

The Powell Memo

Did this document put big business in the political driver's seat?

by Mason Adams

The Powell Memorandum has been praised and vilified, denounced as a blueprint for business to seize control of American life, and embraced as a way to protect liberty and free enterprise. Whether because of its lasting influence or alarming prescience, the Powell Memorandum has become one of the most important single documents in understanding the embrace between American politics and business over the last half century.

Yet, 50 years since it was written in 1971 by a highly respected Virginia lawyer and future U.S. Supreme Court associate justice, the memo remains shrouded in mystery. Political analysts and historians sharply disagree on its actual level of influence. The debate itself testifies to the enduring power of the concise yet comprehensive 34-page document that outlined why and how corporate America could — and should — assert influence over American politics, society and culture.

“Rarely has any memorandum or position paper been more successful, more influential than the Powell Memorandum,” says A.E. Dick Howard, the University of Virginia’s Warner-Booker distinguished professor of international law.

“It was one of the first statements of the culture war,” says political analyst Bob Holsworth. >>>

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CONFIDENTIAL MEMORANDUM

ON AMERICAN FREE ENTERPRISE SYSTEM

Eugene B. Sydnor, Jr.
Chairman
National Commission
Chamber of Commerce

DATE: August

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Memo mythology

The Powell Memorandum was written for the U.S. Chamber of Commerce by Lewis F. Powell Jr. A Richmond-area corporate lawyer and partner in the law firm that is now Hunton Andrews Kurth, he served as president of the American Bar Association from 1964 to 1965.

A spokesman for Powell told The New York Times in 1972 that he wrote the memo at the request of Eugene B. Sydnor Jr., a Richmond businessman and chamber official who was also Powell's neighbor and close friend.

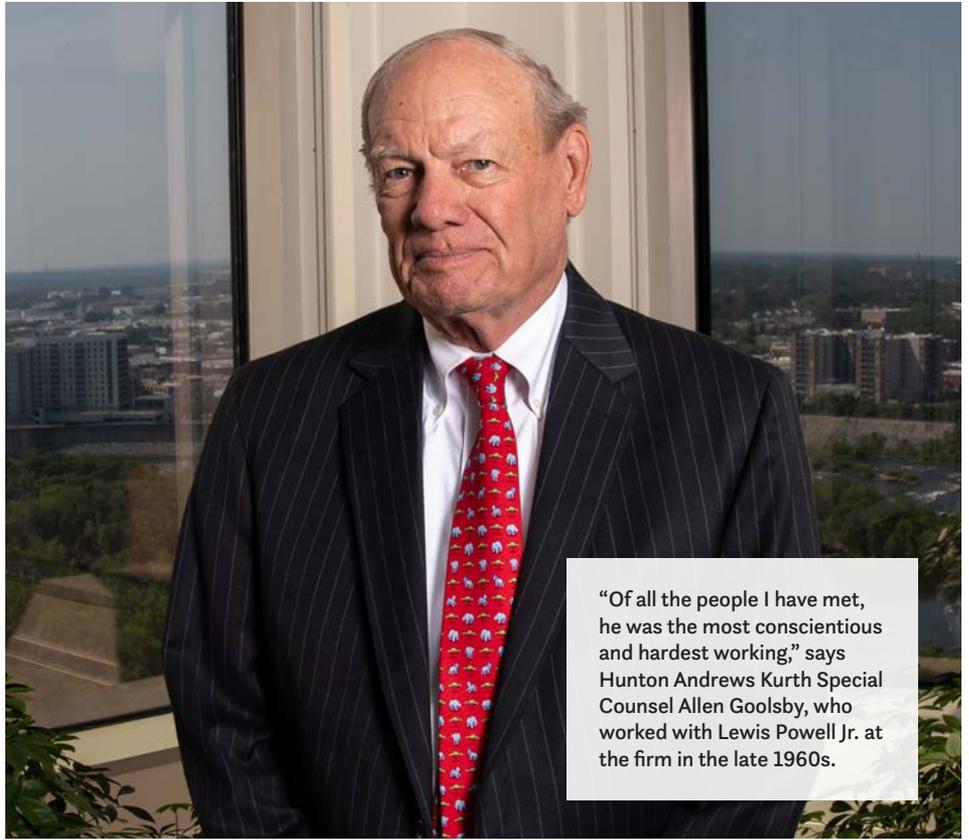
Titled "Attack on American Free Enterprise System," the resulting document counsels a multifaceted strategy encompassing media, government, courts, higher education and corporate structures to counteract rampant anti-business sentiment.

"We are not dealing with sporadic or isolated attacks from a relatively few extremists or even from the minority socialist cadre," Powell writes. "Rather, the assault on the enterprise system is broadly based and consistently pursued. It is gaining momentum and converts."

Initially, the memorandum received little attention. That changed a year later in 1972 when syndicated newspaper columnist Jack Anderson published excerpts from the memo in his political column, "Washington Merry-Go-Round," after Powell had been nominated to the U.S. Supreme Court in 1971 by President Richard Nixon.

The publicity brought the memorandum to the attention of businessmen who enacted a wide-ranging program along the lines of what Powell had recommended. The Powell Memorandum was eventually credited for playing a role in the emergence of conservative institutions that reshaped the political landscape. In turn, the document became a rallying point for the political left to fundraise against and build its own institutions.

Today, the Powell Memorandum is wrapped in a blanket of mythology complicated by 50 years of political rhetoric, blame-casting and hindsight.



"Of all the people I have met, he was the most conscientious and hardest working," says Hunton Andrews Kurth Special Counsel Allen Goolsby, who worked with Lewis Powell Jr. at the firm in the late 1960s.

Consensus builder

By the time he wrote the memorandum bearing his name, Powell already had devoted three decades to public service, including three years as a military intelligence officer with the U.S. Army Air Forces during World War II and 25 years as a partner at Hunton, Williams, Gay, Powell & Gibson, the forerunner of Hunton Andrews Kurth.

In addition to being an active member and leader of the American Bar Association, Powell chaired the Richmond School Board and tried to dissuade U.S. Sen. Harry Byrd from his Massive Resistance strategy opposing racial desegregation of Virginia public schools. Powell also served most of a decade on the Virginia Board of Education.

Allen Goolsby began working with Powell when he started at Hunton Andrews in 1968.

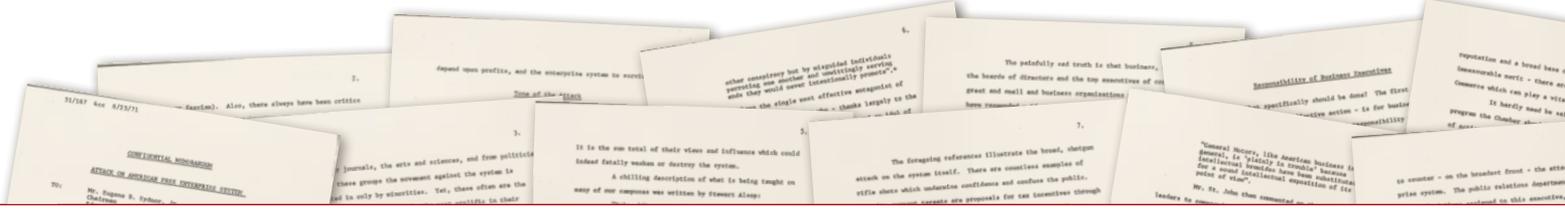
"Of all the people I have met, he was the most conscientious and hardest working,"

Goolsby says. "He basically worked seven days a week. I remember being told that he would go to church on Sunday, but he would only go for the sermon — and then he'd go back to work."

Howard worked with Powell on the commission that drafted a rewrite of the Virginia Constitution, approved by voters in 1971. The redraft was largely undertaken to eliminate racially discriminatory policies such as school segregation.

"At every meeting, Lewis Powell was invariably the best briefed and best prepared, no matter the topic," Howard says. "It might be something he knew about like education, or corporations and finance. If it was an area he wasn't familiar with, he was well briefed all the same. He was the voice of — not compromise, but reconciliation, bringing views around the table together."

"He was very lawyerly in the way he thought about things," says John Jeffries, a



U.Va. law professor and Powell's biographer. "The typical Lewis Powell participation would be to let everyone else speak and then at the end to sum up."

President Nixon nominated Powell to the U.S. Supreme Court in 1971 to succeed Associate Justice Hugo Black. Powell's ensuing 15-year term included the 7-2 *Roe v. Wade* decision that legalized abortion. (Powell voted with the majority, affirming a pregnant woman's right to choose an abortion.)

Probably his most famous opinion came in *Regents of the University of California v. Bakke*, which upheld affirmative action and allowed colleges to incorporate race as a factor in admissions. The case had split the court, but true to form, Powell won consensus with a Solomonic opinion that found that the Constitution allowed affirmative action while striking down the specific program in question.

"Powell was in the majority more than any other justice while he was in the court," Jeffries says. "It wasn't because he moved to the majority; it was because the court was balanced so that it swung whichever way he voted. He was a fulcrum, not a swing."

During his Supreme Court term, Powell drew deeply on his knowledge of corporate law in ways that echoed the Powell Memorandum. In the majority opinion on *First National Bank of Boston v. Bellotti*, Powell wrote for the majority that corporate influence of elections through campaign contributions represents free speech covered by the First Amendment. The case has had long implications on federal law and court rulings ever since, notably influencing the Supreme Court's landmark 2010 *Citizens United* decision.

Battling commies and leftists

Compared with Powell's reputation as a consensus builder, his Powell Memorandum reads like a polemic. The first part lays out the case that free enterprise was under assault by "communists, New Leftists and other revolutionaries who would destroy the entire system, both political and economic."

"He was kind of a conservative corporate lawyer and someone shocked by the hippies," says Mark Schmitt, former editor of the liberal and progressive public policy magazine *The American Prospect* and a self-identified "Powell memo debunker." "He was like a lot of older established men of that era, who were comfortable with the liberal consensus of the post-war era but saw something a lot freakier coming along."

The memo called for a more aggressive response from corporate America, with strategies across business, government, politics and the legal system.

"Its genius is a recognition that you have to build institutions," Schmitt says. "Corporate America didn't think of itself as building institutions to engage in political fights [and] legal fights. He [Powell] spotted all the areas where ... arguments about the direction of the country were going to happen."

The memo's comprehensive nature, relatively short length and concise language make it stand out even today. However, immediate response to it was muted.

"I don't think anything of great consequence within the chamber ever came

of it," says Goolsby. "He listed a bunch of items they could undertake. I don't think they did any of them. It wouldn't have been effective."

Jeffries says, "There is not a long trail" of paperwork about the memorandum in Powell's personal papers. "If I had seen in the papers any evidence of impact at the time he wrote it, that would have been very prominent in my mind and in the biography."

Others have found traces of the memorandum's influence on key right-wing figures.

In her 2016 book *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right*, writer Jane Mayer quotes businessman and political activist Charles Koch from a 1974 speech: "As the Powell Memorandum points out, business and the enterprise system are in trouble, and the hour is late."

Mayer writes that other wealthy conservatives were likewise inspired by the Powell Memorandum. Joseph Coors reportedly was prompted by the memo in 1973 to establish the conservative think tank *The Heritage Foundation*, but Schmitt discounts the



U.Va. law professor and Powell biographer John Jeffries disagrees with the notion that the Powell Memo was a blueprint for conservative institutions: "I think people love conspiracy theories."

memo's role more as a "minor contribution" that "pushed him [Coors] in a direction he was already going."

"I've found a few more traces of real actual influence at the time, but it's still a fiction to treat it as a blueprint for the conservative movement," Schmitt says.

Whose memo is it anyway?

While Schmitt is skeptical about the idea that the Powell Memorandum served as a blueprint for the growth of the conservative movement that found full flower during Ronald Reagan's presidency in the 1980s, he agrees that the memo did play a major role in building up institutions — but ironically on the political left in the 21st century.

"There were a group of progressive fundraisers brought together after the 2004 elections," Schmitt says. "They went to rich people with a PowerPoint and made the case, 'Here's what the right built; we have to build something similar.'"

This reaction to the Powell Memorandum is exemplified in a 2012 issue of The American Prospect, published when Schmitt was not part of the magazine. The cover depicts a black-and-white photo of Powell with hand-scrawled devil horns and a forked tail.

In the cover story, the magazine's editors argued, "The Powell Memo must be reckoned as one of the most successful political directives in history." The issue featured 19 essays that laid out how to match the "revitalized conservative movement" with action on the left.

The American Prospect issue stands out for its stark vilification of Powell, but its umbrella assumption that his memorandum sat at the core of conservative institution-building has been echoed in numerous left-leaning books and publications.

"I find it appalling," says Jeffries. "To be completely and perhaps unwisely candid, I think people love conspiracy theories."

What is undeniable is that more than two decades after his 1998 death, Powell and his ideas are as relevant as ever. A new Supreme Court is taking up cases on issues



Ironically, the Powell Memo has served as a galvanizing force for organizing the political left, says Mark Schmitt, former editor of The American Prospect.

with which Powell wrestled, including affirmative action and abortion.

Moreover, the vision for action he outlined in the Powell Memorandum has come to fruition. The political right and left both have built robust institutions that produce research and talking points, cover news through an ideological lens, put forward judges, conduct political operations and educate the next generation.

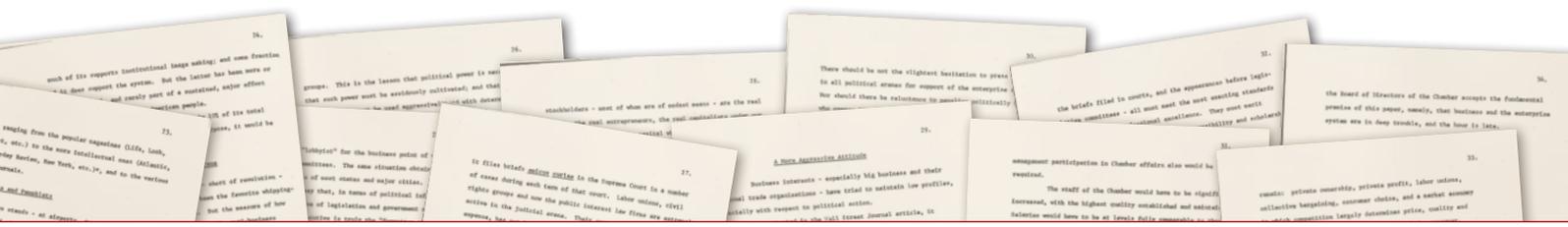
Powell also foresaw how corporations would be challenged by societal, cultural and political movements such as diversity and climate change. Indeed, some of the movements that Powell identified as threats have been thoroughly absorbed into the culture of business.

"Environmental and safety regulations have made cars much safer, and we have

cleaner air," Holsworth says. "It turns out that all of that is consistent with the capitalist system."

Powell would welcome other developments, such as the emergence of activist public interest law firms and the expansion of laws protecting the rights of corporations. Those changes sprang largely from Powell's writing in 1971, says Howard — a fact that would have gratified the Richmond lawyer. ■

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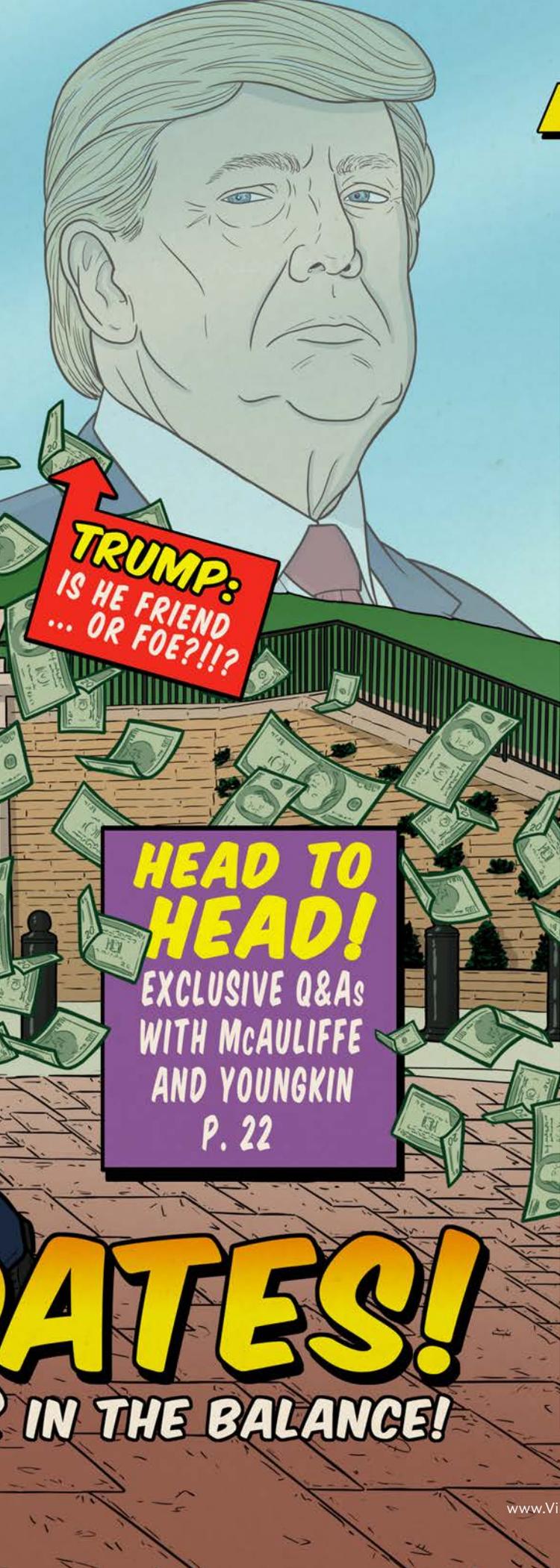
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***ACTUAL STATEMENTS MADE DURING
SEPT. 16 GUBERNATORIAL DEBATE**

by Mason Adams

With early voting starting the next day, Virginia gubernatorial candidates Terry McAuliffe and Glenn Youngkin came out swinging in their Sept. 16 first debate, sniping over issues ranging from coronavirus vaccine mandates to abortion in what The Washington Post described as a “bare-knuckled” sparring match at the Appalachian School of Law.

Democratic former Gov. McAuliffe dismissed his rival as a “Trump wannabe,” while GOP candidate Youngkin, 54, offered mock concern for his 64-year-old opponent’s health.

Virginia voters have until Nov. 2 to decide between McAuliffe, a champion fundraiser seeking a second (non-consecutive) term, and Youngkin, a political outsider and retired equity fund CEO with a hefty personal bankroll and a blank public record. Both men say they’ll be the best governor for business and both are willing to shell out record sums to land the job.

That race, along with all 100 House of Delegates seats also on the ballot, will determine whether Democrats retain the power over state government they gained in 2020, when the party assumed majority control of the legislature for the first time since the 1990s.

An early September poll by The Washington Post and George Mason University’s Schar School of Policy and Government showed the gubernatorial race in a virtual dead heat, with McAuliffe leading Youngkin by three percentage points, within the margin of error. Political analysis site FiveThirtyEight also noted in mid-September that the contest was shaping up to be much tighter than anticipated. McAuliffe’s previously assured lead stands to be harmed by President Joe Biden’s flagging approval ratings, the site noted, as well as Youngkin’s willingness to pour millions of his own money into the race. Additionally, an internal Youngkin campaign poll found that third-party, progressive Liberation Party candidate Princess Blanding could pull enough support away from McAuliffe to cement a Youngkin victory.

Virginia is the only U.S. state that doesn’t allow governors to serve consecutive terms, and McAuliffe, if elected, would be the state’s first two-term governor since Mills Godwin in the 1970s.

Youngkin, a first-time political candidate and former co-CEO of Washington, D.C.-based private equity firm The Carlyle Group, triumphed over better-known candidates to win the Republican Party of Virginia's unassembled convention of 30,000 delegates who cast ranked-choice ballots at 39 sites across the state on May 8.

From Jan. 1 through Aug. 31, Youngkin raised \$35.26 million, including \$16.5 million of his own money, and had \$6.03 million in cash on hand. During the same time period, McAuliffe raised \$26.06 million and had \$12.6 million in the bank. As of Aug. 31, Youngkin had spent \$29.24 million to McAuliffe's \$18.99 million — a difference made even starker considering that more than half of McAuliffe's expenditures went towards campaigning for the June 8 Democratic primary. Spending a combined \$48.23 million by Aug. 31, Youngkin and McAuliffe seem on track to match or exceed the record-setting \$65 million spent in the 2017 Virginia gubernatorial race.

"Youngkin obviously has immense personal resources to bring to bear here," says Kyle Kondik, managing editor of the University of Virginia Center for Politics' political newsletter and website, Sabato's Crystal Ball. "One thing that's interesting is that McAuliffe is the one who is trying to nationalize this race, because he wants people to think of Youngkin as Trump so that Democratic voters will be motivated to come out. Youngkin wants this to be more of a localized race. He's muddying his ideology and political background, representing himself as a nonpartisan business type — almost like Mark Warner in reverse, 20 years later."

The 2021 Virginia governor's race headlines a ballot that includes state house races and two other statewide races. Democratic state Del. Hala Ayala and Republican former Del. Winsome Sears are vying for lieutenant governor. And two-term Democratic incumbent Mark Herring and Republican Del. Jason Miyares are running for attorney general.

Democrats currently hold a 55-45 seat advantage in the House of Delegates, and Republicans are laser-focused on winning the six seats they need to overturn the Dems' new, still-vulnerable majority. All but eight seats are being contested by both major parties in 2021.



Bellwether status

The governor's race so far looks like an uphill fight in both directions.

McAuliffe benefits from his quasi-incumbent status but is running against historic trends, given that only one Virginia candidate since the '70s has won the governorship after their party won the White House. That lone exception? McAuliffe himself.

"We are the ultimate bellwether," says former state Del. Chris Saxman, executive director of Virginia FREE, a nonpartisan business advocacy group. "We come before and

after every major national election. People forget how quickly things can change. One, the losing party is highly motivated to win the next round. Two, the winning team from the previous November doesn't have nearly the juice it had a year ago."

Youngkin, however, must contend against antipathy toward Trump and CNBC's recent ranking of Virginia as America's "Top State for Business" for an unprecedented second time in a row.

"The Youngkin campaign had a strategy of talking about Virginia's economy being

in a ditch,” says Stephen Farnsworth, a political science professor at the University of Mary Washington. “That strategy disappeared when Virginia was named the No. 1 state for business. That ranking has forced Republicans to retool. When a state’s No. 1, you can’t argue the incumbent has driven it into the ditch.”

Instead, Youngkin pivoted to campaigning on hot-button GOP issues such as critical race theory, as well as claiming that McAuliffe is “too dangerous for Virginia,” citing the state’s 40% increase in murders during McAuliffe’s tenure, while not acknowledging that Virginia was also then the fourth-safest state in the nation for violent crime. Meanwhile, McAuliffe, who supports vaccine mandates for people ages 12 and above, has tried to paint Youngkin, who opposes mandates, as an “anti-vax” extremist, echoing Youngkin’s “dangerous for Virginia” rhetoric.

Second bite of the apple

A close friend of former President Bill Clinton and former Secretary of State Hillary Clinton, McAuliffe spent decades in politics as a fundraiser and chair of the Democratic National Committee before his first run for governor in 2009, when he lost in the Democratic primary. He ran successfully four years later, beating Republican Attorney General Ken Cuccinelli. McAuliffe began his term in 2014 as the state continued emerging from the Great Recession, with seasonally adjusted unemployment rates steadily decreasing from 5% in January 2014 to 2.6% in December 2018. He dubbed himself “the jobs governor” and took glee in traveling around the commonwealth for economic development announcements.

Yet McAuliffe was constrained by a Republican-held General Assembly, which hampered his budget initiatives and frustrated his attempts to adopt Medicaid expansion. His successor, Democratic Gov. Ralph Northam, has seen more success, especially after Democrats won control of the General Assembly in the 2019 elections.

Virginia has radically changed since then, widely viewed as the most progressive Southern state. Its newly empowered Democratic legislature passed a flood of consequential laws ranging from abolishing the death penalty and legalizing marijuana

and casino gaming to mandating that Virginia’s utilities generate electricity from carbon-free sources as soon as 2045. Notably, the Assembly also has mandated increases in the minimum wage, putting Virginia on a course for a \$15 minimum wage by 2026.

Virginia’s Democratic Party has shifted leftward, too, but McAuliffe used his fundraising prowess and endorsements to win the 2021 primary over four more progressive and diverse challengers, including two contenders who could have been the party’s first Black woman gubernatorial nominee.

“McAuliffe has a number of advantages as a candidate,” Farnsworth says. “The two biggest ones are, he knows how to win statewide — he’s done it. And he knows how to be governor — he’s done it.”

High-wire act

The contest could also prove to be a preview for a potential 2024 Biden-Trump rematch in a state where Biden defeated Trump 54% to 44% in 2020. Trump retains a firm grip on the Republican base, but it’s less clear how much he still drives people to vote against his political party. That variable animates both the McAuliffe and Youngkin campaigns. Youngkin emerged in May as victor of the six-candidate Republican field. A Virginia Beach native who attended Rice University on a basketball scholarship, Youngkin drew attention for his charisma, business background and organizational savvy, building a team that outmaneuvered a slate of more experienced candidates in the GOP’s pandemic-era convention.

His nomination was greeted with near-universal acclaim by Republicans. He achieved it by walking a careful line between the party’s various wings. That balance appears more tenuous during the general election as McAuliffe has sought to pounce on any feint toward social conservatives or Trump on Youngkin’s part. That included a leaked video of Youngkin saying he must limit his comments about abortion for fear of alienating moderate voters, but that he’d go “on offense” if Republicans win. (Abortion moved to the forefront of the gubernatorial race in September, after Texas’ GOP-led legislature passed one of the strictest anti-abortion laws in the nation.)

“Glenn has been an incredible success and will truly Make Virginia Great again,” Trump said in a July statement endorsing

Youngkin. “Terry McAuliffe was a failed and unpopular governor whose only claim to fame was his relationship with crooked Hillary Clinton — how did that work out? If Virginia wants to open up and take advantage of its great and virtually unprecedented opportunity, Glenn Youngkin is the very successful businessman that will get them there!”

Youngkin, however, has rarely spoken about the former president, and Trump has made no campaign appearances for Youngkin or other Virginia candidates.

But even if the 45th president remains relatively mute about Virginia, Democrats won’t let him be forgotten.

“Nearly every McAuliffe ad is likely to mention Trump,” Farnsworth says. “It’s a winning hand for the Democrats, and they’re going to use it.”

Swinging suburbs

The races for statewide office and a majority in the House of Delegates will likely come down to a handful of competitive regions, largely around the suburbs of Northern Virginia, Hampton Roads and Richmond.

Over the past two decades, Virginia’s changing demographics steadily inched the state toward Democrats before Trump’s 2016 election dramatically accelerated the trend, especially in the suburbs. Chesterfield and Loudoun counties, for example, swung 7 and 10 points, respectively, toward Democrats between 2012 and 2020.

“People in the suburbs were absolutely repulsed by Donald Trump in Virginia,” Saxman says.

Winning those voters back is a crucial part of the Republican strategy.

“There are a lot of people who either are new to Virginia or maybe voted for Republicans in the past but now are functionally Democrats,” Kondik says. “That’s an important group for Youngkin. He’s not going to win places like Loudoun and Prince William counties, but he can’t get blown out in them as Republicans have in recent years.”

Virginia Beach is another important swing area. If Youngkin can get close to McAuliffe there, Kondik says, he might boost enough down-ballot candidates to flip some of those seats to the GOP. “Even if McAuliffe wins the governor’s race but Republicans flip the House of Delegates, that’s a pretty successful election for them.” ■



THE COLOR OF MONEY

VIRGINIA PREPARES FOR COMMERCIAL
MARIJUANA MARKET

by Mason Adams



L to R: Brothers Talbot, Tanner, Jake and Abner Johnson started Elkton-based Pure Shenandoah, a hemp processing and CBD products manufacturing company, in 2018.

A dusty floor, lumber piles and strewn tools mark the signs of active construction in the future showroom of Pure Shenandoah LLC.

CEO Tanner Johnson stands in the front room of the historic, renovated Casey Jones building in Elkton and describes the experience of a future customer.

“You’ll come in right here to a cool circle welcome desk,” Johnson says. “There’ll be a big bar there with some of the smokables and [age] 21-plus products. A divider here

— maybe even hemp bales — separates a workshop area where we do a lot of education. There’ll be a spot here where we highlight farmers, from CBD to the fiber side. Right here, we’ll have all the in-home grow technology. And then cool visual stuff.”

Pure Shenandoah plans to offer tours of its facility to the public, including guests from the nearby Massanutten Resort.

“Everyone’s been on a brewery tour, but there aren’t really cannabis tours anywhere,” Johnson says. “Most people in the cannabis market like to guard what they’re doing.

We’re the opposite. Everyone’s going to be interested in it, just because it’s been in the shadows for so long.”

Those shadows began to be lifted when the federal government removed hemp from its controlled substances list in 2018, opening the door for cultivating industrial hemp and the production of cannabinoid products such as CBD oils, which don’t intoxicate users. In 2020, Virginia lawmakers legalized medical cannabis through five licenses awarded to companies across the commonwealth.

Then, earlier this year, Virginia became the 16th state in the U.S. — and the first in the South — to legalize recreational marijuana. Lawmakers made it legal for people older than 21 to cultivate and possess limited amounts of marijuana, and they also started the process of writing regulations for a commercial market to open in 2024.

Legalization in Virginia has opened a vast, uncertain new industry that still faces many unknowns. Entrepreneurs, including the four brothers behind Pure Shenandoah, are scrambling to engage the market. Johnson says marijuana was “always in the back of our minds” when they founded Pure Shenandoah.

“Some of that’s out of our control,” he notes, “but the way the laws came down, it couldn’t have been any better.”

Marijuana represents only one of three new, potentially giant industries for the commonwealth.

“I genuinely thought that being at the forefront of solar and renewable [energy] was a once-in-a-lifetime opportunity to be on the front end of a multibillion-dollar industry,” says Greg Habeeb, president of Richmond-based Gentry Locke Consulting, a lobbying, communications and marketing business started by the Roanoke law firm. “Then a year later, it’s the same thing with casinos and online gaming, and the next year, it’s the same with cannabis.”

Widespread impact

A 2020 study by Virginia’s Joint Legislative Audit and Review Commission (JLARC) found that marijuana legalization could generate between \$31 million and \$62 million in tax revenue during its first full year of sales, and between \$154 million and \$308 million by the fifth year of commercial sales. By comparison, Colorado, an early legalizer, collected \$387.4 million in state taxes and fees in 2020 on an industry that recorded \$2.2 billion in annual sales last year, according to The Denver Post.

Virginia’s new law will create up to 400 retail licenses, 450 cultivation licenses, 60 processing or manufacturing licenses and 25 wholesale licenses. (The state ruled out an ABC store model for marijuana retail sales because it would have required state employees to do something federally illegal, experts say, and also because the Northam administration and legislators wanted to make social equity a priority in awarding retail licenses.)

But state-level legalization of marijuana has broader implications for businesses stretching far beyond license holders.

“You have a hard time finding a business that can’t be directly or indirectly affected,” Habeeb says. “We were having a hard time coming up with one that couldn’t find a way to be involved with cannabis. Transportation, technology, security, everything — there was always a way, if they wanted to, to be involved in this industry.”

That can also include marketing, human resources and HVAC services.

“Often with legalization, the focus is directed toward cannabis business licensing opportunities, but the economic opportunity afforded by legalization is so much greater than that,” says Jenn Michelle Pedini, development director for the National Organization

for the Reform of Marijuana Laws and executive director of Virginia NORML. “Cannabis businesses need all of the same services that any business needs. Not only do businesses need these ancillary services, so do consumers.”

Take Lockgreen, a Suffolk-based family business that sells lockboxes for marijuana users to safely transport cannabis in compliance with state law, which requires marijuana to be in a sealed container while transporting it in a vehicle and not to be consumed by the driver or passengers. Husband and wife Ron and Sarah Kiah Morton see their endeavor both as a way to enter the burgeoning industry but also to educate communities that have traditionally been punished under earlier drug statutes.



Suffolk couple Ron and Sarah Morton started Lockgreen, a business selling lockboxes for marijuana users to comply with state law when transporting cannabis.



Economic opportunities created by marijuana legalization reach far beyond retail operations, says Jenn Michelle Pedini, executive director of Virginia NORML.

“We always have our face in the book of the law with regard to cannabis, and our ear to the street,” says Sarah Morton. “We are painfully aware of the disproportionate arrests and marijuana convictions in the Black community. Blacks are 3.4 times more likely to be arrested for marijuana.” According to a JLARC report, Black people in Virginia were nearly four times as likely to be convicted as white people charged with marijuana possession from 2010 to 2019.

Even with legalization of adult possession and use, the Mortons saw how legal provisions mirroring bans on driving with an open container of alcohol could still be a source of continued arrests. The answer? Lockable stash boxes that meet Virginia’s requirements and bear a commemorative design celebrating state legalization.

“We wanted something that people could be proud of that also protects them,” Sarah Morton says.

The lockboxes also represent a step toward participation in the future commercial market.

Ron Morton has worked for the past decade in marijuana enterprises across Colorado, Maryland and now Virginia, while Sarah has been engaged with the Hampton Roads business community since 2007, while also serving on Virginia NORML’s board.

Lockgreen gives the University of Virginia alums a chance to educate and engage with the emerging marijuana industry. With a business that directly addresses still-existing gray areas about recreational use, they’re also positioning themselves as participants in the still-to-be-developed commercial market.

“We intend to enter into the commercial cannabis market, or at least to apply,” says Ron Morton. “The aspect we’re coming from — educational and spreading the information, being a proponent of the community — that’s the right way to approach it. If you’re filling that gap, everything else will fit around it.”

Sarah Morton adds, “We want to shape the culture in Virginia.”

Details up in the air

Virginia’s legalization of adult recreational use and home cultivation of marijuana this year marked just the first step in a process that still requires years of additional legislation and regulatory work.

Next year’s General Assembly must reenact the law passed this year. Then the Cannabis Control Authority, a state board advised by a health advisory council, will develop regulations including a social equity program intended to restore communities adversely affected by decades of marijuana prohibitions — primarily people of color. The authority will also license participants in the commercial market, with specific policies that are still being developed.

The commercial market is scheduled to launch in 2024, although lawmakers can decide to move the date earlier.

Regardless, there’s a lot of uncertainty about what legal marijuana will look like in Virginia.



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“Cannabis regulation looks different in every single state and territory in the U.S. that has adopted such a measure,” NORML’s Pedini says.

Virginia has the advantage of following other states that have tried legalization. These include Washington and Colorado, which both legalized marijuana in 2012, as well as Illinois, which considered social equity as a priority but has largely failed to attain its goals.

“Virginia is one of the single most prepared states when it comes to undertaking a legalization effort,” Pedini says, adding, however, that “it was a heavy lift in 2021 and will be a heavy lift in 2022.”

However, they note, “I don’t think legislation in and of itself can ensure a good outcome. What Virginia has done thus far is outline in legislation some initial criteria for social equity licensing and funding, and [it] has established a cannabis equity reinvestment board.”

JLARC already has issued recommendations for 2022. It recommends tightening the path for currently registered hemp processors to obtain licenses to produce marijuana, eliminating special treatment. The watchdog group also recommends reducing the number of retail locations for medical marijuana licensees from five to three, which would somewhat curtail their advantages in a recreational market.

The General Assembly implemented 80% of the commission’s recommendations from its 2020 report, but there’s no guarantee lawmakers will follow all of these suggestions. Adding greater uncertainty are this month’s elections for governor and party control of the House of Delegates.

“Marijuana legalization really is on the ballot in Virginia,” says Pedini, “not with a referendum, but for whom you cast your votes.”

Democratic former Gov. Terry McAuliffe, running for a second, nonconsecutive term as governor, openly supports marijuana legalization, while Republican Glenn Youngkin told Virginia Business that he would not push to reverse the law if elected.

But there’s no question that the creation of a commercial market and other aspects of the law’s implementation would look different under Democratic and Republican administrations. Just how different? That depends on who holds a majority in the

House of Delegates in January, but for starters, Republicans are less likely to focus as much on social equity as Democrats. It’s also unclear whether a Republican-controlled House would approve a commercial marijuana market, complete with a new slate of regulations.

Federal hurdles

Even beyond partisan control in Richmond, plenty of uncertainty remains over commercializing marijuana in Virginia, in part because marijuana is still considered a controlled substance under federal law.

Farmers who are already growing hemp are now considering growing marijuana, but Ben Rowe, national affairs coordinator of the Virginia Farm Bureau, says this has inherent risks.

Currently, federal law requires farmers growing the Cannabis sativa L. plant as industrial hemp to keep it below the 0.3% threshold for THC, the compound found in cannabis plants that gives marijuana its psychoactive properties.

“If a farmer is out of compliance with federal law, they risk losing access to federal programs like crop insurance, guaranteed loans and conservation programs, regardless of what the law is at the state level,” Rowe says.

The Farm Bureau also is concerned that smaller-scale farmers will be pushed out of the industry by “out-of-state, large-scale producers” unless state policymakers ensure that agricultural interests are represented in their discussions, Rowe adds.

Additionally, employers are grappling with whether they can — or should — screen employees for marijuana use. For many companies, drug screens are a standard part of onboarding new employees. Virginia’s legalization of recreational marijuana doesn’t prohibit workplace drug testing, but employers may lose out on hires amid a tight labor market in which many workers are more willing to leave jobs.

“Just because there’s legalization doesn’t mean you have to let your people consume marijuana,” says Habeeb of Gentry Locke. “But the concern is that [could conflict with] one of the strangest labor markets



Rowe



Farmers harvested hemp for baling at a field leased by Pure Shenandoah in Page County in October.

we've ever seen in our lives, where people are choosing not to work or choosing not to return to their job. Today, it's a killer when employees walk out the door."



Habeeb

Some companies — including Henrico County-based Altria Group Inc. and Amazon.com Inc., which is building its HQ2 East Coast headquarters in Arlington — didn't screen for marijuana use even before legalization. As with raising minimum wage, the market is ahead of the law in some cases.

Of course, drug testing remains important for jobs that involve public safety or require high alertness or federal government clearances, and researchers still are trying to develop more targeted tests to measure impairment.

Another challenge related to federal marijuana prohibition is taxing cannabis businesses. The IRS prohibits tax deductions for any business that "consists of trafficking in controlled substances" like marijuana.

Habeeb calls federal taxes "really screwy on this. If you've got \$30,000 a month in overhead and \$60,000 a month in revenue, in most businesses, that means you made \$30,000, and you pay taxes on \$30,000. In cannabis, you pay taxes on \$60,000. You can

pretty quickly get squeezed on the revenue side."

Federal law also restricts banks' ability to engage with marijuana businesses, even those that are complying with state law.

The emerging industry's "access to the banking network is very limited," says Bobby Herndon, senior vice president and director of treasury management at Charlottesville-based Blue Ridge Bank, which began working with Virginia cannabis businesses when hemp was legalized federally. "Most federally regulated banks do not want to jump into that space because of the gray area. Even though [marijuana] is legal at the state level, we still have audits and regulation at the national level."



Herndon

As a result, legal marijuana companies unable to use banks accumulate large amounts of cash while otherwise operating normally. Herndon says Blue Ridge Bank supports passage of the federal Secure and Fair Enforcement (SAFE) Banking Act, which would allow state-licensed marijuana businesses to work with banks and other financial institutions. The House of Representatives passed the act in September as a rider on its annual defense spending bill, but it appears stalled in the Senate.

Moving into position

On the ground, businesses are working to position themselves for the commercial marijuana market. A lot of this comes down to paperwork.

Pure Shenandoah is seeking to acquire a medical marijuana license approved by the Virginia Board of Pharmacy, covering the northwest region of the state. The matter is tied up in court with multistate cannabis dispensary operator MedMen Enterprises Inc., which is fighting to keep its license.

Meanwhile, Pure Shenandoah is taking other steps toward meeting medical requirements, including maintaining batch manufacturing records, traceability and test results. Even if it doesn't receive the state license, company officials see these as steps to prepare for the commercial market.

Other hemp processors are taking a more cautious approach. Golden Piedmont Labs in South Boston intends to pursue a processing license to continue its mission of working with Southern Virginia's agricultural community as farmers transition from hemp to marijuana.

Rick Gregory, principal at Golden Piedmont Labs, and friend Sterling Edmunds co-founded the company to assist farmers who were adversely affected by tobacco's decline as a crop.

“We decided we would get more benefit for our contributions if we set up a company that would help turn around or assist the agricultural community in Southern Virginia,” Gregory says. “We decided to found Golden Piedmont Labs because the [hemp] industry was just starting to grow, but there weren’t any extraction industries for Virginia and North Carolina farmers on the boundary.”

As more farmers think about moving to marijuana when retail sales will become legal, Gregory says Golden Piedmont will adapt to meet their needs. In the meantime, it is waiting as lawmakers and regulators continue to build the framework for commercial marijuana sales. Even with prospects for a vast new industry, Gregory doesn’t think marijuana will ever come close to tobacco’s former dominance as an economic and cultural power.

“Remember, we were growing tobacco for the world,” Gregory says. “Here, you’re talking about marijuana for Virginia. That’s not to say it won’t have some impact, but the hemp crop will have more because it’s going to be much more difficult and regulated to grow anything in fields more than 1% THC. Marijuana will not change the world here.”

Grassroots vs. ‘Big Marijuana’

Perhaps the largest uncertainty for Virginia’s marijuana industry is what will happen when federal prohibition ends. It’s likely to cause an earthquake in the industry.

“While you will hear from activists and even legislators shaking their fist about ‘Big Marijuana,’ they haven’t seen ‘big’ yet,” says Pedini of NORML. “‘Big’ is brands like Constellation [Brands] and Altria. It will be the end of federal prohibition that opens the floodgates for these truly ‘big’ companies.

“What we’re doing in Virginia right now is ensuring that we have our own regulatory structure in place prior to the end of federal prohibition. So, Virginia is deciding how Virginia regulates cannabis, rather than Virginia being beholden to ... behemoths like Altria that will undeniably have a hand in the end of federal prohibition.”

Altria Group — which owns the nation’s largest cigarette manufacturer, Philip Morris USA — has been making headway in the industry during the past few years, viewing it as a natural progression from tobacco



Pure Shenandoah processes hemp into consumer products such as CBD oil, edibles and massage oil. Hemp fiber can be used to make goods like animal bedding, packaging, clothing and paper.

products. In 2018, Altria spent \$1.8 billion for a 45% equity stake in Canadian multinational cannabis corporation Cronos Group Inc. It also has filed patents and purchased marijuana vaporizer technology.

“Altria supports an appropriate federal regulatory framework for cannabis,” Altria spokesman George Parman says. “States are shaping policy frameworks for regulation and legalization, and it will be important that federal policy is, whenever possible, complementary to those efforts. In both cases, we want to ensure this process is done in a way that establishes a transparent, responsible and equitable operating environment for stakeholders in the commonwealth.”

Meanwhile, Constellation Brands Inc., which owns Corona beer and Svedka Vodka, among other alcohol brands, also has invested in Canopy Growth Corp., another marijuana company based in Canada, where federal legalization was enacted in 2018.

The entrance of huge corporations into the nascent industry has grassroots organizers and legislators concerned, after

decades of pushing for federal prohibition to end.

Many worry that big corporations and out-of-state products from states like Oregon and California could overwhelm smaller and minority-owned businesses, not to mention social equity programs that aim to empower communities previously damaged by marijuana prohibition.

In Elkton, Pure Shenandoah continues to look to the future, hoping to secure a foothold in Virginia’s rapidly evolving landscape. Johnson, the company’s CEO, says he is looking particularly closely at processing, which emerged as a bottleneck during the first years of hemp production in Virginia.

Meanwhile, Pure Shenandoah raced to finish up work on its retail front for a ribbon-cutting in early October. “We’ve been so internal,” Johnson says. “Now, we’re saying, ‘Look at what we’re doing.’”

In mid-September, Pure Shenandoah’s showroom was empty, but not for long. Like the void in Virginia’s still to-be-determined commercial marijuana market, it will soon be filled. ■