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CAMPAIGN FINANCE REFORM

Randall v. Sorrell

In a narrowly confined decision the U.S. Supreme Court struck down Vermont's mandatory campaign expenditure and contribution limits on June 26, 2006.

In a total of six separate opinions, the Court held by a 6-3 margin, that a state may not impose mandatory limitations on campaign expenditures under the Supreme Court's 1976 decision in *Buckley v. Valeo*. Justice Breyer's plurality opinion stated that the Court found "no special justification" that would require overruling *Buckley* with respect to expenditure limits.

While acknowledging the Court's previous decisions upholding the validity of campaign contribution limits generally, Justice Breyer, writing for a plurality, stated that the Court "must recognize the existence of some lower bound," and that "[a]t some point the constitutional risks to the democratic electoral process become too great." Vermont's contribution limits were considered the strictest in the nation.

Brennan Center Analysis of Holding on Expenditure Limits

- While *Buckley* did not categorically preclude the possibility of mandatory spending limits that might meet constitutional scrutiny, the Court's decision in *Randall v. Sorrell* does not change the legal status quo of expenditure limits.
- Most importantly, the Court's decision does not impact the constitutionality of voluntary expenditure limitations contained in public financing systems.

Brennan Center Analysis of Holding on Contribution Limits

- While the plurality opinion of the Court struck down Vermont's uniquely restrictive contribution limits, it did not strike down limits on campaign contributions as a general matter.
- The plurality opinion went to great lengths to emphasize that Vermont's limits (\$200 for state House campaigns, \$300 for state Senate races and \$400 for statewide offices) were the nation's most restrictive. Further, the plurality opinion emphasizes five factors specific to Vermont's law which, *taken together*, led the Court to conclude that Vermont's contribution limits were not sufficiently narrowly tailored to withstand First Amendment scrutiny. The five factors identified by the Court are set out below in the summary of Justice Breyer's opinion.

Summaries of Individual Opinions

Justice Breyer (joined by Chief Justice Roberts, and in part by Justice Alito)

According to Justice Breyer, Vermont's expenditure limits violate the First Amendment under *Buckley v. Valeo*. According to Justice Breyer, Vermont presented "no special justification" that would have required the overruling of *Buckley* with respect to expenditure limits.

With respect to contribution limits, Justice Breyer states that Vermont's exceptionally low

contribution limits fail to satisfy the First Amendment's requirement of careful tailoring. This failure is due to a combination of five factors "taken together:" (1) that the contribution limits appeared to restrict the amount of money available to challengers to run competitive elections; (2) political parties were subject to the same contribution limitations, infringing on rights of association; (3) Vermont's law "would seem to" count a volunteer's expenses against the volunteer's contribution limit, and in the context of a very low contribution limit, that imposes too high a First Amendment cost; (4) the limits were not indexed for inflation; and (5) the record did not show a particular need for such low limits.

Justice Thomas's Concurrence (joined by Justice Scalia)

Justice Thomas and Scalia stake out the broadest position of the concurring Justices. They would overrule *Buckley* on the ground that the "illegitimacy of *Buckley* is... underscored by the inability of the Court... to apply *Buckley* in a coherent and principled fashion. As a result, *stare decisis* should pose no bar to overruling *Buckley* and replacing it with a standard faithful to the First Amendment."

Justice Kennedy's Concurrence

Justice Kennedy expresses deep concerns about the "universe of campaign finance regulation" that he feels the "Court has in part created and in part permitted by its course of decisions." Consequently, he finds that while "the result the plurality reaches is correct" he feels that due to his overall "skepticism" it is appropriate "to concur only in the judgment."

Justice Alito's Concurrence

Justice Alito declines to reach the question of whether to overrule *Buckley*. Justice Alito finds it troubling that supporters of the Vermont law relied on *Buckley* in arguing for contribution limits, but argue in favor of overruling it with respect to expenditure limits. According to Justice Alito, the proponents of Vermont's law failed to adequately address the doctrine of *stare decisis* and the Court's cases elaborating on the circumstances in which it is appropriate to reconsider a constitutional decision.

Justice Souter's Dissent (joined by Justice Ginsburg; joined in part by Justice Stevens)

Justice Souter would follow the approach of the U.S. Court of Appeals for the Second Circuit and remand to the District Court for further proceedings as to whether sufficient reason exists to justify Vermont's limits on expenditures. According to Justice Souter "the findings made by the Vermont Legislature on the pernicious effect of the nonstop pursuit of money" were significant enough to justify the remand.

Justice Souter would uphold Vermont's contribution limits as constitutional and the plurality's conclusion to the contrary amounts to second-guessing the Vermont legislature's judgment, contrary to the Court's own "self-admonition."

Justice Stevens's Dissent

Justice Stevens is "convinced that *Buckley*'s holding on expenditure limits is wrong, and that the time has come to overrule it." Justice Stevens would remand for further proceedings on Vermont's expenditure limits and would uphold Vermont's contribution limits as constitutional. Justice Stevens's opinion advocates the most sweeping position of the Justices in favor of campaign finance regulation, stating that "it is quite wrong to equate money and speech."

Key Excerpts from Individual Opinions

Litigation

- [Supreme Court Decision \(June 26, 2006\)](#)
- [Amicus Brief on the Merits \(Supreme Court 2006\)](#)

- [Amicus Brief in Support of Cert Petition](#)
- The Center also submitted an amicus brief on its own behalf in the Second Circuit, where the case was known as *Landell v. Sorrell*. To view the amicus brief, submitted in 2000, click [here](#).

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