



**Vermont House
Government Operations Committee
Public Hearing
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**Testimony of Brenda Wright
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Good morning. My name is Brenda Wright. I am currently Legal Director of the Democracy Program at Demos, a nonprofit research and advocacy organization established in 1999. I thank you for this opportunity to share our views on the important campaign reforms now under consideration by this Committee.

For the past several years, I have had the pleasure of working with Vermont legislators, the Vermont Attorney General's office, and Vermont advocates and citizens on campaign finance reform issues, including the legal defense of Vermont's landmark Act 64. I represented a number of legislators who intervened in the lawsuit, including former Rep. Marion Milne, Representative Daryl Pillsbury, the late Rep. Karen Kitzmiller, former Senator Cheryl Rivers, former Sen. Liz Ready, along with VPIRG, the League of Women Voters, the Older Women's League, and numerous other groups and Vermont citizens.

The legislation before this Committee is an important first step to address the Supreme Court's decision in *Randall v. Sorrell*, and to restore basic reasonable contribution limits that will

allow Vermont to address the sometimes corrosive effect of money in politics. I believe that a system of full public financing is ultimately the way to go, but I recognize that is not part of the current proposed legislation.

Restoring the Contribution Limits

It is very important for Vermont to enact new contribution limits in the wake of the Court's decision. The majority of states have some form of limits on the contributions that donors may make to candidates, and Vermont likewise has imposed contribution limits in political campaigns for many decades. A contribution limit is a very basic measure that gives the public some confidence that candidates will not be unduly beholden to any one donor.

I recognize that the Committee is looking very specifically at the question of where the contribution limits for Vermont should be set and how to comply with the Supreme Court's decision.

Let me give a little context about the decision and then I will jump right into the specifics of the limits and the evidence this Committee has before it that support the various limits in the bill.

It's important for the Committee to keep in mind both what the Supreme Court did, and what it did not do. The limits that the Court struck down were \$200 per election cycle for candidates for state representative, \$300 for candidates for state senate, and \$400 for gubernatorial candidates and other candidates for statewide office.

While the Court ruled that those limits were too low, the Court did not declare that all contribution limits are constitutionally suspect, and it did not set any arbitrary dollar threshold for limits that all states must follow. In fact, the decision reaffirmed that "the legislature is better equipped to make such empirical judgments, as legislators have particular expertise in matters related to the costs and nature of running for office."¹

The Court said that some of Act 64's specific limits were too low not merely because of the level at which they were set, but because several other factors "*taken together*" made them

1 *Id.* (citation and internal quotations omitted).

too restrictive.² Those factors included the fact that the limits in Act 64 applied on a per-cycle basis instead of a per-election basis, which created a concern for candidates with contested primaries; the fact that political parties were restricted to the same limits as individuals in terms of what they could donate to candidates; the lack of exemptions for volunteer expenses, such as travel expenses; and the absence of an automatic adjustment for inflation. The Court's primary concern was that the combination of these factors might hamper challengers and create an advantage for incumbents. Putting aside whether the Supreme Court was right or wrong as a matter of empirical social science, S.278 addresses each one of these concerns.

First, the limits in S. 278 for the most part will apply on a per-election basis, rather than a per-cycle basis.³ Candidates therefore will be able to receive separate donations, up to the maximum, in the primary and general elections. Even if this were the only change, this would effectively double the previous Act 64 limits, which applied to the entire two-year election cycle.

But instead of just doubling the limits by making them apply on a per-election basis, S.278 also increases the dollar amount that can be contributed to candidates as well.

S. 278 also addresses the Supreme Court's concern about an inflation adjustment, by requiring the contribution limits to be adjusted for inflation every two years.

S. 278 also provides that political parties may donate much larger amounts than individuals, which responds to another of the factors the Court identified as important.

Data compiled by Professor Anthony Gierzynski, a noted national scholar on campaign finance who teaches at U. Vt, is very illuminating about how the new limits are likely to affect the competitiveness of elections in Vermont.

When he looked at challengers in House races (Figure 1) over the past seven elections, Professor Gierzynski found that challengers had more success against incumbents in the years the contribution limits were lowest. The re-election rate for incumbents actually went up slightly

2 *Id.* at 2495 (emphasis original).

3 The legislation does not change the existing limits of \$2,000 per election cycle applicable to donations to political committees and political parties. These were upheld by the lower courts and were not included in the plaintiffs' petitions to the Supreme Court nor specifically addressed by the Supreme Court.

in 2006 after the Act 64 limits were invalidated by the Supreme Court and we went to \$1,000 limits for the House and all other offices. So, there is no evidence that challengers will benefit from higher limits.

In addition, Professor Gierzynski's analysis shows that the percentage of contested seats and the percentage of competitive elections in the Vermont House also dropped in 2006, when the higher \$1,000 limits were in place (Figure 2). So when people try to explain their opposition to S.278 by saying they are worried about fairness for challengers, one has to ask whether those are crocodile tears. If anything, the evidence shows that going to a higher limit of \$1,000 would actually hurt challengers and make Vermont elections less competitive.

Professor Gierzynski's data in figure 5 are also important. Candidates in competitive races in 2006 were spending only about \$4,000 on their campaigns in total, including both the primary and general. If the legislature raises the limit to \$1,000, it would mean that the entire campaign could be funded by two donors, because people could give \$2,000 by donating in both the primary and general election. Vermont has a legitimate and indeed compelling interest in making sure that campaigns for Vermont House seats are not bankrolled by just a handful of wealthy donors.

The limits for Senate elections and statewide elections in S. 278 have also been raised well above the Act 64 levels. For the gubernatorial elections, instead of a \$400 limit on contributions to gubernatorial candidates for the entire cycle as was true under Act 64, the new limit would allow a total of \$2,000 – that is, \$1,000 in the primary and \$1,000 in the general election. You will be quintupling the Act 64 limit. For other statewide offices, it would be \$750 per election, or \$1500 total during the cycle. And by the way, the Committee has been provided with a table showing that there is nothing unusual about having different contribution limits for different statewide offices.

Contrary to arguments that some witnesses have made to the committee, there is no court decision saying that states must use the same limit for all statewide offices. Indeed, the Supreme Court itself stated in *Randall v. Sorrell*:

A campaign for state auditor is likely to be less costly than a campaign for governor; campaign

costs do not automatically increase or decrease in precise proportion to the size of an electoral district.⁴

Thus, the only decision you face about whether to make the limits the same for all statewide offices is a policy decision; it is not a decision dictated by constitutional law.

Turning to the limits on contributions by political parties, those will range from \$30,000 for gubernatorial candidates to \$1,000 for house candidates. Again, the Committee has been provided with a table showing that 30 states, plus the District of Columbia, place some kinds of limits on what parties can contribute to candidates. Not only are the dollar amounts much higher for political parties in S.278 than under Act 64, but entire categories of party activities would be exempted from the limits by new definitional provisions. Providing voter lists and other written materials to candidates, conducting candidate training, volunteer recruitment, event coordination and other activities that benefit three or more candidates, and get-out-the-vote activities would now be exempted and not subject to any limit. These exemptions would respond to concerns that were raised in some of the testimony at the trial that was held on Act 64 – for example, the concern that the value of a voter list provided to a candidate might exceed the amount the party was allowed to contribute.

I am aware that the Governor has expressed opposition to the limit on political party contributions by state and local parties, and has asked for those contributions to remain completely unlimited. It's important for this committee to understand that this, again, is purely a policy choice, not a matter dictated by court decisions. There is no court decision by the U.S. Supreme Court, and none by any lower court of which I am aware, that says that parties must be permitted to make entirely unlimited contributions to candidates. That is simply not the law.

I noticed that S.278 includes a larger exemption for volunteer travel expenses than contained in last year's bill, S.164. The exemption is for up to \$1,000 in travel expenses, compared to \$500 in the previous version. Again, an exemption for volunteer expenses is one of the factors that the Supreme Court said might be important, so S. 278 clearly addresses that

4 Randall v. Sorrell, 126 S.Ct. 2479, 2494 (2006).

concern.

The legislation includes a new contribution provision establishing a limit on the aggregate contributions that a single source or political committee can make to all candidates, parties and political committees combined. An overall cap of \$20,000 would apply to donations by a single source to candidates, and \$20,000 more to political committees and parties. Federal elections have had aggregate limits on individuals' contributions for many years. This type of limit is useful in assuring that no one business or individual exercises disproportionate influence through multiple large donations, and it helps prevent an end run around the basic contribution limits. It also places some check on the use of donation strategies that may be more tied to "investing" in public policy than in achieving electoral goals – for example, making large donations to everyone in order to gain influence regardless of the electoral outcome. The committee has been provided with a table showing that 12 other states and the District of Columbia also impose aggregate limits on individual donations.

We urge the Committee to keep in mind that the Supreme Court, in striking down Vermont's previous contribution limits, stressed that the problem stemmed from the combined effect of the different factors identified above. In theory, that means the Act 64 limits might have been upheld if even one of those factors were not present. For example, if the limits for individual donations remained exactly the same, but political parties were allowed to contribute larger amounts, it is not clear that the limits would be struck down. The legislation before this Committee takes the relatively safe course, however, of addressing all the key factors the Supreme Court singled out. It raises the dollar amount of the limits while also adding an inflation adjustment, making the limits per-election rather than per-cycle, exempting many party activities and volunteer expenses, and allowing parties to contribute far more than individuals.

Is it necessary to make these limits even higher in order to meet the Supreme Court's requirements? I think the answer clearly is no. It is common sense that different states will have different contribution limits, if only because the costs of elections vary so greatly from state to state. Vermont is still one of the states with the least expensive elections among the 50 states.

In the context of Vermont elections, these new proposed limits seem, if anything, on the high side. If someone donates a total of \$500 to a Vermont house candidate, that will often be a very large percentage of the total expense of the campaign. In some cases it would fund the entire campaign. So a \$250 or \$500 donation in Vermont has a very different impact than the same donation in New York or California.

Even though Vermont's elections are less expensive than most other states, Vermont will not have the lowest contribution limits in the country if this legislation is enacted. States such as Arizona, Colorado, Montana, Maine and Florida would have lower limits,⁵ and several of these states have far more expensive elections than Vermont.

We urge the Committee to recognize that the concerns associated with campaign fundraising and donations that prompted the reform law in 1997 remain very important to address. Then-Governor Howard Dean made a blunt statement back then: he said, in his inaugural address, "Money does buy access, and we're kidding ourselves and Vermonters if we deny it." When this legislature held all the dozens of hearings leading up to Act 64, and during the trial itself, there was a great deal of honest soul-searching about the role of campaign money in setting the public agenda, and equally important, its role in the public's perception of the integrity of government. The proposed legislation before this Committee recognizes that Vermont still needs to address these issues, although we need to go about it in a different way in light of the Court's decision.

In my view S. 278 goes about this in a responsible, reasonable way that meets the concerns articulated by the Court, and it clearly should withstand constitutional scrutiny.

⁵ Arizona: \$760 per election cycle for statewide elections and \$296 for non-statewide elections (A.R.S. § 16-901, 905, 959); Colorado: \$500 per election for statewide elections and \$200 for legislative elections (Colo. Const. Art. XXVIII, Section 3); Florida: \$500 per election for all offices (Fla. Stat. Section 106.08); Maine: \$500 per election for governor and \$250 per election for other offices (Me. Rev. Stat. Ann., Tit. 21A, § 1012, 1015); Montana: \$500 per election for governor, \$250 for other statewide, \$130 for legislative (Mont. Code Ann., § 13-1-101, 13-37-216, 13-37-218). In addition, Massachusetts sets limits of \$500 per calendar year for all offices (A.L.M. GL Ch. 55, § 1, 6, 7A).