SUPREME COURT OF THE UNITED STATES

Nos. 04–1528, 04–1530 and 04–1697

NEIL RANDALL, ET AL., PETITIONERS
04–1528 *v.*
WILLIAM H. SORRELL ET AL.

VERMONT REPUBLICAN STATE COMMITTEE, ET AL., PETITIONERS
04–1530 *v.*
WILLIAM H. SORRELL ET AL.

WILLIAM H. SORRELL, ET AL., PETITIONERS
04–1697 *v.*
NEIL RANDALL ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 26, 2006]

JUSTICE KENNEDY, concurring in the judgment.

The Court decides the constitutionality of the limitations Vermont places on campaign expenditures and contributions. I agree that both limitations violate the First Amendment.

As the plurality notes, our cases hold that expenditure limitations "place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate." *Buckley* v. *Valeo,* 424 U. S. 1, 58–59 (1976) *(per curiam);* see also *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n,* 518 U. S. 604, 618 (1996) (principal opinion); *Federal Election Comm'n* v. *National Conservative Political*

Action Comm., 470 U. S. 480, 497 (1985).

The parties neither ask the Court to overrule *Buckley* in full nor challenge the level of scrutiny that decision applies to campaign contributions. The exacting scrutiny the plurality applies to expenditure limitations, however, is appropriate. For the reasons explained in the plurality opinion, respondents' attempts to distinguish the present limitations from those we have invalidated are unavailing. The Court has upheld contribution limits that do "not come even close to passing any serious scrutiny." *Nixon* v. *Shrink Missouri Government PAC,* 528 U. S. 377, 410 (2000) (KENNEDY, J., dissenting). Those concerns aside, Vermont's contributions, as the plurality's detailed analysis indicates, are even more stifling than the ones that survived *Shrink*'s unduly lenient review.

The universe of campaign finance regulation is one this Court has in part created and in part permitted by its course of decisions. That new order may cause more problems than it solves. On a routine, operational level the present system requires us to explain why $200 is too restrictive a limit while $1,500 is not. Our own experience gives us little basis to make these judgments, and certainly no traditional or well-established body of law exists to offer guidance. On a broader, systemic level political parties have been denied basic First Amendment rights. See, *e.g.*, *McConnell* v. *Federal Election Comm'n,* 540 U. S. 93, 286–287, 313 (2003) (KENNEDY, J., concurring in judgment in part and dissenting in part). Entering to fill the void have been new entities such as political action committees, which are as much the creatures of law as of traditional forces of speech and association. Those entities can manipulate the system and attract their own elite power brokers, who operate in ways obscure to the ordinary citizen.

Viewed within the legal universe we have ratified and helped create, the result the plurality reaches is correct;

given my own skepticism regarding that system and its operation, however, it seems to me appropriate to concur only in the judgment.