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Independent Expenditures in the Final Week of the 2010 Vermont Election

Campaign finance regulations are a point of contention as lawmakers work to balance First Amendment rights of individuals against ensuring fair and equal elections.¹ One of the more recent contentious aspects of campaign finance law is independent expenditures. Expenditures are considered independent when they are not controlled, directed, or approved by a candidate's campaign.² Independent expenditures can pay for campaign advertising, either to promote or attack a candidate as long as the candidate involved is not consulted concerning the specific message. Under current election law a party committee, corporation, union, or individual is allowed to spend unlimited amounts to independently support candidates.³

Two types of independent groups that make independent expenditures are 527s and 501(c)s.⁴ 527 organizations can raise unlimited money from individuals for voter mobilization and for issues advocacy, as long as they do not coordinate with a candidate or a party. 527s can create issue ads, which refers to campaign communications that do not explicitly endorse or oppose a candidate or a party.⁵ 501(c)s have a similar role to 527s except they do not have to disclose the name of their contributors.

These two groups have had profound and measurable effects on campaigns. First, they have enabled wealthy interests to avoid campaign finance limits and in the process exert a disproportionate influence on elections. Furthermore, as Professor of Political Science Anthony Gierzynski notes, 527s and 501(c)s independent spending is used to disseminate "what are often the most negative, distracting, and dubious messages of the election."⁶ This is due to the anonymity of such groups (because of the lax reporting requirements and the tendency of

¹ For a discussion of this conflict at the core of campaign finance rules see Anthony Gierzynski, *Money Rules: Financing Elections in America* (Boulder, CO: Westview Press, 2000).

² William T. Bianco and David T. Canon, *American Politics Today* (New York: W.W. Norton & Company, 2011).

³ Bianco and Canon, *American Politics Today*.

⁴ 527s and 501(c)s receive their names from the Internal Revenue Service tax code.

⁵ Anthony Gierzynski, *Saving American Elections: A Diagnosis and Prescription for a Healthier Democracy*, (Amherst: Cambria Press, 2011), 250.

⁶ Gierzynski, *Saving American Elections: A Diagnosis and Prescription for a Healthier Democracy*.

these groups to adopt nondescript names), which makes it difficult for voters (or journalists) to hold these groups accountable for the veracity of their messages.

It has proven difficult for governments to regulate independent expenditures due to the landmark ruling in *Buckley v. Valeo* (424 US 1, 1976). In this case, the Supreme Court ruled that campaign spending was a form of speech, therefore is protected under the First Amendment. Thereafter, limitations placed on spending by candidates, individuals, or groups have been considered violations of First Amendment Rights, and thus unconstitutional.⁷ The *Buckley* decision has also enabled groups to have a greater influence in elections through its narrow definition of “electioneering communications.” Professor Gierzynski notes, “[c]ommunications that explicitly advocate the election or defeat of a candidate, using the words ‘vote for, elect, support, cast your ballot for, Smith for Congress, vote against, defeat, and reject’ were considered *express advocacy* or electioneering communications; all other forms of communication during elections (what became known as *issue advocacy*) lay outside the election law.”⁸ Furthermore, in the 2010 case *Citizens United v. Federal Election Commission*, the court extended these rights to corporations and unions, effectively barring any limitations placed on their ability to impact elections.⁹

The Case of Vermont: 2010 Election Cycle

This report documents the independent media expenditures for the very end of the 2010 election cycle in Vermont. To do so, we used the 2010 Mass Media Filings posted on the Secretary of State’s website. The Vermont Secretary of State Election Office indicates that, “Mass media activities include television commercials, radio commercials, mass mailings, literature drops and central telephone banks which include the name or likeness of a clearly identified candidate for office.”¹⁰ These official forms require that, “Any person who makes expenditures totaling \$500 or more for mass media activities within 30 days of a primary or general election shall report such expenditures to the Vermont Secretary of State and to each candidate whose name or likeness is included in the activity within 24 hours of making the expenditure(s).”¹¹

We limited our analysis to reported media spending by independent groups or individuals (and excluded media spending by candidates). While creating the figures later in this report, media expenditures made for more than one office was counted in its entirety toward *each* office. Thus, if a committee filed an expenditure amounting to \$1,000 for a TV ad that included in it a candidate for the VT house and VT Senate, \$1,000 was added to each office amount. This explains why the sum of all expenditures by office exceeds the overall total of \$1,756,603.

⁷ Gierzynski, *Saving American Elections: A Diagnosis and Prescription for a Healthier Democracy*.

⁸ Gierzynski, *Saving American Elections: A Diagnosis and Prescription for a Healthier Democracy*.

⁹ US Supreme Court Media Oyez, *Citizens United v. Federal Election Commission*, January 21, 2010, accessed April 15, 2011, http://www.oyez.org/cases/2000-2009/2008/2008_08_205

¹⁰ Vermont Secretary of State Election Office, “Notice of Mass Media Activities,” November 4, 2010, accessed March 27, 2011, <http://vermont-elections.org/elections1/2010%20Mass%20Media/102710fox.pdf>.

¹¹ Vermont Secretary of State, “Notice of Mass Media Activities.”

Table 1 presents all independent mass media expenditures for the 2010 election cycle between October 25 and Election Day. All separate filings done by independent committees were aggregated. The table is organized by committee and shows: the candidate supported, the purpose of the expenditure, the party of the candidate(s) supported, the office sought by the candidate(s) supported, and the total amount spent.

Table 1: Vermont Independent Mass Media Expenditures, October 25 to November 2, 2010

Committee Name	Candidate(s) on whose behalf expenditure was made	Purpose	Party	Office Sought	Total Expenditures
Addison County Democratic Comm.	Peter Shumlin	Radio ads	Dem	Gov	\$700
Caledonia County Republican Election Committee	Janice Peaslee	Direct mail	Rep	VT Rep	\$995
Democratic Governors Association	Peter Shumlin	Media buy, direct mail, TV commercials	Dem	Gov	\$755,578
Green Mountain Prosperity PAC	Brian Dubie	TV buy, commissions, media buy, radio broadcasts, media production	Rep	Gov	\$672,019
NFIB/ Safe Trust Vermont (c/o Nancy Driscoll)	Brian Dubie	Radio ads	Rep	Gov	\$1,564
Planned Parenthood of Northern New England Action Fund	Peter Shumlin	TV ads	Dem	Gov	\$71,190
Professional Fire Fighters of Vermont	Jim Condos	Media buy	Dem	Sec. of State	\$1,350
Republican Governors Association	Brian Dubie	Media buy, commissions	Rep	Gov	\$134,447
Vermont Business Coalition	Brian Dubie	Radio ads	Rep	Gov	\$2,395
Vermont League of Conservative Voters	Compare gub. cand's' env. Positions	Environmental education for voters	Dem and Rep	Gov	\$8,759
Vermont Republican Federal Election Committee	Len Britton	TV ad	Rep	US Senator	\$50,000
Vermont Right to Life Committee Fund for Independent Political Expenditures	120 Candidates total	Postage, print, and mailing	Dem and Rep	Gov VT Sen VT Rep	\$6,603
Vermont Working Families Party	Peter Shumlin	Voter ed.	Dem	Gov	\$5,898
VT Conservation PAC	Peter Shumlin	Voter ed.	Dem	Gov	\$6,423
VT Senate Victory PAC	Dem Senate candidates	Design, print, and mailing	Dem	VT Senator	\$33,086
VT. Dem. House Camp.	Dem House candidates	Postage	Dem	VT Rep	\$3,836
Working Families Party	Peter Shumlin	Voter ed.	Dem	Gov	\$1,760
Total Independent Media Expenditures					\$1,756,603

Source: Created by the authors from data obtained from the Vermont Secretary of State's Office, accessed March 27, 2011, http://vermont-elections.org/elections1/2010_pre-GE_mass_media.html.

Figure 1 shows the total amount of independent media expenditures by office for the last week of the election campaign. As shown, the majority of expenditures were made in support or opposition to gubernatorial candidates. The race for Governor commanded 95% of the \$1,756,603 total independent expenditures for the time period covered. The remaining \$102,473 of expenditures occurred on behalf of candidates for the offices of Secretary of State, Vermont House and Senate, and the US Senate. Eighty-three percent of the total expenditures made in Vermont senate races can be attributed to the Vermont Senate Victory PAC. This PAC's reported media expenditures were focused exclusively on senator candidates in Chittenden County. Spending made on the behalf of the House was more equally distributed among the different counties.

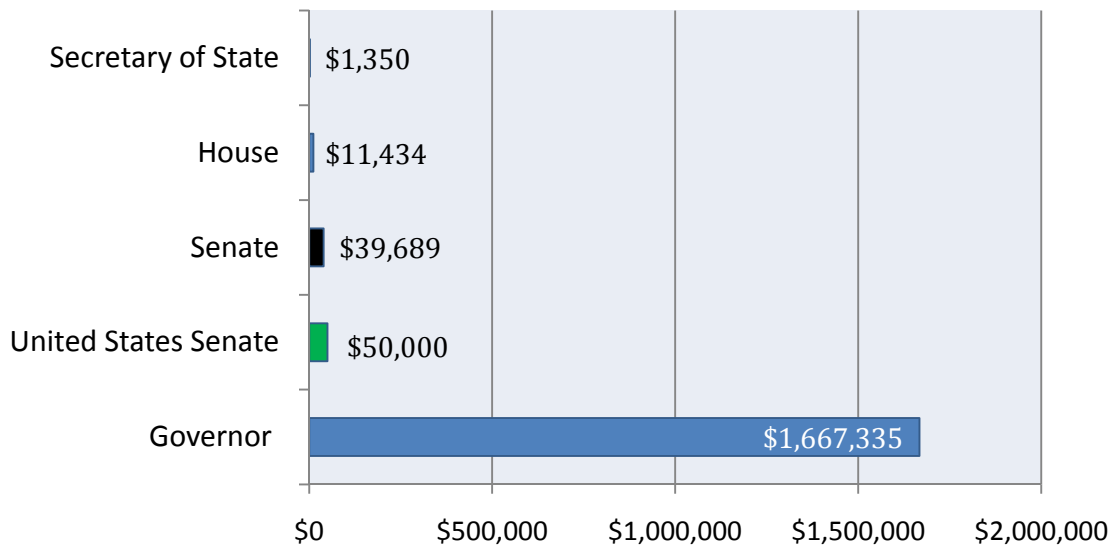


Figure 1: Independent Media Expenditures by Office Sought of Candidate Supported
Source: Created by the authors from data obtained from the Vermont Secretary of State's Office, accessed March 27, 2011, http://vermont-elections.org/elections1/2010_pre-GE_mass_media.html

Figure 2 shows the independent media expenditures in the final week of the election broken down by the political party of candidates supported. Expenditures made in support of Democratic candidates amounted to 49%, as did the amount towards Republican Candidates. The remaining 2% of expenditures were paid by the Vermont Right to Life Committee Fund for independent political expenditures, spending \$6,603.35, for postage, and the Vermont League of Conservative Voters, spending \$8,759, for voter education. These expenditures, which can be seen in detail in Figure 4, included candidates from both the Democratic and Republican parties.

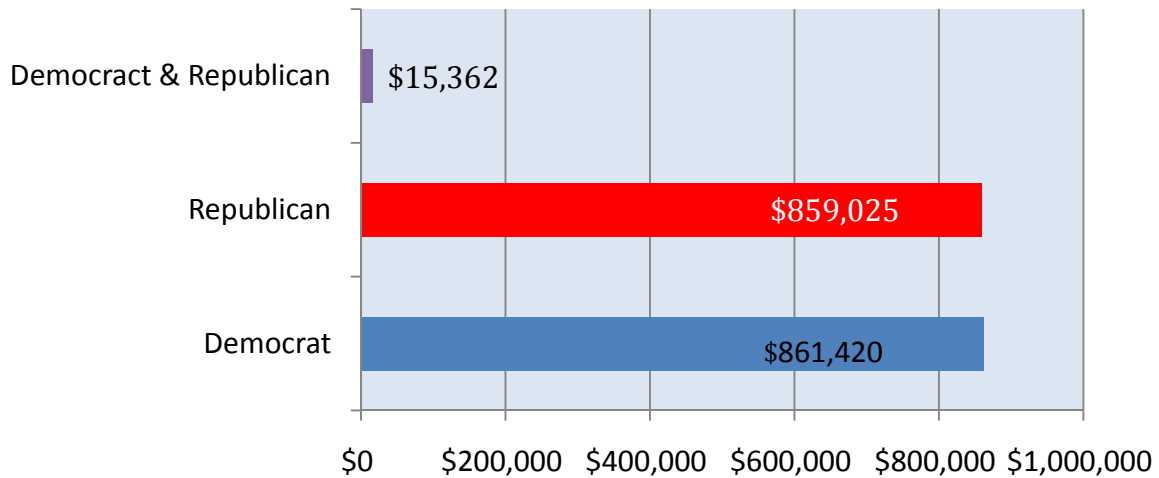


Figure 2: Independent Media Expenditures by Party of Candidate Supported
Source: Created by the authors from data obtained from the Vermont Secretary of State's Office, accessed March 27, 2011, http://vermont-elections.org/elections1/2010_pre-GE_mass_media.html

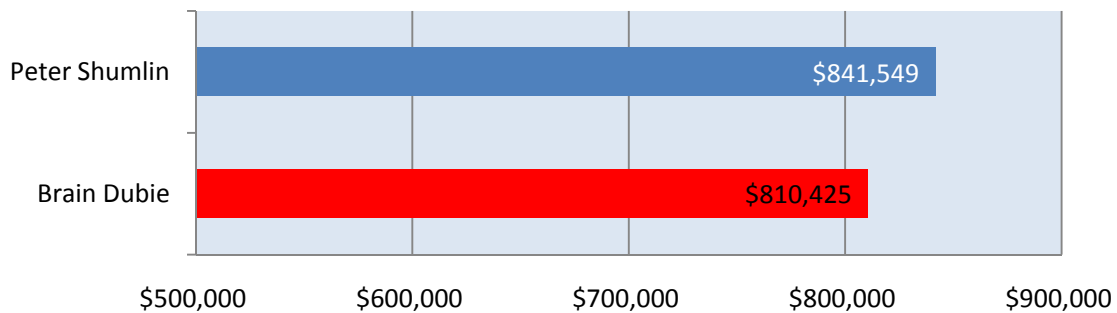


Figure 3: Independent Media Expenditures in Support of Gubernatorial Candidates
Source: Same as Figure 1 and Chart 1 and 2

As seen in Figure 1, 95% of the 2010 independent media expenditures in the final week of the election were made on behalf of candidates in the Governor's race. Figure 3 demonstrates the divide between the two candidates in the last days before the election. Peter Shumlin's campaign was supported by independent expenditures to the amount of \$841,549; the difference between Shumlin and Dubie's independent expenditures was \$31,124. Shumlin

commanded 49.6% of the vote, 119,543 votes, and Dubie received 47.8%, 115, 212 votes.¹² Overall, Dubie's campaign raised a total of \$1,578,060, while Shumlin's campaign raised a total of \$1,485,331; a difference of \$92,729 in the favor of Dubie.

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Disclaimer: This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the report does not reflect the official policy of the University of Vermont.

¹² New York Times, *Election Results 2010: Vermont*, accessed April 15, 2011, <http://elections.nytimes.com/2010/results/vermont>.