

**BEFORE THE
FEDERAL ELECTION COMMISSION**

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

Complainant,

v.

Evan Low
1700 Tribute Road, Suite 201
Sacramento, CA 95815,

Evan Low for Assembly 2024
1700 Tribute Road, Suite 201
Sacramento, CA 95815, and

Evan Low for Congress and Evan Low, Treasurer
1700 Tribute Road, Suite 201
Sacramento, CA 95815,

Respondents.

COMPLAINT

This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1). Complainant is writing to respectfully request that the Federal Election Commission (the “FEC” or “Commission”) investigate potential violations of the Federal Election Campaign Act of 1971, as amended (the “Act”) and FEC regulations by Evan Low, Evan Low for Assembly 2024, Evan Low for Congress, and Evan Low in his official capacity as Treasurer (collectively, the “Respondents”). In short, Assemblymember Evan Low and Evan Low for Assembly 2024 have used corporate and labor funds to pay for electioneering communications supporting his federal candidacy, thus spending nonfederal funds in connection with Assemblymember Low’s federal election, and making illegal and unreported in-kind transfers from

his state committee to his federal committee. Evan Low for Assembly 2024 has also violated the Act by failing to properly disclose its donors on its electioneering communications report – apparently in an attempt to hide its corporate and labor funding sources. We urge the Commission to promptly investigate this matter and levy any appropriate sanctions against Respondents for their failure to comply with the requirements of the Act and Commission regulations.

FACTUAL BACKGROUND

Evan Low is a member of the California Assembly from the 26th Assembly District. Evan Low for Assembly 2024 (the “Nonfederal Committee”) was initially established as his nonfederal re-election committee and is now an officeholder committee. Assemblymember Low declared his candidacy for Congress in California’s 16th Congressional District on or about December 4, 2023,¹ and his principal campaign committee, Evan Low for Congress (the “Federal Committee”), filed a Statement of Organization on the same day.²

According to the Nonfederal Committee’s own filings with the FEC, *which were made under penalty of perjury*,³ on or about September 25, 2024, the Nonfederal Committee spent \$35,070.39 for electioneering communications that identified Assemblymember Low.⁴ This includes an ad distributed on Sing Tao Chinese Radio, a station that broadcasts in the San Francisco Bay Area,⁵ and another media buy placed through Impact Politics LLC, the distribution of which has yet to be

¹ See Statement of Candidacy, Evan Low, available at <https://docquery.fec.gov/pdf/946/202312049599371946/202312049599371946.pdf>.

² See Statement of Organization, Evan Low for Congress, available at <https://docquery.fec.gov/pdf/910/202312049599371910/202312049599371910.pdf>.

³ 52 U.S.C. § 30104(f)(2) (“Each statement required to be filed under this subsection shall be made under penalty of perjury.”).

⁴ See FEC Form 9, 24 Hour Notice of Disbursements/Obligations for Electioneering Communications, available at <https://docquery.fec.gov/pdf/568/202409279684752568/202409279684752568.pdf>.

⁵ *Id.*; Sing Tao Chinese Radio, at <https://www.singtaousa.com/pdf/stmedia.pdf>. Sing Tao Chinese Radio is aired on KVTO (AM 1400) and KSQQ (FM 96.1). *Id.* at 7.

revealed. A copy of the filing is attached to this complaint. The report filed by the Nonfederal Committee did not identify the committee's donors.

On or about September 27, 2024, the Nonfederal Committee also released a campaign-style video.⁶ The video depicts Assemblymember Low walking and describing his accomplishments in the Assembly, while upbeat music plays. It is, in substance, a campaign ad, with Low repeatedly saying "I've fought for you."⁷ The only difference is that, at the end, instead of expressly advocating for his election, Assemblymember Low says "Thank you District 26 for fighting with me, let's keep California moving forward." Sing Tao has indicated that this video is being presented to individuals who visit its YouTube channel.

A review of the Nonfederal Committee's disclosure reports indicate that most of its cash on hand consists of funds that are prohibited by the Act, including contributions made in excess of the federal \$3,300 limit and contributions from corporations and non-federal corporate and labor PACs. For example, on the Nonfederal Committee's 2023 Year-End report, it disclosed receiving \$5,500 contributions from Anheuser Busch Companies and Sempra Energy, \$2,500 contributions from Gilead Sciences, Inc. and Eli Lilly and Company, and \$2,000 contributions from Airbnb, Inc. and StubHub, Inc.⁸

⁶ The video ad may be viewed at <https://www.youtube.com/watch?v=45b6PN98dCw>.

⁷ Low has repeated the same line about "fighting," in his campaign communications. *See, e.g.*, https://www.youtube.com/watch?v=uI_OXQD119I.

⁸ See Evan Low for Assembly 2024, 2023 Year End Report, available at <https://cal-access.sos.ca.gov/PDFGen/pdfgen.prg?filingid=2871312&amendid=1>.

LEGAL ANALYSIS

I. Respondents Have Violated the Soft Money Ban by Spending Nonfederal Funds in Connection with a Federal Election on Public Communications that Promote and Support Low.

The Act prohibits federal candidates, and entities established, financed, maintained, or controlled by or acting on behalf of them, from soliciting, receiving, directing, transferring or spending funds in connection with an election for federal office unless the funds comply with the Act's amount and source limitations and reporting requirements.⁹ A federal candidate is also prohibited from transferring funds or assets from their nonfederal committee to their federal committee.¹⁰ Moreover, federal law prohibits state officeholders and their agents from spending funds for public communications that promote, attack, support or oppose ("PASO") a federal candidate unless the funds used are subject to the limitations, prohibitions, and reporting requirements of the Act.¹¹

In several matters, the Commission has determined when communications by state legislators are "in connection with" a federal election and PASO a federal candidate. In MUR 7154 (Kevin Mullin for Congress), a state assemblymember's nonfederal committee paid for two mailers that were sent to constituents in then-Assemblymember Mullin's Assembly district in December 2021 – *before* the assemblymember had declared his federal candidacy to the FEC or sought access to the ballot.¹² One was a legislative update, the second, a holiday card. The Commission found no reason to believe that the communications violated the soft money ban,

⁹ See 52 U.S.C. § 30125(e)(1)(A); see also 11 C.F.R. § 300.61.

¹⁰ 11 C.F.R. § 110.3(d).

¹¹ 52 U.S.C. § 30125(f). While a federal candidate who concurrently runs for state office may solicit, receive and spend funds outside of the Act's limits and source restrictions solely in connection with the candidate's state election, *id.* §§ 30125(e)(2), (f)(2), that exception does not apply here, as Assemblymember Low declared his candidacy for Congress with the Secretary of State in December 2023, and California law does not permit a candidate to run for two offices at once. See Cal. Elec. Code § 8040.

¹² MUR 7154 (Kevin Mullin for Congress), Factual and Legal Analysis, at 2-3.

noting that (1) the communications identified, but did not PASO, Assemblymember Mullin, (2) they did not solicit money, gather information about potential voters, or expressly advocate the election or defeat of any candidate, (3) they were “consistent with the type of mailers that state officeholders ‘routinely’ send to their constituents,” and (4) “*they were only sent to constituents of Mullin’s State Assembly district.*”¹³

Similarly, in MUR 7106 (Citizens for Maria Chappelle-Nadal), the Commission found no reason to believe that a newspaper ad paid for by a candidate’s state committee was in connection with an election for federal office because (1) it did not PASO a federal candidate but merely identified the candidate and discussed the candidate’s previous and ongoing efforts as a state senator to address toxic waste, (2) it did not solicit money, gather information about potential voters, or expressly advocate the election or defeat of any candidate, (3) it was “akin to the type of communications commonly produced by state officeholders,” and (4) it “*was directed to the constituents of [the candidate’s] state senatorial district.*”¹⁴

The Nonfederal Committee’s communications here are markedly different from the communications in MURs 7106 and 7154, and are plainly in connection with a federal election. This is apparent from the face of the electioneering communication report filed by the Nonfederal Committee.

First and foremost, the electioneering communication report – which, again, ***was filed under penalty of perjury*** – makes it clear that the communications were not limited in distribution to constituents in the 26th Assembly District, but was distributed broadly across the 16th Congressional District. An “electioneering communication” is, in relevant part, a radio or television communication that identifies a clearly identified federal candidate, is publicly distributed within 60 days before the

¹³ *Id.* at 7 (emphasis added).

¹⁴ MUR 7106 (Citizens for Maria Chappelle-Nadal), Factual and Legal Analysis, at 8-9 (emphasis added).

general election, and is targeted to the identified candidate's relevant electorate.¹⁵ A communication is "targeted to the relevant electorate" if it can be received by 50,000 or more persons in the district the identified candidate seeks to represent.¹⁶

The distribution of the Sing Tao advertisement was plainly not limited to the 26th Assembly District and was widely distributed across the 16th Congressional District. A review of the FCC's Electioneering Communications Database indicates that both KSQQ and KVTO, the two stations through which Sing Tao is broadcast, have a distribution of 50,000 or more in the 16th Congressional District. The video ad provided above was also distributed widely on the Internet to Sing Tao's viewers across the Bay Area.

Further, while we do not know the precise distribution of the Impact Politics buy, the fact that it was included on the electioneering communications report indicates it was distributed to at least 50,000 individuals in the 16th Congressional District. Further, there is very little overlap between the 26th Assembly District and the 16th Congressional District.¹⁷ From a review of the voter file, Complainant estimates that only 4% of the voters in Congressional District 16 are in Assembly District 26. For its part, the 16th Congressional District has approximately 748,899 residents, meaning that there are only 29,956 residents who reside in both districts.¹⁸ That means that, at a bare minimum, over 20,000 residents of the 16th Congressional District who are not residents of the 26th Assembly District will hear this advertisement. In other words, at least 40% of the audience comprised residents of the 16th Congressional District who do not live in the 26th Assembly District – and the number is likely much higher. Thus, this is not a case of a legislative update sent only to (or

¹⁵ 52 U.S.C. § 30104(f)(3).

¹⁶ *Id.* § 30104(f)(3)(C).

¹⁷ Compare the map of the 16th Congressional District, at <https://www.congress.gov/member/district/anna-eshoo/E000215>, with the map of the 26th Assembly District, at <https://a26.asmdc.org/district-map>.

¹⁸ United States Census Bureau, at <https://www.census.gov/mycd/?st=06&cd=16>.

even targeted primarily at) constituents – it is a mass media communication that has been distributed to thousands of voters outside of Low’s legislative district and in the 16th Congressional District.

Second and relatedly, while the Commission has declined to interfere with the ability of legislators to send “the type of [communications] that state officeholders ‘routinely’ send to their constituents,” the communications distributed by Low are not “routine” officeholder communications. They are mass media advertisements distributed a mere two weeks before counties in California will begin mailing voters their vote by mail ballots.¹⁹ In fact, Santa Clara and San Mateo counties – the two counties covered by the 16th Congressional District – are “Voters Choice Act counties, meaning that every voter in the district will be mailed a vote by mail ballot in short order.”²⁰ In contrast, MUR 7154 involved mailers sent to a legislator’s constituents six months before the primary election and before the legislator even became a federal candidate. The timing here is plainly indicative of the election-influencing purpose of the communications.²¹ Moreover, Assemblymember Low has no apparent history of distributing these types of ads to his Assembly District constituents in the past. Notably, the “@ASMEvanLow” YouTube account where the YouTube ad has been posted, was established on September 23, 2024, and has posted only one video – the campaign-style ad that Respondents began distributing just last week.

Further, the YouTube video distributed by the Nonfederal Committee is not typical of a legislator’s constituent communications because it is fundamentally a campaign ad in a thin disguise. It copies the same rhetoric that Low has used in his campaign, repeatedly informing

¹⁹ California Secretary of State, at <https://www.sos.ca.gov/elections/upcoming-elections/general-election-nov-5-2024>.

²⁰ California Secretary of State, VCA Participating Counties, at <https://www.sos.ca.gov/voters-choice-act/vca-participating-counties>.

²¹ See MUR 8215 (Last Best Place PAC), Statement of Reasons of Chairman Cooksey and Commissioners Dickerson, Lindenbaum, and Trainor, at 6 (finding no reason to believe that an advertisement contained express advocacy under section 100.22(b) in major part because it was distributed 9 months before an election).

viewers that “I’ve fought for you,” and ends by inviting viewers to join him to “keep California moving forward.” While Complainant has yet to receive one of the radio ads reported, on information and belief, it believes that the radio ads will be similar in substance to the YouTube video.

Finally, court precedent compels the conclusion that Low’s ads are “in connection with” federal elections. In *Citizens for Responsibility and Ethics in Washington v. FEC*, the District Court for the District of Columbia held that, for purposes of determining whether an organization has the major purpose of nominating or electing candidates to federal office, the Commission must consider electioneering communications to be presumptively election-influencing.²² This is because “[t]he legislative history [of BCRA] leaves little doubt that Congress saw electioneering communications as generally aimed at swaying voters.... As evidenced by their timing, their identification of a specific candidate, and their targeting of the relevant electorate, it was clear that electioneering communications—magic words or not— ‘were specifically intended to affect election results.’”²³ Because, in the view of the courts and Congress, the purpose of electioneering communications is election-influencing, it follows that electioneering communications must be considered “in connection with” a federal election for purposes of the soft money ban.

In short, then, Low and the Nonfederal Committee have used nonfederal funds – including corporate and labor funds and funds raised in amounts exceeding \$3,300 – to distribute campaign-style ads to voters throughout the 16th Congressional District, and outside of his current legislative district. This plainly departs from the types of communications that incumbent legislators “routinely” distribute to their constituents. The result is that (1) Low and

²² 299 F. Supp. 3d 83, 96-97 (D.D.C. 2018).

²³ *Id.* (quoting *McConnell v. FEC*, 540 U.S. 93, 127 (2003)).

the Nonfederal Committee have directed and spent nonfederal funds in connection with a federal election, (2) Low and the Nonfederal Committee have spent nonfederal funds for communications that PASO a federal candidate, and (3) Low and the Nonfederal Committee have made, and the Federal Committee has received, prohibited in-kind transfers.

II. Respondents Have Violated the Act's Reporting Requirements.

Respondents have also violated the Act's reporting requirements in two major ways.

First, as stated above, the Federal Committee has received prohibited in-kind transfers from the Nonfederal Committee. The Federal Committee has an obligation to report all contributions and transfers received,²⁴ and yet has failed to report the receipt of a contribution or transfer from the Nonfederal Committee. It has thus violated the Act's reporting requirements.

Second, the Nonfederal Committee did not file a complete electioneering communications report, as required by the Act and Commission regulations. When an unincorporated organization (like the Nonfederal Committee)²⁵ makes a disbursement for an electioneering communication, it is required to report the names and addresses of "all contributors who contributed an aggregate amount of \$1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date."²⁶ This means that the Nonfederal Committee was required to disclose all donors of \$1,000 from January 1, 2023 through the present. It failed to do so, and on a disclosure required to be filed under penalty of perjury, no less.

²⁴ 52 U.S.C. § 30104(b)(2).

²⁵ A search of the California Secretary of State's online business search tool does not identify any corporation with the name "Evan Low for Assembly 2024." See <https://bizfileonline.sos.ca.gov/search/business>.

²⁶ 52 U.S.C. § 30104(f)(2)(F); 11 C.F.R. § 104.20(c)(9).

CONCLUSION

In short, there is ample reason to believe that Respondents have violated the Act and Commission Regulations by using nonfederal funds to make electioneering communications supporting Evan Low's federal candidacy. To make matters worse, they then tried to hide the source of funds used by not properly disclosing them, suggesting that this violation was knowing and willful. We respectfully request that the Commission promptly investigate these potential violations, levy any appropriate sanctions against Respondents, and enjoin them from further violations of the law.

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

SUBSCRIBED AND SWORN to before me this ____ day of September 2024.

Notary Public

My Commission Expires: