S.92

Introduced by Senator White

Referred to Committee on

Date:

Subject: Elections; campaign finance

Statement of purpose: This bill proposes to revise comprehensively Vermont's campaign finance laws.

An act relating to financing campaigns for elected office

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Large campaign contributions reduce public confidence in the electoral process and increase the risk and the appearance that candidates and elected officials will not act in the best interests of all Vermont citizens.

(2) Some candidates and elected officials, particularly when time is limited, may respond and give access to contributors who make large contributions in preference to those who make small or no contributions.

(3) In Vermont, contributions greater than the amounts specified in this act are considered by the general assembly, candidates, and elected officials to be large contributions.

(4) In Vermont, contributions in the amounts permitted in this act adequately allow contributors to express their opinions, levels of support, and affiliations with respect to candidates, political committees, and political parties.

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

(6) In Vermont, lower contribution limits have not prevented challengers from maintaining robust and competitive campaigns.

(7) Limiting large contributions will encourage direct and small group contact between candidates and the electorate and will encourage the personal involvement of a larger number of citizens in campaigns, both of which are crucial to public confidence and the robust debate of issues.

(8) In Vermont, campaign expenditures by persons who are not candidates have been increasing, and public confidence is eroded when unidentified expenditures are made, particularly during the final days of a campaign.

(9) Identification of persons who publish political advertisements and electioneering communications assists in enforcement of the campaign finance limitations established by this act.

(10) Aggregate contribution limitations are necessary to limit the influence of a single source, political committee, or political party in an election.

(11) There is an extensive record supporting the need for the regulation of campaign finance in Vermont that was compiled during the consideration of No. 64 of the Acts of 1997, and that was considered by the courts during the litigation of Landell v. Sorrell, 118 F.Supp. 459 (D.Vt. 2000), aff'd in part and vacated in part, 382 F.3d 91 (2d Cir. 2004), rev'd and remanded sub nom. Randall v. Sorrell, 126 S. Ct. 2479 (2006), and during the general assembly's consideration of S.164 during the 2007 legislative session and S.278 during the 2008 legislative session.

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

Sec. 2. 17 V.S.A. § 2801 is amended to read:

§ 2801. DEFINITIONS

As used in this chapter:

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

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

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

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

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

(A) The name of the candidate appears;

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

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

(3) "Contribution" means a payment, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid ~~to a person~~ for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates in any election~~, but shall not include services provided without compensation by~~

~~individuals volunteering their time on behalf of a candidate, political committee or political party~~. For purposes of this chapter, "contribution" shall not include ~~a personal loan from a lending institution.~~ any of the following:

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

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

(C) unreimbursed travel expenses paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed $1,000.00 per election;

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

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

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

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

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

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

(J) the use of offices, telephones, computers, and similar equipment;

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

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

~~(3)~~(4) "Expenditure" means a payment, disbursement, distribution, advance, deposit, loan, or gift of money or anything of value, paid or promised to be paid, for the purpose of influencing an election, advocating a position on a public question, or supporting or opposing one or more candidates. For the purposes of this chapter, "expenditure" shall not include any of the following:

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

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

(C) unreimbursed travel expenses paid for by an individual who volunteers personal services to a candidate, if the cumulative amount of these expenses does not exceed $1,000.00 per election;

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

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

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

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

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

(D) is limited to:

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

(ii) the offices sought;

(iii) the offices currently held by the candidates;

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

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

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

~~(4)~~(6) "Political committee" or "political action committee" means any formal or informal committee of two or more individuals, or a corporation, labor organization, public interest group, or other entity, not including a political party, which receives contributions of more than $500.00 and makes expenditures of more than $500.00 in any one calendar year for the purpose of supporting or opposing one or more candidates, influencing an election, or advocating a position on a public question in any election or affecting the outcome of an election.

~~(5)~~(7) "Political party" means a political party organized under chapter 45 of this title ~~or~~ and any committee established, financed, maintained, or controlled by the party, including any subsidiary, branch, or local unit thereof ~~and including national or regional affiliates of the party~~ and shall be considered a single, unified political party. The national affiliate of the political party shall be considered a separate political party.

~~(6)~~(8) "Single source" means an individual, partnership, corporation, association, labor organization, or any other organization or group of persons which is not a political committee or political party.

~~(7)~~(9) "Election" means the procedure whereby the voters of this state or any of its political subdivisions select or caucus selects a person to be a candidate for public office or fill a public office, or to act on public questions including voting on constitutional amendments. Each primary, general, special, run-off, or local election shall constitute a separate election.

~~(8)~~(10) "Public question" means an issue that is before the voters for a binding decision.

~~(9)~~(11) "Two-year general election cycle" means the 24-month period that begins 38 days after a general election. ~~Expenditures related to a previous campaign and contributions to retire a debt of a previous campaign shall be attributed to the earlier campaign cycle.~~

~~(10)~~(12) "Full name" means an individual's full first name, middle name or initial, if any, and full legal last name, making the identity of the person who made the contribution apparent by unambiguous reference.

~~(11)~~(13) "Telephone bank" means more than 500 telephone calls of an identical or substantially similar nature that are made to the general public within any 30-day period.

Sec. 3. 17 V.S.A. § 2801a is amended to read:

§ 2801a. EXCEPTIONS

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

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

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

Sec. 4. 17 V.S.A. § 2805 is amended to read:

§ 2805. LIMITATIONS OF CONTRIBUTIONS

(a) A candidate for state representative or local office shall not accept contributions totaling more than ~~$200.00~~ $250.00 from a single source~~,~~ or political committee ~~or political party in~~ for any ~~two-year general~~ election ~~cycle~~.

(b) A candidate for state senator or county office shall not accept contributions totaling more than ~~$300.00~~ $500.00 from a single source~~,~~ or

political committee ~~or political party in~~ for any ~~two-year general~~ election ~~cycle~~.

(c) A candidate for the office of governor, lieutenant governor, secretary of state, state treasurer, auditor of accounts, or attorney general shall not accept contributions totaling more than ~~$400.00~~ $1,000.00 from a single source~~,~~ or political committee ~~or political party in~~ for any ~~two-year general~~ election ~~cycle. A political committee, other than a political committee of a candidate, or a political party shall not accept contributions totaling more than $2,000.00 from a single source, political committee or political party in any two-year general election cycle~~.

~~(b)~~(d) A single source~~, political committee or political party~~ shall not contribute more ~~to a candidate, political committee or political party than the candidate, political committee or political party is permitted to accept under subsection (a) of this section~~ than $20,000.00 to all candidates in any two-year general election cycle. A single source shall not contribute more than $20,000.00 to all political committees and political parties in any two-year general election cycle.

~~(c)~~(e) A candidate~~, political party or political committee~~ shall not accept~~,~~ from a political party contributions totaling more than the following amounts in any two-year general election cycle~~, more than 25 percent of total~~

~~contributions from contributors who are not residents of the state of Vermont or from political committees or parties not organized in the state of Vermont~~:

(1) For the office of governor, $30,000.00;

(2) For the office of lieutenant governor, $10,000.00;

(3) For the office of secretary of state, state treasurer, auditor of accounts, or attorney general, $5,000.00;

(4) For the office of state senator or county office, $2,000.00;

(5) For the office of state representative or local office, $1,000.00.

(f) A single source, political committee, or political party shall not contribute more to a candidate, political committee, or political party than the candidate, political committee, or political party is permitted to accept under subsections (a) through (c) and (e) of this section.

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

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

~~(f)~~(i) This section shall not be interpreted to limit the amount a candidate or his or her immediate family may contribute to his or her own campaign. For purposes of this subsection, "immediate family" means ~~individuals related to the candidate in the first, second or third degree of consanguinity~~ a candidate's spouse or civil union partner, parent, grandparent, child, grandchild, sister, brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, legal guardian, or former legal guardian.

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

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

(l) The contribution limitations contained in this section shall be adjusted for inflation by increasing them based on the Consumer Price Index. Increases shall be rounded up to the nearest $10.00. Increases shall be effective for the first two-year general election cycle beginning after the general election held in 2010. On or before July 1, 2011, the secretary of state shall calculate and publish the amount of each limitation that will apply to the election cycle in which July 1, 2011 falls. On July 1 of each subsequent odd-numbered year,

the secretary shall publish the amount of each limitation for the election cycle in which that publication falls.

(m) Contributions accepted by candidates shall be treated as follows:

(1) A candidate who accepts a contribution prior to the date of the primary election may designate the contribution or portion of the contribution as either a primary or general election contribution. Once designated, a general election contribution accepted prior to the primary election shall be accounted for separately.

(2) A contribution accepted by a candidate after the date of the primary election shall be a general election contribution. A candidate may designate a contribution or portion of the contribution accepted after the date of the primary election as a primary election contribution only for the purpose of retiring debt incurred for the primary election.

(3) Contributions that were accepted prior to the primary election may be used for the general election if all debt incurred for the primary election has been retired.

(4) Expenditures related to a previous two-year general election cycle and contributions to retire a debt of a previous two-year general election cycle shall be attributed to the earlier two-year general election cycle.

(n) The following shall apply to an independent candidate who certifies to the secretary of state that he or she will not accept contributions from any political party:

(1A) The candidate may accept contributions from one political committee, designated by the candidate, up to the limitations set forth in subsection (e) of this section for political party contributions; and

(2) For the purposes of this chapter, "contribution" shall not include:

(A) Compensation paid by one political committee, designated by the candidate, to its employees;

(B) Costs paid by one political committee, designated by the candidate, in connection with a campaign event.

(o) A candidate accepts a contribution when the contribution is deposited in the candidate's campaign account.

Sec. 5. 17 V.S.A. § 2805b is added to read:

§ 2805b. LIMITATIONS ON CONTRIBUTIONS; POLITICAL COMMITTEES; POLITICAL PARTIES

(a) In any two-year general election cycle:

(1) A political committee, other than a political committee of a candidate, shall not accept contributions totaling more than $2,000.00 from a single source, political committee, or political party.

(2) A political party shall not accept contributions totaling more than $2,000.00 from a single source or political committee.

(3) A political party shall not accept contributions totaling more than $30,000.00 from another political party.

(b) The contribution limitations contained in this section shall be adjusted for inflation by increasing them based on the Consumer Price Index. Increases shall be rounded up to the nearest $10.00. Increases shall be effective for the first two-year general election cycle beginning after the general election held in 2010. On or before July 1, 2011, the secretary of state shall calculate and publish the amount of each limitation that will apply to the election cycle in which July 1, 2011 falls. On July 1 of each subsequent odd-numbered year, the secretary shall publish the amount of each limitation for the election cycle in which that publication falls.

(c) In any two-year general election cycle:

(1) A single source, political committee, or political party shall not contribute more than $2,000.00 to a political committee, other than a political committee of a candidate.

(2) A single source or political committee shall not contribute more than $2,000.00 to a political party.

(3) A political party shall not contribute more than $30,000.00 to another political party.

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

Sec. 6. 17 V.S.A. § 2809 is amended to read:

§ 2809. ACCOUNTABILITY FOR ~~RELATED~~ COORDINATED EXPENDITURES

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

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

(c) For the purposes of this section, a "~~related~~ coordinated campaign expenditure made on the candidate's behalf" means any expenditure ~~intended to promote the election of a specific candidate or group of candidates, or the defeat of an opposing candidate or group of candidates, if intentionally facilitated by, solicited by or approved by the candidate or the candidate's political committee~~ made by a single source, political committee, or political party in cooperation, consultation, or concert with, or at the request or

suggestion of, a candidate, a candidate's political committee, or an agent, unless otherwise exempt under subdivision 2801(3) or (4) or section 2801a of this title.

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

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

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

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

For the purposes of this section, a "coordinated campaign expenditure made on the candidate's behalf" does not mean:

(1) the cost of invitations and postage and of food and beverages voluntarily provided by an individual to provide an opportunity for a group of voters to meet a candidate, if the cumulative value of these activities by the individual on behalf of any candidate does not exceed $500.00 per election;

(2) the sale of any food or beverage by a vendor at a charge less than the normal comparable charge, for use at a campaign event providing an opportunity for a group of voters to meet a candidate, if the charge to the candidate is at least equal to the cost of the food or beverages to the vendor and if the cumulative value of the food or beverages does not exceed $500.00 per election; or

(3) amounts expended by a membership organization in compiling and disseminating a nonpartisan voter guide that includes reports of votes on legislation by, or answers to written questions directed to, all or substantially all of the candidates seeking election to the general assembly or to statewide office, about the candidate's position on issues of concern to the organization, if all of the following apply:

(A) the organization was not created for the major purpose of influencing elections;

(B) the organization identifies itself as the sponsor of the communication, and accepts no funding from a candidate, political committee, or political party to defray the costs of the voter guide;

(C) the voter guide does not contain a phrase such as "vote for," "reelect," "support," "cast your ballot for," "(name of candidate) for Senate," "(name of candidate) in (year)," "vote against," "defeat," or "reject," or otherwise is susceptible of no reasonable interpretation other than as an appeal to vote for or against a candidate or candidates;

(D) the voter guide does not contain photographs or messages provided by a candidate or his or her political committee or agents other than responses to a general questionnaire submitted to all candidates.

* * *

Sec. 7. 17 V.S.A. § 2891 is amended to read:

§ 2891. DEFINITIONS

As used in this chapter, "electioneering communication":

(1) means any communication, including communications published in any newspaper or periodical or broadcast on radio or television or over any public address system, placed on any billboards, outdoor facilities, buttons or printed material attached to motor vehicles, window displays, posters, cards, pamphlets, leaflets, flyers, or other circulars, or in any direct mailing, robotic phone calls, or mass e-mails that refers to a clearly identified candidate for

office and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office, regardless of whether the communication expressly advocates a vote for or against a candidate.

(2) does not mean disseminating a nonpartisan voter guide that qualifies as an exemption from the definition of "coordinated campaign expenditure made on the candidate's behalf" under subdivision 2809(d)(3) of this title.

Sec. 8. 17 V.S.A. § 2893(b) is amended to read:

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

information relating to the expenditure that is required to be disclosed under the provisions of subsections 2803(a) and (b) of this title.

Sec. 9. EVALUATION OF 2010 PRIMARY AND GENERAL ELECTIONS

The house and senate committees on government operations shall evaluate the 2010 primary and general elections to determine whether the major provisions of this act are accomplishing their intended purposes.

Sec. 10. REPEAL

17 V.S.A. § 2805a (campaign expenditure limitations) is repealed.

Sec. 11. EFFECTIVE DATE

This act shall take effect on August 1, 2009.