



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Wexton for Congress and Joan Kowalski in her official) MUR 7299
 capacity as treasurer)
 Wexton for State Senate)
 Jennifer Wexton)

**STATEMENT OF REASONS OF
 CHAIR SHANA M. BROUSSARD AND COMMISSIONER ELLEN L. WEINTRAUB**

This matter involves allegations that Jennifer Wexton, Wexton for Congress, and Joan Kowalski in her official capacity as treasurer (“Federal Committee”), and Wexton for State Senate (“State Committee”) raised and spent non-federal funds in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations.

The facts in this matter are not disputed. Jennifer Wexton was a candidate for the 2018 election to the U.S. House of Representatives in Virginia’s Tenth Congressional District.¹ The Federal Committee is her authorized campaign committee.² At the time she filed her Statement of Candidacy, Wexton was a sitting Virginia state senator and an incumbent candidate in the 2019 state election.³ The State Committee is her authorized state candidate committee.

After Wexton became a federal candidate, the State Committee reported making \$34,900 in donations to Virginia state and local candidates and parties.⁴ The State Committee, however, reported receipts of only \$17,625 from individuals and other facially-permissible sources (*i.e.* federal political committees and partnerships) since January 2016.⁵

¹ Wexton Statement of Candidacy (Apr. 20, 2017).

² Wexton for Congress Statement of Organization (Apr. 20, 2017).

³ Resp. at 1 (Jan. 16, 2018).

⁴ See State Committee’s Disclosure Reports Covering the Period from Jan. 1, 2016, through July 30, 2018 <https://cfreports.elections.virginia.gov/Committee/Index/4f45abed-9f50-e311-8b11-984be103f032?CurrentTab=Scheduled%20Reports#> (“State Committee Reports”). The State Committee’s reports also show approximately \$21,302 in disbursements that appear to be reasonably related to Wexton’s own state election.

⁵ Though the State Committee also received \$35,550 in contributions from sources that may be federally permissible (*i.e.* LLCs and Virginia state PACs), 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

The Act prohibits federal candidates, their agents, and entities, such as state committees, that are established, financed, maintained, or controlled (“EFMC’d”) by a federal candidate,⁶ from soliciting, receiving, directing, transferring, or spending funds “in connection” with any federal or non-federal election unless such funds are from sources consistent with state law and are in amounts and from sources permitted by the Act.⁷ The Commission has stated that activities “in connection” with an election include, but are not limited to, contributing to a candidate committee and contributing to a political party organization.⁸

The Act, however, provides an exception to this prohibition for “dual candidates” – *i.e.* candidates who concurrently run for federal and state or local office. Under that exception, dual candidates and entities EFMC’d by such candidates may solicit, receive, and spend funds outside of the Act’s amount limitations and source prohibitions so long as the solicitations, receipts, or spending: (1) are *solely* in connection with the candidate’s own state or local election; (2) “refer[] only” to such candidate or to other candidates running for the same state or local office; and (3) are consistent with state law.⁹ For any spending that is not covered by the dual candidate exception, a federal candidate’s state committee must spend only federally permissible funds in its account for these purposes, as identified by using a reasonable accounting method.¹⁰

The Commission has previously determined that a state candidate committee’s donations to other state candidates’ committees and to political party organizations are not solely in connection with the donating state candidate’s own election and, thus, do not qualify for the dual candidate exception.¹¹ For example, in Advisory Opinion 2007-26 (Schock), the Commission

treatment of the contributor). The remaining \$24,650 in receipts came from sources that are not federally permissible (*i.e.* corporations). During the same time period, the State Committee received \$4,825 in unitemized and in-kind contributions. *See* State Committee Reports. Virginia requires committees to itemize contributions over \$100. Virginia Dept. of Elections, *Summary of Laws and Policies: Candidate Campaign Committees*, Ch. 3, p. 16 <https://www.elections.virginia.gov/media/formwarehouse/campaign-finance/2020/Candidate-Summary-2020-09-29.pdf> (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.”)

⁶ 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; Advisory Op. 2006-38 (Casey State Committee) at 4.

⁷ 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).

⁸ Advisory Op. 2007-26 (Schock) at 4; Advisory Op. 2006-38 (Casey State Committee) at 4.

⁹ 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); *see also* Advisory Op. 2016-25 (Mike Pence for Indiana) at 2 (determining that state campaign of a former state officeholder who was also a federal officeholder could spend non-federal funds for state campaign’s expenses).

¹⁰ Advisory Op. 2007-26 (Schock) at 3; Advisory Op. 2006-38 (Casey State Committee) at 3. For this purpose, the Commission has approved as reasonable the “first in, first out” and “last in, first out” accounting methods. Advisory Op. 2006-38 (Casey State Committee) at 3. Other accounting methods may also be reasonable.

¹¹ *See, e.g.* Advisory Op. 2007-26 (Schock) at 4; Advisory Op. 2006-38 (Casey State Committee) at 4; *see also* Advisory Op. 2005-02 (Corzine II) at 4 (superseded in part on other grounds) (“any solicitation, receipt, or

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

Statement of Reasons of Chair Shana M. Broussard and Commissioner Ellen L. Weintraub

Page 3 of 4

found that the dual candidate's state committee could only use federally permissible funds to make donations to the non-federal accounts of state and local party committees. There, the Commission stated:

Donations by the Schock Committee 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. Therefore, any funds that are donated by the Schock Committee to the non-Federal party committee accounts or the non-Federal candidates . . . must not have been received by the Schock Committee in amounts in excess of those permitted with respect to contributions to Federal candidates and must not be from sources prohibited by the Act.¹²

In 2018, the Commission voted unanimously to find reason to believe that a candidate and her state committee violated the Act's section 30125(e)(1)(B) soft money prohibition where the state committee spent soft money in connection with non-federal elections, including contributions to candidates for state or local office.¹³ In finding reason to believe, the Commission stated that "the soft money exception applies only to funds raised and spent for use in connection with one's own state election. While [the candidate] remained able to solicit and accept soft money funds to spend on her own state race, she was still prohibited from spending those funds on other state and local candidates' races."¹⁴

The Respondents did not dispute that the State Committee had insufficient federally permissible funds to cover the 22 contributions to Virginia state and local committees made after Wexton became a federal candidate. Rather, the Respondents argued that the State Committee's 22 contributions were solely in connection with Wexton's own state election. The Respondents, however, did not explain how contributions to state and local candidates who were not running for the same office as Wexton related solely to Wexton's own state election.

This matter presented a straightforward application of our statute to undisputed facts. The Commission has consistently concluded that a dual candidate's donations to other state or local candidates are not exempt from the requirement that federal candidates and entities EFMC'd by such candidates raise and spend only funds subject to the limitations and prohibitions of the Act. The available information suggests that some portion of the \$34,900 that Wexton and the State Committee disbursed to state and local committees represents impermissible spending of non-federal funds in connection with state and local elections other than Wexton's own election. For this reason, we voted to approve the Office of General

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).

¹² Advisory Op. 2007-26 (Schock) at 4; *see also* Advisory Op. 2006-38 (Casey State Committee) at 4 ("Donating to a State or local candidate or 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").

¹³ Factual and Legal Analysis at 6, MUR 7106 (Citizens for Maria Chappelle-Nadal, *et al.*).

¹⁴ *Id.*

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

Statement of Reasons of Chair Shana M. Broussard and Commissioner Ellen L. Weintraub

Page 4 of 4

Counsel's recommendation to find reason to believe that Jennifer Wexton and Wexton for State Senate violated the Act and Commission regulations.¹⁵

The Complaint also alleged that after Wexton became a candidate, the State Committee improperly transferred funds in the form of two \$1,000 disbursements to her Federal Committee. The Commission's regulations explicitly prohibit "[t]ransfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election."¹⁶ Based on the available information, we also voted to approve OGC's recommendation to find reason to believe that the State Committee and the Federal Committee violated 52 U.S.C. § 30125(e)(1)(A) and 11 C.F.R. § 110.3(d) in connection with these transfers.¹⁷ After voting against the Office of General Counsel's recommendation to find reason to believe with respect to all of the allegations, our colleagues made a motion to find no reason to believe concerning the allegation that the State Committee impermissibly used soft money to make donations to state and local committees.¹⁸ They included in that same motion a reason to believe finding with respect to the two transfers from the State Committee to the Federal Committee totaling \$2,000.¹⁹ Because we did not support a finding of no reason to believe with respect to the donations to state and local committees and in consideration of the use of agency resources to conciliate over a \$2,000 violation, we did not vote in favor of our colleagues' motion.²⁰

September 3, 2021

Date



Shana M. Broussard
Chair

September 3, 2021

Date



Ellen L. Weintraub
Commissioner

¹⁵ Certification, MUR 7299 (Wexton for Congress, *et al.*) (July 15, 2021).

¹⁶ 11 C.F.R. § 110.3(d).

¹⁷ Certification, MUR 7299 (Wexton for Congress, *et al.*) (July 15, 2021).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*