



1000 Potomac Street N.W.  
Suite 200  
Washington, D.C. 20007

Main: 202.965.7880  
Fax: 202.965.1729  
foster.com

Direct Phone 202.298.1793  
*brad.deutsch@foster.com*

November 11, 2019

**BY EMAIL**

Ms. Lisa J. Stevenson  
Acting General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

**Re: MUR 7299 - Response of Wexton for Congress and Joan Kowalski, in her capacity as Treasurer; Wexton for State Senate and Thomas Rock, in his capacity as Treasurer; and Representative Jennifer Wexton**

Dear Ms. Stevenson:

This response is submitted on behalf of the above-referenced respondents (the “Respondents”)<sup>1</sup> in response to a letter from Commission staff dated October 16, 2019 (the “Staff Inquiry Letter”), seeking a supplemental response in the above-referenced matter.<sup>2</sup>

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<sup>1</sup> This response is filed timely pursuant to an extension granted by Commission staff.

<sup>2</sup> This matter was initiated by a complaint dated December 4, 2017, filed by John Findlay, Executive Director of the Republican Party of Virginia. Mr. Findlay’s complaint alleged that Rep. Wexton and Wexton for State Senate continued to *raise* funds for Rep. Wexton’s State Senate campaign while Rep. Wexton was simultaneously campaigning for (1) re-election to the Virginia State Senate and (2) a seat in the United States House of Representatives (*i.e.*, while Rep. Wexton was a “dual candidate”). On January 16, 2018, the undersigned filed a response to the complaint explaining that all funds *raised* by and for Wexton for State Senate were *raised* in full compliance with the “dual candidate” requirements of section 30125(e)(2) of the Federal Election Campaign Act and section 300.63 of the Commission’s rules (the “Dual Candidate Exception”). It should be noted that although the allegations in Mr. Findlay’s complaint only concern funds *raised* by and for Wexton for State Senate, the Staff Inquiry Letter goes beyond Mr. Findlay’s allegations to concern funds *spent* (*i.e.*, disbursements) by Wexton for State Senate.

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Based on Commission staff review of public disclosure reports filed by Wexton for State Senate with the Virginia Department of Elections, the Staff Inquiry Letter indicates that Wexton for State Senate disclosed making “22 contributions to Virginia state and local candidates and state party committees” during the time period when Rep. Wexton was a dual candidate. The Staff Inquiry Letter then goes on to suggest that these contributions may not have satisfied the Dual Candidate Exception, which allows dual candidates to solicit, receive and *spend* funds outside the federal limits and prohibitions in connection with a candidate’s nonfederal campaign so long as the solicitation, receipt, or *spending*: (1) is “solely in connection with such election for State or local office”; (2) “refers only” to him or her, to other candidates for that same state or local office, or both; and (3) is permitted under state law.<sup>3</sup>

Each of the 22 contributions identified in the Staff Letter satisfies all three elements specified in the Dual Candidate Exception. Specifically, each contribution made by Wexton for State Senate constituted *spending* that:

- was “solely in connection” with Ms. Wexton’s then-active campaign for re-election to the Virginia State Senate;<sup>4</sup>
- did not “refer” to anyone at all;<sup>5</sup> and
- was permitted under Virginia state law.

Further, as the Commission itself has explained, the purpose of Dual Candidate Exception is “to provide an equitable basis for a Federal officeholder or candidate to conduct his or her campaign for non-Federal office so that he or she is not financially disadvantaged when competing with a non-Federal opponent who may raise and spend funds without the same restrictions that [the Act] imposes on Federal candidates and officeholders.”<sup>6</sup> Here, if Wexton for State Senate were subject to the Act’s restrictions when making contributions to Virginia state and local candidates and state party committees – contributions that were entirely consistent both with spending by other Virginia State Senate candidates and with Wexton for State Senate’s own past practices –

<sup>3</sup> See, generally, Advisory Opinion 2016-25 (Pence).

<sup>4</sup> The identified contributions are entirely consistent with contributions made by Wexton for State Senate in prior election cycles ever since 2014, well before Ms. Wexton became a Federal candidate. The Office of General Counsel has itself acknowledged that any determination of whether activity is “solely in connection with” a state campaign requires analysis based on a “totality of the circumstances,” including whether the activity is consistent with prior activity that pre-dates the dual candidacy, as well as the proximity of the activity to the candidate’s Federal election. See *First General Counsel’s Report*, MUR 5411 (Winters).

<sup>5</sup> A check written by Wexton for State Senate, in and of itself, does not involve spending that “refers” to anyone. If merely filling out the name of a recipient on a bank check were enough to qualify as a “reference,” then any check written to a state campaign vendor or to a state campaign staffer would be ineligible for the “Dual Candidate Exception” because it does not “refer only” to the dual candidate herself or to her state opponents. Cf. *Statement of Reasons*, MUR 6207 (DeSaulnier) at 4.

<sup>6</sup> See, e.g., Advisory Opinion 2016-25 (Pence) at 2-3 and Advisory Opinion 2007-26 (Schock) at 6.

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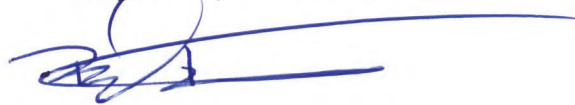
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the result would be precisely the financial disadvantage that the Dual Candidate Exception is designed to avoid.<sup>7</sup>

Finally, with respect to the two \$1,000 contributions from Wexton for State Senate to Wexton for Congress identified in the Staff Inquiry Letter, these contributions contained only federally permissible funds and the Respondents disclosed them in reports filed with Virginia Department of Elections and the Commission, respectively, as “contributions” and not as “transfers.” As such, both *contributions* – one in 2017 and one in 2018 – were compliant and consistent with both 11 CFR § 110.1 (contribution limit) and 11 CFR § 100.5 (political committee).

Respectfully Submitted,



Brad Deutsch  
*Counsel to Wexton for Congress,  
Wexton for State Senate,  
and Rep. Jennifer Wexton*

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<sup>7</sup> Moreover, it is common for likeminded state candidates and officeholders to make contributions to each other's campaigns, and the Supreme Court has made clear that “government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies.” *McCutcheon v. Federal Election Comm'n*, 134 S.Ct 1434, 1441 (2014) (citing, 558 U. S. 310,360 (2010)).