

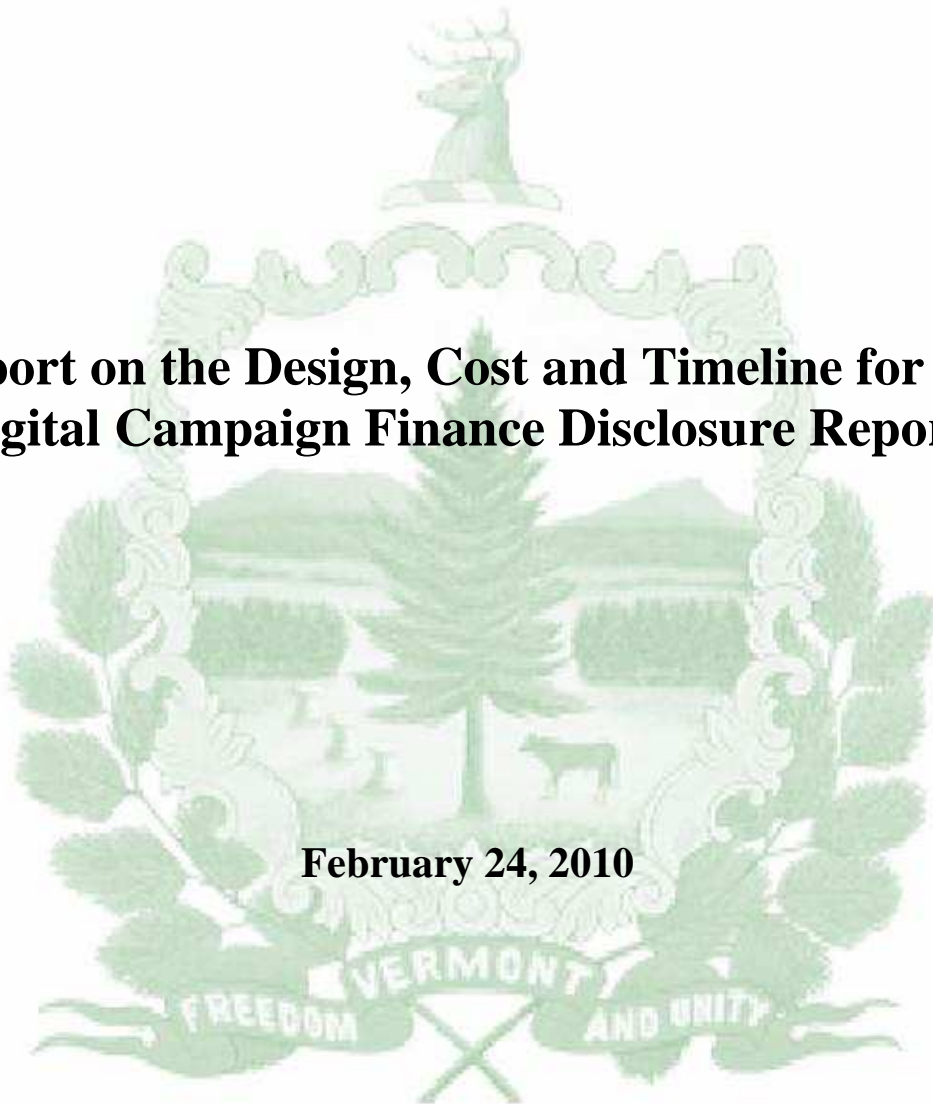
Report to the Vermont General Assembly

by the

Vermont Office of the Secretary of State

**A Report on the Design, Cost and Timeline for Filing
Digital Campaign Finance Disclosure Reports**

February 24, 2010



A Report on the Design, Cost and Timeline for Filing Digital Campaign Finance Disclosure Reports

Executive Summary -

This report describes how Vermont currently provides public access to campaign finance disclosure information filed with the Office of the Secretary of State. The report was requested by the House and Senate Committees on Government Operations with a specific focus on the issue of electronic filing.

Vermont has required campaign finance disclosure since 1916. In 1998 the legislature required the Secretary of State's office to make campaign finance disclosure reports available for viewing on-line. A group of legislators, press and public interest organizations met to discuss what this system should look like, and the resulting on-line disclosure system was created to meet their recommendations. Over the years the system has become out-dated and the Secretary of State's office advised the legislature that major improvements to the system were necessary and that it would require a financial investment, as well as a statutory change to require candidates to file disclosure reports in digital format. Until 2008, the legislature had been reticent to make such changes and asked that we look at other alternatives. However, we have concluded that only with electronic filing will Vermont be able to provide faster, more accurate, and more useful access to campaign finance disclosure reports.

In this report we find that moving to an electronic filing system will allow Vermont to have a campaign finance information database that is searchable and easy to navigate. However, to build such a system will be costly both in time and money. States that have created these systems have spent many millions of dollars, and we should expect to have to make a similar investment in Vermont to achieve the same results.

We recognize that this is not the time for major new investments and that the General Assembly is unlikely to authorize and fund a completely new system for electronic campaign finance disclosure. Consequently, this report also presents a short-term approach that attempts to provide meaningful improvement to public access for the current election cycle while the legislature continues to consider ways to finance and implement a comprehensive approach.

Authority for Report –

This report is submitted in accordance with the requirements of Act 17 of 2009¹. Section 2 of the act reads:

The secretary of state shall file a report with the house and senate committees on government operations by February 5, 2010 that details the design of the system for

filing digital campaign finance forms, the cost implications of the system, and a timeline for implementing the system.

History of campaign finance reporting in Vermont²

1902 - Corrupt Practices Act (Act #6) prohibited candidates from paying to procure party nomination or paying newspaper publishers for endorsements. Public disclosure of campaign expenditures and contributions was not required.

1916 - Primary Act (Act #4, 1915, effective 1916) changed nominating process from party caucus system to direct primary. Candidates for statewide and Federal offices required to file campaign finance reports 10 days after primary. Fines established for violations.

1961 - Act #178 limited primary expenses in statewide races to \$7500.

1972 - Act #259 raised spending limits to \$40,000 for primary candidates for governor and \$20,000 for other statewide primaries and an equal amount for each category in the General Election. State and Federal candidates required to file reports of expenditures and contributions on multiple reporting dates for both primary and general election.

1976 - U.S. Supreme Court ruled in *Buckley v. Valeo* that spending limits are unconstitutional. Vermont repealed all limitations on expenditures, but retained its constitutionally permissible limits on contributions to candidates from individuals and political committees (Act #188).

1982 - Act #197 clarified that limitations on contributions apply separately to the primary and general elections and that out of state political committees had to follow Vermont law when contributing to statewide candidates.

1988 - Act #263 mandated that state representatives and senators and each candidate for county office who spent or received \$500 or more had to file campaign finance reports.

1992 - Act #156 established voluntary spending limits. Candidates could file an affidavit with the Secretary of State agreeing that their total expenditures would meet the following limits: \$400,000 for governor, \$100,000 for lieutenant governor, \$50,000 for attorney general, and \$40,000 for treasurer, secretary of state, and auditor of accounts. State senators and state representatives could also agree to preset limits. To offset the advantage of incumbencies, challengers were allowed to spend 110% of the voluntary limit for each office.

1997 - (Act #64) introduced some public funding for campaigns, changed reporting requirements and included limits on expenditures and contributions.

1998 - Act #64 went into effect the day after the 1998 general election for the 2000 election cycle. The provisions of Act 64 were added to the Vermont Statutes Annotated in Title 17, Chapter 59, Sections 2801 - 2893.

2000 - First candidates for governor and lieutenant governor receive public financing under Act #64.

2000 -August: In *Landell v. Sorrell et al*, Federal District Court Judge Sessions struck portions of Act #64 as unconstitutional, most notably striking limits on expenditure of candidates. The decision is appealed.

2004 -Second Circuit Court of Appeals issues Amended Opinion on the matter of *Landell v. Sorrell et al*.

2005 - Vermont Republican State Committee, et al, filed a Petition for Writ of Certiorari asking the United States Supreme Court to review the decision of the Second Circuit Court of Appeals. The U.S. Supreme Court agrees to hear oral arguments.

The Vermont General Assembly passed Act #62, which includes some stricter reporting requirements within 10 days of a primary or general election and also provides for increases to the stricken expenditure limits (still not in effect) based upon increases in the Consumer Price Index if the Court reinstates the expenditure limits.

2006 - June 26, 2006: U.S. Supreme Court found Act 64's expenditure limits unconstitutional and contributions limits too low.

Current Status –

As noted above, Vermont has required campaign finance disclosure since 1916. Campaign finance disclosure reports from that date through 2002 are available online through the Vermont State Archives.

Campaign finance disclosure reports since 2001 are available online through the Secretary of State's Elections Division. Scanned images of all reports are available for viewing and download. A basic search function allow for the retrieval of individual contributions and expenditures. This function has not been upgraded since its original installation nearly a decade ago. For regular visitors familiar with the search function, data are retrievable and generally usable. For casual visitors or those desiring to perform advance searches or extensive analysis of data, the search function is impractical and difficult to navigate.

Shortcomings of Current System

A useful measure of the adequacy of the current system is provided by the *Grading State Disclosure* reports published by the California Voting Project. This project is a non-partisan collaboration among UCLA, the California Voter Foundation, and the Pew Charitable Trusts³. The most recent report examined the 50 state disclosure systems in 2008⁴. Vermont ranked in the bottom 10 states in the areas of “Disclosure Content Accessibility⁵ and Online Contextual & Technical Usability⁶”

In its report on Vermont, the *Grading State Disclosure 2008* noted that digital images of all disclosure reports for statewide races are posted online within four days of receipt and can be browsed and downloaded. Data from statewide candidates' disclosure reports are also

presented as searchable text files that can be downloaded for offline analysis. Access to paper copies of disclosure reports is excellent. The 2008 report also credited Vermont for offering useful contextual information to the public, including detailed listings of candidates, explanations of the state's campaign finance regulations, and the ability to view historical data going back to 1916.

The 2008 report noted numerous shortcomings in the areas of accessibility and technical usability, concluding: "While the usability testers were able to complete their tasks more quickly this year, most testers still reported confusion and rated their experiences on the site unfavorably."⁷

Areas for potential improvement

The *Grading State Disclosure* report provides an evaluative framework for identifying areas for improvement in Vermont's system.

In the category of public access to campaign finance disclosure content, the highest rated states showed the following attributes⁸:

- paper disclosure reports are easily accessible and quickly provided at no or minimal cost to the public
- disclosure reports are published on the internet quickly, instantly in the best cases
- nearly all filing data is available online, at least in scanned format
- itemized contribution and expenditure data are available online
- the site offers a searchable database of itemized contributions and expenditures. The best sites offer smart search capability within one committee and across all filers and include search fields for donor, amount, and zip code.
- the site provides for online browsing and sorting as well as the ability to download data

In the category of technical usability of campaign finance disclosure sites, the highest rated states showed the following attributes⁹:

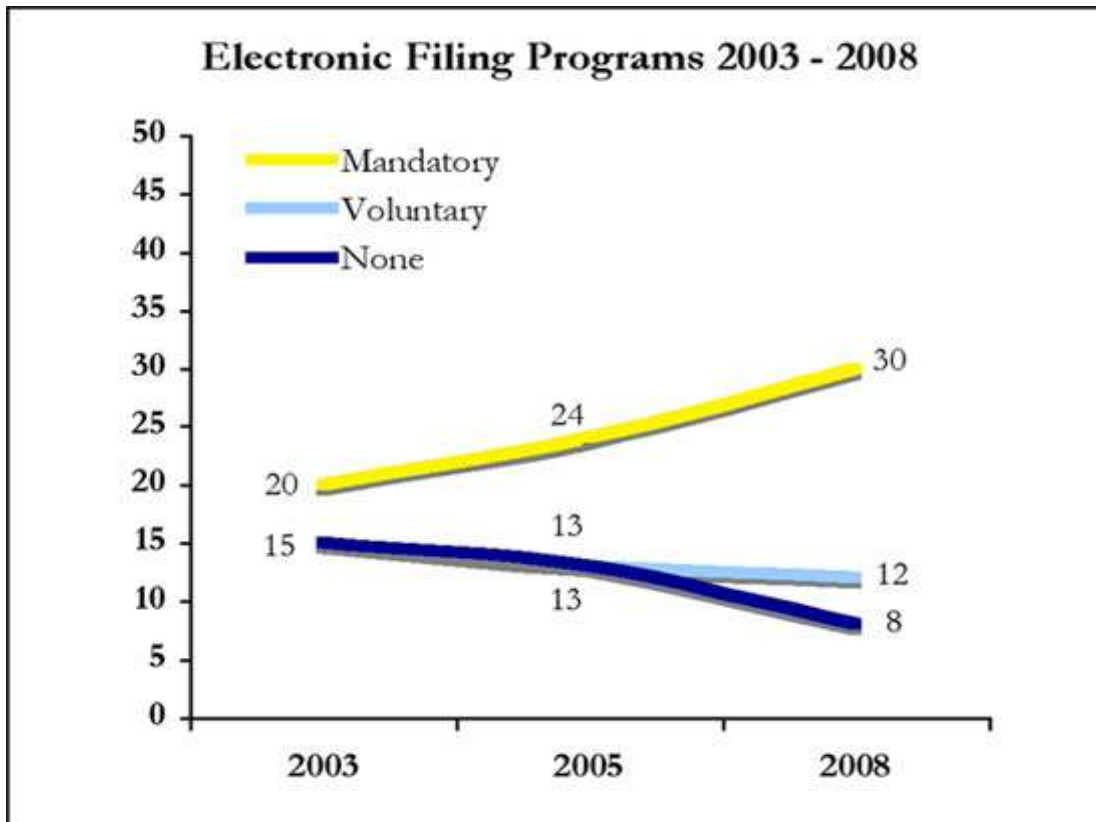
- the disclosure site is easy to find from the state homepage and agency contact information is prominently posted
- the site can be used without broadband connection
- the site provides instructions for public users
- the site provides information, such as summary campaign data and historical figures to give the public an overview of campaign financing trends
- the site provides information explaining the state's campaign finance restrictions and its disclosure requirements
- the site provides a comprehensive list of candidates for recent or current elections, including offices, district numbers and party affiliation
- the site provides clear information about reporting periods and the public can determine easily which filers' reports are available online and which ones are not

- the site provides clear and understandable terms to identify disclosure information
- the site provides access to original filings and amendments, and amendments are clearly labeled
- users can easily find information about donations to, and expenditures by, major party candidates for state offices

Long Term Solution – Replace the current paper filing system with an electronic method of disclosure.

The states that provide the most useful public access to campaign finance disclosure information all require electronic filing – all of the states in the top ten rankings of the *Grading State Disclosure 2008* report require electronic reporting for at least statewide campaigns. In addition the report finds that the surest path to improving public access is by implementing a system of electronic filing – the most improved states in the past decade are the ones who instituted and required electronic filing of reports.

This graph from *Grading State Disclosure 2008* illustrates the trend toward requiring electronic filing of campaign finance disclosure:



Grading State Disclosure 2008 p. 23

The same view is expressed by the National Council of State Legislatures:

“A recent trend in many states is electronic disclosure. A number of states require candidates to file their reports electronically, via a diskette or the Internet, and then post the disclosure information on a public Web site. Electronic filing is effective because it is quick and accurate. It is also inexpensive--once the software has been developed.”¹⁰

The recent experience of states developing the software for electronic disclosure indicates that this initial capital investment is high and the development time is lengthy. Colorado initiated a new system in January 2010. The contract cost for the system is just over \$1 million and the project took three years to complete after the legislature authorized it and provided funding¹¹. A similar project in Wisconsin took four years and cost over \$2 million.¹²

The availability of sufficient funding has been a factor in the implementation of electronic disclosure. The highest rankings are dominated by the most populous states, which have more state resources and likely a greater demand for disclosure, since larger states are usually home to more expensive political campaigns.¹³

If the General Assembly opts to require electronic reporting for some or all filers, there will be a need to provide the funding and time needed to develop and implement a new system. Based on the examples of Colorado and Wisconsin, the start-up cost would be over \$1 million and take at least three years. There would be additional ongoing operating costs for the Elections Division, and there would be some cost in time and expense to filers.

Short Term Measures - Make incremental improvements to the system for the current election cycle.

The 2010 state elections appear likely to include contested races for at least three open statewide offices and numerous open seats in the Vermont State Senate. These races hold the potential for record amounts of campaign spending. There is a significant public benefit to providing complete, timely and convenient public access to campaign finance disclosure filings.

As this report has shown, achieving excellence in campaign finance disclosure access will require considerable investment in time and money – neither of which is available in the current election cycle. Given this reality, the Office of the Secretary of State is exploring a number of incremental improvements which can be made within the current election cycle and at a modest cost. Examples of these improvements include:

- working with filers to implement voluntary electronic filing
- improving usability of disclosure web site by posting filed reports in an easy to find summary page
- making scanned images easier to view and download
- developing basic search functionality by donor, expenditure
- developing download ability for data files

Our goal is to identify and implement some or all of these incremental improvements in time for the 2010 primary and general elections, at least for statewide races. If we determine that these improvements will require spending in excess of currently authorized levels, the office will request additional spending authority for FY 2010 or FY 2011.

These modest improvements will have public value, but will not markedly change the overall ranking of Vermont on campaign finance disclosure access. Significant improvement will require a complete replacement of the current system along with a statutory requirement for electronic filing.

¹Vermont General Assembly. “Acts and Resolves 2009-2010 Legislative Session”
<http://www.leg.state.vt.us/docs/2010/ACTS/ACT017.pdf>

² The Vermont State Archives. 2006. “Time Line for Campaign Finance” <http://vermont-archives.org/govhistory/campaign/pdf/timeline.pdf>

³ Campaign Disclosure Project website <http://www.campaigndisclosure.org/>

⁴ . The California Voter Foundation. 2008. *Grading State Disclosure 2008*
html version at <http://www.campaigndisclosure.org/gradingstate/index.html>
pdf version at <http://www.campaigndisclosure.org/gradingstate/GSD08.pdf>

⁵ defined as “the degree to which the content of disclosure reports is available to the public.”
Ibid., p. 9

⁶ defined as “...the degree to which state disclosure web sites are technically and contextually ‘user-friendly’ to the public.” Ibid., p. 9

⁷ Ibid., p.81

⁸ Ibid., p.10

⁹ Ibid.

¹⁰ National Council of State Legislatures . 2009 “Campaign Finance: An Overview”.
<http://www.ncsl.org/default.aspx?tabid=16603>

¹¹ State of Colorado. 2008. Contract CLIN # 09VAA00010
<http://www.elections.colorado.gov/Content/Documents/Campaign%20Finance/Campaign%20Finance%20System%20Project/Amendment%201%20-%20Campaign%20Finance%20Contract.pdf>

¹² State of Wisconsin Elections Board. 2007 Board Memorandum “Report of Campaign Finance and Agency Operations Director”
<http://elections.state.wi.us/docview.asp?docid=12566&locid=47>

¹³ California Voter Foundation. 1999 *The Digital Sunlight Awards*.
<http://www.digitalsunlight.org/awards/report.html>