No. 14-___

In the
Supreme Court of the United States

Vermont Right to Life Committee, Inc., and
Vermont Right to Life Committee – Fund for
Independent Political Expenditures,
Petitioners

v.

William H. Sorrell *et al.,*
in his official capacity as Vermont attorney general,
Respondents

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

Petition for a Writ of Certiorari

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Questions Presented

1. Vermont Right to Life Committee, Inc. ("VRLC") is a non-profit issue-advocacy and lobby group that is not under the control of a candidate, and its major purpose is not the election or nomination of candidates. Vermont law, however, requires it to be a political committee if it receives $1000 in contributions or makes $1000 in expenditures "in any two-year election cycle for the purpose of supporting or opposing one or more candidates [or] influencing an election[.]" VT. STAT. title 17, 2901(13) (App.180a) ("political-committee definition"); *id.* 2901(4), (7) (App.175a-178a) ("contribution" and "expenditure" definitions). Are these laws unconstitutional under the First and Fourteenth Amendments?

2. VRLC must also comply with Vermont's electioneering-communication and mass-media-activities laws, even though its speech is not express advocacy or its functional equivalent – such as a federal-type "electioneering communication." *Id.* 2901(6), 2901(11) (App.177a-178a); *id.* 2971 (App.221a-223a); *id.* 2972-2973 (App.213a-215a). Are these laws unconstitutional under the First and Fourteenth Amendments?

3. Unlike VRLC, Vermont Right to Life Committee – Fund for Independent Political Expenditures ("VRLC-FIPE") is a Vermont political committee. VRLC-FIPE challenges the $100 threshold for reporting contributions it receives as being too low. *Id.* 2963(a)(1) (App.203a). Is this threshold unconstitutional under the First and Fourteenth Amendments?

4. VRLC-FIPE also challenges Vermont's political committee contribution limit as applied to political committees that, like VRLC-FIPE, make only independent expenditures and do not make contributions

to candidates. *Id.* 2805(a) (App.143a), *amended id.* 2941(a)(4) (App.195a); (App.10a&n.4, 42a&n.19) (each holding Section 2805 remains in effect until Section 2941 takes effect Jan. 1, 2015). Is the political committee contribution limit unconstitutional as applied to independent-expenditure-only groups under the First and Fourteenth Amendments?

Parties to the Proceeding Below

VRLC and VRLC-FIPE are Plaintiffs-Appellants below. Defendants-Appellees below are William H. Sorrell, in his official capacity as Vermont attorney general; David R. Fenster, Erica Marthage, Lisa Warren, T.J. Donovan, Vincent Illuzzi, James Hughes, David Miller, Joel Page, William Porter, Alan Franklin, Marc D. Brierre, Thomas Kelly, Tracy Shriver, and Robert Sand, in their official capacities as Vermont state's attorneys; and James C. Condos, in his official capacity as Vermont secretary of state.

Corporate Disclosure Statement

VRLC is a corporation, yet it has no stock, so no publicly held company owns 10 percent or more of VRLC stock.

VRLC has no parent company.

VRLC-FIPE is not a corporation, so it has no stock.

VRLC formed VRLC-FIPE, an independent-expenditure-only political organization, as a Vermont political committee connected with VRLC. As such, VRLC-FIPE is "a separate association from" VRLC, *Citizens United v. FEC,* 558 U.S. 310, 337 (2010), and "a separate legal entity" from VRLC. *California Med. Ass'n v. FEC,* 453 U.S. 182, 196 (1981). Nevertheless, VRLC is VRLC-FIPE's parent company in the sense that VRLC may legally and "wholly control" VRLC-FIPE. *FEC v. Beaumont,* 539 U.S. 146, 149 (2003).

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Opinion and Orders Below

- *Vermont Right to Life Committee, Inc. v. Sorrell* and accompanying judgment. 758 F.3d 118 (2d Cir.2014) ("*VRLC-II*") (App.1a-58a).
- Second Circuit order allowing release of sealed documents (App.59a-60a).
- District-court summary-judgment order and accompanying judgment. 875 F.Supp.2d 376 (D.Vt. 2012) (App.61a-134a).

Jurisdictional Statement

On July 2, 2014, the Second Circuit entered its opinion and judgment, and allowed release of sealed documents. No one sought rehearing. This Court has jurisdiction under 28 U.S.C. 1254(1).

Constitutions, Statutes, and Regulations

Petitioners append:

- The First and Fourteenth Amendments. U.S. CONST. amends. I, XIV §1 (App.135a).
- The Vermont political-speech statutes before, VT. STAT. title 17, 2801 ("VS-17-2801") *et-seq.* (App.136a-167a), and after, VS-17-2901 *et-seq.* (App.168a-227a), the 2014 amendment, which became law while *VRLC-II* was pending (App.5a-6a), and
- Vermont Administrative Rule 2000-1. (App.228a-231a).

Statement of the Case

Like many states, Vermont has adopted campaign-finance laws that impose burdens on political speech. Of course, the First Amendment limits the burdens that states may impose, articulated principally in this Court's decision in *Buckley v. Valeo,* 424 U.S. 1 (1976). Most states make some genuine effort to comply with these First Amendment protections, albeit imperfectly. But Vermont has engaged in an overt, long-term, systematic, and comprehensive effort to strip away these constitutional protections for political speech, issue advocacy, and issue-advocacy organizations by seeking to "overrule" *Buckley* and other Court opinions. *Randall v. Sorrell,* 548 U.S. 230, 243, 244, 246 (2006).

VRLC seeks to engage in advocacy about issues *via* newsletters, brochures, pamphlets, petitions, press releases, direct mail/mass mailings, mass e-mail, newspaper columns, and its website. Its speech also includes radio ads more than 30 days before a primary or 60 days before a general election.

None of VRLC's speech is *Buckley* express advocacy, *see* 424 U.S. at 44&n.52, or a federal electioneering communication, *see McConnell v. FEC,* 540 U.S. 93, 189-90 (2003), *overruled on other grounds, Citizens United,* 558 U.S. at 336-66, or a contribution to a candidate or political party, *see Buckley,* 424 U.S. at 23n.24, since such speech is not coordinated with a either of them. *See id.* at 46-47, 78; *McConnell,* 540 U.S. at 219-23.

To pay for its speech, VRLC will receive more than $1000 in what Vermont calls "contributions" and make more than $1000 in what Vermont calls "expenditures" each calendar year, VS-17-2901(4), (7) (App.175a-178a), in some cases within 45 days before

an election. VS-17-2901(13) (App.221a). Therefore, VRLC is deemed by the political-committee definition to be a "political committee" under Vermont law, even though it is not controlled by a candidate and its major purpose is not the election or nomination of candidates. VS-17-2901(13) (App.180a).

Political committees "are expensive to administer and subject to extensive regulations." *Citizens United,* 558 U.S. at 337. Indeed, *Buckley* limited government's ability to trigger political-committee status, particularly, but not only, to protect issue-advocacy organizations, such as VRLC. *See* 424 U.S. at 79.

As a political committee, VRLC would have to suffer numerous organizational and administrative burdens, including

- (1)Registration,[1]
- (2)Recordkeeping,[2]
- (3)Extensive, ongoing[3] reporting[4] extending beyond Court-approved[5] one-time, event-driven reporting.[6]

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[1] Including treasurer-designation, bank-account designation, VS-17-2922 (App.189a-190a), and termination (*i.e.,* deregistration). VS-17-2925(b)-(c) (App.193a-194a); VS-17-2965(b) (App.208a).

[2] VS-17-2922(b) (App.189a-190a).

[3] Meaning "periodic[.]" *FEC v. Massachusetts Citizens for Life, Inc.,* 479 U.S. 238, 255 (1986) ("*MCFL*").

[4] VS-17-2961-2964 (App.201a-207a).

[5] *Infra* 10.

[6] *Compare* VS-17-2961-2964 (App.201a-207a) *with* 2 U.S.C. 434(c), 434(f), 434(g) *and Wisconsin Right to Life, Inc. v. Barland,* 751 F.3d 804, 837-38, 841 (7th Cir.2014) ("*Barland-II*"). Effective September 1, 2014, the Federal

These burdens are "onerous" as a matter of law – not only for, *Citizens United,* 558 U.S. at 339, but "particularly" for, "small" organizations, *FEC v. Wisconsin Right to Life, Inc.,* 551 U.S. 449, 477n.9 (2007) ("*WRTL-II*") (citing *FEC v. Massachusetts Citizens for Life, Inc.,* 479 U.S. 238, 253-55 (1986) ("*MCFL*")), such as VRLC – even when there are neither

- (4)Limits nor
- (5)Source bans

on contributions received by political committees. *See Citizens United,* 558 U.S. at 337-40 (mentioning (1), (2), and (3), but not (4) or (5)). But, of course, there are both contribution limits[7] and contribution-source bans[8] on contributions political committees receive.

Vermont's political-committee burdens make VRLC's political speech "simply not worth it" for VRLC. *Vermont Right to Life Comm., Inc. v. Sorrell,* No.2-09-cv-188, PLS.' STATEMENT OF UNDISPUTED MATERIAL FACTS, Doc.166-4.¶41 (D.Vt. Oct. 14, 2011) (quoting *MCFL,* 479 U.S. at 255). Thus, VRLC will not engage in its issue-advocacy speech, *id.* ¶36, even though it has a First Amendment right to do so. *See Citizens United,* 558 U.S. at 336-66; *WRTL-II,* 551 U.S. at 469-70.

Election Campaign Act ("FECA") is in 52 U.S.C. *See* http://uscode.house.gov/editorialreclassification/t52/index.html.

[7] Contributions to Vermont political committees are limited to $2000 under the old law and $4000 under the new law. VS-17-2805(a); VS-17-2941(a)(4) (App.143a, 195a).

[8] Federal law imposes source bans on all political committees, including ones under state law. 2 U.S.C. 441b(a), 441b(b)(2) (national banks and national corporations), 441e (foreign nationals, including foreign corporations).

Although this law is not technically a speech ban, as was the federal law struck down in *Citizens United,* 558 U.S. at 336-66, it has the same effect as a ban on organizations that do not want to suffer these burdens, such as VRLC. *See MCFL,* 479 U.S. at 255.

In addition, VRLC challenges other laws that directly burden its issue-advocacy speech:

- VRLC fears that, because of the statute's vagueness and overbreadth, its speech might be considered an "[e]lectioneering communication" under Vermont law, VS-17-2901(6) (App.177a), and, therefore, VRLC will violate the attribution requirements for "electioneering communications." VS-17-2972-2973 (App.213a-App.215a). Not all VRLC speech includes VRLC's name and address, and none of it includes the required additional name or title, VS-17-2972-2973 (App.213a-App.215a), and
- VRLC fears that, because of the overbreadth of the mass-media-activity definition, VS-17-2901(11) (App.178a), and the vagueness of its reporting requirements,[9] VRLC will violate Vermont law by not filing mass-media-activity

[9] Mass-media reports are to be filed for any "expenditures for any one mass[-]media activity totaling $500.00 or more, adjusted for inflation" in the 45 days before an election, with mass-media activity meaning "a television commercial, radio commercial, mass mailing, mass electronic or digital communication, literature drop, newspaper or periodical advertisement, robotic phone call, or telephone bank, which includes the name or likeness of a clearly[-]identified candidate for office." VS-17-2901(11) (App.178a); VS-17-2971(a)(1) (App.221a-222a). Of course, what is an "expenditure" depends on whether it "support[s] or oppose[s]" a candidate. VS-17-2901(7) (App.177a).

> reports within 24 hours and by not providing copies to candidates whose names or likenesses appear in the communication. VS-17-2971 (App.221a-223a).

Through these laws, Vermont reaches issue advocacy that is not "unambiguously campaign related," under *Buckley,* 424 U.S. at 81, since the Vermont laws capture communications that are not express advocacy, *id.* at 79-82, or a federal-type electioneering communication, *Citizens United,* 558 U.S. at 366-71, and thus are beyond regulation.

VRLC-FIPE, a Vermont political committee, with its limited resources, no longer wishes to report the names and addresses of all those contributing more than $100 to VRLC-FIPE, so it challenges the $100 reporting threshold, VS-17-2963(a)(1) (App.203a), as too low.

In addition, because VRLC-FIPE is an independent-expenditure-only political committee, it wishes to receive contributions in excess of Vermont's contribution limit to fund its independent expenditures. (App.143a, 195a, 10a&n.4, 42a&n.19).

VRLC-II, however, found that VRLC-FIPE and Vermont Right to Life Committee Political Committee ("VRLC-PC") – a federal political committee that VRLC has also formed – were one organization (App.45a, 50a, 52a), even though "VRLC-FIPE maintains a separate bank account" (App.50a-51a), and no contribution VRLC-FIPE receives is "used for" anything other than independent expenditures. (App.51a-n.23); *Republican Party of N.M. v. King,* 741 F.3d 1089, 1091, 1092 (10th Cir.2013) ("*RPNM*") ("used for"); *see also id.* at 1093n.2 ("for the purpose of making independent expenditures"), 1096 (same), 1103 ("used solely for").

The District Court held for Defendants and upheld Vermont's law triggering political-committee status and burdens, Vermont's electioneering-communication and mass-media-activities laws, and Vermont's contribution-reporting threshold for political committees. The District Court also upheld Vermont's limit on political-committee contributions, because it believed that VRLC-FIPE is not an independent-expenditure-only political committee. (App.61a-134a).

The Second Circuit had jurisdiction under 28 U.S.C. 1291, affirmed (App.1a-58a), released sealed documents, and denied Plaintiffs' motion for stay pending appeal regarding the sealed documents. (App.59a-60a).

Petitioners request review of all Second Circuit rulings, except (1) the release of the sealed documents, (App.59a-60a); *see Doe No. 1 v. Reed,* 697 F.3d 1235, 1238 (9th Cir.2012); *id.* at 1241 (Smith, J., concurring), and (2) the upholding of the phrase "on behalf of[,]" VS-17-2972(c) (App.214a), whose predecessor VRLC challenged. This amended phrase – on which there is no circuit split – no longer applies to VRLC. (*See* App.21a-22a).

Reasons to Grant the Writ

This action is the most recent challenge to Vermont's persistent efforts to limit and regulate political and issue-advocacy speech by "overrul[ing]" *Buckley* and other Court opinions. *Randall,* 548 U.S. at 243, 244, 246. So far, Vermont has unsuccessfully sought to:

- Limit campaign expenditures. *Id.* at 240-46.
- Impose too-low contribution limits. *Id.* at 246-62, and

- Regulate issue speech with one-time, event-driven reporting beyond speech that is subject to constitutional regulation. *Vermont Right to Life Comm., Inc. v. Sorrell,* 221 F.3d 376, 386-91 (2d Cir.2000) ("*VRLC-I*").

This action challenges Vermont's further efforts to regulate purely issue-advocacy organizations and issue speech by

- Triggering political-committee status beyond organizations that are "under the control of a candidate" or have "the major purpose of the election or nomination of candidates" as limited by *Buckley,* 424 U.S. at 79, and
- Regulating issue speech with vague and overbroad laws contrary to *Buckley,* 424 U.S. at 44&n.52, 80. *See also Citizens United,* 558 U.S. at 366-71.

In addition, this action challenges Vermont's effort to limit contributions that political committees receive for independent expenditures, which present no danger of *quid-pro-quo* corruption or its appearance, despite *Buckley* which requires such corruption. 424 U.S. at 25; *see also McCutcheon v. FEC,* 134 S.Ct. 1434, 1441, 1450-53 (2014).

I. Introduction

In applying constitutional scrutiny, this Court has established a two-track system under which government may regulate[10] political speech.

Under **Track 1**, the government may trigger political-committee burdens on organizations under the control of a candidate or whose major purpose is the elec-

[10] *I.e.,* require disclosure of, which differs from "limit." *See Yamada v. Kuramoto,* 744 F.Supp.2d 1075, 1082&n.9 (D.Haw. 2010).

tion or nomination of candidates. *See Buckley,* 424 U.S. at 79, *followed in MCFL,* 479 U.S. at 252n.6, 262, *and McConnell,* 540 U.S. at 170n.64.[11]

Under **Track 2**, even when the government may not trigger political-committee burdens, the government may require simple, one-time, event-driven reporting of:

- Independent expenditures properly defined. *Buckley,* 424 U.S. at 79-82,[12] and
- FECA electioneering communications. *Citizens United,* 558 U.S. at 366-71.

Wisconsin Right to Life, Inc. v. Barland, 751 F.3d 804, 836-37, 841 (7th Cir.2014) ("*Barland-II*").[13]

II. Vermont law triggering political-committee status is unconstitutional, but there is a Circuit split on the question.

When VRLC engages in its issue advocacy, receives more than $1000 in contributions for it, and spends more than $1000 on it, Vermont law requires VRLC to be a political committee. *See* VS-17-2901(13)

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[11] Unless the organization's supporters may be subject to "threats, harassment, or reprisals," *Buckley,* 424 U.S. at 74, or unless the organization is too small to justify the burdens. *Sampson v. Buescher,* 625 F.3d 1247, 1261 (10th Cir.2010).

[12] Under the Constitution, "independent expenditure" means *Buckley* express advocacy, 424 U.S. at 44&n.52, 80, that is not coordinated with a candidate, *id.* at 46-47, 78, or a political party. *McConnell,* 540 U.S. at 219-23.

[13] Also unless the organization's supporters may be subject to "threats, harassment, or reprisals" if their identity is revealed. *Citizens United,* 558 U.S. at 370 (citation omitted); *see also Doe v. Reed,* 561 U.S. 186, 200 (2010).

(App.180a). Laws need not ban or otherwise limit political speech to be unconstitutional. *See Arizona Free Enter. Club's Freedom PAC v. Bennett,* 131 S.Ct. 2806, 2816-17&n.5 (2011) ("*AFEC*"); *Buckley,* 424 U.S. at 79-82. Requiring VRLC to be a political committee to engage in political speech, *cf. Citizens United,* 558 U.S. at 337-40, has the same effect as a ban, *cf. id.* at 336-66, for organizations such as VRLC that do not want to suffer political-committee burdens. *See MCFL,* 479 U.S. at 255.

Both *pre-* and *post-Citizens United,* "the 'distinction between laws burdening and laws banning speech is but a matter of degree' and … the '[g]overnment's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans.' Lawmakers may no more silence unwanted speech by burdening its utterance than by censoring its content." *Sorrell v. IMS Health Inc.,* 131 S.Ct. 2653, 2664 (2011) (internal citations omitted).

To counter overbreadth and protect issue-advocacy organizations, therefore, *Buckley* allows government to trigger political-committee status only when (1) an organization is "under the control of a candidate" or (2) "the major purpose" of the organization is "the nomination or election of a candidate." 424 U.S. at 79.

Nevertheless, *VRLC-II* upholds Vermont's political-committee definition by rejecting the major-purpose requirement. (App.32a-42a). Other appellate courts have also rejected the major-purpose requirement: The First, the *Madigan*-Seventh, the *HLW*-Ninth Circuits, and the Ohio state courts. *National Org. for Marriage, Inc. v. McKee,* 649 F.3d 34, 59 (1st Cir.2011);*Center for Individual Freedom v. Madigan,* 697 F.3d 464, 487&n.23 (7th Cir.2012), *superseded, Barland-II,* 751 F.3d at 839; *Human Life of Wash., Inc. v. Brumsickle,*

624 F.3d 990, 1009-10 (9th Cir.2010) ("*HLW*"); *Corsi v. Ohio Elections Comm'n,* 981 N.E.2d 919, 925 (Ohio App.2012), *appeal not allowed,* 984 N.E.2d 19 (Ohio 2013).

However, the Fourth, *post-Madigan* Seventh, Eighth, *pre-HLW* Ninth, Tenth, and Eleventh Circuits have applied the major-purpose test and struck state political-committee definitions that did not contain it. *North Carolina Right to Life, Inc. v. Leake,* 525 F.3d 274, 287-90 (4th Cir.2008) ("*NCRL-III*"); *Barland-II,* 751 F.3d at 834, 839, 840-42; *Minnesota Citizens Concerned for Life, Inc. v. Swanson,* 692 F.3d 864, 872 (8th Cir.2012) (*en-banc*) ("*MCCL-III*"); *California Pro-Life Council v. Getman,* 328 F.3d 1088, 1101n.16 (9th Cir.2003) ("*CPLC-I*") (*pre-HLW*); *New Mexico Youth Organized v. Herrera,* 611 F.3d 669, 677-78 (10th Cir.2010) ("*NMYO*"); *Florida Right to Life, Inc. v. Lamar,* 238 F.3d 1288, 1289 (11th Cir.2001) ("*FRTL-I*").[14]

In deciding the political-committee definition question, the reasoning of the Circuits has varied significantly, creating numerous analytical circuit splits:

●First, *VRLC-II* holds that the major-purpose test does not apply to state law, because it was adopted as a narrowing gloss for a similar federal law. (App.35a-36a). The First, *National Org. for Marriage, Inc. v. McKee,* 649 F.3d 34, 59 (1st Cir.2011), the *Madigan*-Seventh, *Center for Individual Freedom v. Madigan,* 697 F.3d 464, 487&n.23 (7th Cir.2012), *superseded, Barland-II,* 751 F.3d at 839, and the Ninth,

[14] *Aff'g Florida Right to Life, Inc. v. Mortham,* No.98-770CIVORL19A, 1999 WL 33204523, *4 (M.D.Fla. Dec. 15, 1999) (unpublished).

Human Life of Wash., Inc. v. Brumsickle, 624 F.3d 990, 1009-10 (9th Cir.2010) ("*HLW*"), agree.[15]

However, the Fourth, *pre-HLW* Ninth, Tenth, and Eleventh Circuits apply the major-purpose test to state law when the entire organization must be a political committee, as here.[16] *North Carolina Right to Life, Inc. v. Leake,* 525 F.3d 274, 287-90 (4th Cir.2008) ("*NCRL-III*"); *California Pro-Life Council v. Getman,* 328 F.3d 1088, 1101n.16 (9th Cir.2003) ("*CPLC-I*") (*pre-HLW*); *New Mexico Youth Organized v. Herrera,* 611 F.3d 669, 677-78 (10th Cir.2010) ("*NMYO*"); *Florida Right to Life, Inc. v. Lamar,* 238 F.3d 1288, 1289 (11th Cir.2001) ("*FRTL-I*");[17] *see also Worley v. Florida Sec'y of State,* 717 F.3d 1238, 1252&n.7 (11th Cir.2013).

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[15] Were any of these decisions right, state governments would have more power than the federal government to trigger political-committee status. But the political-committee burdens are onerous as a matter of law under *Citizens United* and *WRTL-II,* and political speech needs protection from both federal and state governments. *American Tradition P'ship v. Bullock,* 132 S.Ct. 2490, 2491 (2012). *See also First Nat'l Bank of Boston v. Bellotti,* 435 U.S. 765, 778-79 (1978); *McDonald v. City of Chicago,* 130 S.Ct. 3020, 3035, 3047-48 (2010) (rejecting "watered-down" "standards" for state governments under "the Bill of Rights"); *Wallace v. Jaffree,* 472 U.S. 38, 48-49 (1985) ("States have no greater power" than the federal government's to "restrain" "First Amendment" "freedoms").

[16] Or a political-committee-like organization. *Barland-II,* 751 F.3d at 834. The "label" is irrelevant. *MCCL-III,* 692 F.3d at 875.

[17] *Aff'g Florida Right to Life, Inc. v. Mortham,* No.98-770CIVORL19A, 1999 WL 33204523, *4 (M.D.Fla. Dec. 15, 1999) (unpublished).

Furthermore, *VRLC-II* also splits with the *post-Madigan*-Seventh and Eighth Circuits, which apply the major-purpose test to state laws requiring the political speech to be done by a separate fund or account to which political-committee burdens apply. *See Barland-II,* 751 F.3d at 839-40, 842; *MCCL-III,* 692 F.3d at 872; *IRLC-II,* 717 F.3d at 591-92.

●Second, *VRLC-II* agrees with the First, *Madigan*-Seventh, *HLW*-Ninth, and the Ohio state courts that almost any law, including political-committee requirements, not banning or otherwise limiting speech and which requires only "disclosure," is constitutional *post-Citizens United,* 558 U.S. at 366-71. (App.12a-n.5, 34a-36a). *McKee,* 649 F.3d at 41, 55-59; *Madigan*, 697 F.3d at 488-91; *HLW,* 624 F.3d at 994, 1005-13; *Corsi v. Ohio Elections Comm'n,* 981 N.E.2d 919, 925 (Ohio App.2012), *appeal not allowed,* 984 N.E.2d 19 (Ohio 2013).

This view splits with the *Barland*-Seventh, Eighth, and Tenth Circuits, which recognize that *Citizens United's* approval of one-time, event-driven reports, 558 U.S. at 366-71, does not apply to requiring an organization to be a political committee. *Barland-II,* 751 F.3d at 824, 836-37, 839, 841; *MCCL-III,* 692 F.3d at 875n.9; *NMYO,* 611 F.3d at 676-79 (disregarding *Citizens United* pages 366-71).

●Third, *VRLC-II* upholds Vermont political-committee law because the organizations may terminate political-committee status by deregistering. (App.41a). This splits with the Eighth Circuit, which holds this solves nothing. *See IRLC-II,* 717 F.3d at 599-601.

●Fourth, the proper challenge is to political-committee definitions, not the political-committee burdens themselves. *See Buckley,* 424 U.S. at 79 (ad-

dressing how "'political committee' is defined" and holding what "the words 'political committee' … need only encompass" to be constitutional), *followed in MCFL,* 479 U.S. at 262 ("classified as a political committee"). *See also McConnell,* 540 U.S. at 170n.64. By holding that only the political-committee burdens themselves need to be reviewed, *VRLC-II,* (App.37a), is joined by the First Circuit, *McKee,* 649 F.3d at 58-59, and splits with the Fourth, Seventh, Eighth, Tenth, Eleventh, and D.C. Circuits. *NCRL-III,* 525 F.3d at 288-89; *Barland-II,* 751 F.3d at 811, 812, 832-33, 834, 838, 839-40, 843-44; *MCCL-III,* 692 F.3d at 872; *NMYO,* 611 F.3d at 676 ("classified as political committees"); *FEC v. Florida for Kennedy Comm.,* 681 F.2d 1281, 1287 (11th Cir.1982); *Unity08 v. FEC,* 596 F.3d 861, 867 (D.C. Cir.2010) (quoting *FEC v. Machinists Non-Partisan Political League,* 655 F.2d 380, 392, 395-96 (D.C. Cir.1981)).

III. Vermont's electioneering-communication and mass-media-activities laws are unconstitutional, but there is a Circuit split on the question.

Vermont's electioneering-communication law applies to "any communication that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office or attacks or opposes a candidate for that office," VS-17-2901(6) (App.177a), and requires the name and address of the speaker, plus the name and title of the person who paid for the communication, or, if the person is not a natural person, the name and title of the principal officer of the person. VS-17-2901(6); VS-17-2972-2973 (App.177a, 213a-215a).

Vermont's mass-media-activities law applies to "a television commercial, radio commercial, mass mailing, mass electronic or digital communication, literature

drop, newspaper or periodical advertisement, robotic phone call, or telephone bank, which includes the name or likeness of a clearly[-]identified candidate for office[,]" VS-17-2901(11) (App.178a), in the 45 days before an election and requires filing reports with the secretary of state and providing copies to identified candidates within 24 hours. VS-17-2971 (App.221a-223a).

This Court, however, has upheld one-time, event-driven reports only for express-advocacy communications, *Buckley,* 424 U.S. at 79-82, and for federal "electioneering communications." *Citizens United,* 558 U.S. at 366-71.

VRLC, therefore, challenges these laws on overbreadth grounds. First, Vermont's electioneering-communication and mass-media-activities laws reach beyond what this Court has upheld, since both laws apply to *non*-express-advocacy issue speech and reach well beyond the federal electioneering-communications provision by:

- Not being targeted to the relevant electorate,
- Encompassing speech occurring beyond the 30 days before a primary or 60 days before a general election (no time limit for electioneering communications; 45 days for mass-media activities), and
- Applying not just to broadcast ads but to other communications as well. As previously noted, electioneering communications include "any communication that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office or attacks or opposes a candidate for that office," while mass-media activities reach "a television commercial, radio commercial, mass mailing, mass

> electronic or digital communication, literature drop, newspaper or periodical advertisement, robotic phone call, or telephone bank, which includes the name or likeness of a clearly[-]identified candidate for office." VS-17-2901(6), (11) (App.177a-178a).

Cf. McConnell, 540 U.S. at 189-90.

To be upheld, therefore, the state must prove that these laws survive constitutional scrutiny, including the required tailoring. Otherwise, the law is unconstitutional. *See Center for Individual Freedom v. Tennant,* 706 F.3d 270, 282-85 (4th Cir.2013); *NCRL-III,* 525 F.3d at 281-85.

However, *VRLC-II* rejected this challenge on the basis that these laws are just a disclosure requirement. (*See* App.25a-28a). Thus, Defendants did not prove the need for the extraordinary breadth of these laws or the required tailoring. This splits with the Fourth Circuit in *Tennant* and *NCRL-III,* and sides with the First and *HLW*-Ninth Circuits. *National Org. for Marriage v. Daluz,* 654 F.3d 115, 118 (1st Cir.2011); *McKee,* 649 F.3d at 59-60; *HLW,* 624 F.3d at 1016-19.

VRLC also challenges the vagueness of (1) the promote-support-attack-oppose ("PASO") requirement in the electioneering-communication definition, VS-17-2901(6) (App.177a), (2) "supporting or opposing" in the contribution and expenditure definitions, VS-17-2901(4), (7), and, by extension, in the political-committee definition, VS-17-2901(13) (App.180a), and the mass-media-activities reporting requirements, VS-2971(a)(1) (App.221a), and (3) the "for the purpose of influencing" provision[18] in the contribution, expendi

[18] *VRLC-II* accepted a state court's narrowing of the purpose-of-influencing-elections language to "supporting or op-

ture and political-committee definitions, VS-17-2901(4), (7), (13) (App.175a-178a, App.180a), and, by extension, in the mass-media-activities reporting requirements. VS-17-2971(a)(1) (App.221a) (using "expenditures").

VRLC-II upheld PASO, "supporting or opposing," and the narrowly-construed purpose-of-influencing language, because, in part, *McConnell* rejected a *facial*-vagueness challenge to PASO. 540 U.S. at 170n.64. (App.19a-21a, 22a-25a, 32a-34a).

However, the Seventh Circuit, *post-Madigan,* distinguished *McConnell's* PASO holding and held that parallel "[s]upports[-]or[-]condemns" language is vague when speech is engaged in by a similar Wisconsin organization. *Barland-II,* 751 F.3d at 826, 837-38. Similarly, the Fourth and Fifth Circuits have held that "support or oppose" is unconstitutionally vague. *See NCRL-III,* 525 F.3d at 289, 301 (approving "support or oppose" when – after *id.* at 281-86 – it reaches only *Buckley* express advocacy); *Center for Individual Freedom v. Carmouche,* 449 F.3d 655, 663-66 (5th Cir.2006) (same *vis-à-vis* "for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office").

Furthermore, *VRLC-II* also conflicts with the Fourth, Sixth, and Ninth Circuits, which have held that, *post-McConnell,* only express-advocacy speech and federal-type electioneering communications are not vague. *See NCRL-III,* 525 F.3d at 281-82; *Anderson v. Spear,* 356 F.3d 651, 664 (6th Cir.2004); *ACLU of Nev. v. Heller,* 378 F.3d 979, 985 (9th Cir.2004) ("*McConnell* left intact the ability of courts to make distinctions between express advocacy and issue advo-

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posing." (App.22a-24a).

cacy where such distinctions are necessary to cure vagueness and over-breadth"). *But see Real Truth About Abortion v. FEC,* 681 F.3d 544, 549-55 (4th Cir.2012).

Moreover, the state court's view of "support or oppose" allows for the consideration of factors such as timing, images used, tone, audience, and prominence, (App.22a-24a), and does not even require that the speech contain a clearly identified candidate. (*See* App.24a, 33a). However, such factors are improper, *see WRTL-II,* 551 U.S. at 466-73 (rejecting intent, effect, impact on an election, what the speaker does not say, what the speaker says elsewhere, timing, and references to other sources, including sources the speaker prepared), and the communication must refer to a clearly identified candidate. *See, e.g., id.* at 469-70.

Furthermore, *VRLC-II* specifically upholds Vermont's 24-hour-reporting requirements for mass-media activities, VS-2971(a)(1) (App.222a), because the law is "directly related to the [s]tate's information interest given the need to rapidly address election-related speech in the final weeks of a campaign." (App.32a). The Fourth and Eighth Circuits have also upheld 24-hour reporting requirements. *North Carolina Right to Life Comm. Fund for Independent Political Expenditures v. Leake,* 524 F.3d 427, 439 (4th Cir.2008) ("*NCRL-FIPE*"); *IRLC-II,* 717 F.3d at 595. This ruling, however, splits with the Tenth Circuit's holding that 24-hour reporting is "patently unreasonable" and "severely burdens First Amendment rights[.]" *Citizens for Responsible Gov't State PAC v. Davidson,* 236 F.3d 1174, 1197 (10th Cir.2000).

VRLC-II, (App.31a-32a), also specifically upholds Vermont's requirement to provide copies of mass-media-activities reports other than to the secre-

tary of state. VS-17-2971(a) (App.221a-222a). This ruling splits with the Tenth Circuit's holding that this requirement "is not simply overkill, but is in fact completely unrelated" to government's interest in disclosure. *Citizens for Responsible Gov't State PAC,* 236 F.3d at 1198.

Finally, *VRLC-II,* (App.30a-32a), specifically upholds Vermont's attribution requirements for electioneering communications. VS-17-2971 (App.221a-223a) (calling them "identification"). However, Vermont electioneering communications go well beyond federal-type independent expenditures or federal-type electioneering communications for which attributions and disclaimers have been upheld, *Citizens United,* 558 U.S. at 366-71 (upholding attribution requirements, and by extension, disclaimer requirements,[19] for federal electioneering communications), and, therefore, unduly burden issue speech. *See McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 355 (1995). By allowing Vermont to require extensive attribution on VRLC's short radio ads, (App.213a (address in VS-17-2972(a)), 215a (name and title in VS-17-2973(a)-(b)), *VRLC-II* splits with the Seventh Circuit in *Barland-II,* 751 F.3d at 832.

IV. Vermont's $100 reporting threshold for contributors is unconstitutional, but there is a Circuit split on the question.

VRLC-FIPE challenges the $100 threshold for reporting contributors to a political committee. VS-17-2963(a)(1) (App.203a).

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[19] *Barland-II* correctly understands the difference between an "attribution" and a "disclaimer[.]" 751 F.3d at 815-16.

VRLC-FIPE is a Vermont political committee, and challenges the threshold at which political committees must report contributions they receive, *id.,* because it is just too low.

The threshold fails either the government-interest part or the tailoring part of exacting scrutiny, especially since it is without an inflation index. Vermont enacted its threshold in 1987 at the latest.[20] Since then, its real value has fallen to $47.76.[21]

VRLC-II upholds Vermont's reporting threshold, (App.41a-42a), reasoning that it "is not so low as to prompt any real constitutional doubt." (App.42a). In so doing, *VRLC-II* splits with the Ninth Circuit, in *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth,* which rejects as *de-minimis* a $76 threshold. 556 F.3d 1021, 1033-34 (9th Cir.2009). The lack of an inflation adjustment was significant since incumbent legislators may not diligently change such thresholds. *Cf. Randall,* 548 U.S. at 261 (discussing contribution limits and inflation).

V. Vermont's limit on contributions that political committees receive is unconstitutional as applied to VRLC-FIPE, regardless of whether VRLC-FIPE is an independent-expenditure-only organization or whether it is part of VRLC-PC, which makes contributions. However, there is a Circuit split on the issue.

The only interest that suffices to ban, or otherwise limit, contributions is preventing "'*quid[-]pro[-]quo*' corruption or its appearance." *McCutcheon,* 134 S.Ct. at 1441 (quoting *Citizens United,* 558 U.S. at 359).

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[20] *See* VERMONT 1997 SESSION LAWS: 64TH BIENNIAL SESSION 1200 (1997), Public Act 64, H.28 2003.

[21] *See* http://www.bls.gov/data/inflation_calculator.htm.

Contributions that organizations receive *for independent expenditures* raise no such corruption problem, regardless of whether the organization is an independent-expenditure-only organization or whether the organization both makes contributions and engages in independent expenditures. *See, e.g., RPNM,* 741 F.3d at 1095-97.[22]

By holding that Vermont may limit contributions VRLC-FIPE receives, *VRLC-II,* (App.42a-56a), splits with other circuits in multiple ways.

●First, *VRLC-II* finds VRLC-FIPE is just part of one organization with VRLC-PC, which makes contributions.[23] *VRLC-II* thereby expressly splits with the Fourth Circuit in *NCRL-III. NCRL-III* addresses parallel North Carolina organizations and holds NCRL-FIPE is "independent as a matter of law" from NCRL and NCRL-PAC. (App.47a (quoting 525 F.3d at 294n.8)).

As a matter of law, a political committee is a legal person unto itself; it is not part of another organiza-

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[22]

> If a contribution to outside groups for the purpose of making independent expenditures implicates the government's anti-corruption interest, then the same interest is implicated by the independent expenditures themselves. This would mean that "the entire *Buckley* edifice, built on a foundation of a contribution-expenditure dichotomy, falls." "Is that what the Court really intended buried in a few sentences of a footnote in one of the longest cases in Supreme Court history?"

RPNM, 741 F.3d at 1100n.7 (internal citations omitted) (discussing *McConnell,* 540 U.S. at 152n.48).

[23] *Supra* 6-7.

tion. Its speech is its own. *See Citizens United,* 558 U.S. at 337; *California Med.,* 453 U.S. at 196.[24,25]

Given that, and given "that the record does not show that funds from VRLC-FIPE were used for candidate contributions[,]" (App.51a-n.23), VRLC-FIPE is an independent-expenditure-only organization. Thus, *VRLC-II's* allowing Vermont to limit contributions that VRLC-FIPE receives, (App.42a-56a), splits with the Fourth, Seventh, Ninth, Tenth, and D.C. Circuits. *NCRL-III,* 525 F.3d at 291-95; *Wisconsin Right to Life State PAC v. Barland,* 664 F.3d 139, 151-55 (7th Cir.2011) ("*Barland-I*"); *Long Beach Area Chamber of Commerce v. City of Long Beach,* 603 F.3d 684, 696-99 (9th Cir.2010); *RPNM,* 741 F.3d at 1095-97; *SpeechNow.org v. FEC,* 599 F.3d 686, 696-99 (D.C. Cir.2010) (*en-banc*); *accord California Med.,* 453 U.S. at 203 (Blackmun, J., concurring) (controlling opinion); *see also Texans for Free Enterprise v. Texas Ethics*

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[24] *Alaska Right to Life Committee v. Miles* implicitly recognizes this even when "three entities share the same director and the same board of directors" and the "degree of financial separation among the three entities is unclear from the record." 441 F.3d 773, 776 (9th Cir.2006) ("*ARLC*").

[25] *Stop this Insanity, Inc. Employee Leadership Fund v. FEC* misses this when it tells the plaintiff-political committee, which wants to receive unlimited contributions for an independent-spending fund/account, that the plaintiff's connected organization may instead receive them. ____F.3d____, No.13-5008, slip op. at 7-8, 2014 WL 3824225 (D.C. Cir. Aug. 5, 2014) ("*STI*"), *available at* http://www.cadc.uscourts.gov/internet/opinions.nsf.

STI also relies on "disclosure" to support limiting contributions for independent expenditures. *Id.* at 11-12. However, disclosure and limits are separate concepts. *Supra* 9&n.11.

Comm'n, 732 F.3d 535, 538-39 (5th Cir.2013) (same holding for a contribution-source ban, not a limit); *Thalheimer v. City of San Diego,* 706 F.Supp.2d 1065, 1088 (S.D.Cal. 2010) (addressing a source ban after addressing a limit), *aff'd,* 645 F.3d 1109, 1118-21 (9th Cir.2011).

●Second, *VRLC-II* addresses "circumvention of contribution limits[,]" (App.44a-n.20), without acknowledging that government may prevent "circumvention" but not with an otherwise unconstitutional law. *McCutcheon,* 134 S.Ct. at 1452-60. Thus, *VRLC-II* splits with the Tenth Circuit's *RPNM* holding that "there can be no freestanding anti-circumvention interest." 741 F.3d at 1102.

●Third, *VRLC-II* acknowledges that government may limit contributions to organizations making contributions, (App.42a), and may not limit contributions to organizations engaging in only independent expenditures. (App.45a). However, even assuming that VRLC-FIPE and VRLC-PC are one organization[26] and that VRLC-FIPE "is completely enmeshed with VRLC-PC[,]" (App.53a), *VRLC-II* does not recognize that organizations making contributions and independent expenditures, (*see* App.44a-45a), may still receive unlimited contributions *for independent expenditures.*[27]

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[26] *Supra* 6-7.

[27] *VRLC-II* implies they may not. (*See* App.46a-47a) (holding that "separate bank accounts" – which VRLC-FIPE and VRLC-PC have, (App.50a-51a) – do "not prevent *coordinated* expenditures" (emphasis in original) (citation omitted); (App.53a-54a) (finding "VRLC-FIPE is not meaningfully distinct from VRLC-PC" and therefore affirming summary judgment on the contribution limit).

But preventing organizations' *coordinated* expenditures

The organization "merely needs to ensure that its contributions to [political] parties and candidates come from an account set up for that purpose, not one used for independent expenditures." *RPNM,* 741 F.3d at 1097 (citing *EMILY's List v. FEC,* 581 F.3d 1, 12 (D.C. Cir.2009)). VRLC-PC and VRLC-FIPE have separate accounts, (App.50a-51a), just as a victorious *RPNM* plaintiff does. 741 F.3d at 1097. Thus, *VRLC-II* splits with the Tenth Circuit in *RPNM, id.,* which *VRLC-II* overlooks, and the D.C. Circuit in *EMILY's List,* 581 U.S. at 12, which *VRLC-II* rejects. (App.46a).

●Fourth, along that same line, even assuming that VRLC-PC and VRLC-FIPE are one organization, VRLC-FIPE still prevails, because no contribution VRLC-FIPE receives is "used for"[28] anything other than independent expenditures.

Indeed, *VRLC-II* acknowledges "that the record does not show that funds from VRLC-FIPE were used for candidate contributions." (App.51a-n.23); (*cf.* App.51a) (voter guides and fundraising). By this, however, *VRLC-II* means only direct contributions to candidates. (*See* App.51a-n.23). Yet Defendants also did not prove any contribution VRLC-FIPE receives is "used for"[29] any indirect contribution to candidates, *i.e.,* contributions to candidates *via* intermediaries[30] or ex-

– *i.e.,* contributions, *Buckley,* 424 U.S. at 46-47, 78 – is unnecessary for the organizations to receive unlimited contributions for *independent* expenditures. *RPNM,* 741 F.3d at 1097; *EMILY's List v. FEC,* 581 F.3d 1, 12 (D.C. Cir.2009).

[28] *Supra* 6-7.

[29] *Supra* 6-7.

[30] *E.g., Buckley,* 424 U.S. at 23n.24.

penditures coordinated with candidates.[31] By nevertheless holding that Vermont may limit contributions VRLC-FIPE receives, *VRLC-II* splits with the Tenth Circuit in *RPNM,* 741 F.3d at 1097, and the D.C. Circuit in *EMILY's List.* (App.46a) (citing 581 F.3d at 12).

VRLC-II's holding that mere voter guides are coordinated expenditures, (App.52a), splits with the First Circuit in *Clifton v. FEC,* because "coordination" implies "collaboration beyond" merely asking for candidates' positions on issues, which is what VRLC-FIPE did. 114 F.3d 1309, 1311 (1st Cir.1997) (citing *Buckley*, 424 U.S. at 46-47). So asking for and publishing candidates' positions on issues is not coordinated spending.[32]

Nor did Defendants show under *McCutcheon* any "direct exchange of an official act for money," or its appearance, 134 S.Ct. at 1441 (citing *McCormick v. United States,* 500 U.S. 257, 266 (1991)),[33] or that contributions "are directed … to a candidate or officeholder." *Id.* at 1452. Much less did they show any "large"/"massive" contributions to candidates. *Id.* at 1450-53.

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[31] *E.g., id.* at 46-47, 78. Contributions can lead to *quid-pro-quo* corruption or its appearance only when candidates are involved. *McCutcheon,* 134 S.Ct. at 1452.

[32] *Cf. Colorado Republican Fed. Campaign Comm. v. FEC,* 518 U.S. 604, 613-20 (1996) ("*Colorado Republican-I*"), *cited in Clifton,* 114 F.3d at 1311. Otherwise, every voter guide would be coordinated spending, and therefore a contribution. *But see* 11 C.F.R. 109.21(f) (establishing otherwise *post-Clifton*).

[33] They showed no "effort to control the exercise of an officeholder's official duties," *McCutcheon,* 134 S.Ct. at 1450, *i.e.,* no "act akin to bribery." *Id.* at 1466 (Breyer, J., dissenting).

●Fifth, even conceding *arguendo* that VRLC-FIPE and VRLC-PC are one organization, *VRLC-II* errs in how it assesses under constitutional law whether VRLC-FIPE engages in coordinated expenditures: *VRLC-II* asks whether VRLC-FIPE coordinates with other organizations. (*See* App.48a, 52a-53a, 54a). Instead, the question is whether particular speech is coordinated with candidates.[34] Defendants did not show that VRLC-FIPE coordinates particular speech with

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[34] *See id.* at 1454 (plurality op.) ("the absence of prearrangement and coordination *of an expenditure* with the candidate or his agent undermines the value of the expenditure to the candidate" (emphasis added) (brackets and ellipsis omitted) (quoting *Citizens United,* 558 U.S. at 357 (quoting, in turn, *Buckley*, 424 U.S. at 47))); *FEC v. Colorado Republican Fed. Campaign Comm.,* 533 U.S. 431, 437-65 (2001) ("*Colorado Republican-II*") (focusing repeatedly on "expenditures" and "spending"). The fact that organizations coordinate some speech with candidates, *see Colorado Republican-II,* 533 U.S. at 437-65, does not prevent them from engaging in other, independent speech. *See, e.g., McConnell,* 540 U.S. at 215-18. Otherwise, the government would have won in *Colorado Republican-I.* But instead the Court held that "the constitutionally significant fact" in assessing whether particular speech – not the entire political-party organization, but the particular speech – is independent "is the lack of coordination" with candidates. 518 U.S. at 617.

So "coordination" among organizations – *i.e.,* organizations' working together – does not establish VRLC-FIPE makes contributions, or that any contribution VRLC-FIPE receives is used for anything other than independent expenditures.

Otherwise, no corporation, union, or other organization and its political committee could ever work together without "coordinated" expenditures, and therefore contributions, occurring.

candidates, much less that any contribution VRLC-FIPE receives is "used for"[35] coordinated speech with candidates. Considering whether VRLC-FIPE coordinates with other organizations, other than candidate committees or political parties, splits with the Tenth Circuit in *RPNM*[36] and the First Circuit in *Clifton*.[37]

Nor did Defendants show[38] any "approval (or wink or nod)" by any candidate/candidate's committee – *i.e.,* an "arrangement with a candidate[,]"[39] or a "request or suggestion" from the candidate/candidate's committee.[40]

●Sixth, VRLC may "wholly control" its own political committees. *Beaumont,* 539 U.S. at 149. Yet if such control meant VRLC-FIPE may not receive unlimited contributions for independent expenditures, (App.52a), then plaintiff-organizations in Fourth, Seventh, and Ninth Circuit appeals would have lost. But they won.

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[35] *Supra* 6-7.

[36] *See* 741 F.3d at 1096n.4 ("*Citizens United* did not treat corruption as a fact question to be resolved on a case-by-case basis. Instead, the Court considered whether *independent speech* is the type that poses a risk of *quid[-]pro[-]quo* corruption or the appearance thereof. *See Citizens United,* 558 U.S. at 360. The Court determined that speech through independent expenditures does not pose such a risk." (emphasis in original)).

[37] 114 F.3d at 1311 (focusing on particular speech (citing *Buckley,* 424 U.S. at 46-47)).

[38] (App.125a-n.25).

[39] *Colorado Republican-II,* 533 U.S. at 442-43.

[40] *McConnell,* 540 U.S. at 221. Even the FEC requires this. 11 C.F.R. 109.20, 109.21.

NCRL-III, 525 F.3d at 291-95; *Barland-I,* 664 F.3d at 151-55; *Long Beach,* 603 F.3d at 696-99.

Moreover, by looking to the board-appointment process, board membership, committee membership, identical meeting times, and VRLC-FIPE's and VRLC-PC's discussing "important tactical campaign issues" together, (App.52a), *VRLC-II* splits with the Ninth Circuit in *Alaska Right to Life Committee v. Miles,* under which VRLC-FIPE and VRLC-PC are separate even if they "share the same director and the same board of directors" and the "degree of financial separation among the three entities is unclear from the record." 441 F.3d 773, 776 (9th Cir.2006) ("*ARLC*").[41] *VRLC-II* also splits with the Tenth Circuit in *RPNM,* under which "overlapping leadership" among VRLC, VRLC-PC, and VRLC-FIPE does not help Defendants. 741 F.3d at 1102-03.

Like the parallel, low-budget Fourth Circuit plaintiffs in *NCRL-III,* VRLC, VRLC-FIPE, and VRLC-PC "share staff[.]" 525 F.3d at 294n.8; *see also Barland-I,* 664 F.3d at 143 (other parallel plaintiffs). Sharing leadership/staff is not only legal but also common, because it saves money and prevents operating at cross purposes.

VI. Circuits are split on the facial-vagueness test.

The usual facial-vagueness test is whether law is vague in all its applications. *See United States v. Salerno,* 481 U.S. 739, 745 (1987); *Holder v. Humanitarian Law Project,* 561 U.S. 1, 20 (2010) (holding a "vagueness challenge does not turn on whether a law

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[41] *See also* ADVISORY OP. 2010-09 at 1-4 (Club for Growth) (FEC July 22, 2010), *available at* http://saos.nictusa.com/saos/searchao.

applies to a substantial amount of protected expression" (citations omitted)).

However, in facial-vagueness and facial-overbreadth challenges to speech law, a court asks whether the law "reaches a substantial amount of constitutionally protected conduct." *City of Houston v. Hill,* 482 U.S. 451, 458 (1987) (citations omitted); *Kolender v. Lawson,* 461 U.S. 352, 358n.8 (1983) (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 494 (1982)).

Nevertheless, circuits are split on the facial-vagueness test for speech law. *VRLC-II,* and the First and Sixth Circuits, incorrectly apply a vague-in-all-its- applications test. *See, e.g.,* (App.19a); *URI Student Senate v. Town of Narragansett,* 631 F.3d 1, 13 (1st Cir.2011); *Rendon v. Transportation Security Admin.,* 424 F.3d 475, 480 (6th Cir.2005).

However, the First, Seventh, Ninth, Tenth, Eleventh, and Federal Circuits correctly apply a substantial-amount-of-constitutionally-protected-conduct test. *See, e.g., McKee,* 649 F.3d at 51&n.23 (holding that *Humanitarian Law* does not change this); *Barland-II,* 751 F.3d at 835-36; *Madigan,* 697 F.3d at 470-71, 479-80; *California Teachers Ass'n v. State Bd. of Educ.,* 271 F.3d 1141, 1152 (9th Cir.2001); *Jordan v. Pugh,* 425 F.3d 820, 828 (10th Cir.2005); *Wilson v. State Bar of Ga.,* 132 F.3d 1422, 1429 (11th Cir.1998); *Griffin v. Secretary of Veterans Affairs,* 288 F.3d 1309, 1330 (Fed.Cir.2002).

VII. Conclusion

VRLC and VRLC-FIPE ask the Court to grant certiorari.

Respectfully submitted,

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September 25, 2014

Appendix

[***Editing Note:*** *Page numbers from the reported opinion, 758 F.3d 118, are indicated, e.g.,* ***118**. *Manuscript-opinion page numbers are indicated, e.g.,* *****1***. *The manuscript opinion is available at http://www.ca2.uscourts.gov/decisions.html.*]

[Filed: 7/2/2014; Doc.217-1]

***118**1 United States Court of Appeals**
For the Second Circuit

August Term, 2012
No. 12-2904-cv

VERMONT RIGHT TO LIFE COMMITTEE, INC., AND VERMONT RIGHT TO LIFE COMMITTEE – FUND FOR INDEPENDENT POLITICAL EXPENDITURES,

Plaintiffs-Appellants

v.

WILLIAM H. SORRELL, IN HIS OFFICIAL CAPACITY AS VERMONT ATTORNEY GENERAL, DAVID R. FENSTER, ERICA MARTHAGE, LISA WARREN, T.J. DONOVAN, VINCENT ILLUZZI, JAMES HUGHES, DAVID MILLER, JOEL PAGE, WILLIAM PORTER, ALAN FRANKLIN, MARC D. BRIERRE, THOMAS KELLY, TRACY SHRIVER, AND ROBERT SAND, IN THEIR OFFICIAL CAPACITIES AS VERMONT STATE'S ATTORNEYS, AND JAMES C. CONDOS, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE,[*]

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[*] The Clerk of Court is requested to amend the official caption as noted above.

Defendants-Appellees.

Appeal from the United States District Court
for the District of Vermont
No. 09-cv-188 – William K. Sessions, III, *Judge*

ARGUED: MARCH 15, 2013
DECIDED: JULY 2, 2014
***2**

Before: Wesley and Droney, *Circuit Judges,* and Briccetti, *Judge*.

Plaintiffs, a non-profit corporation and a Vermont political committee, appeal from an order of the United States District Court for the District of Vermont (William K. Sessions, III, Judge) granting summary judgment to Defendants, Vermont officials charged with enforcing Vermont elections statutes. The non-profit corporation asserts that statutory provisions requiring identification of the speaker on any "electioneering communication," requiring reporting of certain "mass media activities," and defining and requiring reporting by "political committees" are void for vagueness and violate the First Amendment facially and as applied. The Vermont political committee brings an as-applied challenge against a provision limiting contributions to political committees. We **AFFIRM** the judgment of the district court.

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Life Committee, Inc. and Vermont Right to Life Committee – Fund for Independent Political Expenditures.

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George Jepsen, Attorney General for the State of Connecticut, Hartford, Connecticut; Maura Murphy Osborne, Assistant Attorney General for the State of Connecticut, Hartford, Connecticut, *for amici curiae States of Connecticut, New York, Hawaii, Iowa, Kentucky, Minnesota, Montana, New Mexico, and Washington, in support of William H. Sorrell, et al.*

J. Gerald Hebert, The Campaign Legal Center, Washington, D.C., *for amici curiae The Campaign Legal Center, and Democracy 21, in support of William H. Sorrell, et al.*

DRONEY, *Circuit Judge*:

The two Plaintiffs–Appellants here are Vermont Right to Life Committee, Inc. ("VRLC") and Vermont Right to Life Committee—Fund for Independent Political Expenditures ("VRLC–FIPE"). VRLC is a Vermont non-profit corporation and VRLC–FIPE is a political committee formed under Vermont law. Both advocate the "universal recognition of the sanctity of human life

from conception through natural death." J.A. 657, ECF No. 34. VRLC challenges ***4*** three disclosure provisions of Vermont's elections laws, contending that they are unconstitutionally vague and violate VRLC's freedom of speech. First, VRLC challenges the statute requiring that "electioneering communications" identify their sponsor. Second, VRLC challenges the statute requiring that groups engaged in any "mass media activity" must submit certain reports to the Vermont Secretary of State and relevant candidates. Third, VRLC challenges Vermont's definition of "political committees" and its requirement that such committees submit campaign finance reports. VRLC–FIPE raises an as-applied challenge to Vermont's limit on contributions to political committees, contending that VRLC–FIPE is an independent-expenditure-only group and therefore the limit violates its freedom of speech. The Defendants–Appellees are various Vermont officials responsible for enforcing Vermont's elections laws. The district court (Sessions, *J.*) granted Defendants summary judgment on every claim. We AFFIRM the judgment of the district court.

*122**5 BACKGROUND

I. Parties

VRLC is a Vermont corporation that files federal tax returns as a non-profit entity under 26 U.S.C. § 501(c)(4). VRLC–FIPE was formed by VRLC in 1999 as a registered Vermont political committee under the Vermont campaign finance statutes. VRLC–FIPE contends that it is an "independent expenditure committee" because the resolution of VRLC creating VRLC–FIPE provides that it may not "make monetary

or in-kind contributions to candidates," or "coordinate the content, timing or distribution of its communications or other activities with candidates or their campaigns." J.A. 1125, ECF No. 36. A third entity, Vermont Right to Life Committee, Inc. Political Committee ("VRLC–PC"), also formed by VRLC, engages in campaign activities, including making direct contributions to pro-life political candidates. VRLC–PC is not a party in this action.

****6 II. Statutory Scheme**

This is not our first encounter with challenges to Vermont election laws by VRLC entities. In *Vermont Right to Life Committee, Inc. v. Sorrell* ("*VRLC I*"), 221 F.3d 376, 387, 389 (2d Cir.2000), we held that previous versions of Vermont's electioneering communication and mass media activity provisions were facially unconstitutional. We also rejected a facial challenge by VRLC–FIPE to Vermont's contribution limit for political committees in a separate lawsuit. *Landell v. Sorrell,* 382 F.3d 91, 139–40 (2d Cir.2004), *rev'd in part sub nom. Randall v. Sorrell,* 548 U.S. 230 (2006).

In the instant case, VRLC has challenged the revised versions of the "electioneering communication," "mass media activity," and "political committee" provisions of Vermont's campaign finance laws. VRLC contends that the definitions of particular terms in those laws render the statutes unconstitutional under the First and ****7** Fourteenth Amendments. VRLC–FIPE challenges the contribution limits as applied to it. While this appeal was pending, Vermont repealed and replaced its campaign finance statutes. Act of Jan. 23, 2014, 2014 Vt. Acts & Resolves No. 90, Sec. 2, *available*

*at*http://www.leg.state.vt.us/DOCS/2014/ACTS/ACT090.PDF (codified at Vt. Stat. Ann. tit. 17, § 2901 *et seq*.). In deciding this appeal, this Court must apply the law now in effect. *See Starbucks Corp. v. Wolfe's Borough Coffee, Inc.,* 477 F.3d 765, 766 (2d Cir.2007). The previous law, however, still governs VRLC–FIPE's as-applied challenge to Vermont's contribution limits because the new contribution limits do not take effect until January 1, 2015. Act of Jan. 23, 2014, 2014 Vt. Acts & Resolves No. 90, Sec. 8(a)(2).

We first set out the relevant statutory language.

A. Electioneering Communication

The definition of "electioneering communication" includes:***8***

> any communication that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate, including communications published in any newspaper or periodical or broadcast on radio or television or over the Internet or any public address system; placed on any billboards, outdoor facilities, buttons, or printed material attached to motor vehicles, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars; or contained ***123** in any direct mailing, robotic phone calls, or mass e-mails.

Vt. Stat. Ann. tit. 17, § 2901(6). With few exceptions, electioneering communications must identify

"the name and mailing address of the person, candidate, political committee, or political party that paid for the communication." *Id.* § 2972(a). Electioneering communications "paid for by or on behalf of a political committee or political party" must also identify certain contributors. *Id.* § 2972(c).***9**

B. Mass Media Activity

Mass media activities include television commercials, radio commercials, mass mailings, literature drops, newspaper advertisements, robotic phone calls, and telephone banks, "which include[ ] the name or likeness of a clearly identified candidate for office." *Id.* § 2901(11). A person engaging in certain "mass media activity" must file a report with the Vermont Secretary of State and send a copy to relevant candidates. *Id.* § 2971(a)(1). "The report shall identify the person who made the expenditure; the name of each candidate whose name or likeness was included in the activity; the amount and date of the expenditure; to whom it was paid; and the purpose of the expenditure." *Id.* § 2971(b).

The disclosure requirements concerning electioneering communications and mass media activities apply to all individuals and entities engaging in such activities, not just political action committees.***10**

C. Political Committee

A "political committee" ("PAC") is defined as:

> any formal or informal committee of two or more individuals or a corporation, labor organization, public

> interest group, or other entity, not including a political party, which accepts contributions of $1,000.00 or more and makes expenditures of $1,000.00 or more in any two-year general election cycle 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, and includes an independent expenditure-only political committee.

Id. § 2901(13). The definition of "political committee" is based in part on the definitions of "contribution" and "expenditure." *Id.* A "contribution" is "a payment, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates *****11*** in any election." *Id.* § 2901(4).[1] As is relevant here, the term "election" refers only to efforts to elect officials within the state of Vermont, *id.* § 2901(5), and "public question" refers to "an issue that is before the voters for a binding decision," *id.* § 2901(15). An "expenditure" is "a payment, disbursement, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid, for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates." *Id.* § 2901(7).

Prior to the district court's decision below, a Vermont Superior Court considered a vagueness and

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[1] The definition then enumerates a number of exceptions such as volunteer services and personal loans from lending institutions. Vt. Stat. Ann. tit. 17, § 2901(4).

overbreadth challenge to the phrase "influencing an election" in the definition of "political committee" in the former version of Vermont's campaign finance ***124 **12** statutes.[2] *Vermont v. Green Mountain Future,* Civ. Div. No. 758–10–10 Wncv, slip op. at 12 (Wash.Super. Ct. June 28, 2011), *available at* http://www.vermontjudiciary.org/20112015Tcdecisioncvl/2011–6–30–1.pdf. The Superior Court interpreted this phrase as "the equivalent of 'supporting or opposing one or more candidates.' " *Id.* Under this interpretation, the phrase "influencing an election" would reach no farther than the phrase "supporting or opposing one or more candidates." After the district court granted summary judgment in this case, however, the Vermont Supreme Court interpreted the "influencing" language in a manner slightly different than the Vermont Superior Court. *Vermont v. Green Mountain Future,* 86 A.3d 981 (Vt.2013) ("*Green Mountain Future* "). Although the Vermont Supreme Court agreed with the Superior Court that a narrowing construction was required to address the phrase's potential vagueness, it determined that the Superior Court had overly ****13** narrowed the statute. *Id.* at 996–98. The Vermont Supreme Court found that the phrase "influencing an election" referred only to the "class of advocacy" captured by the phrase "supporting or opposing one or more candidates," *id.* at 997, but concluded that the phrase covered a broader range of *methods* than the "supporting or opposing one or more candidates" language. *Id.* at 997–98. The Vermont Su-

[2] The decision also addressed the language "affecting the outcome of an election," which is not contained in the new law and so does not need to be considered here. *See* Vt. Stat. Ann. tit. 17, § 2801(4) (repealed 2014).

preme Court also found the definition of "electioneering communication" not to be overbroad or vague. *Id.* at 995.

A Vermont PAC satisfying these definitions is subject to numerous requirements under Vermont law. For example, a PAC must make all expenditures from a single checking account, file campaign finance reports with the Vermont Secretary of State identifying each person who contributed more than $100 to the PAC, and list all PAC expenditures in certain circumstances. Vt. Stat. Ann. tit. 17, §§ 2922(b), 2963, 2964(b)(1). These reports must be filed ****14*** three to four times during an election year. *Id.* § 2964(b)(1), (c). [3] Additionally, PACs "shall not accept contributions totaling more than $2,000.00 from a single source, political committee or political party in any two-year general election cycle." Vt. Stat. Ann. tit. 17, § 2805(a).[4]

III. District Court Proceedings

The district court began its analysis of the parties' cross motions for summary judgment by considering

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[3] Plaintiffs also note that certain federal requirements apply to groups qualifying as a "political committee" as defined under federal law. *See* Appellants' Br. 44 (citing 2 U.S.C. § 441b). Plaintiffs have not challenged the federal requirements in this action.

[4] The new contribution limitations take effect on January 1, 2015, on which date a "political committee shall not accept contributions totaling more than: (A) $4,000.00 from a single source; (B) $4,000.00 from a political committee; or (C) $4,000.00 from a political party." Vt. Stat. Ann. tit. 17, § 2941(a)(4).

VRLC's vagueness challenges to the Vermont statutes. Beginning with the definitions of "political committee," "contribution," and "expenditure," the district court concluded that the definitions were not vague because the phrase "influencing an election" was no broader than the phrase ****15*** "supporting or opposing one or more candidates." *Vt. Right to Life Comm., Inc. v. Sorrell,* 875 F.Supp.2d 376, 387–90 (D.Vt.2012). In so ruling, the district court noted that the U.S. Supreme Court had rejected a vagueness ***125** challenge to similar statutory language. *Id.* at 389 (citing *McConnell v. Fed. Election Comm'n,* 540 U.S. 93, 140 n. 64 (2003), *overruled in part by Citizens United v. Fed. Election Comm'n,* 558 U.S. 310, 365–66 (2010)). The district court rejected VRLC's vagueness challenge to the terms "promotes or supports" and "attacks or opposes" in the definition of electioneering communications on similar grounds. *Id.* at 390. The district court further rejected the vagueness challenge to the phrase "on whose behalf" because its use elsewhere in related Vermont law made its application "clearly defined." *Id.* at 390–91.

The district court then considered VRLC's overbreadth claims. Drawing on *Buckley v. Valeo,* 424 U.S. 1, 79 (1976) (per curiam), and ****16*** subsequent Supreme Court precedent,[5] the district `court concluded

[5] In *Buckley,* the Supreme Court responded to vagueness and overbreadth concerns by construing a federal elections statute to reach only "organizations that are under the control of a candidate *or the major purpose of which is the ... election of a candidate,*" and to reach only express advocacy, as opposed to issue advocacy. 424 U.S. 1, 79 (1976) (per curiam) (emphasis added). Subsequent Supreme Court decisions clarified that when *Buckley* construed the federal stat-

that the Vermont statutes' lack of explicit reference to a "major purpose" or "express advocacy" test did not make the laws unconstitutionally overbroad. *Vt. Right to Life Comm., Inc.,* 875 F.Supp.2d at 395–97.

The district court also concluded that the First Amendment challenge to the PAC definition should be reviewed under "exacting scrutiny," because designation as a "political committee" triggered a disclosure regime. *Id.* at 392–93. Applying this standard of review, the district court concluded that the statute did not impose *****17*** impermissible burdens or sweep in a substantial amount of protected speech. *Id.* at 397. Applying exacting scrutiny to the electioneering communication and mass media activity statutes, the district court reached the same conclusion, finding them appropriately tailored to Vermont's important interests. *Id.* at 398–400.

The district court then addressed Vermont's limits on contributions to PACs. VRLC–FIPE contended that the law was unconstitutional as applied to it because VRLC–FIPE did not make contributions to any political campaigns and makes its expenditures independent

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ute to reach express advocacy but exclude issue advocacy, it did not hold "that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line." *McConnell v. Fed. Election Comm'n,* 540 U.S. 93, 192 (2003), *overruled in part by Citizens United v. Fed. Election Comm'n,* 558 U.S. 310, 365–66 (2010). In *Citizens United v. Federal Election Commission,* the Supreme Court clarified that disclosure regimes could sweep more broadly than speech that is the functional equivalent of express advocacy. 558 U.S. at 368–69.

of any candidate or political campaign.[6] The district ****18*** court ***126** agreed that the State could not limit contributions to a group that did not coordinate with or make contributions to candidates—that is, a group that only made independent expenditures. The district court noted that "because independent expenditures cannot corrupt, governments have no valid anti-corruption interest in limiting contributions to independent-expenditure-only groups." *Id.* at 403. By contrast, groups that made contributions to or coordinated with candidates could be subjected to contribution limits. *Id.* at 402 (citing *Landell,* 382 F.3d at 140–41). The district court went on to reject arguments that applying limits to an independent-expenditure-only group would be justified by Vermont's "unique record of corruption" or by an informational interest in channeling funds into more transparent outlets.[7] *Id.* at 403–04.

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[6] VRLC–FIPE was barred from launching a facial challenge to the statute because of a judgment against it in previous litigation, *Vt. Right to Life Comm., Inc. v. Sorrell,* 875 F.Supp.2d 376, 383 n. 5 (D.Vt.2012), and VRLC did not join in VRLC–FIPE's as-applied challenge. The district court also determined that the challenge survived *Randall v. Sorrell,* 548 U.S. 230 (2006), because the "Supreme Court did not examine that portion of the law when it struck down other Vermont contribution limits." *Id.* Neither party has questioned this conclusion, but we note that the Supreme Court "[did] not believe it possible to sever some of the Act's [unconstitutional] contribution limit provisions from others that might remain fully operative." *Randall,* 548 U.S. at 262.

[7] In light of *McCutcheon v. Federal Election Commission,* 134 S.Ct. 1434 (2014), and "the developing legal framework emerging from other courts," Vermont has withdrawn its

***19** The district court concluded, however, that VRLC–FIPE could not benefit from any protections accorded to independent-expenditure-only groups because of its close connection to VRLC–PC, an arm of VRLC that "contributes funds to candidates." *Id.* at 404–410. Based on the undisputed facts before it, the district court concluded "that the structural melding between [VRLC–FIPE] and [VRLC–PC] leaves no significant functional divide between them for the purposes of campaign finance law." *Id.* at 408. The district court acknowledged that "it is unclear whether even a complete overlap in staff and symmetry in spending permit extending contribution limits that undisputedly apply to a PAC that makes candidate contributions to one that does independent expenditures." *Id.* at 409 (citing *Emily's List v. Fed. Election Comm'n,* 581 F.3d 1, 12 (D.C.Cir.2009)). Nevertheless, the unchallenged evidence indicating that VRLC–FIPE and VRLC–PC had a "fluidity of funds" made it ***20** impossible to ensure "that contributions to [VRLC–FIPE], intended for independent expenditures, are truly aimed at that purpose when spent." *Id.* at 409–10 (internal quotation marks omitted). As a result, the district court rejected VRLC–FIPE's as-applied challenge to Vermont's limitations on contributions.

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argument that limits on contributions to independent-expenditure groups are constitutionally permitted based on a state interest in transparency. Appellees' Notice of Supplemental Authority Pursuant to Fed. R.App. P. 28(j) 2, April 14, 2014, ECF No. 199.

LEGAL STANDARDS

I. Summary Judgment

This Court reviews a summary judgment decision *de novo* and applies "the same standards that govern the district court's consideration of the motion." *Kaytor v. Elec. Boat Corp.,* 609 F.3d 537, 546 (2d Cir.2010).

II. Scope of Review

A. Vagueness

We first must clarify the scope of the legal challenge before us. VRLC describes its suit as both a facial and an as-applied challenge and argues that the "mass media," "electioneering communication," and *****21*** "political committee" provisions are unconstitutionally vague facially and as applied. However, it is not the label that matters in deciding what standard applies. *Doe v. Reed,* 561 U.S. 186, 194 (2010). The inquiry is whether "plaintiffs' claim and the relief that would follow ... reach beyond the ***127** particular circumstances of these plaintiffs." *Id.*

VRLC has done little, if anything, to present its as-applied vagueness challenge. *See Vt. Right to Life Comm., Inc.,* 875 F.Supp.2d at 387 (noting that VRLC "offer[ed] minimal explanation of how the law is unconstitutional as it pertains to the specific communications it either has made or hopes to publish"). The only semblance of an as-applied challenge on appeal is VRLC's claim that it wants to publish speech that it fears "promotes, supports, attacks, or opposes" a clearly identified candidate. Appellants' Br. 24. "But

such groups constitute a broad range of entities.... The claim therefore seems 'facial' in that it is not limited to plaintiff's particular ***22** case, but challenges application of the law more broadly." *Iowa Right to Life Comm., Inc. v. Tooker,* 717 F.3d 576, 588 (8th Cir.2013) (citing *Reed,* 561 U.S. at 194), *cert. denied,* 134 S.Ct. 1787 (2014) (internal quotation marks omitted). Moreover, VRLC describes its "as-applied and facial vagueness challenges" as "largely parallel," Appellants' Br. 32, and its request that the provisions be declared unconstitutional and enjoined from enforcement certainly reaches beyond VRLC's particular circumstances.

We recognize the preference for as-applied challenges, *United States v. Farhane,* 634 F.3d 127, 138 n. 9 (2d Cir.2011), but where plaintiffs asserting both facial and as-applied challenges have failed to "[lay] the foundation for an as-applied challenge," courts have proceeded to address the facial challenge, *Ctr. for Individual Freedom v. Madigan,* 697 F.3d 464, 475 (7th Cir.2012); *accord Human Life of Wash. Inc. v. Brumsickle,* 624 F.3d 990, 1021–22 (9th Cir.2010) (applying facial standard where the plaintiff did "not provide any ***23** evidence to support an as-applied challenge" or "distinguish between its facial and as-applied claims in its briefs").

VRLC has not presented any legal arguments or facts specific to an as-applied vagueness challenge. We will therefore analyze these claims under the standards governing facial challenges.

B. First Amendment

Plaintiffs also argue that Vermont's political com-

mittee, mass media, and electioneering communication definitions and the disclosure regime violate the First Amendment right to free speech "as applied and facially." In support of the claim that these provisions are "facially unconstitutional," VRLC relies on cases dealing with overbreadth. Appellants' Br. 101–03 (citing *United States v. Williams,* 553 U.S. 285, 292–93 (2008); *Broadrick v. Oklahoma,* 413 U.S. 601, 615 (1973)); *see also Members of City Council of L.A. v. Taxpayers for Vincent,* 466 U.S. 789, 796 (1984) ("There are two quite different ways in which a statute may be considered invalid 'on its *****24*** face'—either because it is unconstitutional in every conceivable application, or because it seeks to prohibit such a broad range of protected conduct that it is unconstitutionally 'overbroad.' ").[8]

***128** VRLC's facial and as-applied challenges are substantively identical. VRLC contends that Vermont's PAC disclosure requirements are overbroad—and therefore facially unconstitutional—because, according to VRLC, Vermont may only impose a disclosure regime on an organization if the organization's "major purpose" is to advance a candidacy. VRLC additionally argues that Vermont's "electioneering communication"

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[8] "A law is unconstitutionally overbroad if it punishes a substantial amount of protected free speech, judged in relation to its plainly legitimate sweep." *United States v. Farhane,* 634 F.3d 127, 136 (2d Cir.2011) (internal quotation marks and alteration omitted). An overbroad law can never be validly enforced unless a limiting construction is available. *Id.* As a result, a party may challenge a law as being overbroad even if a narrower law might have validly prohibited her conduct.

and "mass media" disclosure and identification requirements are overbroad because, according to VRLC, Vermont cannot impose a disclosure or identification requirement on speech unless that speech is "express ***25** advocacy" or broadcast speech that is run shortly before an election and targeted at the relevant electorate. VRLC simultaneously asserts that these provisions are unconstitutional as applied to it because the organization does not have the major purpose to advance a candidacy and does not engage in express advocacy.

Because the merits of VRLC's arguments do not depend on whether they have been raised as part of an as-applied or facial overbreadth challenge, we consider both claims together. VRLC–FIPE has separately brought an as-applied challenge against Vermont's contribution limits, which will be addressed separately.

***26 "ELECTIONEERING COMMUNICATIONS" AND "MASS MEDIA ACTIVITIES"

VRLC contends that the Vermont statutory disclosure provisions concerning electioneering communications and mass media activities (i) violate the Fourteenth Amendment's due process guarantee due to vagueness, and (ii) violate the First Amendment's free speech guarantee. Like the district court, we conclude that the provisions are constitutional.

I. Vagueness

The due process clauses of the Fifth and Fourteenth Amendments forbid enforcement of a statute if "the statute ... fails to provide a person of ordinary intelli-

gence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Holder v. Humanitarian Law Project,* 561 U.S. 1, 18 (2010) (internal quotation marks omitted). Although this standard is applied more stringently where the rights of free speech or free association are implicated, "perfect clarity and *****27*** precise guidance have never been required even of regulations that restrict expressive activity." *Id.* at 19 (internal quotation marks omitted). A facial vagueness challenge will succeed only when the challenged law can never be validly applied. *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489,495 (1982).

A. "Promotes or Supports ... or Attacks or Opposes"

The "electioneering communication" definition, which triggers disclosure requirements, uses the words "promotes," "supports," "attacks," and "opposes." Vt. Stat. Ann. tit. 17, § 2901(6). VRLC contends that these terms are impermissibly vague. We disagree; this language is sufficiently precise.

In *McConnell,* the Supreme Court explained that these terms are not unconstitutionally vague in a similar context, because they "clearly set forth the confines within which potential party speakers must act in order to avoid triggering the provision." 540 U.S. at 170 n. 64.*****28***

The *McConnell* Court included an additional basis for its conclusion, the nature of the speaker being regulated: "This is particularly the case here, since actions

taken ***129** by political parties are presumed to be in connection with election campaigns." *Id.* A communication that refers to a "clearly identified candidate for office" is also presumably made in connection with election campaigns. Thus, *McConnell* applies with equal force here: the Vermont definition of "electioneering communication" requires a reference to a clearly identified candidate, and a communication referring to a clearly identified candidate is presumed to be in connection with an election campaign.[9] Also, the language of *McConnell* indicates that the result did not depend on the presumption. Indeed, the First Circuit has applied *McConnell* to hold that use of the terms "promote," "support," and "oppose" was not unconstitutionally vague without apparent reference to the *****29*** additional reasons of *McConnell. Nat'l Org. for Marriage v. McKee,* 649 F.3d 34, 63–64 (1st Cir.2011).

VRLC points to a concurring opinion by Justice Scalia in which he described the issue of whether an advertisement "promotes, attacks, supports, or opposes the named candidate," as "inherently vague," asking, "Does attacking the king's position attack the king?" *Fed. Election Comm'n v. Wisc. Right to Life, Inc.,* 551 U.S. 449, 493 (2007) (Scalia, J., concurring). But the controlling opinion rejected Justice Scalia's concerns. *Id.* at 474 n. 7. Nor does the electioneering communication definition here include the term "influence," which other courts have found requires a limiting construction to avoid impermissible vagueness. *See, e.g., Ctr. for Individual Freedom v. Carmouche,* 449 F.3d 655, 664 (5th Cir.2006), *cert. denied,* 549 U.S. 1112 (2007);

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[9] This does not apply to the "support" or "oppose" language in the PAC definition, discussed below.

N.C. Right to Life, Inc. v. Bartlett, 168 F.3d 705, 712–13 (4th Cir.1999), *cert. denied,* 528 U.S. 1153 (2000).***30***

B. "On Behalf Of"

Electioneering communications "paid for by or *on behalf* of a political committee or political party" must also identify certain contributors. Vt. Stat. Ann. tit. 17, § 2972(c) (emphasis added). VRLC urges that the phrase "on behalf of" is unconstitutionally vague. It is not.

Vermont's previous campaign finance law—and the law considered by the district court below—required that electioneering communications identify "the name of the candidate, party, or political committee by or on whose behalf the same is published or broadcast." Vt. Stat. Ann. tit. 17, § 2892 (repealed 2014). The district court rejected Plaintiffs' vagueness challenge to the phrase "on whose behalf" in the previous electioneering communication reporting provision, concluding that the phrase "contemplates an agreement between the sponsor and the beneficiary to run the communication." *Vt. Right to Life Comm., Inc.,* 875 F.Supp.2d at 390. ***31*** The current law now requires that "an electioneering communication *paid for* by or on behalf of a political committee or political party shall contain the name of" certain contributors. Vt. Stat. Ann. tit. 17, § 2972(c) (emphasis added). "On behalf of" now clearly modifies "paid for." The most natural reading of "on behalf of" in the context of this provision, then, is the passing of money through a third party such that the advocacy is "paid for" by a third party who was hired by the PAC to place the electioneering communication.

See Farhane, 634 F.3d at 142 ("[W]e do not look at statutory language in isolation ***130** to determine if it provides adequate notice of conduct proscribed or permitted. Rather, we consider language in context."). Such ads would still be paid for "on behalf of" the PAC and regulated by Vermont's electioneering communication identification requirements. So construed, the provision is clear and not impermissibly vague.*****32***

C. "Expenditure"

VRLC contends that the definition of the statutory term "expenditure" is unconstitutionally vague. "Expenditure" is used in the mass media activity statute.[10] As noted above, "expenditure" is defined as "a payment, disbursement, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid, for the purpose of *influencing an election,* advocating a position on a public question, or *supporting or opposing* one or more candidates." Vt. Stat. Ann. tit. 17, § 2901(7) (emphases added). VRLC challenges both italicized phrases. As discussed above, the Supreme Court has held that "supporting" and "opposing" are not unconstitutionally vague. *McConnell,* 540 U.S. at 170 n. 64 (concluding that the words promote, support, attack, and oppose are not unconstitutionally vague).

*****33*** As also mentioned above, the Vermont Supreme Court has supplied a narrowing interpretation

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[10] VRLC also asserts that the PAC definition is vague where it too uses the term "expenditure." This challenge will be dealt with below when addressing the constitutional challenges to Vermont's PAC definition.

to the phrase "influencing an election" in the "political committee" definition. As that court explained, the "influencing" phrase "refer[s] only to [the] class of advocacy" covered by the phrase "supporting or opposing": "they both refer to advocacy to vote in a particular way in an election." *Green Mountain Future,* 86 A.3d at 997. The term "influencing" simply embraces a broader set of methods (*i.e.,* not only where the identification of the candidate is explicit, but also where absent such reference, it is nonetheless clear to the objective observer that the purpose of an advertisement is to persuade voters to vote yes or no on a candidate). *Id.* at 997–98. The Vermont Supreme Court explained that:

> The purpose of the methods used by [Green Mountain Future] in this case was very clear, partially because [Green Mountain Future] identified the candidate by name and included his pictures in the advertisements. If in the next case, ****34*** however, an organization ran advertisements in the same way and in the same timeframe with respect to an election without mentioning the candidate's name, and without including a picture of the candidate, we would be reluctant to hold that the statute as narrowed by the trial court could cover this method-even if an objective observer would find the purpose to be the same as when the candidate name and picture was used. As in this case, the objective observer should look to multiple factors: for example, the timing of the advertisement, the images used in the advertisement, the tone of the advertisement, the audience to which the advertisement is targeted, and the prominence of the issue(s) discussed in the advertisement in the campaign. But where the objective observer concludes

> that the purpose of an advertisement is to influence voters to vote yes or no on a candidate, the "influencing an election" language should apply. Other than in this circumstance, we agree with the trial court's narrowing construction.

Id. at 998 (footnote omitted). In other words, if an organization ran an advertisement ***131** "for the objective purpose of persuading someone" to vote for or against a candidate, but the advertisement *****35*** did not identify a candidate in that election, it could still fall within Vermont's definition of "influencing an election." *Id.* at 998.

The expansion of the "influencing" language in the Vermont Supreme Court's *Green Mountain Future* decision has no impact here. A communication only qualifies as a mass media activity if it "includes the name or likeness of a *clearly identified candidate*." Vt. Stat. Ann. tit. 17, § 2901(11) (emphasis added). If a communication does not qualify as a mass media activity, it does not trigger the disclosure statute in which the term "expenditure" is used. *See* Vt. Stat. Ann. tit. 17, § 2971(a)(1) ("[A] person who makes *expenditures* for any one *mass media activity* totaling $500.00 or more ... within 45 days before a primary, general, county, or local election shall, for each activity, file a mass media report." (emphases added)). As a result, the "influencing" language in the expenditure definition has no force in this context. Because the "supporting or opposing" language in the statutory definition of "expenditure" is not vague *****36*** and the "influencing" language in its definition has no relevance to the mass media activity statute, we reject VRLC's vagueness challenge to the term "expenditure" as it is used in the

mass media activity statute.

II. First Amendment

A. Express Advocacy

VRLC contends that Vermont cannot impose a disclosure or identification requirement on speech unless that speech is "express advocacy" or broadcast speech that is run shortly before an election and targeted at the relevant electorate. Because Vermont's definitions of regulated "electioneering communications" and "mass media activities" apply to speech that falls outside of these categories, VRLC contends that they violate the First Amendment. Although VRLC's position finds some support in pre-*Citizens United* decisions, it cannot be squared with *Citizens United*.

***37** In *Buckley,* the Supreme Court responded to vagueness and overbreadth challenges by adopting a narrow construction of the term "political committee" in the Federal Election Campaign Act, which required "political committees" and other persons to disclose their "expenditures." 424 U.S. at 80. Specifically, the Supreme Court interpreted "political committee" to "only encompass organizations that are under the control of a candidate or the *major purpose* of which is the nomination or election of a candidate" and reasoned that the "[e]xpenditures of candidates and of 'political committees' so construed can be assumed to fall within the core area sought to be addressed by Congress." *Id.* at 79 (emphasis added). The Supreme Court further explained that "when the maker of the expenditure is ... an individual other than a candidate or a group other than a 'political committee,' " the term

"expenditure" should "reach only funds used for communications that *expressly advocate* *****38*** the election or defeat of a clearly identified candidate." *Id.* at 79–80 (emphasis added).[11]

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[11] In *VRLC I,* this Court relied on *Buckley's* distinction between express and issue advocacy to hold that a previous version of the Vermont disclosure statute was "unconstitutional on its face. The section apparently requires reporting of expenditures on radio or television advertisements devoted to pure issue advocacy in violation of the clear command of *Buckley*." 221 F.3d at 389 (footnote omitted). As described in the text, *McConnell* did not read *Buckley* as suggesting "that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line." 540 U.S. at 192. As a result, it is unclear whether *VRLC I's* holding that "pure issue advocacy" cannot be the subject of a valid governmental regulation remains viable. *See Minn. Citizens Concerned for Life, Inc. v. Kelley,* 427 F.3d 1106, 1111 (8th Cir.2005) (noting that challenger's position found support in *VRLC I,* but rejecting challenger's position because the "court must follow the latest pronouncement of the Supreme Court," which had become *McConnell*). In any event, as described in the text, the *Citizens United* Court clarified that disclosure requirements can sweep more broadly than "express advocacy." Even if it were not affected by *Citizens United, VRLC I* does not apply here, as Vermont's more recent statute does not reach *pure* issue advocacy. Speech does not qualify as an "electioneering communication" unless it refers to a "clearly identified candidate," and "promotes," "supports," "attacks," or "opposes" a candidate. Vt. Stat. Ann. tit. 17, § 2901(6). And the mass media activity reporting requirement is not triggered absent an "expenditure" (which requires a purpose of "supporting or opposing one or more candidates") and "mass media activity" (which requires a "clearly identified candidate"). *Id.* § 2971(a)(1), (b).

132** Although *Buckley's* narrowing construction arose in the context of constitutional vagueness and overbreadth challenges, subsequent Supreme Court decisions suggest that the limits the Court imposed on the statute were not coextensive with *****39 constitutional limits. *See McConnell,* 540 U.S. at 191–92 ("[A] plain reading of *Buckley* makes clear that the express advocacy limitation ... was the product of statutory interpretation rather than a constitutional command."). For instance, the *McConnell* Court concluded, without indicating that the First Amendment would prohibit further disclosure requirements, that the government could regulate broadcast speech clearly identifying a candidate that is aired in a specific time period and targeted at the relevant electorate. *Id.* at 194. The Supreme Court explained that it was not drawing "a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech." *Id.* at 192–93.

Citizens United removed any lingering uncertainty concerning the reach of constitutional limitations in this context. In *Citizens United,* the Supreme Court expressly rejected the "contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy," because disclosure is a *****40*** less restrictive strategy for deterring corruption and informing the electorate. 558 U.S. at 369; *accord Buckley,* 424 U.S. at 66–68.[12] The Court

[12] The Seventh Circuit has recently interpreted this portion of *Citizens United* as confined to its "specific and narrow context." *Wis. Right to Life, Inc. v. Barland,* No. 12–2915, 2014 WL 1929619, at *29–33 (7th Cir. May 14, 2014). We disagree. There is no indication that the *Citizens*

explained that even if Citizens United's "ads only pertain to a commercial transaction," the government could constitutionally require identification and disclosure with respect to the advertisements because "the public has an interest in knowing who is speaking about a candidate shortly before an election." *Id.*

As a result, the Vermont statutes' extension beyond express advocacy does not render them unconstitutional.

B. Standard of Review

Although the Vermont statutes' reach beyond express advocacy does not render them unconstitutional, the statutes remain ***133 *****41*** subject to "exacting scrutiny," which "requires a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Id.* at 366–67 (internal quotation marks omitted). A governmental interest in "providing the electorate with information about the sources of election-related spending" may justify disclosure requirements. *Id.* at 367 (internal quotation marks and brackets omitted). Applying exacting scrutiny, the Supreme Court has upheld a federal statutory provision that required "televised electioneering communications funded by anyone other than a candidate"

United ruling depended on the type of disclosure requirements it upheld, and the Court specifically referred to three other instances where disclosure requirements were upheld. *Citizens United,* 558 U.S. at 369 (citing *Buckley,* 424 U.S. at 75–76; *McConnell,* 540 U.S. at 321; and *United States v. Harriss,* 347 U.S. 612, 625 (1954)).

to include an identification statement stating "that '_____ is responsible for the content of this advertising.' " *Id.* at 366–71.[13]

***42** Review of the monetary threshold for requiring disclosure of a contribution or expenditure is highly deferential. In *Buckley,* the Supreme Court suggested that a disclosure threshold will be upheld unless it is "wholly without rationality," specifically stating that it would not require the legislature "to establish that it has chosen the highest reasonable threshold." 424 U.S. at 83.

C. Application

The electioneering communication and mass media activity statutes are within the scope of regulation permitted under *Citizens United* . An electioneering communication, which under section 2972(2) must identify the speaker, includes any "communication that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate...." Vt. Stat. Ann. tit. 17, § 2901(6). This definition by its terms only reaches ***43**

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[13] In a decision that predated *Citizens United,* the Second Circuit stated that "[m]andatory disclosure requirements may represent a greater intrusion into the exercise of First Amendment rights of freedom of speech and association than do reporting provisions...." *VRLC I,* 221 F.3d at 387 (citing *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 355 (1995)). This view now appears inconsistent with *Citizens United.*

communications that take a position on an actual candidacy. Also, although the provision is not explicitly time limited, an individual can only be a "candidate" within the meaning of the statute once she has taken an "affirmative action" to become a candidate for office by accepting $500 of contributions, making $500 of expenditures, filing a petition for nomination, being nominated, or announcing her candidacy. *Id.* § 2901(1). Thus, the statute will only apply during a campaign for public office. As a result, the electioneering communication reporting requirements have a substantial relation to the public's "interest in knowing who is speaking about a candidate shortly before an election." *Citizen's United,* 558 U.S. at 369; *see also* Act of Jan. 23, 2014, 2014 Vt. Acts & Resolves No. 90, Sec. 1(15) ("Increasing identification information in electioneering communications will enable the electorate to evaluate immediately the speaker's message and will bolster the sufficiently important *****44*** interest in permitting Vermonters to learn the sources of significant influence in our State's elections.").

Admittedly, the mass media reporting requirements, because they do not directly inform the public about the identity of the speaker, are less tailored to the asserted public interest in information about the sources of election-related spending than an identification requirement. But notwithstanding this less direct nexus, the requirement is still substantially related to ***134** a permissible informational interest. The mass media provision is explicitly limited in time and scope: (a) a mass media activity will only trigger the reporting requirement if it occurs "within 45 days before a primary, general, county, or local election," Vt. Stat. Ann. tit. 17, § 2971(a)(1); (b) a communication only qualifies

as a mass media activity if it includes "the name or likeness of a clearly identified candidate for office," *id.* § 2901(11); and (c) a report is only required when "expenditures" (which, under section 2901(7), must have the *****45*** "purpose of influencing an election, advocating a position on a public question, or supporting or opposing a candidate") "for any one mass media activity total[ ] $500.00 or more," *id.* § 2971(a)(1).

These targeted mass media disclosure requirements are substantially related to a sufficiently important governmental interest. By alerting candidates whose image or name is used, the reporting requirement will identify the source of election-related information and encourage candidate response. And by requiring that the speaker notify the candidate whose image or name was used, the provision brings so-called "whisper campaigns" into the sunlight[14] and also helps ensure that candidates are aware of and have an opportunity to take a position on the arguments being made *****46*** in their name. This public benefit is in line with the informational interest approved by *Citizens United.* The requirement that such reports be filed within

[14] As an example of so-called "whisper campaigns," there have been (still unproven) accusations that during the Republican presidential primary race in 2000, groups supporting a candidate arranged for mass phone calls that strongly suggested that John McCain had an illegitimate child. *See* Richard Gooding, *The Trashing of John McCain,* VANITY FAIR, Nov. 2004, *available at* http://www.vanityfair.com/politics/features/2004/11/mccain200411. If such conduct occurred in Vermont, the group that arranged the phone calls would be required to report it to the candidate being attacked. This would allow the candidate to more quickly and effectively respond.

twenty-four hours of the communication is also directly related to the State's informational interest given the need to rapidly address election-related speech in the final weeks of a campaign.

As a result, the Vermont statutes governing electioneering communications and mass media activities survive exacting scrutiny.

****47** "POLITICAL COMMITTEE" DEFINITION AND DISCLOSURE REQUIREMENTS

VRLC contends that the Vermont "political committee" definition (i) violates the Fourteenth Amendment's due process guarantee because of vagueness, and (ii) violates the First Amendment's free speech guarantee. Like the district court, we conclude that the statute is constitutional.

I. Vagueness

As noted above, VRLC asserts that the phrases "supporting or opposing" and "influencing an election" are unconstitutionally vague as used in the PAC definition. These phrases are either directly incorporated into the definition of "political committee" or are indirectly incorporated, through the definitions of "contribution" or "expenditure." As explained above, the phrase "supporting or opposing" is not unconstitutionally vague. *See McConnell,* 540 U.S. at 170 n. 64.

****48** Also explained above, a Vermont Superior Court has interpreted the phrase "influencing an election" such that it is co-extensive with the "supporting or opposing" language. ***135** *Green Moun-*

tain Future, Civ. Div. No. 758–10–10 Wncv, slip op. at 12 (Wash.Super. Ct. June 28, 2011). We acknowledge that the narrowing construction provided by the Vermont Superior Court and relied on by Judge Sessions differs from the narrowing construction more recently provided by the Vermont Supreme Court. This difference, however, does not change the result. The Vermont Supreme Court merely broadened the Superior Court's interpretation in the sense that it read "influence an election" to also embrace communications that do not identify a specific candidate. *Green Mountain Future,* 86 A.3d at 997–98. The Vermont Supreme Court explained that the "influencing" phrase still "refer[s] only to [the] class of advocacy" covered by the phrase "supporting or opposing." *Id.* at 997.

*****49*** The fact that "influencing an election" covers communications that do not necessarily identify a specific candidate does not make the phrase unconstitutionally vague. In *McConnell,* 540 U.S at 184, the U.S. Supreme Court upheld against a vagueness challenge a definition of "Federal election activity" that included:

> a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate).

2 U.S.C. § 431(20)(A)(iii). Despite the statute's explicit application beyond express advocacy, the Supreme Court held that it was not unconstitutionally vague.

McConnell, 540 U.S. at 170 n. 64. Vermont's use of "influencing" only describes speech that the federal statute captures with the terms "promotes," "supports," "attacks," and "opposes." Because the phrase "influencing" in the *****50*** Vermont statute is coextensive with the federal statute, Vermont's statute is also not unconstitutionally vague.

II. First Amendment

A. "Major Purpose"

As noted above, VRLC contends that Vermont's PAC disclosure requirements violate the First Amendment, arguing that Vermont may only impose a disclosure regime on an organization if "the major purpose" of the organization is to advance a candidacy.

Prior to *Citizens United,* the Fourth Circuit held that an organization could only be subjected to a political committee regulatory regime if the organization met "the major purpose" test. *N.C. Right to Life, Inc. v. Leake,* 525 F.3d 274, 288–89, 295 (4th Cir.2008) ("*NCRL III*"). However, since *Citizens United* and its approval of extensive disclosure regimes, two Circuits have concluded that the major purpose test is not a constitutional requirement. *See Ctr. for Individual Freedom v. Madigan,* 697 F.3d 464, 490 (7th Cir.2012) *****51*** ("[T]he line-drawing concerns that led the [Supreme] Court to adopt the major purpose limitation for contribution and expenditure limits in *Buckley* do not control our overbreadth analysis of the disclosure requirements...."); [15] *Nat'l Org. for Marriage* ***136** *v.*

[15] The Seventh Circuit has since distinguished *Center for*

McKee, 649 F.3d 34, 59 (1st Cir.2011) ("We find no reason to believe that this so called 'major purpose' test, like the other narrowing constructions adopted in *Buckley,* is anything more than an artifact of the Court's construction of a federal statute."); *see also Human Life of Wash., Inc.,* 624 F.3d at 1009–11 (concluding that *Buckley* did not lay down a bright-line test requiring that *the* major purpose of an organization must be to support or oppose a candidate, and that a state law ****52*** regulating organizations with *a* major purpose of engaging in such actions was constitutional).

We join the Circuits that have considered PAC definitions in this context after *Citizens United* and hold that the Constitution does not require disclosure regulatory statutes to be limited to groups having "the major purpose" of nominating or electing a candidate. The "express advocacy" analysis above applies with equal force to "the major purpose" analysis here. When the *Buckley* Court construed the relevant federal statute to reach only groups having "the major purpose" of elect-

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Individual Freedom v. Madigan by applying the "major purpose" limitation to narrow a campaign finance regulation it found would otherwise violate the First Amendment. *Barland,* 2014 WL 1929619, at *33, 36–37. Although *Barland* seems to accept that the major purpose limitation is not a "constitutional command," it asserts that the limitation remains an "important check" to determine whether a disclosure rule is closely tailored to the public's information interest. *Id.* at *36 (internal quotation marks omitted). We believe it is unnecessary here to resort to a major purpose limitation to hold that the disclosure regime satisfies exacting scrutiny.

ing a candidate, it was drawing a statutory line. *See McConnell,* 540 U.S. at 191–93. It was not holding that the Constitution forbade any regulations from going further. *Id.*

B. Standard of Review

Although Vermont's PAC statutes are not rendered unconstitutional because they reach beyond organizations having the "major purpose" of nominating or electing a candidate, they *****53*** remain subject to the appropriate degree of constitutional scrutiny. VRLC argues that "[s]trict scrutiny applies to government's defining an organization as a political committee—or whatever label a jurisdiction uses—and thereby imposing political-committee burdens." Appellants' Br. 45. In essence, VRLC asks this Court to aggregate the various statutory provisions that apply to a Vermont "political committee," decide that these provisions add up to an "onerous burden," and conclude from this that the definition of a Vermont political committee must be evaluated using strict scrutiny.

But as the Fourth Circuit has recently explained:

> [The *Citizens United*] Court used the word "onerous" in describing certain PAC-style obligations and restrictions [but] .... the Court distinguished its application of the strict scrutiny standard to expenditure restrictions from the exacting scrutiny standard applicable to disclosure requirement provisions.... In sum, we conclude that even after *Citizens United,* it remains the law that provisions imposing disclosure obligations are reviewed under the *****54*** intermediate scrutiny level of "exacting scrutiny."

The Real Truth About Abortion, Inc. v. Fed. Election Comm'n, 681 F.3d 544, 549 (4th Cir.2012), *cert. denied,* 133 S.Ct. 841 (2013); *accord Wis. Right to Life, Inc. v. Barland,* No. 12–2915, 2014 WL 1929619, at *33 (7th Cir. May 14, 2014) (applying exacting scrutiny to review rule that imposed "PAC-like disclosure program" on "independent disbursement organizations"); *Free Speech v. Fed. Election Comm'n,* 720 F.3d 788, 792–93 (10th Cir.2013), *cert. denied,* 2014 WL 2011565 (May 19, 2014); *Human Life of Wash. Inc.,* 624 F.3d at 1012–13.

137** Vermont's definition of "political committee," which is then used to impose disclosure obligations, does not require strict scrutiny review. A defined term such as "political committee" is simply a useful drafting tool. The definition sets out the domain of a series of separate statutory provisions. For example, the statute currently defines "political committee" in section 2901(13), then subjects every "political committee" to disclosure requirements in ****55 section 2964. The statute could be rewritten to dispense with the defined term "political committee" by making the disclosure requirements a standalone provision. The same process could be followed with every other provision, including the contribution limitations in section 2941(a)(4). This process would not alter the substance of the statute, and the resulting statute likely would be unwieldy; it would be more difficult to apply and review. But it would lack a "political committee" definition that could be subjected to the type of challenge envisioned by VRLC.

It is the challenged regulation, not the PAC defini-

tion, therefore, that determines what level of scrutiny should apply. VRLC highlights the following obligations that apply to an organization once it is defined as a political committee: registration, recordkeeping necessary for reporting, and reporting requirements. It asserts these "are the very burdens that are 'onerous' as a matter of law." Appellants' Br. 43. These requirements amount to the *****56*** establishment of a disclosure regime. As a result, we, like the district court, apply exacting scrutiny to the "political committee" definition as used to impose the registration and disclosure requirements here.[16] *Vt. Right to Life Comm., Inc.,* 875 F.Supp.2d. at 393; *see also Yamada v. Weaver,* 872 F.Supp.2d 1023, 1048 (D.Haw.2012) (collecting cases that "analyzed various definitions of 'political committee,' which include the burdens associated with such classification, and considered them to be 'disclosure requirements' ").

C. Application

Judge Sessions correctly found that Vermont's PAC definition, in the context of disclosure requirements, survives exacting scrutiny. *Vt. Right to Life Comm., Inc.,* 875 F.Supp.2d at 396–97. Vermont's regime only calls for disclosures of "contributions" and *****57***

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[16] Although there may be an open question as to what level of scrutiny should apply where the political committee definition is used to impose the burden of contribution limits, we, like the district court, do not find a need to reach that question here. VRLC has not challenged the contribution limits and expressly stated in its brief that such limits were "immaterial" for the purpose of its challenge to the political committee definition.

"expenditures," both of which are defined terms that require a purpose to promote or oppose a candidacy. Vt. Stat. Ann. tit. 17, § 2901(4), (7). In other words, Vermont PACs need only disclose transactions that have the purpose of supporting or opposing a candidate.[17] The disclosure regime is substantially related to the recognized governmental interest in "providing the electorate with information about the sources of election-related spending." *Citizens United,* 558 U.S. at 367 (internal quotation marks omitted).

The definition also reaches groups only once they have accepted contributions of $1,000 or more and made expenditures of $1,000 or more in any two-year general ***138** election cycle for the purpose of supporting or opposing one or more candidates. *See* Vt. Stat. Ann. tit. 17, § 2901(13). This is different from the Wisconsin regulation struck down by the Seventh Circuit that imposed a disclosure regime on "*every* independent group that crosses the very ****58*** low $300 threshold in express-advocacy spending." *Barland,* 751 F.3d 804, 2014 WL 1929619, at *35 (emphasis in original). The Seventh Circuit itself relied on regulatory differences to distinguish *Barland* from its earlier decision to uphold Illinois' disclosure system because that political committee definition covered "only groups that accept contribution or make expenditures 'on behalf of or in opposition to' a candidate or ballot initiative." *Id.* at *33 (quoting *Madigan,* 697 F.3d at 488). Factual dis-

[17] The statutory scheme only asks for information that PACs would track even absent a legal requirement. A contributor database is a valuable asset for a PAC, and few organizations would fail to maintain an accounting of its expenditures.

tinctions aside, we find the Seventh Circuit's reasoning in *Center of Individual Freedom v. Madigan* the more persuasive: "[O]ur inquiry depends on whether there is a substantial relation between [Vermont's] interest in informing its electorate about who is speaking before an election and [its] regulation of campaign-related spending by groups whose major purpose is *not* electoral politics. We find that there is." 697 F.3d at 491 (emphasis in original).

***59** Moreover, Vermont's PAC definition is limited to organizations that make expenditures *and receive* contributions. Vt. Stat. Ann. tit. 17, § 2901(13). This definition has a substantial relation to Vermont's legitimate informational interests. Defining PACs as entities that receive contributions and then imposing disclosure requirements simply addresses the situation where, for example, a corporation creates an entity with an opaque name—say, "Americans for Responsible Solutions"—contributes money to that entity, and has that entity engage in speech on its behalf. By requiring that entity to meet reporting and organizational requirements, Vermont can ensure that the underlying speaker is revealed. If the same corporation wishes to engage in independent expenditures, however, it is free to do so without limitation and without falling under the PAC definition and disclosure requirements as long as it does not receive contributions.

***60** Vermont's tailored disclosure regime is distinguishable from the perpetual reporting and organizational requirements that raised concern for the Eighth Circuit. *See Minn. Citizens Concerned for Life, Inc. v. Swanson,* 692 F.3d 864, 867–69, 872–73 (8th Cir.2012) (en banc) (addressing Minnesota statute that required

any association seeking to engage in independent expenditures to set up a PAC). The Eighth Circuit expressed doubt over Minnesota's reporting requirements, which were "untethered from continued speech." *Id.* at 876. Similarly, in *Iowa Right to Life Committee, Inc. v. Tooker,* the Eighth Circuit rejected an Iowa statute on the basis of its requirement that groups "file perpetual, ongoing reports." 717 F.3d 576, 597 (8th Cir.2013), *cert. denied,* 134 S.Ct. 1787 (2014). By contrast, the Vermont statute at issue only considers a group a "political committee" and subjects it to reporting requirements if it receives contributions and makes expenditures of $1,000 or more in a two-year general election cycle. Vt. Stat. Ann. tit. 17, § 2901(13). The reporting requirement, *****61*** therefore, is not "perpetual"; it is contingent upon qualifying as a PAC based on a group's ongoing contributions and expenditures. In addition, the Vermont statute recognizes the ability of a PAC to file a "final report" that lists all of its contributions and expenditures and terminates its campaign activities. *Id.* § 2965(b).

VRLC–FIPE also contends that the $100 threshold for reporting a contribution, *see id.* § 2963(a)(1), is too low. In ****139*** *Buckley,* the Supreme Court upheld a disclosure threshold after observing that it was not "wholly without rationality." 424 U.S. at 83. The Ninth Circuit has applied a "wholly without rationality" standard in evaluating a disclosure threshold, although it evaluated the overall scheme using an "exacting scrutiny" standard. *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth,* 556 F.3d 1021, 1031, 1033–34 (9th Cir.2009).[18] Regardless of the applicable

[18] Although VRLC–FIPE contends that the Fourth Cir-

standard, the ***62** threshold is not so low as to prompt any real constitutional doubt. *See Nat'l Org. for Marriage v. McKee,* 669 F.3d 34, 40–41 (1st Cir.2012) (upholding $100 threshold); *Family PAC v. McKenna,* 685 F.3d 800, 809 n. 7 (9th Cir.2012) (approving disclosure requirements triggered by $25 and $100 contributions, and noting that "[i]t is far from clear ... that even a zero-dollar disclosure threshold would succumb to exacting scrutiny"). We thus also sustain the district court's approval of the disclosure threshold.

POLITICAL COMMITTEE CONTRIBUTION LIMITS

Vermont law provides that a "political committee ... shall not accept contributions totaling more than $2,000.00 from a single source, political committee or political party in any two-year general election cycle." Vt. Stat. Ann. tit. 17, § 2805(a).[19] We have previously held that it is "unquestionably constitutional" for the State to limit ***63** contributions to groups "making contributions to or coordinated expenditures with candidates for office." *Landell,* 382 F.3d at 140. As a result, Vermont may impose contribution limits on VRLC–PC, an entity that makes contributions to candidates. The only question here is whether the statute's contribution limits are unconstitutional as ap-

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cuit has applied a more stringent test to a disclosure threshold, it is not clear whether the Fourth Circuit was inquiring into the actual dollar value that would trigger a report. *N.C. Right to Life Comm. Fund for Indep. Political Expenditures v. Leake,* 524 F.3d 427, 439 (4th Cir.2008).

[19] As mentioned in note 4 *supra,* new contribution limits will take effect on January 1, 2015.

plied to VRLC–FIPE, which claims to be an independent-expenditure-only PAC.

I. Campaign Finance Standards of Review

A. Expenditure Limits

Strict scrutiny applies when the government seeks to ban or limit political expenditures. *Ognibene v. Parkes,* 671 F.3d 174, 182 (2d Cir.2012). In order for a restriction to survive strict scrutiny, the government must show that the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United,* 558 U.S. at 340 (internal citations and quotation marks omitted).

***64** The Supreme Court has recognized only one interest that is sufficiently compelling to justify an expenditure limitation: preventing the actuality or appearance of *quid pro quo* corruption. *Id.* at 358–59. It has expressly rejected any governmental interest in preventing the appearance of influence or access, *id.* at 359–60, limiting distortions of the marketplace of ideas, *id.* at 349–50, protecting the dissenting shareholders of corporate speakers, *id.* at 361–62, equalizing the resources of candidates, *Buckley,* 424 U.S. at 56, or ensuring that government officials do not devote excessive time to raising money, ***140** *Randall,* 548 U.S. at 243, 245–46. The anti-corruption rationale cannot justify a limitation on expenditures that are not coordinated with any political campaign. *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett,* 131 S.Ct. 2806, 2826 (2011).

B. Contribution Limits

Contribution limits are "more leniently reviewed because they pose only indirect constraints on speech and associational rights." ***65** *Ognibene,* 671 F.3d at 182–83. Contribution limitations or bans "are permissible as long as they are closely drawn to address a sufficiently important state interest." *Id.* at 183; *see also Green Party of Conn. v. Garfield,* 616 F.3d 189, 199 (2d Cir.2010) (quoting *Fed. Election Comm'n v. Beaumont,* 539 U.S. 146, 162 (2003)). The Supreme Court recently stated that campaign finance restrictions must target *quid pro quo* corruption or its appearance in order to survive First Amendment scrutiny. *McCutcheon v. Fed. Election Comm'n,* 134 S.Ct. 1434, 1441–42, 1450 (2014).[20] Special deference is due to the legislature's selection of the precise contribution amount limits. *Ognibene,* 671 F.3d at 189.***66**

II. Independent–Expenditure–Only Groups

In *Citizens United,* the Supreme Court declared that " '[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent

[20] The Court also allowed for the possibility that such regulation could be justified as preventing circumvention of contribution limits. *McCutcheon v. Fed. Election Comm'n,* 134 S.Ct. 1434, 1452–53 (2014); *see also Ognibene v. Parkes,* 671 F.3d 174, 194–95 (2d Cir.2012) (identifying as two interests that could justify contribution limitations: (1) an anti-corruption interest in avoiding *quid pro quo* corruption or the appearance of *quid pro quo* corruption; and (2) an "anticircumvention interest in preventing the evasion of valid contribution limits.").

not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.' " 558 U.S. at 345 (quoting *Buckley,* 424 U.S. at 47); *see also Cal. Med. Ass'n v. Fed. Election Comm'n,* 453 U.S. 182, 203 (1981) (Blackmun, J., concurring in part and concurring in the judgment) ("*Cal.Med.*"). As we have noted, *see N.Y. Progress & Prot. PAC v. Walsh,* 733 F.3d 483, 487 (2d Cir.2013), several Courts of Appeals have concluded that an anti-corruption rationale therefore cannot apply to contributions to groups that engage only in independent expenditures. *See Wisc. Right to Life State Political Action Comm. v. Barland,* 664 F.3d 139,154 (7th Cir.2011) ("*WRLC I*"); *Thalheimer v. City of San Diego,* 645 F.3d 1109, 1118–21 (9th Cir.2011); *****67*** *NCRL III,* 525 F.3d at 295. For example, the U.S. Court of Appeals for the District of Columbia stated that, in the context of groups that make independent expenditures only, the Supreme "Court has effectively held that there is no corrupting 'quid' for which a candidate might in exchange offer a corrupt 'quo.' " *SpeechNow.org v. Fed. Election Comm'n,* 599 F.3d 686, 694–95 (D.C.Cir.2010) (en banc).

VRLC–FIPE urges that we follow these courts and hold that contribution limits may not be constitutionally applied to "independent expenditure" entities. But even if contribution limits would be unconstitutional as applied to independent-expenditure-only groups, VRLC–FIPE would not succeed here. The district ***141** court correctly concluded that based on the undisputed facts presented at summary judgment, VRLC–FIPE is enmeshed financially and organizationally with VRLC–PC, a PAC that makes direct contributions to

candidates. Thus, because contribution limits are ***68*** constitutional as applied to VRLC–PC, we agree with the district court that they also may be applied to VRLC–FIPE.

In holding that independent expenditures cannot give rise to *quid pro quo* corruption, the Supreme Court focused on the "absence of prearrangement and coordination" when expenditures are independent. *Citizens United,* 558 U.S. at 345, 357–61; *see also Ala. Democratic Conference v. Broussard,* 541 F. App'x 931, 935 (11th Cir.2013) (per curiam) ("In prohibiting limits on independent expenditures, *Citizens United* heavily emphasized the independent, uncoordinated nature of those expenditures, which alleviates concerns about corruption."). Although some courts have held that the creation of separate bank accounts is by itself sufficient to treat the entity as an independent-expenditure-only group, *see, e.g., Emily's List v. Fed. Election Comm'n,* 581 F.3d 1, 12 (D.C.Cir.2009),[21] ***69*** we do not believe

[21] Even the D.C. district courts, however, have not resolved whether *Emily's List* holds that a separate bank account alone is sufficient to allow for unlimited expenditures. *Compare Stop This Insanity, Inc. Emp. Leadership Fund v. Fed. Election Comm' n,* 902 F.Supp.2d 23, 43 (D.D.C.2012) ("When a single entity is allowed to make both limited direct contributions and unlimited independent expenditures, keeping the bank accounts for those two purposes separate is simply insufficient to overcome the appearance that the entity is in cahoots with the candidates and parties that it coordinates with and supports."), *with Carey v. Fed. Election Comm'n,* 791 F.Supp.2d 121, 135 (D.D.C.2011) ("As long as Plaintiffs strictly segregate these funds ... they are free to seek and expend unlimited soft money funds geared toward independent expenditures.").

that is enough to ensure there is a lack of "prearrangement and coordination." A separate bank account may be relevant, but it does not prevent *coordinated* expenditures—whereby funds are spent in coordination with the candidate. *See Stop This Insanity, Inc. Emp. Leadership Fund v. Fed. Election Comm'n,* 902 F.Supp.2d 23, 43 (D.D.C.2012).

Nor is it enough to merely state in organizational documents that a group is an independent-expenditure-only group. Some actual organizational separation between the groups must exist to assure that the expenditures are in fact uncoordinated. We therefore decline to adopt the reasoning of the Fourth Circuit in *NCRL III.* There, the Fourth Circuit rejected North Carolina's argument that *****70*** NCRL–FIPE (a similar organization to VRLC–FIPE) was "not actually an independent expenditure committee because it [was] 'closely intertwined' " with NCRL and NCRL–PAC, two organizations (similar to VRLC and VRLC–PC) that did not limit their activities to independent expenditures. *NCRL III,* 525 F.3d at 294 n. 8. The Fourth Circuit concluded based only on NCRL–FIPE's organizational documents that the group was "independent as a matter of law." [22] *Id.* We

[22] Dissenting from this conclusion, Judge Michael stated that "at any given moment, the same director or staffer is on the one hand ensuring that NCRL–PAC's activities follow a candidate's campaign strategy, while on the other hand 'independently' designing NCRL–FIPE's expenditure strategy to promote that same candidate." *NCRL III,* 525 F.3d 274, 336 (4th Cir.2008) (Michael, J., dissenting). He concluded that without any organizational separation it was "hard to understand how NCRL–FIPE could, whether intentionally or not, avoid incorporating the coordinated cam-

do not agree that organizational ***142** documents alone satisfy the anti-corruption concern with coordinated expenditures that may justify contribution limits.

There is little guidance from other courts on examining coordination of expenditures, but we conclude that, at a minimum, ****71*** there must be some organizational separation to lessen the risks of coordinated expenditures. Separate bank accounts and organizational documents do not ensure that "*information* [ ] will only be used for independent expenditures." *Catholic Leadership Coal. of Tex. v. Reisman,* No. A–12–CA–566–SS, 2013 WL 2404066, at *17 (W.D.Tex. May 30, 2013) (emphasis added) ("The informational wall [that plaintiff] asserts it can raise to keep its independent expenditure activities entirely separate from its direct campaign contribution activities is thin at best. This triggers the precise dangers of corruption, and the appearance of corruption, which motivated the Court in *Buckley* to uphold the challenged contribution limits."). As discussed below, whether a group is functionally distinct from a non-independent-expenditure-only entity may depend on factors such as the overlap of staff and resources, the lack of financial independence, the coordination of activities, and the flow of information between the entities.

****72*** The decisions cited by VRLC–FIPE to challenge the district court's conclusion that VRLC–FIPE is not sufficiently separate from VRLC–PC are inapposite. In *Citizens United,* the Supreme Court ob-

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paign strategies used by NCRL–PAC into its own ostensibly independent campaign work." *Id.*

served that a corporation's "PAC is a separate association from the corporation." 558 U.S. at 337. But it did so only to emphasize how the challenged statute was "a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak." *Id.* In *Cal. Med.,* the Supreme Court observed that a PAC was not "merely the mouthpiece" of its contributor because the PAC was a "multicandidate political committee" and "receive[d] contributions from more than 50 persons during a calendar year." 453 U.S. at 196. The Court's reliance on these facts supports our conclusion that whether two entities are separate depends on their particular circumstances. The Supreme Court rejected the assertion that a contributor's contributions to a PAC "should receive the same constitutional protection as [the PAC's] independent expenditures." ***73** *Id.* at 195. These decisions do not support VRLC–FIPE's position that the facts regarding its relationships with VRLC and VRLC–PC are irrelevant to the constitutional analysis. *See Ala. Democratic Conference,* 541 F. App'x at 936 ("In this as-applied challenge, whether the establishment of separate bank accounts by ... a hybrid independent expenditure and campaign contribution organization [ ] eliminates all corruption concerns is a question of fact.")

III. Undisputed Facts in the District Court's Evaluation of the Summary Judgment Motions

The role of the court on a summary judgment motion is "to determine whether, as to any material issue, a genuine factual dispute exists." *In re Dana Corp.,* 574 F.3d 129, 151 (2d Cir.2009). VRLC–FIPE did not contest the evidence presented by Vermont or present opposing evidence at summary judgment. Vermont ar-

gued "that [VRLC–FIPE] in fact is enmeshed completely with [VRLC–PC], which contributes funds to candidates." VRLC–FIPE apparently "chose[ ] not to take the fallback position of contesting the factual ***74** showing [Vermont] has made to prove its **143** point," but simply asserted that "its status is cemented as a matter of law" and argued that it is "entitled to judgment as a matter of law regardless of [Vermont's] evidence." *Vt. Right to Life Comm., Inc.,* 875 F.Supp.2d at 384, 404–05.

The State's summary judgment motion included numerous depositions, financial reports, emails, meeting minutes, and expert reports. Both parties attached statements of undisputed materials facts to their summary judgment motions. In its response brief, the State attached a statement of disputed facts, which contested Plaintiffs' showing. Plaintiffs did not file an opposing statement of disputed facts. Therefore, we, like the district court, consider the factual record undisputed. On the basis of the State's evidence, described below, we agree with the district court that there was no genuine dispute of material fact as to VRLC–FIPE's organizational separation from VRLC–PC.

***75** VRLC–PC is registered with the Federal Election Commission as a federal PAC and was created by VRLC to engage in federal and state campaign activities, including making direct contributions to candidates. It is clearly not an independent-expenditure-only group. VRLC–FIPE offers only two facts to demonstrate that it must be treated as separate from VRLC–PC. One, the organizational documents show that VRLC created two committees, VRLC–PC and VRLC–FIPE. Two, VRLC–FIPE main-

tains a separate bank account. For the reasons discussed above, these facts alone are not enough to hold that VRLC–FIPE is an independent-expenditure-only group when, based on the State's undisputed evidence, it is otherwise indistinguishable from the non-independent-expenditure-only group, VRLC–PC.

First, the fact that there are two separate bank accounts does not mean the funds were actually treated as separate. An accountant who examined VLRC's, VRLC–FIPE's, and VRLC–PC's ****76*** structure and finances for the State described "a fluidity of funds between VLRC–FIPE and VRLC–PC." He found that VRLC transferred funds from VRLC–PC to VRLC–FIPE if VRLC–FIPE lacked the resources to engage in a certain activity. VRLC–FIPE's treasurer testified that the groups use VRLC–PC's money to fund VRLC–FIPE's primary activity of producing voter guides when VRLC–FIPE lacks the funding. Meeting minutes also show that the two groups do not consider their funding streams as distinct. In a 2008 VRLC–PC committee meeting, for example, those present described a joint fundraising goal in combined VRLC–FIPE and VRLC–PC funds. Taken as a whole, the groups' financial history and related documents do not support a finding that there is any operational barrier between VRLC–FIPE and VRLC–PC.[23]

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[23] We acknowledge that the record does not show that funds from VRLC–FIPE were used for candidate contributions. Nonetheless, the "fluidity of funds" is enough to show that the accounts were not kept sufficiently separate to establish that VRLC–FIPE is an independent group capable of succeeding with an as-applied challenge to contribution limits.

***77** Next is the organizational structure of the groups; here again there is no evidence that VRLC–FIPE is segregated at all from VRLC–PC. Both are committees of the umbrella organization VRLC, which, by itself, would not show coordination, but the State's accountant represented that VRLC has complete control over VRLC–FIPE's and VRLC–PC's structure and finances. The members of both committees are appointed by the president of VRLC with the approval of VRLC's board. The committees share a substantial overlap in membership. They meet at the same time ***144** and same place and often discuss important tactical campaign issues with no regard for the separation of the two committees. The Executive Director of VRLC (and its principal official), Mary Hahn Beerworth, is also an *ex officio* member of VRLC–FIPE's committee; she attends VRLC–FIPE and VRLC–PC committee meetings and advises both. The Chair of VRLC–PC, Michelle Morin, is also a member of VRLC's Board of Directors and a member of VRLC–FIPE.

***78** Then there are VRLC–FIPE's actual activities. It appears that VRLC–FIPE's primary purpose is the production of voter guides describing the pro-life positions of candidates in each county in Vermont. This activity, however, is done in concert with VRLC–PC. Together the two groups produce and pay for the guides, which often list both groups as sponsors. VRLC–PC in turn bases its endorsement decisions on these voter guides. Beerworth and Morin then decide whether to provide the candidates that VRLC–PC endorses with access to the organization's support phone mailing list. There is no point at which VRLC–FIPE

separates itself from the lines of communication between the candidate, VRLC, and VRLC–PC. At every step of the campaign process, it is completely enmeshed with VRLC–PC.

The 2010 campaign exemplifies the groups' structural melding and absence of any informational or activities wall. In 2010, Beerworth advised Brian Dubie (VRLC–PC has endorsed Dubie in ***79** every election in which he has run), the Republican candidate for Governor, and members of his campaign staff on issues. This same year, the Dubie campaign accepted more than $900 worth of VRLC's support phone lists as an in-kind contribution.

Because VRLC–FIPE chose not to contest the Defendants' Statement of Undisputed Material Facts or its evidence in support of its motion for summary judgment, we—like the district court—are limited to the State's evidence. There is nothing in the record that raises a genuine dispute as to whether VRLC–FIPE operated as an entity apart from VRLC–PC. It relied on funding from VRLC and VRLC–PC when necessary. It was comprised of the same people—including VRLC–PC's own chairwoman. It worked with VRLC–PC on its primary, if not only, project, voter guides. It received its information and advice from the same sources. It met at the same time and place. Uncontroverted, this evidence is sufficient to conclude that VRLC–FIPE is not meaningfully distinct from VRLC ***80** –PC, and affirm the district court's grant of Defendants' summary judgment motion on this issue.

In *Colorado Republican Federal Campaign Commit-*

tee v. Federal Election Commission, the Supreme Court rejected the argument that a party's expenditure is coordinated "because a party and its candidate are identical," saying "[w]e cannot assume ... that this is so." 518 U.S. 604, 622 (1996). Plaintiffs–Appellants ask this Court to follow *Colorado Republican.* Here, however, we do not *assume* that VRLC–FIPE and VRLC–PC are identical; we, like the district court, have examined the undisputed facts and conclude that VRLC–FIPE has presented no evidence to raise a genuine dispute of material fact about its independence from VRLC's non-independent- expenditure-only entity, VRLC–PC.

IV. Contribution Limits as Applied to VRLC–FIPE

Those courts that have found contribution limits unconstitutional as applied to independent-expenditure-only groups ****81*** have ***145** done so on the basis of the holding in *Citizens United* that independent expenditures do not carry the danger that the expenditure will be given as *quid pro quo* for commitments from the candidate. *See, e.g., WRLC I,* 664 F.3d at 143; *NCRL III,* 525 F.3d at 293–95. Such expenditures are not prearranged or coordinated with the candidate. Separate bank accounts alone, however, do not always eliminate coordinated expenditures. Some organizational divide must exist to ensure that the two are separate—that the independent expenditures are truly spent independent of any coordination with a candidate.

VRLC–FIPE is indistinguishable from VRLC–PC, a non-independent-expenditure-only group. As dis-

cussed above, this is clear from the total overlap of staff and resources, the fluidity of funds, and the lack of any informational barrier between the entities. We acknowledge, though, that especially with committees that operate with low funding levels, small staff, and few resources, it ***82*** will be difficult at times to maintain separation among those committees. Nevertheless, in the absence of any opposing evidence here, we have no basis to find that VRLC–FIPE is distinct from the non-independent-expenditure-only organization VRLC–PC.

We have held that the state may impose contribution limits on some groups—groups such as VRLC–PC that directly contribute or coordinate expenditures with campaigns. Where VRLC–FIPE is functionally indistinguishable from VRLC–PC, the same limits may constitutionally apply to it. "The Supreme Court has upheld limitations on contributions to entities whose relationships with candidates are sufficiently close to justify concerns about corruption or the appearance thereof." *Long Beach Area Chamber of Commerce v. City of Long Beach,* 603 F.3d 684, 696 (9th Cir.2010); *accord McConnell,* 540 U.S. at 154–55 (upholding limitations on contributions to national parties because "the close relationship between federal officeholders and the national parties, as well as the means by which ***83*** parties have traded on that relationship, ... have made all large soft-money contributions to national parties suspect"); *Cal. Med.,* 453 U.S. at 203 (Blackmun, J., concurring in part and concurring in the judgment) (upholding limitations on contributions to "multicandidate political committees" because their close relationship with candidates and office holders made them "conduits for contributions to candidates,

and as such they pose[d] a perceived threat of actual or potential corruption"). It is the requirement of independence—the absence of "prearrangement and coordination"—that alleviates the danger that expenditures will be spent as *quid pro quo* for improper commitments from the candidate. VRLC–PC participates in federal and state elections, makes direct contributions to candidates, and works with campaigns. It is an organization with the type of close relationship to candidates that allows for state disclosure requirements and financial limitations. Where VRLC–FIPE cannot be functionally distinguished from ***84* VRLC–PC, the same concerns apply. Therefore, we agree with the district court that Vermont's contribution limits as applied to VRLC–FIPE are permitted.

CONCLUSION

For the reasons given above, we AFFIRM the judgment of the district court in all respects.

[Filed: 7/2/2014; Doc.223]

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of July, two thousand and fourteen.

Before: Richard C. Wesley,
Christopher F. Droney,
Circuit Judges.
Vincent L. Briccetti,
District Judge.*

Vermont Right to Life Committee, Inc. and Vermont Right to Life Committee - Fund for Independent Political Expenditures,

Plaintiffs - Appellants,

JUDGMENT
Docket No. 12-2904

v.

William H. Sorrell, in his official capacity as Vermont Attorney General, David R. Fenster, Erica Marthage, Lisa Warren, T.J. Donovan, Vincent Illuzzi, James Hughes, David Miller, Joel Page, William Porter, Alan

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* The Honorable Vincent L. Briccetti, of the Southern District of New York, sitting by designation.

Franklin, Marc D. Brierre, Thomas Kelly, Tracy Shriver, and Robert Sand, in their official capacities as Vermont State's Attorneys, and James C. Condos, in his official capacity as Secretary of State,

Defendants - Appellees.

The appeal in the above captioned case from a judgment of the United States District Court for the District of Vermont was argued on the district court record and the parties' briefs. Upon consideration thereof,

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the judgment of the district court is AFFIRMED in accordance with the opinion of this court.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

[Filed: 7/2/2014; Doc.224]

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 2nd day of July, two thousand and fourteen.

Before: Richard C. Wesley,
Christopher F. Droney,
Circuit Judges.
Vincent L. Briccetti,
District Judge.[*]

Vermont Right to Life Committee, Inc. *et al.*,

Plaintiffs - Appellants,

ORDER
Docket No. 12-2904

v.

William H. Sorrell, in his official capacity as Vermont Attorney General, *et al.*,

Defendants - Appellees.

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[*] The Honorable Vincent L. Briccetti, of the Southern District of New York, sitting by designation.

In a motion of November 19, 2012, Appellees request an order permitting the district court to correct its ECF docket to reflect a district court ruling denying a motion to seal certain filings. That motion also requests that this Court unseal sealed, unredacted copies of those filings that were supplied to this Court by Appellants. Appellants move to hold decision on the November 19, 2012, motion in abeyance and further move, inter alia, to keep the documents sealed or redact them before releasing them.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the November 19, 2012, motion is GRANTED in all respects. In light of that ruling, it is FURTHER ORDERED that Appellants' other motions are DENIED as moot.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court

[***Editing Note:*** *Page numbers from the reported order, 875 F.Supp.2d 376, are indicated, e.g.,* ***376**.]

[Filed: 6/21/2012; Doc.194]

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

VERMONT RIGHT TO LIFE COMMITTEE, INC. and VERMONT RIGHT TO LIFE COMMITTEE - FUND FOR INDEPENDENT POLITICAL EXPENDITURES, Plaintiffs, v. WILLIAM H. SORRELL, in his official capacity as Vermont Attorney General; DAVID R. FENSTER, ERICA MARTHAGE, LISA WARREN, T.J. DONOVAN, VINCENT ILLUZZI, JAMES HUGHES, DAVID MILLER, JOEL PAGE, WILLIAM PORTER, ALAN FRANKLIN, MARC BRIERRE, THOMAS KELLY, TRACY SHRIVER, and ROBERT SAND, in their official capacities as Vermont State's Attorneys; and JAMES C. CONDOS, in his official Capacity as Vermont Secretary of State,	Case No. 2:09-cv-188

Defendants.	

Opinion & Order
Cross Motions for Summary Judgment

Plaintiffs filed suit for declaratory and injunctive relief to bar enforcement against them of provisions of Vermont's campaign finance law. They contend the challenged portions of the law, which require disclosure of election-related speech and limit the amount donors may contribute to "political committees," violate their constitutional guarantees of free speech and due process of law, U.S. Const. amend. XIV, § 1. Pending are the parties' cross motions for summary judgment, ECF Nos. 166, 168. The Court heard oral argument on the motions on April 30, 2012. As this opinion explains, there are no genuine issues of material fact that warrant trial. On the undisputed factual record before it, the Court **denies** Plaintiffs' motion and **grants** Defendants' motion in full.

Background

I. The Parties

Plaintiff Vermont Right to Life Committee, Inc. ("VRLC") is a Section 501(c)(4) organization engaged in educational and political work " 'to achieve universal recognition of the sanctity of human life from conception through natural death.' " First Am. & Verified Compl. ("FAVC") ¶ 10, ECF No. 132. Plaintiff Vermont Right to Life Committee—Fund for Independent Political Expenditures ("FIPE"), formed by VRLC in 1999, is a registered Vermont political committee. FIPE's for-

mation documents indicate that it would not "make monetary or in-kind contributions to candidates and it will not coordinate" with candidates. Defs.' Mot. for Summ. J. Ex. C ("Organizational Docs."), at 3, ECF No. 168–5. FIPE was active in the 2010 election cycle, but asserts that, prior to that time, it had not been active since at ***380** least 2002. Although not a party in this action, a noteworthy player is Vermont Right to Life Committee, Inc. Political Committee ("PC"). PC was created by VRLC to engage in federal and state campaign activities, including making direct contributions to pro-life candidates. Defendants are Vermont officials with authority to enforce Vermont campaign finance law (the "State").

II. The Challenged Statutes

For the last century, Vermonters' concerns about the influence of money in politics have moved the Vermont Legislature to enact and refine a body of campaign finance law governing state elections. *See Landell v. Sorrell,* 118 F.Supp.2d 459, 464–70 (D.Vt.2000), *aff'd in part, vacated in part,* 382 F.3d 91 (2d Cir.2004), *rev'd in part sub nom., Randall v. Sorrell,* 548 U.S. 230 (2006). This action relates to two classes of provisions contained in Vermont's campaign finance statutes: (1) a series of disclosure requirements for election spending, and (2) a $2000 limit on the amount donors can contribute to political committees.

A. *Disclosure Provisions*

The first set of disclosure regulations are registration and periodic reporting required of organizations that meet the statutory definition of a "political

committee" (referred to alternatively here as a "PAC"). A PAC is:

> any formal or informal committee of two or more individuals, or a corporation, labor organization, public interest group, or other entity, not including a political party, which receives contributions of more than $500.00 and 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.

Vt. Stat. Ann. tit. 17, § 2801(4). "Contribution" and "expenditure," terms used in the PAC definition, are also defined by statute. A "contribution" is "a payment, distribution, advance, deposit, loan or gift of money or anything of value, paid or promised to be paid to a person for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates in any election," not including unpaid volunteer services or a personal loan from a lending institution. *Id.* § 2801(2). An "expenditure" is "a payment, disbursement, distribution, advance, deposit, loan or gift of money or anything of value, paid or promised to be paid, for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates." *Id.* § 2801(3).

Attaining PAC status creates obligations on the part of the nascent political committee. The PAC must designate a single checking account to fund any expenditure and name a treasurer to maintain that account.

Id. § 2802. Within ten days of surpassing the $500 contribution and expenditure threshold, it must register with the Vermont Secretary of State (the "Secretary"), providing its name, address, the location of its bank account, and its treasurer's name. *Id.* § 2831(a).

In addition to registering, it must file "campaign finance reports" with the Secretary at regular intervals. Vermont elects its state officials to two-year terms, such that every even-numbered year is an election year and every odd-numbered year is an off-year. In odd-numbered years, PACs file campaign finance reports once, on July 15. *Id.* § 2811(d). In election years, PACs must report five or six times, twice prior to the primary election, twice ***381** between the primary and the general election, and once or twice following the general election. Decl. of David Crossman, Vt. Elections Adm'r, Defs.' Mot. for Summ. J. ("Crossman Decl.") ¶ 9, ECF No. 71–30.

Each campaign finance report must list the name, address, and date of contribution for each person who contributed more than $100, contain a description of every expenditure, and specify any loans, debts or obligations on the PAC's books. Vt. Stat. Ann. tit. 17, § 2803(a). The law additionally requires PACs to total their expenditures and contributions for the campaign to date, itemized by monetary and non-monetary contributions. *Id.* §§ 2803(a)(2), (b). The Secretary makes campaign finance reports available for public inspection at its Montpelier offices and in a searchable form on its website.

Separately, Vermont law mandates disclosure of two distinct categories of election speech. For these

categories, it does not matter whether the speaker first qualifies as a PAC. One category is "electioneering communications," which refers to:

> any communication, including communications published in any newspaper or periodical or broadcast on radio or television or over any public address system, placed on any billboards, outdoor facilities, buttons or printed material attached to motor vehicles, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars, or in any direct mailing, robotic phone calls, or mass e-mails that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate.

Vt. Stat. Ann. tit. 17, § 2891. An identification requirement attaches to most electioneering communications, as they must:

> contain the name and address of the person, political committee, or campaign who or which paid for the communication. The communication shall clearly designate the name of the candidate, party, or political committee by or on whose behalf the same is published or broadcast.

Id. § 2892. Excluded from the electioneering communication identification requirement, however, are "lapel stickers or buttons," as well as "electioneering communications made by a single individual acting alone who spends, in a single two-year general election cycle, a

cumulative amount of no more than $150.00 on those electioneering communications." *Id.*

The other speech category is mass media activities ("MMA"), which covers "television commercials, radio commercials, mass mailings, literature drops, newspaper and periodical advertisements, robotic phone calls, and telephone banks which include the name or likeness of a clearly identified candidate for office." *Id.* § 2893(a). In the lead up to an election, certain MMAs must be reported:

> In addition to any other reports required to be filed under this chapter, a person who makes expenditures for any one mass media activity totaling $500.00 or more within 30 days of a primary or general election shall, for each activity, file a mass media report with the secretary of state and send a copy of the mass media report to each candidate whose name or likeness is included in the activity within 24 hours of the expenditure or activity, whichever occurs first. For the purposes of this section, a person shall be treated as having made an expenditure if the person has executed a contract to make the expenditure. The report shall identify the person who made the expenditure with the name of the candidate involved in the activity ***382** and any other information relating to the expenditure that is required to be disclosed under the provisions of subsections 2803(a) and (b) of this title.

Id. § 2893(b). The Office provides a standard, one-page MMA reporting form. Crossman Decl. Ex. 11. Unlike campaign reports, MMA reports do not require PACs

to disclose the names of contributors. Vt. Stat. Ann. tit. 17, § 2893(b); Crossman Decl. ¶ 22.[1]

B. *$2000 Limit on Individual Contributions to PACs*

Apart from the challenge to disclosure rules, at issue also is a restriction on finances. Vermont limits the amount a PAC may accept from any one contributor. Vt. Stat. Ann. tit. 17, § 2805(a). The law provides that: "A political committee ... shall not accept contributions totaling more than $2,000.00 from a single source, political committee or political party in any two-year general election cycle." *Id.*

III. Procedural History

Plaintiffs filed their initial verified complaint on August 14, 2009, and later moved for a TRO, a preliminary injunction, and an expedited trial. ECF Nos. 1, 3, 5, 6, 36. The Court granted the request to consolidate the preliminary injunction hearing with a merits trial, and also approved a 45–day window for discovery. ECF

[1] The Second Circuit found prior versions of Vermont's MMA and electioneering communications provisions facially unconstitutional. *Vt. Right to Life Comm. v. Sorrell (VRLC I),* 221 F.3d 376 (2d Cir.2000). In so doing, it reversed this Court's limiting constructions of the statutory language and determination that, so read, the laws passed constitutional muster. *VRLC I,* 19 F.Supp.2d 204 (D.Vt.1998). Both the appellate and trial court decisions in *VRLC I* relied on the assumption that Vermont could not require disclosure of political speech other than "express advocacy." 221 F.3d at 386, 19 F.Supp.2d at 213. Subsequent Supreme Court decisions have unseated that assumption, as described in detail in the Discussion section that follows.

No. 52. The parties filed cross-motions for summary judgment, ECF Nos. 70–71, just after the Supreme Court issued its decision in *Citizens United v. Federal Election Commission,* 558 U.S. 310 (2010). Plaintiffs moved to amend their complaint, reflecting changes in the law due to that seminal ruling and as a result of their voluntary dismissal of a plaintiff party. ECF Nos. 99, 120. The Court granted leave to amend and permitted time for supplemental discovery. ECF No. 129. Plaintiffs filed the twelve-count FAVC on July 19, 2010.[2] During discovery, in August 2011, the Court entered a stipulated protective order that permitted the State to obtain internal meeting minutes and correspondence on the question of VRLC's major purpose and FIPE's activities, but required the State to file under seal any such evidence it referenced in its findings. ECF Nos. 157, 161. The parties filed their motions and briefing was completed on December 9, 2011.

Plaintiffs either already are subject to or fear they will be bound by the disclosure and contribution limit provisions, restraining their speech and exposing them to criminal and civil penalties.[3] VRLC alleges that while it is not currently registered as a PAC, its speech might bring it ***383** within the PAC definition's com-

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[2] The parties later dismissed by stipulation Count 9 of the FAVC, concerning related expenditures. FAVC ¶¶ 143–47; Stipulation to Dismiss Count 9 of Pls.' Verified Compl., ECF No. 145.

[3] Knowing and intentional violations of the PAC provisions carries civil and criminal penalties, while any violation of campaign finance rules may result in civil fines, investigations, and enforcement actions by the State. *See* Vt. Stat. Ann. tit. 17, §§ 2806, 2806a.

pass. It has already or plans to distribute mass e-mails, newsletters, brochures, petitions, newspaper columns, fundraising letters, a web site, and a radio ad discussing pro-life issues and Vermont elected officials. VRLC contends Vermont's PAC definition is unconstitutionally vague, in violation of the Fourteenth Amendment's Due Process Clause, and overbroad, contravening First Amendment's protection of political speech.[4] It further states that some of the media it wishes to publish could incite enforcement against it of Vermont's electioneering communications and MMA requirements. VRLC argues those requirements are unenforceable as well because they are unconstitutionally vague and overbroad.

FIPE, already registered as a Vermont PAC, separately contests the $100 contribution reporting threshold for PACs as an unconstitutional burden on speech. In addition, FIPE contends the $2000 limit on individual contributions it may receive is unconstitutional as applied to it, since it alleges it makes only independent expenditures.[5] Should the Court deem that part of the

[4] The First Amendment is incorporated into the Fourteenth Amendment and applies to limit state action. *See, e.g., Lusk v. Vill. of Cold Spring,* 475 F.3d 480, 485 (2d Cir.2007).

[5] FIPE's challenge to the contribution limit is as-applied only. The parties agree that FIPE cannot launch a facial attack because FIPE remains bound by this Court's final judgment in an earlier case holding the provision facially constitutional. Final Judgment Order 2, *Landell v. Sorrell,* No. 2:99–cv–146–wks (D.Vt. Sept. 26, 2007), ECF No. 209; *see Landell,* 382 F.3d at 139–40, 144. The Supreme Court did not examine that portion of the law when it struck down other Vermont contribution limits. *See Randall,* 548 U.S.

law unconstitutional as applied to FIPE, PC would make an in-kind contribution to FIPE of a supporter mailing list, valued at over $2000.

Discussion

I. Standard of Review

Summary judgment is " 'only warranted upon a showing that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' " *Allstate Ins. Co. v. Hamilton Beach/Proctor Silex, Inc.,* 473 F.3d 450, 455 (2d Cir.2007) (quoting *Feingold v. New York,* 366 F.3d 138, 148 (2d Cir.2004)); Fed.R.Civ.P. 56(a). "In determining whether there is a genuine issue of material fact, a court must resolve all ambiguities, and draw all inferences, against the moving party." *Beth Israel Med. Ctr. v. Horizon Blue Cross & Blue Shield of N.J., Inc.,* 448 F.3d 573, 579 (2d Cir.2006). The moving party will be "entitled to a judgment as a matter of law [if] the non-moving party 'fails to make a showing sufficient to establish the existence of an element essential to that party's case.' " *Tufariello v. Long Island R.R.,* 458 F.3d 80, 85 (2d Cir.2006) (quoting *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986)).

Plaintiffs appended a statement of undisputed material facts to their motion for summary judgment. ECF No. 166–4.[6] ***384** The State's motion included its

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[6] The Court treats the FAVC, since it is verified, as an affidavit offered in support of Plaintiffs' motion for summary judgment. *See Colon v. Coughlin,* 58 F.3d 865, 872 (2d

own statement of undisputed facts, ECF No. 168–2. The State also attached to its response brief a statement of disputed facts, which contested Plaintiffs' showing. ECF No. 170–1. Plaintiffs did not file an opposing statement of disputed facts in return. Instead, they made clear in their briefing and at oral argument that they believe there are no genuine issues of material fact for the Court to resolve and that they are entitled to judgment as a matter of law regardless of the State's evidence. Pls.' Summ. J. Resp. Br. 2, ECF No. 171; Pls.' Summ. J. Reply Br. 1–2, ECF No. 176; Pls.' Supp'l Filing 6, ECF No. 193. The Court accordingly considers the record before it undisputed, and it finds the issues ripe for decision on summary judgment. *See* 10A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2723 (3d ed.) (noting admissions in briefs may be used to determine whether there is an issue of fact for trial "since they are functionally equivalent to 'admissions on file,' which are expressly mentioned in Rule 56(c)" as accepted forms of proof for summary judgment).

Cir.1995) ("A verified complaint is to be treated as an affidavit for summary judgment purposes, and therefore will be considered in determining whether material issues of fact exist, provided that it meets the other requirements for an affidavit under Rule 56[ ]."); Fed.R.Civ.P. 56(c)(4) (affidavits and declarations "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated").

II. *Citizens United*

Citizens United looms large over the discussion that follows. Before launching into a claim-by-claim analysis, it is worthwhile to set forth the holding and central reasoning in that case. *Citizens United* produced a two-fold ruling: "Government may regulate corporate political speech through identification and disclosure requirements, but it may not suppress that speech altogether." 130 S.Ct. at 886.

The Supreme Court made clear that there is no state interest sufficient to justify regulation that limits corporate and union independent political expenditures. It reasoned that the only valid governmental interest in regulating campaign expenditures is preventing the reality or appearance of *quid-pro-quo* corruption, and independent expenditures, precisely because they are uncoordinated with candidates, pose no such threat. 130 S.Ct. at 908–09.[7] That take on campaign spending is at least as old as *Buckley v. Valeo,* in which the Supreme Court remarked that "[u]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign

[7] A special three judge panel of the U.S. District Court for the District of Columbia, affirmed without opinion by the Supreme Court, relied on a different rationale in denying a challenge to 2 U.S.C. § 441e(a)'s prohibition on foreign national contributions and expenditures in federal, state, or local campaigns. *Bluman v. Fed. Election Comm'n,* 800 F.Supp.2d 281, 283 (D.D.C.2011), *aff'd,* 132 S.Ct. 1087 (2012). The three judge panel found the government interest in "exclud[ing] foreign citizens from activities that are part of democratic self-government in the United States" sufficient to justify the law's expenditure ban. *Id.*

and indeed may prove counterproductive." 424 U.S. 1, 47 (1976). *Citizens United* also stands for the proposition that the First Amendment does not permit government to use a speaker's corporate form as justification to regulate its independent expenditures. 130 S.Ct. at 913. The Court accordingly struck down 2 U.S.C. § 441b's total ban on corporate and union spending from general treasury funds for express advocacy or electioneering communications, forms of regulated independent expenditures. 130 S.Ct. at 913.[8] It overruled ***385** *Austin v. Michigan Chamber of Commerce,* 494 U.S. 652 (1990), and, in part, *McConnell v. Federal Election Commission,* 540 U.S. 93, 203–09 (2003), which had permitted limits on such speech.

In reaching that result, *Citizens United* dispatched the counterargument that the law's provision for forming a PAC was a suitable alternative to direct corporate or union speech. 130 S.Ct. at 897. Previously, a corporation like Citizens United could only engage in express advocacy or electioneering speech indirectly, by creating a PAC to which only its stockholders or employees could contribute. *Id.* at 887–88. The Court found the PAC approach did not alleviate the election-

[8] Express advocacy refers to communications that direct the viewer in the manner of words like " 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.' " *Buckley,* 424 U.S. at 44 n. 52; *see Fed. Election Comm'n v. Mass. Citizens for Life, Inc. (MCFL),* 479 U.S. 238, 249–50 (1986). Under federal law, an electioneering communication is "any broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office" and that is made within sixty days before a general election and thirty days before a primary election. 2 U.S.C. § 434(f)(3)(A)(i).

eering ban's speech-repressive effects, because such PACs did not allow the corporation or union to speak for itself and were subject to extensive registration, reporting and disclosure requirements. *Id.* at 897–98. Thus, federal PACs were "burdensome alternatives," and posed "onerous restrictions" that could hinder corporate and union speech during a campaign. *Id.* That critique reflected a longstanding skepticism of federally-defined PACs' ability to substitute for pure political speech. *See Fed. Election Comm'n v. Wis. Right to Life, Inc. (WRTL II),* 551 U.S. 449, 477 n. 9 (2007); *MCFL,* 479 U.S. at 253–56.

At the same time, eight justices joined the portion of the opinion upholding the identification and disclosure requirements that also applied to Citizens United. 130 S.Ct. at 886, 913–16. That part affirmed another longstanding view: in spite of the burdens they pose to political speech, "disclosure requirements certainly in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist." *Buckley,* 424 U.S. at 68. At least since *Buckley,* the Supreme Court has recognized that different government interests support disclosure than support limits on spending in campaigns, namely: (1) informing voters as to the "sources of a candidate's financial support," enabling voters to better "evaluat[e] those who seek office"; (2) limiting corruption and its appearance by making large contributions and expenditures transparent; and (3) gathering data to discover any violations of the campaign finance laws. *Id.* at 66–68.

The Supreme Court relied on the first rationale to justify the provisions applied to Citizens United. 130

S.Ct. at 914–16. To gauge their constitutionality, it applied *Buckley's* " 'exacting scrutiny' " test, which requires a " 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Id.* at 914 (citing *Buckley,* 424 U.S. at 64, 66); *see also John Doe No. 1 v. Reed,* 130 S.Ct. 2811, 2818 (2010) (confirming exacting scrutiny applies to disclosure requirements). The provisions survived scrutiny. 130 S.Ct. at 915–16.[9]

***386** In reaching that conclusion, the Court in *Citizens United* explicitly rejected the argument that disclosure could only cover express advocacy or its functional equivalent, a test distilled by prior cases for as-applied challenges to electioneering spending limits. 130 S.Ct. at 915. This statement assured the vitality of the part of *McConnell* in which the Court "rejected the notion that the First Amendment requires Congress to treat so-called issue advocacy differently from express advocacy." 540 U.S. at 194. The *Citizens United* court made clear that the power to require disclosure extends beyond the power to limit speech, analogizing that although Congress "has no power to ban lobbying itself," it may require registration and disclosure of lobbyists. 130 S.Ct. at 915 (citing *United States v. Harriss,* 347 U.S. 612, 625 (1954)). Indeed, *Citizens United* went further toward solidifying this principle,

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[9] The court also affirmed that organizations may make as-applied challenges to disclosure requirements when such laws create "a reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed." 130 S.Ct. at 916 (citing *McConnell,* 540 U.S. at 198). Plaintiffs have not challenged Vermont's law under that rationale.

explicitly endorsing a system of relatively unrestricted political speech paired with "effective disclosure," noting that many of Congress's findings of influence-peddling in promulgating campaign finance legislation "were premised on a system without adequate disclosure." 130 S.Ct. at 916.

With those principles in mind, the Court advances to Plaintiffs' constitutional claims. As described in Part III below, Plaintiffs have not succeeded in showing that Vermont's disclosure provisions are either vague or regulate in excess of First Amendment protections. Furthermore, as discussed in Part IV, below, FIPE's as-applied challenge to Vermont's limit on individual contributions to PACs also fails. The State has provided uncontested evidence to show that FIPE and PC are deeply interrelated, making it unclear whether contributions to FIPE are spent on independent expenditures or contributions to candidates.

III. Disclosure–Related Challenges

A. *Vagueness*

A law is vague, violating the Due Process Clause, when it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams,* 553 U.S. 285, 304 (2008); *see also Buckley,* 424 U.S. at 77. The concern for vagueness is heightened in the context of the First Amendment. *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,* 455 U.S. 489, 499 (1982). The First Amendment requires "breathing space" and statutes that press on its

protections "must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." *Broadrick v. Okla.,* 413 U.S. 601, 611–12 (1973). Still, " 'perfect clarity and precise guidance have never been required even of regulations that restrict expressive activity.' " *Williams,* 553 U.S. at 304 (quoting *Ward v. Rock Against Racism,* 491 U.S. 781, 794 (1989)); *see also Grayned v. City of Rockford,* 408 U.S. 104, 110 (1972) ("Condemned to the use of words, we can never expect mathematical certainty from our language.").

A plaintiff may challenge a law as unconstitutionally vague both as applied to its own speech and facially. *See Vill. of Hoffman Estates,* 455 U.S. at 494–95. A facial vagueness challenge, however, will succeed only on a showing that the law "is impermissibly vague in all of its applications." *Id.* at 495***387**. Moreover, " '[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others.' " *Holder v. Humanitarian Law Project,* 130 S.Ct. 2705, 2719 (2010) (quoting *Vill. of Hoffman Estates,* 455 U.S. at 495).

While VRLC styles its claims as both as-applied and facial challenges, it does little to craft an as-applied vagueness claim, offering minimal explanation of how the law is unconstitutional as it pertains to the specific communications it either has made or hopes to publish. *See* Pls.' Summ. J. Br. 13 & n. 11, ECF No. 166–1; *Iowa Right to Life Comm., Inc. v. Tooker,* 795 F.Supp.2d 852, 863 n. 16 (S.D.Iowa 2011). By largely proceeding as if vagueness is a question of law shorn of context, VRLC

seems to argue the provisions here must be vague as applied to it because they are vague in all applications. That argument flips on its head the general "preference for as-applied review even where First Amendment rights are implicated." *United States v. Farhane,* 634 F.3d 127, 138 n. 9 (2d Cir.2011). Furthermore, if the law were to clearly apply to VRLC's conduct in some aspect, VRLC could not attack it facially for vagueness. *Humanitarian Law Project,* 130 S.Ct. at 2718–19 (stating for that reason, "[w]e consider whether a statute is vague as applied to the particular facts at issue"); *Nat'l Org. for Marriage, Inc. v. McKee,* 669 F.3d 34, 43 (1st Cir.2012) (noting, "[t]hus, appellants are not only unable to bring a facial vagueness challenge to section 1056–B, but their failure to develop their as-applied challenges also would allow us to reject those claims summarily if we were so inclined"). Putting that concern to one side, however, VRLC's vagueness claims also do not succeed on their merits.

1. *PAC, Contribution, & Expenditure Definitions*

VRLC contends the PAC definition and similar language in the definitions of contribution and expenditure are vague. With respect to PACs, the questioned language applies PAC status to those entities accepting contributions or engaging in expenditures "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." Vt. Stat. Ann. tit. 17, § 2801(4).

VRLC argues first that the language "for the purpose of ... influencing an election ... or affecting the outcome of an election" is vague. Regardless of the

stand-alone merits of that claim, "[i]n evaluating a facial challenge to a state law, a federal court must, of course, consider any limiting construction that a state court or enforcement agency has proffered." *Vill. of Hoffman Estates,* 455 U.S. at 489 n. 5. A state court already has had occasion to narrow the statutory language challenged here. *Vt. v. Green Mountain Future,* Civ. Div. No. 758–10–10 Wncv, slip op. (Wash.Super.Ct. June 28, 2011) (Crawford, J.), http://www. vermont judiciary. org/ 20112015 Tcdecisioncvl/2011–6–30–1.pdf. In that case, Vermont brought an enforcement action against Green Mountain Future, a Vermont organization funded by the Democratic Governors Association that aired advertisements critical of Republican gubernatorial candidate Brian Dubie prior to the 2010 election. *Id.* at 1. Vermont sought civil penalties from Green Mountain Future for failing to adhere to the PAC registration and reporting requirements and for not identifying itself in electioneering communications. *Id.* at 1–2. Green Mountain Future counterclaimed, challenging the disclosure provisions as vague and overbroad, but Judge Crawford ***388** rejected its arguments. *Id.* at 14. On the PAC definition, he found the phrase "for the purpose of ... influencing an election ... or affecting the outcome of an election" not vague and interpreted it to mean the same as simply "supporting or opposing one or more candidates." *Id.* at 12. As the decision further noted, the language "ensures that if the ad cannot reasonably be viewed as referring to a candidate, the registration requirements are not triggered." *Id.* Thus, the decision removed the significance of the "influencing" and "affecting" phrases that are subject to challenge here.

VRLC urged at oral argument that Judge Crawford, while upholding the PAC definition against vagueness, was actually implying that the words "influencing" and "affecting" give "support" and "oppose" an expansive, and therefore less clear, scope. It referred the Court to the State's characterization of the 1988 amendment that added "influencing," as having "broadened" the PAC definition. *See* Defs.' Summ. J. Br. 16, ECF No. 168–1. While creative, that argument does not square with the Court's reading of *Green Mountain Future*. That decision goes on to characterize the PAC and electioneering communications definitions as "differ[ing] little in effect," slip op. at 13, even though the latter uses "support," "promote," "attack," and "oppose" without the words "influencing" or "affecting," or their equivalent, *see* Vt. Stat. Ann. tit. 17, § 2891.

Since *Green Mountain Future,* further developments have bolstered its narrowing construction. The Vermont Attorney General's Office publicly affirmed the narrowing effect of *Green Mountain Future* and a subsequent decision by Judge Crawford, *Vermont v. Republican Governors Association,* Defs.' Supp'l Filing Ex. 3, ECF No. 192–3, on the PAC definition in declining to press charges against a group that had failed to register as a PAC. *See* Office of the Attorney General, Press Releases: Attorney General's Office Concludes Investigation (Feb. 29, 2012), Defs.' Supp'l Filing Ex. 2, ECF No. 192–2. In addition, the State represents that, on the appeal of *Green Mountain Future* currently pending before the Vermont Supreme Court, it will advocate in favor of adopting and affirming *Green Mountain Future's* narrowing construction, and that it is estopped from arguing for a different reading of the

statute in any subsequent proceedings. Defs.' Supp'l Filing 2, ECF No. 192.

The Court accepts the ruling in *Green Mountain Future* as a limiting construction of Vermont law and adopts it here. *See Nat'l Org. for Marriage v. McKee,* 649 F.3d 34, 66–67 (1st Cir.2011), *cert. denied,* 132 S.Ct. 1635 (2012) (relying on a Maine administrative guideline for a narrowing construction of "influencing"). Even further, were this Court in the same position as the Vermont court, it would have reached the same conclusion in interpreting otherwise expansive language like "influencing" and "affecting" in their statutory context. *See id.* at 65 ("*Buckley's* concerns aside, the term 'influencing' does present some vagueness problems."); *see also Yamada v. Weaver,* 872 F.Supp.2d 1023, 1045–48 & n. 18, Civ. No. 10–497 JMS–RLP, 2012 WL 983559, at *18–20 & n. 18 (D.Haw. Mar. 21, 2012) (adopting a narrowing gloss for " 'to influence' " and " 'for the purpose of influencing' " in a PAC definition without a state court decision on point). Neither party has asked the Court to stay consideration of this case pending the Vermont Supreme Court's review, nor does the Court find a stay warranted in light of the lengthy delays in this case and the imminent approach of the 2012 elections.***389** [10] Accordingly, the Court reads "for the purpose of ... influencing an election ... or affecting the outcome of an election" as simply, "supporting or opposing one or more candidates."

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[10] Of course, the Vermont Supreme Court's ultimate interpretation of Vermont law will bind this Court. *See Portalatin v. Graham,* 624 F.3d 69, 84 (2d Cir.2010) (en banc).

VRLC also asserts the law as narrowly construed in *Green Mountain Future* remains vague. This Court agrees with the Vermont court that "supporting or opposing one or more candidates" is sufficiently clear. *Green Mountain Future,* slip op. at 13. The Supreme Court in *McConnell* determined that "[t]he words 'promote,' 'oppose,' 'attack,' and 'support,' " in campaign finance law, " 'provide explicit standards for those who apply them' " and " 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.' " 540 U.S. at 170 n. 64 (quoting *Grayned,* 408 U.S. at 108–09); *see also McKee,* 649 F.3d at 63 (finding "promoting," "support," and "opposition" not vague in the context of several Maine campaign finance law definitions); *Nat'l Org. for Marriage v. Daluz,* 654 F.3d 115, 120 (1st Cir.2011) (finding the phrase " 'support or defeat a candidate' " was not vague when it referred to independent expenditures that must be disclosed under Rhode Island law); *N.C. Right to Life, Inc. v. Leake (NCRL III),* 525 F.3d 274, 318 (4th Cir.2008) (Michael, J. dissenting).

It is true that the Fifth Circuit found vague Louisiana's PAC definition, which also incorporated the phrase " 'supporting or opposing.' " *Ctr. for Individual Freedom v. Carmouche,* 449 F.3d 655, 663–66 (5th Cir.2006), *cert. denied,* 549 U.S. 1112 (2007). But in that statute, " 'supporting or opposing' " was paired with, " 'or otherwise influencing,' " a phrase that potentially broadened the definition's scope and that had not been narrowed by state decision as in Vermont. *Id.* The decision in *Green Mountain Future* distinguishes this case from *Carmouche.* On the strength of the clear statement in *McConnell* and subsequent cases, the

Court concludes "supporting or opposing one or more candidates" is not vague.

Under the same reasoning, VRLC's vagueness challenge to "contribution" and "expenditure," which are separately defined constituent pieces of the PAC definition, does not succeed. *See* Vt. Stat. Ann. tit. 17, § 2801(4). Both terms refer to funds "for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates." *Id.* §§ 2801(2), (3). "Advocating a position on a public question" is both clear and plainly inapplicable to VRLC, since "public question" is separately defined to mean "an issue that is before the voters for a binding decision." *Id.* § 2801(8). As relevant, the potentially vague language boils down to: "for the purpose of influencing an election ... or supporting or opposing one or more candidates." *Id.* §§ 2801(2), (3). So limited, it is nearly identical to the language in the PAC definition *Green Mountain Future* construed narrowly and upheld. Even though *Green Mountain Future* did not discuss "contribution" and "expenditure," its reasoning makes " 'such a construction ... reasonable and readily apparent.' " *Stenberg v. Carhart,* 530 U.S. 914, 944–945 (2000) (quoting *Boos v. Barry,* 485 U.S. 312, 330 (1988)). For the same reason that language is not vague in the context of the PAC definition, it is not vague as used in defining contribution and expenditure. The Court finds the PAC, contribution, and expenditure definitions,***390** as limited in *Green Mountain Future,* not unconstitutionally vague.[11]

[11] VRLC contends the campaign finance report requirements, contained in Vt. Stat. Ann. tit. 17, § 2803, are vague since they use the terms "contribution" and "expenditure."

2. *Electioneering Communications & MMA*

VRLC argues three grounds for finding the electioneering communications and MMA provisions infirm for vagueness. First, it objects to essentially the same definitional language as the "supporting or opposing" clause from the PAC, contribution, and expenditure context. An electioneering communication "promotes or supports a candidate for that office, or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate." Vt. Stat. Ann. tit. 17, § 2891. For the reasons just described, such language is not vague. Indeed, it is nearly verbatim the phrase interpreted in *McConnell,* 540 U.S. at 170 n. 64. *Compare* Vt. Stat. Ann. tit. 17, § 2891, *with* 2 U.S.C. § 431(20)(A)(iii).[12]

Second, focusing on the electioneering communications identification requirement, VRLC argues the phrase "on whose behalf" is vague. That provision reads:

> All electioneering communications shall contain the name and address of the person, political committee, or campaign who or which paid for the communication. The communication shall clearly designate the

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Since the Court does not find "contribution" and "expenditure" vague, it rejects this challenge.

[12] Similarly, VRLC objects to the MMA reporting provision because it uses the term "expenditure," which VRLC argues is vague. *See* Vt. Stat. Ann. tit. 17, § 2893(b). Since the Court has rejected the argument that "expenditure" is defined vaguely, it also rejects this challenge.

> name of the candidate, party, or political committee by or *on whose behalf* the same is published or broadcast.

Vt. Stat. Ann. tit. 17, § 2892 (emphasis added). The Court finds the text straightforward. The first sentence requires the communication sponsor to include his or her name and address on the communication. The second sentence applies in the instance in which the sponsor is not also the communication's beneficiary. When that is the case, the communication must include the name, but need not include the address, of the beneficiary. Crossman Decl. ¶ 32 ("If the communication is not made on the behalf of the person or entity who paid for it, then the communication must also clearly designate the name of the candidate, party, or PAC on whose behalf it was published or broadcast."). VRLC argues that the phrase leaves unclear when a communication is made "on behalf of" another party so as to trigger the second sentence's requirement.

However, "on whose behalf," as underscored by its use elsewhere in related Vermont law, contemplates an agreement between the sponsor and the beneficiary to run the communication, not incidental or uncoordinated aid. *See Farhane,* 634 F.3d at 142 ("we do not look at statutory language in isolation to determine if it provides adequate notice of conduct proscribed or permitted. Rather, we consider language in context"). For instance, a "related campaign expenditure made on the candidate's behalf" must be "intentionally facilitated by, solicited by or approved by the candidate or the candidate's political committee." Vt. Stat. Ann. tit. 17, § 2809(c); *Randall,* 548 U.S. at 238. The same is true of lobbyist ***391** disclosure requirements. Vt. Stat.

Ann. tit. 2, § 263(c)(4) ("the lobbyist shall provide the name of the employer, the name of the person, group or coalition on whose behalf he or she lobbies and a description of the matters for which lobbying has been engaged by the employer").[13] Since "on whose behalf" requires coordination between the party benefited and the party paying for the communication, its application is relatively narrow and clearly defined. The Court does not find it vague.

VRLC lastly contends that "relating to" in the MMA reporting requirement is vague. The law provides that persons engaging in MMA of greater than $500 within thirty days of an election must file a report with the Secretary and send a copy to each candidate who is mentioned or whose likeness appears in the communication. Vt. Stat. Ann. tit. 17, § 2893(b). The required

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[13] Even if the statutory language permitted a degree of uncertainty as to an arrangement between the communication's sponsor and its beneficiary, it would likely still survive vagueness scrutiny. The First Circuit upheld "on whose behalf" against vagueness attack when the phrase appeared in Rhode Island law requiring groups making independent expenditures to send notice to the candidate " 'on whose behalf the expenditure ... was made.' " *Daluz,* 654 F.3d at 120–21 (citing R.I. Gen. Laws § 17–25–10(b)). Even though independent expenditures were defined as spending uncoordinated with candidates, the Court found no vagueness issue with "on whose behalf." *Id.* at 118, 121. Rather, it found the provision clearly required sending a report "to the candidate who stands to benefit from the independent expenditure's advocacy." *Id.* at 121. *McConnell* made a similar point in a different context, upholding against vagueness challenge the federal definition of coordinated expenditures, which does not require an agreement. 540 U.S. at 222–23.

report "shall identify the person who made the expenditure with the name of the candidate involved in the activity and any other information *relating to* the expenditure that is required to be disclosed under the provisions of sections 2803(a) and (b) of this title." *Id.* (emphasis added). Sections 2803(a) and (b) enumerate requirements for all campaign finance reports. Moreover, they require the Secretary to provide a standard reporting form conforming to the requirements. *Id.* § 2803(a). The Secretary has produced a one-page, MMA-specific form, and it sets forth the information "relating to the expenditure" required to be produced. Crossman Decl. Ex. 11. The law is itself clear and further clarified by administrative action, and the Court does not find it unconstitutionally vague.

None of the above language "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Williams,* 553 U.S. at 304. The Court denies VRLC's vagueness claims.

B. *Overbreadth*

VRLC next asks the Court to overturn the PAC, electioneering communications, and MMA provisions for First Amendment overbreadth. A law is overbroad, and should be struck down, if " 'a substantial number' of its applications are unconstitutional, 'judged in relation to the statute's plainly legitimate sweep.' " *Wash. State Grange v. Wash. State Republican Party,* 552 U.S. 442, 450 n. 6 (2008) (quoting *New York v. Ferber,* 458 U.S. 747, 769–71 (1982)). More liberal standards apply to making overbreadth claims in the free speech

context than to facial vagueness claims; even if a plaintiff fails to show a law is vague as applied to any of its own speech, it retains standing to assert the law is overbroad in ***392** violation of others' free speech rights. *See Broadrick,* 413 U.S. at 612. In addition, a law cannot be rescued from overbreadth by the government's promises to enforce it narrowly. *United States v. Stevens,* 559 U.S. 460 (2010). Still, the plaintiff's mere conjecture as to hypothetical cases in which the law could be applied unconstitutionally is not enough. *Williams,* 553 U.S. at 303. Moreover, courts are reluctant to invalidate laws on overbreadth grounds, since it is considered "strong medicine," to be used "sparingly and only as a last resort." *Broadrick,* 413 U.S. at 613.

1. *PAC Definition and Disclosure*

In arguing Vermont's PAC definition is overbroad, VRLC relies on two contentions. It contends first that PAC status is an "onerous" burden as a matter of law, meaning any law that triggers it must be analyzed under strict scrutiny. Second, it contends that the PAC definition is not properly tailored to fit the government's interest in regulating speech, as only entities with the "major purpose" of supporting or opposing candidates may be defined as PACs, a limit the Vermont statute does not reflect.

VRLC's first argument is based on the principle that PACs are "burdensome alternatives" to direct campaign spending by corporations or unions, *Citizens United,* 130 S.Ct. at 897–98. It emphasizes that Vermont's PAC definition imposes a "package" of heavy restrictions on those groups falling within its reach, not just the disclosure requirements that are reviewed

under exacting scrutiny, *id.* at 914. Thus, the PAC definition itself must be rigorously reviewed without focus on the type of regulation it may trigger, and, indeed, VRLC denies any assault on the PAC disclosure requirements themselves. Pls.' Summ. J. Br. 38 n. 39.[14] Prior to *Citizens United,* the Fourth Circuit appeared to adopt a similar approach, examining North Carolina's PAC definition in light of its holistic burdens. *NCRL III,* 525 F.3d at 286, 299–300; *but cf. Real Truth About Abortion, Inc. v. Fed. Election Comm'n,* 681 F.3d 544, 547–50 (4th Cir.2012) (rejecting plaintiff's request to apply strict, instead of exacting, scrutiny to review definitional language that triggered PAC disclosure and organizational requirements).

Respectfully, this Court finds the strong weight of authority post-*Citizens United,* as well as the late Judge Michael's thoughtful dissent in *NCRL III,* more persuasive in showing that it is the underlying regulation, not the PAC definition, that counts. *McKee,* 649 F.3d at 56 (1st Cir.) ("NOM's attempt to ascribe a free-standing significance to the PAC label is unpersuasive. It is not the designation as a PAC but rather the obligations that attend PAC designation that matter for purposes of First Amendment review."); *Human Life of Wash. Inc. v. Brumsickle,* 624 F.3d 990, 1012–13 (9th Cir.2010), *cert. denied,* 131 S.Ct. 1477 (2011);

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[14] The implication of VRLC's approach would appear to be reviewing state PAC disclosure regulations in two stages. First, a state must enact a PAC definition that passes strict scrutiny based on the totality of the burdens it imposes and "the major purpose" test described *infra.* Secondly, it must only place on PACs disclosure requirements that pass exacting scrutiny. *See* Pls.' Summ. J. Br. 38 n. 39.

SpeechNow.org v. Fed. Election Comm'n, 599 F.3d 686, 697 (D.C.Cir.2010) (en banc), *cert. denied sub nom., Keating v. Fed. Election Comm'n,* 131 S.Ct. 553 (2010); *NCRL III,* 525 F.3d at 320 (Michael, J. dissenting); *see also Yamada,* 2012 WL 983559, at *20 (collecting further cases in support of ***393** this proposition and noting, "[t]his makes sense—the purpose of requiring registration as a noncandidate committee is transparency and to enable disclosure").

VRLC has not actually objected to the full suite of burdens it argues Vermont PACs face. While PACs are subject to a $2000 limit on contributions from an individual donor, VRLC did not join FIPE's challenge to that portion of the law and has not alleged concerns about how contribution restrictions might impact it were it deemed a PAC. While it invokes the federal law banning congressionally chartered banks and corporations and foreign nationals from making contributions, 2 U.S.C. §§ 441b, 441e, it does not show how that law burdensomely applies to it or to any other Vermont PAC. Since VRLC has not raised issue with the contribution restriction, it strikes the Court as improbable that the challenge relates to any PAC burden other than the registration and reporting disclosure requirements.[15]

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[15] In addition, contribution restrictions are not subject to strict scrutiny. As discussed in Part IV, *infra,* the lesser "closely drawn" scrutiny applies. *Green Party of Conn. v. Garfield,* 616 F.3d 189, 198 (2d Cir.2010). It would thus be particularly anomalous to use the presence of contribution limits to boost review of the overall package of PAC regulations to strict scrutiny.

As such, the Court can do no more than apply exacting scrutiny, lest, in adopting VRLC's approach, it blur the bright line distinction the Supreme Court has carefully maintained between the scrutiny to apply to spending restraints and to disclosure rules. If Vermont law poses too onerous a burden of compelled transparency for entities falling within the PAC definition, the law should fail exacting scrutiny. Otherwise, it is constitutional as it concerns disclosure.

VRLC also argues the PAC definition fails, even under exacting scrutiny, because it does not incorporate "the major purpose" test to limit the groups that may be considered PACs. The Supreme Court first articulated the major purpose test in *Buckley,* where it reviewed federal PAC disclosure provisions triggered when an organization made campaign expenditures or received contributions of more than $1000. 424 U.S. at 77–79 & n. 105. The Court was concerned that the definition of "contribution" and "expenditure," terms that in turn defined a political committee, were vague for using the phrase " 'for the purpose of ... influencing' " an election. *Id.* at 77. That language made it unclear whether political committees included "groups engaged purely in issue discussion." *Id.* at 79. As the Court had already noted, there was no clear line between speech centering on political issues to which a candidate may be linked and speech advocating for or against that candidate's election. *Id.* at 42. To narrow the statute, the Court limited the law to "organizations that are under the control of a candidate or *the major purpose of which is the nomination or election of a candidate.*" *Id.* at 79 (emphasis added). On that reading, *Buckley* found, the law would only reach groups that "are, by definition,

campaign related," thus placing them "within the core area sought to be addressed by Congress." *Id.*

After *Buckley,* it remained an open question whether "the major purpose" was merely a limiting construction applied to a vague federal law, or whether it was an irreducible First Amendment limit on PAC disclosure laws. VRLC argues it is the latter, contending that Vermont's definition must include the major purpose component to prevent the law from sweeping ***394** in groups that do not engage in candidate advocacy as their major purpose. The State would have the Court hold the former. Vermont law does not by its plain terms include the major purpose test, as it covers entities that make greater than $500 in contributions and expenditures "for the purpose of supporting or opposing one or more candidates...." Vt. Stat. Ann. tit. 17, § 2801(4).

The Fourth and Tenth Circuits, in recent cases, applied the major purpose test to state laws in the manner urged by VRLC. *NCRL III,* 525 F.3d at 288–89 ("[i]f organizations were regulable merely for having the support or opposition of a candidate as 'a major purpose,' political committee burdens could fall on organizations primarily engaged in speech on political issues unrelated to a particular candidate."); *N.M. Youth Organized v. Herrera,* 611 F.3d 669, 677–78 (10th Cir.2010); *Colo. Right to Life Comm. v. Coffman,* 498 F.3d 1137, 1153 (10th Cir.2007). The *NCRL III* court noted that states had the less burdensome alternative of imposing one-time disclosure in the instances in which a non-major purpose organization engaged in campaign spending, rather than requiring regular PAC reporting. 525 F.3d at 290.

The Court is unpersuaded that the reasoning in those cases applies here. Principally, *McConnell* made clear that the line between express and issue advocacy was a tool of statutory construction and not of independent constitutional moment. It explained that "[i]n narrowly reading the FECA provisions in *Buckley* to avoid problems of vagueness and overbreadth, we nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line." 540 U.S. at 192. It then concluded that the First Amendment does not "independent of our precedents ... erect[ ] a rigid barrier between express advocacy and so-called issue advocacy." *Id.* at 193. *Citizens United* emphasized this point strongly in the area of disclosure, rejecting the effort to use the functional equivalent of express advocacy test, developed in the context of electioneering spending, to mark the First Amendment boundary of the electioneering transparency provisions at issue there. 130 S.Ct. at 915. Thus, "in light of *Citizens United* ... the distinction between issue discussion and express advocacy has no place in First Amendment review of these sorts of disclosure-oriented laws." *McKee,* 649 F.3d at 54–55 (applying this analysis to Maine's non-major-purpose PAC registration provisions, *id.* at 55 n. 29); *see Brumsickle,* 624 F.3d at 1016 ("[I]mposing disclosure obligations on communicators engaged in issue advocacy is not per se unconstitutional; instead, the constitutionality of the obligations is determined by whether they are substantially related to a sufficiently important governmental interest."). The major purpose limiting construction was the product of a vague statute, not of the First Amendment.

It is also for this reason that the Court disagrees with VRLC that the Second Circuit's decision in *United States v. National Committee for Impeachment,* 469 F.2d 1135 (2d Cir.1972) governs the analysis of Vermont law and requires the major purpose test. *National Committee for Impeachment* grappled with the same language in the federal statute prior to *Buckley* and was a source for the Supreme Court's major purpose test. *See Buckley,* 424 U.S. at 79 n. 106. The case dealt with whether a group that published a lengthy ad in the *New York Times* in support of President Nixon's impeachment and in opposition to the Vietnam War was required to register as a PAC. 469 F.2d at 1135–38. The Court ***395** found the ad, which also praised pro-impeachment members of the U.S. House of Representatives and called for the potential creation of a pro-impeachment third party, *id.,* "[q]ualitatively, as well as quantitatively," in "support of an impeachment resolution, not the election of political candidates." *Id.* at 1140. It found that to regulate the sponsoring group as a PAC solely on the basis of such an ad would create "serious constitutional issues on which we express no opinion." *Id.* To avoid that result, it limited " 'for the purpose of influencing' " with the major purpose test and found that based on the ad's focus on impeachment, the group did not meet that standard. *Id.* at 1141.

The test put forward in *National Committee for Impeachment* was prophylactic in nature, imposed, as the Second Circuit clarified prior to *McConnell,* "[l]est any movement dealing with national policy be subjected to the onerous requirements devised to police political campaigns, a result we refused to believe Congress intended." *Fed. Election Comm'n v. Survival Educ.*

Fund, Inc., 65 F.3d 285, 294 (2d Cir.1995).[16] As outlined in the tailoring analysis below, Vermont's provision poses little threat of regulating beyond the election context. Moreover, *McConnell* and *Citizens United* made clear that a concern for separating issue advocacy and express advocacy is not rooted in overbreadth but rather in vagueness. As described *supra,* Vermont's PAC definition, as narrowed, is not unconstitutionally vague. Indeed, the troubling " 'for the purpose of ... influencing' " language that spurred the Court in *Buckley* to impose the major purpose requirement has been functionally excised from the Vermont statute. *Green Mountain Future,* slip op. at 12. In the present setting, the justification for applying the major purpose test evaporates.

That conclusion is reinforced by the peculiar results that may arise in applying the major purpose test as a constitutional floor for PAC disclosure. For instance, a group that spends $1.5 MM of a total of $6 MM on promoting candidates probably would not qualify, but one that spends $1500 of a total budget of $2000 probably would. *See Nat'l Org. for Marriage v. McKee,* 723 F.Supp.2d 245, 264 (D.Me.2010), *vacated in part on other grounds,* 649 F.3d 34 (1st Cir.2011). A national organization might have the major purpose of advancing candidates for state office in every state, but could avoid registering as a PAC in any particular state. *Nat'l Org. for Marriage v. McKee,* 666 F.Supp.2d 193,

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[16] *Survival Education Fund* went on to state that *Buckley's* view of " 'for the purpose of influencing' " was different than *National Committee for Impeachment's,* particularly as that language applies in the definition of "contribution." 65 F.3d at 294.

210 n. 96 (D.Me.2009). The test also allows a group that might fit the major purpose definition on its own simply to fold itself into another, larger group that does not, evading the law's requirements. *Brumsickle,* 624 F.3d at 1012. Those outcomes emphasize that the test was merely "an artifact of the Court's construction of a federal statute." *McKee,* 649 F.3d at 59.

VRLC responds that failure by Vermont and other states to incorporate the major purpose test would create the greater perversion. Specifically, it contends that national political advocacy organizations that do not have the major purpose of participating in any single state's candidate elections would be forced to reveal sensitive information about their activities in accordance with the requirements of the state with the broadest PAC definition and most exacting PAC disclosure laws.

Even though Vermont law does not currently incorporate the major purpose test, VRLC has provided no evidence to substantiate***396** its concern. More to the point, because the law defines "election" and "candidate" to include only Vermont elections and Vermont candidates, Vt. Stat. Ann. tit. 17, §§ 2801(1), (7), the Court is not troubled by the prospect that a national organization would be forced to disclose to the Secretary its non-Vermont contributions and expenditures or to abide by Vermont's contribution limit for non-Vermont-related contributions. *See id.* §§ 2801(2), (3) (defining contribution and expenditure in relation to support or opposition for "candidates" in an "election"). In relation to a disclosure statute that is not vague, the major purpose test has no relevance, and Vermont was not required to incorporate it.

Having established that the frame of analysis for reviewing the PAC provisions is the disclosure regulation they trigger and having found the major purpose test is unnecessary, the Court turns to its exacting scrutiny analysis. The disclosure required of PACs bears a substantial relation to Vermont's sufficiently important interest in permitting Vermonters to learn of the sources of significant influence in their state's elections. *See Citizens United,* 130 S.Ct. at 914. Vermont imposes reasonable requirements: (1) registering with the Secretary within ten days of satisfying the dollar thresholds for PAC status, which involves designating a treasurer and bank account and then disclosing that information, Vt. Stat. Ann. tit. 17, §§ 2802, 2831(a); (2) filing campaign finance reports, at most six in an election year and one in a non-election year, *Id.* § 2811(d); Crossman Decl. ¶ 9; (3) listing contributors of over $100, along with their full names, addresses and dates of contribution, *id.* § 2803(a); and (4) totaling to-date contributions and expenditures, *id.* §§ 2803(a)(2), (b). *See McKee,* 649 F.3d at 58; *Brumsickle,* 624 F.3d at 997–98, 1013. By admission of Sharon Toborg, treasurer for VRLC, PC and FIPE, FIPE's campaign finance reports took no more than ten to fifteen minutes to complete. Sharon Toborg Rule 30(b)(6) Dep. for FIPE, Defs.' Mot. for Summ. J. Ex. A ("FIPE Dep."), at 43–44, ECF No. 168–3.[17]

[17] The particular reports in question were from 2003 and 2008 when FIPE was assertedly inactive and had little to report. However, VRLC repeatedly made clear at oral argument that it felt the State was perfectly within First Amendment bounds to satisfy its interest in disclosure by requiring "event-driven" reports revealing a PAC's contributions and expenditures when it actively engages in cam-

Moreover, to the extent constitutional concerns in requiring disclosure of issue advocacy remain after *Citizens United,* Vermont's PAC disclosure law does not cover a "substantial amount of non-electoral speech." *NCRL III,* 525 F.3d at 327 (Michael, J. dissenting); *see Wash. State Grange,* 552 U.S. at 450 n. 6. As narrowed by state court decision, PAC status is triggered only when an organization's contributions and expenditures to support or oppose candidates each pass the $500 threshold in a single calendar year. *Green Mountain Future,* slip op. at 12; Vt. Stat. Ann. tit. 17, § 2801(4). In addition, as limited, the contribution and expenditure definitions are tightly construed to apply only to funding "supporting or opposing one or more candidates" or "advocating a position on a public question." *See id.* §§ 2801(2), (3). The only forms of speech a PAC must report to the Secretary are contributions and expenditures. *See id.* § 2803. That means PACs need only report speech that is meant to advance or defeat the cause of a candidate ***397** or a ballot measure, not speech that broadcasts a stance on an issue.

The statute also excludes an organization's charitable work. If VRLC were at some point to become a PAC, it would not need to report, to take an example, donations received and funds spent to support crisis pregnancy centers. That activity would not meet the definition of a contribution or expenditure under Ver-

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paign speech. Thus, the limited time required to complete reports when a PAC is inactive helps demonstrate that the incremental burden of Vermont PAC status is not significant.

mont law. Since the PAC provisions neither place unconstitutionally onerous burdens on PACs nor sweep overbroadly to require disclosure of a substantial amount of immune speech, the Court finds them constitutional.

2. *MMA and Electioneering Communications*

VRLC also argues the MMA and electioneering communications disclosure provisions are overbroad. VRLC relies on the assumption that, as a matter of constitutional law, when states seek to compel disclosure not connected to PAC status they may only do so concerning two narrow types of speech: (1) express advocacy; and (2) federally-defined electioneering communications, as approved in *Citizens United,* 130 S.Ct. at 914–16. Pls.' Summ. J. Br. 44.

VRLC's position amounts to a belief that lower courts examining state law may only approve of mandated disclosure provisions defined in precisely the same manner as past Supreme Court interpretations of federal statutes. *See* Pls.' Summ. J. Br. 45–47. To do otherwise, VRLC argues, would spring the traps of vagueness or overbreadth. *See* Pls.' Summ. J. Br. 46. Based on its reading of the case law, the Court disagrees. The Supreme Court has not implied that its reasoning on disclosure laws was limited to finely detailed copies of the cases before it.

Even so, the provisions upheld in *Citizens United* were electioneering-related disclosure and identification regulations broadly similar to Vermont's MMA and electioneering laws, respectively. *Compare* 130 S.Ct. at 913–14, *with* Vt. Stat. Ann. tit. 17, §§ 2891–93. Vermont's MMA and electioneering provisions do go

beyond the federal law's requirements in some ways, but are narrower than the federal equivalent in others. Examining those differences individually, the Court concludes they do not render Vermont law overbroad.

Generally, federal law defines electioneering communications as "any broadcast, cable, or satellite communication" referring to a "clearly identified candidate for Federal Office" that is run within 60 days before a general or 30 days before a primary election, and that is "targeted to the relevant electorate" in congressional elections. 2 U.S.C. § 434(f)(3)(A). Disclosure is required when the communications' sponsor spends more than $10,000 in a calendar year on them. *Id.* § 434(f)(1). Once past the $10,000 mark, the sponsoring entity must file a report with the Federal Elections Commission within twenty-four hours to identify itself, its "custodian of the books and accounts," its principal place of business (if not an individual), the amount and source of any single disbursement over $200, the elections and names of candidates to which the communications pertain, and the names and addresses of all contributors of more than $1000 to the sponsor or a segregated bank account used by it since the start of the last calendar year. *Id.* §§ 434(f)(1)-(2).

Vermont's MMA provisions reach more media than the federal equivalent above, including also "mass mailings, literature drops, newspaper and periodical advertisements, robotic phone calls, and telephone banks which include the name or likeness of a clearly identified candidate ***398** for office." Vt. Stat. Ann. tit. 17, § 2893(a).[18] Instead of the $10,000 reporting thresh

[18] VRLC does not appear to object to the expanded cate-

old, Vermont sets its level at $500. *Id.* § 2893(b). Finally, it also requires the MMA sponsor to forward "a copy of the mass media report to each candidate whose name or likeness is included in the activity." *Id.* Like the federal law, it has a twenty-four hour notice requirement. *Id.* In other ways, however, the law is narrower than the federal equivalent. For one, it does not require reporting contributors. *Id.;* Crossman Decl. Ex. 11. It also only applies within the final thirty days before a general election, rather than the sixty days in the federal version. Vt. Stat. Ann. tit. 17, § 2893(b). In total, its burdens are minimal. The sponsor first must send the Secretary a one-page form and then provide a photocopy of the report to any candidates who appear in the activity. *Id.*

VRLC challenges two components of the Vermont MMA law, the candidate notification provision and the twenty-four hour rule. In both instances, VRLC relies on a pre-*McConnell* case that overturned similar provisions in Colorado law. *Citizens for Responsible Gov't State PAC v. Davidson,* 236 F.3d 1174, 1197 (10th Cir.2000). However, that case applied strict scrutiny, while *Citizens United* makes clear that exacting scru-

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gory of media covered by the law as compared to the federal version. If it did, *Citizens United* would provide grounds for skepticism of that argument, as it upheld the disclosure and identification requirements at issue both to ten and thirty-second television ads and to a ninety-minute film, *Hillary: The Movie,* available only on video-on-demand service to digital cable subscribers. 130 S.Ct. at 887, 916. By contrast, the media covered by Vermont's MMA and electioneering communications provisions are more traditional channels for political messaging. *See* Vt. Stat. Ann. tit. 17, §§ 2891, 2893.

tiny is the proper frame for review. Applying exacting scrutiny, the First Circuit upheld an analogous candidate notification requirement for independent expenditures made on the candidate's behalf. *Daluz,* 654 F.3d at 119 & n. 6. As there, "prompt notification to a candidate of the expenditure ... indirectly serves the informational interest by permitting a candidate to distance herself from individuals or organizations whose views she does not share," furthering the aim of providing the public with "accurate information about electoral candidates." *Id.* at 119. In the same manner, it permits candidates attacked in a MMA to respond. Moreover, the incremental burden is minor, merely requiring the sponsor to send a copy of the MMA report to the candidates mentioned. *See id.* at 119 n. 6.

The twenty-four hour rule is also properly tailored to the state's interest in allowing voters to determine the sources of campaign spending. For one, federal law itself contains a twenty-four hour requirement. VRLC is correct that the Supreme Court has never explicitly passed judgment on that element of the law. Pls.' Summ. J. Br. 57 n. 60. *McConnell,* however, did uphold the law's separate requirement to report electioneering communications at the time the sponsor enters into an executory contract to produce them, if earlier than the time of broadcast. 540 U.S. at 200. In sustaining that provision, the Court noted: "Given the relatively short timeframes in which electioneering communications are made, the interest in assuring that disclosures are made promptly and in time to provide relevant information to voters is unquestionably significant." *Id.* That reasoning applies equally here, since MMA reporting only operates in the thirty days before an election. *Iowa Right to Life Comm., Inc. v. Smithson,* 750

F.Supp.2d 1020, 1039 ***399** (S.D.Iowa 2010) (finding Iowa's 48–hour requirement for independent expenditures passes exacting scrutiny). Moreover, VRLC has offered no evidence to suggest the twenty-four hour rule would be burdensome in its case or in general.

The same reasoning applies to Vermont's electioneering communication identification law. Citizens United's advertising was subject to an identification provision. 130 S.Ct. at 913–14. The federal law concerns speakers that, *inter alia,* "make[ ] a disbursement for the purpose of financing communications" that expressly advocate the election or defeat of a candidate or fund an electioneering communication. 2 U.S.C. § 441d(a). Those communications must "clearly state" who paid for and authorized them, and, if not paid for or authorized by a candidate, "clearly state" the street address, web address, and telephone number of the person who paid for it and also state that it was "not authorized by a candidate or candidate's committee." *Id.* It also specifies the size of the type, in the case of print media, or the clarity of a spoken identification statement in the case of broadcast media. 2 U.S.C. §§ 441d(c), (d).

Vermont law's electioneering communication provisions are similar. *See* Vt. Stat. Ann. tit. 17, §§ 2891–92. As with the MMA provision, they cover a broader array of media than the federal model, including items like billboard ads, posters, pamphlets, and robotic phone calls. *Id.* § 2891. While such communications must refer to "a clearly identified candidate for office," and "promote[ ] or support[ ] a candidate for that office, or attack [ ] or oppose[ ] a candidate for that office," they need not "expressly advocate[ ] a vote for or against a

candidate." *Id.* Exempting single electioneers who spend no more than $150 in an election cycle, as well as lapel stickers and buttons, the law requires identification of the communication's sponsor and, if applicable, any other person on whose behalf the communication was made. *Id.* § 2892.

VRLC argues *McIntyre v. Ohio Elections Commission,* 514 U.S. 334 (1995) governs and renders Vermont's electioneering communications law unconstitutional. In *McIntyre,* the Supreme Court rejected application of Ohio's political communications identification law to a solitary woman who distributed anonymous leaflets before a debate on a local ballot measure. 514 U.S. at 348–49, 357. In invalidating the prior version of Vermont's electioneering law, the Second Circuit cited *McIntyre* for the proposition that identification requirements may be a greater intrusion on speech than reporting requirements. *VRLC I,* 221 F.3d at 387; *see also VRLC I,* 19 F.Supp.2d at 212 (same). However, *Citizens United* upheld the federal disclaimer provision without so much as mentioning *McIntyre,* noting that while disclaimer provisions "burden the ability to speak," they do not limit speech. 130 S.Ct. at 914; *see also McKee,* 649 F.3d at 61 (" '*Citizens United* has effectively disposed of any attack on Maine's attribution and disclaimer requirements.' ")(quoting *McKee,* 723 F.Supp.2d at 267). VRLC does not make clear why *McIntyre* requires this Court to hold Vermont law unconstitutional but did not even merit a citation in the analogous context in *Citizens United.*

In addition, the Court in *McIntyre* effectively applied strict scrutiny to the Ohio law. *Justice v. Hosemann,* 829 F.Supp.2d 504, 514 (N.D.Miss.2011);

see McIntyre, 514 U.S. at 337 ("we uphold the restriction only if it is narrowly tailored to serve an overriding state interest"). That test is at odds with the version of exacting scrutiny the Court applied in ***400** *Citizens United*. *See Brumsickle,* 624 F.3d at 1013 (noting that *Citizens United* overruled prior Ninth Circuit precedent that applied strict scrutiny to disclosure laws). Supreme Court case law since this Court and the Second Circuit decided *VRLC I* make it clear that *McIntyre* is inapposite to the class of restrictions at issue.

VRLC also contends that the "on whose behalf" requirement creates a further burden, requiring speakers to place the name of the beneficiary party on the communication itself, which it argues will confuse viewers into believing issue messages are election-related. That fear is unfounded because, as discussed in Part III.A.2, *supra,* "on whose behalf" requires agreement from the beneficiary to produce the message. The Court does not find the prospect of placing an additional name on the communication constitutionally significant. On the contrary, the federal statute, unlike Vermont's, requires publication of the communication sponsor's web address and telephone number, and it also mandates that the message state that it "was not authorized by a candidate or candidate's committee." 2 U.S.C. § 441d(a). Those enforced disclosures are, if anything, more burdensome than Vermont's, even when the "on whose behalf" sentence is implicated. Nor does the Court accept, without further justification, that the minimal identification statements required by Vermont law will distract or mislead viewers. *See McKee,* 649 F.3d at 61.

The identification law promotes the substantial state interest in increasing the transparency of the sources of candidate support. *See id.* The burden on speakers to comply with the law is minimal, and Vermont further limits the impact of the regulation by exempting small-scale electioneering items—lapel stickers and buttons—and individual electioneers who spend less than $150 in an election cycle. Vt. Stat. Ann. tit. 17, § 2892.[19]

In sum and substance, Vermont's MMA and electioneering communications provisions are similar to those upheld and applied in *Citizens United*. Like the PAC disclosure rules, they bear a substantial relation to Vermont's sufficiently important interest in permitting citizens to gauge the sources of candidate support, and they pass exacting scrutiny. As such, the Court finds they are not overbroad.

C. *$100 Transparency Threshold for PAC Contributors*

The final disclosure challenge is brought by FIPE to the contribution threshold of $100, above which PACs must disclose a donor's name, address and date of contribution. Vt. Stat. Ann. tit. 17, § 2803(a)(1). The *Buckley* Court affirmed a similar $100 standard, noting that setting the disclosure threshold was an evaluation best left to congressional discretion and that "[w]e can-

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[19] Since the electioneering communications definition is not vague, the Court rejects VRLC's assertion that the electioneering communications identification provision is unconstitutional by virtue of implementing unconstitutional definitional language. *See* Pls.' Summ. J. Br. 14.

not say, on this bare record, that the limits designated are wholly without rationality." 424 U.S. at 83. The First Circuit recently applied the same "wholly without rationality" standard to uphold Rhode Island's $100 independent expenditure reporting threshold. *Daluz,* 654 F.3d at 118–19. The Court applies that same standard to Vermont law and disagrees with VRLC that exacting scrutiny should instead apply. Even if exacting scrutiny were appropriate, however, it would make little difference in the Court's analysis of this disclosure threshold. *See Family PAC v. McKenna,* 685 ***401** F.3d 800, 809 & n. 7 (9th Cir.2012) (applying exacting scrutiny to uphold $25 and $100 thresholds, noting "[i]t is far from clear, however, that even a zero-dollar disclosure threshold would succumb to exacting scrutiny" and that "we are not aware of any decision invalidating a *contribution disclosure requirement,* either facially or as applied to a particular actor").

Vermont's $100 level has a rational foundation. It is higher than twenty-eight states' and the District of Columbia's. Report of Robert Stern, Defs.' Mot. for Summ. J. Ex CC ("Stern Report"), at 8, ECF No. 168–32. In fact, Alaska, Louisiana, Michigan, and New Mexico require disclosure of all contributions to PACs. Stern Report 8. Only five states and the federal government set their thresholds above Vermont's. Stern Report 8; *see also ProtectMarriage.com v. Bowen,* 599 F.Supp.2d 1197, 1221 (E.D.Cal.2009) ("California's current $100 threshold falls well within spectrum of those mandated by its sister states, which range from no threshold requirement to $300."). Nor has Vermont arrived at $100 haphazardly: the legislative history reflects a concerted effort to adjust the amount over the

years.[20] The present level appears well-calculated for transparency without being overly burdensome. Based on a review of 2006 and 2008 campaign data in Vermont, the $100 level permits transparency for 80 percent of PAC contributions, compared to only 40 percent under a hypothetical $500 threshold. Decl. of Michael Franz ¶ 22, Defs.' Mot. for Summ. J., ECF No. 71–47.

VRLC additionally argues the $100 threshold is set too low because it is not adjusted for inflation. While the Supreme Court in *Randall,* 548 U.S. at 261, found that Vermont's failure to index its candidate contribution limits to inflation was one factor making them unconstitutionally low, failure to index contribution limits to inflation alone is not enough to justify invalidating them. *Ognibene v. Parkes,* 671 F.3d 174, 192 (2d Cir.2011). Failure to index is far less a concern in the realm of disclosure thresholds. *See McKee,* 649 F.3d at 60–61 ("Neither we nor the Supreme Court has ever second-guessed a legislative decision not to index a reporting requirement to inflation."). Examined under a "wholly without rationality" review, Vermont's $100 contribution disclosure provision is constitutional.

Thus, the Court denies in full Plaintiffs' constitutional challenges to Vermont's campaign finance disclosure laws. It now turns to the one remaining claim,

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[20] 1971 Vt. Acts & Resolves 541, Defs.' Mot. for Summ. J. Ex. 5, at 3, ECF 71–7 ($100); 1975 Vt. Acts & Resolves 187, Defs.' Mot. for Summ. J. Ex. 6, at 3, ECF No. 71–8 ($25); 1982 Vt. Acts & Resolves 288, Defs.' Mot. for Summ. J. Ex. 8, at 3, ECF No. 71–10 ($50); 1988 Vt. Acts & Resolves 456, Defs.' Mot. for Summ. J. Ex. 12, at 4, ECF No. 71–12 ($100).

FIPE's as-applied challenge to Vermont's single source contribution limit.

IV. $2000 Limit on Contributions to PACs

Vermont requires that "[a] political committee ... shall not accept contributions totaling more than $2,000.00 from a single source, political committee or political party in any two-year general election cycle." Vt. Stat. Ann. tit. 17, § 2805(a). FIPE challenges Section 2805(a) as it applies to it, a PAC that assertedly makes only independent expenditures. FIPE argues that since the contributions it receives go only to independent expenditures, and are not contributed to or coordinated with candidates, Vermont has no valid state interest in limiting the contributions FIPE may receive from individual donors. The State argues that it is justified in imposing the ***402** limit in Section 2805(a) on independent-expenditure-only groups, but that, in any event, the restriction is constitutional as applied to FIPE, since FIPE in reality merges thoroughly with PC, the VRLC fund that makes candidate contributions.

A. *State Interests in Limiting Contributions*

Limits on contributions must be "closely drawn to achieve a 'sufficiently important' government interest." *Green Party of Conn.,* 616 F.3d at 199 (quoting *Fed. Election Comm'n v. Beaumont,* 539 U.S. 146 (2003)). This distinguishes them from limits on expenditures, which are subject to strict scrutiny. *Green Party of Conn.,* 616 F.3d at 198–99. Scrutiny of contribution restrictions is "relatively complaisant ... because contributions lie closer to the edges than to the core of politi-

cal expression." *Beaumont,* 539 U.S. at 161. The Supreme Court has adhered generally to "this line between contributing and spending." *Fed. Election Comm'n v. Colo. Republican Fed. Campaign Comm. (Colorado Republican II),* 533 U.S. 431, 437 (2001).

At least two state interests may support contribution limits.[21] First is the appearance or reality of *quid-pro-quo* corruption in the relationship between a contributor and a candidate. *Ognibene,* 671 F.3d at 194. As the Supreme Court expressed: "[w]hile neither law nor morals equate all political contributions, without more, with bribes," there is a perception of corruption " 'inherent in a regime of large individual financial contributions' to candidates for public office." *Nixon v. Shrink Mo. Gov't PAC,* 528 U.S. 377, 390 (2000) (quoting *Buckley,* 424 U.S. at 27). Accordingly, since *Citizens United,* the Second Circuit has upheld total bans on contributions from current and prospective state contractors to Connecticut candidates, *Green Party of Conn.,* 616 F.3d at 202, and by all corporations and other business organizations to office seekers in New

[21] In *Ognibene,* the Second Circuit left open whether the additional interests in preventing the distortionary impact of corporate involvement in election politics and in protecting shareholders who disagree with the corporation's political beliefs might supply valid grounds for restricting corporate contributions, even though *Citizens United* had rejected them in the context of expenditure limits. 671 F.3d at 194–95 & n. 21; *see Citizens United,* 130 S.Ct. at 909 (refusing to revisit *Fed. Election Comm'n v. Nat'l Right to Work Comm.,* 459 U.S. 197, 207–08 (1982)), which relied on those rationales to sustain limits on corporations' soliciting funds for their segregated PACs. As in *Ognibene,* it is not necessary to rely on them here.

York City, *Ognibene,* 671 F.3d at 194–97. The same rationale applies to support limits on the amount donors may contribute to a PAC that in turn contributes to or coordinates its spending with candidates. *Landell,* 382 F.3d at 140–41; *see Buckley,* 424 U.S. at 23–26.

Second, and conceptually related, is the state interest in preventing the circumvention of valid contribution limits, which itself forestalls the reality and appearance of *quid-pro-quo* corruption. *Ognibene,* 671 F.3d at 195 & n. 21 (clarifying that the anti-circumvention interest survives *Citizens United*); *see also Green Party of Conn.,* 616 F.3d at 203–04 (upholding a ban on contributions by state contractors' spouses and dependent children to Connecticut candidates under an anti-circumvention rationale). States are permitted to address the "hard lesson" that contributors, once stymied from swaying candidates unduly by direct means, might render contribution limits irrelevant "by scrambling to find another way to purchase***403** influence." *McConnell,* 540 U.S. at 165. In *California Medical Association v. Federal Election Commission (Cal–Med),* 453 U.S. 182 (1981), the Supreme Court upheld the federal limit on contributions to PACs that in turn contribute to candidates, called "multicandidate committees." Justice Marshall's plurality opinion reasoned that Congress's decision to limit those contributions was justified because, otherwise, donors would circumvent limits on their own contributions to candidates by funneling unlimited funds through political committees. *Id.* at 198–99. Bearing those principles in mind, the Court turns to the parties' arguments.

B. *Limits on Contributions to FIPE Regardless of the Nature of its Campaign Spending*

The State first argues it may regulate the amount in contributions FIPE may receive from single sources even if FIPE engages in only independent expenditures. The Supreme Court has found that independent expenditures do not raise concerns of the reality or appearance of corruption, since their very separation from candidates ensures "[t]he candidate-funding circuit is broken." *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett,* 131 S.Ct. 2806, 2826–27 (2011). Federal courts to address the issue since *Citizens United* have emphasized that because independent expenditures cannot corrupt, governments have no valid anti-corruption interest in limiting contributions to independent-expenditure-only groups. *See SpeechNow.org,* 599 F.3d at 694–95; *Wis. Right to Life State Political Action Comm. v. Barland,* 664 F.3d 139, 154 (7th Cir.2011); *Thalheimer v. City of San Diego,* 645 F.3d 1109, 1118–21 (9th Cir.2011); *see also NCRL III,* 525 F.3d at 295 (holding same pre-*Citizens United*). Thus, they have sustained as-applied challenges to those limits by groups making solely independent expenditures.

These cases are in accord with the view expressed by Justice Blackmun in his concurring opinion in *Cal–Med,* in which he joined the plurality in upholding the limit on contributions the multi-candidate committee there could receive from donors. 453 U.S. at 201–04. He wrote separately to clarify that, in his view, the outcome would have been different had the limit been applied to "contributions to a committee that makes only independent expenditures." *Id.* at 203. In

that instance, he noted, there would be no threat of corruption. *Id.* The Second Circuit has not had occasion to comment on the rationale Justice Blackmun and other courts of appeals have relied upon, but to date, the full weight of authority lines up against regulating contributions to independent-expenditure-only groups. As such, the State's burden in justifying contribution limits on independent-expenditure-only groups is considerable. *See Shrink Mo. Gov't PAC,* 528 U.S. at 391 ("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.").

Against that backdrop, the State responds first by asserting that Vermont has a unique record of corruption and the appearance of corruption, caused in part by independent expenditure groups, which justifies extending a contribution limit to all PACs. Defs.' Summ. J. Br. 66–72. The State marshals legislative history and witness declarations in support of its argument, but its approach appears to be foreclosed by *Citizens United.*

In the wake of *Citizens United,* the Montana Supreme Court upheld Montana's***404** prohibition on all corporate spending to support or oppose political candidates, including independent expenditures, distinguishing the case from *Citizens United* on the basis of Montana's long history of corporate corruption and its less-onerous PAC alternative. *W. Tradition P'ship v. Attorney Gen.,* 363 Mont. 220, 2011 MT 328, 271 P.3d 1 (2011). The U.S. Supreme Court has since stayed that ruling pending a decision on whether to grant a writ of certiorari. *Am. Tradition P'ship, Inc. v. Bullock,*

132 S.Ct. 1307 (2012). Justice Ginsburg, in a statement attached to the stay order that Justice Breyer joined, noted that "Montana's experience, and experience elsewhere since this Court's decision in *Citizens United* ... make it exceedingly difficult to maintain that independent expenditures by corporations do not give rise to corruption or the appearance of corruption." *Id.* at 1308 (internal quotation and citation omitted). Even so, Justice Ginsburg concluded the Montana decision was squarely at odds with *Citizens United,* voting to grant the stay because "lower courts are bound to follow this Court's decisions until they are withdrawn or modified." *Id.*

The stay is strong evidence that, at least until the Supreme Court says otherwise, arguments based on peculiar state context cannot unseat the general finding that independent expenditures do not corrupt.[22] As Judge Aspen of the Northern District of Illinois recently put it: "even in Illinois, independent expenditures do not lead to corruption." *Personal PAC v. McGuffage,* 858 F.Supp.2d 963, 969 (N.D.Ill.2012).

The State also contends the limit may be justified against independent-expenditure-only groups as a means to facilitate transparency of the activities of large campaign spenders. Defs.' Summ. J. Br. 73. Wealthy donors would be encouraged by the absence of independent expenditure PAC contribution limits to funnel contributions to PACs rather than spend money themselves on electioneering communications. The up-

[22] Further still, the record does not make clear "that corruption (or its appearance) in Vermont is significantly more serious a matter than elsewhere." *Randall,* 548 U.S. at 261.

shot, according to the State, will be that the donors' spending would be more difficult to trace than were it revealed by electioneering communications attribution. This argument gives short shrift to the PAC reporting requirements the Court upholds today. FIPE, like any other Vermont PAC, must reveal every contributor who has provided it with more than $100, Vt. Stat. Ann. tit. 17, § 2803(a)(1), which is a more direct and less burdensome means to address the State's transparency concern. *See Citizens Against Rent Control/Coal. for Fair Housing v. City of Berkeley,* 454 U.S. 290, 298–99 (1981). The State's arguments do not provide grounds to doubt the broadly-held view that states may not limit contributions independent-expenditure-only groups receive from single sources.

C. *Limits on Contributions to FIPE because of its Relationship with PC*

Since FIPE maintains it makes only independent expenditures, it insists that this must be the end of the Court's analysis. The State counters that the undisputed record before the Court leads to the opposite conclusion: that FIPE in fact is enmeshed completely with PC, which contributes funds to candidates, and thus cannot be considered to make independent expenditures. FIPE has chosen not to take the fallback position of contesting***405** the factual showing the State has made to prove its point. FIPE's view is that its status is cemented as a matter of law. *See NCRL III,* 525 F.3d at 294 n. 8 (declining state's request to "pierce the corporate veil," since "while NCRL–FIPE does share staff and facilities with its sister and parent entities, it is independent as a matter of law" and the state pre-

sented no evidence that it was abusing its corporate form).

The Court is mindful of the delicacy of inquiring into this sensitive area of First Amendment liberty, and it does not question FIPE's good faith and candor. However, it declines to accept FIPE as an independent-expenditure-only PAC without resort to the factual record. To begin, the Second Circuit ordered this Court to make "findings" as to whether FIPE "makes solely independent expenditures" and has standing to bring its claim, when FIPE raised the very same challenge to Vermont's contribution limit in *Landell,* 382 F.3d at 144.[23] That statement demonstrates the Second Circuit's view that the factual basis for FIPE's assertion was crucial. The parties subsequently agreed to dismiss FIPE's claim without prejudice, making any inquiry moot on remand in *Landell. See* Final Judgment Order 2, No. 2:99–cv–146. However, the same reasoning controls the Court's analysis in this case, involving the same challenge raised by the same plaintiff.

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[23] On review of the factual record, the Court finds no reason to question FIPE's standing to bring this challenge as an entity that makes independent expenditures and hopes to receive contributions in excess of $2000. The trouble, as discussed *infra,* is the lack of clear accounting between it and PC, making it uncertain which money supports which activities of the two entities. The Court does not believe the Second Circuit would have wished it to have viewed the facts for the purposes of a standing inquiry only to put on a blindfold when reaching the merits of FIPE's claims. For that reason, the Court also examines the factual record as to the State's rationale for applying Section 2805(a) to FIPE.

Even if it were not directed to do so by the Second Circuit, the Court would take the same course. In this as-applied challenge, the facts are vital. *See Colo. Republican Fed. Campaign Comm. v. Fed. Election Comm'n,* 518 U.S. 604, 613–14, 619 (1996) (examining the summary judgment factual record to determine whether a political party's advertisement was an expenditure that was coordinated with a candidate, and, in light of the undisputed record to the contrary, rejecting the government's assertion as a matter of law that it was coordinated). The issue of independence from candidates is the touchstone of the contribution limit's constitutionality. A number of the courts that have struck down limits on contributions applied to independent-expenditure-only PACs have made clear their reasoning would not hold to the extent the assumption of independence were undermined. *Wis. Right to Life State PAC,* 664 F.3d at 155 (If a PAC "is not truly independent .... the committee would not qualify for the free-speech safe harbor for independent expenditures."); *Long Beach Area Chamber of Commerce v. City of Long Beach,* 603 F.3d 684, 696–97 (9th Cir.2010), *cert. denied,* 131 S.Ct. 392 (2010) (examining the evidentiary record and finding it revealed only attenuated ties between the independent-expenditure-only PAC and candidates); *SpeechNow.org,* 599 F.3d at 696 (deciding "these questions as applied to contributions to SpeechNow, an independent expenditure-only group" that had yet to begin operations); *NCRL III,* 525 F.3d at 295 ("If independent expenditure committees are not in fact independent, they risk forfeiting their exemption from North Carolina's***406** contribution limits."); *Yamada,* 872 F.Supp.2d at 1041, 2012 WL 983559, at *15 ("The record contains no evidence contradicting AFA–PAC's

assertion that it 'operates like any other independent political action committee.' "). Unlike in those cases, here the State has compiled a factual record to contradict FIPE's claim.

FIPE too takes seriously the concern that independent expenditure groups could use their privileged status as a cloak for non-independent spending. At oral argument, it offered that the State could, in the future, probe FIPE's fidelity to that status in the context of an enforcement action. It admitted in its briefing that an organization that engaged in some speech apart from independent expenditures "would present harder questions." Pls.' Summ. J. Br. 60 n. 63. FIPE is correct that the details of its activities could change the First Amendment calculus. The Second Circuit made clear that Vermont's contribution limit, when applied to groups like PC that contribute to or coordinate spending with candidates, is "unquestionably constitutional." *Landell,* 382 F.3d at 140. The D.C. Circuit held that when a PAC engages in more than just independent expenditures, it may be subject to contribution limits for its non-independent spending. *Emily's List v. Fed. Election Comm'n,* 581 F.3d 1, 12 (D.C.Cir.2009).

Finally, in examining FIPE, the Court is guided by the type of burden on speech at issue. This is not a case in which Vermont has imposed a limit on FIPE's expenditures. Instead, it has reduced the amount FIPE can collect from individual contributors that it might later convert into its own speech. *See Buckley,* 424 U.S. at 20–21. Thus, while the Court is deeply sensitive to the hardship that would be imposed in upholding total bans on independent speech while parsing them in endless as-applied review, *see WRTL II,* 551 U.S. at

468 n. 5, 469, 474–76; *Citizens United,* 130 S.Ct. at 891, 895, that concern applies with less vigor in the context of a limit on large, single-source contributions to PACs. Moreover, the factual record to be explored below was compiled in expedited discovery and, had circumstances not intervened, would have been the subject of a decision in a fast-tracked proceeding several years ago.

To sum up, the character of FIPE's political involvement is the hinge on which its claim pivots. To rely solely on a PAC's assertions as to that decisive point, even when challenged by state parties' uncontested facts at summary judgment, would grant "an explicit green light ... to circumvent campaign finance regulation." *See NCRL III,* 525 F.3d at 337 (Michael, J. dissenting).

D. *The Undisputed Factual Record and its Implications for FIPE*

In light of those considerations, the Court now turns to the factual record as to FIPE's status, which FIPE does not contest. Since FIPE repeatedly conceded any challenge on the facts, the record before the Court is essentially limited to the fruits of the State's discovery.

VRLC formed FIPE in 1999 for "the sole purpose of making independent expenditures in Vermont state elections." Organizational Docs. 3. It noted FIPE would not "make monetary or in-kind contributions to candidates and it will not coordinate" with candidates. Organizational Docs. 3. FIPE and PC each maintain distinct bank accounts. However, Kevin Marchand, an accountant who examined VRLC's, FIPE's, and PC's structure

and finances for the State, found that FIPE is managed by VRLC and has no formal existence apart from VRLC. *See* Decl. of Kevin Marchand, CPA, Defs.' Resp. in Opp'n to Pls.' Mot. for Summ. J. Ex. 7 ("Marchand Decl.") ¶ 9, ECF No. ***407** 93–10. FIPE and PC are not separately incorporated organizations. Marchand Decl. ¶¶ 9, 10. In addition to that lack of formal separation, "[t]here is a permeable membrane, rather than a fixed boundary, between VRLC and its funds." Marchand Decl. ¶ 29. Moreover, "it is difficult to determine which fund is supporting which activity of VRLC." Marchand Decl. ¶ 36.

The record demonstrates that FIPE and PC are particularly interrelated. According to Marchand, "[t]here is a fluidity of funds between VRLC–FIPE and VRLC–PC." Marchand Decl. ¶ 11. VRLC at times transfers funds from PC to FIPE if FIPE cannot afford to engage in an activity on its own. *Id.* FIPE and PC together produce, and pay for, voter guides describing the pro-life positions of candidates in each county in Vermont. FIPE Dep. 28–31. From the Court's review of the record, this appears to be FIPE's primary activity. FIPE and PC often list themselves together as sponsors on the backs of those guides. *See* Voter Guides, Defs.' Mot. for Summ. J. Ex. D ("Voter Guides"), ECF No. 168–6. This practice continued even in 2004 and 2006, election cycles during which FIPE stated it was inactive. Voter Guides 2–16. The only criteria in determining whether FIPE or PC money is used to pay for a particular guide is how much money each fund has available and whether the publication refers to a federal candidate, in which case PC funds are used. FIPE Dep. 31. PC also bases its endorsement decisions on the voter guides, while FIPE has sent postcards to sup-

porters describing candidates PC has endorsed. *See* FIPE Dep. 36–37.

FIPE and PC have separate committees that direct their activities, but those committees overlap almost entirely in membership, meet at the same time and same place, and sometimes refer to FIPE and PC interchangeably. FIPE Dep. 7–8. In a 2008 PC committee meeting, the members described that they had a goal of raising $10,000 in combined FIPE and PC funds and one member suggested sending a FIPE letter to non-members and businesses, which PC is not permitted to solicit. PC Comm. Meeting Minutes, Defs.' Mot. for Summ. J. Ex. Y ("PC Minutes"), at 18, 21, ECF No. 168–41. They make decisions on whether to use FIPE or PC, such as in the 2010 election, based on strategic concerns. *See* PC Minutes 3 ("Sharon raised the probability that we would use the FIPE predominantly in this coming election, as opposed to PC, since we are unlikely to be active in any federal races and since the FIPE can raise funds that the PC can't.")

Mary Hahn Beerworth, the Executive Director of VRLC, is an *ex officio* member of FIPE's committee, VRLC Board Meeting Minutes, Defs.' Mot. for Summ. J. Ex. AA, at 22, ECF No. 168–43. She also attends FIPE and PC committee meetings and advises both committees. Mary Hahn Beerworth Dep., Defs.' Mot. for Summ. J. Ex. Q ("Beerworth Dep."), at 4–6, ECF No. 168–20. Ms. Beerworth, as part of her work for VRLC, meets with potential candidates to encourage them to run for elected office. Beerworth Dep. 4; PC Minutes 38. Ms. Beerworth, along with Michele

Morin,[24] decides whether to provide candidates VRLC endorses with access to the organization's supporter phone and mailing list, either by the candidate purchasing a portion of the list from VRLC or by an in-kind contribution from PC to the candidate. Morin Dep. 14–15; Beerworth Dep. 16–17. She also lobbies elected officials on behalf of VRLC. Beerworth Dep. 3.

***408** During the 2010 campaign, Ms. Beerworth advised Brian Dubie, the Republican candidate for Governor, and members of his campaign staff on pro-life issues. *See* Mary Hahn Beerworth E-mail Correspondence, Defs.' Mot. for Summ. J. Ex. K, ECF No. 168–14. During that time, FIPE was active and sought to raise money from contributors who had "maxed out" on contributions to Mr. Dubie's gubernatorial campaign. FIPE Comm. Meeting Minutes, Defs.' Mot. for Summ. J. Ex. Z, at 4, ECF No. 168–42. During the same cycle, the Dubie campaign accepted over $900 worth of VRLC's supporter phone lists as an in-kind contribution. 2010 Brian Dubie Campaign Finance Disclosure Forms, Defs.' Mot. for Summ. J. Ex. GG, at 4, 7, ECF No. 168–36. PC has endorsed Dubie in every election in which he has run. Beerworth Dep. 22–23.

Based on those facts, the Court concludes that the structural melding between FIPE and PC leaves no significant functional divide between them for the purposes of campaign finance law. Their nearly complete organizational identity poses serious questions in its

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[24] Ms. Morin is the chair of the PC committee and a member of the FIPE committee. Michele H. Morin Dep., Defs.' Mot. for Summ. J. Ex. T ("Morin Dep."), at 3, ECF No. 168–23.

own right. *See NCRL III,* 525 F.3d at 337 (Michael, J. dissenting) ("It is hard to understand how NCRL–FIPE could, whether intentionally or not, avoid incorporating the coordinated campaign strategies used by NCRL–PAC into its own ostensibly independent campaign work."). That concern appears starkly in how FIPE and PC operated during the 2010 campaign. Ms. Beerworth, who was involved in setting FIPE's direction as a member of its committee, also actively advised the Brian Dubie campaign, and was involved in VRLC and PC which endorsed Mr. Dubie and contributed supporter phone numbers to his campaign.[25] It is underscored in the consolidated manner in which FIPE and PC approach creating and funding the voter guides. The record indicates that FIPE works part and parcel with PC, with minimal distinctions observed between the two.

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[25] The Supreme Court in *McConnell* traced the constitutional boundaries of coordinated expenditure regulation, stating: "We are not persuaded that the presence of an agreement marks the dividing line between expenditures that are coordinated—and therefore may be regulated as indirect contributions—and expenditures that truly are independent." 540 U.S. at 221. "[E]xpenditures made after a 'wink or nod' often will be 'as useful to the candidate as cash.' " *Id.* (quoting *Colorado Republican II,* 533 U.S. at 442, 446). As previously noted, however, Vermont law, by virtue of "on whose behalf," contemplates express and intentional coordination between the candidate and the spender before an expenditure is considered "coordinated." *See* Vt. Stat. Ann. tit. 17, § 2809(c). The record does not evidence any expenditures designated as FIPE's that were undertaken at the Dubie campaign's explicit direction.

FIPE responds to that suggestion with language taken from prior cases that it suggests hold as a matter of law that PACs formed by a corporation must be treated as distinct entities. In *Cal–Med,* the Supreme Court held that the multicandidate committee at issue was "a separate legal entity" from the California Medical Association ("CMA") that created it. 453 U.S. at 196. However, it did so only to state that limiting the contributions CMA could make to its multicandidate committee was not "an unconstitutional expenditure limitation because it restricts the ability of CMA to engage in political speech through a political committee." *Id.* at 195–96; *see Buckley,* 424 U.S. at 21 ("the transformation of contributions into political debate involves speech by someone other than the contributor"). Nor does *Citizens United* counsel differently, where, as previously described, the Supreme Court held that the First Amendment infringement***409** in banning corporate independent expenditures was not cured by a PAC alternative, since PACs cannot substitute for the corporation's own speech. *See* 130 S.Ct. at 897. Neither case stands for the proposition that Vermont PACs must be treated as wholly distinct entities as a matter of law when reviewing limits on contributions they may receive.

Nonetheless, on its own, it is unclear whether even a complete overlap in staff and symmetry in spending permit extending contribution limits that undisputedly apply to a PAC that makes candidate contributions to one that does independent expenditures. The D.C. Circuit held that a *single* "non-profit that makes expenditures to support federal candidates does not suddenly forfeit its First Amendment rights when it decides also to make direct contributions to parties or candidates."

Emily's List, 581 F.3d at 12. It "simply must ensure, to avoid circumvention of individual contribution limits by its donors, that its contributions to parties or candidates come from" an account containing funds raised in accordance with contribution limits, while it may spend freely from funds raised in unlimited quantities when it engages in independent expenditures. *Id.* If a PAC complies with that protocol, the D.C. Circuit held, the federal government cannot apply a blanket contribution limit to all its fundraising. *Id.; see also Thalheimer v. City of San Diego,* 09–CV–2862–IEG BGS, 2012 WL 177414, at *13 (S.D.Cal. Jan. 20, 2012) (relying on *Emily's List* to reject application of San Diego's limit on contributions to political committees to the extent those political committees engage in independent expenditures, regardless of whether they also conduct non-independent spending). Relying on *Emily's List,* the U.S. District Court for the District of Columbia held that maintaining segregated bank accounts is sufficient to ensure a division between funds raised by a federal political committee for independent expenditures and those raised by the same organization for candidate contributions. *Carey v. Fed. Election Comm'n,* 791 F.Supp.2d 121, 131–32 (D.D.C.2011).

The Court states that this point of law is "unclear" because, as the D.C. Circuit acknowledged, it is in tension with language in *McConnell. See Emily's List,* 581 F.3d at 14 n. 13. In a footnote, the principal opinion in *McConnell* read *Buckley* and *Cal–Med* to approve of contribution limits on political committees both insofar as they restrict the "amount of funds available to parties and political committees to make candidate contributions," and when they also apply to limit the "amount of funds available to engage in express advo-

cacy and numerous other noncoordinated expenditures." 540 U.S. at 152 n. 48. Thus, by its express language, the Supreme Court seemed to refute the assumption that generalized limits on contributions to groups that engage in both independent expenditures and coordinated spending are unconstitutional. *See NCRL III,* 525 F.3d at 333 (Michael, J. dissenting); *Emily's List,* 581 F.3d at 37–38 (Brown, J. concurring in part). The majority in *Emily's List* gave the *McConnell* footnote a narrow reading by finding it could only have been meant to make a point about political parties, the principal concern of that portion of *McConnell,* rather than about PACs, the subject of the cited portions of *Cal–Med* and *Buckley*. *See* 581 F.3d at 14 n. 13. For the reason described below, the Court need only note, and not interject itself into this interpretive debate.

The critical distinction between *Emily's List* and *Carey* and the case at bar is that the functional similarity of PC and FIPE is coupled with "a fluidity of funds." Marchand Decl., ¶ 11. Without a clear accounting***410** between dollars spent by each fund, it cannot be maintained that contributions to FIPE, intended for independent expenditures, are truly aimed at that purpose when spent. *See Carey,* 791 F.Supp.2d at 132. With little demarcation between PC, a fund that gives contributions to candidates, and FIPE, the State is justified under the anti-circumvention rationale in also limiting contributions from single sources to FIPE. Otherwise, funds raised in unlimited quantities by FIPE may support coordinated spending or candidate contributions. Thus, PC would be able to circumvent limits on contributions to it to support its activities. It would also provide an outlet for unlimited contribu-

tions from donors otherwise subject to valid limits on direct contributions to candidates. *See* Crossman Decl. ¶ 35 (Vermont candidates may only accept $1000 in contributions from individuals).

"*Buckley* demonstrates that the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible." *Shrink Mo. Gov't PAC,* 528 U.S. at 391; *cf. Colorado Republican II,* 533 U.S. at 464–65 ("Therefore the choice here is not, as in *Buckley* and *Colorado I,* between a limit on pure contributions and pure expenditures. The choice is between limiting contributions and limiting expenditures whose special value as expenditures is also the source of their power to corrupt. Congress is entitled to its choice."). Faced with that risk, the State may apply Section 2805(a) to FIPE.

The Court emphasizes that it reaches this decision in part based on the category of restriction on speech at issue. Vermont neither limits the aggregate amount FIPE may collect from its supporters, nor the amount FIPE may spend. Nor does the Court hold today that FIPE is categorically required to submit to Section 2805(a) should it change its accounting practices. It reiterates that the State has not offered a persuasive basis on which to limit contributions to PACs that only make independent expenditures. However, the Court cannot ignore the undisputed factual record before it. As applied to FIPE, Vermont is permitted to enforce Section 2805(a) to avert opening a loophole through which contributors may provide FIPE with unlimited sums to contribute to candidates through the flow of funds between FIPE and PC.

Conclusion & Order

Vermont has striven for over a century to curb the worst influences of money in its politics, pursuing the state constitutional mandate "That all elections ought to be free and without corruption," Vt. Const. ch. 1, art. 8. The laws at issue in this case have already been honed by legislative initiatives and legal challenges, but safeguarding the precious First Amendment protection of political speech in keeping with our republic's bold experiment in government "of the people, by the people, for the people" will doubtless remain the subject of debate.

The Supreme Court's profound expression of the law in this area, *Citizens United,* is best known in the public discourse for overruling precedent that had allowed governments to ban corporate independent expenditures in political campaigns. That aspect of the decision has since reduced constraints on corporate political spending. Less discussed is that a near-unanimous Court in *Citizens United* also affirmed the line of cases permitting governments to require political speakers to identify themselves on their communications and to disclose their basic organizational structure, expenditures, and contributions. Vermont's PAC, electioneering communications, and MMA disclosure ***411** rules are consistent with that precedent and pass exacting scrutiny. Its $100 threshold for revealing PAC contributors easily meets the wholly without rationality standard announced in *Buckley*.

While FIPE avowedly makes only independent expenditures, the record before the Court reveals no clear accounting between it and PC, a fund that supports

candidates directly. As such, Vermont is permitted to impose a $2000 limit on contributions FIPE may accept from individual sources. To hold otherwise, on this record, would allow the portion of *Citizens United* dealing with independent expenditure limits to shield political fundraising conducted by PACs that make contributions to candidates or engage in coordinated expenditures.

In so finding, the Court hereby orders:

1. Plaintiffs' motion for summary judgment, ECF No. 166, is **denied.**

2. Defendants' motion for summary judgment, ECF No. 168, is **granted.**

3. Defendants' motions to file summary judgment documents under seal are **denied as moot.**

4. There being no matters in the case outstanding, the Court directs the Clerk to **enter final judgment** in favor of the Defendants.

It is so ordered.

[Filed: 6/21/2012; Doc.195]

United States District Court
District of Vermont

VERMONT RIGHT TO LIFE COMMITTEE, INC. and VERMONT RIGHT TO LIFE COMMITTEE - FUND FOR INDEPENDENT POLITICAL EXPENDITURES,

Plaintiffs,

v.

WILLIAM H. SORRELL, in his official capacity as Vermont Attorney General, DAVID R. FENSTER, ERICA MARTHAGE, LISA WARREN, T.J. DONOVAN, VINCENT ILLUZZI, JAMES HUGHES, DAVID MILLER, JOEL PAGE, WILLIAM PORTER, ALAN FRANKLIN, MARC BRIERRE, THOMAS KELLY, TRACY SHRIVER, and ROBERT SAND, in their official capacities as Vermont State's Attorneys; and JAMES C. CONDOS, in his official capacity as Vermont Secretary of State,
Defendants. :

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2:09-cv-188

_____ Jury Verdict. This action came before the Court for trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Opinion and Order (Document No. 194) filed June 21, 2012, plaintiffs Motion for Summary Judgment (Document No. 166) is DENIED and defendants Motion for Summary Judgment (Document No. 168) is GRANTED. JUDGMENT is hereby entered for defendants William H. Sorrell, David R. Fenster, Erica Marthage, Lisa Warren, T.J. Donovan, Vincent Illuzzi, James Hughes, David Miller, Joel Page, William Porter, Alan Franklin, Marc Brierre, Thomas Kelly, Tracy Shriver, Robert Sand and James C. Condos, against plaintiffs Vermont Right to Life Committee, Inc., and Vermont Right to Life Committee - Fund for Independent Political Expenditures.

Previously pursuant to the parties Stipulation (Document No. 145) filed September 16, 2010, Count 9 of the Plaintiff's First Amended Verified Complaint was dismissed.

JEFFREY S. EATON
Clerk
/s/Lisa Wright
(By) Deputy Clerk

Date: June 21, 2012

Judgement Entered on Docket

Date: June 21, 2012

Constitutional Provisions

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statutes

Vermont Political Speech Statute Before the 2014 Amendment

from
http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=17&Chapter=059
(visited Nov. 11, 2013)

Vermont Statutes
Title 17: Elections
Chapter 59: CAMPAIGN FINANCE

Sub-Section 1: GENERAL PROVISIONS

§ 2801. Definitions

As used in this chapter:

(1) "Candidate" means an individual who has taken affirmative action to become a candidate for state, county, local, or legislative office in a primary, special, general, or local election. An affirmative action shall include one or more of the following:

(A) accepting contributions or making expenditures totaling $500.00 or more; or

(B) filing the requisite petition for nomination under this title or being nominated by primary or caucus; or

(C) announcing that he or she seeks an elected position as a state, county, or local officer or a position as representative or senator in the general assembly.

(2) "Contribution" means a payment, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid to a person for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates in any election, but shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee, or political party. For purposes of this chapter, "contribution" shall not include a personal loan from a lending institution.

(3) "Expenditure" means a payment, disbursement, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid, for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates.

(4) "Political committee" or "political action committee" means any formal or informal committee of two or more individuals, or a corporation, labor organization, public interest group, or other entity, not including a political party, which receives contributions of more than $500.00 and 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.

(5) "Political party" means a political party organized under chapter 45 of this title or 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.

(6) "Single source" means an individual, partnership, corporation, association, labor organization or any other organization, or group of persons which is not a political committee or political party.

(7) "Election" means the procedure whereby the voters of this state or any of its political subdivisions select a person to be a candidate for public office or fill a public office, or to act on public questions including voting on constitutional amendments. Each primary, general, special, run-off, or local election shall constitute a separate election.

(8) "Public question" means an issue that is before the voters for a binding decision.

(9) "Two-year general election cycle" means the 24-month period that begins 38 days after a general election. Expenditures related to a previous campaign and contributions to retire a debt of a previous campaign shall be attributed to the earlier campaign cycle.

(10) "Full name" means an individual's full first name, middle name or initial, if any, and full legal last name, making the identity of the person who made the contribution apparent by unambiguous reference.

(11) "Telephone bank" means more than 500 telephone calls of an identical or substantially similar nature that are made to the general public within any 30-day period. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below; amended 1987, No. 263 (Adj. Sess.), § 1; 1997, No. 64, § 5, eff. Nov. 4, 1998; 2005, No. 62, § 1.)

§ 2801a. Exceptions

The definitions of "contribution," "expenditure," and "electioneering communication" shall not apply to any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication which has not been paid for, or such facilities are not owned or controlled, by any political party, committee, or candidate. (Added 2005, No. 62, § 2.)

§ 2802. Checking account; treasurer

Candidates who have made expenditures or received contributions of $500.00 or more and political committees shall be subject to the following requirements:

(1) All expenditures shall be paid by either a credit card, or a debit card, check, or other electronic transfer from a single checking account in a single bank publicly designated by the candidate or political committee.

(2) Each candidate and each political committee shall name a treasurer, who may be the candidate or spouse, who is responsible for maintaining the checking account. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below; amended 2005, No. 62, § 3.)

§ 2803. Campaign reports; forms; filing

(a) The secretary of state shall prescribe and provide a uniform reporting form for all campaign finance reports. The reporting form shall be designed to show the following information:

(1) the full name, town of residence, and mailing address of each contributor who contributes an amount in excess of $100.00, the date of the contribution, and the amount contributed;

(2) the total amount of all contributions of $100.00 or less and the total number of all such contributions;

(3) each expenditure listed by amount, date, to whom paid, and for what purpose;

(4) the amount contributed or loaned by the candidate to his or her own campaign during the reporting period; and

(5) each debt or other obligation, listed by amount, date incurred, to whom owed and for what purpose, incurred during the reporting period.

(b) The form shall require the reporting of all contributions and expenditures accepted or spent during the

reporting period and during the campaign to date and shall require full disclosure of the manner in which any indebtedness is discharged or forgiven. Contributions and expenditures for the reporting period and for the campaign to date also shall be totaled in an appropriate place on the form. The total of contributions shall include a subtotal of nonmonetary contributions and a subtotal of all monetary contributions. The form shall contain a list of the required filing times so that the person filing may designate for which time period the filing is made. Contributions and expenditures received or spent after 5 p.m. on the third day prior to the filing deadline shall be reported on the next report.

(c) The form described in this section shall contain language of certification of the truth of the statements and places for the signature of the candidate or the treasurer of the campaign.

(d) All reports filed under this section shall be retained in an indexed file by the official with whom the report is filed and shall be subject to the examination of any person.

(e) Disclosure shall be limited to the information required to administer this chapter.

(f) The secretary may require that the form set forth in this section and mass media reports required under section 2893 of this title be filed in a digital format. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below; amended 1985, No. 198 (Adj. Sess.), §§ 14, 15; 1987, No. 263 (Adj. Sess.), § 2; 1997, No. 64, § 11, eff. Nov. 4, 1998; 2005, No. 62, § 4; 2009, No. 17, § 1.)

§ 2804. Surplus campaign funds

(a) No member of a political committee which has surplus funds after all campaign debts have been paid shall convert the surplus to personal use.

(b) No candidate who has surplus funds after all campaign debts have been paid shall convert the surplus to personal use, other than to reduce personal campaign debts.

(c) Surplus funds in a political committee's or candidate's account after payment of all campaign debts may be contributed to other candidates, political parties, or political committees subject to the contribution limits set forth in this chapter or may be contributed to a charity.

(d) The "final report" of a candidate shall indicate the amount of the surplus and how it has been or is to be liquidated. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below; amended 2005, No. 62, § 5.)

§ 2805. Limitations of contributions

(a) A candidate for state representative or local office shall not accept contributions totaling more than $200.00 from a single source, political committee, or political party in any two-year general election cycle. A candidate for state senator or county office shall not accept contributions totaling more than $300.00 from a single source, political committee, or political party in any two-year general election cycle. A candidate for the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general shall not accept contributions totaling more than $400.00 from a single source, political committee, or political party in any two-year general election cycle. A political committee, other than a political committee of a candidate, or a political party shall not accept contributions totaling more than $2,000.00 from a single source, political committee, or political party in any two-year general election cycle.

(b) A single source, political committee, or political party shall not contribute more to a candidate, political committee, or political party than the candidate, political committee, or political party is permitted to accept under subsection (a) of this section.

(c) A candidate, political party, or political committee shall not accept, in any two-year general election cycle, more than 25 percent of total contributions from contributors who are not residents of the state of Vermont or from political committees or parties not organized in the state of Vermont.

(d) A candidate shall not accept a monetary contribution in excess of $50.00 unless made by check, credit or debit card, or other electronic transfer.

(e) A candidate, political party, or political committee shall not knowingly accept a contribution which is not directly from the contributor, but was transferred to the contributor by another person for the purpose of transferring the same to the candidate, or otherwise circumventing the provisions of this chapter. It shall be a violation of this chapter for a person to make a contribution with the explicit or implicit understanding that the contribution will be transferred in violation of this subsection.

(f) This section shall not be interpreted to limit the amount a candidate or his or her immediate family may contribute to his or her own campaign. For purposes of this subsection, "immediate family" means individuals related to the candidate in the first, second, or third degree of consanguinity.

(g) The limitations on contributions established by this section shall not apply to contributions made for the purpose of advocating a position on a public question, including a constitutional amendment.

(h) For purposes of this section, the term "candidate" includes the candidate's political committee. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below; amended 1987, No. 263 (Adj. Sess.), § 3, eff. Jan. 1, 1989; 1997, No. 64, § 6, eff. Nov. 4, 1998; 2005, No. 62, § 6.)

§ 2805a. Campaign expenditure limitations; amounts

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

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

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

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

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

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

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

(c) If a candidate for the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general is an incumbent of the office being sought, the candidate shall be permitted to expend only 85 percent of the amount allowed for that office under this section. If a candidate for the general assembly is an incumbent of the office being sought, the candidate shall be permitted to expend only 90 percent of the amount allowed for that office under this section.

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

(e) The expenditure limitations contained in this section shall be adjusted for inflation by increasing them based on the Consumer Price Index. Increases shall be rounded up to the nearest $100.00. Increases shall be effective for the first campaign cycle beginning after the general election held on November 2, 2004. The adjustments shall be calculated retroactively to January 1, 2001. On or before July 1, 2005, the secretary of state shall calculate and publish the amount of each limitation that will apply to the election cycle in which July 1, 2005, falls. On July 1 of each subsequent odd-numbered year the secretary shall publish the

amount of each limitation for the election cycle in which that publication falls. (Added 1997, No. 64, § 7, eff. Nov. 4, 1998; amended 2005, No. 62, § 7.)

§ 2806. Penalties

(a) A person who knowingly and intentionally violates a provision of subchapters 2 through 4 of this chapter shall be fined not more than $1,000.00 or imprisoned not more than six months or both.

(b) A person who violates any provision of this chapter shall be subject to a civil penalty of up to $10,000.00 for each violation and shall refund the unspent balance of Vermont campaign finance grants received, if any, calculated as of the date of the violation.

(c) In addition to the other penalties herein provided, a state's attorney or the attorney general may institute any appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate any violation of this chapter. (Added 1981, No. 197 (Adj. Sess.), § 1; amended 1991, No. 156 (Adj. Sess.), § 3, eff. Jan. 1, 1993; 1997, No. 64, § 3.)

§ 2806a. Civil investigation

(a) The attorney general or a state's attorney, whenever he or she has reason to believe any person to be or to have been in violation of this chapter or of any rule or regulation made pursuant to this chapter, may examine or cause to be examined by any agent or representative designated by him or her for that purpose any books, records, papers, memoranda, and physical objects of any nature bearing upon each alleged viola-

tion and may demand written responses under oath to questions bearing upon each alleged violation. The attorney general or state's attorney may require the attendance of such person or of any other person having knowledge in the premises in the county where such person resides or has a place of business or in Washington County if such person is a nonresident or has no place of business within the state and may take testimony and require proof material for his or her information and may administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum. The attorney general or a state's attorney shall serve notice of the time, place, and cause of such examination or attendance or notice of the cause of the demand for written responses personally or by certified mail upon such person at his or her principal place of business, or, if such place is not known, to his or her last known address. Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this state for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general or a state's attorney or another law enforcement officer engaged in legitimate law enforcement activities, unless with the consent of the person producing the same. This subsection shall not be applicable to any criminal investigation or prosecution brought under the laws of this or any state.

(b) A person upon whom a notice is served pursuant to the provisions of this section shall comply with the terms thereof unless otherwise provided by the order of a court of this state. Any person who, with intent to avoid, evade, or prevent compliance, in whole or in

part, with any civil investigation under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to such notice, or mistakes or conceals any information, shall be fined not more than $5,000.00.

(c) Whenever any person fails to comply with any notice served upon him or her under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general or a state's attorney may file, in the superior court in which such person resides or has his or her principal place of business or in Washington County if such person is a nonresident or has no principal place of business in this state, and serve upon such person a petition for an order of such court for the enforcement of this section. Whenever any petition is filed under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect the provisions of this section. Any disobedience of any order entered under this section by any court shall be punished as a contempt thereof.

(d) Any person aggrieved by a civil investigation conducted under this section may seek relief from Washington superior court or the superior court in the county in which the aggrieved person resides. Except for cases the court considers to be of greater importance, proceedings before superior court as authorized by this section shall take precedence on the docket over all other cases. (Added 2005, No. 62, § 8.)

§ 2807. New campaign accounts

Candidates who choose to roll over any surplus contributions into a new campaign account for public office may close out their former campaign by filing a final report with the secretary of state converting all debts and assets to the new campaign. A candidate shall be required to file a new bank designation form only if there has been a change in the treasurer or the location of the campaign account. (Added 1987, No. 263 (Adj. Sess.), § 4; amended 2005, No. 62, § 9.)

§ 2808. Repealed. 2005, No. 62, § 14.

§ 2809. Accountability for related expenditures

(a) A related campaign expenditure made on a candidate's behalf shall be considered a contribution to the candidate on whose behalf it was made.

(b) A related campaign expenditure made on a candidate's behalf shall be considered an expenditure by the candidate on whose behalf it was made. However, if the expenditure did not exceed $50.00, the expenditure shall not be considered an expenditure by the candidate on whose behalf it was made.

(c) For the purposes of this section, a "related campaign expenditure made on the candidate's behalf" means any expenditure intended to promote the election of a specific candidate or group of candidates, or the defeat of an opposing candidate or group of candidates, if intentionally facilitated by, solicited by, or approved by the candidate or the candidate's political committee.

(d) An expenditure made by a political party or by a political committee that recruits or endorses candidates, that primarily benefits six or fewer candidates who are associated with the political party or political committee making the expenditure, is presumed to be a related expenditure made on behalf of those candidates. An expenditure made by a political party or by a political committee that recruits or endorses candidates, that substantially benefits more than six candidates and facilitates party or political committee functions, voter turnout, platform promotion, or organizational capacity shall not be presumed to be a related expenditure made on a candidate's behalf. In addition, an expenditure shall not be considered a "related campaign expenditure made on the candidate's behalf" if all of the following apply:

(1) The expenditures were made in connection with a campaign event whose purpose was to provide a group of voters with the opportunity to meet the candidate personally.

(2) The expenditures were made only for refreshments and related supplies that were consumed at that event.

(3) The amount of the expenditures for the event was less than $100.00.

(e) A candidate may seek a determination that an expenditure is a related expenditure made on behalf of an opposing candidate by filing a petition with the superior court of the county in which either candidate resides. Within 24 hours of the filing of a petition, the court shall schedule the petition for hearing. Except as

to cases the court considers of greater importance, proceedings before the superior court, as authorized by this section, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way. The findings and determination of the court shall be prima facie evidence in any proceedings brought for violation of this chapter.

(f) The secretary of state may adopt rules necessary to administer the provisions of this section. (Added 1997, No. 64, § 8, eff. Nov. 4, 1998.)

§ 2810. Candidate information publication; on-line database

(a) For each two-year general election cycle, the secretary of state shall develop and continuously update a publicly accessible campaign database. The database shall contain at least the following information for all candidates for statewide and county office and for the general assembly: for candidates receiving public financing grants, the amount of each grant awarded; the information contained in campaign finance reports filed under this chapter; and all reports of mass media activity expenditures filed under section 2883 of this title. The database shall also include campaign finance reports filed by candidates for federal office. The information in the database, together with any biographical sketches and position statements submitted to the secretary of state by such candidates, shall be made available to the public through the Vermont state home page on-line service, or through printed reports from

the secretary in response to a public request within 14 days of the date of the request.

(b) Any candidate for statewide office and any candidate for federal office qualified to be on the ballot in this state may submit to the secretary of state a photograph, biographical sketch, and position statement of a length and format specified by the secretary for the purposes of preparing a candidate information publication. Without making changes in the material presented, the secretary shall prepare a candidate information publication for statewide distribution prior to the general election, which includes the candidates' photographs, biographies, and position statements, a brief explanation of the process used to obtain candidate submissions, and, with respect to offices for which public financing is available, an indication of which candidates are receiving Vermont campaign finance grants and which candidates are not receiving Vermont campaign finance grants. The secretary shall prepare, publish, and distribute the candidate information publication throughout the state no later than one week prior to the general election. The secretary shall also seek voluntary distribution of the candidate information publication in weekly and daily newspapers and other publications in the state. The candidate information publication shall also be available in large type, audiotape, and Internet versions. (Added 1997, No. 64, § 9, eff. Nov. 4, 1998.)

§ 2810a. Administration

The secretary of state shall administer this chapter and shall perform all duties required under this chapter. The secretary may employ or contract for the ser-

vices of persons necessary for performance of these duties. (Added 1997, No. 64, § 10.)

Sub-Section 2: STATE CANDIDATES

§ 2811. Campaign reports; candidates for state office, the general assembly, political committees, and political parties

(a) Each candidate for state office, each candidate for the general assembly who has made expenditures or received contributions of $500.00 or more, and each political committee and each political party required to register under section 2831 of this title shall file with the secretary of state campaign finance reports on July 15th and on the 15th of each month thereafter until and including December 15th.

(b) At any time, but not later than December 15th following the general election, a candidate for state office and each candidate for the general assembly who has made expenditures or received contributions of $500.00 or more shall file with the secretary of state a "final report" which lists a complete accounting of all contributions and expenditures, and disposition of surplus, and which shall constitute the termination of his or her campaign activities.

(c) A political committee or political party shall file a campaign finance report not later than 40 days following the general election. At any time, a political committee or a political party may file a "final report" which lists a complete accounting of all contributions and expenditures and which shall constitute the termination of its campaign activities.

(d) In odd-numbered years campaign finance reports shall be filed on July 15.

(e) Each candidate for the general assembly required to file campaign finance reports under this section shall also file such reports with the clerk of the candidate's respective senate or house district.

(f) In addition to any other reports required to be filed under this chapter, a candidate for state office or for the general assembly who receives a monetary contribution in an amount over $2,000.00 within 10 days of a primary or general election shall report the contribution to the secretary of state within 24 hours of receiving the contribution. The report shall include all information that is required to be disclosed under the provisions of subsections 2803(a) and (b) of this title.

(g) Each candidate for state office and each candidate for the general assembly who has made expenditures or received contributions of $500.00 or less shall file with the secretary of state, 10 days following the general election, a statement that the candidate has not made expenditures or received contributions of more than $500.00 during the two-year general election cycle. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below; amended 1997, No. 64, § 12, eff. Nov. 4, 1998; 2005, No. 62, § 10; 2009, No. 73 (Adj. Sess.), § 10.)

Sub-Section 3: LOCAL CANDIDATES; GENERAL ASSEMBLY

§ 2821. Campaign reports; county office candidates

(a) Each candidate for county office who has made expenditures or accepted contributions of $500.00 or more shall file campaign finance reports with the officer with whom his or her nomination papers are filed as follows:

(1) 10 days before the primary election;

(2) 10 days before the general election;

(3) further campaign reports shall be filed on the 15th day of July and annually thereafter or until all contributions and expenditures have been accounted for and any indebtedness and surplus have been eliminated.

(b) Within 40 days after the general election, each candidate for county office who has made expenditures or accepted contributions of $500.00 or more shall file a "final report" which lists a complete accounting of all contributions and expenditures, and disposition of surplus, and which shall constitute the termination of his or her campaign activities.

(c) Copies of reports filed under this section shall be forwarded by the officer to the secretary of state within five days of receipt. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below; amended 1987, No. 263 (Adj. Sess.), §§ 5, 6; amended 1997, No. 64, § 13, eff. Nov. 4, 1998.)

§ 2822. Campaign reports; local candidates

Each candidate for local office who has made expenditures or accepted contributions of $500.00 or more shall file with the officer with whom his or her nomination papers are filed campaign finance reports 10 days before and 10 days after the local election. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below.)

§ 2823. Nonfiling

The failure of a legislative, county, or local candidate to file a campaign finance report shall be deemed an affirmative statement that the candidate has not accepted contributions or made expenditures of $500.00 or more. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below.)

Sub-Section 4: POLITICAL COMMITTEES; POLITICAL PARTIES

§ 2831. Campaign reports; political committees and parties

(a) Each political committee and each political party which has accepted contributions or made expenditures of $500.00 or more shall register with the secretary of state stating its full name and address, the name of its treasurer, and the name of the bank in which it maintains its campaign checking account within 10 days of reaching the $500.00 threshold.

(b) A political committee or political party which has accepted contributions or made expenditures of

$500.00, or more, for the purpose of influencing a local election or supporting or opposing one or more candidates in a local election shall file campaign finance reports 10 days before and 10 days after the local election with the clerk of the municipality in which the election is held and with the secretary of state.

(c) Any formal or informal committee of two or more individuals, or a corporation, labor organization, public interest group, or other entity, not including a political party, which makes expenditures of more than $500.00 in any one calendar year for the purpose of advocating a position on a public question in any election or affecting the outcome of an election on a public question shall file a report of its expenditures 10 days before and 10 days after the election with the clerk of the municipality in which the election is held and with the secretary of state. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below; amended 1985, No. 198 (Adj. Sess.), §§ 16, 17; 1997, No. 64, § 14, eff. Nov. 4, 1998; 2005, No. 62, § 11.)

§ 2832. Filing with federal election commission

A political committee or political party may satisfy the filing requirements of this subchapter and subchapter 2 of this chapter by filing with the secretary of state a copy of that portion of the campaign finance reports applicable to candidates seeking election in this state which the committee or party has filed with the Federal Election Commission and by designating an in-state agent in the report. (Added 1981, No. 197 (Adj. Sess.), § 1, eff. date, see note set out below; amended 1997, No. 64, § 15, eff. Nov. 4, 1998.)

Sub-Section 5: VOLUNTARY LIMITATIONS

§§ 2841, 2842. Repealed. 1997, No. 64, § 20, eff. Nov. 4, 1998.

Sub-Section 6: VERMONT CAMPAIGN FINANCE OPTION

§ 2851. Definitions

As used in this subchapter:

(1) "Affidavit" means the Vermont campaign finance affidavit required under section 2852 of this title.

(2) "General election period" means the period beginning the day after the primary election and ending the day of the general election.

(3) "Primary election period" means the period beginning the day after primary petitions must be filed under section 2356 of this title and ending the day of the primary election.

(4) "Vermont campaign finance qualification period" means the period beginning February 15 of each even-numbered year and ending on the date on which primary petitions must be filed under section 2356 of this title.

(5) "Secretary" means the secretary of state. (Added 1997, No. 64, § 2, eff. Nov. 4, 1998.)

§ 2852. Filing of Vermont campaign finance affidavit

(a) A candidate for the office of Governor or Lieutenant Governor who intends to seek Vermont campaign finance grants from the Secretary of State Services Fund shall file a Vermont campaign finance affidavit on the date on or before which primary petitions must be filed, whether the candidate seeks to enter a party primary or is an independent candidate.

(b) The Secretary of State shall prepare a Vermont campaign finance affidavit form, informational materials on procedures and financial requirements, and notification of the penalties for violation of this subchapter. The Vermont campaign finance affidavit shall set forth the conditions of receiving grants under this subchapter and provide space for the candidate to agree that he or she will abide by such conditions and all expenditure and contribution limitations, reporting requirements, and other provisions of this chapter. The affidavit shall also state the candidate's name, legal residence, business or occupation, address of business or occupation, party affiliation, if any, the office sought, and whether the candidate intends to enter a party primary. The affidavit shall also contain a list of all the candidate's qualifying contributions together with the name and town of residence of the contributor and the date each contribution was made. The affidavit may further require affirmation of such other information as deemed necessary by the Secretary for the administration of this subchapter. The affidavit shall be sworn and subscribed to by the candidate. (Added 1997, No. 64, § 2, eff. Nov. 4, 1998; amended 2013, No. 1, § 83.)

§ 2853. Vermont campaign finance grants; conditions

(a) A person shall not be eligible for Vermont campaign finance grants if, during a two-year general election cycle, he or she becomes a candidate by announcing that he or she seeks an elected position as Governor or Lieutenant Governor, or by accepting contributions totaling $2,000.00 or more or by making expenditures totaling $2,000.00 or more, prior to February 15 of the general election year.

(b) A candidate who accepts Vermont campaign finance grants, shall:

(1) Not solicit, accept, or expend any contributions except qualifying contributions, Vermont campaign finance grants, and contributions authorized under section 2855 of this title, which contributions may be solicited, accepted, or expended only in accordance with the provisions of this subchapter.

(2) Deposit all qualifying contributions, Vermont campaign finance grants, and any contributions accepted in accordance with the provisions of section 2855 of this title in a federally insured noninterest bearing checking account.

(3) Not later than 40 days after the general election, deposit in the Secretary of State Services Fund, after all permissible expenditures have been paid, the balance of any amounts remaining in the account established under subdivision (2) of this subsection. (Added 1997, No. 64, § 2, eff. Nov. 4, 1998; amended 2005, No. 62, § 12; 2013, No. 1, § 84.)

§ 2854. Qualifying contributions

(a) In order to qualify for Vermont campaign finance grants, a candidate for the office of governor or lieutenant governor must obtain during the Vermont campaign finance qualification period the following amount and number of qualifying contributions for the office being sought:

(1) For governor, a total amount of no less than $35,000.00 collected from no fewer than 1,500 qualified individual contributors making a contribution of no more than $50.00 each.

(2) For lieutenant governor, a total amount of no less than $17,500.00 collected from no fewer than 750 qualified individual contributors making a contribution of no more than $50.00 each.

(b) No candidate may accept more than one qualifying contribution from the same contributor and no contributor may make more than one qualifying contribution to the same candidate in any Vermont campaign finance qualification period. For the purpose of this section, a qualified individual contributor means an individual who is registered to vote in Vermont. No more than 25 percent of the total number of qualified individual contributors may be residents of the same county.

(c) Each qualifying contribution must indicate the name and town of residence of the contributor, the date received, and be acknowledged by the signature of the contributor.

(d) A candidate may retain and expend qualifying contributions obtained under this section. A candidate may expend the qualifying contributions for the purpose of obtaining additional qualifying contributions and may expend the remaining qualifying contributions during the primary and general election periods. Amounts expended under this subsection shall be considered expenditures for purposes of this chapter. (Added 1997, No. 64, § 2, eff. Nov. 4, 1998.)

§ 2855. Vermont campaign finance grants; amounts; timing

(a) The Secretary of State shall make grants from the Secretary of State Services Fund in separate grants for the primary and general election periods to candidates who have qualified for Vermont campaign finance grants under this subchapter.

(b) Whether a candidate has entered a primary or is an independent candidate, Vermont campaign finance grants shall be in the following amounts:

(1) For Governor, $75,000.00 in a primary election period and $225,000.00 in a general election period, provided that the grant for a primary election period shall be reduced by an amount equal to the candidate's qualifying contributions.

(2) For Lieutenant Governor, $25,000.00 in a primary election period and $75,000.00 in a general election period, provided that the grant for a primary election period shall be reduced by an amount equal to the candidate's qualifying contributions.

(3) A candidate who is an incumbent of the office being sought shall be entitled to receive a grant in an amount equal to 85 percent of the amount listed in subdivision (1) or (2) of this subsection.

(c) In an uncontested general election and in the case of a candidate who enters a primary election and is unsuccessful in that election, an otherwise eligible candidate shall not be eligible for a general election period grant. However, such candidate may solicit and accept contributions and make expenditures as follows: contributions shall be subject to the limitations of section 2805 of this title and expenditures shall be limited to an amount equal to the amount of the grant set forth in subsection (b) of this section for the general election for that office.

(d) Grants awarded in a primary election period, but not expended by the candidate in the primary election period, may be expended by the candidate in the general election period.

(e) Vermont campaign finance grants for a primary election period shall be paid to qualifying candidates within the first 10 business days of the primary election period. Vermont campaign finance grants for a general election period shall be paid to qualifying candidates during the first 10 business days of the general election period. (Added 1997, No. 64, § 2, eff. Nov. 4, 1998; amended 2013, No. 1, § 85.)

§ 2856. Repealed. 2013, No. 1, § 87(a).

Sub-Section 7: POLITICAL ADVERTISEMENTS

§§ 2881-2883. Repealed. 2005, No. 62, § 14.

Sub-Section 8: ELECTIONEERING COMMUNICATIONS

§ 2891. Definitions

As used in this chapter, "electioneering communication" means any communication, including communications published in any newspaper or periodical or broadcast on radio or television or over any public address system, placed on any billboards, outdoor facilities, buttons, or printed material attached to motor vehicles, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars, or in any direct mailing, robotic phone calls, or mass e-mails that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate. (Added 2005, No. 62, § 13.)

§ 2892. Identification

All electioneering communications shall contain the name and address of the person, political committee, or campaign who or which paid for the communication. The communication shall clearly designate the name of the candidate, party, or political committee by or on whose behalf the same is published or broadcast. The identification requirements of this section shall not

apply to lapel stickers or buttons, nor shall they apply to electioneering communications made by a single individual acting alone who spends, in a single two-year general election cycle, a cumulative amount of no more than $150.00 on those electioneering communications. (Added 2005, No. 62, § 13.)

§ 2893. Notice of expenditure

(a) For purposes of this section, "mass media activities" includes television commercials, radio commercials, mass mailings, literature drops, newspaper and periodical advertisements, robotic phone calls, and telephone banks which include the name or likeness of a clearly identified candidate for office.

(b) In addition to any other reports required to be filed under this chapter, a person who makes expenditures for any one mass media activity totaling $500.00 or more within 30 days of a primary or general election shall, for each activity, file a mass media report with the secretary of state and send a copy of the mass media report to each candidate whose name or likeness is included in the activity within 24 hours of the expenditure or activity, whichever occurs first. For the purposes of this section, a person shall be treated as having made an expenditure if the person has executed a contract to make the expenditure. The report shall identify the person who made the expenditure with the name of the candidate involved in the activity and any other information relating to the expenditure that is

required to be disclosed under the provisions of subsections 2803(a) and (b) of this title. (Added 2005, No. 62, § 13.)

Statutes

Vermont Political Speech Statute After the 2014 Amendment

from
http://www.leg.state.vt.us/docs/2014/Acts/ACT090.pdf
(visited Sept. 3, 2014),
a link available at:
http://www.leg.state.vt.us/database/status/summary.cfm?Bill=S.0082&Session=2014,
which is available at
http://www.leg.state.vt.us/database/status/status.cfm?Session=2014
by entering "S.82" as the bill number

Vermont Statutes
Title 17: Elections
Chapter 59: CAMPAIGN FINANCE

Sec. 1. FINDINGS

The General Assembly finds that:

(1) Article 7 of Chapter I of the Vermont Constitution affirms the central principle "That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community,

and not for the particular emolument or advantage of any single person, family, or set of persons, who are a part only of that community; . . ."

(2) To carry out this central principle that the government is for the common benefit of the whole people of Vermont, candidates need to be responsive to the community as a whole and not to a small portion which may be funding the candidate's electoral campaign.

(3) Because of the small size of Vermont communities and the personal nature of campaigning in Vermont, a key feature of Vermont electoral campaigns is the personal connection between candidates and voters. Limiting contributions to candidates encourages this connection by giving candidates an incentive to conduct grassroots campaigns that reach many constituents and many donors, rather than relying on just a few people to fund their campaigns.

(4) Unduly large campaign contributions reduce public confidence in the electoral process and increase the risk and the appearance that candidates and elected officials may be beholden to contributors and not act in the best interests of all Vermont citizens.

(5) In Vermont, contributions greater than the amounts specified in this act are considered by the General Assembly, candidates, and elected officials to be unduly large contributions that have the ability to corrupt and create the appearance of corrupting candidates and the democratic system.

(6) When a person is able to make unduly large contributions to a candidate, there is a risk of voters losing

confidence in our system of representative government because voters may believe that a candidate will be more likely to represent the views of persons who make those contributions and less likely to represent views of their constituents and Vermont citizens in general. This loss of confidence may lead to increased voter cynicism and a lack of participation in the electoral process among both candidates and voters.

(7) Lower limits encourage candidates to interact and communicate with a greater number of voters in order to receive contributions to help fund a campaign, rather than to rely on a small number of large contributions. This interaction between candidates and the electorate helps build a greater confidence in our representative government and is likely to make candidates more responsive to voters.

(8) Different limits on contributions to candidates based on the office they seek are necessary in order for these candidates to run effective campaigns. Moreover, since it generally costs less to run an effective campaign for nonstatewide offices, a uniform limit on contributions for all offices could enable contributors to exert undue influence over those nonstatewide offices.

(9) In Vermont, candidates can raise sufficient monies to fund effective, competitive campaigns from contributions no larger than the amounts specified in this act.

(10) Exempting certain activities of political parties from the definition of what constitutes a contribution is important so as to not overly burden collective political activity. These activities, such as using the assistance of volunteers, preparing party candidate listings, and

hosting certain campaign events, are part of a party's traditional role in assisting candidates to run for office. Moreover, these exemptions help protect the right to associate in a political party.

(11) Political parties play an important role in electoral campaigns and must be given the opportunity to support their candidates. Their historic role in American elections makes them different from political committees. For that reason, it is appropriate to limit contributions from political committees without imposing the same limits on political parties.

(12) If independent expenditure-only political committees are allowed to receive unlimited contributions, they may eclipse political parties. This would be detrimental to the electoral system because such committees can be controlled by a small number of individuals who finance them. In contrast, political parties are created by a representative process of delegates throughout the State.

(13) Large independent expenditures by independent expenditure-only political committees can unduly influence the decision-making, legislative voting, and official conduct of officeholders and candidates through the committees' positive or negative advertising regarding their election for office. It also causes officeholders and candidates to act in a manner that either encourages independent expenditure-only committees to support them or discourages those committees from attacking them. Thus, candidates can become beholden to the donors who make contributions to these independent expenditure-only committees. However, the current legal landscape regarding the constitutionality of imposing limits

on contributions to independent expenditure-only political committees is uncertain. Therefore, under this act, the General Assembly will impose limits on contributions to independent expenditure-only political committees if the final disposition of a case before the U.S. Court of Appeals for the Second Circuit or the U.S. Supreme Court holds that limits on contributions to independent expenditure-only political committees are constitutional.

(14) In order to provide the electorate with information regarding who seeks to influence their votes through campaign advertising; to make campaign financing more transparent; to aid voters in evaluating those seeking office; to deter actual corruption and avoid its appearance by exposing contributions and expenditures to the light of publicity; and to gather data necessary to detect violations of contributions limits, it is imperative that Vermont increase the frequency of campaign finance reports and include more information in electioneering communications.

(15) Increasing identification information in electioneering communications will enable the electorate to evaluate immediately the speaker's message and will bolster the sufficiently important interest in permitting Vermonters to learn the sources of significant influence in our State's elections.

(16) Limiting contributions to political committees and political parties prevents persons from hiding behind these entities when making election-related expenditures. It encourages persons wishing to fund communications to do so directly in their own names. In this way, limiting contributions to political committees and

political parties is another method of fostering greater transparency. When a person makes an expenditure on electioneering communications in the person's own name, that name, rather than that of a political committee or a political party to which the person contributed, appears on the face of the communication. This provides the public with immediate information as to the identity of the communication's funder.

(17) The General Assembly is aware of reports of potential corruption in other states and in federal politics. It is important to enact legislation that will prevent corruption here and maintain the electorate's confidence in the integrity of Vermont's government.

(18) This act is necessary in order to implement more fully the provisions of Article 8 of Chapter I of the Constitution of the State of Vermont, which declares "That all elections ought to be free and without corruption, and that all voters, having a sufficient, evident, common interest with, and attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in this constitution."

Sec. 2. REPEAL
17 V.S.A. chapter 59 (campaign finance) is repealed.

Sec. 3. 17 V.S.A. chapter 61 is added to read:

CHAPTER 61. CAMPAIGN FINANCE

Subchapter 1. General Provisions

§ 2901. DEFINITIONS

As used in this chapter:

(1) "Candidate" means an individual who has taken affirmative action to become a candidate for State, county, local, or legislative office in a primary, special, general, or local election. An affirmative action shall include one or more of the following:

(A) accepting contributions or making expenditures totaling $500.00 or more;

(B) filing the requisite petition for nomination under this title or being nominated by primary or caucus; or

(C) announcing that the individual seeks an elected position as a State, county, or local officer or a position as Representative or Senator in the General Assembly.

(2) "Candidate's committee" means the candidate's campaign staff, whether paid or unpaid.

(3) "Clearly identified," with respect to a candidate, means:

(A) the name of the candidate appears;

(B) a photograph or drawing of the candidate appears; or

(C) the identity of the candidate is apparent by unambiguous reference.

(4) "Contribution" means a payment, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates in any election. As used in this chapter, "contribution" shall not include any of the following:

(A) a personal loan of money to a candidate from a lending institution made in the ordinary course of business;

(B) services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee, or political party;

(C) unreimbursed travel expenses paid for by an individual for himself or herself who volunteers personal services to a candidate;

(D) unreimbursed campaign-related travel expenses paid for by the candidate or the candidate's spouse;

(E) the use by a candidate or volunteer of his or her own personal property, including offices, telephones, computers, and similar equipment;

(F) the use of a political party's offices, telephones, computers, and similar equipment;

(G) the payment by a political party of the costs of preparation, display, or mailing or other distribution of a party candidate listing;

(H) documents, in printed or electronic form, including party platforms, single copies of issue papers, information pertaining to the requirements of this title, lists of registered voters, and voter identification information created, obtained, or maintained by a political party for the general purpose of party building and provided to a candidate who is a member of that party or to another political party;

(I) compensation paid by a political party to its employees whose job responsibilities are not for the specific and exclusive benefit of a single candidate in any election;

(J) compensation paid by a political party to its employees or consultants for the purpose of providing assistance to another political party;

(K) campaign training sessions provided to three or more candidates;

(L) costs paid for by a political party in connection with a campaign event at which three or more candidates are present; or

(M) activity or communication designed to encourage individuals to register to vote or to vote if that activity or communication does not mention or depict a clearly identified candidate.

(5) "Election" means the procedure whereby the voters of this State or any of its political subdivisions select a person to be a candidate for public office or to fill a public office or to act on public questions including voting on constitutional amendments. Each primary, general, special, or local election shall constitute a separate election.

(6) "Electioneering communication" means any communication that refers to a clearly identified candidate for office and that promotes or supports a candidate for that office or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate, including communications published in any newspaper or periodical or broadcast on radio or television or over the Internet or any public address system; placed on any billboards, outdoor facilities, buttons, or printed material attached to motor vehicles, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars; or contained in any direct mailing, robotic phone calls, or mass e-mails.

(7) "Expenditure" means a payment, disbursement, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid, for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates. As used in this chapter, "expenditure" shall not include any of the following:

> (A) a personal loan of money to a candidate from a lending institution made in the ordinary course of business;

(B) services provided without compensation by individuals volunteering their time on behalf of a candidate, political committee, or political party;

(C) unreimbursed travel expenses paid for by an individual for himself or herself who volunteers personal services to a candidate; or

(D) unreimbursed campaign-related travel expenses paid for by the candidate or the candidate's spouse.

(8) "Four-year general election cycle" means the 48-month period that begins 38 days after a general election for a four-year-term office.

(9) "Full name" means an individual's full first name, middle name or initial, if any, and full legal last name, making the identity of the person who made the contribution apparent by unambiguous reference.

(10) "Independent expenditure-only political committee" means a political committee that conducts its activities entirely independent of candidates; does not give contributions to candidates, political committees, or political parties; does not make related expenditures; and is not closely related to a political party or to a political committee that makes contributions to candidates or makes related expenditures.

(11) "Mass media activity" means a television commercial, radio commercial, mass mailing, mass electronic or digital communication, literature drop, newspaper or periodical advertisement, robotic phone call, or telephone bank, which includes the name or likeness of a clearly identified candidate for office.

(12) "Party candidate listing" means any communication by a political party that:

(A) lists the names of at least three candidates for election to public office;

(B) is distributed through public advertising such as broadcast stations, cable television, newspapers, and similar media or through direct mail, telephone, electronic mail, a publicly accessible site on the Internet, or personal delivery;

(C) treats all candidates in the communication in a substantially similar manner; and

(D) is limited to:

(i) the identification of each candidate, with which pictures may be used;

(ii) the offices sought;

(iii) the offices currently held by the candidates;

(iv) the party affiliation of the candidates and a brief statement about the party or the candidates' positions, philosophy, goals, accomplishments, or biographies;

(v) encouragement to vote for the candidates identified; and

(vi) information about voting, such as voting hours and locations.

(13) "Political committee" or "political action committee" means any formal or informal committee of two or more individuals or a corporation, labor organization, public interest group, or other entity, not including a political party, which accepts contributions of $1,000.00 or more and makes expenditures of $1,000.00 or more in any two-year general election cycle 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, and includes an independent expenditure-only political committee.

(14) "Political party" means a political party organized under chapter 45 of this title and any committee established, financed, maintained, or controlled by the party, including any subsidiary, branch, or local unit thereof, and shall be considered a single, unified political party. The national affiliate of the political party shall be considered a separate political party.

(15) "Public question" means an issue that is before the voters for a binding decision.

(16) "Single source" means an individual, partnership, corporation, association, labor organization, or any other organization or group of persons which is not a political committee or political party.

(17) "Telephone bank" means more than 500 telephone calls of an identical or substantially similar nature that are made to the general public within any 30-day period.

(18) "Two-year general election cycle" means the 24-month period that begins 38 days after a general election.

§ 2902. EXCEPTIONS

The definitions of "contribution," "expenditure," and "electioneering communication" shall not apply to:

(1) any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication that has not been paid for or such facilities are not owned or controlled by any political party, committee, or candidate; or

(2) any communication distributed through a public access television station if the communication complies with the laws and rules governing the station and if all candidates in the race have an equal opportunity to promote their candidacies through the station.

§ 2903. PENALTIES

(a) A person who knowingly and intentionally violates a provision of subchapter 2, 3, or 4 of this chapter shall be fined not more than $1,000.00 or imprisoned not more than six months, or both.

(b) A person who violates any provision of this chapter shall be subject to a civil penalty of up to $10,000.00 for each violation and shall refund the unspent balance of Vermont campaign finance grants received under subchapter 5 of this chapter, if any, calculated as of the date of the violation.

(c) In addition to the other penalties provided in this section, a State's Attorney or the Attorney General may institute any appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate any violation of this chapter.

§ 2904. CIVIL INVESTIGATION

(a) (1) The Attorney General or a State's Attorney, whenever he or she has reason to believe any person to be or to have been in violation of this chapter or of any rule or regulation made pursuant to this chapter, may examine or cause to be examined by any agent or representative designated by him or her for that purpose any books, records, papers, memoranda, or physical objects of any nature bearing upon each alleged violation and may demand written responses under oath to questions bearing upon each alleged violation.

(2) The Attorney General or a State's Attorney may require the attendance of such person or of any other person having knowledge in the premises in the county where such person resides or has a place of business or in Washington County if such person is a nonresident or has no place of business within the State and may take testimony and require proof material for his or her information and may administer oaths or take acknowledgment in respect of any book, record, paper, or memorandum.

(3) The Attorney General or a State's Attorney shall serve notice of the time, place, and cause of such examination or attendance or notice of the cause of the demand for written responses personally or by

certified mail upon such person at his or her principal place of business or, if such place is not known, to his or her last known address. Such notice shall include a statement that a knowing and intentional violation of subchapters 2 through 4 of this chapter is subject to criminal prosecution.

(4) Any book, record, paper, memorandum, or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of this State for good cause shown, be disclosed to any person other than the authorized agent or representative of the Attorney General or a State's Attorney or another law enforcement officer engaged in legitimate law enforcement activities unless with the consent of the person producing the same, except that any transcript of oral testimony, written responses, documents, or other information produced pursuant to this section may be used in the enforcement of this chapter, including in connection with any civil action brought under section 2903 of this subchapter or subsection (c) of this section.

(5) Nothing in this subsection is intended to prevent the Attorney General or a State's Attorney from disclosing the results of an investigation conducted under this section, including the grounds for his or her decision as to whether to bring an enforcement action alleging a violation of this chapter or of any rule or regulation made pursuant to this chapter.

(6) This subsection shall not be applicable to any criminal investigation or prosecution brought under the laws of this or any state.

(b) (1) A person upon whom a notice is served pursuant to the provisions of this section shall comply with its terms unless otherwise provided by the order of a court of this State.

(2) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place; conceals, withholds, or destroys; or mutilates, alters, or by any other means falsifies any documentary material in the possession, custody, or control of any person subject to such notice or mistakes or conceals any information shall be fined not more than $5,000.00.

(c) (1) Whenever any person fails to comply with any notice served upon him or her under this section or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender the material, the Attorney General or a State's Attorney may file, in the Superior Court in the county in which the person resides or has his or her principal place of business or in Washington County if the person is a nonresident or has no principal place of business in this State, and serve upon the person a petition for an order of the court for the enforcement of this section.

(2) Whenever any petition is filed under this section, the court shall have jurisdiction to hear and determine the matter so presented and to enter any order or orders as may be required to carry into effect the provisions of this section. Any disobedience

of any order entered under this section by any court shall be punished as a contempt of the court.

(d) Any person aggrieved by a civil investigation conducted under this section may seek relief from Washington Superior Court or the Superior Court in the county in which the aggrieved person resides. Except for cases the court considers to be of greater importance, proceedings before Superior Court as authorized by this section shall take precedence on the docket over all other cases.

§ 2905. ADJUSTMENTS FOR INFLATION

(a) Whenever it is required by this chapter, the Secretary of State shall make adjustments to monetary amounts provided in this chapter based on the Consumer Price Index. Increases shall be rounded to the nearest $10.00 and shall apply for the term of two two-year general election cycles. Increases shall be effective for the first two-year general election cycle beginning after the general election held in 2016.

(b) On or before the first two-year general election cycle beginning after the general election held in 2016, the Secretary of State shall calculate and publish on the online database set forth in section 2906 of this chapter each adjusted monetary amount that will apply to those two two-year general election cycles. On or before the beginning of each second subsequent two-year general election cycle, the Secretary of State shall publish the amount of each adjusted monetary amount that shall apply for that two-year general election cycle and the next two-year general election cycle.

§ 2906. CAMPAIGN DATABASE; CANDIDATE INFORMATION WEB PAGE

(a) Campaign database. For each election, the Secretary of State shall develop and continually update a publicly accessible campaign database which shall be made available to the public through the Secretary of State's home page online service or through printed reports from the Secretary of State in response to a public request within 14 days of the date of the request. The database shall contain:

(1) at least the following information for all candidates for statewide, county, and local office and for the General Assembly:

(A) for candidates receiving public financing grants, the amount of each grant awarded; and

(B) the information contained in any reports submitted pursuant to subchapter 4 of this chapter;

(2) an Internet link to campaign finance reports filed by Vermont's candidates for federal office;

(3) the adjustments for inflation made to monetary amounts as required by this chapter; and

(4) any photographs, biographical sketches, and position statements submitted to the Secretary of State pursuant to subsection (b) of this section.

(b) Candidate information web page.

(1) Any candidate for statewide office and any candidate for federal office qualified to be on the ballot in this State may submit to the Secretary of State a photograph, biographical sketch, and position statement of a length and format specified by the Secretary of State for the purposes of preparing a candidate information web page within the website of the Secretary of State.

(2) Without making any substantive changes in the material presented, the Secretary of State shall prepare a candidate information web page on the Secretary of State's website, which includes the candidates' photographs, biographies, and position statements; a brief explanation of the process used to obtain candidate submissions; and, with respect to offices for which public financing is available, an indication of which candidates are receiving Vermont campaign finance grants and which candidates are not receiving Vermont campaign finance grants.

(3) The Secretary of State shall populate the candidate information web page by posting each candidate's submission no later than three business days after receiving the candidate's submission.

§ 2907. ADMINISTRATION

The Secretary of State shall administer this chapter and shall perform all duties required under this chapter. The Secretary of State may employ or contract for

the services of persons necessary for performance of these duties.

Subchapter 2. Registration and Maintenance Requirements

§ 2921. CANDIDATES; REGISTRATION; CHECKING ACCOUNT; TREASURER

(a) Each candidate who has made expenditures or accepted contributions of $500.00 or more in an election cycle shall register with the Secretary of State within 10 days of reaching the $500.00 threshold or on the date that the next report is required of the candidate under this chapter, whichever occurs first, stating his or her full name and address; the office the candidate is seeking; the name and address of the bank in which the candidate maintains his or her campaign checking account; and the name and address of the treasurer responsible for maintaining the checking account. A candidate's treasurer may be the candidate or his or her spouse.

(b) All expenditures by a candidate shall be paid by either a credit card or a debit card, check, or other electronic transfer from the single campaign checking account in the bank designated by the candidate under subsection (a) of this section, or, if under $250.00, the candidate may make the expenditure from cash from that campaign checking account if accompanied by a receipt, a copy of which shall be maintained by the candidate for at least two years from the end of the election cycle in which the expenditure was made. Nothing in this subsection shall be construed to prohibit the payment of fees required to be made from a separately held

online account designated solely to collect campaign contributions made to the candidate.

(c) As used in this section, "election cycle" means:

(1) in the case of a general or local election, the period that begins 38 days after the previous general or local election for the office and ends 38 days after the general or local election for the office for which that person is a candidate, and includes any primary or run-off election related to that general or local election; or

(2) in the case of a special election, the period that begins on the date the special election for the office was ordered and ends 38 days after that special election, and includes any special primary or run-off election related to that special election.

§ 2922. POLITICAL COMMITTEES; REGISTRATION; CHECKING ACCOUNT; TREASURER

(a) Each political committee shall register with the Secretary of State within 10 days of making expenditures of $1,000.00 or more and accepting contributions of $1,000.00 or more stating its full name and address; the name and address of the bank in which it maintains its campaign checking account; and the name and address of the treasurer responsible for maintaining the checking account.

(b) All expenditures by a political committee shall be paid by either a credit card or a debit card, check, or other electronic transfer from the single campaign checking account in the bank designated by the political

committee under subsection (a) of this section, or, if under $250.00, the political committee may make the expenditure from cash from that campaign checking account if accompanied by a receipt, a copy of which shall be maintained by the political committee for at least two years from the end of the two-year general election cycle in which the expenditure was made. Nothing in this subsection shall be construed to prohibit the payment of fees required to be made from a separately held online account designated solely to collect campaign contributions made to the political committee.

(c) A political committee whose principal place of business or whose treasurer is not located in this State shall file a statement with the Secretary of State designating a person who resides in this State upon whom may be served any process, notice, or demand required or permitted by law to be served upon the political committee. This statement shall be filed at the same time as the registration required in subsection (a) of this section.

§ 2923. POLITICAL PARTIES; REGISTRATION; CHECKING ACCOUNTS; TREASURER

(a) (1) Each political party which has accepted contributions or made expenditures of $1,000.00 or more in any two-year general election cycle shall register with the Secretary of State within 10 days of reaching the $1,000.00 threshold. In its registration, the party shall state its full name and address, the name and address of the bank in which it maintains its campaign checking account, and the name and address of the treasurer responsible for maintaining the checking account.

(2) A political party may permit any subsidiary, branch, or local unit of the political party to maintain its own checking account. If a subsidiary, branch, or local unit of a political party is so permitted, it shall file with the Secretary of State within five days of establishing the checking account its full name and address, the name of the political party, the name and address of the bank in which it maintains its campaign checking account, and the name and address of the treasurer responsible for maintaining the checking account.

(b) All expenditures by a political party or its subsidiary, branch, or local unit shall be paid by either a credit card or a debit card, check, or other electronic transfer from the single campaign checking account in the bank designated by the political party, subsidiary, branch, or local unit under subsection (a) of this section, or if under $250.00, the political party, subsidiary, branch, or local unit may make the expenditure from cash from that campaign checking account if accompanied by a receipt, a copy of which shall be maintained by the political party, subsidiary, branch, or local unit for at least two years from the end of the two-year general election cycle in which the expenditure was made. Nothing in this subsection shall be construed to prohibit the payment of fees required to be made from a separately held online account designated solely to collect campaign contributions made to the political party, subsidiary, branch, or local unit.

(c) A political party or its subsidiary, branch, or local unit whose principal place of business or whose treasurer is not located in this State shall file a

statement with the Secretary of State designating a person who resides in this State upon whom may be served any process, notice, or demand required or permitted by law to be served upon the political party, subsidiary, branch, or local unit. This statement shall be filed at the same time as the registration required in subsection (a) of this section.

§ 2924. CANDIDATES; SURPLUS CAMPAIGN FUNDS; NEW CAMPAIGN ACCOUNTS

(a) A candidate who has surplus funds after all campaign debts have been paid shall not convert the surplus to personal use, other than to reduce personal campaign debts or as otherwise provided in this chapter.

(b) Surplus funds in a candidate's account shall be:

(1) contributed to other candidates, political parties, or political committees subject to the contribution limits set forth in this chapter;

(2) contributed to a charity;

(3) contributed to the Secretary of State Services Fund;

(4) rolled over into a new campaign or be carried forward for surplus maintenance as provided in subsection (d) of this section; or

(5) liquidated using a combination of the provisions set forth in subdivisions (1)–(4) of this subsection.

(c) The "final report" of a candidate shall indicate the amount of the surplus and how it has been liquidated.

(d) (1) (A) A candidate who chooses to roll over any surplus into a new campaign for public office shall close out his or her former campaign by converting all debts and assets to the new campaign.

(B) A candidate who does not intend to be a candidate in a subsequent election but who chooses to carry forward any surplus shall maintain that surplus by closing out his or her former campaign and converting all debts and assets to surplus maintenance.

(2) The candidate may use his or her former campaign's treasurer and bank account for the new campaign under subdivision (1)(A) of this subsection or the maintenance of surplus under subdivision (1)(B) of this subsection. A candidate shall be required to file a new bank designation form only if there has been a change in the treasurer or the location of the campaign account.

§ 2925. POLITICAL COMMITTEES; SURPLUS CAMPAIGN FUNDS

(a) A member of a political committee that has surplus funds after all campaign debts have been paid shall not convert the surplus to personal use.

(b) Surplus funds in a political committee's account shall be:

(1) contributed to other candidates, political parties, or political committees subject to the contribution limits set forth in this chapter;

(2) contributed to a charity;

(3) contributed to the Secretary of State Services Fund; or

(4) liquidated using a combination of the provisions set forth in subdivisions (1)–(3) of this subsection.

(c) The "final report" of a political committee shall indicate the amount of the surplus and how it has been liquidated.

Subchapter 3. Contribution Limitations

§ 2941. LIMITATIONS OF CONTRIBUTIONS

(a) In any election cycle:

(1) (A) A candidate for State Representative or for local office shall not accept contributions totaling more than:

(i) $1,000.00 from a single source; or

(ii) $1,000.00 from a political committee.

(B) Such a candidate may accept unlimited contributions from a political party.

(2) (A) A candidate for State Senator or for county office shall not accept contributions totaling more than:

(i) $1,500.00 from a single source; or

(ii) $1,500.00 from a political committee.

(B) Such a candidate may accept unlimited contributions from a political party.

(3) (A) A candidate for the office of Governor, Lieutenant Governor, Secretary of State, State Treasurer, Auditor of Accounts, or Attorney General shall not accept contributions totaling more than:

(i) $4,000.00 from a single source; or

(ii) $4,000.00 from a political committee.

(B) Such a candidate may accept unlimited contributions from a political party.

(4) A political committee shall not accept contributions totaling more than:

(A) $4,000.00 from a single source;

(B) $4,000.00 from a political committee; or

(C) $4,000.00 from a political party.

(5) A political party shall not accept contributions totaling more than:

(A) $10,000.00 from a single source;

(B) $10,000.00 from a political committee; or

(C) $60,000.00 from a political party.

(6) A single source shall not contribute more than an aggregate of:

(A) $40,000.00 to candidates; and

(B) $40,000.00 to political committees.

(b) A single source, political committee, or political party shall not contribute more to a candidate, political committee, or political party than the candidate, political committee, or political party is permitted to accept under this section.

(c) As used in this section:

(1) For a candidate described in subdivisions (1)–(3) of subsection (a), an "election cycle" means:

(A) in the case of a general or local election, the period that begins 38 days after the previous general or local election for the office and ends 38 days after the general or local election for the office for which that person is a candidate, and includes any primary or run-off election related to that general or local election; or

(B) in the case of a special election, the period that begins on the date the special election for the office was ordered and ends 38 days after

that special election, and includes any special primary or run-off election related to that special election.

(2) For a political committee, political party, or single source described in subdivisions (4)–(6) of subsection (a), an "election cycle" means a two-year general election cycle.

§ 2942. EXCEPTIONS

The contribution limitations established by this subchapter shall not apply to contributions to a political committee made for the purpose of advocating a position on a public question, including a constitutional amendment.

§ 2943. LIMITATIONS ADJUSTED FOR INFLATION

The contribution limitations contained in this subchapter shall be adjusted for inflation pursuant to the Consumer Price Index as provided in section 2905 of this chapter.

§ 2944. ACCOUNTABILITY FOR RELATED EXPENDITURES

(a) A related campaign expenditure made on a candidate's behalf shall be considered a contribution to the candidate on whose behalf it was made.

(b) As used in this section, a "related campaign expenditure made on the candidate's behalf" means any expenditure intended to promote the election of a specific candidate or group of candidates or the defeat of an oppos-

ing candidate or group of candidates if intentionally facilitated by, solicited by, or approved by the candidate or the candidate's committee.

(c) (1) An expenditure made by a political party or by a political committee that recruits or endorses candidates that primarily benefits six or fewer candidates who are associated with the political party or political committee making the expenditure is presumed to be a related expenditure made on behalf of those candidates, except that the acquisition, use, or dissemination of the images of those candidates by the political party or political committee shall not be presumed to be a related expenditure made on behalf of those candidates.

(2) An expenditure made by a political party or by a political committee that recruits or endorses candidates that substantially benefits more than six candidates and facilitates party or political committee functions, voter turnout, platform promotion, or organizational capacity shall not be presumed to be a related expenditure made on a candidate's behalf.

(d) (1) As used in this section, an expenditure by a person shall not be considered a "related expenditure made on the candidate's behalf" if all of the following apply:

(A) the expenditure was made in connection with a campaign event whose purpose was to provide a group of voters with the opportunity to meet a candidate;

(B) the expenditure was made for:

(i) invitations and any postage for those invitations to invite voters to the event; or

(ii) any food or beverages consumed at the event and any related supplies thereof; and

(C) the cumulative value of any expenditure by the person made under this subsection does not exceed $500.00 per event.

(2) For the purposes of this subsection:

(A) if the cumulative value of any expenditure by a person made under this subsection exceeds $500.00 per event, the amount equal to the difference between the two shall be considered a "related expenditure made on the candidate's behalf"; and

(B) any reimbursement to the person by the candidate for the costs of the expenditure shall be subtracted from the cumulative value of the expenditures.

(e) (1) A candidate may seek a determination that an expenditure is a related expenditure made on behalf of an opposing candidate by filing a petition with the Superior Court of the county in which either candidate resides.

(2) Within 24 hours of the filing of a petition, the court shall schedule the petition for hearing. Except as to cases the court considers of greater importance, proceedings before the Superior Court, as authorized by this section, and appeals from there take precedence on the docket over all other cases

and shall be assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.

(3) The findings and determination of the court shall be prima facie evidence in any proceedings brought for violation of this chapter.

(f) The Secretary of State may adopt rules necessary to administer the provisions of this section.

§ 2945. ACCEPTING CONTRIBUTIONS

(a) A candidate, political committee, or political party accepts a contribution when the contribution is deposited in the candidate's, committee's, or party's campaign account or five business days after the candidate, committee, or party receives it, whichever comes first.

(b) A candidate, political committee, or political party shall not accept a monetary contribution in excess of $100.00 unless made by check, credit or debit card, or other electronic transfer.

§ 2946. CANDIDATE'S ATTRIBUTION TO PREVIOUS CYCLE

A candidate's expenditures related to a previous campaign and contributions used to retire a debt of a previous campaign shall be attributed to the earlier campaign.

§ 2947. CONTRIBUTIONS FROM A CANDIDATE

This subchapter shall not be interpreted to limit the amount a candidate may contribute to his or her own campaign.

§ 2948. PROHIBITION ON TRANSFERRING CONTRIBUTIONS

A candidate, political committee, or political party shall not accept a contribution which the candidate, political committee, or political party knows is not directly from the contributor but was transferred to the contributor by another person for the purpose of transferring the same to the candidate, political committee, or political party or otherwise circumventing the provisions of this chapter. It shall be a violation of this chapter for a person to make a contribution with the explicit or implicit understanding that the contribution will be transferred in violation of this section.

§ 2949. USE OF TERM "CANDIDATE"

As used in this subchapter, the term "candidate" includes the candidate's committee, except in regard to the provisions of section 2947 of this subchapter.

Subchapter 4. Reporting Requirements; Disclosures

§ 2961. SUBMISSION OF REPORTS TO THE SECRETARY OF STATE

(a) (1) The Secretary of State shall provide on the online database set forth in section 2906 of this chapter digital access to the form that he or she provides

for any report required by this chapter. Digital access shall enable any person required to file a report under this chapter to file the report by completing and submitting the report to the Secretary of State online.

(2) The Secretary of State shall maintain on the online database all reports that have been filed digitally on it so that any person may have direct machine-readable electronic access to the individual data elements in each report and the ability to search those data elements as soon as a report is filed.

(b) Any person required to file a report with the Secretary of State under this chapter shall file the report digitally on the online database.

§ 2962. REPORTS; GENERAL PROVISIONS

(a) Any report required to be submitted to the Secretary of State under this chapter shall contain the statement "I hereby certify that the information provided on all pages of this campaign finance disclosure report is true to the best of my knowledge, information, and belief" and places for the signature of the candidate or the treasurer of the candidate, political committee, or political party.

(b) Any person required to file a report under this chapter shall provide the information required in the Secretary of State's reporting form. Disclosure shall be limited to the information required to administer this chapter.

(c) All reports filed under this chapter shall be retained in an indexed file by the Secretary of State and shall be subject to the examination of any person.

§ 2963. CAMPAIGN REPORTS; SECRETARY OF STATE; FORMS; FILING

(a) The Secretary of State shall prescribe and provide a uniform reporting form for all campaign finance reports. The reporting form shall be designed to show the following information:

(1) the full name, town of residence, and mailing address of each contributor who contributes an amount in excess of $100.00, the date of the contribution, and the amount contributed;

(2) the total amount of all contributions of $100.00 or less and the total number of all such contributions;

(3) each expenditure listed by amount, date, to whom paid, for what purpose; and

(A) if the expenditure was a related campaign expenditure made on a candidate's behalf:

(i) the name of the candidate or candidates on whose behalf the expenditure was made; and

(ii) the name of any other candidate or candidates who were otherwise supported or opposed by the expenditure; or

(B) if the expenditure was not a related campaign expenditure made on a candidate's behalf but was made to support or oppose a candidate or candidates, the name of the candidate or candidates;

(4) the amount contributed or loaned by the candidate to his or her own campaign during the reporting period; and

(5) each debt or other obligation, listed by amount, date incurred, to whom owed, and for what purpose, incurred during the reporting period.

(b) (1) The form shall require the reporting of all contributions and expenditures accepted or spent during the reporting period and during the campaign to date and shall require full disclosure of the manner in which any indebtedness is discharged or forgiven.

(2) Contributions and expenditures for the reporting period and for the campaign to date also shall be totaled in an appropriate place on the form. The total of contributions shall include a subtotal of nonmonetary contributions and a subtotal of all monetary contributions.

(3) The form shall contain a list of the required filing times so that the person filing may designate for which time period the filing is made.

(4) Contributions accepted and expenditures spent after 5:00 p.m. on the third day prior to the filing deadline shall be reported on the next report.

§ 2964. CAMPAIGN REPORTS; CANDIDATES FOR STATE OFFICE, THE GENERAL ASSEMBLY, AND COUNTY OFFICE; POLITICAL COMMITTEES; POLITICAL PARTIES

(a) (1) Each candidate for State office, the General Assembly, or a two-year-term county office who has rolled over any amount of surplus into his or her new campaign or who has made expenditures or accepted contributions of $500.00 or more during the two-year general election cycle and, except as provided in subsection (b) of this section, each political committee that has not filed a final report pursuant to subsection 2965(b) of this chapter, and each political party required to register under section 2923 of this chapter shall file with the Secretary of State campaign finance reports as follows:

(A) in the first year of the two-year general election cycle, on July 15; and

(B) in the second year of the two-year general election cycle:

(i) on March 15;

(ii) on July 15 and August 15;

(iii) on September 1;

(iv) on October 1, October 15, and November 1; and

(v) two weeks after the general election.

(2) Each candidate for a four-year-term county office who has rolled over any amount of surplus into his or her new campaign or who has made expenditures or accepted contributions of $500.00 or more during the four-year general election cycle shall file with the Secretary of State campaign finance reports as follows:

(A) in the first three years of the four-year general election cycle, on July 15; and

(B) in the fourth year of the four-year general election cycle:

(i) on March 15;

(ii) on July 15 and August 15;

(iii) on September 1;

(iv) on October 1, October 15, and November 1; and

(v) two weeks after the general election.

(b) (1) A political committee or a political party which has accepted contributions or made expenditures of $1,000.00 or more during the local election cycle for the purpose of influencing a local election or supporting or opposing one or more candidates in a local election shall file with the Secretary of State campaign finance reports regarding that local elec-

tion 30 days before, 10 days before, and two weeks after the local election.

(2) As used in this subsection, "local election cycle" means:

(A) in the case of a local election, the period that begins 38 days after the local election prior to the one for which the contributions or expenditures were made and ends 38 days after the local election for which the contributions or expenditures were made, and includes any primary or run-off election related to that local election; or

(B) in the case of a special local election, the period that begins on the date the special local election was ordered and ends 38 days after that special local election, and includes any special primary or run-off election related to that special local election.

(c) The failure of a candidate, political committee, or political party to file a report under this section shall be deemed an affirmative statement that a report is not required of the candidate, political committee, or political party under this section.

§ 2965. FINAL REPORTS; CANDIDATES FOR STATE OFFICE, THE GENERAL ASSEMBLY, AND COUNTY OFFICE; POLITICAL COMMITTEES; POLITICAL PARTIES

(a) At any time, but not later than December 15th following the general election, each candidate required to

report under the provisions of section 2964 of this subchapter shall file with the Secretary of State a "final report" which lists a complete accounting of all contributions and expenditures since the last report and liquidation of surplus and which shall constitute the termination of his or her campaign activities.

(b) At any time, a political committee or a political party may file a "final report" which lists a complete accounting of all contributions and expenditures since the last report and liquidation of surplus and which shall constitute the termination of its campaign activities.

§ 2966. REPORTS BY CANDIDATES NOT REACHING MONETARY REPORTING THRESHOLD

(a) Each candidate for State office, the General Assembly, or a two-year-term county office who was not required to report under the provisions of section 2964 of this subchapter shall file with the Secretary of State 10 days following the general election a statement that the candidate either did not roll over any amount of surplus into his or her new campaign or has not made expenditures or accepted contributions of $500.00 or more during the two-year general election cycle.

(b) Each candidate for a four-year-term county office who was not required to report under the provisions of section 2964 of this subchapter shall file with the Secretary of State 10 days following the general election a statement that the candidate either did not roll over any amount of surplus into his or her new campaign or has not made expenditures or accepted contributions of $500.00 or more during the four-year general election cycle.

§ 2967. ADDITIONAL CAMPAIGN REPORTS; CANDIDATES FOR STATE OFFICE AND THE GENERAL ASSEMBLY

(a) In addition to any other reports required to be filed under this chapter, a candidate for State office or for the General Assembly who accepts a monetary contribution in an amount over $2,000.00 within 10 days of a primary or general election shall report the contribution to the Secretary of State within 24 hours of receiving the contribution.

(b) A report required by this section shall include the following information:

(1) the full name, town of residence, and mailing address of the contributor; the date of the contribution; and the amount contributed; and

(2) the amount contributed or loaned by the candidate to his or her own campaign.

§ 2968. CAMPAIGN REPORTS; LOCAL CANDIDATES

(a) Each candidate for local office who has rolled over any amount of surplus into his or her new campaign or who has made expenditures or accepted contributions of $500.00 or more since the last local election for that office shall file with the Secretary of State campaign finance reports 30 days before, 10 days before, and two weeks after the local election.

(b) Within 40 days after the local election, each candidate for local office required to report under the provisions of subsection (a) of this section shall file with the

Secretary of State a "final report" which lists a complete accounting of all contributions and expenditures since the last report and a liquidation of surplus and which shall constitute the termination of his or her campaign activities.

(c) The failure of a local candidate to file a campaign finance report under this section shall be deemed an affirmative statement that the candidate either did not roll over any amount of surplus into his or her new campaign or has not accepted contributions or made expenditures of $500.00 or more since the last local election for that office.

§ 2969. REPORTING OF SURPLUS MAINTENANCE BY FORMER CANDIDATES

A former candidate who has maintained surplus by carrying it forward as provided in subdivision 2924(d)(1)(B) of this chapter but who is not otherwise required to file campaign reports under this chapter shall file a report of the amount of his or her surplus and any liquidation of it two weeks after each general election until liquidation of all surplus has been reported.

§ 2970. CAMPAIGN REPORTS; OTHER ENTITIES; PUBLIC QUESTIONS

(a) Any formal or informal committee of two or more individuals or a corporation, labor organization, public interest group, or other entity, not including a political party, which makes expenditures of $1,000.00 or more during the election cycle for the purpose of advocating a position on a public question in any election shall file a report of its expenditures 30 days before, 10 days be-

fore, and two weeks after the election with the Secretary of State.

(b) As used in this section, "election cycle" means:

(1) in the case of a public question in a general or local election, the period that begins 38 days after the general or local election prior to the one in which the public question is posed and ends 38 days after the general or local election in which the public question is posed; or

(2) in the case of a public question in a special election, the period that begins on the date the special election for the public question was ordered and ends 38 days after that special election.

§ 2971. REPORT OF MASS MEDIA ACTIVITIES

(a) (1) In addition to any other reports required to be filed under this chapter, a person who makes expenditures for any one mass media activity totaling $500.00 or more, adjusted for inflation pursuant to the Consumer Price Index as provided in section 2905 of this chapter, within 45 days before a primary, general, county, or local election shall, for each activity, file a mass media report with the Secretary of State and send a copy of the report to each candidate whose name or likeness is included in the activity without that candidate's knowledge.

(2) The copy of the mass media report shall be sent by e-mail to each such candidate who has provided the Secretary of State with an e-mail address on his

or her consent form and to any other such candidate by mail.

(3) The mass media report shall be filed and the copy of the report shall be sent within 24 hours of the expenditure or activity, whichever occurs first. For the purposes of this section, a person shall be treated as having made an expenditure if the person has executed a contract to make the expenditure.

(b) The report shall identify the person who made the expenditure; the name of each candidate whose name or likeness was included in the activity; the amount and date of the expenditure; to whom it was paid; and the purpose of the expenditure.

(c) If the activity occurs within 30 days before the election and the expenditure was previously reported, an additional report shall be required under this section.

(d) (1) In addition to the reporting requirements of this section, an independent expenditure-only political committee that makes an expenditure for any one mass media activity totaling $5,000.00 or more, adjusted for inflation pursuant to the Consumer Price Index as provided in section 2905 of this chapter, within 45 days before a primary, general, county, or local election shall, for each such activity and within 24 hours of the expenditure or activity, whichever occurs first, file an independent expenditure-only political committee mass media report with the Secretary of State and send a copy of the report to each candidate whose name or likeness is

included in the activity without that candidate's knowledge.

(2) The report shall include all of the information required under subsection (b) of this section, as well as the names of the contributors, dates, and amounts for all contributions in excess of $100.00 accepted since the filing of the committee's last report.

§ 2972. IDENTIFICATION IN ELECTIONEERING COMMUNICATIONS

(a) An electioneering communication shall contain the name and mailing address of the person, candidate, political committee, or political party that paid for the communication. The name and address shall appear prominently and in a manner such that a reasonable person would clearly understand by whom the expenditure has been made, except that:

(1) An electioneering communication transmitted through radio and paid for by a candidate does not need to contain the candidate's address.

(2) An electioneering communication paid for by a person acting as an agent or consultant on behalf of another person, candidate, political committee, or political party shall clearly designate the name and mailing address of the person, candidate, political committee, or political party on whose behalf the communication is published or broadcast.

(b) If an electioneering communication is a related campaign expenditure made on a candidate's behalf as provided in section 2944 of this chapter, then in addition to

other requirements of this section, the communication shall also clearly designate the candidate on whose behalf it was made by including language such as "on behalf of" such candidate.

(c) In addition to the identification requirements in subsections (a) and (b) of this section, an electioneering communication paid for by or on behalf of a political committee or political party shall contain the name of any contributor who contributed more than 25 percent of all contributions and more than $2,000.00 to that committee or party since the beginning of the two-year general election cycle in which the electioneering communication was made to the date on which the expenditure for the electioneering communication was made. For the purposes of this subsection, a political committee or political party shall be treated as having made an expenditure if the committee or party or person acting on behalf of the committee or party has executed a contract to make the expenditure.

(d) The identification requirements of this section shall not apply to lapel stickers or buttons, nor shall they apply to electioneering communications made by a single individual acting alone who spends, in a single two-year general election cycle, a cumulative amount of no more than $150.00 on those electioneering communications, adjusted for inflation pursuant to the Consumer Price Index as provided in section 2905 of this chapter.

§ 2973. SPECIFIC IDENTIFICATION REQUIREMENTS FOR RADIO, TELEVISION, OR INTERNET COMMUNICATIONS

(a) In addition to the identification requirements set forth in section 2972 of this subchapter, a person, candidate, political committee, or political party that makes an expenditure for an electioneering communication shall include in any communication which is transmitted through radio, television, or online video, in a clearly spoken manner, an audio statement of the name and title of the person who paid for the communication and that the person paid for the communication.

(b) If the person who paid for the communication is not a natural person, the audio statement required by this section shall include the name of that person and the name and title of the principal officer of the person.

Subchapter 5. Public Financing Option

§ 2981. DEFINITIONS

As used in this subchapter:
(1) "Affidavit" means the Vermont campaign finance affidavit required under section 2982 of this chapter.

(2) "General election period" means the period beginning the day after the primary election and ending the day of the general election.

(3) "Primary election period" means the period beginning the day after primary petitions must be filed under section 2356 of this title and ending the day of the primary election.

(4) "Vermont campaign finance qualification period" means the period beginning February 15 of each even-numbered year and ending on the date on which primary petitions must be filed under section 2356 of this title.

§ 2982. FILING OF VERMONT CAMPAIGN FINANCE AFFIDAVIT

(a) A candidate for the office of Governor or Lieutenant Governor who intends to seek Vermont campaign finance grants from the Secretary of State Services Fund shall file a Vermont campaign finance affidavit on the date on or before which primary petitions must be filed, whether the candidate seeks to enter a party primary or is an independent candidate.

(b) The Secretary of State shall prepare a Vermont campaign finance affidavit form, informational materials on procedures and financial requirements, and notification of the penalties for violation of this subchapter.

(c) (1) The Vermont campaign finance affidavit shall set forth the conditions of receiving grants under this subchapter and provide space for the candidate to agree that he or she will abide by such conditions and all expenditure and contribution limitations, reporting requirements, and other provisions of this chapter.

(2) The affidavit shall also state the candidate's name, legal residence, business or occupation, address of business or occupation, party affiliation, if any, the office sought, and whether the candidate intends to enter a party primary.

(3) The affidavit shall also contain a list of all the candidate's qualifying contributions together with the name and town of residence of the contributor and the date each contribution was made.

(4) The affidavit may further require affirmation of such other information as deemed necessary by the Secretary of State for the administration of this subchapter.

(5) The affidavit shall be sworn and subscribed to by the candidate.

§ 2983. VERMONT CAMPAIGN FINANCE GRANTS; CONDITIONS

(a) A person shall not be eligible for Vermont campaign finance grants if, prior to February 15 of the general election year during any two-year general election cycle, he or she becomes a candidate by announcing that he or she seeks an elected position as Governor or Lieutenant Governor or by accepting contributions totaling $2,000.00 or more or by making expenditures totaling $2,000.00 or more.

(b) A candidate who accepts Vermont campaign finance grants shall:

(1) not solicit, accept, or expend any contributions except qualifying contributions, Vermont campaign finance grants, and contributions authorized under section 2985 of this chapter, which contributions may be solicited, accepted, or expended only in accordance with the provisions of this subchapter;

(2) deposit all qualifying contributions, Vermont campaign finance grants, and any contributions accepted in accordance with the provisions of section 2985 of this chapter in a federally insured noninterest-bearing checking account; and

(3) not later than 40 days after the general election, deposit in the Secretary of State Services Fund, after all permissible expenditures have been paid, the balance of any amounts remaining in the account established under subdivision (2) of this subsection.

§ 2984. QUALIFYING CONTRIBUTIONS

(a) In order to qualify for Vermont campaign finance grants, a candidate for the office of Governor or Lieutenant Governor shall obtain during the Vermont campaign finance qualification period the following amount and number of qualifying contributions for the office being sought:

(1) for Governor, a total amount of no less than $35,000.00 collected from no fewer than 1,500 qualified individual contributors making a contribution of no more than $50.00 each; or (2) for Lieutenant Governor, a total amount of no less than $17,500.00 collected from no fewer than 750 qualified individual contributors making a contribution of no more than $50.00 each.

(b) A candidate shall not accept more than one qualifying contribution from the same contributor and a contributor shall not make more than one qualifying contribution to the same candidate in any Vermont campaign

finance qualification period. For the purpose of this section, a qualified individual contributor means an individual who is registered to vote in Vermont. No more than 25 percent of the total number of qualified individual contributors may be residents of the same county.

(c) Each qualifying contribution shall indicate the name and town of residence of the contributor and the date accepted and be acknowledged by the signature of the contributor.

(d) A candidate may retain and expend qualifying contributions obtained under this section. A candidate may expend the qualifying contributions for the purpose of obtaining additional qualifying contributions and may expend the remaining qualifying contributions during the primary and general election periods. Amounts expended under this subsection shall be considered expenditures for purposes of this chapter.

§ 2985. VERMONT CAMPAIGN FINANCE GRANTS; AMOUNTS; TIMING

(a) (1) The Secretary of State shall make grants from the Secretary of State Services Fund in separate grants for the primary and general election periods to candidates who have qualified for Vermont campaign finance grants under this subchapter.

(2) To cover any campaign finance grants to candidates who have qualified under this subchapter, the Secretary of State shall report to the Commissioner of Finance and Management, who shall anticipate receipts to the Services Fund and issue warrants to pay for those grants. The Commissioner shall report

any such anticipated receipts and warrants issued under this subdivision to the Joint Fiscal Committee on or before December 1 of the year in which the warrants were issued.

(b) Whether a candidate has entered a primary or is an independent candidate, Vermont campaign finance grants shall be in the following amounts:

(1) For Governor, $150,000.00 in a primary election period and $450,000.00 in a general election period, provided that the grant for a primary election period shall be reduced by an amount equal to the candidate's qualifying contributions.

(2) For Lieutenant Governor, $50,000.00 in a primary election period and $150,000.00 in a general election period, provided that the grant for a primary election period shall be reduced by an amount equal to the candidate's qualifying contributions;

(3) A candidate who is an incumbent of the office being sought shall be entitled to receive a grant in an amount equal to 85 percent of the amount listed in subdivision (1) or (2) of this subsection.

(c) In an uncontested general election and in the case of a candidate who enters a primary election and is unsuccessful in that election, an otherwise eligible candidate shall not be eligible for a general election period grant. However, such candidate may solicit and accept contributions and make expenditures as follows: contributions shall be subject to the limitations set forth in subchapter 3 of this chapter, and expenditures shall be limited to an amount equal to the amount of the grant

set forth in subsection (b) of this section for the general election for that office.

(d) Grants awarded in a primary election period but not expended by the candidate in the primary election period may be expended by the candidate in the general election period.

(e) Vermont campaign finance grants for a primary election period shall be paid to qualifying candidates within the first 10 business days of the primary election period. Vermont campaign finance grants for a general election period shall be paid to qualifying candidates during the first 10 business days of the general election period.

§ 2986. MONETARY AMOUNTS ADJUSTED FOR INFLATION

The monetary amounts contained in sections 2983–2985 of this subchapter shall be adjusted for inflation pursuant to the Consumer Price Index as provided in section 2905 of this chapter.

Sec. 4. 17 V.S.A. § 2971 is amended to read:
§ 2971. REPORT OF MASS MEDIA ACTIVITIES
(a) (1) In addition to any other reports required to be filed under this chapter, a person who makes expenditures for any one mass media activity totaling $500.00 or more, adjusted for inflation pursuant to the Consumer Price Index as provided in section 2905 of this chapter, within 45 days before a primary, general, county, or local election shall, for each activity, file a mass media report with the Secretary of State and send a copy of the report to each

candidate whose name or likeness is included in the activity without that candidate's knowledge.

(2) The copy of the mass media report shall be sent by e-mail to each such candidate who has provided the Secretary of State with an e-mail address on his or her consent form and to any other such candidate by mail.

(3) The mass media report shall be filed and the copy of the report shall be sent within 24 hours of the expenditure or activity, whichever occurs first. For the purposes of this section, a person shall be treated as having made an expenditure if the person has executed a contract to make the expenditure.

(b) The report shall identify the person who made the expenditure; the name of each candidate whose name or likeness was included in the activity; the amount and date of the expenditure; to whom it was paid; and the purpose of the expenditure.

(c) If the activity occurs within 30 days before the election and the expenditure was previously reported, an additional report shall be required under this section.

(d) ~~(1) In addition to the reporting requirements of this section, an independent expenditure-only political committee that makes an expenditure for any one mass media activity totaling $5,000.00 or more, adjusted for inflation pursuant to the Consumer Price Index as provided in section 2905 of this chapter, within 45 days before a primary, general, county, or local election shall, for each such activity and~~

~~within 24 hours of the expenditure or activity, whichever occurs first, file an independent expenditure-only political committee mass media report with the Secretary of State and send a copy of the report to each candidate whose name or likeness is included in the activity without that candidate's knowledge.~~

~~(2) The report shall include all of the information required under subsection (b) of this section, as well as the names of the contributors, dates, and amounts for all contributions in excess of $100.00 accepted since the filing of the committee's last report.~~ [Repealed.]

Sec. 5. EVALUATION OF 2014 PRIMARY AND GENERAL ELECTIONS

The House and Senate Committees on Government Operations shall evaluate the 2014 primary and general elections to determine the effect of the implementation of this act.

Sec. 6. SECRETARY OF STATE; REPORT; CORPORATIONS AND LABOR UNIONS; SEPARATE SEGREGATED FUNDS

(a) By December 15, 2014, the Secretary of State shall report to the Senate and House Committees on Government Operations regarding any impact on his or her office and on corporations and labor unions if corporations and labor unions were required to establish separate segregated funds in order to make contributions to candidates, political committees, and political parties as provided in 2 U.S.C. § 441b and related federal law.

(b) The report shall include an analysis of what entities would be subject to the requirement described in subsection (a) of this section and how those entities would otherwise be able to use their general treasury funds in relation to political activity.

Sec. 7. INTERIM REPORTING; METHOD OF REPORTING

(a) Prior to and until the effective date of 17 V.S.A. § 2961 (submission of reports to the Secretary of State) in Sec. 3 of this act, as the effective date is provided in Sec. 8(a)(1) of this act, a person shall file reports required under Sec. 3 of this act by any of the following methods:

(1) by filing an original paper copy of a required report with the Secretary of State; or

(2) by sending to the Secretary of State a copy of the report by facsimile; or

(3) by attaching a PDF copy of the form to an e-mail and by sending the e-mail to campaignfinance@sec.state.vt.us.

(b) (1) Reports filed by a candidate, political committee, or political party under subsection (a) of this section shall contain the signature of the candidate or his or her treasurer or the treasurer of the political committee or political party. The treasurer shall be the same treasurer as provided by the candidate, political committee, or political party under 17 V.S.A. §§ 2921–2923 in Sec. 3 of this act.

(2) All other reports filed under subsection (a) of this section shall contain the signature of the person filing the report.

(c) (1) Prior to the effective date of 17 V.S.A. § 2961 (submission of reports to the Secretary of State) in Sec. 3 of this act, the Secretary of State may provide on the online database digital access to campaign finance report forms as described in 17 V.S.A. § 2961.

(2) Notwithstanding the provisions of subsection (a) of this section, if the Secretary of State provides digital access to report forms on the online database as set forth in subdivision (1) of this subsection, a person required to file a report under Sec. 3 of this act may file reports digitally on the online database, as an alternative to the methods provided in subsection (a), until the effective date of 17 V.S.A. § 2961.

(d) The Secretary of State shall ensure that any campaign finance report filed with his or her office prior to the effective date of 17 V.S.A. § 2961 is accessible through his or her office.

Sec. 8. EFFECTIVE DATES; TRANSITIONAL PROVISIONS

(a) This act shall take effect on passage, except that:

(1) in Sec. 3 of this act, 17 V.S.A. § 2961 (submission of reports to the Secretary of State) shall take effect on January 15, 2015;

(2) in Sec. 3 of this act, 17 V.S.A. § 2941 (limitations of contributions), except subdivision (a)(6) (aggregate limits on contributions from a single source), shall take effect on January 1, 2015;

(3) in Sec. 3 of this act, 17 V.S.A. § 2941(a)(6) (limitations of contributions; aggregate limits on contributions from a single source) shall not take effect any sooner than January 1, 2015 and until the final disposition, including all appeals, of McCutcheon v. Federal Election Commission, No. 12cv1034 (D.D.C. Sept. 28, 2012) is determined, and shall not take effect at all if that final disposition holds that aggregate limits on contributions from single sources are unconstitutional.

(4) Sec. 4 of this act, amending 17 V.S.A. § 2971 (report of mass media activities), shall not take effect unless and until the final disposition of a case before the U.S. Court of Appeals for the Second Circuit or the U.S. Supreme Court holds that limits on contributions to independent expenditure-only political committees are constitutional.

(b) The provisions of 17 V.S.A. § 2941(a)(4) (limitations of contributions; limits on contributions to political committees) in Sec. 3 of this act shall not apply to independent expenditure-only political committees, except that those provisions shall apply to independent expenditure-only political committees if the final disposition of a case before the U.S. Court of Appeals for the Second Circuit or the U.S. Supreme Court holds that limits on contributions to independent expenditure-only political committees are constitutional.

(c) As used in this section, "independent expenditure-only political committee" shall have the same meaning as in Sec. 3, 17 V.S.A. § 2901(10), of this act.

Date Governor signed bill: January 23, 2014

Vermont Administrative Rule 2000-1

from Appendix H of
https://www.sec.state.vt.us/media/333336/2014-CF-Guide4-10.pdf
(visited Aug. 12, 2014)

ADMINISTRATIVE RULE 2000-1
VERMONT CAMPAIGN FINANCE LAW
REGULATION OF RELATED EXPENSES

1. Pursuant to the rulemaking authority given to the Secretary of State in 17 V.S.A. § 2809(f), the following rules are necessary for the proper administration of provisions of section 2809.

2. For purposes of section 2809(c), which states "for the purposes of this section, a related campaign expenditure made on the candidate's behalf means any expenditure intended to promote the election of a specific candidate or group of candidates, or the defeat of an opposing candidate or group of candidates, if intentionally facilitated by, solicited by or approved by the candidate or the candidate's political committee:"

> a) A campaign expenditure may be a "related campaign expenditure" even if the candidate or the candidate's political committee did not have a specific intent to make an activity or expense a "related campaign expenditure on a candidate's behalf." However, some knowledge of the fact, or willful

blindness toward the fact that the action will be used in connection with an activity or expenditure on the candidate's behalf is necessary.

b) "Intentionally facilitated" means for a candidate or the candidate's political committee to consciously, and not accidentally, have done an action to make the activity or expenditure possible.

c) "Solicited" means for the candidate or the candidate's political committee to appeal or ask directly or by an intermediary or by any other means, procure the activity.

d) "Approved" means for the candidate or the candidate's political committee to have consciously, and not accidentally, taken any prior action or inaction that indicates permission or approval. Simply knowing that an activity or expenditure is taking place does not, alone, constitute approval.

3. For purposes of section 2809(d) which states, in pertinent part, that "an expenditure made by a political party or by a political committee that recruits or endorses candidates, that primarily benefits six or fewer candidates who are associated with the political party or political committee making the expenditure, is presumed to be a related expenditure made on behalf of those candidates. As expenditure made by a political party or by a political committee that recruits or endorses candidates, that substantially benefits more than six candidates and facilitates party or political committee functions, voter turnout, platform promotion or organizational capacity shall not be presumed to be a related expenditure made on a candidate's behalf":

a) An expenditure "primarily benefits" six or less candidates when the principal purpose of the expenditure is to promote six or fewer specific candidates.

b) The fact that an activity may incidentally benefit all candidates of the same party, for example, by increasing voter participation of a particular party, or by some other means, will not prevent an activity from being presumed to be a related campaign expenditure.

c) While an expenditure or activity does not have to equally benefit all candidates, it will "primarily benefit" more than six candidates if a reasonable person receiving the mailing or seeing the advertisement will believe that its purpose is to promote more than six candidates.

d) When an expenditure is presumed to be a related expenditure, the presumption can be overcome by evidence that the elements of the definition in section 2809(c) were not met or that the elements in 2809(d)(1-3) apply. When an expenditure is not presumed to be a related expenditure because it substantially benefits more than six candidates, the expenditure may still be treated as a related expenditure made on behalf of each candidate if the elements of the definition in section 2809(c) were met and the elements of (d)(1-3) apply.

4. For purposes of section 2809(d) which states, in pertinent part, that "an expenditure shall not be considered a related campaign expenditure made on the candidate's behalf" if all of the following apply:

a) The expenditures were made in connection with a campaign event whose purpose was to provide a group of voters with the opportunity to meet the candidate personally;

b) The expenditures were made only for refreshments and related supplies that were consumed at that event; and

c) The amount of the expenditures for the event was less than $100.00

An expenditure that meets the requirements above will not be a related expenditure on a candidate's behalf even if the expenditure was intentionally facilitated by, solicited by, or approved by the candidate.

5. For the purpose of section 2809(c) & (e), "opposing candidate" means any person who seeks the same office that the candidate seeks.