



Money in Politics Study

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Campaign finance reform/money in politics is a cross-cutting issue. Significantly, you will see in the report mention of a study that finds when there are stricter controls on campaign finance, more money is spent on social welfare programs. Accordingly, other issues about which the League of Women Voters of Virginia is concerned are directly affected by the rules impacting campaign contributions and expenditures.

The League of Women Voters of the U.S. position on Money in Politics provides the framework for a League of Women Voters of Virginia position. The U.S. League's current position calls for political equality, maximum participation by citizens, protection of a representative democracy, transparency regarding who is using money to influence elections and how that money is being spent by candidates, limits on election spending, and enforcement of campaign finance laws with properly funded, staff, and structured regulatory agencies. The state League does not have a position on dark money or campaign finance reform. This report examines Virginia's unique laws and focuses specifically on four important issues: limits on donors, limits on spending by candidates, oversight and enforcement mechanisms, and dark money.

I. Limits on Donors

Summary of Current Virginia Laws

Virginia is one of only five states in the U.S. that allows unlimited contributions from any type of donor. Virginia citizens are dissatisfied with this state of affairs. The Wason Center for Civic Leadership (Christopher Newport University) conducted a poll of Virginia residents (commissioned by the citizen advocacy group, the VA Promise of American Promise (MoneyOutVA)) over the November 3 to December 2, 2021 period, targeting 826 households. The majority of residents (75%) support limits on campaign contributions and 78% support reducing money from large campaign contributors and 56% support banning corporate contributions.¹

From the Wason Poll: "As candidates competed for positions [in the House of Delegates] paying less than \$18,000/year, 22 candidates each raised over \$1 million for their campaigns, including six candidates raising over \$2 million apiece. While the statistics aren't yet available for 2021, the 2019 data on average level of contributions provided by VPAP [Virginia Public Access Project] revealed that 65 percent of total donations came from entities contributing more than \$25,000."¹

VPAP, a nonprofit created for this purpose 25 years ago, extracts and summarizes otherwise inaccessible data on all aspects of campaign contributions. The data provide further evidence that the campaigns of Virginia legislative candidates are chiefly funded by large-dollar donors rather than individuals who will be the future constituents of the candidate. For example, VPAP furnished data on the percentage of campaign contributions for each 2021 House of Delegates candidate that [came from people or businesses within each candidate's district](#)²; this averages only 17%. By contrast, large sums of money are donated by businesses with lobbyist representation at the General Assembly³: more than half of the funds received by incumbent Senators over a 2.5-year interval came from that group

Unlimited donor contributions can hamper policy decisions. For example, while corruption distorts and damages public policy, the perception of corruption damages public trust and makes policy decisions more difficult. This is borne out by research. DeBell and Iyengar⁴ found that the higher individual donations were, the more there was a perception of corruption (even for amounts as low as \$50, which were seen by 40% as causing the candidate to be at least moderately responsive to passing laws favoring that donor). Contributions limits in many states have much higher limits than \$50.

Another study (Spencer and Theodoridis, 2020) found that public perception of corruption was on a scale: the most corrupt (59%), quid pro quo, was seen as extremely corrupt; the next most corrupt (74%) was seen as promoting the interests of campaign donors when those do not benefit the public; and a majority of survey respondents considered that accepting donations from organizations that don't disclose their donors, giving preferential access to lobbyists and special interest groups or donors, and using public office as a means to acquire a lucrative job as a lobbyist to be very corrupt.⁵

Comparison with Federal Laws and Relevant Court Rulings

The U.S. Supreme Court has made several rulings that have defined campaign contributions as protected political speech, and these have applied to both federal and state elections. The Supreme Court cases have revolved around several key issues, including the trade-off between protection of free speech rights vs. avoidance of quid pro quo corruption (or the perception of corruption), whether corporations are guaranteed the same rights to political speech as individuals, and whether an expenditure made on behalf of a candidate carries any risk of corruption if it is made independently of the candidate's committee. The National Conference of State Legislators offers a summary of cases relevant to campaign finance legislation.⁶ Those of greatest relevance to contribution limits are listed below.

- Buckley v Valeo (1976)
- Randall v Sorrell (2006)
- Citizens United v Federal Election Commission (2010)
- McCutcheon v Federal Election Commission (2014)

In these rulings, the Supreme Court has recognized the importance of limits on campaign contributions while attempting to balance those limits with freedom of speech. On the other hand, Virginia laws, without any limitations, do not even address this need for balance. [Federal campaign contribution limits for 2021-2022⁷](#), which are permitted under these U.S. Supreme Court rulings, restrict only contributions to federal campaigns. State and local campaigns are not covered by the federal campaign contribution limits.

Laws from Model States

We selected two states for comparisons of their campaign finance laws with those of Virginia. We used the following criteria in choosing the model states. First, because the financial resources available to office holders may influence the perceived value of the position as well as candidate views on the appropriate uses of campaign contributions, our comparison states had to be similar to Virginia in terms of the average time commitment expected of state legislators, their salaries, and their staff support. Some

large states have well-paid full-time legislators with full-time staff, whereas the workload in other states is very light and staff support is minimal. The National Conference of State Legislators has categorized state legislatures with respect to where they fall on this continuum: Virginia and 25 other states are considered to have ‘hybrid’ legislatures -- the workload isn’t equivalent to that of a full-time job, but legislators report that fulfilling their official responsibilities takes 2/3rd or more of the time required for a full-time job.⁸ Second, we used the Coalition for Integrity’s 2022 State Campaign Finance Index, which measures the strength of each state’s regulation of campaign finance, to determine the two highest-scoring states with hybrid legislatures.⁹ These were the States of Washington (rank #1) and Connecticut (rank #4). (Virginia ranked #43.) Both Connecticut and Washington have limits on campaign contributions in all categories: individual, state party, PAC, corporate, and union (Table 1).

Table 1. Comparison of limits per election on contributions to candidates and political parties in Virginia with those of the federal government and the states of Washington and Connecticut.

	Virginia	Federal ^{7,10}	*Washington ¹¹	**Connecticut ^{12,13}
Individuals to Candidate	unlimited	\$2900	\$2000/\$1000	\$3500/\$2000/ \$1000/\$250
PACs, Corporations & Unions to Candidate	unlimited	\$2900- \$5000 (PACs) corporations & unions may contribute only via a PAC	\$2000/\$1000 if in-state	\$5000/\$3000/ \$1500/\$750 corporations & unions may contribute only via a PAC
Out-of-State Corporations & PACs to Candidate	unlimited	not applicable	prohibited	no distinction between in- and out-of-state donors
Candidate to Party Committee	unlimited	unlimited	prohibited	prohibited

* Tiered Limits for Candidates, Washington: State Executive Officer/Legislator; ** Tiered Limits for Candidates, Connecticut: Governor/Other Statewide Office/State Senator/State Representative

Recent VA Legislative Efforts at Reform

In 2021, the General Assembly considered eight separate measures relating to campaign finance. Six were not adopted. One that was adopted concerned report filing for pre-legislative session contributions over \$1,000. The other bill adopted created the Joint Subcommittee to Study Comprehensive Campaign Finance Reform. The Joint Subcommittee was tasked with examining “the costs of campaigning in the Commonwealth, the effectiveness of the Commonwealth’s present disclosure laws and their enforcement,

the constitutional options available to regulate campaign finances, and the desirability of specific revisions in the Commonwealth's laws, including the implementation of contribution limits, all with the aim of promoting the integrity of, and public confidence in, the Commonwealth's campaign finance system.”¹⁴

The Subcommittee had a limited number of meetings and there was a delay in appointing members to the Subcommittee due to COVID. The subcommittee held several meetings, at which members of the public and advocacy groups were able to testify. The legislation required the subcommittee to produce a report by November 2021; however, the subcommittee was not able to do this, and so submitted a draft executive summary of its work.

The Subcommittee recommended that the General Assembly continue the work of the Subcommittee to give the Subcommittee time to focus on areas, including implementation of contribution limits. The Subcommittee also recommended banning personal use of campaign funds, to follow federal guidelines; establishing record retention guidelines and oversight of campaign finance disclosure reports; electronic filing for local candidates; and electronic filing of independent expenditures. The Subcommittee also recognized the need for additional funding for these recommendations.¹⁴

The 2022 General Assembly considered 23 bills concerning disclosure, oversight, personal use, and campaign contributions in general; three more bills banning campaign contributions from public utilities; and a bill to extend the Joint Subcommittee to Study Comprehensive Campaign Finance Reform. Seventeen proposed bills were not adopted, including the proposed bills banning campaign contributions from public utilities. Two bills were continued to the 2023 session, while one was continued to the 2022 special session. Three bills were adopted; one had to do with violations of advertisement disclosure laws; one had to do with record retention; the other one continued the Joint Subcommittee, which scheduled its first meeting for December 2022.

There were several proposed bills (none adopted) that suggested contribution limits. The upper limits ranged from \$20,000 to \$40,000, depending on what office the candidate was seeking. By far the most popular limit was \$20,000. These limits were suggested for individuals as well as companies and PACs. Many states, including Washington and Connecticut, have limits that are considerably lower for individual, corporate, and union contributors than this proposed limit (Table 1).

In 2021 and 2022, the General Assembly considered a few bills banning campaign contributions from public utilities. Not all delegates or senators who voted against these proposed bills received funds from Dominion Energy. However, delegates and senators face a conflict of interest when they accept contributions from public utilities since the General Assembly has oversight over public utilities, including the ability to set rates. Banning these contributions would be a welcome start to campaign contribution reform in Virginia.

Pros/Cons of Limits

The General Assembly has been establishing subcommittees to reform campaign financing for at least 20 years. They established the Joint Subcommittee to Study Comprehensive Campaign Finance Reform in 2001, and that committee's 2002 report listed the following pros and cons of contribution limits¹⁵:

Pros to contribution limits are that there is a public perception (and perhaps reality) that large contributions corrupt the political process; limits are constitutional; limits promote competition among candidates and give grass roots candidates a better chance against incumbents; and limits promote public trust.

Cons to contribution limits are that no real evidence has been brought forward (to the 2001 Joint Subcommittee) to show that contributions are made in exchange for votes or specific quid pro quo actions by elected officials; limits curtail free speech and the rights of contributors to express support for a candidate through contributions; limits curtail competition by preventing a newcomer with a few generous donors from taking on an incumbent; limits are illusory because the large contributor can donate soft money to parties or can make independent expenditures; and limits undermine the effectiveness of disclosure by driving money to other committees or independent expenditures less likely to be disclosed.

Flavin (2015) analyzed the impact of between-state differences in campaign finance regulations and found a mix of pros and cons for contribution limits. Stricter campaign finance regulations, including contribution limits, were associated with an increased proportion of a state's budget being allocated to policies benefiting lower-income individuals and stricter campaign finance laws were associated with reduced shares of campaign funds contributed by business interests. On the other hand, greater campaign finance regulation was unrelated to average per capita campaign contribution amounts. The study also found that there was no relationship between campaign finance regulations and the proportion of legislators with working-class backgrounds.¹⁶

Recommendations and Questions for Local Leagues

Recommendations: Virginia should limit campaign contributions, determined by the type of donor. Utilities should be banned from contributing to campaigns.

Questions

1. Should VA pass legislation to ban utilities from contributing to campaigns?
2. Should Virginia pass legislation to limit HOW MUCH can be contributed?
3. Should Virginia pass legislation to limit contribution by the type of donor?

II. Campaign Fund Expenditures (Allowable Uses of Campaign Funds)

Summary of Current Virginia Laws

Virginia laws regarding how candidates or office holders who intend to run for re-election are permitted to spend their campaign funds are easily summarized: there are none. Virginia also has no law forbidding candidates or office holders from using campaign funds to pay for their home mortgages, family vacations, or any other personal expense. A list of allowable uses of campaign contributions and a personal use ban exist only for candidates or office holders who are closing out their accounts.^{17, 18}

Attorney General opinions^{18,19} on the permissible uses of active campaign funds have relied on the Virginia Code’s definition of ‘expenditure’, which is a payment made “...for the purpose of expressly advocating the election or defeat of a clearly identified candidate”.²⁰ Thus, Attorney Generals have interpreted the Code as meaning that candidates and office holders are allowed to use their campaign contributions for campaign-related expenses. But paradoxically, candidates encounter a different definition of ‘expenditure’ when they consult the Department of Elections guide to reporting requirements, where expenditures are considered payments made “for the purpose of influencing the outcome of an election....”.²¹ In short, Virginia has one interpretation of permissible uses of campaign funds based entirely on a definition in the State Code, but the Department of Elections offers a considerably more lenient alternative.

Virginia legislators appear to follow the broader definition: Fig. 1 shows the major categories of campaign fund expenditures reported by state senators from January 1st, 2021 (roughly one year after they

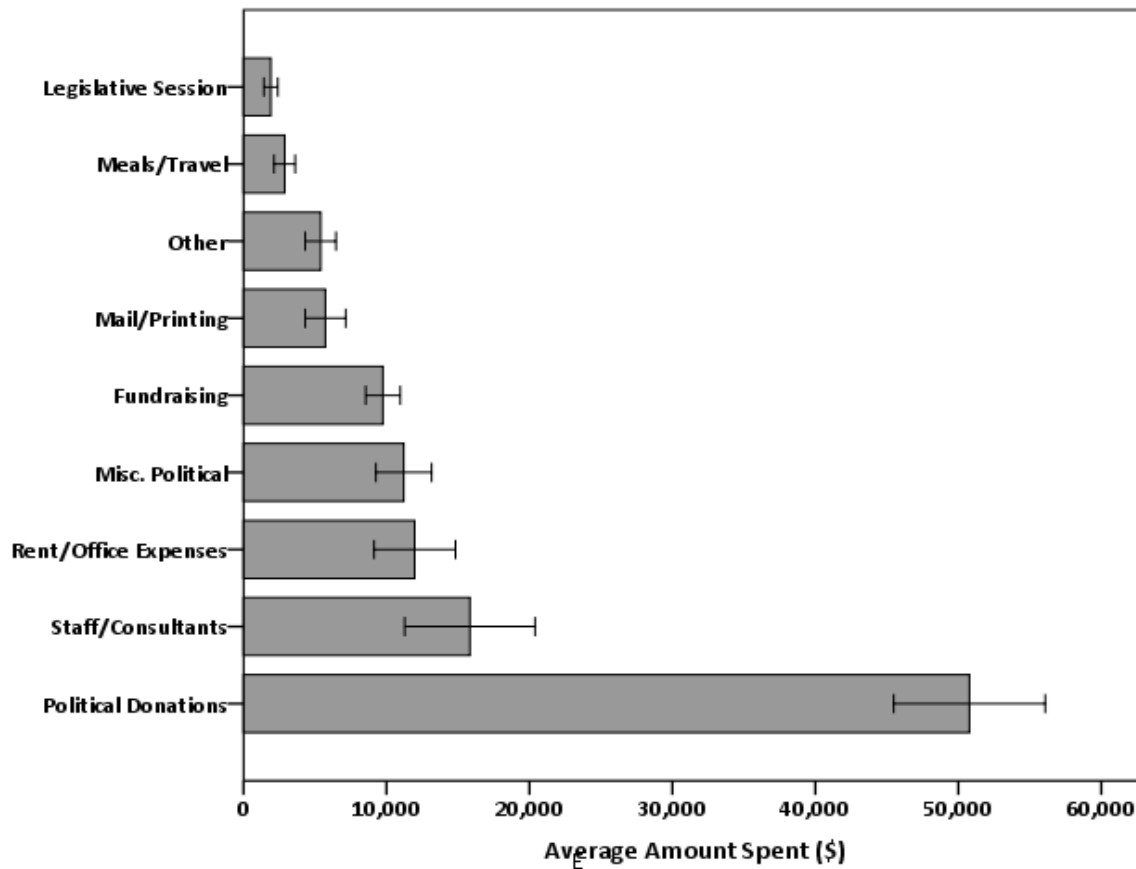


Fig. 1. Average amount spent per senator for each category of expenditures. Data were provided in a Virginia Public Access Project (VPAP) visualization compiled from VA Department of Elections campaign finance reports. Details on how VPAP classified various expenditures and data on each senator’s expenditures are provided on the visualization.²²

took office) through June 30, 2022 (about 16 months before the next election).²² Senators spent an average of \$115,451 from their campaign funds during this period. By far the largest amount (an average of \$50,778) was donated to political committees. While a Senator may justify these donations as ‘influencing the outcome of an election’, it’s hard to argue that they are ‘expressly advocating the election or defeat of a clearly identified candidate’.

Comparison with Federal and Model State laws

Virginia, Federal, and our model states’ laws on allowable and prohibited expenditures are summarized in Table 2. The Virginia Department of Elections definition of ‘expenditure’ actually is very similar to what federal law uses.²³ However, federal law doesn’t rely exclusively on this definition to distinguish permissible uses of campaign funds. Instead, it includes a list of acceptable uses as well as an explanation of prohibited uses, and these are subject to detailed regulations which Virginia currently lacks. For example, given appropriate documentation, candidates for federal office are allowed to draw salary (with limits) from their campaign funds to compensate for earnings lost by virtue of time spent campaigning²⁴; the FEC also recognizes payments for candidate childcare expenses that stem directly from the candidate’s campaign activities as authorized expenditures.²⁵ And although the FEC provides minimal guidance about the use of campaign funds to pay expenses associated with holding a Federal office²⁶, lawmakers are subject to extensive House and Senate Ethics Committee rules that restrict doing so; they are expected to use the Congressional office allowances they receive to pay most of them.²⁷

Table 2. Comparison of basic elements of Virginia laws and regulations concerning campaign fund expenditures with those of the federal government and the states of Washington and Connecticut. References for Virginia and Federal Government are in text.

	Virginia	Federal	Washington 28, 29	Connecticut 30, 31
Personal Use Ban	only when candidate is closing an account	yes	yes	yes
Personal Use Definition	not defined	use for expenses “that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office”	any expenditure not directly related to campaigning	use for normal living expenses having no direct connection to the campaign

Exceptions to Personal Use	N/A	childcare expenses while campaigning; repayment of lost wages; repayment of loans (limited)	childcare expenses while campaigning; repayment of lost wages; repayment of loans (limited)	childcare expenses while campaigning; repayment of loans
Allowable Expenditures	no list; AG opinions rely on Code's definition of expenditure	Campaign-related expenses; expenses incurred as an office-holder; contributions to section 170(c) organization; transfers to political party committees; donations to State and local candidates	Campaign-related expenses	Campaign-related expenses
Administration	State Board of Elections	FEC, House and Senate Ethics Committees	Public Disclosure Commission	State Elections Enforcement Commission

Compared with Federal law, Washington and Connecticut have appealingly simple and unambiguous laws. Both of these states restrict candidates and office holders from using campaign funds for anything other than campaign-related expenses. Active campaign funds cannot be transferred to political parties, donated to other candidates, or used for reimbursements of an office holder's dinners with constituents or expenses during a legislative session. In sum, many of the campaign fund expenditures reported by Virginia General Assembly members (e.g., Fig. 1) would not be allowable under Washington or Connecticut laws. Ironically, if Virginia would simply limit permissible uses of campaign funds to payment of 'expenditures' as defined in the Virginia Code and add a personal use ban, its laws would be very similar to those of Washington and Connecticut.

Recent Virginia Legislative Efforts at Reform

Over the last five regular legislative sessions, multiple bills have been introduced every year to change Virginia's campaign fund expenditures laws. Many of these have focused simply on banning the conversion of campaign fund contributions to personal use. Despite the fact that a majority of Virginians (73%) favor such a ban¹, every bill proposing one has failed or been continued to the next year. The most

recently proposed bills largely follow federal law (Table 2) and specify both acceptable and prohibited uses of campaign funds. The 2022 Senate version of the bill (SB463) made it the furthest through the General Assembly: after being reported by the Senate Privileges & Elections Committee on a 9-6 vote, it passed the Senate 37-3. It then met the same fate as all House versions of the bill: it was left in the House Privileges & Elections Subcommittee.³²

Pros/Cons of Restrictions on Expenditures

Pro – A Demonstration of Integrity. The sponsor of 2022 SB463, Senator John Bell, argued that, while he knew that members of the General Assembly were good, honest people, the public didn't think so, and that he wanted to prove that General Assembly members aren't out simply to enrich themselves. Senator Bell is correct that the public holds a poor opinion of state officeholders. When asked to rate the honesty and ethical standards of people in 22 different occupations, Americans rank state legislators toward the bottom (18th of 22). Only 12% of the public give them high or very high ratings on honesty and ethical standards.³³

Pro – Clarify Acceptable and Prohibited Uses of Campaign Funds. As illustrated by the discrepancy between Attorney General opinions of permissible uses of campaign funds and the Department of Elections guidelines, Virginia's current lack of laws addressing how active campaign funds can and cannot be used has led to a free-for-all on campaign fund expenditures. This problem has been exacerbated by minimal reporting requirements for expenditures (see 'Oversight').

Pro – Protect Virginia's Conflict of Interest laws from Abuse. The aim of Virginia's conflict of interest laws is to prohibit state employees and officeholders from accepting gifts (including money) from individuals or entities that are or will be seeking to do business with the state or local government. Virginia's laws forbidding such gifts and/or requiring their disclosure are largely grounded on whether the gift recipient has a 'personal interest' in whether a business transaction takes place or a proposed contract is accepted, but campaign contributions are exempted from the definition of 'gifts'.³⁴ The exclusion of campaign contributions in this context is not unusual – many states do this.³⁵ What is unusual is that, in Virginia, the exclusion is coupled with a lack of both contribution limits and laws addressing the acceptable versus prohibited uses of campaign funds.

Cons – the People's Perspective. We can only speculate as to why some members of the public might object to laws restricting campaign fund expenditures. One of the less cynical possibilities is that such laws impose a further barrier to lower-income individuals who are interested in seeking office. A ban on personal use of campaign contributions, for example, would make it illegal for candidates to dip into campaign funds to buy groceries, pay the rent, or purchase back-to-school clothing for children. In response, the state of Washington and the Federal government allow candidates to reimburse themselves from campaign funds for documented lost earnings that result from campaigning (Table 2). These provisions in personal use bans provide a partial remedy to the problem that candidates currently must be sufficiently well-off that they can rely on savings, their normal income, or loans to pay their living expenses while they campaign.

Cons – 2022 General Assembly Members. Discussion of SB463 by the Senate Privileges & Elections Committee focused primarily on the personal use ban rather than the section of the bill devoted to

permissible expenditures. Some senators were concerned that they would no longer be able to use campaign funds to pay for meals during the legislative session; other comments suggested misunderstanding of the ‘irrespective’ test (Table 2). (The FEC offers the following simple version of the irrespective test²⁴: “If the expense would exist even in the absence of the candidacy or even if the officeholder were not in office, then the personal use ban applies.” Although the bill was revised to accommodate several concerns of Senators, the House Privileges & Elections subcommittee had its own objections.³⁶

Cons – Campaign Funds are Necessary to Meet Officeholder Expenses. Virginia’s state officeholders are accustomed to having a great deal of freedom over how they spend campaign funds. Perhaps the reluctance to pass legislation that would restrict that freedom has to do with how much they are compensated, how they’re compensated, and whether they think of the payments they receive as part of their salary. As in other states with ‘hybrid’ legislatures, legislator salaries are inadequate to rely on as an individual’s entire annual income. Nevertheless, Virginia state legislator salaries are low in comparison to the base salaries of our model states, which are also hybrid legislatures (Table 3). That said, General Assembly members receive a relatively high per diem for each session day, as well as payments on any days that they attend other official meetings. (Legislators apparently differ on whether the unvouchered per diem payments are reimbursements for meals and lodging or simply ‘session expense payments’ .³⁷) General Assembly members also have a higher legislative office expense allowance than Connecticut or Washington.

Table 3. State Legislator Annual Compensation and Per Diem in Virginia, Washington and Connecticut. Data from NCSL, 2021.³⁸

	Virginia	Washington	Connecticut
Legislator Salary	\$18,000 (Sen.) \$17,640 (Del.)	\$56,881	\$28,000
Annual Office Expense Allowance	\$15,000	\$7800	\$5500 (Sen.) \$4500 (Rep.)
Per Diem (>50 miles)	\$211/day plus mileage	\$120/day plus mileage	no per diem, but mileage paid

An ethics commission established by Governor T. McAuliffe³⁹ noted that the current partitioning of legislator compensation into separate payments for salary and office expenses suggests a distinction that is not present: the office expense allowance counts toward the retirement benefits of General Assembly members and “may be used for any purpose” (p. 21). The Commission recommended that, for the sake of

both transparency and legislator diversity, the current office expense allowance and the base salary should be combined to create a new ‘base salary’ – which would have no effect on the total compensation that legislators currently receive from these sources – and then an inflation-adjusted, vouchered \$15,000/year allowance added for legislative office expenses. The General Assembly has not adopted the recommendation.

Questions for Local Leagues:

4. Virginia currently has no laws prohibiting candidates (or officeholders who intend to run again for re-election) from using campaign funds to pay personal expenses. Should the General Assembly pass legislation that would ban personal use of campaign funds?
5. Virginia currently has no specific laws that address how candidates (or officeholders who intend to run again for re-election) are allowed to use money that has been contributed to their campaigns. If the General Assembly were to pass legislation that provides a list of acceptable uses of campaign funds, would you favor restricting these to campaign-related expenses, as the states of Washington and Connecticut have done?
6. Should a list of acceptable uses of campaign funds include provisions that ensure that payments for childcare/dependent care that arise as a direct result of campaigning are allowed?
7. Should Virginia follow Washington state and federal law and allow candidates to use campaign funds to reimburse themselves for wages lost as a direct result of campaigning?
8. Should the General Assembly follow the recommendations of the McAuliffe Ethics Committee, and merge the current ‘base’ salaries of legislators with the current ‘office expense’ allowance, while adding a separate, vouchered expense allowance for payments of legislative office expenses?

III. Oversight and Enforcement

Compared to other states, Virginia is viewed as notoriously weak with respect to campaign finance regulations and its elections oversight and enforcement reinforce that reputation.

Summary of Current Virginia Laws and Policies

Virginia's oversight and enforcement of campaign finance activity does little to hold candidates accountable. Candidates are required to file their campaign finance reports with the Department of Elections, but reporting requirements are vague, and oversight consists mainly of verifying the submission and timeliness of campaign finance reports. The Department of Elections lacks the authority and staff to do much more than that, and the State Board of Elections, which oversees the Department, is not well-suited for investigating and enforcing campaign irregularities: it is an unpaid 5-member board, and its duties already include supervision of the operations of registrars, officers of elections, and local electoral boards. This suggests challenges to enforcing any future campaign finance legislation (e.g., personal use, broader disclosure, contribution limits).

The Virginia Ethics and Conflict of Interest Council was formed to “encourage and facilitate compliance”

with conflict-of-interest actions of elected officials and lobbyists. However, it can only refer to the General Assembly conflicts concerning members. Neither of the above two agencies has independent oversight and enforcement authority. The oversight is often performed by non-governmental organizations (NGO) that can only encourage enforcement through analysis and public disclosure of the limited reported data.

There are several weaknesses in Virginia's oversight of campaign finance, which are discussed below. They are information technology, accessibility of reports, compliance, auditing and investigations, weak sanctions, and Department of Elections' structural limitations.

1. Information Technology

Virginia's infrastructure for campaign finance data collection, maintenance, and accessibility is obsolete and weak. The Department of Election's current information technology infrastructure for campaign finance data compiles only raw data that is not easy to access, search, and analyze online. This has resulted in a campaign finance disclosure system that provides neither true accountability nor full transparency. With the exception of Virginia and three other outliers, all states have websites which can be searched and sorted with at least four of these variables: **for candidates** - by name, year, office, date and amount of contribution or expenditure, contributors; **for independent spenders** - year, amount of expenditure, and candidate supported or opposed.

2. Accessibility of Reports

While the Department of Elections has an online database, it is only searchable by committee name and committee type, not by candidate/committee name, office, date and amount of contribution, date and amount of expenditure, or contributor. With respect to independent expenditures, it cannot be searched by election year, amount of expenditure or the candidate supported or opposed. Consequently, the public is kept in the dark about who truly has the power with respect to the integrity of its legislators.

3. Compliance - Monitoring

An effective compliance support system with clear standards for registering complaints and maintaining initial confidentiality would help prevent frivolous claims and allow candidates to defend themselves. However, the Virginia Department of Elections Campaign Finance Office does not have sufficient legal authority, staffing capacity, or funds for rigorous monitoring of campaign finance filings for, e.g., accuracy or completeness. Moreover, Virginia lacks compliance training and guidance for legislators, donors, lobbyists. Currently, candidates are required only to report the nature of an expenditure (e.g., meal, travel) and not its purpose. "COMET" (Committee Electronic Tracking, established in 2012) is limited to simple registration and filing deadlines.

4. Auditing and Investigations

Auditing campaign funding is an essential tool in promoting transparency and accountability in election financing. However, rather than just providing a mechanism to punish campaign treasurers, who are often volunteers, audits should be paired with enhanced assistance to ensure compliance. HB492, passed in 2022, will address some of these issues when implemented in 2024, in particular the undertaking of

audits; however, it is not clear that the Department of Elections has sufficient regulatory oversight to order investigations, subpoena documents, or impose fines. Nor does it have the staffing necessary to undertake these activities.

5. Weak Sanctions

Virginia can only impose fines ranging from \$100 to \$500 for late campaign finance reports. For reporting violations (failure to file report or filing a late or incomplete report), a civil penalty of up to \$500 per occurrence may be assessed. Subsequent reporting violations within the same election cycle may warrant a penalty of up to \$1,000 per occurrence. There are NO sanctions for incomplete or inaccurate reports.

6. The Department of Elections' Structural Limitations

To address the extensive weaknesses in Virginia's campaign oversight and enforcement, major structural changes are needed within the Department of Elections. Alternatively and preferably, an entirely new agency is required, which would eliminate the inherent difficulties in restructuring the Department of Elections. Numerous states have such separate agencies/departments. Implementing such changes would require regular and sufficient budgets to fund enhanced responsibilities, including technology infrastructure development and maintenance. A new agency or an overhaul of the existing structure would enable the implementation of relevant elements of the 1994 and the 2014 study commission recommendations for improved governance through reforms in the areas of campaign finance, lobbying, and ethics.

Comparison with Federal and Other State Laws

Almost every jurisdiction in the United States maintains a more transparent and versatile state-run and publicly funded campaign finance information system that could be adapted for Virginia. Several states have independent structures or enact measures to ensure politically independent oversight, e.g.,

- The Maryland Division of Candidacy and Campaign Finance requires registration and monitoring of persons/groups making aggregate independent expenditures.
- Washington State Public Disclosure Board ensures there are adequate resources for strengthening campaign finance compliance.
- The Minnesota Campaign Finance and Public Disclosure Board and the New York City Campaign Finance Board have increased staffing.

Recent Virginia Legislative Efforts at Reform

Efforts to reform oversight and enforcement of Virginia's elections resulted in one, arguably weak, oversight bill that passed in 2022 which obligated political campaigns to retain records and allowed, but did not require, the Department of Elections to undertake reviews. In the 2022 General Assembly, HB86 was proposed to upgrade the information technology software to maximize ease of access and analysis and provide capacity for further upgrading on an ongoing basis. The bill passed both chambers but didn't

get the necessary funding from the Senate (\$147,000).

In 2021, the Joint Subcommittee to Study Comprehensive Campaign Finance Reform² convened over the August-November period. During their four public meetings which allowed public testimony, this bipartisan, bicameral study group, composed of both legislators and private citizens, reviewed the status of campaign finance laws in Virginia. They identified possible entry points for reform, with a particular focus on disclosure and enhancing the ability of the regulatory oversight capacity of the Department of Elections. They released and filed a draft Executive Summary¹⁴ but a final report was never voted on by the entire Subcommittee, which never met in 2022.

The 2014 “Integrity and Public Confidence in State Government Study”³⁹, initiated by Governor McAuliffe, refined proposals for computerization of campaign finance reports. This would have, among other things, enhanced accessibility of computerized campaign finance data (see next section); however, this was never implemented, due mainly to perceived budget constraints.

Pros and Cons of Improved Oversight and Enforcement

More robust oversight over campaign finance in Virginia would promote integrity and provide further reason for citizens to place their trust in the electoral process.

In addition to new substantive legislation which would impose stronger oversight and enforcement in Virginia's campaign finance system, the Department of Elections, or a new independent agency, should be given expanded authority and greater institutional capacity to execute that authority. Enhancements would include simplifying the system for filing the necessary disclosure reports by creating a robust, mandatory electronic filing system. Moreover, the public would greatly benefit from the enhanced transparency provided by access to information showing candidates' funding sources. This would require a major investment in enhanced information technology at the Department of Elections or new independent agency assigned the oversight.

A purported but unfounded “con” is that increased oversight would lead to frivolous claims of ethics transgressions or violations of campaign finance regulations by candidates. There is no evidence or logic to support such claims.

The sole arguable “con” against improved oversight and enforcement is the cost issue. In fact, investing in increased oversight would be a cost-effective way to improve Virginia's governance, integrity, and associated reputation and representative democracy. Moreover, given the state's fiscal surplus in recent years, upgrading the current system would be a relatively small cost.

Questions for Local Leagues

9. Should Virginia pass legislation to increase oversight and enforcement of campaign finance activity in Virginia?

10. Should Virginia pass legislation to create an independent state agency for the purpose of increased oversight and enforcement of campaign finance activity in Virginia?

IV. Dark Money

Virginia has few rules that limit the ability of individuals or businesses to influence elections without revealing their identities. Without such rules, voters are unable to effectively assess the candidates or ballot measures for which they have an opportunity to vote. The following section of this report provides a description of this type of election influence, what is in Virginia law relevant to this issue, and a summary of what other states and the federal government have enacted (and are considering enacting) to address dark money influence in elections.

What is it?

Dark money generally refers to expenditures from certain nonprofit organizations to influence politics. The donors, both individuals and businesses, to these organizations are not disclosed and reported to the public. Included in dark money are the contributions from foreign governments.

These nonprofit organizations are often organized as 501(c)(4) social welfare groups, because of the lax reporting rules for these organizations. However, dark money can also be involved in political expenditures by 501(c)(6) trade associations and 501(c)(5) unions. The elections that benefit from these expenditures include executive and legislative offices, and ballot measures, at the federal and state levels. Also, judicial elections in over 20 states are affected, but not in states like Virginia, which does not elect its judges.⁴⁰

History

In 1980, Republicans had not controlled either chamber of the U.S. Congress or the majority of state legislatures for a quarter of a century. Change came with the decision by Charles and David Koch, ultrarich oil company owners, to spend enormous amounts of money to elect conservatives at all government levels. The purpose was to prevent action on climate regulation reform and to keep a free market policy.⁴¹

In 2010, the Citizens United vs Federal Election Commission decision at the Supreme Court of the US made a monumental decision regarding campaign finance laws and free speech. This decision caused an explosion of dark money.⁴⁰

Beginning in the mid 2000s, the Federal Elections Commission (FEC) started to unravel and become extremely dysfunctional, given the even balance of Democrats and Republicans on the Commission. This failure contributed to a massive increase in dark money.

In the 2020 elections, expenditures by 15 Democratically-aligned nonprofits exceeded \$1 billion; the comparable figure for secret spending by 15 groups that generally support Republicans was slightly over \$900 million.⁴² The FEC reported that only \$100 million of dark money was disclosed to the Commission, down from previous presidential elections. It is believed that the dark money estimates are probably underreported by 600%.⁴³

Underreporting of dark money expenditures was in part due to the adoption of policies by the Trump Administration that no longer require disclosure of donors to nonprofits of 501(c)(4) and 501(c)(6)

making political expenditures. Also, exemptions for ads without express advocacy and unreported donations without disclosure enforcement resulted in higher numbers of dark money expenditures.⁴³

In 2021, a GOP-endorsed bill was introduced in the U.S. Congress that would prevent the IRS from reversing the Trump Administration policies facilitating dark money donors and preventing the SEC (Securities and Exchange Commission) from establishing rules against dark money. Those supporting the bill believe that reporting the source of donations was unnecessary.⁴⁴

In 2018, a grand jury in Washington D.C. returned indictment charges to 12 Russian nationals for committing federal crimes while seeking to interfere with the U.S. Presidential election in 2016. The purported goal of the Russian nationals was to encourage distrust of candidates and the entire US political system.^{45,46} Russia is a key player in the U.S. of distribution of political misinformation and manipulation and other nefarious purposes. The charges against these individuals included identity theft, conspiracy to commit money laundering, hacking computers of personal U.S. citizens and entities administering elections. Hacking was also discovered in state boards and secretary of states' computers. This breach extended to stealing and releasing stolen documents with the sole purpose of influencing election results, which is a federal crime.⁴⁵ Dark money can facilitate foreign interference in our elections by keeping the identities of donors to certain types of political groups invisible.⁴⁷

Why is dark money dangerous to a democracy?

1. Dark money causes a disconnect between a small group of wealthy citizens and the majority of ordinary voters. This gives special interest groups and their lobbyists greater power in government decisions and voter decisions.
2. Due to a lack of transparency of the names of the donors, voters can be misled by expensive sponsored information and ads that can be false, not truthful, or slanted.
3. Our democracy can be in danger of minority rule with expensive blinders on the majority.
4. Foreign governments, such as Russia, are contributing money to dark money organizations and running ads on social media that are false, manipulative, and deceptive to create discord in our country and favor candidates with a Russia government friendly policy. This could lead to voters misjudging candidates and policies and worse unrest.
5. Present dark money policies have led the voters and citizens of the US to lose faith and distrust our system of democracy.⁴⁰

Summary of Current Virginia Laws

Currently, Virginia requires individuals and organizations, both for profit and not for profit, to report their “independent expenditures” relating to an election to the Department of Elections (ELECT), similar to candidate reporting. These reports do not contain information on contributors to the reporting organization. An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and has no coordination with their campaign or their political party. Therefore, “independent expenditures” are not comprehensive, allowing dark money to be expended outside this reporting system. Therefore, these expenditures such as advertising on TV, radio, or social media fall into the category of dark money supported expenses without transparency.^{20,48}

Recent Virginia Legislative Efforts at Reform

In summary, the 2022 Virginia General Assembly defeated most of the bills that were introduced to address dark money risks, although some minor improvements were adopted. Those adopted include bills addressing the disclosure of funds from dark money groups and the extension of the Joint Subcommittee to Study Comprehensive Campaign Finance Reform. Below are the relevant bills that were considered.

1. HB86 requires the Department of Elections (ELECT) to provide a campaign finance database of candidate's expenditures and donations that is easy for the public to navigate. DEFEATED (left in conference committee).
2. HB125 imposes a new civil penalty not to exceed \$25,000 on sponsors violating political campaign advertisement disclosure laws with advertisements or campaign telephone calls. ENACTED.
3. HB492 directs ELECT to review certain campaign records from candidates' elections and to report the results of the review to the proper authorities and to the public. This will not be initiated until January 1, 2024. ENACTED.
4. HJ53 extends the Joint Subcommittee to Study Comprehensive Campaign Finance Reform for another year. ENACTED.
5. HB970 prohibits public agencies from disclosing personal information of nonprofit organization donors to the public, without express written permission; however, disclosures required under the Campaign Finance Disclosure Act of 2006 are exempted. ENACTED.
6. HB489/SB318 requires detailed reporting of independent campaign expenditures. DEFEATED.

FEC and Dark Money

The Federal Elections Commission (FEC) is an independent federal government agency established in 1974 after Watergate. Its sole responsibility is overseeing the integrity of federal elections, including those for Congress and the US President. The FEC does not regulate state or local elections. Duties include establishing regulations for disclosure, donations, and expenditures, and enforcement of these rules. The Commission is composed of 3 Republicans and 3 Democrats appointed by the President, confirmed by the Senate. Until the mid-2000s, this agency was effective in its operation. Today, the Commission has become ineffective, as many of its commissioners have been chosen for their opposition to the purpose of the Commission. This heavily impacts the dark money flow into federal elections, arguably even providing a smoother pathway for such contributions in state level elections. One way to force the FEC to act is through lawsuits brought against the Commission. These lawsuits have been effective in solving some problems on a one-to-one basis.⁴⁹

U.S. Supreme Court Decisions Related to Dark Money

In 2010, the U.S. Supreme Court, in *Citizens United vs Federal Election Commission*, issued a landmark decision regarding campaign finance laws and free speech that applies to federal, state and local elections. In this case, the First Amendment's free speech clause was found to protect unlimited independent expenditures for political campaigns by corporations, nonprofits, labor unions, and other similar associations. This decision allows corporations and outside groups to spend unlimited money that is not

transparent and can be corrupt in elections. A significant portion of the funds are directed to advertising without coordination with candidates or the political parties. The nontransparent aspect then allows dark money into the process.

Supreme Court decisions that favor elimination of limits on donations by individuals or entities will indirectly affect the stream of money into dark money.⁴⁰⁴⁰

1. In 2014, a US Supreme Court decision eliminated a \$123,200 cap on contributions an individual could give to all federal candidates, parties, and political action committees in a 2-year cycle.⁵⁰
2. In 2019, the Court directed the Alaska Court of Appeals to allow citizens to spend freely on elections and to abolish the \$500 annual limit on individual donations to candidates and parties.⁵¹
3. In 2022, in the Federal Election Commission vs Ted Cruz case, the Court rejected a statutory limit on how much candidates can raise after an election to recoup money that they personally lent to their campaign.⁵²

U.S. Congress and Campaign Finance Reform

This section explains some of the initiatives to block the use of dark money. Any bill that decreases transparency or allows for huge and unlimited donations to campaigns will only increase and further the dark money problem.

1. In 2021, the House of Representatives passed the Freedom to Vote John R Lewis Act/H.R. 4, but the Senate has yet to pass the bill. This bill would address the U.S. Supreme Court's dismantling of campaign finance laws, the extreme increase in dark money from unknown sources, and the loopholes allowing foreign spending on U.S. elections.⁵³
2. In 2021, the H.R. 327 End Dark Money bill was introduced. The bill would allow the IRS to promulgate rules requiring transparency of political funding by nonprofit organizations. This bill is still in a House committee.⁵⁴
3. In 2021, H.R.1 For the People Act would address many campaign finance reform problems including dark money expenditures. This bill passed the House, but saw no action in the Senate.⁵⁵
4. In 2022, S.4822/H.R.1 DISCLOSE Act would require super PACs and other groups to disclose donors who give \$10,000 or more during an election cycle. This bill passed the House as part of H.R.1, but was defeated in the Senate.⁵⁶

League of Women Voters - U.S. Position

The methods of financing political campaigns should ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office, and allow maximum citizen participation in the political process.

Questions for Local Leagues

11. Should Virginia enact laws to require transparency and full disclosure of donations by individuals, organizations, PACs and Super PACs, therefore eliminating dark money?

12. Should Virginia pass legislation to curb further the coordination of activities between candidates for election and nonprofit organizations?

13. Should Virginia pass legislation to protect the public by preventing a foreign government from interfering with our state elections, including requiring all ad sponsors to disclose their donors? This legislation would allow the public to better analyze the ad content with the knowledge of its sponsors.

Conclusion

There are many aspects to money in politics. This report has addressed limits on contributions and spending by campaigns, oversight, and dark money. Since Virginia has little to no regulations regarding campaign finance or oversight and enforcement of campaign finance, this report recommends establishing some limits. Virginia should limit campaign contributions, determined by the type of donor and public utilities should be banned from contributing to campaigns. There should be limits on campaign fund expenditures, bringing Virginia in line with other states and federal election regulations.

A separate oversight and enforcement mechanism should be established and fully funded to provide full transparency of campaign financing to the public.

And there should be laws established to limit dark money used in Virginia elections.

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