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VIRGINIA VOTERS LEFT IN THE DARK

Politically active nonprofit organizations are spending big money to elect candidates this year, including in races involving Virginia Beach. It's part of a larger issue with the "dark money" that influences elections at all levels of government when groups don't say where their money comes from. **Page 14.**

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Glen Mason/The Indy

The renowned local artist Ken Wright is seen with one of his abstract works.

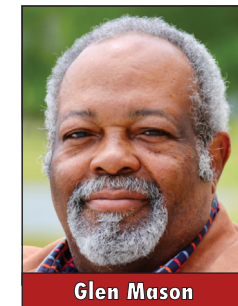
COLUMN

Ken Wright, a local fine arts great, is among those whose work shines at MOCA

VIRGINIA BEACH

You don't expect the acclaimed artist Ken Wright to greet you when entering the Virginia Museum of Contemporary Art.

But his image is on a large video display that welcomes visitors just outside of the "Collector's Edition," an exhibition in the main gallery which highlights the connection of MOCA to the collectors who support the work and



Glen Mason

culture celebrating art.

Art is subjective to one's personal view. At its best, the artist has the power to touch lives. And one of the best calls Hampton Roads home.

Collector's Edition, which runs through the end of the year, has a range of great work. Many art enthusiasts know or are familiar with Wright and the cadre of other artists featured.

"Ken Wright is incredibly generous with his time and wisdom," said Kendall Chandler, education coordinator at MOCA. "He is such a staple to our artistic community. He is such a staple to our creative community. We feel fortunate to work with him."

Wright is a former graphic artist at *The Virginian-Pilot* who continues to create fine art, as evident in his painting on canvas, "Morning Breeze," on display.

[CONTINUED ON PAGE 25]

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How a dark money group, without nam

BY JOHN-HENRY DOUCETTE

VIRGINIA BEACH – Freedom Virginia, a nonprofit organization that says it is nonpartisan, has spent nearly \$1.7 million this year to help Democrats running in state legislative races.

Its spending includes paying for mail and digital advertising on behalf of two Virginia Beach Democrats, among many others, and it has contributed to political organizations and endorsed dozens of Democrats seeking office, according to data compiled by the Virginia Public Access Project, or VPAP, which tracks money in politics.

Political spending by some nonprofit organizations is widespread, but some of Freedom Virginia's advertising on behalf of Democrats ruffled Republican feathers this year.

Freedom Virginia did not file independent expenditure reports, through which organizations disclose spending on behalf of candidates that are not coordinated with the campaign. This led to an opinion released this month by the attorney general's office that says such groups should.

However, Freedom Virginia's spending was disclosed by its recipients as "in-kind" contributions – just not by the organization itself. Freedom Virginia says the types of contributions they made were appropriately reported as in-kind contributions by the various campaigns because there was some coordination with the campaigns the money helped.

This may be a political spat amid a big campaign, but it involves a few issues that make Virginia's campaign finance regulations so complex and, to some, inadequate.

Virginia, unlike other states, does not cap political giving. Election law here is predicated on disclosure. The issue with dark money is the public does not know where the money originates because there is no requirement to disclose that information. And contributions by dark money groups – organizations that do not say where their money originates – can be reported in different ways. That makes monetary influence tough for the public to track and understand.

Special interests can influence voters through "a Russian doll scheme of different organizations to spend and hide" funding, said Beth Shimek, senior legal counsel for state and local reform at the nonprofit Campaign Legal Center.

"In states like Virginia, where there aren't campaign contribution limits," she added, "there's a lot of spending happening in elections. One of the best ways for voters to have that full picture of who is spending is through transparency laws, through transparency initiatives."

Challenges include public access to and the timeliness of some reporting about the flow of political money, stalled attempts to address some of these issues through legislation and the secrecy of dark money groups that say they're grassroots but can be backed by big donors who influence who we elect and what policies those officials enact.

State Del. Israel O'Quinn, a Republican from Bristol, asked Attorney General Jason Miyares, a fellow Republican, to weigh in on whether nonprofits need to file independent expenditure reports for certain kinds of spending. O'Quinn is opposed this year, but he sought the opinion after hearing Freedom Virginia paid for ads in another race.

"I believe any entity operating in Virginia should be subject to our disclosure and campaign finance laws," O'Quinn told *The Independent News* via email recently.

"It is my opinion," Miyares wrote on Wednesday, Oct. 18, to O'Quinn, "that a tax-exempt organization that engages in

express advocacy of a clearly defined candidate must comply with the act's reporting requirements and is subject to the penalties set forth in the law for failure to comply."

Freedom Virginia, a 501(c)(4) nonprofit, responded to questions from *The Independent News* on Tuesday, Oct. 31, with a statement that disputes whether the opinion applies.

"All election-related expenditures have been and will be publicly reported by supported candidates," Brigid Godfrey, communications director for the group, said via email. "We are structured under Virginia campaign finance law like many other advocacy groups of all ideological stripes."

Freedom Virginia said the ad spending to help candidates has been reported by the recipients as in-kind contributions, as the law requires, because they are coordinated with campaigns. These are different than independent expenditures.

"Freedom Virginia is proud of our support from Virginia grassroots donors and like-minded organizations, which share our goals of fighting for policies that empower all Virginia families to thrive," Godfrey said in the statement.

Godfrey said O'Quinn was launching "baseless attacks" on them rather than working on legislation to lower prescription drug costs, one area of the nonprofit's advocacy.

Rich Anderson, chairperson of the Republican Party of Virginia, said the group is partisan and should disclose through independent expenditure reports. He said groups on both sides of the aisle do so.

"I think they're anything but a 501(c)(4) nonpartisan organization, and that plays out when you see their endorsements," he said. "Dozens and dozens of Democrats, and not one Republican. ... This organization, they think they're skirting the rules in a legal way. I think they're skirting the rules, and the rules need to be tightened up."

Others agree campaign finance rules need some work, but how to make reform real seems elusive in Virginia.

"These kinds of examples really highlight the gaps that could be filled through a good disclosure bill," said Nancy Morgan, coordinator for BigMoneyOutVA, a nonpartisan group that advocates to improve campaign finance law.

Morgan said the General Assembly had an opportunity this year to improve reporting requirements.

Proposed bills [**SB854/HB1551**] would have meant greater disclosure requirements on political ads that are independent expenditures, including requiring a group to list its three top donors in its disclaimer, broadening disclaimer requirements for ads for campaigns or for referendums. The Senate version passed that chamber with Democratic support, but the effort died in a subcommittee in the House of Delegates.

"We are for total transparency," said Morgan, who spoke twice before a House subcommittee in support of the effort.

O'Quinn chairs that subcommittee and was among the Republicans who voted not to advance either version. He told *The Independent News* that requiring donor names on the disclosure on an ad seemed a "clunky" way to address the dark money issue – and that the attorney general's opinion says the existing law addresses reporting requirements.

Under state law, nonprofits such as Freedom Virginia can engage in some political activities. The group, like other nonprofits, has done things that might be done by a political action committee, which must disclose the sources of its money and how it is spent on a schedule. But the rules for PACs do not apply if the "primary purpose" of a nonprofit isn't electioneering. Less than half the group's expenditures should be

Some of Freedom Virginia's partisan efforts
opinion issued by Attorney General Jason M
pendent expenditure reports to the state. Th
it, noting that its contributions are already

political, and spending by Freedom Virginia in 2021 appears to have been below that threshold, according to a federal filing reviewed by *The Independent News*.

Essentially, a nonprofit can spend a lot on partisan activities if it spends more on other programs. Freedom Virginia advocates on issues such as access to sick leave, prescription drug affordability and affordable housing. "The majority of our work is on economic legislative priorities for Virginia families, and we have run issue ads supporting Democrats and Republicans alike who support legislation that lowers costs for hard-working Virginians," Godfrey said. "We are also proud to support candidates who share these goals."

The group noted that it released digital ads supporting two Republicans on issues such as prescription drug affordability, though those were not political ads. Neither of their Democratic opponents this year received support from Freedom Virginia, according to VPAP.

VPAP data shows Freedom Virginia has contributed \$2.65 million in support to Democrats and aligned groups since

Paid for by Freedom Virginia in support of Joshua Cole; not authorized by a candidate.
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IONS

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 ayares that says such groups should file inde-
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 being reported in accordance with the law.

2021, or during two General Assembly election cycles.

Dr. Leslie Caughell, associate professor of political science at Virginia Wesleyan University, said dark money groups often draw attention in national politics, but their influence in smaller contests can be enough to swing a close race. Issue ads through television or by mail in a state legislative district can make an impact because voters may know less about candidates than in a national election, Caughell said.

“One of the reasons dark money is so important, so pervasive,” Shimek of the Campaign Legal Center said, “is because, when you look at a state election, people can spend comparatively less money than say a federal election to have a bigger influence, to reach more people in a smaller area.”

“This is such a confusing aspect of politics, and it effects people’s trust in the system,” Caughell said.

Some of Freedom Virginia’s big spending involves races in Virginia Beach. Two of its local endorsed candidates are state Sen. Aaron Rouse, a Virginia Beach Democrat seek-

ing reelection in the new 22nd Senate District, and Michael Feggans, the Democratic challenger to Republican state Del. Karen Greenhalgh in the new 97th House District.

Freedom Virginia made in-kind contributions surpassing \$92,000 to Rouse’s campaign and \$168,000 to Feggan’s campaign through the end of September, according to VPAP and campaign financial reports filed by the candidates. Support included paying for digital ads and mailers.

Republicans in those races also have support from outside groups. For example, nearly \$46,000 in pro-Greenhalgh ads, mailers and canvassing were paid for by Americans for Prosperity, a dark money group that backs conservative causes and candidates. Kevin Adams, challenging Rouse after facing him this year in a special election, had support before the January special election from Americans for Prosperity — about \$56,000 for pro-Adams mailers, digital ads and canvassing. Americans for Prosperity reported this as independent expenditures, which, again, are different than an in-kind contributions.

Dark money was also seen in an advisory referendum in Virginia Beach. In 2016, a 501(c)(4) nonprofit tried to get local referendum voters to support bringing light rail to Town Center. Voters ultimately rejected extending The Tide.

That group, Light Rail Now, didn’t form a referendum committee, which would have required regular disclosures while the election season was underway. State election officials agreed with the group’s reading of the exclusion in the law for nonprofits that do not advocate for candidates.

The group was backed by unidentified donors, some of whom gave tens of thousands of dollars to influence voters while the nonprofit shielded identities. Virginia Beach voters did not have information when the influence occurred.

The sums given by backers were contained in a public copy of the nonprofit’s return to the IRS, but their names were not. The filing was released a year after the vote had been decided.

This September, the Virginia Center for Investigative Journalism at WHRO published a story by Jimmy Cloutier, a reporter at the nonprofit OpenSecrets. Cloutier found nearly \$1.7 million in 2023 spending in state legislative races by independent groups, some backed by dark money.

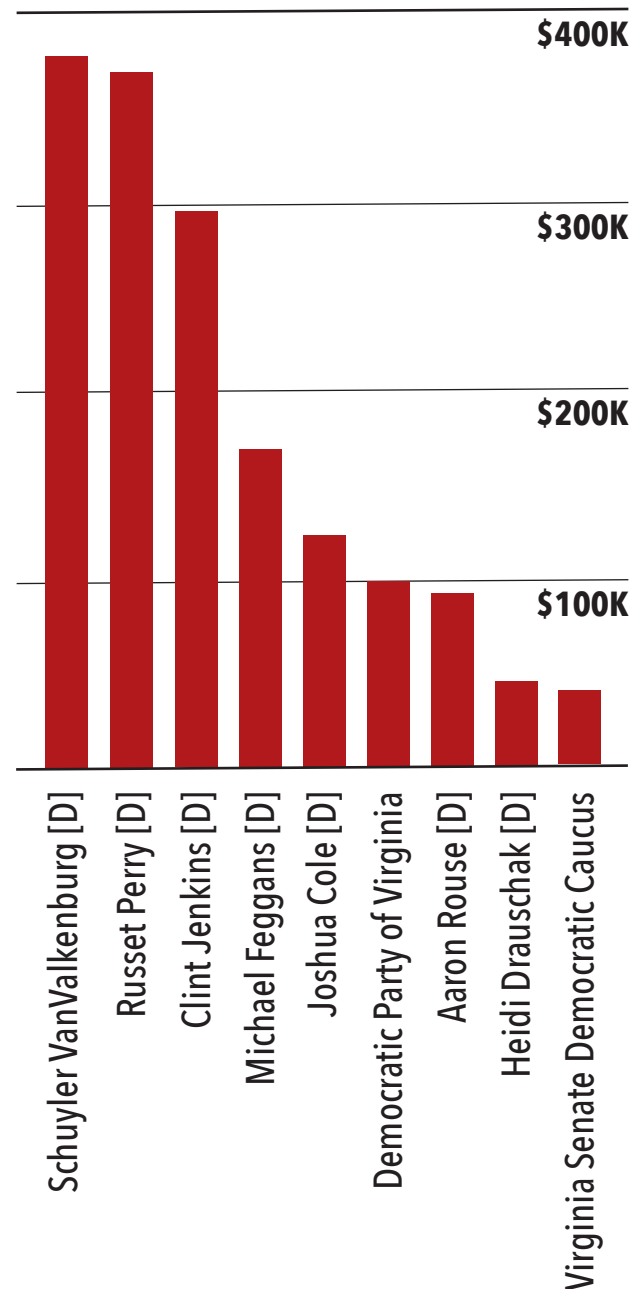
The VCIJ and OpenSecrets report, using numbers through Tuesday, Sept. 12, was based upon independent expenditure reports. Most of the money examined in that story supported Republican candidates. Again, Freedom Virginia does not file that kind of report, and it was not among the groups named in the story. Freedom Virginia has made more than \$1.69 million in contributions this year, though not all was in-kind spending. That includes spending reported through late September. It is roughly the same amount spent among all the groups discussed in the report by VCIJ and OpenSecrets.

This past week, OpenSecrets updated data through Monday, Oct. 16. The group told *The Independent News* there has been an estimated \$4.2 million in outside spending this year, though not all of that was in state legislative races. The leading spender is Americans for Prosperity, which reported more than \$1.8 million through independent expenditure reports obtained by OpenSecrets. It helped Republican candidates with support such as digital ads and mailers, according to VPAP summaries of some of those efforts.

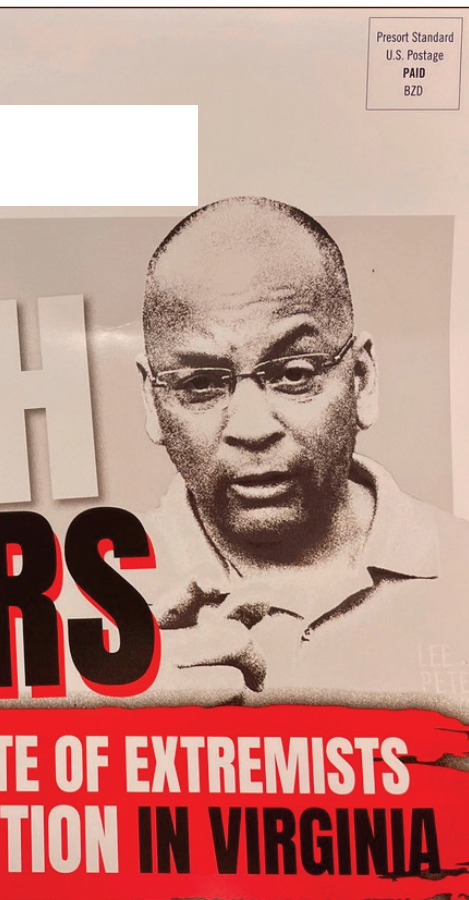
Freedom Virginia has spent more than all but one of the

BIG SPENDING

This graph shows leading beneficiaries of political spending by Freedom Virginia, a 501(c)(4) nonprofit, either on behalf of or to candidate campaigns and political groups in 2023. The organization made nearly \$1.7 million in contributions in support of Democratic candidates for state legislature in Virginia and organizations aligned with the party. Some contributions include paying for advertising and mail to voters, according to the Virginia Public Access Project and a review of campaign financial disclosure reports.



Source: Virginia Public Access Project database using information filed by the campaigns or political organizations identified to the state



Freedom Virginia, a nonprofit that says it is nonpartisan, has funded political advertising such as this example on behalf of Democrats running this year in state legislative races. This ad criticized Lee Peters, a Republican facing former Del. Joshua Cole, who is a board member of Freedom Virginia. The *Independent News* edited this image by placing a box over the address of the direct mail ad’s original recipient.

[CONTINUED ON PAGE 18]



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Dark Money: How some organizations report political spending can differ

[CONTINUED FROM PAGE 15]

groups – Americans for Prosperity – identified by OpenSecrets using the independent expenditure reports. Seemingly similar types of giving are reported in different ways.

OpenSecret's work also suggests a challenge with the independent expenditures. They require timely reporting, but they are not readily available to the public.

OpenSecrets obtained its information through public records requests. Citizens need to look in different places to understand the spending of different politically active groups.

Public records offer a glimpse – if an incomplete one – of how dark money moves.

Freedom Virginia in 2021 received nearly \$3.5 million in contributions and grants, far more than \$352,100 in its initial year, 2020, according to a copy of its return reviewed through a database maintained by the nonprofit news organization ProPublica.

The nonprofit listed more than \$1 million in expenses for a “partisan voter contact program in support of champions for economic justice” in its 2021 filing. As happened with the light rail group years ago in Virginia Beach, Freedom Virginia’s return does not disclose the sources of its money.

The Sixteen Thirty Fund, a 501(c)(4) nonprofit, provided Freedom Virginia with \$118,000 in 2020 and \$114,000 in 2021, according to its returns. The 501(c)(3) charity the Hopewell Fund, which is associated with the Sixteen Thirty Fund, gave more – grants of \$320,325 in 2020 and \$2.4 million in 2021 to Freedom Virginia.

In 2021, the year in which the previous state legislative elections were held in Virginia, Freedom Virginia reported taking in about \$3.45 million in contributions or grants and spending about \$3.16 million in program service expenses, including the “partisan voter contact program.”

Freedom Virginia told *The Independent News* it did not use any money from the nonprofits to advocate to elect candidates. The Hopewell Fund did not return calls seeking comment.

Freedom Virginia in 2021 made about \$939,000 in political contributions supporting candidates and Democratic organizations, VPAP data shows. That included in-kind support reported by campaigns.

Among Freedom Virginia’s board members is Joshua Cole, according to the group’s federal return and a report filed this year with the state corporation commission. Cole, a former delegate who lost a reelection bid in 2021, is seeking election to the new House District 65 seat. He declined to comment.

“We’re proud to support candidates like Josh who share our goals of lowering costs

for hard-working Virginia families,” Godfrey wrote. “The board does not make decisions on election advocacy spending.”

Freedom Virginia is among the top contributors to Cole’s campaign, according to the VPAP database and campaign financial disclosures filed by the campaign. The group has contributed nearly \$362,000 in support to the campaign since 2021, including almost \$125,000 this year – mostly in-kind donations of digital advertising and mailers.

A mailer produced this year by Freedom Virginia and provided to *The Independent News* is marked that the nonprofit paid for it in support of Cole, though it wasn’t authorized by him. It warns voters about “extremist” supporters of Republican Lee Peters.

O’Quinn said advertising in this race led him to seek the opinion from Miyares.

The tax filings in 2020 and 2021 give insight into where Freedom Virginia gets some funding, but there are gaps and the records are not timely. The partial numbers offered in federal returns roughly coincide with an election cycle that is long concluded.

Among many concerns raised by groups such as BigMoneyOutVA is the lack of oversight of disclosure requirements for independent expenditures and groups that spend to help campaigns. The previously mentioned campaign finance bill that did not advance this year sought to address some issues. It could have changed election law making stricter guidelines for advocating a yes or no vote in a referendum, which was at issue in Virginia Beach in 2016.

The Senate version of that bill was introduced by state Sen. Barbara Favola, a Democrat.

State Del. Daniel Helmer, a Democrat, carried a companion bill in the House.

“All that HB1551 does is ensure that dark money has some light shed on it,” Helmer told members of the Privileges & Elections subcommittee led by O’Quinn in Richmond in February.

It didn’t advance. Favola’s version met the same fate in the same subcommittee.

During an interview, Favola said her bill focused upon groups that are not coordinating with campaigns, which means it might not apply to groups such as Freedom Virginia that say they are coordinating.

But the bill would give more information to voters, Favola said this past week.

“We’re never going to be able to write a law that captures everything,” she said.

Ed. — The Virginia Center for Investigative Journalism at WHRO is online via vcij.org. BigMoneyOutVA is at bigmoneyoutva.org, OpenSecrets is at opensecrets.org, ProPublica is at propublica.org and the Virginia Public Access Project is at vpap.org.