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NEWS LETTER

Virginia's Slow Progress on Campaign Finance Reform

By David M. Poole

The only foolproof campaign finance reform, someone once observed, would be a requirement that everyone read a newspaper for at least 20 minutes each day. That way, citizens would stay informed and have the knowledge to hold their elected representatives accountable.

Of course, there is no required newspaper-reading law on the horizon. Where does that leave us in Virginia, with citizens increasingly cynical about the role of money in the democratic process? In a 1999 Old Dominion University survey, nearly half of those responding said they thought their own representative to the House of Delegates had promised to vote a certain way in exchange for a campaign contribution.

The 2000 General Assembly addressed these perceptions when it commissioned a joint legislative study of the escalating flow of money into Virginia campaigns. The resolution establishing the Joint Subcommittee Studying Campaign Finance decried the advent of the first $1-million legislative races and spoke of fund-raising pressures that "test the integrity of the candidates who ask for the money and the donors who respond." Lawmakers gave the committee a broad mandate that included examining reforms such as limits on contributions and "clean election acts" that combine voluntary spending caps with a measure of public financing.

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The resolution's wording was so strong and the subcommittee's mandate so open-ended that reform advocates such as Common Cause of Virginia believed the time had arrived for sweeping change in Virginia's campaign finance system. But they would experience the daunting challenge of altering the status quo.

I was one of three citizen members appointed to the 11-member subcommittee, chaired by Del. Chris Jones, a Republican from Suffolk. House Speaker S. Vance Wilkins Jr. selected me because the non-profit organization I founded, the Virginia Public Access Project, has worked to advance electronic disclosure of campaign finance data. My expectation was that

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the subcommittee would be a success if it recommended steps leading toward greater public access and awareness. Any changes beyond these will only occur with the active involvement of all affected parties. I believe that legislators, lobbyists and reform advocates all feel that there are problems with the current system but at this time there is not a common vision or trust among the parties to enact major changes.

Virginia has permissive campaign finance laws. The Old Dominion is one of a handful of states that places no limits on the amount of money that an individual or corporation can give to a specific candidate. In rejecting limits, the General Assembly has adopted a system in which candidates police themselves by disclosing the source of their donations. The idea is that candidates should not become too reliant upon contributions from one person or one industry, lest the public perceive them as beholden to special interests.

For years, the Virginia system contained a fundamental flaw that undermined the disclosure policy: It was difficult for the public to find out what had been disclosed.

Candidates for state office filed periodic reports listing the names of anyone who had given more than $100. The reports were filed at the State Board of Elections and available for public inspection in Richmond. It was virtually impossible, however, to obtain meaningful information from the thick stacks of paper. Reports filed by candidates for statewide office would contain hundreds of pages of names. The documents filed by General Assembly candidates were more manageable, but there was no easy way to search for trends across all legislators. Most newspaper reporters gave up trying to distill any in-depth meaning from the reports, settling instead for superficial stories that compared the total amount each candidate had raised. If the press wasn't able to inform the public, how could voters know if a lawmaker was representing his constituents or his donors?

Technology—the personal computer and the Internet—brought the opportunity to achieve meaningful disclosure to Virginia's system. In 1997, I helped persuade Virginia's five largest newspapers to create the state's first comprehensive campaign finance database. With substantial support from many of Virginia's newspapers, I founded the non-profit Virginia Public Access Project with the goal of giving citizens information about campaign contributions that could empower them to make informed decisions about candidates for public office. A searchable version of the database went online in June 1997. This database—www.vpap.org—allows all Virginians direct access to campaign finance data. Citizens, reporters, lobbyists and elected officials can analyze tens of thousands of transactions, sorting the contributions by donor name, occupation and zip code. This spring VPAP will also include information regarding campaign expenditures.

There are some who say that disclosure is not enough. With no limits on contributions and lackluster voter participation, big donors play a disproportionately large role in the election process. In the 1997 race for governor, nearly 400 individuals, companies and political organizations each donated $10,000 or more to Democrat Don Beyer or Republican Jim Gilmore. These donors represented less than four percent of the total number of donors, but accounted for more than half of the $19.6 million raised during the campaign.

Citing the lack of contribution limits, the news media invariably describe Virginia as having the "weakest" campaign finance laws in the nation. My observation is that reporters elsewhere make similar claims, even in states that limit contributions. In 1998, I worked as a database consultant to a consortium of newspapers in the state of New York, which limits donations to statewide and legislative candidates. The database I created for the newspapers helped demonstrate how easy it was for donors and candidates to find ways around limits. New York law allowed party committees to maintain "housekeeping" accounts that were exempt from limits. The accounts were intended to pay for office overhead, but became the haven for big money. The housekeeping accounts rendered the New York limits meaningless, just as "soft money" donations to national party committees have undermined federal election laws.

In Virginia, reform advocates who were hoping that the legislature's Joint Subcommittee Studying Campaign Finance might recommend contribution limits were misreading the state's political mood. In the last half of the 1990s, the GOP had reached near parity in the legislature. The business community, however, contributed more heavily to the Democratic caucus and the Speaker of the House, who controls all committee assignments. But money follows power, and now that the Republicans have the power they will likely move cautiously in changing the system. And Democratic leaders, who for years turned a deaf ear to calls for campaign limits, may have difficulty embracing the idea now without having to answer accusations of hypocrisy.

Some of the most ardent (though not most vocal) advocates for limits are the lobbyists whose corporations, law firms or trade associa-

tions give money to General Assembly candidates. Long-time lobbyists will acknowledge that lawmakers have become much more aggressive in their fund-raising appeals as the two parties have battled for primacy. Some lobbyists have grown weary of being solicited several times a year from lawmakers, even those with no election opposition. These lobbyists say privately that contribution limits would allow them to say "no" to overly aggressive lawmakers. No lobbyist, however, testified in favor of limits before the Joint Subcommittee.

Establishing limits is problematic. In 1976, the U.S. Supreme Court ruled that it is an infringement on free speech to limit people and groups from making "independent" expenditures on behalf of a candidate or a cause. The Supreme Court has ruled that states can impose limits on contributions to candidates, but such restrictions often result in money being diverted to party committees or advocacy groups that are free to make unlimited "independent" expenditures. The result is that money flows in a circuitous route, making disclosure meaningless.

The Joint Subcommittee heard testimony that the ultimate answer may be partial public financing of campaigns. Maine, Vermont, Arizona and Massachusetts have enacted laws in which candidates can voluntarily agree to limit spending in exchange for public funds for campaigning. Proponents of public financing suffered a setback in November when voters in Missouri and Oregon rejected "clean campaign" ballot initiatives containing public funding provisions.

In tradition-bound Virginia, change is likely to come slowly. Chairman Jones said he hoped the General Assembly would allow the Joint Subcommittee to continue its work for another year in order to give due consideration to additional changes such as public financing, limits, audits and other issues. Lobbyists, legislators, reform advocates and the general public should seize this opportunity to achieve meaningful and fair reform.

The Joint Subcommittee has set its sights on one issue for this session of the Virginia General Assembly—disclosure. Some reform proponents were disappointed in the outcome, believing that disclosure avoids the central issue of money controlling the political process. But the Joint Subcommittee's recommendations represent a significant step toward ensuring open, honest government. The highlights include:

- Authorizing the State Board of Elections to review the bank accounts of all statewide campaigns and 10 percent of General Assembly campaigns. Currently, the State Board of Elections has so little authority that agency officials say they cannot even question math errors on reports. The subcommittee's provision would authorize the agency to request that campaigns submit bank records and expenditure receipts to ensure disclosure reports accurately reflect the flow of money into and out of campaign accounts.
- Eliminating a provision that allows candidates to postmark disclosure reports on the due date, effectively extending the deadline date. Currently, the public can wait days—sometimes more than a week—after the due date for a candidate's report to arrive at the State Board of Elections. Eliminating the postmark provision would ensure that all reports—filed on paper or electronically—would be available on the due date.
- Requiring General Assembly candidates who raise more than $10,000 to disclose electronically, starting in January 2003. Currently, about 20 percent of candidates file electronically. The State Board of Elections is making arrangements to pay a vendor to keypunch the paper reports into a database. Mandatory e-filing would speed disclosure and eliminate keypunching errors.

Virginia lawmakers who put a high premium on disclosure should be willing to move forward to ensure that disclosure works well. The proposal giving the State Board of Elections power to request bank statements will face the toughest opposition. The panel recommended a limited review, not a full audit. Campaigns would be required simply to maintain their bank statements, copies of canceled checks written on the campaign account and receipts for any expense greater than $500. In the 60 days after an election, the State Board of Elections would review records of all statewide candidates and 10 percent of all General Assembly candidates, to be chosen at a public drawing. There are no penalties, and the State Board of Elections would present its findings to governor and General Assembly.

Some members of the General Assembly may question the need for such reviews. But the Joint Subcommittee heard testimony that "audits" are needed to establish accountability and trust by the public. A review would prove a deterrent for candidates who might be tempted to spend money "off the books," misrepresent the nature of expenses or divert money to non-campaign expenses that subsidize their businesses or lifestyle. The defeat of long-time Norfolk senator Stanley Walker in 1999 was attributed in part to

Lobbyists are being solicited for money several times a year.

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news media reports that campaign money had been used for luxury automobiles for himself and a family member. Some lobbyists believe that this situation was not unique.

Voters who consider campaign finance reform an important issue should resist the temptation to look at reform as some sort of political "v-chip" that will safeguard the system. While parents might hope for a technology that can let their children watch cable TV without adult supervision, voters cannot afford to play such a passive role in politics. The main reason why special interests have so much sway in the General Assembly is that the public is tuned out of the process. A vibrant democracy demands that citizens have access to information, to keep themselves informed and to hold their elected representatives accountable. If the public remains cynical, uncaring and inactive, no measure of campaign finance reform will succeed. •

ABOUT THE AUTHOR. Mr. Poole founded the non-partisan Virginia Public Access Project in 1997. Prior to that, he worked as a political reporter for The (Lynchburg) News & Advance, The Roanoke Times and The (Norfolk) Virginian-Pilot. VPAP maintains a free online list of contributions at www.vpap.org.

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