

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3 **MUR: 7299**

4 DATE COMPLAINT FILED: Dec. 5, 2017

5 DATE OF NOTIFICATION: Dec. 7, 2017

6 DATE OF LAST RESPONSE: Jan. 16, 2018

7 DATE ACTIVATED: July 3, 2018

8 EARLIEST SOL: Nov. 27, 2022

9 LATEST SOL: Mar. 31, 2023

10 ELECTION CYCLE: 2018

11 **COMPLAINANT:**

12 Republican Party of Virginia, Inc.

13 **RESPONDENTS:**

14 Wexton for Congress and Joan Kowalski in her  
15 official capacity as treasurer

16 Wexton for State Senate

17 Jennifer Wexton

18 **RELEVANT STATUTES  
19 AND REGULATIONS:**

20 52 U.S.C. § 30125(e)

21 11 C.F.R. § 110.3(d)

22 11 C.F.R. § 300.63

23 **INTERNAL REPORTS CHECKED:**

24 Disclosure reports

25 **FEDERAL AGENCIES CHECKED:**

26 None

27 **I. INTRODUCTION**

28  
29 The Complaint alleges that Jennifer Wexton, Wexton for Congress and Joan Kowalski in  
30 her official capacity as treasurer (“Federal Committee”), and Wexton for State Senate (“State  
31 Committee”) raised and spent non-federal funds in violation of the Federal Election Campaign  
32 Act of 1971, as amended (the “Act”) and Commission regulations. In addition, the Complaint  
33 alleges that Wexton and the State Committee may have improperly directed non-federal funds to  
34 her Federal Committee. Respondents deny the allegations and argue that they are based on a  
35 misreading of the applicable law and regulations.

36 As discussed below, the available information indicates that the State Committee raised  
37 soft money and, after Wexton became a federal candidate, made disbursements to state and local

1 party committees in connection with Virginia state elections other than Wexton's but had  
2 insufficient federally permissible receipts to fund the disbursements. Further, the State  
3 Committee made direct contributions to the Federal Committee. We therefore recommend that  
4 the Commission find reason to believe that Jennifer Wexton and the State Committee violated  
5 52 U.S.C. § 30125(e)(1)(B) in connection with the disbursements to the state and local  
6 committees, and that the State Committee and the Federal Committee violated 52 U.S.C.  
7 § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) when the State Committee transferred soft money to  
8 the Federal Committee. We also recommend that the Commission authorize pre-probable cause  
9 conciliation.

## 10 **II. FACTS**

11 On April 20, 2017, Jennifer Wexton filed a Statement of Candidacy for the 2018 election  
12 to the U.S. House of Representatives in Virginia's Tenth Congressional District and designated  
13 the Federal Committee as her authorized campaign committee.<sup>1</sup> At the time she filed her  
14 Statement of Candidacy, Wexton was (and still is) a sitting Virginia state senator and an  
15 incumbent candidate in the 2019 state election.<sup>2</sup> The State Committee is her authorized state  
16 candidate committee.<sup>3</sup>

17 Between January 1, 2016, and June 30, 2018, the State Committee received \$77,825 in  
18 itemized contributions.<sup>4</sup> These itemized contributions consisted of \$17,625 (22.6%) in

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<sup>1</sup> Wexton Statement of Candidacy (Apr. 20, 2017); Wexton for Congress Statement of Organization (Apr. 20, 2017).

<sup>2</sup> Resp. at 1 (Jan. 16, 2018).

<sup>3</sup> Virginia Department of Elections, Active Candidate Committees, [https://www.elections.virginia.gov/Files/CandidatesAndPACs/PACS-Data/Active\\_CandidateCommittees.xlsx](https://www.elections.virginia.gov/Files/CandidatesAndPACs/PACS-Data/Active_CandidateCommittees.xlsx).

<sup>4</sup> See Table of State Committee Receipts (Attach. 1); State Committee's Disclosure Reports Covering the Period from Jan. 1, 2016, through July 30, 2018, <http://cfreports.sbe.virginia.gov/Committee/Index/4f45abed-9f50-e311-8b11-984be103f032> ("State Committee Reports"). During the same time period, the State Committee received \$4,825 in unitemized and in-kind contributions. *Id.* Virginia requires committees to itemize contributions over

1 contributions from sources that appear on their face to be federally permissible (*i.e.*, individuals<sup>5</sup>,  
 2 federal political committees, and partnerships); \$35,550 (45.7%) in contributions from sources  
 3 that may be federally permissible (*i.e.*, LLCs and Virginia state PACs)<sup>6</sup>; and \$24,650 (31.7%)  
 4 from sources that are not federally permissible (*i.e.*, corporations).<sup>7</sup>

5 After Wexton became a federal candidate, the State Committee made \$58,202 in  
 6 disbursements, including two \$1,000 disbursements to the Federal Committee<sup>8</sup> and the following  
 7 22 contributions to Virginia state and local candidates and state party committees totaling  
 8 \$34,900:<sup>9</sup>

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\$100. Virginia Dept. of Elections, *Summary of Laws and Policies: Candidate Campaign Committees*, Ch. 3, p. 17, <https://www.elections.virginia.gov/Files/CandidatesAndPACs/LawsAndPolicies/CandidatesSummary.pdf> (“Virginia Campaign Committee Guide”) (Sec. 3.3 stating “Contributors who have contributed an aggregate amount of more than \$100 to a committee during an election cycle . . . must be itemized on the committee’s campaign finance report.”).

<sup>5</sup> The State Committee’s disclosure reports showed that all individual contributions it received during this time period were, in aggregate, within the Act’s amount limitations.

<sup>6</sup> The State Committee Reports do not indicate whether the contributing LLCs are treated, for tax purposes, as partnerships or as corporations.

<sup>7</sup> Under Virginia law, a candidate for state office can accept contributions from any individual, corporation, union, association, or partnership in unlimited amounts. Virginia Campaign Committee Guide, Ch. 3, p. 17 (Sec. 3.1 stating “There are no contribution limits in Virginia.”). The receipts included \$30,600 received after Wexton became a federal candidate. The \$30,600 includes: \$5,300 (17.3%) from individuals, partnerships, and federal committees registered with the Commission; \$13,900 (45.4%) from LLCs and Virginia state PACs; and \$11,400 (37.3%) from corporations.

<sup>8</sup> *See id.*; Wexton for Congress 2017 July Quarterly Report at 141 (July 15, 2017) (reporting receipt of primary contribution on June 15, 2017); Wexton for Congress 2018 April Quarterly Report at 395 (Apr. 15, 2018) (reporting receipt of primary contribution on Mar. 31, 2018).

<sup>9</sup> *See id.* Other disbursements included, *inter alia*, expenditures for travel, office expenses, food, postage, and web hosting.

Date	Recipient	Amount
4/28/17	Ralph Northam for Governor	\$1,000
6/1/17	John Bell for Delegate	\$5,000
6/17/17	Virginia Young Democrats	\$250
6/30/17	Kathleen Murphy for Delegate	\$2,000
7/17/17	Friends of Danica Roem	\$1,000
7/18/17	Delaney for Delegate	\$1,000
7/24/17	Kathy Tran for Delegate	\$1,000
7/27/17	Reid for Delegate	\$1,000
8/15/17	Ayala for Delegate	\$1,000
8/15/17	Commonwealth Victory Fund	\$1,200
9/5/17	Fairfax County Democratic Committee	\$500
9/11/17	Friends of Justin Fairfax	\$500
9/21/17	Ralph Northam for Governor	\$2,500
10/1/17	Virginians for Mark Herring	\$1,000
10/23/17	Friends of Danica Roem	\$1,000
10/24/17	Delaney for Delegate	\$1,000
10/24/17	Reid for Delegate	\$2,000
10/27/17	Friends of Tia Walbridge	\$500
1/8/18	Virginia Legislative Black Caucus	\$100
1/9/18	Virginia Democratic Senate Caucus	\$10,000
2/24/18	Kathy Smith for Supervisor	\$100
3/31/18	Loudoun County Democratic Committee	\$1,250
	<b>Total</b>	\$34,900

### 1 III. LEGAL ANALYSIS

2 The Act prohibits federal candidates, their agents, and entities, such as state committees,  
 3 that are established, financed, maintained, or controlled (“EFMC’d”) by federal candidates<sup>10</sup>  
 4 from soliciting, receiving, directing, transferring, or spending funds “in connection” with any  
 5 federal or non-federal election unless the funds are from sources consistent with state law and are  
 6 in amounts and from sources permitted by the Act.<sup>11</sup>

7 Notwithstanding this general rule, a federal candidate who concurrently runs for state or  
 8 local office may herself, or through an entity she EFMC’d, solicit, receive, and spend funds  
 9 outside of the Act’s amount limitations and source prohibitions when the solicitations, receipts,

<sup>10</sup> The Commission has concluded that a federal candidate’s state committee is an entity EFMC’d by the federal candidate. Advisory Op. 2007-26 (Schock) at 4 (“AO 2007-26”); Advisory Op. 2006-38 (Casey State Committee) at 4 (“AO 2006-38”).

<sup>11</sup> 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.61-62; *see also* 52 U.S.C. §§ 30116(a), 30118(a) (setting out contribution limitation and corporate contribution prohibition, respectively).

1 and disbursements are consistent with state law and are solely in connection with that candidate's  
2 own state or local election.<sup>12</sup> When a dual candidate's state committee engages in activities that  
3 are "in connection" with an election that is not that candidate's own state or local election, the  
4 dual candidate exception does not apply.<sup>13</sup> Such activities include, but are not limited to, a state  
5 candidate committee's donations to other state candidates' committees and to political party  
6 organizations.<sup>14</sup> A federal candidate's state committee must spend only federally permissible  
7 funds in its account for these purposes, as identified by using a reasonable accounting method.<sup>15</sup>

8 Further, the Commission's regulations explicitly prohibit "[t]ransfers of funds or assets  
9 from a candidate's campaign committee or account for a nonfederal election to his or her  
10 principal campaign committee or other authorized committee for a federal election."<sup>16</sup> The  
11 Commission has explained that this prohibition on all transfers from a dual candidate's state  
12 committee to the candidate's federal committee is intended to prevent a federal committee's  
13 indirect use of soft money.<sup>17</sup>

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<sup>12</sup> 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63 (applying rule to dual federal-state candidates and entities EFMC'd by those candidates).

<sup>13</sup> *See, e.g.*, Advisory Opinion 2005-02 (Corzine II) at 4 (superseded in part on other grounds) ("any solicitation, receipt, or spending of funds by a Federal officeholder that refers to State or local candidates running for entirely different offices does not come within the exception"); AO 2007-26 at 4; AO 2006-38 at 4.

<sup>14</sup> *See, e.g.*, AO 2007-26 at 4 ("Donations ... to the non-Federal accounts of State and local party committees and to non-Federal candidates would involve spending and disbursing funds in connection with an election other than a Federal election"); AO 2006-38 at 4 ("Donating to a State or local candidate or to the non-Federal account of any State or local Democratic party organization would involve transferring, spending, or disbursing funds in connection with a non-Federal election").

<sup>15</sup> AO 2007-26 at 3; AO 2006-38 at 3. For this purpose, the Commission has approved as reasonable the "first in, first out" and "last in, first out" accounting methods. AO 2006-38 at 3. Other accounting methods may also be reasonable.

<sup>16</sup> 11 C.F.R. § 110.3(d).

<sup>17</sup> *See* Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3474-3475 (Jan. 8, 1993) (explaining, also, that Commission was adopting total prohibition in this circumstance because of practical difficulty in linking or otherwise accounting for federally permissible funds available for transfer); *see also* MUR 5406 (Hynes for Senate) (finding RTB that dual candidate's federal and state committees violated section 110.3(d) for

1           The Complaint alleges that the State Committee impermissibly raised and spent soft  
2 money, asserting that any soft money raised and spent by the State Committee after Wexton's  
3 declaration of federal candidacy is impermissible. The Complaint also alleges, without  
4 specifying how, that the State Committee "directed" soft money to the Federal Committee.  
5 Respondents argue that they were permitted to solicit and accept soft money under this dual-  
6 candidate exception, and that they complied with the requirements of both 52 U.S.C.  
7 § 30125(e)(2) and 11 C.F.R. § 300.63.<sup>18</sup>

8           The available information shows that Respondents violated the Act's soft money ban in  
9 two ways. First, the State Committee improperly made donations to other state candidates and  
10 state party committees with non-federal funds after Wexton became a federal candidate. Once  
11 Wexton became a federal candidate on April 20, 2017, the State Committee was allowed to  
12 spend soft money on Wexton's own state election but was required, as an entity EFMC'd by a  
13 federal candidate, to use federally permissible funds for disbursements made in connection with  
14 federal and other non-federal elections. From the time Wexton became a federal candidate, the  
15 State Committee made \$34,900 in donations to Virginia state and local candidates and parties  
16 that were required to be made using federally permissible funds.<sup>19</sup> The State Committee,  
17 however, reported receipts of only \$17,625 from individuals and other facially-permissible  
18 sources since January 2016.<sup>20</sup> The State Committee's federally permissible receipts appear

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direct contribution from state to federal committee and requiring disgorgement of contribution amount to U.S. Treasury).

<sup>18</sup> Resp. at 2.

<sup>19</sup> The State Committee's reports also show approximately \$21,302 in disbursements that appear to be reasonably related to Wexton's own state election and thus likely permissible soft money disbursements.

<sup>20</sup> Though the State Committee also received funds from LLCs, it is not apparent from the current record whether these receipts are federally permissible. *See* 11 C.F.R. §110.1(g) (explaining that treatment of LLC contribution depends on tax treatment of the contributor).

1 insufficient to cover its reported state and local election disbursements, regardless of the State  
2 Committee's accounting method for identifying federally permissible funds. Thus, the record  
3 suggests that some portion of the \$34,900 that Wexton and the State Committee disbursed to  
4 state and local committees represents impermissible spending of non-federal funds in connection  
5 with state and local elections other than Wexton's own election. Accordingly, we recommend  
6 that the Commission find reason to believe that Wexton and the State Committee violated  
7 52 U.S.C. § 30125(e)(1)(B).

8         Second, the State Committee improperly contributed funds to the Federal Committee. As  
9 discussed above, the available information shows that the State Committee also made two \$1,000  
10 contributions to the Federal Committee, and such transfers are prohibited.<sup>21</sup> Further, there is no  
11 record of the Federal Committee refunding either contribution.<sup>22</sup> Therefore, we recommend that  
12 the Commission find reason to believe that the State Committee and the Federal Committee  
13 violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) when the State Committee made,  
14 and the Federal Committee accepted, impermissible transfers in the form of direct contributions.

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<sup>21</sup> *See supra* note 8.

<sup>22</sup> *See* Wexton for Congress 2017 July Quarterly Report at 141; Wexton for Congress 2018 April Quarterly Report at 395. Both transactions are accompanied by memo entries indicating that the contributions from the State Committee were "Made with Permissible Funds," indicating that Respondents are aware of, but may have misconstrued, the soft money prohibitions.

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**V. RECOMMENDATIONS**

1. Find reason to believe that Jennifer Wexton and Wexton for State Senate violated 52 U.S.C. § 30125(e)(1)(B);
2. Find reason to believe that Wexton for State Senate and Wexton for Congress and Joan Kowalski in her official capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d);
3. Approve the attached Factual and Legal Analysis;
4. Authorize pre-probable cause conciliation with Jennifer Wexton, Wexton for State Senate, and Wexton for Congress and Joan Kowalski in her official capacity as treasurer;
5. Approve the attached proposed conciliation agreement; and
6. Approve the appropriate letters.

Lisa J. Stevenson  
 Acting General Counsel

10/31/18  
 Date

*Kathleen M. Guith*  
 Kathleen M. Guith  
 Associate General Counsel

*Jin Lee*  
 Jin Lee  
 Acting Assistant General Counsel

*RW*  
 Ray L. Wolcott  
 Attorney



MUR 7299 (Wexton for Congress, *et al.*)

First General Counsel's Report

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2 Attachments

3 1. Table of State Committee Receipts

4 2. Factual and Legal Analysis

5

Source Type	Source	Contrib. Date	Contrib. Amount
<b>Facially Permissible Funds</b>			
Federal PAC	Virginia Education Association Fund	5/10/2016	\$500.00
Federal PAC	Virginia Farm Bureau Federation AgPAC	5/10/2016	\$500.00
Federal PAC	Dominion Political Action Committee	5/23/2016	\$500.00
Federal PAC	Reed Smith PAC	5/23/2016	\$250.00
Federal PAC	HCA for Good Government PAC	7/28/2016	\$1,000.00
Federal PAC	Virginia Bankers Association PAC	8/2/2016	\$1,000.00
Federal PAC	Virginia AFL-CIO Political Expenditures Fund	9/20/2016	\$1,000.00
Federal PAC	American Resort Development Association-Resort Owners Coalition PAC	10/19/2016	\$1,000.00
Federal PAC	LKQ Corporation Employee Good Government Fund	10/27/2016	\$1,000.00
Federal PAC	Raytheon Political Action Committee	11/17/2016	\$1,000.00
Federal PAC	Virginia Natural Gas, Inc. Committee for Effective Government	12/13/2016	\$500.00
Federal PAC	Reed Smith PAC	5/9/2017	\$500.00
Federal PAC	LKQ Corporation Employee Good Government Fund	7/26/2017	\$500.00
Federal PAC	Virginia Farm Bureau Federation AgPAC	9/8/2017	\$500.00
Federal PAC	HCA for Good Government PAC	1/5/2018	\$1,000.00
Individual	Lawrence Baldwin	7/24/2016	\$50.00
Individual	Mary Kitchen	7/31/2016	\$100.00
Individual	Lawrence Baldwin	8/21/2016	\$50.00
Individual	Lawrence Baldwin	9/25/2016	\$50.00
Individual	Wes Callender	10/12/2016	\$100.00
Individual	Cate Magennis Wyatt	10/19/2016	\$125.00
Individual	Lawrence Baldwin	10/19/2016	\$50.00
Individual	Graham Burns	10/24/2016	\$500.00
Individual	Mary Tondreau	10/24/2016	\$200.00
Individual	Wes Callender	10/24/2016	\$100.00
Individual	Paula Tosini	3/8/2017	\$1,000.00
Individual	Graham Burns	6/5/2017	\$500.00
Individual	Paula Tosini	4/4/2018	\$800.00
Partnership	Christian & Barton, LLP	5/26/2016	\$250.00
Partnership	Toll Road Investors Partnership II, L.P.	11/22/2016	\$500.00
Partnership	DuPont Fabros Technology, LP	12/27/2016	\$1,000.00
Partnership	DuPont Fabros Technology, LP	9/8/2017	\$1,000.00
Partnership	Hunton & Williams LLP	12/5/2017	\$500.00
<b>Facially Permissible Total:</b>			<b>\$17,625.00</b>

Source Type	Source	Contrib. Date	Contrib. Amount
<b>Potentially Permissible Funds</b>			
LLC	FutureLaw, L.L.C.	5/10/2016	\$250.00
LLC	Premium Distributors of Virginia, LLC	10/24/2016	\$1,000.00
LLC	Brambleton Group LLC	12/8/2016	\$5,000.00
LLC	Alcalde & Fay	12/29/2016	\$500.00
LLC	FutureLaw, L.L.C.	12/5/2017	\$250.00
State PAC	Virginia Trial Lawyers PAC	1/6/2016	\$1,000.00
State PAC	VA Society of Anesthesiologists PAC	5/10/2016	\$500.00
State PAC	Virginia Automobile & Truck Dealers PAC	5/10/2016	\$250.00
State PAC	Virginia Manufactured & Modular Housing Association PAC	5/10/2016	\$250.00
State PAC	Virginia Sheriffs' Association PAC	5/10/2016	\$250.00
State PAC	Virginia State Police Association PAC	5/10/2016	\$150.00
State PAC	SunTrust Bank Mid-Atlantic PAC	5/16/2016	\$500.00
State PAC	Virginia Independent Auto Dealers PAC	6/21/2016	\$250.00
State PAC	Virginia Beverage Association PAC	7/10/2016	\$750.00
State PAC	Virginia Hospital Association PAC	7/26/2016	\$1,000.00
State PAC	Dulles Area Realtors Political Action Committee	7/28/2016	\$250.00
State PAC	McGuireWoods State PAC Fund	7/28/2016	\$250.00
State PAC	Metro Virginia PAC	7/28/2016	\$250.00
State PAC	Community Associations Institute Virginia PAC	8/9/2016	\$500.00
State PAC	Old Dominion Highway PAC	8/9/2016	\$250.00
State PAC	NVTC TECHPAC	8/16/2016	\$1,500.00
State PAC	Virginia Hospital Association PAC	8/18/2016	\$1,000.00
State PAC	Virginia Automobile & Truck Dealers PAC	10/21/2016	\$500.00
State PAC	Virginia Wine Wholesalers PAC	10/21/2016	\$1,500.00
State PAC	Virginia Beer Wholesalers Association PAC	10/24/2016	\$2,000.00
State PAC	Virginia Cable PAC	12/7/2016	\$500.00
State PAC	Virginia Health Care Association PAC	12/19/2016	\$500.00
State PAC	Virginia Trial Lawyers PAC	12/26/2016	\$1,000.00
State PAC	Virginia State Police Association PAC	4/25/2017	\$150.00
State PAC	Virginia Automobile & Truck Dealers PAC	4/26/2017	\$250.00

Source Type	Source	Contrib. Date	Contrib. Amount
State PAC	Virginia Sheriffs' Association PAC	4/26/2017	\$250.00
State PAC	Old Dominion Highway PAC	5/9/2017	\$500.00
State PAC	Virginia Cable PAC	5/10/2017	\$500.00
State PAC	Community Associations Institute Virginia PAC	5/25/2017	\$500.00
State PAC	Virginia Hospital Association PAC	9/7/2017	\$1,000.00
State PAC	Virginia Wine Wholesalers PAC	9/8/2017	\$1,500.00
State PAC	Virginia Beverage Association PAC	9/8/2017	\$750.00
State PAC	Virginia Automobile & Truck Dealers PAC	9/18/2017	\$1,750.00
State PAC	Virginia Association of Mutual Insurance Companies PAC	9/19/2017	\$500.00
State PAC	Engineering Companies of Virginia PAC	10/20/2017	\$500.00
State PAC	Truckers Political Action Committee of Virginia	12/5/2017	\$250.00
State PAC	Virginia Beer Wholesalers Association PAC	12/5/2017	\$2,500.00
State PAC	Virginia Coalition of Motorcyclists	12/5/2017	\$250.00
State PAC	Virginia Manufactured & Modular Housing Association PAC	12/5/2017	\$250.00
State PAC	Virginia Taxicab Association PAC	12/5/2017	\$500.00
State PAC	Virginia Health Care Association PAC	12/20/2017	\$1,000.00
State PAC	Virginia Natural Gas, Inc. Committee for Effective Government	1/3/2018	\$500.00
State PAC	Virginia Optometric Association PAC	1/5/2018	\$250.00
<b>Potentially Permissible Total:</b>			<b>\$35,550.00</b>

Source Type	Source	Contrib. Date	Contrib. Amount
<b>Facially Impermissible Funds</b>			
Corporation	Hefty Wiley & Gore, P.C.	5/16/2016	\$250.00
Corporation	Williams Mullen	5/16/2016	\$500.00
Corporation	Carmax Auto Superstores, Inc.	5/26/2016	\$250.00
Corporation	Transurban USA, INC	5/26/2016	\$500.00
Corporation	Va Assn for Commercial Real Estate	5/26/2016	\$250.00
Corporation	Wawa, Inc.	5/26/2016	\$250.00
Corporation	Comcast Corporation	6/10/2016	\$500.00
Corporation	Diageo North America, Inc.	6/10/2016	\$500.00
Corporation	The Doctors Company	6/21/2016	\$500.00
Corporation	Altria Client Services Inc.	7/5/2016	\$500.00
Corporation	Hewlett Packard Enterprise Co.	7/7/2016	\$250.00
Corporation	Alliance of Automobile Manufacturers	7/10/2016	\$500.00
Corporation	Virginia Land Title Association	7/10/2016	\$250.00
Corporation	Anheuser-Busch	8/4/2016	\$250.00
Corporation	Northern Virginia Association of Realtors	9/7/2016	\$500.00
Corporation	Tesla	9/9/2016	\$500.00
Corporation	Service Distributing Inc.	9/13/2016	\$1,000.00
Corporation	CareFirst BlueCross BlueShield	10/27/2016	\$500.00
Corporation	Norfolk Southern Corporation	11/2/2016	\$500.00
Corporation	AOL Inc.	11/3/2016	\$2,000.00
Corporation	Republic National Distributing Company	11/21/2016	\$750.00
Corporation	Anheuser-Busch	12/13/2016	\$250.00
Corporation	Maritime Issues Council	12/15/2016	\$1,000.00
Corporation	Virginia Apartment Management Association	12/27/2016	\$500.00
Corporation	Amazon.com	12/29/2016	\$500.00
Corporation	Hefty Wiley & Gore, P.C.	4/25/2017	\$250.00
Corporation	Williams Mullen	5/10/2017	\$500.00
Corporation	Norfolk Southern Corporation	5/15/2017	\$500.00
Corporation	Va Assn for Commercial Real Estate	5/17/2017	\$250.00
Corporation	Republic National Distributing Company	5/19/2017	\$750.00
Corporation	NGP VAN, Inc	5/22/2017	\$4,050.00
Corporation	Virginia Land Title Association	8/4/2017	\$500.00
Corporation	Alliance of Automobile Manufacturers	8/11/2017	\$500.00
Corporation	Amazon.com	8/30/2017	\$500.00
Corporation	Service Distributing Inc.	9/8/2017	\$1,000.00

Source Type	Source	Contrib. Date	Contrib. Amount
Corporation	Virginia Apartment Management Association	10/2/2017	\$100.00
Corporation	Kemper Consulting, Inc.	10/4/2017	\$500.00
Corporation	Micron Technology, Inc.	10/5/2017	\$500.00
Corporation	Maritime Issues Council	11/2/2017	\$1,000.00
Corporation	Anheuser-Busch	12/20/2017	\$500.00
<b>Impermissible Total:</b>			<b>\$24,650.00</b>

**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

1  
2  
3 RESPONDENTS: Wexton for Congress and Joan Kowalski MUR 7299  
4 in her official capacity as treasurer  
5 Wexton for State Senate  
6 Jennifer Wexton

**I. INTRODUCTION**

7  
8 The Complaint alleges that Jennifer Wexton, Wexton for Congress and Joan Kowalski in  
9 her official capacity as treasurer (“Federal Committee”), and Wexton for State Senate (“State  
10 Committee”) raised and spent non-federal funds in violation of the Federal Election Campaign  
11 Act of 1971, as amended (the “Act”) and Commission regulations. In addition, the Complaint  
12 alleges that Wexton and the State Committee may have improperly directed non-federal funds to  
13 her Federal Committee. Respondents deny the allegations and argue that they are based on a  
14 misreading of the applicable law and regulations.

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16 soft money and, after Wexton became a federal candidate, made disbursements to state and local  
17 party committees in connection with Virginia state elections other than Wexton’s, but had  
18 insufficient federally permissible receipts to fund the disbursements. Further, the State  
19 Committee made direct contributions to the Federal Committee. The Commission therefore  
20 finds reason to believe that Jennifer Wexton and the State Committee violated 52 U.S.C.  
21 § 30125(e)(1)(B) in connection with the disbursements to the state and local committees, and  
22 that the State Committee and the Federal Committee violated 52 U.S.C. § 30125(e)(1)(A) and  
23 11 C.F.R. § 110.3(d) when the State Committee transferred soft money to the Federal  
24 Committee.

1     **II.     FACTS**

2             On April 20, 2017, Jennifer Wexton filed a Statement of Candidacy for the 2018 election  
3     to the U.S. House of Representatives in Virginia’s Tenth Congressional District and designated  
4     the Federal Committee as her authorized campaign committee.<sup>1</sup> At the time she filed her  
5     Statement of Candidacy, Wexton was (and still is) a sitting Virginia state senator and an  
6     incumbent candidate in the 2019 state election.<sup>2</sup> The State Committee is her authorized state  
7     candidate committee.<sup>3</sup>

8             Between January 1, 2016, and June 30, 2018, the State Committee received \$77,825 in  
9     itemized contributions.<sup>4</sup> These itemized contributions consisted of \$17,625 (22.6%) in  
10    contributions from sources that appear on their face to be federally permissible (*i.e.*, individuals<sup>5</sup>,  
11    federal political committees, and partnerships); \$35,550 (45.7%) in contributions from sources

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<sup>1</sup>         Wexton Statement of Candidacy (Apr. 20, 2017); Wexton for Congress Statement of Organization (Apr. 20, 2017).

<sup>2</sup>         Resp. at 1 (Jan. 16, 2018).

<sup>3</sup>         Virginia Department of Elections, Active Candidate Committees,  
[https://www.elections.virginia.gov/Files/CandidatesAndPACs/PACS-Data/Active\\_CandidateCommittees.xlsx](https://www.elections.virginia.gov/Files/CandidatesAndPACs/PACS-Data/Active_CandidateCommittees.xlsx).

<sup>4</sup>         See State Committee’s Disclosure Reports Covering the Period from Jan. 1, 2016, through July 30, 2018, <http://cfreports.sbe.virginia.gov/Committee/Index/4f45abed-9f50-e311-8b11-984be103f032> (“State Committee Reports”). During the same time period, the State Committee received \$4,825 in unitemized and in-kind contributions. *Id.* Virginia requires committees to itemize contributions over \$100. Virginia Dept. of Elections, *Summary of Laws and Policies: Candidate Campaign Committees*, Ch. 3, p. 17, <https://www.elections.virginia.gov/Files/CandidatesAndPACs/LawsAndPolicies/CandidatesSummary.pdf> (“Virginia Campaign Committee Guide”) (Sec. 3.3 stating “Contributors who have contributed an aggregate amount of more than \$100 to a committee during an election cycle . . . must be itemized on the committee’s campaign finance report.”).

<sup>5</sup>         The State Committee’s disclosure reports showed that all individual contributions it received during this time period were, in aggregate, within the Act’s amount limitations.



1 that may be federally permissible (*i.e.*, LLCs and Virginia state PACs)<sup>6</sup>; and \$24,650 (31.7%)  
2 from sources that are not federally permissible (*i.e.*, corporations).<sup>7</sup>

3 After Wexton became a federal candidate, the State Committee made \$58,202 in  
4 disbursements, including two \$1,000 disbursements to the Federal Committee<sup>8</sup> and the following  
5 22 contributions to Virginia state and local candidates and state party committees totaling  
6 \$34,900:<sup>9</sup>

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<sup>6</sup> The State Committee Reports do not indicate whether the contributing LLCs are treated, for tax purposes, as partnerships or as corporations.

<sup>7</sup> Under Virginia law, a candidate for state office can accept contributions from any individual, corporation, union, association, or partnership in unlimited amounts. Virginia Campaign Committee Guide, Ch. 3, p. 17 (Sec. 3.1 stating “There are no contribution limits in Virginia.”). The receipts included \$30,600 received after Wexton became a federal candidate. The \$30,600 includes: \$5,300 (17.3%) from individuals, partnerships, and federal committees registered with the Commission; \$13,900 (45.4%) from LLCs and Virginia state PACs; and \$11,400 (37.3%) from corporations.

<sup>8</sup> *See id.*; Wexton for Congress 2017 July Quarterly Report at 141 (July 15, 2017) (reporting receipt of primary contribution on June 15, 2017); Wexton for Congress 2018 April Quarterly Report at 395 (Apr. 15, 2018) (reporting receipt of primary contribution on Mar. 31, 2018).

<sup>9</sup> *See id.* Other disbursements included, *inter alia*, expenditures for travel, office expenses, food, postage, and web hosting.

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Date	Recipient	Amount
4/28/17	Ralph Northam for Governor	\$1,000
6/1/17	John Bell for Delegate	\$5,000
6/17/17	Virginia Young Democrats	\$250
6/30/17	Kathleen Murphy for Delegate	\$2,000
7/17/17	Friends of Danica Roem	\$1,000
7/18/17	Delaney for Delegate	\$1,000
7/24/17	Kathy Tran for Delegate	\$1,000
7/27/17	Reid for Delegate	\$1,000
8/15/17	Ayala for Delegate	\$1,000
8/15/17	Commonwealth Victory Fund	\$1,200
9/5/17	Fairfax County Democratic Committee	\$500
9/11/17	Friends of Justin Fairfax	\$500
9/21/17	Ralph Northam for Governor	\$2,500
10/1/17	Virginians for Mark Herring	\$1,000
10/23/17	Friends of Danica Roem	\$1,000
10/24/17	Delaney for Delegate	\$1,000
10/24/17	Reid for Delegate	\$2,000
10/27/17	Friends of Tia Walbridge	\$500
1/8/18	Virginia Legislative Black Caucus	\$100
1/9/18	Virginia Democratic Senate Caucus	\$10,000
2/24/18	Kathy Smith for Supervisor	\$100
3/31/18	Loudoun County Democratic Committee	\$1,250
	<b>Total</b>	\$34,900

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2 **III. LEGAL ANALYSIS**

3 The Act prohibits federal candidates, their agents, and entities, such as state committees,  
4 that are established, financed, maintained, or controlled (“EFMC’d”) by federal candidates<sup>10</sup>  
5 from soliciting, receiving, directing, transferring, or spending funds “in connection” with any  
6 federal or non-federal election unless the funds are from sources consistent with state law and are  
7 in amounts and from sources permitted by the Act.<sup>11</sup>

8 Notwithstanding this general rule, a federal candidate who concurrently runs for state or  
9 local office may herself, or through an entity she EFMC’d, solicit, receive, and spend funds

<sup>10</sup> The Commission has concluded that a federal candidate’s state committee is an entity EFMC’d by the federal candidate. Advisory Op. 2007-26 (Schock) at 4 (“AO 2007-26”); Advisory Op. 2006-38 (Casey State Committee) at 4 (“AO 2006-38”).

<sup>11</sup> 52 U.S.C. § 30125(e)(1)(A)-(B); 11 C.F.R. §§ 300.61-62; *see also* 52 U.S.C. §§ 30116(a), 30118(a) (setting out contribution limitation and corporate contribution prohibition, respectively).

1 outside of the Act’s amount limitations and source prohibitions when the solicitations, receipts,  
 2 and disbursements are consistent with state law and are solely in connection with that candidate’s  
 3 own state or local election.<sup>12</sup> When a dual candidate’s state committee engages in activities that  
 4 are “in connection” with an election that is not that candidate’s own state or local election, the  
 5 dual candidate exception does not apply.<sup>13</sup> Such activities include, but are not limited to, a state  
 6 candidate committee’s donations to other state candidates’ committees and to political party  
 7 organizations.<sup>14</sup> A federal candidate’s state committee must spend only federally permissible  
 8 funds in its account for these purposes, as identified by using a reasonable accounting method.<sup>15</sup>

9 Further, the Commission’s regulations explicitly prohibit “[t]ransfers of funds or assets  
 10 from a candidate’s campaign committee or account for a nonfederal election to his or her  
 11 principal campaign committee or other authorized committee for a federal election.”<sup>16</sup> The  
 12 Commission has explained that this prohibition on all transfers from a dual candidate’s state  
 13 committee to the candidate’s federal committee is intended to prevent a federal committee’s  
 14 indirect use of soft money.<sup>17</sup>

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<sup>12</sup> 52 U.S.C. § 30125(e)(2); 11 C.F.R. § 300.63 (applying rule to dual federal-state candidates and entities EFMC’d by those candidates).

<sup>13</sup> *See, e.g.*, Advisory Opinion 2005-02 (Corzine II) at 4 (superseded in part on other grounds) (“any solicitation, receipt, or spending of funds by a Federal officeholder that refers to State or local candidates running for entirely different offices does not come within the exception”); AO 2007-26 at 4; AO 2006-38 at 4.

<sup>14</sup> *See, e.g.*, AO 2007-26 at 4 (“Donations ... to the non-Federal accounts of State and local party committees and to non-Federal candidates would involve spending and disbursing funds in connection with an election other than a Federal election”); AO 2006-38 at 4 (“Donating to a State or local candidate or to the non-Federal account of any State or local Democratic party organization would involve transferring, spending, or disbursing funds in connection with a non-Federal election”).

<sup>15</sup> AO 2007-26 at 3; AO 2006-38 at 3. For this purpose, the Commission has approved as reasonable the “first in, first out” and “last in, first out” accounting methods. AO 2006-38 at 3. Other accounting methods may also be reasonable.

<sup>16</sup> 11 C.F.R. § 110.3(d).

<sup>17</sup> *See* Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474, 3474-3475 (Jan. 8, 1993) (explaining, also, that Commission was adopting total prohibition in this circumstance because of practical difficulty in linking or otherwise accounting for federally permissible funds available for transfer); *see also* MUR 5406

1           The Complaint alleges that the State Committee impermissibly raised and spent soft  
2 money, asserting that any soft money raised and spent by the State Committee after Wexton’s  
3 declaration of federal candidacy is impermissible. The Complaint also alleges, without  
4 specifying how, that the State Committee “directed” soft money to the Federal Committee.  
5 Respondents argue that they were permitted to solicit and accept soft money under this dual-  
6 candidate exception, and that they complied with the requirements of both 52 U.S.C.  
7 § 30125(e)(2) and 11 C.F.R. § 300.63.<sup>18</sup>

8           The available information shows that Respondents violated the Act’s soft money ban in  
9 two ways. First, the State Committee improperly made donations to other state candidates and  
10 state party committees with non-federal funds after Wexton became a federal candidate. Once  
11 Wexton became a federal candidate on April 20, 2017, the State Committee was allowed to  
12 spend soft money on Wexton’s own state election but was required, as an entity EFMC’d by a  
13 federal candidate, to use federally permissible funds for disbursements made in connection with  
14 federal and other non-federal elections. From the time Wexton became a federal candidate, the  
15 State Committee made \$34,900 in donations to Virginia state and local candidates and parties  
16 that were required to be made using federally permissible funds.<sup>19</sup> The State Committee,  
17 however, reported receipts of only \$17,625 from individuals and other facially-permissible

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(Hynes for Senate) (finding RTB that dual candidate’s federal and state committees violated section 110.3(d) for direct contribution from state to federal committee and requiring disgorgement of contribution amount to U.S. Treasury).

<sup>18</sup> Resp. at 2.

<sup>19</sup> The State Committee’s reports also show approximately \$21,302 in disbursements that appear to be reasonably related to Wexton’s own state election and thus likely permissible soft money disbursements.

1 sources since January 2016.<sup>20</sup> The State Committee's federally permissible receipts appear  
2 insufficient to cover its reported state and local election disbursements, regardless of the State  
3 Committee's accounting method for identifying federally permissible funds. Thus, the record  
4 suggests that some portion of the \$34,900 that Wexton and the State Committee disbursed to  
5 state and local committees represents impermissible spending of non-federal funds in connection  
6 with state and local elections other than Wexton's own election. Accordingly, the Commission  
7 finds reason to believe that Wexton and the State Committee violated 52 U.S.C.  
8 § 30125(e)(1)(B).

9         Second, the State Committee improperly contributed funds to the Federal Committee. As  
10 discussed above, the available information shows that the State Committee also made two \$1,000  
11 contributions to the Federal Committee, and such transfers are prohibited.<sup>21</sup> Further, there is no  
12 record of the Federal Committee refunding either contribution.<sup>22</sup> Therefore, the Commission  
13 finds reason to believe that the State Committee and the Federal Committee violated 52 U.S.C.  
14 § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) when the State Committee made, and the Federal  
15 Committee accepted, impermissible transfers in the form of direct contributions.

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<sup>20</sup>         Though the State Committee also received funds from LLCs, it is not apparent from the current record whether these receipts are federally permissible. *See* 11 C.F.R. §110.1(g) (explaining that treatment of LLC contribution depends on tax treatment of the contributor).

<sup>21</sup>         *See supra* note 8.

<sup>22</sup>         *See* Wexton for Congress 2017 July Quarterly Report at 141; Wexton for Congress 2018 April Quarterly Report at 395. Both transactions are accompanied by memo entries indicating that the contributions from the State Committee were "Made with Permissible Funds," indicating that Respondents are aware of, but may have misconstrued, the soft money prohibitions.