

Presented by: Amerin Aborjaily, Legislative Counsel
 Prepared by: BetsyAnn Wrask, Legislative Counsel
 Office of Legislative Council
 January 8, 2021

Introduction to Government Operations:
General Government Structure, Elections, Lobbying,
Public Safety, and Professional Regulation

I. OVERVIEW

This document provides an overview of the following topics that are within the jurisdiction of the Committee on Government Operations: General government structure, elections, lobbying, public safety, and professional regulation.

II. GENERAL GOVERNMENT STRUCTURE

A. Federalism

U.S. Const., Art. VI, cl. 2 is the Supremacy Clause, which provides that federal law “shall be the supreme Law of the Land[.]” However, U.S. Const, 10th Am. provides that all powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved to the states or to the people.

“The dynamics of state government in the federal system are to allow the formation of consensus respecting the way members of a discrete community treat each other in their daily contact and constant interaction with each other.”¹

B. Vermont Constitution, Generally

i. Overview

History of the Vt. Const. Vermont has had three constitutions: [1777](#), [1786](#), and [1793](#). [Here is a link](#) to the Sec. of State webpage generally describing each one. We are now operating under the 1793 Vt. Const., with 54 articles of amendment thereto.

Amendments. From 1777-1870, Vt. Const. amendments were proposed by a Council of Censors, and from 1870-1970, the General Assembly was under a 10-year time lock to propose amendments.² From 1970-present, the General Assembly may propose constitutional amendments every other biennium. See [Vt. Const. amendment procedure handout](#). Also, [here is a link](#) to the Sec. of State’s list of all articles of amendment that have been proposed.

Structure. Chapter I contains *articles*, and it is entitled “A Declaration of the Rights of the Inhabitants of the State of Vermont.” Chapter II contains *sections*, and is entitled our “Plan

¹ [U.S. v. Windsor](#), 570 U.S. 744, 769 (2013).

² See the [Sec. of State webpage](#), “[The Amendment Process](#).”

or Frame of Government.” According to NCSL, at around 8,500 words, the Vermont Constitution is the shortest state constitution in the nation.³

ii. Controls!

The Vermont Constitution controls the operation of our State government. “The Vermont Constitution is the fundamental charter of our state and is preeminent in our governmental scheme . . . As such, the constitution stands above legislative and judge-made law, and the rights contained therein speak ‘for the entire people as their supreme law.’”⁴

iii. Constitutional Construction

a. Generally

As discussed below in the overview of Judicial power, the courts’ case law assists us in reading and understanding constitutional requirements because it is the Judicial Branch that has the exclusive authority to make final, binding constitutional adjudications. And the Vermont Supreme Court has stated that it has “a number of tools in construing our constitution, including our own decisions, the wording of the text, historical analysis, construction of similar provisions in other state constitutions[,] and sociological materials.”⁵

b. Unambiguous Language Controls

However, the Court will “first focus on the words of the Constitution themselves,” because while the Court must respect the spirit of the Constitution, “‘the spirit is to be collected chiefly from its words.’”⁶ If the meaning of those words is clear, the Court will not use other sources of constitutional construction.⁷

c. Expressio Unius Est Exclusio Alterius

1. Generally

In reading those words, the Vermont Supreme Court has stated that “if the constitution declares that a thing shall be done in a particular manner or way, it is implied necessarily that it shall not be done in any other.”⁸ The Latin phrase for this canon of construction is *expressio unius est exclusio alterius*; meaning, to express or include one thing implies the exclusion of the other, or of the alternative.^{9,10} In practice, this means that if the Vermont Constitution states one

³ National Conference of State Legislatures, “Constitutions: Amend with Care” (9/1/15), <http://www.ncsl.org/research/elections-and-campaigns/constitution-amend-with-care.aspx>.

⁴ *In re Town Highway No. 20*, 191 Vt. 231, 248 (2012) (other citations omitted).

⁵ *Benning v. State*, 161 Vt. 472, 476 (1994).

⁶ *Baker v. State*, 170 Vt. 194, 207 (1999) (quoting *Sturges v. Crowninshield*, 17 U.S. (4 Wheat) 122, 202 (1819)).

⁷ *Hartness v. Black*, 95 Vt. 190, 114 A. 44, 47 (1921) (“In ascertaining the import and true interpretation of a written instrument, resort is first had to the obvious meaning of the language adopted, and, if this is explicit and unequivocal, all inference by way of construction is excluded. Should any part of the Constitution furnish answers in terms to the questions for decision, it would not only be unnecessary, but improper, to resort to extraneous aids to interpretation.”).

⁸ *Opinion of the Judges of the Supreme Court on the Constitutionality of “An Act Providing for Soldiers Voting”*, 37 Vt. 665, 672 (1865).

⁹ Black’s Law Dictionary, 2nd pocket edition.

¹⁰ See also *Noble v. Secretary of State*, 2010 WL 4567689 (2010) (Vt. Super. Ct.) at pgs. 7–8 (citing *State ex rel. O’Connell v. Slavin*, 75 Wash.2d 554, 452 P.2d 943, 946 (Wash. 1969) (“For purposes of constitutional interpretation, the express mention of one thing implies the exclusion of another which might logically have been considered at the same time.”) and *KGF Dev., LLC v. City of Ketchum*, 129 Idaho 524, 236 P.3d 1284, 1288 (Idaho

branch or office has a specific power, no other branch or office holds that power, and that power cannot be limited. The Vermont Supreme Court has employed this canon on multiple occasions.

2. Examples

Chamber authority to judge members' qualifications. The House and Senate each have the separate constitutional authority to judge their members' elections and qualifications.¹¹ The Court stated that “where the state legislature is made the judge of the qualifications of its members by a provision of the state constitution, the legislature has the sole authority to do so,” calling it the chamber’s “exclusive constitutional prerogative[.]”¹²

Gubernatorial pardon authority. The Governor is given the “power to grant pardons[.]”¹³ The Court has held that this pardon power “can neither be restricted nor taken away by legislative action. Nor can a like power be given by the legislature to any other office or authority.”¹⁴

SCOV judicial officer and attorney disciplinary authority. The Vermont Supreme Court has “disciplinary authority concerning all judicial officers and attorneys at law in the State.”¹⁵ While the Court has the assistance of the Judicial Conduct Board for judicial officers, “in judicial conduct proceedings, this Court makes the only final and ultimate decision. The findings and recommendations of the Board carry great weight, but are advisory, not binding.”¹⁶ Regarding attorneys, the Professional Conduct Board “acts on behalf of this Court” pursuant to the Court’s “exclusive responsibility” over attorney discipline, with the Court making “its own ultimate decisions on discipline.”¹⁷

d. Legislative Branch Fills in Details Not Articulated in the Constitution

1. Generally

As further discussed below, the Legislative Branch, as the State’s lawmaking branch, is limited only by the Constitution in the laws it enacts. Accordingly, it is within the purview of the

2010) (“It is a universally recognized rule of the construction that, where a constitution or statute specifies certain things, the designation of such things excludes all others, a maxim commonly known as *expressio unius est exclusio alterius*.”). In Noble, the Civil Division of the Vermont Superior Court determined that since the Vt. Const. explicitly mentions a residency requirement for some offices, but not for the offices of sheriff and State’s Attorney, the Vt. Const. does not require those two officers to be residents of the counties they serve. Id. at pg. 8.

¹¹ Vt. Const. Ch. II, §§ 14 and 19, respectively.

¹² Brady v. Dean, 173 Vt. 542, 544–545 (2001) (citing Kennedy v. Chittenden, 142 Vt. 397, 399–400 (1983) (“The Constitution ‘places the final determination of the election and qualifications of its members exclusively in the House of Representatives,’ rendering any attempted judicial intervention ineffective and violative of separation of powers.”)).

¹³ Vt. Const. Ch. II, § 20.

¹⁴ In re Conditional Discharge of Convicts, 73 Vt. 414, 51 A. 10, 11 (1901). See also In re De Palo, 101 Vt. 510, 144 A. 678, 679 (1929) (“The pardoning power is with the Governor [citing Vt. Const. Ch. II, § 20] . . . It necessarily follows that he alone has the power to release a convict from the condition imposed in granting such a pardon.”) and Doe v. Salmon, 135 Vt. 443, 445 (1977) (“The power to pardon is a function of the State delegated to the Executive and conferred upon the Office of Governor [citing Vt. Const. Ch. II, § 20] . . . The exercise of the pardoning power is within the sole discretion of the Governor and is not judicially reviewable except as to questions of validity.”).

¹⁵ Vt. Const. Ch. II, § 30.

¹⁶ In re Bryan, 164 Vt. 589, 593 (1996) (other citations omitted).

¹⁷ In re Berk, 157 Vt. 524, 527 (1991) (quoting Vt. Const. Ch. II, § 30 and the Court’s administrative rules).

Legislative Branch to legislate on topics that are not committed to another branch or office in the Vermont Constitution.

“The standards for interpreting constitutional language and meaning, though related, are not the same as for ordinary statutes. Canons of construction, if applied, must be used more cautiously and sometimes differently. This is so because a constitutional provision, unlike a statute, usually operates to limit or direct legislative action . . . *It is of great importance to remember that, since the purpose of any constitutional enactment is to delineate the framework of government, the working details are frequently left, as here, for legislative definition.* Interpretation must, therefore, not be so narrow as to present an obstacle to that function. More than one pattern of working details may well be possible and constitutional [emphasis added].”¹⁸

2. Examples

Restricting constitutional rights that are not self-executing. The Legislative Branch is permitted to restrict constitutional rights that are not self-executing. A self-executing constitutional provision “means only that the rights contained therein do not need further legislative action to become operative.”¹⁹ For example, the Vermont Supreme Court has held that Vt. Const. Ch. I, Art. 1—providing that people “have certain natural, inherent, and unalienable rights,” including liberty and acquiring, possessing, and protecting property—is not self-executing, and stated that “[m]any things contained in the Bill of Rights found in our state Constitutions ‘are not, and from the very nature of the case cannot be, so certain and definite in character as to form rules for judicial decisions; and they are declared rather as guides to the legislative judgment than as marking an absolute limitation of power.’ The general rights named are protected by these provisions, but this protection does not make the rights absolute in all respects; for in many respects they remain subject to legislative control and regulation. [emphases added]”²⁰

Regulating undefined powers of constitutional officers. The Legislative Branch may regulate the powers of a constitutional officer that are not defined in the Vermont Constitution. For example, State’s Attorneys are constitutional officers, but the Vermont Constitution only provides for their election and term of office, without defining their powers or duties. In Office of State’s Attorney v. Office of Attorney General, a State’s Attorney sought to enjoin the Attorney General (who is a statutory, not constitutional, officer, but who has concurrent authority with State’s Attorneys via [3 V.S.A. § 152](#)) from prosecuting a case the State’s Attorney had chosen not to prosecute, arguing that his office’s powers and prerogatives are constitutional functions that cannot be taken away, except by constitutional amendment. “We cannot agree with plaintiff’s argument. The [p]owers of State’s Attorneys are not set forth in the constitution but rather in 24 V.S.A. § 361. The constitution merely provides the date on which the State’s Attorneys shall be elected and the terms for which they shall serve [citing Vt. Const. Ch. II, §§ 43 and 50]. Since the powers of the State’s Attorney are those granted by statute, the legislature

¹⁸ Peck v. Douglas, 148 Vt. 128, 132 (1987).

¹⁹ Shields v. Gerhart, 163 Vt. 219, 227–28 (1995). See also Shields at 224 (quoting Davis v. Burke, 179 U.S. 399, 403 (1900) (“‘A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, . . . and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law . . .’ In short, if complete in itself, it executes itself.”)).

²⁰ State v. Caruth, 85 Vt. 271, 81 A. 922, 923 (1911) (quoting Cool. Con. Lim. 210).

is not precluded from delegating to other offices equal authority with respect to initiating criminal proceedings.”²¹

C. Separation of Powers

i. Overview of Separation of Powers

a. Requirement for Three Separate Core Powers

[Vt. Const. Ch. II, § 5](#) requires that there be a separation of powers among the three branches of State government: “The Legislative, Executive, and Judiciary departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others.”

“Briefly stated, the legislative power is the power that formulates and enacts the laws; the executive power enforces them; and the judicial power interprets and applies them.”²² Separating these three core powers is a “fundamental principle” that serves to create a governmental structure “resistant to the forces of tyranny.”²³

b. Overlapping Powers Permitted

Vt. Const. Ch. II, § 5 “does not contemplate an absolute division of authority among the three branches such that each branch is hermetically sealed from the others.”²⁴ The SCOV stated that due to the practical realities of government, and because there are many powers and functions that cannot be easily classified as belonging exclusively to one branch,²⁵ it will “apply a relatively forgiving standard to separation-of-power claims” that is “tolerant” of overlapping institutional arrangements.²⁶

“[W]e must construe the constitutional command consistent with efficient and effective government structures that are able to respond to the complex challenges and problems faced by today’s state government.”²⁷

c. Test of a Separation of Powers Violation

However, the power exercised by a branch must be “incidental to the discharge of the functions of the [branch] exercising them[.]”²⁸ Thereafter, “[t]he focus of a separation of powers inquiry is not whether one branch of government is exercising certain powers that may in some way pertain to another branch, but whether the power exercised so encroaches upon another branch’s power as to usurp from that branch its constitutionally defined function.”²⁹

²¹ Office of State’s Attorney v. Office of the Attorney General, 138 Vt. 10, 15 (1979).

²² *In re D.L.*, 164 Vt. 223, 228 (1995).

²³ *Id.* (citing James Madison’s statement in Federalist Paper No. 47 that the accumulation of legislative, executive, and judicial power into one place is the “very definition of tyranny.”).

²⁴ *Id.* at 228.

²⁵ *Id.* at 229.

²⁶ *State v. Nelson*, 170 Vt. 125, 128 (1999).

²⁷ *Hunter v. State*, 177 Vt. 339, 349–350 (2004).

²⁸ *In re Opinion of the Justices*, 115 Vt. 524, 529 (1949) (citing *Trybulski v. Bellows Falls Hydro-Electric Corp.*, 112 Vt. 1, 6–7 (1941)).

²⁹ *In re D.L.* at 229.

ii. Legislative Branch

a. Supreme Legislative Power, Restricted Only by the Constitution

As the General Assembly, the Senate and House hold the “Supreme Legislative power,”³⁰ which includes the power to “prepare bills and enact them into laws.”³¹ The Vermont Supreme Court describes the General Assembly as “the lawmaking branch of government.”³²

However, the General Assembly “shall have no power to add to, alter, abolish, or infringe any part of [the Vermont] Constitution.”³³ In other words, the only thing that limits the General Assembly’s lawmaking authority is the Constitution. “The Constitution is not a grant of power to the Legislature, but it is a limitation of its general powers. **The Legislature’s power is practically absolute, except for constitutional limitations.**”³⁴

b. Police Power

[Vt. Const. Ch. II, Art. 5](#) provides for police power: “That the people of this state by their legal representatives, have the sole, inherent, and exclusive right of governing and regulating the internal police of the same.”

“Subject to constitutional limitations, a state Legislature is authorized to pass measures for the general welfare of the people of the state in the exercise of the police power, and is itself the judge of the necessity or expediency of the means adopted.”³⁵ In regard to the police power, “the constitution clearly empowered the legislature to pass such laws as, in its discretion, it might judge would be for the common benefit of the people of the state.”³⁶ This includes legislating to provide for the public’s health, safety, convenience, and morals.³⁷

“[T]he police power is the practical manifestation of each individual’s agreement, as part of the social compact, to subject his rights to the common good when a conflict arises. It follows that the police power ‘is not a grant derived from or under a written constitution’; rather, it is ‘inherent’ in state government.”³⁸

³⁰ Vt. Const. Ch. II, § 2.

³¹ Vt. Const. Ch. II, § 6.

³² *Hartness v. Black*, 95 Vt. 190, 114 A. 44, 47 (1921).

³³ Vt. Const. Ch. II, § 6.

³⁴ *Rufus v. Daley*, 103 Vt. 426, 154 A. 695, 697 (1931). See also *City of Burlington v. Central Vermont RY Co.*, 82 Vt. 5, 71 A. 826, 827 (1909) (“[F]or the law is, by all the cases, that, except where there are constitutional limits upon the Legislature, it is practically absolute.”) and *Dresden School District v. Norwich Town School District*, 124 Vt. 227, 231 (1964) (“Our constitution is, in powers not surrendered to the Federal government, the single great restraint on the autonomy of the Legislature as the repository of the law-making power of the people.”).

³⁵ *Sowma v. Parker*, 112 Vt. 241, 22 A.2d 513, 517 (1941) (quoting *In re Guerra*, 94 Vt. 1, 110 A. 224, 227 (1920)).

³⁶ *State v. Theriault*, 70 Vt. 617, 41 A. 1030, 1034 (1898). See also *State v. Curley-Egan*, 180 Vt. 305, 309 (2006) (“The police power has long been understood to encompass ‘the general power of the legislative branch to enact laws for the common good of all the people.’”) (other citations omitted).

³⁷ *Sabre v. Rutland R. Co.*, 86 Vt. 347, 85 A. 693, 700 (1913) (“Power to provide for the public safety and convenience stands upon the same ground as the power to protect the public health and public morals.”).

³⁸ *State v. Curley-Egan*, 180 Vt. 305, 310 (2006) (quoting *In re Guerra*, 94 Vt. 1, 8 (1920) (“It is an attribute of sovereignty, or rather it is sovereignty itself”) and *Mut. Loan Co. v. Martell*, 222 U.S. 225, 233 (1911) (“In a sense, the police power is but another name for the power of government . . .”)).

c. Appropriation Power

In *Hunter v. State*, the Vermont Supreme Court “recognize[d] that appropriations necessarily represent legislative determinations of policy, by deciding which programs and activities to support financially and therefore who obtains intended public benefits[,]” and further stated that “only the Legislature has the power to appropriate funds for the support of governmental programs.”³⁹ The Court ultimately held that “appropriation is a legislative power, but spending is an executive power.”⁴⁰

d. Investigation Authority

1. Generally

Mason’s ch. 73 addresses investigations by legislative bodies. For example:

- *Mason’s* Sec. 795-1 states that “[t]he right of a legislative body to make investigations in order to assist it in the preparation of wise and timely laws must exist as an indispensable incident and auxiliary to the proper exercise of legislative power. This has been recognized from the earliest times in the history of U.S. legislation, both federal and state, and from even earlier epochs in the development of British jurisprudence.”
- *Mason’s* Sec. 795-7 states that a “legislature or a committee of the legislature cannot be enjoined from investigating a matter that is under litigation in the courts.”
- *Mason’s* Sec. 795-10 provides that “[a]n investigation into the management of the various institutions of the state and the departments of the state government is at all times a legitimate function of the legislature.”
- *Mason’s* Sec. 797 addresses **limitations on legislative investigatory powers**, with Sec. 797-4 stating that a legislative investigation “instituted for political purposes and not connected with intended legislation or with any of the matters upon which a house should act is not a proper legislative proceeding and is beyond the authority of the house or legislature.” Moreover, Sec. 797-5 addresses the invalidity of legislative investigations that attempt to act as a judicial trial of State officers.

2. Subpoenas; contempt

- *Generally.* *Mason’s* Secs. 800-803 address the constitutional authority of a Leg. or its authorized committees to subpoena witnesses and private documents for valid investigations and to punish for contempt, as an essential implication of the power to legislate.
- *Applicable statutes:*
 - [32 V.S.A. § 1556](#) allows Leg. committees, and those appointed by an act or joint resolution of the General Assembly, “when so authorized,” to summon witnesses and require the production of persons and papers. A summoned witness vouches to the Sgt. at Arms under oath miles traveled and days attending, with summons fees being those provided in Superior Court.

³⁹ *Hunter v. State*, 177 Vt. 339, 347 (2004).

⁴⁰ *Id.* at 351.

- [2 V.S.A. § 22](#) allows a chamber or a Leg. committee having subpoena authority to vote to initiate with the Superior Court proceedings to compel a person to comply with a legislative subpoena. Failure to comply with a court order constitutes contempt of court.

e. Judging Elections and Qualifications

1. Generally

[Vt. Const. Ch. II, § 14](#) (powers of House): “The Representatives so chosen . . . shall be styled the House of Representatives: they shall have power to . . . judge of the elections and qualifications of their own members . . .”

[Vt. Const. Ch. II, § 19](#) (powers of Senate): “The Senate shall have the like powers to decide on the election and qualifications of . . . as are incident to, or are possessed by, the House of Representatives.”

2. Judging Elections

Vt. Const. Ch. II, § 14 “places the final determination of the election and qualifications of its members exclusively in the House” as part of its legislative powers.⁴¹

Recounts seldom reach results without discrepancy; the recount statute calls only for the Superior Court judge’s certification of the recount of a legislative election, leaving the validity to the chamber for determination.⁴²

A prior recount does not prevent the chamber from independently evaluating the election any more than the initial count does. The chamber is free to accept or reject the apparent winner in either count, and, if it chooses, conduct its own recount.⁴³

For reference, *see*:

- [HGO Presentation re: 2017 Contested Orange-1 House Election](#)
- [Sampling of Past Contested Legislative Elections](#)

3. Judging Qualifications

In the SCOV case [Brady v. Dean](#),⁴⁴ plaintiffs challenged the civil unions law based on Representatives’ participation in a betting pool re: a vote on the bill. The complaint alleged violations of [House Rule 75](#); of misc. constitutional provisions, including Vt. Const. Ch. I, §§ 6 (officers servants of the people) and 7 (common benefits) and Ch. II, §§ 12 (fees for advocating bills) and 61 (public offices of profit); and of misc. provisions in T.13 re: lotteries, games of chance, and bookmaking.⁴⁵

⁴¹ [Kennedy v. Chittenden](#), 142 Vt. 397, 399 (1983).

⁴² [In re Smith](#), 131 Vt. 24, 26 (1972) (SCOV case in regard to a former recount statute, which, like current [17 V.S.A. § 2602j\(c\)](#), provided that the recount results superseded the original election results).

⁴³ [Roudebush v. Hartke](#), 405 U.S. 15, 25–26 (1972) (U.S. S. Ct. case in regard to each U.S. congressional chamber’s authority to “be the Judge of the Elections, Returns and Qualifications of its own Members” in U.S. Const. Art. 1, § 5.).

⁴⁴ [Brady v. Dean](#), 173 Vt. 542 (2001).

⁴⁵ [Id.](#) at 543.

“[W]here the state legislature is made the judge of qualifications of its members by a provision of the state constitution, the legislature has the sole authority to do so, and courts must refrain from interfering in that determination.”⁴⁶

“[T]he Vermont House of Representative’s exclusive constitutional prerogative to ‘judge of the qualifications of its members’ encompasses the authority to determine whether a member’s personal or pecuniary interest requires disqualification from voting on a question before it.”⁴⁷

“We further conclude that, as a policy matter, a proper regard for the independence of the Legislature requires that we respect its members’ personal judgments concerning their participation in matters before them.”⁴⁸

iii. Judicial Branch

a. Exclusive Authority to Make Final Constitutional Adjudications

The Judicial Branch exercises “judicial power[.]”⁴⁹ This power, like the federal judicial power, means “the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction.”⁵⁰ Therefore—since the Vermont Constitution does not specifically provide for it—our Court has held that Vermont’s Judicial Branch does not have the constitutional authority to give an advisory opinion on a question of law not involving actual and bona fide litigation.⁵¹ Accordingly, “the exercise of judicial authority must lead to a final enforceable result” so that it is not merely informative or advisory.⁵²

Moreover, only the Judicial Branch has the authority to decide constitutional questions; even Executive Branch entities exercising quasi-judicial functions do not have this authority.^{53,54} In the checks and balances built into the separation of powers among the three branches, “it is the

⁴⁶ *Id.* at 544.

⁴⁷ *Id.*

⁴⁸ *Id.* at 545.

⁴⁹ Vt. Const. Ch. II, § 4 (“The judicial power of the State shall be vested in a unified judicial system which shall be composed of a Supreme Court, a Superior Court, and such other subordinate courts as the General Assembly may from time to time ordain and establish.”).

⁵⁰ *In re Opinion of the Justices*, 115 Vt. 524, 529 (1949).

⁵¹ *Id.* This case is ironic, since it was precipitated by the Governor’s request for the Court’s opinion on the constitutionality of a bill allowing the Court to give advisory opinions.

⁵² *Kennedy v. Chittenden*, 142 Vt. 397, 399 (1983) (holding unconstitutional a statute purporting to grant the Superior Court the authority to adjudicate a contested House election, since the House has the exclusive constitutional authority to judge its members’ elections, and therefore, any such judicial adjudication could be reversed by the chamber). See also *In re Williams*, 154 Vt. 318, 324 (1990) (holding unconstitutional a statute that would have required our former district court to hold a hearing regarding police officer misconduct and certify to the officer’s legislative body facts and findings, since the legislative body could ignore the court’s findings of guilt, resulting in the court’s findings having “none of the authority of a judgment.”).

⁵³ *Westover v. Village of Barton Electric Dept.*, 149 Vt. 356, 359 (1988) (Court stated that although the separation of powers requirement set forth in Vt. Const. Ch. II, § 5 does not require an absolute separation of functions, “we believe that the power to decide constitutional issues is vested in the courts[,]” and held that the Public Service Board was without constitutional authority to rule upon the constitutionality of a municipal charter provision).

⁵⁴ See also *I.N.S. v. Chadha*, 462 U.S. 919, 941–942 (1983) (Neither Congress nor the Executive “can decide the constitutionality of a statute; that is a decision for the courts.”).

province of the court to decide whether Vermont’s laws comply with the State Constitution”⁵⁵; “[i]t is the function of the courts to maintain constitutional government”⁵⁶; and the Supreme Court of Vermont is the “final interpreter of the Vermont Constitution.”⁵⁷

b. Court Does Not Question Constitutional Policy

The Judicial Branch will *not* strike down the law due to disagreeing with its policy. “[I]t is not for this Court to pass upon the propriety of the legislative election to exercise [its regulatory] power, nor to question the wisdom of it. Our function is only to determine whether or not the manner or its exercise meets constitutional standards and violates any fundamental rights.”⁵⁸

“[I]t is crucial for a reviewing court to keep in mind that the judicial role in a case like this [challenging the constitutionality of a statute] is not to seek out the preferable from among assorted proffered solutions, but simply to determine whether or not the option selected by the legislature, even if it appear to the Court to be unwise, passes constitutional muster.”⁵⁹ “Plaintiffs are not entitled to have the courts act as a super-legislature and retry legislative judgments based on evidence presented to the court.”⁶⁰

c. Judicial Branch Presumes that Statutes Are Constitutional

When the Judicial Branch is analyzing the General Assembly’s exercise of its legislative authority, it presumes the Legislative Branch acted constitutionally. “[T]here is a presumption of a constitutional purpose on the part of the Legislature, a presumption as strong, perhaps, as any that is not conclusive . . .”⁶¹ This has been stated repeatedly.⁶²

A court will not hold a law unconstitutional unless it clearly conflicts with constitutional requirements. “The efficient exercise of police power inherent in the people of this state is not to be frittered away by overnice speculations upon the distribution of powers of government.”⁶³ “Every presumption is to be made in favor of the constitutionality of an act of the Legislature, and it will not be declared unconstitutional without clear and irrefragable evidence that it infringes the paramount law.”⁶⁴

iv. The Executive Power

a. Executive Power Means Carrying Out Laws

The conferred authority to execute a law is the Executive power.⁶⁵ Aside from any constitutional requirements, the General Assembly determines the Executive Branch entities to

⁵⁵ Brigham v. State, 179 Vt. 525, 528 (2005).

⁵⁶ C.O. Granai v. Witters, Longmoore, Akley & Brown, 123 Vt. 468, 470 (1963).

⁵⁷ State v. Read, 165 Vt. 141, 153 (1996).

⁵⁸ State v. Giant of St. Albans, 128 Vt. 539, 544 (1970).

⁵⁹ Peck v. Douglas, 148 Vt. 128, 132–33 (1987).

⁶⁰ Benning v. State, 161 Vt. 472, 481 (1994).

⁶¹ Sabre v. Rutland R. Co., 86 Vt. 347, 85 A.693, 700 (1913).

⁶² *See, e.g., Badgley v. Walton*, 188 Vt. 367, 376–77 (2010) (“We start by emphasizing that statutes are presumed to be constitutional . . . and are presumed to be reasonable. We have often observed that the proponent of a constitutional challenge has a very weighty burden to overcome (other citations omitted).”).

⁶³ Sabre at 700.

⁶⁴ Village of Waterbury v. Melendy, 109 Vt. 441, 447 (1938) (other citations omitted).

⁶⁵ *See Waterbury v. Melendy*, 109 Vt. 441, 451–453 (1938).

which it will confer authority; what laws those entities must execute; and how they must be executed.

For example, the Vermont Supreme Court stated that the Public Service Commission “has only such powers as are expressly conferred upon it by the Legislature, together with such incidental powers expressly granted or necessarily implied as are necessary to the full exercise of those granted, and it is merely an administrative board created by the State *for carrying into effect the will of the State as expressed by its legislation* . . . The Commission, therefore, is to be classed as an agency of the Legislature[.] [emphasis added]”⁶⁶

Similarly, in reviewing a challenged congressional act, the U.S. Supreme Court drew the line between legislating and executing: “Congress of course initially determined the content of [the act]; and undoubtedly the content of [the act] determines the nature of the executive duty. However . . . once Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly—by passing new legislation.”⁶⁷

b. Executive Offices; Governor’s Supreme Executive Power

1. Overview of Executive Offices

While the Vermont Constitution provides for multiple Executive Branch officers—the Governor, Lieutenant Governor, Treasurer, Secretary of State, Auditor of Accounts, State’s Attorneys, and sheriffs—it provides few to no duties or powers to any such officer other than the Governor.⁶⁸

The Vermont Constitution names the Governor the “Supreme Executive power[.]”⁶⁹ It also requires a candidate of the Offices of Governor, Lieutenant Governor, and Treasurer to receive “the major part of the votes” in the general election or face General Assembly election of the office,⁷⁰ and provides special residence requirements for those three offices⁷¹ (along with legislators).⁷²

The General Assembly created by statute the statewide elected Office of Attorney General.⁷³ The General Assembly also creates in statute various other Executive Branch offices and entities.

2. Constitutional Gubernatorial Authority

As discussed above, when the Vermont Constitution gives a power to one entity, legislation cannot take away that power or give it to any other entity. For example, because the

⁶⁶ *Trybulski v. Bellows Falls Hydro-Electric Corp.*, 112 Vt. 1, 7–8 (1941).

⁶⁷ *Bowher v. Synar*, 478 U.S. 714, 733–734 (1986).

⁶⁸ Vt. Const. Ch. II, §§ 3, 19, and 20, respectively, provide the Lt. Governor with a duty to act in the Governor’s absence; a duty to act as President of the Senate; and the power to exercise the Governor’s authority in Vt. Const. Ch. II, § 20 in the Governor’s absence. Vt. Const. Ch. II, §§ 25 and 26, respectively, provide the Treasurer with a duty to pay a security before entering office and to have his or her accounts annually audited. Vt. Const. Ch. II, § 25 likewise requires sheriffs to provide sufficient surety before entering office.

⁶⁹ Vt. Const. Ch. II, § 3.

⁷⁰ Vt. Const. Ch. II, § 47.

⁷¹ Vt. Const. Ch. II, § 23 (Gov. and Lt. Gov.) and § 66 (Treasurer).

⁷² Vt. Const. Ch. II, § 15 § (legislators).

⁷³ [V.S.A. § 151](#).

Vermont Constitution provides the Governor with pardon power, that power belongs exclusively to the Governor, and it would be unconstitutional for the Legislative Branch to use its lawmaking authority to take away that power from the Governor or provide another officer with pardon power.⁷⁴ Similarly, the Governor is given the exclusive authority to approve or veto legislation and, with the advice and consent of the Senate, to fill judicial vacancies.

The Governor's exclusive and non-exclusive powers and duties are set forth in [Vt. Const. Ch. II, §§ 6, 11, 20-22, 25, 32, 33, and 72](#).

3. Other Statutory Executive Authority

As set forth in the [Office of State's Attorney v. Office of Attorney General](#)⁷⁵ case discussed above, the General Assembly may define the powers of officers and entities that are not otherwise exclusively defined in the Vermont Constitution.

The General Assembly uses this supreme legislative authority to create offices and entities under other offices, such as the Vermont State Archives and Records Administration under the Office of Secretary of State,⁷⁶ as well as those that are to be independent from any other entity, such as the Green Mountain Care Board⁷⁷ and the State Ethics Commission.⁷⁸

4. The Governor's Supreme Executive Power Is Not as Broad as the President's Exclusive Executive Power

Because there are multiple, separate Executive Branch officers and entities that are not under the Governor's control, the Vermont Governor's supreme executive power is distinguishable from the Executive power in our federal government, which by U.S. Const. Art. II, § 1, cl. 1 vests *the* executive power in the President. Similarly, unlike U.S. Const. Art. II, § 2, cl. 2, which provides the President with the power to appoint all major officers of the United States (with the advice and consent of the Senate), the Vermont Constitution provides the Governor with the authority to appoint officers, "except where provision is, or shall be, otherwise made by law or this Frame of Government[.]"⁷⁹ This means that the Governor has the power to appoint officers, except as otherwise provided by the laws enacted by the General Assembly or by the Vermont Constitution.

D. Governmental Ethics

- The Vt. Const. separation of powers requirement, described above, impacts the entities that may regulate governmental ethics. See ["Separation of Powers under the Vermont Constitution: In the Context of a Vermont State Ethics Commission."](#)
- [2017, Act No. 79](#) created the State Ethics Commission and new standards of governmental ethical conduct. See the [2017, Act No. 79 Summary](#).

⁷⁴ [In re Conditional Discharge of Convicts](#), 73 Vt. 414, 51 A. 10, 11 (1901), discussed *supra*.

⁷⁵ [Office of State's Attorney v. Office of the Attorney General](#), 138 Vt. 10 (1979).

⁷⁶ [3 V.S.A. § 117](#).

⁷⁷ "It is the intent of the General Assembly to create an independent board to promote the general good of the State . . ." [18 V.S.A. § 9372](#).

⁷⁸ "There is created within the Executive Branch an independent commission named the State Ethics Commission . . ." [3 V.S.A. § 1221\(a\)](#).

⁷⁹ Vt. Const. Ch. II, § 20.

E. Results-Based Accountability (RBA)

- The joint legislative Government Accountability Committee (GAC), set forth in [2 V.S.A. § 970](#), has been focusing on how RBA can help make Vermont State government more accountable to Vermonters.
- RBA is a performance accountability tool that involves setting goals; using data to measure progress in reaching these goals; analyzing how the data change over time; and determining what changes need to be made in order to improve that data and to therefore make better progress in reaching the goals.
- [2019 GAC report](#)
- [3 V.S.A. § 2311](#) (State Outcomes; Chief Performance Officer; State Outcomes Report)
- [Current State Outcomes and Indicators](#)
- [2018 State Outcomes Report](#)
- [Governor's FY19 Programmatic Performance Measure Budget Report](#)

III. ELECTIONS

A. Qualifications of Voters and Elected Officers

i. Generally

[Vt. Const. Ch. I, Art. 8](#): “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.”

[Vt. Const. Ch. II, § 42](#):

“Every person of the full age of eighteen years who is a citizen of the United States, having resided in this State for the period established by the General Assembly⁸⁰ and who is of a quiet and peaceable behavior,⁸¹ and will take the following oath or affirmation, shall be entitled to all the privileges of a voter of this state:

“You solemnly swear (or affirm) that whenever you give your vote or suffrage, touching any matter that concerns the State of Vermont, you will do it so as in your conscience you shall judge will most conduce to the best good of the same, as established by the Constitution, without fear or favor of any person.

“Every person who will attain the full age of eighteen years by the date of the general election who is a citizen of the United States, having resided in this State for the period established by the General Assembly and who is of a quiet and peaceable behavior, and will take the oath or affirmation set forth in this section, shall be entitled to vote in the primary election.”

ii. Specific Offices

a. Legislators

[Vt. Const. Ch. II, § 15](#): “No person shall be elected a Representative or a Senator until the person has resided in this State two years, the last year of which shall be in the legislative district for which the person is elected.”

b. Governor and Lieutenant Governor

[Vt. Const. Ch. II, § 23](#): “No person shall be eligible to the office of Governor or Lieutenant-Governor until the person shall have resided in this State four years next preceding the day of election.”

⁸⁰ VT’s former one-year durational residency requirement was held unconstitutional in [Kohn v. Davis](#), 320 F.Supp. 246 (1970), and that judgment was affirmed by the U.S. Supreme Court. in [Davis v. Kohn](#), 92 S. Ct. 1305 (1972).

⁸¹ The meaning of “quiet and peaceable behavior” does not seem to have been interpreted by our courts. It has existed since the original [1777 Vt. Const., Ch. II, § VI](#). Multiple law review articles have interpreted this Vt. Const. phrase to be a reference to people with disabilities. *See e.g.* “Voting Rights and the Mentally Incapacitated,” 121 Harv. L. Rev. 1179 (2008); “Anti-Subordination Above All: A Disability Perspective,” 82 Notre Dame L. Rev. 1415 (2007).

c. Treasurer

[Vt. Const. Ch. II, § 66](#): “. . . and except also that such person shall not be capable of being elected **Treasurer**, or Representative in Assembly, **until after two years' residence** . . .”

B. Campaign Finance

See [Overview of Campaign Finance Law](#).

C. Reapportionment

i. Equal Protection Clause

“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const., Amend. XIV, § 1.

ii. Pre-1965 Vermont

- *House*: One town, one vote
 - [former] Vt. Const. Ch. II, § 13: “In order that the freemen of the state may enjoy the benefit of election as equally as may be, each inhabited town in this state may, forever hereafter, hold elections therein and choose each one representative to represent them in the House of Representatives . . . [emphasis added]”
 - 246 representatives total
- *Senate*: County rule
 - [former] Vt. Const. Ch. II, § 18: “The Senate shall be composed of thirty Senators . . . apportioned to the several counties, according to the population . . . and each county being given at least one Senator . . . [emphasis added]”

iii. Early 1960s U.S. S. Ct. Reapportionment Caselaw

- *Judicial Review*. Legislative apportionment was not a political question exempt from judicial review.⁸²
- *Supremacy Clause*. “When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course prevails.”⁸³

iv. Early 1960s Vermont Reapportionment Caselaw

U.S. Dist. Ct. of VT held that both bodies of the Vermont General Assembly were malapportioned and that our Constitution’s reapportionment provisions were in contravention to the Equal Protection Clause of the 14th Am. and therefore unconstitutional and void.⁸⁴

- *House*: “Grossly malapportioned . . . [C]itizens of the state’s larger communities are invidiously discriminated against because of the inequality of representation . . .”⁸⁵

⁸² [Baker v. Carr](#), 369 U.S. 186 (1962).

⁸³ [Reynolds v. Sims](#), 377 U.S. 533, 584 (1964).

⁸⁴ [Buckley v. Hoff](#), 234 F.Supp. 191 (1964).

⁸⁵ *Id.* at 197.

- *Senate*: “[I]mpossible to apportion the Senate in any way which will not result in at least a 5-1 disparity between the largest and smallest number of people represented per Senator.”⁸⁶

v. Current Vermont Reapportionment Requirements

- [Vt. Const. Ch. II, § 13](#) (House: 150 members; 2-member max; reapp. standards):
 “The House of Representatives shall be composed of **one hundred fifty** Representatives. The voters of each representative district established by law shall elect **one or two** Representatives from that district, the number from each district to be established by the General Assembly.

 “In establishing representative districts, which **shall afford equality of representation**, the General Assembly **shall seek to maintain** geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions.”
- [Vt. Const. Ch. II, § 18](#) (Senate: 30 members; no max.; reapp. standards):
 “The Senate shall be composed of **thirty** Senators to be of the senatorial district from which they are elected. The voters of each senatorial district established by law shall elect **one or more** Senators from that district, the number from each district to be established by the General Assembly.

 “In establishing senatorial districts, which **shall afford equality of representation**, the General Assembly **shall seek to maintain** geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions.”
- [Vt. Const. Ch. II, § 73](#) (Leg. decennial reapp. after Census; LAB; deadline; SCOV):
 “**The General Assembly shall** establish senatorial districts within and including all of the state, and shall further establish representative districts within and including all of the state.

 “**At the biennial session following the taking of each decennial census under the authority of Congress**, and at such other times as the General Assembly finds necessary, it shall revise the boundaries of the legislative districts and shall make a new apportionment of its membership in order to **maintain equality of representation among the respective districts as nearly as is practicable**. The General Assembly **may** provide for establishment of a legislative apportionment board to **advise and assist** the General Assembly concerning legislative apportionment. **If the General Assembly fails to revise the legislative districts as required in this section, the Supreme Court in appropriate legal proceedings brought for that purpose may order reapportionment of the districts.**”
- [17 V.S.A. chapter 34A](#) (period reapportionment).

⁸⁶ Id. at 197-98.

vi. Reapportionment Calculations

- *Total VT population.* Vermont's total population after 2010 census = **625,741** (2000 census = 608,827). Under our 2010 population:
 - *House:* 625,741 divided by 150 Reps [= apportionment standard or ideal population] =
 - 1-member = 4,172
 - 2-member = 8,344
 - *Senate:* 625,741 divided by 30 Senators =
 - 1-member = 20,858
 - 2-member = 41,716
 - 3-member = 62,574
 - 4-member = 83,432
 - 5-member = 104,290
 - 6-member = 125,148
- *Deviation Calculation:*
 - Actual population – Ideal Population = Deviation
 - Deviation / Ideal Population x 100 = Percentage Deviation
- *Example:*
 - 2002 Chittenden Senate District had 139,478 people under 2010 census figures
 - $139,478 - 125,148 = 14,330$
 - $14,330 / 125,148 \times 100 = \mathbf{11.45\%}$
- *Overall Deviation* = Highest high deviation + Lowest low deviation (disregarding negative)

vii. Timeframe

- July 1, 2020: Deadline to appoint seven-member Legislative Apportionment Board (LAB). [17 V.S.A. § 1904\(b\)](#).
- July 1, 2021: LAB deadline to:
 - Prepare tentative House proposal. [17 V.S.A. § 1905](#).
 - Submit its final Senate proposal to Senate. [17 V.S.A. § 1907](#).
- Aug. 1, 2021: Town deadline to respond to LAB tentative House proposal. [17 V.S.A. § 1905](#).
- Aug. 15, 2021: LAB deadline to submit its final House proposal to House. [17 V.S.A. § 1906](#).
- Fall 2021: Potential HGO Reapportionment Roadshow. In late Oct.-early Dec. 2011:
 - 1) *Lake Region Union High School* (Lowell, Coventry, Newport City, Newport Town, Albany, Glover, Craftsbury, Greensboro, Barton, Troy, Montgomery, Westfield, Jay, Irasburg, Sheffield, Wheelock, Enosburg, Derby)
 - 2) *Rutland Intermediate School* (Ludlow, Mount Holly, Shrewsbury, Weston, Clarendon, Rupert, Pittsford, Chittenden, Wallingford, Rutland Town and City, West

- Rutland, Mendon, Bridgewater, Sudbury, Tinmouth, Brandon, Middletown Springs, Wells, Pawlet, Proctor)
- 3) *State House* (Bolton, Buel's Gore, Duxbury, Fayston, Huntington, Moretown, Roxbury, Warren, Waterbury & Waitsfield, Cabot, Calais, Danville, East Montpelier, Groton, Marshfield, Middlesex, Northfield, Berlin, Plainfield, Worcester, Woodbury, Barre Town, Barre City, Montpelier, Wolcott, Morristown, Elmore, Peacham, Orange, Topsham, Newbury, Washington, Williamstown, Chelsea, Vershire)
 - 4) *Bennington Fire Station* (Arlington, Bennington, Pownal, Shaftsbury, Sunderland, Stamford, Woodford, Rupert, Sandgate, Glastenbury)
 - 5) *Burlington High School* (Burlington, Colchester, South Burlington, Winooski)
 - 6) *Brattleboro Union High School* (Athens, Brookline, Dover, Grafton, Jamaica, Londonderry, Marlboro, Newfane, Rockingham, Stratton, Wardsboro, Wilmington, Putney, Westminster, Brattleboro, Guilford, Vernon, Windham, Winhall, Dummerston, Halifax, Readsboro, Searsburg, Somerset, Whitingham, Townshend, Weston)
- Mid-2022 Leg. Session: Enact initial House plan. See [2012, No. 74](#), enacted 2/28/12.
 - “As soon as practical” thereafter, by April 1, 2022: BCAs may propose further House district divisions. [17 V.S.A. § 1906b\(b\) and \(e\)](#); [17 V.S.A. § 1906c\(b\) and \(e\)](#).
 - Adjournment Sine Die: Deadline to enact final House and Senate districts. [Vt. Const. Ch. II, § 73](#). See [2012, No. 93](#), enacted 5/1/12.

D. Miscellaneous Recent Election Acts

- Automatic Voter Registration
 - [2016, Act No. 80](#)
 - [2016, Act No. 80 Summary](#)
- Election Day Registration
 - [2015, Act No. 44](#)
 - [2015, Act No. 44 Summary](#)
- National Popular Vote–Presidential Election
 - [2011, Act No. 10](#)
 - [2011, Act No. 10 Summary](#)
- Protection of Information in the Statewide Voter Checklist
 - [2018, Act No. 128](#)
 - [2018, Act No. 128 Summary](#)
- Recounts
 - [2017, Act No. 50](#)
 - [2017, Act No. 50 Summary](#)

- Standardized Ballots and Vote Tabulators
 - [2014, Act No. 161](#)
 - [2014, Act No. 161 Summary](#)

IV. LOBBYING

A. Freedom of Association

The U.S. Supreme Court recognized the right of association in NAACP v. Alabama.⁸⁷ There, the Court stated that effective advocacy “is undeniably enhanced by group association”; that there is a nexus between the freedoms of speech and assembly; and that the freedom to associate for the advancement of beliefs and ideas is an inseparable aspect of the “liberty” ensured by the 14th Amendment’s Due Process Clause.^{88,89}

B. Validity of Lobbying Disclosures

Since the 1954 U.S. Supreme Court case U.S. v. Harris,⁹⁰ the Court has upheld forms of lobbying disclosures. Harris held that the disclosures of the former federal Lobbying Act did not violate the First Amendment, rationalizing:

Present-day legislative complexities are such that individual members of Congress cannot be expected to explore the myriad pressures to which they are regularly subjected. Yet full realization of the American ideal of government by elected representatives depends to no small extent on their ability to properly evaluate such pressures. Otherwise the voice of the people may all too easily be drowned out by the voice of special interest groups seeking favored treatment while masquerading as proponents of the public weal. This is the evil which the Lobbying Act was designed to help prevent.

Toward that end, Congress has not sought to prohibit those pressures. It has merely provided for a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose. It wants only to know who is being paid, who is putting up the money, and how much . . .

Under these circumstances, we believe that Congress, at least within the bounds of the Act as we have construed it, is not constitutionally forbidden to require the disclosure of lobbying activities. To do so would be to deny Congress in large measure the power of self-protection.⁹¹

The Vermont Supreme Court quoted this Harris analysis in Kimbell v. Hooper⁹² in upholding Vermont’s lobbying disclosure law, finding our State law to be a “reasonable means of evaluating the lobbyist’s influence on the political process.”⁹³

⁸⁷ National Association for the Advancement of Colored People v. State of Alabama, 357 U.S. 449 (1958).

⁸⁸ Id. at 460.

⁸⁹ Cf. Hague v. Committee for Industrial Organization, 307 U.S. 496, 527 (1939) (“[T]he liberty guaranteed by the due process clause is the liberty of natural, not artificial persons.” (other citations omitted)).

⁹⁰ U.S. v. Harris, 347 U.S. 612 (1954).

⁹¹ Id. at 625.

⁹² Kimbell v. Hooper, 164 Vt. 80, 85-86 (1995).

⁹³ Id. at 87.

C. Vermont Lobbying Provisions

i. Definitions

Sampling from [2 V.S.A. § 261](#):

- (9) “Lobby” or “lobbying” means:
 - (A) to communicate orally or in writing with any legislator or administrative official for the purpose of influencing legislative or administrative action;
 - (B) solicitation of others to influence legislative or administrative action;
 - (C) an attempt to obtain the goodwill of a legislator or administrative official by communications or activities with that legislator or administrative official intended ultimately to influence legislative or administrative action; or
 - (D) activities sponsored by an employer or lobbyist on behalf of or for the benefit of the members of an interest group, if a principal purpose of the activity is to enable such members to communicate orally with one or more legislators or administrative officials for the purpose of influencing legislative or administrative action or to obtain their goodwill.
- (10) “Lobbyist” means a person who receives or is entitled to receive, either by employment or contract, \$500.00 or more in monetary or in-kind compensation in any calendar year for engaging in lobbying, either personally or through his or her agents, or a person who expends more than \$500.00 on lobbying in any calendar year.
- (12) “Lobbying firm” means a sole proprietorship, partnership, corporation, limited liability corporation, or unincorporated association which receives or is entitled to receive \$500.00 or more in monetary or in-kind compensation for engaging in lobbying, either personally or through its agents, in any calendar year and employs more than one individual lobbyist, contracts with at least one other lobbyist, or is affiliated with at least one other lobbyist.
- (4) “[Lobbyist] Employer” means any person, other than a lobbying firm, who engages the services of a lobbyist for compensation for the purpose of lobbying. A lobbyist who employs another lobbyist shall be required to register and report both as an employer and a lobbyist.

ii. Lobbying Entity Regulation

- [2 V.S.A. chapter 11](#) covers lobbyist regulation.
- Under this chapter, lobbying entities register and file reports with the Secretary of State.
 - See [Secretary of State Lobbying Information System](#).
 - See also [Secretary of State; “Guide to Vermont’s Lobbying Registration and Disclosure Law.”](#)
- The Attorney General investigates lobbying complaints, [2 V.S.A. § 267a](#); and enforces lobbying laws, [2 V.S.A. § 268](#).

iii. Prohibited Conduct

- *Legislators simultaneously serving as lobbyists.* [Vt. Const. Ch. II, § 12](#): “No member of the General Assembly shall, directly or indirectly, receive any fee or reward, to bring forward or advocate any bill, petition, or other business to be transacted in the Legislature; or advocate any cause, as counsel⁹⁴ in either House of legislation, except when employed in behalf of the State.”
- *Monetary gifts.* Under the lobbying chapter, lobbyists, lobbying firms, and lobbyist employers are permitted to give gifts to legislators and administrative officials, but pursuant to [2 V.S.A. § 264\(b\)\(3\) and \(c\)\(3\)](#) and [§ 264b\(b\)\(3\)](#), those lobbying entities are required to report any gift greater than \$15.00. However, those provisions also specifically prohibit those lobbying entities from giving monetary gifts to legislators and administrative officials, other than political contributions.
- *Soliciting gifts.* Legislators and administrative officials are prohibited from soliciting gifts from lobbying entities, except for charitable contributions to § 501(c)(3) nonprofits, and except for campaign contributions after adjournment *sine die*. [2 V.S.A. § 266\(a\)\(2\)](#).
- *Campaign contributions.* [2 V.S.A. § 266\(a\)\(3\)](#) prohibits lobbyists, lobbyist employers, and lobbying firms from giving campaign contributions to a legislator while the General Assembly is in session, until adjournment *sine die*, and prohibits legislators and administrative officials from soliciting campaign contributions during that timeframe.
- *“Revolving door” prohibitions.* A legislator or an Executive officer, for one year after leaving office, shall not be a lobbyist in this State. [2 V.S.A. § 266\(b\)\(1\)](#).
- *Lobbying compensation contingencies.* Lobbyists and lobbying firms are prohibited from receiving compensation that is dependent on a contingency. [2 V.S.A. § 266\(a\)\(1\)](#).

iv. Lobbying Disclosures

- Standard disclosures: [2 V.S.A. § 264](#) and [§ 264b](#).
- Identification information in lobbying advertisements, and special lobbying advertisement reports: [2 V.S.A. § 264c](#).

⁹⁴ Prior to significant amendments in 1990 to our Title 2 lobbying chapter, the term “legislative counsel” was used in lieu of today’s term “lobbyist.” See, e.g., 1975, No. 230 (Adj. Sess.), Sec. 1, 2 V.S.A. § 251(1): “‘Legislative counsel’ means any person who for compensation appears at any public hearing before committees of the legislature with the purpose of influencing any legislative action.”

VI. PUBLIC SAFETY

A. Law Enforcement

- See [“Vermont Law Enforcement Structure in the Operation of Government: Legal Reference Guide”](#)
- See also [Summary of Previous Studies on Law Enforcement Structure](#)

B. Fire

- Vermont Fire Service Training Council: [20 V.S.A. ch. 179](#).

C. Emergencies

- Emergency management: [20 V.S.A. ch. 1](#).
- Emergency interim succession to offices:
 - [Vt. Const. Ch. II, § 24](#).
 - [20 V.S.A. ch. 7](#).

VII. PROFESSIONAL REGULATION

A. Generally

- [26 V.S.A. § 3101](#) sets forth the State’s general policy for regulating professions.
 - This section provides that a profession should be regulated solely for the purpose of protecting the public.
 - [26 V.S.A. § 3105](#) sets forth criteria and standards for professional regulation.
- There are three standard types of regulation: licensure, certification, and registration. [3 V.S.A. § 3101a](#).

B. Law Enforcement Officers

- Law enforcement officers are professionally regulated by the Vermont Criminal Justice Training Council. *See*:
 - [20 V.S.A. ch. 151, subch. 2](#) (unprofessional conduct).
 - Council provisions in [“Vermont Law Enforcement Structure in the Operation of Government: Legal Reference Guide”](#)

C. Department of Public Safety

- Plumbers: [20 V.S.A. ch. 39](#) (plumbers and plumbing).
- Electricians: [20 V.S.A. ch. 15](#) (electricians and electrical installations).

D. Office of Professional Regulation (OPR)

- Established under the Office of Secretary of State. [3 V.S.A. ch. 5, subch. 3](#) (professional regulation).
- Regulates the approx. 50 professions set forth in [3 V.S.A. § 122](#).
 - All professionals regulated by OPR are subject to the professional conduct standards set forth in [3 V.S.A. § 129a](#).
 - Individual professions may have additional professional conduct standards set forth in their individual chapter within [Title 26](#) (professions and occupations).
 - The professional regulation structure may be a:
 - “Board model,” in which a board – normally comprised of professional peers and public members – generally regulates the profession; or
 - “Advisor model,” in which appointed advisors generally assist the Director of OPR in regulating the profession.
- [26 V.S.A. § 3104](#) provides OPR with “sunrise” and “sunset” provisions to analyze the need – or continuing need – to regulate a profession.
 - *See* [OPR Sunrise Review webpage](#).