

## **QUESTIONS AND ANSWERS ABOUT THE SECOND CIRCUIT’S DECISION IN *LANDELL V. SORRELL***

On August 7, 2002, in a stunning 145-page decision (including a 79-page dissent), the U.S. Court of Appeals for the Second Circuit upheld Vermont’s mandatory limits on campaign spending by state candidates. The Second Circuit is the first federal appeals court to hold expenditure ceilings constitutional since the Supreme Court decided *Buckley v. Valeo*, the 1976 campaign finance case invalidating spending caps imposed under the Federal Election Campaign Act. Basic features of the Second Circuit decision, which also addresses the constitutionality of other campaign finance provisions, are discussed below. [Click here](#) for the Brennan Center’s *amicus* brief in the case.

### **What was challenged in *Landell v. Sorrell*?**

The case presented constitutional challenges to the following provisions of Vermont’s 1997 campaign finance law, Act 64:

- mandatory spending limits ranging from \$2,000 per election cycle for a state representative in a single-member district to \$300,000 per election cycle for governor, with a 10-15 percent reduction for incumbents;
- limits of \$200, \$300, and \$400 per election cycle on contributions to candidates for state representative, senator, and statewide office, respectively, from any one source (individual, political action committee (“PAC”), or political party);
- a \$2,000 limit on contributions from any one source to political parties and PACs;
- a definition of third-party “related expenditures” that may be treated as contributions to and expenditures by the candidate, including a rebuttable presumption that expenditures benefiting fewer than six candidates are “related”; and
- a rule that contributions received from out-of-state sources may not exceed 25 percent of a candidate’s total contributions.

### **What did the Second Circuit decide?**

The Court upheld the contribution and expenditure limits, invalidated the limit on contributions from out-of-state sources, and sent the case back to the trial court for further proceedings on the effect of Act 64 on PACs that do not contribute to candidates and on money transfers between national and local political party committees.

### **Given *Buckley*, how could the Second Circuit uphold mandatory expenditure limits?**

The Second Circuit rejected the argument that *Buckley* categorically prohibits campaign spending caps, reasoning that the Supreme Court's decision was rooted in Congress's "fail[ure] to assert any sufficiently important interest that its expenditure limitations served." According to the *Landell* majority, "there remains [after *Buckley*] the possibility that a legislature could identify a sufficiently strong interest, and develop a supporting record, such that some expenditure limits could survive constitutional review." The Second Circuit reviewed the extensive record evidence of special interest influence on politicians and public policy and found that Vermont had demonstrated a compelling interest in "safeguarding its political process from . . . contributor dominance" that justified spending limits and not only contribution limits. The Court's insistence upon grounding its decision in empirical fact, rather than theory or speculation, may be the most important feature of the opinion.

### **Does *Landell* teach us anything new about individual contribution limits?**

Since the Supreme Court decided *Nixon v. Shrink Missouri Government PAC*, no court has invalidated individual contribution limits. *Landell* reminds us of the inquiry that courts undertake to ensure that caps are not unconstitutionally low. Among the factors that the Second Circuit mentioned in upholding the contribution limits were: the small percentage of contributions that exceeded the limits in the previous three election cycles; the successful conduct of an election under the limits; the availability of low-cost, highly effective methods of campaigning; and the comparability of the limits to those upheld in other jurisdictions.

### **What is the significance of upholding the limits on contributions to and from political parties?**

The Second Circuit recognized, as the trial court did not, that political parties "do not deserve a special exemption from generally applicable contribution limits." The opinion confirms that limits on contributions to and from political parties do not have to be separately analyzed once individual limits are found constitutional.

### **Why is the ruling on "related expenditures" important?**

With its definition of "related expenditures," Vermont seeks to identify when expenditures are coordinated and when they are genuinely independent. *Landell* is significant because it upholds a rebuttable presumption that expenditures by political parties or PACs that benefit six or fewer candidates are contributions to those candidates. The Second Circuit explicitly distinguishes the *rebuttable* presumption employed by Vermont from the conclusive presumption of coordination found impermissible by the Supreme Court in *Colorado Republican I*. *Landell* confirms that rebuttable presumptions can be used to define the parameters of coordinated expenditures.

### **Why did the Court invalidate the limit on out-of-state contributions?**

The Court found no state interest sufficient to justify limiting contributions from out-of-state sources, because the record suggested that such contributions could potentially cause harm only if they were individually large rather than “cumulatively great.” Because out-of-state sources would be subject to Vermont’s contribution limits, and Vermont’s expenditure limits would reduce excessive reliance on contributors, the Court invalidated the out-of-state source restriction and severed it from the rest of the law. Before *Landell*, the two courts that had considered challenges to such a restriction had split with respect to its constitutionality.

### **What remains to be decided?**

The Second Circuit sent the case back for more evidence about the impact of Act 64 on PACs that make only independent expenditures. The trial court will decide in the first instance whether contributions to such PACs are covered and, if so, whether the regulation is justified. The trial court will also investigate how national and local affiliates of political parties interact and how they might be affected by limits on transfers.

### **In a nutshell, what was the thrust of the dissenting opinion?**

Bear in mind that the dissenting judge represented Buckley in *Buckley v. Valeo*. He understands that case to impose a *per se* ban on mandatory spending limits, which is how most other courts have read it. In his view, “Act 64’s limits on expenditures by candidates violate the First Amendment because they limit political speech, . . . for no permissible purpose, and entrust those who enforce the law with unfettered . . . discretion to determine what acts of political advocacy are permitted and prohibited.” The dissent also argues that the Act’s affiliation rule for political parties – aggregating contributions to state, county, and local committees for purposes of the limit – is unconstitutional.

### **Where does the case go from here?**

There are two potential avenues for further consideration by the courts:

- The plaintiffs may ask the Second Circuit to hear the case *en banc*, meaning that all of the Second Circuit judges, and not only the *Landell* panel members, could reconsider the constitutional challenges. The Second Circuit has discretion to decide whether or not to hear the case. Given the significance and controversy of the case, there is a good chance that the Court would grant a petition for rehearing *en banc*.
- If the Second Circuit declines to hear the case *en banc*, or after the Second Circuit issues an *en banc* decision, the U.S. Supreme Court may be asked to review the decision. The Supreme Court also has discretion to decide whether or not to hear the case. It is very likely that the Court would agree to review a decision upholding the constitutionality of spending limits, but there is also a possibility that it would take the case even if the Second Circuit *en banc* invalidates the limits.

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