Party. The plaintiffs also include the Vermont Right

the provisions unconstitutionally infringe their rights to free speech and political association. Specifically, the plaintiffs challenge the Act's expenditure limits on candidate campaigns; its contribution limits of $200, $300, and $400 to candidates by individuals, political action committees, and political parties; its contribution limits of $2000 to political action committees and political parties; its treatment of "related expenditures" by third parties as contributions to and expenditures by candidates; and its overall limit on the percentage of contributions that may come from out-of-state sources.

The District Court held a ten-day bench trial between May 8, 2000 and June 2, 2000. An array of former and current public office holders, private citizens, and electoral experts testified as to Vermont's interest in campaign finance legislation, the history of elections and campaign finance reform in Vermont, the cost of campaigning in Vermont, and the likely effect of Act 64's challenged provisions on Vermont races, candidates and political actors.

The District Court gave "considerable deference" to the General Assembly's findings of fact, and supplemented those findings with evidence adduced at trial. As the District Court noted, the Vermont General Assembly promulgated Act 64 after extensive legislative consideration. Numerous committees considered the Act, holding over 65 hearings with more than 145 witnesses testifying.

The General Assembly closely investigated the history of campaign financing for state races by examining campaign finance summaries for various Senate, House, and statewide races during the period 1978–1996 and reports of spending and contribution patterns in Vermont races.

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to Life Committee, the Vermont Republican State Committee, and various additional individuals.

Members of the General Assembly analyzed the current status of Vermont's campaign finance law, including the disintegration of Vermont's voluntary expenditure limits. They also spoke with a range of experienced candidates and experts who provided testimony and data regarding the cost of campaigning, including the cost of travel, staff, materials, mailings, phone calls, and television and radio advertisements. Some of these witnesses described the widespread use of manipulative contribution devices, such as "bundling," which enable special interests to direct large quantities of money by way of individual contributions to particular candidates. Polls demonstrated that citizens held deep reservations and suspicions about the influence of money on the political system, particularly the influence of large contributions. Some witnesses provided testimony detailing the role that big donors have played in advocating or blocking particular pieces of legislation in Vermont.

The evidence adduced in those hearings demonstrated broad and powerful support among the Vermont electorate for fundamental reform to the state campaign financing scheme. These legislative hearings culminated in passage of the Act by an overwhelming majority and with strong bipartisan support.

Based on these hearings, reports and data, the General Assembly set forth specific findings which, in its view, indicated the need for comprehensive reform that includes contribution and expenditure limitations in Vermont electoral campaigns:

> The General Assembly finds that:
> (1) Election campaigns for statewide and state legislative offices are becoming too expensive. As a result many Vermonters are financially unable to seek election to public office and candidates for statewide offices are spending inordinate amounts of time raising campaign funds.
> (2) Some candidates and elected officials, particularly when time is limited, respond and give access to contributors who make large contributions in

preference to those who make small or no contributions.
(3) In the context of Vermont, contributions larger than the amounts specified in this act are considered by the legislature, candidates and elected officials to be large contributions.
(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.
(6) In the context of Vermont, contributions scaled in proportion to the size of the electoral district of the office and up to the amounts specified in this act adequately allow contributors to express their opinions, level of support and their affiliations.
(7) In the context of Vermont, candidates can raise sufficient monies to fund effective campaigns from contributions no larger than the amounts specified in this act.
(8) Limiting large contributions, particularly from out-of-state political committees or corporations, 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 political committees or corporations, reduce public confidence in the electoral process and 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 campaigns.
(11) Public financing of campaigns, conditioned on an appropriate number of qualifying contributions, will increase citizen participation and will limit the time spent soliciting contributions, and will reduce the need of elected officials to respond to, and provide access to, contributors. As a result candidates will be freed to devote more time and energy to debate of the issues and elected officials will be able to spend more time responding to constituents and to performing their official duties.
(12) Public financing of campaigns, coupled with generally applicable contribution and expenditure limitations, will level the financial playing field among candidates and provide resources to independent candidates, both of which will increase the debate of issues and ideas.
(13) In Vermont, campaign expenditures by persons who are not candidates have been increasing and public confidence is eroded when substantial amounts of soft money are expended, particularly during the final days of a campaign.

> (14) Identification of persons who publish political advertisements assists in enforcement of the contribution and expenditure limitations established by this act. (15) Because it is essential for all candidates to have their names and positions on issues known to the electorate and because incumbents have a substantial advantage in these areas, public grants and campaign expenditures must be reduced for incumbents.

1997 Vt. Laws P.A. 64 (H. 28). On June 26, 1997, Vermont's Governor signed Act 64 into law.

Although the District Court found that Vermont had generally demonstrated several compelling justifications for Act 64's comprehensive reform of the campaign finance system, the court concluded that some of Act 64's provisions violated the First Amendment of the United States Constitution. With the exception of the expenditure limitations, the District Court applied the standard of review of "exacting scrutiny," inquiring whether the provision is narrowly tailored to serve a sufficiently important government interest. With regard to the expenditure limits, the District Court interpreted *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), as forbidding such limitations *per se* and held that any contrary decision would violate the doctrine of *stare decisis*. The Court rejected the expenditure limitations despite its findings that Vermont had established several compelling interests in their favor, namely: (1) freeing office holders from the requirements of excessive fundraising so that they can perform their duties; (2) preserving faith in democracy; (3) protecting access to the political arena for those unable to access large sums of money; and (4) diminishing the importance of repetitive 30-second commercials. Despite holding that the expenditure limitations are illegal under *Buckley*, the District Court did find that the expenditure limits were narrowly tailored and would permit effective campaigning.

The District Court upheld the provisions imposing limitations on amounts that

individuals may contribute to political campaigns, Vt. Stat. Ann. tit. 17, §§ 2805(a)–(b). The District Court found that the Vermont provision, like the statutory provision upheld in *Buckley*, served the compelling government interest in preventing actual and perceived corruption in the political system. As evidence of the existence of such an interest, the District Court relied on citizen polls, comments by public officials, and media accounts of citizen concern with the state of the political system, as well as direct testimony from citizens regarding their views of the political systems. The evidence indicated that the current financing scheme eroded public confidence in the democratic system and contributed to a waning public interest in elections. Finally, the evidence supported the public's perception that large contributions won actual influence over the legislative process. Again, the District Court relied not only on trial testimony, but also on studies showing how the pressure to raise money made legislative initiatives less likely to succeed if contrary to the wishes of well-organized interest groups who frequently contribute to candidates.

The District Court further analyzed the amounts of the limitations, and held that they were narrowly tailored to serve this anti-corruption purpose. In support of the narrow-tailoring conclusion, the court relied upon the cost of previous elections in Vermont, the size of Vermont electoral districts and the corresponding cost-per-voter, the effect of the limitations on the Burlington mayoral election held after the passage of Act 64, the widely-held public view that donations in excess of the Act's limitations were suspicious, and the fact that the limitation did not inhibit "effective campaigning."

The District Court rejected the contention that PACs merit special treatment; it thus upheld the restrictions on contributions by and to PACs pursuant to Act 64. *See* Vt. Stat. Ann.

tit. 17, §§ 2805 (a)–(b). If contributions by individuals may be restricted, the court reasoned, than so too may gifts by individuals to associations that in turn give funds to candidates. The District Court reasoned that Vermont has the same anti-corruption interest in limiting PAC contributions as those by individuals. The contribution limit closes a loophole which individuals could exploit to evade individual contribution limitations.

The District Court held, however, that political parties deserve greater freedom in their ability to make contributions to political candidates. Although the District Court upheld the $2000 limitation on contributions to political parties pursuant to Vt. Stat. Ann. tit. 17, § 2805(a), it struck down the provision limiting contributions to candidates insofar as it applies to those candidate's own political parties pursuant to Vt. Stat. Ann. tit. 17, § 2805(b). Regarding contributions to political parties, the court relied on Vermont's anti-corruption interest, noting that unrestrained contributions to parties provided a loophole to individuals wishing to evade restrictions on direct contributions. Quoting *Nixon v. Shrink Mo. Gov't PAC* ("*Shrink*"), the District Court found that the limit imposed by the statute is not "so radical in effect as to render political association ineffective, drive the sound of [a political party's] voice below the level of notice, and render contributions pointless." 528 U.S. 377, 397 (2000). Moreover, the District Court found that, given Vermont's electoral situation, the $2000 limit did not inhibit the strength of political parties. The court relied on the evidence specifically concerning Vermont campaigns and politics, a comparison of limits on contributions to candidates in other jurisdictions, and the ability of the Republican Party to raise substantial sums while subject to Act 64's limitations. The District Court, however, did not address the constitutionality of transfers of money to state and local parties from the national affiliated party which are apparently subject to the $2000

limitation.

The District Court held that Vermont could not limit political parties from giving more than $2000 to its own political candidates. The court recognized that the anti-corruption interest may justify some limitations, given that corruption may "filter[] through the party machine." But according to the District Court, those limitations must be balanced against the special role political parties play in the American electoral system. Without much factual discussion, the court concluded that the limits would reduce the party's voice to a whisper—since political parties speak through their candidates and the restrictions were too stringent even for the small scale of Vermont's electoral races.

The District Court also upheld the treatment of state and local parties as a single entity for the purpose of calculating the contribution limitations pursuant to Vt. Stat. Ann. tit. 17, §§ 2801(5) & 2301–20. The court relied on a number of factors, including the fact that notwithstanding its adamant assertions, the defendant Vermont Republican State Committee had never acted as a loose confederation of entities in the conduct of the litigation.

The District Court upheld the provision of Act 64 that treats third party expenditures "intentionally facilitated by, solicited by or approved by the candidate or the candidate's political committee" as contributions to the candidate pursuant to the Act. *See* Vt. Stat. Ann. tit. 17, § 2809(a) & (c). The purpose of the provision is to close a loophole which would otherwise permit evasion of the legitimate contribution limitations by engaging in coordinated expenditures. The District Court further upheld the provision establishing a rebuttable presumption that any third party expenditure benefitting six or fewer candidates is a related expenditure. *See id.* at 2809(d). The court explained that the presumption is a guideline to assist in compliance, and that since

Vermont's Secretary of State has determined that the presumption is rebuttable, it does not chill otherwise protected speech activity. Although the District Court upheld the provision treating related expenditures as contributions to candidates, it struck down the provisions treating related expenditures as expenditures by candidates, pursuant to Vt. Stat. Ann. tit. 17 § 2809(b).

The District Court struck down the provision that caps out-of-state funds at 25 percent of total contributions received by a candidate, political party, or PAC pursuant to Vt. Stat. Ann. tit. 17, § 2805(c). The court found that the factual record did not establish any legitimate government interest in limiting such contributions. Instead, the record only supported an inference that such contributions raise the risk of corruption when they are large—a problem solved by the contribution limits. The fact that a donor is a resident of another state is not an important factor in either increasing the risk of corruption or the public's perception of corruption. Moreover, the mechanics of the ban indicated a lack of narrow tailoring because it acts as a complete bar to contributions for some would-be contributors and candidates.

The District Court held that the plaintiffs have standing to challenge the subject provisions of the Act. Finally, the court held that, pursuant to Vermont Law, the unconstitutional provisions may be severed from the rest of Act 64.

Accordingly, the ten-day bench trial resulted in the District Court's upholding most of the challenged provisions, but striking down Act 64's expenditure limitations, its limitations on contributions by parties to candidates, and its restriction on contributions from out-of-state sources. Vermont and the other defendant-appellants timely appeal from the District Court's order holding those portions of Act 64 unconstitutional. Vermont is joined by *amici*, the Brennan Center for Justice at New York University School of Law and the States of Colorado,

Connecticut, Maryland, New York, and Oklahoma. The plaintiffs have cross-appealed, contending that the District Court should have also enjoined the enforcement of the other disputed provisions of the Act.

DISCUSSION

Although we review the District Court's factual findings for clear error pursuant to Federal Rule of Civil Procedure 52(a), *see Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 498 (1984), the breadth of review is greater in cases raising First Amendment issues: "an appellate court has an obligation to 'make an independent examination of the whole record' in order to make sure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" *Id.* at 499 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 284–286 (1964)). The appellate court must also be vigilant for errors of law that "may infect a so-called mixed finding of law and fact, or a finding of fact that is predicated on a misunderstanding of the governing rule of law." *Bose*, 466 U.S. at 501.

As a threshold matter, the defendants have challenged the plaintiffs' standing to assert this facial challenge to Act 64's expenditure and contribution limitations. In order to present a "case or controversy" within the meaning of Article III of the Constitution, the plaintiffs seeking relief must have a sufficient "personal stake in the outcome of the controversy." *Buckley v. Valeo*, 424 U.S. 1, 11 (1976) (internal quotation omitted). The District Court provided careful analysis demonstrating that each of the challenged provisions arguably affects the First Amendment rights of one or more of the plaintiffs. *See Landell v. Sorrell*, 118 F. Supp. 2d 459, 474–76 (D. Vt. 2000). For the reasons set forth by the District Court, we uphold its

determination that the plaintiffs have standing to assert their challenge to Act 64's expenditure and contribution limits.

The District Court's legal conclusions regarding the campaign finance reform legislation are subject to *de novo* review. Review of a provision in the campaign finance reform area proceeds according to a three part test: (1) whether the restricted activity is entitled to full First Amendment protection; (2) whether the restrictive statute serves a sufficiently strong government interest; and (3) whether the statute is narrowly tailored to achieve that government interest. *See, e.g.*, *Shrink*, 528 U.S. at 387–88; *Buckley*, 424 U.S. at 25, 44–45; *see also Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496 (1985). Moreover, "limits on political expenditures deserve closer scrutiny than restrictions on political contributions." *Fed. Election Comm'n v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 472 (2001) ("*Colo. Republican II*"). For reasons we set forth below, we reject the contention that *Buckley* established a *per se* rule against the constitutionality of expenditure limitations.

The First Amendment fully protects the activity restricted by the challenged provisions of Act 64. Restrictions on contributions and expenditures implicate both the First Amendment rights of political expression and political association. *Buckley*, 424 U.S. at 14–15. In the case of political expression, an expenditure cap "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *Id.* at 19. Contribution limits are less harmful to First Amendment political expression values than expenditure limits, but they still fall within the ambit of full protection. They are less harmful because they involve "little direct restraint" on the contributor's political communication. *Id.* at 21. "The quantity of communication by the contributor does not increase

perceptibly with the size of his contribution . . . ." *Id.*

Expenditure and contribution limitations also curtail the freedom of association protected by the First Amendment. Contributions serve to affiliate one with a group of people. *See id.* at 22. Expenditures by an association permit the association to communicate and "amplify[] the voices of [the group's] adherents, the original basis for the recognition of First Amendment protection of the freedom of association." *Id.*

The question then is whether each of the provisions survives the "exacting scrutiny" standard: the provision must be narrowly tailored to serve a sufficiently strong government interest. Expenditure limitations, being more severe, require "closer scrutiny," and, relatively speaking, the government interest must meet a more demanding test. *Colo. Republican II*, 533 U.S. at 472; *see also Buckley*, 424 U.S. at 44. We review each of the challenged provisions in turn.

I. Act 64's Expenditure Limitations

A. The Rule of *Buckley*

In the history of campaign finance reform, courts have had numerous opportunities to review expenditure limitations and have typically found that such limits do not survive constitutional review. *Buckley v. Valeo* remains the seminal case governing the constitutional review of campaign finance reform efforts, including expenditure limitations. The *Buckley* Court considered and rejected a variety of expenditure limitations, including a ceiling on independent, campaign-related expenditures, a ceiling on a candidate's use of personal or family resources, and a ceiling on a candidate's campaign expenditures. Like the federal statute reviewed in *Buckley*, Act 64 limits the total campaign funds that a candidate for state office may spend.

Although the clear language of *Buckley* requires that courts should review expenditure limits with exacting scrutiny, the District Court (and it is by no means alone) apparently felt constrained by *Buckley*, concluding that the decision categorically prohibits expenditure limitations. *See, e.g., Homans v. City of Albuquerque*, 264 F.3d 1240, 1244 (10th Cir. 2001); *Kruse v. City of Cincinnati*, 142 F.3d 907, 919–20 (6th Cir. 1998). We disagree. The *Buckley* Court's rejection of particular federal campaign expenditure limitations was rooted in Congress's purported reasons for such legislation and the failures of those interests to demonstrate any need for expenditure limits. 424 U.S. at 55–58. Ultimately, the Court concluded that the federal government had failed to assert any sufficiently important interest that its expenditure limitations served. *See id.* at 55. Examining the federal government's interest in eliminating corruption from federal elections, the Court concluded that the government's asserted rationale only applied to large contributions—that is, eliminating large contributions fully satisfied the government's anti-corruption interest. *See id.* at 56–57. The federal government claimed that expenditure limitations were necessary to make contribution limitations easier to enforce, arguing that when candidates cannot spend large quantities of money, they have a weaker incentive to accept illegally large contributions. The Court concluded that the contribution limitations promised to be sufficiently effective on their own. *See id.* at 56–57. In addition, the Court found that allowing candidates to retain funds in excess of the limits "undercuts whatever marginal role the expenditure limitations might otherwise play in enforcing the contribution ceilings." *Id.* at 56. Based on the Court's review of the record, "[t]here [was] no indication that the substantial criminal penalties" attached to violations of contribution limits, as well as the "political repercussion of such violations," would not suffice to realize this anti-corruption interest. *Id.*

Nor was the Court persuaded that the federal government had a sufficient interest in utilizing expenditure limitations to equalize the financial resources of candidates competing for office. *See id.* at 56-57. The contribution limits would assure that any difference in resources "var[ies] with the size and intensity of the candidate's support." *Id.* at 56. Finally, the Court addressed the argument that expenditure limitations served the federal government's interest "in reducing the allegedly skyrocketing costs of political campaigns." *Id.* at 57. The Court rejected the idea that the state had a sufficient interest in setting the appropriate scope of the "quantity and range of debate on public issues in a political campaign." *Id.* In other words, *Buckley* did not hold that large campaign expenditures are themselves inherently suspect.

We conclude, then, that Vermont cannot sustain Act 64 by asserting a need to control excessive campaign spending *per se*. In addition, the *Buckley* Court addressed two other justifications for expenditure limitations, rejecting both on the grounds that the record failed to demonstrate sufficient state interest in them. The record failed to demonstrate how contribution limitations were not an effective remedy for campaign corruption. Nor did the record demonstrate how the ability to spend unlimited amounts on campaigns would distort the campaign process—fundraising ability, the Supreme Court surmised, would vary with the size of a candidate's public support. Based on the record before the Court in *Buckley*, the contributions and disclosure limitations were sufficient to address each of these concerns. *Id* at 56. Critically, the Court never concluded that the Constitution would always prohibit expenditure limits, regardless of the reasons and the record supporting the limitations. It simply held that based on the record before it, "[n]o governmental interest that has been suggested is sufficient to justify" the federal expenditure limits. *Id.* at 55. After *Buckley*, there remains the possibility that a

legislature could identify a sufficiently strong interest, and develop a supporting record, such that some expenditure limits could survive constitutional review.

B. Post-*Buckley* Interpretations

We disagree with the District Court's interpretation of *Buckley* as establishing an absolute ban on expenditure limitations. We are not alone in concluding that *Buckley* did not permanently foreclose any consideration of future campaign expenditure limitation legislation. In *Shrink*, Justices Breyer, Ginsburg and Stevens all recognized that our post-*Buckley* experiences with campaign finance have demonstrated that we need a flexible approach to the constitutional review of campaign finance rules. Justice Breyer, who was joined by Justice Ginsburg, concluded that courts must resist a static interpretation of *Buckley*'s mandate, which may require reinterpretation in light of subsequent experience, including a legislature's "political judgment that unlimited spending threatens the integrity of the electoral process." 528 U.S. 377, 403–04 (Breyer, J., concurring). Legislatures may protect the electoral process not only from quid pro quo corruption, but also from the threat that campaign funding may pose to the "integrity of the electoral process." *Id.* at 401. Campaign finance restrictions may "aim to democratize the influence that money itself may bring to bear upon the electoral process" thus "encouraging the public participation and open discussion that the First Amendment itself presupposes." *Id.* Because campaign finance regulations serve constitutionally protected interests, *id.* at 400, the Constitution would require adaptation in the face of evidence that existing precedent unduly hampered the freedom of legislatures to address the issue. "Suppose *Buckley* denies the political branches sufficient leeway to enact comprehensive solutions to the problems posed by campaign finance. If so, like Justice Kennedy, I believe the Constitution would require us to reconsider

Buckley." *Id.* at 405.

Indeed, Justice Kennedy argued that the post-*Buckley* experience requires a wholesale abandonment of the approach adopted in *Buckley*, leaving open the possibility that "Congress, or a state legislature, might devise a system in which there are some limits on both expenditures and contributions thus permitting officeholders to concentrate their time and effort on official duties rather than on fundraising" *Shrink*, 528 U.S. at 409 (Kennedy, J., dissenting). Justice Stevens, articulating the need for "a fresh reexamination" of *Buckley*, concluded that "Money is property; it is not speech." Id. at 398 (Stevens, J., concurring). He advocated the replacement of the Court's First Amendment review of campaign finance laws with an analysis based on prohibitions against deprivations of liberty or property. *Id.* at 398–99.[3]

In addition, one judge on the Sixth Circuit has also pointed out that *Buckley* was "decided on a slender factual record" and that a fuller record might satisfy the constitutional requirement that expenditure limits be narrowly tailored to a compelling interest. *Kruse*, 142 F.3d at 919 (Cohn, J., concurring). Judge Cohn also noted that although high campaign costs may not be inherently problematic, it might be shown that the need to raise ever larger amounts of funds might undermine public faith in democracy, justifying expenditure limits. *See id.* at 919–20.

Reconsideration might be required were a court faced with evidence that unlimited expenditures posed great dangers to the very political process that *Buckley* sought to safeguard. Justices Stevens and Ginsburg have supported the constitutionality of spending limits on political

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[3] Unease with *Buckley* is not limited to those who argue that campaign finance regulations have a proper place in our constitutional system. In *Shrink*, Justices Thomas and Scalia both advocate overruling *Buckley* not to give legislatures greater leeway to pass needed campaign finance reform, but to heighten the constitutional review given to contribution limits. *See Shrink* at 528 U.S. at 410–12. Justice Kennedy expressed sympathy for their view. *Id.* at 409–10 (Kennedy, J., dissenting).

parties for, among other reasons, the likelihood that such limits would improve, rather than inhibit, a flourishing political system:

> It is quite wrong to assume that the net effect of limits on contributions and expenditures—which tend to protect equal access to the political arena, to free candidates and their staffs from the interminable burden of fund-raising, and to diminish the importance of repetitive 30-second commercials—will be adverse to the interest in informed debate protected by the First Amendment.

Colorado Republican Fed. Campaign Comm. v. Fed. Election Comm'n, 518 U.S. 604, 649–50 (1996) ("*Colo. Republican I*") (Stevens, J., dissenting). In part, they reached this conclusion because of the comparative competency of the different branches of government: "Congress surely has both wisdom and experience in these matters that is far superior to ours." *Id.* at 650.

The academic literature also contains persuasive analyses that our post-*Buckley* understanding of campaign finance requires a careful evaluation of the evidence in support of expenditure limits. *See, e.g.*, Richard Briffault, Nixon v. Shrink Missouri Government PAC*: The Beginning of the End of the* Buckley *Era?*, 85 Minn. L. Rev. 1729, 1765–69 (2001) (arguing that fair and competitive elections may require some form of expenditure limitations); Vincent Blasi, *Free Speech and the Widening Gyre of Fund-Raising: Why Campaign Spending Limits May Not Violate the First Amendment After All*, 94 Colum. L. Rev. 1281, 1288–89 (1994) (noting that changed circumstances and never before considered government interests, including the protection of candidates' time, might permit expenditure limits to survive *Buckley*'s test).

Although we recognize that there is considerable dissatisfaction with *Buckley*'s approach, we still premise our conclusions on the assumption that *Buckley* continues to govern the constitutional review of campaign finance laws. We do not accept an unyielding interpretation of *Buckley* that expenditure limits are *per se* unconstitutional, because such a static approach to

Buckley's import would require us to ignore not only *Buckley*'s own language, but also over three decades of experience as to how the campaign funds race has affected public confidence and representative democracy.

Like the federal expenditure limitations considered in *Buckley*, Act 64's expenditure limitations rise or fall on whether they have been narrowly tailored to a sufficiently important governmental interest. It is to that question that we now turn.

After our independent review of the evidence, we hold that the record supports the conclusion that Vermont has a sufficiently strong government interest to justify the adoption of expenditure limitations under the *Buckley* standard. By reaching this conclusion, we join the Vermont General Assembly, the Vermont Governor and the District Court in their assessment that Vermont has sufficiently strong interests that are served by limiting campaign expenditures. Fundamentally, Vermont has shown that, without expenditure limits, its elected officials have been forced to provide privileged access to contributors *in exchange for* campaign money. Vermont's interest in ending this state of affairs is compelling: the basic democratic requirements of accessibility, and thus accountability, are imperiled when the time of public officials is dominated by those who pay for such access with campaign contributions.

The record considered by the General Assembly demonstrates how the Vermont system of unbridled expenditures has created situations where public officials are functionally compelled to sell privileged access through the fundraising system. The Vermont legislature explained that a number of phenomena conspire to yield this result: (1) that campaigns were too expensive; (2) that candidates were forced to spend too much time fundraising; (3) that fundraising requires candidates to give preferred access to contributors over non-contributors; and (4) that this system

of increasing expenditures has hindered the robust debate of issues, candidate interaction with the electorate, and public involvement and confidence in the electoral process. Our review of the evidence has led us to conclude that this is not simply a concern about large contributions. A number of distinct factors require expenditure limits. In particular, Vermont candidates feel the need for ever greater funds and the set of contributors in Vermont is limited. As a result, Vermont candidates and officials give preferred access to contributors over non-contributing constituents. This is especially true of contributors whose special interest influence can deliver other contributors. Moreover, candidate dependence on fundraising from the limited group of contributors has given them the ability to influence the legislative process.

Vermont has a compelling interest in safeguarding its political process from such contributor dominance, because it threatens the accessibility and accountability of state officials and candidates. Money—and the special interests that wield it—has a great influence on candidate behavior in Vermont, at the expense of the electorate as a whole, since candidates depend on it in order to run for office. Where influence can be bought, citizens are less willing to believe that the political system represents the electorate, exacerbating cynicism and weakening the legitimacy of government power. The accessibility and accountability of public officials—and the public's faith that Vermont's government is accessible and accountable—are fundamental to any democratic system. The state's expenditure limits, in conjunction with the contribution limits, are necessary to ensure that access is not available only to those who pay for it. Vermont's expenditure limits, by removing the financial pressures and spiraling campaign costs that have conspired to privilege monied special interests, can uniquely ensure that government accessibility is not a commodity for sale.

In reaching this view, we do not need to conclude that a thriving democracy requires that every person have equal influence in government affairs. *See Buckley*, 424 U.S. at 48–49 ("[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . . ."). *But see Shrink*, 528 U.S. at 401 (Breyer, J., concurring) (suggesting that contribution limits may be justified because "such restrictions aim to democratize the influence that money itself may bring to bear upon the electoral process"). In our view, the influence of campaign contributors is pernicious because it is bought. Certain private citizens and organizations should not be given greater access to public office holders—and thus greater influence—*on account of* those citizens' ability and willingness to pay for candidates' campaigns. Similarly, quid pro quo corruption is troubling not because certain citizens are victorious in the legislative process, but because they achieve the victory by paying public officials for it.

C. The History of Campaign Finance Reform in Vermont

Before discussing the specific evidence produced at legislative hearings on Act 64 and also during the trial below, we note that Vermont's decision to impose these expenditure limitations has been the result of a century-long effort to safeguard the accessibility and accountability of its elected officials. In 1916, Vermont took early steps to ensure the accountability of its elected officials by passing direct primary elections and mandating the post-primary disclosure of candidate expenditures. 1915 Vt. Laws 4, § 22; 1916 Vt. Laws (Sp. Sess.) 4, § 1. In 1961, the legislature adopted mandatory expenditure limits in primary elections, 1961 Vt. Laws 178, and applied those limits to general elections in 1971, 1971 Vt. Laws 259. In 1975, Vermont repealed its expenditure limits but continued to limit the maximum contribution that

candidates might accept. 1975 Vt. Laws (Adj. Sess.) 188. Over several decades, Vermont witnessed a period of growing disillusion with its electoral system, and in 1993 instituted a system of voluntary expenditure limits. Former Vt. Stat. Ann. tit. 17, §§ 2841–42 (1991) (repealed 1997). Participation in the voluntary system fell dramatically each year, with 90 percent of candidates participating in the first year and less than 20 percent in the second year. By 1998, not a single candidate for statewide office chose to participate in the voluntary expenditure limits. At the time that the voluntary expenditure system ended in failure in 1998, the legislature had concluded that mandatory expenditure limitations, together with contribution limitations, were essential to protect the public's faith in its electoral system.

It is also worth noting that other state legislatures apparently share Vermont's conclusion that a campaign finance system requires expenditure limitations if democracy is to thrive. Our examination of the election laws of other states supports our conclusion that Vermont's claimed interests in expenditure limitations, and the reasons offered in their favor, are highly persuasive. The widespread presence of voluntary expenditure limits reflects the prevalent view of citizens and politicians that these limitations are necessary and desirable. Numerous states have established voluntary expenditure limits. While these schemes are enforced with the carrot of state campaign funds rather than the stick of penalties as in Vermont, campaign expenditure limitations of one sort or another have been promulgated by governments in Florida, Hawaii, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, Rhode Island, and Wisconsin. *See, e.g.*, Fla. Stat. Ann. § 106.34 (West 2001); Haw. Rev. Stat. § 11-219 (2001); 220 Ill. Comp. Stat. 10/12-5(c) (2001); Ky. Rev. Stat. Ann. § 121A.030 (Banks-Baldwin 2001); Me. Rev. Stat. Ann. tit. 21-A, § 1015 (7–9) (West 2001); Md. Code Ann.,

Election Code § 15-103 (2001); Mass. Gen. Laws Ann. ch. 55A, § 6 (West 2001); Mich. Comp. Laws Ann. § 169.267 (West 2001); Minn. Stat. § 10A.25 (2000); N.H. Rev. Stat. Ann. § 664:5-a (2000); R.I. Gen. Laws § 17-25-20 (2001); Wis. Stat. Ann. § 11.31 (West 2001). Upon review, it has been found that such voluntary schemes survive strict scrutiny because the government has a compelling interest in reducing "the time candidates spend raising campaign contributions, thereby increasing the time available for discussion of the issues and campaigning." *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1552–53 (8th Cir. 1996) (upholding Minnesota's voluntary public financing scheme); *see also Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 39 (1st Cir. 1993) (holding that statute survives exacting scrutiny because Rhode Island has "a valid interest in having candidates accept public financing because such programs 'facilitate communication by candidates with the electorate' [and] free candidates from the pressures of fundraising.") (quoting *Buckley*, 424 U.S. at 91).

D. Compelling Interests

As mentioned, a number of distinct phenomena conspire to foster a situation where those who pay for candidate campaigns are given privileged access while regular citizens are denied such contact. First, the Vermont legislature considered powerful evidence concerning the pressures which the prospect of unlimited expenditures places on candidates for office. In particular, there is strong evidence that unlimited expenditures have compelled candidates to engage in excessively lengthy fundraising in order to preempt the possibility that political opponents might develop substantially larger campaign war chests. The Vermont General Assembly found that fundraising requires an "inordinate[] amount of time." 1997 Vt. Laws P.A. 64 (H.28) (finding No.1). The large and growing (and constantly record-breaking) campaign war

chests in Vermont have created strong pressures on elected officials to ensure that they can raise funds comparable to any opponent. One witness, former State Senator and Lieutenant Governor Peter Smith, described the "stampede or nuclear arms race mentality that we currently have, which is just keep building the bank because you never know what's going to happen." Another witness, former State Representative and Secretary of the State Donald Hooper, testified that expenditure limits would "take[] all the agony away from worrying about the money, about harvesting the money, soliciting it." Under the current system, Vermont candidates feel like "you had two races you were running. The first was for the money . . . ." (testimony of Donald Hooper).

Although there might not be any inherent problem with candidates competing to raise large quantities of funds, the evidence in Vermont is clear that the pressure to raise the large sums of money greatly affects the way candidates behave. Special interests, well placed to take advantage of candidates' fear of losing this fundraising war, have been able to exercise substantial control over the information that passes to candidates. They do this by increasingly dominating the opportunities candidates have for meeting with constituent groups and forcing candidates to choose contributors over private citizens who make small or no contributions. This domination reduces opportunities that candidates have to meet with non-contributing citizens. Every hour spent with financial contributors is an hour that cannot be spent independently studying legislative proposals or meeting with citizens. As one senator, William T. Doyle, testified, without the need to raise such large sums of money "there will be increased time for real debate . . . candidates will be able to concentrate more on issues rather than raising public money." Even if candidates receive valuable information during every hour spent fundraising,

their time is being controlled by those who control the campaign cash, and the effect is corrosive. Contributors dominate candidate's time on account of their willingness to fund campaigns and, as a corollary, contributors determine a significant percentage of the information candidates receive. The General Assembly minced no words when describing this phenomenon: "Some candidates and elected officials, particularly when time is limited, respond and give access to contributors who make large contributions in preference to those who make small or no contributions." 1997 Vt. Laws P.A. 64 (H.28) (finding No.2).

The General Assembly's findings on this point are corroborated by pages of testimony demonstrating how fundraising requires that politicians offer greater access to contributors than to those who donate little or no money. One former Vermont legislator testified that contributors receive a higher quality of consideration, stating that "as I progressed through my political career, [] the farther you went, ineluctably, the more time you spent . . . raising money and the more attention you paid to the people who gave you big money, which I would call 500, a thousand . . . dollars pledge contributions." (testimony of Peter Smith). That same witness also noted that a crucial part of any deliberation on a bill involves speculation about the reaction of contributors because they control the money: politicians are forever asking "what's the industry position, what's the union position, what's—you know, and what they're talking about is where [is] the money behind the issue, what does the money want, where is the conflict between and among the power brokers." Perniciously, it also affects the behavior of elected officials in the context of agenda-setting, since officials pay attention to which contributor "wants what to happen in terms of language of the bill, in terms of calendaring the bill, in terms of writing the rules." (testimony of Peter Smith). One former state representative, Toby Young, prosaically explained that

politicians "certainly pay attention to [important] donors, and they do get [the politicians'] ear. I think everybody has admitted that. The governor has . . . even said that publicly in the newspapers . . . ." One witness, Senator Cheryl Rivers, testified that campaign contributors, by virtue of their role as contributors, can dominate the attention of party leadership or a committee chair, and thereby influence the legislature's agenda. In her words, "there is kind of an atmosphere that is created that there is [an] assumption that phone calls [of contributors] will get taken and [their] policy issues will be considered." Another senator, Elizabeth Ready, recognized that "there is an agenda out there that is pretty much set by folks that are not elected."

Candidates, often with great reluctance, accept the bargain with contributors so that they do not lose large sources of potential fundraising. And public officials agree that the financial necessity imposed by fundraising, and bred by the need to spend ever increasing amounts of money, requires that candidates spend time with donors rather than on their official duties. One member of the legislature stated that fundraising forces her to "be locked away" in party offices instead of "out with the public." (testimony of Elizabeth Ready). Contributors are likely to get attention, and officials are more likely to return phone calls of donors than non-donors. "If I have only got an hour at night when I get home to return calls, I am much more likely to return [a donor's] call then I would [a non-donor's] . . . . [W]hen you only have a few minutes to talk, there are certain people that get access." (testimony of Elizabeth Ready). A former candidate for Congress and current lobbyist in Vermont, Anthony Pollina, described the process:

> [C]andidates and policymakers . . . can only talk to so many people in a day. They can only respond to so many phone calls. The governor can only have so many meetings in a day. And if in fact large contributors are using their contributions to buy access to the governor or other policymakers, and are spending time that they are successful in doing that, then that means that the policymaker, the governor and others are not spending their

> time talking to other people who have not provided other large contributions. . . . [S]o it becomes a cycle where the large contributors get more and more access and the average folks stop trying to get it.

Nor is this just a theoretical concern. One widely reported case involved the differing access that state officials granted to interested groups as the state government considered whether to label milk produced using genetically engineered hormones. Major dairy companies, who in the past had been contributors, were able to arrange meetings with critical state leaders, whereas local farmer organizations which lacked importance as contributors could not arrange similar meetings. The evidence adduced at trial supports the District Court finding of fact that "the Vermont public perceives, legitimately, that candidates frequently spend an excessive amount of time fundraising and not enough time interacting with voters," and that "the need to solicit money from large donors at times turns legislators away from their official duties." The record is replete with remarkably candid explanations of how parties arrange their fundraising in such a way as to provide more personal attention to contributors. One political consultant testified to the techniques used to woo donors: "High dollar donations usually occur with events; with Republican dignitaries, if it's the Republican Party, and Republican club type events . . . Things that are maybe more personal in nature or attendance." (testimony of Darcie Johnston). By giving money, contributors "haven't bought the person, but they have certainly bought a piece of that time there where they have that person's attention." (testimony of Elizabeth Ready).

Citizens in Vermont apparently share this view, and have consistently demonstrated a belief that the attention of their public representatives may be available for a price. As a result, public faith in the democratic system has declined. The General Assembly described the effects of a need to raise ever growing amounts of funds: "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." 1997 Vt. Laws P.A. 64 (H.28) (finding No. 4); "Large contributions and large expenditures by persons or committees, other than the candidate and particularly from out-of-state political committees or corporations, reduce public confidence in the electoral process and increase the appearance that candidates and elected officials will not act in the best interests of Vermont citizens." *Id.* (finding No. 9). At trial, one expert witness, Celinda C. Lake, concluded that "[v]oters are extremely concerned about the influence of special interests in the political process." In fact, according to polling data considered below, nearly 75 percent of voters say that ordinary voters do not have enough influence over Vermont politics and government, and more than two thirds believe that "large corporations and wealthy individuals have too much influence." (expert report of Celinda C. Lake). Most citizens are bothered by the fact that "political fundraising took away time from important government business." (testimony of Celinda C. Lake). Newspaper articles demonstrated the public perception that certain special interests dominated candidate contributions. The Vermont legislature considered one article in the Burlington Free Press stating that "[m]oney not only threatens to corrupt the process, it sabotages the political dialogue as well. Candidates spend too much time begging for dollars and too little time talking issues . . . [I]t breeds cynicism . . . For proof, look in part to the large number of folks who simply don't vote, staying home with a 'why bother' shrug on election day." *See Democratic Process Relies on Reform*, Burlington Free Press, Oct. 6, 1997 at 6A. Testimony by Vermont's elected officials exposed how the disenchantment and loss of public faith play a critical role in their belief that expenditure limits are necessary. The goal of the legislation is to ensure the accessibility and

accountability of Vermont's political system. One State Senator, and a sponsor of Act 64, testified that "I would hope that it's going to give folks running for office more of an opportunity to go out and engage the voters on the issues. I hope it's going to help turn around the cynicism and the lack of participation on the part of many ordinary people that believe that their government is not about them, but about powerful, special interests." (testimony of Cheryl Rivers). Another sponsor of Act 64, Representative Karen Kitzmiller, presented the Vermont House of Representatives with evidence showing that 94 percent of Vermonters believe that too much money is spent in politics, and 76 percent believe that ending private contributions would "reduce the power of special interest groups." Another state legislator, Gordon Bristol, described his concern "about the regular guy on the street, and I think if they feel that candidates are spending a modest amount of money, that they are going to get candidates in there who are representing issues and not a special interest . . . ." According to one legislator, citizens have reported that they do not vote because "'All the big money controls everybody in Montpelier anyways.' . . . They think it's all wrapped up and that the special interests control it and, quite frankly, they aren't that wrong." (testimony of Elizabeth Ready). In the word of one legislator, "it's the monied interests that control the process, and that cynicism . . . , it keeps people from participating, from engaging . . . ." (testimony of Donald Hooper).

Contribution limits, though highly effective at eliminating the actual and perceived quid pro quo corruption that accompanies large gifts, do not address these noxious effects of an unrelenting drive for campaign funds. So long as the danger remains that a political opponent might severely out-strip a candidate's financial resources, candidates have continued to feel it necessary to raise ever larger sums of money. For elected officials, this will mean giving more

time to contributors over non-contributors, and expending more effort on relatively generous contributors over less important ones. In other words, even with contribution limits, the arms race mentality has made candidates beholden to financial constituencies that contribute to them, and candidates must give them special attention and time *because* the contributors will pay for their campaigns. Vermont has concluded that widespread presence of this arms race mentality, however irrational, can only be effectively controlled by spending limits. One elected official shared her sense of how spending limits will liberate public officials: "[The spending limit] lessens the pressure. . . . I am not going to be locked away . . . in the Democratic Party somewhere or in my own office somewhere making fundraising calls." (testimony of Elizabeth Ready). Without expenditure limits, she said, "it's an escalating kind of a thing. The more money gets spent, the more money everybody has to spend in order to look like they are in." (testimony of Elizabeth Ready). Contribution limits have not tamed this escalating phenomenon in Vermont.

Nor have contribution limits significantly sapped the influence of "well-heeled" special interests. Discrete interest groups, whose members individually control substantial financial resources, continue to exercise disproportionate control over what candidates in Vermont hear and discuss. They do this by virtue of the interest group members' cumulative ability to shift resources toward particular candidates. Put another way, the record vividly establishes that insofar as contributors effectively buy candidates' time and attention, this distortion of the democratic process is caused not only when contributors give single, large gifts, but also when they are members of organized, wealthy interest groups that "bundle gifts." *Cf. Homans v. City of Albuquerque*, 160 F. Supp. 2d 1266, 1273 (D.N.M. 2001) (discussing bundling phenomenon).

In Vermont, these interest groups often sponsor political fundraisers where many smaller donations are solicited. For example, Vermont's slate industry allegedly gave bundled gifts to senators sitting on the committee that, in the words of one legislator, determined "the future of this particular industry." (testimony of Elizabeth Ready). When the industry won an exemption from the committee, citizens were reportedly "irate. . . . They felt angry and helpless and they felt that they were not being listened to." One legislator, a supporter of campaign finance reform, candidly reported one incident where he received five smaller checks in a single envelope, and it turned out that one of those people had an interest in a matter before his committee. (testimony of Donald Hooper). The bundling phenomenon in Vermont was evidently not anticipated by the Supreme Court in *Buckley*. Indeed, the *Buckley* Court seemed to assume that many small contributions could not raise the specter of corruption. "If a senatorial candidate can raise $1 from each voter, what evil is exacerbated by allowing that candidate to use all that money for political communication?" 424 U.S. at 56 n.64 (internal quotations omitted). The reality of campaign financing in Vermont is a far cry from this idyllic vision of political fundraising, in large part because not every voter has the desire or financial ability to participate by giving campaign contributions. "[T]he average Vermonter has been, to some degree, disenfranchised because the average Vermonter cannot afford the price of admission." Senate J. of the State of Vt., at 1338 (Biennial Session, 1997) (statement of William T. Doyle). That difference has had pernicious effects on the support for and participation in the democratic process in Vermont by requiring that candidates for public office rely on special interests for financial support, produced directly or by way of devastatingly broad and cumulatively overwhelming bundling.

Moreover, there is substantial evidence that candidates cannot easily raise funds if they

alienate these significant and organized interest groups, thus heightening a candidate's dependence on special interest groups. In other words, because of the limited number of participants in campaign financing, candidates feel themselves unable to oppose too many special interests, no matter how unpopular, because they will be cut off from funds. The General Assembly described the effects of a need to raise ever growing amounts of funds: "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." 1997 Vt. Laws P.A. 64 (H.28) (finding No. 5). If legislation alienates one major special interest group, officials are reluctant to alienate others because the number of entities and people making political contributions is finite and small. One Vermont official and campaign organizer, Mark Snelling, simply stated "there's a relatively limited number of people in Vermont that are interested in participating through actually either spending their time or writing a check . . . ." Another campaign consultant conceded that there is a practical limit to the ability to continue to get donors, testifying that "[i]t becomes more and more expensive to find donors. If you have to keep prospecting deeper and deeper, the cost goes up and return is much less." (testimony of Darcie Johnston). The limited number of fundraising sources in Vermont makes it difficult for candidates to alienate the few that support them. One state legislator admitted that, when considering a piece of legislation, "You have to initially consider it as whether or not you want to risk losing the financial support or, in the worst case, having that financial support go to a primary opponent or to a person who opposes you in a general election." (testimony of Peter Smith). A lobbyist who supports Act 64 noted that contribution limits coupled with unlimited expenditures would require that candidates "continue to spend more time and energy raising

those smaller contributions to see who could raise the most money and outspend their opponent and therefore win the race. So the spending limits, tied to the contribution limits, create a situation where the candidates simply don't have to spend as much time and energy raising money. . . . [The limits] change the way campaigns are run, in a sense, and make them more people oriented or voter oriented as opposed to fundraising oriented . . . ." (testimony of Anthony Pollina). Unfortunately, the contributions limits, though necessary to eliminate the excessively large contributions, do not address the problem.[4] That same lobbyist also explained that "the unfortunate thing is that candidates would feel compelled to look for those other sources because they would still be trying to outspend . . . their opponents, and that would cause them to then spend more time and more energy into looking for those other sources of funding. It might then encourage the bundling practices that were referred to earlier, and . . . it would not address the problem that we are hoping to address." (testimony of Anthony Pollina). Candidates realize that a large contributor who is denied "preferential access or treatment" might refuse to make a contribution in the next election, or worse yet, direct contributions to an opponent. (testimony of John Patch, Chairman of Chittenden County Democratic Committee). One candidate recalled being told by another lawmaker, "We've already lost the drug money [because of the pharmacy bill], and I don't need to lose the food manufacture money too. So I'm not going to sign the bill." (testimony of Cheryl Rivers).

Faced with this evidence and the compelling nature of the General Assembly's findings, we conclude that *Buckley*'s standard of review requires us to hold that Vermont has a compelling

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[4] We note that one unintended side effect of contribution limits might be to make it more difficult to raise funds, thus potentially aggravating these problems. Since candidates bound by contribution limits would rely on a larger number of contributors, they might have to spend more time raising funds.

interest in maintaining campaign expenditure limits. "The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." *Shrink*, 528 U.S. at 391. Regardless of whether one finds Vermont's justification novel, the quantum of evidence demonstrating the depth of the problem in Vermont campaigns is great. The drive for campaign funds has created a situation where candidate time is effectively for sale. Unfortunately, the war-chest mentality has caused the cost of campaigning to grow so rapidly that more and more candidates believe that they have no alternative but to participate in the fundraising process. In any government, access to public officials is a valuable commodity. Vermont has a compelling interest in ensuring that, as a democracy, access is not available only—or mostly—to the people who are willing and able to pay for it. Moreover, the record demonstrates that expenditure limits coupled with contribution limits, but not contribution limits alone, will alleviate this problem.

The defendants have also asserted that Vermont has a sufficiently compelling interest in (1) encouraging public debates and other forms of meaningful constituent contact in place of the growing reliance on 30-second commercials and (2) increasing the ability of non-wealthy Vermonters to run for state office in Vermont. Because we find Vermont's interest in alleviating the above fundraising problems to be sufficient, we need not address these additional justifications.

E. Narrow Tailoring

The third part of *Buckley*'s test requires a determination as to whether the particular limits are narrowly tailored to serve the compelling interest offered. Certainly, expenditure limits will reduce the race to raise campaign funds, will lower candidates' dependence on fundraisers and

will thus curtail the incentive that candidates have to prefer contact with contributors over non-contributors. In other words, we have every reason to expect that expenditure limits in conjunction with contribution limits will ameliorate the effect of fundraising on Vermont's electoral process, primarily by limiting the campaign financing's role as a dominant determinant of whether one has access to candidates and elected officials. We must ensure, however, that the expenditure limits are not so low that they also sacrifice candidates' ability to communicate with the electorate and campaign effectively.

This narrow-tailoring inquiry is fact-intensive. A district court should look to a variety of factors, including the previous pattern of campaign spending. We consider expenditure limits that approximate actual spending patterns to be presumptively narrowly tailored for two reasons. First, actual patterns indicate the amounts that candidates believe they need to spend to run for office. Second, the patterns show the amount of money that is available from contributors with a reasonable effort. As Vermont has found, the pressures on candidates to raise funds, and to sell access, increase as candidates begin seeking amounts of money in excess of what is readily available. The inquiry into existing spending patterns is particularly useful in the case of Vermont, where Act 64 introduces limits on a campaign system where candidates have been previously free to spend without limit. Besides actual spending patterns, a district court should also look to the likely costs and needs that a candidates will encounter in running an effective campaign. The court should consider such factors as the size of election districts, the cost of mass media, and the feasibility of alternative communication techniques. This narrow tailoring analysis does not require that we fine-tune the expenditure amounts elected by the legislature as long as those amounts are within a range reasonably related to the needs of a candidate who is

running for office. Finally, the court should test whether the limits unduly benefit incumbents or otherwise create dangerous distortions of the electoral system. It should be recognized, however, that a legislature's inaction may maintain such barriers more easily than reforms create them, and review of legislation should not amount to a presumption against the fairness of spending limits simply because elected officials have an interest in the reforms they are enacting. *See* Frank Michelman, *Law and the Political Process*, 24 Harv. J.L. & Pub. Pol'y 17, 22 (2000).

The District Court found that Vermont's expenditure limitations reflect the actual cost of running for office in Vermont and would leave candidates fully capable of conducting effective campaigns. In fact, Act 64's expenditure limits would not cause a revolutionary shift in campaign spending, and would have very little effect on House, Senate and statewide races. The average spending in House districts during the three election cycles preceding the District Court's opinion was found to be almost uniformly below the limits set pursuant to Act 64. The lone exception—spending in single member districts in 1994—saw average expenditures of only ten dollars over the Act 64 limits. Similarly, multi-member Senate districts all involved average spending below that permitted pursuant to Act 64, with average spending exceeding the Act's expenditure limits only in single-member Senate districts.

In addition to reflecting the actual expenditures in Vermont elections, Act 64's expenditure limits are also appropriate given the costs of running for office in Vermont. Put simply, candidates can spend the money needed to conduct effective campaigns. The District Court credited the testimony of a number of fact witnesses who testified to the details of previous campaigns they had run, including a Senate challenger in Chittenden County and a former Senate candidate in Rutland County. Vermont candidates for legislative offices are able to run such

campaigns because of the standard use of low-cost campaigning methods, such as community debates, door-to-door campaigning, town barbecues and suppers, advertising placards and the issuance of press releases. Legislative candidates rarely purchase expensive mass media or hire campaign staff.

Although candidates for statewide office utilize these more expensive media and techniques, they are permitted to spend larger amounts and can thus engage in effective campaigning. In part, this reflects the particular qualities of Vermont, especially the relatively inexpensive cost of television advertising. In reaching this conclusion, the District Court rejected testimony of witnesses for the plaintiffs that much larger amounts of money—amounts so large that no Vermont candidate has ever spent them—are required to wage an effective campaign for governor or other statewide offices.

Finally, Act 64 permits challengers to outspend incumbents, partially neutralizing the advantages that incumbents often enjoy from free media exposure. Specifically, incumbent candidates for statewide office may only spend 85 percent of the amount permitted challengers. *See* Vt. Stat. Ann. tit. 17, § 2805a(c). Incumbents in the General Assembly may spend 90 percent. *See id.*

We note the apparent tension between requiring, on the one hand, that expenditure limits reform the political process and also, on the other hand, that the limits approximate the spending needs of candidates as demonstrated by current spending patterns. We believe that tension is more apparent than real. First, even with expenditure limits that are higher than the amounts spent in the vast majority of campaigns, the limits will still affect the minority of campaigns where significantly larger funds are raised and expended. Moreover, the record in Vermont

demonstrates that often it is the potential of being vastly outspent—the arms race mentality—that creates powerful and deleterious pressures to raise funds. Expenditure limits make such dangers more easily calculable, and, the evidence indicates, will encourage a more rational response to the dangers of facing a better financed opponent. In addition, although consistent with current spending, the expenditure limitations will also forestall the continued escalation of campaign spending into the future. Finally, we recognize that the reality of campaign spending may require even lower limits if the evidence were to demonstrate that Act 64's limits are inadequate and lower caps would still permit effective campaigning.

Act 64 establishes campaign expenditure limits which are grounded in the reality of running for office in Vermont. We uphold the District Court's findings that the limits permit fully effective campaigns and are narrowly tailored. Since we do not agree with the District Court's conclusion that *Buckley* prohibits all expenditure limits, we vacate the District Court's injunction against enforcement of the expenditure limitations. We have reviewed them with the level of exacting scrutiny required by *Buckley* and its progeny for expenditure limits, and we hold these provisions of Act 64 to be constitutional.

II. Act 64's Contribution Limitations

Act 64 also imposes four basic types of contribution limitations. First, contributions by individuals to candidates are limited to $200 for state representative and other local offices, $300 for state senator and other county offices, and $400 for state-wide office. *See* Vt. Stat. Ann. tit. 17, § 2805(a). Second, PACs and political parties may not accept contributions from a single source in excess of $2000, and are subject to the individual contribution limits when contributing to candidates. *See id.* Third, individuals, PACs or political parties that make "related

expenditures" with candidates must count those expenditures toward the relevant expenditure and contribution limits. *See id.* at 2809(a)–(c). Finally, candidates, PACs, and political parties may not accept more than 25 percent of their total resources from out-of-state sources. *See id.* at 2805(c).

A. Limits on Contributions by Individuals to Candidates

The contribution limits of $200 (state representative), $300 (state senator), and $400 (state-wide office) are subject to "'the exacting scrutiny required by the First Amendment. . . .'" *Shrink*, 528 U.S. at 386 (quoting *Buckley*, 424 U.S. at 16). Contribution limits "involving significant interference with associational rights could survive if the Government demonstrated that contribution regulation was closely drawn to match a sufficiently important interest, though the dollar amount of the limit need not be fine tun[ed]." *Id.* at 387–88 (internal quotation omitted) (alteration in original).

The government interest in eliminating actual and apparent corruption is sufficient to support Vermont's limits on contributions to candidates. The *Buckley* Court upheld limitations of $1000 on contributions to candidates for federal office on the strength of this interest alone. "It is unnecessary to look beyond the Act's primary purpose to limit the actuality and appearance of corruption resulting from large individual financial contributions in order to find a constitutionally sufficient justification . . . ." 424 U.S. at 26. In *Shrink*, the Supreme Court upheld contribution limits ranging from $250 to $1000 for various state offices, rejecting the argument that corruption is limited to quid pro quo arrangements. 528 U.S. at 382–89. Instead, the government interest in battling corruption extends "to the broader threat from politicians too compliant with the wishes of large contributors." *Id.* at 389.

The Vermont limits are narrowly tailored to this anti-corruption interest. The District Court's findings in this respect are reasonable and based on evidence adduced at trial. The legislature relied heavily on testimony of those who have run for office in Vermont. For example, during 1998, fewer than 2 percent of the donors were responsible for over 40 percent of the Vermont Republican Party's funding. The law has had the effect of causing the party to broaden its donor base, and reduce its reliance on a small number of donors. Based on testimony by both plaintiffs' and defendants' witnesses, the District Court also concluded that the limitations approximated amounts "considered suspiciously large by the Vermont public." The District Court also relied on citizen polls, comments by public officials and media coverage to demonstrate the real and perceived threat of corruption. As the District Court noted, "The threat of corruption in Vermont is far from illusory."

The contribution ceilings are also sufficiently high to permit effective campaigning. Overly restrictive contribution limits might "have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." *Buckley*, 424 U.S. at 21. Contribution limits, however, need not be perfectly set: the failure of the legislators to "engage in such fine tuning does not invalidate the legislation." *Id.* at 30. "[D]istinctions in degree become significant only when they can be said to amount to differences in kind." *Id.* We agree with the District Court's conclusion that the limits do not "amount to differences in kind."

As the District Court found, the limits imposed by Vermont hardly overwhelm the ability of candidates to engage in active and effective campaigning. The District Court marshaled evidence to support its findings, and conducted a fact intensive analysis of what constitutes

effective campaigning. Over the last three election cycles, less than 10 percent of contributions exceeded the limits set by the Vermont legislature. Moreover, Vermont has actually conducted an election since the imposition of these contribution limits (for Mayor of Burlington), and that election involved effective campaigns despite the contribution limitations. Subject to the applicable limits imposed by the statute, the candidates for mayor raised funds comparable in amount to that spent in State Senate races in the past. The District Court also reviewed testimony concerning the availability of low cost, highly effective methods of campaigning that reach large numbers of voters in Vermont, including county-wide televised and live debates, tables distributing literature, and town barbecues. The District Court further concluded that the limits may actually improve the ability of candidates to campaign, by freeing candidates from the time-consuming task of "wooing big donors." Finally, the court compared the Vermont law to similar limits upheld in Maine and Missouri. In Maine, a limit of $250 for House and Senate candidates was upheld. *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445, 459 (1st Cir. 2000). In Missouri, limits of $1075, $525, and $275, depending on the size of the electoral district, were upheld. *Shrink Mo. Gov't PAC v. Adams*, 204 F.3d 838, 840 (8th Cir. 2000).[5]

B. Limitations on Contributions to and by PACs and Political Parties

Act 64 regulates the ability of PACs and political parties to give and receive contributions. The Act prohibits such organizations from accepting contributions of more than $2000 from a single source during any two-year general election cycle. *See* Vt. Stat. Ann. tit 17,

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[5] The District Court noted that by way of comparison, the Vermont law has a limit-constituency ratio (i.e., the maximum contribution allowed divided by the number of constituents) of .00068, compared to .00040 under the Missouri statute.

§ 2805(a). The Act further prohibits those organizations from making contributions to political candidates in excess of the general contribution limits—$200 for state representatives or local office, $300 for state senator or county office, and $400 for statewide office. *See id.* at §§ 2805(a)–(b).

The District Court upheld these limitations, except as applied to contributions by political parties to their own candidates. Upon review, we hold that all of these limitations are constitutional. We thus affirm the judgment of the District Court as to the constitutionality of most of the limitations, but reject the District Court's conclusion that political parties cannot be prohibited from contributing to candidates in excess of generally applicable limitations. We discuss three narrow issues that require further attention and, in two of those, further proceedings before the District Court.

As a general matter, we find little merit in the plaintiffs' contention that the $2000 limit on contributions to political parties and PACs is unconstitutionally overbroad. We first consider the issue of the $2000 limitation on contributions to political committees or political action committees and political parties. Act 64 defines "political committees" or "political action committees" as "any formal or informal committee of two or more individuals, not including a political party, which receives contributions or makes expenditures of more than $500.00 in any one calendar year for the purpose of supporting or opposing one or more candidates, influencing an election or advocating a position on a public question, in any election or affecting the outcome of an election." *Id.* at § 2801(4). A political party is defined separately by Vermont Elections Law, *id.* at § 2311–13, and includes both the party apparatus and "any committee established, financed, maintained or controlled by the party." *Id.* at § 2801(5).

Perhaps the most typical application of these rules would involve contributions to a political committee or political party that participates in the political process either by making contributions to or coordinated expenditures with candidates for office. As applied to these organizations, the $2000 limitation is unquestionably constitutional. Political action committees "derive rights from their members" and are accordingly due First Amendment protection. *Colo. Republican II*, 533 U.S. 431, 477 n.10. It is well established, however, that the state interest in fighting corruption, real and apparent, justifies limitations on contributions by individuals to particular candidate committees. Such a state interest is equally capable of justifying limits on contributions made to political parties or committees.

> If the First Amendment rights of a contributor are not infringed by limitations on the amount he may contribute to a campaign organization which advocates the views and candidacy of a particular candidate, the rights of a contributor are similarly not impaired by limits on the amount he may give to a multicandidate political committee . . . which advocates the views and candidacies of a number of candidates.

Cal. Med. Ass'n v. Fed. Election Comm'n, 453 U.S. 182, 197 (1981) ("*CMA*").

The plaintiffs do not dispute that, in principle, such limitations may be constitutional. Instead, they argue that Vermont's chosen limitations are overbroad, both because the statute applies to too many organizations and because it sets the contribution ceiling too low.

Regarding the first point, the plaintiffs assert that the restriction is an "overbroad, blunderbuss approach that punishes" even those organizations that are unlikely to corrupt the political process. They imply that certain types of PACs, "particularly legislative leadership PACs or ideological PACs," pose a weaker danger of corruption and should be permitted greater latitude in determining how to allocate their contributions. The plaintiffs argue that the limits are unconstitutional because Vermont has not shown any independent evidence that political parties

and PACs have a negative or deleterious effect on Vermont's politics. Further, the plaintiffs contend, these organizations are even less likely to corrupt in light of Act 64's other limitations. Private individuals cannot, for example, effectively funnel large gifts through political parties because parties can themselves only make contributions to candidates of between $200 and $400 dollars.

An argument identical to the plaintiffs' overbreadth argument was addressed and rejected in *Buckley*. There, the appellants argued that many large contributors have no interest in corrupting the political process, and the law was overbroad for restricting the rights of these unthreatening contributors. The Supreme Court upheld the constitutional validity of generally applicable contribution limits of $1000, even though "most large contributors do not seek improper influence over a candidate's position or an officeholder's action." *Buckley*, 424 U.S. at 29. The Court reasoned that the very corruption rationale which provides a foundation for the constitutional validity of contribution limitations supports their general applicability: "Not only is it difficult to isolate suspect contributions, but, more importantly, Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated." *Id.* at 30.

These arguments were also rejected by the Supreme Court in *CMA*. 453 U.S. at 197. In that case, a California political action committee challenged a $5000 federal limit on annual contributions by individuals and associations to multicandidate political committees. *See id.* at 186. Like the plaintiffs here, the parties in *CMA* asserted that such limitations do not serve the government's strong interest in preventing actual or apparent corruption in the political process.

See id at 197. The Supreme Court concluded that "*Buckley* precludes any argument" that the government may not limit the size of contributions made to multicandidate committees, and rejected the assertion that such limitations do not further the government's interest in battling political corruption. *Id.* Without such limitations, individuals could evade the contribution limitation "by channeling funds through a multicandidate political committee." *Id.* at 198.

In light of these prior holdings, we are unpersuaded by the plaintiffs' contention that Vermont had an obligation to divine which PACs and political parties pose the most serious risk of corruption, and develop a record that donations to each type of organization, narrowly defined, pose a strong threat of corruption. It is clear that, in principle, such limitations are an "appropriate means . . . to protect the integrity of the contribution restrictions upheld . . . in *Buckley*." *CMA*, 453 U.S. at 199. Accordingly, the Vermont provision is constitutional so long as the danger of corruption of the political system exists. Just as individuals may be limited from directly contributing to campaign organizations, individuals may be limited from doing so indirectly—that is, contributing large sums to PACs or political parties that funnel money to candidates. *See Buckley*, 424 U.S. at 38. Vermont does not have the burden to show on a contributor-by-contributor basis that contributions have led to corruption.

The plaintiffs' second overbreadth argument is that the $200, $300, and $400 limits on contributions to candidates for office are unnecessarily low, and that political parties and PACs should be exempt. The plaintiffs in *Buckley* also raised this argument, contending that the $1000 limitation regulated more contributions then necessary to accomplish its anti-corruption goals. Specifically, the appellants argued that even contributions of a larger amount did not carry a risk of corruption because no politician would throw away a career and reputation for a $1000

donation. As with the earlier overbreadth argument, the Supreme Court rejected the contention. *See Buckley*, 424 U.S. at 30. "[I]f it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a $2000 ceiling might not serve as well as $1,000. Such distinctions in degree become significant only when they can be said to amount to differences in kind." *Id.* (quotations and citations omitted). The Court reaffirmed the validity of this approach in *Shrink*, stating that a contribution limit survives scrutiny only if the regulation is "closely drawn to match a sufficiently important interest, though the dollar amount of the limit need not be fine tun[ed]." 528 U.S. at 387-88 (internal quotations and citations omitted) (alteration in original).

In order to succeed, then, this overbreadth argument must establish that when the limitations are applied to political parties and political action committees, they impose such a severe burden that it results in a "difference[] of kind" from alternative limits. *Buckley*, 424 U.S. a 30. In other words, a party seeking a special exemption from such laws carries a large burden. Illustrative of the political parties' and political action committees' burden in this regard is *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"). In that case, the Supreme Court considered the constitutionality of a federal law which bans corporations from making any political expenditures from general corporate funds. The statute's purpose was to regulate "the corrosive influence of concentrated corporate wealth." *Id.* at 257. The F.E.C. had sought enforcement of the provision against an incorporated, non-profit pro-life advocacy organization that had "features more akin to voluntary political associations than business firms." *Id.* at 263. The Court held that, as applied, the provision was unconstitutional because the stated interest does not apply to an incorporated association like

MCFL. *Id.* at 263-64. The court set forth specific and demanding criteria for determining when other corporations fall into this constitutionally mandated exclusion. *Id.* These advocacy organizations met this high standard.

We should expect that the plaintiffs here bear a similar burden of establishing their exceptionalism, even if the particular facts of *MCFL* do not apply. Unlike the situation in *MCFL*, the PACs here have offered no evidence that PACs and political parties have overriding features exempting them from the general findings about actual and apparent corruption in Vermont. Nor have they provided evidence that the limitations, when applied to these organizations, impose such a severe burden on speech as to constitute a difference in kind. As mentioned, the District Court concluded, after considering a large body of evidence, that the contribution limits are high enough so that they do not constitute a severe infringement—a difference in kind—of the ability to associate politically. We thus agree with the judgment of the District Court and find that Act 64's contributions limits on political action committees and parties are constitutional.

The District Court did find support for one exception to the candidate contribution limits: those made by political parties. In this regard, we reject the District Court's conclusion that on account of their "unique role in the mechanics of our democracy," political parties must have greater freedom to provide their candidates with financial support. Relying on the central place of political parties in elections, the District Court held that the generally applicable limits were too severe when applied to parties. "Such limits would reduce the voice of political parties to an undesirable, and constitutionally impermissible, whisper."

We see no other way to understand the District Court's position than as being founded on

the belief that political parties operate as specially protected institutions under our Constitution. The District Court had already concluded that candidates can receive sufficient funds to effectively exercise their First Amendment rights even when restricted by Act 64's contribution limits. Thus, the District Court's conclusions concerning political parties are at odds with its findings that contributions within the limit are constitutionally adequate. Therefore, the District Court must have relied upon an implicit finding that political parties merit special treatment.

Whatever the validity of this principle in other legal contexts, the Supreme Court has recently left no doubt that parties do not deserve a special exemption from generally applicable contribution limits. *See Colo. Republican II*, 533 U.S. at 480–82. In that case, the Colorado Republican Party challenged the constitutionality of restrictions on expenditures it made in coordination with candidates for office, arguing that "coordinated spending is essential to parties because a party and its candidate are joined at the hip, owing to the very conception of the party as an organization formed to elect candidates." *Id.* at 477 (citations and quotation marks omitted). The Court held that such limitations are a constitutional mechanism for ensuring that contributors do not circumvent the federal contribution limit and rejected the claim that political parties occupy some special place in our constitutional system. Above all, the argument fails because, just as with other political organizations, political parties "are necessarily the instruments of some contributors whose object is not to support the party's message or to elect party candidates across the board, but rather to support a specific candidate for the sake of a position on one, narrow issue, or even to support any candidate who will be obliged to the contributors." *Id.* at 479. Thus, as it does with any other contributor to political campaigns, the government has an interest in restricting the flow of money from parties to candidates in order to

reduce actual and apparent corruption. "The Party's arguments for being treated differently from other political actors subject to limitation on political spending under the Act do not pan out." *Id.* at 481. "We accordingly apply to a party's coordinated spending limitation the same scrutiny we have applied to the other political actors, that is, scrutiny appropriate for a contribution limit." *Id.* at 482.

Since we agree with the District Court's conclusion that Vermont's limits are "vital to deter avoidance of the individual contribution limits," we hold that their application to political parties is supported by this strong government interest.

Having concluded that the restriction of contributions from political parties is supported by a constitutionally sufficient government interest, we turn to the question of whether the statute is narrowly tailored to this interest. As discussed above, the District Court reviewed the limits based upon data reflecting the costs of elections and the views of citizens regarding what constitutes suspiciously large gifts. Based on this body of evidence, the District Court concluded that gifts in excess of the limits create the appearance of, and increase the likelihood of, corruption. Moreover, contributions in the amounts permitted by the Act provide citizens an adequate tool for "speaking their mind" by giving a donation in order to affiliate with a candidate.

There are three narrower issues that require more individual attention. The first concerns the Act's definition of local and state party affiliates as a single entity. For the purposes of determining whether a political party has exceeded its various contribution limitations, Act 64 defines a political party as "any committee established, financed, maintained or controlled by the party, including any subsidiary, branch or local unit thereof and including national or regional

affiliates of the party." Vt. Stat. Ann. tit. 17, § 2801(5). Vermont's Secretary of State has interpreted this provision, in conjunction with Vt. Stat. Ann. tit. 17, §§ 2301–2320, to require that state and local branches of political parties be considered a single unit for the purposes of applying contribution limits, and determining whether those limits have been reached or violated.

Plaintiff Vermont Republican State Committee argues that this definition requires the party to treat itself as a single monolithic unit, and requires the party to abandon its current, decentralized structure. However, the plaintiff has not cited any actual changes that will need to be made, except that the local and state affiliates will now have to record and coordinate their contributions. In other words, the provision does not impose any organizational burden on the party outside of the campaign finance realm, and requires no broader organizational reform. Moreover, the District Court indicated doubt as to whether the Republican Party actually demonstrated that it operates in the decentralized form that it claims. For example, the state committee brought suit on behalf of all of the town and county committees without ever consulting them or asking them to approve the lawsuit. The District Court also noted that federal election law treats state, county, and town committees as a single unit for the purposes of campaign finance. We agree with the District Court that, insofar as Vermont's campaign finance law treats state and local affiliates as a single entity, it suffers from no constitutional defect.

Second, the plaintiffs have argued that Act 64 applies to even those political action committees that make wholly independent expenditures. Plaintiff Vermont Right to Life Committee-Fund for Independent Political Expenditures ("VRLC-FIPE"), which is affiliated with the Vermont Right to Life Committee ("VRLC"), is a political committee that, by its charter, cannot make contributions to candidates. It has asserted that it makes only independent

expenditures, that is, it never coordinates its expenditures with candidates for office. Thus it argues that when applied to itself, the $2000 cap operates as a limitation on independent expenditures.

The statute does appear to lend itself such an interpretation. On the one hand, the Act explicitly states that it does not apply to independent expenditures. The law explicitly states that "[t]he limitations on contributions . . . shall not apply to contributions made for the purpose of advocating a position on a public question, including a constitutional amendment." Vt. Stat. Ann. tit. 17, § 2805(g). Nonetheless, it appears that VRLC may be correct that even political organizations that make solely independent expenditures, but nonetheless advocate the election of particular candidates, would be covered. *See id.* at § 2801(4).

Thus, we remand for findings on the following points: (1) whether plaintiff VRLC makes solely independent expenditures and thus has standing to challenge this provision; (2) whether the Vermont law regulates contributions to such organizations; and (3) whether Vermont has a sufficiently strong government interest in such limitations.

Finally, we remand for additional proceedings on the issue of how Act 64 implicates the ability of a state party affiliate to receive funds from national affiliates. Act 64 apparently limits the transfer of money from national to state and local parties, and that limit might impose a significant burden on political parties. How a party allocates money between its national, state and local affiliates constitutes an important component of party organization. It determines who in the party exercises decision making authority, who speaks for the party, and how the party arranges its internal finances. At the same time, the failure to limit such transfers might create a loophole that would allow contributors to easily circumvent the $2000 limit on gifts to state

parties. The District Court never made specific findings of fact regarding this issue, including how national and local affiliates of the political parties interact and how limitations on transfers of money might affect parties. Since we are reluctant to rule on this issue without the benefit of findings of fact on how such a provision might be expected to operate, we remand for further proceedings.

C. The Related Expenditure Provisions are Constitutional

We affirm the District Court's holding that the "related expenditure" provisions of Act 64 are constitutional because they serve to reinforce the anti-corruption goals of the contribution limitations. Pursuant to Act 64, "related expenditures" on behalf of a candidate by a third party count toward the third party's contribution limit as well as the candidate's expenditure limit. The Act defines related expenditures as those "intentionally facilitated by, solicited by or approved by the candidate or the candidate's political committee." Vt. Stat. Ann. tit. 17, § 2809(c). The plaintiffs challenge the provision on three grounds: (1) the phrase "facilitated by" is vague; (2) political parties and PACs should have greater abilities to engage in coordinated expenditures with candidates; and (3) the Act's rebuttable presumption that an expenditure benefitting six or fewer candidates is a related expenditure is a content-based speech restriction discouraging advertisements about a small number of candidates. We reject each claim.

Plaintiffs argue that the "facilitated by" standard is vague because it leaves open the possibility that *any* communication about a candidate's views with a third party that then undertakes independent expenditures will qualify as a contribution. The First Amendment permits the treatment of "coordinated expenditures" as contributions to a candidate. *Buckley*, 424 U.S. at 46–47. Independent expenditures may not be limited because "the absence of

prearrangement and coordination undermines the value of the expenditure to the candidate, and thereby alleviates the danger that expenditures will be given as a quid pro quo." *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 498 (1985). The plaintiffs' objection to Act 64 is really one which assumes that the word "facilitated" has its broadest meaning, akin to giving any aid in support of the third-party expenditure. If that were what the statute meant, then we would agree that the provision might raise constitutional problems.

We think that, in light of the terms "solicited by or approved by" that accompany it, the term facilitated should be given a narrower reading. Such a reading would also resolve the ambiguity of the statutory language so as to guarantee the constitutionality of the statute. *See* William Eskridge, *Legislation: Statutes and the Creation of Public Policy*, 873–89 (3d Ed. 2001) (discussing canon of constitutional avoidance). Accordingly, we construe the phrase "facilitated by" as requiring some "prearrangement" or "coordination" with the candidate. *Nat'l Conservative Political Action Comm.*, 470 U.S. at 498. Under such a construction, sharing routine information about a candidate is not sufficient to meet the "facilitated by" requirement. Thus, the provision is not constitutionally invalid.

Nor is there any constitutional barrier to applying this provision to related expenditures by PACs and political parties. The plaintiffs' argument on this point substantially restates their claim discussed above—that different contribution limits ought to apply to PACs and political parties. We reject it for the same reasons.

Finally, the provision's rebuttable presumption, which presumes that expenditures by political parties or PACs that benefit six or fewer candidates are contributions to those

candidates, does not violate the constitution by chilling protected speech. The plaintiffs argue that the presumption is unconstitutional because (1) the law may never presume that an expenditure is coordinated and (2) the presumption could never be rebutted and, as a result, chills independent advocacy of particular candidates. We find neither claim persuasive.

The Constitution does not bar the use of rebuttable presumptions in this context. The plaintiffs base their argument on *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604 (1996) ("*Colo. Republican I*"). There, the Supreme Court struck down a federal provision that automatically treated all party expenditures, including those made independently, as contributions to candidates. The Court rejected the Court of Appeals's analysis that the government was entitled to a conclusive presumption that party expenditures are coordinated. *Id.* at 619. The fact that the presumption was conclusive, however, played the critical role in that decision: it eliminated the need for a finding that the expenditures were in fact coordinated and foreclosed the possibility of a defense. *Id.* at 625. Act 64 does nothing of the sort, since its presumption is rebuttable.

The plaintiffs' argument that the presumption is functionally conclusive because one "cannot prove a negative" is, at least in the legal arena, inaccurate. There are ample strategies that an accused party can employ to demonstrate that an expenditure was truly independent from the candidate it supported. The party can, for example, testify that no discussion took place with the candidate about advertising strategies, including the sharing of information about advertising plans. Candidates can testify that they never gave feedback on an independent advertising scheme or that the third parties never solicited such feedback. Adjudicative bodies can take such evidence, or other similar testimony, as proof and infer a lack of coordination.

Accordingly, we uphold Act 64's rebuttable presumption concerning related expenditures.

D. The 25 Percent Limit on Out-of-State Donations is Not Constitutional

We can find no sufficiently important government interest to support the provision of Act 64 that limits out-of-state contributions to 25 percent of all candidate contributions. Unlike all of the other Act 64 provisions at issue in this appeal, the out-of-state contribution limit isolates one group of people (non-residents) and denies them the equivalent First Amendment rights enjoyed by others (Vermont residents). The District Court's decision in this regard should be upheld.

The District Court concluded that Vermont's interest in eliminating excessive out-of-state contributions was confined to unusually large contributions. The District Court also noted that many non-residents have legitimate and strong interests in Vermont and have a right to participate, at least through speech, in those elections. We find no support in the record for the alternative claim that Vermont has an important interest in singling out one class of contributors for limitations as particularly worrisome. *See* 1997 Vt. Laws P.A. 64 (H.28) (1997) (finding No. 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."). There are only vague references to the danger of out-of-state contributions, and those all refer to the danger of excessively large (not cumulatively great) contributions.

In the two reported decisions on the issue, courts have split on whether limitations of non-resident contributions may be upheld on corruption grounds. The Ninth Circuit has rejected, almost in bright-line form, limitations on non-resident restrictions. In *VanNatta v. Keisling*, the court struck down an Oregon initiative that effectively limited the use of non-resident

contributions to 10 percent of total campaign expenditures. 151 F.3d 1215, 1218–19 (9th Cir. 1998). Addressing the asserted anti-corruption justification, the court held that the provision suffered from both over- and underbreadth. Its overbreadth stemmed from the fact that it prevented all non-resident contributions once the 10 percent threshold had been reached, even those too small to have any corrupting influence. *Id.* at 1221. The provision was underbroad because it did nothing to prevent corrupting (i.e., large) resident contributions; nor did it prevent corrupting non-resident contributions until the 10 percent limit had been reached. *See id.* at 1221. In other words, the non-resident cap was "not closely drawn to advance the goal of preventing corruption." *Id.*

Because Act 64 contains contribution limits, it does not share all of the flaws of the Oregon statute considered in *VanNatta.* Act 64 does, for example, limit large resident and non-resident contributions. Nonetheless, the provision is overbroad in that it prohibits small contributions from out-of-state sources once the 25 percent threshold has been reached, even though such contributions are no more likely to corrupt than in-state contributions. Under this analysis, sustaining the provision would require an additional explanation for why exactly Vermont has an interest in eliminating such small donations only from non-residents.

The Alaska Supreme Court has attempted to craft such an explanation in *State v. Alaska Civil Liberties Union*, 978 P.2d 597 (Alaska 1999), *cert. denied*, 528 U.S. 1153 (2000). The Alaska law at issue capped out-of-state contributions but at lower percentages than Vermont's law. The court upheld the limitations on the grounds that out-of-state contributions have the ability to distort the Alaskan political system: "These nonresident contributions may be individually modest, but can cumulatively overwhelm Alaskans' political contributions. Without

restraints, Alaska's elected officials can be subjected to purchased or coerced influence which is grossly disproportionate to the support nonresidents' views have among the Alaska electorate, Alaska's contributors, and those most intimately affected by the elections, Alaska residents. These restraints therefore limit the 'potential for distortion.'" *Id.* at 617. Put another way, Alaska's "[m]ore than 100 years of experience . . . have inculcated deep suspicions of the motives and wisdom of those who, from outside its borders, wish to remold Alaska and its internal policies." *Id.* The out-of-state limitation restrains their distorting influence. *Id.*

The analysis of the Alaska case is a sharp departure from the corruption analysis adopted by the Supreme Court in *Buckley* and *Shrink*. Even under the more expansive *Shrink* analysis, the fear was that candidates would become too compliant with the wishes of large contributors because they must rely on private interest groups for funding. The *Alaska* analysis permits limitations not to ensure candidate independence generally, but to limit the influence of one set of people—untrustworthy outsiders. Even assuming that the Alaska Supreme Court is correct that outsiders have bad motives and little to contribute to its political discourse, the government does not have a permissible interest in disproportionately curtailing the voices of some, while giving others free rein, because it questions the value of what they have to say.

The Alaska Court's concern could be understood another way: that when candidates are beholden to fundraisers, and not voters, then large contributions from non-residents distort the system. Again, this problem would endure even if officials were beholden to in-state contributors. Moreover, Vermont's expenditure limitations eliminate the major force behind candidates' excessive reliance on campaign contributors—their need to maximize their ability to raise funds by remaining pliant to the wishes of those who contribute to the political campaign

system.

Based on our review of these cases and the government interests asserted by the defendants, we are unpersuaded that the First Amendment permits state governments to preserve their systems from the influence, exercised only through speech activities, of non-residents. Vermont has asserted no valid interest sufficiently strong to justify the provision, and we therefore hold it unconstitutional. Pursuant to Act 64's severability provision, the unconstitutional provisions should be severed.[6]

CONCLUSION

Vermont has established a sufficiently important interest in favor of Act 64's expenditure limitations: namely, preventing the effective sale of time and access to public officials that results from the corrupting influence of excessive fundraising and campaign spending. Such limits are

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[6] With respect to the dissent, we offer only a few observations. The arguments largely reprise those presented by Senator Buckley and like-minded commentators in the early 1970s. While some of those arguments were then successful, they failed to result in having the Supreme Court hold that expenditure limits are *per se* unconstitutional—a fact that our dissenting colleague appears not to dispute. Thus, given that *Buckley* was grounded in a factual record distinguishable from that before us today, we are confident in our conclusion that the unique circumstances of the Vermont context warrant a different outcome.

It is beyond cavil that an opponent of the Act will argue its ambiguities and statutory peculiarities. But any such ambiguities, omissions or statutory quirks will, in the normal course of litigation, legislative amendment and administrative interpretation, be resolved. But in any event, the ambiguities raised by the dissent do not, we believe, render the statute unconstitutional. Indeed, though raising the specter of a multitude of pitfalls latent in the statutory text, even our dissenting colleague would uphold the constitutionality of the majority of the Act—despite that many of those same ambiguities speak to portions of the Act unanimously upheld. And while the dissent questions the extensive record made by the State of Vermont, we are quite comfortable in having concluded, upon direct review of their efforts, that the Governor and Legislature of Vermont, as confirmed by the District Court, were correct in finding a compelling governmental interest for expenditure limitations. Finally, the cited post-event commentary could not have informed the State nor the District Court and can have no effect on our decision.

In short, the dissent argues that, though acting with the best intentions, the State of Vermont has charted a misguided course destined only to silence the voices of ordinary citizens and entrench political parties. Our dissenting colleague thus characterizes the legislators of Vermont as, at best, naive, and at worst, strategically self-interested. We choose not to view Act 64 through this cynical lens and instead take solace in the words of our Supreme Court, which has cautioned that "tradition teaches that the First Amendment embodies an overarching commitment to protect speech from government regulation through close judicial scrutiny, thereby enforcing the Constitution's constraints, but without imposing judicial formulas so rigid that they become a straightjacket that disables government from responding to serious problems." *Denver Area Ed. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 741 (1996) (plurality opinion).

thus necessary to safeguard the democratic process and the public's faith in its representatives. These limits are narrowly tailored, and permit candidates for public office to engage in effective campaigns. Vermont also has a sufficiently important interest in support of Act 64's contribution limits: fighting the real and apparent corruption that accompanies unlimited campaign gifts. The contribution limits are narrowly tailored to this goal. Accordingly, those provisions of Act 64 are constitutional.

For the reasons set forth, we affirm the District Court's holdings that the following provisions of Act 64 are constitutional: (i) the limit on contributions that candidates may accept from individuals or political action committees; (ii) the limit on contributions that political action committees and political parties may accept from any source; (iii) the definition of political parties as including state, county and town entities; and (iv) the classification of related expenditures.

We vacate the District Court's injunction against enforcement of (i) the expenditure limitations and (ii) the limitation on contributions by political parties to candidates. We also vacate the judgment and remand for further proceedings with respect to the constitutionality of (i) regulating contributions by the plaintiff Vermont Republican Right to Life Committee and (ii) limiting transfers of funds from national to state political party affiliates. Finally, we affirm the District Court's injunction against enforcement of the limits on contributions from non-Vermont residents and organizations.

In vacating aspects of the District Court's injunction, we are mindful that Act 64's limitations are premised on a two-year election cycle. Because the issuance of this opinion will occur in the waning months of such a two-year period, the application of these limits to the

current cycle might be disruptive to candidates who relied on their absence while campaigning. Given that further proceedings must be held, and given our concerns with the timing of this decision, we remand to the District Court the issue of when the various limitations revived by this opinion should be given effect. We thus authorize the District Court to designate an appropriate effective date for these limitations that causes the least disruption to the current election cycle.

Each party shall bear its own costs on this appeal.