Randall v. Sorrell: A New Wrinkle in the Campaign Finance Reform Debate

Justin Kramer
COMMENTS

RANDALL V. SORRELL: A NEW WRINKLE IN THE CAMPAIGN FINANCE REFORM DEBATE

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INTRODUCTION

The campaign finance debate rages on.1 Congress’ continuous attempt to reform the national political process has sparked one of the most politically driven battles of the twentieth and twenty-

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1 See Landell v. Sorrell, 406 F.3d 159, 162 (2d Cir. 2005) (Calabresi, J., concurring) (discussing how there is a “huge elephant – and donkey – in the living room in all discussions of campaign finance reform”); see also Sonia P. Fois & Leslie A. Nickel, Corporations Still Have Some Rights to Participate in the Electoral Process, LEGAL TIMES, Apr. 28, 1997, at S.40, available at http://www.arnoldporter.com/publications_articles.cfm?practice_ID=0&publication_id=514 (arguing that there are many different explanations for why the campaign finance debate continues, even in light of the contribution ban placed on corporations, foreign nationals, and labor unions); Brandon L. Lowy, Comment, Not Quite Shays’ Rebellion: Putting McConnell v. Federal Election Commission in Perspective, 60 U. MIAMI. L. REV. 283, 283-84 (2006) (noting that the current debate stems from the Bipartisan Campaign Reform Act of 2002 and how significant the debate is because “it is an exercise in democracy”).
first centuries.\(^2\) In the past, Congress has taken numerous steps in order to initiate this change.\(^3\) Through a number of different legislative acts, Congress banned certain political contributions made by corporations,\(^4\) labor unions,\(^5\) and banks throughout the early to mid-twentieth century.\(^6\) The first of such legislative acts was the Pendleton Act of 1883 which aimed at controlling appointments to political office,\(^7\) but it proved to be largely ineffective.\(^8\) It was not until the Tillman Act of 1903 when

\(^2\) See Thomas Cmar, Toward a Small Donor Democracy: The Past and Future of Incentive Programs for Small Political Contributions, 32 FORDHAM URB. L.J. 443, 443 (2005) (discussing money and how it is “the lifeblood of electoral politics”, with the candidate raising more money winning 94% of the congressional elections in 2002, thus making campaign finance a critical political issue); see also John M. de Figueiredo & Elizabeth Garrett, Paying for Politics, 78 S. CAL. L. REV. 591, 621-22 (2005) (noting how changes in campaign finance reform policy are driven by corruption concerns and an interest in “democratizing the political process”, giving more individuals a chance to participate in self-governance).


\(^4\) See Lowy, supra note 1, at 286-87 (discussing how corporations are now forbidden from giving soft money contributions to federal election candidates and their respective party committees); see also Fontana, supra note 3, at 753 (noting that Congress wanted to prevent corporations from using corporate dollars to finance political campaigns, without the consent of shareholders).


\(^6\) See DIANA DWYER & VICTORIA A. FARRAR-MYERS, LEGISLATIVE LABYRINTH: CONGRESS AND CAMPAIGN FINANCE REFORM 4-5 (2001) (noting that under the auspices of President Theodore Roosevelt, Congress passed the Tillman Act in 1907 which banned national banks from giving money to federal campaigns); see also Justin A. Nelson, The Supply and Demand of Campaign Finance Reform, 100 COLUM. L. REV. 524, 533 (2000) (discussing Congress’ first attempt to reform the campaign finance system in the early twentieth century by banning national banks from giving to federal election campaigns).

\(^7\) See Steve Padilla, In Politics, Money Talks – And Keeps Talking Despite Reforms, HOOVER INSTITUTION, July 16, 2000, http://www.campaignfinancesite.org/history/reform3.html (noting how the Pendleton Act declared that a federal worker was under no obligation to “contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so”); see also Scott D. Slater, Comment, Where the Buck Stops: An Analysis of Presidential Telephone Solicitations under 18 U.S.C. § 607, 59 U. PITT. L. REV. 851, 868-69 (1998) (explaining the purpose of the Act as a means of eliminating the spoils system and political corruption as a whole).

\(^8\) See Charles W. Hemingway, A Closer Look at Waters v. Churchill and United States v. National Treasury Employees Union: Constitutional Tensions Between the Government
Congressional statutes began to have a real bite in the campaign finance arena. The Tillman Act, passed during President Theodore Roosevelt's tenure as President, prohibited national banks and corporations from providing funds for federal campaigns. In 1910, Congress passed the Publicity Act, which forced campaign committees in the House of Representatives "operating in two or more states" to disclose any contributions they received in excess of $100. Fifteen years later, Congress passed the Federal Corrupt Practices Act, which closed a loophole found in the Publicity Act, allowing "non-election-year contributions to escape disclosure." Though other minor acts were passed over the next fifty years, they did not have a major impact on election campaigns. This includes the Taft-Hartley Act of 1947, which prohibited labor union contributions to political campaigns.

In the early 1970's, Congress focused its attention on individual citizens' contributions, beginning with the enactment of the Federal Election Campaign Act ("FECA") of 1971, later

as Employer and the Citizen as Federal Employee, 44 AM. U. L. REV. 2231, 2248-49 (1995) (noting how the act failed to provide protection to employees who were "subjected to alleged unwarranted personnel actions while on the job"); see also H. Manley Case, Federal Employee Job Rights: The Pendleton Act of 1883 to the Civil Service Reform Act of 1978, 29 How. L.J. 283, 288-90 (1986) (explaining the inadequacy of the Pendleton Act in that it provided "no process or review of removal actions").


10 2 U.S.C.S. § 441b (2006) (declaring contributions by national banks and corporations to federal candidates illegal, even if for purposes of funding primary elections, political conventions, or caucuses); see Robert H. Sitkoff, Corporate Speech and Citizenship: Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters, 69 U. CHI. L. REV. 1103, 1103 (2002) (discussing the current form of the Tillman Act, barring direct contributions by corporations to federal candidates and corporate "independent expenditures" on behalf of the corporations).

11 See Nathan Huff, Note, Landell v. Sorrell: Lessons Learned from Vermont's Pending Challenge to Buckley v. Valeo, 53 CATH. U. L. REV. 239, 247 (2003) (noting how the Act was of little historical significance); see also DWYER, supra note 6, at 4-5 (discussing the 1910 Publicity Act).

12 Huff, supra note 11, at 248.

13 Laws passed during the middle half of the 20th century had little effect on election campaigns. See Huff, supra note 11, at 247-48. For a discussion of other minor legislative attempts at campaign finance regulation, see DWYER, supra note 6, at 4-5. The Hatch Act of 1939 prohibited federal employees from "active participation in national politics." Id. at 5. This act was revised and limited within one year. The revised act limited the fundraising and spending abilities of party committees that operated in more than one state. Expenditure ceilings of three million dollars per year were implemented. Id. at 5.
amended in 1974. FECA limited individual donations to political committees to $5000 per year and initially included expenditure limits as well. However, due to a number of loopholes in the FECA framework, individuals remained able to contribute to political activities, so long as the money spent did not go directly to political parties or federal candidates. Congressional legislation was passed throughout the last two decades of the twentieth century, but all proved ineffective in combating the FECA loopholes. Most recently in 2002, Congress passed the Bipartisan Campaign Reform Act ("BCRA"), which stated that national political parties could not accept monies in excess of statutory limits. The primary purpose of BCRA was to "plug[] 'the soft-money loophole' and put[] in place funding and disclosure regulations for 'issue ads.'"

In light of the Congressional reforms, the Supreme Court has been faced with the arduous task of interpreting the adopted

14 See Huff, supra note 11, at 247 (discussing the legislature's first modern attempt at "comprehensive campaign finance reform"); see also Bradley A. Smith, Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform, 105 Yale L.J. 1049, 1055 (1996) (highlighting the limits imposed by FECA on individual contributors to election campaigns, specifically in presidential elections).

15 See de Figueiredo, supra note 2, at 597 (noting how expenditure limits were struck down by the Court in Buckley on First Amendment grounds); see also Deborah Goldberg, Federal and State Campaign Finance Reform: Lessons for the New Millennium, 34 Ariz. St. L.J. 1143, 1145 (2002) (explaining how monetary caps on contributions, regulated by FECA, are called "hard money" contributions).

16 See Shabo, supra note 3, at 234-35 (noting how campaign finance bills were drafted throughout the 1980s and 1990s in order to close up the loopholes left by FECA, but such legislation was widely ineffective); see also Goldberg, supra note 15, at 1145 (discussing how soft money contributions given to political parties for the purposes of "party-building" actually "escapes FECA's source and amount restrictions").

17 See Shabo, supra note 3, at 236 (discussing how large allowable soft money donations were made, all of which avoided "express advocacy" which was outlawed in Buckley); see generally Goldberg, supra note 15 (discussing the ineffectiveness of FECA and its loopholes).


19 See BCRA § 307, 2 U.S.C.A. § 441a(a)(1)(A) (2003) (limiting individual contributions to $2,000 per candidate, per election); see also Michael Saxl & Maeghan Maloney, The Bipartisan Campaign Reform Act: Unlimited Consequences and the Maine Solution, 41 Harv. J. On Legis. 465, 467 (2004) (explaining the BCRA and how political parties may not "solicit, receive, or direct" monies donated from contributors to "any other organization").

20 Shabo, supra note 3, at 236 (discussing how members of Congress recognized the "inequities in the way campaigns were run and funded."); see McConnell v. Fed. Election Comm'n, 540 U.S. 98, 133 (2003) (noting how 2 U.S.C.S. § 441i prevents the use of soft money contributions).
legislation and weighing its constitutionality. One of the most intriguing issues is what limits, if any, may be placed on campaign expenditures by electoral candidates? The seminal case in this area continues to be *Buckley v. Valeo.*

Here, the Court distinguished between limits on campaign contributions and restrictions on candidate expenditures, applying a rigorous review and upholding the Act's contribution limits while striking down its expenditure restrictions. Using the text of the Constitution as its baseline, the Court noted how both expenditure limits and contribution limits "operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution." In justifying the contribution limitations and striking down the expenditure caps, the per curiam opinion stated, "expenditure ceilings impose[d] significantly more severe restrictions on protected freedoms of political expression and association than [did] its limitations on financial contributions." The Court also held that "corruption or the appearance of corruption" was, at the time, the only recognizable constitutionally permissible justification for regulating campaign finance.

After grappling with the corruption justification, the Court commented on another proposed validation for the limits, namely the interest in "equalizing the relative ability of individuals and
groups to influence the outcome of elections." The Court commented that such an interest is "wholly foreign to the First Amendment" and thus struck down the expenditure limits accordingly.

Chief Justice Burger, concurring in part and dissenting in part, commented that while the Court was justified in finding stringent limitations on expenditures unconstitutional, the Court in dealing with contributions "ignores the reasons it finds so persuasive in the context of expenditures." Justice Blackmun agreed with the Chief Justice that no distinction could be made between expenditure and contribution limits. Both Justice White and Justice Marshall found that expenditure limits should be upheld because neither contribution nor expenditure limits were in contravention of the First Amendment.

The Court attempted to further clarify the role money plays in the electoral process in First National Bank of Boston v. Bellotti. The majority expanded First Amendment rights by striking down a Massachusetts statute aimed at curbing contributions made by banks or other corporations "for the purpose of ... influencing or affecting the vote on any question submitted to voters, other than one materially affecting any of the property, business or assets of the corporation. After upholding the contribution/expenditure distinction found in

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27 Id. at 48.
28 Id. at 49 (noting how the First Amendment was designed to secure "the widest possible dissemination of information from diverse and antagonistic sources" (quoting N.Y. Times Co. v. Sullivan, 376 U.S. 254, 266 (1964) (quoting Associated Press v. United States, 326 U.S. 1, 20 (1945))).
29 Id. at 241. Chief Justice Burger said that expenditures and contributions were "two sides of the same First amendment coin." Id. He noted that limiting contributions would have the net effect of limiting expenditures and would effectively place a ceiling on the amount of political debate the Government wanted to take place. Id. at 241-42. In his argument, Chief Justice Burger alludes to the fact that it does not matter who is paying to "utter the words", whether it is the candidate himself or some third party, it is the communication of those ideas that is the central question. Id. at 244. Finally, Chief Justice Burger points out that independently wealthy candidates will not be affected by the Act since it chooses to strike down expenditure limitations, but not contribution limitations. Id. at 244 nn. 9-10.
30 Id. at 290 (commenting that no "principled constitutional distinction" can be made between contribution and expenditure limitations).
31 See id. at 257-66, 286-90 (White, J. and Marshall, J., concurring in part and dissenting in part).
34 Bellotti, 435 U.S. at 787-88 (quoting MASS. GEN. LAWS ANN., ch. 55, § 8 (West 1977)).
Buckley, the court noted that "[t]he risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue."35 The Court found no compelling interest in "equalizing the voices of individuals" and held that legislatures may not suppress the speech of some in order to promote the speech of others.36 Justice White in dissent argued that while corporate communications clearly fall within the speech protected by the First Amendment, their speech should be limited since such entities are merely "artificial entities" that do not necessarily reflect the political views of shareholders.37 The dissent reasoned that the ability of corporations to raise funds for political speech, coupled with a corporation's ability to reach the masses, was enough of a compelling interest to warrant a restriction on corporate speech.38

In another landmark decision, McConnell v. Federal Election Commission,39 the Court upheld the Bipartisan Campaign Reform Act (BCRA) of 1992, rejecting First Amendment challenges to those Congressional provisions aimed at (1) preventing the flow of soft money,40 (2) "electioneering communications,"41 (2) the related disclosure provisions,42 and (4) the ban on union and corporation general treasury funding of electioneering communications."43 Specifically, the bill at issue

35 Id. at 790.
36 Id. at 790-91 (stating "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. . . ." (quoting Buckley, 424 U.S. at 48-49 n.30)).
37 Id. at 804, 809-10 (White, J., dissenting) (recognizing that corporate speech is protected under First Amendment, but explaining how corporations are subject to more restrictions than individuals because of their nature).
38 Id. at 809-13. Justice White discusses the fear of "corporate domination" in the political arena and how the Massachusetts statute adequately restricts corporate speech, ensuring that shareholders are not subject to support political ideals that have nothing to do with the company in which they are invested in and the revenue stream the corporation makes. Id. at 812.
40 Id. at 181-82 (finding that the BCRA provision, which generally prohibited the flow of unregulated soft money, did not violate candidates' or officeholders' free speech or free association rights).
41 Id. at 230-31 (discussing the courts disagreement with plaintiffs' challenge of electioneering communications as unconstitutional, finding that the communications bear a sufficient relationship to the important governmental interest of "shed[ding] the light of publicity' on campaign financing" (citing Buckley v. Valeo, 424 U.S. 1, 81 (1976))).
42 Id. at 194-96 (upholding the use of disclosure requirements).
43 Id. at 195-96, n.79 & accompanying text (discussing the portion of the BCRA which "bars corporations and labor unions from funding electioneering communications with
limited political advertisements and other communications paid for by groups, corporations, and unions. The McConnell Court found that soft money contributions "lead to actual corruption and the appearance of corruption", thus banning the use of such campaign funds.

Still, while the Court has looked to McConnell as a supplement to the existing Buckley framework, the open questions stemming from an interpretation of the Congressional campaign finance legislation with regard to expenditure limits remain. Specifically, it is uncertain how the three-part test established in Nixon v. Shrink Missouri Government PAC will be interpreted with regard to expenditure limits. The Court, as articulated in Nixon, first asks whether the provision in question is entitled to full First Amendment protection. Second, the Court needs to money from their general treasuries, instead requiring them to establish a 'separate segregated fund' for such expenditures," and finding that there is an important state interests in providing the electorate with information, deterring corruption, and avoiding any appearance thereof, which is accomplished by such a bar).

44 Id. at 134 (discussing a provision of the Bill that "prevents circumvention of the restrictions on national, state, and local party committees by prohibiting state and local candidates from raising and spending soft money to fund advertisements and other public communications that promote or attack federal candidates"); see generally de Figueiredo, supra note 2, at 595 (noting that the primary goal of the BCRA was to prevent "quid pro quo corruption of elected officials by special interests and to combat the appearance of such corruption").

45 McConnell, 540 U.S. at 154 (noting that there is substantial evidence to support Congress' determination that large soft-money contributions to national political parties give rise to the suggestion that money buys influence); see Goldberg, supra note 15, at 1145-46 (discussing how in reality the party-building premise is a legal fiction, whereby soft money is raised by federal candidates, and though the spending is confined to the parties, the federal candidates themselves coordinate the spending, thus causing money donors to have a dramatic influence on federal elections).

46 See Fed. Election Comm'n v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431, 443 (2001) (noting how some have argued for a reexamination of issues addressed in Buckley "in light of post-Buckley developments in campaign finance"); see also Kristen Kay Sheils, Landell Bodes Well for Campaign Finance Reform: A Compelling Case for Limiting Campaign Expenditures, 26 VT. L. REV. 471, 485-86 (2002) (finding support from various cases for interpreting the Buckley decision to hold that all campaign expenditure limits are not unconstitutional as a matter of law, and that it may be possible to establish a factual record to provide that "preserving faith in democracy" or "freeing officeholders from the pressures of fundraising so they can perform their duties" can be sufficient justifications for expenditure limits).


48 Id. at 405 (Breyer & Ginsburg, JJ., concurring) ("it might prove possible to reinterpret aspects of Buckley in light of the post-Buckley experience stressed by Justice Kennedy . . . making less absolute the contribution/expenditure line, particularly in respect to independently wealthy candidates, whose expenditures might be considered contributions to their own campaigns"); see Sheils, supra note 46, at 484 (discussing Nixon, Justice Breyer's statement, and the cases that followed).

49 Nixon, 528 U.S. at 387-88 (discussing First Amendment implication by a "significant interference" with associational rights).
decide whether the provision in question serves a sufficiently compelling governmental interest.\textsuperscript{50} Finally, the Court looks to see if the means and ends are narrowly tailored to serve that interest.\textsuperscript{51}

Recently, in \textit{Landell v. Sorrell},\textsuperscript{52} the United States Court of Appeals for the Second Circuit ruled on the issue of campaign expenditure caps, overturning a 2000 Vermont District Court opinion.\textsuperscript{53} The majority of the Second Circuit concluded that a Vermont law authorizing limits on the amount of money candidates could spend on campaigns\textsuperscript{54} was constitutional and right in line with the \textit{Buckley} framework. In upholding the law, the court focused on a tandem of compelling government interests: An anticorruption interest\textsuperscript{55} and a time-saving interest.\textsuperscript{56} Upholding Vermont’s campaign expenditure limits was the first decision of its kind.\textsuperscript{57} On September 27, 2005, the Supreme Court granted a writ of certiorari to review both the

\textsuperscript{50} \textit{Id.} (stating the government must demonstrate that the infringement of First Amendment rights were “closely drawn” to match a “sufficiently important interest” in order to survive).

\textsuperscript{51} \textit{Id.} at 395 (finding that the statute was sufficiently tailored to serve its purpose).


\textsuperscript{53} \textit{Id.} at 97. Judge Sessions reviewed each provision of Vermont’s Act 64 separately, and ultimately ruled that three aspects of the legislation were unconstitutional. This Court of Appeals decision affirmed in part and vacated in part, and remanded the Federal District Courts decision in, \textit{Landell v. Sorrell} (\textit{Landell I}), 118 F. Supp. 2d 459 (D. Vt. 2000). See Martin Flumenbaum & Brad S. Karp, \textit{Campaign Finance Law: Decision Not to Hear 'Landell' In Banc, N.Y.L.J.}, May 25, 2005, at 3. This article discusses the \textit{Landell II} decision, in that it withdrew its original 2002 opinion and issued another in 2004, still holding that Vermont’s interests were sufficiently compelling to survive strict scrutiny and ruled that the case be remanded for the district court to determine whether the expenditure limits were narrowly tailored to achieve their interest. \textit{Id.}

\textsuperscript{54} \textit{Landell II}, 382 F.3d at 107-08 (finding that “the \textit{Buckley} Court did not conclude that the Constitution would always prohibit expenditure limits,” and that there remains the possibility of a sufficient government interest that could allow for expenditure limits to survive constitutional review, which are present in the present case).

\textsuperscript{55} \textit{Id.} at 115-19, 125 (commenting on anti-corruption as a legitimate governmental interest, finding that taken with the state’s time saving interest, it is sufficiently compelling to support expenditure limits).

\textsuperscript{56} \textit{Id.} at 119-24 (discussing the interest of “assuring that candidates and officeholders will spend less time fundraising and more time interacting with voters and performing official duties” as a legitimate government interest, finding that taken with the state’s anti-corruption interest, it is sufficiently compelling to support expenditure limits).

\textsuperscript{57} See Huff, supra note 11, at 243 (commenting on campaign finance reform activists’ praise for the decision since it is the first of its kind); Editorial, \textit{Campaign Finance Nirvana}, \textit{WALL ST. J.}, Aug. 12, 2002, at A10 (discussing the \textit{Landell II} decision, and that “[s]upporters of strict limits on campaign finance must think they’ve died and gone to heaven, now that a court has for the first time upheld limits on how much candidates may spend even if they aren’t receiving public funds”).
expenditure and contribution caps found in Vermont's Act 64.\textsuperscript{58} The Supreme Court heard this case on February 28, 2006\textsuperscript{59} and has recently issued its decision, much to the dismay of individuals in favor of increased campaign finance reform.

This comment focuses on the constitutionality of campaign expenditure limits, in light of the \textit{Buckley} framework established thirty years ago. Part I of this comment explores the holdings in \textit{Landell}, as well as two other circuit court decisions which stand in sharp contrast to the Second Circuit opinion. Part II discusses the recent Supreme Court decision in \textit{Randall}, reversing \textit{Landell}, with a focus on the Court's analysis of expenditure caps in light of the \textit{Buckley} framework. Finally, Part III discusses why the Supreme Court was incorrect in applying strict stare decisis in light of the facts and arguments presented by the \textit{Randall} case.

\section*{PART I}

\textbf{THE LANDELL DECISION: A CLOSE EXAMINATION}

\textit{The District Court's Decision}

\subsection*{A. Statement of the Facts}

The United States District Court for the District of Vermont was faced with the issue of the constitutionality of Vermont's Act 64.\textsuperscript{60} This 1997 overhaul of the Vermont campaign finance system "represent[ed] a return to the state's policy established almost forty years before of directly limiting campaign expenditures for certain state offices."\textsuperscript{61} Act 64 was originally

\begin{itemize}
  \item \textsuperscript{58} \textit{Landell II}, 382 F.3d 91, cert. granted sub nom. Randall v. Sorrel (\textit{Landell III}), 126 S. Ct. 35 (U.S. Sept. 27, 2005) (No. 04-1528), (No. 04-1530), and 126 S. Ct. 36 (No. 04-1697).
  \item \textsuperscript{59} Randall v. Sorrell (\textit{Landell II}), 126 S. Ct. 2479, 2485 (2006) (reversing the Second Circuit's decision in \textit{Landell II}, finding that expenditure limits are inconsistent with the First Amendment, as well as well-established precedent).
  \item \textsuperscript{61} William P. Russell, \textit{A Brief History of Campaign Finance Legislation in Vermont}, 27 VT. L. REV. 699, 700-01 (2003) (discussing how in 1961 there was a limitation put on
\end{itemize}
proposed to include voluntary expenditure limits for electoral campaigns, but was later converted into "universal and mandatory limits." After being introduced in the House, modifications were made, and the Senate adopted all of the justifications for spending limitations. Once adopted in both houses, the Governor signed the bill on June 26, 1997. The final version of Act 64, which became effective at the beginning of the 2000 general election cycle, read as follows:

§ 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.

expenditures where primary candidates were not authorized to spend more than $7,500 for their campaign).  

62 Id. at 712 (noting how Act 64, prior to enactment, had been voluntary expenditure limits, which evolved into "universal and mandatory" expenditure limits by the time of enactment); See Richard Briffault, The Return of Spending Limits: Campaign Finance After Landell v. Sorrell, 32 FORDHAM URB. L.J. 399, 410 (2005) (demonstrating how Act 64's restrictions apply to all candidates for state office).

63 See Russell, supra note 61, at 712 (noting that the bill was being debated in the house twenty-two days before the Senate's version of the same bill); see also H. 0028, 1997 leg., 1997-1998 Sess. (Vt. 1997), available at http://www.leg.state.vt.us/database/status/summary.cfm?Bill=H%2E0028&Session=1998 (listing H.28, titled, Public Financing of Election Campaigns, which was a House bill that was the instrument which became Act 64); S. 0069, 1997 leg., 1997-1998 Sess. (Vt. 1997), available at http://www.leg.state.vt.us/database/status/summary.cfm?Bill=S%2E0069&Session=1998 (cataloging S. 69, titled, Public Financing of Campaigns & Limitations on Expenditures, which was a Senate bill that stated the provisions pertaining to campaign spending limits that were subsequently enacted in Act 64).

64 Russell, supra note 61, at 712 (discussing provisions that were changed, and the eventual recommendation of maximum spending limit provisions); see also Gen. Assemb. 64, 1997 Leg., 1997-1998 Sess. (Vt. 1997), available at http://www.leg.state.vt.us/DOCS/1998/ACTS/ACT064.HTM (noting the amendments, individual votes, and provides a full text of Act 64, titled, An Act Relating to Public Financing of Election Campaigns, Disclosure Requirements and Limits on Campaign Contributions and Expenditures, as it was Enacted into Law).

65 See Gen. Assemb. 64, 1997 Leg., 1997-1998 Sess. (Vt. 1997), available at http://www.leg.state.vt.us/DOCS/1998/ACTS/ACT064.HTM (laying out provisions relating to financing election campaigns); see also Landell, 118 F. Supp. 2d at 467 (discussing that Act 64 enjoyed "widespread bipartisan support" and was signed by Governor Howard Dean on June 26, 1997); Russell, supra note 61, at 716-17 (noting that after the adoption of Act 64 by both houses of the Vermont Legislature, the Governor of Vermont signed the Act into law on June 26, 1997).
(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 in 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% 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% of the amount allowed for that office under this section.
(d) For purpose of this section, the term "candidate" includes the candidate's political committee.66

Various plaintiffs claimed that the single source rule, the two-year election cycle, and the 25% limit imposed on out-of-state contributions limited their ability to run effective campaigns and was a violation of their First Amendment rights.67

B. The District Court's Opinion

The ten-day bench trial included much of Act 64's legislative debate, as the Court noted that the constitutionality of the legislation would heavily depend on the factual circumstances surrounding the drafting of the legislation.68 Legislative findings showed that "rising spending levels denied some Vermonters the opportunity to run for office, required candidates to devote 'inordinate amounts of time raising campaign funds', and reduced 'public involvement and confidence in the electoral process.'"69 Additionally, the court found another important government interest in minimizing the "reality and appearance of corruption, stemming [from] the manipulative practice of bundling, increasing candidate-voter contact, and inspiring participation in the electoral process."70 The district court noted that "[g]iven the wealth of evidence gathered by the Vermont legislature . . . this [c]ourt understands why it included spending limits as part of its comprehensive campaign finance bill."71 The court went on to conclude that such spending limits are an

67 Id.; see Mitchell L. Pearl, Against Act 64: Preserving Political Freedom for the Candidate and the Citizen, Brief for the Appellants in Landell v. Sorrell, 27 VT. L. REV. 721, 722 (2003) (highlighting the particular effects of Act 64 on Mr. Neil Randall, an incumbent representative in the Vermont legislature); cf. Huff, supra note 11, at 245-46 (discussing how the First Amendment, through its incorporation by the Fourteenth Amendment, limits the power of states in regulating campaign finance).
68 See Landell, 118 F. Supp. 2d at 464, 468 (noting that "the constitutionality of some provisions of Act 64 depends heavily on facts"); see also John T. Cooke, Making the Case for Campaign Finance: One Theory Explaining the Withdrawal of Landell v. Sorrell, 27 VT. L. REV. 685, 690 (2003) (discussing the Landell court's inclusion of a substantial portion of Act 64's legislative debate in its opinion and noting the ten day bench trial the court conducted to gather more facts on the background of the legislation).
69 See Briffault, supra note 62, at 410 (explaining how the Act was an "end-product . . . that included extensive legislative deliberation . . ."); see also Landell, 118 F. Supp. 2d at 468 (highlighting the specific findings of the Vermont General Assembly).
70 Landell, 118 F. Supp. 2d at 463.
71 Id. at 483 (noting that in light of the evidence, the court was still bound by the doctrine of stare decisis).
“effective response to certain compelling governmental interests not addressed in Buckley,” including the protection of officeholders’ abilities to focus on their elected capacities, “[p]reserving faith in our democracy”, and protecting individuals access to the political forum.\textsuperscript{72}

However, despite its sympathetic tone, the court struck down Act 64 as unconstitutional.\textsuperscript{73} Relying on the established precedent in \textit{Buckley}, the court felt compelled to invalidate the law.\textsuperscript{74} The court majority stated it “[could] not take the unprecedented step of finding expenditure limits constitutional.”\textsuperscript{75} Similarly, it noted that it was not “insignificant” that the Vermont legislature amended its campaign finance provisions by “eliminating mandatory spending limits” as soon as the Supreme Court handed down the \textit{Buckley} decision.\textsuperscript{76} Finally, the district court explained how the Second Circuit had not yet ruled on the issue, and how it felt uncomfortable with an opinion that was not founded in case law.\textsuperscript{77}

\textbf{C. The Second Circuit Reverses}

The district court’s decision was appealed and the Second Circuit Court of Appeals heard the arguments on May 7, 2001.\textsuperscript{78} After it initially issued an opinion in August 2002, the opinion was withdrawn just two months later, while a petition for a rehearing en banc was pending.\textsuperscript{79} The petition for rehearing en

\textsuperscript{72} Id. at 482-483.
\textsuperscript{73} Id. at 483.
\textsuperscript{74} Id.
\textsuperscript{75} Id. (discussing Kruse v. City of Cincinnati, and how it also followed the established precedent and thus must also be given proper consideration); see generally Kruse v. City of Cincinnati, 142 F.3d 907 (6th Cir. 1998) (establishing precedent \textit{Landell} court felt compelled to follow).
\textsuperscript{76} Id. The court found that the change in the law served at least as some indication that the legislature in Vermont was “dubious” about the constitutionality of spending limits at that point in time. \textit{Id.}
\textsuperscript{77} At the time of the decision, spending limits only existed in Albuquerque, New Mexico, and there had yet to be a constitutional challenge surrounding those expenditure caps. \textit{Id.}
\textsuperscript{78} \textit{Landell v. Vt. Public Interest Research Group}, 300 F.3d 129 (2002) (stating the appeal was argued on May 7, 2001).
\textsuperscript{79} \textit{See Briffault, supra note 62}, at 411 (summarizing the judicial history of the \textit{Landell} decisions); \textit{see also} Suzanne Nelson, \textit{Court Could Revisit 'Buckley': Spending Cap in Vermont at Issue}, ROLL CALL, May 16, 2005 (discussing plaintiffs appeal to have the case heard by all 12 active circuit judges).
banc was eventually denied.\textsuperscript{80} The court finally issued an amended opinion in August 2004.\textsuperscript{81}

The court, in a 2-1 decision, held that it was not as limited by the \textit{Buckley} framework as the district court had previously determined.\textsuperscript{82} Rather, the court found that \textit{Buckley} did not stand for the proposition that expenditure limits were, by their very nature, "per se unconstitutional."\textsuperscript{83} As Judge Straub writes, "\textit{Buckley v. Valeo} . . . left the door ajar for narrowly tailored spending limits that secure clearly identified and appropriately documented compelling governmental interests."\textsuperscript{84} In its brief, Vermont discussed different compelling government interests that Act 64 supposedly served. These interests were: "(1) avoiding the reality and appearance of corruption in elective politics and government"; (2) "assuring that candidates and officeholders will spend less time fund-raising and more time interacting with voters and performing official duties"; (3) "promoting electoral competition and in protecting equal access to political participation"; (4) "bolstering voter interest and engagement in elective politics"; and (5) "enhancing the quality of political debate and voters' understanding of the issues." \textsuperscript{85}

Similarly, Amicus Brennan Center for Justice relied on the first three interests identified by Vermont, and also relied upon by

\textsuperscript{80} \textit{Landell v. Sorrell}, 406 F.3d 159, 159 (2d Cir. 2005). See \textit{Briffault, supra} note 62, at 415-17. Five members of the court dissented from the decision not to rehear the case en banc. Four of those dissenters argued that the \textit{Buckley} precedent prevented the court from finding Vermont's spending limits to be constitutional. In doing so, the court barred the use of the anti-corruption arguments used by the majority to uphold the spending limits and rejected the argument that there was a compelling government interest in the time protection argument. Conversely, seven members of the Second Circuit, including the two justices who drafted the majority opinion from the \textit{Landell} panel, voted to deny the rehearing in banc. The denial was rooted in the "Second Circuit's longstanding tradition of rejecting en banc review" and was not based on the outcome of the panel decision. Judge Calabresi wrote a separate concurrence, focusing on the First Amendment issues presented by the spending caps. He challenged the reading of \textit{Buckley} that determined the constitutionality of campaign finance litigation solely on the basis of corruption or the appearance of corruption. Finally, Judge Calabresi ended his concurrence by encouraging the Supreme Court to take a closer look at the panel decision and to determine, once and for all, the constitutionality of other justifications for campaign expenditure restrictions. \textit{Id.}


\textsuperscript{82} \textit{Id.} at 97 (noting how Judge Winter dissents from the majority opinion of Judge Straub and Judge Pooler).

\textsuperscript{83} \textit{Id.}

\textsuperscript{84} \textit{Id.} (discussing how the Vermont law was narrowly tailored to meet the clearly identifiable governmental interests).

\textsuperscript{85} \textit{Id.}
intervenors, described as (1) “eliminating corruption and the appearance of corruption in the political process”; (2) “ensuring that officeholders can spend less time fund-raising and more time performing their duties” and (3) “bolstering equal access to political office and restoring the public’s confidence in the electoral system.”

The court noted how Buckley did not “permanently foreclose” any consideration of campaign expenditure limits, and relied on the opinions of Justices Breyer, Ginsburg, and Stevens in Nixon v. Shrink Missouri Gov’t Pac, which noted a “flexible approach to the constitutional review” of campaign finance limitations was necessary. Though the standard of review, strict scrutiny, posed a high barrier, that barrier was not “impenetrable.” After noting that 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”, the majority applied this imprecise test to the interests asserted by Vermont. The majority found two of the proposed government interests, the “corruptive influence” that unlimited spending has and “the effect the perpetual fundraising has on the time of candidates and elected officials”, justified the expenditure limitations, passing even strict scrutiny. The court criticized the majority in Buckley for assuming a large number of small contributions could not “raise the specter of corruption.” Judge Straub discussed how much had changed in the thirty years since the Buckley decision was handed down, and that the majority could not have “anticipated the whole range of individual concerns faced by specific states, such as Vermont.”

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86 Id. at 115.
88 Landell, 382 F.3d at 108.
89 Id. at 114.
90 Id. (quoting Nixon, 528 U.S. at 391).
91 Id. at 97 (the limits fit within the “narrowly tailored spending limits” Buckley would allow).
92 Id. at 118 (discussing the plight of the disenfranchised Vermont voter who “could not afford the price of admission”).
93 Id. at 121, n.15 & accompanying text (noting one political commentator who said that Buckley was decided “before the advent of pervasive war chests and candidate-PAC merchandizing bazaars”); see Vincent Blasi, Free Speech and the Widening Gyre of Fund-Raising: Why Campaign Spending Limits May Not Violate the First Amendment After All, 94 COLUM. L. REV. 1281, 1287 (1994) (discussing changes driving campaign finance movement during 1990’s).
Additionally, the court concluded that contribution limits alone did not ensure the prevention of corruption and appearance of corruption concerns.\textsuperscript{94}

Judge Winter drafted a lengthy dissent. He found Act 64 to be unconstitutionally vague, and therefore found that \textit{Buckley} invalidated the legislation.\textsuperscript{95} Specifically, the words "contribution" and "expenditure", along with the phrase "paid to a candidate" were particularly troublesome.\textsuperscript{96} After questioning much of the data presented by the state, Judge Winter noted that expenditure caps force those individuals who make political decisions to "give priority to activities that reach the largest number of voters."\textsuperscript{97} Judge Winter concluded that the number of self-interested decision makers was going to increase and that the asserted government interests were "largely sparse, anecdotal, and conclusory" and did not meet the exacting strict scrutiny that is required when such First Amendment rights are withheld by the state.\textsuperscript{98}

\textbf{APPROACHES ADOPTED BY OTHER CIRCUITS}

\textbf{A. The Sixth Circuit's Approach: Kruse v. City of Cincinnati}\textsuperscript{99}

The U.S. Court of Appeals for the Sixth Circuit was the first court that attempted a judicial interpretation of the \textit{Buckley} expenditure limits ruling.\textsuperscript{100} The ordinance in question was City

\textsuperscript{94} Landell, 382 F.3d at 119 (noting that with contribution limits firmly in place, "the arms race mentality has made candidates beholden to financial constituencies that contribute to them," thus diverting candidate's attention away from other duties).

\textsuperscript{95} \textit{Id.} at 163 (Winter, J., dissenting).

\textsuperscript{96} \textit{Id.} at 165-66 (discussing the ambiguities of these words and phrases).

\textsuperscript{97} \textit{Id.} at 172 (discussing decision makers' focus on mass media, as opposed to activity at "grassroots" level).

\textsuperscript{98} \textit{Id.} at 189 (holding that the evidentiary record of the Act presents no evidence concluding that the limits on contribution will "eliminate any improper influence").

\textsuperscript{99} 142 F.3d 907 (6th Cir. 1998).

Ordinance 240-1995, passed by the Cincinnati City Council. The legislation placed a cap on campaign expenditures for city council candidates, ensuring that each individual could not spend more than three times the annual salary of such a council member.

The parties supporting the Ordinance argued that the limits are “different in kind and degree” from the governmental interests asserted and subsequently rejected in *Buckley*. First, proponents of the Ordinance cited the “corruption and the appearance of corruption” rationale. To support their claim, those parties brought forth evidence that wealthy campaign donors caused “undue influence” in the political arena as a whole, and more specifically that the high cost of a successful campaign discouraged many capable individuals from running for public office, which in turn “deprive[d] voters of a full choice of candidates.” In upholding the decision of the District Court, the United States Court of Appeals for the Sixth Circuit found that *Buckley* “foreclosed . . . as a matter of law” the use of the anti-corruption argument as a justification for upholding expenditure limitations. The court found that the city failed to show how spending limits were “[strictly] necess[ary]” to prevent corruption, in light of the fact that the city placed the spending limits in place before any contribution limits were executed.

The Sixth Circuit rejected a new rationale for expenditure caps, not yet offered to the Supreme Court, that there is an interest in reducing the time burden that fundraising poses for
both officeholders and candidates because of “allegedly skyrocketing costs of political campaigns.” In his majority opinion, Judge Kennedy noted that although the high cost of campaigns directly caused an increase in the time spent soliciting money, the government still could not constitutionally limit “the cost of campaigns, [and] the need to spend time raising money,” even though it detracted incumbents from doing the job they were elected to do. The court found this argument to be no more than an offshoot of another interest asserted, the interest in preventing the rise of campaign costs. Such an argument was struck down by Buckley, which did not find the interest compelling under the First Amendment standard.

Finally, the court also struck down an interest in preventing the continued erosion of trust in government, in conjunction with the “pervasive cynicism” that discouraged the public’s participation in the democratic process. The court refused to find that such an interest was a new type of corruption, not discussed in Buckley or previously examined by the Supreme Court, and thus ultimately struck down the expenditure limits as whole, finding them to be unconstitutional.

A concurrence was written by District Judge Cohn. While noting that both Buckley and this case were both decided on a “slender” factual record, Cohn disagreed with the majority’s per

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108 Id. Quoting Buckley’s First Amendment rule:

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

Id. (quoting Buckley v. Valeo, 424 U.S. 1, 57 (1976))

109 Id. at 916-17.

110 Buckley v. Valeo, 424 U.S. 1, 57 (1976) (holding that the growth in the cost of election campaigns provides no basis for government-imposed limitations on campaign spending); see also Kruse, 142 F.3d at 916 (upholding Buckley’s determination that an interest in “reducing the allegedly skyrocketing costs of political campaigns” was not compelling).

111 Kruse, 142 F.3d at 916 (interpreting Buckley to hold that such an interest was not compelling or constitutionally sufficient to justify campaign spending restrictions).

112 Id. (finding the erosion of public trust argument to be an “outgrowth of the problems of actual and perceived quid pro quo corruption... and of the inequalities of private economic power” and thus not constitutionally sufficient to justify campaign spending limits).

113 Id. at 919 (Cohn, J., concurring).
se ruling with regard to the time interest justification. He noted that the time protection interest was wholly independent of the limitation on the costs of campaigns justification. To support this proposition, he cited the amicus brief presented by The Brennan Center, which included a number of startling facts regarding the amount of time candidates actually spent soliciting donations to their prospective campaigns. Cohn concluded his concurrence by noting that Buckley did not create a broad and rigid rule which declared all campaign expenditure limits unconstitutional. "It may be possible to develop a factual record to establish that the interest in freeing officeholders from the pressures of fundraising so they can perform their duties, or the interest in preserving faith in our democracy, is compelling, and that campaign expenditure limits are a narrowly tailored means of serving such an interest."

B. The Tenth Circuit's Approach: Homans v. City of Albuquerque

Three years later, the United States District Court for the District of New Mexico was confronted by a similar set of facts to those in Kruse. At issue was Article XIII, Section 4(d)(2) of the Albuquerque City Charter, which prevented mayoral candidates from spending more than two times the annual salary of the Mayor of Albuquerque on their individual campaigns. The

114 Id. (noting that the statement “because the government cannot constitutionally limit the cost of campaigns, the need to spend time raising money, which admittedly detracts an officers from doing her job, cannot serve as a good basis for limiting campaign spending” was beyond the scope of the factual record in the case).

115 Id. (calling for a determination of whether the time interest was “sufficiently compelling,” to be left for another day).

116 Id. at 919 n.1. A former member of Congress estimated that nearly 80% of the time spent during a campaign, by both he and his staff, was spent fundraising. Additionally, even President Clinton often complained about the time spent on fundraising and how it prevented him from “issuing[ing] executive orders”, as his focus was continually on the next fundraising event. Id.

117 Id. at 920.

118 Homans v. City of Albuquerque (Homans II), 264 F.3d 1240 (10th Cir. 2001).


120 Homans v. City of Albuquerque (Homans I), 217 F. Supp. 2d 1197, 1198 (D. N.M. 2002). That Section of the Charter states:
challenger to the expenditure caps was Mr. Rick Homans, a “duly qualified candidate” for Mayor of Albuquerque, who claimed the City Charter was an unconstitutional infringement on his First Amendment rights. United States District Court Judge Martha Vazquez’ opinion outlined the history of expenditure cap interpretation, beginning with the Buckley framework, and noted the circuit split that existed as a result of the Second Circuit’s Landell decision and the Tenth Circuit’s holdings in the area. The court ultimately concluded that as a result of the Buckley decision, a “clear statement” was provided for future courts that expenditure limits do not survive under the following rationales: “deterring corruption and preventing evasion of contribution limits,” equalizing the finances available for candidates, and setting limits on expenditures in order to keep the general costs of elections down.

The case soon reached its way up to the Tenth Circuit. The City of Albuquerque presented the court with three different justifications for upholding the expenditure limitations. In its brief, the city argued that the “deterring corruption and preventing erosion” rationale is sufficient to pass even the strictest scrutiny. Additionally, the city contended that equalizing the financial resources of mayoral candidates and “restraining the cost of election campaigns for its own sake” were compelling interests that were narrowly tailored. The Tenth Circuit upheld the district court’s decision. After noting that “the distinction between campaign expenditures and campaign

(d) No candidate shall allow contributions or make expenditures in excess of the following for any election:
(2) To a candidate for the office of Mayor contributions or expenditures equal to twice the amount of the annual salary paid by the City of Albuquerque to the Mayor as of the date of filling of the Declaration of Candidacy.

Id. at 1205-06 (noting how the district court within the Tenth Circuit was bound to follow the precedent that was established by higher courts in the circuit).

121 Id. at 1199-1200 (noting that Mr. Homans was subject to a $500 fine for each violation of the expenditure limits, and that in the event he won the election, he was subject to “public reprimand” and removal from office).
122 Id. at 1204-06 (outlining history of expenditure caps in the judiciary and the different interpretations of the Buckley standard).
123 Id. at 1205-06 (noting that even under the strict scrutiny standard, “the facts do matter”).
contributions is about to change," the court felt compelled to follow the standard as handed down by the Supreme Court in *Buckley*, despite Judge Cohn's concurrence in *Kruse* that "*Buckley* may not be the last word on expenditure limits." Thus, the court accordingly concluded that Mr. Homans had "demonstrated a substantial likelihood of success on the merits" and enjoined the City of Albuquerque from enforcing the campaign expenditure limitations.

**PART II**

**SUPREME COURT DECISION**

On June 26, 2006, the Supreme Court issued its opinion in *Randall v. Sorrell*, the result of a consolidation of cases arising out of the *Landell* decision from 2004. Justice Breyer delivered the opinion of the Court, holding that both the expenditure limits and contribution limits imposed by Vermont's Act 64 were unconstitutional. Both sets of limits were found to violate the First Amendment. The Court went to great lengths to discuss how the contribution limits failed to satisfy the "careful tailoring" requirement of the First Amendment. Deeming the question of contribution limits to be "more complex" than that of expenditure limits, Justice Breyer explained that contribution limits were permissible if they were "closely drawn" to match a "sufficiently important interest". Historically, preventing corruption and the appearance of corruption was deemed a "sufficiently

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127 Id. at 1244.
128 Id. (examining the opinions in *Kruse* and the district court in *Landell*).
129 Id. at 1244-45 (noting how the court was "unpersuaded" by the city's contentions, based on the precedent established by the Supreme Court).
131 Id. at 2485.
132 Id.
133 Id. (discussing burdens resulting from Vermont's contribution limits as "disproportionately severe" when compared to the statute's objectives).
134 Id. at 2491. Using the *Buckley* framework, the Court explained that contribution limits, like expenditure limits, implicated fundamental First Amendment interests. Specifically, contribution limits hinder the freedoms of "political expression" and "political association". *Id.* To determine if such limits were closely drawn, the Court has looked at the amount of the limit. *See, e.g.*, Cal. Med. Ass'n v. Fed. Election Comm'n., 453 U.S. 182, 184-85, 201 (1981). The Court upheld a $5,000 limit on contributions to multi-candidate political committees. *Id.* at 201.
important interest" in order to justify contribution limits. Here, while such sufficient interests were asserted, the Court acknowledged that the contribution limits posed a risk to the democratic electoral process, as they were not closely drawn. The Vermont limitations on contributions were the lowest in the nation and well below the lowest limit that the Supreme Court has previously upheld. These facts, coupled with uncontested data provided by petitioners showing that contribution limits had substantially restrictive effects on strongly contested elections, spelled the ultimate end of Act 64's contribution limits.

Justice Thomas, joined by Justice Scalia, wrote a vigorous concurrence, noting that the contribution limits presented in Act 64 were, in fact, unconstitutional, but for a different reason. Justice Thomas argued that the amorphous Buckley standard was difficult, if not nearly impossible to apply in practice, as the plurality appeared concerned only with a few key factors: "the limits [were] the lowest in the Nation," the limits were lower than any previously upheld, the limits were set per election cycle, and the limits "appl[y]ed to contributions from political parties." Justices Thomas and Scalia noted that while these factors are important in determining the constitutionality of

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135 Randall, 126 S. Ct. at 2491.
136 Id. at 2492. Justice Breyer noted "the interests underlying contribution limits, preventing corruption and the appearance of corruption directly implicate the integrity of our electoral process... [yet] that rationale does not simply mean the lower the limit, the better." Id. There comes a point where contribution limits are too low, and as a result, can actually harm the electoral process by preventing challengers from bolstering effective campaigns. Id.
137 Id. at 2493-94 (noting that Vermont's limit of $200 per election is less than one-sixth of the comparable limit upheld in a similar Missouri statute); see Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 382-83 (2000) (stating that a Republican candidate running for nomination for a state auditor position during 1997 and 1998, argued that a $1,075 campaign contribution limit prevented him from campaigning effectively).
138 Randall, 126 S.Ct. at 2494-99. The Court found that party contributions which comprised a significant percentage of total campaign income would be cut by nearly 85% for the average legislator and up to 99% for gubernatorial candidates. Id. at 2495. Additionally, the important political right of association was threatened as political parties were faced with the same contribution limits as other individual contributors. Id. at 2496. The ability for candidates to conduct coordinated advertising, events, and mass mailings would be severely limited by the low limits on political parties. Id. at 2797. Finally, Act 64's limits were not adjusted for inflation, thus causing the real value of each campaign dollar spent to decrease dramatically. Id. at 2499.
139 Id. at 2502 (Thomas, J. and Scalia, J., concurring) (arguing that Buckley "provides insufficient protection to political speech, the core of the First Amendment").
140 Id. at 2503-05 (explaining that the plurality is concerned "not with the impact on the speech of contributors, but solely with the speech of candidates, for whom the two facts might be connected").
contribution limits, the factors by themselves do not help determine constitutionality of the limits. Justice Thomas went on to declare the Act 64 contribution limits unconstitutional, but did not propose a more practical standard to apply in these cases such as these.

Justice Kennedy concurred only in the judgment and noted his skepticism regarding the entire "universe of campaign finance regulation." He noted that the Supreme Court was partially to blame for the current state of affairs, as the Court "in part created and in part permitted" this system to exist through the course of its decisions in the area.

Justice Souter dissented, joined by Justice Ginsburg and Justice Stevens, arguing that the contribution limits were not "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." He noted that the limits were not "remarkable departures either from those previously upheld by this Court or from those lately adopted by other States." Thus, Justice Souter wrote in total agreement with the respondents in favor of upholding the contribution limits.

The Court seemed much more eager to overturn the expenditure limits found in Vermont's Act 64, yet the plurality of the Court could not persuade enough Justices to come to a consensus as to why these limits were unconstitutional. In striking down the expenditure limits, Justice Breyer began by stating as a matter of fact that "[w]ell-established precedent makes clear that the expenditure limits violate the First

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141 Id. at 2503 (reasoning that the first two factors considered by the plurality “have no bearing on whether the contribution limits are too low” and had no relation to the compelling interest prong of the strict scrutiny standard of review).
142 Id. at 2505-06 (discussing the various inadequacies of the Buckley approach).
143 Id. at 2501.
144 Id. at 2501 (Kennedy, J., concurring) (highlighting some of the general inadequacies found in the present campaign finance reform system).
145 Id. at 2512-13 (Souter, J., dissenting) (quoting Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 397 (2000)). The dissent relied heavily on Shrink to establish the legitimacy of the contribution limits. "To place Vermont’s contribution limits beyond the constitutional pale, therefore, is to forget not only the facts of Shrink, but also our self-admonition against second-guessing legislative judgments about the risk of corruption to which contribution limits have to be fitted." Id. at 2513.
146 Id. at 2512.
Amendment." Specifically, he was of the opinion that Act 64's contribution limits failed in regard to the "careful tailoring" prong of the First Amendment test. Noting the "fundamental importance" of stare decisis, Justice Breyer found Act 64 to fit neatly into the mold established by Buckley, and thus struck down the expenditure ceilings accordingly. The plurality noted that the respondents were asking the Court to do one of two things: distinguish these cases from Buckley or overrule Buckley completely, neither of which the plurality was willing to do. Justice Breyer was unable to find "any demonstration that circumstances ha[d] changed so radically... to undermine Buckley's critical factual assumptions", and declined the opportunity to overturn the precedent established over thirty years earlier. Similarly, the plurality opted not to distinguish Buckley on the grounds that the limits imposed by Act 64 were not substantially different from those in Buckley. Similarly, the Court did not find the justification posed by respondents sufficient for distinguishing the two cases, namely that limits were "necessary in order to reduce the amount of time candidates must spend raising money." Justice Breyer was of the opinion that while Buckley did not address these justifications, it was "highly unlikely" that the outcome of the case would have been different. He was heavily persuaded by the fact that the Court of Appeals opinion, as well as the briefs written in Buckley, noted

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147 Id. at 2485 (noting how expenditure caps "necessarily reduce the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached").
148 Id. (discussing the burdens placed on the First Amendment that are "disproportionately severe").
149 Id. at 2489 (quoting United States v. International Business Machines Corp., 517 U.S. 843, 856 (1996)) (noting that stare decisis "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process").
150 Id. at 2489-90 (finding the case one that "fits the stare decisis norm").
151 Id. Justice Breyer used the example of the respondents' inability to show there was a "dramatic increase" in corruption or its appearance in Vermont, to justify the application of Buckley to the facts at hand. Id. at 2489. Similarly, he was of the opinion that respondents did little to prove that expenditure limits are "the only way" to attack the corruption problem. Id. at 2490.
152 Id. at 2490 (demonstrating that in both cases, a dollar cap was imposed on the amount candidates were allowed to spend on their campaigns).
153 Id. (noting that the increased costs of campaigning, along with the fear of "a better-funded opponent" allegedly caused candidates to spend too much time raising money for campaigns instead of "meeting the voters and engaging in public debate").
154 Id. (stating that the Buckley Court was cognizant of the link between expenditure limits and reductions in fundraising time).
that a natural consequence of higher campaign expenditures was that “candidates were compelled to allot to fund raising increasing and extreme amounts of time and energy.” Justice Breyer concluded his discussion of expenditure caps by pointing out that the connection between high campaign costs and increased fundraising demands was “perfectly obvious”, and therefore any failure to mention the merits of the argument on the part of the Buckley Court simply meant that the argument was falling upon deaf ears.

Justice Stevens and Justice Souter each wrote separate dissents, both arguing why the expenditure caps should have been upheld, even in light of the firmly established precedent. Justice Stevens found that the time had come to overrule the Buckley framework, since the Court in Buckley was silent regarding the “time spent on fund-raising” justification for the proposed limits. Acknowledging the “fundamental importance” of stare decisis, Justice Stevens echoed the sentiments of Justice Souter by noting that it is not an “inexorable command.” In fact, Buckley’s holding in regard to expenditure limits in and of itself “upset a long-established precedent” whereby congressional races were subject to statutory limits on expenditures. Justice Stevens demonstrated that stare decisis had never been explicitly recognized in regard to its rejection of expenditure limits. Additionally, he was heavily influenced by an opinion drafted by Justice White. Justice White, writing for the dissenters in Federal Election Commission v. National Conservative Political Action Committee, commented:

155 See Buckley v. Valeo, 519 F.2d 821, 838 (D.C. Cir. 1975); see also Brief for United States et al. as Amici Curiae in Buckley v. Valeo, O.T. 1975, Nos. 75-436 and 75-437, p. 36.

156 See Randall, 126 S. Ct. at 2490-91 (stating Court’s decision to avoid overruling or distinguishing Buckley on the facts presented).

157 Id. at 2506 (Stevens, J. dissenting) (noting that Buckley does not stand for the proposition that campaign expenditure caps can never be justified).

158 Id. at 2506-07 (demonstrating that a number of different factors, grouped together, provide enough justification to question the constitutionality of limits on campaign finance expenditures).

159 Id. at 2507; see United States v. Automobile Workers, 352 U.S. 567, 575-76 (1957) (discussing expenditure limits placed on congressional races).

160 Randall, 126 S. Ct. at 2507 n.1 (noting that stare decisis was important in Buckley’s holding regarding contribution limits, but not expenditure limits).

The burden on actual speech imposed by limitations on the spending of money is minimal and indirect. All rights of direct political expression and advocacy are retained. Even under the campaign laws as originally enacted, everyone was free to spend as much as they chose to amplify their views on general political issues, just not specific candidates. The restrictions, to the extent they do affect speech, are viewpoint-neutral and indicate no hostility to the speech itself or its effects.162

Thus, reasoned Justice Stevens, the expenditure caps were “far more akin to time, place and manner restrictions than to restrictions on the content of speech,” and he would therefore opt to uphold the limits if they served a “legitimate and sufficiently substantial” purpose.163

After citing numerous examples of “effective speech in the political arena” that involved little to no cost for campaigners, Justice Stevens focused on the legitimacy of the interests presented by the respondents.164 In addition to the corruption argument presented in Buckley and Landell, he viewed the limits as a legitimate means of protecting equal access to the political arena and helping candidates’ staffs avoid the “interminable burden of fundraising.”165 Justice Stevens also dismissed a popular “conspiracy theory”, that expenditure limits were established to protect incumbents, citing statistics from the Homans case involving financing elections in Albuquerque, New Mexico.166 In his concluding remarks, he pointed to the intentions of the Framers with regard to election campaigns. He noted that the Framers would be “appalled” by the modern campaigning system and that it wasn’t their intent to have judges interfere with state-made limits on expenditures that

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162 *Id.* at 508-09.
163 *Randall*, 126 S. Ct. at 2512 (Stevens, J., dissenting).
164 *Id.* at 2509 (noting limits protect against corruption, free candidates from burdens of raising funds and protect equal access to the political arena).
166 *Randall*, 126 S. Ct. at 2510 (Stevens, J., dissenting) (finding “no convincing evidence that these important interests favoring expenditure limits are fronts for incumbency protection); see Homans v. City of Albuquerque, 217 F. Supp. 2d. 1197, 1200 (D. NM. 2002) (noting that while 88% of incumbent Mayors were successfully reelected in 1999, the City of Albuquerque with its firm expenditure caps did not have any Mayors successfully reelected since the caps were enacted).
merely called for better budgeting efforts on the part of candidates.\textsuperscript{167}

Justice Ginsberg joined Justice Souter's dissent which scaled back, at least to some degree, the strong and passionate dissent drafted by Justice Stevens. Justice Souter did not believe Vermont was asking for a total abandonment of the \textit{Buckley} framework; rather, that the \textit{Buckley} standard should be applied, but to the facts in this case which were considerably different from any seen before.\textsuperscript{168} He showed that the \textit{Buckley} Court did not give any indication that it considered the aims that Vermont was trying to pursue with Act 64.\textsuperscript{169} "[T]he Court did not squarely address a time-protection interest as support for the expenditure limits, much less one buttressed by as thorough a record as we have here."\textsuperscript{170} As a result of the "nonstop pursuit of money", Justice Souter believed much had changed over the last thirty years.\textsuperscript{171} As a result, he called for the case to be remanded to the District Court in order to determine whether Vermont's spending limits were the "least restrictive means of accomplishing what the court unexceptionally found to be worthy objectives."\textsuperscript{172} Thus, Justice Souter was of the opinion that more evidentiary work was necessary in order to determine the narrow tailoring prong of the test, but felt satisfied that compelling interests existed as a result of the time-savings argument.\textsuperscript{173}

\begin{itemize}
\item \textsuperscript{167} Randolph, 126 S. Ct. at 2510-11 (Stevens, J., dissenting) (stating the Framers would not have a problem with expenditure limits where no restrictions were imposed on the content of speeches, debates and interviews).
\item \textsuperscript{168} Id. at 2512 (Souter, J., dissenting) (discussing whether the "fundraising treadmill" needed to be slowed down in order to support the enactment of Vermont's Act 64).
\item \textsuperscript{169} Id. at 2511 (discussing how \textit{Buckley} only dealt with the corruption and appearance of corruption justification, and that the case did not foreclose other possible sufficient interests to "limit" First Amendment speech).
\item \textsuperscript{170} Id.
\item \textsuperscript{171} Id. at 2512 (discussing the enormous spending habits of candidates over the last few decades).
\item \textsuperscript{172} Id. (noting that constitutionality of the expenditure limits was not "conclusively decided" by the Second Circuit decision).
\item \textsuperscript{173} Id. (stating that evidentiary work still remained to be done and would provide the prospect for sound answers).
\end{itemize}
PART III

THOUGH CLOSING, THE DOOR HAS NOT BEEN SLAMMED SHUT

Stare decisis undoubtedly remains the "cornerstone of our legal system." 174 The plurality in *Randall* recognized the "fundamental importance" of this legal principle. 175 Still, when facts present themselves or circumstances change warranting lines of cases to be distinguished or even overruled, judges will not hesitate to make such necessary changes. 176 Herein lays the problem with the misguided precedent now established by the Supreme Court's decision in *Randall*.

Justice O'Connor once proclaimed, "[i]n constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations and the thoughtful part of the Nation could accept each decision to overrule a prior case as a response to the Court's constitutional duty." 177 As Justice Rehnquist eloquently stated, "[s]tare decisis ... is a principle of policy and not a mechanical formula of adherence to the latest decision." 178 Thus, the concept alone should not prevent changes to Constitutional principles, where completely necessary. 179 If stare

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176 See Dragich, supra note 174, at 770-71 (noting circumstances in which precedent can be overturned); see also Earl Maltz, The Nature of Precedent, 66 N.C. L. REV. 367, 367 (1988) (arguing that the central tenet of the United States legal system is that of judges following precedent).


179 See Christopher P. Banks, Reversals of Precedent and Judicial Policy-Making: How Judicial Conceptions of Stare Decisis in the U.S. Supreme Court Influence Social Change, 32 AKRON L. REV. 233, 249 (1999) (noting that another interpretation of stare decisis would "violate the maxim that all citizens have a basic right to enjoy their freedom by living under a Constitution that evolves throughout time"); see also Richard H. Fallon, Jr., Stare Decisis and the Constitution: An Essay on Constitutional Methodology, 76 N.Y.U. L. REV. 570, 581 (2001) (explaining that "the Court has said repeatedly that stare decisis is 'not an inexorable command,' [b]ut this need imply no more than that stare decisis, like many principles of constitutional stature, is capable of being overridden").
decisis was the final arbiter in Constitutional debates, *Plessy v. Ferguson*\(^{180}\) would still be the controlling law of the land.

Much has changed over the last 30 years since *Buckley*. The ruling has been faced with increasing dissent in both the legal and political community.\(^{181}\) More than ten Congressional bills have been introduced, each calling for the establishment of spending limits for federal elections.\(^{182}\) Similarly, the Attorney General in more than half the states has denounced the *Buckley* decision.\(^{183}\) Still, despite the strong opposition to the Court’s holding, this alone does not warrant a reversal of precedent. However, as a number of new justifications never presented before the Supreme Court enter the equation, the scream for expenditure caps becomes louder than ever.\(^{184}\) Randall had provided the legal ammunition for a *Buckley* revolution of sorts, one which justified the use of narrowly tailored expenditure limits when certain compelling justifications were present. However, the plurality’s attempt to end the campaign finance war once and for all by sweeping these new found justifications under the rug is certain to drive legislators crazy and add even more fuel to the campaign finance fire.

The *Buckley* Court never did permanently shut its doors on the idea of constitutional expenditure caps. While striking down the proposed expenditure caps at issue, the majority stated: “No

\(^{180}\) 163 U.S. 537 (1896).

\(^{181}\) See Bonifaz, *supra* note 100, at 41 (1999) (highlighting a signed statement by more than 200 constitutional scholars calling for the reversal of *Buckley* with regard to expenditure caps); see also Phil Neisel, *Buckley Brigade to the Rescue: Campaign Finance Reform*, 4 TEX. F. ON C.L. & C.R. 289, 299 (1999) (reviewing BUCKLEY STOPS HERE: LOOSENING THE JUDICIAL STRANGLEHOLD ON CAMPAIGN FINANCE REFORM) (explaining the books argument that that *Buckley* is prime candidate for reversal).

\(^{182}\) See Bonifaz, *supra* note 100, at 41 (summarizing the opposition for *Buckley* in both the Senate and U.S. Department of Justice); see also Alan B. Morrison, *What If... *Buckley* Were Overturned?*, 16 CONST. COMMENT. 347, 356 (1999) (talking about the “popular cry” among political activists for reversing *Buckley*).


\(^{184}\) See Bonifaz, *supra* note 100, at 63 (noting a new justification for expenditure caps to be the enrichment of the “diversity and depth of civic discourse”); see also Shabo, *supra* note 3, at 262 (suggesting expenditure caps to be necessary in order for all citizens to “speak and participate meaningfully in the electoral process”).
governmental interest that has been suggested is sufficient to justify [the congressional campaign spending limits].” Thus, the Court remains open to certain compelling governmental interests that were never suggested to the *Buckley* Court. The Court reaffirmed this sentiment in *Shrink*, stating that “preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances.” That the plurality in *Randall* asserts it to be “highly unlikely that fuller consideration of this time protection rationale would have changed *Buckley*’s result” is highly disturbing, as the time protection justification has never been fully presented before the Supreme Court. The *Randall* Court was correct in noting that Vermont has not demonstrated any change in circumstances so “radically” different from those in *Buckley* that would justify the expenditure limits regarding corruption and the appearance of corruption justification. However, since *Buckley* did not fully examine the merits of the time protection justification, *Buckley* is not the proper “precedent” to follow. How can the Court follow a precedent that does not yet exist?

Given the proper examination, the time protection justification proves to be a compelling government interest. In its purest form, the time protection justification can be summarized by the following statement:

As candidates spend more money during their campaigns, they become more shackled to the machinery of fundraising. They spend increasing amounts of time dialing for dollars, attending fundraisers, and cultivating prospective donors. But these candidates,

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186 See Mark C. Alexander, *Let Them Do Their Jobs: The Compelling Government Interest in Protecting the Time of Candidates and Elected Officials*, 37 LOY. U. CHI. L.J. 669, 721 (2006) (finding the *Buckley* Court to have “left the door open for the development of a new rationale that might satisfy strict scrutiny”); see also Bonifaz, *supra* note 100, at 61-52 (demonstrating that *Buckley* never stood for the proposition that all expenditure caps were unconstitutional).
188 *Randall v. Sorrell*, 126 S. Ct. 2479, 2490 (2006); *see Buckley*, 424 U.S. at 91, 96 (noting that the Court was aware of the connection between expenditure limits and a reduction in fundraising time).
189 *Randall*, 126 S. Ct. at 2489-90 (explaining both cases, a dollar cap on campaign expenditures was at issue).
often already in office themselves, are consequently spending less time speaking with the people, studying legislation, and governing. In short, fundraising takes time away from elected officials in the performance of their duties.\textsuperscript{190}

As a result of this diversion of time away from elected duties, candidates often become “full-time fundraisers,” as opposed to being representatives for the people.\textsuperscript{191} Ultimately, the political process breaks down as a result of this lack of focus on elected officials’ responsibilities as officeholders. This “arms race” for funds, as it helps to break down the political process with every dollar spent, can be considered a “compelling” justification for limiting the amount candidates can spend on their campaigns.\textsuperscript{192}

Vermont was not shy in bringing forth evidence to demonstrate both the arms race and its effect. As Justice Stevens notes in his dissent, “[m]ountains of evidence” have accumulated over the last decade demonstrating the adverse effect that activist fundraising has on the performance of elected officials in their official capacity.\textsuperscript{193} One Representative, Bill McCollum, spent at least an hour every day while in Washington soliciting money for his campaign.\textsuperscript{194} While at his Florida residence, McCollum spent the “bulk” of his time fundraising in what he called “a very time-consuming” process.\textsuperscript{195} Sadly, McCollum was not alone. The majority of legislators now find themselves “running back and forth” to meet fundraising demands, consequently taking away time and attention from their legislative duties.\textsuperscript{196} Unfortunately, not all Americans who are interested in becoming

\textsuperscript{190} See Alexander, supra note 186, at 669 (discussing the particular problems associated with the diversion of time).

\textsuperscript{191} See id. (summarizing problems caused by long, calculated fund raising efforts, especially by incumbents); see also Briffault, supra note 62, at 429-31 (demonstrating how officeholders are distracted from completing the daily business they were elected to take care of).

\textsuperscript{192} See Bonifaz, supra note 100, at 52 (analogizing the costs of city council elections to an “arms race” as people search for funds in order to compete in elections for office).

\textsuperscript{193} See Randall, 126 S. Ct. at 2509 (discussing the important interest of freeing candidates from the “fundraising straitjacket”); see also Alexander, supra note 186, at 679-80 (examining the “money chase” and its adverse effect on “the real business of legislating”).

\textsuperscript{194} See Alexander, supra note 186, at 675 (discussing the time demands of the money clause).

\textsuperscript{195} See id. (providing statistics to demonstrate the real cost campaign fundraising has on both officials and their constituents).

\textsuperscript{196} Id. at 681 (noting how elected officials cleared their legislative calendars in an effort to ensure adequate time for fundraising).
legislators have the resources of a Ross Perot or a Mike Bloomberg.197

The time protection justification is also narrowly tailored to achieve the compelling interest. No one can deny that the costs of campaigns have been skyrocketing. For example, while the total money spent on presidential and congressional elections in 1992 was $1.8 billion, that number increased to $2.2 billion in 1996 and over $3 billion in the 2000 election cycle.198 The single most narrowly tailored way to prevent the astronomical costs of campaigns is to place a cap on the amount candidates can spend. Thus, instead of spending their time searching for donors, incumbents can spend their time handling their elected responsibilities. Similarly, those candidates trying to dethrone the incumbent can focus their attention on meeting the people face to face, instead of broadcasting their messages to the people on television. As Justice Stevens writes in his dissent in Randall:

But, of course, while a car cannot run without fuel, a candidate can speak without spending money. And while a car can only travel so many miles per gallon, there is no limit on the number of speeches or interviews a candidate may give on a limited budget. Moreover, provided that this budget is above a certain threshold, a candidate can exercise due care to ensure that her message reaches all the voters. Just as a driver need not use a Hummer to reach her destination, so a candidate need not flood the airways with ceaseless sound-bites of trivial information in order to provide voters with reasons to support her.199

197 See Jim Rutenberg, Bloomberg Spent $84 Million To Remain Mayor, a Record, N.Y. TIMES, Jan. 14, 2006, at B2. During Mayor Bloomberg’s successful reelection campaign in 2005, he spent $84 million, $10 million more than he spent to initially win the position in 2001. Id. See also Sam Roberts, Offers of Coal for the Mayor’s Newcastle, N.Y. TIMES, Dec. 16, 2005, at B4. Bloomberg’s opponent, mayoral candidate Fernando Ferrer, spent a total of $9.1 million on his election bid to become mayor of New York City. Id.

198 See Huff, supra note 11, at 239 (discussing rising campaign costs at both the federal and state levels); see also Nathaniel Persily, Reply: In Defense of Foxes Guarding Henhouses: The Case for Judicial Acquiescence to Incumbent-Protecting Gerrymanders, 116 HARV. L. REV. 649, 666 (2002) (commenting on “rising campaign costs that inhibit effective challengers”).

Thus, the narrowly tailored expenditure caps place a brake on the spiraling campaign costs which are taking up too much time and tearing political fabric of our country.

Much like the time protection justification, other interests may be deemed compelling and they too may be grounds for overruling Buckley. One such justification is the promotion of competitive elections.200 Another is voter equality.201 However, if the Supreme Court continues to classify all proposed interests as falling under Buckley's umbrella, seemingly all expenditure caps will continue to be deemed unconstitutional.

CONCLUSION

Although stare decisis helps to promote “evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process”,202 the principle does not stand for the proposition that Constitution and its tenets should not evolve over time. Perhaps if the Court’s composition was the same today as it was a mere two years ago, the result in Randall would have been different. Campaign finance reformists take careful note - the door has not been completely shut on the use of expenditure caps as a means of protecting taxpayers’ dollars and promoting fair elections; perhaps another state will deliver even more compelling statistics or provide a new and compelling government interest that will limit the money and time spent on campaigning, while still preserving every American’s First Amendment rights. Until then, the debate rages on.

200 See Briffault, supra note 62, at 433 (discussing the many advantages that incumbents have in competitive elections as a result of holding office); see also ASSN OF THE BAR OF THE CITY OF N.Y., BASIC PRINCIPLES OF CAMPAIGN FINANCE REGULATION (2000), available at http://www.nycbar.org/Publications/reports/show_html.php?rid=45 (noting that “[t]he statistical likelihood that the incumbent will be reelected increases his or her ability to collect funds from donors who want ‘access’ to the winner”).

201 See Briffault, supra note 62, at 435-36 (arguing that the “one person, one vote” doctrine combined with the Supreme Court’s mandate that wealth-based requirements for voting or running for office be eliminated, be considered another compelling interest that can be used to overrule Buckley); see also ASSN OF THE BAR OF THE CITY OF N.Y., supra note 200, at 87 (suggesting our laws “deny a special place for wealth in voting”).