

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Brian Lemek
Founder and Executive Director
Defend the Vote
600 Pennsylvania Ave SE #15180
Washington, DC 20003

Complainant,

v.

Charlene Nijmeh
409 Tenant Station, No. 422
Morgan Hill, CA 95037,

Charlene for Congress 2024 and Stacy Owens, Treasurer
312 Clay St. Ste. 300
Oakland, California 94607, and

Matt Ricchiazzi, Chief of Staff to Charlene Nijmeh
33 South Third Street
San Jose, CA 95113.

Respondents.

COMPLAINT

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1). Complainant is writing to request that the Commission investigate violations of the Federal Election Campaign Act by Charlene Nijmeh, Matt Ricchiazzi, Charlene for Congress 2024 and Stacy Owens as Treasurer (collective, the “Respondents”) for violating provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Federal Election Commission (the “FEC” or “Commission”) regulations.

FACTUAL BACKGROUND

Charlene Nijmeh is the chairwoman of the Muwekma-Ohlone tribe. On or about October 30, 2023, she filed a statement of candidacy as a candidate for Congress in California's 18th Congressional District.¹ On the same day, she established Charlene for Congress 2024 (the "Committee") to serve as her principal campaign committee.²

According to a recent press report, Nijmeh's campaign has been working with Matt Ricchiazzi, a political consultant who has identified himself as Nijmeh's "chief of staff."³ Ricchiazzi has also, by his own admission, served as a "volunteer" for Nijmeh's campaign.⁴ According to that report, Ricchiazzi is responsible for the production and distribution of a fake newspaper, called "The South Bay Chronicle," that was distributed to the homes of voters across the 18th Congressional District in February 2024.⁵ A copy of that publication is attached as **Exhibit B**.

While the publication resembles a traditional newspaper in appearance, it is anything but. The publication states that it is the "Election Edition," but reporting indicates that the publication has not previously been distributed, making it the only "edition of the publication that has been distributed to date."⁶ Unlike a traditional newspaper, this newspaper does not include a

¹ See Statement of Candidacy, Charlene Concepcion Nijmeh, *available at* <https://docquery.fec.gov/cgi-bin/forms/H4CA18136/1733988/>.

² See Statement of Organization, Charlene for Congress 2024, *available at* <https://docquery.fec.gov/cgi-bin/forms/C00855056/1733980/>.

³ Ramona Giargis, Silicon Valley congressional candidate tied to fake newspaper, San Jose Spotlight (Feb. 12, 2024), *available at* <https://sanjosespotlight.com/silicon-valley-congressional-candidate-charlene-nijmeh-tied-to-fake-newspaper-misinformation-zoe-lofgren-election-2024/#:~:text=News%20articles%20in%20a%20publication,Screenshot>. A copy of the article is provided as **Exhibit A**.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

“masthead” that lists the publisher, editor or contact information for the publication.⁷ A search for the name “The South Bay Chronicle” on the California Secretary of State’s website does not identify any corporation or business entity with that name.⁸ Nearly every page of the 24-page publication promotes the election of Nijmeh, levies fake and outlandish attacks on her opponent, incumbent Representative Zoe Lofgren (such as accusing her of “transgendering” minors and enabling global sex trafficking), or does both. The paper includes multiple instances of express advocacy – including endorsements of Nijmeh and photos of her campaign signs – but does not identify who paid for it. Ricchiazzi has admitted that the campaign did not pay him to produce the newspaper.⁹ According to Nijmeh, Ricchiazzi asked her if he could publish articles about the campaign, and she assented, telling him that he could.¹⁰

In order to make the publication appear like a legitimate newspaper, the newspaper includes what appear to be advertisements paid for by sponsors. However, this is a sham. Multiple entities who are identified by the publication, seemingly as advertisers, have indicated that they have never heard of the publication and have denied placing advertisements in the publication.¹¹

This is not the first fake newspaper that Ricchiazzi has sponsored. Ricchiazzi has sponsored other political advertisements masquerading as “journalism,” including the “San Francisco Inquirer.”¹²

⁷ *Id.*

⁸ Business Search, California Secretary of State, at <https://bizfileonline.sos.ca.gov/search/business> (last visited April 22, 2024).

⁹ Exhibit A.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

Respondents' violations do not end there. Ricchiazzi is identified as the payor on a mailer that was distributed on or about February 28 and that invokes political operative Roger Stone and urges Republican voters to vote for Nijmeh. A copy of that mailer (the "Stone Mailer") is attached as **Exhibit C**. However, the Committee has not reported receiving an in-kind from Ricchiazzi for the Stone Mailer, nor is there any record of Ricchiazzi filing an independent expenditure report with the Commission for the Stone Mailer.

Further, Nijmeh's campaign seems to have distributed mailers that have not been reported and that lack required disclaimers. Two mailers that were distributed by the Committee indicate that they were "Paid for by Charlene for Congress 2024" and include a return address for "Charlene for Congress 2024, 18 South 2nd Street, San Jose, CA 95113." A copy of these mailers are attached as **Exhibit D**. However, another two mailers, attached as **Exhibit E**, bear the same return address but do not indicate who paid for it. And the Committee's 2024 April quarterly report identifies that the Committee incurred debt for mailers, but they identify Nijmeh as the party to whom the debt is owed, rather than the vendor for those mailers, in violation of Commission policy.

LEGAL ANALYSIS

I. The South Bay Chronicle publication violates the Act's contribution limits, reporting requirements and disclaimer requirements.

a. The South Bay Chronicle is a coordinated communication.

Under Commission regulations, a communication will be considered a coordinated communication and, therefore, an in-kind contribution to a candidate if (1) it is paid for by a

person other than a candidate or a political party committee, (2) it contains certain conduct, and (3) it follows certain conduct.¹³ The South Bay Chronicle plainly meets this three-part test.

First, as Ricchiazzi has admitted to the press, neither Nijmeh nor the Committee paid for the communication. Ricchiazzi has taken responsibility for the publication and either he, or a business entity with whom he is associated, paid for the publication. Therefore, the first prong is met.

Second, the South Bay Chronicle contains the type of content that would qualify it as a coordinated communication. “Newspapers” and “magazines” are considered “public communications” under Commission regulations.¹⁴ And this communication expressly advocates for Nijmeh’s election (by containing endorsements of her candidacy and republishing her campaign signs in photographs); contains the functional equivalent of express advocacy in its extended, repeated, and outlandish attacks on Congresswoman Lofgren¹⁵; and identifies both Nijmeh and Congresswoman Lofgren in a communication that was distributed to their electorate during the 90 days before the March 5 primary election.¹⁶ Accordingly, the second prong is met.

Third, there is ample evidence that multiple conduct prongs have been met. Ricchiazzi has admitted to the press that he is a volunteer for the Committee; he also self-identifies as Nijmeh’s chief of staff. Accordingly, he is an agent of Nijmeh. As such, he was materially

¹³ 11 C.F.R. § 109.21(a).

¹⁴ *Id.* § 100.26.

¹⁵ *See Citizens United v. FEC*, 558 U.S. 310, 325 (2010) (finding that *Hillary: the Movie*, was the equivalent of express advocacy: “In light of historical footage, interviews with persons critical of her, and voiceover narration, the film would be understood by most viewers as an extended criticism of Senator Clinton's character and her fitness for the office of the Presidency. The narrative may contain more suggestions and arguments than facts, but there is little doubt that the thesis of the film is that she is unfit for the Presidency.”).

¹⁶ 11 C.F.R. § 109.21(c)(3), (4)(i), (5).

involved in the creation and distribution of the sham publication; he has taken credit for authoring it and distributing it.¹⁷

Even if the Commission determines that Ricchiazzi is not an agent of Nijmeh, the conduct prong would still be met. According to the candidate herself, Ricchiazzi asked Nijmeh if he could distribute articles about her, and she provided her approval to do so. Thus, Nijmeh assented to the communication.¹⁸ Moreover, as a volunteer to the campaign and as Nijmeh's chief of staff, Ricchiazzi would have been in possession of nonpublic information about Nijmeh's campaign plans, projects, activities or needs. And given the vast amount of content in the publication, his knowledge about these nonpublic plans, projects, activities and needs would have had to influence at least some of the content contained therein. Accordingly, the "former employee or independent contractor" prong would have also been met.¹⁹

Accordingly, there is ample reason to believe that Ricchiazzi made, and the Committee and Nijmeh received, an in-kind contribution in the form of a coordinated communication. Because this publication was distributed across the district, the cost likely exceeded the Act's limit of \$3,300 in connection with the primary election; and if Ricchiazzi paid for the publication with corporate funds, it would result in a prohibited corporate contribution.²⁰ And the Committee has further violated the Act by failing to report its receipt.²¹

b. The South Bay Chronicle is not subject to the media exemption.

Even though the publication is styled as a newspaper, Respondents cannot avail themselves of the "media exemption." The Act and Commission regulations exempt from the

¹⁷ *Id.* § 109.21(d)(2).

¹⁸ *Id.* § 109.21(d)(1)(ii).

¹⁹ *Id.* § 109.21(d)(5).

²⁰ 52 U.S.C. § 30118(a).

²¹ *See id.* § 30104(b)(3)(A).

definition of “contribution” and “expenditure” “any cost incurred in covering a news story, commentary, or editorial by any broadcasting station ..., web site, newspaper, magazine, or other periodical publication ... unless the facility is owned or controlled by any political party, political committee or candidate.”²² In assessing whether the exemption applies, the Commission conducts a two-step analysis. First, it asks whether the entity engaging in the activity is a press or media entity. Second, it applies the two-part analysis from *Readers Digest Association v. FEC*,²³ which asks (1) whether the entity is owned or controlled by a political party, political committee, or candidate, and (2) whether the press entity is acting in its “legitimate press function.”²⁴

The South Bay Chronicle fails to qualify for the exemption on all fronts. It is not a press or media entity, but a 24-page piece of campaign literature meant to support Nijmeh and attack Congresswoman Lofgren. It contains only de minimis content that is not related to those two candidates, and much of that content, such as the advertisements, appears to have been fabricated in an attempt to camouflage the publication as a legitimate publication (which it is not). Further, it was a one-off publication, rather than a regular publication. Residents were surprised to find this publication delivered to their doors; they had not received the publication until they received the self-described “election edition” of the publication in the month before the 2024 primary election. Accordingly, the publication has no press identity separate from its election-influencing purpose.

Nor is it operating under any economic model used by the recognized press. It does not charge users a subscription fee, nor does it even seem to have advertising revenue. As stated,

²² 11 C.F.R. § 100.73.

²³ 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981),

²⁴ See, e.g., Advisory Opinion 2023-10 (Sony Pictures Television).

while it purports to include paid advertisements, a number of the companies identified as purported advertisers have denied placing advertisements in the publication. Thus, the publication seems to have fabricated advertisements to make it appear as a legitimate press entity. But it is plainly not.

Even if the Commission disagrees with this conclusion, the publication would still not qualify for the exemption. It fails the first prong of the *Readers Digest* test because it is controlled by Nijmeh's agent, her campaign volunteer and chief-of-staff. And it fails the second prong, because, for all of the reasons outlined above, it is not a legitimate press function. As the court in *Reader's Digest Association* noted, the press exemption would not apply where, "for example, on Election Day a partisan newspaper hired an army of incognito propaganda distributors to stand on street corners denouncing allegedly illegal acts of a candidate and sent sound trucks through the streets blaring the same denunciations."²⁵ The publication, rather than a newspaper, is a 24-page piece of political literature, and not a bona fide newspaper. For these reasons, Respondents cannot avail themselves of the press exemption.

c. Even if the South Bay Chronicle is not a coordinated communication, it violates the Act's reporting requirements.

While there is compelling evidence that the publication is a coordinated communication, even if the Commission concludes that the conduct prong was not met, it would still violate the Act's reporting requirements. Because the publication contains express advocacy, if, for argument's sake, it was conducted independently of the Nijmeh campaign, it would have triggered independent expenditure reporting. This would have included reporting the communication within 48 hours if it was distributed more than 20 days and cost \$10,000 or

²⁵ 509 F. Supp. 1210 at 1214; *see also Fed. Election Com. v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 251 (1986) (distinguishing "fliers" from "regular publications").

more, as well as quarterly reporting.²⁶ To date, Ricchiazzi has failed to so report the communication.

d. The South Bay Chronicle violates the Act's disclaimer requirements.

Under the Act, public communications that expressly advocate for or against the election of a clearly identified candidate that are paid for by a person other than a candidate or candidate's authorized committee must identify the person who paid for the communication and whether or not it was authorized by a candidate.²⁷ As a public communication that expressly advocates for Nijmeh's election, and against Congresswoman Lofgren's, was required to include these identification statements, but it has not.

II. The Stone Mailer violates the Act's contribution limits, reporting requirements and disclaimer requirements.

The Stone Mailer was also a coordinated communication. On its face, it indicates that it was paid for by Ricchiazzi. The mailer meets the content prong of the coordinated communications rule because it contains express advocacy and identifies both Congresswoman Lofgren and Nijmeh and was distributed in their jurisdiction in the 90 days before the March 5, 2024 primary. And, for the same reasons articulated above, the conduct prong of the coordinated communications rule has also been met. Accordingly, the Committee received another in-kind contribution from Ricchiazzi that it failed to report. And the contribution likely exceeded the Act's limits, particularly when the cost of the Stone Mailer is aggregated with the cost of The South Bay Chronicle.

²⁶ 11 C.F.R. § 109.10(b), (c).

²⁷ 52 U.S.C. § 30120(a).

Moreover, whether or not the Stone Mailer was coordinated with Nijmeh and the Committee, it, on its face, violates the Act's disclaimer requirements because it provides the reader with no information about whether or not it was authorized by Nijmeh. And even if, for argument's sake, the Stone Mailer was not coordinated with Nijmeh or her campaign, Ricchiazzi would have been required to report the independent expenditure within 24 hours if the value was \$1,000 or more, and file quarterly reports of his independent expenditures, which he did not.

III. The Charlene for Congress 2024 mailer violates the Act's

Lastly, the Committee has further violated the Act by distributing mailers that violate the Act's disclaimer and reporting requirements. Attached to this Complaint are four mail pieces that the Committee appears to have distributed. Two indicate that they were paid for by the Committee. However, the other two, while bearing the same return address, do not indicate who paid for the mailing. The shared return address suggests that they were paid for by the Committee, but the fact that mailer does not contain a "paid for by" disclaimer violates the Act. Moreover, to date, the Committee has not reported the true recipient of any disbursements to for mail pieces. On its 2024 April Quarterly report, the Committee reported debt being owed to Nijmeh for mailers; however, the Committee has failed to correctly report the ultimate payee for those disbursements.²⁸ Complainant also notes that there are other irregularities in the Committee's 2024 April Quarterly report: (1) numerous disbursements are not accompanied with a description of their purpose, and (2) disbursements to Meta for what appear to be campaign communications are incorrectly reported on line 21 of the report as "other disbursements."

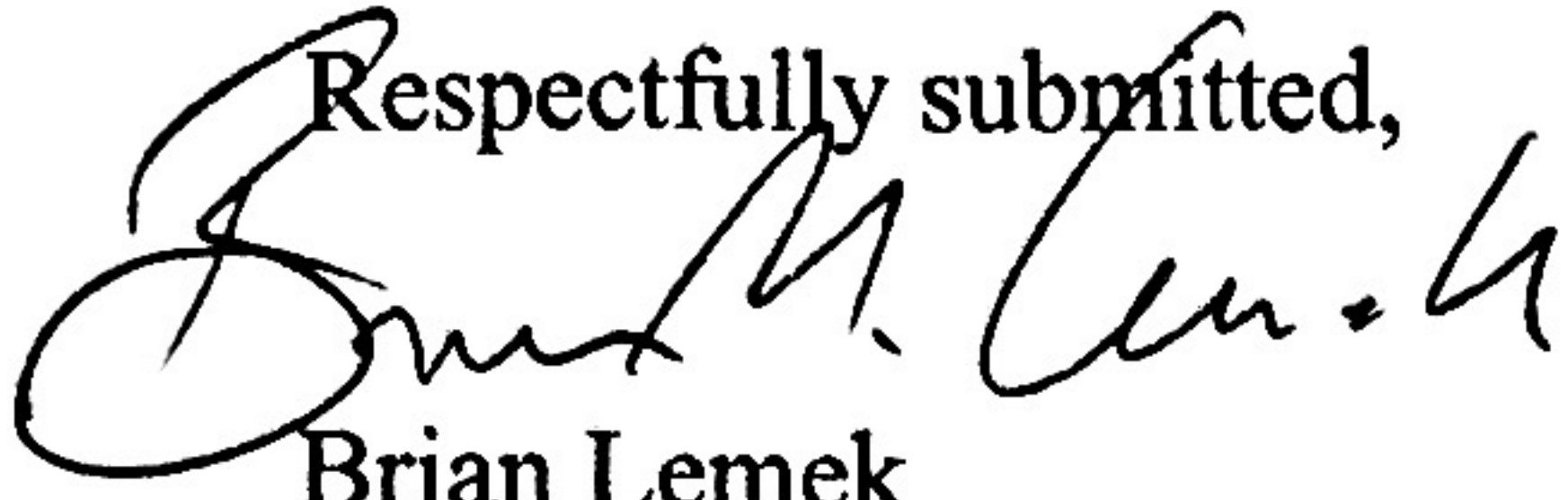
²⁸ *Notice of Interpretive Rule: Reporting Ultimate Payees of Political Committee Disbursements*, 78 Fed. Reg. 40,625, 40,626 (July 8, 2013) ("out-of-pocket spending by candidates, as agents of their authorized committees, requires memo entry itemization of the ultimate payee if the aggregate amount of payments to that vendor exceeds \$200 for the election cycle.")

Accordingly, the Committee has also violated the Act's reporting requirements by not correctly disclosing its disbursements and obligations.

CONCLUSION

In short, there is ample reason to believe that Respondents have repeatedly violated the Act and Commission rules. Given the extensive nature of the violations, there is reason to believe that these violations were knowing and willful. We respectfully request that the Commission immediately investigate these allegations, fine Respondents the maximum amount permitted by law, and enjoin Respondents from further violations of the law.

Respectfully submitted,



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SUBSCRIBED AND SWORN to before me this 30 day of April 2024.



EDWARD DUNCAN
Notary Public MONTGOMERY COUNTY
MARYLAND

My Commission Expires: 9/23/24

