

No. 04-

In the
SUPREME COURT OF THE UNITED STATES

WILLIAM H. SORRELL, *ET AL.*,
AND
VERMONT PUBLIC INTEREST RESEARCH GROUP, *ET AL.*,
CONDITIONAL-CROSS-PETITIONERS,

v.

NEIL RANDALL, *ET AL.*,
AND
VERMONT REPUBLICAN STATE COMMITTEE, *ET AL.*,
CONDITIONAL-CROSS-RESPONDENTS.

ON CROSS-PETITION FOR WRIT OF *CERTIORARI*
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

**CONDITIONAL CROSS-PETITION
FOR WRIT OF *CERTIORARI***

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QUESTION PRESENTED

Whether Vermont's mandatory limits on campaign expenditures by candidates for public office are constitutional under the First and Fourteenth Amendments to the United States Constitution.

LIST OF PARTIES

Neil Randall, George Kuusela, Steven Howard, Jeffrey A. Nelson, John Patch, and Libertarian Party of Vermont: *Petitioners in 04-1528 and Conditional Cross-Petition Respondents*;

Vermont Republican State Committee; Vermont Right to Life Committee, Inc.; Political Committee, Vermont Right to Life Committee–Fund for Independent Political Expenditures; Marcella Landell; and Donald R. Brunelle: *Petitioners in No. 04-1530 and Conditional Cross-Petition Respondents*;

William H. Sorrell; John T. Quinn; William Wright; Robert Butterfield; Robert Simpson, Jr.; Vincent Illuzzi; James Hughes; David Miller; Joel W. Page; William Porter; Keith W. Flynn; James P. Mongeon; Craig Nolan; Dan Davis; Robert L. Sand; and Deborah Markowitz: *Respondents in Nos. 04-1528 & 04-1530 and Conditional-Cross-Petitioners*;¹

Vermont Public Interest Research Group, Inc.; League of Women Voters of Vermont; Rural Vermont; Vermont Older Women’s League; Vermont Alliance of Conservation Voters; Mike Fiorillo; Marion Grey (deceased); Phil Hoff; Frank Huard; Karen Kitzmiller (deceased); Daryl Pillsbury; Marion Milne; Elizabeth Ready; Nancy Rice; Cheryl Rivers; and Maria Thompson: *Respondent-Intervenors in Nos. 04-1528 & 04-1530 and Conditional-Cross-Petitioners*.

¹ As this is an official capacity action, pursuant to Supreme Court Rule 35.3, State’s Attorneys Dale Gray, Lauren Bowerman, George Rice, James McNight, Terry Trono have been replaced by Robert Butterfield; Robert Simpson, Jr.; David Miller; William Porter; and Craig Nolan who are, respectively, the current officeholders.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, The Vermont Public Interest Research Group, Inc.; League of Women Voters of Vermont; Vermont Older Women's League; Vermont Alliance of Conservation Voters; and Rural Vermont state that they have not issued shares to the public and no parent companies, subsidiaries, or affiliates of any of them have issued shares to the public.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
LIST OF PARTIES	ii
CORPORATE DISCLOSURE STATEMENT.....	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES.....	v
CONDITIONAL CROSS-PETITION FOR WRIT OF <i>CERTIORARI</i>	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE CONDITIONAL CROSS-PETITION.....	3
CONCLUSION	5

v
TABLE OF AUTHORITIES

	Page
CASE LAW	
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976) (<i>per curiam</i>)	4
<i>Landell v. Sorrell</i> , 382 F.3d 91 (2 nd Cir. 2004)	1
<i>Landell v. Sorrell</i> , 118 F. Supp. 2d 459 (D. Vt. 1999)	1
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend I	i,2,3,4
U.S. Const. amend XIV	i,2
STATUTES	
28 U.S.C. §1254(1)	2
1997 Vt. Laws P.A. 64, §2805a	2,3

**CONDITIONAL CROSS-PETITION
FOR WRIT OF *CERTIORARI***

Pursuant to Supreme Court Rule 12.5, William H. Sorrell, Attorney General of the State of Vermont, *et al.*, and Vermont Public Interest Research Group, Inc., *et al.*, respectfully submit this Conditional Cross-Petition for Writ of *Certiorari* to review the judgment of the United States Court of Appeals for the Second Circuit. This Conditional Cross-Petition is contingent upon the Court granting a writ of *certiorari* on the issue of the constitutionality of Vermont's candidate expenditure limits, which is presented as Question One in the Petitions for Writs of *Certiorari* filed in Nos. 04-1528 and 04-1530.

OPINIONS BELOW

The decision of the Court of Appeals for the Second Circuit is reported at 382 F.3d 91 (2nd Cir. 2004). It is reproduced in the Appendix to the Petition for Writ of *Certiorari* in *Neil Randall, et al. v. William H. Sorrell, et al.*, No. 04-1528, at App. 90a-312a. The opinion of the United States District Court for the District of Vermont is reported at 118 F. Supp. 2d 459 (D. Vt. 1999). It is reproduced in the Appendix to the Petition for Writ of *Certiorari* in *Neil Randall, et al. v. William H. Sorrell, et al.*, No. 04-1528, at App. 21a-89a.

JURISDICTION

The judgment of the United States Court of Appeals for the Second Circuit was filed on August 18, 2004. Petitions for rehearing *en banc* were denied on February 11, 2005. App. 313a-314a. The order denying rehearing *en banc* was amended on April 11 (App. 315a-344a), and again on April 18 and May 11, 2005 (filed with the Court by counsel of record in No. 04-1528). The Petition for Writ of *Certiorari* in No. 04-1528 was placed on this Court's

docket on May 16, 2005. The Petition for Writ of *Certiorari* in No. 04-1530 was placed on this Court's docket on May 17, 2005. The Conditional Cross-Petition is timely pursuant to Rule 12.5 of the Rules of this Court. This Court has jurisdiction under 28 U.S.C. §1254(1).

**CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED**

The First Amendment to the United States Constitution provides:

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 I.

The Fourteenth Amendment to the United States Constitution provides:

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

U.S. Const. amend. XIV.

1997 Vt. Laws P.A. 64, §2805a (“Act 64”) (codified at 17 V.S.A. §2805a and reproduced in the Appendix to the Petition for Writ of *Certiorari* in *Neil Randall, et al. v. William H. Sorrell, et al.*, No. 04-1528, at App. 6a-7a).

STATEMENT OF THE CASE

The Court is respectfully referred to the Statement of the Case found in the Response and Partial Opposition of Respondents William H. Sorrell, *et al.*, in Nos. 04-1528 and 04-1530, which is incorporated here by reference.

**REASONS FOR GRANTING
THE CONDITIONAL CROSS-PETITION**

The first Question Presented in the Petitions for Writs of *Certiorari* in Nos. 04-1528 and 04-1530 seeks review of the Second Circuit's ruling below, which concluded that Vermont's candidate expenditure limits, 1997 Vt. Laws P.A. 64, §2805a ("Act 64") (codified at 17 V.S.A. §2805a and reproduced in the Appendix to the Petition for Writ of *Certiorari* in *Neil Randall, et al. v. William H. Sorrell, et al.*, No. 04-1528, at App. 6a-7a), were permissible under the First Amendment and that the interests of deterring corruption and its appearance, and in protecting officials from the rigors of fundraising so that they could focus upon their duties, were sufficiently compelling to justify such limits.

In response to those Petitions, Respondents William H. Sorrell, *et al.* and Respondent-Intervenors Vermont Public Interest Research Group, Inc., *et al.*, agreed that there is a division among the Circuits as to the constitutionality of expenditure limits and argued that the Second Circuit had correctly upheld such limits in light of this Court's precedents. Respondents and Respondent-Intervenors further asserted that additional compelling interests, different constitutional analyses, and alternative narrow tailoring analyses not examined by the Second Circuit also supported the ruling below. Respondents and Respondent-Intervenors concluded, however, that review by this Court at this time is

necessary and appropriate to resolve the split among the Courts of Appeals and to bring clarity to this recurring issue of national importance.

In the event the Court issues a writ of *certiorari* as to Question One in either No. 04-1528 or No. 04-1530, it should also grant this Conditional Cross-Petition. Conditional Cross-Petitioners state that there are additional compelling interests, different constitutional analyses (including reconsideration of the standards set out in *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*)), and alternative narrow tailoring analyses that the Court could choose to employ in evaluating expenditure limitations under the First Amendment. These arguments are more fully set out in the Response and Partial Opposition of Respondent-Intervenors Vermont Public Interest Research Group, Inc., *et al.*, in Nos. 04-1528 & 04-1530 (the “Partial Opposition”), at Section I(C)(3), which is incorporated here by reference.

Cross-Petitioners believe that the above-referenced arguments will properly be before the Court upon a grant of review as to Question One set forth in the Petitions in Nos. 04-1528 or 04-1530, because these arguments provide alternative grounds for upholding the judgment of the Second Circuit. Nevertheless, they have filed this Conditional Cross-Petition to assure that the Court can give full examination to all constitutional justifications for candidate spending ceilings and can afford relief in excess of that granted by the Second Circuit.

In light of the fact that the Court has not considered candidate expenditure limits in over 30 years, that a number of Justices of this Court have expressed concerns over the constitutional standards enunciated in *Buckley* regarding such limits, *see* Partial Opposition at Section I(B) n.5, and that the propriety of spending limits is an

issue of great public concern, the Court should grant this Conditional Cross-Petition to allow complete and thorough consideration of this issue.

CONCLUSION

If the Petition for Writ of *Certiorari* in either No. 04-1528 or No. 04-1530 is granted as to Question One, this Conditional Cross-Petition also should be granted.

Respectfully submitted,

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